

North Dakota Board of Dental Examiners
Draft - Minutes - June 17, 2022, 1:00 PM CDT – Quarterly Meeting
Office of Brady Martz & Associates, 2537 S. University Drive, Fargo, ND

- 1. Call to Order and roll call:** Tim Mehlhoff called the meeting to order at 1:00 CDT and introduced newest board member Jennifer Sarsland, DDS, from Bowman. Dr. Sarsland has been in practice for 11 years.

Board Members and Administrative Staff Attendance

Tim Mehlhoff, CPA	Bev Marsh, RDH President -Elect
Otto Dohm, DDS, MS	Andrea Carlson, RDA
Marcus Tanabe, DDS, OMFS, Secretary Treasurer	Allison Fallgatter, DDS
Joel Kangas, DDS	Rita Sommers, RDH, MBA, Executive Director
Jennifer Sarsland, DDS	David Schaibley, Assistant Attorney General

- 2. Review and approve minutes:** April 22, 2022. An error was recorded in the vote related to removing a duty from the dental assistant section. The minutes were amended immediately to reflect a “no” vote by Andrea Carlson as follows: “E. Legislative Committee: Mr. Schaibley elaborated on rule making procedures and status quo of process. Moved by Dr. Fallgatter and seconded by Ms. Marsh to strike section 20-03-01-01(k). Discussion: Comments regarding the issue were considered. Since the procedure is related to diagnostic procedures the duty will authorized for qualified or registered dental assistants under general supervision. Roll call vote (RCV): Mr. Mehlhoff, yes; Ms. Marsh, yes; Dr. Kangas, no; Dr. Fallgatter, yes; Dr. Dohm, yes; Dr. Tanabe, yes; Ms. Carlson, no. Motion carried 5-2.” Moved and seconded to amend April 22 minutes. RCV: Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Tanabe, yes; Dr. Kangas, yes; Dr. Sarsland, yes, Ms. Marsh, yes; Ms. Carlson, yes; Dr. Fallgatter, yes. Motion carried 8-0.
- 3. Treasurer’s report and review of payables:** Ms. Sommers presented a 2nd quarter balance sheet, and 2nd quarter profit and loss statement for discussion. First quarter reconciled bank statements were provided to Mr. Mehlhoff and Dr. Tanabe for review. Moved by Mr. Mehlhoff and seconded by Dr. Fallgatter to accept the treasurer’s report. RCV: Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Tanabe, yes; Dr. Kangas, yes; Dr. Sarsland, yes, Ms. Marsh, yes; Ms. Carlson, yes; Dr. Fallgatter, yes. Motion carried 8-0.

Balances and Certificates - 06/16/2022					
BALANCES		CERTIFICATES OF DEPOSIT		SHORT TERM ASSETS	
US Bank Checking	\$125,347.03	CC Union 1	\$53,988.65 /	CC Union Savings	\$25,117.64
		1 st Inter. 702	\$102,166.67 /	USB Muni. Investor	\$2,832.36
		1 st Inter. 8684	\$81,549.49 /	USB Business	\$2,792.28
		1 st Inter. 9757	\$65,000.00 /		
		Bremer 5580	\$58,312.78 /		
		Bremer 80/1	\$65,000.00 /		
		Bremer 5579	\$58,312.78 /		
Total Checking	\$125,347.03	Total Certificates	\$484,330.37	Total STA	\$30,742.28

- 4. Review candidate’s credentials; Ratification of new licenses and registrations:** Moved by Dr. Kangas and seconded by Dr. Tanabe to ratify licenses and registrations. RCV: Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Tanabe, yes; Dr. Kangas, yes; Dr. Sarsland, yes, Ms. Marsh, yes; Ms. Carlson, yes; Dr. Fallgatter, yes. Motion carried 8-0.

Al Samurraie	Bashaar	1844	RDH
Johanson	Bailey	1876	RDH

Schock	Julia	Kate	1846	RDH
Swenson	Julia	Mae	1847	RDH
McIntosh	McKayla	Lucille	1848	RDH
Linnard	Hannah	Marie	1849	RDH
Tucker	Patricia	L	1850	RDH
Iken	Nicole		1860	RDH
Calverly	Jennah	J	2458	DDS
Graham	Meghan	L	2459	DDS
Lelm	Neil	J	2453	DDS
Liskiewicz	Ian	A	2457	DDS
Wolf	Jacob	A	2456	DDS
Anderson	Joseph	Scott	2454	DDS
Haley	Mason	Todd	2470	DDS
Jacobson	Anthony		2464	DDS
Evenson, RDA	Megan		1792	
Hersch, RDA	Kathy		1795	
Irmen, QDA	Alexis		1791	
Jorgensen, RDA	Abby		1796	
Lehner, QDA	Madison		1797	
Nieman, QDA	Courtney		1794	
Risovi, QDA	Haley		1790	
Whittier, RDA	Deborah		1793	

6. Committee Reports

A. Complaints: Discussion: The committee remains in flux regarding efficiency in addressing the higher number of complaints which now seems to be the norm during the past few years. Alternatives include dividing the complaints among members of the committee and/or increase scheduled executive session type meetings.

EXECUTIVE SESSION: Dr. Dohm moved to enter Executive Session. Motion seconded by Dr. Fallgatter. The legal authority for closing this portion of the meeting is NDCC § 43-28-18.2.(4) The topic of this executive session is to discuss patient records and complaints. RCV: Mr. Mehlhoff, yes; Dr. Kangas, yes; Dr. Fallgatter, yes; Dr. Dohm, yes; Dr. Sarsland, yes; Dr. Tanabe, yes; Ms. Carlson, yes. Motion carried 7-0-1 Marsh absent. Members of the public were placed into a breakout session of the Zoom meeting. The Executive Session began at 4:07 PM CST. Executive Session ended at 5:58 PM CST and the public was invited back.

1) Bates, DDS: Dr. Dohm moved to accept signed alternative Settlement Agreement of Robert Bates, DDS. Dr. Bates allowed his license to expire 12/31/2021. The Agreement stipulates that

Bates agrees to retroactive probation of his ND dental license and that he waives his right to an administrative hearing and appeal that are set forth in NDCC 43-28 and ch. 28-32. Dr. Fallgatter seconded the motion. RCV: Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Tanabe, yes; Dr. Kangas, yes; Dr. Sarsland, yes; Ms. Carlson, yes; Dr. Fallgatter, yes. Motion carried 7-0-1 Ms. Marsh unable to connect.

2) Regarding case numbers 54, 55, 56, 58, 60: Dr. Dohm moved to proceed as previously discussed and send the letter of concern and incorporate complaint no. 56 to the four other concerns. Motion was seconded by Ms. Carlson. (RCV): Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Tanabe, yes; Dr. Kangas, yes; Dr. Sarsland, yes; Ms. Carlson, yes; Dr. Fallgatter, yes. Motion carried 7-0-1, Ms. Marsh absent. Mr. Schaibley will compose the robust letter of concern to address five complainants. *[At its April meeting the Board moved a letter administer letter of concern, emphasizing the numbers of complaints, and practitioner to complete within 3 months of signed agreement, 3 hours of CEU related to professionalism, 3 CEU of ethics and provision that the practitioner compose and send to the NDBDE a two-page summary of what was done wrong and how to avoid similar transgressions in the future.] Mr. Schaibley will draft the robust letter of concern.].*

3) Case no. 62: Dr. Dohm moved to proceed with disciplinary action to include suspension of license pending fitness to practice evaluation by a psychiatrist approved by the Board. Dr. Fallgatter seconded the motion. Discussion: The Board will evaluate the information and then move forward. RCV: Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Tanabe, yes; Dr. Kangas, yes; Dr. Sarsland, yes; Ms. Carlson, yes; Dr. Fallgatter, yes. Motion carried 7-0-1, Ms. Marsh absent.

4) Case no. 66: Dr. Dohm moved to dismiss, seconded by Dr. Fallgatter. RCV: The case related to marketing and auxiliary abuse was dismissed due to the lack of information and perhaps witnesses recollection of their accounts had changed. Therefore, grounds for disciplinary action do not exist. There was no account of the public being harmed in this case. RCV: Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Tanabe, yes; Dr. Kangas, yes; Dr. Sarsland, yes; Ms. Carlson, yes; Dr. Fallgatter, yes. Motion carried 7-0-1, Ms. Marsh absent.

5) Case no. 70: Dr. Dohm moved to dismiss, seconded by Dr. Fallgatter. Grounds for disciplinary action do not exist. RCV: Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Tanabe, yes; Dr. Kangas, yes; Dr. Sarsland, yes; Ms. Carlson, yes; Dr. Fallgatter, yes. Motion carried 7-0-1, Ms. Marsh absent.

6) Case no. 71: Dr. Dohm moved to dismiss, seconded by Dr. Fallgatter. Grounds for disciplinary action do not exist. RCV: Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Tanabe, yes; Dr. Kangas, yes; Dr. Sarsland, yes; Ms. Carlson, yes; Dr. Fallgatter, yes. Motion carried 7-0-1, Ms. Marsh absent.

7) Case no. 72: Dr Dohm requested Ms. Sommers request more information regarding the Board's prescribing concerns of the individual.

8) Case no. 73: Ms Sommers will contact the individual regarding the Board's review of the futile and erroneous anonymous letter. No grounds for action.

B. Anesthesia: Dr. Tanabe was made aware of an incident and will notify the practitioner to prepare a report for the Board's review as per NDCC § 43-28-18.1(1.c.). Dr. Tanabe also reported Dr. Stanley's successful site evaluation.

C. Continuing Education: Ms. Marsh reported on the circumstances related to deficiencies of licensees CE requirements. Ms. Marsh educated licensees during the audit on the requirements of ND laws mandating continuing education especially CE subject matter. Mr. Schaibley explained the nature of settlement agreements regarding insufficient CE. Current protocol for delinquent CE is usually a time frame allotted for tardy CE to be submitted within a given period and consequently a subsequent audit may be performed during another period. The result of the recent audit was discussed where a dentist had 32 hours of CE, however only 13 of the hours were qualifying. Dr. Dohm moved that the practitioner correct the error within 30 days; alternatively, action would be taken against the license. Dr Tanabe seconded the motion. (RCV): Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Tanabe, yes; Dr. Kangas, yes; Dr. Sarsland, yes, Ms. Marsh, yes; Ms. Carlson, yes; Dr. Fallgatter, yes. Motion carried 8-0.

Renewal applicants are required to attest that they have met the requirements for CE during license renewal and further agree to waive the right to an administrative hearing and appeal pursuant to NDCC Ch 28-32 which provides that the Board may issue an Order taking disciplinary action against the license. A signature is required below this attestation for the specific CE language.

D. Application Review Committee: The Board reviewed the following applications. No further actions required from applicants.

- 1) Mack, DDS:
- 2) Hanson, RDH
- 3) Zittleman, DDS

E. Legislative:

1) Rules: Regarding the three carried-over rules of concern during the June 1, 2022 Administrative Rules Committee (ARC) meeting: The Board discussed the ARC meeting and duties of dental assistants regarding the final scan by digital capture for review by the authorizing dentist under general supervision for a prescriptive fixed or removable appliance. Dr. Fallgatter moved that the Board does not go forward with any action and moved to approve the rules with the exception of NDAC §§ 20-03-01-01(2)(c), 20-03-01-01(5)(r), and NDAC 20-04-01-01(6)(aa) which were being “carried over” for the Rules Committee’s September meeting agenda. Remaining proposed rules shall go into effect July 1, 2022. Photographs taken by the patient are not prohibited. The legislators put the final scan rule on hold and the Board determined it best to accept the status quo and further determined that a rule to this effect will need to be taken up by another entity, perhaps the ND Dental Association. The Board has received no complaints to date from the public regarding who records a scan. To the Board’s knowledge, the public has not been harmed thus far by any scan. Ms. Carlson pointed out however, use of a faulty or inadequate scan for the purposes of making an appliance or crown etc. has potential to lead to a problematic or irreversible outcome. The public is not being directly harmed by the person who performs the scan. But the larger concern of the Board is rather when the public might be harmed by the final result based on an incomplete or flawed scan. A dental assistant or RDH remains prohibited from providing dental procedures which require the professional judgment and skill of a licensed dentist or any *irreversible* dental procedures. Should the Board discover the public is being harmed by lack of the language being present, they will revisit the issue. Motion seconded by Dr. Dohm. (RCV): Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Tanabe, yes; Dr. Kangas, yes; Dr. Sarsland, yes; Ms. Carlson, yes; Dr. Fallgatter, yes. Motion carried 7-0-1 (Ms. Marsh absent).

Other concerns of ARC: Rep. Devlin asserted that Mr. Mehlhoff is not an “independent consumer member” of the board during the Administrative Rules hearing (during 2021-22 session new laws insert the word “independent” as a requirement for consumer member of the Board), further indicating his intention to write a letter bringing his pronounced concern to the Governor. Dr. Fallgatter commented that she subsequently submitted a letter to the Governor regarding Mr. Mehlhoff’s independence in his position as consumer member of the Board. Mr. Mehlhoff’s wellbeing is not tied to the dental community and therefore is not an issue and Representative Devlin’s comment was erroneous.

2) ICON: At a previous meeting of the board, it was agreed to include language related to auxiliary being authorized to administer ICON. Tyler Johnson, DDS had petitioned the Board prior to the rules process. ICON is a resin infiltration of incipient smooth surface lesions requiring minimally invasive restorative treatment; ICON appears to be within the scope of practice for a RDA/RDH. Rules currently do not address the resin infiltration. Discussion: The Board will have to collect the information during the next Admin Rules amendment and revisit the issue.

7. Old Business

A. Open meetings laws - video overview sent to members by Mr. Schaibley - open meetings laws: Discussion; the five-hour video was helpful to the new Board member and a good review for current members. Dr. Schaibley elaborated on serial conversations and other open meetings laws and discussed at length the meaning of quorum and the pros and cons of committees.

B. Policy & Procedure Manual updates: Mr. Schaibley edited the P&P Manual. Ms. Sommers recommended the Board postpone the discussion until all 9 members are present. The Board will review the P&P Manual further at its next meeting. Dr. Fallgatter moved to recommend that for attendance and preparation related to meetings, remuneration be updated to \$200 per meeting lasting over one hour. Attendance and preparation for meetings less than 1 hour, remuneration would be \$100; Mr. Mehlhoff seconded the motion. Discussion; The recent history of the Board’s Complaint Committee is extremely time consuming with, often times, many hours for review. These proposed honoraria coincide with those of other state entities, i.e, legislators. Ms. Sommers recommended the Complaint Committee bring the Board a recommendation regarding how they wish to proceed with open meetings. (RCV): Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Tanabe, yes; Dr. Kangas, yes; Dr. Sarsland, yes; Ms. Carlson, yes; Dr. Fallgatter, yes. Motion carried 7-0-1 (Ms. Marsh absent).

C. AADB renewal: Dr. Dohm move to discontinue membership to the American Association of Dental Boards due to lack of value we are receiving. Dr. Fallgatter seconded. Discussion: The consensus

was that the AADB has recently moved in another direction and is no longer of value to the NDBDE. Therefore, the Board will discontinue the membership. Ms. Sommers will send a letter communicating the Board's decision. (RCV): Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Tanabe, yes; Dr. Kangas, yes; Dr. Sarsland, yes; Ms. Carlson, yes; Dr. Fallgatter, yes; Ms. Marsh, yes. Motion carried 8-0.

8. New Business

A. Executive Director Search Committee:

EXECUTIVE SESSION: Dr. Dohm moved to enter Executive Session. Motion seconded by Dr. Fallgatter. The legal authority for closing this portion of the meeting is NDCC § 44-04-18.27. The topic of this executive session is to discuss applicants and qualifications for the executive director's position. RCV: Mr. Mehlhoff, yes; Dr. Kangas, yes; Dr. Fallgatter, yes; Dr. Dohm, yes; Dr. Sarsland, yes; Dr. Tanabe, yes; Ms. Carlson, yes. Motion carried 7-0-1 Marsh absent. Members of the public were placed into a breakout session of the Zoom meeting. The Executive Session began at 6:22 PM CST. Executive Session ended at 6:51 PM CST. Ms. Sommers will post the job on the ND Job Service website. Interviews will be conducted once applications have all be reviewed.

B. NDDA April 27th informative letter: The NDDA submitted a letter for the Board's review which requests dental professionals serve on a strategic planning task force in the development of a new Career and Technical Education center in Minot. The task force would assist in program development. The ND State Board of Higher Educations approval of the development of a dental assisting and dental hygiene program is projecting a scheduled opening for the fall of 2023 for dental assistants and fall of 2024 for dental hygiene.

C. APT contract: The contract expires on June 30th. Dr. Fallgatter moved to extend the contract renewal date. Mr. Schaibley will assist with the process of the extension. Motion seconded by Mr. Mehlhoff. (RCV): Mr. Mehlhoff, yes; Dr. Dohm, yes; Dr. Tanabe, yes; Dr. Kangas, yes; Dr. Sarsland, yes; Ms. Carlson, yes; Dr. Fallgatter, yes; Ms. Marsh, yes. Motion carried 8-0.

9. National Organizations; Regional Clinal Boards: Trip Reports

A. AADB & AADA: no report

B. CRDTS: Aug 26-27 Workshop and Annal Meeting

C. FARB: no report

D. DERB mtg: HERB mtg: no report

10. Remuneration: Effective 7/1/2022 new rate - 62.5 cents per mile.

11. Date and time of next meeting: Friday, September 16, 2022, 1:00 PM, held at Bismarck Brady Martz & Associates. The meeting will also offer the ZOOM option.

12. Adjournment: Hearing no objection the meeting adjourned by President Mehlhoff at 6:53 PM.

Submitted by _____

Rita Sommers, Executive Director

Marcus Tanabe, DDS, Secretary Treasurer