



ARIZONA STATE BOARD OF DENTAL EXAMINERS

4205 North 7th Avenue, Suite 300 • Phoenix, Arizona 85013

Telephone (602) 242-1492 • Fax (602) 242-1445

www.dentalboard.az.gov

MEETING OF THE ARIZONA STATE BOARD OF DENTAL EXAMINERS MINUTES OF THE BOARD MEETING October 10, 2014

Board Members Present:

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

Board Members Absent:

Mr. Joshua Greer

Staff Present:

Ms. Elaine Hugunin, Executive Director
Ms. Nancy Chambers, Deputy Director
Ms. Mary DeLaat 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, Mr. Greer is absent. Also for the record, there is extra material for agenda items 7B, 17A, 18B, 4Q and 17E are provided in Board members folders.

Agenda Item No. 3 PRESIDENT'S REPORT

A. Appointment of Dental Hygiene Selection Committee Members

Dr. Hauer appointed Sharon Zastrow, RDH, Emma Violante, RDH and Marilyn McClain, RDH to the Dental Hygiene Selection Committee.

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- B. Report from the American Association of Dental Boards Annual Meeting, October 7-8, San Antonio, TX

Dr. Hauer provided information from the American Association of Dental Boards Annual Meeting held October 7-8 in San Antonio, Texas. The best part of that meeting is a round table where we hear from the attorneys or presidents of other boards as to what is happening in their states. In the state of Ohio, they are addressing the student debt problem by forgiving up to \$75,000.00 per year for graduates to work in low access areas of the state. The funds are generated from the increase in licensing fees and the fund is administered by the Dental Association.

The states of Ohio and Tennessee already have expanded function dental assistants. The representative from Ohio stated that there aren't too many dental assistants who would like to do that. The state of Nevada has a prescription monitoring program that requires licensees to provide a self-query and provide the results with their renewal application. The Federal Trade Commission suit against the North Carolina Dental Board is going to be argued before the U.S. Supreme Court on October 14. The North Carolina Board was appointed by the North Carolina Dental Association, a private organization and not the Governor. Therefore they are more susceptible to anti-competitive problems. The issue in North Carolina started out as a "teeth whitening" issue and has grown into a lot more. The North Carolina board started out by issuing cease and desist orders to the teeth whitening centers, the attorneys state that they should have had the court issue the cease and desist orders. It would have more standing coming from the courts vs. the Board. The state of Florida now issues licenses to any dentist who has served in the armed services as a dentist. Massachusetts now registers dental assistants. Minnesota has 24 dental therapists, Maine has dental hygiene therapist and Nebraska has introduced into legislation to register dental assistants.

The last problem that was mentioned at the meeting is when a dentist takes a board exam and fails multiple times, then goes to another state and fails, moves to a another state, the current state doesn't know that he has failed. This is a clearinghouse that tells the past history for that candidate. The AADB and AADE are trying to get together to create a clearing house for test results to provide to the states.

Agenda Item No. 2 PUBLIC COMMENT ON CASES

Complainant HS was present and spoke about case no 201400072 (Agenda Item 17A).
Complainant RP was present and spoke about case no.201400147 (Agenda Item 17G).
Complainant BA was present and spoke about case no. 201400151 (Agenda Item 18E).
Complainant TE was present and spoke about case no. 201400174 (Agenda Item 19D).
Complainant TA was present to speak about case no. 201400160 (Agenda Item 24C) however TA did not speak English and did not have an interpreter.

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

- A. Dr. Kevin James Kwiecien – Board approved exam, allegedly practicing dentistry in Arizona without a license.

Dr. Kwiecien was not present.

Dr. Woods moved to deny licensure to Dr. Kwiecien because he admitted to practicing dentistry without a license. Dr. Taylor seconded the motion. Upon subsequent discussion by the Board, Dr. Woods withdrew his motion and Dr. Taylor withdrew his second. The Board would like Dr. Kwiecien to appear before the Board to explain the situation.

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Ms. Williams advised the Board that they could make a comprehensive request for additional information. This would stop the clock on the application timeframe. And that request could be that Dr. Kwiecien appear before the Board.

Upon MOTION by Dr. Woods, second by Dr. Taylor, the Board voted to REQUEST comprehensive information due to the allegation and disclosure on his application and appear before the Board at the December 5, 2014 Board Meeting. MOTION PASSED UNANIMOUSLY.

- B. Dr. David Jay Birdwell – Board approved exam; disclosure of disciplinary action in Oklahoma

Dr. Birdwell was present to answer questions from the Board. Dr. Birdwell stated that Oklahoma had reprimanded him in 1997 for allowing dental assistants to take impressions. When he realized it was wrong, he immediately corrected the situation.

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

- C. Dr. Kenneth Allan Chernow – 1970 California State Exam prior to a regional

Dr. Chernow was present to answer questions from the Board. He has been practicing in California for the last 45 years.

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

- D. Dr. David James Hill – 1976 Idaho State Exam prior to a regional

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

Upon MOTION by Dr. Woods, second by Dr. Taylor, the Board voted to GRANT licensure to Dr. Hill. MOTION PASSED UNANIMOUSLY.

- E. Dr. Eric Wayne Smith – 2003 Indiana State Exam prior to a regional

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

- F. Judith Ann Davidson, RDH – 1973 Indiana State Exam prior to a regional

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

- G. Deborah Straine, RDH – 2008 California Dental Hygiene Exam prior to a regional

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

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

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- B. Review and discussion of information regarding the FY2014 Annual Report to the Governor

The 2014 annual report has been submitted to the Governor's office and is available on the website. Of note, the complaints are significantly higher this past fiscal year than the previous fiscal year.

- C. Review and discussion of information regarding the Arizona State Board of Dental Examiners FY 2016 budget and strategic plan.

The Arizona State Board of Dental Examiners FY 2016 budget and strategic plan has been submitted. Additional appropriations or funds were not requested.

- D. Review and discussion regarding the Arizona Dental Association Sunrise report requesting the consideration of a change in the scope of practice of dental assistants in Arizona and to provide the Arizona Board of Dental Examiners the statutory authority to register and to establish training and examination standards for the Expanded Function of Dental Assistants.

This agenda item is here to secure some comments from the Board. A sunrise application from the Arizona Dental Association is going to expand functions of dental assistants. For your information this is not neutral in terms of cost to the Board. It will take considerable staff time. There will be an initial cost to change our database software. It is important to remember as this moves forward with the legislature that the sunrise includes the ability to charge fees to offset the cost.

The Board discussed if there had been any studies to show the effect on the citizens of Arizona. It was asked if there had been any demographics done on the state of Arizona, as there doesn't seem to be a shortage of people that can do these types of procedures. The sunrise application has come about as a result of a survey of Arizona dentists. One Board member commented that he was never surveyed and he doesn't know anyone who participated in the survey.

Arizona Dental Association Government Affairs Counsel completed a lot of research as it was moving forward. The counsel looked at different surrounding states and what they had added to the expanded functions and what they had not. An email survey went out asking if the dentists would be in favor of something like this. This took place a couple of years ago and it was very informal.

A Board Member likes the idea of expanded functions of dental assistants, but the practicality of it is a problem. Someone is going to have to cover the expenses to the Board, either raising fees to the dentists, making fees for the schools, and regulating the schools that will sponsor it. Many dentists are not happy with the current situation of dental assistants, the thought is by having expanded functions of dental assistants, it would raise the level. He doesn't agree that by offering more education to a few is going to raise the level of all. It is a great undertaking for the Board. It is not something he can support as it is currently written.

One of the interesting points is who is ultimately responsible for the work that is being performed. The dentist is not doing the work. An assistant is doing the work for the dentist. It was speculated that the amount of complaints are going to escalate if the doctor is responsible for the work being done and the doctor's malpractice claims are going to go up as well.

Mr. Earle said 104 people responded to the survey. That is not really a big enough response to move forward with this application.

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One of the complaints Mr. Earle brought up was the decrease in reimbursement from insurances and the costs of bringing in a dentist to do something that is irreversible or something that is reversible, that a trained dental assistant can do. If a dental assistant is trained, they can do a decent job. If you look at the dental hygiene model, Arizona is one of the few states that allow dental hygienists to do local anesthetic without a dentist present in the office.

Everything seems based upon the lack of dental care in rural areas. Looking at traditional dental offices in metropolitan areas, most doctors are booked six to eight weeks out. Why would a doctor want an assistant doing work that they should be doing themselves. Is this just for rural areas? By providing some financial consideration to newly licensed doctors to work in those areas, they can provide the services needed. Now there is no additional education for a dental assistant, you have a qualified doctor doing the work there for one to two years, and the doctor is reducing the debt from student loans. There are other opportunities, if it is just for rural area to have a licensed practicing qualified doctor doing the work.

An expanded function dental assistant doing restorations could possibly mean having insurance companies reimburse differently.

There is concern is that the only fee is the application fee. There are no provisions for continuing education, recertification or renewals. Is the Board going to take responsibility for something where they have no control?

The Dental Assistant National Board would probably be the body that would do the certification, but it is a one-time certification.

Dental assistants are now coming out of school with debt much similar to dentists. They are then topping out at an hourly rate because they can't have expanded functions.

The Board discussed the fact that dental assistants coming out of school expecting a high salary as advertised by the schools. Just because they are going to be more educated does not mean they are going to be hired. They will go into more debt. The other issue is that the schools aren't putting out the highest quality of dental assistants. This isn't really a cost effective thing. Sometimes the work done is not cost effective. The damage is done and it can't be reversed.

In the state of Kentucky, expanded function dental assistants attend school at that dental school. They are taught by the same people that teach dentists. Graduating from a dental assistant school does not guarantee that a person has expanded functions. A dental assistant has to pass the DANB exam, which is rigorous. It is what the Board has in place to be able to make radiographs in a dental office. A dental assistant with a DANB certification can make more money because they are certified.

It is a sunrise application. The legislature will make that decision on whether it is going to be effective or not. This is just a discussion on the pros and cons.

Will the Board have an opportunity to provide any additional information to the association or the legislature?

Ms. Hugunin stated that this is so broad, some questions have come up. There needs to be language in place, the process, all of that has not been discussed.

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This is going to mostly affect the general dentist population. There are companies that employ many dentists. If a mistake is made by the dental assistant, who is going to be liable, the doctor or the corporation? In larger corporations, there are dentists that are currently paid on a thirty percent commission, what if since the dentists aren't doing all of the work and the corporation now decides to pay them twenty-eight percent commission. However, the dentist will make up the difference because they are going to see more patients. Is that good for the public? Is this something that is needed in the state of Arizona? There has been an increase in population within the past ten years of about 2 percent. There has been an increase in the number of dentist in the state within the past ten years of about ten percent. The question is do we want to take more work away from those dentists?

The idea of patient notification was addressed. The patient doesn't know that it is an expanded function dental assistant placing a filling. There needs to be a written form stating that someone other than a dentist is performing the work and the patient needs to sign off of that. This breaks down the doctor/patient relationship. If the Board has to administer this, will this increase the fees for hygienist and dentists to cover the costs?

For the record, Ms. Hugunin added that the Board document in its discussion that there needs to be a delayed effective date because of the administrative challenges. It does not state in the statute who is going to be the certifying group. The Board agreed with the delayed effective date.

E. VACANT

F. Review, discussion and possible action regarding modifying the Board's current subpoena to produce documents

At the last Board meeting during call to the public a suggestion was made to modify the Board's existing subpoena. A copy of what was provided at the last Board meeting as well as the Board's current subpoena was located in the Board folders. Board staff can make changes; however, we probably still wouldn't get all of the records, but we are open to making it easier for our licensees.

Dr. Woods stated that he read through the list and it delineates step by step. He also suggested we still state "all records." It would need the Board verbiage. He thinks it would be fine to add the list to our current subpoena.

Upon MOTION by Dr. Woods, second by Dr. Sorensen, the Board voted to MODIFY the Board's current subpoena to produce documents adding the list that was suggested.

Mr. Tonner addressed the Board. Since the list was provided to the board one item was added. If a foreign language form was used, the office would need to provide the equivalent form in English.

Dr. Woods accepted that as a part of the list.

G. Review, discussion and possible action regarding mandated Board Member Training; approval of Council on Licensure and Enforcement Regulation training

At the Board's last meeting, staff reported on options for complying with ARS 32-3217. Subsequent to the Board's meeting another opportunity was identified. Purchasing the CLEAR modules is an excellent option and it allows the Board to secure hours at their convenience. Of course it will not total the 12, but it will give six hours of basic training at a

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very minimal cost for the agency. Dir. Hugunin and Ms. Chambers will develop the rest of the training.

The Board asked if there was any way to increase the number of hours, assign two hours per module. Who determines that each module is only an hour?

Ms. Hugunin stated that CLEAR determines the number of hours for each module. These modules do not have a question and answer session so it is only one hour. But this is a way to secure six hours. Perhaps one hour of training could be completed at every Board meeting.

Upon MOTION by Ms. Crevier, second by Mr. Jackson, the Board voted to APPROVE the Council on Licensure and Enforcement Regulation training as mandated Board Member Training. MOTION PASSED UNANIMOUSLY.

- H. Arizona Administrative Code (AAC) R4-11-1202 Continuing Education Compliance and Renewal requirements
 - i. Review, discussion and possible action regarding staff recommendations for revisions to AAC R4-11-1202.

These are recommendations to change rules with the Auditor General's recommendation:

1A is to revise its continuing education affidavit to include information on the number of continuing education self-study hours. This recommendation is on page 1, line 16. Staff is recommending that you strike "written".

On page 1, line 19-20, adding to the affidavit it's the total number of activities defined in R4-11-1209.24 and that should take care of the affidavit part of it.

The next recommendation from the auditor general was 1C and it's to take action against licensees who do not comply with continuing education or consider revising its administrative rule to licensees who meet the overall continuing education hour's requirements giving a specific amount to time to come into compliance. The auditor general suggested we mimic the Physical Therapy Board. The Physical Therapy Board allows a physical therapist to come into compliance within a certain amount of time, but they are still considered out of compliance. Adopting something like the Physical Therapy Board has should be moot because it is similar to this Board's non-disciplinary or disciplinary consent agreements.

Staff recommendation is on page 2, line 10, to strike the word "shall" and insert the word "may" which gives the Board more flexibility in how to handle a licensee who is in non-compliance. There could be degrees of non-compliance. It could be that licensee who didn't get continuing education or it could be someone who made an honest mistake.

Line 11, same page, add the words "non-disciplinary" or you could strike 12.02H, since the Board has a complaint process already in place and the other amendments are clean up page 2 G, H.

The auditors recommended the Board to more closely follow the process. They found that the Board and committees were lenient and that the rules didn't reflect that leniency. Since the rules can't be changed for this year's audits, more audits will be going directly to complaints being opened.

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This language gives the Board the opportunity to make it disciplinary or non-disciplinary. It states that the Board has that option and it says "may" which means it can be terminated. It doesn't significantly change the process; it just sophisticates it a little more.

It makes more work, but it can still be terminated. If someone is not in compliance, typically they are given an Administrative Penalty and required to complete the continuing education. An Administrative Penalty is a disciplinary action.

Upon MOTION by Dr. Woods, second by Ms. Hardy, the Board voted to ACCEPT the staff recommendation as revised to AAC R4-11-1202. MOTION PASSES UNANIMOUSLY.

- ii. Review, discussion and possible action regarding opening a docket and filing a notice of proposed rulemaking for proposed amendment to AAC R4-11-1202.

Upon MOTION by Dr. Woods, second Ms. Crevier, the Board voted to OPEN a docket and file a notice of proposed rulemaking for proposed amendment to AAC R4-11-1202. MOTION PASSED UNANIMOUSLY.

- I. Review, discussion and possible action regarding amendment to Substantive Policy Statement #4 – Continuing Education Random Audit.

This is a continuation of the rule change in agenda item 4H. It is in response to the Auditor General's recommendation of 1B to ensure that committees comply with the substantive policy statement. The Board received a Substantive Policy Statement.

The same percentage of audits would be conducted, but we have more hygienists now so that number will increase. New licensees shouldn't be audited because they haven't had a chance for renewal. Notice of the audit will be sent by certified mail, the Board would see all recommendations for approval with all of those recommended for investigation going to IIRC.

Upon MOTION by Ms. Crevier, second by Dr. Sorensen, the board voted to ADOPT the proposed changes to the Substantive Policy statement #4. MOTION PASSED UNANIMOUSLY.

- J. Dr. Glenn H. Featherman – Review, discussion and possible action to open an investigation based on the information from the Office of Inspector General.

The Board has been notified by the Office of the Inspector General that Dr. Featherman is being excluded from participation in Medicare, Medicaid and all Federal health care programs. The Board has already reviewed the underlying reasons this has occurred. The Board needs to decide whether an investigation needs to be opened or take no action as recommended by the Internal Investigative Review Committee given the Board's prior discussion regarding the conduct that led to the sanction. Additionally, it was mentioned in open session that Dr. Featherman is being monitored.

Mr. Kraig Marton, Dr. Featherman's attorney, was present to address the Board. Mr. Marton stated that nothing has happened since a year ago when the Board considered this conviction and decided not to open an investigation. There is nothing to investigate.

Upon MOTION by Dr. Sorensen, second by Ms. Hardy, the Board voted to take NO ACTION upon the information from the Office of Inspector General. MOTION PASSED UNANIMOUSLY.

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- K. Dr. Robert N. Hoskyns – Review, discussion and possible action on acceptance of Dr. Hoskyns' voluntary surrender

Upon MOTION by Dr. Woods, second by Dr. Taylor, the Board voted to ACCEPT the voluntary surrender of Dr. Hoskyns' license. MOTION PASSED UNANIMOUSLY.

- L. VACANT

- M. Dr. Lee Harding – Review, discussion and possible action regarding additional information received from the complainant in case 201300153.

The Board has additional information and a complaint from the complainant who previously filed a complaint against Dr. Harding. The Internal Investigative Review Committee's memo details the information with the recommendation that the Board not add the additional information to the current complaint since it is already scheduled to go to the Office of Administrative Hearings and not open the other complaint given these allegations have been investigated. The memo clearly articulates the additional information.

Upon MOTION by Dr. Woods, second by Dr. Sorensen, the Board voted NOT to open the complaints and NOT INCLUDE additional information received by the complainant in case 201300153. MOTION PASSED UNANIMOUSLY.

- N. Review, discussion and possible action regarding approval of CE Course – Record Keeping provided by Dr. Gregory Loeben.

Dr. Loeben is requesting to be approved to provide a record keeping course. The course outline and his CV are attached. Dr. Loeben is currently on the Board's list to provide an ethics course.

Dr. Woods reviewed the course outline and he stated that it looks complete.

Upon MOTION by Dr. Woods, second by Ms. Crevier, the Board voted to APPROVE the CE Course – Record Keeping provided by Dr. Gregory Loeben. MOTION PASSED UNANIMOUSLY

- O. Arizona Administrative Code (AAC), Title 4, Chapter 11, Article 4 Fees

- i. Review, discussion and possible action regarding staff recommendations for revisions to AAC, Title 4, Chapter 11, Article 4 Fees

Board staff is requesting the Board consider approving recommendations for revisions to Title 4, Chapter 11, Article 4 fees. The fees are not being changed, however we are required to place all the fees now in rules.

Upon MOTION by Dr. Woods, second by Dr. Sorensen, the Board voted to ACCEPT the staff recommendations for the revisions to AAC, Title 4, Chapter 11, Article 4 Fees. MOTION PASSED UNANIMOUSLY.

- ii. Review, discussion and possible action regarding opening a docket for proposed revisions to AAC, Title 4, Chapter 11, Article 4 Fees

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Board staff is requesting the Board approve opening a docket for proposed revisions to title 4, chapter 11, article 4 fees. The Board previously opened a docket, however the process was terminated due to considerable GRRC changes and therefore we are requesting that another docket be opened.

Upon MOTION by Dr. Woods, second by Ms. Hardy, the Board voted to OPEN a docket for proposed revisions to AAC, Title 4, Chapter 11, Article 4 Fees.

- P. Report from the American Association of Dental Administrators Annual Meeting, October 5 - 7, San Antonio, TX.

Ms. Hugunin reported on the American Association of Dental Administrators Annual Meeting. Ms. Hugunin thanked the Board for their support in her attendance of these meetings. After meeting with her peers for two days, she then joined Dr. Hauer and Mary at the American Association of Dental Boards meeting. The most valuable part, as Dr. Hauer indicated, is the round table in which challenges are shared. Every Board is structured differently. One Board doesn't have an Executive Director. The administrative matters fall on the Board President or Vice President. The common theme throughout all of the states is the anesthesia rules because of the anesthesia deaths in Hawaii, District of Columbia, and other places. Dental Assistants in Oklahoma are fingerprinted and half of the Board meeting is dedicated to reviewing them due to backgrounds. Many of the Boards conduct their own Formal Hearings. We go to the Office of Administrative Hearing. They meet every other week which is pretty significant. In North Carolina, they meet two days a month because they are conducting hearings at their meetings. Idaho contracts with Certified Registered Nurse Anesthetists, who performs all of the anesthesia evaluations.

After attending this meeting for five years, it reinforces how honored Ms. Hugunin is to work with awesome Board staff. We have a great team and a committed Board. This year she is serving as President elect for her peer group as well as serving on the America Association of Dental Boards programming committee and will work toward improving the programs.

Ms. Williams thanked the Board for sending her to the meeting as she hadn't attended in several years. It was good for her to get together with other attorneys and talk about all of the different issues. She stated that the Board does a really great job, especially after listening to some of the others.

- Q. 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 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 22 Executive Director Terminations since the last Board meeting. Three have been appealed. Thirteen can still be appealed.

Agenda Item No. 13 FORMAL HEARING

**Agenda Item No. 13A Case Nos. 201300291/201400004
Dr. Rosalyn D. Keith**

Mr. David Williams, attorney for Dr. Keith, and Rosalyn Keith were present. Ms. Mary DeLaat Williams was present representing the State.

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All Board members stated that they had received and read the Administrative Law Judge's decision.

The Board heard brief oral arguments from both parties.

Ms. Williams asked the Board to adopt in full the Administrative Law Judge's recommended Findings of Facts, Conclusions of Law, and Order of revocation in this case as the Administrative Law Judge found it is undisputed that Dr. Keith failed to comply with the two consent agreements. One was entered into in November of 2013 and one she entered into in December of 2013. Dr. Keith entered into the two consent agreements voluntarily. Dr. Keith knew what the requirements were before signing the documents. Once she signed them and once the Board signed them, they were effective and each consent agreement had deadlines attached to them. Dr. Keith, at the hearing, did not offer any mitigating factors that excused her noncompliance with both of the consent agreements. Based on the record, the aggravating factors outweigh any mitigation that she did put forth. Dr. Keith was already on probation when she entered into both of those consent agreements. Her noncompliance in these two cases as well as her disciplinary history, the Administrative Law Judge found that Dr. Keith is unregulatable at this time and Ms. Williams would agree with that finding and would agree that revocation is the appropriate sanction to take with this case.

Mr. David Williams, attorney for Dr. Keith addressed the Board. He did not represent Dr. Keith at the Administrative Hearing; however, he has had the opportunity to review the file and familiarize himself with the facts of the case. Dr. Keith does not dispute that she is in noncompliance with the two consent agreements. Mr. Williams stated the reason they were here is to ask if the punishment fits the crime. He did not agree that Dr. Keith is unregulatable by the Board. Dr. Keith's noncompliance with the two consent agreements was due to mitigating factors. The primary issue was that Dr. Keith's health has been failing her for almost the last year. In early spring of 2014, Dr. Keith was diagnosed with Multiple Sclerosis. It has limited her ability to work on a consistent basis. At the time of entering into the consent agreements, Dr. Keith's goal was to make restitution to the affected patient, pay the Administrative Penalty, and to complete her continuing education requirements. Her illness has prevented this and it has also limited her income because of her ability to work.

Dr. Keith is now working four days per week. She works at two separate practices. At one practice she works two days per week on a part-time salary. At the other, she works on a commission basis. This causes her income to fluctuate. Dr. Keith wants to comply with the requirements of the Board. Mr. Williams requested that the Board not revoke her license and asked to extend the current stay of revocation for a period of two years. He also asked that the Board give her nine months to make the payments required for restitution and a reasonable period of time to comply with her continuing education credits. This allows the Board to monitor Dr. Keith to ensure that she is in compliance and if she does not comply, then the Board would have grounds to move forward with the revocation of her license. Mr. Williams asked the Board for some leniency to allow her to make the restitution that is required so that she can continue to earn an income and treat her current patients.

Ms. Williams readdressed the Board. Dr. Keith has been experiencing some health problems and a decline in her income, as the Administrative Law Judge referenced in her findings of facts, when she entered into the consent agreements in the fall of 2013. Dr. Keith signed the first agreement in November of 2013 and did not comply. She then entered into the second agreement in December. If Dr. Keith knew she had a limitation and would not be able to comply, she should not have entered into the agreement. The Board has given Dr. Keith many chances in the past and it hasn't worked. Ms. Williams stated that she doesn't come before the Board very often asking for revocation, but in this case it is warranted as the Administrative Law Judge found. She asked the Board to adopt the recommended decision in full. Upon MOTION by Dr. Woods, second by Ms. McClain, the Board voted to ACCEPT the Finding of Facts, the Conclusions of Law and the recommendation to REVOKE the license of Dr. Rosalyn Keith. MOTION PASSED UNANIMOUSLY

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Agenda Item No. 15 PETITION TO REHEAR

**Agenda Item No. 15A Case No. 201400061
Dr. Michael Wassef**

Dr. Wassef presented oral arguments on the motion to petition to rehear. Dr. Wassef stated that his intention was to try to resolve this issue amicably without it metastasizing into something larger than necessary. He felt it should be fair to the public, the Board, and himself.

In March, a pharmacist called the Board and concerns were raised about a prescription that Dr. Wassef had written for himself. There were also concerns about three patients that he had been treating. Upon obtaining a copy of the prescription, it was realized that Dr. Wassef did not write a prescription for himself. His doctor verified the prescriptions he had written for Dr. Wassef and it matched up with the urine analysis that Dr. Wassef had presented.

The Board issued an Interim Board Order for a substance abuse evaluation in three specific facilities, which were all located out of state. On Wednesday, on or about April 9th, Dr. Wassef went to the only place he could be seen in the time frame allotted and complete an evaluation without any third party involvement. It was located in Scottsdale. Dr. Wassef stated that is was not a facility ordered, but it was the best he could do under the circumstances. A copy of the evaluation was provided at the April 11, 2014 Board Meeting. Dr. Wassef was trying to comply and satisfy what was asked of him as he has always done in the past. Dr. Wassef also provided affidavits at the April 11, 2014 meeting to verify his statements. He was unsure why an assessment by a treatment facility did not satisfy the Interim Board Order other than the simple fact that it was not one of the three facilities listed. Dr. Wassef's attorney spoke to the Board and Betty Ford was approved by the Executive Director. Dr. Wassef decided to attend Promises and he informed the Board. He personally spoke to the director of Promises. The second time Dr. Wassef spoke to the Director of Promises, he learned there was third party involvement. This quite frankly irritated him and he decided against going there. He then drove to Betty Ford on Monday, to undergo another assessment in an attempt to put to rest any doubts or concern. He spent half a day there. When he returned from lunch, after speaking with Joseph DuBois, the director, he found out there was third party involvement again. He was a little more than irritated; he was kind of angry, so he left.

As far as the Administrative Law Judge's decision, the Judge stated that Dr. Wassef's constitutional due process was denied. Dr. Wassef's thoughts were that had he an opportunity to sit down and talk about this any questions the Board may have had would have been answered at that point. Dr. Wassef asked the Board to vote to give him his license back, effective immediately. He would be willing to undergo random urinalysis for the next three months as a token of good faith, so that the Board can maintain their responsibility to the public. He would also agree not to write any controlled substances for those three patients for the next three years. He honestly believes this is a win-win-win proposal.

Ms. Williams, present on behalf of the State, addressed the Board. What is before the Board today is Dr. Wassef's petition for review or rehearing. It is his burden in filing the petition to demonstrate that one of the eight grounds outlined in the rules governing petitions to rehearing is demonstrated. Dr. Wassef's petition for rehearing and what he has argued today has not proved any of those grounds. The petition filed is based upon Dr. Wassef's claim that the Board denied him due process. As Ms. Williams argued in the response provided to the Board, 1) Dr. Wassef hasn't given any legal authority supporting his position that this Board was required to give him a hearing either before or after issuing the Interim Order for the substance abuse evaluation. His chance for the hearing came once the Board summarily suspended his license. He was then provided a full Administrative Hearing at the Office of Administrative Hearings. He did come and participate. He did not call any witnesses, as the state did and Ms. Williams believes that the Board's actions in this case were legal. The Board gave him all of the due process he was due. Dr. Wassef did have opportunities to come and discuss with the Board at every stage before the Interim Order was issued. The Board had a meeting and Dr. Wassef's attorney did attend. At the time, the Board

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voted to summarily suspend his license. Ms. Williams' position is that the petition for rehearing or review be denied.

Dr. Sorensen asked how a petition for rehearing would benefit a licensee. Christopher Munns, Solicitor General, stated granting a rehearing would be hearing the case over either entirely or in part. The Board could do a review of the order and change portions of the Board Order that have been entered.

Ms. Hardy was the lead Board Member. Based upon her review, she recommended that the Board deny the petition for rehearing or review as Dr. Wassef's grounds are not justified. Ms. Hardy agreed with Ms. Williams, in that Dr. Wassef focuses on the AAC R4-1711.1701 (C)(1) "irregularities in proceedings of the Board or any order or abuse of discretion which deprived the party of a fair hearing." Dr. Wassef stated that the Board denied him due process. Regarding the Interim Order, Dr. Wassef had the right to judicially challenge it, which is his due process. He chose not to do so. He violated the order and continues to violate it. The violation of the Interim Order was not the reason for the summary suspension. The Board decided to summarily suspend Dr. Wassef's license because he was a threat to the public which lead to ARS §32.1201.21(n), conduct that constitutes a danger to the health, welfare, or safety of the patient or the public. Under ARS § 41.1092.11(b), an agency may summarily suspend a license pending proceedings when there is a threat to public safety and welfare. Ms. Hardy believes that Dr. Wassef is now backpedaling to get his license back because he did not follow the due process of his right to judicially challenge the original Interim Order in the time legally allotted. Dr. Wassef continues to refuse to get an evaluation.

Dr. Wassef mentioned today that a lot of actions taken has been on his own. The opportunity to sit down and to talk about things was available at two meetings. He chose to not come to the meetings and be legally represented.

Upon MOTION by Ms. Hardy, second by Dr. Woods, the Board voted to DENY the Petition for Rehearing or Review. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 14 ACTION ON PREVIOUS ACTION

**Agenda Item No. 14A Case No. 201400067
Dr. Kevin Brian Cebrynski**

The case was remanded for another review. Dr. Cebrynski's legal counsel was present to answer any questions, if necessary.

Martha Stewart, legal counsel for Dr. Cebrynski, addressed the Board. This case was reviewed by two Board certified prosthodontists, both who opined that there was no deviation from the standard of care. So, she respectfully requested a dismissal.

The Board had concerns that there were no study models, no implant wax up; there was no periodontal probing, and no periodontal assessment. In some situations, there was a lack of attached tissues where implants were place. A complete work up should be done when undertaking a comprehensive case. The summary it states that patient did not address the issue of the speech problem with the doctor.

Upon MOTION by Dr. Foster, second by Dr. Woods, the Board voted to ISSUE a Letter of Concern stating "In the future, Dr. Cebrynski, in complex cases should have comprehensive exams, full mouth x-rays, upper and lower study models, periodontal probing and evaluation of soft tissue especially in those areas that may potentially be used as implant sites and diagnostic wax up to determine the most appropriate implant sites." Ms. Hardy, Dr. Flowers, Dr. Hauer OPPOSED. MOTION PASSED

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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:

Agenda Item No. 17E Case No. 201400129	Dr. David Kloss
Agenda Item No. 17G Case No. 201400147	Dr. Ian Ikhyun Cho
Agenda Item No. 17I Case No. 201400158	Dr. Ralph Juriansz
Agenda Item No. 18A Case No. 201400103	Dr. Francine J. Vickers
Agenda Item No. 18C Case No. 201400136	Dr. Richard E. Feldhake
Agenda Item No. 18D Case No. 201400140	Dr. Bradley K. Brittain

Cases ADJUDICATED:

Agenda Item No. 16 – CASES RECOMMENDED FOR DISCIPLINARY CONSENT AGREEMENTS

Item No.	Case No.	Licensee	Action
A.	VACANT		

Agenda Item No. 17 – CASES RECOMMENDED FOR NON-DISCIPLINARY CONTINUING EDUCATION CONSENT AGREEMENTS – CONSENT AGENDA

Upon MOTION by Dr. Foster, second by Dr. Taylor, 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.	201400072	Dr. Stuart S. Sanders	6 hours in the area of implant placement
B.	201400088-MP	Dr. Scott Dee Wallin	6 hours of record keeping
C.	201400127	Dr. Keith Stewart West	3 hours of record keeping
D.	201400128	Dr. Leon B. Reed, II	4 hours of risk management and 3 hours of record keeping
F.	201400141	Dr. Neelama P. Muthanna	6 hours of crown and bridge and 4 hours of risk management
H.	201400148	Dr. Navid Zamani	6 hours of crown and bridge
J.	201400173	Dr. Javier E. Portocarrero	6 hours of crown and bridge and 6 hours in the area of endodontics

Agenda Item No. 18 – CASES RECOMMENDED FOR ISSUANCE OF LETTER OF CONCERN – CONSENT AGENDA

Upon a MOTION by Dr. Foster, second by Dr. Taylor, the Board voted to ISSUE a Letter of Concern for the following cases on the Consent Agenda. MOTION PASSED UNANIMOUSLY.

Item No.	Case No.	Licensee	Action
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B.	201400135	Dr. Cody H. Skinner	Issue a Letter of Concern stating: "Dr. Skinner should completely and thoroughly document the patient's condition and the refusal to follow treatment recommendations and provide appropriate treatment."
E..	201400151	Dr. Christopher A. Lienau	Issue a Letter of Concern stating: "Dr. Lienau should ensure that all margins are closed and records are clear, concise, and legible."
F.	201400177	Dr. Paul Alan Varda	Issue a Letter of Concern stating: "Dr. Varda should maintain clear, concise, and understandable records and adequate informed consent should be documented in the patient record."

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

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

Item No.	Case No.	Licensee	Action
A.	201400126	Dr. Lori Karen Anderson	Terminate – per patient letter
B.	201400139	Dr. Christopher A. Lienu	Terminate – per patient letter
C.	201400172	Dr. Jenny V. Wang	Terminate – per patient letter
D.	201400174	Dr. Brooke A. Zoumbaris	Terminate – per patient letter

Agenda Item No. 20 – CASES RECOMMENDED FOR DISMISSAL – CONSENT AGENDA

Item No.	Case No.	Licensee	Comments
A.	VACANT		

Agenda Item No. 21 – MALPRACTICE, ADVERSE OCCURANCE REPORTS, AND DISCIPLINARY ACTION IN ANOTHER STATE – CONSENT AGENDA

Upon a MOTION by Dr. Foster, second by Ms. Crevier, the Board voted to ACCEPT the recommendation to take no action on the following cases. MOTION PASSED UNANIMOUSLY

Agenda Item No. 21A

Dr. Brian K. Kniff
Malpractice report. Took no action.

Agenda Item No. 21B

Dr. Salvatore F. Perna
Malpractice Report. Took no action

Agenda Item No. 21C

Dr. Michelle A. Bibeau
Malpractice Report. Took no action

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Agenda Item No. 21D

Dr. Donald Arthur Gage
Malpractice Report. Took no action

Agenda Item No. 21E

Dr. Jungwoo Lee
Disclosure of action taken in another State.
Took no action

Agenda Item No. 22 – APPROVAL OF CONSULTANTS AND EXAMINERS – CONSENT AGENDA

Upon MOTION by Dr. Woods, second by Dr. Taylor, the Board voted to APPROVE the following as an Anesthesia Evaluator. MOTION PASSED UNANIMOUSLY.

A. Dr. Hargrow Dexter Barber – Anesthesia Evaluator

Agenda Item No. 23 – APPROVAL OF MINUTES – CONSENT AGENDA

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

Agenda Item No. 23A August 1, 2014 – Board Meeting Minutes

Agenda Item No. 23B August 20, 2014 – Board Meeting Minutes

Agenda Item No. 23C August 20, 2014 – Executive Session Board Meeting Minutes

END OF CONSENT AGENDA

**Agenda Item No. 18C Case No. 201400136
Dr. Richard E. Feldhake**

This case was pulled by a Board member and the public.

There were records that were modified on the date the doctor received the subpoena. There wasn't any evidence that what he did was wrong. A record can be modified as long as it is labeled, documented and dated according to the standard of care. Dr. Feldhake did that.

Ms. Crevier confirmed that the modifications to the records took place a couple of years after the patient was seen. Based on her knowledge, that would not be acceptable in any healthcare organization.

Jeff Tonner, attorney for Dr. Feldhake, addressed the Board. He indicated that the wrong subpoena was sent out. The one that Dr. Feldhake received stated that this case was against another dentist, when in fact it was against Dr. Feldhake. When he modified his records, it was not to cover himself because he thought it was against another dentist.

Upon MOTION by Dr. Hauer, second by Dr. Sorensen, the Board voted to DISMISS case no. 201400136. Ms. Crevier, Mr. Jackson, Dr. Foster OPPOSED. MOTION PASSED.

**Agenda Item No. 18A Case No. 201400103
Dr. Francine J. Vickers**

Dr. Vickers was present to address the Board.

After evaluating the records, Dr. Vickers' endodontic procedure was within the standard of care. Prior to coming to Dr. Vickers office, the patient was anesthetized, so completing diagnostic testing would be

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Agenda Item No. 12 REQUEST FOR ACTION ON APPLICATION(S) FOR RENEWAL OF LICENSE

- A. Review, discussion, and possible action regarding medical disclosure and proposed consent agreement for Dr. Sterling A. Wall

Upon MOTION by Dr. Foster, second by Dr. Taylor, the Board voted to ACCEPT the proposed Consent Agreement for Dr. Sterling A. Wall. MOTION PASSED UNANIMOUSLY.

- B. Review, discussion and possible action regarding medical disclosure and proposed consent agreement for Ms. Lisa L. Grant, RDH.

Upon MOTION by Dr. Foster, second by Ms. Crevier, the Board voted to ACCEPT the proposed Consent Agreement for Ms. Lisa L. Grant. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 7 COMMITTEE REPORTS

- A. Legislative Committee Report – Dr. Michael R. Hauer

Review, discussion and possible action on committee recommendations for the following proposed changes to the Dental Practice Act for the 2015 legislative session: ARS § 32-1201 (21) (k) – Unprofessional conduct definition; ARS § 32-1263.01 (C) – Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification; ARS § 32-1201 (21) (v) – unprofessional conduct definition; ARS § 32-1289 (B) – Employment of dental hygienist by public agency, institution or school; definition; ARS § 32-1207 (B)(6) – Powers and duties; Executive Director; immunity; fees; definition; ARS § 32.1264 (D) – Maintenance of records; ARS § 32-1236 (A) – Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled licensees penalties; ARS § 32-1287 (A) – Dental hygienist triennial licensure; forfeiture of license; reinstatement; notice of change of address; penalties; retired and disabled licenses; ARS § 32.1297.06 (A) Denturist certification; continuing education; certificate reinstatement; ARS § 32-1299 – Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement; ARS § 32-1232 – Qualifications of applicant; application fee; ARS § 32-1284 – Qualifications of applicant; application; fee; rules; denial or suspension of application; ARS § 32.1297.01 – Application for certification; denial; suspension

Since the Legislative Committee last met and made their recommendations, Board Staff has had conversations with different entities that adding sealants to ARS § 32-1289(B) would require a sunrise application. Although dental hygienists may place sealants, adding sealants to ARS § 32-1289(B) changes the supervision level which changes the supervision level which changes the dental hygienists' scope of practice.

Upon MOTION by Ms. Crevier, second by Dr. Sorensen, the Board voted to ACCEPT committee's recommendation for the changes to the practice act as referenced in the agenda with the exception of the change to ARS § 32-1289(B). MOTION PASSED UNANIMOUSLY

- B. Review, discussion, and possible action regarding the Rules Review Committee proposed amendments to ARS § 32-1240 Licensure by credential; examinations; waiver; fee and ARS §32-1292.01 Licensure by credential; examinations; waiver; fee.

The Auditor General's Sunrise Review state the Board has established administrative rule that it may not have had sufficient authority to establish. The Rules Review Committee met and reviewed Arizona Administrative Code R4-11-202(B) and r4-11-203(C) and found the Board did not have statutory authority to collect the continuing education or the practice affidavit from license

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by credential applicants. The Rules Review Committee recommends language to be added to the Board omnibus bill to comply with the Auditor General's Sunset Review recommendation.

Upon MOTION by Dr. Woods, second by Ms. Hardy, the Board voted to ACCEPT the proposed amendments to ARS § 32-1240 Licensure by credential; examinations; waiver; fee and ARS §32-1292.01 Licensure by credential; examinations; waiver; fee. MOTION PASSED UNANIMOUSLY

Dir. Hugunin requested that the Board authorize the Executive Director to make any grammatical changes to the omnibus bill if necessary.

Upon MOTION by Dr. Woods, second by Dr. Taylor, the Board voted to AUTHORIZE the Executive Director to make grammatical changes to the omnibus bill. 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

In late September, the oral argument went before the Court of Appeals. We are awaiting a decision.

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

This case is still before the Court of Appeals awaiting a decision from the judge.

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

This case is before the court of appeals. Dr. Robison did receive a stay pending review.

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

The judge affirmed the Board's decision. The time limit to appeal has passed.

Agenda Item No. 6 PERSONNEL ISSUES

- A. VACANT

Agenda Item No. 9 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

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

A. VACANT

FORMAL INTERVIEW

Agenda Item No. 25A VACANT

Agenda Item No. 26 – Members of the Public

Agenda Item No. 27 – Future Agenda Items

There is one future agenda item that is being deferring due to a pending case.

Agenda Item No. 28 – Next Meeting Date – December 5, 2014

Agenda Item No. 29 – Adjournment

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

Dr. Hauer adjourned the meeting at 10:35AM.

Minutes APPROVED at the December 5, 2014 Board Meeting.

Elaine Hugunin, Executive Director