

**Maine Board of Dental Practice
Board Meeting Minutes
January 11, 2019**

Meeting convened at 9:09 a.m.

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

Member Absent: Kathryn Young, LD

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

Assistant Attorney General Black provided an introduction of AAG Adria LaRose who will be the assigned legal counsel for the Board as of later this month.

Dr. Morse provided an introduction of Dr. Todd Ray who accepted a gubernatorial appointment to fill the vacant seat of former member, Dr. Lisa Howard, whose term expired on December 31, 2018.

Dental Sleep Medicine Presentation – Dr. Thomas Corwin: Dr. Corwin provided a brief presentation for members of the Board regarding dental sleep medicine.

Board Meeting Minutes – December 7, 2018: Dr. Zajkowski made a motion to accept the minutes as amended. Dr. Davis seconded the motion. Vote 8-0 in favor.

Subcommittee on Dental Hygienists Report:

- The Subcommittee reviewed and approved its minutes from the December 7, 2018 meeting.
- Application for Dental Hygiene License Reinstatement - Toni Joy, RDH: Dr. Dunbar made a motion to accept the recommendation from the Subcommittee to grant reinstatement of Ms. Joy's dental hygiene license and to remind her of the reporting requirements pursuant to 32 M.R.S. §18352. Dr. Zajkowski seconded the motion. Vote 8-0 in favor.

Dental Hygiene License Renewal Application Reviews:

- Sharan Malinowski, RDH – Dr. Davis made a motion to accept the recommendation from the Subcommittee to grant licensure for Ms. Malinowski. Ms. Jowett seconded the motion. Vote 8-0 in favor.
- Una Purvis, RDH – Dr. Zajkowski made a motion to accept the recommendation from the Subcommittee to grant an extension until February 28, 2019 to complete the remaining continuing education credits, and to grant licensure. Dr. Dunbar seconded the motion. Vote 8-0 in favor.
- Katherine Williams, RDH – Dr. Davis made a motion to accept the recommendation from the Subcommittee to grant a 45-day extension to complete 18.5 continuing education credits needed, and to grant licensure. Dr. Zajkowski seconded the motion. Vote 8-0 in favor.
- Kelle Remick, RDH – Dr. Davis made a motion to accept the recommendation from the Subcommittee to grant an extension for six (6) months to complete thirty (30) hours of continuing education requirements, and to approve licensure renewal pending receipt of a valid CPR certification. Ms. Jowett seconded the motion. Vote 8-0 in favor.
- Jessie Robinson, RDH – Dr. Zajkowski made a motion to accept the recommendation from the Subcommittee to table the review of Ms. Robinson’s renewal application and refer her for an assessment with the Maine Medical Professionals Health Program (“MPHP”). The assessment is to be submitted to the Board no later than February 28, 2019. Ms. Jowett seconded the motion. Vote 8-0 in favor.
- Jennifer Smart, RDH – Ms. Jowett made a motion to accept the recommendation from the Subcommittee to table the review of Ms. Smart’s license renewal application and refer her for an assessment with the MPHP. The assessment is to be submitted to the Board no later than February 28, 2019. Dr. Davis seconded the motion. Vote 8-0 in favor.
- Angela Dorsett, RDH – Ms. Foster made a motion to accept the recommendation from the Subcommittee to table the review of Ms. Dorsett’s license renewal application and request additional information from her treating provider regarding her progress and/or diagnoses. The information is to be submitted to the Board within fourteen (14) days from receipt. Dr. Zajkowski seconded the motion. Vote 8-0 in favor.

- Katherine Landry, RDH – Dr. Zajkowski made a motion to accept the recommendation of the Subcommittee to table the review of Ms. Landry’s license renewal application and refer her for an assessment with the MPHP. The assessment is to be submitted to the Board no later than February 28, 2019. Dr. Davis seconded the motion. Vote 8-0 in favor.

Review/Ratification of Consent Agreement – Complaint 18-73: Dr. Dunbar made a motion to accept the consent agreement as presented. Dr. Zajkowski seconded the motion. Vote 8-0 in favor. Dr. Dunbar made a motion to approve the license renewal applications that are pending for this licensee. Dr. Davis seconded the motion. Vote 8-0 in favor

Notification of Criminal Conduct Incident – Informal Complaint 19-1: In lieu of imposing an emergency suspension, Dr. Zajkowski made a motion to set the matter for an adjudicatory hearing on February 8, 2019, in combination with Case No. 18-79. The motion also included offering the licensee an interim consent agreement whereby the licensee would agree to a voluntary suspension of licensure until completion of an inpatient evaluation and further recommendations from the MPHP, and/or known disposition of the criminal proceedings. Dr. Dunbar seconded the motion. Vote 7-0 in favor. Dr. Glen Davis recused.

Board Chair Report:

- Dr. Morse provided an overview of the Board’s 2019 priorities, which in part, include: continue to work with the Commissioner’s Office regarding the Board’s finances, reduce the number of open cases; finalize current rulemaking efforts; initiate review Chapters 14 and 21; and continue to identify efficiencies and efforts to further streamline board processes.
- Article discussion: “Effect of Different Cavity Lining Techniques on Marginal Sealing of Class II Resin Composite Restorations In Vitro” as published in the *International Journal of Periodontics & Restorative Dentistry*, Volume 38, Number 6, 2018.

Application for Dentist Licensure – Vahid Ebrahimi, DDS: After a review of the application materials presented, Dr. Zajkowski made a motion to preliminary deny the application for dentist licensure based on the allegation that the applicant has engaged in the practice of fraud, deceit or misrepresentation when submitting documents to establish credentials required for licensure in Maine, and to refer the matter to the Criminal Division within the Office of the Maine Attorney General. Dr. Dunbar seconded the motion. Vote 8-0 in favor.

Application for Dental Radiography Licensure – Jessica Schmidt: After a review and discussion of the application materials, including the applicant's disclosure of criminal conduct, Ms. Foster made a motion to table its review of the application and refer Ms. Schmidt for an assessment with the MPHP. The assessment shall be submitted to the Board no later than February 28, 2019. Dr. Davis seconded the motion. Vote 8-0 in favor

Application for Dentist Licensure – Bruce Milzman, DDS: After a review and discussion of the application materials, including information related to the applicant's non-disclosure of criminal conduct, and the applicant's disclosure regarding two recent malpractice settlements, Ms. Foster made a motion to preliminary deny Dr. Milzman's application for licensure and offer a consent agreement for failure to report an arrest on his application. Dr. Dunbar seconded the motion. Vote 0-8 motion failed. Ms. Foster made a motion to table the application, and to request the applicant to submit additional information regarding the 2017 settlement case, and submit a written response to the Board as to why he did not disclose a prior arrest event. Dr. Dunbar seconded the motion. Vote 8-0 in favor.

Initial Complaint Presentations:

Complaint 17-24: A complaint was filed against a dentist alleging that a restoration completed by the licensee resulted in subsequent bruising on the patient's cheek, and that the restoration needed to be re-done. After a review and discussion of the materials presented, Dr. Zajkowski made a motion to dismiss the complaint. Dr. Davis seconded the motion. Vote 7-0 in favor. Dr. Stephen Morse recused.

Complaint 17-35: The Board generated a complaint against a faculty dentist based on information it received regarding the licensee's termination of employment pursuant to the Maine Health Security Act. According to the information received, the licensee was terminated based on improper placement of dental implants. Following their review and discussion of the materials presented, Dr. Zajkowski made a motion to dismiss the complaint. Dr. Davis seconded the motion. Vote 7-0 in favor. Dr. Stephen Morse recused.

Complaint 18-64: A complaint was filed against a dentist alleging substandard care with regards to crown work. After a review and discussion of the materials provided, Dr. Zajkowski made a motion to dismiss the complaint and issue a letter of guidance which would remain on file for five years and will remind the licensee that the Board may impose discipline against a licensee who engages in unprofessional conduct, and who makes a misrepresentation in connection with services rendered within the scope of licensure. A licensed dentist who promises an unsatisfied patient that reimbursement will be

provided to both the patient and the patient's insurance company for the costs of treatment rendered, and who then reimburses only the patient, and not the patient's insurance company, risks harming the patient. Such a patient may be foreclosed by the insurance company from seeking anticipated remedial treatment or may be forced to undergo an appeals process that could delay the anticipated treatment. Moreover, such a patient may lose trust in the dental profession. Ms. Jowett seconded the motion. Vote 7-0 in favor. Dr. Glen Davis recused.

Complaint 18-87: A complaint was filed against a dentist alleging that the licensee failed to release patient records upon request. After a review and discussion of the materials provided, Ms. Foster made a motion to offer the licensee a consent agreement based on violating a standard of professional behavior established by Board Rule, Chapter 9 regarding the release of patient records. The terms of the consent agreement include: a warning; a civil penalty in the amount of \$150.00 to be paid within ninety days; and a requirement to complete three continuing education credits on ethics and professionalism pre-approved by the Complaint Officer which must be completed within ninety days. Dr. Dunbar seconded the motion. Vote 7-0 in favor. Dr. Glen Davis recused.

Complaint 16-26: A complaint was filed against a dentist alleging that the licensee did not provide treatment options to the patient. After a review and discussion of the materials presented, Dr. Davis made a motion to dismiss the complaint. Ms. Foster seconded the motion. Vote 7-0 in favor. Dr. Mark Zajkowski recused.

Complaint 16-66: A complaint was filed against a dentist alleging treatment provided was below the standard of care. After a review and discussion of the materials presented, Dr. Davis made a motion to dismiss the complaint. Ms. Jowett seconded the motion. Vote 7-0 in favor. Dr. Mark Zajkowski recused.

Complaint 16-68: A complaint was filed against a dentist alleging that the licensee did not obtain informed consent for the surgical procedure, did not provide adequate anesthesia for the procedure, and did not act professionally. After a review and discussion of the materials presented, Dr. Davis made a motion to dismiss the complaint and to issue a letter of guidance. The letter of guidance will be placed in the licensee's file for five years and will remind the licensee to obtain and document informed consent for a surgical procedure on the date of treatment. Dr. Dunbar seconded the motion. Vote 7-0 in favor. Dr. Mark Zajkowski recused.

Complaint 17-52: This case was initially presented to the Board on May 11, 2018 and at that time the Board voted to offer the licensee a consent

agreement to include an admission to unprofessional conduct regarding the failure to make a timely referral. The offer was to include a warning and require the licensee to complete six hours of pre-approved continuing education relating to management of patient infection and/or medical emergencies within ninety days and that it could not be used towards meeting the licensure renewal requirements. The licensee subsequently filed an additional response and supplied documentation showing completion of continuing education in which they discussed Ludwig's Angina for the Board's review, and after its review the Board voted to amend its earlier offer of a consent agreement by removing the requirement that the licensee obtain three (3) hours of continuing education. The consent agreement will clarify that the licensee completed continuing. Dr. Davis seconded the motion. Vote 7-0 in favor. Dr. Mark Zajkowski recused.

Complaint 18-91: A complaint was filed by the Board against a dental radiographer alleging unprofessional conduct for practicing dental radiography beyond the date of the expired license. Following the Board's review and discussion of the complaint materials, Ms. Foster made a motion to offer the licensee a consent agreement which would include the admission to practicing without a license, a reprimand, completion of three credits of pre-approved continuing education on ethical/professional behavior within ninety days, and a civil penalty of \$100.00 to be paid within ninety days. Dr. Dunbar seconded the motion. Vote 8-0 in favor.

The Board directed board staff to send a letter to the supervising dentists requesting clarification regarding their understanding of the circumstances surrounding the unlicensed practice.

Complaint 18-92: A complaint was filed by the Board against a dental radiographer alleging unprofessional conduct for practicing dental radiography beyond the date of the expired license. Following the Board's review and discussion of the complaint materials, Ms. Foster made a motion to offer the licensee a consent agreement which would include the admission to practicing without a license, a warning, and a civil penalty of \$50.00 to be paid within ninety days. Dr. Dunbar seconded the motion. Vote 8-0 in favor.

Complaint Items – Compliance Reporting:

Review of Consent Agreement Compliance Documentation - Complaint No. 14-35: A review of the compliance documents submitted to Board identify potential non-compliance with the consent agreement as it relates to the practice monitoring requirements and reporting of attendance of AA/caduceus meetings.

Review of Consent Agreement Compliance Documentation – Complaint

No. 18-3: A review of the compliance documents submitted to the Board identify potential non-compliance with the consent agreement in terms of submitting patient names and/or patient records to the Board. In addition, upon review of the patient records the licensee is alleged to be in violation of Board Rules, Chapter 14 related to documenting a time-oriented anesthesia record.

After a review and discussion of the potential non-compliance and practice issues noted in the two cases, Ms. Jowett made a motion to set Case Nos. 14-35 and 18-3 for an adjudicatory hearing on March 15, 2019. Ms. Foster seconded the motion. Vote 7-0 in favor. Dr. Mark Zajkowski recused.

Review of Consent Agreement Compliance Documentation – Complaint

Nos. 15-37; 16-46; and 16-70: After a review and discussion of the potential non-compliance issue related to the frequency of counseling sessions, Dr. Davis made a motion to send a letter to the former licensee informing him that issues of non-compliance with the consent agreement will be revisited by the Board upon receipt of an application for licensure. Dr. Dunbar seconded the motion. Vote 8-0 in favor.

Executive Director’s Report:

- Legislative Update: Board staff is finalizing its work to fully implement the latest statutory changes, including the transition of dental hygiene permits into practice authorities. Additionally, board staff has fully transitioned dental radiographers and expanded functional dental assistants to a fixed, two-year license term. Ms. Vaillancourt briefly discussed the new legislative committee of jurisdiction, and reported that she and the Commissioner’s Office will be tracking legislation on dentally related bills during the 129th legislative session.
- Rulemaking: The Rules Committee will reconvene April 2019 to examine Board Rules, Chapter 14 and 21. Board staff will reach out to anesthesia committee members and to the sedation community for their involvement in discussions surrounding Chapter 14.
- Financial Report: The Board accepted the report as an FYI.
- Licensing Data: The Board accepted the report as an FYI.

Continuing Education Pre-Approval Request Form – “Mastermind Team

Retreat”: Following its review and discussion of the materials submitted, Dr. Dunbar made a motion to deny the request for credit as the course does not

meet the requirement for continuing education. Dr. Zajkowski seconded the motion. Vote 8-0 in favor.

Letter from Carol Farrar Received December 19, 2018 Re: Dental

Appointment: Following a review of the copied correspondence, the Board directed board staff to inquire whether the consumer is filing a formal complaint with the Board.

Continuing Education Approval List: The Board members had questions on the approval list and requested Board staff to follow up.

The following items were accepted as an FYI:

- E-mail dated December 11, 2018, RE: CMS Part D Opioid Prescriber Tip Sheet
- AMA Article “Association of Opioid Prescriptions from Dental Clinicians for US Adolescents and Young Adults with Subsequent Opioid Use and Abuse
- Review of National Practitioner Data Bank Report – Medical Malpractice Payment Report RE: Dentist Licensee
- Secretary of State – Annual Report Filings
- FDA-Required REMS for Serious Drug Risks dated September 2018
- Preliminary Agenda
- Case Management Report

Board Rules, Chapter 19 “Practice Requirements”: The Board made additional edits to the draft rule. Consideration of the changes will be memorialized in the latest draft.

Dr. Dunbar made a motion to adjourn the meeting at 3:41 p.m. Ms. Foster seconded the motion. Vote 8-0 in favor.