



Arizona State Board of Dental Examiners

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

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OPEN SESSION MINUTES

September 13, 2022

Investigative Committee Meeting

On the aforementioned date, members of the Arizona State Board of Dental Examiners’ (“Board”) Investigative Committee (“Committee”) held a virtual/telephonic meeting. The Committee did not meet in executive session.

COMMITTEE MEMBERS

	Anthony Caputo, DDS	Chairperson
	Brown “Skip” Harris, DDS	Vice-Chairperson
	Timothy, Cross, DDS	Committee Member
	David Dodell, DMD	Committee Member
	Mari Fukami, DMD, MS	Committee Member
X	Sabah Kalamchi, DDS, FFDSRS	Committee Member
	Deborah Kappes, RDH	Committee Member
	Rebecca Lavene, DMD	Committee Member
	Mindy Motahari, DMD, MA Edu	Committee Member
	Vacant	Committee Member
	Vacant	Committee Member



Joined/deperted as denoted in the body of the minutes

X Absent

STAFF PRESENT

	Ryan P. Edmonson	Executive Director
	Kristina C. Gomez Seamus	Deputy Director
	Monaghan Esq.	Assistant Attorney General
	Benjamin Berschler, DMD	Deputy Chief Investigator
	Terry Bialostosky Selena	Compliance Consultant
	Acuna	Compliance Officer
	Mary Ford	Compliance Officer
	April Romero	Compliance Officer
	Yazmin Bustamante	Executive Assistant

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 1:01 p.m. by Dr. Caputo. Roll call of the committee members was taken and a quorum was established.

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

There were no declarations of conflicts of interest.

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

- A. Discussion and approval of the Open Session Minutes from the May 10, 2022 committee meeting.

Ms. Kappes requested that page five of the minutes be corrected to remove the doctor designation from her name.

Motion: Dr. Dodell moved to approve the minutes from the May 10, 2022 committee meeting with the correction on page 5.

Second: Dr. Cross

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

- B. Discussion and approval of the Open Session Minutes from the June 28, 2022 committee meeting.

Motion: Ms. Kappes moved to approve the minutes from the June 28, 2022 committee meeting with a correction to indicate that Dr. Lavene was absent.

Second: Dr. Dodell

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

IV. ITEMS FOR REVIEW, DISCUSSION AND POSSIBLE ACTION ON BOARD RECOMMENDATIONS

- A. Review of Investigation(s)

Motion: Dr. Harris moved to dismiss agenda items IV.A. 5. 202200035, 6. 202200049, 7. 202200050, 9. 202200059, 10. 202200084 and 11. 202200093.

Second: Dr. Fukami

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

1. 202100028

Dr. Berschler provided the Committee an overview of the case. The Committee concurred with the Consultant's Report that the allegations for overbilling and inadequate upper dentures were not substantiated. However, the Committee considered that the deviation from the standard of care related to anesthesia was substantiated because the respondent did not provide all dental treatment during IV sedation, in accordance with A.A.C. R4-11-1304(A)(2). In addition, another provider who did not hold a 1304 Permit performed the treatment.

Motion: Dr. Harris moved to find that there are violations of A.R.S. § 32-1201.01(14), (24) and A.A.C. R4-11-1304(A)(2) for improper record keeping and functioning in an anesthesia environment without the proper permit; based on the factual allegations in the Consultant's Report.

Second: Dr. Dodell

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

The Committee proceeded to discuss the record keeping issues. Staff informed the Committee that in 2018 the respondent was previously issued a non-disciplinary consent agreement, requiring 3 hours of CE in ethics for inadequate upper denture. Since the respondent was not compliant with the Order, a five hundred dollar penalty was issued.

Motion: Dr. Harris moved to recommend that the Board offer a disciplinary consent agreement, requiring the completion of 4 hours of CE in record keeping, 4 hours in ethics and 2 hours in Jurisprudence.

Second: Dr. Lavene

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

2. 202100078

Dr. Berschler provided the Committee an overview of the case and indicated that the allegation for failure to prescribe antibiotics was not substantiated. The patient came in for a bi-annual cleaning and did not express pain or fever at the time; therefore, there was no indication for an antibiotic prescription. The patient was made aware that there was sinus tract draining from tooth number 30 and the doctor made a diagnosis with a recommendation for extraction. The Consultant's report also noted a new allegation against the business entity for failure to comply with a Board subpoena in a timely manner. The Committee inquired on the process for opening a case against a business entity.

Motion: Ms. Kappes moved to recommend that the Board dismiss the case against the respondent and open a case against the business entity; based on the information contained in the Consultant's Report.

Second: Dr. Dodell

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

3. 202100081

Dr. Berschler provided the Committee an overview of the case and indicated that the allegations for inadequate orthodontic treatment and failure to honor an agreed refund and waiver agreement were substantiated. Dr. Berschler further indicated that there are record keeping issues, the photos don't match the dates of the initial exam, there were no pre-treatment orthodontic models provided or charted as being done and the patient's health history shows no signature. The Committee proceeded to discuss the matter.

Motion: Dr. Harris moved to find deviations from the standard of care for violation of A.R.S. § 32-1201.01(14) and (24); based on the information contained in the Consultant's Report.

Second: Ms. Kappes

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

The Committee discussed whether the violations merited disciplinary action.

Motion: Dr. Harris moved to recommend that the Board issue a disciplinary consent agreement, requiring the completion of 4 hours of CE in record keeping and restitution for two thousand, five hundred and eighty dollars.

Second: Dr. Lavene

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

4. 202100088

Dr. Berschler provided the Committee an overview of the case and indicated that there were allegations that multiple teeth that were treatment planned for buccal restorations, there was trauma and post-operative pain and teeth 15 and 18 required root canal and crowns. The alleged HIPAA violation for discussion between the Endodontist and provider was not substantiated. The Committee consensus was that teeth 15 and 18 were healthy teeth that did not warrant a filling and considered it a matter of overtreatment.

Motion: Dr. Harris moved to recommend that the Board issue a letter of concern for possible overtreatment, the importance of a clear and distinct diagnosis and appropriate treatment planning based on that diagnosis.

Second: Dr. Motahari

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

Later in the meeting, the Committee discussed whether it would be appropriate to open a case against the dentist that did the crowns.

Motion: Ms. Kappes moved to recommend that the Board consider opening a case against the dentist that did the crowns.

Second: Dr. Dodell

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

Dr. Caputo and Dr. Cross voted against the motion.

8. 202200052

Dr. Berschler provided the Committee an overview of the case. The first allegation involved tooth number 11 which was deemed nonrestorable by the dentist and ultimately an implant was placed after the extraction. Dr. Berschler indicated that there were modifications in the cost of treatment which is typical when there is a change in the treatment plan. Allegation two was for inadequate diagnosis and was pertaining to tooth number 6. Radiographs in the report showed radiolucency that was not recorded. Although the doctor claimed it was mentioned to the patient there was no indication of that being communicated to the patient. The Committee concurred with the Consultant's report that only allegation two was substantiated.

Motion: Ms. Kappes moved to recommend that the Board find that there is unprofessional conduct pursuant to A.R.S. § 32-1201.01(14); based on allegation number two in the Consultant's Report for inadequate diagnosis.

Second: Dr. Dodell

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

Staff informed the Committee that in 2014 a non-disciplinary consent agreement was issued, requiring the completion of 4 hours of CE in risk management for unnecessary treatment.

Motion: Dr. Harris moved to recommend that the Board issue a non-disciplinary consent agreement, requiring the completion of 4 hours of CE in record keeping, treatment planning and informed consent.

Second: Dr. Dodell

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

V. SELECTION OF COMMITTEE MEMBERS

The Committee reviewed the list of candidates and discussed what type of specialties would be beneficial based on commonly reviewed cases. The consensus was that Dr. Berrigan, Dr. Goldstein, Dr. Imtiaz and Dr. Patel would be valuable additions to the Committee.

Motion: Dr. Dodell moved to recommend the aforementioned candidates as committee members.

Second: Dr. Lavene

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

VI. COMMITTEE ELECTIONS

A. Nomination and Election of Chairperson

Motion: Dr. Harris moved to nominate Dr. Caputo as Chairperson.

Second: Ms. Kappes

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

B. Nomination and Election of Vice-Chairperson

Motion: Dr. Fukami moved to nominate Dr. Harris as Vice-Chairperson.

Second: Dr. Motahari

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

VII. SUMMARY OF CURRENT EVENTS

None were discussed.

VIII. DISCUSSION AND POSSIBLE ACTION ITEMS FOR FUTURE MEETING AGENDAS

Training from the Assistant Attorney General will be provided at the next meeting.

IX. NEXT COMMITTEE MEETING DATE

A. October 11, 2022

X. ADJOURNMENT

Motion: Ms. Kappes moved to adjourn the meeting at 3:01 p.m.

Second: Dr. Harris

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