

**Board of Dental Examiners Meeting
Board Meeting Minutes
February 19, 2010**

The meeting convened at 8:53 a.m.

Board Members Present: Drs. Denise Theriault, Philip Higgins, Jr., Jerrold Cohen, David Moyer and Charles Zois; Ms. Susanne LaVallee, RDH; Ms. Darlene Collins-Harden, RDH; Ms. Diane Denk, Public Member and Mr. William Buxton, LD

Also Present: Kelly Richardson, LD; John Bastey, Maine Dental Association; Michelle Gallant, RDH; Bonnie Vaughan, IPDH; Robert Erickson, DMD; Frances Miliano, Maine Dental Association; Jay Wietecha, DMD, AGD President; James Sparaga, DMD; Vance Wormwood, Maine Association of Nurse Anesthetists; Robert Palermo, LD; Daniel Walker, Esquire; Paul Levasseur, Maine Association of Denturists; Praveen Pavuluru, DMD; Daniel Steinke, DDS; John Merrill, LD; Gareth Coward, LD; Julie Coward; David Wicks, DDS; Thomas Nolan, Maine Association of Nurse Anesthetists; Pamela Gilbert, RDH; Ted Morgan, DDS; Nicole Breton, Maine CDC, Oral Health Program; Gordon Smith, Esquire, Maine Medical Association; John Murray, Medical Professionals Health Program; Dr. Margaret Palmer, Medical Professionals Health Program; Cathy Stratton, Medical Professionals Health Program; Bernadette Kozak, RDH; Thomas Gadziala, DDS; Peter Vayanos, DMD; Abhay Ektare, DDS; Lynn Warner; Chris Mann, AAG, and Teneale Johnson

Interviews for IPDH Licensure: The Dental Hygiene Subcommittee members joined the Board meeting for the following two interviews.

Bernadette Kozak, RDH
Pamela Gilbert, RDH

Dental Hygiene Subcommittee Update: Ms. Susanne LaVallee provided the following report from the Dental Hygiene Subcommittee meeting held. The Subcommittee met and reviewed the dental hygiene application for Ms. Nicki Clukey and recommended that the Board issue her a Maine dental hygiene license. Dr. Higgins made a motion to accept the recommendation and issue Ms. Nicki Clukey a license. Dr. Zois seconded the motion and it passed unanimously. Board staff informed the Dental Hygiene Subcommittee members that several individuals who held local anesthesia permits, had allowed their local anesthesia permits to lapse, due in part to the conversion of data to ALMS and the office not notifying them of their renewal date. Dr. Higgins made a motion to reinstate Mr. Robert Myshrall's permit and waive the late/reinstatement fees. Ms. Denk seconded the motion and it passed unanimously.

Motions on Previous Interviews:

Dr. Cohen made a motion to grant **Ms. Bernadette Kozak** an IPDH license upon completion of her file. Ms. LaVallee seconded the motion and it passed unanimously.

Dr. Cohen made a motion to grant **Ms. Pamela Gilbert** an IPDH license upon receipt and confirmation of the appropriate number of hours worked from February 2004 through the present date. Ms. LaVallee seconded the motion and it passed unanimously.

Denturist Subcommittee Update: The Denturist Subcommittee reviewed advertisements of a licensed denturist who is utilizing “Dr.”. The Subcommittee recommended that a letter be sent to licensed denturist asking him to correct any advertisements and to list one’s degrees in the order in which they were received. The licensee will be asked to provide proof to the Subcommittee and Board when it has been corrected. Dr. Higgins made a motion to accept the Subcommittee’s recommendation. Dr. Zois seconded the motion and it passed with Mr. Buxton recused.

Complaint 09-39: The Subcommittee reviewed this Board generated complaint, which did not include the licensee’s response to the complaint, as she had not provided one after several request attempts were made. The Subcommittee recommended that the complaint be hand delivered to the licensee and provide her with seven days to respond. The complaint will be reviewed again on March 19, 2010. Ms. LaVallee made a motion to accept the recommendation. Dr. Cohen seconded the motion and it passed with Mr. Buxton recused and Dr. Theriault recused as the Complaint Officer.

The Board broke from the regular Board meeting at 9:30 a.m. to commence the Public Hearing on Proposed Rules Chapters 1, 2, 3, 4, 5, 9, 11, 12 and 14. The Board reconvened at approximately 11:15 a.m.

Letter from Daniel Hett, Pediatric Associates (Medical Office) RE: PHS and IPDH

Questions: This medical office posed the following questions to the Board:

1. Do you suggest that we hire an IPDH or a PHS? Answer: Under the Dental Board statute and rules, this would be allowable for either category to work in a medical practice. It is the responsibility of the dental hygienist to have an appropriate referral network for dental care.
2. Can an IPDH and a PHS both treat Maine Care patients, self-pay patients, and privately insured patients, if they do not have access to a dental home? Answer: Yes, an IPDH or PHS can treat any of these patient types. The Board is unaware of the billing aspect and would suggest that they establish whether it is appropriate or not.
3. Can either an IPDH or PHS give x-rays? Answer: PHS hygienists can take dental x-rays, but they must follow the appropriate Board rules.
4. Can we bill for services and pay the dental hygienist a salary, even if they are an IPDH? Answer: Yes
5. Do both an IPDH and a PHS need a supervising dentist? Answer: Only a PHS hygienist needs to have a supervising dentist.

6. Is the dental hygienist required to refer his/her patients to the supervising dentist or can they refer patients to any dentist in the community? Answer: A dental hygienist can refer their patients to any dentist and the Board would expect them to do so.

Complaint 06-34-Follow Up: The complainant in this previously dismissed complaint filed a request to reopen the case once again. The Board noted that when the patient initially filed the complaint, several years had passed. Dr. Cohen made a motion to write a thank you letter to the complainant indicating that the Board will not reopen the complaint as it has already reviewed the case and stand by its original statement. In the future, if there is any new information that the Board has not previously addressed, the Board will revisit the matter. Mr. Buxton seconded the motion, it passed with Dr. Theriault recused, and Dr. Higgins recused as the Complaint Officer.

Complaint 09-11 Follow-Up – M. Doe/C Foster: This complaint was previously tabled to allow the licensee to complete several continuing education courses at the Board's request. Dr. Higgins made a motion to untable the complaint. Ms. Denk seconded the motion and it passed with Dr. Cohen recused as the Complaint Officer. The complainant in this case alleged that the wrong tooth was treated. Dr. Higgins made a motion to dismiss the complaint as no violation of the Dental Practice Act, with a letter of guidance impressing on the licensee to ensure an appropriate treatment plan and treatment sequencing for his patients are noted in the record. Dr. Zois seconded the motion, it passed with Dr. Moyer abstained, and Dr. Cohen recused as the Complaint Officer.

Dr. Moyer arrived at 11:55 a.m.

Complaint 09-42: This is a Board generated complaint based on a licensee's non-compliance with two previous consent agreements. Dr. Theriault made a motion to request that AAG Dennis Smith construct a new consent agreement in order to exclude him from the remaining requirement left undone in the consent agreement dated August 31, 2004, which involved sending patient cases to the Complaint Officer for review. Dr. Moyer seconded the motion, it passed with Dr. Cohen recused, and Dr. Higgins recused as the Complaint Officer.

Complaint 09-45 – C. Zois/H. Jacques: The complainant alleged that the licensee did not provide appropriate dental care and he was left in pain. This complaint comes from an inmate at the Cumberland County Correctional facility. Dr. Higgins made a motion to dismiss the complaint with a letter of guidance indicating that while the Board realizes that he may be limited by the contracted services provided by the facility, that his record keeping was not adequate and that he should have made a better effort to provide follow up care. Dr. Theriault seconded the motion and it passed with Dr. Cohen recused as the Complaint Officer.

Ms. Denk made a motion to send a letter to the Medical and Dental Directors of the Facility, Correctional Medical Services, Cumberland County Sherriff Mark Dion, Esquire, the Commissioner of Corrections, and the Governor, which states that it appears through a second complaint received at this Board, that the dental services that are contracted for this facility are not adequate in hours or coverage with regards to the population that they serve and that the level

of care provided is not acceptable. Ms. LaVallee seconded the motion and it passed unanimously.

Annual Report from the Maine Medical Association – Medical Professionals Health

Program: In attendance were Mr. Gordon Smith, Esquire, Dr. Margaret Palmer, Ms. Cathy Stratton and Mr. John Murray.

The Board asked the Committee to forward the following information:

- (1) Of the amount referred to the program, how many were referred by a Board and how many were self-referred?
- (2) A copy of their policy regarding second dilute results for participants.

Dr. Palmer mentioned that if the Board constructs a consent agreement for a licensee that involves the PHP, there is no need to list how often the licensee is to be tested. In order to enter into a contract with the PHP, the individual is required to complete a comprehensive evaluation that is used to determine the amount of testing needed for that individual. It would be good if both the Board and the PHP could work in the same direction. If the Board is comfortable with “compliance with contract and protocols of the PHP” wording within the Agreement, the Board would not need to be as specific on the individual requirements that the licensee also must follow with the PHP contract. Dr. Palmer also relayed that some of their participants stay in a less rigorous recovery maintenance program that they offer.

Interviews for Licensure:

Thomas Gadziala, DDS
Peter Vayanos, DMD
Abhay Ektare, DDS

Motions on Interviews for Licensure:

Dr. Moyer made a motion to issue a dental license to **Dr. Thomas Gadziala** upon completion of his application file. Dr. Zois seconded the motion and it passed unanimously. Dr. Moyer made a motion to issue a dental license to **Dr. Peter Vayanos** upon completion of his application file. Dr. Higgins seconded the motion and it passed unanimously. Dr. Moyer made a motion to grant **Dr. Abhay Ektare** a dental license upon completion of his application file. Ms. Denk seconded the motion and it passed unanimously.

Complaint 09-47: This is a Board generated complaint based on the licensee’s non-compliance with a consent agreement dated March 30, 2009. A letter was sent by the licensee’s counsel, which indicated that one of the reasons this licensee has not complied with the consent agreement was due to medical problems. Dr. Cohen made a motion to grant a continuance for the licensee to fulfill incomplete items and to request staff to obtain a summary of his medical records, which is to include a medical clearance from his primary care physician. The medical

clearance should indicate whether the licensee is fit to practice dentistry. Once the information from the PCP has been reviewed, the Board intends to request the licensee to come in to speak concerning his plans for his dental practice. Dr. Zois seconded the motion and passed with Dr. Higgins recused, Mr. Buxton recused, and Dr. Moyer recused as the Complaint Officer.

Complaint 09-50: R. Crawford/K. Hutchins – The complainant in this case alleged that the licensee communicated improperly to her concerning follow up care. Dr. Cohen made a motion to dismiss the complaint, as there was no violation of the Dental Practice Act. Dr. Zois seconded the motion and it passed with Dr. Moyer recused as the Complaint Officer.

Complaint 09-51: A. Alexcovich/M. Brookins – The complainant in this case alleged that the licensee dismissed her as a patient inappropriately and the clinic was withholding her dental records. Dr. Cohen made a motion to dismiss the complaint, as there was no violation of the Dental Practice Act. Mr. Buxton seconded the motion and it passed unanimously with Dr. Moyer recused as the Complaint Officer.

Complaint 10-6: The complainant in this case sent a letter to the Board after Board staff had sent the initial notice to the licensee, which requested that the complaint not be taken any further. Because it had been 14 years since the treatment in question was provided, the Complaint Officer agreed to administratively close the complaint. The information was accepted as an FYI.

Minutes January 22, 2010: Dr. Moyer made a motion to accept the minutes. Ms. Collins-Harden seconded the motion and it passed unanimously.

Secretary/Treasurer's Report: Dr. Moyer made a motion to increase the Board's contribution to the Medical Professionals Health Program from \$10,000 to \$20,000 for the 2010-2011 biennium. A letter will be forwarded stating that the Board has really looked at its budget and stretched it, in order to increase this amount. Dr. Cohen seconded the motion and it passed unanimously. Dr. Moyer made a motion to accept the Secretary-Treasurer's report. Ms. Denk seconded the motion and it passed unanimously.

Correspondence: FYI

President's Desk:

Office Inspection Follow Up: Dr. Theriault reported that she and the Board's Investigator have been unable to schedule an office inspection for one of the Board's licensee's who is under a Consent Agreement. She indicated that Dr. Cathy Turbyne would be in that area of the state this spring and has offered to do an office inspection of this dental practice while there. Dr. Cohen made a motion to authorize Dr. Cathy Turbyne to conduct an office inspection. Dr. Moyer seconded the motion and it passed with Dr. Theriault recused as the Complaint Officer.

Secretary's Desk:

Inactive vs. Active Licensure: Board staff reported that there are currently fifty hygienists who hold an inactive license and eight dentists who hold an inactive license. The Board requested staff to research and determine whether it would take a statute or rule change if the fee for retired inactive licensure were reduced and bring that information back to the March meeting. Would the public be served better by reducing the fee for retired inactive dentists?

Moderate Sedation Waivers and ACLS Certification: There have been four individuals who presented their applications and waiver forms for moderate sedation permits, who do not have a current ACLS certification. Does the Board want to grant an extension to these individuals to obtain the certification? Dr. Moyer made a motion to grant an extension of 90 days from February 11, 2010, for the four individuals to obtain their ACLS so long as the applications were filed by 2/11/2010. Dr. Cohen seconded the motion and it passed unanimously.

Review of Continuing Education for P.B., DMD: At the January meeting, the Board voted to request that this licensee provide further information on the Aspen Orientation Program listed on his continuing education log. Board staff provided a copy of the certificate, which was sent in with the log, but not included in last month's book. The Board accepted the information as an FYI and decided not to request further information on the Program.

Review of draft clinical practice certification form for IPDH licensure: Ms. LaVallee requested that the wording under the lines be bolded so that when their applications are scanned for review, it will be legible.

Old Business:

UNE Subcommittee for review of Statutes/Rules for new Dental School: Dr. Theriault, Dr. Moyer and Dr. Cohen will be meeting with Kneka Smith of UNE on May 7, 2010 at 2:00 p.m. Dr. Theriault will contact Ms. Smith to set up a place to meet.

Daylong Educational Program on IPDH, PHS, Public Health Clinics and Maine Care: Dr. Higgins reported that Bonnie Vaughan, IPDH, Judy Feinstein of the Oral Health Program, and he would be having a conference call to start the process.

Possible Workshop for Anesthesia Team Members: Dr. Moyer reported that he had met with the Team Chair, Dr. Robert Schaedel and discussed the issues that the Board wanted to discuss with Team Members. There are three major goals to have the anesthesia team put forth during office inspections: (1) time oriented anesthesia record; (2) the use of EKG's with patients with a known cardiac history; and (3) for moderate enteral sedationist to have an appropriate response to a respiratory event. This item can be taken off Old Business.

Letter from George O'Donnell, Jr., DMD Re: Availability to Conduct EFDA Clinical Competency Exams: Dr. Cohen made a motion stating that a letter will be sent thanking him

for his interest but indicating that the Board has no need for additional examiners at this time. Ms. Denk seconded the motion and it passed unanimously.

Letter from Jonathan Shenkin, DDS MDA President Re: Request for Meeting with the MBDE to Discuss Issues Raised by LD 1608: Dr. Higgins made a motion to honor the request for the Board's March 19, 2010, morning agenda to meet in a proactive manner to address some complaint processing concerns. Dr. Moyer seconded the motion and it passed unanimously.

E-mail from Frances Miliano, MDA Executive Director Re: Proposed Newsletter Article in Response to Guest Editorial on Blood Pressure Rules: Ms. Denk made a motion to send the suggested changes and thank them for the opportunity to provide input. Dr. Moyer seconded the motion and it passed unanimously.

Dental Renewal Application for R.G., DMD: Dr. Cohen made a motion to table this renewal application until next month. Ms. LaVallee seconded the motion and it passed unanimously. Dr. Higgins made a motion to have the licensee send in proof of the continuing education courses listed on his log. Dr. Cohen seconded the motion and it passed unanimously.

Dental Renewal Application for F.H., DMD with Yes Response: The Board received a copy of the disciplinary action taken against this licensee by the Massachusetts Dental Board. Dr. Higgins made a motion to preliminarily deny the renewal application for Dr. F.H. Dr. Theriault seconded the motion and it passed unanimously.

Memo from American Dental Association Re: ADA CERP Call for Written Comments:
The Board accepted this information as an FYI.

E-mail from Ellen McLaughlin, Investigator for the Medicare Integrity Program Re: Dentists and Oral Surgeons Working Outside the Mouth: Ms. McLaughlin asked whether an Oral and Maxillofacial Surgeon is able to remove lesions from the facial area by laser. Board staff will send a letter requesting confirmation of the size of which she is speaking and the exact location of the lesion.

E-mail from Dr. Moyer Re: Potential Appointment to Anesthesia Committee: Dr. Moyer relayed Dr. Robert Schaedel's wishes to appoint Dr. Killian McCarthy to the Anesthesia Team. Dr. Higgins made a motion to send a letter to Dr. Schaedel approving his request for the appointment of Dr. McCarthy. Dr. Cohen seconded the motion and it passed unanimously.

Memo from Anne Head, Commissioner of Professional and Financial Regulation Re: LD 1608 Stakeholder's Meeting: Accepted as an FYI

Request for CE Extension from E.G., DMD and N.R., DMD: Dr. Cohen made a motion to grant Dr. E.G. an additional extension of time until March 15, 2010. Dr. Moyer seconded the motion and it passed unanimously. Dr. Cohen made a motion to grant Dr. N.R. an extension of 60 days to obtain the needed credits. Dr. Zois seconded the motion and it passed unanimously.

Draft Response to Consumer Re: Dental Radiographs: There was one typographical error fixed within the drafted letter. Dr. Cohen made a motion to send the letter under Dr. Theriault's signature after the letter had been corrected. Dr. Higgins seconded the motion and it passed unanimously.

Draft Response to Peter Davis, DMD Re: Information Requested: Dr. Cohen made a motion to accept the draft as written. Ms. Collins-Harden seconded the motion and it passed unanimously.

The Following Items were accepted as FYI's:

2009 Annual Report of the Maine Regulatory Fairness Board
Memo from John Crosby, DMD, CRDTS President Re: CRDTS National Dental Examination
The Salt Lake Tribune Article "Legislators Prescribe Changes to Drug Monitoring"
Trans World News Article "Dentists & Prescription Drugs"
Memo from White Graves, II, DDS RE: AADB CE Course "The Dental Patient Record"
AGD Transcript – January 2010 Issue
Report on Resolve R.2009, c.56-To Establish Uniform Protocols for the Use of Controlled Substances
Memo from Lois Haglund of the ADA RE: 2009 ADA House of Delegates
Associated Press Article "DEA to Investigate CU Dental School"
Summary of LD 1773 "An Act to Improve Dental Insurance Coverage for Maine Children"
Memo from John Berwind, DDS, AADB President Re: Mid-Year Meeting
Bangor Daily News Article "Dental Care Denial Unfair, Unwarranted"

Dr. Cohen made a motion to adjourn at 4:40 p.m. Dr. Moyer seconded the motion and it passed unanimously.

Respectfully Submitted,

Teneale E. Johnson
Executive Secretary