

BOARD OF DENTAL EXAMINERS
161 Capitol Street, Augusta, Maine

February 8, 2008

The Board convened at 8:19 a.m.

Board Members Present: Drs. Fister, Theriault, Moyer, Cohen, Higgins; Ms. Kristine Blaisdell, RDH; Ms. Susanne LaVallee, RDH; Mr. William Buxton, LD and Ms. Diane Denk, Public Member.

Also Present: Jim Dowling, Maine Primary Care Association; John Bastey and Pamela Cahill, MDA; Linda Wacholtz, RDH, Prevention Partners; John Royal, DDS, and David Simmons, MD for the Physicians Health Program; Howard Bates, DMD, MDA; Andrea Pinette, RAD; Patrick McGarry, DMD; Richard Mitchell, DMD; Richard Arbuckle, DDS; J. Martin Gelb, DDS; Dawn King; Robert McArthur; James Belleau, Esq., Rebecca Farnum, Esq., Dennis Smith, AAG; Lynn Warner, Board Secretary; and Teneale Johnson, Executive Secretary.

Complaint 06-49 Follow Up: It was noted that a typographical error occurred on page 3 of the Consent Agreement. Dr. Cohen moved to accept the Consent Agreement with correction, Dr. Higgins seconded the motion and it passed with Dr. Theriault recused as Complaint Officer.

Complaint 07-41/ 07-46/07-47 Follow Up: The Board accepted follow up on these complaints as an FYI.

Complaint 07-51 Progress Note: The Board accepted Dr. Higgins progress note as an FYI.

Complaint 07-66 R. Seekins/B. Curtis, Jr.: The complainant in this case alleged that a restoration resulted in an insufficient seal. Dr. Theriault made a motion to dismiss the complaint as there was no violation of the Dental Practice Act. Dr. Cohen seconded the motion and it passed with Dr. Moyer recused and Dr. Higgins recused as Complaint Officer.

Complaint 07-68 The complainant in this case alleged that the licensee is taking advantage of the public by being overly aggressive in forming treatment plans. The licensee has had and continues to have record keeping issues. Dr. Higgins moved to invite the licensee in for an informal conference to discuss record keeping, complaint 07-68, and to afford the licensee an opportunity to provide proof that he has met his obligation regarding his student loans. Dr. Cohen seconded the motion and it passed with Dr. Theriault recused and Dr. Moyer recused as Complaint Officer. Records will be requested from Aspen Dental.

Addition to Agenda–Complaint 06-23 Follow Up: The Board accepted follow up on this complaint as an FYI.

Minutes – **December 14, 2007:** Dr. Cohen made a motion to accept the minutes. Ms. LaVallee seconded the motion and it passed with Ms. Denk abstained.
– **January 11, 2008:** On complaint 07-64 a correction will be made showing that Dr. Cohen was recused on this matter. Dr. Moyer made a motion to accept the minutes as amended. Dr. Theriault seconded the motion and it passed with Ms. Denk abstained.

Secretary/Treasurer's Report: Ms. Blaisdell informed the Board that we are still within the allotted budget. Dr. Cohen questioned whether the governor's statement that the State is operating with a deficit of \$95,000,000 and that he would be looking for budget cuts would mean the governor would be looking to transfer money from agencies again as it could impact our budget once more. Ms. Johnson relayed to the Board that she had recently communicated with PFR indicating that there were no areas in our budget where we could make cuts. Ms. Johnson also informed the Board that she had begun the process to replace the position that she had vacated and that a justification to keep the vacant position in the budget had been required and completed. Dr. Cohen made a motion to accept the secretary/treasurer's report. Dr. Moyer seconded the motion and it passed with Ms. Denk recused.

Correspondence: These items, under Tab 3 and in the hand-outs, were accepted as FYI's.

Secretary's Desk:

Modifications to Board Meeting Dates – The May meeting date has been changed from May 9th to May 23rd; the August meeting will no longer be held on the 8th but will be on the 15th instead. An e-mail will be sent to all Board Members and members of the Dental Hygiene Sub-Committee to inform all members of the dates of change. The dates will also be modified on the Board's website. Dr. Moyer will not be available for the June meeting; Dr. Theriault will not be available in September.

Continuing Education Approval List – The Board accepted as an FYI.

Newsletter Items – Items will be drafted and presented to the Board, for review, by Dr. Higgins at the March, 2008 meeting. After acceptance by the Board, these items will be posted to the Board's website, possibly under the heading 'News from the Board'.

Administration of Oxygen by Dental Auxiliaries – Board staff questioned whether hygienists and assistants were allowed to administer oxygen if it is needed. The Board stated that it is never inappropriate to give oxygen; all auxiliaries are CPR qualified; this item will be added to the Board's policy list.

Reimbursement for Anesthesia Team Members – It was determined that the team members should be reimbursed when they appear at the Board's request (e.g. March luncheon meeting). While the sub-committee's time and efforts are always appreciated, there were other interested parties at the January meeting who will not be receiving reimbursement. A motion was brought by Dr. Cohen to deny reimbursement for the January, 2008 meeting. This was seconded by Dr. Theriault and the motion passed with Ms. Blaisdell and Dr's. Higgins and Moyer opposed. A second motion was brought to reimburse the committee when they appear specifically for committee business at the discretion of the Board. This motion was brought by Dr. Theriault, seconded by Dr. Cohen and passed unanimously.

Reimbursement for Task Force Meetings – Dr. Fister was informed that he should be adding mileage and per diem to his expense vouchers for these meetings as he is attending on Board business.

Additions to Secretary's Desk:

Pro-Ration of Nitrous Oxide Permit Fees – T.H., RDH contacted the staff office inquiring whether the fee for registering a Nitrous Oxide permit in the last half of the biennium would be pro-rated. Dr. Higgins made a motion that the Board not pro-rate this fee, Dr. Cohen seconded this motion and it passed unanimously.

Security Measures Concerning Prescription Pads – Dr Higgins will add this to his list of items for the Newsletter.

Denturist Sub-Committee: A discussion took place as to whether the sub-committee or the full Board would be holding the informal conference with the licensee named in complaint 07-30. After a lengthy discussion and a request that AAG Dennis Smith research the matter in statute, it was decided that the sub-committee will hold the informal conference and will then report back to the Board with its recommendation. Following this informal conference, a policy will be drafted for those circumstances when the sub-committee's recommendation is to hold an informal conference.

Annual Report for PHP: Dr's. David Simmons and John Royal presented the annual report to the Board. A discussion took place regarding how to get the word out that the Physician Health Program is available to medical professionals. Dr. Higgins will add this item to his list of items for the Newsletter. Dr. Simmons asked that the Board increase their contribution to the PHP. Dr. Moyer made a motion that, in the next contract, the Board's contribution be increased to \$10,000 (this is an increase of \$2,500). This motion was seconded by Ms. Blaisdell and the motion passed unanimously. John Bastey, MDA, stated he would be willing to ask the Maine Dental Association (MDA) to consider increasing their contribution as well. He will ask the MDA to consider inviting Dr. Simmons to attend the Samoset meeting.

Renewal Interview for "yes" response P.M, DMD: Dr. Higgins made a motion to ask the licensee to meet with Dr. Simmons (PHP) for an evaluation. Dr. Simmons will then report back to the Board. In the interim the licensee's current license will remain in effect pursuant to Title 5 M.R.S. § 10002 pending the outcome of the report. The Board will grant re-licensure if the report is satisfactory. Dr. Cohen seconded the motion and the motion carried unanimously. The licensee agreed to participate in the evaluation.

Anesthesia Discussion Chapter 14: Dr. Moyer presented a synopsis of his work with Committee H regarding the guidelines pertaining to Anesthesia. The Board was given a booklet, "Guidelines Pertaining to Sedation & General Anesthesia" and a handout, "Continuum of Depth of Sedation Definition of General Anesthesia and Levels of Sedation/Analgesia." Guidelines for Minimal, Moderate, and Deep Sedation were discussed. The Board also discussed the differences between Enteral (by mouth) and Parenteral (by IV) Sedation. Minimal Sedation

(formerly Conscious Sedation) guidelines stand as written; Moderate Sedation, however, will require two (2) separate permits: (1) Moderate Enteral; and (2) Moderate Parenteral. Minimal Sedation does not require a time oriented anesthesia record. However, Moderate and Deep Sedation will require this record (this record will show what you gave and when you gave it).

The Board discussed the need to be clear about the difference between administering and monitoring anesthesia. Basically, with Minimal Sedation the focus is on who can perform what procedures. With Moderate Sedation, the focus is on the two delivery methods. The only people who are administering Deep Sedation have attended a CODA accredited school and are qualified to do so. Dr. Fister recommended to the members of the Board that they accept the ADA guidelines either as they are written or model the Board guidelines to closely resemble the ADA guidelines.

Informal Conference Complaint 07-34: The complainant in this case alleged that the dentist provided substandard care. A discussion took place concerning who should be allowed to stay during the informal conference. Dr. Higgins made a motion to enter executive session at 11:10 a.m. in order to conduct an informal conference with only the complainant, the licensee, and the licensee's counsel allowed to be present. Dr. Theriault seconded the motion and it passed with Ms. Denk opposed and Dr. Cohen recused as Complaint Officer. Dr. Theriault made a motion to come out of executive session at 11:53 a.m. Dr. Higgins seconded the motion and it passed unanimously. Dr. Theriault made a motion to table complaint 07-34 to allow the complaint officer, Dr. Moyer, to review ten (10) current patient records for issues related to record keeping. If the records prove adequate, the complaint may be returned to the Board for dismissal with no violation of the dental practice act. The licensee will provide an appointment schedule for the previous sixty (60) days, via the staff office, to enable the complaint officer to select the records for review; the licensee shall then send the selected records to the Board office. This motion was seconded by Dr. Higgins and the motion passed with Dr's Cohen and Moyer recused.

Anesthesia Discussion: – The Board resumed its discussion of the Anesthesia Guidelines. Concern was expressed regarding multiple sedations (how many patients could be under sedation and how many patients could be in recovery at the same time); concern was also expressed regarding stacking doses. The categories were discussed individually:

- Minimal Sedation:**
- To administer Minimal Sedation is a permit necessary?
No.
 - If you are treating children, 12 years of age and under, who are taking a sedative pre-medication (regardless of dose or method of delivery) and you are administering Nitrous Oxide, do you need to be permitted?
Yes, and the pre-medication needs to be administered in the office.
- Moderate Sedation:**
- Will consist of two (2) permit alternatives:
 - Moderate Enteral (1 Dose; can be stacking doses)
 - Moderate Parenteral
 - Will require an EKG/ECG

This will mean there will be a total of three (3) separate permits for dentists (Moderate Enteral Sedation, Moderate Parenteral Sedation, and Deep Sedation/General Anesthesia).

Rule-Making List: Dennis Smith, AAG, will draft language for moderate sedation; the timeline for a temporary permit will be six (6) months with the actual permit renewable every five (5) years.

Update to Other Rules on the 2008 Rule-Making List:

- **Item # 1-Related to Sedation:** Mr. Smith drafting language
- **Item # 2-Lower Local Anesthesia Course requirement from 60 hours:** Item tabled to allow Kris Blaisdell time to research (possibility of 35-40 hours) and report back to the Board
- **Item # 3-Corporate Ownership:** *Not discussed at this meeting*
- **Item # 4-Pathway for Certified Orthodontic Assistants to become EFDA's:** *Not discussed at this meeting*
- **Item # 5-Additional Duties for EFDA's:** *Not discussed at this meeting*
- **Item # 6-CE credits for Residency Program:** *Not discussed at this meeting*
- **Item # 7-Chapter 11, Section II (G): Housekeeping,** *not discussed at this meeting*
- **Item # 8-Elimination of ADA approved radiation barriers from Ch's 6 & 9:** *Not discussed at this meeting*
- **Item # 9-Verbiage Change in Denturist Rules:** *Not discussed at this meeting*
- **Item # 10-Remove pouring of study models by dental asst's from Ch 3:** *Not discussed at this meeting*
- **Item # 11-Public display of Radiographers licenses:** *Not discussed at this meeting*
- **Item # 12-Teledentistry:** *Not discussed at this meeting*
- **Item # 13-Chapter 3:** *Housekeeping, not discussed at this meeting*
- **Item # 15-Related to Sedation:** Mr. Smith drafting language
- **Item # 16-Operating Room on-site inspection exemption:** Mr. Smith is writing
- **Item # 17-Waiver of Reinstatement Interviews:** *Not discussed at this meeting*
- **Item # 18-Nitrous Oxide-Verbiage concerning monitoring of Vital Signs:** Do not add to Chapter 2
- **Item # 19-Nitrous Oxide-Verbiage concerning:**
 - A -Fail Safe: No
 - B-Scavenge: No
 - C-Calibration: Yes
 - D-CE: No
- **Item # 20-Dental Profession Re-entry:** *Not discussed at this meeting*
- **Item # 21-Staggered Renewals:** *Not discussed at this meeting*
- **Item # 22-Waiver for CE and/or fees:** *Not discussed at this meeting*
- **Item # 23-Placement of dentures over implants w/dentist prescription:** *Not discussed at this meeting*

Radiography – Reinstatement Request from Andrea Pinette: Ms. Pinette requested that the Board reinstate her dental radiography license which lapsed October 2005. Dr. Cohen moved that the Board reinstate Ms. Pinette’s license to be sent with a Letter of Guidance containing a provision that she be aware of the rules pertaining to her license. Ms. LaVallee seconded the motion and it passed unanimously.

Meeting with Diane Chadbourne, RDH, BS – Creation of On-line Ethics Course for Dental Professionals: Dr. Higgins suggested that Ms. Chadbourne have a contact on the Board who could review the development of the course and has offered himself in that position. In previous conversations with UNE staff, Ms. Blaisdell talked with them about the development of a text book and case studies. Diane Chadbourne spoke to the quality of on-line and distance learning. Ms. Chadbourne agreed to design a proposed course that would be a minimum of eight (8) hours in length and would be followed by an exit exam. Ms. Chadbourne will talk with University of New England (UNE) staff and will report back to the Board in May. The Board expressed their appreciation for Ms. Chadbourne’s time.

Informal Conference Complaint 07-36: The Board alleged that the licensee named in this complaint allowed the unlicensed practice of dentistry. Following the signing of the “Waiver of Objections” form by the licensee and his attorney, Dr Moyer made a motion to enter executive session at 2:06 p.m. to conduct an informal conference. Dr. Cohen seconded the motion, and it passed unanimously. Dr. Moyer made a motion to come out of executive session at 3:14 p.m., Dr. Cohen seconded the motion and it passed unanimously. Dr. Theriault made a motion to offer the licensee a consent agreement based on the following violations of the dental practice act: 1) engaging in any activity which assists, encourages or induces any person to violate this chapter or the rules of the Board (Chapter 9, Section II A of the DPA); 2) delegation, by the dentist, of any duty not specified in Chapter 2 or 3 such as taking final impressions, placing or carving restorations, and allowing an auxiliary to produce full or partial dentures. Discipline would include a two (2) week license suspension, five (5) years of probation, announced and unannounced office visits with patient treatment and billing records to be made available upon request. The licensee is to submit a semi-annual list of current employees, pay fines (2) of \$1500 each for each violation, pay Board costs (\$252.25) of the investigation, and take a closed book jurisprudence exam within ninety (90) days. Additionally, the licensee will take a dental ethics course, within six (6) months, which will not count towards the requirement for renewal of his dental license. Diane Denk seconded the motion and the motion passed with Dr. Higgins recused as Complaint Officer.

Interview for Dental Licensure – Richard W. Arbuckle, DDS: Dr Theriault made a motion that licensure be granted to Dr. Arbuckle upon completion of his file, Dr. Moyer seconded the motion and it passed unanimously.

Interview for Dental Licensure – Richard A. Mitchell, DMD: Dr. Higgins made a motion to grant a license to Dr. Mitchell upon completion of his file. Dr. Moyer seconded the motion and it passed unanimously.

Board member Buxton left the meeting at approximately 3:20 p.m.

Interview for Special Permit for Dr. J. Martin Gelb: Dr. Higgins made a motion to deny a permit to Dr. Gelb based on his extensive disciplinary history in multiple states along with the outstanding complaints against him. The motion was seconded by Ms. LaVallee and it passed with Ms. Blaisdell recused.

Review of Dental Assisting Program for Nancy McGrath, Initial Radiography Applicant: Dr. Cohen moved that a letter be sent to the applicant informing her that the course she has taken qualifies her to sit for the Radiation Health and Safety Examination (RHSE); he also moved that upon providing proof of her taking and passing the exam she be issued a radiography license. Ms. Blaisdell seconded the motion and the motion passed unanimously.

Review of Syllabus & Course Outline for Dawn Arthur, Initial Radiography Applicant: Dr. Higgins moved that licensure be granted to Ms. Arthur pending proof of her having taken and passed the Radiation Health and Safety Exam (RHSE), Dr. Cohen seconded the motion and it passed unanimously.

Review of documentation/reinstatement documentation, Wenceslao Velez Perez, DMD: The documentation was accepted as an FYI. No action is required at this time as Dr. Perez has not submitted a reinstatement application. Should Dr. Perez wish to apply for reinstatement he will need to sit for an interview with the Board. It was noted that Dr. Perez should be communicating with the Board directly not via his daughter.

Letter from Cora S. Lapuz, BSE re: Board Members Acting as Test Administrators: Diane Denk, Public Member has volunteered to act as Test Administrator at the UNE site on March 25, 2008. Her name and address have been faxed to the school to enable them to send an information packet to her.

EFDA Jurisprudence Examination: Dr. Cohen moved to accept the questions drafted for the Expanded Function Dental Assistants Jurisprudence Exam as written, Ms. Blaisdell seconded the motion, and it passed unanimously. Ms. Johnson noted that we will be able to post the EFDA materials on the website soon.

Request from Linda Wacholtz, RDH re: Temporary Licensure for foreign trained dentist, Dr. Aronita Rosenblatt: Dr. Higgins moved that Dr. Rosenblatt be invited to meet with the Board to discuss the possibility of receiving a special temporary permit as allowed under §1086. Ms. Denk seconded the motion and the motion passed with Dr. Cohen opposed and Ms. Blaisdell recused. Dr. Rosenblatt will be sent a letter requesting she join the Board at its March meeting.

Letters from John A. Ellis, Jr., DDS, MD re: Hospitalization and Mission Trip: Dr. Moyer made a motion that the Board grant his request that the terms of the Consent Agreement, regarding testing, not be enforced while he is undergoing surgery and while he is away. Dr. Theriault seconded the motion and the motion passed unanimously.

Addition to Agenda: Letter from Challie Kingston re: Multiple Practitioner Office: The Board determined that, both, signage and letterhead need to list the names of those practicing at a particular location and when all locations are named on the letterhead then all names of all

practitioners at all of the locations would need to be listed as well; this would apply to business/appointment cards also.

E-mails from Leah Diane Howell, AADA; Claudia Megaro; and Bonnie Vaughan, RDH were accepted as FYI's.

Articles from UCLA and News & Views Citizen Advocacy Center were accepted as FYI's.

Letters from James Dunn, DMD and Justin Griffee, DMD were accepted as FYI's. The letter written to Ovidiu Barbu regarding foreign trained dentists was also accepted as an FYI.

Radiographs and the fact that insurance companies base their payment for them on the intervals when they were taken was discussed. It was determined that the standard of care can not be allowed to suffer because of a business decision on the part of the insurance companies.

Addition to Secretary's Desk: An anonymous fax was received at the Board office citing concern about a licensee. This led to discovery of a police report concerning a dental licensee Dr. Cohen moved that the Board generate a complaint against the licensee on suspicion of substance abuse and fraud or deceit (for allegedly failing to disclose substance abuse history on applications for re-licensure). Dr. Higgins seconded the motion and all were agreed. Dr. Moyer moved that a substance abuse and psychological evaluation by Dr. Siegel be ordered for this licensee. Ms. LaVallee seconded the motion and it passed unanimously.

Application for Special Temporary Permit to be drafted: This permit application will be modeled on the existing application for regular licensure to include such items as an Education Certificate, Jurisprudence Exam, Letters of Good Standing, an affidavit page, etc.

Old Business: Item A, the board policy list was accepted as an FYI. Item B, the new jurisprudence exam for complaint resolution purposes is being drafted by Dr. Fister and he will be presenting it in the near future. Item C concerning the signage at Aspen Dental will be followed up on by Dr. Moyer.

Case Milestone Report: Accepted as an FYI.

Dental Hygiene Sub-Committee Update: To be presented on the March, 2008 agenda.

Dr. Cohen made a motion to adjourn at 5:45 p.m. Dr. Moyer seconded the motion and it passed unanimously.

Respectfully Submitted,

Lynn A. Warner
Board Secretary