



# Arizona State Board of Dental Examiners

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

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## OPEN SESSION MINUTES

**March 31, 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 items IV.E.6 and IV.E.7 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, DMD	Licensed Dentist Member
X	Nick Goodman	Public Member
	<i>Jaselyn K. Moffett, RDH</i>	Licensed Hygienist Member
	<i>Russell Jeffrey Morrow, DDS</i>	Licensed Dentist Member
🕒	Vicki B. Penna, RDH	Licensed Hygienist Member
X	Leslie D. Seaman, DDS	Licensed Dentist Member
🕒	Joined/deperted as denoted in the body of the minutes	
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
	<i>Robert Pulver, Esq.</i>	Assistant Attorney General
	<i>Scott Donald, Esq.</i>	Assistant Attorney General
	<i>Julie Cutler, DMD</i>	Deputy Chief Investigator
	<i>Sherrie Biggs</i>	Assistant Deputy Director
	<i>Yazmin Bustamante</i>	Executive Assistant
	Jessica Thomas	Rules Administrator

*Staff members in italics participated in-person*

#### **GUESTS PARTICIPATING AND/OR PRESENT**

	Jeffery J. Tonner, Esq.	Attorney for Respondents
	Leanne Schachar, Esq.	Attorney for Respondents

Michele Thompson, Esq.	Attorney for Respondents
Leanne Hay, Esq.	Attorney for Respondents
Arman Nafisi, Esq.	Attorney for Respondent
Rita J. Bustos, Esq.	Attorney for Respondents
Renee Lawton	Respondent
Michael Whiting	Respondent
Jeffrey Spillers	Respondent
Thomas McClammy	Respondent
Laura Sibrava	Respondent
Jarom Stradling	Respondent
Pejman Moghbeli	Respondent
Donovan Hansen	Respondent
Piyush Hirpara	Respondent
Riza Jafair	Respondent
Rajan Sheth	Respondent
James Goodwin, Esq.	Attorney for Respondent
Jefferson R. Hayden, Esq.	Attorney for Respondent
Nishant Chauhan	Guest

### **I. CALL TO ORDER AND ROLL CALL**

Dr. Herro called the Board's meeting to order at 8:01 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. III.B.6 and III.B.7.

Dr. Bienstock declared conflicts of interest with agenda item nos. III.A.5, III.B.1, III.B.4, III.B.8, III.B.14, III.B.15, III.B.19, III.B.24, III.B.28, IV.C.8, IV.E.2, IV.E.6 and IV.H.1

Dr. Morrow declared conflicts of interest with agenda item nos. III.C.1 and IV.C.8.

Dr. El-Gendy declared conflicts of interest with agenda item nos. III.B.3, III.B.6, III.B.7, III.B.14, III.B.20, III.B.24, and IV.C.5.

### **III. CONSENT AGENDA**

#### **A. Termination of Board Orders(s)/Consent Agreements(s)**

1. 202000335; Hank, Mark
2. 202100120; Patrick, Gary
3. 202100242; Munoz, Lourdes
4. 202200053; Olsen, Tad
5. 202100258; Mansoor, Hana

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

1. 202200072; Jolley, Tyson
2. 202200110; Kaushesh, Ashutosh
3. 202200116; Galindo, Daniel F.
4. 202200123; Valley Endodontic Specialty Group
5. 202200129; Skaugrud, Cameron
6. 202200158; DiVito, Roberto

7. 202200164; DiVito, Enrico
8. 202200175; Mansoor, Hana
9. 202200186; Barnes, Kathleen
10. 202200190; Easton, Nathan M.
11. 202200192; Kroulik, Makenna C.
12. 202200198; Loschiavo, Charles
13. 202200200-MP; Smith, John
14. 202200206; Mojgani, Farzan
15. 202200215; Jolley, Tyson
16. 202200222; Peterson, Royce
17. 202200224; Morris, Mark
18. 202200230; Culler, Charles W.
19. 202200231; Teeters, Morghan
20. 202200236; Maleki, Farzam
21. 202200245; Khara, Satbir
22. 202200250; Owens, Paul
23. 202200251-MP; Richardson, Steven
24. 202200254; Mojgani, Farzan
25. 202200255; Mack, Jared
26. 202200256; Chang, Paul
27. 202200262; Stucki, Andrew R.
28. 202200277; Prescott Valley Dental Group
29. 202200291; Lawton, Renee
31. 202200326; Lavene, Ryan

The Board informed the participants that items on the consent agenda with multiple conflicts of interest would be considered later in the meeting once a quorum was established for those cases.

**Motion:** Dr. Herro pulled III.B.6, III.B.7, III.B.14 and III.B.24 from the consent agenda.

**Second:** Mr. Dynar

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

**Motion:** Dr. Morrow pulled III.B.30 from the consent agenda for discussion.

**Second:** Dr. Herro

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

**Motion:** Dr. Herro pulled III.B.3 and III.B.20 from the consent agenda.

**Second:** Dr. Bienstock

**Vote:** 6-aye, 0-nay, 0-abstain, 1-recuse, 4-absent. Motion passed.

*Dr. El-Gendy was recused and did not participate in the matter.*

**Motion:** Dr. Herro moved to dismiss the cases for agenda items III.B.3 and III.B.20.

**Second:** Dr. Bienstock

**Vote:** 6-aye, 0-nay, 0-abstain, 1-recuse, 4-absent. Motion passed.  
*Dr. El-Gendy was recused and did not participate in the matter.*

**Motion:** Dr. Herro moved to accept the rest of the consent agenda cases under sections A and B.

**Second:** Dr. Morrow

**Vote:** 6-aye, 0-nay, 0-abstain, 1-recuse, 4-absent. Motion passed.  
*Dr. Bienstock was recused and did not participate in the matter.*

30. 202200295; Costes, Mark

During the Board's review, Dr. Morrow pointed out that there were no soft tissue exam notes, no full mouth perio probing, no existing restoration chart, no TMJ, no oral cancer screening and considered the lack of documentation warrants a letter of concern.

**Motion:** Dr. Morrow moved to issue a letter of concern for lack of documentation.

**Second:** Dr. Bienstock

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

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

2. 202200225; Kener, Chester Bitter

**Motion:** Dr. Herro moved to accept the Investigative Committee's recommendation to issue a letter of concern.

**Second:** Dr. Morrow

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

1. 202100072; Nelson, Peter Stafani

**Motion:** Dr. Herro moved to accept the Investigative Committee's recommendation to issue a letter of concern.

**Second:** Dr. Bienstock

**Vote:** 6-aye, 0-nay, 0-abstain, 1-recuse, 4-absent. Motion passed.  
*Dr. Morrow was recused and did not participate in the matter.*

3. 202200232; Saiz, Fatima Peralta

The Board discussed that no respiratory rate was documented in the oral sedation record.

**Motion:** Dr. Bienstock moved to accept the Investigative Committee's recommendation to issue a letter of concern that also addresses record keeping.

**Second:** Dr. Herro

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

4. 202200244; LaCorte, Michael

**Motion:** Dr. Bienstock moved to dismiss the case.

**Second:** Dr. Morrow

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

#### IV. ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION

##### A. Review of Investigation(s)

1. 202200168; Abaie, Kathleen Ashley

Dr. Cutler provided the Board an overview of the case. The Board considered there were deviations from the business entity and the licensee. Staff confirmed that the business entity is owned by a licensed dentist.

**Motion:** Dr. Herro moved to open a case against the licensed owner of the business entity.

**Second:** Dr. Morrow

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

The Board further reviewed the extensive lack of documentation from the treating dentist. The lot numbers of the implants and anesthetic were not listed in the clinical notes. Treatment was not finished and a refund was not provided to the patient after it was agreed that it would be given to the patient.

**Motion:** Dr. Morrow moved to find violation of A.R.S. § 32-1201 and adopt the violations cited in the consultant's report.

**Second:** Dr. Herro

*Dr. Morrow rescinded the motion.*

The Board considered further investigation would be beneficial and tabled the matter to get more documentation. The Board further directed staff to agendize the case to a future meeting.

##### B. 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)

2. 202200241-MP; Whiting, Michael

Dr. Whiting was available during the Board's consideration of the matter. Ms. Bustos informed the Board that the malpractice settlement was done by the insurance company without Dr. Whiting's consent. In addition, Ms. Bustos indicated the removal of the crown was complicated; however, it did not violate the standard of care. Dr. Whiting answered questions and explained that the crown removal took longer than usual. Dr. Whiting also explained how he did probing to check if there was a crack in the crown.

**Motion:** Dr. Herro moved to open a case against Dr. Smith.

**Second:** Dr. Bienstock

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

**Motion:** Dr. Morrow moved to issue a non-disciplinary order requiring the completion of 3 hours of CE in treatment planning in diagnosis, 4 hours in risk management and 3 hours of hands on CE in crown and bridge for violation of A.R.S. § 32-1201.01. The CE hours shall be in addition to the hours required for license renewal and shall be completed within 12 months.

**Second:** Dr. Herro

*Dr. Morrow rescinded the motion.*

**Motion:** Dr. Morrow moved to find violation of A.R.S. § 32-1201.01.

**Second:** Dr. Herro

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

**Motion:** Dr. Herro moved to issue a non-disciplinary order requiring the completion of 3 hours of CE in treatment planning in diagnosis, 4 hours in risk management and 3 hours of hands on CE in crown and bridge for violation of A.R.S. § 32-1201.01 and the consultant's report. The CE hours shall be in addition to the hours required for license renewal and shall be completed within 12 months.

**Second:** Dr. Morrow

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

1. 202200212; Behbahani, Babak

Mr. Tonner made a statement and indicated that the consultant did not find indicatives that the sinus infection was due to treatment. Dr. Behbahani stated that he took x-rays of the sinus area before placing the implant and indicated that he thoroughly explained post-operative care to the patient.

**Motion:** Dr. Herro moved to dismiss the case.

**Second:** Dr. Morrow

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

*Ms. Penna temporarily departed the meeting at 8:50 a.m.*

C. Review of Investigation(s) – Case(s) Recommended for an Offer of a Disciplinary Consent Agreement

1. 202200090-MP; Spillers, Jeffrey

Dr. Spillers was available during the Board's review of the matter. Ms. Thompson indicated that the case was due to a settlement without admission of liability. Ms. Thompson acknowledged that documentation was lacking and pointed out that the case took place two years prior to the Board ordering recordkeeping CE. Ms. Thompson clarified the record had the incorrect prescribed medication and

indicated that an oral surgeon reviewed the matter during the settlement and concurred that the case did not require a referral to an oral surgeon.

**Motion:** Ms. Moffet moved to issue a letter of concern for record keeping.

**Second:** Dr. Herro

**Vote:** 6-aye, 0-nay, 0-abstain, 0-recuse, 5-absent. Motion passed.

2. 202200102; McClammy, Thomas

Dr. McClammy and Ms. Bustos were available during the Board's consideration of the matter. Ms. Bustos stated that Dr. McClammy has extensive experience in implant placement. The patient needed full mouth restoration and was referred to Dr. McClammy for replacement of failing implants. In addition, Ms. Bustos indicated that the electronic medical record was provided and no documentation was missing. Dr. McClammy stated that Ultratooth implants 8 and 9 are FDA approved for immediate load. Dr. McClammy also answered the Board's questions pertaining to the size of the implants and he indicated that there was enough bone to place them in that location. Dr. McClammy further indicated that the implant failure was because the patient was seen immediately after the implant placement for restorative treatment and the other restorations were loose and the abutment was not properly torqued.

**Motion:** Dr. Herro moved to invite Dr. McClammy to a formal interview.

**Second:** Dr. El-Gendy

**Vote:** 6-aye, 0-nay, 0-abstain, 0-recuse, 5-absent. Motion passed.

*The Board took a break from 9:22 a.m. to 9:36 a.m.*

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

3. 202200165; Sibrava, Laura

Dr. Sibrava was available during the Board's review of the matter. Ms. Hay indicated that the patient was seen for cosmetic treatment and stated there is an open margin with tooth number 9; however, it was not causing the patient issues. Dr. Sibrava advised the patient to have bite adjustments with her or a local dentist in Idaho, where the patient was residing. The patient did not respond and did not undergo the recommended bite adjustments. As a result, a root canal was needed. Dr. Sibrava proceeded to answer questions pertaining to the treatment provided. In addition, Dr. Sibrava stated that the patient was refunded for endodontic treatment and buildups. Sr. Sibrava also paid for treatment performed by the general dentist in Idaho. The Board discussed the open margins and lack of pre-cementation x-rays. After review, the Board concurred with the deviations listed in the consultant's report with the exception of the buildups.

**Motion:** Dr. Herro moved to find violation of A.R.S. § 32-1201.01 for poor margin integrity.

**Second:** Dr. El-Gendy

**Vote:** 6-aye, 0-nay, 0-abstain, 0-recuse, 5-absent. Motion passed.

**Motion:** Dr. Herro moved to issue a non-disciplinary order requiring the completion of 4 hours of CE in crown and bridge; based on the previously adopted violation of A.R.S. § 32-1201.01. The CE hours shall be in addition to the hours required for license renewal and shall be completed within six months.

**Second:** Ms. Moffett

**Vote:** 6-aye, 0-nay, 0-abstain, 0-recuse, 5-absent. Motion passed.

*Dr. El-Gendy departed the meeting at 10:07 am.*

*The Board temporarily lost quorum and took a break at 10:08 a.m. to 10:38 a.m.*

*Ms. Penna rejoined the meeting at 10:30 a.m.*

*Dr. Christensen joined the meeting at 10:38 a.m.*

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

4. 202200188; Stradling, Jarom

Dr. Stradling was available during the Board's consideration of the matter. Mr. Whittekind made a statement and indicated that the concerns with treatment for the bridge for teeth six through eight did not rise to disciplinary action although the patient had requested restitution. Dr. Cutler subsequently provided the Board with an overview of possible deviations listed in the consultant's report. Deviations included recordkeeping, not perio-charting prior to the bridge construction and delivering the bridge with open margins. The Board proceeded to review the matter and considered that although the quality of the x-rays is not ideal, it is not clear that the margins are open.

**Motion:** Dr. Herro moved to dismiss the case.

**Second:** Dr. Morrow

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

5. 202200193; Moghbeli, Pejman

Dr. Moghbeli was available during the Board's consideration of the matter. Mr. Hayden clarified Dr. Moghbeli's involvement in the case. Dr. Moghbeli did the extractions of teeth and no violations with those extractions were substantiated. With regard to the bridgework, Dr. Moghbeli prepped and seated the bridge in 2020. The patient's health deteriorated in 2022 and Dr. Moghbeli did not treat the patient after 2020. Decay was treated and a crown was placed afterwards. During discussion, the Board took into consideration the patient's lack of follow-up with treatment.

**Motion:** Dr. Herro moved to dismiss the case.

**Second:** Dr. Morrow

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.



## 6. 202200203; Hansen, Donovan

Dr. Hansen was available during the Board's review of the matter. Ms. Schachar made a statement and indicated that the patient paid for the first stage of an All-on-4 treatment. Dr. Hansen had informed the patient that treatment would be staged out in phases, which included extractions, followed by implants and finalized by the All-on-4. The consultant found that the allegation for improper treatment was not substantiated. Written consent is documented and no concerns with the implants were found by the patient's subsequent treating dentist. Dr. Hansen proceeded to answer questions pertaining to the angulation and technicalities of the procedure.

**Motion:** Dr. Christensen moved to dismiss the case.

**Second:** Dr. Morrow

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

## 7. 202200221; Hirpara, Piyush

Dr. Hirpara was available to answer questions during the Board's review of the matter. Ms. Hay made a statement and indicated that fillings were recommended; however, the patient did not return for treatment until the following year. The patient's caries and decay worsened and was referred to a pediatric dentist. There was no misdiagnosis and new policies and procedures have been implemented to address the documentation issues.

**Motion:** Dr. Bienstock moved to issue a letter of concern for recordkeeping for failure to document the mesiodens and the decay in 2020.

**Second:** Dr. Herro

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

## 8. 202200238; Ashraf, Shaharyar

This matter was tabled due to a lack of quorum.

## 9. 202200242; Jafari, Reza

Dr. Jafari made a statement and explained that there were insurance coverage issues; therefore, a payment plan was arranged. However, there is still an outstanding balance due. Dr. Cutler proceeded to inform the Board that there were documentation issues. The Board discussed the patient's bite issues and considered there was a treatment plan and case selection issue.

**Motion:** Dr. Herro moved to find violation of A.R.S. § 32-1201.01 (14).

**Second:** Dr. Morrow

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

**Motion:** Dr. Herro moved to offer a disciplinary consent agreement, requiring the completion of 3 hours of CE in diagnosis and treatment planning specific to

courses that discuss bruxism and traumatic occlusion cases, 4 hours in crown and bridge. The CE hours shall be in addition to the hours required for license renewal and shall be completed within 12 months. In addition, restitution to be paid to the patient within 30 days. If not accepted, move the matter to a formal interview.

**Second:** Dr. Morrow

During further discussion, the Board took into consideration the outstanding balance and clarified that the restitution shall be for fixed restorations that were done and paid for.

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

E. Malpractice, Adverse Occurrence Report and/or Self-Report Pursuant to A.R.S. § 32-3208 and/or A.A.C. R4-11-1305

1. 202200219-AO

There was no one present to speak on the matter. Dr. Cutler proceeded to provide the Board an overview of the case and indicated that the patient had an adverse occurrence, EMS was called and diagnosed a possible allergic reaction to the anesthetics. The consultant found a possible deviation to A.A.C. R4-11-1102 for advertising as a recognized specialist. During discussion, the Board considered the oral surgery advertising was misleading to the public.

**Motion:** Dr. Herro moved to issue a letter of concern for false advertising.

**Second:** Dr. Bienstock

**Vote:** 5-aye, 2-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

*Mr. Dynar and Dr. Morrow voted against the motion.*

D. Response/Non-Response to Offered Interim Consent Agreement

1. 202200278-AO; Sheth, Rajan

Dr. Seth was available during the Board's consideration of the matter. Mr. Tonner made a statement and indicated the consent agreement was declined. Mr. Tonner informed the Board that Dr. Seth submitted an affidavit to not use or work with anesthetics that require the use of a permit until the case is adjudicated. Dr. Sheth also took additional CE courses. Dr. Harris pointed out that there is a 14% increase in risk every 30 minutes that a procedure is extended. Considering the procedure extended to nine hours, there is an 84% increase in complication rate. The Board considered the case should have been planned out better especially since it was in a teaching environment which typically causes treatment to take longer. In addition, Dr. Cutler indicated that the anesthesia exceeded the max.

**Motion:** Dr. Herro moved to adopt violation of A.R.S. § 32-1201.01(14).

**Second:** Ms. Penna

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

**Motion:** Dr. Herro moved to offer a disciplinary consent agreement, requiring the completion of 12 hours of CE in anesthesia and sedation and a 12 month probation status with practice monitoring on the type of anesthesia cases that are done, including how long the procedures take, ASA classification and any other relevant information that can be pulled from the anesthesia record. The CE hours shall be in addition to the hours required for license renewal and shall be completed within the year of probation status. Monitoring expenses shall be paid by Dr. Seth.

**Second:** Dr. Morrow

**Vote:** 6-aye, 1-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

*Mr. Dynar voted against the motion because he disagreed with the probation.*

E. Malpractice, Adverse Occurrence Report and/or Self-Report Pursuant to A.R.S. § 32-3208 and/or A.A.C. R4-11-1305

2. 202300039-AO

The respondent was available to answer questions during the Board's review of the matter. Mr. Kent made a statement and indicated that the patient had a reaction, EMS was called and the patient continues to receive dental treatment by the respondent. The Board concurred that the adverse occurrence was properly handled by the provider.

**Motion:** Dr. Herro moved to dismiss the case.

**Second:** Dr. Christensen

**Vote:** 6-aye, 0-nay, 0-abstain, 1-recuse, 4-absent. Motion passed.

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

3. 202300044-AO

**Motion:** Dr. Herro moved to assign the matter to a consultant and open an investigation.

**Second:** Dr. Bienstock

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

4. 202300060-AO

Mr. Tonner informed the Board that he is representing the respondent on the matter.

**Motion:** Dr. Herro moved to table the matter for a future meeting.

**Second:** Dr. Bienstock

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

5. 202300062-AO

The respondent was available to answer questions during the Board's review of the matter. Ms. Hay made a statement and indicated that the patient began

de-saturating at 90%, laryngospasm was suspected and EMS was called. The patient was still difficult to ventilate and was intubated appropriately. EMS confirmed the complication was due to a laryngospasm. After review, the Board considered the incident was handled appropriately.

**Motion:** Dr. Morrow moved to dismiss the case.

**Second:** Dr. Christensen

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

6. 202300069-AO

The respondent was available during the Board's review of the matter. Mr. Goodwin informed the Board that he was recently retained as legal council for the case and requested time to consult with his client. The Board reviewed the deviations in the consultant's report including mismanagement of the case that could have been prevented and resulted in the patient's death. The Board considered offering an interim consent agreement with suspension of the respondents 1301 Permit.

**Motion:** Dr. Morrow moved for the Board to enter into executive session to obtain legal advice and discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2) and (3). Also, to invite the investigator of the case in executive session.

**Second:** Dr. Herro

**Vote:** 6-aye, 0-nay, 0-abstain, 1-recuse, 4-absent. Motion passed.

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

*The Board entered into executive session at 12:35 p.m.*

*The Board returned to open session at 12:48 p.m.*

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

The Board reviewed the deviations cited in the consultant's report which included: consent before the procedure is invalid because the patient reported smoking cannabis the morning prior to signing the consent. Additional risks due to the use of cannabis should have led to reconsider moving forward with an elective procedure. The use of cannabis increases airway reactivity and risk of cardiac complications, greatly increases salivary secretion in patients undergoing anesthesia. Excessive salivary and mucus secretion significantly enhance the risk of laryngospasm. There was no indication from the doctor that the increased risk of airway or cardiac complication was considered in the decision to move forward with elective surgery. The medication utilized for deep sedation general anesthesia was not adjusted to account for the patient's heightened risk of airway complication. It is not justified that the respondent elected to use Ketamine which is a medication that increases salivary secretion on a patient that was already at a high risk of excessive salivary secretions under anesthesia due to the use of cannabis. The procedure was not stopped at the onset of airway complications to

stabilize the patient's airways. The airway was repositioned and opened by holding the tongue out of the mouth; which only mildly improved the patient's breathing. However, the doctor continued the procedure by administering local anesthetic which goes directly against the standard of care. The medications administered and the sequence of administration contributed to the patient's adverse outcome. An aggravating factor is that the provider's ACLS certification was expired at the time of the adverse outcome. After reviewing the consultant's report, the Board concurred that there is an immediate threat to the public with the doctor practicing anesthesia.

**Motion:** Dr. Herro moved to find violation of A.R.S. § 32-1201.01(14).

**Second:** Ms. Moffett

**Vote:** 6-aye, 0-nay, 0-abstain, 1-recuse, 4-absent. Motion passed.

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

**Motion:** Dr. Herro moved to offer an interim consent agreement with the suspension of the doctor's 1301 Permit, based on the findings and facts in the consultants report and violation of A.R.S. § 32-1201.01(14).

**Second:** Dr. Morrow

Roll Call

*Herro- aye*

*Christensen- aye*

*Dynar- aye*

*Moffett- aye*

*Morrow- aye*

*Penna- aye*

**Vote:** 6-aye, 0-nay, 0-abstain, 1-recuse, 4-absent. Motion passed.

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

Dr. D.L. verbally attested that he would not practice any level of sedation or anesthesia until the Board has a future meeting to further review the case.

**Motion:** Dr. Herro moved to schedule a meeting for a potential summary suspension for April 19th at 6:00pm.

**Second:** Dr. Morrow

**Vote:** 6-aye, 0-nay, 0-abstain, 1-recuse, 4-absent. Motion passed.

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

## 7. 202300072-AO

The respondent was available during the Board's review of the matter. Mr. Hayden stated that the respondent acknowledges the seriousness of the matter and provided immediate submission of the adverse occurrence report. Mr. Hayden requested that the Board go into executive session to discuss confidential aspects of the case, given the unique circumstances.

**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:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

*The Board entered into executive session at 1:29 p.m.*

*The Board returned to open session at 1:50 p.m.*

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

Mr. Hayden stated the main concern in the consultant's report was pertaining to the anesthesia. Mr. Hayden also indicated that the respondent would voluntarily surrender his 1303 Permit effective immediately. However, the Board considered that the issues outlined in the consultant's report go beyond the anesthesia treatment. The Board considered offering an interim consent agreement.

**Motion:** Dr. Herro moved to offer an interim consent agreement to cease the practice of dentistry, based on the findings in the consultant's report, violation of A.R.S. §§ 32-1201.01(14), (24) and 32-1264. If not accepted by April 6th, agendaize the matter for summary suspension.

**Second:** Dr. Bienstock

*Dr. Herro amended the motion to specify that the respondent shall cease in practice of extractions, implants and sedation.*

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

## V. NOTICES OF PROPOSED RULEMAKING ("NPR")

Dr. Bienstock requested that the Board table the matter to further review the advertising NPR.

The Board proceeded to review the NPR regarding fees and discussed Mobile Dental Facility Permits.

**Motion:** Mr. Dynar moved to accept the amendments to the NPR regarding fees with the addition of a one-hundred dollar initial fee for Mobile Dental Facility Permits.

**Second:** Dr. Bienstock

*Mr. Dynar amended the motion to make the initial Mobile Dental Facility Permit fee two hundred dollars.*

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

## VI. FIVE-YEAR RULE REVIEW

The Board reviewed the draft Five-Year Rule Review for Title 4, Chapter 4, Articles 13 and 17.

**Motion:** Dr. Herro moved to approve the draft Five-Year Rule Review for Title 4, Chapter 4, Articles 13 and 17 and voted to submit it to the Governor's Regulatory Review Council.

**Second:** Dr. Morrow

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

## VII. INVESTIGATIVE COMMITTEE

**Motion:** Dr. Herro moved to approve and appoint the Committee's selections to the two vacant seats.

**Second:** Dr. Morrow

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

## III. CONSENT AGENDA

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

14. 202200158; DiVito, Roberto and 24.202200254; Mojgani, Farzan

**Motion:** Dr. Herro moved to dismiss cases from agenda items III.B.14 and III.B.24.

**Second:** Dr. Morrow

**Vote:** 6-aye, 0-nay, 0-abstain, 1-recuse, 4-absent. Motion passed.

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

**Motion:** Dr. Herro moved to open a case against Dr. Aghassi.

**Second:** Dr. Morrow

**Vote:** 6-aye, 0-nay, 0-abstain, 1-recuse, 4-absent. Motion passed.

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

6. 202200158; DiVito, Roberto and 7. 202200164; DiVito, Enrico

**Motion:** Dr. Morrow moved to dismiss the case.

**Second:** Mr. Dynar

*Dr. Morrow rescinded the motion.*

Ms. Schachar stated that the records show that the torque was appropriate.

**Motion:** Dr. Morrow moved to table the matters and agendize them at the same time as Dr. McClammy's case.

**Second:** Dr. Bienstock

**Vote:** 6-aye, 0-nay, 0-abstain, 1-recuse, 4-absent. Motion passed.

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

## IV. ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION

### G. Motion for Rehearing/Review – A.A.C. R4-11-1701

1. 202100148; Jensen, Matthew

Ms. Thompson made a statement on behalf of Dr. Jensen and indicated that the missing records from the subsequent treating provider should be reviewed. Ms. Thompson further indicated that restitution is improper because it is speculated that the implants may fail. The Board discussed whether the information provided suffices to uphold their previous action.

**Motion:** Dr. Herro moved to deny the request to review the matter.

**Second:** Dr. Morrow

**Vote:** 2-aye, 5-nay, 0-abstain, 0-recuse, 4-absent. Motion failed.

*Drs. Bienstock, Christensen, Mr. Dynar, Ms. Moffet and Ms. Penna voted against the motion.*

**Motion:** Dr. Herro moved to grant the request to review the matter.

**Second:** Dr. Bienstock

**Vote:** 5-aye, 2-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

*Drs. Herro and Morrow voted against the motion.*

F. Response/Non-Response to Offered/Issued Consent Agreement(s)/Board Order

1. 202200083; Koussa, Lawrence

Mr. Nafisi made a statement and indicated that Dr. Koussa is retired and does not intend to practice again.

**Motion:** Dr. Morrow moved to offer an agreement for Dr. Koussa to voluntarily surrender his license.

**Second:** Dr. Herro

**Vote:** 6-aye, 1-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

*Mr. Dynar voted against the motion.*

H. Settlement Offer

1. 20200023 & 202000256; Lam, Kenny

**Motion:** Dr. Herro moved to reject the settlement offer and move forward with a hearing on the case.

**Second:** Dr. Morrow

**Vote:** 6-aye, 0-nay, 0-abstain, 1-recuse, 4-absent. Motion passed.

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

I. Review of Compliance/Non Compliance for Consent Agreement/Board Order

1. 202200330; Svoboda, Christina

No one requested to speak during the Board's consideration of the matter. Staff informed the Board that the requested final assessment was provided in their material for review.

**Motion:** Dr. Herro moved to offer a consent agreement that includes the recommendations in the final assessment and shall be paid by the licensee.

**Second:** Ms. Penna

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.



**VII. AMERICAN ACADEMY OF DENTAL SLEEP MEDICINE (“AADSM”)**

Belinda Postol provided the Board an overview of AADSM standards of practice for oral appliance therapy to help treat sleep apnea and snoring.

**IX. AFFILIATED MONITORS, INC.**

Vincent L. DiCiani, Esq. provided the Board an overview of updates of independent monitoring services and remediation sanctions. Mr. DiCiani referenced the sample reports that were provided for the Board to review and offered their services.

**X. CALL TO THE PUBLIC**

No one requested to speak.

**XI. EXECUTIVE DIRECTOR’S REPORT****A. Budget Update**

The Board did not have questions regarding the budget that was provided in their materials for review.

**B. Agency Operations****1. Board’s 6-month Response to the Auditor General’s Report and 6. Guidelines for Adjudicating Complaints**

Mr. Edmonson provided the Board an overview of the auditors recommendations that have been implemented and resolved. The remaining recommendations are in process until the transition to the new database system is complete.

**Motion:** Dr. Herro moved to approve the presented response for the auditor general’s report and the guidelines for adjudicating complaints.

**Second:** Dr. Bienstock

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

**4. Adverse Occurrence Policy & Procedure – A.A.C. R4-11-1305**

No action was taken on the draft AO policy.

**2. CE Compliance Policy & Procedure – A.A.C. R4-11-1202****3. Board Member, et. al. Policy & Procedure – A.A.C. R4-11-1209****5. DUI/DWI Disclosure on Initial Application – A.R.S. §§ 32-1232(C), 32-1263**

**Motion:** Dr. Herro moved to approve the policies and procedures for agenda items 2, 3 and 5.

**Second:** Dr. Bienstock

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

**7. Dental Related Legislative Bills**

Mr. Edmonson stated that the Board is currently in opposition of SB1602 and inquired on whether their position has changed with the recent amendments to

the bill. The Board discussed having the Anesthesia and Sedation Committee review the bill at their next meeting.

**Motion:** Dr. Herro moved for the Board to support SB1076.

**Second:** Dr. Herro

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

**Motion:** Dr. Herro moved for the Board to support SB1226

**Second:** Dr. Christensen

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

C. Complaint Log

The Board did not have questions on the complaint log.

D. Joint Commission on National Dental Examinations (“JCNDE”) – Possible Development of a National Board Dental Therapy Examination Survey

Mr. Edmonson informed the Board that the JCNDE requested a response to a survey for possible development of a National Board Dental Therapy Examination.

**Motion:** Dr. Herro moved to direct staff to answer the survey.

**Second:** Dr. Morrow

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

**XII. REVIEW, DISCUSSION AND POSSIBLE ACTION ON BOARD MEETING MINUTES**

A. Discussion and approval of the Open Session Minutes from the March 3, 2023 board meeting.

B. Discussion and approval of the Executive Session Minutes from the March 3, 2023 board meeting.

**Motion:** Dr. Herro moved to approve the meeting minutes.

**Second:** Dr. Morrow

**Vote:** 7-aye, 0-nay, 0-abstain, 0-recuse, 4-absent. Motion passed.

**XIII. SUMMARY OF CURRENT EVENTS**

None were discussed.

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

None were discussed.

**XV. NEXT BOARD MEETING DATE**

A. May 12, 2023

**XVI. ADJOURNMENT**

Dr. Herro adjourned the meeting at 3:56 p.m.