

**Maine Board of Dental Examiners  
Board Meeting Minutes  
March 19, 2010**

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

**Board Members Absent:** Dr. Charles Zois

**Others Present:** John Bastey, Maine Dental Association; Howard Bates, DMD; Jonathan Shenkin, DDS, Maine Dental Association; Michelle Gallant, RDH; Bonnie Vaughan, IPDH; John Merrill, LD; William D. Buxton, LD; Nancy L. Buxton; Austin Carbone, LD; Dan Walker, Esquire; Preti, Flaherty; David Wicks, DDS; Jennifer MacDonald; Nicole Desmond; Dennis Smith, AAG and Teneale Johnson, Executive Secretary

**Interview for IPDH Licensure:** (Dental Hygiene Subcommittee members, Ms. Bonnie Vaughan, IPDH and Ms. Michelle Gallant, RDH joined the Board members for the following interview.)

Elizabeth Doherty, RDH

**Dental Hygiene Sub Committee Update:**

Continuing Education for Dental Hygiene Bachelor Degree Program – The Subcommittee recommended that there be a policy made to clarify the rules, Chapter 13, section B (4). The Subcommittee also recommended that the words “didactic” be removed from the policy that relates to faculty or volunteers of a dental professional program so that it does not contradict the rule, and remove the wording “10 hours for dentists and 5 hours for hygienists” from the same policy. The two dental hygiene schools agreed to work with the Board and will issue certificates to hygiene students for each class they take during his/her degree program.

Dr. Moyer made a motion that the Board policy concerning credits for faculty be amended and consistent with rules (i.e. drop the word didactic). Didactic instruction can be counted towards category II credit. Dr. Cohen seconded the motion and it passed unanimously. Dr. Moyer made a motion that this policy also be amended by deleting the number of hours listed and only reference that clinical teaching can be counted for up to one-fourth of the total requirements per biennium for dentists or hygienists.

Board staff will amend the continuing education log to make reference to the Board policies relating to continuing education for clarification of category I or category II for Chapter 13, section B (4).

**Consent Agreement Follow up – Brenda Gagnon, RDH:** Ms. Gagnon relayed to the Subcommittee and Board that her participation with the Medical Professionals Health Program will end on April 30, 2010, and the end date of the agreement with the Board will be July 31,

2010. The Subcommittee recommends that the Board amend Ms. Gagnon's consent agreement to have the same end date as her contract with the PHP. Ms. LaVallee made a motion to accept the Subcommittee's recommendation. Ms. Collins-Harden seconded the motion and it passed with Dr. Higgins abstained.

**Complaint 09-21 Consent Agreement Non-Compliance:** Board staff reported to the Subcommittee that the licensee in this complaint is currently not compliant with the consent agreement entered into on October 8, 2009. The Subcommittee recommended that the Board issue a complaint against the licensee for non-compliance. Dr. Moyer made a motion to accept the recommendation. Dr. Cohen seconded the motion, it passed with Ms. LaVallee recused, and Dr. Higgins recused as the Complaint Officer.

**Letter from Licensee Re: Notification to Board of Unauthorized Use of DEA Number:** Dr. Higgins made a motion to send the licensee a letter thanking them for the information. Dr. Cohen seconded the motion and it passed unanimously.

**Motion on Interview for IPDH License:**

Ms. LaVallee made a motion to grant Ms. Elizabeth Doherty an Independent Practice Dental Hygiene license. Ms. Denk seconded the motion, it passed with Dr. Theriault, Dr. Cohen recused, and Dr. Higgins abstained.

**Denturist Subcommittee Update:**

**Complaint 09-39** – The Subcommittee reviewed a draft consent agreement to resolve this complaint and recommended that the Board offer the consent agreement to the licensee. Dr. Moyer made a motion to accept the recommendation. Ms. Denk seconded the motion, it passed with Mr. Buxton recused, and Dr. Theriault recused as the Complaint Officer.

**Advertising Issue** – The Subcommittee also reviewed a draft letter to a dentist who is currently advertising with the initials “Dr.” The Subcommittee recommended that the Board agree to send the letter out which will be sent with the Denturist Subcommittee members signatures along with the Board President. Dr. Higgins made a motion to accept the recommendation. Ms. Denk seconded the motion and it passed with Mr. Buxton recused.

**Meeting with Jonathan Shenkin, DDS, Maine Dental Association President Re: Complaint**

**Process:** Dr. Shenkin asked to meet with the Board to discuss possible modifications to the complaint process, more specifically, a mechanism to review and dismiss clearly frivolous complaints without needing response from the dentist. Dr. Shenkin reported that he has had dentist members come to him to relay their anger and frustration with the Board of Dental Examiners. The MDA feels that it is not right for the Board to find or look for other egregious violations while investigating a frivolous complaint. Dr. Shenkin made two suggestions: (1) To have other individuals review and dismiss frivolous claims without requesting a response from the dentist; and (2) To change the process so that the Board is not the “judge, jury and appellate court.” Dr. Shenkin states that there should be no immunity for the Board members for any of

their decisions/actions and that the Board should be liable for bad judgments (none were identified). Dr. Shenkin also feels that the Board needs to be less hostile towards dentists and not put them through the process of investigating frivolous complaints. Dr. Shenkin believes that the Board should have the power to dismiss frivolous complaints and stated that the MDA is willing to help the Board change the statute to which the Board must adhere. On another subject, Dr. Shenkin also relayed his concerns with access to care for Maine citizens.

**Presidents Desk:**

According to MRSA 1, section 405 6(a) and (e), Dr. Higgins made a motion to enter executive session at 10:36 a.m. for legal advice to discuss matters relating to Board appointments. Dr. Cohen seconded the motion and it passed with Dr. Moyer recused. Dr. Higgins made a motion to come out of executive session at 10:54 a.m. Dr. Cohen seconded the motion and it passed with Dr. Moyer recused. Dr. Higgins made a motion directing the Board President to send a letter to Governor Baldacci in support of Dr. Moyer's reappointment to the Board. Mr. Buxton seconded the motion and it passed with Dr. Moyer recused.

**Review of Comments for Proposed Rules:**

**Chapter 1:** The Board reviewed all oral comments made during the rule making hearing on February 19, 2010, and all written comments submitted to the Board regarding its proposed changes to Chapter 1. Following its review, the Board voted to accept some of the comments, and made additional changes to Chapter 1, and put the proposed changes out for additional public comment.

**Chapter 2:** The Board reviewed all oral comments made during the rule making hearing on February 19, 2010, and all written comments submitted to the Board regarding its proposed changes to Chapter 2. Following its review, the Board voted to accept some of the comments, and made additional changes to Chapter 2, and put the proposed changes out for additional public comment.

**Chapter 3:** No comments received – Dr. Cohen made a motion to adopt Chapter 3 as proposed. Dr. Theriault seconded the motion and it passed unanimously.

**Chapter 4:** The Board reviewed all oral comments made during the rule making hearing on February 19, 2010, and all written comments submitted to the Board regarding its proposed changes to Chapter 4. Following its review, the Board voted to accept some of the comments, and made additional changes to Chapter 4, and put the proposed changes out for additional public comment.

**Chapter 5:** The Board reviewed all oral comments made during the rule making hearing on February 19, 2010, and all written comments submitted to the Board regarding its proposed changes to Chapter 5. Following its review, the Board voted to accept some of the comments,

and made additional changes to Chapter 5, and put the proposed changes out for additional public comment.

**Chapter 9:** The Board reviewed all oral comments made during the rule making hearing on February 19, 2010, and all written comments submitted to the Board regarding its proposed changes to Chapter 9. Following its review, the Board voted to accept some of the comments, and made additional changes to Chapter 9, and put the proposed changes out for additional public comment.

**Chapter 11:** No comments received. Dr. Higgins made a motion to adopt Chapter 11 as proposed. Dr. Cohen seconded the motion and it passed unanimously.

**Chapter 12:** No comments received. Dr. Cohen made a motion to adopt Chapter 12 as proposed. Dr. Theriault seconded the motion and it passed unanimously.

**Chapter 14:** The Board reviewed all oral comments made during the rule making hearing on February 19, 2010, and all written comments submitted to the Board regarding its proposed changes to Chapter 14. Following its review, the Board voted to accept some of the comments, and made additional changes to Chapter 14, and put the proposed changes out for additional public comment.

**Addition to Agenda-Deep Sedation/General Anesthesia:** Dr. Christopher Maller applied for a permit to administer deep sedation/general anesthesia at a Periodontist office in South Portland. The purpose of the permit is for him to provide anesthesia to the Periodontists' patients. Dr. Theriault questioned whether this can be issued under the current wording within Chapter 14 or if the Periodontists would need to obtain a permit. The Board decided to address this later in the day.

**Interviews for Dental Radiography License Reinstatement:**

**Jennifer MacDonald** – Dr. Moyer made a motion to reinstate Ms. MacDonald's dental radiography license. Ms. Denk seconded the motion and it passed with Mr. Buxton abstained.

**Nicole Desmond** – Dr. Cohen made a motion to reinstate Ms. Desmond's dental radiography license. Ms. LaVallee seconded the motion and it passed unanimously.

**Dr. Theriault asked the Board members if they would like to change the June meeting, as she will not be able to attend until later in the day and several other members may not be able to attend. The Board chose to leave the June meeting on the 18<sup>th</sup>.**

**Complaint 08-7 Follow Up:** The Board accepted the information as an FYI.

**Complaint 09-49 D. Woods/K. Pelletier:** The complainant alleged that the licensee was rough during the dental exam, made her hold the x-ray film, and did not utilize local anesthesia and caused damage by removing her old restoration. Dr. Higgins made a motion to close the complaint and send a letter to the licensee and the complainant indicating that the licensee has voluntarily allowed his license to lapse without the intention to practice dentistry. Should the licensee apply for reinstatement of his Maine dental license, the issues raised in the complaint will be addressed prior to reinstatement. Dr. Theriault seconded the motion and it passed with Dr. Moyer recused as the Complaint Officer.

**Complaint 09-52:** The complainant alleged that the licensee was rude and had a bad attitude. The Board has also tabled this licensee's dental renewal, which is still not complete. Dr. Higgins made a motion to invite the licensee in for an informal conference to discuss the complaint and his license renewal. Ms. Denk seconded the motion and it passed with Dr. Moyer recused as the Complaint Officer.

**Complaint 10-1 C. Wnek/C. Rodrigues:** The complainant alleged that the fee charged for a crown was too much. Dr. Cohen made a motion to dismiss the complaint, as there was no violation of the Dental Practice Act. Ms. LaVallee seconded the motion and it passed with Dr. Moyer recused as the Complaint Officer.

**Complaint 10-2:** The complainant alleged that the licensee did not perform treatment that she was charged for. Dr. Cohen made a motion to invite the licensee in for an informal conference to discuss his anesthesia technique, his crown and bridge technique and his endodontic technique. Ms. Denk seconded the motion and it passed with Dr. Moyer recused as the Complaint Officer.

**Complaint 10-3 C. Dorr/M. Drouin:** The complainant alleged that the office did not appropriately inform them of their billing procedures and whether their insurance was accepted. Dr. Higgins made a motion to dismiss the complaint, as there was no violation of the Dental Practice Act. Ms. Collins-Harden seconded the motion and it passed with Dr. Cohen recused as the Complaint Officer.

**Complaint 10-4 P. Drews/C. Hedgpeth:** The complainant alleged that the licensee did not listen when she asked the licensee to stop the procedure. Dr. Cohen made a motion to dismiss the complaint, as there was no violation of the Dental Practice Act, but issue the licensee a letter of guidance encouraging him to have better lines of communication with patients. Ms. Collins-Harden seconded the motion and it passed with Dr. Moyer recused as the Complaint Officer.

**Complaint 09-42:** This is a Board generated complaint for noncompliance with two consent agreements. At the last meeting, the Board asked AAG Smith to draft a consent agreement to amend the previous agreement to delete the requirement of the patient records review. Since the Board's request, the licensees' legal counsel has requested that the consent agreement also be amended to remove the remaining probationary period. Dr. Theriault made a motion to offer the licensee a termination of consent agreement and close the new complaint. Mr. Buxton seconded

the motion, it passed with Dr. Moyer abstained, Dr. Cohen recused, and Dr. Higgins recused as the Complaint Officer.

**Complaint 09-45:** Board staff asked that the draft letter of guidance be reviewed before being sent. The Board agreed to amend the wording that refers to the patient's temporary appliance. Board staff also requested that the Board review the draft letter to the Correctional Facility. The Board agreed to amend some of the wording in the letter.

**Minutes-February 19, 2010:** Dr. Moyer made a motion to accept the minutes as amended. Ms. Denk seconded the motion and it passed unanimously.

**Secretary/Treasurer's Report:** Dr. Zois absent – Board staff reported that another payment was made during the month of February for \$3,208.82 for rule making advertisements.

**Correspondence:** The Board accepted the information as an FYI

**President's Desk Continued:**

**Board Reappointments:** Staff was asked to notify the Board two – three months prior of a Board member's expiration of their first term.

**Board President Contact Information:** Staff was asked to send a courtesy letter with contact information, to the Commissioner of PFR each time a new Board President is appointed.

**Review of Local Anesthesia Examinations:** The Board office was informed that there were numerous errors in the Board's local anesthesia examinations. Dr. Theriault asked that each member take the amended exams home to review and bring back any changes to the next meeting.

**Complaint 08-3 follow-up Re: Continuing Education Requirement:** The licensee's counsel has asked for assistance in locating an appropriate endodontic diagnosis course and an additional extension of time to complete the course. They have been unable to locate a course specific to endodontic diagnosis. Dr. Cohen made a motion to offer an amended consent agreement and grant the licensee an additional six months to complete a course in endodontic diagnosis and to offer Dr. Eugene Pantera's name to the licensee. The Board will also suggest that the licensee may be able to spend an afternoon or a day of remedial training with an Endodontist in lieu of completing the course. Either item would need to be pre-approved by the Complaint Officer. Dr. Moyer seconded the motion and it passed with Dr. Theriault recused as the Complaint Officer.

**Secretary's Desk:**

**Fee change for Inactive License:** Dr. Moyer made a motion to add this item to the list for possible rule changes. Dr. Cohen seconded the motion and it passed unanimously.

**Dental License Renewal Follow Up:** The Board previously tabled the renewal application for Dr. J.B. and requested information from the Pennsylvania Dental Board. Dr. B. contacted the Board office to follow up on his license renewal and requested whether the Board would accept a notification confirming that the PA Board will allow him to voluntarily relinquish his license. The Board chose to wait for requested documentation from the PA Dental Board.

**Revisit Preliminary Denial of Renewal for Dr. F.H.:** The Board voted to preliminary deny the renewal of Dr. F.H.'s dental license at the February meeting. The Board did not provide a clear basis for the denial therefore; it was presented back to them. The preliminary denial is based on the Massachusetts Dental Board findings of fact and the violations within the MA Decision, which include unprofessional conduct, professional incompetence and fraud or deceit.

**Old Business:**

**Follow up on Educational Program to discuss IPDH, PHS, Public Health Clinics and Maine Care:** Dr. Higgins reported that he had a brief meeting with Judy Feinstein of the Oral Health Program who wishes to have a scientific portion directed at sealants and would like to address the changing roles of dental hygiene in today's dental society.

**American Association of Dental Board's Scope of Practice Survey:** The Board asked to keep this item on the agenda.

**Case Milestone Report:** The Board accepted this information as an FYI.

**E-mail from Ellen McLaughlin, Investigator, SafeGuard Services LLC, Medicare Integrity Program Re: Oral Surgeons Performing Laser Services on Areas Outside of the Mouth:**

Ms. McLaughlin has asked whether a board certified oral and maxillofacial surgeon can remove a lesion in the facial area with a laser. The Board has tried to obtain more information concerning the size of the lesion in question and the exact location of the lesion. Ms. McLaughlin has been unable to provide further information at this time. Without further information, the Board is unable to answer her question. We will forward a copy of 32 MRS §1081 "Definitions; Persons Excepted", and highlight the section referencing deformity.

**Response to Board Inquiry from R.A., DDS:** The Board requested further information from this licensee as a result from an inquiry to the Board office regarding the maximum amount of local anesthesia that can be given to a patient. The Board has also been notified that this licensee has been terminated from his employment at a particular practice due to issuing a prescription to an employee of the practice for non-dental purposes. Dr. Cohen made a motion to table this item until the Board receives a response from the Dental Practice's legal counsel requesting further information. Ms. LaVallee seconded the motion and it passed unanimously.

**Request for Additional Continuing Education Extension – Lawrence Singer, DDS:** Dr. Singer has already completed the needed credits for renewal. The Board did not need to take any action on this item.

**E-mail from Cathryn Stratton, MPHP Re: Documents Requested by the Board:** The Board accepted the information as an FYI.

**Letter from Molly Nadler, Executive Director, AADB Re: Nominee for Citizen of the Year Award:** The Board accepted the information as and FYI.

**E-mail from Meredith Davis, DMD Re: Nitrous Oxide Monitoring:** Dr. Davis asked what monitoring is necessary for those patients receiving nitrous oxide – Blood Pressure, Pulse Oximeter... The Board asked staff to direct Dr. Davis to Chapter 14 of the Board's rules.

**Letter from Anonymous Correspondent Re: False Advertising and Insurance/Aspen Dental:** The Board did not take any action on this item.

**Draft Application for Dental Resident Permit:** Staff asked the Board to review the draft application for the dental resident permits. The Board would like to receive a confirmation letter from the residency program director for each applicant. Dr. Higgins made a motion accept the draft application. Dr. Moyer seconded the motion and it passed unanimously.

**Draft Letter to Dr. David Pier RE: Status of Rule Change Concerning Three Live Patient Observations:** The Board revised the letter and agreed to send it as amended.

**Letter from Angela Estes, RDH Re: Request for Assistance in Obtaining a Supervising Dentist for PHS Status:** The Board agreed to send Ms. Estes a letter suggesting that she contact the Maine Dental Association and inquire of dental officers of York County Dental Society or contact the area clinics. In addition, the Board will inform Ms. Estes that sports mouth guards are not an allowable procedure for an RDH under Public Health Supervision.

**Letter from Sabrina Tove, RDH Re: Request for Assistance from Dental Community in Locating Dentists to Provide Dental Services in PHS Settings:** Ms. Tove is requesting assistance in locating a dentist who would be willing to provide dental care to nursing home residents. The Board agreed to forward Ms. Tove the name of the recently licensed dentist who indicated his plans to provide dental care to nursing home residents.

**Letter from Edward E. Lancaster, III, DMD RE: Continuing Education Audit:** Dr. Lancaster was chosen for the continuing education audit. He voluntarily surrendered his Maine dental license because he felt he had not met the continuing education requirement for 2010-2011. Through staff review, Dr. Lancaster did in fact have enough credits for renewal. The Board voted to send Dr. Lancaster a letter thanking him for his conscientious response but that he does have enough credits for the 2010-2011 biennium and return his license to him.

**Letter from Philip W. Higgins, Jr., DMD Re: Complaint Process:** The Board agreed to keep the complaint process issue on Old Business so that a proposal can be submitted to Commissioner, Anne Head by mid-summer.

**E-mail from Patient Re: Question on Dental Coverage:** This patient's dental insurance coverage recently changed. She has been seeing a dentist where they get regular periodontal cleanings for their mild periodontal condition. The new insurance policy will only cover regular cleanings, not periodontal cleanings. The patient has asked the dental office to provide a regular cleaning on the next scheduled visit in order to use the dental benefit. The dental office said it would be illegal, since the patient has this known condition. The patient wants to know if it would be illegal for the dentist office to give them a regular cleaning instead of the periodontal cleaning if they asked for it. Dr. Higgins made a motion to send a letter to the individual indicating the Board does not consider it illegal, but it would be inappropriate for the dentist to provide this service, knowing that the patient does have periodontal disease. The Board suggests that the patient work out the issue with the provider or find a new provider. Dr. Theriault seconded the motion and it passed unanimously.

**Request from Kathie Norwood, Downeast Health Services, Inc. for Two Temporary Dental Permits for Drs. John Bruce and Sonali Patel:** Dr. Higgins made a motion stating that the Board has reviewed in detail the applications for temporary permits and Title 32, Chapter 16, § 1086, which relates to types of permits that the Board can issue, and do not feel that this is the proper use of a temporary permit. The Board would encourage these two dentists to apply for a full Maine dental license. Ms. LaVallee seconded the motion and it passed with Ms. Denk opposed.

**E-mail from C.S. Maller, DMD Re: Office Inspection:** Dr. Maller posed a question concerning moderate sedation: If the dentist is titrating one drug orally, does the rule allow for other drugs to be used at the same time? Dr. Moyer made a motion stating, yes, the dentist can administer multiple drugs, as long as the patient remains in moderate sedation. They can only use one drug when it is minimal sedation. The Board will also refer Dr. Maller to the ADA guidelines as well. Ms. Denk seconded the motion and it passed unanimously.

**E-mail from Kim Sylvester, RDH Re: Patient Examination Refusal:** Dr. Higgins made a motion to answer the questions as follows: 1. Is it a law, that a patient must have an exam once per year? **Answer:** No, it is not a law. 2. What do we do about patients who refuse it at every visit? **Answer:** The Board expects its licensees to perform to the standard of care and the licensee has the right to refuse treatment if the patient refuses the standard of care. Dr. Cohen seconded the motion and it passed unanimously.

**DOCS Postcard Re: Regulatory Compliance Made Easy for Maine Dentists – CE Course:** The Board office has received several telephone calls from dentists who were upset with the Board because of the information sent out by DOCS. The Board agreed to send a letter to DOCS stating that the advertisements are erroneous concerning the inclusion of the term minimal sedation and that a permit would be required and ask that it be corrected, as it is misleading.

**Notice of Rule Making Meeting – Chapter 21 – Joint Rule:** The public hearing for the proposed joint rule change was held earlier this day. The Board will review all information and decide whether to adopt the rule as proposed at its next meeting.

Dr. Higgins made a motion to adjourn at 7:11 p.m. Dr. Moyer seconded the motion and it passed unanimously.

Respectfully Submitted,

Teneale E. Johnson  
Executive Secretary