

NEW JERSEY STATE BOARD OF DENTISTRY

PUBLIC SESSION MINUTES

BOARD OFFICE  
NEWARK, NEW JERSEY

DECEMBER 7, 2011

**The Public Session Agenda commenced at 9:30 A.M.**

ATTENDANCE: The following members were in attendance:  
Shirley Birenz, RDH; Mr. Steven Brisgel; Emil Cappetta, DMD; Lydia David, DMD; Peter DeSciscio, DMD; Herbert Dolinsky, DDS; Maxine Feinberg, DDS; Beverly Kupiec, RN, Ph.D.; Alexander Hall, DMD; Arnold Rosenheck, DMD

OTHER ATTENDEES: Deputy Attorneys General Miller and Oo; Jonathan Eisenmenger, Executive Director; Cecilia Moreira, Senior Management Assistant

ABSENT AND/OR EXCUSED: Sheila Dashkow, DDS

**I. APPROVAL OF MINUTES:** November 16, 2011 - Approved as amended.

**III. EXECUTIVE DIRECTOR'S REPORT:**

1. Status of dental and dental hygiene renewals.

**IV. COMMITTEE REPORTS:**

**1. Credentials:**

- Linda Sangenito, RDH - Inquiry concerning the reinstatement of her dental hygiene license. The committee indicated that she must take a refresher course prior to reinstatement.

- Theresa McLean, RDH - Inquiry concerning the reinstatement of her dental hygiene license. The committee indicated that she must take a refresher course prior to reinstatement.

The Board in a motion by Ms. Birenz, seconded by Dr. Rosenheck, approved the committee's report.

**2. Continuing Education:**

The committee reported on remedial continuing education. Seven (7) courses were approved, one was denied.

**V. COPY OF THE ADOPTED REGULATION CONCERNING “ADMINISTRATION OF INJECTABLE PHARMACOLOGICS.”**

This was received as information only.

**HANDOUTS:**

1. Letter from Paul Condello at Jersey Shore about the Botox Course. Can dentists inject in the peri-orbital area, treat crows feet, and inject the forehead?  
The Board discussed the regulation, and the spirit of the Board’s intent. For a dentist to administer Botox and other derma-fillers, it must be a part of a dental treatment plan that is documented in the dental record. The regulation does not nor did the Board intend that licensees perform services outside the permitted scope of practice.  
The answer to Dr. Condello’s inquiry is “no” unless you are treating a dental condition as per the Board’s regulation 13:30-8.4A(m).
2. Information from Dr. Marc Goldman at Newark Beth Israel about a Botox course that was given by Dr. Louis Malcmacher’s company.

The Board will send a letter to the approved BoTox course providers to discuss the spirit and intent of the regulations, with specific emphasis on the “hospital or university setting.” The Board did not intend for the course to be held in a hotel or conference center but rather in an appropriate clinical setting. The Board will reiterate that the injections are to be part of a dental treatment plan.

Hygienists who attend these courses can qualify for continuing education if they attend the full course, but are not permitted to administer Botox or other injectable pharmacologics as part of the hands on segment.

**VI. INITIAL DECISION FROM THE OFFICE OF ADMINISTRATIVE LAW:**

1. Dr. Marc Weber - On November 4, 2011, Administrative Law Judge Howard Solomon issued an initial decision in the matter of the Formal Complaint filed against Dr. Weber. This matter was moved to Executive Session.

DAG Faulk did not file exceptions to the Initial Decision, and the Board received no exceptions from Dr. Weber.

Upon return to public session, the Board voted to adopt the finding of fact and conclusions of law in the initial decision and to give the Deputy Attorney General Faulk until January 6, 2012 to submit proposed restitution, costs, and attorney’s fees. Because Dr. Weber’s attorney has apparently withdrawn from the case, the board directed that Dr. Weber be given a very brief period to seek reconsideration if he demonstrates he did not have adequate notice.

The Board will consider the application for fees and costs and restitution at its meeting on February 1, 2012, and thereafter enter a Final Order.

**VII. REQUEST FOR REINSTATEMENT OF LICENSE FOLLOWING BOARD ORDER:**

1. Dr. Judd Garson - Request for reinstatement of license. On July 7, 2010 the Board filed an Order Reinstating License (Inactive Status). This matter was moved to Executive Session.

The Board determined to reinstate his license to active practice with restrictions as recommended by the Professional Assistance Program of New Jersey.

**VIII. ORDERS FILED WITH THE BOARD:**

1. Michael Scaglione, DMD - Consent Order filed on November 2, 2011.
2. Daniel A. Smilowitz, DDS - Order of Early Reinstatement filed on November 2, 2011.

These items were received as informational.

**IX. MISCELLANEOUS ITEMS:**

1. Correspondence from Dr. Jonathan Abenaim concerning the Botox regulation. Dr. Abenaim states that he has performed thousands of cosmetic procedures during his career and believes he should be excused from additional training.

The Board noted that the regulation provides that no course will be accepted unless the Board specifically approved it for credit pursuant to the recently adopted regulation. The Board, in developing its rule, determined it would not “grandfather” prior courses.

2. CODA - Request for “State Board Participation on Accreditation Site Visits.” Ms. Birenz will attend on behalf of the Board.
3. Department of Health and Senior Services proposes New Rules at N.J.A.C. 8:89 Governing Adult Protective Services. The Board received this as informational.
4. Copy of article entitled “Federal lawsuit seeks to block Conn. rules banning certain teeth whitening by non-dentists.” The Board received this as informational.
5. Survey from the Joint Commission on National Dental Examinations Policy Changes concerning the change to “Pass/Fail” and that numerical standard scores will no longer be produced or reported to the Boards. The Board was not opposed to this change.

**X. HANDOUTS:**

1. Letter from Guy Shampaine, DDS, Chairman of NERB concerning allowing dental hygiene candidates to administer local anesthetics during the clinical examination. The Board determined that new graduates with a notarized statement from the program attesting that administration of local anesthesia was part of the curriculum would be permitted under a licensed dentist's supervision to administer local anesthesia during the clinical examination.

Also, the Board appointed a committee (Ms. Birenz, Dr. Feinberg, Dr. DeSciscio) to determine whether the required coursework needs to be modified in light of current hygiene programs.

2. Inquiry about whether a dentist may provide a staff member with a gift for a referral. The Board's regulations provide that remuneration may not be given or received for referrals except a dentist may give a gift of nominal value to a patient who makes a referral. Note that Federal law prohibits any gifts of any kind for a Medicaid/Medicare patient.

#### **X. APPEARANCES:**

1. 11:00 A.M. - Dr. Barry Litt - Application for reinstatement of his New Jersey dental license. Dr Litt appeared without counsel.

Dr. Litt discussed with the Board the action taken in New York based on his conviction for Health Care Fraud.

The Board in a motion by Dr. Feinberg, seconded by Ms. Birenz, determined to reinstate Dr. Litt's license with an Order with a public reprimand that reflects the criminal conviction and public disciplinary action in New York.

2. 1:00 P.M. - Dr. Lawrence Gardner - Application for reinstatement of his New Jersey dental license. Dr. Gardner appeared with counsel, Peter Allegra, Esq., and Edward Reading, Ph.D., of the PAPNJ.

Dr. Gardner's license was voluntarily surrendered on July 20, 2011 following review of information that he issued multiple prescriptions for controlled dangerous substances in the names of family members for his own use.

Dr. Gardner described the incidents and medical conditions that led to his conduct.

The Board determined to reinstate Dr. Gardner's license with restrictions, including the recommendations outlined by the PAP and his therapist. Also, he is to provide self-report on his personal and professional status and submission of triplicate prescriptions on a quarterly basis.

**XI. ADJOURNMENT:** The Board adjourned the Public Session and moved to Executive Session for advice of counsel and review of open matters (investigations and deliberations). When and if action is taken, it will be reported in Public Session.