



Douglas A. Ducey,
Governor

Arizona State Board of Dental Examiners

“Caring for the Public’s Dental
Health and Professional Standards”

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OPEN SESSION MINUTES

January 29, 2021 Regular Board Meeting

Members of the Arizona State Board of Dental Examiners (“Board”) held a board meeting at 8:03 a.m. on Friday, January 29, 2021, which was held virtually and telephonically due to the COVID-19 pandemic. All participants, including guests participated either telephonically or virtually.

Board Members

Heather N. Hardy, RDH – President
Anthony Herro, DDS – Vice-President
Lisa B. Bienstock, DMD
Morgan B. Burg
Aditya Dynar, Esq.
Nick Goodman
John N. Harman IV, DDS
Marilyn L. McClain, RDH
Russell Jeffrey Morrow, DDS
Leslie D. Seaman, DDS
Robert B. Taylor, DDS

I. CALL TO ORDER AND ROLL CALL

President Hardy called the Board’s meeting to order at 8:03 a.m.

ROLL CALL

The following Board members participated in the meeting:

President Hardy, Vice-President Herro, Dr. Bienstock, Mr. Dynar, Mr. Goodman, Ms. McClain, Dr. Morrow (*was present, but did not participate in all matters*), Dr. Seaman and Dr. Taylor.

The following Board members were absent:

Ms. Burg and Dr. Harman.

ALSO PRESENT

The following Board staff and Assistant Attorneys General participated in the meeting:

Ryan P. Edmonson, Executive Director; Kristina C. Gomez, Deputy Director; Seth T. Hargraves, Esq., Assistant Attorney General (“AAG”); Sherrie Biggs, Assistant Deputy Director; Lisa Schmelling, Chief Compliance Officer; Selena Acuna, Legal Administrator; John Dovgan, DDS, Chief Investigator; Julie Cutler, DMD, Deputy Chief Investigative Consultant; Susie Adams, Program and Project Specialist; Jill Barenbaum, Administrative Assistant; Nancy Elia, Administrative Services Officer; and Andrea Cisneros, Minutes Administrator. AAG Michael Raine also participated in the meeting to provide the Board with independent legal advice on the hearing matters as stated herein.

The following individuals were also in attendance of the meeting:

Raegan Taft, Mesa Community College

Deanna Trupiano
Tommy Dang
McKayela Mueller, Mesa Community College, Dental Hygiene
McKenzie Dominguez, Mesa Community College, Dental Hygiene
Marin Brice, Mesa Community College, Dental Hygiene
Jessica Jeffrey, Mesa Community College
Ashley Ashcroft, Mesa Community College, Dental Hygiene
Alex Karapetian, Respondent
Kyle Jackson, Respondent
Sean Murphy, Arizona Dental Association
Shana Abrahams, Arizona Dental Association
Jeff Tonner, Attorney for Respondent
Puneet Devgun, DDS, Respondent
David Raiffe, DDS, Respondent
Mark Christensen, WREB
Cody Hall, Attorney for Respondent
Brent Jacob Gardner, Respondent
Scott Rodgers, Attorney for Respondent
Michele Thompson, Attorney for Respondent
Robert Hawke, Respondent
Harry Collins, DMD, Respondent
Kate Corcoran, Attorney for Respondent
Matthew Arnall, Respondent
Nicole Lopez, Attorney for Respondent
Peter Dang, Respondent
Matthew Nolen, Respondent
Kim Paukune, Respondent
Shaun Gardner, Respondent
Kyla Hollen, Respondent
Susan McLellan, Attorney for Respondent
Dino Drummer, Respondent; and
Joseph Rodriguez, Arizona Association of Nurse Anesthetists; Arizona Anesthesia Solutions

II. CALL TO THE PUBLIC

No individuals addressed the Board during the Call to the Public.

III. DECLARATION OF CONFLICTS OF INTEREST – A.R.S. § 38-503

Drs. Bienstock and Seaman declared conflicts with agenda item no. V.F.2.

IV. REVIEW, DISCUSSION AND POSSIBLE ACTION ON BOARD MEETING MINUTES

A. Discussion and approval of the Open Session Minutes from the December 4, 2020 board meeting.

MOTION: Dr. Taylor moved for the Board to approve the December 4, 2020 Open Session Minutes.

SECOND: Mr. Dynar

VOTE: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

B. Discussion and approval of the Executive Session Minutes from the December 4, 2020 board meeting.

MOTION: Dr. Taylor moved for the Board to approve the December 4, 2020 Executive Session Minutes.
SECOND: Mr. Dynar
VOTE: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

V. ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION

A. Application(s) for Licensing of Dentist(s) or Hygienist(s) – A.R.S. §§ 32-1231 et. seq. and 32-1281 et. seq. respectively

1. Karapetian; Alex

Dr. Karapetian participated in the virtual meeting during the Board’s consideration of this matter and answered Board members’ questions. He confirmed that the matters in New York have been resolved and reported that he is currently practicing in New York with an active license.

MOTION: Dr. Taylor moved for the Board to approve the application and grant licensure.
SECOND: Mr. Dynar
VOTE: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

2. Jackson; Kyle Spencer

Dr. Jackson participated in the virtual meeting during the Board’s consideration of this matter and answered Board members’ questions. He reported that he currently does not hold a DEA registration and that he voluntarily offered not to seek renewal for several years as a term of the settlement. Dr. Jackson discussed his plans for relocating to Arizona to practice orthodontics, and explained the circumstances that resulted in the settlement with the Montana Board.

MOTION: Ms. McClain moved for the Board to approve the application and grant licensure.
SECOND: Vice-President Herro
VOTE: 7-aye, 2-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.
Mr. Goodman and Dr. Taylor voted against the motion.

VII. PRESENTATION BY ARIZONA DENTAL ASSOCIATION (“AzDA”)

The Board heard from AzDA representatives regarding a Continuing Education (“CE”) monitoring system and discussed permitting AzDA to create a CE tracking platform for the Board to recognize and utilize to track CE as it pertains to licenses, registrations and renewals. Sean Murphy explained that CE courses completed through AzDA would be automatically uploaded to the system, and that courses completed elsewhere would need to be manually uploaded to the system by the licensee.

Executive Director Edmonson explained that the current process for facilitating annual renewal applications is done manually, and that he hopes for a more automated process for renewals in the future that would include connection to a CE reporting mechanism. President Hardy recalled the Board approved utilizing CE Broker in 2020, spoke in support of approving the request and stated that there was no harm in having another option for licensees to have the ability to submit their CEs. Dr. Taylor agreed and encouraged licensees that are not already members of AzDA to sign up.

MOTION: Dr. Taylor moved for the Board to accept the AzDA’s CE tracking platform.

SECOND: Dr. Bienstock

VOTE: 7-aye, 1-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

Mr. Dynar voted against the motion.

V. ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION

C. Review of Investigation(s) – Cases Recommended for a Letter of Concern

1. 201900290; Acomb, Donald

The Board observed that this matter involved the licensee’s failure to obtain an x-ray of the teeth prior to prepping for a bridge, and the consultant who reviewed the case recommended issuance of a Letter of Concern.

MOTION: Vice-President Herro moved for the Board to issue a Letter of Concern indicating that pre and post cementation x-rays should be taken for all final fixed partial dentures.

SECOND: Dr. Taylor

VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

2. 201900323; Han, Sang Bum

The Board observed that the consultant who reviewed this matter found that the licensee failed to diagnose and maintain records in that there was no diagnosis for extraction of tooth #16 at the initial visit, but was a diagnosis at the extraction visit. Vice-President Herro questioned whether a Letter of Concern was warranted and considered dismissal. He stated that the treatment appeared appropriate and that there was potentially miscommunication between the dentist and patient. Dr. Bienstock agreed with the Vice-President’s comments and noted that the patient was issued a full refund.

MOTION: Vice-President Herro

SECOND: Dr. Bienstock

VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

3. 202000311; Devgun, Puneet

Dr. Devgun and Attorney Jeff Tonner participated in the virtual meeting during the Board’s consideration of this matter, made statements and answered Board members’ questions. Mr. Tonner stated that Dr. Devgun was one of three dentists involved in this patient’s treatment that was done in four phases, he addressed the two concerns raised by the consultant and asked the Board to dismiss the case.

In response to Dr. Taylor’s questioning, Dr. Devgun explained that he participated in the second and fourth phases of this patient’s treatment and Mr. Tonner clarified that Dr. Devgun was responsible for delivering the final implant for this patient, but the patient did not return for new impressions after the denture did not fit. Vice-President Herro noted that the licensee was in mid-treatment when the patient elected not to return.

MOTION: Vice-President Herro moved for dismissal.

SECOND: Dr. Taylor

President Hardy observed that the review committee recommended a Letter of Concern for lack of notes relating to prescriptions and noted that Dr. Devgun did not prescribe

any drugs for this patient. Dr. Dovgan explained that the case was complex given the multiple providers involved and that by the time he realized Dr. Devgun had not prescribed medications for the patient, the matter had already been considered by the committee. Dr. Dovgan stated that dismissal of the case was appropriate.

**VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.
MOTION PASSED.**

D. Review of Investigation(s) – Case(s) Recommended for Issuance/Offer of Non-Disciplinary Consent Agreement for CE – A.R.S. § 32-1263.02(F)(3)

1. 201900271; Raiffe, David Mark

Dr. Raiffe and Attorney Jeff Tonner participated in the virtual meeting during the Board's consideration of this matter. Dr. Cutler informed the Board that her report needed correction to accurately identify that the patient experienced pressure in tooth #30 and not pain. Mr. Tonner stated that the licensee only saw the patient on one occasion for complaints of pressure in tooth #30, that a hole was identified in the existing crown and that there were no clinical indications that a root canal was needed. The Board discussed the lack of pulpal testing and thanked Dr. Cutler for her hard work and efforts.

**MOTION: Dr. Taylor moved for the Board to issue a Letter of Concern regarding the need to test and do all parameters prior to placing a crown on the tooth.
SECOND: President Hardy**

Vice-President Herro stated that he did not feel a Letter of Concern was warranted. Dr. Dovgan commented that 5% of teeth die no matter what is done during crown prep and that the standard of care did not require pulpal testing of every tooth prior to placing a crown.

ROLL CALL VOTE: The following Board member voted in favor of the motion: Dr. Taylor. The following Board member voted against the motion: President Hardy, Vice-President Herro, Dr. Bienstock, Mr. Dynar, Mr. Goodman, Ms. McClain, Dr. Morrow and Dr. Seaman. The following Board members were absent: Ms. Burg and Dr. Harman.

**VOTE: 1-aye, 8-nay, 0-abstain, 0-recuse, 2-absent.
MOTION FAILED.**

**MOTION: President Hardy moved for dismissal.
SECOND: Dr. Taylor
VOTE: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.**

X. **WESTERN REGIONAL EXAMINING BOARD (“WREB”)**

Mark Christensen participated in the virtual meeting during the Board's consideration of this matter. The Board observed that Dr. Morrow attended WREB's virtual meeting and Dr. Morrow briefly summarized the discussion that took place. Executive Director Edmonson stated that WREB provided updates in anticipation that the Board would have an opportunity to receive, review and report back with any questions concerning what testing agencies are currently doing.

Mr. Christensen informed the Board that WREB's recent annual meeting was held virtually, that exams will begin at the end of February or beginning of March for 2021, and that most students

will take the exam in simulation. Dr. Morrow commented that it has been a great opportunity to serve as an examiner for WREB and encourages others to become involved in it as well.

V. ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION

D. Review of Investigation(s) – Case(s) Recommended for Issuance/Offers of Non-Disciplinary Consent Agreement for CE – A.R.S. § 32-1263.02(F)(3)

2. 201900339; Gardner, Brent Jacob

Dr. Gardner and Attorney Cody Hall participated in the virtual meeting during the Board’s consideration of this matter. Mr. Hall stated that the licensee did use a rubber dam during the procedure and did have a discussion regarding informed consent, though these items were not documented in the record.

In response to the Vice-President’s questioning, Dr. Gardner confirmed that he uses a rubber dam when performing endodontic work and that he chose not to conduct ice testing or percussion testing while the patient was having pain. Dr. Taylor stated his concerns regarding the lack of documentation and lack of further testing prior to proceeding with a root canal for this patient. He stated that the records should include a diagnosis, what the licensee was going to do and the reason for doing it.

MOTION: Dr. Taylor moved for the Board to issue a Letter of Concern for inadequate records.

SECOND: Vice-President Herro

VOTE: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

E. Review of Investigation(s) – Case(s) Recommended for Offer of Disciplinary Consent Agreements

1. 201900152; Phillips, Matthew David

Attorney Scott Rogers participated on behalf of Dr. Phillips during the Board’s consideration of this matter. He asked the Board to consider tabling this matter until its next meeting as he was just recently retained and needs more time with his client.

MOTION: Dr. Taylor moved for the Board to table this matter to its next meeting.

SECOND: Vice-President Herro

VOTE: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

VIII. AUTOMATED EXTERNAL DEFIBRILLATOR (“AED”)

The Board reviewed and discussed the Anesthesia & Sedation Committee’s recommendation to seek a statutory and/or rule change to require all dental practices to have at least one AED available at all dental practices for patient safety. The Board discussed whether the requirement would apply to all dental practices versus practices that perform sedation. Mr. Murphy pointed out the cost of an AED and stated his concerns regarding this requirement applying to practices that are not doing sedation. Board staff confirmed that sedation permit holders are required to have AED in their office.

Executive Director Edmonson clarified that the Committee recommended requiring an AED in all dental offices, and stated that one option for the Board’s consideration is to modify the renewal applications to require licensees to attest to whether they have an AED in their office. The Board considered whether to include this item in the existing bill as an amendment or to proceed with a separate bill in the next legislative session. Vice-President Herro spoke in favor of requiring all

dental offices to have at least one AED available for patient safety given that dentists perform procedures that could impact cardiac stability of the patient. Mr. Dynar proposed the Board approach this matter as a standard of care requirement while pursuing a future legislative change.

MOTION: President Hardy moved for the Board to adopt the Anesthesia & Sedation Committee’s recommendation to seek a statutory change that would require all dental practices to have at least one AED available in the office, for staff to draft proposed language for the Board to consider at a future meeting to pursue in the next legislative session.

SECOND: Mr. Goodman

VOTE: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

V. ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION

E. Review of Investigation(s) – Case(s) Recommended for Offer of Disciplinary Consent Agreements

2. 201900216; Hawke, Robert

Dr. Hawke and Attorney Michelle Thompson participated in the virtual meeting during the Board’s consideration of this matter, made statements and answered Board members’ questions. Ms. Thompson stated that this matter involved documentation issues that do not rise to the level of disciplinary action and that any failure of the subsequent crowns were not due to inadequate dentistry. Dr. Hawke stated that he would never place a crown margin on build up and always uses rubber dams, though it was not documented in this case. He stated that he guarantees his crown and bridge work for up to five years for all patients, and that since this patient left the practice, he voluntarily reimbursed her for the cost of four crowns.

Dr. Taylor stated his concerns that the x-rays showed the crowns were not on good tooth structure, but on build up material. Dr. Hawke explained that the x-ray was being misinterpreted and that the buildup was inside of the crowns apical to his margins. He stated that x-rays obtained in September of 2016 showed the crowns prior to build-up with good margins. Vice-President Herro stated he found that this matter rises to the level of a non-disciplinary sanction for documentation concerns. Dr. Taylor stated that he agreed this matter does not rise to the level of discipline.

MOTION: Dr. Taylor moved for the Board to issue a Non-Disciplinary Order for CE requiring completion of 6 hours in crown and bridge, and 4 hours in risk management. The CE hours shall be completed within six months and are in addition to the hours required for license renewal.

SECOND: Vice-President Herro

VOTE: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

The Board took a break from 10:21 a.m. to 10:31 a.m.

B. Formal Interview(s)

1. 201900128; Collins, Harry

Dr. Collins and Attorney Jeff Tonner participated in the virtual meeting during the Board’s consideration of this matter, made statements and answered Board members’ questions. Board staff summarized the concerns raised by the consultant in this case, that this matter was previously considered by the Board at its October 2020 meeting,

and that Dr. Collins declined the Disciplinary Consent Agreement that was offered and elected to proceed with the Formal Interview.

Mr. Tonner summarized that the patient presented with an upper bridge of ten units, Dr. Collins removed it and performed root canals, preps, posts and bridge replacement. Dr. Collins started the lower or bilateral partial, the patient left before that could be completed and presented to a different practice six months later where the subsequent dentist obtained x-rays and felt that the dental work was inadequate. Mr. Tonner stated x-rays demonstrate that the patient underwent additional dental treatment between Dr. Collins treatment and the subsequent dentist's x-rays.

Dr. Morrow noted that Dr. Collins has no prior Board history. Dr. Taylor stated his concerns regarding the crown to root ratio and the use of a long expansion bridge that involved ten units and was placed on teeth that have had considerable amount of work done including root canals. Vice-President Herro recognized that this matter was complicated as it appeared the patient underwent additional work from which there were no records available for review. He stated that he struggled with whether or not this matter rises to the level of discipline, and stated that the licensee appeared to be a very thoughtful and experienced dentist. Dr. Taylor pointed out that Dr. Collins referred the patient for a root canal and the dentist who performed the procedure took x-rays that showed there was no good tooth structure to support a bridge and appeared to have been taken prior to the patient undergoing additional dental work.

Dr. Seaman commented that it appeared the treatment was inappropriately planned in that the patient's teeth were questionable in prognosis with prior root canals noted. He stated that endodontic evaluation should have been performed on all teeth prior to proceeding with a bridge, that there was a poor crown to root ratio and that alternative options should have been given to this patient.

MOTION: Vice-President Herro moved for the Board to issue a Non-Disciplinary Order for CE requiring completion of 6 hours in crown and bridge and 4 hours in risk management, to be completed within six months and in addition to the regular CE hours required for license renewal.

SECOND: Dr. Taylor

ROLL CALL VOTE: The following Board member voted in favor of the motion: President Hardy, Vice-President Herro, Dr. Bienstock, Mr. Dynar, Mr. Goodman, Ms. McClain, Dr. Morrow, Dr. Seaman and Dr. Taylor. The following Board members were absent: Ms. Burg and Dr. Harman.

VOTE: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

F. Response/Non-Response to Offered Consent Agreement(s)

1. 201900113; Ferraris, Valentine

AAG Seth Hargraves summarized that the Board previously offered Dr. Ferraris a Non-Disciplinary Consent Agreement for CE and Civil Penalty for failure to comply with a subpoena. Dr. Ferraris' response indicated that he retired and provided additional documentation. Thereafter, the Board offered him a Consent Agreement for Voluntary Surrender and \$500 Civil Penalty, to which the licensee did not respond. The Board noted that Dr. Ferraris is retired and considered dismissal without prejudice, which would allow the Board an opportunity to adjudicate this case if he returned to practice.

MOTION: Dr. Taylor moved for dismissal without prejudice.

SECOND: Dr. Morrow
VOTE: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

2. 201900325-AO; Arnall, Matthew

Drs. Bienstock and Seaman were recused from this matter. Dr. Arnall and Attorney Kate Corcoran participated in the virtual meeting during the Board's consideration of this matter. Ms. Corcoran asked the Board to consider settling this matter with a non-disciplinary Consent Agreement as the licensee has agreed not to use IO access and will complete the CE that was outlined in the disciplinary Consent Agreement previously offered to him.

Vice-President Herro stated he found the licensee's self-report was somewhat lacking in that it did not mention the use of IO access, and opined that it is below the standard of care to proceed with an elective case on a pediatric patient in an office-based setting utilizing general anesthesia without IV access. Vice-President Herro spoke in favor of offering the licensee a non-disciplinary Consent Agreement for CE with the requirement for Dr. Arnall to establish IV access when performing moderate, deep and general anesthesia cases. Mr. Goodman and Dr. Morrow spoke in support of the Board proceeding as usual when a licensee declines a Consent Agreement offered by the Board.

MOTION: Vice-President Herro moved for the Board to offer a Non-Disciplinary Consent Agreement for CE requiring completion of 6 hours in clinical anesthesia and 4 hours in risk management, to be done within 12 months and in addition to the hours required for license renewal with the understanding that the licensee will agree to establish IV access on any case where he is administering moderate, deep and general anesthesia.

SECOND: President Hardy

ROLL CALL VOTE: The following Board member voted in favor of the motion: President Hardy, Vice-President Herro, Mr. Dynar, Ms. McClain, Dr. Morrow, and Dr. Taylor. The following Board member voted against the motion: Mr. Goodman. The following Board members were absent: Ms. Burg and Dr. Harman.
VOTE: 6-aye, 1-nay, 0-abstain, 2-recuse, 2-absent.

MOTION PASSED.

G. Notice of Violation(s) – A.R.S. §§ 32-1288 & 32-3227

1. 202000260; Dang, Peter

Mr. Dang and Attorney Nicole Lopez participated in the virtual meeting during the Board's consideration of this matter, made statements and responded to Board members' questions. Ms. Lopez summarized that Mr. Dang was hired by Magic Smiles in March of 2017 as a dental assistant while completing dental hygiene school. She stated that he denied the allegations of practicing without a license, that he has not done anything to compromise public safety or patient care, and that this matter does not warrant referral to prosecuting agency for any charges. Ms. Lopez added that during the course of the investigation, Mr. Dang has taken remedial measures and is no longer employed by Magic Smiles.

Ms. McClain noted that Mr. Dang is not currently licensed in Arizona as a dental hygienist and that while Mr. Dang has stated he has not practiced, the Board received a number of letters indicating that he was practicing dental hygiene. She stated that Mr. Dang knew he did not have a license to practice and that this matter should proceed

further. Board staff confirmed that Mr. Dang is not licensed and has not applied for Arizona licensure. Dr. Taylor noted that a number of dentists attested that Mr. Dang was performing dental hygiene procedures at different offices. Mr. Dang clarified that he was working in a pediatric office, that he was not practicing adult hygiene and was performing coronal polishing for which he stated he is certified. The Board recognized that it is common in pediatric dental offices for dental assistants to perform teeth polishing.

Ms. McClain noted that Mr. Dang passed both clinical and written WREB exams in 2017 and questioned him as to why he did not apply for licensure. Mr. Dang stated that he was of the impression that his school was handling the licensure process. Ms. Lopez stated that Mr. Dang was waiting for court orders to clear up some items that appeared on his background check and planned to apply for a new fingerprint clearance card to apply for a license. President Hardy proposed the Board instruct staff to request patient ledgers to determine who was doing the actual scaling part of the teeth cleaning. Mr. Goodman spoke in favor of referring this matter to the appropriate authorities as the individual is not licensed by this Board. President Hardy stated her concerns that Mr. Dang may have thought he was licensed.

Dr. Morrow questioned whether the Board should look into the dentists supervising Mr. Dang during his employment with Magic Smiles. Dr. Taylor pointed out that the Board received correspondence from doctors that have indicated they had no involvement in the hiring of Mr. Dang. Dr. Taylor also noted that upon receiving the Board's notice, Mr. Dang's employer placed him on leave. Dr. Taylor stated his concerns that Mr. Dang was practicing without a certificate or license. Ms. McClain noted that Magic Smiles indicated in their correspondence with the Board that they were not aware that Mr. Dang was not licensed and that it was an oversight. She spoke in support of forwarding this matter. The Board also considered referring this matter to Superior Court for an injunction.

MOTION: Ms. McClain moved for the Board to refer this matter to Superior Court for an injunction and the County Attorney or Attorney General's Office for criminal investigation.

SECOND: Mr. Goodman

ROLL CALL VOTE: The following Board member voted in favor of the motion: President Hardy, Vice-President Herro, Mr. Goodman, Ms. McClain, Dr. Morrow, Dr. Seaman and Dr. Taylor. The following Board members voted against the motion: Dr. Beinstock and Mr. Dynar. The following Board members were absent: Ms. Burg and Dr. Harman.

VOTE: 7-aye, 2-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

H. Failure to Notify the Board of Criminal Charges – A.R.S § 32-3208

1. 202000123; Nolen, Matthew C.

Dr. Nolen participated in the virtual meeting during the Board's consideration of this matter, made a statement and answered Board members' questions. The Board observed that Dr. Nolen failed to report an arrest within ten working days as required by A.R.S. § 32-3208 and failed to respond to a subpoena.

MOTION: President Hardy moved for the Board to issue a Letter of Concern for failure to report as required by A.R.S. § 32-3208 and assess a non-disciplinary \$500 Civil Penalty for failure to respond to a subpoena.

SECOND: Mr. Goodman.

President Hardy and Mr. Goodman withdrew their motion to allow the licensee an opportunity to address the Board.

Dr. Nolen explained the events that resulted in the arrest and that the case will be dismissed contingent on his completion of anger management courses and restitution payment. He stated that he was not aware of the reporting requirements and that he faced a number of challenges in his life at the time, including the inability to return to his apartment after the arrest due to an order of protection. Dr. Taylor questioned the licensee as to why he did not respond to the subpoena. Dr. Nolen stated after the incident occurred, he changed his address to his parent's home in Sacramento and that he did not receive it timely, and reported that he now has a new PO Box to prevent future issues. Dr. Nolen confirmed that he had not updated the Board with the new PO Box information.

Executive Director Edmonson pointed out that licensees are required to inform the Board of a new address within ten days and referred Dr. Nolen to the Board's website to complete an address change form. In response to Dr. Bienstock's questioning, Dr. Nolen explained that he previously held licensure in Arizona, that he had a case against him 17 years ago, and that the Board subsequently granted him licensure in 2017.

MOTION: President Hardy moved for the Board to issue a Letter of Concern for failure to report an arrest as required by A.R.S. § 32-3208 and assess a non-disciplinary \$500 Civil Penalty for failure to respond to a subpoena, to be paid within 30 days.

SECOND: Mr. Goodman

VOTE: 8-aye, 1-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

Mr. Dynar voted against the motion.

The Board took a break from 12:34 p.m. to 12:45 p.m. Dr. Bienstock departed from the meeting at the start of the break.

I. Failure to Respond to a Board Issued Subpoena for Patient Records – A.R.S. §§ 32-1213(H), 32-1263(C) and (D)(8) & (12)

1. 201900118; Gentle Dental

Board staff confirmed that the records were received from Gentle Dental. Dr. Dovgan commented that pending litigation does not preclude them from providing the Board with the records requested via subpoena. President Hardy proposed tabling this matter until such time that the investigation is complete and return to the Board at a future meeting for consideration of Civil Penalty for failure to comply with a Board subpoena.

MOTION: President Hardy moved for the Board to table this matter at this time and return to the Board at a future meeting

SECOND: Vice-President Herro

VOTE: 6-aye, 1-nay, 0-abstain, 0-recuse, 4-absent.

MOTION PASSED.

Dr. Taylor voted against the motion.

2. 201900299; Wellness Dental

Board staff reported that the records have not been received in that the correspondence submitted by Wellness Dental included links that have since expired. Board staff informed Wellness Dental and they indicated they would resend the files, but have not done so. The Board considered allowing additional time for Wellness Dental to comply as it appeared that they did initially attempt to submit the requested records and if no response is received, the matter would proceed to the Office of Administrative Hearings for failure to comply with a subpoena. Dr. Morrow stated his concerns regarding the number of licensees affected if the practice were to be suspended. AAG Hargraves stated that the entity has not provided the requested records and as a result, the Board's investigation has been stalled.

MOTION: President Hardy moved for the Board to instruct staff to correspond with Wellness Dental to provide the requested records within 30 days. If the records are not received within 30 days, the matter shall proceed to the Office of Administrative Hearings for failure to comply with a subpoena to suspend the ability to practice until the requested records are received by the Board.

SECOND: Ms. McClain

ROLL CALL VOTE: The following Board members voted in favor of the motion: President Hardy, Vice-President Herro, Ms. McClain, Dr. Seaman and Dr. Taylor. The following Board members voted against the motion: Mr. Goodman, Mr. Dynar and Dr. Morrow. The following Board members were absent: Dr. Bienstock, Ms. Burg and Dr. Harman.

VOTE: 5-aye, 3-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

J. Failure to Respond to a Board Issued Subpoena for Patient Records – A.R.S. §§ 32-1201.01(23) and (24), 32-1263(A)(1) and (4), 32-1264(C), 32-1208

1. 202000160; Paukune, Kim

Dr. Paukune participated in the virtual meeting during the Board's consideration of this matter. She stated that she sent the records via fax and email. Board staff reported that the information submitted by the licensee pertained to the wrong patient, that they explained this to Dr. Paukune and made it clear that the case concerned patient TB. The documents submitted by Dr. Paukune were regarding patient MC. AAG Hargraves pointed out that the patient's name was on the subpoena issued to the licensee.

President Hardy proposed allowing additional time for the licensee to provide the requested records for the correct patient as it appeared that she attempted to comply with the subpoena.

MOTION: President Hardy moved for the Board to assess a non-disciplinary \$500 Civil Penalty and to instruct Board staff to correspond with Dr. Paukune to provide the requested records within 30 days. If the records are not received within 30 days, the matter shall proceed to the Office of Administrative Hearings for failure to comply with a subpoena to suspend the ability to practice until the requested records are received by the Board.

SECOND: Dr. Taylor

President Hardy clarified that the existing subpoena would be extended if the motion passed. AAG Hargraves clarified that if the records are not provided by the licensee and the license is suspended as a result of the hearing, the license would remain suspended until the records are received by the Board and the investigation can proceed.

ROLL CALL VOTE: The following Board members voted in favor of the motion: President Hardy, Vice-President Herro, Ms. McClain, Dr. Morrow, Dr. Seaman and Dr. Taylor. The following Board members voted against the motion: Mr. Dynar and Mr. Goodman. The following Board members were absent: Dr. Bienstock, Ms. Burg and Dr. Harman.

**VOTE: 6-aye, 2-nay, 0-abstain, 0-recuse, 3-absent.
MOTION PASSED.**

2. 202000232; Botar, Andrea

**MOTION: President Hardy moved for dismissal without prejudice.
SECOND: Dr. Taylor**

The Board recognized that this licensee was referred to Formal Hearing for license revocation at the Board's last meeting, and that if she were to reapply for licensure, the Board will have the ability to adjudicate this case at that time.

**VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.
MOTION PASSED.**

3. 202000301; Gardner, Shaun

Dr. Gardner participated in the virtual meeting during the Board's consideration of this matter. He explained that he resolved the issue with the patient, that the patient attempted to withdraw the complaint, and that he had submitted electronic files to the Board on December 10, 2020 and did not realize it did not come through. After receiving notification from Board staff, Dr. Gardner contacted staff and successfully submitted the files electronically. Board staff confirmed that it was received on January 21, 2021.

Dr. Morrow stated that it appeared the licensee did his due diligence and did not fail to comply as the complete file has since been received.

**MOTION: Dr. Morrow moved for the Board to take no action on this issue at this time.
SECOND: Dr. Taylor
VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.
MOTION PASSED.**

K. Malpractice, Adverse Occurrence Report and/or Disciplinary Action

1. 202000162-AO; Hollen, Kyla N.

Dr. Hollen and Attorney Michelle Thompson participated in the virtual meeting during the Board's consideration of this matter. Ms. Thompson stated that they agreed with the termination and were present for any questions.

**MOTION: Dr. Taylor moved for dismissal.
SECOND: President Hardy**

In response to Vice-President Herro's questioning, Dr. Hollen stated that she worked on sedated patients with an anesthesiologist two to three days a month, and that IV access is maintained in all general anesthesia cases.

**VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.
MOTION PASSED.**

L. Review of Executive Director Complaint Terminations and Subsequent Complainant Appeals – A.R.S. § 32-1263.03

1. 201900233; Pulsipher, Douglas

Attorney Susan McLellan participated in the virtual meeting on behalf of Dr. Pulsipher during the Board's consideration of this matter. Dr. Taylor commented that the Board and staff conduct thorough investigations in order to carry out the Board's mission to protect the public and that Board members recuse themselves from cases when a conflict of interest is identified.

In a statement submitted by complainant LC, she stated her concerns regarding the length of time to conduct the investigation, that the licensee abandoned her and exhibited bizarre and unprofessional behavior in the office and canceled her appointment less than one hour prior to the scheduled time. LC indicated that Dr. Pulsipher thereafter issued her a letter of termination and failed to provide the needed or emergency care for thirty days while she looked for a new provider.

Ms. McLellan stated that LC's letter did not provide new information and that termination of the case was appropriate. She explained that the canceled visit occurred on a day where the licensee had a family emergency and had to leave the office, that the patient was not charged for the exam and was sent a proper letter of termination when there was no treatment pending. Ms. McLellan stated that while the patient did call Dr. Pulsipher's office, she did not leave a message or ask for an appointment and did not indicate that she was in pain.

MOTION: Vice-President Herro moved for the Board to deny the appeal and approve the Executive Director's complaint termination.

SECOND: Dr. Morrow

President Hardy recognized that the Board is currently understaffed and that it takes time to review the information gathered during investigations. She stated that the allegations in this case do not rise to the level of unprofessional conduct and that same day appointment cancellations are common.

VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

2. 201900277; Drummer, Dino

Dr. Morrow was recused from this item. Dr. Drummer and Attorney Kate Corcoran participated in the virtual meeting during the Board's consideration of this matter. Ms. Corcoran stated that the patient's appeal did not provide any additional information that would warrant further review. She pointed out that the consultant found there was no breach of standard of care in this case and asked the Board to deny the appeal.

MOTION: Dr. Taylor moved for the Board to deny the appeal and approve the Executive Director's complaint termination.

SECOND: Ms. McClain

VOTE: 7-aye, 0-nay, 0-abstain, 1-recuse, 3-absent.

MOTION PASSED.

VI. **CONSENT AGENDA**

A. Board Dental/Hygiene Consultant(s) and Anesthesia and Sedation Evaluator(s)

1. Hauschildt, Amy (*anesthesia and sedation evaluator*)
2. Foulk, Bryan (*dental consultant*)

B. Executive Director Complaint Terminations A.R.S. § 32-1263.03

1. 201900174;
2. 201900246;
3. 201900265;
4. 201900269;
5. 201900275;
6. 201900294;
7. 201900307 and
8. 201900338.

C. Termination of Board Order(s)/Consent Agreement(s)

1. 201800174; Endicott, Thomas
2. 201800224; Coleman, John
3. 201900010; Poll, Jeremy
4. 201900059; Waite, Jay
5. 201900105; Heap, Kristopher
6. 201900109; Givens, Kevin
7. 201900115; Montes, Sergio
8. 201900308; Jones, Joshua
9. 201900096; Wallin, Derek
10. 201900102; Barrett, Clayton
11. 201900140 & 201900163; Eskanos, Keith
12. 202000031; Merchant, Birju

MOTION: President Hardy moved for the Board to approve all items under the Consent Agenda, including A.1. and 2., B.1.-8. and C.1.-12.

SECOND: Mr. Dynar

VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

IX. AMERICAN ASSOCIATION OF DENTAL BOARDS (“AADB”)

Executive Director Edmonson informed the Board that the AADB’s annual meeting will be held virtually this year, and that the Agency’s budget would allow for two members to attend. President Hardy and Dr. Dovgan expressed interest in attending the upcoming virtual meeting.

MOTION: Ms. McClain moved for President Hardy and Dr. Dovgan to attend the upcoming AADB virtual conference.

SECOND: Dr. Taylor

VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

XI. COMMISSION ON DENTAL ACCREDITATION (“CODA”)

Executive Director Edmonson informed the Board that the 2021 Annual Report has been submitted to the Board for informational purposes and that if approved, he would relay that approval to CODA.

MOTION: Ms. McClain moved for the Board to approve the report.

SECOND: President Hardy

VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

XII. COVID-19

1. License renewals and the completion of required CE; and
2. Completion of CE as it relates to board orders.

The Board discussed the current lack of availability of live, in-person CE courses due to the health pandemic and considered whether to extend waiving CEs until June 30, 2021. Shana Abrahams, AzDA, clarified that the Western Regional Dental Experience will be held virtually in April of 2021 and that participants will be eligible to receive up to 18 CE hours.

MOTION: President Hardy moved for the Board to extend CEs pertaining to items 1 and 2 until June 30, 2021 and to revisit this topic at the Board’s May 2021 meeting.

SECOND: Dr. Taylor

VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

XIII. ARIZONA ASSOCIATION OF NURSE ANESTHETISTS (“AZANA”)

The Board considered and discussed the document provided by AZANA regarding their request for changes to the Board’s Anesthesia & Sedation Rules in Arizona and their possible amendments to the current rules. Executive Director Edmonson informed the Board that this matter has been agendaized for the Anesthesia & Sedation Committee’s meeting scheduled for February 5, 2021 and that the AZANA representative requested that it be submitted for the full Board’s consideration.

Mr. Goodman spoke in favor of tabling this matter until such time that the Board’s Anesthesia & Sedation Committee has reviewed and made a recommendation for the Board’s consideration. President Hardy clarified that the Anesthesia & Sedation Committee was established to review matters such as this and stated that she agreed with Mr. Goodman’s comments.

Joseph Rodriguez, AZANA, Arizona Anesthesia Solutions, participated in the virtual meeting during the Board’s consideration of this matter. He stated that while he recognized that the Board’s Anesthesia & Sedation Committee is currently working to update rules and statutes, AZANA felt that bringing this specific topic to the full Board’s attention was the most effective way to make progress on this particular issue.

MOTION: President Hardy moved for the Board to take no action at this time and instructed staff to place this matter on the Board’s Anesthesia & Sedation Committee’s February 5, 2021 Agenda.

SECOND: Dr. Taylor

VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

XIV. GOVERNOR’S REGULATORY REVIEW COUNCIL (“GRRC”)

The Board discussed GRRC’s request to assist the Board in determining if the Board’s rule waivers and relaxations due to COVID-19 and the Governor’s Executive Order 2020-17 can and should be made permanent.

Executive Director Edmonson stated he opposed granting another fee holiday and stated his concerns that the Agency is currently understaffed. He reported that licensees have saved \$1.9 million since the time that the Board was granted discretion by the Governor’s Office relating to the pandemic. Dr. Dovgan stated his appreciation for the Board’s staff’s hard work and efforts. Executive Director Edmonson reported that the previous fee holiday expired on December 31, 2020 and that the Board had the discretion to grant another fee holiday. He stated that the Board’s fund

balance has decreased since the last fee holiday since the majority of the Board’s revenue is generated from license renewal fees. Dr. Taylor noted that the Board would be insolvent in two years if it did not collect any more fees. Deputy Director Gomez reported the revenue generated last year.

Mr. Dynar spoke in favor of increasing staff’s salaries for doing phenomenal work and questioned the reasoning behind the Board’s inability to access the monies available in its fund balance. Executive Director Edmonson stated that staff raises would be considered once the Board is properly funded in addition to hiring more staff. The Board discussed a possible statutory change to amend licensing fees. Mr. Goodman spoke in support of reinstating licensing fees.

MOTION: President Hardy moved for the Board to instruct the Executive Director to draft a response to GRRC indicating that the Board has determined the rule waivers and relaxations due to COVID-19 cannot and should not be made permanent and that the Board has elected to continue collecting licensing fees.

SECOND: Dr. Taylor

ROLL CALL VOTE: The following Board member voted in favor of the motion: President Hardy, Vice-President Herro, Mr. Dynar, Mr. Goodman, Ms. McClain, Dr. Morrow, Dr. Seaman and Dr. Taylor. The following Board members were absent: Dr. Bienstock, Ms. Burg and Dr. Harman.

VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

XV. EXECUTIVE DIRECTOR’S REPORT

A. Budget update

The Board received an update from Deputy Director Gomez regarding the Agency’s budget. Deputy Director Gomez referred the members to the spreadsheet outlining Agency expenditures and revenue generated for the time period of July 2020 to December 2020. She stated that the Agency has done an excellent job in reducing the Board’s fund balance and that she will continue to monitor the budget and report to the Board on a regular monthly basis. Executive Director Edmonson clarified the discrepancy between the Agency’s figures and the numbers reported by Central Services Bureau.

C. Legislation update on the following Bills:

1. Dental Specific:

b. HB2258 (*current Board bill*);

The Board observed that HB2258 changes the expiration date from June 30th to every three years on the individual’s birthdate.

2. Other impactful Bills:

k. HB2433;

The Board observed that HB2433 would require acceptance of cash payments for fees.

l. HB2454

The Board observed that HB2454 would allow health care providers that are not licensed in Arizona to provide care via telehealth for Arizona residents. Mr. Goodman stated his concerns regarding this bill relating to the Board’s inability to review complaints from patients regarding telehealth care provided by a clinician in another state.

1. Dental Specific:

h. SB1372 (*specifically changes statutes related to sedation*).

President Hardy stated her concerns regarding SB1372 as it removes the Board's authority to regulate anesthesia. She proposed instructing Board staff to report the Board's opposition to SB1372 and HB2454. Dr. Morrow questioned whether the Board should reach out to stakeholders regarding their concerns for these bills. Executive Director Edmonson asked the Board to consider designating one of its clinician members to assist the Board's staff. President Hardy and Vice-President Herro offered Board staff their assistance in drafting the correspondence.

MOTION: President Hardy moved for the Board to instruct the Executive and Deputy Directors to express the Board's opposition to SB1372 and HB2454 to the dental associations.

SECOND: Vice-President Herro

VOTE: 7-aye, 1-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

Mr. Dynar voted against the motion.

The Board clarified that the correspondence would indicate that the decision was based on a majority vote of the members given that the vote was not unanimous.

XVI. SUMMARY OF CURRENT EVENTS

Executive Director Edmonson reported that a number of new Bills have been introduced, including SB1504 that changes the rules and statutes that govern dentistry to allow dentists and hygienists to administer vaccines after completion of training that has yet to be outlined in rule. SB1482 was also discussed, which would prohibit any state agency from imposing any penalty or adverse action against an individual who consents to counseling and that the type of counseling has not yet been defined. Executive Director Edmonson informed the Board that he would continue to monitor these Bills as they progress and report any new developments to the Board.

XVII. DISCUSSION REGARDING FUTURE MEETINGS AND POSSIBLE ACTION ITEMS FOR FUTURE MEETING AGENDAS

The Board discussed agendaizing at a future meeting a topic regarding the status of COVID-19 in relation to CEs and online access for licensees.

The Board instructed staff to look into the entity involved in Agenda Item No. V.G.1. Vice-President Herro stated his support for modifying the language under the anesthesia rules for the permit holders who perform moderate sedation, deep sedation and/or general anesthesia to be required to establish IV access. Executive Director Edmonson informed the Board that this topic would be appropriate for the Board Anesthesia & Sedation Committee, which was scheduled to meet on February 5, 2021.

XVIII. NEXT BOARD MEETING DATE

A. March 5, 2021

VIII. ADJOURNMENT

MOTION: President Hardy moved for the Board to adjourn.

SECOND: Mr. Dynar

VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

The Board's meeting adjourned at 3:07 p.m.