

**KANSAS DENTAL BOARD MEETING MINUTES
FRIDAY, NOVEMBER 18, 2022, 9:00 A.M.
LANDON STATE OFFICE BUILDING, 5th FLOOR
900 SW JACKSON, ROOM 509
TOPEKA, KS 66612**

A. Call to Order / Approval of the Agenda.

Call to Order: Mark Herzog, D.D.S., President, called the Board meeting to order at 9:05 a.m.

Members Present at Call to Order: Rita Burnett, D.D.S.; Jill Ellner, D.D.S.; Maya Nunley, D.D.S.; Lacey Randa, D.D.S.; Rachael Wiebe, R.D.H.; Davette McCoy, R.D.H.; and Kevin Waite, Public Member (telephone).

Members Arriving After Call to Order: None.

Members Absent: Jonas Lichty, D.D.S.

Staff Present: Brenda Head, Attorney for the Board; Lane Hemsley, Executive Director; Charity Carlat, Senior Administrative Specialist; and Katie Mulkey, Senior Administrative Assistant.

Attendees: Mike O'Neil, Association of Dental Support Organizations (ADSO).

Approval of the Agenda: It was moved and seconded to approve the agenda. The motion passed.

B. Minutes of August 12, 2022.

It was moved and seconded to approve the minutes of August 12, 2022, with the following modifications to Paragraph E. (Botox and Dermal Fillers Discussion):

1. The same language for hands-on training courses from ADA CERP or AGD PACE shall be used for all subparagraphs on dentally-related purposes and cosmetic purposes.
2. For the subparagraphs relating to a licensed Kansas dental hygienist, language shall be included to ensure that both the supervising dentist and dental hygienist successfully completed the hands-on training courses from ADA CERP or AGD PACE.
3. Consistent with K.S.A. 65-1468, a paragraph shall be added requiring each dentist and dental hygienist to notify their respective professional liability insurance company to obtain appropriate insurance coverage for any and all Botox and Dermal Filler purposes.

The motion, which included the foregoing modifications, passed unanimously. The Board's Executive Director was subsequently authorized to attach his electronic signature to the minutes and publish the signed minutes on the Board's website.

C. 20% Rule Discussion: K.S.A. 65-1435(d) – (f).

Over the past several years, the Board office has received numerous inquiries regarding the application of the 20% Rule, regardless of suburban, urban, or rural locations for dental offices. The Board's Executive Director, Lane Hemsley, has routinely assisted dental offices and attorneys across the country with the proper application of the 20% Rule. As such, Mr. Hemsley provided the Board with an extensive legislative and judicial history of the 20% Rule. The 20% Rule initially originated from the Kansas Legislature as the Majority Presence Rule.

The Board further welcomed Mike O'Neil, a lobbyist for the Association of Dental Support Organizations (ADSO). On behalf of ADSO, Mr. O'Neil advised that Kansas is an outlier with the 20% Rule in that no other state or profession has such a practice limitation. Accordingly, ADSO has been working with Kevin Robertson, Executive Director of the Kansas Dental Association (KDA), to repeal the 20% Rule. Although no agreement has been reached, Mr. O'Neil is optimistic that the parties will be able to arrive at a mutually beneficial solution to repeal the 20% Rule and simultaneously ensure continuity of care for dentists and patients during the 2023 legislative session.

After extended discussion, the Board directed Mr. Hemsley to take a neutral position if and when the legislature considers a bill repealing the 20% Rule. Likewise, Mr. O'Neil advised that, if ADSO and the KDA arrive at a mutually beneficial solution, he will send the Board the proposed legislative bill for review.

D. ICON Dental Treatment Discussion.

The Board received an inquiry regarding whether a licensed Kansas dental hygienist was authorized to perform an ICON dental treatment. After extended discussion, it was moved and seconded to authorize the following:

1. Licensed Kansas Dental Hygienist.

- a. Prior to any ICON dental treatment by a licensed Kansas dental hygienist, a licensed Kansas dentist shall diagnose and perform a clinical diagnosis, comprehensive or periodic.
- b. A licensed Kansas dental hygienist may place ICON on white spot lesions, but shall not engage in the removal of tooth structure via air abrasion or high-speed handpiece.
- c. During any procedure where tooth structure is not removed, a licensed Kansas dental hygienist may complete the procedure with ICON resin.

2. Nonlicensed Person.

- a. A nonlicensed person is prohibited from performing ICON dental treatment.

The motion passed unanimously.

E. Emergency Medical Kits Discussion.

The Board staff has been receiving general inquiries regarding the appropriate tools that should be included in an emergency medical kit. A sample of various emergency medical kits from a dental supply company was reviewed. Additionally, with extreme inflationary pressures, the cost of an EpiPen for the emergency medical kit has risen dramatically. After discussion, it was recommended that dental offices could acquire an EpiPen, prefilled syringes, or an Epinephrine vial and prepare pre-marked syringes from the vial.

F. Level II Anesthesia Permit Course Approval Request: Stay in the Box Sedation.

The Board received a request from Stay in the Box Sedation to review and approve a proposed Level II Anesthesia Permit Course. After review and discussion of the course materials, it was moved and seconded to approve the course as presented. The motion passed unanimously.

G. N2O Course Approval Request: DOCS Education.

The Board received a request from DOCS Education to review and approve an N2O course for nonlicensed persons under K.S.A. 65-1444(b). After discussion, it was moved and seconded to table the request and direct the Board staff to acquire more information from DOCS Education about the hands-on components of the course. The motion passed unanimously.

H. Specialty Licensing Application Discussion.

On November 8, 2019, during its regularly scheduled open public meeting, the Board approved the revocation of K.A.R. 71-2-3 (Committee for specialists' examination). The regulation was primarily revoked because American specialty boards had created nationally recognized qualifying examinations for specialty licensing purposes. At the time, the Board staff was directed to continue sending completed specialty applications to at least one specialty committee member for review and approval.

The Board staff subsequently requested authority to review and approve all specialty applications except oral and maxillofacial surgeon applicants who have not completed the qualifying examination from the American Board of Oral & Maxillofacial Surgeons (ABOMS). The request was aimed at increasing administrative efficiencies and expediting the issuance of specialty licenses to applicants who have already completed the American specialty boards qualifying examination. The Board approved the staff request.

I. Stipulation and Consent Orders.

1. Devin Harr, D.M.D. (Case No. 21-69). Attorney Brenda Head presented the Stipulation and Consent Order. It was moved and seconded to approve the Stipulation and Consent Order, a copy of which will be posted to the Board's website. The motion passed unanimously.

2. Theodore C. Dimas, D.D.S. (Case No. 22-51). Attorney Brenda Head presented the Stipulation and Consent Order. It was moved and seconded to approve the Stipulation and Consent Order, a copy of which will be posted to the Board's website. The motion passed unanimously.

J. Public Forum.

The Board welcomed members of the public to speak to the Board. There were no public comments.

K. President's Report: Dr. Herzog.

Mark Herzog, D.D.S., expressed his gratitude to all Board members and staff for working diligently through the pandemic and returning to in-person meetings.

**L. Investigations Report: Dr. Herzog / Lane Hemsley.
Inspections Report: Dr. Johnson.**

Mark Herzog, D.D.S., President, and Lane Hemsley presented the status of the Investigative Committee cases from January 3, 2022, to October 19, 2022.

M. Executive Report: Lane Hemsley.

1. Budget. An update was provided on the budget for FY 2022 (July 1, 2021 – June 30, 2022) and FY 2023 (July 1, 2022 – June 30, 2023).

2. Licensee and Specialty Licensee Report. License and specialty license reports were provided for July 28, 2022, to October 19, 2022.

N. New Business / Adjournment.

1. Selection of Board Meeting Dates for 2024.

- a. Friday, January 12, 2024
- b. Friday, April 12, 2024
- c. Friday, August 2, 2024
- d. Friday, November 8, 2024

Adjournment: It was moved and seconded to adjourn at 11:36 a.m. The motion passed. The meeting was adjourned.

APPROVED BY:

s/ Rachael Wiebe, R.D.H.
Representative, Kansas Dental Board

January 12, 2023
Date