

# North Dakota Board of Dental Examiners

## MINUTES – June 18, 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.

#### Board Members and Administrative Staff Attendance

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

**Others in attendance via Zoom:** Kimber Cobb National Director of Licensure Acceptance and Portability CDCA; Tony Hruby, RDA, CDA, ND Oral Health Prevention Coordinator; Cheri Kiefer, RN, BSN, RDN, RD, ND Oral Health Program Director; Matt Glans, Academy of Dental Sleep Medicine (AADSM); Dr. Nancy Addy, AADSM; Brent Holman, DDS; Cari Orn, DDS, NDDA; William Sherwin, NDDA Executive Director; Maria Meyer, DDS. **Others attending in person:** Susan Peters, RDA and Marsha Krumm, RDA, ND Dental Assisting Association; Brenda Blazer, Esq., Vogel Law Firm.

**2. Review and approve minutes:** March 19, 2021; June 3, 2021, Special Meeting. Ms. Marsh moved to approve the minutes from March 19, 2021. Motion seconded by Dr. Keim. Hearing no further discussion, all voted in favor of approving the minutes. Moved by Ms. Marsh and seconded by Dr. Evanoff to approve the minutes from June 3, 2021, Special Meeting. Hearing no further discussion, all voted in favor of approving the minutes.

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

A. License status:										
Year	DDS in state	DDS Total	RDH in state	RDH Total	RDA/QDA in state	RDA/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	432	495	694	859	653	737	18	36	1833	2145
B. 03/31/2021 Balances and Certificates: Total assets   \$503,468.47										
BALANCES			CERTIFICATES OF DEPOSIT				SHORT TERM ASSETS			
US Bank Checking	\$121,608.67		CC Union 1		\$52,544.20		Capitol Credit Union		\$25,105.07	
			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					
			Bremer 5		\$56,399.10					
Total Checking	\$121,608.67		Total Certificates		\$345,509.07		Total STA		\$30,726.32	

Ms. Sommers provided members a balance sheet reflecting balances ending the 1<sup>st</sup> quarter and provided newly elected Treasurer, Bev Marsh, profit and loss reports of the previous four years to become acquainted with the Board's finances. Moved by Mr. Mehlhoff and seconded by Dr. Dohm to approve the Treasurer's Report. All voted in favor of the motion.

#### 4. Committee Reports

##### A. Complaint Committee/ Legal Issues

1) 27-10152019 – Ms. Brandner presented a counteroffer proposed by the defending counsel. The Board remains concerned with the practitioner's modality of the sedation procedure and criteria for discharge. The Board determined that the practitioner shall attend courses related to the event which led to the Board's concerns. Dr. Evanoff moved to delegate Dr. Tanabe to locate the courses specific to the concerns of the Board and amend the Settlement Agreement to include the suspension until the courses are successfully completed, at which time a special meeting of the Board would be scheduled. The Board waives the site evaluation as a site evaluation was recently completed and the JP exam. Dr. Fallgatter seconded the motion. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Dr. Dohm, yes. Motion passed 7-0.

2) 39-08042020 – After further review of requested x-rays the Board determined the clinician was at fault, a misdiagnosis occurred. Based on findings, the Board determined a letter of concern would be sent and requirement to fulfill six hours of continuing education related to root canal therapy. Moved by Dr. Dohm, seconded by Dr. Fallgatter. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Dr. Dohm, yes. Motion passed 7-0. Ms. Brandner will send the communication.

3) 47-01052021 – The Board received a response which was followed up with a request for more information regarding the treatment history of the patient. No response was provided regarding the patient. Smile Direct Club responded with a letter rather than patient notes stating the dentist is not directly or indirectly employed by Smile Direct Club and does not accept payment from Smile Direct Club in exchange for dental services. The patient submitted a copy of bill from Smile

Direct Club for \$1750. The Board wished to review the “Dr. approved treatment plan” mentioned in a correspondence from SDC, however no patient notes were submitted as requested. Dr. Evanoff moved to revoke the license, Dr. Fallgatter seconded the motion. Ms. Brander will send the communication. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Dr. Dohm, yes. Motion passed 7-0.

4) 49-02112021 – The Board addressed nine complaints regarding the same entity involving two treating dentists, assertions of possible patient abandonment, dubious patient records storage, administering treatment below the standard of care, improper and inappropriate use of local anesthetic agents which have the potential to produce life-threatening, systemic adverse reactions, and improper dosing of anxiolytic medications. Four complaints center around patient care with very complicated and extensive treatment, and transitioning between one practitioner to another within the entity. The complaint asserted the patient was left in a difficult position, sometimes financially or dissatisfied with treatment as expectations related to the final outcome were not met. The Board expressed concern regarding quality of care issues related to the owner/dentist who employs the dentist who was authorized or directed to provide treatment that the practitioner was not adequately trained or capable to deliver. Dr. Dohm moved to initiate a complaint based on the documents provided by the practitioner and obtain more information. Dr. Fallgatter seconded the motion. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Dr. Dohm, yes. Motion passed 7-0. Dr. Tanabe moved to authorize Ms. Brandner to request an additional anesthesia (Ativan, Halcion, Valium or other) records list from the entity’s two practitioners of concern. Discussion: The sampling size will be reviewed and records can randomly be selected for review. Motion seconded by Dr. Fallgatter. Discussion: The Board will request a list of patients that were given oral anesthesia/sedation prescriptions or oral anesthesia/sedation drugs and then request records. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Dr. Dohm, yes. Motion passed 7-0.

5) 50-02192021 - Dr. Evanoff recommended Tara send a letter to the office receptionist regarding the complaint. The Board will address the findings at its September meeting.

6) 51-03182021 - The Board determined that grounds for disciplinary action do not exist. Dr. Evanoff moved to dismiss the complaint. Dr. Fallgatter seconded the motion. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Dr. Dohm, yes. Motion passed 7-0.

7) 52-04092021 - The Board determined that grounds for disciplinary action do not exist. Dr. Fallgatter moved to dismiss the complaint. Dr. Dohm seconded the motion. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Dr. Dohm, yes. Motion passed 7-0.

8) 53-05272021 – After review of the clinical notes, Dr. Evanoff moved to seek further information from the practitioner and referring practitioners involved in the treatment/case. Dr. Fallgatter seconded the motion. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Dr. Dohm, yes. Motion passed 7-0. Defer further discussion to September meeting.

**B. Anesthesia Committee** (Dr. Tanabe): Dr. Tanabe reviewed the anesthesia site inspection evaluations from Dr. Glosenger Minot, Dr. Crago, Dr. Gray, Dr. Bui, Fargo location and Dr. Bulik’s Fargo and Valley City locations. Letters of completion will be sent to practitioners by the Executive Director. The Committee’s main concern was regarding practitioner’s lack of mock code documentation as it relates to the importance of office preparedness to decrease unfavorable outcomes.

**C. Continuing Education Committee:**

1) Random Audits: Ms. Marsh reported eight audits successfully completed during the first two quarters of 2021 and the committee will complete eight audits for the last two quarters of 2021.

**D. Application Review Committee:**

1) Kolar dental assistant QDA application - military spouse: Ms. Kolar received dental assisting training in a non-accredited program. Ms. Kolar was providing duties such as radiographs and has had infection control education and has completed substantially equivalent QDA requirements demonstrating competency (N.D.C.C. § 43-51-11.1). Ms. Kolar appeared to have demonstrated competency in her previous work history. Moved by Dr. Dohm and seconded by Dr. Keim to issue a two-year provisional registration. Ms. Kolar can work toward meeting the (QDA or RDA) DANB requirements during the two-year provisional registration period. Dr. Dohm moved to grant the temporary QDA registration. Motion seconded by Dr. Kiem. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Dr. Dohm, yes. Motion passed 7-0.

**E. Legislative Committee:**

1) Admin Rules: The Board has yet to receive substantive comments from the NDDA’s reported coalition (NDDA, NDDHA, NDDAA) regarding Administrative Rules. NDDA Executive Director, William Sherwin, after requesting the Administrative Rules adopted by the Board in January 2021 be voided during the Admin Rules Committee meeting in Bismarck March 5, 2021 to allow time to form a task force to address the rules, informed the Board that the NDDA had “no appetite to be on that task force and I didn’t believe it is proper.” Mr. Sherwin further stated that NDBDE member Dr. Tanabe would “have a strong handle on it.” Ms. Brandner commented on how any “task force” meetings proposed to include the NDBDE would require proper public notification, minutes etc. Ms. Brandner also emphasized that it is the *Board’s* duty to draft rules. The NDDA may make specific suggestions or provide comments/opinions related to specific elements of existing or proposed rules. She advised the NDDA further those non-substantive statements (e.g., “we don’t like this”) are not helpful to the process or to the Board. Specific examples of preferred language must be provided. The purpose of the Board’s withdrawal of the rules was to provide the NDDA’s coalition (NDDHA, NDDAA, NDDA) sufficient time to provide comments to the Board. Dr. Evanoff requested Mr. Sherwin notify his association members to provide comments by **8/1/2021** so Board members will have time to study and all suggestions prior to their September 17, 2021.

**5. Old Business:**

A. A virtual Sleep Medicine Presentation was presented by Nancy Addy, DDS, Immediate past president of the American Academy of Dental Sleep Medicine (AADSM, [www.aadsm.org](http://www.aadsm.org)). Dentists play a key role in identifying patients who may have sleep disorder breathing. Dr. Addy provided an overview of dental sleep medicine which focuses on the use of oral appliance therapy to treat sleep disordered breathing, including snoring and obstructive sleep apnea (OSA). The ADA views sleep disorder screening as an important part of the comprehensive dental and medical history. Dr. Addy suggested that state boards play a role in a collaborative effort between physicians and dentists, where the appropriately trained dentists role allows dentists to order and administer sleep apnea tests. In the AADSM treatment model, physicians must be the interpreters of the sleep test and diagnosis, however, to streamline the process dentists need to be authorized to order and administer sleep apnea tests, collect clinical observation and objective data allowing sleep disorder patients to be screen and treated with few visits to healthcare providers. The AADSM offers their training program at CODA accredited dental schools. Dr Tanabe asked about different levels of testing and liability. Dr. Addy commented that the physician would help determine the level based on other information. The physician determines the efficacy of the dental appliance based on subsequent sleep tests that could be administered by appropriately trained dentists. Results of such tests administered by a dentist are subsequently read and diagnosed by a primary sleep doctor. The benefit is that the dentist facilitates the process and is able to get needed treatment for patients efficiently according to the AADSM.

B. Policy & Procedure Manual review: Dr. Evanoff moved to approve the finalized amendments to the Policy & Procedure Manual. Motion seconded by Ms. Marsh. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Dr. Dohm, yes. Motion passed 7-0. Ms. Sommers will notify CRDTS of the changes.

#### **6. New Business:**

##### A. Public Forum:

1) Phlebotomy and RDH: A DDS inquired as to whether or not the RDH could draw blood to spin out platelets for dental procedures under the supervision of a DDS. The Board advised that the RDH would need to have a different license to provide the duty as it is currently not within the scope for hygienists. The hygienist would not be prohibited if she received a license from the clinical laboratory Board <https://www.ndclinlab.com/> to provide such services.

2) Dr. Trevor Andrews, 2003 U of MN dental graduate was in private practice until 2015 and has not been practicing since. Dr. Andrews currently does not meet the requirements of 43-28-15(1) and would be required to retake licensing exams. Dr. Andrews requested the Board consider allowing him to take only part II of the NBDE and a clinical board. The Board cannot open the requirements for interpretation and accept only one part of the exam for licensure. An applicant must provide evidence of successfully completing the National Board Dental Exam (NBDE) and a clinical competency exam within five years of application or have been actively practicing dentistry for within five years prior to application. Dr. Evanoff moved and motion seconded by Dr. Tanabe to deny request to interpret requirements for NBDE exam. RCV: Dr. Fallgatter, yes; Dr. Keim, yes; Dr. Evanoff, yes; Ms. Marsh, yes; Dr. Tanabe, yes. Mr. Mehlhoff, yes. Dr. Dohm, yes. Motion passed 7-0.

3) RDA, EFDA and ICON resin: Tyler Johnson, DDS, pediatric dentist asked Board whether resin infiltration (ICON), a minimally invasive restorative treatment, is within the scope of practice for dental hygienist or dental assistant. Administrative rules do not specifically address ICON resin application or resin infiltration of incipient smooth surface lesions. ICON is coded differently than a sealant. The Board will consider updating rules in the future to include ICON language.

B. Letter to Board, Mr. Beehler: Subsequent to the discussion with Mr. Sherwin regarding rules process, no further discussion. Mr. Beehler was invited to attend the Board's meeting.

C. AAO letter: The Board discussed an American Association of Orthodontists (AAO) letter communicating their revised clinical practice guidelines which include recommendations specifically intended to protect patients receiving orthodontic treatment that includes a teledentistry component. The AAO stressed in person comprehensive dental and orofacial examinations should occur by a state-licensed dentist.

D. Ms. Peters and Ms. Krumm inquired and commented on the rules process. The Board reiterated the nuances of public board communications and how the flow of information takes place during the rules amendment process which is governed by laws. Dr. Evanoff encouraged NDDAA members to distribute relevant information accordingly and stressed that in preparation for meetings to submit issues in writing. Although the Board members cannot discuss the issue outside of a meeting, written comments provided in advance of a meeting are helpful.

#### **7. National Organizations; Regional Clinical Boards; Trip Reports:**

A. AADB & AADA: 138<sup>th</sup> Annual AADB Meeting hosted at the Grand Hyatt San Antonio Oct 30-31.

B. CRDTS – no report.

C. CDCA - WREB (recent merger): Kimber Cobb provided information related to the merger and facilitate questions from the Board. Ms. Cobb provided details for the 2022 exams and applicants will have the option of which exam they would take during the transition period of two years after which the ADEX exam will be administered to all applicants. The entity will now be known as CDCA-WREB. Board reviewed the letter sent by WREB Executive Director, Beth Cole.

D. FARB: Ms. Brandner is scheduled to attend the Sept. 30- Oct 3 meeting.

E. DERB mtg: 10/23/2021 HERB mtg: 10/15-16/2021

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

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

**10. Adjournment:** Moved by Dr. Fallgatter to adjourn. Hearing no objection, the meeting adjourned at 4:25 PM.

Respectfully submitted,

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Rita Sommers, Executive Director

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Bev Marsh, RDH, Secretary-Treasurer