

NH BOARD OF DENTAL EXAMINERS

7 Eagle Square - Hearings Room

CONCORD, NH 03301-4980

MONDAY, April 4, 2022

PUBLIC BOARD MEETING MINUTES

The April 4, 2022, public session of the meeting of the New Hampshire Board of Dental Examiners was called to order at 3:08 pm by Puneet Kochhar, DMD, President of the Board, with the following members present:

Muhenad Samaan, DMD	(MS)
Howard Ludington, DDS	(HL)
Virginia Moore, RDH	(VM)
Puneet Kochhar, DMD, President	(PK)
John Girald, DMD	(JG)
Lisa Scott, RDH	(LS)
Linda Tatarczuch, Public Member	(LT)

Absent:

Roger Achong, DMD	(RA)
Jay Patel, DDS	(JP)

Attendees present:

Sheri Phillips, Jessica Whelehan, Jenna Wilson, Mike Auerbach, Barbara Stowers, Jacqueline Harrison (via Zoom), Mark Abel, Dwayne Thibeault, Rudy Pavlesich, Chandler Jones

Zoom teleconferencing technology was in use for this electronic meeting through <https://us02web.zoom.us/j/87485332355?pwd=di9idW10MElqOXROWldrZkp4eUkxZz09>.

*All votes are unanimous unless otherwise noted.

1. **RFA Discussion with OPLC Executive Director Lindsey Courtney and OPLC Finance Director Heather Kelley** – Lindsey Courtney met with the Board to discuss the RFA that had been posted for a Dental Anesthesia Inspector. She noted the fact that the emergency rule the Board had promulgated, as well as the emergency rule OPLC had promulgated, had expired, meaning the Board was not able to set a fee for dental anesthesia inspections or evaluations, nor was there a clear and legal process set forth for accepting payment for these procedures. Because filing an interim rule or an emergency rule was no longer an option, the only two options left are to wait for regular rules to be filed, and to attempt to fix this issue with a contract. PK asked why the contract was showing a maximum of seven hours per month, explaining that this seemed unreasonable as a single comprehensive evaluation would last multiple hours, and the Board had a back log of comprehensive evaluations. Heather Kelley said that this could be negotiated in the contract, and they could also consider taking more than one contract to G&C. Heather also said they could make an amendment to the RFA which changed the language to “a minimum of 7 hours per month”, and the Board agreed that the change should be made. PK asked why the RFA was put out to MDs and CRNAs as well as dentists who hold an anesthesia permit, citing concerns that the rules as they currently are would be

violated if it was an MD or CRNA who was accepted . Lindsey Courtney explained that the RSA contemplates other anesthesia providers, and to keep in line with anti-competitive concerns raised, the Board should consider changing their rules accordingly. Additionally, she stressed the fact that the Board did not put out the RFA, OPLC did, and it was all open to negotiation.

2. **Review of Public Minutes – March 7, 2022** – Upon motion from HL and second from VM, the Board voted to accept the minutes as presented; LS, LT, PK, and JG abstained.
3. **Dental Hygiene Committee Update** – Jacqueline Harrison, via Zoom, stated that the DHC continues to go through the rules. She mentioned that they had discussed a question that DHC member Mary Duquette had brought forth, and that was to be discussed later at this BODE meeting. Upon motion from HL, second from VM, the Board voted to accept the DHC minutes of the March 7, 2022, meeting.
4. **NH Dental Hygiene Association Report** – Jacqueline Harrison, via Zoom, stated that the NHDHA provided testimony for HB103 and SB422, relative to adult Medicare. The NHDHA also conducted a workforce survey sent out to all NHDHA members regarding RDHs and workforce. A third party conducted the survey and UNH was hired to review the survey and provide summary; results are pending.
5. **Public Rules Hearing Den 302.06** – At 3:30 pm, PK opened a public rules hearing on Den 302.06. There was no public comment. PK closed the public rules hearing at 3:45 pm.
6. **Dental Society Report** – Mike Auerbach provided the following update:
 - We are getting excited for our Annual Meeting, which begins on Wednesday, 18 May, and runs through Saturday, 21 May. I hope all of you can attend this exciting event, which offers in-person CE for the entire team as well as much-needed networking and social events for all dental professionals. For more information, visit the NHDS website.
 - We continue to get calls from Members concerned that they did not get their license renewal notice yet. Thanks to Jes, who has helped us get these Members’ information so they can reset their e-portal information.
 - Arguably, one of the top questions we get (outside of the ongoing workforce shortage) from Members is when the state’s in-office COVID protocols will be updated. In particular, Members are asking about masking rules for the waiting room. We are in touch with DHHS, which has not yet offered any updates, and consistent with the CDC and OSHA, we are continuing to advise our Members to adhere to the May 2020 guidelines. Any input from the Board (which has in the past deferred to the Governor and DHHS) is welcome.

LS asked Mike Auerbach about masks in dental offices, specifically asking if N-95s were being worn. Mike Auerbach responded that it was still recommended that masks be worn, at least in the treatment rooms.

7. **HbA1c/blood glucose testing question** – The Board reviewed a question submitted by DHC member Mary Duquette, RDH, asking if hygienists who had received the proper training would be within the scope of their practice act to administer an HbA1c or blood glucose test. The Board discussed the matter. VM, BODE member and DHC member, highlighted rule part Den 402.01 (a) 3, 10, and 11. VM also explained that this would not be used to diagnose, it would be used to assist in treatment in office, and if something concerning was noted the patient would be instructed to reach out to their primary care office for further. LS said she felt this would help treat patients with issues such as

undiagnosed prediabetes, et cetera. Upon motion from PK, second from LS, the Board voted to inform Mary Duquette that the tests would fall within the scope of practice.

8. **Licensure** –

- A. **Dentist Applications Approved and Pending** - The Board reviewed the OPLC Dentist applications approved and pending document.
- B. **Hygienist Applications Approved and Pending** - The Board reviewed the OPLC Hygienist applications approved and pending document.
- C. **Neil Hiltunen, DMD, expiration date waiver request** – Upon motion from HL, second from MS, the Board voted to extend Dr. Hiltunen’s current license, changing his expiration date to May 30, 2022.
- D. **Bethany Long, RDH, waiver request for 2018 WREB** – A motion to approve the waiver request, made by MS, second by HL, did not pass, with no members voting to approve the waiver/application due to the fact that the WREB taken in 2018, 2019, and 2020 was not considered to be similar to the ADEX.
- E. **Simran Grover, DDS, waiver request for education qualifications** – A motion to approve the waiver request, made by MS, second by LS, did not pass, with no members voting to approve the waiver/application based on the applicant’s inability to meet the educational requirements set forth in rule part Den 301.02(i) (1), (2), and (3).

9. **Anesthesia/Sedation permits** –

- A. **Lily Hu, DMD, Concord location** - Upon motion from HL, second from LS, the Board voted to accept the recommended pass of the Concord Facility Inspection for Lily Hu, DMD, thus issuing their permit to administer GA/DS.
- B. **Lily Hu, DMD, Hollis Location** - Upon motion from HL, second from LS, the Board voted to accept the recommended pass of the Hollis Facility Inspection for Lily Hu, DMD, thus issuing their permit to administer GA/DS.
- C. **Mina Fahmy, DDS, Salem location** - Upon motion from HL, second from LS, the Board voted to accept the recommended pass of the Salem Facility Inspection for Mina Fahmy, DDS, thus issuing their permit to administer GA/DS.
- D. **Mina Fahmy, DDS, Nashua location** - Upon motion from HL, second from LS, the Board voted to accept the recommended pass of the Nashua Facility Inspection for Mina Fahmy, DDS, thus issuing their permit to administer GA/DS.
- E. **Mina Fahmy, DDS, Pembroke location** - Upon motion from HL, second from LS, the Board voted to accept the recommended pass of the Pembroke Facility Inspection for Mina Fahmy, DDS, thus issuing their permit to administer GA/DS.

- F. **Jason Lee, DMD, Somersworth location** - Upon motion from HL, second from LS, the Board voted to accept the recommended pass of the Somersworth Facility Inspection for Jason Lee, DMD, thus issuing their permit to administer GA/DS.

10. **ASEC Discussion and strategy** –

- A. **Current Anesthesia Sedation list** – The Board discussed the current Anesthesia Sedation list. PK and MS asked Board administrator Jessica Whelehan if she had been able to make any progress with the backlog of comprehensive evaluations. Jessica explained that none had been scheduled as the emergency rules dictating the fee and the manner of payment had expired. PK stated we could still move forward with the evaluations as the expiration of a rule meant that the old rule was back in place. Jessica pointed out that there was no fee for the evaluations set in the old rule, rather, it had been a sliding scale that left the Board open to the appearance of preference or impropriety, and that the manner of payment in the old rule, direct to the 3rd party, opened the Board up to legal issues.
- B. **Dental Anesthesia Study Committee** – Dwayne Thibeault, CRNA, presented a proposed Dental Facility Permit that the committee had developed. PK expressed concerns over some of the requirements on the form, such as the controlled substance lockbox, elaborating that the lockbox was required by the Board of Pharmacy, and fell under their purview. PK also stated that much of what was on this proposed form was already on the forms that ASEC used for inspections. Jessica Whelehan clarified that this proposed form was for a facility permit, which is something that the Board does not currently license or permit.

11. **Hearing – Joseph Hart, DMD, show cause** – At 4:00 pm, PK turned the meeting over to Attorney Nikolas Frye, Presiding Officer and Hearings Examiner. The Board listened to the testimony of Dr. Joseph Hart regarding his application for licensure in NH, and the past disciplinary actions that had been taken against him by the State of Massachusetts, Board of Dental Examiners. The Board was then given the opportunity to question Dr. Hart. Attorney Nikolas Frye closed the record at 4:59 pm.

At 5:01 pm, pursuant to RSA 91-A:3, and upon motion from LT, 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 5:14 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 PK, 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.

12. **Hearing – Joseph Hart, DMD, show cause (continued)** – A motion to approve the application of Joseph Hart, made by MS, second by HL, did not pass, with no members voting to approve the application citing the applicant's failure to meet the character qualifications defined in RSA section 317-A:8 V, which reads, "No application shall be granted unless the board finds that the applicant possesses the necessary educational, character, and other professional qualifications to practice dentistry or dental hygiene, and that no circumstances exist which would be grounds for disciplinary action against a licensed dentist or hygienist pursuant to RSA 317-A:17, II."

Additionally, the Board made this decision based on rule part Den 301.02(a)(10), which reads in part, “currently has or ever has had any professional license subjected by any professional licensing body in any jurisdiction or state to any investigation, sanction, or disciplinary action, including but not limited to revocation, suspension, probation or stayed probation, limitation or restriction, fine, reprimand, denied renewal, voluntary or involuntary relinquishment, or required submission to care, counseling, supervision, or further education.” Attorney Nikolas Frye to work on drafting the order, to be reviewed by PK.

13. **ASEC Discussion and strategy (continued) –**

- B. **Dental Anesthesia Study Committee (continued)** – Dwayne Thibeault continued his presentation, putting forth a proposed “Mobile Anesthesia Provider Form for Deep Sedation/General Anesthesia Permit”. This form, based on the existing “Facility Inspection and Comprehensive Evaluation Form for Deep Sedation/General Anesthesia Permit” which is currently used by ASEC member during inspections or evaluations, had several changes including the addition of boxes, to be initialed by the dental office and the mobile provider. Jessica Whelehan clarified with Dwyane that this was not an inspection form, but more along the lines of an attestation form, to be completed when a host facility/dentist is bringing in a non-dental anesthesia provider, such as a CRNA or an anesthesiologist.

Attorney Sheri Phillips and Board Administrator Jessica Whelehan presented to the Board the State of Rhode Island’s Board of Dental Examiners rules regarding anesthesia. Jessica explained that she had been researching rules as both she and Attorney Phillips felt the Board needed to focus on the big picture, needed to look at the process and then begin to draft rules or statute changes as needed, once a general process had been decided on. In her research, Jessica had found that RI offered individual permits to dentists, facility permits for all locations where anesthesia would be administered, and host facility permits for those locations that would have anesthesia providers (dentists holding permits, CRNAs, anesthesiologists), other than the “home” dentist, come into the office to provide anesthesia services. Attorney Phillips said that she had reviewed the RI rules, and statutes, and found them to be something she felt the Board could utilize as a jumping off point, rather than trying to reinvent the rules from scratch. Jessica distributed copies of the relevant RI rules to all present.

Mark Abel, Chair of the ASEC, spoke to the Board regarding his takeaways from the meeting of the Dental Anesthesia Study Committee, as well as some thoughts the Study Committee had discussed regarding the RFA. Mark’s comments were presented as follows:

- Facility inspections would be performed by new Dental Anesthesia Inspector
- Deep sedation emergency scenario evaluations would be conducted by 2 deep sedation permit holders
- Additional requirements:
 - Make ASEC a “think tank” with maybe 5 members (+ Inspector ex-officio) that would include stakeholders (anesthesia providers who specifically provide dental office anesthesia) from dentistry, nursing, and potentially other fields
 - Draft facility emergency plan & leadership structure, enforced by facility director
 - Quarterly review of facility emergency plan (including written emergency protocols) with staff, led by facility director
 - Mandatory use of safety checklists

- Emergency airway algorithms readily available in procedure rooms
- Require video laryngoscope for deep sedation office supply list or mobile anesthesia supply list (excluding moderate sedation providers)
- 6 hours of anesthesia-specific CE for sedation permit holders per biennium, verified by the board (counts towards the 40 required biennial CE hours)
- No exceptions to requirement for separate, dedicated anesthesia provider for children age <13 years
- Clarification that a dental assistant (not licensed to practice dentistry, medicine, or nursing) cannot be delegated to perform tasks in an emergency beyond those taught in Basic Life Support training
- Mandatory reporting to the Board any death or hospital admission (excluding ER or Urgent Care visits) that occur within 24 hours of a dental procedure under sedation
- Facility and emergency scenario evaluations should include a permission slip that an oral surgeon could sign to release evaluation results to the AAOMS and the NH OMS society, in order to maintain AAOMS membership
- Adopt rules for minimum pre-op history & physical exam on child for office sedation, which should include comments regarding any history of prematurity, developmental delays, genetic syndromes, seizure disorders, obstructive sleep apnea, personal or family history of anesthesia problems, ASA status, BMI, and airway evaluation (including assessment for tonsillar hypertrophy and/or mandibular hypoplasia).

14. **New Business** – PK let the Board know that he had spoken with Executive Director Lindsey Courtney, and she had indicated she would help the Board move forward with some legislative changes, with the hopes that they would make it through this session and not be delayed until the next legislative session in 2023.

A. **Change to Section 317-A:2, I** – On motion from PK, second from HL, the Board voted to ask Executive Director Lindsey Courtney to assist them with making the following change to 317-A:2, I: include that one of the 6 dentists be “any dentist administering general anesthesia/deep sedation”.

B. **Change to Section 317-A:2-a, or additional section added** – On motion from PK, second from HL, the Board voted to ask Executive Director Lindsey Courtney to assist them with making the following change to 317-A:2-a, or to add a new section detailing the following: create an Anesthesia and Sedation Committee, to consist of at least 5 members, appointed by the Board. Each member must be currently licensed and permitted to administer anesthesia in a dental office. The Committee will elect a Chair, and the Chair will hold the position of Chair for a 3-year term. There are no term limits on committee membership. One member of the Anesthesia Sedation Committee will be the Board member currently administering general anesthesia/deep sedation.

C. **Facility Licenses** – PK suggested that the Board put forth a request to change the statute to allow the Board to license every dental facility in the state of NH, which is something the Board has been discussing for some time. Board Administrator Jessica Whelehan interjected and expressed concerns regarding the amount of work the Board already had to do, referencing the drastic and through changes that would need to be considered for the anesthesia rules. Jessica explained that once a statute was in place the Board would need to act fairly quickly to get rules in place and given the amount of work that the facility licenses would likely involved, she felt concerned that the Board would not have the time to attend to both anesthesia and facility licenses. PK agreed that the matter should be tabled to for time being.

D. **Additional/Extended meeting** – The Board discussed the need for an additional and extended meeting to continue work on ASEC issues. PK asked Board Administrator Jessica Whelehan to email the Board with some possible meeting dates.

At 6:42 pm, pursuant to RSA 91-A:3, and upon motion from HL, second by MS, 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 7:45 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 7:46 p.m., PK adjourned the meeting.