



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 30, 2020

Records Management Committee

Committee Members of the Arizona State Board of Dental Examiners (“Board”) Records Management Committee held a meeting at 1:09 p.m. on Thursday January 30, 2020 at the Board’s office in Boardroom C, 1740 West Adams Street, Phoenix, Arizona 85007.

COMMITTEE MEMBERS:

- Aditya Dynar, Esq..... Chairperson and Board Member
- Nick Goodman Board Member
- Marilyn J. McClain, RDH Board Member
- Susan I. McLellan, Esq. Public Member
- Russell J. Morrow, DDS Board Member
- Rebecca Schaffer, DDS Licensed Dentist Member*
- Participated telephonically
- Absent

*Dr. Schaffer left the Committee Meeting at 1:55 p.m.

STAFF AND ASSISTANT ATTORNEY(S) GENERAL PRESENT:

- Ryan P. Edmonson..... Executive Director
- Kristina Gomez Deputy Director
- Mary DeLaat-Williams, Esq Assistant Attorney General
- Sherrie Biggs..... Licensing Manager
- Miriam Thompson Chief Compliance Officer
- Selena Acuna Legal Administrator
- Lisa Schmelling Administrative Assistant
- Nancy Elia..... Licensing Administrator

GUEST(S) PARTICIPATING AND/OR PRESENT:

None.

CALL TO ORDER AND ROLL CALL

The meeting was called to order at 1:09 p.m. by Mr. Aditya Dynar. The following Committee Members were present: Mr. Aditya Dynar, Mr. Nick Goodman, Ms. Susan McLellan, Dr. Russell Morrow (telephonic) and Dr. Rebecca Schaffer. Member(s) absent: Ms. Marilyn McClain. With a quorum achieved, the Committee considered the following agenda items:

REVIEW, DISCUSSION AND POSSIBLE ACTION ON COMMITTEE MINUTES

Mr. Goodman moved to approve the Open Session Minutes from the November 26, 2019 Committee Meeting, Ms. McLellan seconded. Motion passed unanimously.

CALL TO THE PUBLIC

No statements from the public.

CURRENT STATUTE(S) AND/OR RULE (S) REGARDING THE MANAGEMENT OF CLIENT RECORDS

Mr. Dynar invited Committee Members to discuss the issues outlined on the agenda from the last meeting. He stated that the Committee should prepare solutions for submission to the Board. A starting point would be solutions which would be least intrusive and practical. Dr. Schaeffer stated that the subpoena documents sent from the Board to dentists appear confusing and are conflicting documents. Ms. McLellan stated that these issues could be corrected through direction to staff without the need for any rule or statute.

Mr. Goodman commented that most of the issues as listed on the agenda could be addressed via direction to Staff with the understanding of the Board that the investigation concerns the complaint and the quality of care outlined in the complaint not the records. The records, according to Mr. Goodman are a part of the investigation and too many cases are backlogged because the records become the investigation. Mr. Goodman stated that the investigation can proceed with or without records. Ms. McLellan stated that there should be an explanation for absence of records. The investigation can proceed and the Dentist can testify according to his or her custom and practice.

Mr. Dynar presented the scenario of a case where the investigation is stalled and proposed that Staff could approach the Board for direction. The Board would decide on reasonable action on the case. Does it make sense to continue the investigation or stop the investigation? Dr. Schaeffer agreed with the viewpoint proposed by Mr. Dynar adding that there should be a decision to the next steps for an investigation when records are absent.

Mr. Goodman stated that the Board is empowered to figure out exceptions in such cases. In cases where records cannot be produced, Mr. Goodman stated that the investigation should continue as the records are not the focus of the complaint. This would enforce the timeline of the subpoena. Dr. Schaeffer questioned the continuation of the investigation when the dentist cannot show proof or evidence of innocence or guilt. The patient could be subjected to new clinical exams or x-rays to prove or disprove the allegations in a complaint.

Mr. Edmonson stated that based on his observation, there were complaints that were dismissed due to the absence of records. There were more efforts directed to difficulties with obtaining records than investigating the complaint. Echoing Dr. Schaeffer's view, Mr. Edmonson stated that one cannot justifiably discipline a dentist when there are no records. There was a trend of dismissing cases due to the absence of records. While there was merit in dismissing some of the cases, an investigation was not done. This practice, according to Mr. Edmonson is inappropriate. Patient records from subsequent treating dentists can be used in the investigation.

The Committee was engaged in a discussion on a respondent's entitlement to patient records received by the Board, due process rights and the implication of A.R.S. §32-3206 regarding the

investigative process. Mr. Dynar recognized that this discussion is more about the manner in which staff handles investigative than records management. He stated that this discussion may not address the mandate issued by the Board to the Committee. This may be appropriate for discussion at a Board meeting. Mr. Goodman suggested that the complaint could be placed on the Board agenda as an item for review, discussion and possible action.

Dr. Morrow informed the Committee that based on his knowledge, there are States who pursue legal action against dentists who fail to submit records. Mr. Dynar inquired about a legal practice related to records retention in the dental industry. According to Ms. McLellan, based on industry standards, if there is a written contract for employment between the dentist and the office, there are clauses contained in the document that state that the patients and the records belong to the office. She further stated that dentists should not have to produce an employment agreement due to possible non-existence. Dentist could produce a written explanation with the name and address of the custodian of records.

The Committee invited staff to share experiences with complaints and investigations, records management and responses to Board subpoenas. Having heard the staff feedback, Mr. Dynar stated that this situation cannot be resolved simply by direction to staff. The Committee could make recommendations to the Board. Mr. Dynar stated one solution could be direction to Staff that in cases where they are stuck with an issue, the case should be submitted to the Board for review. According to Mr. Dynar, at some point the Committee should submit a report to the Board along with the Minutes for review. The Committee could be kept active until there is an issue for discussion.

Mr. Goodman moved to make a recommendation to the Board that it directs Staff to focus on the complaint and not compliance with the subpoena for patient records during the investigative process. In doing so, standards pertaining to subpoena timelines would be upheld. If Staff are unable to obtain patient records, the matter should be submitted to the Board. Dr. Morrow seconded Mr. Goodman's motion, motion passed unanimously.

DISCUSSION AND POSSIBLE ACTION ITEMS FOR FUTURE MEETING AGENDAS

No action items presented.

ADJOURNMENT

Mr. Dynar moved for an adjournment, Mr. Goodman seconded, motion carried. Meeting adjourned at 2:45 p.m.

NEXT COMMITTEE MEETING DATE

To be determined.