

**North Dakota Board of Dental Examiners**  
**Minutes for Regular Meeting: May 3, 2024, 12:00 PM CDT**  
**Remote**

**1. Call to Order, roll call, officers**

Dr. Tanabe called the meeting to order at 12:00 pm CT.

**Board Members and Administrative Staff Attendance**

Bev Marsh, RDH

Marcus Tanabe, DDS, OMFS, President

Megan Olson Stremick, DDS

Cindy Snay, Consumer Member, Sec/Treasurer

Jennifer Sarsland, DDS

Alison Fallgatter, DDS

Otto Dohm, DDS, MS

Andrea Carlson, RDA

David Schaibley, Executive Director

Jacinda Simmons, Administration

Absent: Dr. Megan Olson Stremick; Dr. Joel Kangas

**2. Minutes**

Reviewed the draft of the March 28, 2024, Special Meeting minutes:

Motion by Dr. Fallgatter; Second by Ms. Marsh: Approving the March 28, 2024, minutes.

In Favor: Ms. Marsh, Dr. Dohm, Dr. Fallgatter, Dr. Tanabe, Ms. Carlson, Dr.

Sarsland, Ms. Snay. Motion carried 7-0.

**3. Treasurer's Report**

Ms. Snay shared her current financial assessment. Mr. Schaibley added information:

- Ms. Snay is continuing efforts to update financial processes and look for ways to create efficiencies; she anticipates having that work completed and to be able to share a comprehensive summary at the July 12, 2024, regular meeting.
- Ms. Snay explained that at present, the Board will experience a shortfall of approximately \$10,000 for the current biennium, but that certificates of deposit can account for that shortfall. The Board discussed identifying spending efficiencies and considering fee increases as ways to ensure shortfalls don't continue.
- The Board discussed the need to continue to fully assess all costs as to staffing. Discussed the need to cut extra costs as expenditures can be made more efficiently, including:
  - Ms. Snay shared that we do not have the funds to contemplate hiring a new full-time employee.
  - Ms. Snay shared that regardless of other staffing decisions, paramount is to ensure we keep a bookkeeper under contract. This is best practice—allows a small board to separate financial duties among more than one individual. It is also a critical support necessary to balance the executive director's workload.
  - Discussed that we have a contract with APT that covers both finance and administrative support. Ms. Snay and Mr. Schaibley are meeting with APT on May 21, 2024, to firm up financial procedures and obtain

more complete financial services from them as permitted under our contract.

- Ms. Snay and Mr. Schaibley will assess the bookkeeping work done by APT over 2024 and at future meetings will report whether APT's bookkeeping work meets expectations or if the Board should consider procuring a different bookkeeping service provider.
- The administrative support we receive from APT meets our needs and is of good quality. But we'll continue to assess that administrative support and the tasks they carry out while Mr. Schaibley continues to learn Board processes. In doing so Ms. Snay and Mr. Schaibley will be prepared to address the extent to which we can afford to continue to contract with APT, and if we can afford those services, which services we would recommend for beyond the current March 2025, contract end date.
- Discussed Ms. Sommers work and that she continues to provide valuable support to the Board. Discussed the pending end of Ms. Sommers employment through retirement and firming up that date. Options include converting Ms. Sommers from a salaried employee to a contractual consulting relationship with an hourly rate. The timing of retirement/ending/converting the relationship depends on our needs for her assistance and includes a financial assessment of whether we can afford this expenditure. The change in relationship could occur when the Board deems necessary, and it discussed options of this spring, at the September 2024 meeting, at the end of 2024, or continuing through March 2025. Mr. Schaibley requested that the Board retain Ms. Sommers under the current employment terms at least through the completion of the biennial audit that takes place in July 2024.
- Discussed that Widmer Roel and the Board have signed an engagement letter for the audit of the 2021-2023 biennial audit. It will take place in July 2024.

Motion by Dr. Fallgatter; Second by Dr. Dohm: Delegation to Dr. Tanabe of full decision-making authority as to the Board relationship with Ms. Sommers, including whether and when to end that relationship or convert it to hourly, the terms, and carrying out that decision.

In Favor: Ms. Marsh, Dr. Dohm, Dr. Fallgatter, Dr. Tanabe, Ms. Carlson, Dr. Sarsland, Ms. Snay. Motion carried 7-0.

#### **4. Licensees/Registrants**

The Board reviewed the table of current quantities of licensees and registrants, and the attachment listing new licenses and registrations that have been issued since the last meeting.

Motion by Ms. Marsh; Second by Dr. Fallgatter: Ratification of licenses and registrations on Attachment A.

In Favor: Ms. Marsh, Dr. Dohm, Dr. Fallgatter, Dr. Tanabe, Ms. Carlson, Dr. Sarsland, Ms. Snay. Motion carried 7-0.

## **6. Portfolio Report: Anesthesia**

Discussed completed site evaluations. Dr. Tanabe shared information about the 'Sim Man' simulation program at UND. It can be used for mock codes—is used in the medical/nursing arena but they say it could be expanded to focus on dental emergencies, cares, IV starting, etc. They might be open to teaming with an entity such as ND Dental Association to put on continuing education, bring the program to a NDDA meeting, etc.

## **7. Portfolio Report: Continuing Education**

Random audits for licenses renewed as of December 31, 2023, will begin now that the renewal period has ended.

## **8. Portfolio Report: Applications**

Discussed Dr. Burney potentially seeking hardship extension for renewal.

## **9. Portfolio Report: Legislation and Rulemaking**

Discussed changes to its statutes and rules; that workforce concerns remain on the forefront of issues licensees, the Board, legislators, and stakeholders focus on; that the Board is proposing to its laws reflect a focus on workforce while balancing that against the need to ensure public safety.

Legislation: Discussed circulation of the Board's draft of a bill for next session. Mr. Schaibley will begin circulating it and reaching out to stakeholders and legislators to identify supporters and sponsors. The Bill is anticipated to amend NDCC ch. 43-20 and NDCC ch. 43-28. The Board incorporated modifications to the draft.

Rulemaking: Discussed that the Board is in the process of rulemaking. Mr. Schaibley shared:

- Notices were published timely in all newspapers except Grand Forks, where publication occurred late.
- The deadline for submission of comments on the proposed rule was May 2, 2024.
- Provided Grand Forks licensees an extra eight days to submit comments to that new, informally extended deadline is May 10, 2024.
- New comments continue to arrive, and the Board can consider those too.
- Drafting all supporting materials such as Regulatory Analysis, Fiscal Note, etc.
- All comments will be submitted to the Attorney General's office and Legislative Council comments as required by law.
- The rulemaking timeline continues to be that we anticipate appearing before the legislative administrative rules committee's September 2024 meeting and with any resulting rules taking effect October 1, 2024.
- Mr. Schaibley shared that throughout 2023 and leading up to the February 2024 notice, the Board sought input on what would be included in the proposed rules in many different ways: postings on the Board website, inclusion in meeting notices since mid-2023, posting at the Secretary of State website, and emails to every licensee and many stakeholders. The Board received substantial input through that process, much of which was incorporated into the proposed changes noticed in February 2024.
- Explained that rulemaking laws require us to give notice of the kinds of changes the Board is seeking to make and seek input on those proposed changes.
  - Explained that a high percentage of comments received on the proposed rule changes are not related to the changes that the Board

noticed. Many comments instead pertained to rules related to sedation rules that took effect July 1, 2022, or prior.

- Mr. Schaibley relayed that he consulted with the Board’s lawyer on this issue. The Board lawyer could not be present due to a scheduling conflict, but Mr. Schaibley relayed his input—rules comments that are not responsive to the proposed changes that were noticed by the Board in February 2024 cannot be considered for this cycle of rulemaking. Making material changes that were not part of the February 2024 notice would be unfair to stakeholders, outside the Board’s legal authority, and inconsistent with the due process requirements of NDCC ch. 28-32. Those comments can, however, be held by the Board for consideration when it explores doing additional rulemaking after the 2025 legislative session.
- The Board then turned to reviewing the comments received. It completed its review of comments submitted on ND Admin Code ch. 20-02.
- Mr. Schaibley is directed to schedule a Special Meeting for May or early June at which the Board can resume its review of comments.

#### **10. Portfolio Report: Executive Director**

Discussed Mr. Schaibley’s quarterly report; his chief focus the first quarter of 2024 was rulemaking processes. Other key issues were that he attended the AADB mid-year meeting; worked on contracts and procurements with auditor, administrative support, software vendor, and OMB.

#### **11. Old Business**

Licensing Software:

Mr. Schaibley shared that he is working to get the contract in place with Albertson Consulting to transition from CloudDocs to WorkDocs and begin the website refresh; progress in getting the contract feedback from Albertson has been slow and disappointing.

Bookkeeping and Administrative Support:

Much of this was discussed in the Treasurer’s Report. Mr. Schaibley continues to work with APT on signing the contract extension. It will extend the relationship through March 2025, allowing the Board’s contract with APT to run coterminous with the OMB Master Contract with APT.

Joint Statement with Board of Nursing:

Mr. Schaibley attended the Board of Nursing’s recent meeting and shared input on the Joint Statement’s purpose—which is to provide clarity for dentists who might hire nurses to perform anesthesia work. Licensees and the Board seek clarification of the scope of practice for registered nurses and licensed practical nurses as to anesthesia work their nursing license allows them to perform in a dental office. The Board of Nursing shared concerns about the LPN scope of practice as to anesthesia and anticipates providing us with revisions to the draft joint statement in July.

#### **12. New Business**

Conflicts of Interest: Mr. Schaibley shared attorney AAG Menge’s input about conflicts of interest; background on the Ethics Commission’s rules and how they impact the process by which a Board member handles a potential conflict of interest; shared that at present, the Board’s neutral reviewer of conflicts of interest is the Governor, and that the Board can identify a different neutral

reviewer through rulemaking or policy. The Board discussed options for identifying a neutral reviewer.

Motion by Dr. Sarsland; Second by Dr. Fallgatter: Designate the Board's assistant attorney general, who is currently Mr. Menge, as the Board's Neutral Reviewer as discussed in the Ethics Commission rules.

In Favor: Ms. Marsh, Dr. Dohm, Dr. Fallgatter, Dr. Tanabe, Ms. Carlson, Dr. Sarsland, Ms. Snay. Motion carried 7-0.

Mr. Schaibley is to relay this motion and an explanation to Dr. Kangas and Dr. Olson Stremick

Dr. Peters: Discussed Dr. Peters' inquiry regarding difficulties he and his patients have experienced in obtaining patient records from Dr. Krieg in a timely matter. The Board discussed that Dr. Krieg is no longer a licensee; that his license was revoked; directed Mr. Schaibley to work with Mr. Menge to write a letter strongly reinforcing the need for Dr. Krieg to fully comply with the laws and rules related to patient records, identify the laws implicated, send via certified mail from Mr. Menge.

### **13. Portfolio Report: Complaints, Discipline, Inquiries**

Non-Complaint files/Inquiries:

Discussed ongoing monitoring of inquiries related to:

Dr. Mengedoth, Dr. Turman: Continue monitoring

Dr. Noffze; Dr. Keith: End monitoring

Ms. Mata: Mr. Schaibley work with Mr. Menge to send a letter of concern to this non-

Discipline:

Discussed the non-renewal of license agreement the Board entered into with Dr. Day.

Complaints:

Discussed that the complaints on the agenda may be reviewed in Executive Session pursuant to NDCC §§ 43-28-18.2.

Motion by Dr. Fallgatter; Second by Dr. Dohm: Motion to enter into executive session.

In Favor: Ms. Marsh, Dr. Dohm, Dr. Fallgatter, Dr. Tanabe, Ms. Carlson, Dr. Sarsland, Ms. Snay. Motion carried 7-0.

Entered executive session at 1:20pm CT. Attended by Ms. Marsh, Dr. Dohm, Dr. Fallgatter, Dr. Tanabe, Ms. Carlson, Dr. Sarsland, Ms. Snay, Ms. Simmons, Mr. Schaibley.

Ended executive session at 1:44pm CT.

After close of the executive session and return to open meeting, the following occurred:

Motion by Dr. Dohm; Second by Dr. Fallgatter: Move to dismiss complaints 104, 109, 110, and 111 using standard language, and to dismiss complaint 108 using a letter of concern.

In Favor: Ms. Marsh, Dr. Dohm, Dr. Fallgatter, Dr. Tanabe, Ms. Carlson, Dr. Sarsland, Ms. Snay. Motion carried 7-0.

### **15. National/State Organizations**

Mr. Schaibley reinforced the benefits of attending the NDDA, AADA, AADB, and FARB conferences. He'll be attending the NDDA meeting in Bismarck in 2024. He'll share the agendas for the AADA, AADB, and FABR meetings as soon as they're released and recommend if he sees a benefit of him attending any of them. The Board also discussed that depending on schedules and agendas for those conferences, Board members may want to attend some of them.

**15. Adjournment**

3:00 PM, CT