

# Ohio State Dental Board

## Board Meeting

February 6, 2013

### Contents

Attendance .....	1
Call to Order.....	1
Introduction of Board Members.....	1
Review of Minutes .....	2
Personal Appearance(s).....	2
David J. Kozar, D.D.S. ....	2
Decision In The Matter Of David J. Kozar, D.D.S.....	2
Review of License/Certification/Registration/Permit Application(s) .....	2
License/Certification/Registration Report (Approved by the Executive Office) .....	2
Dentist(s).....	3
Dental Hygienist(s).....	3
Dental Assistant Radiographer(s) .....	3
Limited Teaching .....	7
Coronal Polishing .....	7
Expanded Function Dental Auxiliary.....	7
Oral Health Access Supervision Permit(s).....	8
Dentist(s).....	8
Dental Hygienist(s).....	8
Graduate(s) of Unaccredited Dental Colleges Located Outside the United States.....	8
Reinstatement License Application(s) – No Interview .....	8

Dental Hygienist(s).....	8
Ad Hoc Board Operations Report .....	9
Anesthesia Committee Report .....	9
Provisional Conscious Sedation Privilege(s) .....	9
Provisional General Anesthesia Privilege(s) .....	9
Conscious Sedation Permit(s).....	9
Education Committee Report.....	10
Review of Sponsor Application(s).....	10
Biennial Sponsors.....	10
Biennial Sponsor Renewals.....	10
Treatment Center Approval.....	10
Supervisory Investigative Panel Report.....	10
Office Expense Report .....	11
Enforcement Report .....	11
Review of Proposed Consent Agreement(s).....	11
Disciplinary.....	11
<i>Farzad Firouzian, DDS</i> .....	11
<i>Patricia L. Haley, RDH</i> .....	11
<i>Jennifer L. Hughes, Dental Assistant Radiographer</i> .....	11
<i>David W. Menning, DDS</i> .....	11
<i>Julieann M. Shaffer, Dental Assistant Radiographer</i> .....	12
<i>Angela D. Wise, Dental Assistant Radiographer</i> .....	12
Non-Disciplinary.....	12
<i>Vikas Puri, DDS</i> .....	12
<i>Sasi K. Sunkara, DDS</i> .....	12
Notices of Opportunity for Hearing.....	12
Igor J. Skalsky, DDS .....	12

Lark M. Anspach, Dental Assistant Radiographer, EFDA .....	12
Jessica E. Fraley .....	13
Enforcement Report .....	13
Report and Recommendations.....	14
Report and Recommendation in the Matter of Jessica M. Ferrera, Dental Assistant Radiographer .....	14
Report and Recommendation in the Matter of Mark T. Shue, DDS.....	15
Quasi Judicial Deliberations.....	17
Open Session .....	17
Decision In The Matter Of Jessica M. Ferrera, dental assistant radiographer. ....	17
Decision In The Matter Of Mark T. Shue, DDS.....	18
Executive Director’s Report .....	19
SB 301 .....	19
Financial Disclosure .....	19
FTC Case Update .....	19
Anything for the Good of the Board.....	21
ODAMD Correspondence .....	21
AADB Meeting Attendees.....	21
Ethics Course .....	21
Committee Assignments.....	21
Dr. Kaye distributed the new committee assignments for 2013.....	21
Executive Session.....	21
Resume Meeting.....	22
Adjourn .....	22

# Ohio State Dental Board

## Board Meeting

February 6, 2013

### **Attendance**

The Ohio State Dental Board (Board) met in Room 1960, 19<sup>th</sup> Floor of the Vern Riffe Center for Government and The Arts, 77 South High Street, Columbus, Ohio on February 6, 2013, beginning at 1:00 p.m. Board members present were:

Lawrence Kaye, D.D.S., President  
Gregory A. McDonald, D.D.S., Vice President  
Mary Ellen Wynn, D.D.S., the Board Secretary  
Marybeth Shaffer, D.D.S., Vice Secretary  
Jacinto W. Beard, D.D.S.  
Constance F. Clark, R.D.H.  
Ashok Das, D.D.S.  
W. Chris Hanners, D.D.S.  
Douglas W. Wallace, D.D.S.  
Clifford Jones, R.D.H.  
James Lawrence

William G. Leffler, D.D.S. and Linda R. Staley, R.D.H. were not in attendance to the meeting.

The following guests were also in attendance: Katherine Bockbrader, Esq. and Walter McNamara, Esq., of the Ohio Attorney General's Office; Mark S. Wenzel, D.D.S. of the ODA Dentists concerned for Dentists; Michele Carr, R.D.H., M.A. of the Ohio State University College of Dentistry, Division of Dental Hygiene; Mark Lutz, M.A., L.C.D.C. II of the Ohio Physicians Health Program (OPHP); Lili Reitz, Esq., Executive Director, Kathy Carson, Michael Flugge and Gail Noble, Dental Board Enforcement Officers, Jayne Smith, Licensing Coordinator and other guests.

### **Call to Order**

Dr. Kaye extended greetings to everyone and noting that there was a quorum present called the meeting to order at approximately 1:00 p.m.

### **Introduction of Board Members**

Dr. Kaye then introduced himself as the Board President, a periodontist from Akron. He took a moment to introduce the rest of the Board members. Dr. Kaye introduced Dr. Greg McDonald, the

Board Vice President, a general dentist from Springfield, Dr. Mary Ellen Wynn, the Board Secretary, a general dentist from Cincinnati, Dr. Marybeth Shaffer, the Board's Vice Secretary, a general dentist from Leetonia, Dr. Jacinto Beard, a general dentist from Gahanna, Dr. Chris Hanners, a general dentist from Chillicothe, Dr. Douglas Wallace, an oral and maxillofacial surgeon from Fairfield, Ms. Constance Clark, a dental hygienist from Dublin, Mr. Clifford Jones, a dental hygienist from Cincinnati, and Mr. James Lawrence, the Board's public member from Akron.

Dr. Kaye noted that William G. Leffler, D.D.S., a general dentist from Massillon and Linda R. Staley, R.D.H., a hygienist from Lima, were not in attendance to the meeting.

## **Review of Minutes**

**Motion by Dr. McDonald, second by Mr. Jones, to table the December 5, 2012 minutes to April 10, 2013 meeting.**

Motion carried unanimously.

## **Personal Appearance(s)**

### **David J. Kozar, D.D.S.**

Ms. Noble informed the Board members that Dr. Kozar is appearing before the Board for his second interview. She stated that Dr. Kozar was in compliance with the terms of his consent agreement and all screens have been negative.

Dr. Kozar expressed his gratitude to be able to re-enter the practice of dentistry for 8 hours per week, which he has been dividing into two, four-hour days. He has enjoyed again working with patients and would appreciate the Board considering allowing him to work up to sixteen (16) hours per week.

### **Decision In The Matter Of David J. Kozar, D.D.S.**

**Motion by Dr. Hanners, second by Dr. Wynn, that the license of David J. Kozar, D.D.S. be reinstated up to sixteen (16) hours per week and pursuant to the terms of his consent agreement with the Board.**

Motion carried unanimously.

## **Review of License/Certification/Registration/Permit Application(s)**

### **License/Certification/Registration Report (Approved by the Executive Office)**

Jayne Smith, Licensure Coordinator, had prepared a report of the licenses, certificates, and registrations issued since the previous Board meeting.

**Dentist(s)**

**Motion by Dr. Beard, second by Mr. Lawrence, to approve the licensure report for the following dental licenses issued by a regional board examination:**

Shawna S. Battier	Joseph J. Mirci
William K. Chin	Paul D. Ranney, Jr.
Luis E. Garabis	Yoshihito Shimizu
Courtney R. Levine	Swati Sood
Ryan A. Long	Laura J. Westover

Motion carried unanimously.

**Dental Hygienist(s)**

**Motion by Ms. Clark, second by Dr. Wynn, to approve the licensure report for the following dental hygiene licenses issued by a regional board examination:**

Shavon L. Bills	Deborah Paul
Malinda L.K. Board	Melissa L. Sachs
Devryn A. DiJohn	Katrina N. Stanfield
Kara L. Lucarelli	Jaime M. Worline
Wanda Morales	Emily E. Zehall
Pamela H. Murawski	

Motion carried unanimously.

**Dental Assistant Radiographer(s)**

**Motion by Dr. Beard, second by Dr. Wynn, to approve the licensure report for the following dental assistant radiographer certificates issued by: acceptable certification or licensure in another state, certification by the Dental Assisting National Board (DANB) or the Ohio Commission on Dental Assistant Certification (OCDAC), or successful completion of the Board-approved radiography course:**

Mohamud Abdi	Karen Baumert
Alyssa Adams	Ashley Beckley
Myriah Adamson	Jessica Benedict
Jessica Andre	Akila Benson
Samantha Andrews	Andrayia Blade
Roxanne Arlt	Briana Blakey
Brittany Arnold	Khrystina Blank
Keta Atwood	Stacy Blankenship
Amy Ayers	Rita Bode
Mindy Back	Tamara Bodley
Hope Bailey	Margaret Boylan
Danielle Baker	Karen Bramble
Joy Bandurske	Savanah Brochetti
Tina Bapst	Selena Brock
Trisha Barnhart	Christine Brown

Colette Bruner  
Kayleigh Bruns  
Tina Brunson  
James Bryant  
Jennifer Bui  
Sydney Bunnow  
Diane Burns  
Taylor Burns  
Erica Cain  
Brittany Camburn  
Katlyn Campbell  
Sirena Campbell  
Alycia Cantrell  
Katie Carr  
Katherine Carson  
Christina Case  
Michelle Cebula  
Evelyn Chaffin  
Nicole Chmura  
Suthasinee Chomko  
Bonnie Coburn  
Megan Cochell  
Natalia Collins  
Allyson Conley  
Jerico Cook  
Aimee Correll  
Traci Courts  
Brittany Covey  
Jennie Cowdrey  
Allison Crabill  
Monica Creech  
Kendra Crumrine  
Amy Curley  
Amanda Dalton  
Danielle Daugherty  
Anna Daughetee  
Jennifer Davis  
Angela Dayton  
Emily Decaro  
Amber Decker  
Heather Deeter  
Brittany Denning  
Danielle Dinnell  
Angela Dittman  
Heather Dittman  
Nichelle Dokes  
Brynn Donovan  
Sidney Douglas  
Jennifer Duarte  
Amy Dunham  
Lachande Dunn  
Mary Dunton  
Patricia Dwyer  
Amy Eden  
Courtney Elliott  
Amy Emberton  
Dannielle Embry  
Steven Enriquez  
Ashley Evans  
Melissa Evers  
Marie Fairchild  
Tiffany Faulkner  
Kelsey Fenton  
Allison Fields  
Alexis Fisher  
Vivian Fitch  
Catherine Foley  
Jessica Foody  
Kristin Franczak  
Belinda Fyffe  
Ciera Gabriel  
Danielle Ganues  
Kearsti Gardner  
Samantha Gassman  
Melissa Geletka  
Victoria Gerace  
Amy Gerhardstein  
Jill Glacken  
De'ayera Glover  
Kelly Golden  
Alicia Gool  
Jessica Gossard  
Tori Graves  
Stephanie Gray  
Lawanda Green  
Aleisha Gregg  
Abigayle Grigsby  
Breanna Grimes  
Christine Grzelewski  
Kristen Guerrero  
Amanda Hammond  
Kelsey Harmon  
Jillian Harrington  
Susan Hart  
Kayla Hartford  
Jessica Heath

Aquilla Helms  
Kristen Henson  
Kendra Herboltzheimer  
Veronica Herrera  
Madison Hess  
Brittany Hicks  
Jamie Hilderbrand  
Vanessa Hitchcock  
Devon Hooper  
Kecia Hornbeck  
Hannah Houser  
Jennifer Hughes  
Tiffany Hughes  
Emily Hull  
Naomi Hunt  
Joy Hurst  
Taylor Hylton  
Danielle Jackson  
Jody Jackson  
Chelsey James  
Naketta Jennings  
Sarah Johnson  
Thomas Kane  
Emily Kearns  
Kylee Keister  
Kelli Kellar  
Shannon Kerner  
Christa Kiefer  
Kayla Kinney  
Destiny Kleyman  
Virginia Kohl  
Danielle Kohler  
Mackenzie Kolebuck  
Danielle Kosakowski  
Devan Kurilko  
Nakita Ladany  
Felicia Lane  
Patrice Lane  
Amanda Lantzer  
Whitney Latour  
Taylor Law  
Chelsea Lawrence  
Richard Lea  
Lauren Lebeau  
Britney Ledford  
Angela Leightey  
Eric Lindgren  
Sara Loges  
Grace Lomeli  
Jaz'mine Longmire  
Crystal Madaris-Grier  
Victoria Manring  
Chandra Mansfield  
Della Marcum  
Tayler Markel  
Andriel Martin  
Nichole Martino  
Katarena Mathews  
Mckinsey Maurer  
Amanda Mays  
Heather McCabe  
Alexandra McCartney  
Amanda McClintock  
Megan McConnell  
Ashley McCullough  
Shaylin McDaniels  
Amanda McDonald  
Sarah McDowell  
Monica McNew  
Cara Meade  
Melissa Medina  
Erin Merkel  
Jessica Miller  
Kanedra Miller  
Matthew Miller  
Nasteha Moalim  
Mary Mockerman  
Erin Moder  
Kaitlyn Mohre  
Amber Morningstar  
Jordan Morris  
Cassandra Morse  
Elisha Murray  
Karrie Myers  
Lauren Myers  
Ashley Newman  
Kayla Norris  
Brittany Oglesby  
Courtney Olivo  
Jamie Oney  
Rachael Orendorff  
Paulina Ortega  
Lori Pasquale  
Lindsay Pastor  
Michelle A Patel  
Melinda Pavlik

Andrea Pawul  
Alycia Penny  
Nicoleta Perijoc  
Breanna Perrine  
Shayla Perry  
Julie Peters  
Kaitlin Peters  
Yen-Ly Phan  
Tabitha Phillips  
Maria Plaza Amado  
Samantha Popejoy  
Jordynn Pozzuto  
Amber Prendergast  
Kristen Ragsdale  
Caily Rapp  
Michelle Reddick  
Chelsea Reece  
Ashley Reed  
Dana Reuteman  
Brandy Reynolds  
Molly Rhees  
Shadai Richardson  
Melissa Riskin  
Kimberly Ristedt  
Rhiana Roberts  
Carissa Rose  
Kayla Ross  
Kimberly Rummel  
Helen Salinas  
Tonya Sanders  
Davian Sanner  
Holly Schaffer  
Lisa Schneider  
Mollie Schoonmaker  
Krista L Schulze  
Jamie Scott  
Katelyn Sedlacek  
Jamie See  
Julieann Shaffer  
Mickey Shipe  
Carol Siekbert  
Nicole Simms  
Jakia Singleton  
Lydia Sizemore  
Deborah Skolosh  
Jasmine Smith  
Jasmin Sowards  
Christine Speedy  
Alexandra Spires  
Alexa Stemple  
Kalie Stillions  
Brittany Stith  
Cody Strahler  
Bethany Strange  
Julia Strejnowski  
Meredith Stuck  
Kendall Stultz  
Heidi Sundermeier  
Chris Sutton  
Emily Swallie  
Brittanie Tackett  
Hailey Tatman  
Kaitlin Taylor  
Lindsey Taylor  
Nicole Thoma  
Brittany Thomas  
Taylor Thomison  
Amber Thompson  
Kerri Thurston  
Shurell Tidwell  
Michelle Trickey  
Deana Vondriska  
Marissa Wagner  
Mary Walcott  
Heather Walker  
Ashley Waller  
Kara Wallingford  
Ashley Warnock  
Monica Waters  
Bridget Watkins  
Heather Watkins  
Karla Watkins  
Brooks Welty  
Jennifer Westcamp  
Cassandra Westrick  
Emily Wier  
Katie Williamson  
Jesse Wilson  
Jodi Winner  
Ashley Wise  
Celestain Woodruff  
Kara Yambor  
Sophia Yasgur  
Kinsey Yoder  
Nicole Zahn  
Cynthia Zalar

Motion carried unanimously.

**Limited Teaching**

**Motion by Dr. Shaffer, second by Dr. Wynn, to approve the licensure report for the following limited teaching licenses:**

Hany A. Emam

Gabriela A. Weiss

Motion carried unanimously.

**Coronal Polishing**

**Motion by Dr. Beard, second by Dr. Shaffer, to approve the licensure report for the following coronal polishing certificates issued by: certification by the Dental Assisting National Board (DANB) or the Ohio Commission on Dental Assistant Certification (OCDAC) and completion of the requirements necessary to obtain certification:**

Holly L. Anderson

Kristine N. Losekamp

Victoria A. Bishop

Courtney A. Maddox

Jerika M. Davidson

Tiffany S. Mason

Megan E. Hall

Tiffany L. Mitchell

Andrea N. Hardy

Mallory K. Murray

Nichollette M. Homa

Keisha L. Pierce

Mary J. Kerschner

Jonnie-Lynn Thomas

Mona L. Koehler

Olivia D. Upchurch

Motion carried unanimously.

**Expanded Function Dental Auxiliary**

**Motion by Dr. Beard, second by Ms. Clark, to approve the licensure report for the following expanded function dental auxiliary registrations issued by: certification by the Dental Assisting National Board (DANB) or the Ohio Commission on Dental Assistant Certification (OCDAC) and completion of the requirements necessary to obtain registration:**

Selma Bardideh

Tomi Kestner

Kimberly K Bartoe

Amanda Ketcham

Katie Bartzen

Jennifer Kline

Malinda D Berry

Angela S Leitschuh

Shelley L Boddy

Stephanie L Minger

Brittnee Crawford

Amanda A Mowry

Ashley Cross

Jaclyn Niese

Michelle D Cunningham

Saneeka S Patel

Ashley Griffiths

Melissa A Pavlovic

Sarah Hall

Andrew Pepley

Michele Hrebin

Angela M Sallisbury

Kerry J Kahler

Tammy D Sanders

Todd M Slatzer  
Tiffany A Stefanko  
Victoria R Teet  
Marcia R Viney

Korey J Walsh  
Melissa Webb  
Melissa R Wilder  
Marie S Wright

Motion carried unanimously.

### **Oral Health Access Supervision Permit(s)**

Motion by Ms. Clark, second by Dr. Beard, that the following applicants have met the requirements necessary to obtain permits to practice under the oral health access supervision program:

#### ***Dentist(s)***

Dr. Larry A. McLaughlin

#### ***Dental Hygienist(s)***

Michele B. Nemet  
Nancy M. Stanwick

Motion carried unanimously.

### **Graduate(s) of Unaccredited Dental Colleges Located Outside the United States**

Motion by Dr. Beard, second by Dr. Wynn, to approve the licensure report for applications for the following dental licenses issued by graduation from an unaccredited dental college located outside the United States:

Dr. Vikas Puri  
Dr. Sasi K. Sunkara

Motion carried with Dr. Hanners opposed.

### **Reinstatement License Application(s) – No Interview**

Motion by Mr. Jones, second by Dr. Beard, to approve the following reinstatement application for licensure in Ohio:

#### ***Dental Hygienist(s)***

Vasiliki Avradopoulos, RDH

Motion carried unanimously.

## **Ad Hoc Board Operations Report**

Dr. Wallace reported that the Ad Hoc Operations Committee met and discussed issues involving the Supervisory Investigative Panel, the Quality Intervention Program, the process, etc. He stated that as a result of the discussions it was suggested that a task force be created to continue discussions.

Dr. Kaye, as president, agreed to appoint a QUIP Task Force, and named Dr. Wallace the chair.

**Motion from committee to accept the report.**

Motion carried unanimously.

## **Anesthesia Committee Report**

### **Provisional Conscious Sedation Privilege(s)**

Dr. Wallace stated that the following individuals have applied for conscious sedation permits. He explained that the Anesthesia Committee has reviewed the applications and the applicants are recommended to receive provisional privileges:

Dr. Shaheen M. Moezzi

– Intravenous

Dr. Sophia G. Thankaraj

– Intravenous

### **Provisional General Anesthesia Privilege(s)**

Dr. Wallace stated that the following individuals have applied for general anesthesia permits. He explained that the Anesthesia Committee has reviewed the applications and the applicants are recommended to receive provisional privileges:

Dr. Brian J. Fangman

Dr. Jill M. Weber

### **Conscious Sedation Permit(s)**

Dr. Wallace stated that the following individuals have applied for conscious sedation permits. He explained that the Anesthesia Committee has reviewed the applications, evaluations have been conducted, and the applicants are recommended to receive anesthesia permits.

Dr. Sanjeev K. Goel – West Chester – Intravenous

Dr. Ashley L. Paulus – Sylvania – Non-intravenous Parenteral

Dr. Luis Fernando Soares pires – Fairview Park – Intravenous

Dr. Jason M. Stroom – Lyndhurst - Intravenous

**Dr. Wallace made the motion from the Anesthesia Committee to accept the report and approve the above applicants to receive privileges and permits.**

Motion carried unanimously.

## **Education Committee Report**

### **Review of Sponsor Application(s)**

#### **Biennial Sponsors**

Ms. Clark stated that the following individual/organization has applied for approval as biennial sponsors of continuing education for the years 2012-2013 and has been recommended for approval by the Education Committee:

Zuga Medical, Inc.

#### **Biennial Sponsor Renewals**

Ms. Clark stated that the following individuals/organizations have applied for renewal as biennial sponsors of continuing education for the years 2012-2013 and have been recommended for approval by the Education Committee:

Cleveland Academy for Dental Studies

Greater Cincinnati Dental Study Club

Underwood Orthodontics Inc.

Michael Lipson, DDS

**Ms. Clark made the motion from the Education Committee to accept the report and approve the above applications.**

Motion carried unanimously.

### **Treatment Center Approval**

The following have applied for approval to be a Treatment Provider for the Board:

Arrowhead Behavioral Health

The Ridge

**Motion by Dr. Hanners, second by Mr. Lawrence, to approve the treatment center applications.**

Motion carried unanimously.

### **Supervisory Investigative Panel Report**

Dr. Wynn attested that, as Secretary, she had spent in excess of ten (10) hours per week attending to Board business. Dr. Shaffer, as Vice Secretary, attested that she had spent in excess of ten (10) hours per week attending to Board business.

**Motion by Dr. Hanners, second by Mr. Lawrence, to approve the Supervisory Investigative Panel report.**

Motion carried unanimously.

### **Office Expense Report**

Motion by Dr. Wynn, second by Dr. Hanners, to approve the expense report and approve payment of the November and December, 2012 Board bills.

Motion carried unanimously.

### **Enforcement Report**

#### **Review of Proposed Consent Agreement(s)**

The Board reviewed eight (8) proposed consent agreements. The names of the individuals/licenses were not included in the documents reviewed by the Board. The names of the individuals/licenses have been added to the minutes for public notice purposes.

#### **Disciplinary**

##### ***Farzad Firouzian, DDS***

Motion by Dr. McDonald, second by Dr. Hanners, to approve the proposed consent agreement for Dr. Farzad Firouzian, license number 30-019415, case number 11-25-0256.

Motion carried unanimously.

##### ***Patricia L. Haley, RDH***

Motion by Dr. McDonald, second by Dr. Beard, to approve the proposed consent agreement for Patricia L. Haley, RDH, license number 31-013247, case number 12-31-0388.

Motion carried unanimously.

##### ***Jennifer L. Hughes, Dental Assistant Radiographer***

Motion by Dr. McDonald, second by Mr. Lawrence, to approve the proposed consent agreement for Jennifer L. Hughes, dental assistant radiographer, certificate number 51-024275, case number 12-25-0401.

Motion carried unanimously.

##### ***David W. Menning, DDS***

Motion by Dr. Beard, second by Dr. McDonald, to approve the proposed agreement for Dr. David W. Menning, license number 30-019544, case number 12-55-0403.

Motion carried unanimously.

***Julieann M. Shaffer, Dental Assistant Radiographer***

**Motion by Dr. McDonald, second by Dr. Beard, to approve the proposed consent agreement for Julieann M. Shaffer, dental assistant radiographer, certificate number 51-024263, case number 13-18-0036.**

Motion carried unanimously.

***Angela D. Wise, Dental Assistant Radiographer***

**Motion by Dr. Beard, second by Dr. Hanners, to approve the proposed consent agreement for Angela D. Wise, dental assistant radiographer, certificate number 51-021034, case number 12-31-0371.**

Motion carried unanimously.

**Non-Disciplinary**

***Vikas Puri, DDS***

**Motion by Dr. Beard, second by Dr. McDonald, to approve the proposed consent agreement for Dr. Vikas Puri.**

Motion carried unanimously.

***Sasi K. Sunkara, DDS***

**Motion by Dr. Beard, second by Dr. McDonald, to approve the proposed consent agreement for Dr. Sunkara.**

Motion carried unanimously.

**Notices of Opportunity for Hearing**

The Board reviewed one (3) proposed notices of opportunity for hearing. The name of the individual/licensee was not included in the document reviewed by the Board. The name of the individual/licensee has been added to the minutes for public notice purposes.

***Igor J. Skalsky, DDS***

**Motion by Dr. Wallace, second by Dr. Hanners, to approve the proposed notice of opportunity for hearing and forward it to Igor J. Skalsky, DDS, license number 30-016564, case numbers 11-52-0343; 11-52-0390; 11-52-0402 and 11-52-0428.**

Motion carried unanimously.

***Lark M. Anspach, Dental Assistant Radiographer, EFDA***

**Motion by Mr. Jones, second by Dr. Beard, to approve the proposed notice of automatic suspension and opportunity for hearing and forward it to Lark M. Anspach, certificate number 51-009048, registration number EFDA-01121, case number 08-09-0078.**

Motion carried unanimously.

**Jessica E. Fraley**

**Motion by Dr. Beard, second by Dr. Hanners, to approve the proposed notice to deny application for certificate and notice of opportunity for hearing and forward it to Jessica E. Fraley, case number 12-30-0342.**

Motion carried unanimously.

## **Enforcement Report**

Enforcement Officer Kathy Carson began her report by informing the Board that there are five (5) cases pending hearings, of which all have been assigned. She stated that three (3) cases listed that are pending the hearing officer's report and recommendation. Ms. Carson stated that there are currently thirty-eight (38) licensees under suspension. She informed the Board members that there are sixteen (16) pending cases and five (5) active cases in QUIP. Additionally, Ms. Carson stated that the Board currently has two hundred and seventy-one (271) active cases. Ms. Carson informed the Board that thirty-seven (37) cases have been investigated and reviewed by the Board Secretaries and are recommended to be closed.

Due to the requirement in Chapter 4715.03(D) of the Ohio Revised Code, that "The board shall not dismiss any complaint or terminate any investigation except by a majority vote of its members,..." Ms Carson reviewed the cases to be closed with the Board.

The following cases are to be closed:

12-25-0141	Standard of Care	12-18-0367	Permit Unlic Rad-Warning
12-25-0202	Standard of Care-Warning	12-18-0365	Practicing W/O Cert
12-25-0207	Standard of Care	12-25-0353	Standard of Care
12-18-0232	Standard of Care	12-89-0378	Standard of Care
12-18-0234	Standard of Care	12-25-0387	Standard of Care
12-57-0238	Adverse Occurrence	12-31-0392	Adverse Occurrence
12-18-0270	Standard of Care-Warning	12-21-0398	Standard of Care
12-18-0293	Standard of Care	12-31-0396	Standard of Care-Warning
12-25-0295	Standard of Care	12-57-0395	Standard of Care
12-25-0292	Standard of Care	12-31-0393	Standard of Care
12-18-0296	Standard of Care	12-09-0391	Misrepresentation
12-25-0302	Standard of Care-Warning	12-57-0390	Advertising
12-25-0308	Standard of Care	12-31-0394	Standard of Care
12-52-0309	Misrep/Standard	12-57-0415	Standard of Care
12-25-0313	Permitting	12-25-0420	Abandonment/Standard
12-02-0322	Standard of Care	12-25-0425	Standard/Abandon-Warning
12-45-0326	Adverse Occurrence	12-31-0431	Standard of Care
12-25-0339	Standard of Care	12-09-0430	Standard of Care
12-18-0366	Practicing W/O Cert		

Prior to the vote to close the above listed cases, Dr. Kaye inquired as to whether any of the Board members had any personal knowledge that the cases that were being voted on today involve either themselves or a personal friend.

Roll call:        Dr. Beard – No  
                     Ms. Clark – No  
                     Dr. Das – No  
                     Dr. Hanners - No  
                     Mr. Jones – No  
                     Dr. Kaye – No  
                     Mr. Lawrence – No  
                     Dr. McDonald - No  
                     Dr. Shaffer – No  
                     Dr. Wallace – No  
                     Dr. Wynn - No

Dr. Kaye then called for a motion to close the cases.

**Motion by Dr. Mr. Jones, second by Dr. Beard, to close the above thirty-seven (37) cases.**

Roll call vote:    Dr. Beard – Yes  
                     Ms. Clark – Yes  
                     Dr. Das - Yes  
                     Dr. Hanners - Yes  
                     Mr. Jones – Yes  
                     Dr. Kaye – Yes  
                     Mr. Lawrence – Yes  
                     Dr. McDonald - Yes  
                     Dr. Shaffer – Yes  
                     Dr. Wallace – Yes  
                     Dr. Wynn - Yes

Motion carried unanimously.

## **Report and Recommendations**

### **Report and Recommendation in the Matter of Jessica M. Ferrera, Dental Assistant Radiographer**

Dr. Shaffer announced that the Board would now consider the Hearing Officer's Report and Recommendation in the matter of Jessica M. Ferrera, dental assistant radiographer, that was filed by Attorney Hearing Examiner Sharon Murphy on October 22, 2012.

Dr. Shaffer then proceeded by asking whether each member of the Board had read the Hearing Examiner's Report and Recommendation in the matter of Jessica M. Ferrera.

Roll call:        Jacinto W. Beard, D.D.S. – Yes  
                     Ashok Das, D.D.S. - Yes  
                     Constance F. Clark, R.D.H. - Yes  
                     W. Chris Hanners, D.D.S. - Yes

Clifford Jones, R.D.H. - Yes  
Lawrence Kaye, D.D.S. - Yes  
Gregory A. McDonald, D.D.S. - Yes  
Marybeth Shaffer, D.D.S. - Yes  
Douglas W. Wallace, D.D.S. - Yes  
Mary Ellen Wynn, D.D.S. - Yes  
James Lawrence - Yes

Dr. Shaffer then proceeded by asking whether each member of the Board had the record, including the transcript, available to refer to when necessary in reviewing this matter?

Roll call: Jacinto W. Beard, D.D.S. - Yes  
Ashok Das, D.D.S. - Yes  
Constance F. Clark, R.D.H. - Yes  
W. Chris Hanners, D.D.S. - Yes  
Clifford Jones, R.D.H. - Yes  
Lawrence Kaye, D.D.S. - Yes  
Gregory A. McDonald, D.D.S. - Yes  
Marybeth Shaffer, D.D.S. - Yes  
Douglas W. Wallace, D.D.S. - Yes  
Mary Ellen Wynn, D.D.S. - Yes  
James Lawrence - Yes

The original Order, Report and Recommendation and any objections shall be maintained in the exhibits section of this journal.

Dr. Shaffer then stated that there was no court reporter present and the Board's minutes would serve as the official record of the proceedings. She then asked if Jessica Ferrera was present. (Ms. Ferrera was not present).

#### **Report and Recommendation in the Matter of Mark T. Shue, DDS**

Dr. Shaffer then announced that at the last meeting of the Board, deliberations in the matter of Mark T. Shue, D.D.S. commenced. She stated that after some deliberation, the matter was tabled to be considered at this meeting. Dr. Shaffer stated that as a reminder, that the Board is considering the Hearing Officer's Report and Recommendation in the case of Mark T. Shue, D.D.S. that was filed on October 18, 2012.

Dr. Shaffer then proceeded by asking, once again for the record, whether each member of the Board had read the Hearing Examiner's Report and Recommendation in the matter of Mark T. Shue.

Roll call: Jacinto W. Beard, D.D.S. - Yes  
Constance F. Clark, R.D.H. - Yes  
Ashok Das, D.D.S. - Yes  
W. Chris Hanners, D.D.S. - Yes  
Clifford Jones, R.D.H. - Yes  
Lawrence Kaye, D.D.S. - Yes  
Gregory A. McDonald, D.D.S. - Yes  
Marybeth Shaffer, D.D.S. - Yes

Douglas W. Wallace, D.D.S. - Yes  
Mary Ellen Wynn, D.D.S. - Yes  
James Lawrence - Yes

Dr. Shaffer then proceeded by asking whether each member of the Board had the record, including the transcript, available to refer to when necessary in reviewing this matter?

Roll call: Jacinto W. Beard, D.D.S. - Yes  
Constance F. Clark, R.D.H. – Yes  
Ashok Das, D.D.S. - Yes  
W. Chris Hanners, D.D.S. - Yes  
Clifford Jones, R.D.H. - Yes  
Lawrence Kaye, D.D.S. – Yes  
Gregory A. McDonald, D.D.S. - Yes  
Marybeth Shaffer, D.D.S. - Yes  
Douglas W. Wallace, D.D.S. - Yes  
Mary Ellen Wynn, D.D.S. - Yes  
James Lawrence – Yes

Dr. Shaffer then asked if each member of the Board had read any Objections to the Report and Recommendation that had been filed in reviewing this matter.

Roll call: Jacinto W. Beard, D.D.S. - Yes  
Constance F. Clark, R.D.H. – Yes  
Ashok Das, D.D.S. - Yes  
W. Chris Hanners, D.D.S. - Yes  
Clifford Jones, R.D.H. - Yes  
Lawrence Kaye, D.D.S. – Yes  
Gregory A. McDonald, D.D.S. - Yes  
Marybeth Shaffer, D.D.S. - Yes  
Douglas W. Wallace, D.D.S. - Yes  
Mary Ellen Wynn, D.D.S. - Yes  
James Lawrence – Yes

The original Order, Report and Recommendation and any objections shall be maintained in the exhibits section of this journal.

Dr. Shaffer then stated that there was no court reporter present and the Board’s minutes would serve as the official record of the proceedings.

On behalf of Dr. Shue, Mr. Newkirk asked once again if he could address the Board, acknowledging that he had been given that opportunity at the last Board meeting. His request was granted.

Mr. Newkirk began by stating that “everyone knows what happened at the last meeting.” He stated that there was an impartial AAG called in to assist the Board on legal issues involving the Board’s desire to refer Dr. Shue to QUIP. Therefore, Mr. Newkirk stated he and his client were under the impression that Dr. Shue would be referred to QUIP. In fact, he stated that at the last meeting Dr. Shue was told to contact Dr. Beard to begin the QUIP process, and that Dr. Shue did call, but never received a response. Mr. Newkirk stated that the next thing that happened was that he got a call

from third AAG, who told him he needed to sign a settlement agreement or the Board would adopt the Report and Recommendation. Mr. Newkirk stated that the only explanation for this change in the Board's position would be due to the Executive Director's interference. He stated that it is troubling that once again it appears the Executive Director is asserting her position in this case, and unduly pressuring the Board into making a different decision in this matter. He stated that if the Executive Director told the Board they could not refer Dr. Shue to QUIP, that she was wrong. Mr. Newkirk then stated Dr. Shue wanted to say a few words to the Board.

Dr. Shue stated that he was more than willing to do QUIP. He discussed his treatment of the patient and said he did his best for the patient based on what the patient wanted, and the patient signed a release. He stated that in December he worked with the patient to make the situation right, and that he has paid \$100,000.00 to defend himself against these charges, and that the insurance company paid \$100,000.00. Again he said he was willing to do QUIP.

Dr. Kaye asked if the Assistant Attorneys General would like to respond.

Katherine Bockbrader stated that she did not feel it necessary to rehash the facts of the case. She stated Mr. McNamara may wish to comment. Mr. McNamara stated that he found it interesting that Mr. Newkirk must think he is clairvoyant. He said all he did was simply relay to Mr. Recker a possible settlement offer brought to him by the Executive Director. He said that matter was not discussed further as Mr. Recker declined any settlement discussions.

## **Quasi Judicial Deliberations**

**Motion by Dr. McDonald, second by Dr. Wallace, to recess for the purpose of conducting quasi-judicial deliberations in the disciplinary matters of Jessica Ferrera and Mark T, Shue, DDS, pursuant to R. C. Chapter 119, and to reconvene in open session following deliberations.**

Roll call vote.

Motion carried unanimously.

Dr. Kaye invited AAG Walter McNamara to attend the Executive Session.

## **Open Session**

The Board resumed open session at approximately 2:45 p.m.

Dr. Shaffer stated, "Let the record reflect that Dr. Bill Leffler, Dr. Mary Ellen Wynn and I were the Secretaries in these matters, were not present during executive session, and did not participate in deliberations in this matter. Therefore, we will abstain from final vote"

## **Decision In The Matter Of Jessica M. Ferrera, dental assistant radiographer.**

**Motion by Dr. McDonald, Second by Mr. Jones, to accept the Finding Of Fact, Conclusions of Law, and Recommended Order of the Hearing Examiner, and REVOKE the dental assistant radiographer certificate of Jessica Ferrera.**

Roll call: Jacinto W. Beard, D.D.S. - Yes  
Constance F. Clark, R.D.H. - Yes  
Ashok Das, D.D.S. – Yes  
W. Chris Hanners, D.D.S. - Yes  
Clifford Jones, R.D.H. - Yes  
Lawrence Kaye, D.D.S. – Yes  
James Lawrence – Yes  
Gregory A. McDonald, D.D.S. - Yes  
Marybeth Shaffer, D.D.S. - Abstain  
Douglas W. Wallace, D.D.S. - Yes  
Mary Ellen Wynn, D.D.S. - Abstain  
James Lawrence - Yes

**Decision In The Matter Of Mark T. Shue, DDS**

**Motion by Dr. Beard, second by Dr. Hanners, to accept the Finding Of Fact, but reject the Conclusions of Law and Recommended Order of the Hearing Examiner.**

Roll call: Jacinto W. Beard, D.D.S. - Yes  
Constance F. Clark, R.D.H. – Abstain  
Ashok Das, DDS, - Yes  
W. Chris Hanners, D.D.S. - Yes  
Clifford Jones, R.D.H. - Abstain  
Lawrence Kaye, D.D.S. – Abstain  
James Lawrence, - Yes  
Gregory A. McDonald, D.D.S. - Yes  
Marybeth Shaffer, D.D.S. - Abstain  
Douglas W. Wallace, D.D.S. - No  
Mary Ellen Wynn, D.D.S. - Abstain

Ms. Reitz asked for a brief recess to confer with Katherine Bockbrader and Walter McNamara.

Meeting Resumed. Ms. Bockbrader informed the Board that after thorough consideration, based on the language of Ohio Revised Code 4715.03, the Board needs a majority vote of its members to pass this motion, which is seven. She indicated that the Board could consider another motion, or re-vote.

**Motion by Dr. Beard, second by Dr. Hanners, to accept the Finding Of Fact, but reject the Conclusions of Law and Recommended Order of the Hearing Examiner.**

Roll call: Jacinto W. Beard, D.D.S. - Yes  
Constance F. Clark, R.D.H. – Yes  
Ashok Das, DDS, - Yes

W. Chris Hanners, D.D.S. - Yes  
Clifford Jones, R.D.H. – Abstain  
Lawrence Kaye, D.D.S. – Yes  
James Lawrence, - Yes  
Gregory A. McDonald, D.D.S. - Yes  
Marybeth Shaffer, D.D.S. - Abstain  
Douglas W. Wallace, D.D.S. - No  
Mary Ellen Wynn, D.D.S. - Abstain

Dr. Kaye asked Mr. Newkirk to take a seat at the table before concluding this matter. Dr. Kaye stated that the Board hoped that Mr. Newkirk did not interpret its silence when Mr. Newkirk addressed the Board prior to deliberations as any sort of an agreement. In fact, Dr. Kaye stated that the Board did not appreciate the disparaging words he spoke about the Board's Executive Director, and that he refrain from doing so in future matters before the Board.

Mr. Newkirk asked if he could respond. Dr. Kaye said no.

## **Executive Director's Report**

### **SB 301**

Ms. Reitz began her report by explaining the changes made to the Dental Practice Act as a result of the passage of SB 301, which goes into effect March 13, 2013. The documents presented to the Board are attached as an exhibit.

### **Financial Disclosure**

Ms. Reitz shared information regarding the new changes to the filing procedures, and that Board members were now able to file on-line. She shared information from the Ethics Commission's website regarding filing.

### **FTC Case Update**

Ms. Reitz updated the members on the FTC case that is pending before the United States District Court of Appeals, Fourth Circuit. She reminded the members that she had attended the oral arguments in December.

Ms. Reitz stated that the North Carolina State Board of Dental Examiners is currently in the process of appealing a final opinion and order of the Federal Trade Commission ("FTC") to the U.S. Court of Appeals for the Fourth Circuit. She explained that the FTC has charged that the NC Board illegally conspired to restrict teeth whitening services to licensed dentists in North Carolina. The NC Board relied upon a clear state statute, N.C. Gen. Stat. § 90-29(b)(2), which provides that the removal of stains from teeth constitutes the practice of dentistry, and determined that teeth whitening constitutes stain removal. Letters were sent to mall kiosks and salons that provided teeth whitening services without a license to provide such services. Ms. Reitz explained that these letters notified

the recipients that North Carolina law prohibits stain removal from teeth without a license and that any violation of the statute must not be perpetrated.

Ms. Reitz continued by explaining that in response to complaints from industry representatives, the FTC opened an investigation and ultimately filed an administrative complaint against the NC Board. A year-long administrative proceeding ensued and culminated in the FTC issuing a final opinion and order that restricts the NC Board's ability to carry out its duties under North Carolina's Dental Practice Act. The NC Board is now appealing the FTC's opinion and order to the Fourth Circuit Court of Appeals.

Ms. Reitz explained that this case presents issues that have national significance for, among other entities, state agencies and professional licensing boards. First, the FTC denied NC Board's claim that it was entitled to state action immunity even though it is a sovereign state agency of North Carolina, created by statute and required to enforce the state's Dental Practice Act. The FTC held that in order to qualify for state action immunity, agencies and boards that are made up of a majority of licensees are required to show both a clearly-articulated state policy authorizing the restraint on competition and active supervision by the state.

Second, the FTC has charged that the NC Board was capable of engaging in a conspiracy even though the Board members were enforcing state law as part of their statutorily-mandated duties. Under the FTC's novel legal theories, any board made up of a majority of licensees constitutes a conspiracy to restrain trade and is subject to prosecution under the nation's antitrust laws. In the FTC's view, these Board member licensees (who are sworn state officials) have "competing economic interests." Further, the FTC has rejected the NC Board's contention that any actions at issue were taken for the purpose of public protection. The public protection rationale has been wholly rejected by the FTC as inapplicable under antitrust law.

Third, the NC Board has argued that it is not a person, partnership, or corporation under Section 5 of the Federal Trade Commission Act. Therefore, the NC Board has continuously asserted that the FTC has no jurisdiction over a state agency acting pursuant to a clear state statutory mandate. The NC Board asserts that it acted to prohibit the illegal provision of teeth whitening services and such prohibition is not an "unfair method of competition" under the FTC Act. The FTC has now advanced its own interpretation of a state statute by claiming that unlicensed teeth whitening is not illegal. The NC Board argues that this interpretation is without merit because the FTC is not in a position to interpret state statutes, especially when such interpretation contradicts the decision-making of the state agency charged with interpreting and enforcing the statute.

Ms. Reitz stated that she appreciated the opportunity to attend the oral arguments in this case. She noted that the NC Board Executive Director would inform her when the Court issues a decision. She explained that the NC Board's concern, which is also a concern for all regulatory boards, is that if the FTC were to prevail in this matter, an independent federal agency would be granted direct oversight over the way in which states protect their citizens.

## **Anything for the Good of the Board**

### **ODAMD Correspondence**

Dr. Kaye stated for the record that as President of the Board, he has notified our Executive Director and AAG of the receipt of numerous correspondence from the Ohio Dental Association of Minority Dentists, Melissa Rodgers, Dr. Sohi, and Dr. Mathur. This correspondence has been forwarded to them as we have received them. Our Executive Director has informed the Governor's office of this correspondence. I have informed our Executive Director and AAG that in the correspondence I had received that there had been a complaint made against myself and Dr. Wynn. These complaints I assume have been channeled to the appropriate agencies and staff for investigation. Advice has been given to us by the AG's office concerning this correspondence.

### **AADB Meeting Attendees**

Dr. Kaye inquired as to who planned to attend the AADB Mid-year meeting in April. In addition to Dr. Kaye, the following indicated they intended to go: Dr. Mary Ellen Wynn, Dr. Mary Beth Shaffer. Possible: Dr. Jacinto Beard.

### **Ethics Course**

Dr. Beard presented information from Robert B. Stevenson, DDS, MS from the Ohio State University wherein he would like to offer an Ethics Course. Dr. Beard indicated that this course could be used in addition to the courses provided by Dr. Homenko and Dr. Jones for QUIP and consent agreements.

**Motion by Dr. Beard, second by Dr. Wallace, to approve Dr. Stevenson's ethics course.**

Motion carried unanimously.

### **Committee Assignments**

Dr. Kaye distributed the new committee assignments for 2013.

### **Executive Session**

**Motion by Dr. McDonald, second by Dr. Beard, to move the Board into executive session pursuant to Ohio Revised Code Section 121.22 (G)(3) to confer with counsel on matters that are the subject of pending or imminent court action.**

Roll call:            Jacinto W. Beard, D.D.S. - Yes  
                          Constance F. Clark, R.D.H. – Yes  
                          Ashok Das, DDS, - Yes  
                          W. Chris Hanners, D.D.S. - Yes  
                          Clifford Jones, R.D.H. - Yes  
                          Lawrence Kaye, D.D.S. – Yes

James Lawrence - Yes  
Gregory A. McDonald, D.D.S. - Yes  
Marybeth Shaffer, D.D.S. - Yes  
Douglas W. Wallace, D.D.S. - Yes  
Mary Ellen Wynn, D.D.S. - Yes

**Resume Meeting**

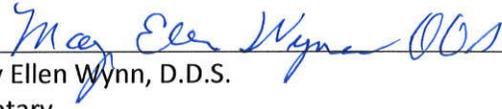
**Adjourn**

Dr. Kaye adjourned the meeting at 4:00 p.m.



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Lawrence Kaye, D.D.S.  
President



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Mary Ellen Wynn, D.D.S.  
Secretary