



ARIZONA STATE BOARD OF DENTAL EXAMINERS

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MEETING OF THE ARIZONA STATE BOARD OF DENTAL EXAMINERS MINUTES OF THE BOARD MEETING June 6, 2014

Board Members Present:

Michael R. Hauer, DDS, President
Robert H. Foster, DDS, Vice President
Heather N. Hardy, RDH
Ms. Carole A. Crevier
Mr. Joshua Greer
Mr. Charles E. Jackson
Darren L. Flowers, DMD
Howard Sorensen, DDS
Marilyn J. McClain, RDH
William G. Woods, DDS

Board Members Absent:

Robert B. Taylor, DDS

Staff Present:

Ms. Elaine Hugunin, Executive Director
Ms. Nancy Chambers, Deputy Director
Ms. Mary Williams, Assistant Attorney General
Ms. Terry Bialostosky, Investigations Supervisor
Ms. Sherrie Biggs, Licensure Manager
Ms. Susie Adams, Legal Assistant
Ms. Yubeka Riddick, Legal Administrator

NOTICE:

Roll Call votes are recorded and provided as an attachment to these minutes pursuant to A.R.S. §32-3205 which reads "If a disciplinary action requires a vote of Board members, the health professional regulatory Board shall conduct that vote by roll call. The Board shall maintain a record of each member's vote. This section does not prohibit a Board from using a Consent Agenda."

GENERAL BUSINESS

Agenda Item No. 1 CALL TO ORDER AND INTRODUCTIONS

Dr. Hauer called the meeting to order at 8:00 a.m.

For the record Dr. Robert Taylor is absent. Dir. Hugunin stated, for the record, additional information for agenda items 4D, 4J, 13A and 23D are provided in Board members folders.

Agenda Item No. 3 PRESIDENT'S REPORT

- A. Review, discussion and possible action regarding the appointment of a legislative committee

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Dr. Hauer appointed Mr. Greer, Dr. Ben Butler, Dr. Sophia Chiang, Mr. Kevin Earle, Julia Wadoff, RDH, April Pohlman, RDH and Mr. David Fishman to the legislative committee. It will be chaired by Mr. Greer.

Agenda Item No. 4 Executive Director's Report

- A. Summary of current events that affect the Arizona State Board of Dental Examiners

No current events reported

- B. Review, discussion, and possible action regarding Title 4. Chapter 11. Article 4 – Fees Economic, small business and consumer impact summary; Notice of Final Rulemaking Professions and Occupations State Board of Dental Examiners

The Board has a copy of the Fee Rules on the Economic, small business and consumer impact summary, notice of final rulemaking. There have been typographical corrections made subsequent to the dissemination of the document. This will move forward to the Governor's Regulatory Review Committee if approved.

Upon MOTION by Dr. Hauer, second by Dr. Woods, the Board voted to ACCEPT Title 4. Chapter 11. Article 4 – Fees Economic, small business and consumer impact summary; Notice of Final Rulemaking Professions and Occupations State Board of Dental Examiners. MOTION PASSED UNANIMOUSLY

- C. Dr. Andrew T. Brown – Case No. 201400107: Review, discussion, and possible action to administratively adjust complaint number 201400107

Upon MOTION by Dr. Woods, second by Dr. Foster, the Board voted to ADMINISTRATIVELY ADJUST complaint number 201400107 against Dr. Andrew T. Brown

- D. Dr. Leonard Bryan Gerken – Case No. 201300277: Review, discussion, and possible action to subpoena additional records or alternatively review, discussion, and possible action regarding the non-disciplinary consent agreement.

Mr. Smith, attorney for Dr. Gerken, was present to address the Board and potentially answer any questions.

Mr. Smith addressed the board. Prior to doing the procedure on November 4, the hygienist noted that the patient had severe bruxism and clenched her teeth. Dr. Gerken noted on the same day, before replacing any fillings in tooth number 10, that the patient had wear and rough teeth. In the complaint, the patient admits that she grinds her teeth and has a mouth guard. During a January 14, 2014 appointment with Dr. Pena, he charts that he examined the situation and did not detect any significant reduction in the patient's teeth.

Dr. Palmer commented on the additional information provided by NB. There were approximately 10 additional dentists the patient provided to the Board. Upon review, many of them were phone calls. Most of the dentists indicated that they would not treat the patient and referred her to other dentists. Some of which she had already seen who would not treat her.

The Board questioned Dr. Palmer about receiving the additional records from the 10 dentists provided by the patient. The agenda item refers to subpoenaing the 10 dentists for any additional records. In the information provided by the patient, it states "talked to this guy by phone", "went to this office, he wouldn't treat me", "he referred me to here". As the memo

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reflects, a consent agreement had already been done and then the patient submitted additional information. The Board needs to decide if it wants to attempt to subpoena additional records or proceed with the proposed consent agreement.

The records that were provided to the Board were all subpoenaed based upon the initial complaint and any subsequent treating dentists.

The Board discussed wanting to review any other records that may be available, even if it was a chart entry that stated an observation or why the dentist decided not to treat the patient once the patient was in the office.

Upon MOTION by Dr. Woods, second by Mr. Jackson, the Board voted to SUBPOENA any additional practitioners based upon the list provided by the complainant for records. Dr. Flowers OPPOSED. MOTION PASSED.

- E. Review, discussion, and possible approval for the Executive Director and Board President to attend the Annual Meeting of the American Association of Dental Boards in San Antonio, TX, October 7-8, 2014, and for the Executive Director to attend the AADA meeting October 5-6, 2014.

Upon MOTION by Dr. Woods, second by Dr. Foster, the board voted to APPROVE the Executive Director and Board President to attend the Annual Meeting of the American Association of Dental Boards in San Antonio, TX, October 7-8, 2014, and for the Executive Director to attend the AADA meeting October 5-6, 2014.

- F. VACANT

- G. VACANT

- H. Review, discussion, and possible action regarding renewal of the Board's Interagency Service Agreements and contracts with the Office of Administrative Hearings, Attorney General's Office, and Department of Administration – Central Services Bureau

Upon MOTION by Dr. Foster, second by Ms. Crevier, the Board voted to RENEW the Interagency Service Agreements and contracts with the Office of Administrative Hearings, Attorney General's Office, and Department of Administration – Central Services Bureau. MOTION PASSED UNANIMOUSLY

- I. Review, discussion and possible action regarding recognition of the course "Dental Enteral Sedation" for a section 1303 Oral Sedation Permit.

The Board was provided a memo regarding why it was presented for review.

Upon Motion by Dr. Woods, second by Dr. Foster, the Board voted to RECOGNIZE the course "Dental Enteral Sedation" for a section 1303 Oral Sedation Permit. MOTION PASSED UNANIMOUSLY

- J. Review and discussion regarding the Executive Director Complaint Terminations. Pursuant to A.R.S. § 32-1263.03(C), the Executive Director has provided a list of each complaint terminated under A.R.S. § 32-1263.03(A) to the Board. The list of complaints is confidential pursuant to A.R.S. § 32-1207(A)(3). The Board may vote to go into Executive Session on this agenda item, pursuant to A.R.S. § 38-431.03(A)(2), to discuss and consider

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records exempt by law from public inspection, including the receipt and discussion of information or testimony that is confidential by State or Federal law.

Dir. Hugunin stated there have been 21 Executive Director Terminations since the last Board meeting. Two have been appealed. Thirteen can still be appealed.

Agenda Item No. 2 PUBLIC COMMENT ON CASES

Complainant NB was present and spoke about case no 201300277 (Agenda Item 4D).

Complainant WW was present and spoke about case no.201300277 (Agenda Item 4D).

Complainant VL was present and spoke about case no. 201400062 (Agenda Item 17B).

Complainant SHN was present and her husband spoke about case no. 201400009-ED (Agenda Item 23B).

Complainant PR was present and spoke about case no. 201300298 (Agenda Item 24A).

Agenda Item No. 9 REQUEST FOR ACTION ON LICENSURE BY CREDENTIAL

- A. Dr. Robert James Houchin – Board approved exam, NPDB lists two malpractice settlements

Dr. Houchin was present to answer questions from the Board.

Upon MOTION by Ms. Crevier, second by Ms. Hardy, the Board voted to GRANT licensure to Dr. Houchin. MOTION PASSED UNANIMOUSLY.

- B. Dr. David Stanley McCann – Board approved exam, NPDB lists four malpractice settlements. Discipline on California license

Dr. McCann was present to answer questions from the Board.

The Board questioned Dr. McCann regarding a citation he received from the state of California and a \$750.00 fine for violating the statute that involved the health, safety, and welfare of patients. Dr. McCann informed the Board that the citation and fine was a result of an inspection in which his sharps container was over the line. He was on an automatic pick up cycle and it was scheduled to be picked up the following week. He was also cited for not having his drawers, which contained his needles covered in plastic. He stated that he rectified those issues by placing a sheet of vinyl covering in all of his drawers.

A member of the Board was concerned with the fact that Dr. McCann seemed to minimize the deficiencies. Dr. McCann stated that he did not mean to minimize the incident. It was a long time ago and he made the corrections. He also informed the Board that the representative from California Board told him not to worry about it, that it was not a big deal, he just had to make the corrections.

Dir. Hugunin stated for the record, that it was not discipline. It was an administrative finding that was non discipline.

Dr. McCann contacted the California Board to inquire how he should present the information on his Arizona application. The representative from the California Board told him that it was a citation, it was minor and not to worry about it. Dr. McCann has owned two offices in Southern California for 25 years. This was his only citation and he made the corrections requested.

Upon MOTION by Dr. Sorensen, second by Mr. Jackson, the Board voted to GRANT licensure to Dr. McCann. Dr. Woods OPPOSED. MOTION PASSED.

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- C. Dr. Howard Keith Couch – 1996 Washington State Exam prior to a regional, NPDB lists two malpractice settlements. Discipline on Idaho license

Dr. Couch was present to answer questions from the Board. The Board questioned Dr. Couch regarding the discipline on his Idaho license.

In 2006, Dr. Couch employed a person in an expanded function role from another state. In this role, the person did things that were allowed in the previous state, but not in the state of Idaho. Dr. Couch stated that he was aware; however, he did not monitor the employee closely enough. The Idaho Board wrote a letter of reprimand to him and immediately he stopped allowing the employee from performing those duties. He placed a notice in the lab stating that anyone who performed anything that was outside of the scope of Idaho would be terminated. The problem was resolved and he hasn't had an issue since.

In the consent agreement that he signed with the Idaho Board, there were some other issues that were addressed. Dr. Couch stated that there was a lawsuit in conjunction with this case as well as the consent agreement. The lawsuit was for \$500,000.00 and settled for \$30,000. The consent agreement stated that there was some concern with the placement of mini implants.

One of the local oral surgeons did not believe in mini implants and when this person went to get a second opinion, the oral surgeon requested that they be removed. This prompted the lawsuit. Dr. Couch presented this case in a course with Dr. Gordon Christensen, and it was agreed that in this situation mini implants are very proper and should be used. Dr. Couch's attorney advised him to settle with the complainant while the case was in mediation. Dr. Couch states that he is still placing mini implants and has not had a problem.

Upon MOTION by Ms. Crevier, second by Mr. Greer, the Board voted to GRANT licensure to Dr. Couch. MOTION PASSED UNANIMOUSLY

- D. Stacy Lynn Morales, RDH – Board approved exam, Discipline on Missouri license

Ms. Morales was present to answer questions from the Board.

Upon MOTION by Dr. Woods, second by Mr. Greer, the Board voted to GRANT licensure to Ms. Morales. MOTION PASSED UNANIMOUSLY.

**Agenda Item No. 11 REQUEST FOR ACTION ON LICENSURE BY CREDENTIAL
Clinical Examination taken less than five years ago**

- A. Dr. Brent Jason Hawkes – 2014 NERB

Upon MOTION by Ms. Hardy, second by Dr. Foster, the Board voted to GRANT licensure to Dr. Brent Jason Hawkes. MOTION PASSED UNANIMOUSLY

- B. Dr. Kevin Jordan Beyea – 2014 NERB

Dr. Beyea was present to answer questions by the Board.

Upon MOTION by Ms. Hardy, second by Ms. Crevier, the Board voted to GRANT licensure to Dr. Beyea. MOTION PASSED UNANIMOUSLY

- C. Dr. Kristopher Roberts Alpers – 2014 CRDTS

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Upon MOTION by Ms. Hardy, second by Ms. Crevier, the Board voted to GRANT licensure to Dr. Kristopher Roberts Alpers. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 5 ASSISTANT ATTORNEY GENERAL'S REPORT FOR BOARD DIRECTION & POSSIBLE ACTION

A. Administrative Appeals

- i. Dr. Nishith S. Shah v. ASBDE (Case No. 201100033) (Maricopa County Superior Court Case LC2011-000735; Court of Appeals Case 1CA-CV13-0488) – Status Update

Ms. Williams stated that this case is still before the Court of Appeals.

- ii. Dr. Jack I. Lipton v. ASBDE (Cases No. 201000254 & 201100259) (Maricopa County Superior Court Case LC2011 000713) – Status Update

Ms. Williams stated this case is still before the Court of Appeals.

- iii. Dr. Brent Tyler Robison v. ASBDE (Case No. 201000301) (Maricopa County Superior Court Case LC2013-000484) – Status Update

Ms. Williams stated the court took under advisement with no oral argument.

- iv. Dr. Arthur J. Porter v. ASBDE (Case No. 201200097) (Maricopa County Superior Court Case LC2013-000370-001DT) – Status update

Ms. Williams stated that the brief is due on Monday.

Agenda Item No. 6 PERSONNEL ISSUES

- A. VACANT

Agenda Item No. 7 COMMITTEE REPORTS

- A. VACANT

Agenda Item No. 8 REQUEST FOR ACTION ON LICENSURE BY EXAMINATION

- A. VACANT

**Agenda Item No. 10 REQUEST FOR ACTION ON LICENSURE BY CREDENTIAL
Clinical Examination taken more than five years ago**

- A. VACANT

Agenda Item No. 12 RECOMMENDATION(S) FROM BOARD MATP MEDICAL DIRECTOR

- A. VACANT

CONSENT AGENDA

The following items were pulled from the Consent Agenda either at the request of a Board Member or by the public. These items will be discussed individually:

Cases pulled from the Consent Agenda:

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Agenda Item No. 15A Case No. 201400011	Dr. Thomas A. Endicott
Agenda Item No. 17A Case No. 201400006	Western Dental F 123
Agenda Item No. 17B Case No. 201400062	Dr. Jason R. Melashenko
Agenda Item No. 21A Anesthesia Evaluator	Dr. R. Austin Brinks
Agenda Item No. 21K Anesthesia Evaluator	Dr. Brent C. Call

Cases ADJUDICATED:

Agenda Item No. 15 – CASES RECOMMENDED FOR DISCIPLINARY CONSENT AGREEMENTS

Upon MOTION by Mr. Greer, second by Ms. Crevier, the Board voted to ACCEPT the Disciplinary Consent Agreements on the following cases on the Consent Agenda. MOTION PASSED UNANIMOUSLY.

Item No.	Case No.	Licensee	Action
B.	201400052	Dr. Eric J. Swensen	

Agenda Item No. 16 – CASES RECOMMENDED FOR NON-DISCIPLINARY CONTINUING EDUCATION CONSENT AGREEMENTS – CONSENT AGENDA

Upon MOTION by Mr. Greer, second by Dr. Foster, the Board voted to IMPOSE the Non-Disciplinary Continuing Education Consent Agreements on the following cases on the Consent Agenda. MOTION PASSED UNANIMOUSLY.

Item No.	Case No.	Licensee	Action
A.	201400001	Dr. Sean Y. Kim	6 hours in the area of crown and bridge 3 hours of record keeping
B.	201400023	Donna Rose Sharman, RDH	6 hours in the area of appropriate laser treatment of periodontal disease
C.	201400033	Dr. Robert L. Donaldson	6 hours of record keeping
D.	201400068	Dr. Edward H. Carlson	6 hours in the area of appropriate prescribing and documentation of controlled substances

Agenda Item No. 18 – CASES RECOMMENDED FOR TERMINATION – CONSENT AGENDA

Upon a MOTION by Mr. Greer, second by Dr. Foster, the Board voted to TERMINATE the following cases on the Consent Agenda. MOTION PASSED UNANIMOUSLY.

Item No.	Case No.	Licensee	Action
A.	201300306	Dr. Dawnie L. Kildoo	Terminate – per patient letter
B.	201400019	Dr. Peter J. Badalamenti	Terminate – per patient letter
C.	201400020	Dr. Dositej Stulic	Terminate – per patient letter

Agenda Item No. 19 – CASES RECOMMENDED FOR DISMISSAL – CONSENT AGENDA

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Item No.	Case No.	Licensee	Comments
A.	VACANT		

Agenda Item No. 20 – MALPRACTICE, ADVERSE OCCURANCE REPORTS, AND DISCIPLINARY ACTION IN ANOTHER STATE – CONSENT AGENDA

Upon a MOTION by Dr. Sorensen, second by Mr. Greer, the Board voted to ACCEPT the recommendation to take no action on the following cases. MOTION PASSED UNANIMOUSLY

Agenda Item No. 20A

Dr. Arthur J. Porter

Malpractice report. Took no action.

Agenda Item No. 20B

Dr. Brent D. Pulley

Malpractice report. Took no action.

Agenda Item No. 20C

Dr. Elwyn A. Montieth

Malpractice Report. Took no action

Agenda Item No. 20D

Dr. Mark D. Stumphy

Malpractice Report. Took no action

Agenda Item No. 20E

Dr. Sonia Kumar

Adverse Occurrence. Took no action

Agenda Item No. 21 – APPROVAL OF CONSULTANTS AND EXAMINERS – CONSENT AGENDA

Upon MOTION by Mr. Greer, second by Ms. Hardy, the Board voted to APPROVE the following as Anesthesia Evaluators. MOTION PASSED UNANIMOUSLY.

- B. Dr. Burton E. Becker
- C. Dr. Brent R. Boyse
- D. Dr. Robert D. Carpenter
- E. Dr. Ashutosh Kaushesh
- F. Dr. Jean A. Lewis
- G. Dr. Sheila Rao
- H. Dr. Lawrence H. Shults
- I. Dr. Heath C. Snell
- J. Dr. Ray William Tuckett
- L. Dr. John A. Janicke
- M. Dr. Jerry R. Pearson
- N. Dr. Vaughn E. Perkins III
- O. Dr. Darrell B. Sims

Agenda Item No. 22 – APPROVAL OF MINUTES – CONSENT AGENDA

Upon a MOTION by Mr. Greer, second by Ms. McClain, the Board voted to APPROVE the following minutes. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 22A April 11, 2014 – Board Meeting Minutes

Agenda Item No. 22B April 11, 2014 – Executive Session Minutes

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Agenda Item No. 22C May 22, 2014 – Telephonic Board Meeting Minutes

Agenda Item No. 22D May 22, 2014 – Telephonic Executive Session Meeting Minutes

END OF CONSENT AGENDA

Agenda Item 23 REVIEW OF EXECUTIVE DIRECTOR TERMINATIONS

Agenda Item No. 23A Case No. 201300307-ED Dr. Allen S. Honigman

Upon MOTION by Ms. Crevier, second by Dr. Woods, the Board voted to APPROVE the Executive Director Termination. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 23B Case No. 201400009-ED Dr. Jessica C. Watkins

Upon MOTION by Ms. Crevier, second by Dr. Foster, the Board voted to APPROVE the Executive Director Termination. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 23C Case No. 201400010-ED Dr. Sara S. Mosley

Upon MOTION by Dr. Woods, second by Ms. Crevier, the Board voted to APPROVE the Executive Director Termination. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 23D Case No. 201400017-ED Dr. Tam T. Le

Dr. Le was present to address the Board. She saw the patient on January 21, 2014 as a second opinion. The patient had received resin restoration done a week earlier and was concerned that the filling color did not match. The patient wanted to know if she should get them redone. The patient completed the required paperwork and indicated that she did not want photographic records taken on that page of the office policy. That page of the chart was not given to Dr. Le by the front desk when they put the chart together.

Dr. Le stated that the patient never voiced a refusal of photos to her or the staff. The office policy is to refuse seeing patients who decline x-rays or dental photos as it is considered the standard of care in her practice. If Dr. Le was aware of the patient's refusal of documentation, she would have declined to see the patient.

This patient explicitly allowed Dr. Le to take pictures of her teeth during the examination. In addition, her privacy has never been violated as the photos are only in her chart. Dr. Le respectfully requests that the Board dismiss the case as the patient was not caused any harm, her pictures were necessary for documentation, and her privacy has not been violated in any way.

Dr. Le was sworn in retroactively and affirmed that the testimony that she gave was truthful.

The Board discussed Dr. Le's behavior and stated that Dr. Le acted appropriately. The patient said she didn't want photos taken and Dr. Le did not have that information during the time of the examination. This does not rise to the level of a letter of concern; however, the doctor should go back and have a discussion with her staff so that the situation does not occur again.

Upon MOTION by Dr. Woods, second by Dr. Sorensen, the Board voted to APPROVE the Executive Director Termination. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 23E Case No. 201400029-ED Dr. Manuel C. Bedoya

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Upon MOTION by Dr. Woods, second by Dr. Foster, the Board voted to APPROVE the Executive Director Termination. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 23F Case No. 201400038-ED Dr. Michael C. Fair

Upon MOTION by Dr. Woods, second by Dr. Foster, the Board voted to APPROVE the Executive Director Termination. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 23G Case No. 201400051-ED Dr. Saeid Badie

Upon MOTION by Dr. Woods, second by Dr. Foster, the Board voted to APPROVE the Executive Director Termination. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 13 ACTION ON PREVIOUS ACTION

**Agenda Item No. 13A Case No. 201400061
Dr. Michael Wassef**

Diana, the solicitor general was in attendance via telephone. The hearing on this matter at the Office of Administrative Hearing has been continued to allow the Board to hear the proposal and take action.

Dr. Wassef was present to address the Board and the Board was provided with a copy of the proposed settlement sent via email. Dr. Wassef has been practicing for 25 years. His goal is to resolve this matter with the Board and address any concerns. There are key issues as to why he believes his license should be reinstated; there was no proof that there was any foul play. He does acknowledge that there were allegations and suspicions, but that he broke no laws. He did not hurt any patients and he is unsure as to how the Board came to the conclusion that he was a danger to the public. The entire summary suspension is predicated on the Interim Board Order. In the Interim Board Order, Dr. Wassef was given two weeks to comply with a recommendation by a physician that he had not seen nor is a patient of. In the Order, Dr. Wassef had to provide the Board with a 10 day notice, leaving him four days to figure out how comply with the out of state Board Order. At the time, Dr. Wassef stated, the Board had not offered to pay for transportation, hotel or the assessment. On the fifth day, Dr. Wassef was in noncompliance with the Board Order. During this time, he was trying to choose a facility, figure out the mode of transportation, lodging, and how to pay for the assessment.

Ms. Williams objected before Dr. Wassef could present information regarding the hearing that is currently taking place at the Office of Administrative Hearings. Ms. Williams objected based upon the fact that the Board does not have the complete record in front of them. It was Ms. Williams' understanding that Dr. Wassef was presenting his terms of a proposed settlement to the Board. Ms. Williams' asked that the Board not consider anything that has happened at the hearing as it is ongoing.

Dr. Wassef summarized his proposal by stating that he wanted his license back. There was no reason based upon his understanding why he should lose his license. If the Board is going to pull someone's license and take their livelihood and life away, there would be a legitimate reason rather than just an allegation. He would like to appeal to the Board and the Board's sense of justice of doing what is right and being impartial and fair.

Ms. Williams, serving as the prosecutor in the ongoing hearing, addressed the Board. She spoke to the terms of Dr. Wassef's proposal in a May 29th email received from Dr. Wassef. On behalf of the state, Ms. Williams' does not support his proposal on any of the terms. The proposal by Dr. Wassef does not include any type of substance abuse evaluation, which was part of the Board's reason for issuing the interim order. Without either an in-patient or out-patient evaluation, Dr. Wassef's proposal is not

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something Ms. Williams' can support on behalf of the state. Ms. Williams' recommendation is to proceed back to the hearing.

The solicitor general advised the Board that the only action to consider is whether to accept or reject the settlement proposal. If the proposal is rejected, it will proceed back to the hearing. The Board will then have the opportunity to accept, reject, or modify the order as a result of the hearing.

At the April Board meeting it was clarified that the evaluation would be at the Board's expense. After consultation with his client, Dr. Wassef's attorney informed the Board that regardless of the fact that the Board would cover the expenses, Dr. Wassef refused to go. Dr. Wassef has had two additional months to comply with the interim Board Order and has not done so.

Dr. Wassef attempted to ask the board questions and he was informed that he was unable to do so as it was under discussion.

Upon MOTION by Dr. Foster, second by Ms. McClain, the Board voted to REJECT the settlement proposal offered by Dr. Wassef. MOTION PASSED UNANIMOUSLY

Agenda Item No. 14 PETITION TO REHEAR

**Agenda Item No. 14A Case No. 201300153
 Dr. Lee W. Harding**

Mr. Jeffrey Tonner, attorney for Dr. Harding, was present to address the Board.

Ms. Hardy was the lead Board Member for the Petition to Rehear. Mr. Tonner submitted four reasons for rehearing. After reviewing the Petition to Rehear, Ms. Hardy did not find any merit for rehearing based upon reasons one and two. Reason number three for the finding of fact to not be justified by the evidence or is contrary to law, Ms. Hardy agreed. There was an error during the process of the proceeding regarding the communication exchange between her and Dr. Palmer. The dialogue that occurred between Ms. Hardy and Dr. Palmer should have been at a previous time when Dr. Harding and Mr. Tonner had an opportunity for rebuttal. Reason number four presented by Mr. Tonner was due to newly discovered evidence. Ms. Hardy agreed that there was new evidence that Dr. Christensen had written in a letter regarding finding of fact number five.

The cost of the glass ionomers as it relates to the finding of fact number seven, Ms. Hardy does not believe that there would be a change in the finding of fact regarding three separate costs. If the Board wanted to proceed more evidence was needed.

Upon Motion by Ms. Hardy, second by Ms. Crevier according to article 1754-11-1701 (c)(5) and article 1754-11-1701 (c)(8), the Board voted to GRANT a rehearing at a future Board Meeting. Based on the grounds that during the process of the proceedings there was an error in admission of evidence, and there is newly discovered material that could not have been discovered and produced at the hearing. MOTION PASSED UNANIMOUSLY

During Ms. Hardy's review, there were allegations in the report and summary about over diagnosis and over treatment. She recommends that the Chief Investigator review the case regarding these allegations.

Upon MOTION by Ms. Hardy, second by Dr. Woods, the Board voted to DIRECT Chief Investigator, Dr. Palmer, to review the case regarding the two allegations of over diagnosis and over treatment. They were already allegations in the Report & Summary that were not previously investigated. Dr. Palmer would

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complete a supplemental Report and Summary focused on the allegations of over diagnosis and over treatment. Dr. Sorensen OPPOSED. MOTION PASSED.

Mr. Tonner addressed the Board. The anonymous complainant filed eight complaints; six of those complaints have been dismissed. Two are still pending, this case and Arizona Health Care Cost Containment System. As noted in the petition for review, these are eight cherry picked cases and Mr. Tonner does not believe looking at these cases is an indication of the office. AHCCCS has reviewed 150 cases. The patients in this case are all within the 150 cases that AHCCCS is investigating as it relates to where glass ionomers were placed in class II posterior teeth. Mr. Tonner asked that the Board proceed forward with what they have.

The Board has an examiner that can complete an investigation outside of AHCCCS. The Board reviews cases that are brought before them and are not looking at the case as a reflection of what is happening in the entire office. There were eight patients that were treated by both Dr. Harding and associates. Dr. Palmer is going to review the records received for this case and investigate the allegations.

FORMAL INTERVIEW

**Agenda Item No. 24A Case No. 201300298
Dr. Lonnie C. Eckman**

Dr. Eckman and his attorney, Susan McLellan, was present. The Court Reporter swore in Dr. Eckman. Dr. Hauer read the Formal Interview Process

The Board received a complaint from PR on December 16, 2013 alleging Dr. Eckman performed inadequate oral surgery which resulted in complication from surgery. The investigation concluded that Dr. Eckman did not advise the patient prior to extraction of tooth no. 17 that she could have a second opinion from a specialist for the extraction, due to the position and condition of tooth no. 17. Dr. Eckman has elected to appear before the board for a formal interview and has been noticed that his conduct may rise to the level of unprofessional conduct in accordance with ARS 32.1201.21(n).

In this case, initially, there were three allegations. The first was inadequate oral surgery; based upon the report by the Chief Investigator, there is no criticism of the oral surgery. The second allegation was complication before and after treatment and unfortunately this patient did experience a complication of nerve injury. This risk of nerve injury was discussed twice with the patient. She signed two full consent forms that addressed that risk. There is also a third general consent form that advises the patient of the risk of nerve injury with dental procedures. The third allegation was the failure to consult or refer.

Based upon the report and summary there are two conflicting standards. The first is to give the patient the option to go to an oral surgeon for an extraction. The second is that Dr. Eckman must first consult with an oral surgeon or must refer the patient to an oral surgeon. It is Ms. McLellan's belief that this conflicts with the standard of care of giving the patient an option for treatment. There are mitigating factors that takes the case from disciplinary to something less than discipline. Upon receipt of the Formal Interview notice, Dr. Eckman provided information of his experience in dealing with extractions.

The patient had four prior molar extractions and knew that specialists existed as stated in her complaint. Dr. Eckman offered to have the patient to see a more senior dentist in the office, but she refused due to wanting to get it done that day. Based upon that, Dr. Eckman was trying to do the best for the patient in this situation. Dr. Eckman has since changed his consent form to include in the first paragraph "the patient has the right to go to an oral surgeon, specialist for an extraction procedure". He has taken this case serious, listened to the comments made, and already implemented changes in his practice.

Dr. Foster was the lead board member. He questioned Dr. Eckman regarding violating ARS 32.1201.21(n).

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Dr. Lonnie C. Eckman, attended Arizona School of Dentistry. Upon graduation, he worked in a private practice until present. He does not have any specialty training in surgery or orthodontics. Dr. Eckman does have a 1302 sedation permit for IV Conscious Sedation.

The patient came in for an emergency exam. She was having pain in the lower left side of her mouth. She'd had a root canal done on tooth no. 18 which was broken off at the gum line. She also had severe decay on a tooth on the lower right. After the x-ray Dr. Eckman sat down and talked with her about the findings, what was going on and why she was having pain. They discussed her health history, her concerns, asthma, and fears. Dr. Eckman then told her what he could do to help her. In emergency cases, if the patient is experiencing swelling and periodontal drainage, Dr. Eckman provides the option of prescribing antibiotics and scheduling a new appointment. Dr. Eckman discussed the difficulty of the procedure once he reviewed the Cone Beam Computed Tomography scan with her taken by the panoramic machine in the office. After extensive conversation, the patient was given the option of which teeth she wanted extracted. She opted for tooth no. 18 and the lower right tooth. Dr. Eckman stated that it was not an easy extraction due to her oral health and medical condition. It was explained to the patient that due to the condition of tooth no. 17, Dr. Eckman was not sure how it was going to heal. There is usually a 7 day post-op check that is done. Dr. Eckman did not see the patient within that time frame and he is unsure as to why.

The patient returned a week later still having problems with the lower right side of her mouth. The gum tissue for tooth no. 17 was inflamed as the patient had decay on that tooth that was near the gum tissue. During this appointment, Dr. Eckman reviewed the CBCT scan and panoramic x-ray and discussed the risks. The patient was presented with a treatment plan, provided the option to come back on another day, as well as the option to see a more experienced dentist in the office. Dr. Eckman discussed that he did not feel that it was going to be as complicated as the previous extraction because tooth no. 18 was already gone. Dr. Eckman had access to the crown of tooth no. 17 and the patient chose to have it done that day. The tooth was not becoming mobile during the procedure and he discussed seeing an oral surgeon as a large chunk of the root had been left.

There was some issue with the Board staff getting the CBCT scan. Dr. Eckman stated that the machine used takes both panoramic x-rays as well as CBCT scans. However, the CBCT scans are not a part of the patient's official records. Dr. Eckman stated that every patient gets a CBCT scan and that is what he reviewed both prior to and during the extraction.

The patient was given the option to see an oral surgeon. The office protocol is that if Dr. Eckman was not comfortable doing a procedure, then the patient would be referred to the owning dentist. The owning dentist would make the decision to refer the patient as the owning dentist has more experience than Dr. Eckman. Post operatively, the patient did experience numbness and parenthesis. Dr. Eckman telephoned the patient that evening to complete a post-operative check. He also called her the next day and the patient reported that the numbness had not gone away. A plan was already in place to send her to an oral surgeon. Dr. Eckman placed her on steroids, got her in contact with an oral surgeon, and verified that she was seen by the oral surgeon.

Dr. Eckman stated that he does not perform a lot of extractions anymore as his current office does not have the proper technology to diagnose and treatment plan these types of cases. He now refers most of these cases to an oral surgeon.

Dr. Eckman was questioned by the Board. As a point of clarification, Dr. Eckman offered to have the patient seen by a more senior doctor in the office and she refused. The patient wanted the procedure done that day so that she could get out of pain. Dr. Eckman was not concerned about doing the extraction because he had done over 120 partial bony extractions and had never had complications. The protocol in the office is to offer the patient the option to see a more senior dentist. As a dentist, the standard of care is always followed. During the two and a half years that Dr. Eckman was employed at

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this office, he is not aware of any complications from doing these types of extractions. He was not restricted from referring a patient to an oral surgeon. Dr. Eckman stated there have been other times when he has started a procedure and stopped so that he could refer the patient.

The Board questioned the date on some of the x-rays. Ms. McLellan stated that the records were subpoenaed from the office and not Dr. Eckman. The x-rays were mislabeled by the office as it is not an automatic label.

Ms. McLellan, in her closing statement believes that this is not a disciplinary case. The issue is whether or not the dentist offers the patient a referral to an oral surgeon when extracting teeth. There is no evidence that the patient would have gone to see an oral surgeon on this date to have the extraction done. The patient was aware that specialists exist and she was offered another option of treatment which she refused. Due to this as well as the other mitigating factors mentioned at the beginning, discipline is not applicable in this case.

Upon MOTION by Dr. Foster, second by Ms. Crevier, the Board voted to FIND unprofessional conduct based ARS § 32.1201.21(n) for failure to refer. Dr. Woods, Ms. Hardy, Dr. Flowers, Mr. Jackson, Mr. Greer, Ms. McClain, and Dr. Hauer OPPOSED. MOTION FAILED.

Upon MOTION by Dr. Woods, second by Mr. Greer, the Board voted to ISSUE a Letter of Concern stating "Dr. Eckman should when confronted with a difficult case give the patient an option to see a specialist for treatment." Ms. Hardy, Ms. Crevier, Dr. Flowers, Dr. Sorensen, Dr. Foster OPPOSED. MOTION FAILED

Upon MOTION by Dr. Woods, second by Dr. Sorensen, the Board voted to IMPOSE Non-Disciplinary continuing education for 6 hours in oral surgery diagnosis and treatment planning and 4 hours of risk management to be completed in 6 months. If documentation can be provided for the completion of 4 hours of risk management taken within the past 12 months, it will satisfactorily fulfill the requirements of the proposed Board Order. Mr. Greer, Ms. McClain OPPOSED. MOTION PASSED.

Agenda Item No. 27 – Next Meeting Date – August 1, 2014

Agenda Item No. 26 – FUTURE AGENDA ITEMS

Agenda Item No. 25 – Members of the Public

**Agenda Item No. 21A Anesthesia Evaluator
 Dr. R. Brinks Austin**

Upon MOTION by Dr. Woods, second by Ms. Hardy, the Board voted to APPROVE Dr. R. Brinks Austin as an Anesthesia Evaluator. Mr. Greer RECUSED. MOTION PASSED

**Agenda Item No. 21K Anesthesia Evaluator
 Dr. Brent C. Call**

Upon MOTION by Dr. Woods, second by Ms. Hardy, the Board voted to APPROVE Dr. Brent C. Call as an Anesthesia Evaluator. Mr. Jackson RECUSED. MOTION PASSED

**Agenda Item No. 17B Case No. 201400062
 Dr. Jason R. Melashenko**

This case was pulled by a member of the Public

Ms. McLellan, attorney for Dr. Jason Melashenko, was present to address the Board. The Letter of Concern relates to a one time amended or addendum progress note which is at page 24 of the records. In

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Dr. Endicott failed to comply with the consent agreement. However, Dr. Endicott is now in compliance with the consent agreement. Due to the untimeliness of completing his continuing education, the Board discussed increasing the administrative penalty from \$250.00 to \$500.00.

Upon MOTION by Dr. Flowers, second by Dr. Woods, the Board voted to MODIFY the Non-Disciplinary Consent Agreement by IMPOSING an Administrative Penalty of \$500.00. If Dr. Endicott declines the amended agreement, he will be invited for a Formal Interview. Mr. Jackson recused, Dr. Hauer OPPOSED. MOTION PASSED.

Agenda Item No. 28 – Adjournment

Upon MOTION by Dr. Woods, second by Dr. Foster, the Board voted to ADJOURN the Board meeting. MOTION PASSED UNANIMOUSLY.

Dr. Hauer adjourned the meeting at 10:41AM.

Minutes APPROVED at the August 1, 2014 Board Meeting.

Elaine Hugunin, Executive Director