



Arizona State Board of Dental Examiners

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

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OPEN SESSION MINUTES

January 27, 2023 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 C, 1740 West Adams Street, Phoenix, Arizona 85007. The meeting was also held virtually and telephonically. The Board met in executive session during its consideration of agenda item V.C.2 as stated herein.

BOARD MEMBERS

	Anthony Herro, DDS	President and Licensed Dentist Member
	Lisa B. Bienstock, DMD	Vice-President and Licensed Dentist Member
	Morgan B. Burg	Business Entity Member
	Edward H. Christensen, DDS	Licensed Dentist Member
	Aditya Dynar	Public Member
X	Tamer El-Gendy	Licensed Dentist Member
	Nick Goodman	Public Member
	Jaselyn K. Moffett, RDH	Licensed Hygienist Member
X	Russell Jeffrey Morrow, DDS	Licensed Dentist Member
	Vicki B. Penna, RDH	Licensed Hygienist Member
	Leslie D. Seaman, DDS	Licensed Dentist Member



Joined/departed as denoted in the body of the minutes

X Absent

Board members in italics participated in-person

STAFF AND ASSISTANT ATTORNEY(S) GENERAL PRESENT

<i>Ryan P. Edmonson</i>	Executive Director
<i>Kristina C. Gomez</i>	Deputy Director
<i>Seamus Monaghan, Esq.</i>	Assistant Attorney General
John W. Dovgan, DDS	Chief Investigator
<i>Terry Bialostosky</i>	Chief Compliance Consultant
<i>Selena Acuna</i>	Compliance Officer
<i>April Romero</i>	Compliance Officer
<i>Mary Ford</i>	Compliance Officer
<i>Yazmin Bustamante</i>	Executive Assistant
Jessica Thomas	Rules Administrator

Staff members in italics participated in-person

GUESTS PARTICIPATING AND/OR PRESENT

<i>Robert E. Sutter Jr., DDS</i>	Applicant
<i>Ashish Sharma</i>	Applicant
<i>Jeffery J. Tonner, Esq.</i>	Attorney for Respondents
<i>Leanne Hay, Esq.</i>	Attorney for Respondents
<i>Martin Zone</i>	Respondent
<i>Michele Thompson, Esq.</i>	Attorney for Respondents
<i>Leah Schachar, Esq.</i>	Attorney for Respondents
<i>Keeley Le</i>	Respondent
<i>Prabidhi Adhikari</i>	Respondent
<i>Carter A. Grampp</i>	Respondent
<i>Cody Hall, Esq.</i>	Attorney for Respondent
<i>Lori Karen Anderson</i>	Respondent

Guests in italics participated in-person

I. CALL TO ORDER AND ROLL CALL

Dr. Herro called the Board’s meeting to order at 8:05 a.m. Roll call of the Board members was taken and a quorum was established.

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

Dr. Herro declared conflicts of interest with agenda item nos. IV. E.1, V.D.3

Dr. Bienstock declared conflicts of interest with agenda item nos. IV.C.5, IV.D.9, IV.D.21, IV.D.22, V.B.3, V.C.1, V.D.1, V.D.2, V.D.8 and V.K.1.

Dr. Christensen declared conflicts of interest with agenda item nos. V.D.6 and V.D.8

Mr. Goodman declared a conflict of interest with agenda item no. V.D.6

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

A. Discussion and approval of the Open Session Minutes from the December 2, 2022 board meeting.

B. Discussion and approval of the Executive Session Minutes from the December 2, 2022 board meeting.

Motion: Dr. Herro moved to approve the open session and executive session minutes from the December 2, 2022 board meeting.

Second: Mr. Goodman

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

IV. CONSENT AGENDA

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

1. 202100114
2. 202100137
3. 202200138

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

1. 201900263; Lee, Sung
2. 202100021; Altier, Jr., Frank
3. 202100143; Juriansz, Ralph
4. 202100179; Mann, Roopinder Singh
5. 202100185; Nazar, America
6. 202100232; DeAvila, Rachel
7. 202100257; Robison, Gary

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

1. 202100101; Trujillo, Victor
2. 202100105; Crosby, David
3. 202100124; Howell, Kent
4. 202200010; McCartin, Brian
5. 202200079; Kess, Bradford
6. 202200087; Olsen, Gregory
7. 202200091; Jirsa, Richard C.
8. 202200105; Fryberg, Harrison D.
9. 202200115; Wooff, Cory G.
10. 202200118; Fehmi, Nabil
11. 202200125; Khamis, Shana
12. 202200130; Barrett, Christopher
14. 202200133; Stratman, Matthew
16. 202200173; Eftekhari, Massoud
17. 202200177; Pugnea, Valentino
18. 202200183; Chiappetti, Donald
19. 202200196; Schmelter, Jeffrey
20. 202200199; Margolis, Michael
21. 202200223; Erwin, Eugene
22. 202200226; Choi, Howard

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

2. 202200109; Espinoza, Mark
3. 202200174; Razzaq, Mahwesh
4. 202200184; Ogunware, Caroline

Motion: Dr. Bienstock moved to pull items IV.A.1, IV.A.2, IV.D.13.202200131, IV.D.15.202200141-MP and IV.E.1.202200097 from the consent agenda.

Second: Ms. Moffett

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

Dr. Herro was recused and did not participate in the matter.

Motion: Dr. Herro moved to approve the remaining consent agenda.

Second: Ms. Penna

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

Dr. Bienstock was recused and did not participate in the matter.

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. Sutter Jr., Robert E., DDS

Dr. Sutter was available to answer questions during the Board's consideration of his application for licensure.

Motion: Dr. Herro moved to accept the application for licensure.

Second: Dr. Bienstock

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

2. Williams, John Stewart, DDS

Mr. Edmonson informed the Board that Dr. Williams requested to withdraw his application for licensure.

Motion: Dr. Herro moved to honor the applicant's request to withdraw his application.

Second: Mr. Goodman

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

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

13. 202200131; Whatcott, Josh

The Board took into consideration that the patient suffered irreversible damage.

Motion: Dr. Bienstock moved to issue a letter of concern for crown and bridge because the open distal margin on tooth number 14 resulted in the patient losing a tooth.

Second: Dr. Herro

The Board discussed tabling the matter to put the respondent on notice that the item will be placed on the agenda for Board review of the investigation.

Dr. Bienstock rescinded the motion.

Motion: Dr. Bienstock moved to table cases IV.D.13. 202200131; Whatcott, Josh, IV.D.15. 202200141-MP; Winterholler, Chris W. and IV.E.1. 202200097; Toal, Maureen M. for the next meeting.

Second: Mr. Goodman

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

Dr. Herro was recused and did not participate in the matter.

V. ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION**A. Review of Application(s) for Issuance of a Sedation Permit – A.A.C. R4-11-1301****1. Sharma, Ashish P.**

Dr. Sharma was available during the Board's consideration of the matter. Mr. Tonner made a statement on behalf of Dr. Sharma and elaborated on the applicant's education and experience. Mr. Tonner further directed the Board's attention to A.A.C. R4-11-1301(C)(2) and indicated that Dr. Sharma is eligible for examination because he completed residency. Dr. Sharma was granted a limited education license with a deep sedation general anesthesia permit in Tennessee. After providing clarification, Mr. Tonner requested that the Board instruct staff to process Dr. Sharma's application. Dr. Sharma further answered questions related to his work experience. The Board considered that he has an Arizona license, is compliant with the caseload requirements for sedation and graduated from an accredited program.

Motion: Dr. Herro moved to grant the ability to apply for a 1301 Permit pending the submission of proof of eligibility of examination for diplomatic status by the American Board of Oral and Maxillofacial Surgeons.

Second: Dr. Christensen

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

B. Review of Investigation(s)**1. 202200073; Howard, Jessica**

Ms. Hay made a statement on behalf of Dr. Howard and addressed the concerns of an overly aggressive treatment plan. Ms. Hay explained that the patient presented with multiple cavities and decay and indicated that the fracture may have resulted independently of the treatment provided. The Board proceeded to review the x-rays.

Motion: Dr. Herro moved to dismiss the complaint.

Second: Dr. Christensen

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

2. 202200082; Zone, Martin

Dr. Zone was available during the Board's consideration of the matter. Ms. Schachar made a statement on behalf of Dr. Zone and indicated that although there were concerns for lack of documentation; based on the records provided, the notes show that Dr. Zone reviewed the medical history and did full mouth probing. Dr. Dovgan expressed agreement with Ms. Schachar's explanation.

Motion: Dr. Herro moved to dismiss the complaint.

Second: Dr. Bienstock

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

3. 202200290; Prescott Valley Dental Group

Ms. Schachar made a statement to clarify that the subpoena for records was overlooked because the case representation changed; however, was ultimately fulfilled. Dr. Dovgan stated that the compliance with the subpoena was one month late. The Board considered there is violation of A.R.S. §§ 32-1263(D)(12) and 32-1213(H)(3).

Motion: Dr. Herro moved to issue a five hundred dollar civil penalty.

Second: Ms. Penna

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

Dr. Bienstock was recused and did not participate in the matter.

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

1. 202100056; Le, Keeley

Dr. Le was available during the Board's consideration of the matter. Ms. Hay made a statement to clarify that Dr. Le only saw the patient once. Dr. Le performed a limited examination and discussed treatment with the patient. The Board proceeded to discuss the matter.

Motion: Dr. Herro moved to issue a letter of concern for failure in diagnosis and treatment planning.

Second: Dr. Christensen

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

2. 202200162; Van Dusen, Justin

There was no one available to speak during the Board's consideration of the matter. Dr. Dovgan proceeded to provide an overview of the case and indicated that the patient was seen for a root canal; however, something slipped and fell. As a result, the tooth was shaved down. The patient experienced worsening pain and was informed that a broken file was left in the tooth. The Board expressed concerns that the records are deficient for the diagnosis and treatment provided.

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. Goodman

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

The Board entered into executive session at 8:52 a.m.

The Board returned to open session at 9:07 a.m.

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

Dr. Dovgan informed the Board that there was a lack of diagnosis, there was no vitality testing done on tooth number 15 when diagnosing the tooth for a root canal, no rubber dam use was charted, there was no chart for working and final lengths of the root canal and materials used. The Board considered that failure to use a rubber dam is a clinical violation in addition to the lack of record keeping.

Motion: Dr. Herro moved to find that there is violation of A.R.S. §§ 32-1201.01(13), (25) and 32-1264(A) based on the findings in the consultant's report.

Second: Mr. Goodman

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

Staff informed the Board of prior action taken and indicated that this case took place after previous board rehabilitative action was issued. The Board considered probation including an audit of charts moving forward and taking action based on the result of the audit.

Motion: Dr. Herro moved to offer a disciplinary consent agreement to include a chart audit for twelve months with Affiliated Monitors with quarterly reports. The audit expenses are to be paid by the licensee. In addition, to require the completion of 4 hours of CE in risk management and 4 hours in endodontic treatment. The CE hours shall be in addition to the hours required for license renewal and shall be completed within six months. Probationary status will carry through until the Board can review the results of the audit.

Second: Mr. Goodman

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

VI. NOTICES OF PROPOSED RULEMAKING (“NPR”)

Ms. Thomas reviewed the NPR related to fees for mobile dental permit facilities with the Board and discussed the annual renewal requirement and fees associated with the renewal. Ms. Thomas encouraged the Board to have a justification for the fee amount.

Motion: Dr. Herro directed staff to table the discussion of the advertising and fee NPR for a future meeting date.

Second: Mr. Goodman

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

Ms. Thomas proceeded to provide the Board an overview of the 5YRR related to general changes.

Motion: Mr. Dynar moved to proceed with the rulemaking of the 5YRR.

Second: Dr. Herro

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

V. ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION**C. Review of Investigation(s) – Case(s) Recommended for Issuance of a Non-Disciplinary Order for Continuing Education – A.R.S. § 32-1263.02(F)(3)****3. 202200191; Adhikari, Prabidhi**

Dr. Adhikari was available during the Board's consideration of the matter. Ms. Schachar made a statement to address the record keeping issues for lack of informed consent and treatment plan. Dr. Dovgan stated that there were no preoperative and postoperative x-rays for extractions of teeth number 31 and 32.

Motion: Dr. Herro moved to issue a non-disciplinary order, requiring the completion of 4 hours of CE in record keeping or risk management; based on the consultant's report. The CE hours shall be in addition to the hours required for license renewal and shall be completed within six months.

Second: Mr. Goodman

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

Dr. Bienstock voted against the motion because she thinks treatment planning should be added to the order.

Ms. Moffett voted against the motion.

4. 202200214; Mencini, Alyssa

Ms. Hay made a statement on behalf of Dr. Mencini and indicated that the patient has withdrawn the complaint and agreed to continue treatment with Dr. Mencini. Ms. Hay further addressed the lack of documentation issues related to oral cancer screening and TMJ screening.

Motion: Dr. Herro moved to issue a letter of concern for record keeping.

Second: Dr. Christensen

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

The Board took a break from 10:00 a.m. to 10:16 a.m.

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

F. Formal Interview(s)**1. 202000317-MP; Grampp, Carter A.**

Dr. Grampp was available during the Board's consideration of the matter. Ms. Schachar made a statement to address the allegation of unnecessary treatment and indicated that restorative treatment options were provided; however, the patient elected to proceed with implants. Ms. Schachar further stated that the allegation of inadequate implant placement was not substantiated and explained that the patient was not consistently wearing the dentures provided and saw other providers during a period of ten months. Dr. Grampp proceeded to answer the Board's questions and discussed the technicalities of the procedure. In addition, Dr. Grampp indicated that he offered restorative treatment and the patient brought up

implants; therefore, he explained the risks for heavy smokers as it applied to the patient. Dr. Grampp also stated that he believes the notation of anesthetic was erroneous and indicated that there were no complications during the procedure. Dr. Dovgan informed the Board that not having a periodontal assessment, no hard tissue pathology or periapical pathology charting is outside the standard of care. During discussion, Dr. Grampp clarified that a preoperative pano hard copy was sent to a dental x-ray lab before both the extractions and implant was done. The Board further reviewed the x-rays for teeth numbers 18-20. After discussion, the Board considered that Dr. Grampp could benefit from continuing education and discussed the importance of properly educating patients.

Motion: Dr. Herro moved to adopt the findings and facts as listed in the consultant's report and stated during the meeting; including the deviations from the standard of care that were cited.

Second: Dr. Bienstock

The Board discussed the deviations cited in the consultant's report which include: several patient visits did not have corresponding chart notes and implant information was not stated in the notes. The Board removed the pano issue due to discrepancies. In addition, there were no notes regarding implant abutment retention system, the comprehensive exam did not have oral cancer screening, periodontal assessment, extraoral findings, soft and hard tissue exam findings. Several adjustments were performed without a diagnosis or finding. In addition, prescriptions for peridex and antibiotics were given without a diagnosis. Substantiated allegations include inadequate complete dentures, failure to maintain records, unnecessary treatment and failure to diagnose.

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

Motion: Dr. Herro moved to find that the conduct and circumstances in the stated findings and facts constitute unprofessional conduct ARS 32-1201.01(13) and 32-1264 as it relates to 1201.01(25).

Second: Dr. Bienstock

Roll call

Herro- aye

Bienstock- aye

Christensen- nay

Dynar- nay; because he would in favor of non-disciplinary action

El-Gendy- aye

Goodman- aye

Moffett- aye

Morrow-- aye

Penna- aye

Seaman- nay

Vote: 6-aye, 3-nay, 0-abstain, 0-recuse, 2-absent. Motion passed.

Motion: Dr. Herro moved to issue a disciplinary consent agreement, requiring the completion of 4 hours of CE in risk management and 4 hours in diagnosing and treatment planning. The CE hours shall be in addition to the hours required for license renewal and shall be completed within six months.

Dr. Herro rescinded the motion.

Staff provided the Board with prior board action which included nine previous orders. The Board's concern heightened with the repetitiveness involving the same issue.

Motion: Dr. Herro moved to issue a disciplinary consent agreement, requiring the completion of 4 hours of CE in risk management. The CE hours shall be in addition to the hours required for license renewal and shall be completed within six months. In addition, to issue a probationary chart audit at the expense of the licensee with quarterly reports for twelve months.

Second: Dr. Bienstock

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

The Board took a break from 11:19 a.m. to 11:35 a.m.

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

2. 202100115 & 202100094; Anderson, Lori Karen

Dr. Anderson was available during the Board's consideration of the matters. Dr. Dovgan provided the Board an overview of both cases. Mr. Hall made a statement for the 202100115 case and indicated that the implant was adequately placed; therefore, the patient was offered a refund for the crown; not the implant. Dr. Anderson proceeded to address the allegations for case 202100094 and indicated that a screw broke off inside the implant; but was not successful. The implant was removed and replaced by another implant at no charge. Since the patient was moving, Dr. Anderson provided her contact information to share with the dentist that would be removing the membrane. Dr. Anderson further elaborated on her experience and answered the Board's questions with regard to implants.

The Board was informed of potential security issues in the building. As a result, the Board concurred to agendize the formal interview for a future meeting date.

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

The Board directed staff to coordinate a meeting to continue the review of agendized items.

XIII. NEXT BOARD MEETING DATE

To be determined.

XIV. ADJOURNMENT

Dr. Herro adjourned the meeting at 11:52 am.