



TEXAS STATE BOARD OF DENTAL EXAMINERS

William P. Hobby, Jr. Building
333 Guadalupe Street, Tower 3, Suite 800
Austin, Texas 78701-3942

BOARD MEETING MINUTES

May 17, 2019

1. CALL TO ORDER – BOARD MEETING.

Dr. Tillman called the meeting of the Texas State Board of Dental Examiners (TSBDE) to order at 8:32 a.m.

Ms. Jones read the mission statement of the Texas State Board of Dental Examiners.

2. ROLL CALL.

Dr. Quirch called the roll. It was noted for the record that a quorum was present.

a. Members Present:

Dr. David Tillman	Presiding Officer
Dr. Jorge Quirch	Secretary
Dr. Bryan N. Henderson	Member
Dr. David H. Yu	Member
Dr. Robert G. McNeill	Member
Dr. Kimberly Haynes	Member
Ms. Lois M. Palermo, RDH	Member
Ms. Lorie Jones, RDH	Member
Dr. Margo Melchor	Member
Ms. Kathryn Sisk	Member

b. Members Absent – Excused:

Mr. Rodney Bustamante	Member
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c. Staff Present:

Dr. W. Boyd Bush	Executive Director
Mr. Alex Phipps	General Counsel
Dr. Brooke Bell	Director of Dental Practice Division
Ms. Christine Mendez	Director of Licensing Division
Ms. Charlice Kruger, RDH	Director of Investigations

Ms. Wendy Richardson

Executive Assistant

Mr. Dan Matthews

IT Department Project Manager

3. REVIEW AND APPROVAL OF MINUTES FROM PREVIOUS BOARD MEETINGS.

a. Minutes for February 22, 2019, Board Meeting.

Ms. Palermo stated a few editorial changes. A motion was made by Dr. Quirch and seconded by Dr. McNeill to approve the Minutes for the February 22, 2019 Board meeting (with Ms. Palermo's changes).

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

b. Minutes for April 26, 2019, Video Board Meeting

A motion was made by Dr. Henderson and seconded by Dr. Melchor to approve the Minutes for the April 26, 2019 Video Board meeting.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

4. DISCUSSION AND ACTION ON PROPOSED CASE RESOLUTIONS.

a. Agreed Settlement Orders.

A motion was made by Dr. Quirch and seconded by Dr. Yu to approve the Agreed Settlement Orders for Ho (2017-00121 & 2017-00961); Bhatti (2017-00194); Branson (2017-00691); Titensor (2017-00783); Hsu (2017-00830); Martin (2017-00871); Aranda (2017-00877); Huff (2017-00938); Fey (2017-01003; 2019-00514); Wilstead (2017-01070); Horne (2017-01074); Hayes (2017-01100); Knowles (2017-01177); Watson (2017-01482); Kethley (2018-00607 & 2018-00694); Gandhi (2018-00657); Idriss (2018-00691; and Fincannon (2018-01381).

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

b. Remedial Plans.

A motion was made by Ms. Jones and seconded by Dr. McNeill to go into Executive Session for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and/or legal matters subject to the attorney-client privilege under the authority of the Open Meetings Act, Section 551.071, Government Code at 8:41 a.m.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

Executive Closed Session began at 8:41 a.m. and open session resumed at 8:51 a.m. and it was announced that no action was taken.

A motion was made by Ms. Jones and seconded by Dr. McNeill to approve the Remedial Plans for Edwards (2017-00099); Brown (2017-00138); Salas (2017-00367); Willison (2017-00517); Yang (2017-00576); Mason (2017-00578); Sanders (2017-00584); White (2017-00590); Biaggi (2017-00603; Vartikar (2017-00647); Kolb (2017-00671); Coughlin (2017-00785); Kruger (2017-00812); Smith (2017-00862); Eckford (2017-00865); Doshi (2017-00942); Mooney (2017-00945); Do (2017-00946); Timm (2017-00948 & 2017-01255); Eeds (2017-00964); Warchol (2017-00993); Kim (2017-01004); Clapham (2017-01026); Horton (2017-01059); Bhakta (2017-01072); Chung (2017-01127); Zang (2017-01144); Milenbaugh (2017-01155); Youngs (2017-01180); Swedenburg (2017-01190); Fischbach (2017-01247); Handley (2017-01248); Beyers (2017-01256); Polo (2017-01261); Homerstad (2017-01266); Kubecka (2017-01277); Nguyen (2017-01303); Hogge (2017-01391); Childers (2017-01394); Chaudhry (2017-01395); Ellis (2017-01402); Davis (2017-01453); Marquez (2017-01808); Devore (2018-00340); Ahmadi (2018-00432, 2018-00660 & 2018-00850); and Milligan (2018-01349).

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

A motion was made by Ms. Jones and seconded by Dr. Quirch to dismiss SBDE No. 2017-01127.

(FOR – 10/OPPOSED – o/ABSTAIN – o) MOTION CARRIES

c. Modification Orders.

None were presented.

d. Consent Orders.

A motion was made by Dr. Quirch and seconded by Dr. Henderson to approve the Consent Orders for Herrera (2019-00455); Young (2019-00574); Snider (2019-00575); Mejia (2019-00578); Alcantar (2019-00580); Ogunniyi (2019-00582); Casey (2019-00634); Bejarano (2019-00636); Valdez (2019-00637); and Schiff (2019-00638).

(FOR – 10/OPPOSED – o/ABSTAIN – o) MOTION CARRIES

e. Pre-ISC Recommendations of Dismissal.

A motion was made by Dr. Quirch and seconded by Dr. Yu to approve the Pre-ISC recommendations for dismissal for 2017-01664; 2017-01689; 2019-00019; 2017-01881; 2017-01811; 2017-01759; 2017-00967; 2017-00943; 2017-00857; 2017-00225; 2017-00457; 2018-00311; 2017-01524; 2018-00625; 2018-00170; 2018-00608; 2017-01046; 2018-00207; 2017-01835; 2016-01562; 2017-00511; 2017-01566; 2018-00647; and 2017-00687.

(FOR – 10/OPPOSED – o/ABSTAIN – o) MOTION CARRIES

f. Post-ISC Recommendations of Dismissal.

A motion was made by Dr. McNeill and seconded by Dr. Yu to approve the Post-ISC recommendations for dismissal for 2017-00984; 2017-00931; 2017-00932; 2017-00898; 2017-01457; 2017-00918; 2017-00468; 2017-01160; 2017-01211; 2017-01217; 2017-01556; 2017-01269; 2017-00516; 2017-01852; 2018-01437; 2017-01367; 2017-01230; 2018-00407; 2017-01417; 2017-01593; 2017-01752; 2017-01897; 2017-01276; 2017-01249; 2017-01424; 2017-00891; 2017-01365; 2017-01848; and 2018-01024.

(FOR – 10/OPPOSED – o/ABSTAIN – o) MOTION CARRIES

g. Discussion of Specific Orders.

None were presented.

5. DISCUSSION AND ACTION ON CASES HEARD BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS .

a. Docket No. 504-19-1898, Michael McCann, DDS, Dental License No. 10723.

Consideration of the Administrative Law Judge's Order No. 4 Conditional Order of Default, Dismissal, and Remand, Recommendations and Board Action.

Board staff recommendation presented by Olivia M. Roberts, Staff Attorney. The Respondent did not appear at the hearing and a default was entered.

A motion was made by Dr. Quirch and seconded by Ms. Palermo to adopt the Order of the Board recommended by staff and discipline Dr. Michael McCann's Texas Dental License No. 10723.

(FOR – 10/OPPOSED – o/ABSTAIN – o) MOTION CARRIES

b. Docket No. 504-19-1932, Charles W. Sizemore, DDS, Dental License No. 8722.

Consideration of the Administrative Law Judge's Order No. 1 Conditional Order of Default, Dismissal, and Remand, Recommendations and Board Action.

Board staff recommendation presented by Anitra Abdullah-Levy, Staff Attorney. The Respondent did not appear at the hearing and a default was entered.

A motion was made by Dr. McNeill and seconded by Dr. Melchor to adopt the Order of the Board recommended by staff and discipline Dr. Charles W. Sizemore's Texas Dental License No. 8722.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

c. Docket No. 504-18-5381, April Knoy, Applicant.

Consideration of the Administrative Law Judge's Proposal for Decision, Recommendations, and Board Action.

Board staff recommendation presented by Cassie Kamp, Staff Attorney. The Respondent and Respondent's attorney, Rodney Montes were present and made a presentation.

A motion was made by Dr. Haynes and seconded by Dr. McNeill to go into Executive Session for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and/or legal matters subject to the attorney-client privilege under the authority of the Open Meetings Act, Section 551.071, Government Code at 9:09 a.m.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

Executive Closed Session began at 9:09 a.m. and open session resumed at 9:27 a.m. and it was announced that no action was taken.

A motion was made by Dr. Melchor and seconded by Ms. Sisk to accept the Findings of Fact and Conclusions of Law in the Proposal for Decision as written, adopt the Order of the Board recommended by staff and deny the application of April Knoy.

(FOR – 9/OPPOSED – 0/ABSTAIN – 1) MOTION CARRIES

6. Discussion and Action on Robert Beck, DDS, v. TSBDE, Cause No. D-1-GN-18-002051, in the 345th Civil District Court of Travis County, Texas.

Mr. Phipps gave a brief summary. Sarah Wolfe from the Attorney's General's office was present and made a presentation. The Respondent's attorney, Louis Leichter was present and made a presentation.

A motion was made by Dr. McNeill and seconded by Dr. Henderson to go into Executive Session for private consultation and advice of counsel concerning pending or contemplated litigation, settlement offers, and/or legal matters subject to the attorney-client privilege under the authority of the Open Meetings Act, Section 551.071, Government Code at 9:37 a.m.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

Executive Closed Session began at 9:37 a.m. and open session resumed at 9:52 a.m. and it was announced that no action was taken.

A motion was made by Dr. McNeill and seconded by Dr. Quirch to enter into negotiations to abate litigation and appoint Dr. Tillman as the Board representative.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

The Presiding Officer called for a recess at 9:54 a.m.

The Presiding Officer called the meeting back to order at 10:13 a.m.

7. PRESIDING OFFICER REPORT.

A motion was made by Dr. Tillman and seconded by Dr. McNeill to go into Executive Session for personnel matters regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee under the authority of the Open Meetings Act, Section 551.074, Government Code at 10:13 a.m.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

Executive Closed Session began at 10:13 a.m. and open session resumed at 10:33 a.m., and it was announced that no action was taken. A certified agenda was made.

No Board action was taken.

Dr. Tillman discussed going to California for WREB and inquired as to what the other Board members were attending.

8. PROFESSIONAL RECOVERY NETWORK REPORT (PRN).

Eden Males, Executive Director, was present and gave her report.

Several Board members has questions regarding voluntary and board-ordered enrollment and the cost for each participant. Confidentiality of the PRN program was also discussed.

9. ANESTHESIA COMMITTEE REPORT AND RECOMMENDATIONS.

a. Committee recommendations and possible action on currently-proposed rule amendments from February 22, 2019, Board Meeting:

- i. Proposed Amendment to 22 Tex. Admin. Code § 110.17 – Sedation/Anesthesia of Pediatric Patients, published in the April 5, 2019, issue of the Texas Register.

Mr. Phipps read the TDA public comment submitted to the Board. A motion was made and did not require a second because the recommendation was made from the committee to adopt the amendments to the rule as published.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

- ii. Proposed Amendment to 22 Tex. Admin. Code § 110.18 – Inspection of Sedation/Anesthesia Providers, published in the April 5, 2019, issue of the Texas Register.

Mr. Phipps read the TDA public comment submitted to the Board. A motion was made and did not require a second because the recommendation was made from the committee to adopt the amendments to the rule as published.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

b. Committee recommendation and possible action on Request for Exception to Board Rules - Andy Duke, DDS.

A motion was made and did not require a second because the recommendation was made from the committee to deny the request for exception to Board Rules by Andy Duke, DDS.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

- c. Committee recommendation and possible action on Nitrous Oxide Monitoring - Referred from February 22, 2019, Board Meeting.

Mr. Phipps summarized the recommendation out of committee for Board staff to revisit the topic, gather informal stakeholder input and recommend possible rulemaking. Board staff's recommendations will be presented to the next Anesthesia Committee.

No Board action taken.

10. DISCIPLINARY REVIEW COMMITTEE REPORT AND RECOMMENDATIONS.

- a. Committee recommendation and possible action on proposed Board rule from February 22, 2019, Board Meeting: 22 Tex. Admin. Code § 107.110 - Baseless or Unfounded Complaints, published in the April 5, 2019, issue of the Texas Register.

Mr. Phipps read the TDA public comment submitted to the Board. A motion was made and did not require a second because the recommendation was made from the committee to adopt the amendments to the rule as published.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

- b. Committee Recommendation and possible action on Disciplinary Matrix and related rulemaking.

Dr. McNeill discussed the revised disciplinary matrix. Mr. Phipps gave an overview of the revised matrix. A motion was made and did not require a second because the recommendation was made from the committee to adopt the Disciplinary Matrix.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

11. DENTAL PRACTICE COMMITTEE REPORT AND RECOMMENDATIONS.

- a. Committee recommendation and possible action on proposed rule amendment from February 22, 2019, Board Meeting: 22 Tex. Admin. Code § 108.14 - Pediatric and Special Needs Case Management; Protective Stabilization, published in the April 5, 2019, issue of the Texas Register.

Mr. Phipps read the TDA public comment submitted to the Board. A motion was made and did not require a second because the recommendation was made from the committee to adopt the amendments to the rule as published. (Dr. McNeill left the room before the vote was taken.)

(FOR – 9/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

- b. Committee recommendation and possible action on 22 Tex. Admin. Code § 102.1 - Fees.

Mr. Phipps discussed the current rule and the schedule contained in the attached graphic. Mr. Phipps discussed Board staff's amendment to the existing rule with attached graphic. Committee recommends that the Rule 102.1 amendment and figure 102.1 as a proposed amendment to the rule as presented by Board staff be proposed. A motion was made and did not require a second because the recommendation was made from the committee to propose the rule as presented.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

- c. Committee recommendation and possible action on petition for rulemaking - Restriction of the Use of Silver Diamine Fluoride to Dentists and Registered Dental Hygienists.

Mr. Phipps summarized the recommendation out of committee for Board staff to gather informal stakeholder input and draft Rule 114.1 Board staff will provide stakeholder input at the next committee meeting.

No Board action was taken.

12. LICENSING COMMITTEE REPORT AND RECOMMENDATIONS.

a. Committee recommendation and possible action on Staff's recommended application denials:

i. 2019-Q3-RDA1.

Committee recommended denial of application. A motion was made and did not require a second because the recommendation was made from the committee to deny the application of 2019-Q3-RDA1.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

ii. 2019-Q3-RDA2.

Committee recommended denial of application. A motion was made and did not require a second because the recommendation was made from the committee to deny the application of 2019-Q3-RDA2.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

b. Committee recommendation and possible action on Staff's deferral to Licensing Committee: 2019-Q3-DDS1.

Committee recommended a two (2) year probated suspension. Staff will extend a Consent Order, to be ratified at the August meeting. A motion was made and did not require a second because the recommendation was made from the committee to extend a two (2) year probated suspension Consent Order to 2019-Q3-DDS1.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

c. Committee recommendation and possible action on request for approval of remediation: 2019-Q3-DDS2.

Committee recommended approval of the application for remediation. A motion was made and did not require a second because the recommendation was made from the committee to approve the application for remediation of 2019-Q3-DDS2.

(FOR – 8/OPPOSED – 0/ABSTAIN – 2) MOTION CARRIES

d. Committee recommendation and possible action on request for exception to Board rules: 2019-Q3-RDH1.

Committee recommended approval of the request for exception to Board rules. A motion was made and did not require a second because the recommendation was made from the committee to approve the request for exception to Board rules of 2019-Q3-RDH1.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

e. Committee recommendation and possible action on Board rule 22 Tex. Admin. Code § 104.2 - Providers.

Mr. Phipps discussed the current rule and Board staff's amendment to the existing rule. Committee recommends that the amendment as a proposed amendment to the rule as presented by Board staff be proposed. A motion was made and did not require a second because the recommendation was made from the committee to propose the rule as presented.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

13. PUBLIC COMMENTS.

No public comments.

14. AGENCY ACTIVITY REPORTS.

a. Executive Division Report.

Dr. Bush discussed the legislative session. He commended staff for being proactive with good ideas. The Governor's office has appointed new Dental Review Committee members. Dr. Bush referred to his Executive Division report that discusses several legislative matters of interest.

Dr. Bush presented the first page of the new TSBDE website.

b. Finance and Administration Division Report.

Leticia Kappel presented the division report. All reports have been uploaded to the website.

The agency currently has 50 FTEs and 4 open positions. The agency is 75% thru the fiscal year.

Ms. Kappel answered Board member questions concerning the anesthesia inspection program budget. She stressed that all agency fees collected go to the general fund and are not kept by the agency.

c. Licensing Division Report.

Christine Mendez presented the division report. Ms. Mendez reported a drop in nitrous oxide registrations, due to clean up. There are currently 9300 stand alone nitrous oxide holders.

Ms. Palermo stated that she received her new certificate and pit and fissure was not listed. Ms. Mendez stated that SB 313 is the reason for that change. However, all credentials are in the database. The division is considering moving to a paperless renewal certificate, but no implementation date has been set.

The dates for the expos are June 7 for hygienists and June 21 for dentists.

d. Dental Division Report.

Dr. Bell presented the division report. All reports have been uploaded to the website. There are 2 candidates recommended for appointment to the Dental Review Panel today.

e. Discussion and possible action on Staff recommendations for appointments to Dental Review Panel.

Mr. Phipps presented the 2 candidates for appointment. Mr. Phipps reviewed the qualifications required to be on the Dental Review Panel (Rule 107.107).

Dr. Henderson made the motion to approve the 2 Dental Review Panel candidates. Motion was seconded by Dr. Yu.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES

f. Legal Division Report.

Mr. Phipps presented the legal division report. All reports have been uploaded to the website. Mr. Phipps discussed HB1899, regarding enforcement action and criminal history. This legislation would create a list of offenses that will cause automatic denial of licensure. This will clarify and make a uniform application of denial/revocation of licensure.

Mr. Phipps discussed the improving trend with the division's numbers. The legal division numbers have already surpassed 2017 numbers, as well as the days to resolution number is trending downward.

g. Investigations Division Report.

Ms. Kruger presented the division report. She stated that caseloads are consistent and 800 cases have been processed this fiscal year. There is improvement in the days to resolution and it will continue. The division has hired 2 new analysts and a new investigator will be hired. There are no 2017 and 2018 cases in investigations as of today – they are currently working on 2019 cases.

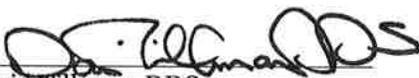
15. ANNOUNCEMENTS.

No announcements.

16. ADJOURN.

Dr. McNeill made a motion and Ms. Jones seconded to adjourn the meeting at 12:41 p.m.

(FOR – 10/OPPOSED – 0/ABSTAIN – 0) MOTION CARRIES.



David Tillman, DDS
Presiding Officer
August 23, 2019



Jorge Quirch, DDS
Board Secretary
August 23, 2019