

North Dakota Board of Dental Examiners

MINUTES – January 15, 2021, 1:00 PM - Quarterly Meeting

Office of Brady Martz & Associates, 207 E Broadway, Bismarck, ND

1. Call to Order and roll call: Dr. Evanoff called the meeting to order at 1:00 PM CDT.

<u>Board Members and Administrative Staff Attendance</u>	
Greg Evanoff, DDS, President	Otto Dohm, DDS
Alison Fallgatter, DDS, President-Elect	Mike Goebel, DDS
Michael Keim, DDS, Immediate Past-President	Rita Sommers, RDH, MBA, Executive Director
Tim Mehlhoff, CPA, Secretary-Treasurer	Tara Brandner, Assistant Attorney General
Bev Marsh, RDH	

2. Review and approve minutes: September 18, 2020; December 18, 2020; August 24, 2020. Dr. Goebel moved to approve the September 18, 2020 minutes. Motion seconded by Dr. Fallgatter. Roll call vote (RCV): Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Dr. Dohm, yes; Ms. Marsh, yes; Dr. Goebel, yes. Mr. Mehlhoff, yes. Motion passed 7-0. Moved by Dr. Fallgatter and seconded by Ms. Marsh to approve the December 18, 2020 minutes. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Dr. Dohm, yes; Ms. Marsh, yes; Dr. Goebel, yes. Mr. Mehlhoff, yes. Motion passed 7-0.

3. Additions to the Agenda:

A. Letter from J. Lundstrom, DDS

4. Treasurer’s report and review of payables: Mileage report: Mr. Mehlhoff reported the 2021 mileage rate to be .56/mi which is a federal and state amount.

A. 1099-MISC: Completed forms were distributed to members required to receive the tax form.

B. Budget: Moved to March meeting as renewal process is incomplete.

C. RDA/QDA renewal status: Dental Assistants non renewed to date; 137. Ms Sommers will post final numbers once the grace period is over. Dental assistants may still renew during the 60-day grace period. Ms. Sommers commented that numbers of late renewals are not unusual and anticipates late fees. The FDIC-insured account where the NDBDE’s fee for service deposits occur is not at risk as current balances plus deposits for RDA/QDA renewal revenue cannot exceed the insurance limit.

D. ED Annual Review: The Board exchanged comments with the ED regarding duties and performance, reflecting a four percent increase in the base salary of the Executive Director.

E. Audit: An audit conducted by Jason Schuh, CPA, has been completed. Mr. Mehlhoff summarized the results of the audit. From an accounting perspective, the size of the staff is an issue. The Board and Board staff is small therefore cannot mitigate the issue. The report also requested Mr. Mehlhoff and Ms Sommers set up accounts payable so that the information is more readily available during an audit. Also regarding accounts payable Mr. Schuh recommended payroll be issued at the end of the month rather than the beginning of the month to keep the books a bit cleaner. Currently, as an example, compensation to the ED is issued on the 1st of the month for the previous month’s services. The suggestion is to have all accounts payable paid by the end of the month and not carry the amount into the following month. Mehlhoff commented the auditor’s findings were found to be extremely reasonable and immaterial and do not reflect negatively and moved that the Board to accept the audit by Jason Schuh. Dr. Goebel seconded the motion. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Dr. Dohm, yes; Ms. Marsh, yes; Dr. Goebel, yes. Mr. Mehlhoff, yes. Motion passed 7-0.

<u>12/31/2020 Balances</u>		<u>Certificates of Deposit</u>	
Checking	\$205,265.80	CC Union	\$77,295.98
Muni. Inv.	\$2,832.20	1 st Inter. 702	\$102,166.67
Prefer. Bus.	<u>\$2,792.10</u>	1 st Inter. 684	\$78,000.00
USBank Total	\$210,890.10	Bremer 3	\$56,399.10
		<u>Bremer 5</u>	<u>\$56,399.10</u>
		Total Certificates	\$370,260.85

5. Review candidate credentials: No report

6. Committee reports:

A. Complaint Committee:

1) Case 27: Summary: The Board offered the practitioner a Settlement Agreement. The practitioner rejected the NDBDE's Proposed Settlement Agreement and provided additional testimony in support of the sedation treatment provided. Dr. Goebel moved to re-offer the previous Settlement Agreement; the Board discussed the terms of the agreement. No changes were made to the agreement. Motion seconded by Dr. Fallgatter. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Ms. Marsh, yes; Dr. Goebel, yes; Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Evanoff, yes. Motion carried 7-0. The Board's consensus is to move forward with an Administrative Law Judge Hearing should the Settlement Agreement be rejected again by the practitioner.

2) Case 41-08132020: Dr. Dohm moved to dismiss the case regarding fractured implants. Implants are not indestructible and are subject to wear and can fail. Following detailed discussion regarding the treatment notes, motion seconded by Dr. Keim. Grounds for disciplinary action do not exist. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Ms. Marsh, yes; Dr. Goebel, yes; Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Evanoff, yes. Motion carried 7-0.

3) Case 42-08262020: The Board was concerned with the online sedation advertising which appeared to lack clarity and therefore misleading to the public. Dr. Dohm moved to send a *Letter of Concern* to the practitioner regarding sedation advertising to correct misleading language relative to minimal sedation although the Board did not believe there was ill intent. Dr. Fallgatter seconded the motion. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Ms. Marsh, yes; Dr. Goebel, yes; Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Evanoff, yes. Motion carried 7-0.

4) Case 44: Dr. Goebel moved to dismiss the case regarding a fee dispute with a *Letter of Concern* to the dentist regarding the doctor's lack of adequate communication with the patient disputing out-of-network and in-network dental care. Dr. Fallgatter seconded the motion. Dr. Dohm abstained from the vote. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Ms. Marsh, yes; Dr. Goebel, yes; Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Evanoff, yes. Motion carried 6-0-1.

5) Case 45: Dr. Fallgatter moved to dismiss. Motion seconded by Ms. Marsh. Grounds for disciplinary action do not exist. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Ms. Marsh, yes; Dr. Goebel, yes; Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Evanoff, yes. Motion carried 7-0.

6) Case 46: Dr. Goebel moved to dismiss the complaint regarding dentures and quality of care, grounds for disciplinary action do not exist. Ms. Marsh seconded the motion. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Ms. Marsh, yes; Dr. Goebel, yes; Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Evanoff, yes. Motion carried 7-0.

7) Supreme Court NDBDE v. Burr: The Board has not received an Order or response.

B. Anesthesia Committee: Sedation and anesthesia site evaluations concluded were uneventful and successfully completed.

C. CE Committee: The CE Committee reported on the 3% of audits performed in the last quarter. Hygienists and dentist still have 11 months to complete CE requirements and furthermore, all CE can be obtained online via live webinars or other online learning. The Committee will begin the RDA/QDA audit process and proposes to audit about 25 registered dental assistants.

D. Nominating Committee:

1) Dr. Goebel nominated Mr. Mehlhoff for 2021 President-elect. Dr. Fallgatter seconded the motion. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Ms. Marsh, yes; Dr. Goebel, yes; Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Evanoff, yes. Motion carried 7-0.

2) Dr. Evanoff moved and seconded by Dr. Goebel to nominate Bev Marsh, RDH as the Secretary-Treasurer, the new terms begin 3/15/2021. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Ms. Marsh, yes; Dr. Goebel, yes; Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Evanoff, yes. Motion carried 7-0.

E. Legislative Committee:

1) Ch 20-02-01-03.1(2) "patient-based" language NDAC: Dental students taking clinical regional boards will be taking manikin exams this spring. Dr. Dohm moved to amend the rules accordingly to eliminate wording with rules requiring such examinations to be "patient based." The Board's discussion focused on new graduates taking the manikin-based exam. The Board determined that it would be appropriate to remove the "patient-based" language from administrative rules. The availability of fewer and fewer live patient exams is becoming the reality, in part due to expenses and complexities related to travel. Manikin based exams offer the best alternative to confirm minimal clinical competency and demonstrate the requisite didactic skills of new graduates seeking licensure. If the Governor or Legislature would declare an end to the state of emergency related to the pandemic, expiration of Executive Orders related to the pandemic could adversely affect current clinical testing requirements elements for graduating dental students seeking licensure in ND. The Board continues to be opposed to a written-only digital examination that

excludes demonstration of clinical and procedural skills. Dr. Fallgatter moved that the “patient based” language be removed from section 20-02-01-03.1. Dr. Goebel seconded the motion. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Ms. Marsh, yes; Dr. Goebel, yes; Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Evanoff, yes. Motion carried 7-0. Dr. Dohm moved to add a class three restorative component to clinical testing component found in 20-02-01-03.1. Dr. Dohm seconded the motion. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Ms. Marsh, yes; Dr. Goebel, yes; Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Evanoff, yes. Motion carried 7-0 (highlighted areas below amended 01.15.2021).

“20-02-01-03.1. Additional requirements for licensure by examination.

2. The applicant has passed, within five years of application, a clinical competency examination approved by the board. Required components shall include a patient-based periodontal component, a patient-based restorative component, posterior composite or amalgam restoration, a class three restoration, an endodontic component, and after April 1, 2021 a fixed prosthetic component.”

2) HB 1151; Telehealth and the practice of dentistry: The Board is concerned that any language related to the specific practice of dentistry should be located within the Administrative Rules. The Board also took issue with a telehealth “evaluation” being equivalent to an in-person examination. Under many circumstances, this would not be possible. Discussion focused on HB 1151’s statement that “a dentist may perform an examination or evaluation entirely through telehealth” since there are many circumstances in dentistry where this is completely impossible. Absent more specific terms, the language as it exists would be extremely difficult to enforce and lacks essential elements necessary for protection of the public. The bill’s statement that a telehealth “examination or evaluation is equivalent to an in-person examination” is flagrantly false. The Board commented that in addition to the absence of truth within the statement, such language is vague and open to interpretation. For example, other statements that pose potential conflict with existing Administrative Rules include, “once a dentist conducts an acceptable examination...” What is the definition of an “acceptable examination?” Another inappropriate passage noted was related to a dentist selecting someone as a “provider designated by a dentist?” Who assures such a person’s education, training and licensing is adequate as required for the treatment necessary? Is it the state of North Dakota, only the dentist involved with the examination, or another dentist or individual perhaps not licensed in North Dakota? What is the definition of a “bona fide” doctor-patient relationship? The Board was not certain of the intent of the bill. As written, extremely ambiguous language in the bill presents many challenges for the BODE’s regulation of patient safety Board members also commented that many dentists have implemented some telehealth elements into their practices that recognize the benefit to public health and patient services while respecting requirements for public safety. Yet, many challenges remain to appropriately incorporate telehealth into dentistry. Because aspects related to dental treatment are constantly changing, regulations for telehealth/teledentistry in North Dakota would be better located within the Administrative Rules. Dr. Dohm moved to oppose the bill. Dr Fallgatter seconded the motion. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Ms. Marsh, yes; Dr. Goebel, yes; Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Evanoff, yes. Motion carried 7-0. Ms. Sommers will compose send a communication expressing the Boards concerns.

Other pending legislation: Ms. Brandner recommended the Board send the communication to the House Human Services Committee. Ms. Brandner also provided explanation to questions regarding:

- HB 1154; dental benefits and contracts;
- HB 1166; occupational licensing of foreign practitioners.
- SB 2164; occupational licensing in case of emergencies.
- SB 2175; occupational licensing of military members and military spouses.

7. Old Business

A. Annual BCI Training: Each member will renew as required by the expiration dates of their last online training. Ms. Sommers will relay the link/information to all members.

B. Procurement: Albertson & APT contracts - Ms Sommers communicated with the Board’s Procurement Officer, Amy Cannon regarding Albertson Consulting and APT.

8. New Business

A. PBIS / licensing by credential: Ms Sommers investigated three credentialing companies and determined

that the Board can process application by credentials in house. PBIS ceased operation at the end of 2020. Dr. Evanoff moved to remove the letters of recommendation requirement. Motion seconded by Dr. Goebel. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Ms. Marsh, yes; Dr. Goebel, yes; Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Evanoff, yes. Motion carried 7-0.

B. Dr. Lundstrom's letter: The Board discussed the letter related to the COVID-19 vaccinations and testing concerns and scope of practice of a dentist. NDDoH's Chief Nursing Officer, Nicole Brunelle, RN, provided clarification related to Dr. Lundstrom's statements pertaining to the DOH and COVID-19 logistics related to testing.

C. Review Prescription Drug Monitoring Program (PDMP) stats. The third quarter PDMP and use statistics were shared with the members of the Board for review. Numbers of users per month, reportable substances dispensed/year in ND or to ND residents and 406 (of 426 in-state dentists) active dentist accounts were reported.

D. BinaxNOW Covid-19 antigen rapid test for asymptomatic patients & dental office use: Nicole Brunelle, RN, provided a detailed overview of the recommended use for BinaxNOW COVID-19 Ag Card for use in healthcare settings. Anyone who would choose to utilize BinaxNOW Rapid Antigen tests requires prior training. Ms. Brandner confirmed the antigen testing or rapid tests are screening tests and may not be used as diagnostic tests. She also reaffirmed that COVID-19 diagnostic tests are not within the scope of practice for a North Dakota dentist. Ms. Brunelle explained that positive and negative results of the BinaxNOW test must be reported to the NDDoH. The testing materials which have expiration dates are distributed by the Federal Government and are provided at no cost to the dental practice. Individuals receiving the test may not be charged specifically for the test. A CLIA (Clinical Laboratory Improvement Amendments) certificate must be obtained (\$180) by application to perform the screening. Any individual who is *appropriately trained* may conduct the non-medical screening and a dental license is not required. Therefore, screening is not performed under the dental license. The individuals to be tested are instructed to swab themselves and collect their own specimen. Therefore, the BinaxNOW is not a Board matter. Practitioners wishing to utilize BinaxNOW complete training and understand the recommended use, reporting, and test site obligation may find this and other information posted to the Board's website [www.nddentalboard.org] on the COVID page. Dr. Goebel moved to post on the Board's website that to the extent it is used as a screening tool for asymptomatic individuals, BinaxNOW does not fall under dental practice act. Dr. Dohm seconded the motion. Further discussion; the Board cannot monitor how the screening is used and if clinicians utilize the rapid test, must be trained like any other individual. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Ms. Marsh, yes; Dr. Goebel, yes; Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Evanoff, yes. Motion carried 7-0.

E. NDDA letter to NDBDE: The Board received a request from the ND Dental Association to authorize dentists to provide COVID-19 vaccines. Discussion: Ms. Brunelle, ND DOH nurse stated there is currently not a distribution problem or shortage of personnel capable of providing the vaccines. The Board does not have the legal authority to authorize the request. The request would require an amendment to the ND Century Code. Dr. Dohm moved and Dr. Goebel seconded Ms Brandner and Ms. Sommers to compose a letter to the NDDA indicating the Board's position. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Ms. Marsh, yes; Dr. Goebel, yes; Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Evanoff, yes. Motion carried 7-0.

9. Meetings & National Organizations

National Meetings:

- 1) AADA – Mid Winter meeting will be held virtually March 2, 2021 via Zoom.
- 2) AADB – Mid-Winter meeting February 27-28, 2021.
- 3) CRDTS –The 2021 meeting is scheduled August 27-28, 2021.
- 4) FARB – Regulatory law seminar and virtual meeting held January 27-29, 2021.
- 5) WREB / DERB: Dr. Evanoff reported on the WREB; report posted to cloud.

10. Remuneration: 2021 In-state travel reimbursement rate is .56 cents/mile.

10. Next meeting of the NDBDE: The NDBDE will convene March 19, 2021, Fargo; June 18, 2021, Fargo; September 17, 2021, Fargo.

11. Adjournment: Moved by Ms. Marsh and seconded by Dr. Fallgatter to adjourn. Hearing no objection, the meeting adjourned at 4:14 PM.

Respectfully submitted,

Rita Sommers, Executive Director

Tim Mehlhoff, CPA, Secretary-Treasurer