

**Maine Board of Dental Practice  
Board Meeting Minutes  
December 7, 2018**

The Meeting convened at 9:00 a.m.

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

**Also Present:** Andrew Black, Assistant Attorney General; James Bowie, Assistant Attorney General; Jonathan Bolton, Assistant Attorney General; Christopher Taub, Assistant Attorney General; Hearing Officer F. Mark Terison, Esq.; Teneale Johnson, Executive Secretary; and Penny Vaillancourt, Executive Director.

**Review/Ratification of Decision and Order – Complaint 18-66 (Dr. Schecter):**

Dr. Paul Dunbar made a motion to accept the decision and order as written. Dr. Glen Davis seconded the motion. Vote: 7 in favor -1 opposed (Dr. Mark Zajkowski). Ms. Young recused.

**Review/Ratification of Decision and Order – Complaint 18-46 (Dr. Steuer):**

Dr. Glen Davis made a motion to accept the decision and order as written with the clarification that costs are identified at \$3,000.00. Dr. Stephen Morse seconded the motion. Vote: 7-0 in favor. Drs. Paul Dunbar and Mark Zajkowski recused.

**Review/Ratification of Decision and Order – Complaint 18-29 (Ms. Packard):**

Ms. Foster made a motion to accept the decision and order as written. Ms. Young seconded the motion. Vote: 9-0 in favor.

**Discussion with Legal Counsel Regarding Pending Litigation:**

Dr. Stephen Morse made a motion to enter into executive session at 9:28 a.m. pursuant to 1 M.R.S. § 405(6)(E) so that the Board can consult with its attorney with respect to pending litigation. Dr. Glen Davis seconded the motion. Vote: 9-0 in favor.

Dr. Glen Davis made a motion to come out of executive session at 10:50 a.m. Ms. Jowett seconded the motion. Vote: 9-0 in favor.

**Complaint Nos. 16-5, 16-6, 16-20, 16-21, 16-22, 16-37, 16-38, 16-39, 16-40, 16-43, 16-45, 16-47, and 16-71:**

Dr. Glen Davis made a motion to rescind the Board's earlier vote to file the complaint cases in District Court and to dismiss the cases and issue a letter of guidance. Dr. Stephen Morse seconded the motion. Vote: 6-0 in favor. Dr. Paul Dunbar, Dr. Mark Zajkowski, and Ms. Nancy Foster recused.

The letter of guidance will be placed in the licensee's file for five years as identified below:

"Dental practitioners have a duty to respect a patient's right to self-determination. See ADA Principles of Ethics and Code of Professional Conduct ("ADA Principles"), Part III, § I; American Board of Oral and Maxillofacial Surgery Canons of Ethical Conduct ("ABOMS Canons"), C3.1. That duty includes the obligation to inform the patient of proposed treatments, and any reasonable alternatives, in a manner that allows the patient to become involved in treatment decisions. Effective communication with the patient is essential to fulfilling this duty. Effective communication includes active listening and genuinely attempting to understand the perspective and expectations of the patient. A professional demeanor is essential. Curt or dismissive responses to patient questions or concerns can interfere with the patient's ability to fully understand treatment alternatives and to make informed decisions. Unduly rushing procedures is counterproductive to effective communication and a threat to patient confidence in treatment. A dental practitioner who fails to communicate effectively with patients regarding proposed treatments and alternatives, including addressing fully any fears or concerns the patient may have about such treatments, risks engaging in unprofessional conduct.

Dental practitioners have a duty to protect a patient from harm. ADA Principles, Part III, § 2. This duty includes performing procedures in a manner that minimizes patient discomfort. It includes monitoring of patients for indications of pain, verbal or otherwise, during and after procedures and acting to address that pain or distress promptly. Appropriate responses to patient distress include not only pharmacological interventions but also empathy and sympathetic communication. A pause or termination of a procedure may be necessary in cases in which patient pain or distress cannot otherwise be addressed. A dental practitioner who fails to adequately monitor patient pain or distress during procedures risks engaging in unprofessional conduct.

Dental practitioners should exercise judgment as to whether they can effectively treat a presenting patient and as to whether a pre-procedure consultation visit might be appropriate. See ABOMS Canons, C3. 1. For some patients, a separate consultation visit may be necessary to ensure that they

fully understand their treatment options. For other patients, a hospital admission or referral to a colleague may be appropriate. Sound judgment regarding the advisability of a consultation will help ensure treatment that is fully consistent with patient consent and expectations.

Dental practitioners have a duty to maintain sanitary and safe office conditions at all times. See Board Rules, Chapter 9, § II(L). Except for service animals as defined by the Americans with Disabilities Act and the Maine Human Rights Act, no living animal, including domesticated pets, should be brought into the office of a dental practitioner. In addition, gloves, separation of clean and dirty areas, and protective barriers should be used consistent with Center for Disease Control and Prevention Guidelines for Infection Control in Dental Health-Care Settings. See Board Rules, Chapter 9, § II(L)(7). There should be regularly scheduled employee education on OSHA regulations, particularly those dealing with bloodborne pathogens.

The duties described above apply to all patients, regardless of economic situation or insurance coverage.”

**Subcommittee on Dental Hygienists Report:**

Pending Applications: Dr. Glen Davis made a motion to accept the recommendation from the Subcommittee to cancel the following permit applications. Ms. Jowett seconded the motion. Vote: 9-0 in favor.

- Kittrena Moccia – Local Anesthesia and Nitrous Oxide Analgesia
- Olympia Thibault – Local Anesthesia
- Jessica Fadden – Local Anesthesia
- Tonya England – Local Anesthesia
- Sherry Donaldson – Local Anesthesia
- Katie Honnell – Local Anesthesia
- Jennifer Marden – Nitrous Oxide Analgesia
- Natasha McNutt – Dental Hygiene License Reinstatement and Local Anesthesia

Dr. Glen Davis made a motion to accept the recommendation from the Subcommittee to grant the request to withdraw the permit application, but deny the request for a refund. Ms. Jowett seconded the motion. Vote: 9-0 in favor.

- Laura Goomishian – Local Anesthesia and Nitrous Oxide Analgesia.

Dental Hygiene License Renewals:

- So Yong Pastore, RDH: Criminal conviction disclosure: Dr. Mark Zajkowski made a motion to accept the recommendation from the Subcommittee to grant re-licensure and to issue the licensee a letter of guidance. The letter of guidance will remind the licensee to accurately respond to questions on renewal applications and will be placed in the licensee's file for five years. Ms. Pastore will also be asked to report any final disposition of the recent disclosure and Board staff will flag her record for review at the next renewal cycle. Ms. Young seconded the motion. Vote: 9-0 in favor.
- Susan Vollhardt, RDH: CE waiver request. Dr. Paul Dunbar made a motion to accept the recommendation from the Subcommittee to grant the waiver and to grant re-licensure. Dr. Glen Davis seconded the motion. Vote: 9-0 in favor.
- Katharine Decker, RDH: Request for inactive status/review of disclosure. Ms. Young made a motion to accept the recommendation from the Subcommittee to grant the request re-licensure with an inactive status. Dr. Zajkowski seconded the motion. Vote: 9-0 in favor.

Initial Complaint Presentation - Complaint 18-78: Dr. Glen Davis made a motion to accept the recommendation from the Subcommittee to offer the licensee a consent agreement mandating the licensee to enroll with Maine's Medical Professionals Health Program, and to place the licensee on probation for a period of five years. Dr. Paul Dubar seconded the motion. Vote: 9-0 in favor.

**Board Meeting Minutes – October 12, 2018:** Ms. Foster made a motion to accept the minutes as drafted. Dr. Glen Davis seconded the motion. Vote: 7-0 in favor. Dr. Mark Zajkowski and Ms. Young recused.

**Board Meeting Minutes – November 9, 2018:** Ms. Foster made a motion to accept the minutes as drafted. Dr. Glen Davis seconded the motion. Vote: 9-0 in favor.

**Application for Dental Radiography Licensure – Joslynn Studley:** Ms. Studley provided disclosures regarding criminal conduct and a diagnosis/treatment of a medical condition. After a review and discussion of the issues involved, Dr. Paul Dunbar made a motion to grant licensure. Dr. Mark Zajkowski seconded the motion. Vote: 9-0 in favor.

**Application for Dental Radiography Licensure – Ingrid Hermanus:** Ms. Hermanus filed an application via endorsement and provided a dental radiography course for the Board’s review and approval. After a review and discussion of the materials, Dr. Paul Dunbar made a motion to grant licensure. The motion was seconded by Dr. Glen Davis. Vote: 9-0 in favor.

**Immediate Suspension Consideration – Informal Complaint 18-90:** The licensee signed a consent agreement whereby she agreed to an interim suspension of her dental radiographer license until the disposition of the criminal case is determined. Dr. Glen Davis made a motion to initiate a formal complaint against the licensee. Dr. Mark Zajkowski seconded the motion. Vote: 9-0 in favor.

**Notification of Criminal Conduct Incident – Informal Complaint 18-93:** A licensed dentist notified the Board of a criminal charge of Unlawful Possession of Scheduled Drugs. The licensee submitted documentation related to the incident, as well as a psychological evaluation that was conducted in August of 2018.

After a review of the materials presented, Dr. Paul Dunbar made a motion to initiate a complaint against the licensee with the allegation of engaging in unprofessional conduct by violating Board Rules Chapter 9, Section II(F) by possessing controlled substances in a way other than for dental therapeutic purposes. The motion also included an offer of a consent agreement to resolve the matter. The terms of the consent agreement are: an admission, a warning, develop a written protocol for the storage, prescribing, dispensing, and disposal of controlled substances and submit to the Board within 30 days, and as a condition of licensure submit to the Board on a quarterly basis, a written controlled substances log identifying patient name, name of the drug, dosage of the drug, and the date of prescription, dispensing, or administration. Dr. Zajkowski seconded the motion. Vote: 9-0 in favor.

**Initial Complaint Presentations:**

**Complaint 18-33:** A complaint was filed against a dentist alleging unprofessional conduct related to the dentist’s responses to the consumer’s requests for dental records. After a review and discussion of the materials presented, Dr. Paul Dunbar made a motion to dismiss the complaint and issue the licensee a letter of guidance. The letter of guidance will be placed in the licensee’s file for five years and will remind the licensee of their responsibilities to release records and to ensure informed consent to treatment is part of the patient’s record. Dr. Glen Davis seconded the motion. Vote: 8-0 in favor. Dr. Lisa Howard recused.

**Complaint 18-36:** A complaint was filed against a dentist alleging unprofessional conduct based on the dentist's failing to inform the patient of a practice closure and retirement while seeking dental services from the dentist. After a review and discussion of the materials presented, Dr. Glen Davis made a motion to dismiss the complaint. Ms. Young seconded the motion. Vote: 8-0 in favor. Dr. Paul Dunbar recused.

**Complaint 18-52:** A complaint was filed against a dentist alleging unprofessional conduct based on the consumer unable to obtain dental records following a dental practice closure. After a review and discussion of the materials presented, Ms. Young made a motion to dismiss the complaint. Dr. Mark Zajkowski seconded the motion. Vote: 8-0 in favor. Dr. Paul Dunbar recused.

**Complaint 16-55:** A complaint was filed against a dentist alleging unprofessional conduct related to the dissatisfaction of dentures delivered to the patient. After a review and discussion of the materials presented, Dr. Mark Zajkowski made a motion to dismiss the complaint, and issue the licensee a letter of guidance. The letter of guidance will be placed in the licensee's file for five years reminding the licensee of their obligation to the patient when adopting a business practice requiring a patient to return dentures as a condition to receive a monetary refund. Strictly enforcing such a return policy without first conducting a health assessment may cause adverse impacts to the patient's overall health. Ms. Young seconded the motion. Vote: 8-0 in favor. Dr. Glen Davis recused.

**Complaint 16-122:** A complaint was filed against a dentist alleging unprofessional conduct related to a tooth extraction. After a review and discussion of the materials provided, Dr. Paul Dunbar made a motion to dismiss the complaint and issue the licensee a letter of guidance. The letter of guidance will be placed in the licensee's file for five years and will remind the licensee of the standard of care regarding obtaining and recording a patient's blood pressure prior to performing a surgical procedure. Failure to do so may not only constitute unprofessional but may severely compromise patient care and/or patient safety. Dr. Stephen Morse seconded the motion. Vote: 8-0 in favor. Dr. Glen Davis recused.

**Complaint 18-57:** The licensee signed a consent agreement whereby she agreed to an interim suspension of her dental radiographer license until the disposition of the criminal case is determined. Since that time her dental radiography license expired, and she received a conviction of one count of theft by unauthorized taking or transfer, suspended sentence of 364 days in jail, and placed on one year probation. After a review and discussion of the

complaint materials, Dr. Mark Zajkowski made a motion to offer a consent agreement with the following terms: a reprimand, and a license revocation. Ms. Foster seconded the motion. Vote: 9-0 in favor.

**Bureau of Consumer Credit Protection (BCCP):** The Board received correspondence from BCCP dated October 11, 2018, regarding a consumer who contacted their agency seeking financial reimbursement from a dental corporation. After a review and discussion of the information presented, Dr. Glen Davis made a motion to send a letter to the consumer with a copy to BCCP. Ms. Jowett seconded the motion. Vote: 9-0 in favor.

**Consideration of Consent Agreement – Complaint 16-18:** An amended consent agreement was presented to the Board, which included a provision to reimburse the complainant. After a review and discussion, Dr. Glen Davis made a motion to accept the amendment. Dr. Mark Zajkowski seconded the motion. Vote: 8-0 in favor. Ms. Young recused.

**Complaint 15-35:** A complaint was filed against a dentist alleging unprofessional conduct resulting from a dental filling that fell out. After a review and discussion of the materials presented, Dr. Stephen Morse made a motion to dismiss the case. Ms. Jowett seconded the motion. Vote: 8-0 in favor. Dr. Mark Zajkowski recused.

**Complaint 16-13:** A complaint was filed against a dentist alleging unprofessional conduct related to a request to release of records in a timely fashion. After a review and discussion regarding the materials, Dr. Glen Davis made a motion to dismiss the complaint and issue the licensee a letter of guidance. The letter of guidance will remain in the licensee's file for five years and will remind the licensee of their obligations to release patient records in accordance with Board Rule Chapter 9. Dr. Paul Dunbar seconded the motion. Vote: 8-0 in favor. Dr. Mark Zakowski recused.

**Initiate a complaint related to Complaint Case 16-13:** After a review and discussion of the complaint materials in Complaint Case 16-13, Ms. Foster made a motion to initiate a complaint against another dentist identified based on the allegation of unprofessional conduct related to the use of another dentist's taxpayer identification number. Dr. Glen Davis seconded the motion. Vote: 9-0 in favor.

**Complaint 18-53:** A complaint was filed against a dentist alleging unprofessional conduct related to the notification to a change in the status of insurance participation. After a review and discussion of the materials, Dr.

Glen Davis made a motion to dismiss the complaint. Dr. Paul Dunbar seconded. Vote: 8-0 in favor. Dr. Mark Zajkowski recused.

**Complaint 18-94:** After a review and discussion of the licensee's non-response to Complaint Case 16-82, Ms. Foster made a motion to offer the licensee a consent agreement with the following terms: a censure, payment of a monetary fine of \$10,500.00 (\$1,500 x 7 instances of a violation) to be paid within 90 days. Dr. Stephen Morse seconded the motion. Vote: 8-0 in favor. Dr. Mark Zakowski recused.

**Executive Director's Report:**

- Legislative Updates: Board staff is currently working to fully implement the legislative changes from the 128<sup>th</sup> Second Regular Legislative Session. Information regarding the 129<sup>th</sup> First Regular Session will be forthcoming, including a newly formed legislative committee of jurisdiction.
- Rulemaking: the Rules Committee will reconvene in April of 2019 to examine Board Rules Chapter 14 and 21. Board Rule Chapter 13 went into effect on November 12, 2018 and a transition chart was developed and placed on the website to assist with the transition.
- Transition five year licenses into two year licenses is almost complete, along with the transition of dental hygiene permits into the dental hygiene renewal of licensure cycle.
- Wall Certificate – after a review of the formatting and signatures on the existing wall certificates, the Board agreed to transition the wall certificates to include only the signatures of the chair and vice-chair. In addition, due to the availability of customized paper, the Board agreed to send the wall certificates to licensees via email as a pdf document and it could be printed on paper selected by the licensee.

**Other Items:**

**E-mail dated November 19, 2018 from Dr. Aaron Im RE: Dental Sleep Medicine:** Board discussed the existing scope of practice along with other documentation regarding the diagnosis and treatment of sleep disorders. After a thorough discussion, the Board directed staff to respond to the inquiry. There was discussion that Dr. Thomas Corwin will present to the Board regarding the practice of dental sleep medicine at its January 11, 2019 meeting.

**E-mail correspondence dated November 5 and November 28, 2018 RE: Swanky Smiles:** The Board accepted the information and reinforced guidance regarding existing statutes and rules governing dental practice in Maine.

**Board Chair Report:** There was discussion regarding the articles presented for this month with a note that they are helpful as resource documents for clinical discussions and rulemaking efforts.

Dr. Paul Dunbar made a motion to nominate Dr. Stephen Morse as chair. The motion was seconded by Ms. Foster. Vote: 9-0 in favor.

Ms. Jowett made a motion to nominate Ms. Foster as vice-chair. The motion was seconded by Ms. Wellington. Vote: 3-5 in favor; motion fails.

Ms. Young voted to nominate Dr. Glen Davis as vice-chair. The motion was seconded by Dr. Stephen Morse. Vote: 7-2 in favor.

The following items were accepted as an FYI:

- Thank you note from Tricia Spearin, RDH, EFDA
- CE Approval List
- Preliminary Agenda
- Case Management Report

**Board Rules:** A brief discussion on proposed Board Rule Chapter 19 related to patient recordkeeping was held. Consideration of the changes will be memorialized in the latest draft.

Ms. Young made a motion to adjourn the meeting at 4:23 p.m. The motion was seconded by Dr. Glen Davis. Vote: 9-0 in favor.