



Arizona State Board of Dental Examiners

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

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OPEN SESSION MINUTES

June 23, 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 V.D.4, V.H.3 and V.E.1 as stated herein.

BOARD MEMBERS

	<i>Anthony Herro, DDS</i>	President and Licensed Dentist Member
	Lisa B. Bienstock, DMD	Vice-President and Licensed Dentist Member
X	Morgan B. Burg	Business Entity Member
X	Edward H. Christensen, DDS	Licensed Dentist Member
⌚	Aditya Dynar	Public Member
X	Tamer El-Gendy, DMD	Licensed Dentist Member
⌚	Nick Goodman	Public Member
	<i>Jaselyn K. Moffett, RDH</i>	Licensed Hygienist Member
	<i>Russell Jeffrey Morrow, DDS</i>	Licensed Dentist Member
	<i>Vicki B. Penna, RDH</i>	Licensed Hygienist Member
	Leslie D. Seaman, DDS	Licensed Dentist Member
⌚	Joined/departed 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>Seamus Monaghan, Esq.</i>	Assistant Attorney General
	<i>Julie Cutler, DMD</i>	Deputy Chief Investigator
	<i>Sherrie Biggs</i>	Assistant Deputy Director
	<i>April Romero</i>	Chief Compliance Officer
	<i>Selena Acuna</i>	Compliance Officer
	<i>Mary Ford</i>	Compliance Officer
	<i>Yazmin Bustamante</i>	Executive Assistant

Staff members in italics participated in-person

GUESTS PARTICIPATING AND/OR PRESENT

Clay Welch	Applicant
Leah Schachar, Esq.	Attorney for Respondents
Clark Larson	Respondent
James Mallory	Respondent
Andrew Plattner, Esq.	Attorney for Respondent
Maureen Toal	Respondent
Robert Janisse	Respondent
Nathaniel Hill, Esq.	Attorney for Respondent
Abraham Miller	Respondent
Kirk Woodruff	Respondent
Brent Boyse	Respondent
Matthew Phillips	Respondent
Rita Bustos, Esq.	Attorney for Respondent
Thomas McClammy	Respondent
Roberto DiVito	Respondent
Enrico DiVito	Respondent
Matthew Janbou	Respondent
James Frisbie, Esq.	Attorney for Respondent
David Tambor	Respondent
Maryam Hamdan	Respondent
Han Choi	Respondent
Rachel DeAvila	Respondent
Leanne Hay, Esq.	Attorney for Respondents
Bonjung “Jane” Koo	Respondent
Jeffery J. Tonner, Esq.	Attorney for Respondents
Michele Thompson, Esq.	Attorney for Respondents
Jefferson Hayden, Esq.	Attorney for Respondent
Sal Sheckley	Respondent

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. IV.C.1, V.B.2, V.B.3, and V.H.1.

Dr. Bienstock declared conflicts of interest with agenda item nos. IV.B.3, IV.B.8, IV.C.2, IV.C.3, V.C.3, V.D.6, V.F.1 and V.I.1.

Dr. Morrow declared a conflict of interest with agenda item no. V.F.4

Ms. Penna. declared a conflict of interest with agenda item no. V.F.5.

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

A. Discussion and approval of the Open Session Minutes from the May 12, 2023 Board meeting.

- B. Discussion and approval of the Executive Session Minutes from the May 12, 2023 Board meeting.

Motion: Dr. Herro moved to approve the minutes from the May 12, 2023 Board meeting.

Second: Dr. Morrow

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

Mr. Goodman joined the meeting at 8:02 a.m.

IV. CONSENT AGENDA

Dr. Herro pulled IV.B.3 from the consent agenda for discussion. In addition, Dr. Morrow pulled IV.C.1 from the consent agenda.

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

1. 202100037; Conrad, Stephen
2. 202100126; Gardner, Brent
3. 202100267; Robles, Jonathan
4. 202200051; Brase, Jon
5. 202200191; Adhikari, Prabidhi
6. 202200276; Griswold, Jason

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

Board to review, discuss and take possible action on the following case(s):

1. 202200107; Johnson, Ella Ivanovna
2. 202200227; Thompson, Michael
- ~~3. 202200258; Pratt, Forrest~~
4. 202200281; Field, Taylor
5. 202200305; Liu, Sarah Tse-Wen
6. 202200316; Yoza, Ethan
7. 202200332; Valiyaparambil, Jayasanker
8. 202200336-MP; Petersen, Andrew
9. 202300003; Lee, Sin Hui
10. 202300018; Bryant, Joe

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

- ~~1. 202200228; Toal, Maureen (Herro Conflicted)~~
2. 202200324; Prince, Steven
3. 202200329-MP; Hansen, Michael
4. 202300005-AO; Foisy, Erik
5. 202300017; Samandari, Nafys

Motion: Dr. Herro moved to accept the rest of the consent agenda.

Second: Dr. Morrow

Vote: 7-aye, 0-nay, 0-abstain, 1-recuse, 3-absent. Motion passed.

Dr. Bienstock was recused and did not participate.

B. Review of Investigation(s) – Case(s) Recommended for Dismissal**3. 202200258; Pratt, Forrest**

Dr. Cutler provided the Board an overview of the case and indicated that while Dr. Pratt was removing number 32 with a hand piece, it became heated and caused the patient a burn. Ms. Schachar subsequently made a statement on behalf of Dr. Pratt and pointed out that the standard of care is not judged by an untoward outcome. Ms. Schachar further stated that Dr. Pratt took adequate steps to address the injury, informed the patient of the incident and followed-up with the patient. The mother of the patient addressed the Board and stated that the patient had second and third degree burns. The patient saw a surgeon who indicated that the scar is permanent. The Board proceeded to discuss the matter and considered issuing a letter of concern.

Motion: Dr. Herro moved to issue a letter of concern for failure to recognize patient safety.

Second: Dr. Morrow

Vote: 3-aye, 4-nay, 0-abstain, 1-recuse, 3-absent. Motion failed.

Mr. Dynar, Mr. Goodman, Dr. Morrow and Dr. Seaman voted against the motion.

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

Motion: Dr. Morrow moved to dismiss the case.

Second: Mr. Goodman

Vote: 4-aye, 3-nay, 0-abstain, 1-recuse, 3-absent. Motion passed.

Dr. Herro, Ms. Moffett and Ms. Penna voted against the motion.

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

V. ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION**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. Dunn, David S., DMD (by Credential)**

The Board reviewed Dr. Dunn's application for licensure and confirmed that the out of state license is unencumbered.

Motion: Dr. Herro moved to grant licensure.

Second: Dr. Morrow

Vote: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent. Motion passed.

2. Welch, Cay S., RDH (by Credential)

Ms. Welch was available during the Board's consideration of her application for licensure.

Motion: Dr. Herro moved to grant licensure.

Second: Ms. Penna

Vote: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent. Motion passed.

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. 202200286; Skyler, Montana Jay

Dr. Cutler provided the Board an overview of the case and indicated there was a substantiated allegation for failure to maintain records.

Motion: Dr. Herro moved to issue a letter of concern for failure to maintain records.

Second: Dr. Bienstock

The Board took into consideration that the patient was fully refunded and the Investigative Committee did not find violations against crown and bridge.

Vote: 7-aye, 1-nay, 0-abstain, 0-recuse, 3-absent. Motion passed.

Dr. Morrow voted against the motion.

2. 202200318; Larson, Clark

Dr. Larson made a statement to clarify that the ledger was provided in the records for the Board to review. Dr. Cutler proceeded to provide the Board an overview of the case and indicated that the patient filed the complaint when there was a failure to issue a refund. Dr. Larson clarified that there was a delay with the insurance claim and stated that he will refund the patient.

Motion: Ms. Penna moved to dismiss the case.

Second: Dr. Herro

Vote: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent. Motion passed.

3. 202200328; Mallory, James

During the Board's review of the matter, Dr. Mallory answered questions about the open margin on tooth number 29 and elaborated on the treatment that was provided to the patient.

Motion: Dr. Morrow moved to issue a letter of concern for open margin.

Dr. Morrow rescinded his motion.

The Board further discussed the deficiencies for no diagnosis listed prior to treatment plan, no records of periodontal probings, decay was listed on most teeth. Dr. Mallory explained that some records were not transferred when changing software. After discussion, the Board considered the only issue was the open margin on tooth number 29.

Motion: Dr. Morrow moved to issue a letter of concern due to an open margin on tooth number 29.

Second: Dr. Herro

Vote: 6-aye, 1-nay, 0-abstain, 1-recuse, 3-absent. Motion passed.

Mr. Goodman voted against the motion.

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

4. 202200333; Zargar, Andre Dariush

Dr. Cutler provided the Board an overview of the case and indicated that insurance denied a periodontal scaling root cleaning done on the right side. Dr. Zargar saw the patient for a limited exam. The investigator found there was no diagnosis documented in the records. The Board proceeded to discuss the matter.

Motion: Ms. Moffett moved to uphold the Investigative Committee's recommendation to issue a non-disciplinary order requiring the completion of 3 hours of CE in perio diagnosis and treatment planning and 3 hours in risk management; based on the discussion held during the meeting and 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: Ms. Penna

Vote: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent. Motion passed.

5. 202300001; Noble, Andrew

Dr. Cutler informed the Board that Dr. Noble was unable to finish the invisalign treatment due to filing bankruptcy. However, the patient was provided a refund.

Motion: Dr. Herro moved to dismiss the case.

Second: Ms. Penna

Vote: 8-aye, 0-nay, 0-abstain, 0-recuse, 3-absent. Motion passed.

6. 202300020; Kim, Thomas

Dr. Cutler provided the Board an overview of the case and indicated that the investigator found deviations for lack of detailed exam notes, no TMJ evaluation and materials were not documented.

Mr. Goodman temporarily departed the meeting at 8:59 a.m.

Motion: Dr. Herro moved to adopt statutory violation of A.R.S. § 32-1201.01(24) and 32-1263(A).

Second: Ms. Moffett

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

Staff proceeded to inform the Board that the respondent had prior board action taken for record keeping issues.

Motion: Dr. Herro moved to issue a non-disciplinary order, requiring the completion of 3 hours of CE in risk management; based on the discussion held during the meeting, the consultant's report and the previously adopted statutory violation.

Second: Dr. Morrow

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

IV. CONSENT AGENDA

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

1. 202200228; Toal, Maureen

Dr. Toal was available during the Board's review of the matter. Mr. Plattner made a statement on behalf of Dr. Toal and indicated that the patient was a close friend of Dr. Toal. Mr. Plattner further pointed out that the treatment was provided during COVID-19. Dr. Toal proceeded to answer the Board's questions about the treatment and her decision to treat the patient at her home. The Board further discussed that the patient has a history of cardiac problems and giving fluids to a patient with such a history and not being monitored is below the standard of care.

Mr. Plattner further indicated that the care provided to the patient helped and requested that the Board take into consideration that it happened during COVID-19.

Motion: Ms. Penna moved to dismiss the case.

Second: Mr. Dynar

The Board further discussed the irregularity of the situation and that Dr. Toal put the patient under unnecessary risk for giving her IV fluids without monitors and did not have proper equipment in her home. Dr. Toal could have taken the patient to her practice for treatment.

Vote: 2-aye, 4-nay, 0-abstain, 1-recuse, 4-absent. Motion failed.

Dr. Bienstock voted against the motion because she would be in favor of non-disciplinary action.

Ms. Moffett, Dr. Morrow and Dr. Seaman voted against the motion.

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

Motion: Dr. Morrow moved to issue a letter of concern for administering medication in a non-office setting (ie. the doctors home).

Second: Ms. Moffett

Amended Motion: Dr. Morrow moved to adopt the draft letter of concern in the Board's packet.

Second: Ms. Moffett

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

Dr. Bienstock voted against the motion.

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

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

1. 202200235; Cook, Sean

Dr. Cuter informed the Board that the investigator found no periodontal evaluation was done prior to root canal treatment, no pre-treatment, treatment, and post-treatment radiographs submitted, and subjective symptoms were documented such as swelling and redness. The Board proceeded to discuss the matter and took into consideration that the patient lost a tooth.

Motion: Dr. Herro moved to adopt violation of A.R.S. § 32-1201.01(14), (24) and 32-1263(A) based on the findings in the consultant's report.

Second: Dr. Morrow

Vote: 7-aye, 0-nay, 0-abstained, 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 record keeping, 3 hours of hands-on diagnosis and treatment planning related to endodontics and 3 hours of hands-on implant treatment; based on the consultant's report, discussion held during the meeting and previously adopted statutory violations. The CE hours shall be in addition to the hours required for license renewal and shall be completed within twelve months.

Second: Dr. Morrow

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

2. 202200249; Janisse, Robert

Dr. Janisse was available during the Board's review of the matter. Dr. Cutler provided the Board with an overview of the case and indicated that the allegation for inadequate root canal was substantiated. The investigator found that initial access preparation for root canal fell below the standard of care by perforating both the furcation and distal aspect of tooth number 15. Dr. Janisse subsequently indicated that the restoration was not placed by him and answered the Board's questions.

Motion: Dr. Herro moved to adopt violation of A.R.S. § 32-1201.01(14), (24) and 32-1263(A) based on the findings in the consultant's report.

Second: Dr. Morrow

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

Board staff provided the Board a history of prior action.

Motion: Dr. Herro moved to offer a disciplinary consent agreement, requiring the completion of 4 hours of CE in risk management and 3 hours of hand-on CE in endodontics; based on the consultant's report, discussion held during the meeting and previously adopted statutory violations. The CE hours shall be in addition to

the hours required for license renewal and shall be completed within twelve months.

Second: Ms. Penna

The Board further inquired if the patient was provided a refund. Dr. Jannise clarified that there was no refund to give because the patient was not charged for treatment.

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

Dr. Morrow voted against the motion.

3. 202200252; Setoodeh, Abraham

Dr. Cutler indicated that the investigator found deviations for incomplete medical documents, no rubber dam isolation for root canal treatment of teeth number 21 and 22, short final fill for RCT of tooth number 22, undocumented decay for teeth 28 and 29, lack of periodontal evaluations and open margins noted on crowns for teeth number 21 and 22. The Board proceeded to discuss the deviations and concurred that there was poor clinical decision making and considered offering an agreement for a chart audit.

Motion: Dr. Herro moved to adopt violation of A.R.S. § 32-1201.01(14), (24) and 32-1263(A) based on the findings in the consultant's report.

Second: Dr. Morrow

Vote: 8-aye, 0-nay, 0-abstained, 0-recuse, 3-absent. Motion passed.

Staff informed the Board of previous action.

Motion: Dr. Herro moved to invite Dr. Setoodeh to a formal interview.

Second: Dr. Morrow

Vote: 7-aye, 1-nay, 0-abstained, 0-recuse, 3-absent. Motion passed.

4. 202200263; Miller, Abraham

Dr. Miller made a statement to express remorse for his actions and indicated he is now employed at a corporation in which he is continuously supervised and never left alone with patients or staff. Dr. Cutler proceeded to provide the Board an overview of the case in which the complainant alleges sexual misconduct with patients, current and former employees. In addition, there was a lack to maintain records. The respondent also failed to disclose that he was in therapy when renewing his license.

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. Morrow

Vote: 8-aye, 0-nay, 0-abstained, 0-recuse, 3-absent. Motion passed.

The Board entered into executive session at 9:54 a.m.

The Board returned to open session at 10:12 a.m.

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

The Board expressed concern about the inappropriate touching and advancing while in the dental chair before relationships started. The Board further discussed the inappropriate text messages and considered that Dr. Miller's actions breached the trust of patients. During discussion, the Board evaluated whether Dr. Miller is safe to practice. The Board considered offering a five year probation period, requiring a third party chaperone to be present while all patients are being treated and including a restriction to not sedate patients. In addition, to have communication with patients and staff be only through the office. The Board also considered requiring chart audits on clinical treatment and notes and having expenses paid by the licensee along with periodic assessment of board approved counseling.

Motion: Dr. Herro moved to find violation of A.R.S. § 32-1201.01(14), (24) and 32-1263(A). In addition, to direct the AAG to draft a disciplinary consent agreement including parameters for a five year probation with affiliated monitors requiring quarterly reports to be reviewed on a yearly basis. Also, to require a third party chaperone to be present while all patients are being treated. At the discretion of the Board, any changes can be made in the order. Patients being treated will not be sedated and communication between patients and staff can only be through the office. In addition, to require chart audits on clinical treatment and notes to be paid for by the licensee along with periodic assessment of board approved counseling. Once drafted, to be brought to the Board for review at the next meeting.

Second: Ms. Penna

Roll call

Herro- aye

Bienstock- aye

Dynar- aye

Goodman- abstained

Moffett- aye

Morrow- nay

Penna- nay

Seaman- aye

Vote: 5-aye, 2-nay, 1-abstained, 0-recuse, 3-absent. Motion passed.

The Board took a break from 10:35 a.m. to 10:48 a.m.

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

Mr. Goodman departed the meeting at 10:35 a.m.

5. 202200298; Woodruff, Kirk

Dr. Woodruff was available to answer questions during the Board's review of the case. Dr. Cutler indicated that there was no periodontal evaluation before and after the root canal treatment and there was no record of using rubber dam isolation based on the consultant's report. Dr. Woodruff stated that when he saw the patient he did a limited exam and indicated that did not use a rubber dam. Dr. Woodruff also indicated that he did pulp testing and elaborated on the results. Dr. Woodruff further clarified that the patient was not charged for treatment.

Motion: Dr. Herro moved to adopt violation of A.R.S. § 32-1201.01(14), (24) and 32-1263(A) based on the findings in the consultant's report.

Second: Dr. Morrow

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

Staff informed the Board that the respondent does not have any prior action.

Motion: Dr. Morrow moved to offer a disciplinary consent agreement for improper diagnosis periodontal vs endodontic and improper root canal treatment. To require 3 hours of CE in diagnosis and treatment planning, 6 hours of endo, 3 of which need to be hands-on. The CE hours shall be in addition to the hours required for license renewal and shall be completed within twelve months.

Roll call

Herro-nay

Bienstock-nay

Dynar-nay

Moffett-nay

Morrow-aye

Penna-aye

Seaman-nay

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

Motion: Dr. Herro moved to issue a non-disciplinary order, requiring the completion of 3 hours of CE in diagnosis and treatment planning in endo, 3 hours of hands-on CE in endo and 4 hours in risk management. The CE hours shall be in addition to the hours required for license renewal and shall be completed within six months. Based on the consultant's report, discussion held during the meeting and previously adopted statutory violations.

Second: Ms. Penna

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

H. Formal Interview(s)

2. 202200179; Boyse, Brent

Dr. Boyse was present during the Board's review of the case. Ms. Schachar was also present to represent Dr. Boyse in the matter. Dr. Cutler proceeded to provide the Board an overview of the case and indicated that the patient complained about the prosthesis. Ms. Schachar subsequently clarified that there was a restorative dentist involved and indicated that there was no issue with the implants.

Motion: Dr. Herro moved to dismiss the case.

Second: Dr. Morrow

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

3. 202000239; Phillips, Matthew

Dr. Phillips was available during the Board's review of the case. Ms. Schachar was also available to represent Dr. Phillips in the matter. Dr. Cutler provided the Board an overview of the case and indicated that the patient alleged inadequate implant treatment. After the final prosthesis try-in, Dr. Phillips left the practice. The subsequent dentist provided a final delivery. The investigator found that there was a lack of detailed treatment notes for the extractions, bone graft, membrane and the implant placements. Ms. Schachar subsequently addressed the allegation of inadequate records, issues with medical history and integration of implants. Ms. Schachar stated that Dr. Phillips left the practice when the complaint was received and was not made aware of the complaint until the patient was refunded. Ms. Schachar further clarified that pre-op and post-op x-rays were done, but not provided by the custodian of records. In addition, Ms. Schachar indicated that the patient's history of osteoporosis did not prevent her from treatment. Dr. Phillips proceeded to answer the Board's questions about the treatment plan and technicalities of the treatment. The Board proceeded to discuss its options to deliberate. The Board took into consideration the lack of records that were provided by the custodian of records.

Motion: Dr. Herro moved to adopt as findings of facts the information that is listed under findings of facts in the disciplinary consent agreement that was offered November 22, 2022 based on the testimony heard; particularly the lab slips that were signed by Dr. Phillips, which show that a hybrid was planned.

Second: Dr. Morrow

Roll call

Herro- aye

Bienstock- aye

Dynar- aye

Moffett- aye

Morrow- aye

Penna- aye

Seaman- aye

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

Motion: Dr. Herro moved to adopt the conclusions of law as stated on the disciplinary consent agreement that was offered November 22, 2022; based on the testimony heard and because several elements of the chart are missing.

Second: Dr. Morrow

Roll call

Herro- aye

Bienstock- aye

Dynar- aye

Moffett- aye

Morrow- aye

Penna- aye

Seaman- aye

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

Staff informed the Board that the respondent has had four prior board actions. The Board considered there was a recordkeeping issue.

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. Morrow

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

The Board entered into executive session at 12:01 p.m.

The Board returned to open session at 12:10 p.m.

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

Motion: Dr. Herro moved to issue a disciplinary order, requiring the completion of 3 hours of CE in prosthesis, 3 hours in implants and 4 hours in risk management. In addition, to require 6 months of chart audits through Affiliated Monitors, to be paid for by the licensee in reviewing recordkeeping. The CE hours shall be in addition to the hours required for license renewal and shall be completed within twelve months.

Second: Dr. Morrow

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

Later in the meeting, the Board clarified that probation is required for a chart audit.

Motion: Dr. Herro moved to amend the motion to include 12 months of probation, with the opportunity to request early release.

Second: Dr. Morrow

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

1. 202200102; McClammy, Thomas (*Herro and El-Gendy Conflicted*)

Dr. McClammy was present during the Board's review of the case. Ms. Bustos was also available to represent Dr. McClammy. Ms. Bustos proceeded to make a statement to address the allegation of the complaint and requested that the Board look at the records pertaining to the twerks. Dr. Cutler proceeded to provide the Board an overview of the case and indicated that the patient alleged inappropriate diagnosis, inappropriate referral and inappropriate surgery. The patient had a chronic infection and a referral was not given. There was a lack of detailed treatment notes and failure to document the periodontal evaluation of tooth number 5 prior to surgery. The patient lost the tooth five months post surgery due to vertical fracture diagnosis by another provider. Dr. McClammy subsequently answered the Board's questions and discussed the technicalities of the implant placement and restoration.

The Board took a break at 12:50 p.m. to 12:55 p.m. due to technical issues.

The Board proceeded to discuss the patient's pain on tooth number 8 and the documentation issues.

Motion: Dr. Morrow moved to issue a non-disciplinary order requiring the completion of 4 hours of CE in risk management based on the consultant's report and discussion held during the meeting. The CE hours shall be in addition to the hours required for license renewal and shall be completed within six months.

Second: Dr. Bienstock

Vote: 5-aye, 1-nay, 0-abstained, 1-recuse, 4-absent. Motion passed.

Ms. Moffett voted against the motion.

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

B. Review of Investigation(s)2. 202200158; DiVito, Roberto (*Herro and El-Gendy Conflicted*)

Dr. DiVito was available during the Board's review of the case. Ms. Schachar made a statement to indicate that the implant abutments were not twerked by Dr. DiVito. The issue was with the placement, size and symptoms of pain.

Motion: Dr. Morrow moved to dismiss the case.

Second: Ms. Penna

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

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

3. 202200164; DiVito, Enrico (*Herro and El-Gendy Conflicted*)

Dr. DiVito was available during the Board's review of the case. Ms. Schachar made a statement to address the alleged perforation of tooth number 7. Ms.

Schachar further stated that the endodontic treatment took place after hours and it is a known complication.

Motion: Dr. Morrow moved to issue a letter of concern for the inadequate endo.

Second: Dr. Bienstock

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

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

The Board took a break from 1:30 p.m. to 1:44 p.m.

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

B. Review of Investigation(s)

1. 202100066-AO; Endicott, Thomas

The Board discussed that the respondent is currently under an interim consent agreement to not practice and considered offering Dr. Endicott a disciplinary consent agreement for voluntary surrender of his license.

Motion: Dr. Herro moved to offer a disciplinary consent agreement for voluntary surrender of Dr. Endicott's license. If not signed within 10 days, move to a formal interview.

Second: Dr. Morrow

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

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

6. 202200310; Janbou; Matthew

Dr. Janbou was available during the Board's review of the case. Mr. Tonner made a statement and addressed the failure to detect decay on tooth number 30. Mr. Tonner further stated that the patient was reimbursed. Dr. Cutler pointed out that the root canal should have been done prior to the crown preparation due to the size of the decay. Dr. Janbou proceeded to answer the Board's questions and explained that temporaries were placed and the patient was out of pain after seeing him. Dr. Janbou acknowledged his oversight. The Board proceeded to discuss if there are violations.

Motion: Dr. Herro moved to adopt violations A.R.S. § 32-1201.01(14), (24) and 32-1264(A).

Second: Dr. Morrow

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

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

The Board proceeded to discuss that the patient was made whole and considered downgrading the Investigative Committee's recommendation to non-disciplinary action.

Motion: Dr. Herro moved to issue a non-disciplinary order, requiring the completion of 4 hours of CE in crown and bridge and 4 hours in risk management; based on the discussion held during the meeting, the findings in the consultant's report and the previously adopted statutory violations. The CE hours shall be in addition to the hours required for license renewal and shall be completed within twelve months.

Second: Dr. Morrow

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

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

Mr. Dynar departed the meeting at 1:55 p.m.

7. 202200341-MP; Tambor, David

Dr. Tambor was available during the Board's review of his case and was represented by Mr. Frisbie. Ms. Tambor made a statement and explained that the patient insisted on going with a fixed prosthesis. Dr. Cutler proceeded to provide the Board with an overview of the case. The investigator found deviations for the mini implant used in conjunction with the natural teeth was not supported as part of the fixed bridge with a cantilever, lack of detailed exam and periodontal evaluation notes, missing treatment notes for tooth number 19 extraction, no informed consent for extraction and fixed upper bridge and no implant verification x-rays were taken post mini implant placement. The Board proceeded to review the Investigative Committee's recommendation.

Motion: Dr. Herro moved to adopt violation of A.R.S. § 32-1201.01(14), (24) and 1264(A).

Second: Dr. Morrow

Vote: 6-aye, 0-nay, 0-abstained, 5-absent. Motion passed.

The Board concurred with the consultant's report and considered adding crown and bridge CE.

Motion: Dr. Herro moved to offer a disciplinary consent agreement, requiring the completion of 6 hours of CE in diagnosis and treatment planning, 6 hours in implant diagnosis and treatment planning, 4 hours in risk management and 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 twelve months.

Second: Dr. Morrow

Vote: 6-aye, 0-nay, 0-abstained, 5-absent. Motion passed.

8. 202300004; Hamdan, Maryam

Dr. Hamdan made a statement and indicated that the patient complained about a chipped tooth. Dr. Hamdan further stated that the patient requested that the crown

be handed to her. The Board discussed that the standard of care is not to hand a patient a crown. During further discussion, the Board concurred that the patient should have been refunded.

Motion: Dr. Herro moved to adopt violations of A.R.S. § 32-1201.01(14), (24) and 1264(A).

Second: Dr. Morrow

The Board further discussed the patient's request for a refund.

Motion: Dr. Herro moved to issue disciplinary action, requiring the completion of 4 hours of CE in risk management and restitution for the crown to be paid within 30 days. The CE hours shall be in addition to the hours required for license renewal and shall be completed within six months.

Second: Dr. Morrow

Roll call

Herro- aye

Bienstock-nay

Moffett-nay

Morrow- aye

Penna-nay

Seaman-aye

Vote: 3-aye, 3-nay, 0-abstained, 5-absent. Motion failed.

Motion: Ms. Penna moved to issue non-disciplinary action 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.

Ms. Penna withdrew her motion.

Motion: Ms. Penna moved to dismiss the case.

Second: Dr. Herro

Vote: 3-aye, 3-nay, 0-abstained, 5-absent. Motion failed.

Drs. Bienstock, Morrow and Seaman voted against the motion.

Motion: Ms. Moffett moved to issue a letter of concern for improper billing and coding.

Second: Dr. Bienstock

Vote: 5-aye, 1-nay, 0-abstained, 5-absent. Motion passed.

Dr. Morrow voted against the motion.

9. 202300009; Choi, Han

Dr. Choi made a statement to inform the Board that he is an associate dentist and clarified that he is not the owner of the practice. He was not informed of the

conversation between the manager and the patient. Dr. Cutler proceeded to provide the Board with an overview of the case and indicated that the patient received two black and white x-rays through the mail, which were not legible. Dr. Choi indicated that the digital copy of patient records was sent to the patient twice; however, the patient claims it was not received. The \$50 fee for patient records was an issue with the patient and Dr. Choi directed his staff to release the records free of charge. Dr. Choi further explained that he reviewed the x-rays and a treatment plan was not done for the patient. The Board discussed that a cleaning was done without perio charting and the patient was billed for a comprehensive exam that wasn't completed.

Motion: Dr. Herro moved to issue a letter of concern for incomplete chart notes.

Second: Dr. Morrow

Vote: 6-aye, 0-nay, 0-abstained, 5-absent. Motion passed.

10. 202300022, Magelsdorf, Jesse

Dr. Cutler provided the Board an overview of the case and indicated that the patient alleges not receiving the full treatment that she paid for. The investigator found that the relines and adjustments for the upper and lower removable prosthesis were not provided. The respondent attempted to pay a refund to the credit card company. The investigator also found that there was a pano and intraoral photo series missing. The Board further reviewed the records and proceeded to discuss the matter.

Motion: Dr. Herro moved to adopt the violations of A.R.S. § 32-1201.01(14), (24) and 1264(A).

Second: Dr. Morrow

Vote: 6-aye, 0-nay, 0-abstained, 5-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, 4 hours in risk management, 3 hours in periodontal diagnosis and treatment planning and restitution for the perio, adjustments, reline and 4 quadrants of SRP; 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 twelve months.

Second: Dr. Morrow

Vote: 6-aye, 0-nay, 0-abstained, 5-absent. Motion passed.

11. 202300033; Thompson, Ronald

Dr. Cutler provided the Board an overview of the case. The investigator found that the incorrect insurance code was submitted to the patient's insurance. The Board proceeded to discuss the matter.

Motion: Dr. Herro moved to adopt the statutory violations of A.R.S. § 32-1201.01(14), (24) and 32-1264(A).

Second: Dr. Morrow

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

Staff informed the Board of previous board action. The Board did not consider a chart audit to be necessary. The Board further discussed the respondents attempt to issue restitution.

Motion: Dr. Herro moved to issue a letter of concern for a billing code error.

Second: Ms. Moffett

Vote: 5-aye, 1-nay, 0-abstained, 0-recuse, 5-absent. Motion passed.

Dr. Morrow voted against the motion.

E. Review Draft Board Order(s)/Consent Agreement(s)

1. 202200260; DeAvila, Rachel

Dr. DeAvila was available during the Board's review of the case accompanied by Mr. Tonner. The Board reviewed the draft consent agreement.

Motion: Dr. Morrow moved for the Board to enter into executive session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).

Second: Ms. Penna

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

The Board entered into executive session at 2:56 p.m.

The Board returned to open session at 3:03 p.m.

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

Motion: Dr. Herro moved to accept the draft agreement as written and offered the consent agreement; to be signed within 25 days.

Second: Dr. Morrow

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

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

1. 202000306; Hossieni, Rozbeh

The case was not considered due to a lack of quorum.

2. 202100118; Koo, Bonjung “Jane”

Dr. Koo was available during the Board's review of the matter. Ms. Hay made a statement on behalf of Dr. Koo and indicated that the patient has been refunded. Ms. Hay also explained that the patient moved out of state and there was no harm to the patient. The Board proceeded to review the findings of fact which included violations of A.R.S. § 32-1201.01(14), (24) and 1264(A).

Motion: Dr. Herro moved to uphold the previous decision.

Second: Ms. Penna

The Board further reviewed the new information that was submitted.

Dr. Herro rescinded his motion.

Motion: Dr. Morrow moved to issue a non-disciplinary order, requiring the completion of 4 hours of CE in risk management and 3 hours in ethics; based on the new evidence. 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-abstained, 0-recuse, 5-absent. Motion passed.

3. 202100131; Brown Jr., Calvin

Motion: Dr. Herro moved to uphold the previous decision.

Second: Dr. Morrow

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

4. 202100133; Arora, Manu

The case was not considered due to a lack of quorum.

5. 202100246-MP; Fazel, Abbas

The case was not considered due to a lack of quorum.

6. 202200278-AO; Sheth, Rajan

Mr. Tonner requested that the case be tabled for a future meeting. The Board agreed to table the matter to the next scheduled meeting.

7. 202200135; Sheckley, Sal

Dr. Sheckley was available online to answer questions. Mr. Hayden stated that it may be a case of mistaken identity and explained that Dr. Sheckley obtained his license two weeks prior to seeing the patient for the first time. Dr. Sheckley inherited problems that were created by a prior dentist. The patient did not have issues with treatment provided with Dr. Sheckley. Mr. Hayden further referenced the consultant's report with regard to the investigator finding that both allegations against Dr. Sheckley are unsubstantiated. Dr. Sheckley proceeded to answer the Board's regulations regarding the dentures.

Motion: Dr. Herro moved to dismiss the case and rescind the offer for a disciplinary consent agreement.

Second: Dr. Morrow

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

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

1. 202300179-AO

The respondent and Mr. Tonner were available during the Board's review of the matter. Mr. Tonner indicated that the incident was timely reported by the respondent. The respondent classified the patient as an ASA-2 and explained that the patient's blood pressure went up during treatment. The respondent further answered the Board's questions pertaining to the carpule dosage. After discussion, the Board voted to not take action.

2. 202300182-AO

The Board reviewed the matter and did not consider it necessary to further investigate. As a result, the Board voted to take no action.

3. 202300212-AO

Mr. Smith made a statement on behalf of the respondent and indicated that the patient was properly monitored. After review of the matter, the Board voted to take no action.

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

1. 202300069-AO; Lamb, Derek

The case was not considered due to a lack of quorum.

J. Failure to Respond/Timely Respond to Subpoena – A.R.S. § 32-1208

1. 202300066; Christy, Han R.

Staff informed the Board that Dr. Christy's practice has moved and they have yet to receive the subpoenaed records. A change of address form has not been received from the respondent.

Motion: Dr. Herro moved to invite the respondent to a formal interview and add potential violation of failure to notify the Board of a change of practice address.

Second: Ms. Penna

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

VII. CALL TO THE PUBLIC

No one addressed the Board.

VI. RECOMMENDATION TO REPEAL AGENCY SUBSTANTIVE POLICY STATEMENTS (“SPS”)

The Board reviewed the Guideline Steering Committee’s recommendation to direct staff to collaborate with the Arizona Secretary of State’s Office to repeal all of the Board’s SPS. Mr. Edmonson informed the Board that SPS do not hold legal weight. The Board considered that moving forward, new SPS should be reviewed within a specified timeframe to determine if they are relevant and should be codified in statute or rule. During discussion, Mr. Monaghan clarified that SPS are for the Board to interpret an existing statute or rule.

Motion: Dr. Herro moved to accept the Guideline Steering Committee’s recommendation to direct staff to collaborate with the Arizona Secretary of State’s Office to repeal all of the Board’s SPS.

Second: Dr. Morrow

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

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

The Board did not have questions regarding the budget.

B. Agency Operations

There was no discussion.

C. Dental Related Legislative Bills

Mr. Edmonson informed the Board that staff is collaborating with AzDA for the next legislative session. The Board further reviewed the legislative bills.

D. Complaint Log

Mr. Edmonson informed the Board that the complaint log can be used for members to look ahead and declare a conflict with cases.

E. Attorney General's opinion regarding dental hygienists’ authority to administer Botox or perform other procedures not specifically listed in A.R.S. § 32-1281(B).

Mr. Edmonson informed the Board that the AG’s opinion is available for informational purposes and requested that the Board consider taking action at the next meeting.

F. Dental Compact

Mr. Edmonson informed the Board that nine states have adopted the dental compact.

G. Board Database Vendor for Fiscal Year 2024 and Issues Related to the New Vendor

Mr. Edmonson informed the Board that the database vendor has not met the deadline to go live four times.

H. 2024 Board Meeting Dates

1. January 26, 2024
2. March 8, 2024
3. April 19, 2024
4. May 24, 2024
5. June 21, 2024
6. August 2, 2024
7. September 6, 2024
8. October 25, 2024
9. December 6, 2024

The Board directed staff to change the May 24, 2024 meeting date.

IX. SUMMARY OF CURRENT EVENTS

None were discussed.

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

None were discussed.

XI. NEXT BOARD MEETING DATE

- A. August 18, 2023 (*virtual*)

XII. ADJOURNMENT

Dr. Herro adjourned the meeting at 4:23 p.m.