



## March 6, 2023, BoDE Public Meeting Minutes

Dental Examiners Board

Mar 6, 2023 at 8:30 AM EST

@ OPLC - 7 Eagle Square, Concord, NH 03303 - Meeting in person required - Public

Attendance available via Zoom

<https://us02web.zoom.us/j/87485332355?pwd=di9idW10MElqOXROWldrZkp4eUkxZz09>

### **Attendance**

#### **Present:**

Members: Roger Achong, Puneet Kochhar, Howard Ludington, Virginia Kapetanakis Moore, Lisa Scott, Linda Tatarczuch

Guests: Jessica Whelehan - Board Administrator, Chris Senko - Board Administrator, Shana Warriner - Board Administrator, Mike Auerbach (remote), Tommy Burk, Sheri Phillips - Board Counsel, Shane Goulet - Board Counsel, Sarah Finne (remote), Lily Hu, Dwayne Thibeault

#### **Absent:**

Members: John Giraldo, Jay Patel, Muhenad Samaan

#### I. Call to Order

Puneet Kochhar, President, called the meeting to order at 8:39 am.

#### II. Approval of Public Minutes

##### A. February 6, 2023, public session

#### **Motion:**

Approve the February 6, 2023, public minutes as amended.

Motion moved by Lisa Scott and motion seconded by Linda Tatarczuch. Motion passed unanimously.

The previous Zoom link did not appear to be working, and a new Zoom link was created, and sent to IT at OPLC to be posted to the website for public access to the meeting.

#### III. Non-Public Session

#### **Motion:**

Conduct a Non-Public session for the purpose of discussing investigations of alleged licensee misconduct and other confidential Board business. Such a non-public session is

authorized by RSA 91-A:3, II (c), RSA 91-A:3 II (e), RSA 91-A:5, IV, Lodge v. Knowlton, 119 N.H. 574 (1978), and the Board's executive and deliberative privileges.

Motion moved by Puneet Kochhar and motion seconded by Howard Ludington. Motion passed unanimously by roll call vote at 8:56 am.

IV. Resume Public Session

Public session resumed at 9:13 am.

V. Seal the minutes of the non-public session

**Motion:**

Seal the minutes of the non-public session 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.

Motion moved by Virginia Kapetanakis Moore and motion seconded by Roger Achong. Motion passed unanimously.

VI. Old Business

A. NH Dental Society Update - Mike Auerbach

Mike Auerbach provided the following update, via Zoom.

- The NHDS is pleased to stand behind the recommendations of the NH Society of Oral and Maxillofacial Surgeons regarding proposed rules changes for the sedation of young children. Those recommendations were submitted by Dr. Thomas Burk on 23 February 2023.
- The NHDS is concerned, however, that the rules in question would potentially encourage the addition to the dental operatory an individual who is not subject to any oversight by the Board of Dental Examiners. In multiple recent incidents in Arizona, the negligence of the individual responsible for the monitoring of the condition of patients under sedation led to the deaths of four patients between 2016 and 2021. In those cases, the dentist was held accountable by the Arizona Board of Dental Examiners. That state's Board of Nursing, however, only issued public "statements of concern", although there are lawsuits pending against the additional individuals present during the incidents.
- I am making these statements not to attack CRNAs, nurses or any other qualified individual or business contracted by dentists to administer and monitor

sedation. Rather, I am making them because these proposed rules (and two ill-informed bills pending in the NH State Senate) would open the doors for much greater numbers of dental anesthesia consulting businesses to sedate young dental patients without subjecting them to the oversight of the Board of Dental Examiners. NHDS has confirmed with OPLC that if there were a similar incident in New Hampshire, this Board would have no authority to take action against them in the event of a child's death. Furthermore, OPLC has confirmed with NHDS that while the Board would have the authority to investigate and even suspend the license of a dentist after such an incident, such anesthesia consultants would likely not be subjected to similar action by the state Board of Nursing.

· The NHDS believes that a careful assessment of both the proposed new rules AND the providers who would be subject to these rules would best reflect the Board's focus on patient safety, especially as this relates to young children. Just as an additional dentist or dental anesthesiologist would be subject to the Board's oversight, so too should CRNAs, nurses and others who are operating within a New Hampshire dental practice. Such a move protects the patient, provides transparency and ensures accountability.

B. Dental Hygiene Committee Update

1. DHC 2023 Schedule update

Jessica Whelehan, Board Administrator, informed the Board that the schedule for the Dental Hygienists Committee had been set for the first Thursday of every month from 2:00 pm through 3:30 pm, beginning in April. Jessica stated she would be distributing the Audit materials and DHC assignments from the Board once their OnBoard accounts had been created and activated.

C. Anesthesia laws and rules discussion

1. Pediatric Dental Anesthesia discussion/Anesthesia Rules Discussion

The Board discussed the rules that Dr. Ludington had presented at the February meeting, and the edits that Dr. Kochhar had presented for today's meeting.

**Motion:**

Accept the proposed and edited rules regarding exemption from the 2-provider statute; Jessica Whelehan to provide the draft to OPLC Rules to begin the process.

Motion moved by Howard Ludington and motion seconded by Roger Achong. Motion passed unanimously.

The Board discussed both letters that Dr. Tommy Burk had submitted. Dr. Kochhar noted specifically that Oral and Maxillofacial Surgeons (OMS) would not be able to apply collectively; Dr. Burk stated he believed that was the case but had included it in his letter as he had heard that topic brought up by others on multiple occasions. Dr. Kochhar also addressed the fact that Dr/ Burk was requesting more OMS be allowed to apply to work as contracted inspectors/evaluators, noting that the contract had already posted, and the Board had hoped more OMS would apply, but only a few had, which is why there was only one Dentist who was currently contracted to inspect/evaluate.

**Motion:**

Reach out to OPLC Finance Director Heather Kelley and inquire as to whether the contract for inspectors/evaluators may be opened again, allowing interested parties to apply.

Motion moved by Howard Ludington and motion seconded by Roger Achong. Motion passed unanimously.

The Board discussed the letter from Dr. Lily Hu and addressed her directly when discussing the letter. Dr. Kochhar noted that many of the rules changes Dr. Hu was presenting would need to be addressed when the drafted rules moved forward to the public hearing part of the rules making process. He noted that this did not mean that the Board was not interested in their input, simply that the rules had already been drafted, and once the hearing occurred, all interested parties would have their opportunity to voice their thoughts and concerns on the rules, and the Board would review all feedback.

2. Question regarding forms

**Motion:**

Inform Enforcement that the checklists should be released to the permit holders; however, the emergency scenarios should not be released to the permit holders.

Motion moved by Puneet Kochhar and motion seconded by Roger Achong. Motion passed unanimously.

D. Marina Becker - Reflection Statement

Tabled to non-public.

VII. New Business

A. UNE College - Dental Student Program Report

**Motion:**

Accept the report as submitted.

Motion moved by Lisa Scott and motion seconded by Roger Achong. Motion passed unanimously.

B. American Academy of Dental Sleep Medicine letter

The Board reviewed the letter, for informational purposes.

C. Opioid course approval

**Motion:**

Approve the course.

Motion moved by Puneet Kochhar and motion seconded by Howard Ludington. Motion passed unanimously.

D. NBDTE

The Board reviewed the letter, noting that NH does not recognize Dental Therapists under the NH Dental Practice Act.

E. AADA Proposed Mission Statement

The Board reviewed the proposed mission statement.

VIII. Rules Review and other Legislative Topics

A. Update on 2023 legislation - OPLC Board Counsel

Shane Goulet, Board Counsel, provided updates on the following bills: HB655 and HB2. The Board discussed the proposals in detail, noting that HB655 and HB2

were very similar. Shane informed the Board that HB655 was being heard at committee on Wednesday, and he would be happy to represent any concerns the Board had to the committee.

Sheri Phillips, Board Counsel, discussed SB147, and the fact that it, in addition to being the changes the Board had already sought, also included a repeal of the exemption from the 2-provider statute. Sheri noted that this was being discussed at the Senate of Thursday.

**Motion:**

Approve Dr. Ludington to attend Senate on Thursday, March 9, 2023, and express the fact that the Board does not support the amendment repealing the exemption. Dr. Ludington may elaborate that the Board is drafting rules aimed at keeping patient safety in mind, rules that would not allow an exemption for patients under the age of 8, but would allow for the Board to grant exemptions on an individual basis due to the fact that as a patient's age increase, the risks under anesthesia generally decrease, and the Board did not want to create undue barriers to care.

Motion moved by Puneet Kochhar and motion seconded by Roger Achong.

Motion passed unanimously

**Motion:**

Approve Shane Goulet to provide testimony for HB655 stating that the Board has the following 4 concerns: 1 - The Board has concerns with OPLC's ability to vet complaints as they are not subject matter experts; 2 - the Board has concerns with military and military spouse reciprocity, and would also like further clarification on the term 'jurisdiction'; 3 - the Board is concerned that the repeal of the investigation/discipline section of their practice act does not appear to be addressed anywhere in HB655; 4 - the Board is concerned that there is nothing regarding reciprocal discipline in HB655.

Motion moved by Puneet Kochhar and motion seconded by Howard Ludington.

Motion passed unanimously.

IX. Licensure Approval

A. Applications approved and pending through 3/1/2023

**Motion:**

Ratify the list as submitted.

Motion moved by Puneet Kochhar and motion seconded by Lisa Scott. Motion passed unanimously.

X. Non-Public Session

**Motion:**

Conduct a Non-Public session for the purpose of discussing investigations of alleged licensee misconduct and other confidential Board business. Such a non-public session is authorized by RSA 91-A:3, II (c), RSA 91-A:3 II (e), RSA 91-A:5, IV, Lodge v. Knowlton, 119 N.H. 574 (1978), and the Board's executive and deliberative privileges.

Motion moved by Puneet Kochhar and motion seconded by Howard Ludington. Motion passed unanimously by roll call vote at 11:22 am.

XI. Resume Public Session

Public session resumed at 11:25 am.

XII. Seal the Minutes of the Non-Public Session

**Motion:**

Seal the minutes of the non-public session 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.

Motion moved by Linda Tatarczuch and motion seconded by Puneet Kochhar. Motion passed unanimously.

XIII. Adjourn meeting

Puneet Kochhar adjourned the meeting at 2:43 pm.