



MINNESOTA BOARD OF DENTISTRY

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POLICY COMMITTEE MEETING MINUTES
Board of Dentistry, 4th Floor Conference Room A
December 16, 2015, 5:00 p.m.
Revised

Call to Order

Neal Benjamin, DDS, Chair, called the meeting to order at 5:05 p.m.

Committee Members Present

Neal Benjamin, DDS, Chair
Jake Manahan, JD
Paul Walker, DD

Board Staff Present

Joyce Nelson, Interim Executive Director

Others in Attendance: (per sign-in sheet):

Dick Diercks, Park Dental; John Gulon, DDS; Park Dental; Jean Lind, Park Dental; Liz Rydell, Midwest Dental; David Linde, DDS; MDA, Dave Resch, DDS; MDA; Jeanne Anderson, DH, MDHEA; Donna Stenberg, DDS, MAO; Judith Gundersen, DHS; Tammy Filipiak, Midwest Dental; Carmelo Cinqueonce MDA; Bridgett Anderson, LDA, MDA; Beth Rynders, LDA, MEDA; Todd Hill, Hill Capitol Strategies; Gary Pickard, Pacific Dental Services; Jason Engelhart, JD, Stinson & Leonard Street; Jack Breviu, JD, Stinson & Leonard Street

Review and Approval of Minutes from October 28, 2015

Review of the October 28, 2015 meeting minutes.

Motion made to accept the October 28, 2015 meeting minutes as amended.

MOTION: Jake Manahan SECOND: Neal Benjamin
IN FAVOR: Unanimous RESULT: Motion carried

Infection Control Update

About a year ago this Committee was directed to bring this issue back to the full board. The Task Force not only met outside of the Committee, but also with Board staff.

Mr. Manahan offered a report that is a recommendation to the full board for their January meeting.

MOTION:

That the Committee bring this report forward with the recommendations to the Full Board at their January meeting.

MOTION: Jake Manahan SECOND: Neal Benjamin
IN FAVOR: Unanimous RESULT: Motion carried

MAO Proposal:

Dr. Stenberg updated the Committee that since Policy's last meeting she has meet with MEDA and reviewed the CODA standards of dental assisting. She has a better understanding of what the changes would be asking of the educators. Every rule added forces the schools to ensure that the student has

1 the training and is competent. Ortho is not necessarily CORE curriculum, but a small percentage of
2 the graduates would use these skills.

3
4 Dr. Stenberg suggested two pathways that the Board could move forward with;

5
6 Pathway short term – propose a board resolution that reflects the intent that these duties can be
7 delegated when proper education has been achieved.

8
9 Long term – create way that an allied staff could earn certification for additional education in
10 specialties.

11
12 The Committee agreed to allow Dr. Stenberg to work on a draft resolution, and present it to the
13 Committee at their January meeting.

14
15 **DSO discussion:**

16 Dr. Gulon wished to expand on the Jonathan Dental opinion from the AGO in the '80's. He wanted to
17 point out that it was work from 1984, and the memo did not reach any holding, or have any law
18 effect. The author of the memo ignored case history. This was not a legal opinion of the AGO.

19
20 He also commented that the suggestion that the Board is only involved in compliant driven action is
21 false. The Board also deals every day with Rulemaking and Policy. Many Rules are not complaint
22 driven.

23
24 Mr. Manahan reflected that the DSO's prefer the law to stay as they are, and those in opposition,
25 hope to see changes. It would be helpful for the Committee to have those that have concerns bring
26 forward suggested changes for the Committee to review and discuss.

27
28 Dr. Gulon suggested the Board's pursue looking at a registration process with the DSO's or look at
29 their operating agreements. He believes the capital has an impact on directing the treatment.

30
31 Mr. Brevieu stated the memo from the AGO does not have effect of law, it gives an opinion
32 regarding the DSO Jonathan Dental, in 1984. He stated the opinion speaks for itself, but the
33 conclusions are those of the Attorney Generals.

34
35 Regarding the suggestion to have the Board pursue investigation to look at all DSO's appears over-
36 regulation since there has been no identified problem. The complaint process in place exists just for
37 the purpose of investigating and looking into any allegations of misconduct with regards to the
38 practice of dentistry.

39
40 Jake suggested having Board staff speak with AGO and get a decision and bring it back to a future
41 Policy meeting.

42
43 **PMP required registration:**

44 Dr. Benjamin has been working with the PMP staff for the last year. He believes organized Dentistry
45 has received information about this program and that the majority is supportive of this program.
46 However, he is concerned that the legislation is more concerned with statistics of how many are
47 actually registered.
48

1 Dr. Benjamin would like to keep the registration and use of the PMP program voluntary, if possible.

2

3 Mr. Cinqueonce mentioned that the MDA has a webinar available to their membership, that educates
4 them about the PMP. He is aware of Senator Rosen's current legislation to mandate registration, but
5 he too is hopeful that the Board can support voluntary use.

6

7 Carmelo stated the MDA doesn't favor mandates of any sort. The association has seen 25% (825)
8 increase of enrollment this past year from their membership registration in this program.

9

10 Dr. Benjamin has mentioned that many other states are looking at similar attempts. He also tied in
11 this Committee's support of both the PMP and Infection Control issues, and try to show the
12 legislatures that the Board would like to work with the profession and attempt to gain compliance
13 through education first. He stated that if in a years-time this has not been accomplished, then the
14 Committee would re-address these issues and he would be in favor of looking at regulation.
15 However, he felt that the profession will show that they can accomplish these goals and protect the
16 public.

17

18 Jake asked the MDA what the downfall would be for both registration and use.

19

20 MDA stated the downfall of mandatory use, is an administrative one, since the licensee would have
21 to constantly have to look up patients use. It is more an administrative burden. Mandatory enrollment
22 is not burdensome, but the question is "is there a need"?

23

24 Jake asked what the Board of Dentistry's stand is on this issue. He identified that the role of the
25 Board differs greatly from that of the MDA.

26

27 Dr. Linde mentioned that to have a DEA number it costs \$900 every 3 years, and that in order to
28 register for the PMP a dentist must hold a DEA, or they do not qualify for the registration.

29

30 Carmelo mentioned that the MDA is doing a good job of trying to educate and encourage its
31 membership to utilize.

32

33 Ms. Anderson stated that the only downside to mandated registering, is that there is the likelihood of
34 those individuals being mandated to register, never actually using the program.

35

36 Dr. Benjamin mentioned that CC-A is bringing a motion forward to the January meeting, to mandate
37 registration at renewal. The Committee is pursuing this in order to bring the discussion to a greater
38 audience

39

40 **MDA proposal:**

41 Mr. Cinqueonce brought forward an MDA House of Delegates proposal for the Board to allow
42 Minnesota licensed dentist, to be able to use their license renewal certification in lieu of the mini
43 license, for the purposes of volunteering.

44

45 He stated that the mini license and renewal certificate provide the same information, which includes
46 the license's name, license number, license issue date, and current license expiration date.

47

1 Dr. Benjamin stated that he was in support of this proposal, because it was not the intent of the Board
2 to put up barriers or add additional cost for licensees who wish to provide their services for voluntary
3 purposes, such as "Mission of Mercy" or "Give Kids a Smile".
4

5 Staff commented that for those volunteering dentists who are out of state, they would still need to be
6 issued a mini license. However, since there is no fee for this type of a license, their mini license is
7 free of charge.
8

9 **MOTION:**

10 Acceptance of renewal certificates in lieu of mini license for volunteer purposes only.
11

12 **MOTION: Neal Benjamin SECOND: Paul Walker**
13 **IN FAVOR: Unanimous RESULT: Motion carried**
14

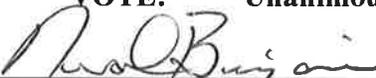
15
16 **Future Meetings:**

17 January 11, 2016
18

19 **Adjourn**

20 *Motion made to adjourn at 6:58 p.m.*
21

22 **MOTION: Neal Benjamin SECOND: Jake Manahan**
23 **VOTE: Unanimous RESULT: Motion carried**

24 
25 _____
26 Signed: Neal Benjamin, DDS, Chair

27 2-2-2016
28 _____
29 Date

Nelson, Joyce (HLB)

From: Vang, Vicki (HLB)
Sent: Monday, January 11, 2016 8:19 AM
To: Nelson, Joyce (HLB)
Subject: FW: MN BoD Policy Committee - December Meeting Notes Correction

Joyce,

This was sent to me from Gary Pickard requesting to have the 12/16 Policy Committee meeting minutes amended.

Vicki Vang
Administrative Assistant
Minnesota Board of Dentistry
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Minneapolis, MN 55414
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vicki.vang@state.mn.us

From: Pickard, Gary [mailto:PickardG@pacificdentalservices.com]
Sent: Saturday, January 09, 2016 5:05 PM
To: Vang, Vicki (HLB) <vicki.vang@state.mn.us>
Subject: MN BoD Policy Committee - December Meeting Notes Correction

Ms. Vang,

The Policy Committee ("Committee") Meeting Minutes do not reflect a fair representation of the comments made during the last meeting held December 16, 2015. I request that the following summary be included in the 'DSO Discussion':

Dr. Neal Benjamin, Committee Chair, started the meeting discussing the shift occurring in the dental industry and lamenting how the younger generation are becoming employees.

Representatives of several dental support organizations (DSOs) provided a strong defense of their business practices and questioned concerns raised by competitors. Jack Breuiu for ADPI, Tammy Filipiak of MidWest Dental, and Gary Pickard of Pacific Dental Services made similar comments –

- The New York Attorney General settlement with Aspen Dental Management, Inc. had rested with the AG; the NY State Board of Dentistry never got involved
- DSOs have been operating in MN with little to no issues for over 30 years
- There's a risk of anticompetitive behavior by regulatory boards when they react in this manner. See *North Carolina State Board of Dental Examiners v. FTC., U.S. (2015)* decision.
- Current statutes and regulations are adequate
- The MN Board of Dentistry (the "Board") is charged with protecting consumers and regulating licensees

Mr. Pickard also commented that Park Dental's actions appear anti-competitive and while they state they are not a DSO they seem to be more like a DSO than not given the centralized operations, branded practices, etc.

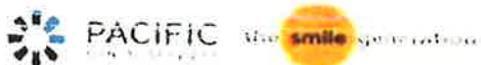
During the discussion, members of the Committee indicated they are seeing complaints about DSOs and, given the NY Attorney General action they believe it makes sense for MN to have some structure in place to address issues and concerns regarding DSOs. The Chair ended the discussion by indicating the issue will be on the agenda in January and the Committee will rely heavily upon the recommendations of the MN Attorney General's Office. It is the Chair's hope the Board will discuss the Committee's recommendations at their Executive Committee meeting on January 15, 2016.

The Chair of the Committee indicated he will meet with the Deputy Attorney General assigned to the Board to get a better understanding of the Board's authority along with the intent of a previous memo from the MN Attorney General on the issue.

Board and Committee member Dr. Paul Walker remained silent and at the end of the discussion recused himself due to his position with a DSO.

Respectfully,

Gary J Pickard | Director | Government & Industry Affairs



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"We Believe that the way we do business is as critical as whether business is good or bad. Therefore: Our decisions for moral and ethical conduct are based on principles given to us by God in the Bible. Honesty, integrity, and character are vital aspects of business." - 1 of 8 PDS Belief Statements

Response to Mr. Pickard
Email to Ms. Vang 1/9/2016
Subject: MN BoD Policy Committee-December Meeting Notes Correction

Requests summary be included in DSO Discussion:

Summary to be read as printed:

Elaboration by Chair to summary:

Paragraph two: lamenting- I am lamenting the fact that all students are graduating with an increased debt load that restricts their ability to move forward in their chosen career path. I will stand by that statement. If this means that a graduate has the perception that they must seek employment as an employee rather than as an entrepreneur I see this as a potential decrease in access to care to the citizens of my State. Part of public protection is reflecting and speaking to access to care issues. No other intent is implied.

While not an attorney, I have been attempting to read and digest the information I have received about the FTC guidelines for Boards. Especially the part that discusses the terminology around "active supervision."

If I am perceived to be moving slowly it is because I need to affirm that the process of this Board is functioning correctly.

Our Board should have a level playing field and a process that is transparent. The current process of the Board is to "investigate" utilizing the resources available to us "a formally submitted complaint." While the path of the investigation may take different forms it must start with the "formally submitted complaint."

What this committee needed to reaffirm before proceeding with the request to investigate a contract was our authority to investigate and what gave us the authority to investigate. To my understanding that authority is generated in the process of the formal complaint.

If I misspeak on a subject it is due to my lack of specific knowledge of the legal process and it is not my intention to cloak or obfuscate an issue.

In the Board's communication with the AGO's office, to the best of my current knowledge, we are consistent with our authority. If any investigation of "anything" is done by this Board there must exist a formal complaint precipitating the investigation, and we must be able to trace the investigation back to the complaint.

Submitted Respectfully,
Neal Benjamin DDS MAGD FACD
Chair Policy Committee

Dr. Gulon's response and statement for the records of the Minnesota Board of Dentistry and its Policy Committee in regard to specific misleading statements and/or suggestions that have been made to the Board and/or Committee in a January 9, 2016 email from Gary Pickard of Pacific Dental Services a DSO organization and ADSO member, and in a January 8, 2016 letter from Richard B. Dagon of the Law Firm AXINN, which represents ADSO. My statement for the record is:

ADSO and/or the DSOs seem to suggest that it has been my aim or the aim of Park Dental to stifle competition. I need to briefly address that suggestion because it is a misrepresentation of what I have said. At previous meetings of this Committee, when others engaged in a broader discussion of the DSO issue, I have repeatedly brought the discussion back to the concern I have expressed. That concern is that we have a particular company, Aspen Dental, which is the subject of adverse findings by the New York Attorney General. These detailed findings involve violations of law resulting from the conduct of the DSO that was investigated and its involvement in the Aspen Dental practices. At the very time the New York AG was reaching these findings, Aspen Dental and the very same DSO began operations in Minnesota. I simply have suggested that in light of those events, it makes sense that steps be taken to determine whether there are any similar violations of law occurring in Aspen Dental's Minnesota practices. For me to suggest that Aspen Dental should obey the law hardly seems to be a controversial point of view, and it does not have anything to do with restricting competition.

Dr. John Gulon
President, Park Dental

Statement of Randy Gullickson
Anthony Ostlund Baer & Louwagie P.A.
February 10, 2016

The minutes of the December 2015 meeting of this Committee meeting included as an attachment an email from Gary Pickard of Pacific Dental Services of Irvine, California. Although this email was not adopted by the Committee as part of the minutes, I understand that this email was attached to the minutes as an Appendix and therefore is part of the permanent public record.

Because this email was made part of the record, I need to set the record straight as on one very incorrect statement made about my client, Park Dental. Mr. Pickard's email states:

“Park Dental's actions appear anti-competitive and while they state they are not a DSO they seem to be more like a DSO than not given the centralized operations, branded practices, etc.”

This statement is wrong and fundamentally misconstrues the issue being discussed. Park Dental—PDG, PA—is a professional firm under Minnesota law, comprised of about 120 licensed dentists and owned exclusively by licensed dentists. Like most dental practices, Park Dental employs others, both licensed and non-licensed, some of whom serve in a variety of administrative and business functions.

Importantly—and as distinguished from non-licensed DSOs—all of the Park Dental non-licensed employees report directly or indirectly to licensed dentists. And licensed dentists control all aspects of the practice, including the “business side.” Non-licensed staff act at the direction and under the supervision of licensed dentists and have no decision-making authority on any aspects of Park Dental's practice that would allow them to override or refuse to implement decisions of the licensed dentists who own and operate the practices. This is dramatically different than non-licensed DSOs. Such DSOs are not professional firms operated by licensed dentists, like Park Dental is. Rather, they are unlicensed business corporations employing non-licensed business people who, at least according to the Attorney General of New York addressing Aspen Dental, have significant decision-making authority in a variety of aspects of the practices, do not take direction solely from licensed dentists, and can act contrary to what the dentists want in a variety of areas.

The issue is not whether a dental practice has people who perform administrative and business functions—every dental practice does. The issue is whether those people performing the functions or the corporations they work for are answerable to and managed by licensed dentists, as they are at Park Dental, or whether they are answerable to non-licensed corporations or non-licensed business men and women, as the New York Attorney General has indicated to be the case with Aspen Dental.