



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

June 6, 2021 Board Meeting

On the aforementioned date, members of the Arizona State Board of Dental Examiners’ (“Board”) held a board meeting at the Board’s office, in Boardroom A, 1740 West Adams Street, Phoenix, Arizona 85007. The meeting was also held virtually and telephonically due to the COVID-19 pandemic. The Board met in executive session during its consideration of agenda items V.F.1, V.H.1, and V.I.1 as stated herein.

BOARD MEMBERS

	<i>Anthony Herro, DDS</i>	President and Licensed Dentist Member
	<i>Lisa B. Bienstock, DMD</i>	Vice-President and Licensed Dentist Member
X	Morgan B. Burg	Business Entity Member
	<i>Edward H. Christensen, DDS</i>	Licensed Dentist Member
	Aditya Dynar	Public Member
	Tamer El-Gendy	Licensed Dentist Member
X	Nick Goodman	Public Member
	<i>Marilyn J. McClain, RDH</i>	Licensed Hygienist Member
	Russell Jeffrey Morrow, DDS	Licensed Dentist Member
	Vicki B. Penna, RDH	Licensed Hygienist Member
	Leslie D. Seaman, DDS	Licensed Dentist Member
X	Absent	
	<i>Board members in italics participated in-person</i>	

STAFF AND ASSISTANT ATTORNEY(S) GENERAL PRESENT

	<i>Ryan P. Edmonson</i>	Executive Director
	<i>Kristina C. Gomez</i>	Deputy Director
	Seth T. Hargraves, Esq	Assistant Attorney General
	<i>John W. Dovgan, DDS</i>	Chief Investigator
	<i>Julie Cutler, DMD</i>	Deputy Chief Investigator
	<i>Sherrie Biggs</i>	Assistant Deputy Director
	<i>Lisa Schmelling</i>	Chief Compliance Officer
	<i>Selena Acuna</i>	Compliance Officer
	Jessica Thomas	Rules Administrator

Staff members in italics participated in-person

GUESTS PARTICIPATING AND/OR PRESENT

Peter H. Dang, RDH	Applicant
John J. Kim, DDS	Applicant
Paul C. Yoon, DDS	Applicant
<i>Gregory A. Romney</i>	Respondent
Susan Trujillo, Esq.	Attorney for Respondent
David Mark Raiffe	Respondent
Jeffery J. Tonner, Esq.	Attorney for Respondents
Leah Schachar, Esq.	Attorney for Respondents
Darren Brower	Respondent
Matthew David Phillips	Respondent
Zack Hoard, Esq.	Attorney for Respondent
Neil T. Miller	Respondent
<i>Susan McLellan, Esq.</i>	Attorney for Respondent
Nicole Valerio	Respondent
Robert Craig Janisse	Respondent
Kenny D. Lam	Respondent
M. G.	Complainant
Alida Montiel	Guest Speaker
Kristen Boilini	Partner, Pivotal Policy Consulting
Deborah Kappes, RDH, MPH	Vice President, Arizona Dental Hygienist's Association
Alida Montiel	Health and Human Services Director, Inter Tribal Council of Arizona

Guests in italics participated in-person

I. CALL TO ORDER AND ROLL CALL

Dr. Herro called the Board's meeting to order at 8:03 a.m. Roll call of the Board members was taken and a quorum was established.

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

Dr. Bienstock declared conflicts of interest with agenda item nos. V.C.1., V.E.4. and V.G.1.

Dr. Seaman declared a conflict of interest with agenda item no. V.F.1.

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

A. Discussion and approval of the Open Session Minutes from the April 2, 2021 board meeting.

B. Discussion and approval of the Executive Session Minutes from the April 2, 2021 board meeting.

C. Discussion and approval of the Open Session Minutes from the May 7, 2021 board meeting.

D. Discussion and approval of the Executive Session Minutes from the May 7, 2021 board meeting.

Dr. Herro stated that agenda the open session and executive session minutes from the May 7, 2021 board meeting were not available for review.

Motion: Mr. Dynar moved to approve the open session and executive session minutes of April 2, 2021, agenda items A and B.

Second: Dr. Bienstock

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

II. CALL TO THE PUBLIC

No individuals addressed the Board.

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. Dang, Peter H., RDH**

Ms. McClain expressed her concern that the applicant was not forthcoming when previously asked if he held a license and his credentials. Mr. Dang answered the Board's questions pertaining to his job.

Motion: Ms. McClain moved to deny licensure.

Second: Dr. El-Gendy

Vote: 2-aye, 7-nay, 0-abstain, 0-recuse, 2-absent. Motion failed.

Drs. Herro, Morrow, Christensen, Bienstock, El-Gendy, Seaman and Mr. Dynar voted against this motion.

Motion: Dr. Bienstock moved to table the application for the next Board meeting.

Second: Dr. Christensen

Dr. Bienstock rescinded her motion.

Board staff indicated that Mr. Dang had been asked to provide documentation and referenced Dental Assisting National Board (DANB) requirements on a coronal polishing certification.

Motion: Dr. Bienstock moved to table the application for the next available Board meeting to allow the applicant to provide documentation on all his certificates within 30 day.

Second: Dr. Christensen

Vote: 7-aye, 2-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

Ms. McClain and Ms. Penna voted against this motion.

2. Kim, John J., DDS

Dr. Kim was available to answer the Board's questions pertaining to his out of state license.

Motion: Dr. Herro moved to grant licensure.

Second: Ms. McClain

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

3. Verne, Serge, DDS

Motion: Ms. McClain moved to grant licensure.

Second: Dr. Christensen

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

4. Yoon, Paul C., DDS

Dr. Yoon was available during the Board's consideration of this matter.

Motion: Dr. Herro moved to grant licensure.

Second: Dr. Bienstock

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

B. Review of Investigation(s) – Case(s) Recommended for Dismissal

1. 202000339-AO; Romney, Gregory A.

Motion: Dr. Herro moved to dismiss the case.

Second: Dr. Christensen

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

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

1. 202000060-MP; Dickerson, Todd E

Ms. Trujillo addressed the Board on behalf of Mr. Dickerson and requested that the Board limit discussion as to the reasons for the delay in providing notice.

Motion: Ms. McClain moved to issue a letter of concern for not notifying the Board of arrest within the ten day statutory requirement.

Second: Dr. Herro

Vote: 8-aye, 0-nay, 0-abstain, 1-recuse, 2-absent. Motion passed.

Dr. Bienstock was recused and did not participate in this case.

2. 202000050; Raiffe, David Mark

Mr. Tonner represented Dr. Raiffe and requested that the case be dismissed since the patient did not return for treatment for a year.

Motion: Dr. Christensen moved to dismiss the case.

Second: Dr. Morrow

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

D. Review of Investigation(s) – Case(s) Recommended for Issuance of Non-Disciplinary Order for Continuing Education – A.R.S. § 32-1263.02(F)(3)

1. 202000052; Fulcher, William C.

Motion: Dr. Christensen moved to dismiss the case.

Second: Dr. Herro

Vote: 2-aye, 7-nay, 0-abstain, 0-recuse, 2-absent. Motion failed.

Drs. Herro, Bienstock, Morrow, El-Gendy, Mr. Dynar, Ms. McClain, and Ms. Penna voted against this motion.

Motion: Dr. Bienstock moved to issue a non-disciplinary board order requiring the completion of 3 hours of CE in crown of bridge and 4 hours in risk management. The CE hours shall be in addition to the hours required for license renewal and shall be completed within three months. Online courses are acceptable due to COVID-19 restrictions.

Second: Ms. McClain

Vote: 8-aye, 1-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

Dr. Christensen voted against this motion.

2. 202000059; Brower, Darren

Ms. Schachar addressed the Board and Dr. Brower provided context on the incident that led to the patient dismissal and the complainants allegations. Ms. Schachar further indicated that multiple attempts have been made to request proof of documentation from the dental practice.

Motion: Ms. McClain moved to dismiss the case.

Second: Ms. Penna

Vote: 8-aye, 1-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

Dr. Morrow voted against the motion.

3. 202000094; Savino, Paul A.

The Board discussed the case and board staff's recommendation.

Motion: Dr. Herro moved to issue a non-disciplinary board order requiring the completion of 4 hours of CE in risk management and 3 hours in endodontics. The CE hours shall be in addition to the hours required for license renewal and shall be completed within three months. Online courses are acceptable due to COVID-19 restrictions.

Second: Ms. McClain

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

The Board reviewed the consent agreement. Dr. Phillips was available during the consideration of the case and answered questions pertaining to his experience and the implant failure.

Motion: Dr. Herro moved to issue a non-disciplinary board order requiring the completion of 4 hours of CE in record keeping. The CE hours shall be in addition to the hours required for license renewal and shall be completed within six months. Online courses are acceptable due to COVID-19 restrictions.

Second: Dr. Bienstock

Vote: 8-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

Dr. Morrow did not vote for this case.

The Board took a break from 9:35 a.m. to 9:45 a.m.

Roll call of the Board members was taken and a quorum was established.

VIII. NOTICES OF PROPOSED RULEMAKING (“NPR”)

Ms. Thomas informed the Board of the change in the renewal deadline. The Board reviewed the NPR and requested corrections prior to submitting the NPR to the Secretary of State.

Motion: Dr. Herro moved to approve the draft NPR with the requested corrections and direct staff to proceed with the rule making process.

Second: Dr. Bienstock

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

IX. FIVE-YEAR RULE REVIEW

The Board reviewed the draft Five-Year Rule Review.

Motion: Dr. Herro moved to approve the draft Five-Year Rule Review and direct staff to submit to the Governor’s Regulatory Review Council.

Second: Ms. McClain

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

2. 202000045-MP; Walker, Ronald D.

Motion: Dr. Herro moved to table the case for a future Board meeting.

Second: Dr. Christensen

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

3. 202000056; Miller, Neil T.

Dr. Miller was available during the Board's consideration of the matter. Ms. McLellan made a statement pertaining to the allegations of the case. Dr. Miller explained the options that were given to the patient and further answered the Board's questions.

Motion: Dr. Morrow moved to dismiss the case.

Second: Dr. Christensen

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

4. 202000108; Valerio, Nicole

Ms. Valerio answered the Board's questions pertaining to the technicalities of the procedure.

Motion: Ms. McClain moved to offer a disciplinary consent agreement for violation of A.R.S. § 32-1201.01(14), requiring the completion of 4 hours of CE in risk management and 6 hours in periodontal. The CE hours shall be in addition to the hours required for license renewal and shall be completed within three months. Online courses are acceptable due to COVID-19 restrictions.

Second: Ms. Penna

Roll call

Herro- nay

Blenstock- recused

Christensen- nay

Dyna- nay

EL-Gendy- nay

McClain- aye

Morrow- did not vote

Penna- aye

Seaman- nay

Vote: 2-aye, 5-nay, 0-abstain, 1-recuse, 2-absent. Motion failed.

Motion: Dr. Herro moved to offer a non-disciplinary agreement moved to offer a disciplinary consent agreement, requiring the completion of 4 hours of CE in risk management and 6 hours in periodontal. The CE hours shall be in addition to the hours required for license renewal and shall be completed within six months. Online courses are acceptable due to COVID-19 restrictions.

Second:

Vote: 6-aye, 1-nay, 0-abstain, 1-recuse, 2-absent. Motion passed.

Dr. Morrow did not vote on this case.

F. Review of Investigation(s) – Case(s) Recommended for Hearing for Suspension of License for Failure to Provide Patient Records – A.R.S. §§ 32-1263(D)(8) & 32-1264(D)

1. 202000053; Janisse, Robert Craig

Dr. Janisse was available during the Board's consideration of the case and stated that he had instructed his office manager to provide the requested documentation; however she failed to do so.

Motion: Dr. Herro moved for the Board to enter into executive session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).

Second: Mr. Dynar

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

The Board entered into executive session at 10:35 a.m.

The Board returned to open session at 10:47 a.m.

No legal action was taken by the Board during executive session.

The Board further discussed Dr. Janisse's failure to provide patient records pursuant to A.R.S. 32-1264(D).

Motion: Ms. McClain moved to offer a disciplinary consent agreement for violations of A.R.S. §§ 32-1263(A)(4) and 32-1264(D) for an administrative penalty of \$100 for each day in violation beginning 15 days after the initial request starting from October 7, 2019 to be paid within six months from the date of the order. In addition, to provide proof to the Board that the complete medical records have been provided to the patient's family. If not accepted within 30 days, proceed to a formal interview.

Second: Dr. Herro

Vote: 7-aye, 0-nay, 1-abstain, 1-recuse, 2-absent. Motion passed.

Dr. Morrow abstained.

Dr. Seaman was recused and did not participate in this case.

G. Reconsideration of the Board's Decision to Invite Licensee to Attend a Board Meeting to Participate in a Formal Interview

1. 202000023; Lam, Kenny D.

Motion: Dr. Herro moved to rescind the Board's previous decision to invite the licensee to attend a board meeting to participate in a formal interview and direct staff to continue the investigation.

Second: Ms. McClain

Vote: 8-aye, 0-nay, 0-abstain, 1-recuse, 2-absent. Motion passed.

Dr. Bienstock was recused and did not participate in this case.

H. Initial Review

1. Mohlem, John

Ms. Schachar addressed the Board and stated that the Board does not have jurisdiction based on the allegations of the complaint. M.G. made a statement to the Board explaining his concerns of improper diagnosis.

Motion: Dr. Herro moved for the Board to enter into executive session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).

Second: Dr. Bienstock

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

The Board entered into executive session at 11:38 a.m.

The Board returned to open session at 11:52 a.m.

No legal action was taken by the Board during executive session.

Mr. Dynar drew the Board's attention to the definition of dental incompetence.

Motion: Ms. McClain moved to direct the complainant to contact the Department of Insurance and Financial Institutions and Delta Dental with his complaint because the case is outside of the Board's jurisdiction.

Second: Dr. Bienstock

The Board further discussed whether they have authority to open an investigation on the licensed dentist. The Board's consultant clarified that liability falls on the dentist that makes a diagnosis.

Vote: 2-aye, 6-nay, 0-abstain, 0-recuse, 2-absent. Motion failed.

Drs. Herro, Christensen, Morrow, Seaman, Ms. Penna and Mr. Dynar voted against the motion.

Dr. El Gendy did not vote.

Motion: Ms. McClain moved to direct staff to open an investigation.

Second: Dr. Herro

Vote: 7-aye, 1-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

Mr. Dynar voted against the motion.

Dr. El-Gendy did not vote.

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

1. 202000314; Cognito, Randy

The Board's consultant summarized the case and indicated that there is enough evidence to indicate that Mr. Cognito is practicing as a denturist without a license.

Motion: Dr. Herro moved for the Board to enter into executive session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).

Second: Dr. Bienstock

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

The Board entered into executive session at 12:10 p.m.

The Board returned to open session at 12:22 p.m.

No legal action was taken by the Board during executive session.

Motion: Dr. Herro moved to direct staff to further investigate whether Mr. Cognito is acting as a dentist.

Second: Mr. Dynar

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

J. Review of Compliance/Non Compliance for Consent Agreement(s)/Board Order(s)

1. 201900149-MP; Jackson Roger L.

Motion: Dr. Herro moved to proceed to a hearing for non-compliance.

Second: Dr. Christensen

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

K. Response/Non-response to Offered Consent Agreement(s)/Board Order Update on the status of an offered consent agreement

1. 201900238; Goodman, Caleb

Motion: Dr. Herro moved to update the consent agreement to reflect the corrected restitution amount.

Second: Ms. McClain

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

2. 202000039; Chiang, Leonard

Motion: Dr. Herro moved to amend the previous board order to reflect the changes proposed by Dr. Chiang.

Second: Ms. McClain

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

VI. **CONSENT AGENDA**

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

1. Eugene J. Kim, DDS – Anesthesia and Sedation Evaluator

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

1. 201900285
2. 202000001
3. 202000008
4. 202000012
5. 202000013
6. 202000015
7. 202000287-AO

C. Termination of Board Orders(s)/Consent Agreements(s)

1. 201700164; Margolis, Michael
2. 201900116; Tehrani, Mojdeh
3. 202000007; Sims, Darrell

Motion: Dr. Herro moved to accept items A through C of the consent agenda.

Second: Mr. Dynar

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

VII. ADVERSE OCCURRENCE PROCEDURES

Mr. Edmonson informed the Board of board staff's procedure when in receipt of adverse occurrences reports and the prioritization of such reports.

Motion: Dr. Herro moved to direct staff to finalize the Adverse Occurrence policy.

Second: Dr. Bienstock

Vote: 8-aye, 1-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

Mr. Dynar voted against the motion.

X. BOARD RULES ADVISORY GROUP ("GROUP")

The Board discussed the current members of the Group and considered changing the composition of the Group. Mr. Dynar recommended having two additional currently appointed Board members become part of the Group. Ms. Montiel addressed the Board and commented on the progress made by the Group. Ms. Boilini expressed her concern that changing the membership of the Group would slow down the process and requested that the Board add additional members. Ms. Kappes also addressed the Board and expressed her support for the work of the Group.

Motion: Dr. Herro moved to add two more Board members to the Group.

Second: Ms. McClain

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

XI. CONTINUING EDUCATION ("CE") EXTENSION REQUESTS

Board staff requested that the Board delegate authority to board staff to determine whether or not to grant CE extensions based on the information provided.

Motion: Dr. Herro moved to delegate authority to board staff to determine whether or not to grant CE extensions

Second: Dr. Bienstock

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

XII. CENTERS FOR DISEASE CONTROL AND PREVENTION'S ("CDC") GUIDANCE FOR HEALTHCARE PERSONNEL ("HCP")

The Board discussed directing board staff to post on the Board's website a message to continuously encourage dental practices to follow the guidance provided by the CDC.

XIII. EXECUTIVE DIRECTOR'S REPORT

A. Budget Update

Ms. Gomez informed the Board of the current budget and of HB2895 and SB1823 bills pertaining to appropriation for fiscal year 2022.

B. Agency Operations

Mr. Edmonson provided the Board an update on agency operations.

C. Legislation update on the following Bills:

1. Dental Specific:

- a. HB2102; d. SB1013; g. SB1160; and
- b. HB2258; e. SB1034; h. SB1372.
- c. HB2547; f. SB1140;

2. Other impactful bills:

- a. HB2014; h. HB2265; o. HB2570;
- b. HB2029; i. HB2267; p. HB2663;
- c. HB2067; j. HB2422; q. SB1063;
- d. HB2092; k. HB2433; r. SB1145;
- e. HB2128; l. HB2454; s. SB1149;
- f. HB2242; m. HB2471; t. SB1272; and
- g. HB2243; n. HB2535; u. SB1373.

Mr. Edmonson provided the Board a legislation update on dental specific and other impactful bills.

XI. SUMMARY OF CURRENT EVENTS

None were discussed.

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

The Board discussed agendaing possible legislative changes for a future meeting.

XIII. NEXT BOARD MEETING DATE

A. August 6, 2021

XIV. ADJOURNMENT

Motion: Dr. Christensen moved to adjourn at 1:20 p.m.

Second: Dr. Morrow

Vote: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.