

**MASSACHUSETTS BOARD OF REGISTRATION IN DENTISTRY**  
**239 Causeway Street, Boston, MA 02114**  
**Room 417**  
**February 19, 2014**  
**AGENDA**

**8:30**  
**a.m.**

**Call to Order**

**A. Review of General Session Minutes—Meeting of January 15, 2014**

**B. DentaQuest**

**9:30**  
**a.m.**

**C. Complaint Resolution—Investigator Kathleen O’Connell**

--In the Matter of SA-INV-4500: Dr. Sean Rayment

**D. Administrative Matters**

--Regional/State Clinical Examination Requirements

--Legislative Updates

--Request for Clarification of Botulinum Toxins/ Dermal Fillers Policy

--Good Moral Character Licensure Policy

--AADB Mid-Year Meeting: April 2014

--Review of Enforcement Options Appropriate to the Different Stages of Complaint-Based Matters

**10:30**  
**a.m.**

**D M.G.L.c.112, §65C Session (closed to the public)**  
**(1-2).**

**E. Executive Session (closed to the public)**

**thru** The Board will meet in Executive Session as authorized pursuant to  
**L.** M.G.L. c.30A, § 21(a)(1) for the purpose of discussing the reputation,  
character, physical condition or mental health, rather than professional  
competence, of an individual, or to discuss the discipline or dismissal of,  
or complaints or charges brought against, a public officer, employee, staff  
member or individual.

Specifically, the Board will discuss and evaluate the Good Moral Character  
as required for registration for a pending applicant.

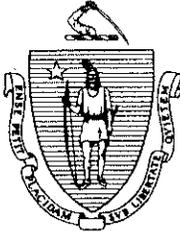
Specifically, the Board will discuss and evaluate pending disciplinary  
complaints that involve patient records and treatment of patients.

Specifically, the Board will review for approval the prior executive session  
minutes in accordance with M.G.L.c.30A, § 22(f) for sessions held during the  
January 15, 2014 meeting.

**Adjournment**

***NEXT MEETING: March 5, 2014***

Board of Registration in Dentistry  
General Session Minutes  
February 19, 2014  
Adopted by Board March 5, 2014



Board of Registration in Dentistry  
 Executive Session Minutes  
 February 19, 2014  
 Approved by Board March 5, 2014

**The Commonwealth of Massachusetts**  
 Executive Office of Health and Human Services  
 Department of Public Health  
 Division of Health Professions Licensure  
 239 Causeway Street, Suite 500, 5<sup>th</sup> Floor, Boston, MA 02114

DEVAL L. PATRICK  
 GOVERNOR

JOHN W. POLANOWICZ  
 SECRETARY

CHERYL BARTLETT, RN  
 COMMISSIONER

**MASSACHUSETTS BOARD OF REGISTRATION IN DENTISTRY**  
 239 Causeway Street, Boston, MA 02114  
 Room 417  
**GENERAL SESSION MINUTES**  
 February 19, 2014

**Present:** Dr. Cynthia Stevens, Chair; Ms. Lois Sobel, RDH, Secretary; Dr. Stephen DuLong; Dr. Milton Glicksman; Dr. John Hsu; Ms. Jacyn Stultz, RDH

**Absent:** Dr. Keith Batchelder; Dr. David Samuels; Ward Cromer, Ph.D.; Ms. Ailish Wilkie, CPHQ; Ms. Diane Grondin, CDA, Dental Assistant Advisor

**Staff Members Present:** Barbara A. Young, Executive Director; Jeffrey Mills, Assistant Executive Director; Vita Berg, Board Counsel; Dr. Liliana DiFabio, Supervisor of Investigations; Investigators Eileen Mulligan, Kathleen O’Connell, Lisa Seeley-Murphy, and Barbara Yates; Nursing Board Counsel Olajumoke Atueyi; Administrative Staff Genevieve Schaefer and Ana Bienvenu

**Motion:** At 8:31 a.m., to commence the meeting

**Motion Made By:** Ms. Lois Sobel

**Second:** Dr. John Hsu

**Vote:** Unanimous

*Dr. Cynthia Stevens, Chair, requested all present to observe a moment of silence in memory of Investigator Kathy Perault, who died recently.*

**Motion:** To adopt the proposed agenda for today’s meeting, as re-ordered by first-come, first-heard in Executive Session.

**Motion Made By:** Ms. Lois Sobel

**Second:** Dr. John Hsu

**Vote:** Unanimous

**Motion:** **To adopt General Session Board Minutes of January 15, 2014.**

**Motion Made By:** Ms. Lois Sobel

**Second:** Dr. Stephen DuLong

**Vote:** Unanimous

### **DentaQuest**

Atty. James Hawkins read a prepared statement to the Board on behalf of DentaQuest in response to the memoranda and presentation made by Atty. Joel Rosen and Dr. Mouhab Rizakallah at an earlier Board meeting. Atty. Hawkins informed the Board that DentaQuest is the MassHealth vendor who reviews and either approves or denies requests for coverage of proposed orthodontic treatment for MassHealth clients using the HLD Index (Handicapping Labio-Lingual Deviation Index) adopted by MassHealth in mid-2012. Under that index, benefits are approved if a score of "28" or greater is achieved, any score under "28" results in a denial of benefits. Prior to using the HLD Index, MassHealth directed DentaQuest to use the PAR Index (Peer Assessment Rating Index). Atty. Hawkins stated DentaQuest received copies of the DPH memos and agrees with DPH's position that the Wisconsin-based orthodontists, chosen to review the claims for coverage under MassHealth, are not practicing dentistry without a license but rather are performing an administrative function, specifically utilization review. Atty. Hawkins informed the Board that MassHealth, DentaQuest and EOHHS were recently sued by Atty. Rosen and his clients in federal court claiming the HLD Index and its use by MassHealth is discriminatory and unfair to MassHealth clients.

Dr. Glicksman voiced his concerns stating he is aware of cases where orthodontic benefits should have been approved by DentaQuest but were denied, in his opinion, inappropriately. To buttress his position, Dr. Glicksman produced a two-page document from a patient, who applied for orthodontic coverage under MassHealth but was denied, for review by the Board. Dr. Glicksman reiterated his position that the Board is charged with a duty to protect the public and stated he has serious concerns that the public is being harmed by the manner in which DentaQuest and MassHealth are denying coverage.

Ms. Berg stated the Board's mandate is to license dentists, etc. and to protect the public by monitoring the practice of dentistry in the Commonwealth but in these situations, there is no relationship between the patient and the DentaQuest case reviewer.

Dr. Hsu questioned whether the Board has the legal authority to decide this issue and suggested the Board defer the issue until that question can be answered.

Dr. DuLong stated clinicians often have concerns with their diagnoses and whether an insurance company will pay for treatment, i.e. is a "checklist" being used by the insurance

company and what happens if the utilization reviewer disagrees with the treating dentist's diagnosis.

Ms. Berg reminded the Board that MassHealth clients who have been denied coverage have the right to appeal that decision. Atty. Hawkins stated MassHealth clients who have been denied coverage may first appeal that decision to DentaQuest; if the patient remains unhappy post-review, then the patient may appeal the decision to a "board of hearing" at MassHealth. Atty. Hawkins stated this hearing process is not associated with DentaQuest and is conducted by an outside agency.

Atty. Rosen stated he filed a class action lawsuit in federal court as the Wisconsin-based orthodontists are using clinical data from the treating dentist and thus are "diagnosing" a patient.

Ms. Sobel suggested the Board defer any decision on this issue until the federal lawsuit is resolved.

### **Complaint Resolution—Investigator Kathleen O'Connell**

#### **--In the Matter of SA-INV-4500: Dr. Sean Rayment**

**Allegation:** Advertising violation

**Discussion:** Investigator O'Connell submitted her report to the Board for its consideration, noting that the violation was corrected when the Licensee requested the marketing company responsible for producing the ad re-design the flyers and brochures to conform to regulations. The Board did not discuss the matter.

**Motion:** **To not open as a complaint, as discipline is not warranted.**

**Motion Made By:** Dr. Milton Glicksman

**Second:** Ms. Lois Sobel

**Vote:** Unanimous

### **Administrative Matters**

#### **--Regional and State Clinical Examination Licensing Requirements**

Assistant Executive Director Jeffrey Mills presented a memorandum detailing changes to the Southern Regional Testing Agency (SRTA) and Council of Interstate Testing Agencies, Inc. (CITA) examinations. The memorandum included a recommendation of a policy change to maintain uniform application of this Board's standards for acceptance of regional and state board clinical examinations.

**Motion:**

**To adopt the following policy, to be posted on the Board's web site:**

Important Note: Although some regional and state examinations offer the option of not taking a Patient-Based Periodontal Examination, successful completion of this portion of a regional or state exam is required for dental licensure in Massachusetts.

The Massachusetts Board of Registration requires applicants for licensure in dentistry and dental hygiene to submit proof of successful completion (a minimum of 75% in EACH SECTION) of a clinical examination administered by one of the following:

- North East Regional Board (NERB);
- Florida State Board of Dental Examiners
- Nevada State Board of Dental Examiners
- Central Region Dental Testing Service (CRDTS) **if taken prior to July 1, 2009**
- Southern Regional Testing Agency (SRTA) Dental Exam **if taken on or after January 1, 2013**
- Council of Interstate Testing Agencies (CITA) Dental Exam **if taken on or after January 1, 2014**

**OR**

Successful completion of the NERB Diagnostic Skills Exam (DSE - formerly called DSCE) for dentists or the CSCE for dental hygienists **plus** successful completion (a minimum of 75% in EACH SECTION) of a state clinical examination acceptable to the Board or a clinical examination administered by one of the following:

- Central Region Dental Testing Service (CRDTS) **if taken on or after July 1, 2009**
- Southern Regional Testing Agency (SRTA) **Dental Exam if taken prior to January 1, 2013**
- Southern Regional Test Agency (SRTA) **Dental Hygiene Exam**
- Western Regional Examination Board (WREB)\*
- Council of Interstate Testing Agencies (CITA) **Dental Exam if taken prior to January 1, 2014**
- Council of Interstate Testing Agencies (CITA) **Dental Hygiene Exam**

\* Please note that for those submitting WREB test scores from exams taken after January 1, 2009, a rating of three (3) out of five (5) on sections of the exam using a rating system of 1-5 is considered passing by the Massachusetts Board (Board decision of November 18, 2009).

**Motion Made By:** Dr. Milton Glicksman

**Second:** Dr. John Hsu

**Vote:** Unanimous

### **--Legislative Updates**

Board Counsel Vita Berg explained to the Board members that the proposed dental assisting regulations that the issues announced at the January 15, 2014, meeting are in the process of being resolved. Ms. Berg, Executive Director Barbara A. Young, and Ms. Diane Grondin, CDA, dental assistant advisor to the Board, met to address the inconsistencies in language of the proposed regulations and have produced a consistent text. The Board is now awaiting advice from the EOHHS/DPH Office of General Counsel to determine if the new text will be considered a substantive change, which would require public hearing. Ms. Young advised the Board that there has been no further development with PGY-1 or advanced practice dental hygienist proposed legislation.

### **--Advisory Opinion Request—Use of Botulinum Toxins and Dermal Fillers by Licensed Dentists**

Executive Director Barbara A. Young produced a letter written to the Board by Atty. Judith Feinberg Albright and Atty. Robert F. Callahan, Jr. asking for clarification on behalf of their clients on the Board's policy regarding the use of botulinum toxins and dermal fillers by licensed dentists. Specifically, Atty. Feinberg Albright and Atty. Callahan asked: 1) what is the Board's interpretation of "part of the delivery of the patient's comprehensive treatment plan" as it pertains to the use of botulinum toxins and dermal fillers and, 2) what is the Board's interpretation of the "practice of dentistry" as it pertains to the use of botulinum toxins and dermal fillers?

Dr. Hsu noted the policy was adopted by the Board to offer licensees some guidance but the technology is constantly changing. Dr. Hsu also noted botulinum toxins and dermal fillers were originally exclusively used in TMJ cases but that has also changed as the technology has changed.

Ms. Sobel asked if it was the Board's intent to limit the use of botulinum toxins to oral surgeons due to their extensive training. Dr. Stevens replied that oral surgeons have been permitted to use botulinum toxins and dermal fillers for a long time and that she was part of the Board's workgroup that drafted the policy. She stated the workgroup was trying to avoid a situation where a general dentist is only using botulinum toxins and dermal fillers and their use is not part of a comprehensive treatment plan.

Dr. Glicksman suggested the Board not amend the current policy but review each case, as warranted, on a case-by-case basis. Dr. Hsu concurred.

**Motion:** **To make no changes to the Board's current Policy Advisory on the Use of Botulinum Toxins and/or Dermal Fillers by Licensed Dentists**

**Motion Made By:** Dr. Milton Glicksman

**Second:** Dr. Stephen DuLong

**Vote:** Unanimous

**--Staff Action to Identify Individual Registration Applications Requiring Good Moral Character Evaluation**

Board Counsel Vita Berg and Executive Director Barbara A. Young asked the Board to review and/or draft a policy concerning the Executive Director and/or Asst. Executive Director's authority to approve licensure applications where an applicant has answered "yes" to one of the Good Moral Character application questions. Ms. Young stated further information is requested when an applicant has indicated "yes" to the question regarding criminal history; specifically, Ms. Young indicated a CORI (Criminal Offender Record Information) check is done, as to Mass. only, to determine if the applicant has a criminal history in Mass., whether that record includes convictions for felonies or misdemeanors, whether a case is pending at the time of application and whether the applicant's disclosure matches the CORI results. Ms. Berg provided a proposed policy from the Board of Registration in Pharmacy that was recently adopted by that Board to address this very issue.

**Motion:** **To adopt the Licensure Policy 14-01 currently employed by the Board of Registration in Pharmacy regarding licensure applications where an applicant has answered "yes" to one of the Good Moral Character questions, to authorize Board staff to change pharmacy-specific language to dentistry-specific language, and to adopt the dentistry-specific version as policy for this Board.**

**Motion Made By:** Dr. Milton Glicksman

**Second:** Dr. Stephen DuLong

**Vote:** Unanimous

**--AADB Mid-Year Meeting and American Dental Education Assoc. Meeting**

Executive Director Barbara Young reminded members of the April 6-7, 2014, meeting in Chicago, IL. Ms. Young, Dr. Stevens, and Dr. Glicksman are planning to attend. Dr. Stevens encouraged other members to become involved in the organization. Ms. Young provided an application for an interested Board member to attend the AADB Mid-Year Meeting and ADEA meeting with all expenses being paid for one member by ADEA.

**--Review of Enforcement Options**

Board Counsel Vita Berg distributed a document containing suggested language for Board members' use when making motions after reviewing Good Moral Character, staff assignments, initial review of complaints, reconsiderations of prior Board actions, final adjudications, license status changes, and when making policy decisions. Also included was a list of types of sanctions and optional requirements which may be included in each.

*At 9:56 a.m., Dr. Stevens announced that the Board will meet in Executive Session as authorized pursuant to M.G.L. c. 30A, §21(a)(1) for the purpose of discussing the reputation, character, physical condition or mental health, rather than the professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. Specifically, the Board will discuss and evaluate the Good Moral Character as required for registration for a pending applicant for licensure. Additionally, the Board will discuss and evaluate pending disciplinary complaints that involve patient records and treatment of patients. The Board will also approve prior executive session minutes in accordance with M.G.L. c. 30A, §22(f). Executive Session is closed to members of the public, except as provided for in M.G.L. c. 30A, §21(a)(1). At the conclusion of the Executive Session, the Board will return to open session for the sole purpose of entering into another closed session pursuant to M.G.L. c. 112, §65C. The Board will not hear any additional matters in open session on this date.*

**Motion:** At 9:56 a.m., to enter Executive Session, under Purpose 1 of the Open Meeting Law, and to announce to the public that the Board will not return to General Session today.

**Motion Made By:** Ms. Lois Sobel, RDH

**Second:** Dr. John Hsu

**Roll-Call Vote:** **In Favor:** Dr. Stephen DuLong; Dr. Milton Glicksman; Dr. John Hsu; Ms. Lois Sobel, RDH; Ms. Jacyn Stultz, RDH  
**Opposed:** None  
**Abstain:** Dr. Cynthia Stevens, Chair

*The Board remained in Executive Session from approx. 9:56 a.m. to 1:05 p.m.*

**Motion:** At 1:05 p.m., to enter M.G.L.c.112, §65C Session

**Motion Made By:** Ms. Lois Sobel

**Second:** Ms. Jacyn Stultz

Board of Registration in Dentistry  
General Session Minutes  
February 19, 2014  
Adopted by Board March 5, 2014

**Vote:** Unanimous

*The Board remained in M.G.L. c. 112, §65C Session from approx. 1:05 p.m. to 1:22 p.m.*

**Adjournment**

**Motion:** At 1:22 p.m., to adjourn the meeting

**Motion Made By:** Ms. Lois Sobel

**Second:** Dr. John Hsu

**Vote:** Unanimous

Respectfully submitted,

\_\_\_\_\_  
Lois Sobel, RDH, Secretary

\_\_\_\_\_  
Date