Commonwealth of Massachusetts

Executive Office of Health and Human Services

Department of Public Health

Bureau of Health Professions Licensure

Board of Registration in Dentistry

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May 4, 2022

Via WebEx from 250 Washington Street

# Boston, Massachusetts 02108

# **AGENDA**

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General Session is open to the public and may be viewed and/or heard via WebEx.

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Access Code: 2536 473 4941 Attendee ID: #

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| Time | # | Item | Exhibits | Contact |
| 8:30 a.m. | **I** | **CALL TO ORDER, DETERMINATION OF QUORUM, AND** APPROVAL OF AGENDA |  |  |
| 8:32 | **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) 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.  Specifically, the Board will discuss and evaluate pending disciplinary complaints that involve medical records and information of patients. |  |  |
| 10:00 | **III** | ADJUDICATORY SESSION (closed to the public) |  |  |
| 10:30 | **IV** | COMPLAINT RESOLUTION: PENDING BOARD MATTERS  1. DEN-2020-0125: Dr. Ekaterina Mamulashvili 2. DEN-2019-0181: Monica Barbano, RDA 3. SA-INV-18317: Dr. Mark Wang | Investigation Reports,  Memos, Attachments | D El-Majdoubi  K O’Connell  E Mulligan |
| 10:50 | **V** | ADMINISTRATIVE MATTERS  1. Update: Draft Guidance on Patient First Legislation 2. Update: In-Person Board Meetings 3. EFDA Workgroup Meetings 4. Staff Action Authority Unlicensed Practice Cases Report 5. Review of General Session Minutes of April 6, 2022 | Report,  Draft Minutes | B Young |
| 11:15 | **VI** | PROBATION MATTERS  1. Request for Early Termination of Probation and Retired License Status: DEN-2019-0020: Dr. Kevin Smith 2. Review of Compliance and Recommendation for Suspension 3. DEN-2019-0058: Kelly Kirchdorfer, RDA 4. DEN-2019-0107: Kall Fentahun, RDA 5. Review of Compliance: DEN-2018-0053: Sabine Dumel, RDA 6. Probation Monthly Report | Request,  Memos, Attachments,  Report | K Fishman |
| 11:50 | **VII** | **FLEX SESSION** |  |  |
| 12 noon |  | **ADJOURNMENT** |  |  |

**MASSACHUSETTS BOARD OF REGISTRATION IN DENTISTRY**

**250 Washington Street, Boston, MA 02108**

**GENERAL SESSION MINUTES**

**May 4, 2022**

**Present:**  Dr. Michael Scialabba, Board Chair; Dr. Thomas Trowbridge, Board Secretary;

Dr. Patricia Wu; Dr. Richard T. Miller, Dr. Seema Jacob; Ms. Jacyn Stultz, RDH; Ms. Jennifer McKeon, RDH, CDA

**Absent:** Ms. Stacy Haluch, RDH; Ms. Ailish Wilkie

**Board Staff Present:** Barbara A. Young, RDH, Executive Director; Jeffrey Mills, Asst. Executive Director; Heather Engman, Esq., Chief Board Counsel; Michael Egan, Esq., Board Counsel; Dr. Liliana DiFabio, Supervisor of Investigations; OPP Investigators Kathleen O’Connell, Deborah El-Majdoubi, Eileen Mulligan and Rhonda Heard; Probation Department Coordinator Karen Fishman

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| **Motion:** | **At 8:31 a.m., to adopt the proposed agenda for today’s meeting** |
| **Motion Made By:** | Ms. Jacyn Stultz |
| **Second:** | Dr. Thomas Trowbridge |
| **Vote:** | Unanimous |

*At 8:32 a.m., Dr. Scialabba announced that the Board will meet in a closed session as authorized 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 the treatment of patients. The 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 meet in a closed Adjudicatory Session before returning to its General Session and adjourning the meeting for the day.*

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| **Motion:** | **At 8:33 a.m., to enter an Executive Session pursuant to**  **M.G.L. c. 30A, §21(a)(1)** |
| **Motion Made By:** | Ms. Jacyn Stultz |
| **Second:** | Dr. Thomas Trowbridge |
| **Vote:** | **In Favor:** Dr. Michael Scialabba, Dr. Thomas Trowbridge,  Dr. Richard T. Miller, Dr. Patricia Wu, Dr. Seema Jacob,  Ms. Jacyn Stultz, Ms. Jennifer McKeon  **Opposed:** None  **Abstain:** None |

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| **Motion:** | **At 9:43 a.m., to enter an Adjudicatory Session** |
| **Motion Made By:** | Dr. Michael Scialabba |
| **Second:** | Ms. Jacyn Stultz |
| **Vote:** | **In Favor:** Dr. Michael Scialabba, Dr. Thomas Trowbridge,  Dr. Richard T. Miller, Dr. Patricia Wu, Dr. Seema Jacob,  Ms. Jacyn Stultz, Ms. Jennifer McKeon  **Opposed:** None  **Abstain:** None |

*The Board took its morning recess at 9:52 a.m. and resumed its meeting at 10:17 a.m.*

**Administrative Matters:**

1. **Update: Draft Guidance on “Patients First” Legislation**

Ms. Young informed the Board it appears she is the individual who needs to draft this memo and has yet to do so. Ms. Young indicated she hopes to present the document to the Board at its June or July meeting.

1. **Update: In Person Board Meetings**

Ms. Young informed the Board the target date for resuming in-person Board meetings is still June 1st but Mr. Mills noted the recording system has yet to be tested by IT and once tested, a new system must be ordered. Ms. Young noted given the current situation, it is highly unlikely the Board will resume its in-person meetings in time for its June 1st Board meeting.

1. **EFDA Workgroup Meetings**

Ms. Young noted Ms. Haluch has volunteered to chair this workgroup but a schedule has yet to be finalized with Ms. Haluch. Ms. Young asked for volunteers to participate in these meetings; Ms. McKeon and Dr. Trowbridge volunteered. Ms. Young indicated her plan is to hold these meetings every month after the monthly Board meeting wraps up.

1. **Staff Action Report on Unlicensed Practice Cases**

Ms. Young submitted her report listing those complaints for unlicensed practice or the employment of unlicensed dental personnel that were resolved through the application of staff action policy 14-03. Ms. Young noted she has approx. 40 more cases to review and hopes to do so in the coming weeks. The Board members had no questions for Ms. Young.

1. **Review of the General Session Minutes of the Board Meeting on April 6, 2022**

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| **Motion:** | **To approve the General Session Minutes of the April 6, 2022, Board meeting** |
| **Motion Made By:** | Dr. Thomas Trowbridge |
| **Second:** | Dr. Richard T. Miller |
| **Vote:** | **In Favor:** Dr. Michael Scialabba, Dr. Thomas Trowbridge,  Dr. Richard T. Miller, Dr. Patricia Wu, Dr. Seema Jacob,  Ms. Jacyn Stultz, Ms. Jennifer McKeon  **Opposed:** None  **Abstain:** None |

**Complaint Resolution – Investigator Kathleen O’Connell**

**--In the Matter of DEN-2020-0125: Dr. Ekaterina Mamulashvilli**

*Sean Carroll, Esq. was present on behalf of the licensee, via WebEx, for the discussion and vote of the Board on this matter.*

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| **Issue:** | Employment of an unlicensed dental assistant |
| **Materials Reviewed:** | Investigative report with attachments |
| **Discussion:** | Ms. O’Connell informed the Board the dental assistant at issue is alleged to have practiced on an expired license from 11/1/17 to 5/22/18 but noted the licensee and the dental assistant indicate the dental assistant was not practicing during this time period. Ms. O’Connell noted the complaint against the dental assistant has already been resolved by the Board. |
| **Motion:** | **To dismiss the complaint.** |
| **Motion Made By:** | Dr. Richard T. Miller |
| **Second:** | Ms. Jennifer McKeon |
| **Vote:** | **In Favor:** Dr. Michael Scialabba, Dr. Thomas Trowbridge,  Dr. Richard T. Miller, Dr. Patricia Wu, Dr. Seema Jacob,  Ms. Jennifer McKeon  **Opposed:** None  **Abstain:** None  (*Ms. Jacyn Stultz did not participate in the Board’s discussion or vote.)* |

**Complaint Resolution – Investigator Eileen Mulligan**

**--In the Matter of DEN-2019-0181: Monica Barbano, RDA**

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

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| **Issue:** | Unlicensed practice by a dental assistant |
| **Materials Reviewed:** | Investigative report with attachments |
| **Discussion:** | Ms. Mulligan noted the licensee stated she was unaware her license had expired. Further, Ms. Mulligan noted the licensee completed zero CEUs during the 2015-2017 licensure cycle, 12 CEUs during the 2017-2019 licensure cycle and only 9 CEUs during the 2019-2021 licensure cycle. |
| **Motion:** | **To offer a Consent Agreement for Stayed Probation for 6 Months to include the completion of the following conditions and remedial coursework:**   * **3 Hours: Risk management** * **1 Hour: Ethics** * **Successful completion of 15 deficient CEUs** * **Stayed probation period may be terminated early by the licensee upon evidence of the successful completion of the coursework and ethics/jurisprudence exam as stated.**   **If this agreement is not accepted by the licensee, the matter will be referred to prosecution.** |
| **Motion Made By:** | Dr. Michael Scialabba |
| **Second:** | Dr. Thomas Trowbridge |
| **Vote:** | **In Favor:** Dr. Michael Scialabba, Dr. Thomas Trowbridge,  Dr. Richard T. Miller, Dr. Patricia Wu, Dr. Seema Jacob,  Ms. Jennifer McKeon  **Opposed:** None  **Abstain:** None  (*Ms. Jacyn Stultz did not participate in the Board’s discussion or vote.)* |

**Complaint Resolution – Investigator Rhonda Heard**

**--In the Matter of SA-INV-18317: Dr. Mark Wang**

*Drs. Richard T. Miller and Patricia Wu recused themselves from the discussion and vote of the Board on SA-INV-18317: Dr. Mark Wang.*

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

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| **Issue:** | Business practice issues; Infection control violations |
| **Materials Reviewed:** | Investigative report with attachments |
| **Discussion:** | Ms. Heard informed the Board it received two anonymous complaints against this licensee alleging the licensee employed an unlicensed dental assistant and was non-compliant with the CDC Guidelines, i.e. the presence of an animal in the office that is not a service animal. Ms. Heard noted the licensee denies the allegations and an inspection was conducted of the licensee’s office in January 2022. Ms. Heard noted several deficiencies were discovered but each has since been remediated by the licensee.  Dr. Scialabba asked if there was a regulation regarding the presence of a dog in a dental office; Ms. Young replied there is no regulation that discusses this situation. But Mr. Mills noted having a dog present in a dental office may be a violation of the local board of health’s requirements. Ms. Heard replied she spoke with the Concord, MA board of health and was informed they do not have any such ordinance. Atty. Engman noted this issue came up in a pharmacy case so the pharmacy board adopted a sub-regulatory policy prohibiting the presence of non-service animals in pharmacies. |
| **Motion:** | **To open a formal complaint on the grounds of infection control violations, business practice issues and anesthesia/sedation regulatory violations.** |
| **Motion Made By:** | Ms. Jacyn Stultz |
| **Second:** | Dr. Thomas Trowbridge |
| **Vote:** | **In Favor:** Dr. Michael Scialabba, Dr. Thomas Trowbridge,  Dr. Seema Jacob, Ms. Jacyn Stultz, Ms. Jennifer McKeon  **Opposed:** None  **Abstain:** None |

**Probation Matters:**

1. **Review of Compliance/Recommendation for Suspension – by Karen Fishman, Probation Department Coordinator**

**--In the Matter of DEN-2019-0058: Kelly Kirchdorfer, RDA**

*The licensee was present, via WebEx, for the discussion and vote of the Board on this matter and answered all questions as appropriate.*

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| **Materials Reviewed:** | Probation report with attachments |
| **Discussion:** | Ms. Fishman informed the Board the licensee accepted a consent agreement for stayed probation for 6 months, effective 6/3/20, to resolve a complaint for unlicensed practice. Ms. Fishman noted the Board lifted the stay on 3/3/21 as the licensee had not completed the required remedial coursework and extended the licensee’s probationary period. However Ms. Fishman noted the notice sent to the licensee was returned to her by the post office. Ms. Fishman indicated the licensee denied receiving the notice as she was getting divorced and was having difficulty receiving mail sent to her former address. Ms. Young asked why two years later the licensee has yet to complete the risk management and ethics courses; the licensee replied she misread the consent agreement and thought she was all set. Dr. Scialabba asked the licensee if she could complete these two courses in the next month; the licensee replied she could. |
| **Motion:** | **To find the licensee in violation of her probation and to extend her probation three months with the same conditions as stated in the original consent agreement** |
| **Motion Made By:** | Ms. Jacyn Stultz |
| **Second:** | Dr. Michael Scialabba |
| **Vote:** | **In Favor:** Dr. Michael Scialabba, Dr. Thomas Trowbridge,  Dr. Richard T. Miller, Dr. Patricia Wu, Dr. Seema Jacob,  Ms. Jacyn Stultz, Ms. Jennifer McKeon  **Opposed:** None  **Abstain:** None |

**3. Probation Department Monthly Report**

Ms. Fishman submitted her monthly probation report for the period of 3/30/22 to 4/28/22. The Board had no questions for Ms. Fishman.

*Ms. Young informed the Board the probation matters involving Ms. Kall Fentahun, RDA (DEN-2019-0107) and Ms. Sabine Dumel, RDA (DEN-2018-0053) have been deferred until the next Board meeting on June 1, 2022.*

**Flex Session:**

1. Ms. Stultz asked if the Board’s compliance form, used by the investigators during an office inspection, will be updated. Ms. Young replied yes once the proposed changes to the Board’s regulations at 234 CMR have been promulgated by the Board.
2. Dr. Trowbridge asked if there has been any update on those proposed changes to 234 CMR; Ms. Young replied we are still waiting for the administrative review process to be completed. Atty. Engman stated she will follow up and report to the Board at its next meeting in June.
3. Dr. Jacob asked if having cameras in a dental treatment room were acceptable. Ms. Young replied that is not a good idea noting Massachusetts is a two-party state in that any recording of an individual can only be completed if the individual is given notice by the recording party and consents to be recorded. Otherwise Ms. Young noted the dentist who is setting up a recording system in his/her office might be subject to criminal prosecution. Atty. Engman agreed noting recording a patient may also implicate HIPAA and FIPA requirements. Ms. Young and Atty. Engman recommended the dentist who raised this question contact his/her attorney for advice. Dr. Scialabba agreed noting this is not an issue for the Board.
4. Ms. Young asked the Board for volunteers to participate in the two continuing education courses, originally scheduled for the Yankee Dental Congress in late January but cancelled due to a blizzard, to be offered by the Mass. Dental Society virtually. Ms. Young also asked for available dates suggesting June 1st or 2nd for the BORID Update course and June 28th to June 30th for the Dental Assisting 101 course. Ms. Young noted both courses would be offered in the evening from 6:30 to 8:30PM.

Drs. Scialabba, Trowbridge and Miller volunteered for the BORID Update course and selected June 2nd.

Ms. McKeon and Ms. Stultz volunteered for the Dental Assisting 101 course and selected June 30th.

**Probation Matters (continued):**

**4. Request for Early Termination of Probation and Approval of Application for Retired License Status – Ms. Karen Fishman, Probation Department Coordinator and Executive Director Barbara A. Young, RDH**

**In the Matter of DEN-2019-0020: Dr. Kevin Smith**

*The licensee and Vincent Dunn, Esq. were present, via WebEx, for the discussion and vote of the Board on DEN-2019-0020; the licensee answered all questions as appropriate.*

Ms. Fishman informed the Board the licensee entered into a consent agreement for two years’ probation, effective 8/17/21, with several conditions including the appointment of a practice monitor, remedial coursework, etc. Ms. Fishman stated the licensee is seeking the early termination of his probationary period as he has closed his dental practice and is retiring from active practice. Ms. Fishman noted she did receive one report from the practice monitor and the monitor noted the licensee still had several issues that needed to be addressed.

Ms. Stultz noted these issues are not mutually exclusive; Ms. Fishman agreed but noted the practice monitor would be unable to monitor the licensee’s practice as the licensee’s dental office has closed. Atty. Engman advised the Board it may approve the licensee’s application for retired license status if the Board votes to terminate the licensee’s probationary period. Dr. Trowbridge agreed and noted it would be impossible for the licensee to meet the terms of the consent agreement if he has closed his dental office. Ms. Young noted she has staff action authority to approve the licensee’s application for retired license status if the Board votes the terminate the license’s probation.

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| **Motion:** | **To terminate the licensee’s probationary period effective today** |
| **Motion Made By:** | Ms. Jacyn Stultz |
| **Second:** | Dr. Patricia Wu |
| **Vote:** | **In Favor:** Dr. Michael Scialabba, Dr. Thomas Trowbridge,  Dr. Richard T. Miller, Dr. Patricia Wu, Dr. Seema Jacob,  Ms. Jacyn Stultz, Ms. Jennifer McKeon  **Opposed:** None  **Abstain:** None |

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| **Motion:** | **At 11:28 a.m. to adjourn the meeting** |
| **Motion Made By:** | Dr. Michael Scialabba |
| **Second:** | Dr. Patricia Wu |
| **Vote:** | **In Favor:** Dr. Michael Scialabba, Dr. Thomas Trowbridge,  Dr. Richard T. Miller, Dr. Patricia Wu, Dr. Seema Jacob,  Ms. Jacyn Stultz, Ms. Jennifer McKeon  **Opposed:** None  **Abstain:** None |

Respectfully submitted,

Barbara A. Young, RDH

Executive Director

Date: May 30, 2022