**NH BOARD OF DENTAL EXAMINERS**

**7 Eagle Square - Hearings Room**

**CONCORD, NH  03301-4980**

**MONDAY, April 18, 2022**

**PUBLIC BOARD MEETING MINUTES**

The April 18, 2022, public session of the meeting of the New Hampshire Board of Dental Examiners was called to order at 8:43 am by Puneet Kochhar, DMD, President of the Board, with the following members present:

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| Puneet Kochhar, DMD, President | (PK) |
| Muhenad Samaan, DMD | (MS) |
| Howard Ludington, DDS | (HL) |
| Virginia Moore, RDH | (VM) |
| Lisa Scott, RDH | (LS) |

Absent:

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| Roger Achong, DMD | (RA) |
| Jay Patel, DDS | (JP) |
| John Girald, DMD | (JG) |
| Linda Tatarczuch, Public Member | (LT) |

Attendees present:

Sheri Phillips, Jessica Whelehan, Jenna Wilson, Mike Auerbach, Mark Abel, Dwayne Thibeault, Chandler Jones

Zoom teleconferencing technology was in use for this electronic meeting through https://us02web.zoom.us/j/87485332355?pwd=di9idW1OMElqOXROWldrZkp4eUkxZz09.

*All votes are unanimous unless otherwise noted.

1. **Anesthesia/Sedation Discussion:**

PK opened the discussion by asking if every General Practitioner dental office where an itinerant provider, a CRNA or an MD, should have a "host" or "facility" permit, noting that the Board had discussed this topic in November and had decided that all offices should have some sort of a hosting or facility permit. HL stated that he felt the host permit should only address the facility, not the process of administering anesthesia/sedation. PK stated he felt that every facility, whether hosting an itinerant provider or a dental provider, should have to obtain a facility permit. Attorney Sheri Phillips interjected that the Board should take a look at the Rhode Island dental rules with relation to Anesthesia as their basic framework appeared to match what the Board had voted on in November of 2021. PK stated that the ASEC had already done this work and the Board should not have to do Committee work. PK and HL then discussed what should be in the facility/host permit and the inspection form. PK argued strongly that there should only be one universal permit for facilities, and it should not be broken into a "facility" permit and a "host" permit. Chandler Jones, ASEC Vice Chair, and Mark Abel, ASEC Chair, brought up the fact that

Massachusetts has facility permits for each type of anesthesia being administered. Dwayne Thibeault, CRNA, also mentioned that ME has a framework that may cover all areas of concern. PK stated that a pro of having every facility get a facility permit was that they would be able to bring on any provider who was permitted, elaborating that the facility inspection would cover the facility and the comprehensive evaluation would cover the provider. PK stated that under this framework, if a provider had just had a comprehensive evaluation completed, and then wanted to add an additional facility, all that would need to be done was a facility inspection. Jessica Whelehan, Board administrator, stated that this was very similar to the current process, just with the addition of a facility permit. Mark Abel stated that the trend in oral surgery was for oral surgeons to work at multiple facilities as a "practice" often included more than one facility. PK shared a document he had been working on that was based on the Facility Inspection/Permit that Dr. Crowley and the ASEC has presented to the Board prior to Dr. Crowley stepping down. PK had made several changes to the form and expressed his ideas that the word "host" should be deleted as he felt it should just be one "universal" facility permit. After reviewing the form, and looking at the various sections which listed required items, and also provided a spot for listing who was responsible for what items, and provided a list of items that must be in all facilities, regardless of the type of anesthesia provider, Jessica asked PK if this meant that a new form and would be required for each provider, or a new permitting fee, or a new inspection fee? This question went unanswered. PK then stated that OPLC had issued an RFA without the approval of the Board and that OPLC had gotten the Board into this trouble, and that it now fell to the Board to make sure these issues were fixed. Neither Jessica Whelehan nor Sheri Phillips responded to this allegation. Mark Abel expressed concerns over the reference to the lockbox. HL suggested cleaning up the language discussing the lockbox and simply stating that the form indicated that the requirements set forth in the appropriate RSA (Pharmacy) needed to be met. PK noted that he had added the video laryngoscope to the requirements, based on previous discussions. He also explained that the inspector would simply be checking what the form indicates the facility will be providing, or, in the case of someone like an oral surgeon, the inspection would include everything, including a simulated scenario comprehensive evaluation, this way all mandatory inspections/evaluations would be completed prior to the permit being issued. Chandler Jones said that the MA rules were not specific about when the inspections occurred, which meant that permits were issued without creating a backlog of work. PK responded that the Board was following the general procedures that were set forth by AAMOS, and an additional follow-up every 5 years would be required, and that the scheduling would be the responsibility of the permit holder. HL asked what the penalty would be if the inspection and/or evaluation were not scheduled. PK said he was putting forth a rule proposal that a permit would simply lapse if the dentist did not schedule the required inspection/evaluation at the 5-year mark. Sheri Phillips expressed concerns that the Board, if they went this was, was adding inspections as every facility would require an inspection, as would every provider, and that this would make the rules and process even more bogged down. PK responded that this would actually be getting rid of inspections as a dental provider, at their "home office" would have the inspection and evaluation completed at the same time. Dwayne Thibeault expressed concern over the requirements that were listed on the facility permit/inspection form, explaining that he felt it should be based on the type of provider in the office. PK stated that he did not care, and that the meds on the mist needed to be in every single office with a permit. Dwayne inquired as to how the Board could hold someone accountable for meds that were not explicitly stated in the rules. Dwayne said the type of provider in the office should absolutely matter, as some of these meds would place the general practitioner at a great liability risk. PK disagreed. The Board members present, along with all guests and attendees debated whether an "emergency kit" with meds was a requirement in all offices. VM summarized that every office should have this kit, even though it was not listed anywhere in rules or statue, because every licensee had to complete a mandatory class on medical emergencies for each renewal, and this course "required" the emergency kit. PK then

asked if the battery backup for suction should be mandatory for the facility, or for the provider. MS argued that it should be a requirement at every facility, and PK argued that he felt it should be based on what the provider is bringing and elaborating that a generator is not "back-up". Dwayne stated, after further review of the form, that he felt that ECG should be a standard of care and not specific to cardiac patients only. A discussion regarding who should initial or attest to items on the form. PK explained that everyone will have a facility permit, whether they are hosting or administering anesthesia themselves. If they are hosting, they will complete the form, indicating what they are providing and what the provider will be contributing. The facility inspection, using the submitted form, will only check the facility requirements (section 4 of the drafted form) and any other items that were marked as being present at the facility, whether the provider was there or not. PK said that there would be a facility inspection every 5 years, and the provider must inform the board of any changes to provided equipment or anesthesia providers. Chandler Jones noted that the MA rules read that the Board "may" require an inspection/evaluation at any time, and that this left the door open to allow the Board to perform these two tasks more or less frequently, as needed or determined by the Board. HL debated that it should be on a regular basis, even yearly, like the inspections we all have to put our personal vehicle through, reminding the Board and all guests that the ultimate point and purpose of all of this discussion was public safety. PK asked how fair it would be if facility inspections were done yearly at facilities that are hosting itinerant providers, but those facilities that use dental providers are only being inspected, as part of the comp eval, every 5 years. Chandler Jones pointed out that MA and FL keep the two, the facility inspections and comprehensive evaluations, separate. PK suggested taking a random audit style approach to the facility inspection piece. A discussion ensued about how to run this proposed new process. Jessica Whelehan also took this opportunity to point out the fact that the current list of anesthesia providers showed that there were 76 offices listed as using CRNAs or MDs, and less than 20% had be inspected. Jessica also stated that she believed that there were many other offices, not registered with the board, and therefore not in compliance with the rules, that were using itinerant providers; Dwayne Thibeault confirmed this assertion. Jessica stated that she felt that, based on this information, expecting a yearly facility inspection would put an undue hardship on the Board and ASEC/inspectors. Jessica Whelehan also reminded the Board that they were currently behind by approximately 41 comprehensive evaluations, and if there were any additional facility inspections to come up, they had no way to get these done due to the fact that their current rules were insufficient and/or inappropriate, and a new system had not been proposed prior to the expiration of the emergency rules. PK asked if, once a basic framework had been discussed, the Board could proceed with scheduling inspections; Jessica and Sheri stated the Board could not. PK asked if the Board could simply revert back to the form rules, and Jessica responded that they could not as the old rules did not detail the fees and did not outline an appropriate way for the payments to be made. PK again suggested that the Board consider an audit approach to the facility inspections, and suggested using the following language, which is based on the Rhode Island Dental rules, as submitted by Jessica:

> A. The Board may, through appointed advisory consultants, conduct such inspections and investigations as deemed necessary by the Board to ensure compliance with the requirements of this Part.
> B. Refusal to permit an inspection shall constitute a valid ground for permit denial, suspension or revocation.
> C. Every applicant shall be given notice by the Board of all deficiencies reported as a result of an inspection or investigation.
> D. There will be an annual audit of At least 3% of the facilities. No facility will be subject to a random facility audit within 5 years unless there is a complaint. FI shall be scheduled within 30 days of notification of audit.

Upon motion from PK, second from HL, the Board voted to approve the following:

A. Every facility will be issued a facility permit.
B. There will be a universal facility permit form, which will be the form that PK had been editing.
C. The form will mandate that the host dentist indicate who will be providing anesthesia
D. The form will detail all items required by the facility (section 4).
E. The form will list the other items needed for anesthesia, and the list will include a spot to mark whether the provider will bring the items, or the facility.
F. All holders of a facility permit must inform the Board of any changes to anesthesia providers or changes to who is providing items on form. This notification will be on the approved form and will also require a new application fee.
G. The Board, after the application fee and inspection fee have been paid, will review the app and schedule the facility inspection.
H. Once facility inspection occurs a facility permit will be issued.
I. If there are changes to the provider of anesthesia or the equipment, the Board will review the new application and determine whether another inspection is required.
J. If a new inspection is deemed necessary, another inspection fee will be remitted.

PK asked if there needed to be a separate Dental Mobile Anesthesia Provider permit. Jessica expressed concerns that this would prove redundant considering the addition of the new facility permit. Jessica explained that a facility permit would essentially allow anyone holding an individual dental permit to provide anesthesia at any location (if agreed upon, and with the appropriate required documentation submitted). PK then asked if there needed to be two moderate sedation permits, one with pediatric qualification, and one without.

2. **RULES**

A. **DEN 403.07** Upon motion from MS, second from HL, the Board voted to adopt the text of 403.07; PK signed the cover letter.
B. **DEN 301** Upon motion from MS, second from HL, the Board voted to conditionally approve the text of Den 301; PK signed the approval letter.
C. **DEN 302.06** Upon motion from MS, second from LS, the Board voted to accept the final proposal as presented.
D. **DEN 301** Upon motion from MS, second from HL, the Board voted to adopt the text of Den 301; PK signed the cover letter.

3. **RFA**

Upon motion from MS, second from VM, the Board voted to have PK and HL serve on the RFA scoring team.

4. **ANESTHESIA/SEDATION DISCUSSION (Continued):**

PK asked the Board to consider the frequency of evaluations, looking at current rule Den 304.05 (c) 6, which currently reads, "Upon satisfactory completion of the facility inspection and comprehensive evaluations, a comprehensive evaluation shall be held at least once every 5 years; and". PK said that this would need some changing if the facility inspections were to be completed using an annual random audit. Jessica Whelehan pointed out that the random audit model would not work with just one facility permit, as there would be no way to differentiate between those offices that had a dentist performing anesthesia, meaning the facility inspection

would occur when the comprehensive evaluation was completed, versus those facilities that used an itinerant provider, and would therefore require additional facility inspections only. After discussion it was determined that there would be a facility permit and a host permit, and the host permit would be specifically for those who were using an itinerant provider. The Board also discussed what would happen if the permit holder failed to reach out to schedule the inspection and/or evaluation by their due date. PK suggested adding to Den 304.05 (c), possibly adding number 8, which would read, "permit holders who lapse shall not administer anesthesia." PK explained that a violation of this would then be considered professional misconduct, and the permit holder would be subject to disciplinary action. PK asked Jessica if, now that the Board had made some decisions about the process, the scheduling and completion of facility inspections/comprehensive evaluations could continue. Jessica replied that it could not, as there needed to be rules in place to address the process, the permits, the fees, et cetera. Attorney Sheri Phillips agreed with Jessica, stating that the Board would not be able to do inspections or evaluations until the rules were in place or until something moved forward with the RFA. All members and guests present then had a discussion about moderate sedation, with concerns being raised about the number of qualified providers in the room during these procedures. PK said the moderate discussion should be tabled so that RA (not present) could be consulted. The Board then began going through their current rules (Den 304) alongside the Rhode Island Dental Anesthesia rules, as detailed in the working draft of the rules and the associated forms.

At 4:37 pm, pursuant to RSA 91-A:3, and upon motion from MS, second by HL, the Board voted unanimously by roll call vote to go out of public session and into a non-public session for the purpose of discussing investigations of alleged licensee misconduct and as authorized by RSA 91-A:3, II (c), RSA 91-A:3, II (e), and Lodge v. Knowlton, 119 N.H. 574 (1978).

At 4:53 p.m., upon motion by MS, and second by HL, the Board voted unanimously by roll call to go out of non-public session and into public session.

Upon motion by HL, second by MS, the Board voted unanimously to seal the non-public minutes and to maintain the privacy of the items discussed in non-public session pursuant to RSA 91-A:3, II (c), on the grounds that public disclosure may adversely affect the reputation of a person other than a Board member or render the proposed action ineffective.

At 4:54 p.m., PK adjourned the meeting.