



ARIZONA STATE BOARD OF DENTAL EXAMINERS

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BODEX UPDATE AND CHALLENGES

As with your personal and professional lives, the Board faces many challenges which we attempt to see as opportunities. In this month's column, I will share a few of these challenges.

“Doing more with less:” Several proposed bills are currently before the Legislature which, if passed, will require additional Board resources (both money and staff time) to implement. These proposed bills include the Board's regulation of extended dental function assistants; amendments to the Dental Practice Act; mandating the Board, and other health regulatory agencies, to report certain information to the pharmacy board regarding licensees; and, amendments to the small business regulatory bill of rights (which the Legislature passed last year. If the bills pass, additional Board resources will be required for the initial implementation of and the ongoing enforcement of and compliance with the new laws.

“Rulemaking moratorium:” Shortly after taking office, Governor Ducey issued an executive order placing a rulemaking moratorium which applies to all agencies, unless the Governor's Office grants an exemption. The Board currently has four rules packages pending at various stages in the process. The proposed rules address fees; continuing education requirements; clinical examinations; requirements; and the process for filing petitions for rehearing or review with the Board. The Board has requested an exemption to allow it to proceed with the rulemaking process; however, at this time, the Governor's Office has not approved the exemption. Not being able to proceed with the rules could impact the Board's compliance with the Auditor General's recommendations and compliance with the Board's five-year rules review which is required by the Governor's Regulatory Review Council.

“Judicial appeals of Board decisions:” A licensee has many opportunities to challenge a Board decision through the court system. The appeal process can be very lengthy. In some cases, the court may stay the Board's decision pending an appeal. Before taking disciplinary action against a licensee, the Board must afford the licensee due process. Following are the steps involved in the adjudication and appeal of a Board decision:

1. Formal hearing before the Office of Administrative Hearings or a formal interview before the Board.
2. Licensee may file a petition for rehearing or review if he/she does not agree with Board decision. (Mandatory before appealing to the superior court)
3. File an appeal challenging the Board's decision in the superior court.
4. If the licensee does not prevail at the superior court, file an appeal in the court of appeals.
5. If the licensee does not prevail at the court of appeals, file a petition for review in the Arizona Supreme Court.

The following judicial appeals of Board decisions are currently pending:

1. Dr. Jack I. Lipton v. ASBDE (Maricopa County Superior Court Case (LC2011-000713; Court of Appeals Case 1CA-CV 13-0748)
2. Dr. Brent Tyler Robison v. ASBDE (Maricopa County Superior Court Case LC2013-000484; 1CA-CV 14-0533)
3. Dr. Michael Wassef v. ASBDE (Maricopa County Superior Court Case LC2014-000547-001)
4. Dr. Rosalyn D. Keith v. ASBDE (Maricopa County Superior Court Case LC2015-000017-001)

Additionally, at the present time, two cases are pending scheduling at the Office of Administrative Hearings. Kudos to Mary Williams, the Board's Assistant Attorney General, for her expertise and tenacity in representing the Board in the formal hearings and judicial appeals. Kudos also to many of our Board consultants who have served as expert witnesses in some of these cases.

“Media and Social Media:” As with your practices, the Board is also subject to media requests and comments in social media. The Board is also mandated to comply with the Open Meeting Law and Public Records Law. I receive many questions from licensees requesting guidance on handling social media reviews. This is not within the Board's jurisdiction; however, I have been told there are companies that specialize in doing this. We all know social media is here to stay!

As I stated in the beginning of this article, challenges are always opportunities and the Board staff is an incredible team who consistently rise to the occasion.

Thank you again for your ongoing support.....**FIVE more months until football!**