

OHIO STATE DENTAL BOARD

BOARD MEETING

NOVEMBER 12, 2014

Contents

Attendance	1
Call to Order	1
Introduction of Board Members	1
Review of Minutes	2
September 2014.....	2
Personal Appearance(s)	2
Michael J. Vaporis, D.D.S.....	2
Report and Recommendation(s).....	3
In the Matter of Igor J. Skalsky, D.D.S.	3
Igor J. Skalsky, D.D.S.	4
James M. McGovern, Esq., Attorney for Igor J. Skalsky, D.D.S.....	5
Katherine Bockbrader, Esq., Assistant Attorney General.....	6
Executive Session	8
Open Session.....	8
Decision in the Matter of Igor J. Skalsky, D.D.S.....	8
Enforcement Report.....	11
Review of Proposed Agreement(s)	11
Disciplinary	11
Enforcement Update.....	11
90-day Open Case Report	12
Executive Session	13
Open Session.....	13
Licensure Report	13
License/Certification/Registration Report (Approved by the Executive Office)	13
Dentist(s).....	13
Dental Hygienist(s)	14

Dental Assistant Radiographer(s)	14
Limited Resident's.....	18
Limited Continuing Education	18
Limited Teaching.....	19
Coronal Polishing	19
Expanded Function Dental Auxiliary.....	19
Oral Health Access Supervision Permit(s).....	20
Dentist(s).....	20
Dental Hygienist(s).....	20
Anesthesia Permit(s).....	21
Conscious Sedation Permit(s)	21
Graduate(s) of Unaccredited Dental Colleges Located Outside the United States.....	21
Reinstatement Application(s)	21
Dentist(s).....	21
Dental Hygienist(s).....	21
Ad Hoc Board Operations Committee Report	22
Education Committee Report.....	22
2014-2015 Biennial Continuing Education Sponsor Renewal Application(s)	22
Review of Course(s)	23
Anesthesia/Conscious Sedation Permit Renewal	23
Policy Committee Report.....	23
Law and Rules Review Committee Report.....	24
Supervisory Investigative Panel Report.....	24
Executive Director's Report	24
New Office Staff.....	24
American Association of Dental Administrators (AADA)/American Association of Dental Boards (AADB) Meetings.....	25
U.S. Supreme Court Oral Argument – North Carolina State Board of Dental Examiners vs. Federal Trade Commission	26
Citizens Advocacy Center Report.....	26
2014 Workforce Plan	26
Governor's Cabinet Opiate Action Team	27

Oral Health Access Supervision Program Report	27
Military Personnel – Report	27
Award – Minority Business Enterprise	27
Anything for the Good of the Board	28
NERB Steering Committee	28
Board Meeting Schedule	28
Holiday Party	28
Board Member Recognition	28
Clerk 1 Posting	28
Adjourn	29
Appendix A	31
Appendix B	39
Appendix C	43

OHIO STATE DENTAL BOARD

BOARD MEETING

NOVEMBER 12, 2014

Attendance

The Ohio State Dental Board (Board) met in Room 1960, of The Vern Riffe Center for Government and the Arts, 77 South High Street, 19th Floor, Columbus, Ohio on November 12, 2014, beginning at 1:00 p.m. Board members present were:

Gregory A. McDonald, D.D.S., President
William G. Leffler, D.D.S., Vice President
Marybeth Shaffer, D.D.S., Secretary
Ashok Das, D.D.S., Vice Secretary
Ann Aquillo
Martin Chambers, D.D.S.

Constance Clark, R.D.H.
Chris Hanners, D.D.S.
Susan Johnston, R.D.H.
Lawrence Kaye, D.D.S.
Anne Missig, R.D.H.
Charles Smith, D.D.S.

The following guests were also in attendance: Katherine Bockbrader, Esq. of the Ohio Attorney General's Office, David Owsiany, J.D., Executive Director, and Henry Fields, D.D.S. of the Ohio Dental Association (ODA); Mark Wenzel, D.D.S., of the ODA's Dentists Concerned for Dentists; Michele Carr, R.D.H., M.A., Chair, The Ohio State University College of Dentistry Department of Dental Hygiene; Kelley Long, Executive Director, and Sarah Thompson, Administrative Assistant of the Ohio Physicians Health Program (OPHP); Lili C. Reitz, Esq., Executive Director, Kathy Carson, Dental Board Enforcement Officer, Jayne Smith, Licensing Coordinator, Heidi Massaro, Compliance Secretary, and Malynda Franks of the Ohio State Dental Board; and other guests.

Call to Order

Dr. Greg McDonald introduced himself as the Board President, a general dentist from Springboro. After extending greetings to everyone Dr. McDonald noted that there was a quorum present and called the meeting to order at approximately 1:08 p.m.

Introduction of Board Members

Dr. McDonald then introduced the rest of the Board members. He introduced Dr. William Leffler, the Board's Vice President and a general dentist from Massillon, Dr. Marybeth Shaffer, the Board's Secretary, a general dentist from Leetonia, Dr. Ashok Das, the Board's Vice Secretary, a general dentist from Mason, Dr. Martin Chambers, D.D.S., a general dentist from Cleveland, Dr. Lawrence Kaye, a periodontist from Akron, Dr. Chris Hanners, a general dentist from Piketon, Dr. Charles Smith, a general dentist from Tipp City, Ms.

Constance Clark, a dental hygienist from Dublin, Ms. Susan Johnston, a dental hygienist from Columbus, Ms. Anne Missig, a dental hygienist from Morrow, and Ms. Ann Aquillo, the Board's Public member from Powell.

Review of Minutes

September 2014

Motion by Ms. Johnston, second by Dr. Das, to approve the September 10, 2014 Board meeting minutes as presented.

Motion carried unanimously.

Personal Appearance(s)

Michael J. Vaporis, D.D.S.

Dental Board Enforcement Officer Barb Yehnert introduced Michael J. Vaporis, D.D.S. to the Members and explained that Dr. Vaporis was before them today for his third personal appearance in order to request an increase in work hours. She briefly gave the Board members the background on Dr. Vaporis leading up to his appearance before them. Ms. Yehnert explained that Dr. Vaporis signed a Consent Agreement with the Board on September 17, 2008, completed treatment in 2010, and was reinstated in June 2011. She stated that Dr. Vaporis made his first appearance in May 2011 and was approved for 20 hours of work privilege at that time. Ms. Yehnert stated that at Dr. Vaporis' second appearance in April 2011, he was granted up to 30 hours work privileges.

Continuing on, Ms. Yehnert explained that Dr. Vaporis has not had a need to increase his work hours since that time because he had not been in a position to work more than 30 hours. She stated that Dr. Vaporis is now requesting to be permitted to work an additional day as a result of a recent request to cover for a fellow employee. She informed the Members that the Supervisory Investigative Panel approved the request and advised him that he should be proactive and come before the Board to request an increase to full-time practice.

Concluding, Ms. Yehnert informed the Board that Dr. Vaporis will celebrate five (5) years of sobriety in December.

Upon questioning by the Board, Dr. Vaporis stated that he feels he has been doing fine. He stated that he would not mind working thirty-two (32) or even thirty-five (35) hours. He stated that there have been times when instances like this would arise at the dental hospice when they have needed an extra guy to fill in. Dr. Vaporis explained that it appears as this is probably the way that things are going to work out for him for a while.

Motion by Dr. Hanners, second by Ms. Johnston to approve an increase in Dr. Vaporis ability to practice full time up to forty (40) hours.

Dr. Kaye stated that maybe the Board should consider approving Dr. Vaporis' practice hours to full-time with no limitation on the number of hours. Dr. Hanners amended his motion based on the discussion of the Board.

Motion by Dr. Hanners, second by Ms. Johnston, to approve Dr. Vaporis to practice full-time and pursuant to the terms of his consent agreement with the Board.

Motion carried unanimously.

Report and Recommendation(s)

In the Matter of Igor J. Skalsky, D.D.S.

Dr. McDonald turned the meeting over to Dr. Shaffer to conduct the Report and Recommendations. Dr. Shaffer then announced that the Board would now consider the Attorney Hearing Examiner's Report and Recommendation in the matter of Igor J. Skalsky, D.D.S. that was filed by Attorney Hearing Examiner, Lawrence D. Pratt, Esq., on August 1, 2014.

Dr. Shaffer then proceeded by asking whether each member of the Board had read the Report and Recommendation in the matter of Igor J. Skalsky, D.D.S.?

Roll call: Ms. Aquillo – Yes
Dr. Chambers – Yes
Ms. Clark – Yes
Dr. Das – Yes
Dr. Hanners- Yes
Ms. Johnston – Yes
Dr. Kaye – Yes
Dr. Leffler – Yes
Dr. McDonald – Yes
Ms. Missig - Yes
Dr. Shaffer – Yes
Dr. Smith – Yes

Dr. Shaffer then asked whether each member of the Board had the record, including the transcript available to refer to when necessary when reviewing this matter.

Roll call: Ms. Aquillo – Yes
Dr. Chambers – Yes
Ms. Clark – Yes
Dr. Das – Yes
Dr. Hanners- Yes
Ms. Johnston – Yes
Dr. Kaye – Yes
Dr. Leffler – Yes
Dr. McDonald – Yes

Ms. Missig - Yes
Dr. Shaffer – Yes
Dr. Smith – Yes

Dr. Shaffer proceeded by asking if each Board member read any Objections to the Report and Recommendations filed in this case?

Roll call: Ms. Aquillo – Yes
Dr. Chambers – Yes
Ms. Clark – Yes
Dr. Das – Yes
Dr. Hanners- Yes
Ms. Johnston – Yes
Dr. Kaye – Yes
Dr. Leffler – Yes
Dr. McDonald – Yes
Ms. Missig - Yes
Dr. Shaffer – Yes
Dr. Smith – Yes

Dr. Shaffer then asked if either Dr. Skalsky and/or his attorney were present. James McGovern, Esq., attorney for Dr. Skalsky, introduced himself to the Board members and indicated that both he and Dr. Skalsky were in attendance and would be addressing them.

Dr. Shaffer informed Dr. Skalsky and his attorney that the Board's minutes would serve as the official record of the proceedings. She stated that Dr. Skalsky had requested the opportunity to address the Board and therefore, Katherine Bockbrader, Esq., the Assistant Attorney General in this matter would be given the opportunity to respond. She informed the members that Dr. Skalsky, Mr. McGovern and Ms. Bockbrader should limit their comments to the Hearing Examiners Findings of Fact, Conclusions, and Proposed Order in this matter. She informed them that the Board will only consider the evidence presented during the administrative hearing in this matter and therefore, there would be no questions from the Board members.

Ms. Reitz stated that there was one matter that needed to be addressed prior to the discussions. She stated that Dr. Skalsky filed a motion to supplement the record on November 3, 2014 to show that he had completed continuing education in various hours/topics. She indicated that the Board members could approve that motion in order for the information regarding continuing education could be considered as part of the record.

Motion by Ms. Johnston, second by Dr. Leffler, to modify the record and accept the motion to supplement the record in the matter of Igor J. Skalsky, D.D.S.

Motion carried unanimously.

Igor J. Skalsky, D.D.S.

Dr. Skalsky began by thanking the Board members for allowing him to speak with them. He stated that he was a little bit nervous and would be referring to his notes in addressing them. He stated that he has

learned a great deal throughout the hearing process and everything else that he has gone through since he received the 2013 Notice of Opportunity for Hearing (Notice). Dr. Skalsky noted dating back to 2012 when the Board Investigator, Kathy Carson, first brought some of the matters at issue in the 2013 Notice to his attention, he has strived to cooperate with the Board.

Continuing on, Dr. Skalsky stated that with respect to the charges in the 2013 Notice, he recognizes that the treatment he provided to the patients at issue, as well as his recordkeeping, were in need of improvement. However, he stated, as noted in his written objections to Mr. Pratt's Report and Recommendations, he hopes that the Members recognize that some of Dr. Lalonde's opinions were unsubstantiated and/or failed to take a real world approach to the practice of dentistry. That said, he stated that he recognizes the Board's concerns and is committed to improving his dental practice. Dr. Skalsky stated that he has taken steps to improve upon the areas of concern for the Board, including:

1. Taking and completing CE courses that are set forth in exhibit EE which include test based continuing education regarding the 2015 CDT Companion and coursework in dental radiology;
2. Routinely meeting and/or exceeding the CDT parameters for a full mouth set of x-rays showing all contacts and crowns;
3. Always carefully reviewing the x-rays he takes to determine if there is any need to retake the images;
4. Revising the language in his coupon offers to avoid any ambiguities;
5. Promptly documenting and billing any care he provides; and
6. Only using CDT codes in his records and billing documents in a manner that is consistent with the guidance provided in the CDT Companion.

Dr. Skalsky stated that in moving forward, he will continue to cooperate with the Board and do everything he can to improve his dental practice. He stated that he hopes that the Board gives him the chance to prove that he has learned from this experience and that they will allow him to contribute to the dental profession as a provider in his community. He stated that he truly wants to do the right thing to be considered a good dentist by the Board, his peers, and his patients.

James M. McGovern, Esq., Attorney for Igor J. Skalsky, D.D.S.

Mr. McGovern informed the members that he was not involved with Dr. Skalsky in any of his previous consent agreements with the Board. However, he stated that from the time that he first became involved with Dr. Skalsky through the hearing, preparing for the hearing, the post hearing and all the way up until this day he has seen changes in Dr. Skalsky. He stated that he believes that this is reflected in the record and hopefully the Board members can see that today. Mr. McGovern stated that in the past, he feels that Dr. Skalsky was a person who was easily riled, put his defenses up, and probably did not do a good job in cooperating with the Board as he should have. He stated that part of that is on Dr. Skalsky, and part of that may be the type of representation that Dr. Skalsky had at that time.

Continuing on, Mr. McGovern explained that what he has tried to do with Dr. Skalsky is to encourage him to be as cooperative and forthcoming as possible, to acknowledging his shortcomings and to do his best to move through them. He stated that deep down what he has seen in Dr. Skalsky is that he is a gentlemen, he

is a good person, and he is someone who is capable of doing the right thing if given the opportunity. Mr. McGovern stated that he hopes that the Members would give Dr. Skalsky that opportunity.

Mr. McGovern stated that they filed objections to the Hearing Examiner's Report and Recommendation. He stated that the Hearing Examiner, Mr. Pratt, and the Assistant Attorney General, Ms Bockbrader, in this case, handled things extremely well. He stated that he could not ask for anything more in terms of professionalism and treating Dr. Skalsky with respect. Mr. McGovern stated that there may be some disagreement around the edges, for example with regard to Count 7 regarding whether a full periodontal exam needs to be done as part of a comprehensive exam. He stated that he does not believe that is the case, however, the bottom line here is that Dr. Skalsky is capable of remediation. Mr. McGovern explained that Dr. Skalsky has already begun on that journey of remediation. He stated that Dr. Skalsky has changed a lot of his practice habits that were of concern in this case such as it was more a matter of how you document things, how you advertise your practice, how you bring your patients in. He stated that many of these areas of concern have already been corrected. Mr. McGovern explained that Dr. Skalsky is willing to work with the Board.

Concluding, Mr. McGovern stated that he hopes that the Board will impose a sanction that is less than the four (4) months minimum suspension that Mr. Pratt has recommended. He stated that while he believes that particular sanction is on the outside edge of what is reasonable, he hopes that they can understand as Board members, many of which are practicing dentists, that four (4) months out of practice can be very crippling. He commented that if they will consider reducing that period of suspension, he believes that will give Dr. Skalsky the best chance possible to move forward and be a productive member of the Brunswick area and Northeast Ohio dental community.

Katherine Bockbrader, Esq., Assistant Attorney General

Ms. Bockbrader began by thanking Mr. McGovern for his kind remarks about herself and the Attorney Hearing Examiner and wished to thank him on his professionalism as well.

Ms. Bockbrader continued by stating that the Hearing Examiner in this case found multiple violations of the standard of care by Dr. Skalsky. She stated that the case really turns on competing opinions between the State's expert and the expert retained by Dr. Skalsky. Ms. Bockbrader stated that this Board is made up of experts and this is an opportunity for them as a Board to use their own expertise to determine whether they agree that Dr. Skalsky violated that standard of care in these areas.

Ms. Bockbrader stated that Count 1 relates to the number of x-rays that Dr. Skalsky took when billing for a comprehensive exam. She stated that Dr. Skalsky argues that the Board expert was not reliable on this count and reminded the members that they could use their own expertise to determine whether they believe that the x-rays that Dr. Skalsky took were sufficient to perform a comprehensive exam for these patients, several of whom had not been to a dentist in less than a year and three (3) of whom had not seen Dr. Skalsky in the preceding three to five (3-5) years.

Continuing on, Ms. Bockbrader stated that the issue in Count 3 was Dr. Skalsky documenting that he took full mouth x-rays when in actuality an insufficient number of x-rays were taken. She stated that a full mouth

x-ray means x-rays of every tooth in the mouth from the crown to the root. She stated that it is undisputed that this also includes bitewings. She stated that it is undisputed that Dr. Skalsky would document taking a full mouth x-ray but would not take bitewings; rather he would take PA's which did not show the complete tooth, including apex of the root. Therefore, she stated that the Hearing Examiner properly found that even though this was not a billing issue, it was a standard of care issue of accurate vs. inaccurate documentation in saying that Dr. Skalsky was taking a full mouth x-ray.

Ms. Bockbrader stated that Count 4 related all to x-rays that were not of diagnostic quality. She explained that Dr. Skalsky took PA x-rays wherein the complete tooth was not shown, one piece would be shown poorly, or they were at a poor angle or had significant overlap. Again, she stated that the Members could review those x-rays to see whether they agreed that the x-rays were not of diagnostic quality and not within the standard of care. Ms. Bockbrader stated that Dr. Skalsky argues that the x-rays were diagnostic based on his ultimate diagnosis. However, she stated that Dr. Skalsky was simply lucky that the patient did not have issues in the teeth that he had missed or were in the poor x-rays. She stated that simply because that did not happen does not mean that they were of sufficient quality and diagnostic quality but rather that the x-rays were below the standard of care.

Continuing, Ms. Bockbrader stated that Count 5 relates to the diagnosis of decay for Patient #1 on tooth #31. She commented that this is a very important area for Board members to use their expertise. Again, she stated that the x-rays and the records were available to them for review and to determine whether they agreed with the Hearing Examiner. She stated that the findings of the Hearing Examiner that Dr. Skalsky should have diagnosed decay in tooth #31 for Patient #1 and the failure to diagnose the decay was a violation of the standard of care. Ms. Bockbrader stated that if the Board members disagree on that or any other issue, then they should state their rationale on those issues.

Ms. Bockbrader stated that Count 7 related to perio charting for Patient #3. She stated that Dr. Skalsky says that he conducted a perio screening type of exam rather than a full perio charting. She stated that Dr. Skalsky did not document the measurements for any particular tooth but that he would do a few spots in different areas and simply document that area. She stated that Dr. Skalsky's documents noted that patient #3 had a Type 3 or Type 4 disease and that some measurements were from 8-9 mm. Therefore, she stated that the screening showed significant problems and the Hearing Examiner found that it violates the standard of care for this patient to provide a comprehensive exam and not include the full periodontal charting for that patient.

Concluding, Ms. Bockbrader stated that the Hearing Examiner recommended a four (4) month suspension and continuing education in various areas. She stated that Dr. Skalsky has now provided them evidence that he has completed continuing education in some of those areas. However, she informed the members that some of the continuing education taken does not relate at all to the charges. She indicated that Dr. Skalsky took continuing education in CDT codes and also radiology which both relate to the charges. However, Ms. Bockbrader pointed out that he also took some continuing education in implants, oral surgery, and medically compromised patients, which is all good, but does not necessarily relate to the charges in this case.

Therefore, Ms. Bockbrader said that if the Board chooses to require Dr. Skalsky to obtain continuing education, she would ask that the continuing education recommended cover the issues that are mentioned by the Hearing Examiner. She stated that if the Board chooses to impose a probationary period, she would recommend some type of record review for Dr. Skalsky in order that they can see whether he has actually been remediated. She reminded the Board members that Dr. Skalsky has had four (4) previous consent agreements with the Board that required him to take a total of over 100 hours of continuing education. She stated that they should consider his previous discipline in determining the discipline in this case.

Executive Session

Motion by Dr. Leffler, second by Dr. Kaye, to move the Board into executive session pursuant to Ohio Revised Code Section 121.22(G)(1) to consider the matter involving Igor J. Skalsky, D.D.S.

Roll call vote: Ms. Aquillo – Yes
Dr. Chambers – Yes
Ms. Clark – Yes
Dr. Das – Yes
Dr. Hanners – Yes
Ms. Johnston – Yes
Dr. Kaye – Yes
Dr. Leffler – Yes
Dr. McDonald - Yes
Ms. Missig – Yes
Dr. Shaffer – Yes
Dr. Smith – Yes

Motion carried unanimously.

Open Session

The Board resumed open session at approximately 2:07 p.m.

Dr. Shaffer stated, "Let the record reflect that Dr. Ashok Das and I were the Secretaries in this matter, 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 Igor J. Skalsky, D.D.S.

Motion by Dr. McDonald, second by Ms. Missig, that counts 1, 2, 3, 4, and 7 in the matter of Igor J. Skalsky, D.D.S. are found to be true.

Roll call vote: Ms. Aquillo – Yes
Dr. Chambers – Yes
Ms. Clark – Yes
Dr. Das – Abstain
Dr. Hanners – Yes
Ms. Johnston – Yes
Dr. Kaye – Yes
Dr. Leffler – Yes

Dr. McDonald - Yes
Ms. Missig – Yes
Dr. Shaffer – Abstain
Dr. Smith – Yes

Motion carried.

Motion by Dr. McDonald, second by Ms. Missig, to accept the Hearing Examiners recommended order in the matter of Igor J. Skalsky, D.D.S. as follows:

It is hereby ORDERED that:

- 1) The license of DR. SKALSKY to practice dentistry in the state of Ohio is SUSPENDED for a period of four (4) months.**
- 2) The Board shall not consider REINSTATEMENT of DR. SKALSKY’s license to practice dentistry unless and until he completes continuing education in the following areas:**
 - a) Ethics**
 - b) Dental Radiography**
 - c) Diagnosis and Treatment Planning**
 - d) Periodontal Charting**
 - e) Record Keeping**
 - f) Billing Practices**

The exact number and type of hours will be determined by the Board Supervisory Investigative Panel and sent to Dr. Skalsky by Certified Mail within 10 days of the mailing of this Order.

- 3) Once REINSTATED, DR. SKALSKY shall be subject to the following terms and conditions for a period of three (3) years:**
 - a) DR. SKALSKY shall fully cooperate with the Board investigators in future inspections and evaluations in accordance with law. DR. SKALSKY shall make any and all of his patient records available for inspection and review, at the request of the Board. At the Board’s discretion, such records may be reviewed by a consultant to the Board.**
 - b) DR. SKALSKY shall submit to the Board, on a quarterly basis, a written report indicating his compliance with all probationary terms and conditions.**
 - c) DR. SKALSKY shall appear before the Board or its designee as requested by the Board.**
 - d) DR. SKALSKY shall obey all federal, state and local laws and rules governing the practice of dentistry in Ohio.**
- 4) DR. SKALSKY’s failure to comply with all terms of this Order may result in additional disciplinary proceedings against his dental license, in accordance with Ohio Revised Code Chapters 119 and 4715.**

5) Upon successful completion of the terms of this ORDER, DR. SKALSKY's license will be fully RESTORED.

This ORDER shall take effect thirty (30) days from the date of mailing of this ORDER.

Roll call vote: Ms. Aquillo – Yes
Dr. Chambers – Yes
Ms. Clark – Yes
Dr. Das – Abstain
Dr. Hanners – Yes
Ms. Johnston – Yes
Dr. Kaye – Yes
Dr. Leffler – Yes
Dr. McDonald - Yes
Ms. Missig – Yes
Dr. Shaffer – Abstain
Dr. Smith – Yes

Motion carried.

Ms. Bockbrader stated that the Hearing Examiner recommended dismissal of Counts 2 and 6. She stated that Count 6 was dismissed by stipulation. She commented that if the Board wished to modify any of the Hearing Examiner's findings of fact or conclusions of law, then the Board must state the rationale for the modification.

Motion by Dr. Leffler, second by Dr. McDonald, to revise the previous motion accept the Findings of Fact and Conclusions of Law of the Hearing Examiner with respect to counts 1, 3, 4, 5, and 7 in the matter of Igor J. Skalsky, D.D.S.

Roll call vote: Ms. Aquillo – Yes
Dr. Chambers – Yes
Ms. Clark – Yes
Dr. Das – Abstain
Dr. Hanners – Yes
Ms. Johnston – Yes
Dr. Kaye – Yes
Dr. Leffler – Yes
Dr. McDonald - Yes
Ms. Missig – Yes
Dr. Shaffer – Abstain
Dr. Smith – Yes

Motion carried.

Enforcement Report

Review of Proposed Agreement(s)

The Board reviewed one (1) proposed agreement to limit practice. The name of the individual/licensee were not included in the documents reviewed by the Board. The names of the individuals/licensees have been added to the minutes for public notice purposes.

Disciplinary

Rick L. Terhune, D.D.S.

Motion by Ms. Aquillo, second by Ms. Missig, to approve the proposed consent agreement for Rick L. Terhune, D.D.S., license number 30-016504, case number 13-57-0335.

Motion carried unanimously.

Enforcement Update

Ms. Reitz began the report by informing the Board that there are six (6) cases pending hearings, all of which have been assigned. She stated that they had just completed their review of the hearing officer's report and recommendation that was listed in the report. She indicated that there were currently forty-six (46) licensees under suspension and informed the Board members that there were two hundred and ninety-one (291) active cases. Ms. Reitz said that there was one (1) licensee currently referred to QUIP, and seven (7) licensees actively participating in QUIP. She informed the members that there were fifty (50) cases which have been investigated and reviewed by the Board Secretaries and are recommended to be closed with five (5) warning letters issued.

Due to the requirement in Chapter 4715.03(B) of the Ohio Revised Code, that "A concurrence of a majority of the members of the board shall be required to... ..(6) Dismiss any complaint filed with the board.", Dr. McDonald reviewed the cases to be closed with the Board.

The following cases are to be closed:

14-25-0253	14-47-0324	14-25-0272-Warning
14-31-0152	14-85-0349	14-72-0339
12-47-0166	14-85-0370	14-73-0243
12-47-0122	14-57-0195	14-18-0347
12-39-0068	14-18-0330	14-50-0327
11-39-0437	14-43-0364	14-18-0245
12-39-0337	14-25-0011	14-76-0348
12-47-0230	14-25-0310	14-25-0314
11-39-0276	14-21-0311	14-18-0236
11-39-0367	14-18-0354	14-25-0271-Warning
11-39-0235	14-18-0332	14-52-0362
11-39-0277	14-18-0159	14-28-0331
14-31-0317	14-21-0328	13-48-0379

14-39-0014	14-25-0254	14-84-0177-Warning
14-71-0346	14-57-0026	14-55-0068-Warning
14-21-0312	14-31-0309	14-65-0358-Warning
14-78-0335	14-25-0313	

Prior to the vote to close the above listed cases, Dr. McDonald 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: Ms. Aquillo – No
Dr. Chambers – No
Ms. Clark – No
Dr. Das – No
Dr. Hanners – No
Ms. Johnston - No
Dr. Kaye – No
Dr. Leffler - No
Dr. McDonald – No
Ms. Missig – No
Dr. Shaffer – No
Dr. Smith – No

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

Motion by Ms. Johnston, second by Ms. Clark, to close the above fifty (50) cases.

Roll call: Ms. Aquillo – Yes
Dr. Chambers – Yes
Ms. Clark – Yes
Dr. Das – Yes
Dr. Hanners – Yes
Ms. Johnston - Yes
Dr. Kaye – Yes
Dr. Leffler - Yes
Dr. McDonald – Yes
Ms. Missig – Yes
Dr. Shaffer – Yes
Dr. Smith – Yes

Motion carried unanimously.

90-day Open Case Report

Ms. Reitz provided the members with a report on open cases over 90 days. She reported that there are one hundred and thirty-eight (138) cases currently over 90 days. She stated that of those; there remain only two (2) open cases that were initiated prior to 2012 due to litigation, there are less than twenty (20) that were initiated in 2013, and the rest were opened this year. Ms. Reitz stated that many of the remaining cases are under review with Board experts.

Executive Session

Motion by Dr. Leffler, second by Ms. Johnston, 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 and pursuant to Ohio Revised Code Section 121.22(G)(1) to discuss issues involving personnel.

Roll call vote: Ms. Aquillo – Yes
Dr. Chambers – Yes
Ms. Clark – Yes
Dr. Das – Yes
Dr. Hanners – Yes
Ms. Johnston – Yes
Dr. Kaye – Yes
Dr. Leffler – Yes
Dr. McDonald - Yes
Ms. Missig – Yes
Dr. Shaffer – Yes
Dr. Smith – Yes

Motion carried unanimously.

Dr. McDonald requested Ms. Reitz and Ms. Bockbrader to attend the executive session.

Open Session

The Board resumed open session at approximately 2:50 p.m.

Licensure Report

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 Ms. Clark, second by Ms. Johnston, to approve the licensure report for the following dental licenses issued by a regional board examination:

Elif D. Aksoylu
Aubrey V. Bateman
Daniel J. Breha
Michelle L. Furlong
Monther I. Hamdan
Samar Harake
Joshua M. Leavitt
Moshood B. Martins

Clarissa K. McDermott
Nicholas S. Morenz
Brent F. Newby
Jinhee Park
Patrick J. Petley
Dina Rasheed
Rashelle D. Salaita
Raquel D. Sebastian

John Siu
Brandon A. Smith
Reza Tahernia

Ricardo L. Vidal Gonzalez
Stacey E. Zaikoski

Motion carried unanimously.

Dental Hygienist(s)

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

Taylor B. Brumbaugh
Kelly L. Dempsey
Lindy P. Ewalt
Jessica M. Fercana
Rebecca L. Foltz
Brittany M. Gabriele
Ashley M. Glowacki
Martha L. Grate
Heather L. Hale
Cassandra S. Hale
Michelle K. Horrigan
Penny D. Liegel

Brittany N. Lyden
Brandi L. Maiese
Lindsay M. McCrady
Alex M. Miller
Malorie S. Nason
Samantha J. Ortmann
Batsheva R. Perl
Jennifer E. Reese
Kari N. Rigrish
Allison I. Shrewsbury
Jessica E. Walter
Jocelyn M. Warren

Motion carried unanimously.

Dental Assistant Radiographer(s)

Motion by Dr. Kaye, second by Ms. Aquillo, 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:

Hamde Abdirashid
Tanya Adams
Danisha Allen
Lynda Alston
Cheyane Anderson
Nikkeya Andrich
Victoria Andrix
Kelsey Arbogast
Gail Argentine
Mandana Bagheri
Theresa Baker
Tammy Ballard

Charles Ballour
Tracy Banford
Bianca Banner
Laura Barker
Sarah Bartlett
Stephanie Bauman
Ashley Bedlion
Mallori Bemis
Lacey Benson
Megan Bentz
Stephanie Beyer
Devin Bissett

Claudia Blankenship
Jade Bohanon
Lori Bolen
Erika Boystel
Mollie Brandel
Jessica Brown
Laura Brown
Montoya Brown
Shellie Brown
Sherri Bruce
Katharine Burdette
Phylicia Burgard
Kendel Butler
Summer Byers
Allisun Campbell
Keisha Carlin
Alison Caruso
Kerri Chakroff
Haley Clawson
Trisha Clifford
Jaclynn Coffman
Jade Cokes
Nicole Colagross
Ashley Collins
Ashley Collins
Mariah Collins
Tiffany Cooper
Leah Corcoran
Tracie Cordova
Sarah Cost
Desiree Cottrell
Michelle Coutts
Sonora Cox
Katie Cunningham
Demetris Curtiss
Tiffany Daugherty
Angela Davidson
Renee' Davidson
Melissa Davis
Elizabeth Deangelis
Rachel Dennis
Christine Devore
Amber Dinson
Raisa Done De Leon
Miranda Donnersbach-Fansher
Kori Dowell
Haley Dozer
Jena Drees
Sarah Dulaney
Jasmine Eastin
Alexis Etzler
Wendi Euton
Annette Fasnacht
Brittany Faulkner
Tiara Ferguson
Maritza Ferreira
Darine Fisher
Emily Fix
Erin Flanagan
Pinky Flanders
Samantha Ford
Susan Forsythe
Charles Foster
Emily Fox
Shannon Fox
Allison Gaiters
Alma Ganger
Tiffany Garrison
Lindsey Gehring
Rachel George
Jennifer Ghohestani
Katonnia Gilbert
Jamie Glasgow
Taylor Goch
Kayla Goodin
Karen Grant
Sherlaine Grant
Taylor Greathouse
Cheli Greenway
Anesha Gregg
Brittany Grimes
Ashley Grimm
Brittany Griner
Ashton Groeniger-Miller

Lindsey Groves	Stacey Konwinski
Rosalinda Guerra	Kelly Kroft
Brittany Gunter	Leigh Ann Kroskey
Tara Gween	Sarah Landek
Rebecca Haas	Amanda Lather
Heather Hampshire	Jessica Lemble
Courtney Harding	Elise Leonhardt
Sierra Hardy	Alexa Linz
Miranda Harms	Sabrina Lipps
Donna Harper	Megan Lisinski
Yasmine Harris	Taylor Loos
Nancy Paige Harrison	De'aaron Loxley
Amanda Hatten	Caitlin Lubera
Kataura Hatten	Jordan Lyle
Alexis Haymon	Kelsey Maitien
Megan Hays	Alexis Malcolm
Andrea Heban	Olivia Malone
Elizabeth Hernandez	Michael Mansour
Stephanie Hill	Michelle Markus
Hillary Hopkins	Desiree Mastache
Angela Hosier	Thondi Matthews
Hannah Hurdle	Katharine McCance
Hannah Huszar	Samantha McClenahan
Jacqueline Ioffredo	Sabrina McCleskey
Tyesha Irvin	Veronica McCollum
Alexis Johnson	Tiffany McEntyre
Amber Johnson	Jennifer McGaughey
Julesa Jointer	Amanda McGlothin
Elvia Jones	Brittney McGroder
Emily Jury	Kaitlin McGuire
Elizabeth Karrow	Victoria McKenzie
Daniel Kear	Sequoya McMullen
Karli Keaton	Lisa McNatt
Rachel Keller	Michelle Metzger
Randohl Keller	Theresa Mihalick
Miesha Kendrick	Elizabeth Miller
Brittany Kennedy	Shelby Miller
Monika Kidd	Ashley Milligan
Sydney Kilgore	Chelsea Montgomery
Taylor Kirsch	Shatia Moore
Lindsay Kirschner	Amber Morrett
Kerry Knipp	Allison Morris

Kimiko Morrison	Sarah Pryor
Averi Mounts	Kayla Pullins-Maurice
Connie Mouser	Sarah Rice
Jessica Murphy	Shannon Riley
Shawna Murphy	Tammy Risaliti
Kaitlyn Mutter	Natalia Riveros-Pereira
Emma Neal	Deborah Roberts
Christina Neeley	Shanna Roberts
Jodi New	Natalie Roddy
Dasia Newman	Halie Rogers
Kayla Nicoloff	Victoria Rolf
Michelle Noftz	Jamie Romano
Alexandria Nowak	Chelsea Roth
Emily Nowak	Rachel Rummer
Mikaiala Nuby	Sierra Russell
Jordan Ogle	Naomi Sakuma
Kristen O'Rourke	Jessica Sansom
Susan Oschip	Briauna Sargent
Amanda Owens	Kylie Sawyers
Kayla Panyard	Jenena Schaefer
Jennifer Parissi	Amy Schenek
Maryjo Parker	Ashley Schimmel
Kelly Parks	Emily Schirtzinger
Shweta Patel	Britney Scott
Megan Payne	Jesse Scott
Kendra Paynter	Amanda Seidel
Shawn Pearce	Heather Seifert
Robin Pearson	Alex Sherman
Danielle Peirson	Shakella Shirley
Mariah Perdue	Alexis Shockey
Priscilla Perkins	Rachel Siefert
Runesha Perry	Rachael Skibbe
Wendy Petruzzi	Jennifer Sklenar
Kaniesha Phifer	Edward Small
Jacinda Pickett	Kenneth Small
Railynn Poindexter-Hill	Hubbell Smith
Svetlana Porrello	Leslee Smith
D'arjene Porter	Lisa Smith
Desiree Price	Misty Smith
Virginia Price	Ra'niqua Smith
Traci Pringle	Rhayia Smith
Nicole Prouty	Bridget Snapp

Kayla Speckman
Krista Steiner
Deborah Steinhauser
Tanya Stemple
Kayla Stody
Katlyn Stoots
Ladorian Stoudenmire
Rachel Stover
Rachel Strayer
Sabrina Strothers
Megan Sturgeon
Anne Sullivan
Mahogani Sydnor
Brittany Tankersley
Tawni Taulbee
Marley Telek
Gabrielle Tillet
Ashley Tucker
Helinna Tucker
Ayrika Turner
Donnida Turner
Tracy Uher
Cheyenne Via
Chandler Waldemarson

Erica Ward
Chelsea Warren
Christina Washington
Matison Waters
Mikayla Welch
Rebecca Weyer
Neeley Wheeler
Aisha Whitfield
Michia Williams
Kristina Willis
Heather Wilson
Paige Wilson
Leah Winke
Meagan Winters
Elizabeth Wood
Kamaria Wooding
Presley Worstall
Maribeth Wozniak
Nancy Wright
Natalie Wright
Elizabeth Youngpeter
Dawn Yunker
Catherine Zaye

Motion carried unanimously.

Limited Resident's

Motion by Ms. Johnston, second by Dr. Kaye, to approve the licensure report for the following limited resident's license:

Elisabeth A. Banasik

Motion carried unanimously.

Limited Continuing Education

Motion by Dr. Kaye, second by Ms. Aquillo, to approve the licensure report for the following limited continuing education licenses:

Ross R. Nelson

Sunshine A. Mullins

Motion carried unanimously.

Limited Teaching

Motion by Dr. Kaye, second by Ms. Aquillo, to approve the licensure report for the following limited teaching license:

Juan Troconis

Motion carried with Drs. Chambers, Hanners, Leffler and Ms. Missig opposed.

Coronal Polishing

Motion by Ms. Clark, second by Dr. Chambers, 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:

Elizabeth M. Anderson

Toni M. Bone

Ashley M. Boulis

Terri L. Clark

Amy L. Coldwell

Christina Y. Cowman

Karryl C. Hynd

Andrea M. Lamp

Diane M. Long

Shelley K. Meyer

Marta L. Motter

Austine N. Mundy

Bethany LM Papp

Rebekah J. Pope

Stephanie L. Rechsteiner

Mercedes S. Robb

Brittany S. Simpson

Karen S. Wagoner

Kimberly A. Ward

Alicia K. White

Motion carried unanimously.

Expanded Function Dental Auxiliary

Motion by Ms. Clark, second by Dr. Kaye, 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:

Brooke A Alexander

Danielle Anderson

Jessica A Ardner

Marianne Ashman

Lexie R Ball

Sheena M Balog

Nicole Barker Lockerby

Elyse Barkett

Evgenia Barnhart

Tara N Beckley

Jennifer N Bennett

Tiffany A. Bowman

Sara Buddo

Brittany L Carr

Sara E Clark

Carmen E Clock

Brittany K Dellagatta

Darcy L Deluna

Amy E Deweese

Jurgita V Diceviciene

Shawna R Dingey

Jennifer Dollenmeyer

Julie L Farr

Laura M Fellure

Meghan Greening	Karley M Nair
Grace K Gross	Maryam Oroji
Megan Hall	Allyson E Ortlepp
Lindsay M Harris	Jennifer L Parissi
Samantha C Hayek	Krista D Petty
Sarah D Hendricks	Whitney L Reis
Leland C Henwood	Amanda Rieker
Hillary Hopkins	Syed Salahuddin
Teresa L Jacofsky	Sarah Sanders
Vanessa A Johnson	Sabrina L Sasinouski
Rachel Kane	Kacie Saylor
Emily M Kays	Erin Scaduto
Zamzam O Khalif	Jessica Shouse
Lindsey J Kunkler	Christina E Simeone
Alla F Lawson	Galina Snyder
Denise E Le	Trisha K Stanley
Jennifer E Maess	Kelly Thwaites
Carmen C Marengo	Amanda L Trisler
Xavier Matias	Nicole M Turek
Jamie L Maxwell	Eunice Vado
Erin Q Mays	Mary E Walcott
Christopher McDaniel	Brittany Warner
Holly L McDowell	Christina M Weber
Lisa M McGregor	Ashley N Welker
Carrie A Mickey	Kelly N Wentink
Lyndsey N Miller	Mary M Wildermuth
Marci R Morrison	Christina M Wood

Motion carried unanimously.

Oral Health Access Supervision Permit(s)

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

Dentist(s)

David Knight, D.D.S. – Rocky River
Kim Oberlander, D.D.S. - Cincinnati

Dental Hygienist(s)

Sheryl Williams

Motion carried unanimously.

Anesthesia Permit(s)

Motion by Dr. Kaye, second by Ms. Johnston, that based on the information provided by the Board's Anesthesia Consultant, the following individual has applied for an anesthesia permit and the applicant is recommended to receive a permit.

Dr. Gary H. Wilcox, Jr

Motion carried unanimously.

Conscious Sedation Permit(s)

Motion by Dr. Kaye, second by Ms. Aquillo, that based on the information provided by the Board's Anesthesia Consultant, the following individuals have applied for conscious sedation permits and the applicants are recommended to receive permits for the specified modality.

Dr. Jonathan W. Draney – Non-intravenous parenteral

Dr. Jillian Gray – Oral for children 12 years or younger

Dr. Patricia Hannahan - Intravenous

Dr. Christopher Heck - Intravenous

Dr. Drew Meyers - Intravenous

Dr. Charles Moorehead - Intravenous

Dr. Thomas Niederhelfman - Intravenous

Dr. Vikas Puri - Intravenous

Dr. Charles Stevens, III - Intravenous

Motion carried unanimously.

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

Motion by Dr. Kaye, second by Dr. Das, that the following applicants have met the requirements necessary to obtain licenses to practice dentistry in Ohio as graduates of unaccredited dental colleges outside the United States:

Dr. Joseph N. Abiad

Dr. Husam M. Najag

Motion carried with Dr. Hanners and Ms. Missig opposed.

Reinstatement Application(s)

Motion by Dr. Kaye, second by Ms. Johnston, to approve the following reinstatement applications for licensure in Ohio:

Dentist(s)

Kyle W. Reynolds, D.D.S.

Dental Hygienist(s)

Angela D. Theriault, R.D.H.

Michele A. Yee, R.D.H.

Motion carried unanimously.

Ad Hoc Board Operations Committee Report

Dr. Kaye informed the Board that the Ad Hoc Board Operations Committee met earlier that morning and had invited Dr. Jerry Goldberg, former Dean of Case Western Reserve University College of Dental Medicine to speak to them. He stated that Dr. Goldberg had spoken about other professional associations in their relationship to dentistry and where we need to recognize systemic issues. Dr. Kaye stated that they had discussed and talked about managing systemic issues in relation to dental disease, about furthering that discussion and about possibly developing policies related to managing systemic issues as they relate to the treatment of dental disease.

Dr. Kaye informed the members that the Committee had reviewed that position descriptions for the Executive Director and the Assistant Director that have recently been approved by the Department of Administrative Services.

Continuing, Dr. Kaye said that they had briefly gone over the new draft Enforcement Manual and have instructed all the Board members to look it over and make suggestions at the next meeting towards the eventual adoption of that manual.

Lastly, Dr. Kaye stated that there is a position opening in QUIP and that the Board is also in need of more expert witnesses. He stated that Ms. Reitz had drafted some verbiage and is requesting it be put out on the Board website asking the dental community for suggestions on persons to fill those positions. Ms. Reitz informed the member that the postings will remain on the website until the end of the year and that the notices request that any resumes be submitted by the end of year. She stated that the Supervisory Investigative Panel will vet the applications and make recommendations to the Board, once they have been reviewed by the Board executive office.

Dr. Kaye then took a moment to express the Committees thanks and appreciation to Ms. Reitz and Ms. Franks in the development of the new Enforcement Manual.

Education Committee Report

Ms. Johnston informed the Board members that the Education Committee met earlier that day and reviewed three (3) Biennial Sponsor Renewal applications for 2014-2015. She stated that the Committee was recommending approval of all the sponsor applications as meeting the requirements set forth in the Dental Practice Act. Ms. Johnston stated that the approval for Northcoast Endodontic Specialists would be pending receipt of missing application information that has been previously requested.

2014-2015 Biennial Continuing Education Sponsor Renewal Application(s)

Assist 4 Dentist, L.L.C.

Greater Cincinnati Dental Study Club

Northcoast Endodontic Specialist

Additionally, Ms. Johnston stated that the Committee received a request for approval of an Anesthesia/Conscious Sedation Permit Renewal course from the Ohio Dental Society of Anesthesiology. She stated that based on the recommendation from the Boards Anesthesia Consultant, Dr. Doug Wallace, the Committee is recommending approval of the course.

Review of Course(s)

Anesthesia/Conscious Sedation Permit Renewal

Ohio Dental Society of Anesthesiology

“2014 Annual Scientific Session”

Concluding, Ms. Johnston stated that the Committee opened up discussions regarding continuing education for license/registration/permit holders who are not currently required to obtain relevant continuing education for renewal. She stated that the Committee would continue their discussion at the next meeting in December.

Motion by Ms. Missig, second by Ms. Aquillo, to accept the report and approve the applications and permit renewal course.

Motion carried unanimously.

Policy Committee Report

Dr. Shaffer stated that the Policy Committee had met that morning and considered several policies. She stated that they had decided that the policy regarding sharps would be referred back to the Law and Rules Review Committee to be defined by rule rather than policy.

Continuing, Dr. Shaffer stated that the Committee had considered a policy regarding the definition of surgery and again had decided that this should be defined in rule. Therefore, she stated that it has been referred to the Law and Rules Review Committee for defining rule.

Dr. Shaffer stated that the Committee had been working on developing a policy on prescribing, specifically in regards to self and family members. She stated that the Committee has determined that this issue requires further research and discussion and therefore they have tabled their discussions until their next meeting.

Lastly, Dr. Shaffer informed the members that considered an educational policy concerning the allied health hours for dental hygiene education. She stated that it was decided this issue was best handled by a letter of support from the Board.

Motion by Ms. Johnston, second by Dr. Dass, to approve the Policy Committee Report.

Motion carried unanimously.

Law and Rules Review Committee Report

Dr. Leffler explained that the Law and Rules Review Committee had not met that day. However, he stated that in light of the report, discussions and a referral from the Policy Committee, he was recommending draft language be considered by the Board for inclusion in the rules currently being reviewed by the Board. Dr. Leffler recommended the following language be included in the Board's considerations in December:

"Surgery" means any procedure that involves cutting or otherwise infiltrating hard or soft human tissue; including but not limited to, gingival, bone and tooth structure, by mechanical means, including laser surgery, ionizing radiation, therapeutic ultrasound.

A brief discussion followed wherein it was determined that this definition was in regards to the procedure itself and not in regards to the dental personnel performing the procedure.

Motion by Ms. Johnston, second by Ms. Clark, to accept this definition of "surgery" for inclusion in the amended rules for consideration at the December Board meeting.

Further discussion resulted in the word "therapeutic" being added to "ionizing radiation".

Motion by Ms. Clark, second by Ms. Aquillo, to amend the language to read; "...laser surgery, therapeutic ionizing radiation, therapeutic ultrasound."

Motion carried unanimously.

Motion by Ms. Aquillo, second by Ms. Clark, to accept the amended motion.

Motion carried unanimously.

Supervisory Investigative Panel Report

Dr. Shaffer, as Secretary, attested that she had spent in excess of twenty (20) hours per week attending to Board business. Dr. Das, the Board's Vice Secretary, attested that he had spent in excess of twenty (20) hours per week attending to Board business.

Motion by Dr. Leffler, second by Ms. Johnston, to approve the Supervisory Investigative Panel report.

Motion carried unanimously.

Executive Director's Report

New Office Staff

Ms. Reitz introduced two (2) new to the Board, Samantha Slater, who joined the staff at the end of September is working with Ms. Smith on processing renewal applications. She then introduced Pamela Cartwright from Idaho, and stated that she is the individual hired to replace former Fiscal Officer, Linda Daubenmire. Ms. Reitz stated that Ms. Cartwright will be handling travel expenses and processing

payments. She commented that she had offered Ms. Cartwright the job on Friday and she started work the next Monday.

American Association of Dental Administrators (AADA)/American Association of Dental Boards (AADB) Meetings

Ms. Reitz distributed folders to all the Board members which included several documents. She indicated that the first document was her report from the American Association of Dental Administrators (AADA)/American Association of Dental Boards (AADB) Annual meetings. She pointed out a few things to highlight were:

- On page 2 of the memo there was a presentation from a group called Affiliated Monitors, a private company out of Massachusetts that provides independent monitoring services for state boards. So for example, if we want to have a dentist's practice monitored for a period of time we could ask this group. Their services are independent and it is what they do. If at any time in the future we would need that, they are available.
- On page 6 we had representatives from all the regional testing agencies talk to us about things going on with the various examining entities. It was very interesting because, as you know, CRDTS, NERB, and SRTA all administer ADEX. The director of ADEX explained that they are a test development agency not a testing agency. SRTA, CRDTS, and NERB administer ADEX but SREB does not. When WREB was asked why they have not joined to administer ADEX, they said that they believe they are a national exam. Apparently we still have a lot of work to do to get everyone together to administer one exam.
- Next was some of Ms. Reitz information with respect to her participation in AADB. As Chair of the Attorney Roundtable they had a separate agenda. However, many attorneys wanted to sit in on the general session for some lectures and she listed the ones she attended.
- Ms. Reitz gave a presentation at that meeting about corporately owned dental practices and then highlighted some of the issues they had discussed as attorneys for the boards.

Ms. Reitz informed the members that Dr. Shaffer had also attended the AADB meeting and wished to make some comments.

Dr. Shaffer informed the Board that the President of the American Dental Association, Dr. Chuck Norman, gave an address on dental education and licensure and how the curriculum integrated format is working for ADEX. She stated that there were many conversations and a presentation on sleep apnea, diagnosis and treatment indicating that these same issues before the Ohio board are the same as those issues before the AADB.

Dr. Shaffer commented that the one major issue that she felt would be of interest to the Board was a presentation by Robert Compton, D.D.S., Executive Director of The DentaQuest Institute was in conjunction with Delta Dental and the Dental Quality Alliance (Alliance). She stated that Dr. Compton was asking the AADB to be a part of a panel and was providing information on the Alliance. Dr. Shaffer explained that Dr. Compton had detailed how the Alliance had been statistically collecting data from every NPI, the number used when submitting claims to insurance companies, Medicaid or Medicare. She then detailed how the

data was being tracked and used to develop mean and standard deviation numbers which will eventually be reported back to the insurance companies. Dr. Shaffer further stated that they will be utilizing this information as an outcomes assessment tool in the future for payments and that this will ultimately become like a public report card. She stated that this is all being put into play by the Affordable Care Act and that these quality assurance measures would eventually pay.

Ms. Reitz noted that one thing brought to her attention at the Administrators meeting and the Attorney Roundtable meeting was the existence of the American Association of Dental Specialties. She said their purpose apparently is to push for recognition of additional specialties.

U.S. Supreme Court Oral Argument – North Carolina State Board of Dental Examiners vs. Federal Trade Commission

Ms. Reitz highlighted her next report, which had previously been e-mailed regarding the U.S. Supreme Court oral argument for the North Carolina State Board of Dental Examiners vs. the Federal Trade Commission. Ms. Reitz gave a summary and state that subsequently, it came to her mind after the presentation that she gave on corporate dentistry, following a presentation by the Dental Service Organization group and she learned that twenty-six (26) State Attorneys General filed amicus briefs supporting the North Carolina Board, and Ohio was one of them.. She stated that an amicus brief in support of the FTC was filed by the Association of Dental Support Organizations (DSO's). She indicated that the brief set the stage for what is coming down the pike with respect to DSO's. Ms. Reitz read introductory statements which stated, to restrict competition, state dental boards in recent years have actively sought to limit or exclude DSO's from their market and have undertaken a variety of restrictive activities that restrict DSO's from operating efficiently and effectively. Such anti-competitive practices by state dental boards have resulted in higher cost to patients and less dental care to underserved communities to the detriment of dental patients in this country.

Citizens Advocacy Center Report

Ms. Reitz next presented her report for the Citizens Advocacy Center, where she was asked to be a faculty. She stated it was really a very interesting meeting.

QUIP Presentation – Maryland State Board of Dental Examiners

Ms. Reitz next report was from her meeting at the Maryland State Board of Dental Examiners which was also previously e-mailed to the members. She stated that she spoke on the Boards Quality Intervention Program (QUIP) and then spent a day with their enforcement staff. She stated that they had a lot of questions about what we do, etc. and she shared much information.

2014 Workforce Plan

Continuing on, Ms. Reitz explained that she spent days and hours on the 2014 Workforce Plan, and wanted to share the meat of it. She stated that she did not include all the tables that are needed for the plan. She stated that she wanted to share with the members as an FYI note on the last page is the new Table of Organization with the updated responsibilities of the Executive Director and Deputy Director.

Governor's Cabinet Opiate Action Team

Ms. Reitz continued by sharing that on November 4, she met with Director Cantor-Burman, who is one of the Chairs of the Governors Cabinet Opiate Action Team. She stated that she was not quite sure what Director Cantor-Burman wanted to discuss with her, but knowing that she was the C-chair of the Opiate Action Team and the committee was considering creating a subcommittee to discuss guidelines for prescribers when prescribing for acute pain, Ms. Reitz had done some research in preparation.

Ms. Reitz stated that the Director indicated that she would like the Dental Board to be involved to educate this committee about dentists and their prescribing habits and patterns. She said that the Director asked that the Board write a practitioner or two who might want to consider participating on this subcommittee which will begin meeting in January. Ms. Reitz said an oral surgeon would be good, and she asked the Board's Anesthesia Consultant, Doug Wallace, D.D.S., if he might be interested. She stated that his concern was since the committee meets every month it might be good to have someone local so they would not have to take an entire day off. Ms. Reitz indicated that this person does not necessarily have to be a Board member. She stated that she told Director Cantor-Burman that she would share this at this Board meeting and go from there. She stated this is the Board's opportunity to remain involved.

Oral Health Access Supervision Program Report

Ms. Reitz presented the Board's Oral Health Access Supervision Program (OHASP) Report, thanking Ms. Cartwright for her help. She stated that the Board has all of these applications and all of these reports that were submitted for the past few years. Ms. Reitz noted that there was nothing to report for 2011, there was some activity in 2012, and she was pleased to learn of the numbers for 2013. She explained that the number of patients who received dental hygiene services from dental hygienists providing services under their permit (and that includes practicing under a dentist's supervision) was 5,245 patients. She stated that the number of patients who received a clinical evaluation from a dentist following those clinical services was 5,090. This year, Ms. Reitz stated she will provide this report to the Governor's office so we now have a report. She noted that the number and geographic location of facilities at which dental hygienists provide services was 2 facilities in 2012 and 23 facilities in 2013 and that these services are only being done by 23 dental hygienists and 21 dentists.

Military Personnel – Report

Ms. Reitz commented that it had come to her attention that the report on the number of military and veteran dentists, dental hygienists and their spouses that she previously reported last month may have been in error. She stated that she would update the members once she received the correct information.

Award – Minority Business Enterprise

Concluding, Ms. Reitz noted that the Board had again received the Minority Business Enterprise (MBE) award and attended the event which recognized the Board exceeding the minimum 15% spending requirement for purchases through the MBE vendors program for the State of Ohio.

Anything for the Good of the Board

NERB Steering Committee

Ms. Reitz informed the members that she had received a letter from David Perkins, D.D.S., Chair of the North East Regional Board of Dental Examiners, Inc. regarding submission of names for delegates to the Steering Committee. Members briefly discussed current delegates and determined that any recommendations should be submitted prior to the meeting in December.

Board Meeting Schedule

Ms. Reitz informed the members that she had recently been made aware of a conflict with the November 2015 Board meeting. She stated that the AADB would be holding its annual meeting sometime during the first week in November, 2015. Discussion followed wherein it was determined to revise the 2015 Board meeting schedule as follows:

February 4	July 22
March 11	September 16
May 13	October 21
June 3	December 9

Holiday Party

Dr. McDonald informed the members that they would be holding their annual holiday dinner on Tuesday, December 2, 2014, the evening before the next Board meeting. He stated that he will be inviting all former Board members to attend the dinner and the Board meeting on the following day to recognize them for their accomplishments and duty to the Board and the practice of dentistry.

Board Member Recognition

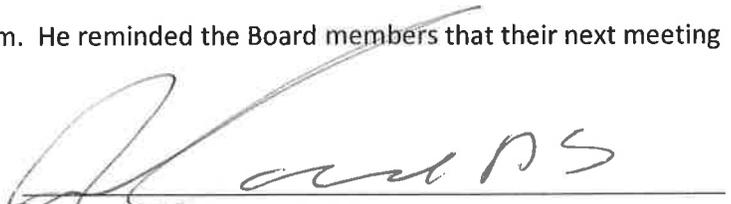
Dr. McDonald took a moment to congratulate Susan Johnston, R.D.H. for recently receiving the Outstanding Effort Award from the American Dental Hygienists' Association. He noted also that her daughter had just been awarded the Bronze Star Medal.

Clerk 1 Posting

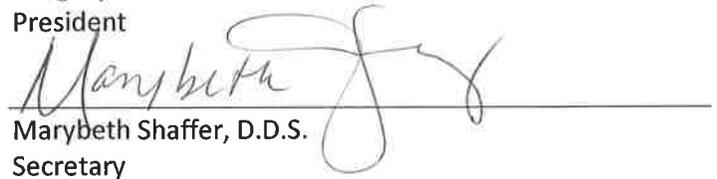
Ms. Reitz informed the members that the Clerk 1 position in the Board executive office had been posted. She stated that they had received 587 applications for the position. Ms. Reitz informed the Board that one of the applicants for the position was the former Board employee who resigned from the position in November, 2013 due to personal reasons, and she was one of the candidates selected for interview. Discussion ensued wherein Ms. Reitz clarified questions from the Board members. Dr. Leffler stated that the Board members should defer to Ms. Reitz, as it is her responsibility to determine the best candidate for the position.

Adjourn

Dr. McDonald adjourned the meeting at 4:13 p.m. He reminded the Board members that their next meeting would be December 3, 2014.



Gregory A. McDonald, D.D.S.
President



Marybeth Shaffer, D.D.S.
Secretary

Appendix A**MEMORANDUM**

TO: BOARD MEMBERS

FROM: LILI C. REITZ, Esq.
Executive Director

RE: AADA/AADB Annual Meeting Report

DATE: October 21, 2014

I attended the American Association of Dental Administrators (AADA) and the American Association of Dental Boards (AADB) Annual meetings in San Antonio, Texas, in October, 2014.

AMERICAN ASSOCIATION OF DENTAL ADMINISTRATORS

October 5-6, 2014

We began our meeting with presenting two new AADA awards.

The Award for Innovative Leadership was presented to Bobby White, Director of the North Carolina Board of Dental Examiners, for all his work related to the FTC lawsuit. The Diamond Award for Commitment and Contributions to the AADA went to Diane Howell, director of the Mississippi Board of Dental Examiners for all she does for us, from meeting preparation to the website to meeting planning and organizing, which she has been doing since before I was a member of AADA.

Next on the agenda was an open discussion about how states engage in practice monitoring for licensees needing education and monitoring. Oregon discussed how they use AGD faculty mentoring agreements, which are public record. Colorado trains experts to monitor licensees as needed, and again these arrangements are public record.

I explained Ohio's QUIP program, to which there was much interest, and I was asked to possibly present this information formally at next year's meeting. DC and Washington have separate departments for compliance monitoring for various professions, which I compared to the work Heidi does in monitoring of Board consent agreements and orders. In these states, a licensee is assigned a compliance manager (similar to probation officer), wherein they report in and provide documentation to show compliance. Licensees are required to obtain a mentor who then must be approved by the Board and report to the Board compliance of the licensee being monitored, to the compliance manager.

We then had a presentation by Affiliated Monitors, Inc. They are a private company that provides independent compliance monitoring services for state boards, and the fees are paid by the licensee being monitored. The fee is \$450/hr. for actually monitoring services. A monitor will conduct interviews, review records, conduct inspections, and write a report with recommendations. Affiliated Monitors does not charge for the time to write the report. Typically they monitor licensees for two (2) years.

Next the subject of expert witnesses was discussed: how Boards select and utilize experts, pay them, etc. It was interesting to learn that in some states, the expert report is not discoverable.

It was mentioned that the AADB is now providing training for experts that can be utilized by boards to assess information, treatment, standard of care, etc.

As is done every year, we heard from everyone present as to what is happening in each's respective states.

Group Roundtable

Tennessee (umbrella)

- Now requiring ethics and jurisprudence exam for all new, renewal and reinstatement applicants.
- Due to \$3M surplus, they lowered licensure and renewal fees.

Idaho (independent)

- Used DPrep in a case, was effective/beneficial

Arizona (independent)

- Under microscope due to issues with Medical Board
 - o All Board members now required to get 12 hours of training in order to serve on the Board
- Right now they are unable to issue new licenses because the FBI won't release to the Board results of background check. New permit categories. Medical Board posting all convictions on website; no board wanting to do that so not issuing licenses.
- Sued by licensee for \$20M

Maryland (independent)

- Licensees physically threatening Board members and staff, so increasing security at their office location.
- Proposed regulations for dentist offices run by dental management companies, met with much resistance.
- Standard of care legislation effective October 1.

Washington (umbrella):

- Rule changes regarding dental assistants, anesthesia, prescribing.
- Issues with dental management organizations wanting to "maintain" dental offices.

- Legislation pending for all professions to offer alternative to discipline in form of remediation.

Minnesota (independent)

- Board supports dental therapy. 42 dental therapists licensed.
- Seeking requirement for background checks
- Also seeking legislation to do random infection control inspections, and continued competency testing for dentists

Missouri (umbrella)

- Dealing with issue of possible deregulation of some professions, as boards are “barriers to employment”.

Oregon (independent)

- Now require mandatory 2 hours CE in infection control.
- All licensees now required to have basic life support
- Expanded function dental hygienists work independently doing hygiene and can prescribe fluoride and antimicrobials

North Carolina (independent)

- Thanked 23 states for amicus brief filings in support of North Carolina (no states filed in support of FTC)
- Had 2 egregious sedation deaths: one dentist license revoked, one dentist 10 year suspension and lost sedation permit.
- Former revoked dentist John Robert Hall resurfaced and is practicing dentistry in Costa Rica: medical tourism.

North Dakota (independent)

- Update anesthesia site evaluation
 - o CRNA’s can do general dentist office evaluation
- need definition for “actively practicing dentistry”.

Mississippi (independent)

- Frustrated with inability to get local anesthesia for hygienists

DANB

- has a dental assistant credentialing tool on website: all exams taken are listed.

Colorado

- Now has CE requirements: 30 hours every 2 years for dentists and hygienists
- Now has fining authority
 - Up to \$5000 for DDS
 - Up to \$3000 for RDH
- CE for anesthesia: 17 hours every 5 years
- Use of lasers is an issue
- Limited prescribing for hygienists
- Accepts PGY1 and portfolio for licensure

- Licensees have to report ARRESTS for any drug charges to Board within 30 days

Ohio

- OARRS/Prescription Drug issue update
- Staff changes
- Sohi Update (due to questions)
- Impairment case discussed
- Matrix

Oklahoma (independent)

- CDC case, Dr. Harrington, permanent surrender
- Trying to fine corporations for failure to produce records
- “Professional Corporations Act” every shareholder of professional corporation must be licensed professional
- Clear background check service \$300/mo.
- If have DEA license, cannot employ anyone with criminal drug history

Virginia (umbrella)

- PMP use required for dentists
- Rending rules for “remote supervision” for RDH’s (access driven)
- Corporate dentistry is issue
- Authenticity of digital dental records is concern

Arkansas

- Orthodontist practicing outside scope is suing Board

Louisiana

- Lawsuit by revoked dentist, dentist said board conspired to revoke him because he was going to testify against LSU dental school. Had to turn over investigative file.

Georgia

- Went from umbrella board to independent
- new rules for contested cases before board
- Teeth whitening issues

DC

- Finding practice management groups really owning practices and hiring new grads. Ebrihimi in many states.
- Licensees donating services to Mission of Mercy
- Association asking to make advertising a priority

Hawaii

- Anesthesia cases: 2 deaths and one 21 year old in coma.
- RICO: Regulated Individuals Complaints Office (?)

Day 2

Regional Exam discussion. Representatives from NERB, WREB, SRTA and CRDTS all given opportunity to share information.

WREB

When asked why WREB doesn't join a national exam, the response was that WREB considers itself a national exam. The written exam can now be taken before graduation. Remediation is required after 3 failures, if one continue to fails, more remediation is required.

CRDTS

An applicant is required to submit a letter from a state Board stating that they are eligible for licensure if the examination is passed. They do not have a computerized exam for treatment planning but believe it is covered in the exam, coupled with what is tested on the national boards. The manikin is offered in the fall, and patient exam is in the spring. Remediation is target based, and failures during the school year do not count against the rule that after 3 failures, remediation is required.

ADEX

ADEX is not a testing agency but rather a test development agency. NERB, SRTA and CRDTS all administer the ADEX exam (43 states). 34 states are members of ADEX. Every state Board sends a member and gets a vote on the examination committee, and any changes accepted are applied to everyone. Testing agencies agree to administer the exam by contract. The contract requires administering the written and clinical portions, and perio is optional. This decision to make perio optional was based on a national occupational analysis.

SRTA

SRTA has 8 member states, and their exam is totally computerized. They have an exam committee so that what the member states want can be represented to ADEX.

NERB

NERB has 27 member states. NERB wants to create a database comprised of exam scores for all regional testing agencies.

Next on the agenda was a presentation by Affiliated Monitors, Inc. This is an independent monitoring company out of Massachusetts that will provide monitoring services for boards, for licensees who are required to have practice monitoring, or impairment monitoring by their respective Boards. Affiliated Monitors, Inc. (AMI), offers monitors who are qualified, unbiased, no conflict issues, and these monitors provide reports to the Board based on the agreement between the licensee, board, which AMI follows.

The monitors provide an skills assessment, they do audits and review records, the conduct interviews and inspections, and they make recommendations for improvement.

The cost to the licensee is \$450/hr. There is no charge for report writing. Typically 10-15 charts are reviewed per month, which typically takes 3 hours. AMI recommends monitoring for 2 years.

Finally, the administrators had an open roundtable discussion regarding the necessity and appropriate use of expert witnesses.

BUSINESS MEETING

- o April 25-26, 2015, mid-year meeting, Chicago, IL
- o November 1-2, 2015, annual meeting, Washington, DC

The AADA elected its 2014-2015 officers. These officers are:

- o President: Cindy Durley, DANB
- o President-Elect: Elaine Hugunin, Arizona
- o Vice-President: Brian Barnett, Missouri
- o Secretary: Susan Miller, Idaho
- o Treasurer: Diane Howell, Mississippi
- o Immediate Past-President/AADB Executive Council:
Mo Miskell, Colorado

Considering a new AADA name and logo. Tabled, along with By-Laws changes, until new name agreed upon, if any.

AADB Attorney Roundtable

October 7-8, 2014

Our agenda included sessions from the AADB General Session and our own discussions. This included:

GENERAL SESSION:

- Sleep Apnea/Sleep Disordered Breathing – Saving Lives in the Dental Office
- Dental Support Organizations for Dentists Working in Group Practices.
- Dr. Sam Shames, Gentle Dental Partners of New England
- Corporately-Owned Dental Practices
- Lili C. Reitz, Esq. OH

Attorneys Present:

Lori Roberts, Esq., public member, Ok
Susan Rogers, Esq., OK
Panravee Vongiaroenrat, Esq., DC
Liz Gagan, Esq., WY
John Hunt, Esq., NV
Bobby White, Esq., NC
Mary Williams, Esq., AZ
Brittany Novotny, Esq., SD
Grant Gerber, Esq., MD
Izzy Jenkins, Esq., public member, MD
Sara Boeshang, Esq., MN
Rusty Hickham, Esq., LA
Nyria Deal, Esq., TX
James Casey., Esq., WV
Lili C. Reitz., Esq., OH

Presentations and Discussions:

Botox Policies:

The members discussed various policies involving the administration of botox by dentists in their states. I shared OH's practice within the scope of dentistry, NV limits use of botox only to OMFS, TX allows its use only for dental and TMJ purposes, OK says use of botox in head/neck area is acceptable, LA has policy that allows it only if can demonstrate that 10 areas of training are covered.

Teledentistry

Some states starting to address this issue. Questions about tactile and observation, "live" impressions were discussed. Consider as topic for next year.

Unlicensed Practice

Discussion of Dental Works: Contracts, they own building, equipment, records, software.....concern when businesses are paid based on % of fees. If paid 10% gross, and there is an 8% margin, actual dentists get nothing.

Look at activities that constitute control, look at how services are bundled.

Other issues:

Corrective Action vs. Consent agreement....not reported to NPDB. Corrective Action is a remedial plan, public record just not reportable as discipline. Only used for first offenses. Includes reimbursing Board for cost of investigation. Sets the stage for any future action.

Presentation to AADB Membership

Update on DEA/Drug laws
FTC case update

Chairs for Spring 2015 Mid-Year Meeting
Lili C. Reitz, Esq., OH
Grant Gerber, Esq., MD

Appendix B

MEMORANDUM

TO: BOARD MEMBERS

FROM: LILI C. REITZ, Esq.
Executive Director

RE: United States Supreme Court Oral Argument
North Carolina Board of Dental Examiners v. FTC

DATE: October 21, 2014

As you know, I had the privilege to attend the oral arguments in the United State Supreme Court On October 14, 2013 on the case involving the North Carolina Board of Dental Examiners v. FTC.

The night before the argument I was invited to a dinner with the NC Board members and the lead attorney from Jones Day that was representing the Board, and others. I sat next to attorney Glen Nager and it was so interesting to hear his take on the case. The next morning, we all met at the Jones Day offices and walked together to the United States Supreme Court. Unfortunately I was unable to head to the counsel room so I waited in line with another Jones Day attorney. We were unable to observe the first oral argument, but we did make it for our case. When your number is called in the lawyer's Lounge, you are escorted by security to a specific seat in the courtroom. It was worth the wait, as I was in the first row with other member of the Supreme Court Bar, right in the center behind counsel tables.....about 30 feet from the bench! It was amazing.

The Jones Day attorney for the NC Board, Hashim Mooppan, did a brilliant job in my opinion. It was his first argument in the US Supreme Court. Each side is given 30 minutes to present their arguments. Hashim took no notes to the podium. He presented his arguments and was asked numerous questions from the Bench. He handled them all, and in fact knew sentences of paragraphs from pertinent cases by heart.

The attorney for the Government wore the standard uniform of a suit coat with tails and pinstripe pants. I was not as impressed with his performance, but then again I am not impartial.

The primary issue before the Court is whether state-established boards can regulate their occupations without fear of being accused of violating federal antitrust laws.

Stated another way: Whether a regulatory board created by state law can be exempt from federal antitrust law, even if most of the Board's members earn their livings from the profession they're overseeing.

This case stems from an action taken in 2007, whereby, after receiving numerous complaints, the NC Dental Board issued cease and desist letters to bleaching kiosks, salons, and malls offering teeth whitening services, etc., stating that this was the unlicensed practice of dentistry. The NC definition of dentistry includes the removal of stains and accretions from the human teeth.

The FTC brought action against the Board stating that the Board had engaged in unfair competition in the teeth whitening market by preventing lower cost competitors who are not licensed dentists from offering teeth whitening services.

Hashim's opening comment was: "A state regulatory agency does not lose its state action antitrust immunity simply because the agency is run by part-time public officials who are also market participants in their personal capacities."

He argued that respect for federalism requires deference to a State's sovereign choices concerning how to structure and manage its own regulatory agencies. He said that states obtain valuable benefit from using market participants as part-time public officials based on their expertise. He explained that the states should be given deference to how they choose to regulate, and the simple fact that the Board is comprised of some market participants doesn't change the fact that they are a state agency.

To make this point he explained that Board members take an oath to enforce state law, they are required to comply with state administrative laws, ethics, and procedures, and to protect the public; they are fiduciaries of the state. He said the issue of how to deal with any board who may not be doing what they've sworn to do should be managed by the state, not the federal government.

Judges had questions about the inherent conflict for a dentist Board member, whether elected by peers, appointed by the Governor, recommended by the association, etc., to protect their own self-interests, however many acknowledged the need for professionals to make decisions about their given professions, as opposed to a group of disinterested bureaucrats doing the same. The FTC conceded that the issue was not how the dentists got put on the Board, but rather it was their inability as dentists to put the needs of the public before their own self-interests (a statement that somewhat offended me). He stated that a majority of dentists on the Board constituted a "decisive coalition". Justice Scalai said, "Do you really think that the financial interest of the individual members of the board is going to be significantly affected? Of each individual member of the board? My goodness. I find that hard to believe."

In this case the NC Board members were addressing the issue of what constitutes the practice of dentistry, which is a clearly articulated policy given to the Board. Hashim noted that the Dental Practice Act says that only licensed dentists can practice dentistry, and that is on its face inherently anticompetitive, which is acceptable as long as it is a clearly articulated policy. The FTC didn't argue that the law is a clearly

articulated policy, but they claim that the dentists on the Board interpreting what is the practice of dentistry is suspect. The FTC stated that when these determinations are made by market place participants, there cannot be impartiality due to the dentists' own self-interests, and therefore, active supervision is required. The judges, whether they agreed with that premise or not, seemed to have difficulty in determining what that would look like, and acknowledging that professionals would not be willing to serve on these regulatory boards if they would subject themselves to antitrust litigation, penalties, damages, attorneys fees, etc.

Justices Breyer and Scalia noted that a decision in this case will affect not only dentists, but also used the example of neurosurgeons, noting that they would want neurosurgeons making decisions about who should practice and the scope of practice, not disinterested parties. Justice Breyer said, "[If you are not going to give deference to the expert board's determination], then you're going to have the neurology qualification determination made by some people in the State who are not neurologists. Now, that to me spells danger."

In response to the concern the wide spread effect this decision could have, the FTC stated: "...the Court also does proceed incrementally and it doesn't feel disabled from announcing the right rule in the case before it simply because it can foresee both that difficult cases will arise in the future and that the rule it's announcing won't clearly resolve [every case]".

I can go on and on about what I believed to be significant in this case and in the arguments. It is interesting because the media coverage I'm reading seems to side with the FTC's position. Headlines include:

- "Can dentists bar competition over teeth whitening?"
- "Justices Skeptical of Dental Board's Antitrust Immunity"
- "US Supreme Court to hear case over filling state boards with those who regulate own occupation"
- "A State Licensed Board Used Government Power for Self-Serving Private Gain? Justice Scalia Can't Believe it"
- "Dental Regulators Seek to Quash 14th Amendment"
- "Supreme Court justices chew on teeth whitening dispute"
- "High Court considers if state boards serve public or limit competition"
- "Supreme Court Scrutinizes Power of Licensing Boards"

My headline would have been a little different I think, but then again, I'm not impartial!

After the argument we all met back at the Jones Day offices for a lunch. Hashim's parents and wife were there, most of the Board members from NC, and others were in attendance.

Glen gave a great summary of his perceptions based on the arguments. He indicated that he believed the biggest challenge was convincing the United State Supreme Court to hear the case. He said once, they did, he believed they had a good chance of winning. And he believed that still.

Hash did what most attorneys do after a big argument: criticized himself for what he should have said or didn't say or what he could have said better or differently. However, it was unanimous from all of us in attendance that we believed he did an excellent job.

I previously sent you a copy of the entire transcript of the arguments.

It was interesting to learn that typically after the arguments are heard for that week, the judges meet on Friday and discuss each case. Based on preliminary discussions, a straw vote is taken, and based on that, a Justice is selected to write the opinion. That Justice obviously must share the opinion of the majority. The draft opinion is then circulated among the justices, and based on that opinions might change. Therefore it is a process, but Glenn anticipates a decision by February or May.

One thing to note:

Many amicus briefs were filed in this case by interested parties. 26 Attorneys General, including Ohio, submitted briefs in support of the NC Board. Of interest to me was a brief filed by the Association of Dental Support Organizations. This brief seemed to set the stage for DSOs and their arguments. For example, the following introductory statement was made:

Acting on incentive to restrict competition, state dental boards have in recent years actively sought to limit or exclude DSOs from their markets and have undertaken a variety of restrictive activities that prevent DSOs from operating efficiently and effectively.

Such anticompetitive practices by state dental boards have resulted in higher costs to patients and less dental care to underserved communities to the detriment of dental health in this country.

If you would like a copy of their brief please let me know. Obviously this decision will have a far reaching impact on dental boards and other regulatory boards and how they operate.

It was an honor to be in attendance and participate in the events as I was so fortunate to do. Thank you again for this extraordinary opportunity, and thanks are extended to the North Carolina Board for allowing me to be included in all aspects of those two days in D.C.

Appendix C

MEMORANDUM

TO: BOARD MEMBERS

FROM: LILI C. REITZ, Esq.
Executive Director

RE: Visit to the Maryland State Board of Dental Examiners.

DATE: September 26, 2014

On September 17, 2014, I attended the meeting of the Maryland State Board of Dental Examiners, and, at their request, gave them a presentation on our QUIP program. They are very interested in creating something similar in their state. They had many questions about our entire complaint process, and I was also asked to attend committee meetings (not open to public), as a consultant, and provide them feedback. It was extremely interesting to see another Board operate, and I can say how proud I am of how we operate as a Board. Their Board meetings are held twice a month, they have 16 Board members, (9 dentists, 4 dental hygienists and 3 public members), and they meet every other Wednesday. They have one AAG for general counsel to the Board, and then a different AAG serves as prosecutor, and it never appears to be the same person.

On Thursday September 18, 2014, I met with the Director and her compliance staff: we sat for several hours where they explained their process, asked me about ours, sought input on some specific cases, and shared with me information that I was interested in looking over.

The Board just had legislation passed (effective October 1) which allows them now to discipline for standard of care violations. Up until then the Board could only discipline for gross incompetence. As a result, the Board has many many cases where there are multiple standard of care complaints, but not enough to, in the opinion of the prosecuting AAG's in the past few years, constitute incompetence, which has been a huge frustration to the Board.

I remember years ago the Board had a prosecuting AAG that would take on some of those cases, and was successful, but as you know, things change: politics, Board members, etc., and the Board members felt like their hands were tied. This Board is pleased to now have jurisdiction to address standard of care complaints, so they wanted to see our warning letters, some consents, and thus the reason for my QUIP presentation. At their request I emailed them a lot of information, from our infection control manual to sample warning letters, sample consent agreements, letters we send to complainants when a case is opened

and closed, how we classify our cases, our complaint flow chart, and other information. They are also interested in our matrix program for investigations.

I found it interesting that the Board members, since they meet so frequently, do a lot of work as a Board in committees. They have 16 standing committees. Several of their committees are enforcement related. For example, the Board has a Triage Committee that reviews complaints for decision whether to move forward. They determine at that point any aggravating or mitigating factors that appear to be present. Then they have a Discipline Review Committee, where other members make recommendations for sanctions.

The Maryland Board summarily suspends a dental office for infection control violations. They will have a report from an "expert" regarding infection control and CDC violations, and based on that, summary suspensions are issued. I was able to sit in on a meeting with one such dentist and their Case Resolution Committee (CRC) in an effort to settle the case. The dentist had been summarily suspended for several weeks. It was very interesting.

Their Board has many staff, a dentist on staff to work on training and other issues, a compliance officer, a staff attorney to work on consent agreements and orders, etc., only 3 investigators, licensing staff, etc. Their office was outside the city, in an older building in an area that was once exclusively a mental health hospital campus. In fact, the Director shared that *Silence of the Lambs* was filmed in the building right across the parking lot from their building. It was a beautiful setting, very different than our own.