COMMONWEALTH OF MASSACHUSETTS

NOTICE OF THE REGULARLY SCHEDULED MEETING OF THE BOARD OF REGISTRATION IN DENTISTRY

April 1, 2015 239 Causeway Street ~ Room 417 A&B Boston, Massachusetts 02114

AGENDA

Time	#	Item	Exhibits	Contact
8:30 a.m.	1	CALL TO ORDER		
8:31	II	DETERMINATION OF QUORUM AND APPROVAL OF AGENDA		
8:32	III	ADMINISTRATIVE MATTERS Amalgam Separator Compliance Issue—John Reinhardt, DEP Update Board Calendar 2015 VALOR Act Policy Regulatory Workgroup Membership State E-Mail System for Board Members NPDB Report: Dr. Chris Kim, DN20565 Advisory Ruling: Out-of-State CODA-approved Dental Assisting Programs Limited License Applicant Request for TOEFL Score Waiver: Dr. Alessandra Salles	Memos and Attachments	B. Young, S. Leadholm
10:15	IV	COMPLAINT RESOLUTION: PENDING BOARD MATTERS SA-INV-5166: Dr. Amelia Lane SA-INV-6792: Dr. Richard Blasé DEN-2013-0065: Sandra Goutier, RDH DEN-2013-0066: Kimberly Consoli, RDH DEN-2014-0064: Renee Perez, RDH	Investigation Reports	L. Seeley- Murphy, B. Yates E. Mulligan
10:40	V	REVIEW OF MINUTES OF GENERAL SESSION MEETINGS Meeting of October 1, 2014 Meeting of November 5, 2014		0.00
10:50	VI	FLEX SESSION		

11 a.m.	VII	EXECUTIVE SESSION (closed to the public) 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 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 pending disciplinary complaints that involve patient records and treatment of patients. Specifically, the Board will discuss and evaluate the Good Moral Character of applicants for licensure.	
3:00	VIII	M.G.L.c.112, §65C SESSION (closed to the public)	
3:45	IX	ADJUDICATORY SESSION (closed to the public)	
4:15	х	ADJOURNMENT	

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

AL SESSION MINUTES April 1, 2015

Present: Dr. David Samuels, Board Chair; Dr. Keith Batchelder; Dr. Cynthia Stevens; Dr. Stephen DuLong; Dr. Milton Glicksman; Dr. Ward Cromer; Ms. Kathleen Held; Ms. Lois Sobel

Absent: Ms. Ailish Wilkie, Board Secretary; Ms. Jacyn Stultz; Dr. John Hsu; Ms. Diane Grondin

Dr. Keith Batchelder left the meeting for the day at 3:10PM.

Staff Present: Barbara A. Young, Executive Director; Jeffrey Mills, Assistant Executive Director; Samuel Leadholm, Esq., Board Counsel; Dr. Liliana DiFabio, Supervisor of Investigations; OPP Investigators Sarah Millar, Eileen Mulligan, Kathleen O'Connell, Lisa Seeley-Murphy and Barbara Yates.

Motion:

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

Motion Made By:

Ms. Lois Sobel

Second:

Dr. Cynthia Stevens

Vote:

Unanimous

Motion:

To adopt the proposed agenda for today's meeting.

Motion Made By:

Ms. Lois Sobel

Second:

Dr. Cynthia Stevens

Vote:

Unanimous

Administrative Matters:

A. 2015 BORID Calendar

Ms. Young asked the Board to confirm the remaining proposed meeting dates for 2015. Dr. Samuels noted the July and August meetings were scheduled mid-month rather than the traditional first Wednesday of each month. Mr. Mills informed the Board the July meeting was tentatively scheduled for July 8th due a possible conflict with the July 4th holiday but the nursing board is scheduled to meet on July 8th so the conference room is unavailable that day. The Board

members agreed to reschedule their July meeting for Wednesday, July 1st and to cancel any proposed August meeting date.

B. Amalgam Separator Compliance Issue - Mr. John Reinhardt Mass. DEP

Ms. Young informed the Board she had been contacted by Mr. John Reinhardt of the Mass. DEP regarding DEP's efforts to bring dentists into compliance with the regulations regarding the disposal of mercury amalgam in wastewater. Mr. Reinhardt provided a handout to Board members describing DEP's Mercury Amalgam Certification program and answered questions from the Board as appropriate. Mr. Reinhardt informed the Board amalgam separators have been required by the state for all dentists who place or remove amalgam restorations since 2008 and noted DEP is having difficulty in keeping up with current dental office locations and addresses. Mr. Reinhardt informed the Board dentists are required to certify they are following proper disposal procedures every five years but noted dentists are generally very resistant. Mr. Reinhardt asked if the Board had an updated list of practice locations it could provide to DEP. Ms. Young responded that all dentists are only required to provide one official address and that could be a home address or office address and that the Board does not track office locations. Mr. Reinhardt informed the Board DEP is considering modifying its regulations to require dentists to certify their compliance every two years tracking the current licensure renewal cycles. Mr. Reinhardt also stated DEP has been consulting with the Mass. Dental Society on its proposed regulatory changes and noted that oral surgeons will be exempted from these requirements.

Dr. Cromer asked if the Board needed to make a decision at this meeting; Dr. Samuels advised the Board this is an informational session only. Dr. DuLong asked if there are any other special cases other than dental schools, such as corporate dental practices like Aspen Dental; Mr. Reinhardt answered no. Dr. Glicksman asked about cleaning agents used for waterlines in that the agents might mobilize mercury; Mr. Reinhardt agreed stating bleach may separate mercury.

Mr. Reinhardt stated approx. 1000 dental offices will need to recertify this year but that process is currently on hold pending the result of DEP's proposed regulatory changes. Dr. Glicksman expressed concern stating he was the chair of the MDS committee that addressed this issue and explained MDS had come to a 5-year agreement with the Mass. Water Resource Authority that is now being changed by DEP. Mr. Reinhardt replied the MWRA does not regulate wastewater, which is under the authority of DEP. Dr. Glicksman asked about the fee to recertify; Mr. Reinhardt stated that fee will be assessed every 2 yrs. instead of the original every 5 yrs. if the proposed regulatory changes are adopted within the next year. Mr. Reinhardt stated no public hearings on the proposed changes have been scheduled yet and the proposed changes will likely include changes on the record retention requirements. Dr. Glicksman questioned whether the change in certification from every 5 yrs. to every 2 yrs. will actually help dentists.

Dr. DiFabio noted DHPL investigators do not look for amalgam separators during an inspection generally due to their location outside the confines of a dental office, i.e. in a rear storage room near the compressors, etc.

C. Valor Act Policy

Atty. Leadholm submitted a proposed DHPL division-wide policy regarding the licensure of Valor Act candidates that was passed by the Legislature in 2012. Atty. Leadholm advised the Board the policy was drafted to help with the transfer of active military personnel and their families from one state to another. Atty. Leadholm stated Chief Board Counsel Vita Berg has been appointed the division's Valor Act liaison. Dr. DuLong asked if this policy applies to current active duty personnel or former; Atty. Leadholm replied it could apply to both but noted the applicant must identify themselves as a Valor Act applicant.

Motion:

To Adopt the Valor Act Implementation, DHPL Division

Policy 14-01 as written

Motion Made By:

Dr. Cynthia Stevens

Second:

Dr. Ward Cromer

Vote:

Unanimous

D. Regulatory Review Workgroup

Ms. Young submitted a roster of the current workgroup members and asked the Board to adopt this roster so a quorum may be established at each workgroup meeting. Dr. Samuels asked how the roster was determined; Dr. DiFabio answered that members who volunteered to work on the Aug. 2010 regulatory amendments were contacted to see if they were interested in taking another look at those amendments. Atty. Leadholm advised the Board it may recommend additional participants. Dr. Stevens, chair of the workgroup, stated she would welcome new members suggesting specialists would be especially welcomed to the workgroup. Dr. DuLong noted the workgroup does not have a general practitioner and stated the Board should encourage dentists to participate. Ms. Young informed the Board Dr. Rosenberg has agreed to participate as a consultant on the anesthesia and sedation regulations only and as a consultant will not be a voting member of the workgroup.

Dr. Glicksman stated Dr. Samuels should be included as an ex officio member.

Motion:

To Accept the Proposed Roster of the Regulatory Review

Workgroup as amended

Motion Made By:

Dr. Milton Glicksman

Second:

Dr. Cynthia Stevens

Vote:

Unanimous

E. State Email System

Mr. Mills reminded the Board he provided each member with information on how to access the state email system and provided each member with their own unique password. Dr. Glicksman asked if the passwords were case sensitive; Mr. Mills replied they were not. Dr.

Batchelder asked how they would receive information from Board staff as he and other Board members may not routinely check their state email address; Atty. Leadholm advised that an alert would be sent out to each Board member's personal email address advising them to check their state email address. Atty. Leadholm advised the Board that passwords would need to be updated every 90 days.

F. Request for Investigation and/or Decision Regarding a Malpractice Settlement – In re: Dr. Chris Unsok Kim by Executive Director Barbara A. Young, RDH

Ms. Young informed the Board she had received a request from Dr. Kim requesting "official verification or letter of good standing" as Dr. Kim is applying for licensure in No. Carolina. According to Dr. Kim, the No. Carolina dental board requires a letter from the Board stating that he did not violate the dental practice act before No. Carolina will issue his license. In support of his request, Dr. Kim submitted a copy of the NPDB report that indicates he settled a Sept. 2008 claim of alleged negligent treatment in January 2012 for \$5,000.00. Ms. Young informed the Board that to date it has not received a complaint and has not been contacted by the patient complainant in relation to the malpractice settlement. Further, Ms. Young stated Dr. Kim is requesting the Board institute an investigation in the facts and circumstances surrounding the 2012 malpractice settlement, or in the alternative, a letter of good standing clearing Dr. Kim of any violation of the Massachusetts dental practice act(s) with regards to the 2012 malpractice settlement so that he may be duly licensed in No. Carolina.

Dr. Samuels suggested sending a letter to the No. Carolina dental board stating there is no complaint on file with the Board. Atty. Leadholm advised the Board that a letter doesn't resolve the issue as No. Carolina is requiring a letter that states Dr. Kim is cleared of any wrongdoing in connection with the 2012 malpractice settlement. Further, Atty. Leadholm advised the Board it is not a good policy to open a complaint in the absence of a complaint from the patient seven years after the incident occurred. Dr. Batchelder stated he understood Dr. Kim's dilemma and asked if anyone had talked to the No. Carolina board; Atty. Leadholm replied yes. Dr. DuLong noted a \$5,000 settlement is relatively minor. Dr. Glicksman noted it appears to be a simple case of unsuccessful treatment. Dr. Samuels suggested the No. Carolina dental board may investigate the complaint if it is interested in doing so.

Motion:

To send a letter to the Licensee that states the Board will not open an investigation concerning the treatment that gave rise to the 2012 malpractice settlement

Motion Made By:

Dr. Stephen DuLong

Second:

Dr. Cynthia Stevens

Vote:

Unanimous

G. Advisory Ruling – Dental Assistant Licensure of Applicants who have completed out-of-state training at CODA-accredited dental assisting programs

Atty. Leadholm advised the Board the new dental assisting regulations do not address what to do with a licensure application from a dental assistant who has successfully completed a dental assisting program from an out-of-state CODA-accredited school. Ms. Young stated she believed this omission to be an oversight as the Board routinely accepts transcripts from out-of-state CODA-accredited programs in dentistry and dental hygiene.

Motion:

To adopt the proposed Advisory Ruling on Dental Assistant Licensure Applicants who have successfully completed out-of-state CODA-accredited dental assistant programs.

Motion Made By:

Dr. Milton Glicksman

Second:

Dr. Stephen DuLong

Vote:

Unanimous

H. Request for Waiver of a Passing Score of "90" on the TOEFL in re: Dr. Alessandra Salles by Executive Director Barbara A. Young, RDH

Dr. Cynthia Stevens recused herself from the discussion and vote of the Board on this matter.

Ms. Young informed the Board it had received an application for an initial-first-time limited license dental intern license from Dr. Alessandra Salles, an Aug. 1995 graduate of a Brazilian dental school As required, Dr. Salles submitted the results of her TOEFL score as her dental school program was taught in a language other than English. Dr. Salles reported a total score of "78" on her 1/17/14 test and a score of "89" on her 11/21/14 test.

Dr. Salles addressed the Board in English answering all questions as appropriate. Dr. Samuels asked how often the TOEFL exam was given; Dr. Salles replied the paper based test is given approx, every 4 months. Dr. Batchelder asked Dr. Salles was she received a score of "89;" Dr. Salles replied it is a very hard test that takes 4-5 hours to complete. Dr. DuLong noted the BUSDM had required all foreign trained, post-doctorate dental students to achieve a score of "85" on the TOEFL exam for years but changed the score to a "90" when the Board amended its regulations in 2010. Mr. Mills noted a score of "90" is average but some states require a score of "94" while others only require a score of "84."

Dr. Salles noted 90% of the patients at the community health center where she will work speak Portuguese (her native language) or Spanish. Dr. Cromer noted Dr. Salles' supervising dentist will be former Board member Dr. Roderick Lewin. Dr. Samuels expressed concern the Board might be setting an unwarranted precedent by accepting Dr. Salles' score of "89."

Motion:

To Accept Dr. Salles' score of "89" on the TOEFL exam

Motion Made By:

Dr. Milton Glicksman

Second:

Dr. Ward Cromer

Vote:

Unanimous

The Board took its morning recess at 9:51AM and resumed the meeting at 9:57AM

Complaint Resolution—Investigator Lisa Seeley-Murphy

--In the Matter of SA-INV-5166: Dr. Amelia G. Lane

The licensee was not present for the discussion and vote of the Board on this matter.

Ms. Kathleen Held and Dr. Milton Glicksman recused themselves from the discussion and vote of the Board on Complaint No. SA-INV-5166: Dr. Amelia G. Lane.

Allegation:

Drug Violation

Discussion:

Investigator Seeley-Murphy informed the Board the licensee no longer practices in Massachusetts and the DEA is currently searching for the person who wrote the fraudulent prescriptions.

Dr. Samuels asked if the Attorney Generals' office was involved;

Ms. Seeley-Murphy replied it was not as the DEA was

investigating the matter.

Motion:

To not open a complaint as no evidence of violation found.

Motion Made By:

Dr. Ward Cromer

Second:

Dr. Stephen DuLong

Vote:

Unanimous

Complaint Resolution—Investigator Barbara Yates

--In the Matter of SA-INV-6792: Dr. Richard M. Blasé

The licensee was not present for the discussion and vote of the Board on this matter.

Allegation:

Inferior Treatment; Failure to Release Dental Records; Business

Practice Issues

Discussion:

After the presentation by Investigator Yates, the Board opted not

to discuss the matter.

Motion:

To open a formal complaint as possible evidence of violation

found.

Motion Made By:

Dr. Ward Cromer

Second:

Dr. Cynthia Stevens

Vote:

Unanimous

I. General Session Minutes of October 1, 2014

Motion:

To adopt the General Session Minutes of Oct. 1, 2014

Motion Made By:

Ms. Lois Sobel

Second:

Dr. Cynthia Stevens

Vote:

Unanimous

J. General Session Minutes of November 5, 2014

Motion:

To adopt the General Session Minutes of Nov. 5, 2014

Motion Made By:

Ms. Lois Sobel

Second:

Dr. Milton Glicksman

Vote:

Unanimous

K. Flex Session

- 1. Mr. Mills informed the Board of the next Oral Health/HIV Symposium and extended an invitation on behalf of Ms. Helene Bednarsh to any interested Board member.
- 2. Dr. Batchelder asked about the implications of the recent US Supreme Court decision on the FTC case against the No. Carolina dental board on the work done by the Board. Dr. Glicksman noted the No. Carolina dental board's members are appointed by their professional dental association. Dr. DuLong noted this issue will likely be discussed in great detail at the next AADB meeting in late April. Atty. Leadholm advised the Board this decision may not only impact the Board but all boards across the Commonwealth and noted the issue arose when the No. Carolina dental board issued cease and desist orders to non-dental providers of teeth

whitening services. Atty. Leadholm stated he would bring this issue back to the Board once he and the DPH Office of General Counsel have an opportunity to review the decision.

- 3. Dr. Samuels informed the Board he has been invited to speak on three occasions to members of the dental community and asked if these presentations would qualify for CEUs. Dr. Samuels was informed it would qualify but he would need to keep records on where and when he spoke and on what subject.
- 4. Dr. Samuels asked about foreign trained dental students working as limited licensees at community health centers suggesting a committee be formed to review the curriculum of the foreign dental school programs. Ms. Young reminded the Board it granted her staff action authority to approve licensure applications from foreign trained dentists last fall and to bring any questionable applications/transcripts to the Board for its consideration. Dr. Samuels suggested creating a list of all foreign dental schools and providing that list to Dr. DuLong for review.
- 5. Dr. Samuels noted the state has recently required all boards to undergo 15 mins of exercise during its meeting. After receiving several puzzled looks from his fellow Board members, Dr. Samuels stated April Fools!

Complaint Resolution—Investigator Eileen Mulligan

--In the Matter of DEN-2013-0065: Sandra Goutier, RDH

The licensee was not present for the discussion and vote of the Board on this matter.

Allegation:

Practicing Beyond the Scope

Discussion:

Investigator Mulligan informed the Board the licensee admitted to administering nitrous oxide oxygen to 10-12 patients over a 3-4 month period. Ms. Sobel suggested putting a hold on the licensee's ability to renew her hygiene license but Ms. Mulligan noted the licensee has already renewed her hygiene license.

Motion:

To offer a Consent Agreement for Probation for 6 Months to include the following remedial coursework:

3 Hours: Risk Management

• 3 Hours: Ethics

If this agreement is not accepted by the licensee, the matter will be referred to prosecution.

Motion Made By:

Dr. Milton Glicksman

Second:

Dr. Stephen DuLong

Vote:

Unanimous

Complaint Resolution—Investigator Eileen Mulligan

-- In the Matter of DEN-2013-0066: Kimberly Consoli, RDH

The licensee was not present for the discussion and vote of the Board on this matter.

Allegation:

Practicing Beyond the Scope

Discussion:

Investigator Mulligan informed the Board this licensee also admitted to administering nitrous oxide oxygen to her patients.

Motion:

To offer a Consent Agreement for Probation for 6 Months to

include the following remedial coursework:

• 3 Hours: Risk Management

• 3 Hours: Ethics

If this agreement is not accepted by the licensee, the matter

will be referred to prosecution.

Motion Made By:

Ms. Lois Sobel

Second:

Dr. Stephen DuLong

Vote:

In Favor: Dr. David Samuels; Dr. Cynthia Stevens; Ms. Lois

Sobel; Dr. Stephen DuLong; Dr. Milton Glicksman; Dr. Ward

Cromer; Ms. Kathleen Held

Opposed: None

Abstain: Dr. Keith Batchelder

Complaint Resolution—Investigator Eileen Mulligan

-- In the Matter of DEN-2013-0064: Renee Perez, RDH

Seema Lynch, Esq. was present on behalf of the licensee for the discussion and vote of the Board on this matter.

Allegation:

Practicing Beyond the Scope

Discussion:

Investigator Mulligan informed the Board the licensee is a recent graduate of dental hygiene school and admitted to administering nitrous oxide oxygen to her patients.

Atty. Lynch stated the investigator's interview with the licensee was done while the licensee was on maternity leave and the licensee felt pressured to answer all questions. Atty. Lynch noted the dentist who hired the licensee only received 3 months' probation.

Dr. Samuels asked about the layout of the dentist's office, i.e. is it an open concept office. Ms. Mulligan stated the walls between each operatory only go halfway up to the ceiling but you would need to stand to see over these walls.

Dr. Samuels asked if the dentist started and finished administering the nitrous to the patient but was not present in the operatory was performing a prophylaxis. Ms. Mulligan stated the dentist would set up the patient on nitrous oxide oxygen but would leave the hygienist's operatory to see his own patients while the hygienist was performing the prophylaxis.

Motion:

To offer a Consent Agreement for Probation for 6 Months to include the following remedial coursework:

• 3 Hours: Risk Management

• 3 Hours: Ethics

If this agreement is not accepted by the licensee, the matter will be referred to prosecution.

Motion Made By:

Ms. Lois Sobel

Second:

Dr. Milton Glicksman

Vote:

Unanimous

At 10:51AM a.m., Dr. Samuels announced that the Board will meet in closed 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 to be immediately followed by M.G.L. c.112, §65C and adjudicatory closed sessions. Specifically, the Board will meet in Executive Session and will discuss and evaluate the Good Moral Character as required for registration of pending applicant(s) 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 §65C session and the adjudicatory session, the Board will not return to the general session and will adjourn for the day.

Motion:

At 10:52AM, to enter Executive Session pursuant to M.G.L. c.

30A, §21(a)(1)

Motion Made By:

Dr. Stephen DuLong

Second:

Dr. Milton Glicksman

Vote:

In Favor: Dr. David Samuels; Dr. Cynthia Stevens; Ms. Lois Sobel; Dr. Stephen DuLong; Dr. Milton Glicksman; Dr. Ward

Cromer; Ms. Kathleen Held; Dr. Keith Batchelder

Opposed: None Abstain: None

The Board recessed for lunch at 12:00PM and resumed its meeting at 12:48PM.

Motion:

At 3:50PM, to leave Executive Session

Motion Made By:

Dr. Milton Glicksman

Second:

Dr. Cynthia Stevens

Vote:

In Favor: Dr. David Samuels; Dr. Cynthia Stevens; Ms. Lois

Sobel; Dr. Stephen DuLong; Dr. Milton Glicksman; Dr. Ward

Cromer; Ms. Kathleen Held

Opposed: None Abstain: None

Motion:

At 3:51PM, to enter M.G.L. c. 112, §65C Session

Motion Made By:

Dr. Stephen DuLong

Second:

Dr. Cynthia Stevens

Vote:

In Favor: Dr. David Samuels; Dr. Cynthia Stevens; Ms. Lois

Sobel; Dr. Stephen DuLong; Dr. Milton Glicksman; Dr. Ward

Cromer; Ms. Kathleen Held

Opposed: None **Abstain:** None

Motion:

At 4:34PM, to leave M.G.L. c. 112, §65C Session

Motion Made By:

Dr. Stephen DuLong

Second:	Dr. Cynthia Stevens			
Vote:	In Favor: Dr. David Samuels; Dr. Cynthia Stevens; Ms. Lois Sobel; Dr. Stephen DuLong; Dr. Milton Glicksman; Dr. Ward Cromer; Ms. Kathleen Held Opposed: None Abstain: None			
Motion:	At 4:35PM, to enter an Adjudicatory Session			
Motion Made By:	Dr. Stephen DuLong			
Second:	Dr. Cynthia Stevens			
Vote:	In Favor: Dr. David Samuels; Dr. Cynthia Stevens; Ms. Lois Sobel; Dr. Stephen DuLong; Dr. Milton Glicksman; Dr. Ward Cromer; Ms. Kathleen Held Opposed: None Abstain: None			
Motion:	At 4:40PM, to leave the Adjudicatory Session and to Adjourn			
Motion Made By:	Ms. Lois Sobel			
Second:	Dr. Cynthia Stevens			
Vote:	In Favor: Dr. David Samuels; Dr. Cynthia Stevens; Ms. Lois Sobel; Dr. Stephen DuLong; Dr. Milton Glicksman; Dr. Ward Cromer; Ms. Kathleen Held Opposed: None Abstain: None			
Respectfully submitted,				
Ms. Ailish Wilkie, Board Sec	cretary Date			