



ARIZONA STATE BOARD OF DENTAL EXAMINERS

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MEETING OF THE ARIZONA STATE BOARD OF DENTAL EXAMINERS MINUTES OF THE BOARD MEETING February 3, 2017

Board Members Present:

Gregory A. Waite, DDS, President
Robert H. Foster, DDS, Vice President
Robert B. Taylor, DDS
Darren L. Flowers, DMD
Heather N. Hardy, RDH
Marilyn J. McClain, RDH
Mr. Charles E. Jackson
Mr. Joshua Greer
Ms. Carole A. Crevier

Absent:

Howard J. Sorensen, DDS

Staff Present:

Ms. Elaine Hugunin, Executive Director
Ms. Nancy Chambers, Deputy Director
Ms. Mary DeLaat Williams, Assistant Attorney General
Ms. Terry Bialostosky, Investigations Supervisor
Ms. Sherrie Biggs, Licensure Manager
Ms. Yubeka Riddick, Program & Project Specialist

NOTICE:

Roll Call votes are recorded and provided as an attachment to these minutes pursuant to A.R.S. §32-3205 which reads "If a disciplinary action requires a vote of Board members, the health professional regulatory Board shall conduct that vote by roll call. The Board shall maintain a record of each member's vote. This section does not prohibit a Board from using a Consent Agenda."

GENERAL BUSINESS

Agenda Item No. 1 CALL TO ORDER, INTRODUCTIONS AND ANNOUNCEMENTS

Dr. Waite called the meeting to order at 8:00 a.m.

Agenda Item No. 3 PRESIDENT'S REPORT – Dr. Gregory A. Waite

- A. Western Regional Examining Board (WREB) and Dental Exam Review Board (DERB) report

Dr. Waite reported there was a discussion on statistics and data from the previous year. He stated several hours were spent discussing the pressures from outside agencies as well as the Arizona Dental Association (AZDA) to change the current examinations. He stated WREB is considering revising the examination and implementing the changes may take several years.

Agenda Item No. 4 EXECUTIVE DIRECTOR'S REPORT

Additional materials for agenda items 4Bi, 4Bii, 4Bv, 4F, 4H, 10A, and 20B were provided in the Board's materials.

A. Summary of current events that affect the Arizona State Board of Dental Examiners

No current events reported

B. Current Proposed Legislation – Review, discussion and possible action regarding current proposed legislation for the 2017 session

i. SB 1362 – Dental Board; dentists; dental hygienists

Mr. Kevin Earle, Executive Director, Arizona Dental Association (AZDA), was present and addressed the Board. He stated there is language included in this bill which would repeal the clause preventing the Board from spending more than 90% of the revenue.

Deborah S. Kappes, RDH, Arizona Hygiene Association (AHA), was present and addressed the Board. She stated the intentions of the definitions in the law are to provide clarity on something that is already in place and exists in the community. The purpose for the clarification has been about the issue of reimbursement. She said the insurance plans who are reimbursing some of these procedures had similar questions. The insurance plans were questioning was this practice getting in the way of diagnosis, or did the patient require a dental diagnosis. Ms. Kappes stated the answer has always been no, but it was not clear the way the current law is written.

The Board suggested some revisions to the language in SB 1362 which were discussed with Mr. Earle. He said he would consult with the Dental Assisting National Board (DANB) regarding the revisions and obtain a committee amendment to the bill before the bill was heard at the state Legislature.

ii. SB 1452 – Health profession regulatory boards and SB 1437 – Agencies; review; GRRC; occupational regulation

Director Hugunin stated she attended two stakeholder meetings regarding these two bills which Senator Barto was working on. SB 1452 is similar to the bill Senator Barto proposed last year which would require regulatory boards to post all non-disciplinary sanctions against licensees on their website. The Board's Dental Practice Act was amended to require sanctions be posted for five years. Based on the stakeholder meetings, the bill may not include letters of concern or advisory letters and it will include only disciplinary and non-disciplinary sanctions the Board orders after the effective date of the law. This would require the Dental Board to pay an additional programming fee to remove all non-disciplinary orders currently on the website which were imposed prior to the effective date. SB 1437 is one that Senator Barto believes will address the FTC (Federal Trade Commission) issue which places additional responsibility on the Governor's Regulatory Review Council. Director Hugunin stated that this may not be in line with the Governor's plan; however, to date, there have been no other bills dropped which address the FTC issue.

iii. SB 1123 – Lobbyist Restriction – State contract lobbyists; prohibition

Director Hugunin stated this places in law last year's Executive Order which precludes agencies to contract with lobbyists. Director Hugunin stated staff certainly has experienced the loss of Mr. Goodman.

iv. HB 2307 – Controlled substances prescription monitoring program

Director Hugunin stated last year the Pharmacy Board passed a bill which required regulatory Boards to notify licensees about the Controlled Substance Prescription Monitoring Program (CSPMP) and collect information that the Board did not previously collect; however, changes were made to comply with the law that passed. HB 2307 makes modifications to last year's bill and still requires the Board to notify licensees; however, it would not require the Board to collect the information as requested last year. There are seven bills moving their way through the legislature related to the CSPMP.

v. HB 2372 – Public Benefits; fee waivers; requirements

Director Hugunin stated this addresses fee waivers for applicants for an initial license for an applicant whose family income does not exceed two hundred percent of the federal poverty guidelines. Board staff believed some recent graduates may qualify for this and is not sure how this information would be verified.

Ms. Chambers addressed the Board and stated she spoke with the analyst from the Office of Strategic Planning and Budgeting (OSPB). The bill should have only included new graduates. The law is currently written to include anyone who falls below 200 percent of the poverty level. The law is currently written for all licensees who are eligible for the fee waiver. Research was conducted by OSPB and the waiver would affect 24 percent of the Board's revenue.

Mr. Earle stated HB 2372 passed the health committee with very little discussion about the licensing impacts. Mr. Earle stated the Governor's goal was to assist someone who is working themselves out of poverty, this would make them exempt from initial licensing fees. He stated he does not believe the intention was to grant exemptions to current licensees from in state and who currently have an active license. Mr. Earle said he believes it would be beneficial to work with the lobbyist to draft an amendment to the current bill to clarify the bill.

C. Appointment of a Board member to WREB and Dental Exam Review Board

Director Hugunin stated that the Board needs to elect a WREB Dental Examiner Review Board representative. She said typically the Board president is the representative, and Dr. Waite did attend the most recent meeting and would provide a brief report.

Upon Motion by Dr. Taylor, second by Ms. Crevier the Board voted to APPOINT Dr. Waite as the WREB and DERB representative. MOTION PASSED UNANIMOUSLY.

D. Review, discussion and possible approval for the Executive Director to attend the midyear AADB and AADA meeting, and the Board President to attend the midyear AADB meeting in Chicago, IL., April 23 – 24, 2017

Upon Motion by Dr. Taylor, second by Ms. Hardy the Board voted to APPROVE the Executive Director and Board President to attend the midyear AADB and AADA meeting in Chicago, IL. MOTION PASSED UNANIMOUSLY.

E. Review, discussion and possible action on informal meeting held on January 11, 2017 regarding fee reductions and reduction of reserve funds.

Director Hugunin stated that the Board was in receipt of a detailed memo from Board staff as a follow-up to the information meeting held on January 11, 2017. This memo was also

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provided to Mr. Earle and Ms. Kappes. The Board will continue to decrease its surplus each fiscal year based on recent reductions as well as an increase to its appropriation if approved for special projects. The pros and cons of various options for reducing the reserve fund were discussed at the meeting. The Committee requested Board staff to project the impact of a "moratorium or waiver" on renewal fees for a three-year cycle. Board staff was also requested to detail a future project list and the estimated costs associated with this. The memo reflects the current reserve fund can sustain a fee waiver for a three-year cycle and would be an expeditious manner in which to do this; however, there are many unknowns at this time and the Board must be cognizant of these. Most critical are the unknown costs of relocating the office as well as the potential fee waiver in HB 2372 for initial licensing applicants which most likely will include a high percentage of the dental and hygiene graduates.

Mr. Earle stated he realizes that there are specific needs the Board has that require an investment and AZDA supports the unknowns the Board is currently faced with. Mr. Earle stated AZDA suggested a fee waiver for licensees who paid fees in 2017; their fees would be waived in 2018, 2019, and 2020. He stated even with the fee waiver, 2.9 million dollars would still remain in the Dental Board fund.

- F. Executive Order 2017-02 – Internal Review of Administrative Rules; Moratorium to Promote Job Creation and Customer Service Oriented Agencies

Director Hugunin stated in the Board's material there's a copy of Governor Ducey's latest Executive Order related to the moratorium on rule making and each agency's requirement to review its administrative rules with comments from stakeholders and provide a report to the Governor by September 1, 2017.

- G. Kenton B. Covington, DDS – Review, discussion and possible action, including possible summary suspension and/or interim order for substance abuse evaluation, regarding ability to safely practice and violation of confidential stipulated rehabilitation agreement

No action taken

- H. Review and discussion regarding the Executive Director Complaint Terminations. Pursuant to A.R.S. § 32-1263.03(C), the Executive Director has provided a list of each complaint terminated under A.R.S. § 32-1263.03(A) to the Board. The list of complaints is confidential pursuant to A.R.S. § 32-1207(A)(3). The Board may vote to go into Executive Session on this agenda item, pursuant to A.R.S. § 38-431.03(A)(2), to discuss and consider records exempt by law from public inspection, including the receipt and discussion of information or testimony that is confidential by State or Federal law.

The list of each complaint terminated was in the additional information as stated under Agenda Item 4.

Agenda Item No. 2 PUBLIC COMMENT ON CASES

Complainant JH was present and spoke about case no. 201600142 (Agenda Item 13C)

Complainant DM was present and spoke about case no. 201600129-ED (Agenda Item 20A)

Agenda Item No. 5 ASSISTANT ATTORNEY GENERAL'S REPORT – Mary DeLaat Williams, Assistant Attorney General

- A. Administrative Appeals
 - i. Dr. Michael Wassef v. ASBDE (Case No. 201400061) (Maricopa County Superior Court Case LC2014-000547-001) – Status update

Ms. Williams stated on December 15, 2016 the Board received the Court of Appeals decision in the case for Dr. Wassef. The court ruled to uphold the Board's Order. Ms. Williams stated there has been a motion filed with the Court, in consultation with Director Hugunin, to publish this case. This will allow the case to be cited as case law regarding Interim Orders not being subject to a challenge. She said Arizona doesn't currently have any case law on Interim Board Orders. She stated Dr. Wassef's license has been suspended until Dr. Wassef complies with the Interim Board Order.

Agenda Item No. 6 PERSONNEL ISSUES

- A. VACANT

Agenda Item No. 7 COMMITTEE REPORTS

- A. Dental Hygiene Selection Committee – Heather N. Hardy, RDH
 - i. Review, discussion and possible action regarding the 2016 Dental Hygiene Continuing Education Audits. Upon recommendation from the Dental Hygiene Committee, the Board may consider approval of the CE Audit responses from the following:
 - a. Megan Jones, RDH
 - b. Adrian Joy Wilson, RDH

Upon MOTION by Ms. Hardy, second by Ms. McClain, the Board voted to APPROVE the CE Audit responses from Ms. Jones, and Ms. Wilson. MOTION PASSED UNANIMOUSLY.

- B. Continuing Education Audit for Dentists Committee – Dr. Robert Foster
 - i. Review, discussion and possible action regarding the 2016 Dental Continuing Education Audits. Upon recommendation from the Continuing Education Audit for Dentists Committee, the Board may consider approval of the CE Audit responses from the following:
 - a. Dr. James Arnold Jerman

Upon MOTION by Dr. Foster, second by Ms. Hardy, the Board voted to APPROVE the CE Audit response from Dr. Jerman. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 8 REQUEST FOR ACTION ON LICENSURE

The Board will review, discuss and take action on the following applications.

- A. Dr. Andre Dariush Zargar – Disclosure of misdemeanor theft conviction, and felony convictions for aggravated assault and solicitation to commit kidnapping.

Dr. Zargar was present to answer questions from the Board.

Mr. Jackson asked Dr. Zargar about the counseling he obtained. Dr. Zargar stated he was court ordered to attend counseling and also sought counseling voluntarily in 2015. Mr. Jackson stated he had concerns for the safety of the public. Mr. Jackson stated Dr. Zargar's risky behavior still remains an issue. Mr. Jackson asked Dr. Zargar if he would be willing to undergo a substance abuse evaluation from Dr. Sucher to determine if his substance abuse issues had been resolved. Dr. Zargar stated he had a consultation with Dr. Sucher scheduled for February 13, 2017 dependent on today's meeting. Mr. Jackson stated there were multiple issues in Dr. Zargar's application he had concerns with.

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Dr. Foster questioned Dr. Zargar regarding the charge for solicitation to commit kidnapping. Dr. Zargar stated he was young when this incident occurred and it was a mistake he made in his past. He stated during this time, alcohol was a big factor in his life, but since that time he has made steps to change and improve.

Ms. Crevier asked Dr. Zargar if he presently consumed alcohol. Dr. Zargar stated he does consume a glass of wine occasionally with his family, but does not feel as though alcohol is a problem for him.

Upon Motion by Dr. Waite, second by Ms. McClain the Board voted to GRANT licensure to Dr. Zargar. Ms. Crevier, Dr. Flowers, Mr. Jackson, and Dr. Foster OPPOSED. Dr. Taylor RECUSED. MOTION FAILED.

Upon Motion by Mr. Jackson, second by Ms. Crevier the Board voted that Dr. Zargar undergo an evaluation from Dr. Sucher. If Dr. Zargar passes the evaluation, Executive Director Hugunin has the authority to grant licensure to Dr. Zargar. Ms. McClain, Mr. Greer OPPOSED. MOTION PASSED.

- B. Dr. Scott Lewis Siegel – Voluntary Surrender of DEA License & Disclosure of Malpractice Claim

Dr. Siegel was present to answer questions from the Board.

Upon Motion by Mr. Greer, second by Ms. Hardy the Board voted to GRANT licensure to Dr. Siegel. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 9 REQUEST FOR ACTION ON APPLICATION (S) FOR RENEWAL OF LICENSE

The Board will review, discuss and take action on the following renewal applications:

- A. VACANT

ACTION ON CASES

Agenda Item No. 10 ACTION ON PREVIOUS ACTION

Agenda Item No. 10A – CASE NO. 201600113-MP – Dr. James R. Chaffin

At the December 2, 2016 Board meeting, this case was pulled from the Board's consent agenda for further discussion. The Board moved to table the proposed consent agreement pending further investigation of an added allegation of inadequate endodontics. The case was reviewed again and a report and summary was written for the additional allegation. The licensee responded to the report and summary, all of which has been provided to the Board. Based on the additional review, the Internal Investigative Review Committee is recommending the Board consider approving an amended non-disciplinary consent agreement to include 4 hours of Risk Management. Dr. Chaffin agreed to the amended consent agreement.

Dr. Waite stated he did not agree with the amended consent agreement. Based on the x-rays for the crown and bridge performed, every margin was open. He said the patient ended up losing all of those teeth. Dr. Waite stated the endodontics were very poor and inadequate and believes this case rises to the level of unprofessional conduct. Dr. Foster said he agreed with Dr. Waite.

Jeffrey Tonner, attorney for Dr. Chaffin, was present and addressed the Board. He stated he wasn't sure which crown and bridge x-rays the Board reviewed because the x-rays do not appear to show open margins. Mr. Tonner stated it should be noted the patient's teeth had recurrent decay. Mr. Tonner stated he was disappointed it wasn't mentioned that two of the endodontic procedures performed were

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emergencies. The endodontics had radiolucency's on teeth nos. 9 and 11 and Dr. Chaffin referred the patient to a specialist who stated the teeth were non-restorable.

Upon MOTION by Dr. Waite, second by Dr. Taylor the Board voted to AMEND the non-disciplinary consent agreement to a disciplinary consent agreement with 12 hours CE in hands on crown and bridge in a dental school setting, 12 hours of CE in hands on endodontics in a dental school setting, and four hours of risk management. If Dr. Chaffin refused the consent agreement he would be invited for a Formal Interview. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 11A PETITION TO REHEAR – CASE NO. 201500190 – Dr. Sathish Bhadra Chari

Dr. Taylor reviewed the case. He stated this case was presented to the Board in October of 2016 for a Formal Interview. He stated in the patient's record there was a cephalogram which was completed by an outsourcing agency. Dr. Taylor stated he didn't see anywhere in the patient's record where Dr. Chari made a diagnosis. No comments were written in the records. Instead he relied on the outsourcing. Dr. Taylor stated after 15 months of active orthodontics the patient terminated treatment with Dr. Chari. Dr. Taylor stated the crown and bridge was over prepped, the crowns were placed on active decay. Dr. Taylor stated this case rises to the level of unprofessional conduct.

Jeffrey Tonner, attorney for Dr. Chari, was present and addressed the Board. He stated the sanctions in this case must have a relationship with the findings of fact. Mr. Tonner stated regarding the orthodontics when you look at the findings of fact there are two issues; record keeping which Dr. Chari agrees with and didn't challenge. The second issue was sequencing which basically started at the beginning of the orthodontic treatment before the restorative work was done. Mr. Tonner stated Dr. Chari has never had an orthodontic case upheld against him before the Board. He stated the only finding of fact the Board recognized was sequencing and he didn't understand why sequencing for a first time offender would have 12 hours of orthodontic hands on training in a dental school setting. He stated if that were the only issue before the Board, it would only be three or four standard hours of continuing education. Mr. Tonner stated Dr. Chari has two prior cases of crown and bridge with open margins and this is not an open margin case. He stated Dr. Kelly who is an expert witness in the civil case, stated this was not a case of open margins. The finding of fact the Board had talked about was the bite relationship. Mr. Tonner stated this case in his opinion was an occlusal case that has nothing to do with the prior cases. He stated the continuing education should be for bite relationship and occlusion. He stated the crown and bridge restriction should be waived.

Dr. Taylor stated the bitewing x-ray for tooth no. 14 taken on February 24, 2014, and tooth no. 14 definitely had open margins. He stated tooth number 11 had open margins. He stated in the panoramic x-ray there is excessive cement on the crowns on tooth nos. 20 and 21. Dr. Taylor stated Dr. Chari's priors have been noted, and this was the reason for the 36 hours of hands on continuing education which will include the occlusal hands on training.

Dr. Foster stated he had concerns after reviewing the x-rays and saw that partial arch wires were in place. Arch wires left on too long will change the occlusion.

Upon Motion by Dr. Taylor, second by Ms. McClain the Board voted to DENY the Petition to Rehear. MOTION PASSED UNANIMOUSLY.

CONSENT AGENDA

The following items were pulled from the Consent Agenda either at the request of a Board Member or by the public. These items will be discussed individually:

Cases pulled from the Consent Agenda:

Agenda Item No.	13A	Case No. 201600137	Dr. Gary Michael Gwilt
Agenda Item No.	15D	Case No. 201600183	Dr. Nicholas P. Heiner

Agenda Item No. 15F Case No. 201600123 Dr. Michael D. Margolis
 Agenda Item No. 20A Case No. 201600129-ED Dr. Matthew David Phillips

Cases ADJUDICATED:

**Agenda Item No. 12 CASES RECOMMENDED FOR DISCIPLINARY CONSENT AGREEMENTS
 CONSENT AGENDA**

Item No.	Case No.	Licensee	Comments
A.	VACANT		

**Agenda Item No. 13 CASES RECOMMENDED FOR NON-DISCIPLINARY CONTINUING
 EDUCATION CONSENT AGREEMENTS
 CONSENT AGENDA**

Upon MOTION by Dr. Foster, second by Dr. Taylor, the Board voted to ISSUE a Non-Disciplinary Continuing Education Consent Agreement on the following cases on the Consent Agenda. MOTION PASSED UNANIMOUSLY.

Item No.	Case No.	Licensee	Comments
B.	201600141	Dr. Gabriel T. Woodruff	3 hours of CE in occlusion
C.	201600142	Dr. Carter A. Grampp	6 hours of CE in record keeping, 4 hours of CE in risk management
D.	201600143	Dr. Kyle Ryan Cordner	3 hours of CE in record keeping
E.	201600149	Dr. Manpreet S. Badyal	3 hours of CE in orthodontic record keeping
F.	201600158	Dr. Lowell Frank Arbuckle	6 hours of CE in treatment planning in restoration of implants, 3 hours of CE in record keeping

**Agenda Item No. 14 CASES RECOMMENDED FOR ISSUANCE OF LETTER OF CONCERN
 CONSENT AGENDA**

Upon MOTION by Dr. Foster, second by Dr. Taylor, the Board voted to ISSUE a Letter of Concern on the following cases on the Consent Agenda. MOTION PASSED UNANIMOUSLY.

Item No.	Case No.	Licensee	Comments
A.	201600128-MP	Dr. Henry Joe Tagle III	"Dr. Tagle should timely refer patients when complications occur."
B.	201600156	Dr. Joseph Marion Allred	"Dr. Allred should thoroughly document conversations with the patient related to the treatment."

**Agenda Item No. 15 CASES RECOMMENDED FOR TERMINATION
 CONSENT AGENDA**

Upon MOTION by Dr. Foster, second by Dr. Taylor, the Board voted to TERMINATE the following cases on the Consent Agenda. MOTION PASSED UNANIMOUSLY.

Item No.	Case No.	Licensee	Comments
A.	201600150	Dr. Erik M. Unger	Terminate per patient
B.	201600162	Dr. Grace Ji Yeon Park Lee	Terminate per patient
C.	201600165	Dr. Joseph R. Bentley	Terminate per patient
E.	201600184	Dr. Daniel Cole Sluyk	Terminate per patient

**Agenda Item No. 16 CASES RECOMMENDED FOR DISMISSAL
 CONSENT AGENDA**

Item No.	Case No.	Licensee	Comments
A.	VACANT		

**Agenda Item No. 17 MALPRACTICE AND ADVERSE OCCURRENCE REPORTS, AND
 DISCIPLINARY ACTION IN ANOTHER STATE
 CONSENT AGENDA**

- A. Dr. Long K. Bui – Malpractice – Took no action

Upon MOTION by Ms. Crevier, second by Dr. Taylor, the Board voted to ACCEPT the recommendation to take no action on agenda item 17A. MOTION PASSED UNANIMOUSLY.

**Agenda Item No. 17.1 CASES RECOMMENDED FOR APPROVAL OF CONTINUING EDUCATION
 AUDIT AND ISSUANCE OF LETTER OF CONCERN
 CONSENT AGENDA – Roll Call Vote *is required if case is pulled***

Upon MOTION by Dr. Taylor, second by Ms. Hardy, the Board voted to APPROVE issuance of letter of concern. MOTION PASSED UNANIMOUSLY.

Item No.	Case No.	Licensee	Comments
A.	201600185	Dr. Robert Joseph Benzell	“Dr. Benzell should be aware of the definition of “Recognized Continuing Dental Education.”
B.	201600188	Jennifer L. Nielsen, RDH	“Ms. Nielsen should be aware of the Board’s continuing education renewal requirements.”

**Agenda Item No. 18 APPROVAL OF CONSULTANTS AND EXAMINERS
 CONSENT AGENDA**

- A. Dr. Matthew B. Kahn – Dental Consultant

Upon MOTION by Ms. Crevier, second by Dr. Taylor, the Board voted to APPROVE Dr. Kahn as a Dental Consultant. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 19 APPROVAL OF MINUTES
CONSENT AGENDA

- A. December 2, 2016 – Board Meeting Minutes
- B. December 2, 2016 – Board Meeting Executive Session Minutes

Upon MOTION by Dr. Taylor, second by Mr. Greer, the Board voted to APPROVE the December 2, 2016 Board Meeting Minutes, and the December 2, 2016, Board Meeting Executive Session Minutes. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 20 REVIEW OF EXECUTIVE DIRECTOR TERMINATIONS
CONSENT AGENDA

Upon MOTION by Dr. Taylor, second by Crevier, the Board voted to APPROVE the following appealed Executive Directors Terminations on the Consent Agenda. MOTION PASSED UNANIMOUSLY.

Item No.	Case No.	Licensee	Comments
B.	201600130-ED	Dr. Salvatore F. Perna	
C.	VACANT		
D.	201600176-ED	Dr. Michael A. Prost	

*****END OF CONSENT AGENDA*****

Agenda Item No. 22. FORMAL INTERVIEW CASES

Item No.	Case No.	Licensee	Comments
A.	VACANT		

CASES PULLED FROM CONSENT AGENDA

Agenda Item No. 13A Case No. 201600137
Dr. Gary Michael Gwilt

This case was pulled by Dr. Flowers to RECUSE.

Upon MOTION by Dr. Foster, second by Mr. Greer the Board voted to APPROVE case no. 201600137 for a non-disciplinary consent agreement. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 15D Case No. 201600183
Dr. Nicholas P. Heiner

The case was pulled by Dr. Waite for endodontic issues. He stated his concern was the broken file left in the tooth eventually caused the patient to lose the tooth. He stated had the issue been addressed at the time of initial treatment, and the patient sent to an endodontist, the problem could have been resolved. He said he does not feel that the case should be terminated. He believed the case should be looked at for inadequate endodontics based on the fact that the patient ended up losing the tooth from the work that was performed.

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Ms. McLellan, attorney for Dr. Heiner, was present and addressed the Board. She stated it has always been the Board's precedent and procedure, when a doctor and a patient come to a resolution and ask the Board to withdraw the complaint, the Board would honor that request from the patient. Ms. McLellan stated there was a settlement in 2016 regarding the treatment. The settlement paid for the past care as well as the future care needed for the patient.

Dr. Waite stated patients have the right to terminate a complaint. He stated as a Board, it has an obligation, regardless if the doctor and patient settle their dispute, to protect the public. When the Board is made aware a patient has been harmed, it is the responsibility of the Board to look into the allegations.

Ms. McLellan stated the endodontist gave the option for retreat of the patient and the patient chose the other option of extraction and have an implant placed. She stated the endodontist was willing to retreat, or perform an apical because the file is located at the very end of the apex. She stated other dentists have also chosen to leave a file at the end of the apex and they feel as though it is sealed. Dr. Waite asked Ms. McLellan why Dr. Heiner didn't record this in the patient's record. She stated this occurred in 2011, and she didn't know if it was because Dr. Heiner had only been licensed for two years. She stated she discussed with Dr. Heiner about what he does when he performs an examination on a patient and what is charted, and a discussion took place on what needed to be charted in patient's records and she ensured he understands what is needed for the records. Dr. Waite asked if any other Board member had an issue with this case. Dr. Taylor asked if the records had an informed consent and Ms. McLellan said yes there was.

Upon MOTION by Dr. Waite, second by Ms. McClain the Board voted to TERMINATE per patient letter case no. 201600183. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 15F

Case No. 201600123

Dr. Michael D. Margolis

The case was pulled by Dr. Waite who stated the patient in this case was harmed by the work performed by Dr. Margolis. Dr. Waite stated this case was egregious and regardless of the fact that the patient and doctor reached an agreement to terminate the case, Dr. Margolis practiced outside the standard of care in this case and the patient was truly harmed.

Mr. David Williams, attorney for Dr. Margolis, was present and addressed the Board. He stated Dr. Margolis settled with the patient for \$25,000.00. Mr. Williams stated this case has been an eye opening experience for Dr. Margolis and breaks down into two issues. One is the cavitation work and Dr. Margolis has been before the Board on this issue before. He said there was a lengthy discussion in a previous Formal Interview regarding cavitation work. Mr. Williams stated the patient sought treatment from Dr. Margolis, and that she was fully informed, and appreciated the risks associated with cavitation work. He said the patient signed numerous informed consent documents and Dr. Margolis went through an extensive process with the patient to ensure he understood what the patient wanted and confirmed that in the records. Mr. Williams stated the second issue was with the implant placement and Dr. Margolis recognized there were some issues with respect to this, which is why he was willing to pay restitution. Mr. Williams stated Dr. Margolis has spent over \$30,000.00 and has taken over 70 hours of continuing education in advanced implant dentistry.

Dr. Waite stated Dr. Margolis is practicing outside of the scope of dentistry. He said this patient presented to Dr. Margolis with no complaints of pain. There was no diagnosis for the crowns placed on teeth numbers two and three, other than the gingiva was discolored. There were four healthy non-pathologic teeth extracted, teeth nos. 14, 15, 18 and 19 with no diagnosis given. Dr. Waite stated Dr. Margolis did not give a reason for the extractions. The patient wasn't having any problems with these teeth, which then resulted in the patient having problems with the implants. Dr. Waite stated regardless of what the patient signed, Dr. Margolis performed dentistry that should not have been done.

Upon MOTION by Dr. Waite, second by Mr. Greer the Board voted to INVITE Dr. Margolis for a Formal Interview. If Dr. Margolis declines the Formal Interview this case will be forward to a Formal Hearing. Dr. Taylor RECUSED. MOTION PASSED.

Agenda Item No. 20A **Case No. 201600129-ED**
Dr. Matthew David Phillips

The case was pulled by Dr. Waite for endodontic issues. In the treatment records and after viewing the x-ray, tooth number 18 was extracted and it shows all of the gutta percha cones that were coming out of the side of the root. Dr. Waite stated Dr. Phillips makes no note in his records that the root had been perforated. Dr. Phillips continued treatment and prepared the tooth for a crown on a tooth which could not be saved. Dr. Waite stated Dr. Phillips did not recognize the inadequate endodontics and still proceeded with treatment.

The case was also pulled by Mr. Jackson who asked Dr. Phillips if there were gaps in the patient's records. Mr. Greer stated the case appeared to be a risk management issue. There were no records showing Dr. Phillips called the patient to discuss the tooth extraction.

Dr. Phillips was present and addressed the Board. He stated this was a two-step procedure. The patient presented for treatment, and Dr. Phillips advised the patient he did not feel as though the tooth was restorable. Dr. Phillips stated this procedure occurred after normal business hours. He informed the patient the tooth should be extracted; however, the patient was insistent he prepare the tooth for a crown. Dr. Phillips stated he viewed the x-ray the next day, and realized the tooth was not savable and needed to be extracted. Dr. Phillips stated the patient presented to another dentist to have the tooth extracted and then contacted him to make him aware of this.

Christopher J. Smith, attorney for Dr. Phillips, was present and addressed the Board. He stated the issue with this patient was that she returned to the dental school, and was given an option to extract the tooth and he believed that option was given by Dr. Phillips. Dr. Waite stated there was no record of Dr. Phillips contacting the patient and informing the patient a tooth extraction was necessary in the patient's dental records.

Upon MOTION by Dr. Waite, second by Dr. Taylor, the Board voted to ISSUE a non-disciplinary consent agreement for 3 hours of record keeping and 6 hours of endodontics, if he refused Dr. Phillips will be invited for a Formal Interview. Mr. Jackson OPPOSED. MOTION PASSED.

FORMAL INTERVIEW

Agenda Item No. 21A **Case No. 201600125**
Dr. Robert C. Bingham

Dr. Bingham was sworn in by the court reporter. Dina Anagnopoulos, attorney for Dr. Bingham was present and addressed the Board.

Dr. Foster was the lead Board Member.

On August 1, 2015 the Board received a complaint against Dr. Bingham for inadequate crowns, inadequate bridge, and inadequate informed consent. Dr. Bingham signed a proposed consent agreement for six hours of continuing education in crown and bridge. The proposed consent agreement was on the December 2, 2016 Board meeting consent agenda. The case was pulled for further discussion. The Board voted to amend Dr. Bingham's disciplinary consent agreement to 12 hours of continuing education in crown and bridge, hands on in a dental school setting, and six hours of record keeping. If Dr. Bingham did not agree he would be invited for a Formal Interview. Dr. Bingham elected to appear in front of the Board for a Formal Interview.

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Dr. Bingham attended Howard University in Washington, DC and graduated in 2004. Dr. Bingham moved to Arizona and began practicing dentistry in 2006.

Dr. Foster questioned Dr. Bingham about a new technique called a margin elevation technique. Dr. Bingham stated there is a portion of the margin that is subgingival and in order to keep the subgingiva healthy, restorative material can be used to elevate the margin in that particular area. Dr. Bingham stated he received the training for this technique in Los Angeles, California from Dr. Jose Ruiz from the Los Angeles Institute of Aesthetic Dentistry. He stated there are also published articles regarding this technique he uses. Dr. Foster asked Dr. Bingham what material was placed on tooth number 13. Dr. Bingham stated it was flowable composite resins. Dr. Foster stated tooth number 11 appeared to have a filling underneath the crown. Dr. Bingham stated the patient presented with a restoration on the cervical and root surface of the tooth, it was subgingival, close to the crest of the bone. He stated it was defective further down on the root surface, the filling itself. Dr. Foster stated there was a space between the filling material and the tooth itself and asked Dr. Bingham if he was able to see that for himself and Dr. Bingham agreed he did. Dr. Foster asked Dr. Bingham about an x-ray regarding tooth number 12 taken on March 16, 2015. Dr. Foster stated the implant appeared to penetrate on the tooth from the mesial. Dr. Bingham said he did an examination of the implant and removed it. He stated the implant was overlapping and close to the periodontal ligament. He stated he did not place the implant originally, he removed it. Dr. Foster stated he looked for the records for the removal of the implant and he couldn't find it in the record. Dr. Bingham stated he did neglect to document it in the record. Dr. Foster asked Dr. Bingham if a full mouth x-rays were taken of the patient. Dr. Bingham stated yes there were full mouth x-rays taken. Dr. Foster stated he did not see any full mouth x-rays in the record. Dr. Foster asked Dr. Bingham if the patient had to leave town during the treatment. Dr. Bingham stated the patient accepted a limited treatment plan. The following day, the patient changed the treatment plan, because of costs and time constraints. The patient informed Dr. Bingham she would need to leave town ten days after beginning the treatment.

Dr. Waite stated to Dr. Bingham that it was prudent to ensure when cementing a bridge on five teeth that all of the teeth were in healthy condition. Dr. Waite asked Dr. Bingham if tooth number 11 was a good sound tooth. Dr. Bingham agreed with Dr. Waite that tooth no. 11 was not a healthy sound tooth. Dr. Waite stated he does not believe there are any dental schools teaching the margin elevation technique which would allow a bridge to be cemented on filling material rather than sound tooth structure.

Dr. Taylor questioned Dr. Bingham on tooth no. 11. He asked if there was decay on the distal, after the bridge was cemented. Dr. Bingham stated he saw at the base of the restoration cementum a radiolucency, and the distal had the margin of the bridge ending on composite resin.

Dr. Flowers asked Dr. Bingham if he charged the patient for a buildup for tooth number 13. Dr. Bingham stated he did not. Dr. Flowers stated he did not see in the records any mention that a flowable composite was placed, or decay was removed on tooth number 13. Dr. Flowers asked Dr. Bingham if he completed a flowable composite and remove decay on tooth 13, Dr. Bingham stated he did.

Ms. Anagnopoulos stated a treatment plan was signed by the patient, the risks and benefits were explained. She stated after the treatment had begun, the patient informed Dr. Bingham she didn't want implants due to the healing time. The patient informed Dr. Bingham she would be leaving town and would need her treatment completed in a short amount of time. This was not an ideal situation for Dr. Bingham. The patient presented for treatment to a dentist in California who refused to treat the patient. The patient returned to Arizona for a weekend and had Dr. Bingham complete the treatment. A year later, the patient presented to her treating dentist who informed the patient there was problems with the bridge work Dr. Bingham had completed. Ms. Anagnopoulos stated Dr. Bingham offered to repair the bridge at his expense and the patient refused. Ms. Anagnopoulos stated Dr. Bingham did omit a few things in the patient's record which should have been recorded. Ms. Anagnopoulos stated in May 2016, Dr. Bingham did complete continuing education in record keeping and believes 12 hours of continuing education in crown and bridge is excessive. She stated Dr. Bingham received 14 hours of hands on training for the margin elevation technique which is within the standard of care. She stated the standard of care is

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changing regarding this technique, there have been articles written and other dentists are practicing this technique. Ms. Anagnopoulos stated there was no harm to the patient, and Dr. Bingham was willing to bring the patient back to remedy the complaints the patient had, but the patient refused.

Upon MOTION by Dr. Foster, second by Mr. Greer, the Board voted to FIND unprofessional conduct based on A. R. S. §32-1201.01(24), A. R. S. §32-1264(A). MOTION PASSED UNANIMOUSLY.

Board staff reported four priors.

Dr. Foster stated the work fell below the standard of care. The Board discussed Dr. Bingham's continuing education in record keeping. In May 2016 he took three hours of record keeping. Ms. McClain stated four hours of continuing education in risk management would be more appropriate instead of continuing education in record keeping.

Upon MOTION by Dr. Foster, second Ms. McClain, the Board voted to ISSUE a disciplinary consent agreement for 18 hours of crown and bridge hands on training in a dental school setting and four hours of risk management with six months to complete. MOTION PASSED UNANIMOUSLY.

Agenda Item No. 21B

Case No. 201600140

Dr. Wayne O. Baldon

Dr. Baldon was not present to address the Board.

The Internal Investigative Review Committee's October 21, 2016 Board memo stated the reason this case was opened was a result of Dr. Baldon's non-compliance with a Board Order. The memo documents the numerous courtesy attempts Board staff made to contact him. The last communication was to inform Dr. Baldon that if he failed to comply he would be invited for a Formal Interview before the full Board. Dr. Baldon has so been noticed. Since he has not appeared, the Board can consider dismissing the case or move to refer it to a formal hearing.

Director Hugunin stated several attempts via telephone were made to contact Dr. Baldon. She stated mail to Dr. Baldon was sent certified mail as well as regular delivery. The regular mail was not returned to the Board.

Upon MOTION by Dr. Waite, second by Mr. Greer, the Board voted to MOVE this case to a Formal Hearing. MOTION PASSED UNANIMOUSLY.

CALL TO THE PUBLIC

Consideration of comments from the public. Those wishing to address the Board need not request permission in advance. The Board may ask staff to review a matter or may ask that a matter be put on a future agenda. The Board shall not discuss or take action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action. A.R.S. § 38-431.01(H).

23. MEMBERS OF THE PUBLIC

24. FUTURE AGENDA ITEMS

25. NEXT MEETING DATE – March 31, 2017

26. ADJOURNMENT

Upon MOTION by Dr. Waite, second by Dr. Taylor, the Board voted to ADJOURN the Board meeting. MOTION PASSED UNANIMOUSLY.

Dr. Waite adjourned the meeting at 11:08 am.

Elaine Hugunin, Executive Director