



# Arizona State Board of Dental Examiners

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

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## OPEN SESSION MINUTES

**April 19, 2023**

### **Special Board Meeting**

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

#### **BOARD MEMBERS**

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

#### **STAFF AND ASSISTANT ATTORNEY(S) GENERAL PRESENT**

Ryan P. Edmonson	Executive Director
Kristina C. Gomez	Deputy Director
Robert Pulver, Esq.	Assistant Attorney General
Julie Cutler, DMD	Deputy Chief Investigator
Sherrie Biggs	Assistant Deputy Director
April Romero	Chief Compliance Officer
Yazmin Bustamante	Executive Assistant
Jessica Thomas	

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

Jefferson Hayden, Esq.	Attorney for Respondent
James Goodwin, Esq.	Attorney for Respondent
Derek Lamb	Respondent
Sergio Gomes De Souza	Respondent
Anthony Caputo	Board Investigator
Nishant Chauchan	Board Investigator

Vicky Dyck  
Leah Shachar  
Larry Melver

Guest  
Guest  
Guest

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

Dr. Herro called the Board's meeting to order at 6:00 p.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. Bienstock declared a conflict of interest with agenda item no. III.A.1.

**III. ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION**

A. Summary Suspension or Formal Hearing for Revocation of License for Violations of Board Statutes

1. 202300069-AO; Lamb, Derek

Dr. Lamb and Mr. Goodwin were available during the Board's consideration of the matter. Mr. Goodwin made a statement to address the allegation of invalid consent because the patient smoked cannabis the morning of treatment. Mr. Goodwin referenced the literature that was provided to the Board and indicated that there is no established standard of care yet on the usage of cannabis prior to treatment.

*Dr. Bienstock joined the meeting at 6:03 p.m.*

Mr. Goodwin further stated that patients who use prescribed marijuana for medical purposes cannot stop the use 72 hours prior to treatment. In addition, Mr. Goodwin addressed the alleged increased risk of complications due to the use of marijuana and Dr. Lamb's preparation for treatment. Mr. Goodwin also informed the Board that it is not known if an autopsy was performed and indicated that the dosage given is within the standard of care. Dr. Lamb proceeded to explain that the patient was alert, drove to the appointment and did not present with any evidence to indicate impairment before the procedure. Dr. Lam stated that he knows to expect that when patients disclose being marijuana smokers they will have more irritable airways, more salivary secretions and may need more medication and that was taken into account when preparing for the patient's treatment. Dr. Chauchan proceeded to indicate that an elective procedure doesn't justify making accommodations to the patient's ability to accurately consent to treatment. It is reasonable to consider there was some level of impairment since the patient smoked marijuana the morning of treatment and it affects you for several hours. Typically providers consult with the patient's physician who prescribed the medication to see if there is an opportunity to make an accommodation and rely on the physician's report to adjust the medications that are prescribed. Furthermore, when taking into account the use of cannabis and the patient's presentation with a difficult airway, you have the combination that results in an outcome where it is likely to have an adverse occurrence. Dr. Lamb

proceeded to answer the Board's questions about the incident and stated that he asked the patient if he takes recreational drugs or illicit substances. Dr. Lamb also indicated that the patient was seen November 2022 and did not present with complications at that time. Dr. Lam further explained that the patient was re-sedated to get him oxygenated. After discussion, the Board considered there was an inability to manage the airway that led to the adverse occurrence.

**Motion:** Dr. Herro moved to offer a disciplinary consent agreement with a 12 month suspension of the 1301 Permit, during which time the licensee will take 4 hours of CE in risk management because the ACLS was expired, 12 hours in airway management and 12 hours in anesthesia and sedation specific to medical emergencies in the dental office. Once completed with the CEs, allow the respondent the opportunity to come before the Board to reevaluate and potentially lift the suspension early. Based on the violations cited in the consultant report and discussion held during the meeting.

**Second:** Mr. Goodman

*Dr. Herro amended the motion to also require 4 hours of CE in pharmacology.*

Roll Call

*Herro-aye*

*Christensen-nay*

*Dynar-nay*

*El-Gendy-nay*

*Goodman-aye*

*Moffett-nay*

*Morrow-nay*

*Penna-aye*

*Seaman-aye*

**Vote:** 4-aye, 5-nay, 0-abstain, 1-recuse, 1-absent. Motion failed.

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

**Motion:** Dr. Herro moved to offer a disciplinary consent agreement, requiring the completion of 12 hours of CE in anesthesia and sedation to be broken down into 4 hours in airway management, 4 hours in pharmacology and 4 hours in medical emergency. In addition, 4 hours in risk management because of the expired ACLS. A 6 month suspension of the 1301 Permit, which can be lifted if the CE is completed before the 6 months. The CE hours shall be in addition to the hours required for license renewal. Based on the statutory violations cited in the consultant's report and discussion held during the meeting.

**Second:** Mr. Morrow

*Dr. Seaman temporarily departed the meeting at 7:30 pm.*

Roll Call

*Herro-aye*

*Christensen-aye*

*Dynar-nay*

*El-Gendy-aye*

*Goodman-aye*

*Moffett-aye*

*Morrow-aye*

*Penna-aye*

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

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

2. 202300072-AO; Gomes De Souza, Sergio

Dr. Souza and Mr. Hayden were available during the Board's consideration of the matter. Mr. Hayden informed the Board that it was recently revealed that the patient had other conditions that the patient did not disclose to Dr. Souza. Dr. Caputo proceeded to provide the Board an overview of the case and stated that the initial work up and assessment of the patient was clearly identified by the information provided to the office and indicate that this was a cardiovascularly compromised patient. Dr. Caputo also pointed out that the medical consult was not adhered to and expressed concern with the amount of local that was used to achieve anesthesia and the length of treatment based on the presentation that it was a medically complex patient. In addition the deficiencies with the record based on 1301 Permit requirements. During the Board's review, Dr. Cauto explained that the amount of local anesthesia administered was within the acceptable parameters; however, the medical consult said no to the administration of Epinephrine containing local anesthetic solutions. That advice was not followed. The Board proceeded to discuss Dr. Souza's clinical decision making, preoperative assessment of a medically complex patient and his ability to safely administer sedation.

*Dr. Seaman rejoined the meeting at 8:04 p.m.*

**Motion:** Dr. Herro moved to offer a disciplinary consent agreement with a minimum of 12 months suspension of the 1303 Permit. Prior to that suspension being lifted, require the completion of 80 hours of proctorship in hands-on clinical cases with a 1303 provider that has an unencumbered permit or higher; prior to the suspension of the 1303 Permit being lifted. In addition, 6 months practice restriction, during which time the licensee would be on probation with the practice restriction in extractions of all kinds and the surgical placement of dental implants a minimum of 6 months. Also, require the completion of 8 hours of CE in dental treatment on a medically complex patient, 4 hours in medical emergencies in a dental office, 12 hours of hands-on CE in oral surgery and 4 hours in risk management. The CE hours shall be in addition to the hours required for license renewal. Based on the violations cited in the consultant's report and discussion held during the meeting.

**Second:** Mr. Goodman

*Dr. Herro amended the motion to specify that the CE shall be completed within 12 months and the Board will reevaluate the order in 12 months.*

Roll Call

*Herro-aye*

*Bienstock-aye*

*Chrisenten-aye*

*Dynar-aye*

*El-Gendy-aye*

*Goodman-aye*

*Moffett-aye*

*Morrow-aye*

*Penna-aye*

*Seaman-aye*

**Vote:** 10-aye, 0-nay, 0-abstain, 0-recuse, 1-absent. Motion passed.

**IV. NOTICE OF FINAL RULEMAKING (“NFR”)**

The Board reviewed the written comments from the Arizona Oral Health Coalition pertaining to the Dental Therapy rulemaking package. Mr. Dynar informed the Board that the issues that the comments raise were considered by the Rules Group. The request to remove the requirement for the applicant to submit transcripts was declined by the Board because it determined that requiring such transcripts from the issuing institute better ensures the validity of the credentials. Mr. Dynar also indicated that due to the case of the dentist faking a 1301 sedation permit, the Rules Group concurred that transcripts should be provided to the Board directly from the institution. With regard to the request to remove A.A.C. R4-11-1602 because there may not be clear statutory authority to place restrictions on direct supervision of dental therapists, Mr. Dynar stated that the Rules Group reviewed it and viewed it as a regulation of the supervising dentist to not directly supervise more than three therapists providing services. The Board also determined that it was appropriate to restrict the number of therapists that can be supervised at one time due to the physical limitations of one dentist to directly supervise multiple dental therapists. As a result, the Board declined the request to remove A.A.C. R4-11-1602. Furthermore, the Board reviewed the request to remove A.A.C. R4-11-1601(B) and (C) because statute does not appear to require a dental therapist to complete specific courses in order to administer Nitrous Oxide Analgesia or perform suturing and suture removal within the scope of their dental therapy practice. Mr. Dynar clarified that the Rules Group viewed that the specific procedures are in the scope of practice and indicated that they are more invasive than the other listed procedures. Given the invasive nature of these specific procedures, the Board declined the request to remove the aforementioned sections because it determined that in order to protect the public, it is appropriate to ensure the licensees meet the requisite qualification and are trained to perform the procedures.

**Motion:** Mr. Dynar moved to approve the rules package changes to Title 4, Chapter 11, Articles 1, 2, 3, 4, 7, 12, 15 and 16 pertaining to Dental Therapy and resubmit the NFR to the Governor's Regulatory Review Council with the additional information that was discussed during the meeting to address the letter from Arizona Oral Health Coalition.

**Second:** Dr. Herro

**Vote:** 10-aye, 0-nay, 0-abstain, 0-recuse, 1-absent. Motion passed.

**V. CALL TO THE PUBLIC**

No one addressed the Board.

**VI. SUMMARY OF CURRENT EVENTS**

None were discussed.

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

None.

**VIII. NEXT BOARD MEETING DATE**

A. May 12, 2023

**IX. ADJOURNMENT**

Dr. Herro adjourned the meeting at 8:50 p.m.