

# North Dakota Board of Dental Examiners

MINUTES – March 19, 2021, 1:00 PM - Quarterly Meeting

Office of Brady Martz & Associates, 2537 S. University Drive, Fargo, ND

**1. Call to Order and roll call:** Dr. Fallgatter called the meeting to order at 1:02 PM CDT and welcomed newest member to the NDBDE, Dr. Marcus Tanabe, OMFS, Grand Forks. Dr. Fallgatter also welcomed other guests attending the meeting.

## Board Members and Administrative Staff Attendance

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|---|--|
| Alison Fallgatter, DDS, President           | Michael Keim, DDS                          |
| Tim Mehlhoff, CPA, President-Elect          | Marcus Tanabe, DDS                         |
| Greg Evanoff, DDS, Immediate Past-President | Otto Dohm, DDS                             |
| Bev Marsh, RDH, Secretary-Treasurer         | Rita Sommers, RDH, MBA, Executive Director |
| Tara Brandner, Assistant Attorney General   |  |

**2. Review and approve minutes:** January 15, 2021; January 29, 2021; February 11, 2021. Ms. Marsh moved to approve the January 15, 2021 minutes. Motion seconded by Mr. Mehlhoff. Roll call vote (RCV): Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Motion passed 6-0 (Dohm briefly absent from meeting). Moved by Ms. Marsh and seconded by Dr. Keim to approve the January 29, 2021 minutes. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Motion passed 6-0. Ms. Marsh moved to approve the February 11, 2021 minutes. Motion seconded by Dr. Keim. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Motion passed 6-0.

## 3. Treasurer's report and review of payables:

| A. License status: Dental assistants non-renewed, 137 |              |           |              |           |                   |                |              |              |                |       |
|---|--------------|-----------|--------------|-----------|-------------------|----------------|--------------|--------------|----------------|-------|
| Year  | DDS in state | DDS Total | RDH in state | RDH Total | RD A/QDA in state | RD A/QDA total | Inactive DDS | Inactive RDH | Total in state | Total |
| 2019  | 433          | 503       | 671          | 875       | 614               | 681            | 25           | 44           | 1718           | 2128  |
| 2020  | 426          | 473       | 694          | 843       | 687               | 811            | 26           | 47           | 1807           | 2200  |
| 2021  | 431          | 479       | 704          | 849       | 581               | 704            | 17           | 34           | 1716           | 2032  |

| B. 02/28/2021 Balances and Certificates: Total assets   \$534,181.26 |              |                            |                     |                      |                    |
|--|--------------|----------------------------|---------------------|----------------------|--------------------|
| BALANCES   |              | CERTIFICATES OF DEPOSIT    |                     | SHORT TERM ASSETS    |                    |
| Total Checking   | \$158,296.06 | CC Union 1                 | \$52,194.01         | Capitol Credit Union | \$25,101.97        |
|  |              | 1 <sup>st</sup> Inter. 702 | \$102,166.67        | Muni. Investor       | \$2,832.22         |
|  |              | 1 <sup>st</sup> Inter. 684 | \$78,000.00         | Prefer. Business     | \$2,792.13         |
|  |              | Bremer 3                   | \$56,399.10         | <b>Total STA</b>     | <b>\$30,726.32</b> |
|  |              | Bremer 5                   | \$56,399.10         |                      |                    |
|  |              | <b>Total Certificates</b>  | <b>\$345,158.88</b> |                      |                    |

**C. Budget:** Moved by Mr. Mehlhoff and seconded by Dr. Evanoff to approve the Treasurer's Report. Discussion: The Executive Director presented an operating/activity budget consisting of revenues and associated expenses relative to board activities over the time period of 2017 thru 2020. The spreadsheet also provided projected revenue and components of revenue for 2021-22 based on the most previous renewal cycles. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Motion passed 6-0.

## 4. Committee Reports

### A. Complaint Committee/ Legal Issues

1) 43-09142020 – Dr. Keim moved, seconded by Dr. Fallgatter to send a letter of concern regarding the advertising issue which had occurred previously. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Motion passed 6-0. Dr. Evanoff will send the communication.

2) 47-01052021 – In review of the voluminous response submitted, the Board found patient treatment records to be incomplete and determined that a second request for a complete treatment record would be required to complete their investigation. Dr. Fallgatter moved to authorize Ms. Brandner to send the communication. Motion seconded by Dr. Evanoff. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Motion passed 6-0. Ms. Brandner will send the request for further information related to patient records for the Board's interpretation at the next full meeting of the Board.

3) 48-02222021 – Dr. Fallgatter moved to dismiss. Motion seconded by Dr. Keim. The patient requested a treatment the dentist could not provide, recommending an alternative the patient could not accept. Dr. Keim seconded the motion. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Motion passed 6-0.

### B. Anesthesia Committee: No report

**C. Continuing Education Committee:** Ms. Marsh reported five successful dental assistant CE audits for the current quarter and anticipates completing five more audits in the next quarter.

D. Application Review Committee: The Board reviewed a letter from Bongmin An, DDS regarding future ND dental license application. The Board commented that without an application, background check and review of all requirements of the application, they could not comply with the request for assurance of ND dental licensure based on the substance of the letter alone or provide advisory opinions. No action taken.

E. Legislative Committee: HB 1151 - NDBDE spoke in opposition. The NDDA commented that they were neutral on HB 1151. Dr. Evanoff asked that the NDDA Board reevaluate their position due HB 1151's adverse effect on patients. Dr. Keim spoke against 1151 during the Senate Human Services Committee. Dr. Sommers also spoke against some aspects of the bill regarding telehealth. Friendly amendments to the bill offered by Dr. Keim were passed on to the Senate Committee as well.

HB 1166 - occupational licensing of foreign practitioners, NDBDE spoke in opposition.

HB 1154 - dental benefits and contracts. No testimony provided.

SB 2164 - occupational licensing in case of emergencies no testimony provided.

SB 2175 - occupational licensing of military members and military spouses; signed by the Governor.

Administrative Rules: The Legislative Administrative Rules Committee addressed the NDDA's "coalition" letter requesting the NDBDE's rules be voided on grounds of being "arbitrary and capricious." Ms. Brandner disagreed with the NDDA's interpretation of the rules, the interpretation in direct conflict with the Attorney General's interpretation and opinion of the rules. The result issued by the Administrative Rules Committee was to "hold over" the NDBDE rule until their next hearing, except for two rules related to dental clinical board examinations (removed patient-based language) and dental hygiene license requirements (accept the clinical ADEX exam). The two rules would be enacted April 1, 2021. Considering the NDDA's claim that the NDBDE did not provide the "coalition" of providers time to address rules being amended, Dr. Evanoff moved to authorize Ms. Brandner to invite each association in the coalition additional opportunity to provide a precise response with substantive content. Dr. Fallgatter seconded motion. Further discussion: The legality of providing predilection by allowing additional time for commentary for specific groups was in question. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Motion passed 6-0

#### 5. Old Business:

A. Policy & Procedure Manual review: The Board reviewed and updated the NDBDE P & P Manual and will review committee assignments again at the next meeting of the full Board.

B. Committee assignments: Hold for June meeting.

C. Annual open meeting laws review: Ms. Brandner provided a summary of open meetings laws, what a record means, and public business or business of the board, and explained the intent of the open meetings laws.

#### 6. New Business:

A. South East District Dental Society: The SE District Dental Society requested clarification regarding 43-28-18(9) and giving a gift for the referral of a patient. The Board determined that whether the reward for a *referral* is given in front of or after the fact is irrelevant. Fee splitting as defined by the NDCC is sharing any professional fee with anyone or paying anyone for sending or referring patients to the dentist. Gifts sent to patients for the referral of other patients is considered unethical and a violation.

B. Sleep Medicine Letters: The Board received letters from Matthew Glans, American Academy of Dental Sleep Medicine (AADSM). The Board determined that creating a device for sleep apnea treatment without the diagnoses of obstructive sleep apnea by a medical provider is not within the scope of practice for a ND licensed dentist. Dr. Evanoff recommended a physician speak to the Board regarding sleep appliances. Dr. Tanabe commented on the success and use of CPAP devices. The consensus was that the Board is not opposed to the use of devices provided by dentists as long as the patient has received a diagnosis by the physician. The Board also received a letter from Kannan Ramar, MD, American Academy of Sleep Medicine expressing concerns regarding the recently published position statement issued by the AADSM on the use of home sleep apnea tests by dentists. The AASM requested the Board adopt policy to address the issue; the Board determined that this is not a policy matter rather a scope of practice issue relative to laws or administrative rules governing dentistry. Dr. Tanabe may be able to provide a speaker/presentation for the Board or a statement from a physician to further the Board's understanding of establishing an obstructive sleep apnea diagnosis.

C. Dr. Evanoff commented on the manikin exams and requested Dr. Lauf be invited to appear at the next meeting to specifically discuss the restorative manikin procedures.

**7. National Organizations; Regional Clinical Boards; Trip Reports:** Ms. Sommers attended an abbreviated virtual AADA meeting. No other meetings were attended for the 1<sup>st</sup> quarter of 2021.

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

**9. Next meeting of the NDBDE:** June 18, 2021, Fargo; September 17, 2021, Fargo.

**10. Adjournment:** Moved by Ms. Marsh and seconded by Dr. Fallgatter to adjourn. Hearing no objection, the meeting adjourned at 3:24 PM.

Respectfully submitted,

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Rita Sommers, Executive Director

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Bev Marsh, RDH, Secretary-Treasurer