

Maine Board of Dental Practice
Board Meeting Minutes
August 16, 2019

Meeting convened at 8:00 a.m.

Members Present: Drs. Stephen Morse; Glen Davis; Mark Zajkowski; and Todd Ray; Ms. Nancy Foster, RDH, EFDA; Tracy Jowett, RDH, IPDH; Kathryn Young, LD; and M. Lourdes Wellington, Public Member

Member Absent: Dr. Paul Dunbar

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

Other: Andrew Black, AAG left at approximately 1:00 p.m.; Dr. Zajkowski left at approximately 3:00 p.m.

Subcommittee on Dental Hygienists – Combined meeting with the Board of Dental Practice:

- Minutes June 14, 2019: Dr. Davis made a motion to approve the Subcommittee minutes. Dr. Morse seconded the motion and it passed unanimously.
- Eliza Lopes – Application for dental hygiene licensure and local anesthesia authority: Following their review of the application materials including a criminal background disclosure, Dr. Davis made a motion to table the application and request that Ms. Lopes obtain an assessment with the Maine Medical Professionals Health Program (“MPHP”). Dr. Morse seconded the motion and it passed unanimously

The Subcommittee’s recommendation to table the application and request that Ms. Lopes obtain an assessment through the MPHP was adopted by the Board.

- Shannon Palermino, RDH – 10-Day Reporting Disclosure: Following their review of the information including information concerning a recent conviction of operating under the influence, Dr. Davis made a motion to refer Ms. Palermino for an assessment with the MPHP. Dr. Morse seconded the motion and it passed unanimously.

The Subcommittee’s recommendation to refer Ms. Palermino for an assessment with the MPHP was adopted by the Board.

Dr. Davis made a motion to adjourn the Subcommittee on Dental Hygienists at 8:18 a.m. Dr. Morse seconded the motion and it passed unanimously.

Review/Ratification of Decision and Order – Case No. 19-25 – Jennifer Smart, RDH: Dr. Zajkowski made a motion to accept the decision and order as written. Ms. Foster seconded the motion. Vote 7-0 in favor. (Dr. Ray abstained)

Minutes – July 19, 2019: Ms. Foster made a motion to accept the minutes as drafted. Dr. Zajkowski seconded the motion. Ms. Foster made a motion amend the original motion to accept the minutes as amended. Dr. Davis seconded the amendment to the motion. Vote 7-0 in favor. (Dr. Ray abstained)

Board Chair Report:

- AADB Membership – Dr. Davis made a motion to appoint Ms. Foster as the AADB Board representative. Dr. Zajkowski seconded the motion. Vote 8-0 in favor.
- ADEX Meeting Update – Dr. Morse attended the recent ADEX meeting and provided an overview of the meeting.

Applications for Review:

Jade P. Duncan, DDS – Application for Dentist Licensure: Dr. Zajkowski made a motion to preliminarily deny the application for licensure based on her not completing an accepted regional examination or an equivalent examination. Ms. Foster seconded the motion. Vote 8-0 in favor.

Erica Couture – Application for Dental Radiographer Licensure: The Board had previously tabled Ms. Couture’s application and requested that she obtain an assessment with the Maine Medical Professionals Health Program (MPHP) based on her criminal conviction. Following the Board’s review of the application materials, including a recommendation from the MPHP that she enroll into a three-year agreement, Dr. Zajkowski made a motion to preliminarily deny Ms. Couture’s application and in lieu of the denial, offer a consent agreement requiring enrollment with the MPHP for a minimum of three-years. Dr. Davis seconded the motion. Vote 8-0 in favor.

R. Robert Berube, DDS – Application for Deep Sedation/General Anesthesia Permit Renewal: After a review and discussion of the application materials, Dr. Zajkowski made a motion to approve Dr. Berube’s renewal application. Ms. Young seconded the motion. 8-0 in favor

John Gerhauser, DMD – Application for Moderate Parenteral Sedation Permit: After a review and discussion of the application materials, Dr. Zajkowski made a motion to approve the application for a moderate parenteral sedation permit. Ms. Jowett seconded the motion. Vote 8-0 in favor.

Christopher Maller, DMD – Application for Deep Sedation/General Anesthesia Permit Renewal: After a review and discussion of the application materials, Dr. Zajkowski made a

motion to approve Dr. Maller's renewal application. Ms. Foster seconded the motion. Vote 8-0 in favor.

James Sevey, DMD – Application for Moderate Parenteral Sedation Permit Renewal:

After a review and discussion of the application materials, Ms. Jowett made a motion to approve the application for renewal upon receipt of a current BLS certification which must be submitted no later than September 11, 2019. Dr. Zajkowski seconded the motion. Vote 8-0 in favor.

Case Items – Compliance Reporting:

Review of Consent Agreement Compliance Documentation – Case No. 18-84: After a review and discussion of the compliance documents submitted to the Board which included payment of a civil penalty and proof of continuing education completed, Dr. Zajkowski made a motion to accept the documentation. Ms. Young seconded the motion. Vote 8-0 in favor.

Review of Consent Agreement Compliance Documentation – Case No. 18-93: After a review and discussion of the compliance documents submitted to the Board which included a quarterly report listing a log of controlled substances prescribed, Dr. Zajkowski made a motion to accept the documentation. Dr. Davis seconded the motion. Vote 8-0 in favor.

Review of Consent Agreement Compliance Documentation – Case No. 19-15: After a review and discussion of the compliance documents submitted to the Board which included a letter from the MPHP indicating that Ms. Landry had completed her six-month monitoring agreement and recommendation that she be dismissed from the program, Ms. Foster made a motion to accept the documentation. Dr. Zajkowski seconded the motion. Vote 8-0 in favor.

Adjudicatory Hearing – Case No. 19-39 – Alden S. Hurtig, DMD:

An adjudicatory hearing was held in the above-mentioned case.

Ms. Jowett made a motion to grant licensure by endorsement pursuant to 18347 (1)(B). Dr. Zajkowski seconded the motion. Vote 8-0 in favor. Dr. Davis made a motion to issue Dr. Hurtig's license as of today. Dr. Zajkowski seconded the motion. Vote 8-0 in favor.

After presentation of the evidence, Dr. Zajkowski made a motion stating that Dr. Hurtig had met the burden of proof as it relates to his application for licensure as a dentist. Ms. Young seconded the motion. Vote 8-0 in favor. Dr. Zajkowski made a motion that the state has not met the burden of proof of misrepresentation. Ms. Young seconded the motion. Vote 7-1 in favor. (Dr. Ray opposed)

Maine Medical Professional Health Program Annual Report (MMPHP): Maine Medical Mr. Guy Cousins, and members of the MMPHP staff, provided a summary of the annual report of the Program for members of the Board.

Case Items – Initial Presentations:

Case No. 17-58: A complaint was filed against a dentist alleging that a fee had been quoted over the phone that was incorrect, and that the patient had pain following placement of a temporary crown which resulted in having impressions re-done. After a review and discussion of the materials presented, Dr. Zajkowski made a motion to dismiss the case and issue a letter of guidance which would remain on file for five years. The letter of guidance will remind the licensee of the importance of effective communication with patients and documentation of patient communication and vital signs to be noted in the record. Ms. Young seconded the motion. Vote 7-0 in favor (Dr. Davis abstained)

Case No. 17-59: A complaint was filed against a dentist alleging that the licensee was recommending periodontal therapy which is not covered by the complainant's insurance. After a review and discussion of the materials presented, Dr. Zajkowski made a motion to dismiss the complaint and issue a letter of guidance to remain on file for five years reminding the licensee to obtain and record a complete record of patient information such as blood pressure readings, and to properly supervise and train dental staff to ensure patient health information is obtained at the time of examination. Ms. Young seconded the motion. Vote 7-0 in favor (Dr. Davis abstained)

Case No. 17-73: A complaint was filed against a dentist alleging problems with the billing department, not with the treatment rendered. After a review and discussion of the materials presented, Ms. Young made a motion to dismiss the complaint and issue a letter of guidance to remain on file for five years reminding the licensee to obtain and record a complete record of patient information such as blood pressure readings, along with a reminder that this is a second letter of guidance regarding the taking and recording of patient blood pressure readings. Dr. Ray seconded the motion. Vote 7-0 in favor. (Dr. Davis abstained)

Case No. 18-50: A complaint was filed against a dentist alleging that they were provided with an estimate for a procedure which was inaccurate. After a review and discussion of the materials presented, Dr. Zajkowski made a motion to dismiss the case. Ms. Young seconded the motion. Vote 7-0 in favor. (Dr. Davis abstained)

Case No. 19-32: A complaint was filed by the Board against a dentist alleging that the dentist failed to utilize a full set of x-rays when generating a treatment plan. Following the Board's review and discussion of the materials presented, Dr. Zajkowski made a motion to dismiss the complaint and issue a letter of guidance to remain on file for five years reminding the licensee that the periodic use of a full mouth survey of dental radiographs (a combination of bitewing and periapical images) is a fundamental standard of care.. Ms. Jowett seconded the motion. Vote 7-0 in favor. (Dr. Davis abstained)

Case No. 17-44: A complaint was filed against a dentist alleging that there was a misdiagnosis of a fractured tooth. After a review and discussion of the materials presented, Dr. Davis made a motion to dismiss the case. Ms. Young seconded the motion. Vote 7-0 in favor. (Dr. Zajkowski abstained)

Case No. 17-53: A complaint was filed against a dentist alleging lack of ethics and integrity. After a review and discussion of the materials presented, Ms. Foster made a motion to dismiss the case. Ms. Young seconded the motion. Vote 6-0 in favor (Dr. Morse and Dr. Zajkowski abstained).

Case No. 17-54: A complaint was filed against a dentist alleging that a dental filling was inadequate. After a review and discussion of the materials presented, Dr. Davis made a motion to dismiss the case. Dr. Ray seconded the motion. Vote 7-0 in favor. (Dr. Zajkowski abstained)

Case No. 17-56: A complaint was filed against a dentist alleging the dentist released personal health information to a non-authorized party. After a review and discussion of the materials presented, Ms. Young made a motion to dismiss the case and issue a letter of guidance to remain on file for five years, reminding the licensee that protecting the privacy of patient information by developing and implementing policies is a fundamental standard of practice. Dr. Davis seconded the motion. Vote 7-0 in favor. (Dr. Zajkowski abstained)

Case No. 17-61: A complaint was filed against a dentist alleging that inappropriate work was done by the licensee. After a review and discussion of the materials presented, Dr. Davis made a motion to dismiss the case. Dr. Ray seconded the motion. Vote 7-0 in favor. (Dr. Zajkowski abstained)

Case No. 17-65: A complaint was filed against a dentist alleging improper treatment of a tooth and a billing dispute. After a review and discussion of the materials presented, Dr. Davis made a motion to dismiss the case and issue a letter of guidance to remain on file for five years, reminding the licensee regarding effective communication regarding a treatment plan including alternatives is an important component of competent and professional practice. In addition, obtaining and recording a complete record of patient care including discussions with the patient are fundamental standards of practice. Ms. Young seconded the motion. Vote 7-0 in favor. (Dr. Zajkowski abstained)

Case No. 17-67: A complaint was filed against a dentist alleging that the patient aspirated during treatment which resulted in the patient having to be transferred to the hospital. After a review and discussion, Dr. Ray made a motion to dismiss the case and issue a letter of guidance to remain on file for five years, reminding the licensee that these incidents are required to be reported to the Board pursuant to Board Rule, Chapter 15. Dr. Davis seconded the motion. Vote 7-0 in favor. (Dr. Zajkowski abstained)

Case No. 18-25: A complaint was filed against a dentist alleging that there was a lack of communication with the patient regarding post treatment medication. After a review and discussion of the materials presented, Dr. Davis made a motion to dismiss the case and issue a letter of guidance to remain on file for five years, reminding the licensee that dentists are required to provide the Board with records of treatment upon request pursuant to Board Rule, Chapter 9, Section II (O). Dr. Ray seconded the motion. Vote 7-0 in favor. (Dr. Zajkowski abstained)

Case No. 18-101: A complaint was filed by the Board against the licensee alleging the inappropriate use of a tax ID number that was not issued to the licensee. After a review and discussion of the materials presented, Dr. Davis made a motion to dismiss the case. Ms. Young seconded the motion. Vote 7-0 in favor. (Dr. Zajkowski abstained)

Case No. 19-41: Following the Board's review and discussion of the materials, Ms. Foster made a motion to approve the consent agreement as drafted. Ms. Young seconded the motion. Vote 7-0 in favor. (Dr. Davis abstained)

Rulemaking Items:

After a review and discussion of the draft rules, Ms. Foster made a motion to propose a repeal and of chapters 1 through 6, 8 through 12, 15, and 16; and replace them with chapters 1 through 6 and 8 through 12. Ms. Young seconded the motion. Vote 7-0 in favor. Ms. Foster then made a motion to repeal chapters 15 and 16. Dr. Davis seconded the motion. Vote 7-0 in favor.

Executive Director's Report:

- Legislative Update: Board staff will continue to work on implementing changes based on last legislative session
- Rulemaking Update: The above set of rules will be sent for pre-legal review and review by the Commissioner.
- Financial Report: The Board accepted the report as an FYI.
- Licensing Report: The Board accepted the report as an FYI.
- Other: Introduction of Board Investigator, Therese Cahill (Acting Capacity)

August 7, 2019 Letter from Lorraine Klug, RDH, IPDH RE: Subcommittee and Chapter 7 Testimony: The Board reviewed Ms. Klug's letter and noted that the responses provided to her inquiries by staff were sufficient.

June 19, 2019 E-mail request seeking clarification of drug inventory requirements:

Following their review of the information presented, the Board agreed that a response be sent to the licensees regarding appropriate logging and usage of amounts remaining of any drug inventory.

June 27, 2019 from MPHP RE: Dr. Richard Crawford: After a review and discussion of the materials presented, Ms. Foster made a motion to initiate a complaint against the licensee and offer a consent agreement to include enrollment with the Maine Medical Professionals Health Program and reporting to the Board. Dr. Davis seconded the motion. Vote 7-0 in favor.

June 19, 2019 from Dr. Jeffrey Doss RE: Notification and Update of Licensure

Information: After a review and discussion of the materials presented, Dr. Ray made a motion that the Board issue Dr. Doss a letter of guidance stating that the dentist must ensure safe practices and accurate record keeping along with appropriate communication with referring

providers. The Board also acknowledges the steps taken by the practice. Ms. Jowett seconded the motion. Vote 7-0 in favor.

The following items were accepted as an FYI:

- Letter dated June 12, 2019 from Michael Silverman, DMD RE: New regulatory counsel, J. Kathleen “Kate” Marcus, J.D.
- Continuing education approval report
- Case management reports
- Preliminary agenda for upcoming meetings

Ms. Foster made a motion to adjourn the meeting at 4:43 p.m. Ms. Young seconded the motion. Vote 7-0 in favor.