Ohio State Dental Board
Board Meeting
February 6, 2013

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Ohio State Dental Board

Board Meeting

February 6, 2013

Attendance

The Ohio State Dental Board (Board) met in Room 1960, 19th 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. Battler
William K. Chin
Luis E. Garabis
Courtney R. Levine
Ryan A. Long

Joseph J. Mirci
Paul D. Ranney, Jr.
Yoshihito Shimizu
Swati Sood
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
Malinda L.K. Board
Devryn A. DiJohn
Kara L. Lucarelli
Wanda Morales
Pamela H. Murawski

Deborah Paul
Melissa L. Sachs
Katrina N. Stanfield
Jaime M. Worline
Emily E. Zehall

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
Alyssa Adams
Myriah Adamson
Jessica Andre
Samantha Andrews
Roxanne Arlt
Brittany Arnold
Keta Atwood
Amy Ayers
Mindy Back
Hope Bailey
Danielle Baker
Joy Bandurske
Tina Bapst
Trisha Barnhart

Karen Baumert
Ashley Beckley
Jessica Benedict
Akila Benson
Andrayia Blade
Briana Blakey
Khrystina Blank
Stacy Blankenship
Rita Bode
Tamara Bodley
Margaret Boylan
Karen Bramble
Savanah Brochetti
Selena Brock
Christine Brown
| Colette Bruner                          | Jennifer Duarte                        |
| Kayleigh Bruns                         | Amy Dunham                              |
| Tina Brunson                           | Lachande Dunn                           |
| James Bryant                           | Mary Dunton                             |
| Jennifer Bui                           | Patricia Dwyer                          |
| Sydney Bunnnow                         | Amy Eden                                |
| Diane Burns                            | Courtney Elliott                        |
| Taylor Burns                           | Amy Emberton                            |
| Erica Cain                             | Dannielle Embry                         |
| Brittany Camburn                       | Steven Enriquez                         |
| Katlyn Campbell                        | Ashley Evans                            |
| Sirena Campbell                        | Melissa Evers                           |
| Alycia Cantrell                        | Marie Fairchild                         |
| Katie Carr                             | Tiffany Faulkner                        |
| Katherine Carson                       | Kelsey Fenton                           |
| Christina Case                         | Allison Fields                          |
| Michelle Cebula                        | Alexis Fisher                           |
| Evelyn Chaffin                         | Vivian Fitch                            |
| Nicole Chmura                          | Catherine Foley                         |
| Suthasinee Chomko                      | Jessica Foody                           |
| Bonnie Coburn                          | Kristin Franczak                        |
| Megan Cochell                          | Belinda Fyffe                           |
| Natalia Collins                        | Ciera Gabriel                           |
| Allyson Conley                         | Danielle Ganues                         |
| Jerico Cook                            | Kearsti Gardner                         |
| Aimee Correll                          | Samantha Gassman                        |
| Traci Courts                           | Melissa Geletka                         |
| Brittany Covey                         | Victoria Gerace                         |
| Jennie Cowdrey                         | Amy Gerhardstein                        |
| Allison Crabill                        | Jill Glacken                            |
| Monica Creech                          | De'ayera Glover                         |
| Kendra Crumrine                        | Kelly Golden                            |
| Amy Curley                             | Alicia Gool                             |
| Amanda Dalton                          | Jessica Gossard                         |
| Danielle Daugherty                     | Tori Graves                             |
| Anna Daughtee                          | Stephanie Gray                          |
| Jennifer Davis                         | Lawanda Green                           |
| Angela Dayton                          | Aleisha Gregg                           |
| Emily Decaro                           | Abigail Grigsby                         |
| Amber Decker                           | Breanna Grimes                          |
| Heather Deeter                         | Christine Grzelewski                    |
| Brittany Denning                       | Kristen Guerrero                        |
| Danielle Dinnell                       | Amanda Hammond                          |
| Angela Dittman                         | Kelsey Harmon                           |
| Heather Dittman                        | Jillian Harrington                      |
| Nichelle Dokes                         | Susan Hart                              |
| Brynn Donovan                          | Kayla Hartford                          |
| Sidney Douglas                         | Jessica Heath                            |
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
Victoria A. Bishop
Jerika M. Davidson
Megan E. Hall
Andrea N. Hardy
Nicholette M. Homa
Mary J. Kerschner
Mona L. Koehler

Kristine N. Losekamp
Courtney A. Maddox
Tiffany S. Mason
Tiffany L. Mitchell
Mallory K. Murray
Keisha L. Pierce
Jonnie-Lynn Thomas
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
Kimberly K Bartoe
Katie Bartzen
Malinda D Berry
Shelley L Boddy
Brittnee Crawford
Ashley Cross
Michelle D Cunningham
Ashley Griffiths
Sarah Hall
Michele Hrebin
Kerry J Kahler

Tomi Kestner
Amanda Ketcham
Jennifer Kline
Angela S Leitschuh
Stephanie L Minger
Amanda A Mowry
Jaclyn Niese
Saneeka S Patel
Melissa A Pavlovic
Andrew Pepley
Angela M Sallisbury
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. Streem – 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/licensees 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

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

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

[Signatures]

Lawrence Kaye, D.D.S.
President

Mary Ellen Wynn, D.D.S.
Secretary