

North Dakota Board of Dental Examiners
Minutes for Regular Meeting: July 19, 2024, 12:00 PM CDT
Brady Martz & Associates
2537 S. University Drive; Fargo, ND 58103

1. Call to Order, roll call, officers

Dr. Tanabe called the meeting to order at 12:01 pm CT.

Board Members and Administrative Staff Attendance

Andrea Carlson, RDA

Marcus Tanabe, DDS, OMFS, President

Joel Kangas, DDS

Cindy Snay, Consumer Member, Sec/Treasurer

David Schaibley, Executive Director

Rita Sommers, Assistant Executive Director

Alison Fallgatter, DDS

Jennifer Sarsland, DDS

Megan Olson Stremick, DDS

Bev Marsh, RDH

Matt Menge: Legal Counsel

Absent: Otto Dohm, DDS

2. Minutes

Reviewed drafts of the minutes of the May 3, 2024, Regular Meeting and May 24, 2024 Special Meeting:

Motion by Ms. Marsh; Second by Dr. Fallgatter: Approve the May 3, 2024, and May 24, 2024, meeting minutes.

In Favor: Ms. Marsh, Dr. Kangas Dr. Olson Stremick, Dr. Fallgatter, Dr. Tanabe, Ms. Carlson, Dr. Sarsland, Ms. Snay. Motion carried 8-0.

3. Compact

Guest speakers Kimber Cobb and Dr. Art Jee representing AADB appeared and provided their perception as to dental licensing compacts as follows.

They discussed aspects of two dental compacts; one drafted by AADB and the other drafted by CSG. They explained concerns they have about the CSG compact, including the ability of the Commission to accept any exams, approve accrediting agencies other than CODA; loss of state control, loss of protection to the public, and that the CSG compact has no 'home state' requirement. A possible result is that a dental professional could be granted an unrestricted compact privilege despite a background that contained notable or dangerous disciplinary, criminal, or other concerning behaviors and North Dakota could not readily place any restrictions on the individual that would safeguard patients or staff. Discussed the difference between compact 'permit holders' v. 'license holders' (permit holders might not have to follow laws that pertain to licensees of a state, such as continuing education, site evaluation, practice ownership, discipline. The fees and costs the Commission can assess against each state is undefined and unlimited; the Commission has the power to tax/levy the states; borrow money; set fees. CSG's compact has been adopted by more than seven states so it has met the threshold to start operating.

They shared that the AADB has structure in place to function as a compact data clearinghouse so the financial impact will be limited. The only fees will be those assessed to individuals seeking to join the Compact—and that fee is estimated at around \$300. State Board's retain full authority over the issuance of licenses under the compact, and retain the ability to restrict licenses. AADB anticipates that its compact will be adopted in five states by the fall of 2024 and start operating.

Mr. Schaibley summarized aspects of conversations he's had with LtC Sheldon, who met with him on behalf of the Military Commission. They are seeking the Board's perspective on the CSG compact. Mr. Schaibley relayed that he shared with LtC Sheldon that the Board has expressed concerns about the CSG compact at past Board meetings, including aspects pointed out by Ms. Cobb and Dr. Jee. Key focus of was that the CSG compact does not require a clinical exam that tests handskills and the broad rulemaking authority of the Commission allowing it to pass rules that have the force and effect of law in North Dakota without following NDCC ch. 43-28 and its processes (CSG Compact at 9), and that Commission rules supersede North Dakota Century Code (CSG Compact at 13B).

4. Treasurer's Report

Ms. Snay shared the current financial assessment of the Board; confirmed it is sound financially and shared Income Statements, a Balance Sheet, a table of the Board's certificates of deposit, etc.

Ms. Snay proposed preparing similar documentation for each meeting, plus an expenditure report. Board members discussed their support for that.

Ms. Snay and Mr. Schaibley shared that the 2021-2023 biennial audit being conducted by Widmer Roel is progressing and we've given them all the documentation they have sought so far.

5. 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 Dr. Kangas; Second by Ms. Marsh: Ratification of licenses and registrations on Attachment C.

In Favor: Ms. Marsh, Dr. Kangas, Dr. Fallgatter, Dr. Tanabe, Ms. Carlson, Dr. Sarsland, Dr. Olson Stremick, Ms. Snay. Motion carried 8-0.

6. Portfolio Report: Anesthesia

Dr. Tanabe shared that his schedule has precluded him from making more progress on the 'Sim Man' simulation program he is exploring. It can be used for mock codes, training, etc. It is used in the medical/nursing arena but UND staff administering it agree it could be expanded to focus on dental emergencies, cares, IV starting, etc. He'll continue information gathering and report back to the Board as scheduling and timing permit.

7. Portfolio Report: Continuing Education

Ms. Carlson explained that six of the licensees she's carrying out continuing education audits on are lacking hours. Mr. Schaibley is to collaborate with her on reaching out to the licensees and will set up a system so we can more readily track those being audited.

8. Portfolio Report: Applications

Discussed that we've had no application concerns since the last meeting. Mr. Schaibley shared that recently the time it takes for criminal history records checks to be completed by BCI has been under two weeks.

9. Portfolio Report: Legislation and Rulemaking

Rulemaking:

Mr. Schaibley explained that:

1. The Office of the Attorney General has informally approved our rule changes, minus a couple of the changes as to fees. We should receive his formal letter of approval in the next few days.
2. One of the fees removed was the contingent fee that would apply if the legislative assembly approved a Bill allowing for the statutory establishment of a program for our licensees similar to the physicians health program in NDCC ch. 43-17.3. If that occurs, instead of having the contingent fee already in place, the Board would now have to seek legislative approval during that Bill discussion—seeking a fee to help fund the administration of that program.
3. He will send the resulting rules and supporting materials to Legislative Council before August 1.
4. The Board can fully anticipate Mr. Schaibley appearing before the Legislative Administrative Rules Committee at its September 4, 2024, meeting.
5. Mr. Schaibley shared that he discussed the proposed changes with Sen. Lee and Sen. Hogan; circulated them to Sen. Bekkedahl and Sen. Cleary; and will continue to circulate them to more legislators and stakeholders.

Motion by Ms. Marsh; Second by Dr. Fallgatter: Approval of rules as modified based on discussions with, and recommendations received from, the Office of the Attorney General

In Favor: Ms. Marsh, Dr. Kangas, Dr. Fallgatter, Dr. Tanabe, Ms. Carlson, Dr. Sarsland, Dr. Olson Stremick, Ms. Snay. Motion carried 8-0.

Mr. Schaibley explained an oversight in the proposed changes to NDAC 20-03-01-05(2)(a)(5). It was intended to create another pathway to registration for QDAs. The pathway was worded the same way as the same new pathway proposed for RDA. The two rules would both allow assistants registered in other states, who don't quite meet our criteria, to demonstrate other experience, education, etc., to overcome that shortcoming and be registered here. The concern is that unlike RDAs—no other states have QDAs. That means the proposed rule would have no effect and fail to create this pathway to QDA registration. Before going on to a solution, the Board discussed that we regulate QDAs because North Dakota law on medical imaging requires that those seeking to perform radiographs must be regulated by either the Board of Medical Imaging, or a Board exempt from the Board of Medical Imaging. The Board of Dental Examiners is exempt, and in discussions with the Board Medical Imaging, they explained their perspective of NDCC ch. 43-62 and it's requirement that we must regulate any dental employee that our rules allow to do radiographs.

The Board discussed ways to remedy this oversight in NDAC 20-03-01-05(2)(a)(5) because as worded, it is ineffective and does not create the pathway for registration that was intended.

Motion by Ms. Marsh; Second by Dr. Kangas: Provide Mr. Schaibley with authority to ask the Legislative Administrative Rules Committee to consider adopting this rule, but striking the words “is licensed in good standing under the laws of another jurisdiction and” from it.

In Favor: Ms. Marsh, Dr. Kangas, Dr. Fallgatter, Dr. Tanabe, Ms. Carlson, Dr. Sarsland, Dr. Olson Stremick, Ms. Snay. Motion carried 8-0.

Legislation:

Discussed the Board’s anticipated filing, through legislators, a Bill anticipated to amend NDCC ch. 43-20 and NDCC ch. 43-28.

Ongoing circulation of the Board’s draft of a bill for next session. Mr. Schaibley confirmed he shared the Bill draft with Senators Bekkedahl, Lee, Hogan, and Cleary. Support is being received.

Mr. Menge will go through the two statutes carefully to identify any legal concerns he has about any of the language, and share that input with Mr. Schaibley and the Board. We’ll then consider adding those ideas to our Bill draft.

10. Portfolio Report: Executive Director

Discussed Mr. Schaibley’s quarterly report. In summary, his chief focus the second quarter of 2024 was again rulemaking processes. Key was amassing the materials for the Office of the Attorney General, lengthy discussions with their attorneys, resolution of their concerns, and discussions with legislators about their support for the proposed rules.

Also worked on contracts and procurements with OMB; with Albertsons Consulting to roll out the product that will replace CloudDocs and work toward the website refresh; audit issues with Widmer Roel; continuous discussions with APT and Ms. Snay to get our internal finances processes more refined.

11. Old Business

Joint Statement with Board of Nursing continues to await their input on the scope of practice as to nurses and anesthesia. They explained that other priorities have resulted in a slight delay in getting to this.

12. New Business

The Board discussed input from a licensee who is interested in whether the Board might explore the regulation of dental services organizations. The Board queried whether some outcomes of the proliferation of DSOs are less than positive as to patient care or dentist autonomy. The Board asked Mr. Schaibley to continue gathering information on that possibility and examples of other state regulatory efforts.

Mr. Schaibley will present on Board issues and rules at the NDDA Annual Meeting. He also drafted an article providing an update on rulemaking for publication in the upcoming NDDA newsletter.

13. Portfolio Report: Complaints, Discipline, Inquiries

Non-Complaint files/Inquiries:

Discussed ongoing monitoring of two non-complaint inquiries.

Complaints:

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

Motion by Dr. Tanabe; Second by Dr. Fallgatter: Motion to enter into executive session.
In Favor: Ms. Marsh, Dr. Kangas, Dr. Fallgatter, Dr. Tanabe, Ms. Carlson, Dr. Sarsland, Dr. Olson Stremick, Ms. Snay. Motion carried 8-0.

Entered executive session at 2:45pm CT. Attended by Ms. Marsh, Dr. Kangas, Dr. Fallgatter, Dr. Tanabe, Ms. Carlson, Dr. Sarsland, Ms. Snay, Dr. Olson Stremick, Ms. Sommers, Mr. Menge, Mr. Schaibley.

Ended executive session at 3:05pm CT.

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

Motion by Dr. Kangas; Second by Dr. Fallgatter: Move to dismiss complaint 114 and to dismiss complaint 116 using a letter of concern.

In Favor: Ms. Marsh, Dr. Kangas, Dr. Fallgatter, Dr. Tanabe, Ms. Carlson, Dr. Sarsland, Dr. Olson Stremick, Ms. Snay. Motion carried 8-0.

15. National/State Organizations

Mr. Schaibley will assess the possibility of attending the FARB conference in September, but it immediately precedes another conference the Board asks him to attend. That is the joint AADA, CWC, and AADB conference in Kentucky, which spans five days.

Mr. Schaibley will also attend and present at the NDDA meeting in Bismarck in 2024.

15. Adjournment

3:10 PM, CT