



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
October 30, 2020
Board Meeting

Members of the Arizona State Board of Dental Examiners (“Board”) held a meeting at 8:03 a.m. on Friday, October 30, 2020, which was held virtually and telephonically due to the COVID-19 pandemic. All participants, including guests participated either telephonically or virtually. The Board did not meet in executive session.

BOARD MEMBERS

- Heather N. Hardy, RDH..... President and Licensed Hygienist Member
Robert B. Taylor, DDS Vice-President and Licensed Dentist Member
[X] Lisa B. Bienstock, DMD..... Licensed Dentist Member
[X] Morgan Burg..... Business Entity Member
+ Aditya Dynar, Esq..... Public Member
Nick Goodman..... Public Member
John N. Harman, IV, DDS Licensed Dentist Member
Anthony Herro, DDS Licensed Dentist Member
Marilyn J. McClain, RDH..... Licensed Hygienist Member
Russell J. Morrow, DDS Licensed Dentist Member
Leslie D. Seaman, DDS Licensed Dentist Member
+ Absent from 8:40 a.m. to 10:40 a.m.
[X] Absent

STAFF AND ASSISTANT ATTORNEY(S) GENERAL PRESENT

- Ryan P. Edmonson..... Executive Director
Kristina Gomez Deputy Director
Seth T. Hargraves, Esq..... Assistant Attorney General
Mary DeLaat Williams, Esq. Assistant Attorney General
John W. Dovgan, DDS..... Chief Investigator
Sherrie Biggs..... Licensing Manager
Lisa Schmelling Chief Compliance Officer
Nancy Elia..... Licensing Administrator
Selena Acuna Legal Administrator
Jill Barenbaum Information Processing Specialist
Jessica Thomas..... Board Rules Consultant
Andrea Cisneros..... Minutes Administrator

GUESTS PARTICIPATING AND/OR PRESENT:

Ann Blue, DDS, Board Member..... Arizona Dental Association
Kristen Boilini, Managing Partner..... Pivotal Policy Consulting
Anthony Caputo, DDS Board Consultant
Skip Harris, DDS Board Consultant
Deb Kappes, RDH, MPH.....Arizona Dental Hygienists’ Association
John MacDonald, Esq. Arizona Dental Association
Susan McLellan, Esq.Respondent’s Attorney
Alida Montiel, Director..... Health & Human Services, Inter Tribal Council of Arizona
Sean Murphy, JD, Executive Director Arizona Dental Association
Layal Rabat Asian Pacific Community in Action, Arizona Oral Health Coalition
Emily Raymond Goodman Schwartz
Joseph Rodriguez, CRNA.....American Association of CRNAs
Kim Russell, Executive DirectorArizona Advisory Council on Indian Health Care
Henry Sargent, CRNA Arizona Association of Nurse Anesthetists

OPEN SESSION

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 8:03 a.m. by President Hardy. Roll call of the Board members was taken and a quorum was established. The following order of business was then considered.

IV. ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION

B. Review of Proposed Consent Agreement

1. 201900140 & 201900163; Eskanos, Keith H.

Attorney Susan McLellan participated in the virtual meeting on behalf of Dr. Eskanos. AAG Hargraves participated on behalf of the State. AAG Williams participated to provide independent legal advice.

Ms. McLellan requested the Board accept the signed proposed disciplinary Consent Agreement negotiated in this matter and stated that the licensee will work hard to complete the requirements timely. AAG Hargraves explained that this matter involved the licensee’s non-compliance with a prior non-disciplinary Board Order which resulted in the Board voting to refer this matter to a formal hearing that has been scheduled for November 5, 2020. AAG Hargraves requested the Board vacate the formal hearing and accept the proposed consent agreement, which has added a requirement for the licensee to pay an administrative penalty in the amount of \$2,000.

The Board discussed the licensee’s reasoning for the delay, noted that Dr. Eskanos is currently practicing in Arizona, and that there was potential for license revocation had the matter proceeded to formal hearing.

MOTION: Vice-President Taylor moved for the Board to vacate the formal hearing and accept the proposed Consent Agreement in this matter.

SECOND: Mr. Goodman

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

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

MOTION PASSED.

II. CALL TO THE PUBLIC

The Complainant for Board case numbers 201900303 and 201900304 stated her concerns regarding the disposition of the cases.

Sean Murphy addressed the Board regarding the informal rulemaking process and the importance of adhering to the parameters of the applicable statutes.

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

A. Discussion and approval of the Open Session Minutes from the July 17, 2020 Special Board Meeting.

MOTION: Vice-President Taylor moved for the Board to approve the Open Session Minutes from the July 17, 2020 Special Meeting.

SECOND: Mr. Dynar

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

MOTION PASSED.

B. Discussion and approval of the Open Session Minutes from the August 21, 2020 Special Board Meeting.

President Hardy reported a minor edit involving a typographical error to change “bread” to “break” throughout the document.

MOTION: Vice-President Taylor moved for the Board to approve the Open Session Minutes from the August 21, 2020 Special Board Meeting as amended.

SECOND: Mr. Dynar

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

MOTION PASSED.

IV. ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION

A. Review of Application(s) for Issuance of a Sedation Permit – A.A.C. R4-11-1302

1. Mascarenhas, Jules Luke

Board staff noted that Dr. Macarenhas had not submitted a new application for a permit; therefore, the Board took no action on this item.

VII. ARIZONA DENTAL HYGIENISTS’ ASSOCIATION

After hearing a presentation by Ms. Kappes with the Arizona Dental Hygienists’ Association regarding revisions to *Article 6—Dental Hygienists*, the Board discussed including language to amend or eliminate rules which may be antiquated, redundant or no longer necessary in the Notice of Proposed Rulemaking that includes Article 6. The Board

considered referring this matter to the Dental Hygienists Committee for further review and comment. The Board also discussed whether an additional request for exemption from the rule moratorium was required to make specific changes.

MOTION: President Hardy moved for the Board to direct staff to request exemption from the rule writing moratorium regarding Article 6 and refer this matter to the Dental Hygiene Committee.

SECOND: Vice-President Taylor

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

MOTION PASSED.

Mr. Dynar voted against the motion.

VIII. ADVERTISING AS A RECOGNIZED SPECIALIST

The Board reviewed and discussed amending *Article 11 – Advertising* to include other American Dental Association recognized dental specialties, including but not limited to Dental Anesthesiology (adopted March 2019), Oral Medicine (adopted September 2020) and Orofacial Pain (adopted September 2020).

Executive Director Edmonson reported that a request for exemption from the rule moratorium has been submitted to the Governor’s Office and that a response had not yet been received. The Board discussed whether to seek additional exemption to add in these three additional specialties versus whether this is already covered in the current request for exemption.

MOTION: Mr. Dynar moved for the Board to request exemption from the rule moratorium regarding *Article 11 – Advertising* for the specific purpose of adding the three specialties.

SECOND: Dr. Morrow

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

MOTION PASSED.

Mr. Goodman voted against the motion.

VI. ARIZONA DENTAL SEDATION ADVERSE OCCURRENCE / FATALITY RESEARCH

The Board considered Dr. Harris’ presentation and heard concerns from Mr. Rodriguez.

Mr. Dynar departed from the meeting at 8:40 a.m.

Mr. Goodman stated that the issues raised today are of serious nature as it relates to public safety and spoke in favor of seeking a statistically validated review prior to taking any action. Dr. Morrow stated his concerns regarding overregulation that can make it extraordinarily difficult for patients to get sedated for the needed dental work. Dr. Herro stated that in the interest of public safety, he would be supportive of further evaluation of the initial issue raised by Dr. Harris and reviewed by the Anesthesia Subcommittee. Mr. Goodman agreed that an additional study was appropriate, and suggested obtaining input from other specialists.

MOTION: President Hardy moved for the Board to refer this matter to the Anesthesia Subcommittee to conduct further research and report to the Board.

SECOND: Mr. Goodman

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

MOTION PASSED.

The Board noted that the Anesthesia Committee is scheduled to meet on November 10, 2020. Executive Director Edmonson informed the Board that the meeting will be held in-person with the option to participate remotely, and that this matter will be placed on that agenda. Mr. Rodriguez offered to provide the Subcommittee with information that he believes may be useful for their review. Dr. Harris stated his concerns regarding the length of time it may take to review this matter via Subcommittee as well as concerns that additional fatalities may occur in that time. Vice-President Taylor commented that the Board takes this matter seriously, and thanked the speakers for participating in today's proceedings. President Hardy spoke in support of the Subcommittee reviewing this matter further and reporting back to the Board.

V. NOTICE OF PROPOSED RULEMAKING (“NPR”)

The Board reviewed and discussed the draft NPRs for submission to the Governor's Regulatory Review Council (“GRRC”), including proposed changes to Title 4, Chapter 11, Articles 1, 2, 3, 4, 5, 6, 7, 9, 12, 13, 14 and 15, which include the adoption of rules regarding the licensing and regulations of Dental Therapists. The Board invited other stakeholders to voice their concerns, amendments, deletions, etc. Several guests were present to express their opinion(s) regarding the Board's rules, but most specifically about the expansion of the field with the addition of dental therapy and dental therapists in the State of Arizona, as well as requirements for individuals applying for licensure by credential.

The Board discussed A.A.C. R4-11-201 regarding Clinical Examination; Requirements. Stakeholders offered input and the Board considered clinical examination requirements based on the profession rather than having a generic universal description that may not apply in some instances, as well as incorporating into A.A.C. R4-11-201(A) references to A.R.S. §§ 32-1276.01(B)(3) and 32-1285 to this section of rule.

MOTION: President Hardy moved for the Board to add similar language from the already amended language in A.R.S. § 32-1276.01(B)(3) and A.R.S. § 32-1285 to A.A.C. R4-11-201(A)(1).

SECOND: Vice-President Taylor

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

MOTION PASSED.

The Board discussed and stakeholders offered input regarding the timeframe referenced in A.R.S. §§ 32-1276.01(B)(3) and 32-1285 to this section of rule, and the Board considered amending its prior motion to clarify that only the examination is being referred to in the statutory references added to A.A.C. R4-11-201.

MOTION: President Hardy moved for the Board to amend its prior motion to include referencing only the examination and not the timing identified in the statutory references.

SECOND: Vice-President Taylor

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

The Board reviewed and considered stakeholder input regarding A.A.C. R4-11-201(A)(1). The Board discussed and agreed to incorporating the same statutory references and language from the previous motions to this section. The Board also reviewed and considered stakeholder input regarding the language of R4-11-201(A)(2), and elected to strike this section while maintaining the language in section R4-11-201(B) in its current form.

The Board took a break from 9:53 a.m. to 10:04 a.m.

Upon returning to session, roll call of the Board members was taken and a quorum was again established.

The Board discussed and considered stakeholder input relating to A.A.C. R4-11-203(C).

MOTION: President Hardy moved for the Board to remove R4-11-203(C).
SECOND: Vice-President Taylor
VOICE VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.
MOTION PASSED.

The Board reviewed and discussed revisions to A.A.C. R4-11-206 regarding Dental Therapist Licensure by Credential; Application. Stakeholders offered input and the Board discussed the differences between the licensure by credential statutes for a dental therapist versus a dental hygienist.

MOTION: President Hardy moved for the Board to remove R4-11-206(C).
SECOND: Vice-President Taylor
VOICE VOTE: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent.
MOTION PASSED.

The Board further discussed the proposed revisions regarding section A.A.C. R4-11-206 pertaining to licensure requirements for dental therapists to have either held a dental hygienist license previously or demonstrate successful completion of an approved dental hygiene course, as well as whether the applicant is required to have attended a CODA accredited or initially accredited dental therapy school. Several stakeholders also provided input and proposed revisions on this section.

Mr. Dynar rejoined the virtual meeting at 10:40 a.m.

The Board considered adding under sections B and C language regarding submission of official transcripts either directly from a recognized school or third party showing that the degree was conferred.

Mr. Goodman proposed holding further discussion on these items absent the Board members and stated that it was not for lack of interest, but for the Board to only address

prevailing issues that arise out of further discussion among the stakeholders. Dr. Morrow spoke in support of Mr. Goodman’s suggestion.

MOTION: President Hardy moved for the Board to accept the revisions to A.A.C. R4-11-206 through R4-11-206(C) per the Board’s discussion.

SECOND: Dr. Morrow

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

MOTION PASSED.

Mr. Dynar voted against the motion.

The Board discussed and received input from stakeholders regarding potential revisions to section 206(D) and (E), as well as including language that applicants must provide evidence of competency prior to receiving a dental therapy license by credential. Mr. Dynar questioned whether the Arizona Dental Association supported or opposed dental therapy legislation when the bill was moving through the process. Mr. MacDonald explained that at the end of that process, they had a piece of legislation on which they all agreed to the provisions that had been negotiated.

MOTION: President Hardy moved for the Board to accept the revisions to R4-11-206(D) and (E), per the Board’s discussion including striking section 3 as well as subsections A-E.

SECOND: Mr. Dynar

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

MOTION PASSED.

Mr. Goodman abstained from the vote.

The Board concluded its discussion regarding this agenda item and considered referring further discussions to be held at a stakeholder meeting and report back to the Board with recommendations. President Hardy volunteered to participate in such a meeting, as well as Mr. Dynar and Vice-President Taylor.

The Board thanked the stakeholders in attendance for their input and participation.

IX. SUMMARY OF CURRENT EVENTS

Executive Director Edmonson informed the Board that the Agency has been contacted by a number of law makers who wish to meet after election day to discuss matters involving the Board’s prior bills that did not pass due to the circumstances surrounding COVID, the budget and the progression of adding Botox and dermal fillers to dentists and hygienists scope of practice.

X. DISCUSSION AND POSSIBLE ACTION ITEMS FOR FUTURE MEETINGS AND AGENDAS

The Board’s next meeting will be held on December 4, 2020.

XI. ADJOURNMENT

MOTION: Dr. Taylor moved for adjournment at 1:17 p.m.

SECOND: Mr. Dynar

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

MOTION PASSED.