

COMMONWEALTH OF MASSACHUSETTS

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

February 3, 2016
239 Causeway Street ~ Room 417 A&B
Boston, Massachusetts 02114

AGENDA

Time	#	Item	Exhibits	Contact
8:30 a.m.	I	CALL TO ORDER, DETERMINATION OF QUORUM, AND APPROVAL OF AGENDA		
8:35	II	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) and (3) for the purposes 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 an individual, and to discuss strategy with respect to litigation as a public discussion may have a detrimental effect on the Board's position. Specifically, the Board will discuss and evaluate individuals with respect to the Good Moral Character requirement for initial licensure. Specifically, the Board will discuss and evaluate pending disciplinary complaints that involve patient records and treatment of patients. Specifically, the Board will discuss pending litigation: Commonwealth of Mass., et al. v. Donald Sydor, Suffolk Superior Court, C.A. 2015-00780-F		
11:30	III	GENERAL SESSION (open to the public): PENDING BOARD MATTERS A-DEN-2014-0058: Dr. Paul Freedman B-SA-INV-7879: Dr. Frank Varinos C-DEN-2015-0104: Dr. Richard A. Goodman D-DEN-2015-0043: Dr. Joseph Nash E-SA-INV-7757: Dr. Mark Sivers F-SA-INV-6825: Community VNA/Dr. Donald A. Pierce G-DEN-2015-0031: Dr. Robert Kelly H-DEN-2015-0032: Beverly Dixon, RDH I-DEN-2014-0120: Christine Villaneuva, RDH J-DEN-2014-0118: Dr. Ofelia Villanueva	Memos, Attachments	S. Millar D. Taylor, L. Seeley- Murphy, B. Yates
1:45 p.m.	IV	ADMINISTRATIVE MATTERS A-Good Moral Character Licensure Report B-Reactivation of Complaint Committee (start date, members, scope) C-CDCA Update D-Dental Assistant OJT Licensure Policy	Memos	B. Young, S. Leadholm, S. DuLong, J. Stultz

2:45

V

FLEX SESSION

3:00

ADJOURNMENT

MASSACHUSETTS BOARD OF REGISTRATION IN DENTISTRY

239 Causeway Street, Boston, MA 02114

Room 417

GENERAL SESSION MINUTES

February 3, 2016

Present: Dr. Stephen DuLong, Board Chair; Ms. Ailish Wilkie, Board Secretary; Dr. Cynthia Stevens; Dr. Paul Levy; Ms. Lois Sobel, RDII; Dr. David Samuels; Ms. Jacyn Stultz, RDII; Dr. Keith Batchelder; Dr. John Hsu; Ms. Kathleen Held

Absent: Dr. Ward Cromer

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

Dr. John Hsu arrived for the meeting at 8:58 a.m.

Ms. Kathleen Held arrived for the meeting at 11:30 a.m.

Ms. Lois Sobel left the meeting for the day at 2:45 p.m.

Dr. David Samuels left the meeting for the day at 3:22 p.m.

Motion: At 8:31 a.m., to commence the meeting and to adopt the proposed agenda for today's meeting.

Motion Made By: Dr. Cynthia Stevens

Second: Ms. Ailish Wilkie

Vote: Unanimous

At 8:32 a.m., Dr. DuLong 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. 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. 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 General Session before adjourning the meeting for the day.

Motion: At 8:33 a.m., to enter Executive Session pursuant to M.G.L. c. 30A, §21(a)(1)

Motion Made By: Dr. Cynthia Stevens

Second: Ms. Ailish Wilkie

Vote: Unanimous

The Board took its morning recess at 10:20 a.m. and resumed the meeting at 10:28 a.m.

The Board recessed for lunch at 12:06 p.m. and resumed its meeting at 1:00 p.m.

Complaint Resolution – Investigator Sarah Millar

--In the Matter of DEN-2014-0058: Dr. Paul R. Freeman

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

Allegation(s): Infection Control Violations

Discussion: Ms. Millar informed the Board the licensee's office was inspected in Nov. 2015 and the licensee was found to be deficient in CEU's for the 2012-2014 licensure cycle including the required courses on effective pain management and infection control.

Motion: To offer a Consent Agreement for Probation for 6 Months to include the required CEU coursework on effective pain management and infection control, remediation/full compliance with items 3, 5, and 6 on the notice of violation(s) and the following remedial coursework:

- 6 Hours: Managing Medical Emergencies

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

Motion Made By: Ms. Lois Sobel

Second: Dr. John Hsu

Vote: Unanimous

Complaint Resolution – Investigator Danielle Taylor

--In the Matter of SA-INV-7870: Dr. Frank T. Varinos

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

Allegation(s): Advertising Violation

Discussion: Ms. Taylor informed the Board the licensee has remediated the advertising violation.

Motion: **To not open a formal complaint as no evidence of violation found.**

Motion Made By: Dr. John Hsu

Second: Ms. Lois Sobel

Discussion: Dr. Samuels noted this case involves more than just a simple advertising violation as the licensee's advertisement did not include a licensee's name or the value of the discounted services. Ms. Held asked how the Board can improve this process. Dr. DuLong noted the attendees at the recent CDCA meeting felt this board and others were not taking a harsh enough stand against advertising violations. Dr. DiFabio suggested the regulatory review workgroup will need to clarify what is required in advertisements.

Vote: Unanimous

Complaint Resolution – Investigator Danielle Taylor

--In the Matter of DEN-2015-0104: Dr. Richard A. Goodman

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

Allegation(s): Employment of an Unlicensed Dental Hygienist

Discussion: Ms. Taylor informed the Board the licensee is seeking to have this complaint dismissed as he no longer owns the practice that employed this hygienist noting the licensee's son is a co-owner of the practice.

Motion: To dismiss the formal complaint as no evidence of violation found.

Motion Made By: Dr. David Samuels

Second: Dr. Paul Levy

Vote: Unanimous

Complaint Resolution – Investigator Danielle Taylor

--In the Matter of DEN-2015-0043: Dr. Joseph A. Nash

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

Allegation(s): Employment of an Unlicensed Dental Hygienist

Discussion: Ms. Taylor informed the Board the licensee was also deficient in the required CEU's including infection control and BLS certification but has since completed both courses.

Atty. Leadholm suggested the Board amend current Staff Action Discipline Policy 14-02 to include a provision permitting the Executive Director to resolve complaints involving unlicensed practice where a licensee had cured any CEU deficiency within 90 days. Ms. Sobel agreed but suggested the Executive Director submit a quarterly report.

Motion: To amend Staff Action Discipline Policy 14-02 to include a provision regarding cure of CEU deficiency by a licensee within 90 days.

Motion Made By: Dr. Keith Batchelder

Second: Dr. John Hsu

Vote: Unanimous

Motion: To dismiss the formal complaint as no evidence of violation found with an advisory letter on the licensing and CEU regulations.

Motion Made By: Dr. David Samuels

Second: Ms. Lois Sobel

Vote: Unanimous

Complaint Resolution – Investigator Danielle Taylor

--In the Matter of SA-INV-7757: Dr. Mark A. H. Sivers

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

Allegation(s): Advertising Violation

Motion: To not open a formal complaint as no evidence of violation found with an advisory letter on the advertising regulations.

Motion Made By: Dr. John Hsu

Second: None

Motion: To open a formal complaint as possible evidence of violation found.

Motion Made By: Dr. David Samuels

Second: Ms. Jacyn Stultz

Discussion: Dr. Batchelder noted the size of the advertisement is immaterial. Atty. Leadholm asked if the licensee has remediated the advertising violation, then why open a formal complaint questioning what, if any, additional information would be gained. Dr. Batchelder suggested voting down this motion and moving forward with Dr. Hsu's original motion.

Vote: **In Favor:** None
Opposed: Unanimous
Abstain: None

(Motion Failed)

Motion: To not open a formal complaint as no evidence of violation found with an advisory letter on the advertising regulations.

Motion Made By: Dr. Keith Batchelder

Second: Dr. John Hsu

Vote: Unanimous

Complaint Resolution – Investigator Lisa Seeley-Murphy

--In the Matter of SA-INV-6825: Dr. Donald A. Pierce

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

Allegation(s): Patient Abuse

Discussion: Ms. Seeley-Murphy informed the Board this case was referred to the Board from the DPH Bureau of Health Care Quality.

Motion: **To not open a formal complaint as no evidence of violation found.**

Motion Made By: Dr. Cynthia Stevens

Second: Dr. Paul Levy

Vote: Unanimous

Complaint Resolution – Investigator Lisa Seeley-Murphy

--In the Matter of DEN-2015-0031: Dr. Robert A. Kelly

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

Allegation(s): Administering Nitrous Oxide-Oxygen without a Valid (Expired) Individual Permit

Discussion: Ms. Seeley-Murphy informed the Board the licensee was also deficient in CEUs but has since corrected some. Dr. Hsu recommended a stayed probation but asked about the allegations that this licensee's hygienist also administered nitrous to patients. Dr. Hsu suggested both cases be joined.

Motion: **To join complaints DEN-2015-0031 and DEN-2015-0085**

Motion Made By: Dr. John Hsu

Second: Dr. Cynthia Stevens

Vote: Unanimous

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

- **3 Hours: Risk Management**

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

Motion Made By: Dr. David Samuels

Second: Dr. Keith Batchelder

Amended Motion: **To offer a Consent Agreement as stated but to include the following additional remedial coursework:**

- **3 Hours: Ethics**

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

Amended Motion Made By: Ms. Lois Sobel

Second: Dr. John Hsu

Vote: **In Favor:** Dr. Stephen DuLong; Ms. Ailish Wilkie; Dr. Cynthia Stevens; Dr. Paul Levy; Ms. Lois Sobel; Ms. Jacyn Stultz; Dr. Keith Batchelder; Dr. John Hsu; Ms. Kathleen Held
Oppose: Dr. David Samuels
Abstain: None

Complaint Resolution – Investigator Lisa Seeley-Murphy

--In the Matter of DEN-2015-0032: Beverly Dixon, RDH

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

Allegation(s): Practicing Beyond Scope

Discussion: Ms. Seeley-Murphy informed the Board this licensee is the hygienist employed by Dr. Kelly who is alleged to have administered nitrous oxide-oxygen to patients.

Motion: **To offer a Consent Agreement for Stayed Probation for 3 Months to include the following remedial coursework:**

- **3 Hours: Risk Management**

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

Motion Made By: Dr. Cynthia Stevens

Second: Dr. Keith Batchelder

Amended Motion: To offer a Consent Agreement as stated but to include the following additional remedial coursework:

- 3 Hours: Record Keeping

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

Amended Motion Made By: Dr. David Samuels

Second: Ms. Jacyn Stultz

Vote: Unanimous

Complaint Resolution – Investigator Barbara Yates

--In the Matter of DEN-2014-0118: Dr. Ofelia V. Villanueva

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

Allegation(s): Infection Control Violations

Discussion: Ms. Yates informed the Board the licensee completed the requisite 40 CEU's not including the required course on effective pain management but the licensee has since completed the 1 hour online course offered by the BUSDM.
Dr. Hsu asked if the licensee provided Botox treatments; Ms. Yates replied yes noting a registered nurse had administered Botox at the licensee's practice. Dr. Batchelder asked if the licensee has remediated all infection control violations; Ms. Yates replied yes. Dr. Batchelder asked if the licensee remains deficient in CEU's; Ms. Yates replied the correct no. of CEU's have been completed by the licensee but the licensee did not complete the full effective pain management course offered online by the BUSDM.

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

- 3 Hours: Effective Pain Management
- 3 Hours: Infection Control

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

Motion Made By: Dr. David Samuels

Second: Ms. Jacyn Stultz

Amended Motion: **To offer a Consent Agreement as stated but to increase the no. of hours of remedial coursework as follows:**

- **6 Hours: Infection Control**

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

Amended Motion Made By: Dr. Keith Batchelder

Second: Dr. John Hsu

Vote: **In Favor:** Dr. Stephen DuLong; Ms. Ailish Wilkie; Dr. Cynthia Stevens; Ms. Jacyn Stultz; Dr. Keith Batchelder; Dr. John Hsu; Ms. Kathleen Held
Oppose: Dr. David Samuels; Dr. Paul Levy; Ms. Lois Sobel
Abstain: None

Complaint Resolution – Investigator Barbara Yates

--In the Matter of DEN-2014-0120: Christine V. Villanueva, RDH

Dr. Stephen DuLong recused himself from the discussion and vote of the Board on complaint DEN-2014-0120: Christine V. Villanueva, RDH.

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

Allegation(s): Infection Control Violations

Discussion: Ms. Yates informed the Board this licensee was a part-time hygienist on Saturdays for Dr. Ofelia Villanueva.

Ms. Sobel asked if the licensee was administering local anesthesia; Ms. Yates replied it is unclear.

Motion: **To offer a Consent Agreement for Probation for 3 Months to include the following remedial coursework:**

- **3 Hours: Infection Control**

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

Motion Made By: Dr. David Samuels

Second: Dr. John Hsu

Vote: Unanimous

Administrative Matters:

A. Report from Executive Director Barbara A. Young regarding Licensure of Applicants with Good Moral Character Issues

Pursuant to BORID Policy 14-01, the following licenses were issued between 1/19/16 and 2/3/16:

Charletha Ames	Dental Assistant (OJT)	DA07155
Patricia Brook	Dental Assistant (FTDA)	DA07183
Carl M. Lormeus	Dental Assistant (OJT)	DA07198

B. Proposed Board Policy – Complaint Committee

Atty. Leadholm submitted a revised policy for the Board's consideration noting allegations to be reviewed by the Complaint Committee will be done so in either a general session or in an executive session as appropriate. Dr. DuLong stated he thought the Board's decision was to ensure two dentists participated in each committee meeting; Dr. Batchelder agreed. Dr. DuLong also suggested the committee meet once per quarter; Ms. Young suggested an April 2016 meeting to be followed by meetings in July and October. Dr. Stevens, Dr. DuLong and Ms. Sobel agreed to participate in the first complaint committee meeting in April 2016. Dr. Batchelder asked what would happen if one committee member could not attend the meeting; Ms. Young replied the committee would not meet or the absentee member could ask some other Board member to take their place.

Motion: To adopt the Proposed Board Policy regarding the formation of a Complaint Committee, as amended

Motion Made By: Ms. Lois Sobel

Second: Dr. David Samuels

Vote: Unanimous (Dr. Batchelder abstained)

C. CDCA & ADEX - Update

Dr. DuLong updated the Board on the outcome of the recent CDCA meeting noting the examination format will now be called the "patient centered clinical integrated format." Ms. Sobel noted the CDCA proposed going forward with the Buffalo project noting the exam patient must be a patient of record prior to sitting for the examination. Dr. DuLong noted the practice used to be dental students would recruit board patients from the street but going forward the

board patient must be a patient of record. Dr. DuLong noted this will decrease the likelihood a dental student will pay a patient to sit for the board exam and this patient will likely be used by the dental schools to determine the clinical competency of the dental student. Dr. DuLong noted the BUSDM is only the 2nd school to adopt this format and it has been well received by the dental students. However Ms. Stultz noted the new format will be a logistical nightmare for the board examiners.

Ms. Wilkie stated the Mass. caucus discussed advertising violations by dentists and elections to the steering committee. Dr. DuLong stated Ms. Patricia Atkins-Connolly has stated only active members of state boards may participate in the steering committee and informed the Board the he, Ms. Sobel and Dr. Myron Alukeian were elected to the steering committee and Dr. Stevens is the alternate.

Dr. DuLong noted ADEX will no longer let two Board members attend the ADEX meeting. Currently Dr. Milton Glicksman is the Board's representative on the exam committee and Dr. Mina Paul is the Board's representative on the House of Representatives. Dr. DuLong indicated the Board will need to decide which of the two should represent the Board or the Board may pick a current Board member. Ms. Wilkie noted public Board members are recognized as part of the CDCA but are not supported by the CDCA.

D. Dental Assistant Licensure - OJTs

Ms. Stultz stated she's had numerous conversations with OJTs who are seeking employment but cannot become licensed due to the Board's regulations requiring a letter from a supervising dentist. Dr. Batchelder suggested adopting a policy changing the supervising dentist letter to a letter within the last year. Ms. Diane Zack, owner of RDH Temps a temporary employment agency for hygienists and assistants, suggested solving the problem by changing the letter requirement to within the last year may help Massachusetts based OJTs but will not help any OJT seeking employment here from out of state. Ms. Zack also noted this requirement has created a problem for OJTs who left the practice of assisting for a period of time and are now trying to regain employment. Dr. DuLong disagreed noting OJTs need to be supervised; Dr. Hsu agreed noting the training in infection control protocols might have changed since that OJT was first employed. Dr. Hsu opined the dentists need to be held responsible for the duties of the OJTs and other assistants. Dr. Hsu asked if a license is granted to an OJT without a dentist's letter, what happens if problems arise. Ms. Stultz suggested changing the wording from supervising dentist to supervising employer. Ms. Zack noted the original intent was to only register dental assistants but somehow this changed to licensing dental assistants.

Atty. Leadholm advised the Board the licensure statute for assistants may not delineate categories of assisting, i.e. OJTs, CAs, etc. Dr. Samuels suggested eliminating the requirement of a letter from the supervising dentist altogether but Dr. Hsu strongly disagreed. Atty. Leadholm suggested adding this issue to the agenda for the March 2016 meeting for further discussion.

Motion: **To include the OJT dental assistant licensure requirements in the agenda for the March 2016 BORID meeting**

Motion Made By: Dr. David Samuels

Second: Dr. Paul Levy

Vote: Unanimous

E. Flex Session

1. Legislative Report

Dr. Batchelder opined the Board is remiss in its duties by not voicing its opinion regarding pending legislation but Ms. Young noted DPII's commissioner does report on the status of pending legislation. Atty. Leadholm advised the Board it is likely not authorized by the dental practice act(s) to comment on pending legislation; Dr. Batchelder asked to see this in writing.

2. Indemnification of the Board Members

Dr. DuLong expressed concern about the indemnification of individual Board members by the state given the recent FTC decision. Atty. Leadholm advised the Board it could discuss this issue in further detail by adding the issue to its agenda but noted indemnification is permissive and dependent upon the appointing authority per the Mass. Tort Claims Act. Dr. DuLong noted the Board members need more information so they can each make an informed decision as to the need for a personal indemnification policy. Dr. Batchelder asked to see the written policy on indemnification from the division level.

3. Prescription Monitoring Program (PMP)

Ms. Wilkie and Mr. Mills updated the Board on a recent training they attended regarding the PMP program noting the revised PMP is scheduled to begin in June 2016. Mr. Mills noted the program has been expanded to include information from 30+ states. Ms. Wilkie noted each licensee or licensee's delegate will have their own sign-in identification and the revised program will review prescriber habits and will cross-reference prescribers.

4. Dental Licensure Renewal

Dr. Samuels asked why a question was included in the dental renewal on whether a licensee was involved in a civil lawsuit since the last renewal. Mr. Mills replied this has been a policy across the division suggesting Mr. Lavery might have an explanation.

5. CEU's, Assessing Fines, etc.

Dr. Batchelder stated he was troubled by the apparent explanation that the Board cannot begin assessing monetary fines for regulatory violations and non-compliance with CEU requirements. Dr. Batchelder suggested BORID ask the other boards within DIHPL to join in the Board's efforts to begin assessing fines. Dr. Batchelder also asked for a written explanation from DIHPL why the Board cannot comment on pending legislation. Atty. Leadholm advised the Board members to review its governing statute at MGL c.112, §43 noting the authority to offer a legal opinion has not been expressly granted to the Board. Ms. Wilkie noted that the Board had been asked for its opinion in years past and questioned why the Board could not do so now. Atty. Leadholm advised the Board a response is often needed within 24-48 hours and suggested bringing the response to the Board afterwards. Dr. Batchelder noted Board staff has made decisions without Board involvement. Dr. DuLong suggested the Board needs an update on the pending legislation before deciding how to respond, if at all.

Motion: At 3:30 p.m. to adjourn the meeting for the day

Motion Made By: Dr. John Hsu

Second: Ms. Ailish Wilkie

Vote: Unanimous

Respectfully submitted,

Ms. Ailish Wilkie, Board Secretary

Date