

**Maine Board of Dental Practice
Board Meeting Minutes
August 17, 2018**

The Board meeting convened at 8:42 a.m.

Members Present: Drs. Lisa Howard, Stephen Morse, Glen Davis, Paul Dunbar, and Mark Zajkowski; Nancy Foster, RDH, EFDA; Tracey Jowett, RDH; Kathryn Young, LD; and M. Lourdes Wellington, Public Member

Also Present: Andrew Black, Assistant Attorney General; Teneale Johnson, Executive Secretary; and Penny Vaillancourt, Executive Director

Subcommittee on Dental Hygienists Report:

- Ms. Grenier reported that the Subcommittee on Dental Hygienists reviewed Complaint 16-31. Following their review of the complaint materials, the Subcommittee recommended that the Board dismiss the complaint as there was no violation of the Dental Practice Act. Dr. Zajkowski made a motion to accept the recommendation of the Subcommittee. Ms. Young seconded the motion. Vote 8-1 in favor (Dr. Davis recused as Complaint Officer)
- Ms. Grenier reported that the Subcommittee on Dental Hygienists reviewed Complaint 18-61. Following their review of the complaint materials, the Subcommittee recommended that the Board offer the licensee a consent agreement to resolve the complaint. The consent agreement would include an admission to the unlicensed practice, a warning, and a monetary penalty of \$50.00 to be paid within ninety (90) days of the fully executed agreement. Dr. Dunbar made a motion to accept the recommendation of the Subcommittee. Ms. Jowett seconded the motion. Vote 9-0 in favor.
- Ms. Grenier reported that the Subcommittee reviewed an application for Dental Hygiene licensure for Ms. Bonnie Morrison. Following their review of the application materials, the Subcommittee recommended that the Board grant Ms. Morrison a dental hygiene license. Dr. Zajkowski made a motion to accept the recommendation of the Subcommittee. Ms. Young seconded the motion. Vote 9-0 in favor.

Board Minutes – July 13, 2018: Following their review, Ms. Foster made a motion to approve the July 13, 2018 minutes. Dr. Morse seconded the motion. Vote 7-2 in favor. (Ms. Jowett and Ms. Wellington abstained)

Board Chair Report:

- “Consumer-Driven Elective Healthcare: “The Ethical Case for Doctor-Directed at Home Orthodontic Aligner Treatment,” written by Dr. Marc Ackerman, www.theProOrtho.com, Q3, 2018. The Board briefly discussed the article and accepted it as an FYI.

Public Health Supervision Presentation: Ms. Tracey Jowett provided a PowerPoint presentation for members of the Board regarding her experience practicing under Public Health Supervision in several school settings.

E-mail dated July 3, 2018 RE: ADHA – State Laser Curettage Info: The Board reviewed e-mail correspondence from the American Dental Hygienist Association which was requesting clarification of whether a Maine licensed dental hygienist could perform laser curettage. Dr. Davis made a motion to respond to the inquiry by stating that it cannot provide practice or legal advice; however, it would attempt to highlight and clarify its existing statutes and rules. The Board’s discussion included that while it is conceivable that a dental hygienist might perform ancillary curettage while completing scaling and root planing; soft tissue curettage is a dental procedure performed predominantly to limit the progression of periodontal disease. In addition, soft tissue curettage is usually performed under local anesthesia to reduce pain and/or discomfort to a patient. There was also discussion that there are significant patient safety concerns when performing curettage in treating periodontal conditions. Those patient safety concerns are elevated when combined with the use of laser technology. Finally, the Board discussed that the topic of soft tissue curettage may be part of a dental hygiene curriculum, but it is not necessarily taught clinically or included in the clinical examinations for dental hygiene licensure. Dr. Morse seconded the motion. Vote 9-0 in favor.

Letter dated July 20, 2018 from JCNDE RE: NBDE Transition: The Board agreed to keep this information in mind when addressing the proposed rule changes to ensure that that all wording regarding any future examinations remains correct.

American Association of Dental Boards Annual Membership: Dr. Davis made a motion to nominate Nancy Foster as the Board representative for the upcoming year. Dr. Zajkowski seconded the motion. Vote 9-0 in favor.

Complaint 18-54: A complaint was filed by a patient against a dentist alleging unprofessional conduct and patient abandonment. Following the Board’s review and discussion of the complaint materials, Dr. Dunbar made a motion to dismiss complaint 18-54 as there was no violation of the Dental Practice Act.

Dr. Zajkowski seconded the motion. Vote 7-2 in favor (Ms. Young recused and Dr. Davis, Complaint Officer recused)

Complaint 16-3: A complaint was filed by a patient alleging unprofessional conduct following his dental treatment. Following the Board's review and discussion of the complaint materials, Dr. Zajkowski made a motion to dismiss complaint 16-3 as there was no violation of the Dental Practice Act. Dr. Morse seconded the motion. Vote 7-2 in favor. (Ms. Young recused and Dr. Davis, Complaint Officer recused)

Complaint 15-36: A complaint was filed by a patient alleging that the licensee failed to release a copy of their records timely and applied fillings that were not appropriate and needed to be re-done. Following the Board's review and discussion of the complaint materials, Dr. Dunbar made a motion to dismiss complaint 15-36 and issue a letter of guidance regarding the appropriate release of patient records, which will remain of file for five years. Vote 8-1 in favor. (Dr. Davis, Complaint Officer recused)

Complaint 16-32: A complaint was filed by a patient against a dentist alleging unprofessional conduct relating to improper dental treatment which resulted in the patient having to obtain full dentures. The complainant also alleged that the office manager violated HIPAA. Following the Board's review and discussion of the complaint materials, Dr. Dunbar made a motion to offer the licensee a consent agreement based on unprofessional conduct (standard of care). The consent agreement would include a warning, and a license probation of one year. The licensee would also be required to complete six hours of continuing education which must be pre-approved by the Complaint Officer on record keeping and risk management within 90 days; following completion, the licensee will be required to submit five patient charts for review by the Complaint Officer. Dr. Morse seconded the motion. Vote 8-1 in favor. (Dr. Davis, Complaint Officer recused)

Complaint 16-118: A complaint was filed by a former employee against a dentist alleging unprofessional conduct, unsafe practice, and substance abuse. Following the Board's review and discussion of the complaint materials, Dr. Zajkowski made a motion to offer the licensee a consent agreement which would include enrollment and participation with the Maine Medical Professionals Health Program. The consent agreement would also include a warning, and a civil penalty of \$1,500 to be paid within 90 days following the execution of the agreement, for failing to disclose substance abuse treatment on their 2017 license renewal application. Dr. Morse seconded the motion. Vote 8-1 in favor. (Dr. Davis, Complaint Officer recused)

Complaint 16-119: A complaint was filed by a former employee against a dentist alleging unauthorized delegation of duties and sexual harassment. Following the Board's review and discussion of the complaint materials, Dr. Dunbar made a motion to offer the licensee a consent agreement for unprofessional conduct and allowing unlicensed practice. The consent agreement would include a reprimand, a civil penalty of \$1,500 to be paid within 90 days, and six hours of pre-approved continuing education regarding sexual harassment, which must be completed within 90 days. Dr. Morse seconded the motion. Vote 8-1 in favor. (Dr. Davis, Complaint Officer recused)

Complaint 17-49: A complaint was filed by the parent of a patient, alleging unprofessional conduct by the dentist for obtaining a fee by fraud or misrepresentation. Following the Board's review and discussion of the complaint materials, Dr. Zajkowski made a motion to dismiss complaint 17-49 and issue a letter of guidance stating that a patient's treatment planning should be completed closer to the time the procedures are being completed, or prior to entering the operating room. The letter of guidance will remain on file for five years. Dr. Morse seconded the motion. Vote 8-1 in favor. (Dr. Davis, Complaint Officer recused)

Complaint 15-6: A complaint was filed by the parent of a patient alleging that the licensee failed to release records as requested, and that the licensee provided incomplete and inappropriate treatment and that there may have been possible billing irregularities.

Complaint 16-112: A complaint was filed by the Board against a licensed dentist based on information it had received pursuant to 24 M.R.S. §2506 regarding overtreatment and undertreatment of dental disease, lack of documentation, and limited documentation.

Following the Board's review and discussion of the materials for complaint 15-6 and complaint 16-112, Ms. Foster made a motion to offer the licensee a consent agreement for failure to respond to the Board, and failure to maintain records. The agreement would include a provision that the licensee would agree to never reapply for licensure in Maine as a dental professional. Dr. Morse seconded the motion. Vote 8-1 in favor. (Dr. Zajkowski, Complaint Officer recused)

Complaint 15-28: A complaint was filed by a patient alleging patient abandonment. Following the Board's review and discussion of the complaint materials, Dr. Dunbar made a motion to dismiss complaint 15-28 as there was no violation of the Dental Practice Act. Dr. Davis seconded the motion. Vote 8-1 in favor. (Dr. Zajkowski, Complaint Officer recused)

Complaint 17-62: A complaint was filed by a patient alleging that the dentist failed to refund the complete fee for services not rendered. Following the Board's review and discussion of the complaint materials, Dr. Davis made a motion to dismiss complaint 17-62 as no violation of the Dental Practice Act. Ms. Foster seconded the motion. Vote 8-1 in favor. (Dr. Zajkowski, Complaint Officer recused)

Complaint 15-32: A complaint was filed by a patient alleging that the licensee ruined their front teeth. Following the Board's review and discussion of the complaint materials, Dr. Davis made a motion to dismiss complaint 15-32, as there was no violation of the Dental Practice Act. Ms. Foster seconded the motion. Vote 8-1 in favor. (Dr. Zajkowski, Complaint Officer recused)

Complaint 15-49: A complaint was filed by a patient alleging that the licensee failed to perform restorative dentistry properly, which resulted in a bridge failure and an injury to the lip; occlusal issues; failure to provide records timely, and failed to provide informed consent. Following the Board's review and discussion of the complaint materials, Dr. Dunbar made a motion to dismiss complaint 15-49 and send a letter of guidance regarding the records being released in a timely manner. The letter will remain on file for five years. Dr. Morse seconded the motion. Vote 7-2 in favor. (Dr. Davis recused, and Dr. Zajkowski, Complaint Officer recused)

Complaint 16-17: A complaint was filed by a patient alleging that the licensee lost her dental radiographs which resulted in tooth loss. Following the Board's review and discussion of the complaint materials, Dr. Zajkowski made a motion to dismiss complaint 16-17 as there was no violation of the Dental Practice Act. Dr. Morse seconded the motion. Vote 8-1 in favor. (Dr. Dunbar, Complaint Officer recused)

Complaint 16-116: A complaint was filed by a patient alleging that fillings which were completed by a previous provider needed to be replaced, and that the new provider should pay the costs for replacement. Following the Board's review and discussion of the complaint materials, Dr. Davis made a motion to dismiss complaint 16-116. A letter will be sent to the complainant letting them know that the Board does not get involved with fee disputes, and a letter will be sent to the licensee regarding better communication regarding treatment planning. Dr. Zajkowski seconded the motion. Vote 8-1 in favor. (Dr. Dunbar, Complaint Officer recused)

Complaint 16-27: A complaint was filed by a patient alleging unprofessional conduct and discrimination based on MaineCare coverage. Following the Board's review and discussion of the complaint materials, Dr. Zajkowski made a motion to dismiss complaint 16-27 as there was no violation of the Dental

Practice Act. Dr. Davis seconded the motion. Vote 8-1 in favor. (Dr. Dunbar, Complaint Officer recused)

Complaint 18-46: A complaint was filed by a patient alleging that the licensee agreed to retreat a root canal. Upon receiving a second opinion, the patient learned that the tooth was deemed non-restorable. Following the Board's review and discussion of the complaint materials, Dr. Zajkowski made a motion to offer the licensee a consent agreement which would include a reprimand, and a civil penalty of \$1,500 for fraud which is to be paid within 30 days. Dr. Morse seconded the motion. Vote 8-1 in favor. (Dr. Dunbar, Complaint Officer recused)

Complaint 16-108: A complaint was filed by a parent of a patient alleging unprofessional conduct, as the child's roots were shortened by the licensee's orthodontic practices. Following the Board's review and discussion of the complaint materials, Dr. Davis made a motion to dismiss complaint 16-108 and issue a letter of guidance regarding obtaining a signed informed consent with the patient/guardian, and obtaining mid treatment images to monitor progress. The letter will remain on file for five years. Dr. Morse seconded the motion. Vote 8-1 in favor. (Dr. Howard, Complaint Officer recused)

(Note: Complaint cases 17-57, 16-67, and 18-4 below were filed against the same licensee. The Board's vote, identified in Complaint case 18-4 is a combined vote on all three cases.)

Complaint 17-57: A complaint was filed on behalf of a patient alleging that the dentist provided inappropriate orthodontic treatment. After a thorough review and discussion of complaint materials, the Board voted to offer a consent agreement for potential violations of standard of care as concerns recordkeeping.

Complaint 16-67: A complaint was filed by a parent of a patient, alleging unprofessional conduct due to the child's teeth not being corrected when the braces were removed. After a thorough review and discussion of the complaint materials, the Board voted to offer the licensee a consent agreement for potential violations of the standard of care as concerns recordkeeping.

Complaint 18-4: A complaint was filed on behalf of a patient alleging unprofessional conduct, including rude behavior, failure to treat an infection, an inadequate orthodontic care. After a thorough review and discussion of the complaint materials the Board voted to offer the licensee a consent agreement for potential violations of the standard of care as concerns recordkeeping.

Following the Board's review and discussion of the above three complaints, Dr. Zajkowski made a motion to offer the licensee a consent agreement based on unprofessional conduct as it relates to record keeping. The agreement would include a warning, a civil penalty of \$1,500 to be paid within 90 days. The licensee will be required to complete six hours of continuing education on record keeping which has been pre-approved by the Complaint Officer within 90 days. (preference will be given to courses offered through the American Association of Orthodontists), and the Board reserves the right to review patient records to ensure compliance with pre/intra/post treatment documentation of patient care. Dr. Morse seconded the motion. Vote 8-1 in favor. (Dr. Howard, Complaint Officer recused)

Complaint 18-65: A complaint was filed by the Board against a dentist alleging a violation of the Board's rules regarding advertising. Following the Board's review and discussion of the complaint materials, Dr. Davis made a motion to dismiss the complaint. Dr. Zajkowski seconded the motion. Vote 9-0 in favor.

Request for Consent Agreement Amendment - Complaint 14-35: The licensee is requesting to reduce the frequency of testing, to eliminate the practice monitor requirement, and to eliminate the counseling requirement from his consent agreement. The Board received a letter from the MMPHP which recommended that the practice monitor remain in place for both practice locations, that testing be reduced, and counseling be eliminated. Following the Board's review and discussion of the materials, Dr. Zajkowski made a motion to amend the consent agreement to eliminate counseling, reduce testing frequency, and that the licensee be informed that a practice monitor will be required for each practice location. The motion was seconded by Dr. Howard. Vote 9-0 in favor.

Request for Consent Agreement Amendment - Complaint 15-7: The licensee is requesting that she be allowed to enter a senior monitoring contract with the Maine Medical Professionals Health Program. Following the Board's review and discussion of the materials reviewed, Ms. Foster made a motion to approve this request. Dr. Howard seconded the motion. Vote 9-0 in favor.

At a previous meeting, the Board had voted to generate a complaint against the above licensee for documentation which was not appropriately filed with the Board. Following the Board's discussion, Dr. Dunbar made a motion to withdraw its motion to issue a board complaint. Dr. Davis seconded the motion. Vote 9-0 in favor.

Review and Approval of Consent Agreement Compliance Documentation -

Complaint 16-120: Following the Board's review of the documentation submitted for compliance with the consent agreement, Dr. Davis made a motion to approve the reporting. Dr. Morse seconded the motion. Vote 9-0 in favor.

Review of Consent Agreement Compliance Documentation - Complaint

Nos. 15-37, 16-46, and 16-70: Following the Board's review of compliance information, Dr. Davis made a motion to table the matter, but to delegate to board staff that if this matter should go to hearing, the allegation of non-compliance with a consent agreement be added to the notice of hearing. Dr. Morse seconded the motion. Vote 8-1 in favor. (Dr. Dunbar, Complaint Officer recused)

Application for Dental Radiography Licensure - Kourtney Parshall:

Following their review of the application materials, including information concerning a criminal background disclosure, Ms. Foster made a motion to grant a dental radiography license to Ms. Parshall. Dr. Zajkowski seconded the motion. Vote 9-0 in favor.

Application for Dental Radiography Licensure - Amanda Sebok:

Following their review of the application materials, including information concerning a criminal background disclosure, Dr. Davis made a motion to grant a dental radiography license to Ms. Sebok. The motion was seconded by Dr. Dunbar. Vote 8-1 in favor. (Dr. Howard recused)

Application for Dental Radiography License Renewal - Chad Erickson:

Following their review of the application materials, including documentation provided by the licensee related to certain disclosures on his application, Dr. Dunbar made a motion to grant the dental radiography license renewal for Mr. Erickson. Dr. Zajkowski seconded the motion. Vote 7-2 in favor. (Ms. Jowett and Ms. Foster opposed)

Application for Moderate Parenteral Sedation Permit - Dr. Michael

Cwiklinski: Following their review of the application materials, including proof of the additional experience obtained through the registration process, Dr. Davis made a motion to grant a moderate parenteral sedation permit to Dr. Cwiklinski. Dr. Dunbar seconded the motion. Vote 7-2 in favor. (Dr. Morse and Dr. Zajkowski recused)

Application for Renewals - DSA permits - Dr. Pankaj Thakker:

Following their review of the application materials, including information regarding affirmative responses to various application questions, Dr. Dunbar made a motion to grant the renewal of Dr. Thakker's deep sedation/general anesthesia

permits, with a reminder of the reporting requirements pursuant to 32 M.R.S. §18352. Dr. Davis seconded the motion. Vote 9-0 in favor.

Application for Dental Radiography Renewal – Angelina Hamlin: Following their review of the application materials, including information regarding a disclosure on an application question, Dr. Davis made a motion to grant a dental radiography license to Ms. Hamlin. The motion was seconded by Dr. Morse. Vote 8-1 in favor. (Ms. Foster recused)

Executive Director’s Report:

- Legislative Update – Ms. Vaillancourt will update the Board once legislative activities begin in anticipation of the 129th First Regular Session.
- Rulemaking Update – Ms. Vaillancourt reported that the Board received Executive approval to move forward through the rule-making process as it relates to Board Rules, Chapter 13. Information related to the Board’s rulemaking effort has been advertised, filed, and distributed as required by law and executive order. In addition, the Board has distributed the same information to its Interested Parties list notifying them of the rulemaking hearing set for September 14, 2018 at 1 p.m.
- Licensing Data – Ms. Vaillancourt provided an overview of licensing data for the Board which was accepted as an FYI.
- Dental Hygiene Therapy – AADB Teleseminar – Ms. Vaillancourt recently participated in a teleseminar through the American Association of Dental Boards which discussed dental therapists. She will present a draft dental hygiene therapy application for the Board’s review at an upcoming meeting.
- Transition 5-year license term into a 2-year term – Ms. Vaillancourt will be working to transition the five-year license terms into a two-year license term to fully implement the Dental Practice Act. Initial applicants for dental radiography will be issued a fixed expiration date set to December 31st of odd years. Initial applicants for local anesthesia authorities will be issued a fixed expiration date set to December 31st of even years. Initial applicants for expanded function dental assisting will be issued a fixed expiration date set to December 31st of even years. Existing five year licenses and permits will take several years to fully transition upon renewal into a fixed expiration date set on December 31st, respectively.

Proposed Draft – Board Rule, Chapter 7 “Establishment of Fees”: In response to addressing a revenue shortfall in developing a balanced budget for Fiscal Years 2020 and 2021, the board reviewed, discussed, and voted to adopt a fee proposal that in part, increases fees for all licensure categories for both initial licensure and renewal of licensure. Dr. Morse made a motion to accept the draft, and to propose Board Rule chapter 7. Dr. Zajkowski seconded the motion. Vote 8-1 in favor. (Ms. Foster opposed)

The remaining agenda items not addressed will be tabled to the next Board meeting.

Dr. Davis made a motion to adjourn at 4:28 p.m. Ms. Jowett seconded the motion and it passed unanimously.

Respectfully Submitted,

Teneale E. Johnson
Executive Secretary