

**Board of Dental Examiners
Board Meeting Minutes
October 16, 2009**

The Board convened at approximately 9:10 a.m.

Board Members Present: Drs. Denise Theriault, Jerrold Cohen, Philip Higgins, Jr. and Charles Zois; Ms. Kristine Blaisdell, RDH and Ms. Diane Denk, Public Member

Board Members Absent: Dr. David Moyer, Mr. William Buxton and Ms. Susanne LaVallee, RDH

Also Present: Bernice Mills, RDH; John Bastey, Maine Dental Association; Marc Horowitz, DDS; Mark Franco, Esquire; Alan Harrison, DMD; Linda Wacholtz, RDH; Timothy Oh, DMD; Dr. Stuart Hirsch; Ms. Lauren Meyers; Audree Park, DDS; Lisa Kavanaugh; David Wicks, DDS; Karen Casey; Bonnie Vaughan, IPDH; James Gioia; Dennis Smith, AAG; and Teneale Johnson

Meeting with Bernice Mills, RDH of University of New England Re: Fourth year dental hygiene students and Internships: The first four-year curriculum will not begin until 2010. It appears that these fourth year dental hygiene students will not need any kind of permit.

Dental Hygiene Subcommittee Report: Ms. Blaisdell reported that the Subcommittee interviewed Ms. Heather Anderson Ward for reinstatement of her hygiene license and recommended that the Board issue her license upon completion of her application file. Dr. Cohen made a motion to accept the Subcommittee's recommendation. Dr. Zois seconded the motion and it passed unanimously. The Subcommittee also interviewed Ms. Joan Gunn, RDH and Ms. Patti Pontillo for licensure and recommend that they be issued a license upon completion of their files. Dr. Zois made a motion to accept the recommendation. Ms. Denk seconded the motion and it passed unanimously. The Subcommittee also interviewed Ms. Jolene Cox concerning her request to re-take the Board's local anesthesia examination. She completed the Local Anesthesia course in 2003 and has taken, but not successfully completed the Board examination after two attempts. The Subcommittee recommends that if appropriate, Ms. Cox have a skills assessment done with Dr. Higgins, in order to determine whether she should take some education prior to sitting for the Board examination. The Subcommittee does wish to relay that if Dr. Higgins determines that further education is needed, it would be her responsibility to contact the educators. Ms. Denk made a motion to accept the recommendation. Dr. Higgins seconded the motion and it passed unanimously.

Informal Conference – Complaint 09-5: The licensee was present for the conference along with legal representation. The complainant in this case alleged that the licensee did not perform her child's endodontic treatment correctly which resulted in the loss of the tooth. Dr. Cohen made a motion to enter executive session at 9:40 a.m. Ms. Denk seconded that motion and it passed unanimously. The Board came out of executive session at approximately 10:30 a.m. Dr. Cohen made a motion to offer the licensee a consent agreement based on a violation of Board Statute 32 1077 2(E) relating to incompetence in performing dentistry concerning Root Canal Therapy. As discipline, the licensee would agree to a five-year probation which would include

the following conditions: (1) agree to announced and/or unannounced office/record inspections including billing records; (2) submit to the Complaint Officer, the next ten complete dental records for endodontic procedures, records to include complete treatment records; (3) reimburse the complainant in this case in the amount of \$1,086.72 for subsequent services required for the patient; and (4) reimburse the Board \$22.50 for costs associated with processing the complaint. Ms. Denk seconded the motion with an amendment that the licensee reimbursement the complainant and the Board within six months and provide proof to Board. The motion passed with Dr. Higgins recused as the Complaint Officer.

Meeting with Timothy Oh, DMD Re: Temporary Dentists to Work in Public Health

Settings: Dr. Oh reports that Maine Coast Community Dental Clinic, would like to work with New York University dental training program who has agreed to come to Maine and assist in providing dental care to children and families who do not have access to care. Dr. Oh brought Dr. Stuart Hirsch Associate Dean of International Programs and Development and Ms. Lauren Meyers, Director of Global Outreach Programs with him to discuss what it envisions. (They bring a team of specialists, faculty members, dental students and administrators when they provide services two times per year.)

Meeting with Linda Wacholtz, RDH Re: Patient Records and billing procedures: The Board asked Ms. Wacholtz to come in to speak with the Board concerning an inquiry that came in from Maine Care, and concerning the dental records of patients seen by Prevention Partners employees. Ms. Wacholtz stated that the Board of Prevention Partners, Inc is no longer, and all members resigned except for Dr. Griffin. That Board has not met to discuss how to records will be forwarded to patients upon their request. Dental records are located in a locked facility, which she is the only one who can access them. Any records from 2007 on would be located on the Dentrix program, which she stated she does no longer have access to. The Board relayed that they feel she is responsible for providing the records to the patients upon appropriate request. If she can locate an individual to take over the records, the Board asked that she please inform the Board office.

Interview for Licensure: Alan Harrison, DMD

Dr. Higgins made a motion to grant Dr. Harrison a Maine dental license upon completion of his application file. Dr. Zois seconded the motion and it passed unanimously.

Minutes: September 18, 2009 – Dr. Higgins made a motion to accept the minutes as written. Dr. Zois seconded the motion and it passed unanimously. Dr. Higgins made a motion to accept the September 18, 2009 Ad Hoc Committee minutes. Ms. Denk seconded the motion and it passed unanimously.

Secretary/Treasurer's Report: Dr. Cohen made a motion to accept the report. Dr. Zois seconded the motion and it passed unanimously.

Correspondence: Accepted as an FYI.

President's Desk:

(a) Holiday Lunch – Check to see when the picture can be taken.

(b) Meal Reimbursement Rate – Dr. Higgins made a motion to check the State's policy on meal reimbursement and table this item until the November meeting. Dr. Cohen seconded the motion and it passed unanimously.

Secretary's Desk: All items accepted as an FYI.

Old Business:

(a) Brainstorming discussion topics with Professional Societies – The Board previously received an inquiry on how often it puts out a newsletter, and could the next one include an item on allowable duties by auxiliaries. Staff will bring the inquiry back to the next meeting along with the statement already located on the Board's website under "Announcements". They also briefly discussed how to get dentists to enroll in the Prescription Monitoring Program.

(b) The Board also previously decided to hold a workshop for Anesthesia Team members to go over any questions on the new rules relating to Moderate Sedation and General Anesthesia/Deep Sedation. The Board agreed to table this item until next month when Dr. Moyer is in attendance.

Addition to Agenda: Dr. Cohen made a motion to enter executive session at 1:06 p.m. to obtain legal advice. Dr. Zois seconded the motion and it passed unanimously. The Board came out of executive session at 1:36 p.m. Dr. Higgins made a motion to develop a policy for release of public information relating to the Board meetings, with the understanding that the agenda made public Friday before the meeting. Honor requests for any publicly available by Wednesday at noon, will be honored and information available no later than the morning of the Board meeting date. Dr. Cohen seconded the motion and it passed unanimously.

Complaints 03-44, 05-29, and 05-42 Follow Up: Board staff reported that complaint 05-42 remains open at the Board's request, because the licensee has not completed the consent agreement requirements. Dr. Theriault made a motion to issue a Board generated complaint based on the licensee's failure to comply with conditions of his consent agreement. Ms. Blaisdell seconded the motion, it passed with Dr. Cohen abstained, and Dr. Higgins recused as the Complaint Officer.

Complaint 07-55 Follow Up: Board staff reported that the licensee is not in compliance with portions of his consent agreement and has sent a letter to that effect to the licensee. Dr. Cohen made a motion to table this item until the November meeting pending a response by the licensee. Ms. Blaisdell seconded the motion and it passed with Dr. Higgins recused.

Complaint 09-35 J. Robbins/L. Dowell – The complainant in this case alleged that the dental radiographer over radiated her and asked her to push the button herself. Ms. Denk made a motion to dismiss the complaint as no violation of the Dental Practice Act, and issue a letter of

guidance indicating that the patient should not be involved in the radiographic process and it is improper radiographic technique for the patient to push the sensor button. In addition, when a patient asks to speak to the dentist concerning their treatment, and the doctor is not available, accommodations should be made for the patient to do so. Dr. Zois seconded the motion, it passed with Dr. Higgins opposed, and Dr. Cohen recused as the Complaint Officer.

Complaint 09-36 L. Howard/J. Brady – The complainant alleged that the licensee did not indicate that there would be additional charges for his daughter’s orthodontia. The licensee informed the other parent what the fees would be and all treatment was consented to. There is no evidence that the orthodontia was anything but standard of care. Ms. Blaisdell made a motion to dismiss the complaint, as there was no violation of the Dental Practice Act. Dr. Zois seconded the motion, it passed with Dr. Theriault, Ms. Denk recused, and Dr. Cohen recused as the Complaint Officer.

Rules:

Chapter 1: Definition for “Certificate of Oral Condition”: a written statement of oral condition completed by a licensed dentist on a form supplied by the Board of Dental Examiners prior to the fabrication of cast partial dentures by a licensed Maine denturist.

- #27: typographical error, should say “an” instead of “and” individual.
- #29: definition for moderate sedation – Board staff will check ADA guidelines.
- #32: Overdenture is one word – add teeth, “retained roots” or “dental” implants
- #35: typographical error, should say, “constructing” not construction

Dr. Cohen made a motion to accept the draft of Chapter 1 as a proposed rule. Ms. Blaisdell seconded the motion and it passed unanimously.

Chapter 2: Dr. Higgins made a motion to accept the draft of Chapter 2 as a proposed rule. Dr. Cohen seconded the motion and it passed unanimously.

Chapter 3: Ms. Denk made a motion to accept the draft of Chapter 3 as a proposed rule. Ms. Blaisdell seconded the motion and it passed unanimously.

Chapter 4: The Board would like to add the following to Chapter 4:

J. Prior to the fabrication of a removable tooth-borne partial denture, including but not limited to cast frameworks, a Maine licensed denturist must have:

- (1) A certificate of oral condition approved by the Board and completed by a Maine licensed dentist; and
- (2) A diploma from a post-secondary denturism educational institution approved by the International Federation of Denturists and the Maine Board of Dental Examiners; or

- (3) Completed the upgrade curriculum related to the fabrication of partial dentures as set forth in 32 M.R.S. §1100-E(6) and Board Rule, Chapter 5.

Dr. Cohen made a motion to accept the draft to include the above changes to chapter 4 as a proposed rule. Dr. Zois seconded the motion and it passed unanimously.

Chapter 5: Ms. Denk made a motion to accept the draft of Chapter 5 as a proposed rule. Dr. Cohen seconded the motion and it passed unanimously.

Chapter 9:

II.E. add “with the exception of ongoing dental treatment by the licensee.”

U. “Board certified” oral and maxillofacial surgeon

Failure to comply with practice closure procedures as follows:

Dr. Higgins made a motion to accept Chapter 9 to include the above changes, as a proposed rule. Ms. Blaisdell seconded the motion and it passed unanimously.

Chapter 11: Ms. Blaisdell made a motion to accept Chapter 11 as a proposed rule. Dr. Zois seconded the motion and it passed unanimously.

Chapter 12: Dr. Higgins made a motion to accept Chapter 12 as a proposed rule. Dr. Zois seconded the motion and it passed unanimously.

Chapter 14: Dr. Higgins made a motion to accept Chapter 14 as a proposed rule. Dr. Cohen seconded the motion and it passed unanimously.

“An Act to Allow the Board to Grant Permits to Qualified Individuals to Practice as Dental Residents”: The Board will need to draft testimony to be presented at the BRED Committee’s Work Session for this bill. Dr. Theriault will work on this and bring it back for review.

Letter from Cathy Turbyne, RDH, MS, Ed.D. Re: Credits Awarded to Presenters: Ms. Turbyne requested that the Board review its rationale for awarding category II credits to a developer/presenter of a Category I course. Ms. Blaisdell made a motion stating that according to the current Board rules, presenters can only claim category II credits. The Board will add this item to its next round of rule making to further discuss the possibility of changing its rules. Dr. Cohen seconded the motion and it passed unanimously.

Letter from Licensee Re: Request to Amend Consent Agreement Requirement: The licensee requested that his random urinalysis testing be reduced from once per week to two times per month. Dr. Higgins made a motion to send a letter indicating that the Board reviewed his request, and let him know that the Board has not received his quarterly report from his Primary Care Physician, which was due July 9, 2009 and October 9, 2009. It is his responsibility to

ensure that the Board receives these reports as they become due. The Board will review this information again at its November 13, 2009 meeting in order to review your compliance with the Consent Agreement. Dr. Cohen seconded the motion and it passed with Dr. Theriault recused. The Board has already sent a proposed amended Agreement to allow the decrease in testing which the Board will hold onto until the licensee has come into compliance.

E-mail from William C. Adams, DMD, MAGD Re: Fabrication and Delivery of an Oral Appliance Diagnosed by a Physician: Dr. Higgins made a motion stating that the fabrication and delivery of an oral appliance is within the scope of practice for licensed Maine dentists. Ms. Denk seconded the motion and it passed unanimously.

E-mail from Marie Doucette, RDH Re: PHS/IPDH questions: 1. Can an independent dental hygienist take radiographs if a dentist is available for interpreting/diagnosing them? 2. Can a public health hygienist work in a denturist office and be paid by the denturist business? Dr. Higgins made a motion stating that the answer to her two questions is negative under the current laws and rules relating to Public Health Supervision and Independent Practice of Dental Hygiene. Dr. Cohen seconded the motion and it passed unanimously.

Letter from David Flanders, DMD Re: Request for Information Concerning Old Complaint: Dr. Cohen made a motion stating that the Board send Dr. Flanders a letter answering the question that the patient did not file a complaint against the other licensee mentioned in his request and that in answering the first question, the remaining question we are unable to answer your remaining questions. Dr. Theriault seconded the motion and it passed unanimously. AAG Smith will review the letter.

E-mail from Melissa Bellmore Re: Hepatitis B Questions: Dr. Higgins made a motion to send a letter stating that these questions are answered in the CDC guidelines and/or OSHA guidelines and refer them to those entities. Dr. Cohen seconded the motion and it passed unanimously.

Letter from Dr. Simmons Re: Release of Obligation for Licensee: Dr. Simmons requested that the licensee be allowed to accept a position on the MMPHP Committee. Dr. Higgins made a motion to send a letter to the licensee, with a copy of Dr. Simmons' letter, asking him to comment on the inquiry and whether he would be willing to be a participant monitor. He will be asked to respond by the November 13, 2009 meeting. Ms. Denk seconded the motion and it passed unanimously.

Letter from Jane Bernier, DDS Re: Patient records located at Kennebec Valley Dental Center: Dr. Bernier asked whether she could take over the patient records from the former Penobscot Bay Children's Dental Center in Belfast so that individuals will not fall through the cracks. Dr. Higgins made a motion to send a letter with a statement indicating that the Board does not own the records and therefore cannot release them; this would be something between the entities. If she wishes to speak further to the Board concerning this inquiry, the Board is available to discuss it. The records need to be available to the patients upon appropriate request

and it would be helpful if the Board office knew of the location of the records, should we get an inquiry. Dr. Zois seconded the motion and it passed unanimously.

Sun Tan City Brochure Re: Teeth Whitening: The Board accepted the information as an FYI.

E-mail from Sonja Bussiere Re: H1N1 Vaccine: Ms. Bussiere asked the Board whether there were any regulations that allow dentists and/or hygienists to administer the H1N1 vaccination. Dr. Higgins made a motion to send a letter indicating that the Department of Professional and Financial Regulation who the Board answers to, has already considered this possibility, and current regulations do not allow this procedure at this time. Dr. Cohen seconded the motion and it passed unanimously.

E-mail from Margaret Palmer, PhD. Re: New Proposed MMPHP Policy: The Maine Medical Professionals Health Program asked for the Board's input on a new proposed policy that they are planning to put into place for its participants. Dr. Cohen made a motion stating that this Board is in favor of the policy in question. Dr. Zois seconded the motion and it passed with Dr. Higgins opposed.

Request from Marc Franco, Esquire Re: Continuing Education Approval for Licensee Concerning Complaint 08-3: Dr. Cohen made a motion stating that the course syllabi provided do not qualify for the consent agreement requirement relating to endodontic diagnosis. The Board agreed to grant a three-month extension to the licensee in order to locate a course, which must be pre-approved by the Complaint Officer. Dr. Zois seconded the motion (the licensee also has the option to contact a dental school to develop an appropriate course) and it passed with Dr. Theriault recused as the Complaint Officer. The licensee will have until March 12, 2010 to provide proof of successful completion of this pre-approved course.

Request from Kathy Raithel Re: Additional Extension of Time to Obtain CPR Recertification: Ms. Raithel has been granted a previous three-month extension to obtain her CPR certification. She was unable to locate a course and now requests an additional extension. Dr. Cohen made a motion to grant her an extension until November 30, 2009, and let her know that she is welcome to attend the course being offered in Dr. Theriault's office on October 30, 2009, but she would need to contact her office as soon as possible if she wishes to. The Board will not grant any further extension. Ms. Denk seconded the motion and it passed unanimously.

Dr. Cohen made a motion to adjourn at 4:46 p.m. Dr. Zois seconded the motion and it passed unanimously.

Respectfully Submitted,

Teneale E. Johnson
Executive Secretary