



STATE OF WISCONSIN
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DENTISTRY EXAMINING BOARD
Room 121A, 1400 E. Washington Avenue, Madison
Contact: Berni Mattsson 608-266-8741
March 7, 2012

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a description of the actions and deliberations of the Board.

8:30 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

A. Pledge of Allegiance

B. Adoption of Agenda (1-4)

C. Approval of Minutes – January 4, 2012 (5-12)

D. Board Committee and Liaison Appointments

1) Discussion of Credentialing Liaison and Delegating Certain Credentialing Authority **(13-16)**

E. Secretary Matters

F. Executive Director Matters

1) Board Member Guidebook **(17-48)**

G. CRDTS Issues

1) Review request for recommendation as a Deputy Examiner – Dr. Christopher Dix **(49-62)**

H. NERB Issues

1) Request for Comments from NERB on a Potential Consultant Member **(63-68)**

I. National Dental Examiners Advisory Forum Designee (69-70)

J. Board Discussion Items including any received after printing of agenda

1) Division of Enforcement Matters

a. Discussion of the Jurisdiction of Unlicensed Practice Cases **(71-78)**

2) **Education and Examination Issues/ Matters**

a. Discussion of Acceptance of State Examinations for Licensure by Endorsement **(79-80)**

3) Credentialing Matters

4) **Practice Questions/Issues**

a. Practice Questions Policy – Lydia Thompson **(81-86)**

5) Legislation/Administrative Rule Matters

- 6) Liaison Reports
- 7) Report from the Sleep Apnea Work Group
- 8) Report from the Laser Use By Dental Hygienists Work Group
- 9) Discussion on the Budget Lapse Report – **APPEARANCE 9:10 A.M. – Karen Van Schoonhoven, DSPS Budget Director (87-88)**
- 10) Speaking Engagement, Travel, Public Relation Requests

K. Informational Items

- 1) Carolina Journal News Report on Teeth Whitening Case **(89-92)**
- 2) Final Draft and Legislative Reports for Chs. DE 1,2 (Active Practice, Faculty Licenses); DE 2,6,7 (Advertising, CPR); and DE 2, 13 (Continuing Education) **(93-102)**
- 3) ADA/White Dismissal with Prejudice **(103-120)**

L. New Business

M. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1) (a), Stats.; consider closing disciplinary investigation with administrative warning (s. 19.85(1)(b), Stats. and 440.205, Stats., to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.; and, to confer with legal counsel (s. 19.85(1)(g), Stats.)

N. Faculty Application Review and Personal Appearance – 9:30 a.m. – APPEARANCE – Amir Seifi (121-132)

O. Deliberation of Proposed Stipulations, Final Decisions and Orders including any received after printing of the agenda

- 1) 09 DEN 088 – Marc A. Shantz, II, DDS **(133-140)**
 - a) Attorney Susan Gu
 - b) Case Advisor William Stempki
- 2) 09 DEN 098 – Joseph C. Ferraro, DDS **(141-146)**
 - a) Attorney Susan Gu
 - b) Case Advisor Kirk Ritchie

P. Deliberation of Proposed Administrative Warnings including any received after printing of the agenda

- 1) 10 DEN 048 (J.L.V., DDS) **(147-150)**
- 2) 11 DEN 098 (S.A.S., DDS) **(151-154)**

Q. Monitoring Cases including any received after printing of the agenda (155-156)

- 1) Robert B. Pultz, DDS – Request for Full Licensure **(157-180)**
- 2) Raymond L. Schneider, Sr., DDS – Request for Full Licensure **(181-206)**

R. Case Closings including any received after printing of the agenda (207-208)

- 1) 10 DEN 099 **(209-212)**
- 2) 11 DEN 071 **(213-216)**

S. Deliberation of other items received after printing of agenda

- 1) Case Closings
- 2) Case Status Report
- 3) Proposed Decisions
- 4) Summary Suspensions
- 5) Objections and Responses to Objections
- 6) Complaints

- 7) Administrative Warnings
- 8) Matters Relating to Costs
- 9) Monitoring Cases
- 10) Appearances from Requests Received or Renewed
- 11) Examination Issues
- 12) Application Issues
- 13) PAP Cases
- 14) Motions

T. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

U. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

V. Other Board Business

W. Next Meeting Date: May 2, 2012

ADJOURNMENT

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**DENTISTRY EXAMINING BOARD
MINUTES
JANUARY 4, 2012**

PRESENT: Linda Bohacek, RDH; Mark Braden, DDS; Eileen Donohoo, RDH; John Grignon, DDS; Adriana Jaramillo (arrived at 8:33), DDS; Lyndsay Knoell, DDS; Sandra Linhart, RDH; Kirk Ritchie, DDS; William Stempski, DDS

STAFF: Berni Mattsson, Executive Director; Lydia Thompson, Legal Counsel; Karen Rude-Evans, Bureau Assistant; other DSPS staff

GUESTS: Mara Brooks, Steven Stoll and Mark Paget, WDA; Jennifer Kreider, WDHA; Lori Pelke, Midwest Dental; Lisa Davidson, WPHCA; Matt Crespin, CHAW; D. Schumacher, CVTC; B. DeGrasse, Renee Dischler, Megen Lube, Ashley Hagmann, Kelsey Lind, Susanna Mikkelsen, Wendy Dahleen, Cassandra Michels and Chelsea Frion, CVTC Students

CALL TO ORDER

Lyndsay Knoell, Vice Chair, called the meeting to order at 8:30 a.m. A quorum of nine (9) members was confirmed.

PLEDGE OF ALLEGIANCE

The Board members, staff and guests rose and recited the Pledge of Allegiance

ADOPTION OF AGENDA

Amendments:

- Item F4b –USE OF DERMAL FILLERS AND BOTOX, insert additional information after page 32
- Item F4c – new item, SLEEP APNEA DRAFT STATEMENT, insert after page 32
- Item F5a – STATUS OF CURRENT PROJECT, insert additional information after page 32
- Item G3 – new item, PDMP UPDATE, presented by Chad Zadrazil
- Case Status Report – insert at the end of the agenda in closed session
- Updated Board Roster – for Board information only

MOTION: Linda Bohacek moved, seconded by John Grignon, to adopt the agenda as amended. Motion carried unanimously.

APPROVAL OF MINUTES OF NOVEMBER 2, 2011

MOTION: Linda Bohacek moved, seconded by John Grignon, to approve the minutes of November 2, 2011 as written. Motion carried unanimously.

BOARD COMMITTEE AND LIAISON APPOINTMENTS

Practice Questions: Board Officers (Lyndsay Knoell, John Grignon, Linda Bohacek) with legal counsel

Screening Panel: Lyndsay Knoell, Sandra Linhart

Legislative Liaison: Mark Braden

DOE Monitoring Liaison: William Stempski

PAP Liaison: Kirk Ritchie

Credentialing Liaison: John Grignon

Office of Education and Examinations Liaison: Adriana Jaramillo, Eileen Donohoo

CPR Advisor: Sandra Linhart

Digest Advisor: Lyndsay Knoell

AADB: William Stempski

The Board discussed appointing a liaison to the steering committees for the regional examinations. Lydia Thompson will research whether or not this may be a conflict of interest and will report back to the Board in March.

SECRETARY MATTERS

There was no report at this time.

EXECUTIVE DIRECTOR MATTERS

There was no report at this time.

BOARD DISCUSSION ITEMS

DIVISION OF ENFORCEMENT MATTERS

There were no issues at this time.

EDUCATION AND EXAMINATION MATTERS

Failure and Re-Examination Requirements Under S. DE 2.09

The Board discussed applicants who have failed a regional examination more than two times and the possible requirement of remedial education.

MOTION: Eileen Donohoo moved, seconded by William Stempki, to approve the Credentialing Liaison to review the application when the applicant has failed a clinical and laboratory examination two times. Motion carried. Mark Braden opposed.

CREDENTIALING MATTERS

Review of Pharmacy Examining Board's Motion Document Identifying a Board Credentialing Liaison and Delegating Certain Credentialing Authority Duties

The Board briefly reviewed this document and will submit comments to legal counsel. This will be further discussed at the March meeting.

Application and Licensure By Endorsement Issues Related to NERB, CRDTS, Board Specialty Certification and Regional Examination

MOTION: Lyndsay Knoell moved, seconded by Linda Bohacek, to withdraw the previous motion to accept all regional examinations for dental applicants irrespective of the date the examination was taken. Motion carried unanimously.

MOTION: Lyndsay Knoell moved, seconded by John Grignon, to accept all regional examinations that currently have prior Board approval for applicants applying by endorsement irrespective of the date the examination was taken, with the exception of a Board Specialty Certification examination of the American Dental Association accredited specialty. Motion carried unanimously.

The Board discussed the acceptance of regional examinations for dental hygiene applicants. The Board made a motion at the July 2009 meeting to accept all regional exams for dental hygiene and will continue with this practice at this time. The Board has requested a comparison of the dental hygiene regional exams from the Office of Education and Examinations.

PRACTICE QUESTIONS/ISSUES

Review of Pharmacy Board's Practice Questions Policy

The Board reviewed the document from the Pharmacy Board regarding practice question policy.

MOTION: Lyndsay Knoell moved, seconded by Eileen Donohoo, to approve legal counsel to draft a Dentistry Examining Board practice question policy in convocation with the Board's appointed practice questions liaisons. Motion carried unanimously.

This document will be brought to a future meeting for the full Board's review.

Botox Use Scope Statement

The Board reviewed the current position statement on the use of dermal fillers and botox and determined that additional language should be inserted to clarify the Board’s position.

MOTION: Lyndsay Knoell moved, seconded by Mark Braden, to revise the Board’s position statement to read:

The use of dermal fillers and botox by a licensed dentist in the state of Wisconsin is allowable for functional, therapeutic, and aesthetic treatment purposes in accordance with the practice of dentistry as defined in s. 447.01 of the Wisconsin Statutes. It is expected that dentists will obtain appropriate training to be able to perform such services competently. Such training shall be provided by organizations or institutions recognized to provide continuing education courses in accordance with s. 447.056 of the Wisconsin Statutes.

Motion carried unanimously.

This information will be posted to the DSPS website.

Sleep Apnea

The Board reviewed the information regarding sleep apnea. Lydia Thompson will work with the sleep apnea workgroup to revise the statement and will bring this to the March meeting for further discussion.

LEGISLATION/ADMINISTRATIVE RULES

Review and Approve the Final Drafts and Legislative Reports for DE1; DE2, 6, 7; DE 2, 13

The Board reviewed the drafts and made some language changes.

MOTION: Lyndsay Knoell moved, seconded by Kirk Ritchie, to approve the final drafts and legislative report for the rules revisions to 11-033, 11-034 and 11-035. Motion carried unanimously.

LIAISON REPORTS

There were no reports.

SPEAKING ENGAGEMENT, TRAVEL AND PUBLIC RELATION REQUESTS

Eileen Donohoo will be attending the upcoming NERB meeting as an examiner.

Board members were reminded that Board approval is needed for any speaking engagement when representing the Board.

DISCUSSION OF TEETH WHITENING SERVICES AND COMPLAINTS

Berni Mattsson contacted DATCP regarding possible complaint records on teeth whitening. DATCP records are maintained by company name and not by the type of complaint; therefore, their records will not provide the information the Board had requested. The Board will not proceed with this issue at this time.

INFORMATIONAL ITEMS

Informational items were reviewed.

MOTION: Eileen Donohoo moved, seconded by Mark Braden, to authorize Lyndsay Knoell to work with legal counsel to draft a letter in support of AB 251. Motion carried unanimously.

Chad Zadrazil updated the Board on the PDMP project.

NEW BUSINESS

There was no new business.

PUBLIC COMMENTS

Mara Brooks, WDHA, addressed the Board regarding the requirements for dental licensure by endorsement.

CLOSED SESSION

MOTION: Lyndsay Knoell moved, seconded by John Grignon, to convene to Closed Session to deliberate on cases following hearing (Wis. Stat. § 19.85(1) (a)), to consider licensure or discipline (Wis. Stat. § 19.85(1) (b)), to consider individual histories or disciplinary data (Wis. Stat. § 19.85(1) (f)), and to confer with legal counsel (Wis. Stat. § 19.85(1) (g)). Roll call vote: Linda Bohacek-yes; Mark Braden-yes; Eileen Donohoo-yes; John Grignon-yes; Adriana Jaramillo-yes; Lyndsay Knoell-yes; Sandra Linhart-yes; Kirk Ritchie-yes; William Stempski-yes. Motion carried unanimously.

Open Session recessed at 10:39 a.m.

RECONVENE TO OPEN SESSION

MOTION: Lyndsay Knoell moved, seconded by John Grignon, to reconvene into open session. Motion carried unanimously.

The Board reconvened into open session at 1:22 p.m.

VOTING ON ITEMS CONSIDERED/DELIBERATED IN CLOSED SESSION

CASE CLOSING

05 DEN 133 (W.K.L, DDS)

MOTION: Adriana Jaramillo moved, seconded by Mark Braden, to close case **05 DEN 133 against respondent W.K.L., DDS**, for compliance gained. Motion carried. Lyndsay Knoell, William Stempski, Kirk Ritchie and Eileen Donohoo were all excused during deliberation and abstained from voting.

PROPOSED STIPULATIONS, FINAL DECISIONS AND ORDERS

GREGORY E MACHULAK, DDS

10 DEN 032

MOTION: Adriana Jaramillo moved, seconded by Linda Bohacek, to adopt the Proposed Stipulation, Final Decision and Order in the disciplinary proceedings against Gregory E. Machulak, DDS. Motion carried unanimously.

MATTHEW E RICHARDSON, DDS

10 DEN 127

MOTION: Adriana Jaramillo moved, seconded by John Grignon, to adopt the Proposed Stipulation, Final Decision and Order in the disciplinary proceedings against Matthew E. Richardson, DDS. Motion carried. Lyndsay Knoell was excused during deliberation and abstained from voting.

EDWARD J MCGRATH, DDS

11 DEN 093

MOTION: Linda Bohacek moved, seconded by John Grignon, to adopt the Proposed Stipulation, Final Decision and Order in the disciplinary proceedings against Edward J. McGrath, DDS. Motion carried unanimously.

ORDER FIXING COSTS

**JACK ELDER, DDS
05 DEN 020**

MOTION: Linda Bohacek moved, seconded by John Grignon, to adopt the Order Fixing Costs in the disciplinary proceedings against Jack Elder, DDS. Motion carried. Sandra Linhart was excused during deliberation and abstained from voting.

APPLICATION REVIEW

LINDA BRAUER, DDS

MOTION: Linda Bohacek moved, seconded by John Grignon, to require the applicant, Linda Brauer, DDS, to successfully complete the clinical portion of a regional exam or a proficiency evaluation/assessment from the Marquette University School of Dentistry. Motion carried unanimously.

ADMINISTRATIVE WARNINGS

MOTION: Linda Bohacek moved, seconded by Eileen Donohoo, to issue the administrative warning in case **10 DEN 024 against respondent A.A.T., DDS**. Motion carried unanimously.

MOTION: Adriana Jaramillo moved, seconded by John Grignon, to issue the administrative warning in case **11 DEN 063 against respondent T.T.T., DDS**. Motion carried unanimously.

CASE CLOSING(S)

MOTION: Mark Braden moved, seconded by John Grignon, to close case **11 DEN 082** for no violation. Motion carried unanimously.

OTHER BOARD BUSINESS

There was no other Board business to discuss.

ADJOURNMENT

MOTION: John Grignon moved, seconded by Kirk Ritchie, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 1:30 p.m.

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**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Lydia Thompson, Legal Counsel Division of Board Services		2) Date When Request Submitted: February 17, 2012 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Dentistry Examining Board			
4) Meeting Date: March 7, 2012	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Motion Identifying a Board Credentialing Liaison and Delegating Certain Credentialing Authority	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: The Board should review the document and identify duties for which the Board may delegate authority to the Credentialing Liaison. The Board has several options and may: <ul style="list-style-type: none"> • Suggest revisions to the document for review at a future meeting; • Delegate a member to approve of the final document after this meeting, but before the next Board meeting; or • Vote in approval of the current document. 			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: <ol style="list-style-type: none"> 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting. 			

MOTION IDENTIFYING A BOARD CREDENTIALING LIAISON AND DELEGATING CERTAIN CREDENTIALING AUTHORITY

On [DATE], the Dentistry Examining Board found the following and passed one motion identifying a Board Credentialing Liaison with alternates and delegating certain credentialing authority on an ongoing basis until such motion is hereinafter modified or withdrawn by the Board:

- Licensing individuals who are applying for a Board issued credential is an important responsibility of the Board and the Department.
- The number of applications for review, requests for review of state examinations, requests for examination retakes by applicants, and requests for review of disciplinary and/or criminal background histories of applicants and the time required therefore has increased in recent years.
- Presentation and consideration of issues relating to credentialing requires substantial Board meeting time.
- Delays in considering credentialing issues may adversely affect the delivery of health care services to Wisconsin residents.
- Many routine credentialing decisions may be made without the involvement of the full Board.

1) The Board appoints John Grignon, D.D.S. as the Board’s Credentialing Liaison for dental applicants, [NAME] as first alternate, and [NAME] as second alternate; and Linda Bohacek, R.D.H, M.A., C.D.H.C., as the Board’s Credentialing Liaison for dental hygiene applicants, [NAME] as first alternate, and [NAME] as second alternate; with authority to act on the Board’s behalf with respect to the following:

- a) Granting a credential within the Board’s jurisdiction if all required information required by law is submitted, and as otherwise limited by paragraphs, (d), through (f), set forth herein.
 - i. If applicable, the Liaison shall review the applicant’s examination, whether regional or state, to determine whether it is substantially equivalent to the clinical and laboratory demonstration examination administered by the Central Regional Dental Testing Service. If applicable, the Liaison shall review the applicant’s clinical and laboratory demonstration examination to determine whether it is a Board approved dental hygiene testing service.
 - ii. The Liaison shall assist the Division of Professional Credentialing and Division of Board Services with questions related to applications for a credential.
 - iii. The following credentials are included under this paragraph: Dentist, Dental Hygienist, Dental Faculty, Temporary licensure, and a permit authorizing the practice of dentistry or dental hygiene without compensation (to a dentist or dental hygienist licensed in another state).

Comment [r1]: Is this something the Board would like to keep in the motion?

Comment [r2]: These persons will need to be chosen at the March meeting.

Comment [r3]: These persons will need to be chosen at the March meeting.

Comment [r4]: Should this be included?

- iv. Any determination by the Liaison to deny a request under this paragraph or grant a credential with limitations must be presented to the Board for final determination.
- b) Granting requests for further examination under Wis. Admin. Code § DE 2.09, upon such conditions as authorized by that rule. Any determination by the Liaison to deny such a request must be presented to the Board for final determination.
- c) Reviewing applicants who have twice failed the clinical and laboratory demonstrations examinations. Any determination by the Liaison to deny an applicant from further examination or to deny a credential must be presented to the Board for the final determination.
- d) In granting a credential for licensure by *Endorsement* the Liaison may review the application and all documentation submitted with the application to determine whether the applicant meets the qualifications outlined in Wis. Stat. s. 447.04 and Wis. Admin. Code s. DE 2.04. The Liaison may approve the applicant for a credential if, in the Liaison’s judgment, the legal and professional qualifications have been met.
 - i. The Liaison shall review the dental applicant’s examination, whether regional or state, to determine whether the applicant successfully passed the examination and whether it is substantially equivalent to the clinical and laboratory demonstration examination administered by the Central Regional Dental Testing Service. Or alternatively, for a dental applicant, the Liaison shall review to determine whether the applicant has successfully completed a board specialty certification examination of an American Dental Association accredited specialty within the previous 10 years.
 - ii. The Liaison shall review the dental hygiene applicant’s examination to determine whether the applicant successfully passed the Central Regional Dental Hygiene Testing Service or the examination of a dental hygiene testing service approved by the Board.
 - iii. The Liaison shall review the dental hygiene applicant’s examination, whether regional or state, to determine whether the applicant successfully passed the examination and whether it is substantially equivalent to the clinical and laboratory demonstration examination administered by the Central Regional Dental Testing Service.
 - iv. Any determination by the Liaison to deny a request under this paragraph or grant a credential with limitations must be presented to the Board for final determination.
- e) In granting a credential for licensure by *Exam* the Liaison may review the application and all documentation submitted with the application to determine whether the applicant meets the qualifications outlined in Wis. Stat. s. 447.04 and Wis. Admin.

Comment [r5]: Is this something the Board would like to keep in the motion?

Comment [r6]: Is this language appropriate?

Comment [r7]: This is based on a motion the Board made at the January 2012 meeting in response to the current language in s. DE 2.09.

Comment [r8]: Should this be included?

Comment [r9]: Should this be included?

Code s. DE 2.01. The Liaison may approve the applicant for a credential if, in the Liaison's judgment, the legal and professional qualifications have been met. Any determination by the Liaison to deny a request under this paragraph or grant a credential with limitations must be presented to the Board for final determination.

- f) Granting the issuance of a credential, following the review of any discipline or conviction of crime as reported by the applicant and upon making the determination that the reported discipline or conviction of crime does not, at the time of application, pose a significant threat to the public health, safety, or welfare. In making the determination, the Liaison shall review Wis. Stat. s. 447.07(3). Any determination by the Liaison to deny a request under this paragraph or grant a credential with limitations must be presented to the Board for final determination.
- g) For all administrative actions taken pursuant to this motion the Liaison shall prepare a written report documenting the actions taken. A report shall be presented to the Board for review at the next available Board meeting following the administrative action taken by the Liaison.

2) This motion shall stay in effect until further modification by the Board.

Approved by Board Motion, [DATE].

Lyndsay Knoell, D.D.S.
Chairman of the Board

Department of Safety and Professional Services



Division of Board Services Board Member Guidebook

Division of Board Services

Board Member

Guidebook

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Department Information

The Department of Safety and Professional Services

History:

The 2011-13 biennial budget, 2011 Wisconsin Act 32 created the Department of Safety and Professional Services (DSPS) by combining the Department of Regulation and Licensing (DRL) and the Divisions of Safety and Buildings and Environmental and Regulatory Services from the Department of Commerce.

Chapter 75, Laws of 1967, created DRL and attached to it 14 separate examining boards that had been independent agencies. The 1967 reorganization also transferred to the department some direct licensing and registration functions not handled by boards, including those for private detectives and detective agencies, charitable organizations, and professional fund-raisers and solicitors.

DRL's responsibilities changed significantly since its creation. Initially, it performed routine housekeeping functions for the examining boards, which continued to function as independent agencies. Subsequently, a series of laws required the department to assume various substantive administrative functions previously performed by the boards and to provide direct regulation of several professions.

The DSPS Division of Safety and Buildings traces its roots to 1911 when the Legislature created the Industrial Commission in Chapter 485 to set standards for a safe place of employment. This "safe place" statute was extended in Chapter 588, Laws of 1913, to include public buildings, defined as "any structure used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public, or by three or more tenants." The commission adopted its first building code in 1914. Programs added over the years include plumbing, heating, ventilation, air conditioning, energy conservation, private on-site waste treatment systems, accessibility for people with disabilities, and electrical inspection and certification. These responsibilities and the job of administering various other laws relating to the promotion of safety in public and private buildings, including enforcing building codes, and the licensure of occupations such as electricians and plumbers, were ultimately assumed by the Department of Commerce.

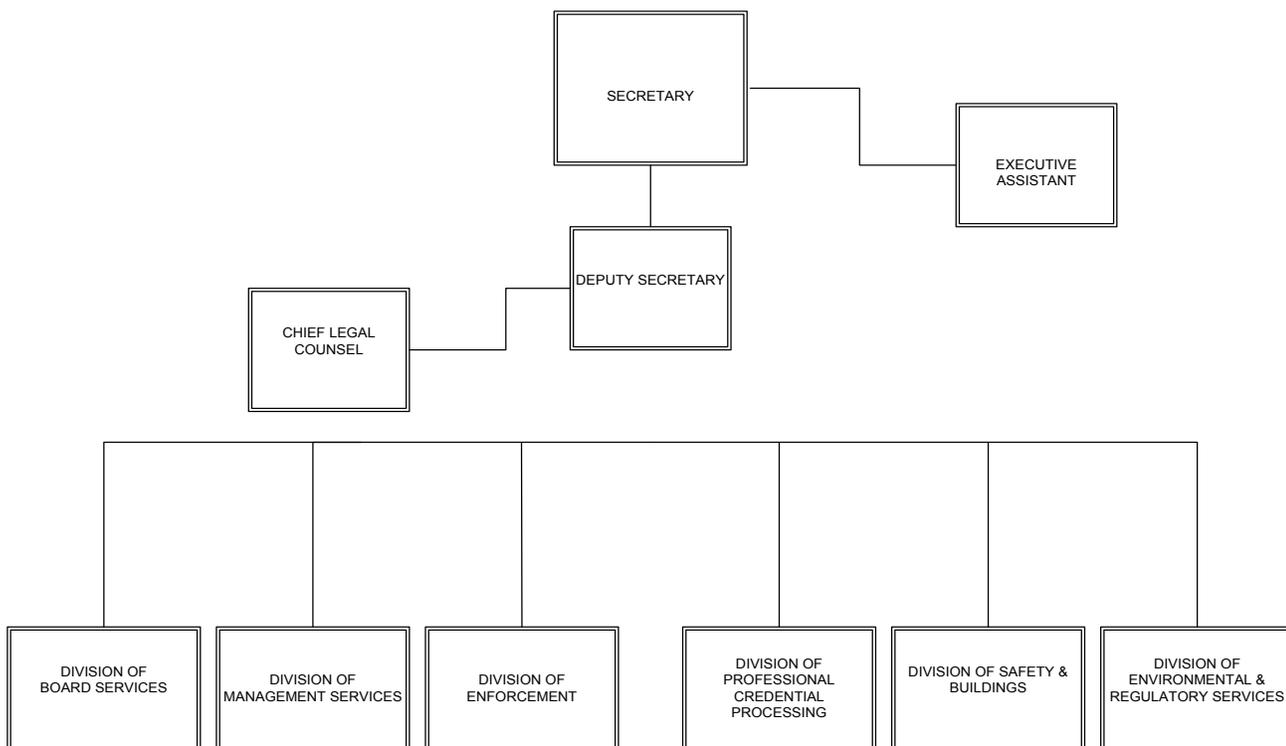
The DSPS Division of Environmental and Regulatory Services was created by 1995 Wisconsin Act 27 which transferred the PECFA program and the safety and buildings functions from the Department of Industry, Labor and Human Relations to the Department of Commerce.

The Department of Safety and Professional Services

Quick Facts

- Responsible for ensuring the safe and competent practice of licensed professionals in Wisconsin. The department also administers and enforces laws to assure safe and sanitary conditions in public and private buildings and regulates petroleum products and petroleum storage tank systems.
- Provides policy coordination and centralized administrative services for more than 70 boards, sections, councils, advisory committees, and direct licensing professions.
- Oversees the regulation of 200 types of credentials and specialty permits in more than 60 professional fields.
- Issues over 27,500 new credentials and renews more than 430,000 credential holders each biennium.
- Organized into six divisions and two offices:
 - Office of the Secretary
 - Division of Board Services
 - Division of Enforcement
 - Division of Environmental and Regulatory Services
 - Division of Management Services
 - Division of Professional Credential Processing
 - Office of Education and Examinations
 - Division of Safety and Buildings
- 379.6 full-time employees.
- Receives more than 2,500 consumer complaints per year.
- Verifies about 7,000 Wisconsin licenses per year to other states.

The Department of Safety and Professional Services Organizational Structure



Division of Board Services

Mission of DSPS and the Boards

To protect the health, safety and well-being of the citizens of Wisconsin by ensuring the safe and competent practice of licensed professionals at the least cost to the state.

To ensure the availability of safe and competent professional services by:

- fairly administering education, experience and examination requirements;
- establishing professional practice standards;
- ensuring compliance by enforcing occupational licensing laws.

Division of Board Services-Board Staff

17 staff in Board Services

1 Division Administrator

1 Program Assistant Supervisor

4 Executive Directors

4 Legal Counsel

4 Bureau Assistants

1 Adv-Paralegals

2 Paralegal

- There are approximately 300 board, council and committee members.
- A Bureau Director, Legal Counsel, and Bureau Assistant are assigned to each profession.
- The Division averages approximately 15 board, council and committee meetings each month.
- There are about 185 meetings scheduled each year.
- Provide the coordination and facilitation of a number of professional and administrative services to all of the regulatory boards, councils and committees.
- Provide administrative support.
- Coordinate and manage the business of each board, council or committee.
- Assist in facilitating the meetings.
- Provide professional services (analysis, evaluation and research).
- Coordinate drafting and implementation of laws, rules and policies.
- Coordinate board member travel and reimbursement processing.



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 Department of Safety and Professional Services

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DIVISION OF BOARD SERVICES
BOARD ASSIGNMENTS

<p>Tom Ryan, Executive Director Sandy Nowack, Legal Counsel Karen Rude-Evans, Bureau Asst Shawn Leatherwood, Adv Paralegal</p>	<p>Denise Aviles, Executive Director Yolanda McGowan, Legal Counsel Michelle Solem, Bureau Asst Kris Anderson, Paralegal</p>	<p>Dan Williams, Executive Director Colleen Baird, Legal Counsel Kimberly Wood, Bureau Asst Sharon Henes, Paralegal</p>	<p>Berni Mattsson*, Executive Director Lydia Thompson, Legal Counsel David Carlson, Bureau Asst. Kris Anderson/Sharon Henes, Paralegal</p>
<ul style="list-style-type: none"> ▪ Medical Examining Board <ul style="list-style-type: none"> ▫ Athletic Trainers Affiliated Credentialing Board ▫ Council on Physician Assistants ▫ Dietitians Affiliated Credentialing Board ▫ Occupational Therapists Affiliated Credentialing Board ▫ Perfusionists Examining Council ▫ Podiatrists Affiliated Credentialing Board ▫ Respiratory Care Practitioners Examining Council ▫ Massage Therapy & Bodywork Therapy Affiliated Credentialing Board 	<ul style="list-style-type: none"> ▪ Accounting Examining Bd ▪ Architects, Landscape Architects, Professional Engineers, Designers & Land Surveyors Examining Board <ul style="list-style-type: none"> ▫ Architects Section ▫ Designers Section ▫ Engineers Section ▫ Landscape Architects Section ▫ Land Surveyors Section ▪ Barbering & Cosmetology Examining Board ▪ Chiropractic Examining Bd ▪ Crematory Authority Council ▪ Funeral Directors Ex. Bd ▪ Real Estate Board <ul style="list-style-type: none"> ▫ RE Contractual Forms Advisory Committee ▫ RE Curriculum & Examination Council 	<ul style="list-style-type: none"> ▪ Controlled Substances Board (Lydia Thompson – Legal Counsel) ▪ Geologists, Hydrologists & Soil Scientists Examining Bd. <ul style="list-style-type: none"> ▫ Geologists Section ▫ Hydrologists Section ▫ Soil Scientists Section ▪ Marriage & Family Therapy, Professional Counseling, and Social Work Examining Bd. <ul style="list-style-type: none"> ▫ Marriage & Family Therapist Section ▫ Professional Counselor Section ▫ Social Worker Section ▪ Nursing, Board of <ul style="list-style-type: none"> ▫ Examining Council on Licensed Practical Nurses ▫ Examining Council on Registered Nurses 	<ul style="list-style-type: none"> ▪ Auctioneer Board ▪ Cemetery Board ▪ Dentistry Examining Board ▪ Hearing & Speech Examining Board <ul style="list-style-type: none"> ▫ Council on Speech-Language Pathology & Audiology (Colleen Baird – Legal Counsel) ▪ Optometry Ex. Board ▪ Real Estate Appr. Board* <ul style="list-style-type: none"> ▫ REA App Adv Com ▪ Sign Language Interp. Council
<ul style="list-style-type: none"> ▪ Nursing Home Ad. Ex Bd (Colleen Baird – Legal Counsel) ▪ Physical Therapy Ex. Bd ▪ Radiography Ex. Bd ▪ Veterinary Ex. Bd 	<p>Direct Licensing:</p> <ul style="list-style-type: none"> ▪ Athletic Agents Adv. Com. ▪ Private Detectives ▪ Private Security Persons <ul style="list-style-type: none"> ▫ Firearms Permits ▫ Firearms Certifiers 	<ul style="list-style-type: none"> ▪ Pharmacy Examining Board (Lydia Thompson – Legal Counsel) ▪ Psychology Examining Board 	<p>Direct Licensing:</p> <ul style="list-style-type: none"> ▪ Acupuncture ▪ Licensed Midwives Advisory Committee ▪ Music, Art & Dance Therapy ▪ Professional Employer Organizations
<p>Direct Licensing:</p> <ul style="list-style-type: none"> ▪ Boxing ▪ Home Inspectors ▪ Interior Designers ▪ Peddlers ▪ Charitable Organizations ▪ Professional Fund Raisers 	<p>Direct Licensing:</p> <ul style="list-style-type: none"> ▪ Behavioral Analysts ▪ Sanitarians ▪ Substance Abuse Counselors 	<p>Where indicated by the following, the Bureau Assistants differ from the staff listing:</p> <ul style="list-style-type: none"> • Lydia – Green • Sandy – Purple • Colleen – Orange • Karen – Red • Michelle – Yellow • Kim – Blue 	<p>*Berni Mattsson also provides support to the Boards and Councils associated with the Division of Safety & Buildings.</p>

Powers and Responsibilities

Powers of Regulatory Bodies

- **Examining Boards**

Authority:

- Set standards of professional competence and conduct for the professions.
- Prepare, conduct and administer examinations.
- Grant and deny credentials (licenses).
- Impose discipline.

Appointed By: Governor with Senate confirmation.

Reimbursement: Per Diem: \$25
Expenses: Actual and necessary expenses incurred in the performance of Examining Board duties.

- **Affiliated Credentialing Boards**

Bodies that are attached to an Examining Board to regulate professions that do not practice independently of the profession regulated by the Examining Board or that practice in collaboration with the profession regulated by the Examining Board.

Authority: With the advice of the examining board to which it is attached, sets standards of professional competence and conduct for the profession under the Affiliated Credentialing Board's supervision, reviews the qualifications of prospective new practitioners, grants credentials, and takes disciplinary action against credential holders.

Appointed By: Governor with Senate confirmation.

Reimbursement: Per Diem: \$25
Expenses: Actual and necessary expenses incurred in the performance of Board duties.

- **Examining Councils and Councils**

Authority: Serve an Examining Board in an advisory capacity to:

- Formulate rules to be promulgated by the Examining Board or department for the regulation of the specific profession.

Appointed By: Some Councils have members appointed by the Governor and others have members appointed by an Examining Board. Senate confirmation is not required. The Governor has the authority to appoint all public members.

Reimbursement: Per Diem: No compensation
Expenses: Actual and necessary expenses incurred in the performance of Council duties.

- **Auctioneer and Real Estate Appraisers Boards**

Authority: Advisory in all matters, except:

- Screening complaints.
- Imposing discipline.

Appointed By: Governor with Senate confirmation.

Reimbursement: Per Diem: \$25
Expenses: Actual and necessary expenses incurred in the performance of Examining Board duties.

- **Direct Licensing Advisory Committees and Screening Panel;**

- No examining board.
- The Secretary of the Department directly regulates the profession or occupation.
- The Secretary has authority to appoint committee and panel members.
- Committee and panel members serve at the discretion and pleasure of the Secretary.
- The Committee or panel members make recommendations and advise the Secretary on issues relating to the specific profession

Appointed By: Department Secretary

Reimbursement: Per Diem: No compensation

Expenses: Actual and necessary expenses incurred in the

Responsibilities of a Board Member

- You are a public official who is dedicated to public service. You are willing to sacrifice your time and tolerate inconvenience, frustration, and scheduling conflicts to be available for board service.
- You have major responsibilities to the public and credential holders.
- You ARE NOT an advocate for private interest or professional groups.
- You must represent the highest standards of ethical and professional conduct.
- You must strive to avoid any relationship, activity or position that may influence, directly or indirectly, the performance of your official duties as a board member.
- You cannot serve as spokesperson for the board unless properly designated by the board.
- You must make public (and recuse yourself from) any conflict of interest that exists to ensure the integrity of the board and all of its decisions.
- You must comply with the rules of confidentiality, at all times, in dealings outside the board meeting.

Importance of Public Members

- You are the voice of the public.
- You expand the range of perspectives available for higher quality and more creative board action.
- You balance decisions that might otherwise favor one faction of the regulated group over another.
- You make the governing board more responsive to the public it affects.
- You reduce the potential for board decisions to be professionally biased.
- You lend credibility to board accessibility and decisions.
- Public Member Concerns:
 - Being intimidated by professional members' experience in the field.
 - May impede board activity if technical issues are not understood.
 - Afraid to ask questions for fear of slowing down the meeting.
 - Professional members not treating public members as Board peers.

Responsibilities of the Board Chair

- Recognize board members are entitled to speak or propose motions.
- Restate the motion after it has been seconded, then open for discussion.
- Close discussion and put motions to a vote. Restate the motion exactly as it was made or amended before calling for the question.
- Announce the result of the vote immediately. A tie vote defeats a motion requiring a majority of those voting. The chair may vote to make or break a tie.
- Avoid entering into any controversy or interfering with legitimate motions.
- Maintain order and proper procedure by making necessary rulings promptly and clearly.
- Expedite board business in every way compatible with the rights of the board members. You can allow brief remarks on motions, advise board members how to take action (proper motion or form of motion), or order proposed routing action without a formal vote (“If there is no objection, the minutes will stand approved as read. Hearing no objection, so ordered”).
- Protect the board from frivolous motions whose purpose is to obstruct the board’s business. You can refuse to entertain such motions. Never adopt such a course, however, merely to expedite business.
- Guard the board’s time by having board members vote to adopt an agenda at the beginning of the meeting. Follow the agenda faithfully. Do not permit unauthorized interruptions by spectators.

What Makes A Successful Board Member?

- Recognition that the goal of the board is the protection of the public.
- Embracing role as a public servant.
- Common sense and a willingness to ask questions.
- Commitment to attendance.
- Willingness to devote time and effort to the work of the board.
- Open .
- Team player.
- Fairness.
- An orderly approach to decision making.
- Ability to set aside personal/business interests.

Board Members Should Avoid:

- Obsession with a single issue.
- Self-serving by bringing own agenda to the table.
- Always taking the “contrarian” view—just for show.
- Expounding on strongly held opinions that are rarely backed by fact or research.
- Unpredictable participation or attendance.

Disappointments Experienced As Board Members:

- Personal goals for improvement of the profession have not been realized.
- The public has not been served fairly.
- Lack of effort and dedication on the part of other board members.
- The “wheels” of government do not move fast enough.

Dealing With The Volatile World Of Meetings

Some of the ideas are best undertaken by the Chair; however, you should feel free to help any meeting to progress. After all, why should you allow your time to be wasted?

- If a participant strays from the agenda item, call him/her back: “We should deal with that separately, but what do you feel about the issue X?”
- If there is confusion, you might ask: “Do I understand correctly that ...?”
- If you do not understand, say so: “I don’t understand that, would you explain it a little more; or, do you mean X or Y?”
- If a point is too vague ask for greater clarity: “What exactly do you have in mind?”
- If the speaker begins to ramble, wait until an inhalation of breath and jump in: “Yes, I understand that such and such, does anyone disagree?”
- If someone interrupts (someone other than the rambler), you should suggest that: “We can hear your contribution after Phoebe is finished.”
- If people chat, you might either simply state your difficulty in hearing/concentrating on the real speaker or ask them a direct question: “What do you think about that point?”
- If someone gestures disagreement with the speaker (e.g., by a grimace), then make sure they are brought into the discussion next: “What do you think Phoebe?”
- If there is an error, look for a good point first: “I see how that would work if X Y Z, but what would happen if A B C?”
- If you disagree, be *very* specific: “I disagree because

Ethics For Board Members

Public officials must not engage in unethical or the appearance of unethical behavior. Board members should be cognizant of how their actions may be perceived by the public.

If you have questions about certain activities, you are encouraged to consult with the attorney from the Division of Board Services assigned to your Board.

General Standards of Conduct For Board Members

- Board members must not act in an arbitrary or capricious manner in discharging any of their public duties. All Board member decisions whether the individual or collective ones must be based upon a reasoned consideration of facts applied to the correct law.

Primary Duties of All Board Members

- Be knowledgeable about the statutes and rules governing the Board.
- Review and make decisions on all issues presented to the Board in compliance with the law and with the ultimate goal of protecting the public.
- Be aware that Board members are viewed as representatives of the Board when they appear at public meetings and professional gatherings. Board members should not speak for the Board unless specifically authorized to do so.
- Refer public inquiries about Board issues directly to the bureau director for your Board.
- Do not participate in discussion or vote on any matter in which the Board member has a personal or professional conflict of interest.
- Prepare for Board meetings by careful review of materials. Board members shall come to the meetings with preliminary opinions of the issues to be discussed and questions for clarification.
- As a professional member of the Board, remain current in standards of practice through reviewing professional literature and attending educational programming and through actual practice or relationships with colleagues in practice.
- As a public member of the Board, become educated regarding the practice of the profession.
- Maintain absolute confidentiality regarding disciplinary matters, examinations, examination scores and other closed-session issues. The failure to maintain confidentiality could result in loss of immunity Board members enjoy for purposes of their actions as Board members.

Discipline

- The objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter others from engaging in similar conduct.
- Punishment of the licensee is not an appropriate consideration.
- The statutory framework which creates the Board's authority will provide the options available for discipline.
- The goal of a regulatory board is to protect the public.

Standards of Ethical Conduct

■ The Five Commandments

- Do not act in an official capacity in a matter in which you have a private interest.
- Do not use your public position for a private benefit.
- Do not solicit or accept rewards or items or services likely to influence you.
- Do not use confidential information.
- Do not use your public position to obtain unlawful benefits.

■ Bias/ Conflict – Watch for:

- Financial Interests (employer/ employee/ competitor)
- Professional business Interests (have you worked with them in the past)
- Other – friends, non-friends
- Personal knowledge of facts which may not be in the record

Agendas and Meetings

Agendas and Meetings

- New Technologies – Share Point & Live Meeting.
- Agenda packets are mailed, emailed, and/or posted on Share Point about 7 calendar days prior to meeting.
- Agendas include:
 - Approval of the Agenda and Minutes
 - Open Session Items
 - Administrative Report
 - Legislation and Administrative Rules Issues
 - Public Hearings
 - Education and Exam Issues
 - Practice Questions
 - Current Issues Affecting the Profession
 - Closed Session items
 - Stipulations
 - Administrative Warnings
 - Deliberations on Proposed Disciplinary Actions
 - Case Closings
 - Monitoring Issues
 - Credentialing Issues
 - Exam Issues
- Agendas are published for public notice every Wednesday prior to the meeting on the Department's web site
- Meetings must comply with the Open Meetings Law.
- "To-Do" lists are distributed to staff within three (3) days after a meeting.
- Minutes are prepared within five (5) days after the board meeting.
 - Once the board approves the minutes, they are published on the Department's web site.

Expenses and Travel

General Expense Reimbursement Guidelines

- State statutes and Code of Ethics strictly prohibit any board member, his or her family, or co-workers from benefiting personally from free flight plans, lodging, meals, or other promotions which result from travel incurred in connection with board official business and paid from state or federal funds.
- All travel-related expenses are reimbursable within the limitations established by the Department of Employment Relations and the Department of Administration.
- Any board member whose appointment has been confirmed by the Senate or who has been nominated to fill a vacant board position is eligible to receive a per diem. Council and Committee members are not eligible for a per diem.
- Any board, council or committee member whose appointment has been confirmed by the Senate or who has been nominated to fill a vacant position is eligible to receive travel expenses for each day on which he or she has actually and necessarily engaged in the performance of board duties. If you are employed by the State of Wisconsin these requirements do not apply.
- All per diem and travel expense reimbursement vouchers must be submitted to the Department **within a month of the activity** in which payment is being requested.
- Any board member who wishes to attend out-of-state regional or national meetings or conventions must have prior approval by the Board and the Department, if he or she wishes to receive reimbursement for expenses by the Department.
- Employees in travel status are expected to use good judgment when incurring travel costs. Only expenses incurred while conducting official State business will be reimbursed. Reimbursement claims must represent actual, reasonable and necessary expenses.
- Reimbursement for air travel is limited to the lowest appropriate airfare which is defined as coach fare, which provides for not more than a 2-hour window from the traveler's preferred departure or arrival time and may require one plane transfer.
- Benefits from any airline promotion program, such as frequent flier points or credit vouchers, belong to the State and should be turned over to the Department.

Lodging Accommodations

- Hotel arrangements for board meetings are scheduled by the department for all board meetings at the beginning of each year.
- Lodging the night before a board meeting will be reimbursed provided the board member would have to leave home before 6:00 a.m. in order to be at the meeting site by the set meeting time.
- Maximum reimbursement rate for in-state lodging is \$70, except in Milwaukee, Waukesha and Racine counties where the rate is \$80.
- Maximum reimbursement rates for out-of-state lodging are determined by the Office of State Employment Relations. In cases where a board member stays at the conference site, the conference room rate is allowable.

Per Diem Guidelines

\$25 per day

(Only one per diem may be claimed per calendar day.)

Examples:

- Attend board meeting or participate in a board meeting by telephone.
- Attend a Screening Panel Session when held on a day other than a board meeting date, in person or by telephone.
- Senate confirmation hearing.
- Exam administration or test development
- Attend a legislative or other public hearing as an authorized representative of the board on matters directly related to the work of the board. Prior approval from the secretary is required for per diem payments for more than one board-authorized representative at a public hearing.
- Represents the board at a meeting of a governmental body or other organization where attendance is necessary to the performance of the board's official duties.

5-Hour Rule

- \$25 for performing a cumulative minimum of 5 hours engaged in:
 - Duties as a disciplinary case screener or board advisor including reviewing cases, consulting with investigators, etc. (NOTE: You will need to document the exact times performing these duties on your per diem form.
 - Preparation of board correspondence or articles
- Hours can only be claimed in the month the duties were performed. Hours cannot carry over to other months.

Insufficient Basis For Approval of a Per Diem

- Travel days to or from board meetings, conferences, and other events when there is no event business conducted.
- Reading board agendas, meeting packets, minutes or transcripts.
- Attendance at professional association meetings, conferences, seminars, exam administrator or test development if there has not been prior board authorization and approval of the Secretary's office.

Travel and Meal Guidelines

- **Mileage rate --** 48.5 cents per mile
- **Private Airplane--** 48.5 cents per mile
- **Meals** (*Maximum amounts*)

	<u>In-State Travel</u>	<u>Out-of-State Travel</u>
Breakfast	\$8	\$10
You must leave home before 6:00 a.m.		
Lunch	\$9	\$10
You must depart before 10:30 a.m. & return after 2:30 p.m.		
Dinner	\$17	\$20
You must return home after 7:00 p.m.		

NOTE: Alcoholic beverages may not be claimed for any meal.

- **Telephone:** One personal call home is reimbursable up to \$5 for each night in travel status.
- **Hotel Gratuities:** Gratuities to hotel employees are reimbursable up to \$2 on dates of departure and arrival, and up to \$2 per night for a stay at a hotel/motel.
- **Porterage:** Porterage costs at airports or bus terminals will be reimbursed. The claim should not exceed \$1 per piece of luggage.
- **Taxi/Shuttle:** Receipts are required for one-way fares exceeding \$25.

Examples of Non-reimbursable Items

This list is not all-inclusive

- Traffic citations, parking tickets and other fines
- Mileage charges incurred for personal reasons, e.g., sightseeing, side trips, etc.
- Additional charges for late checkout
- Taxi fares to and from restaurants
- Meals included in the cost of registration fees or airfare
- Flight insurance
- Cancellation charges (unless fully justified)
- Alcoholic beverages
- Spouse or family members' travel costs
- Lost/stolen cash or personal property
- Personal items, e.g., toiletries, luggage, clothing, etc.
- Repairs, towing service, etc., for personal vehicle
- Pay-for-view movies in hotel room; personal entertainment
- Child care costs and kennel costs

Forms and Memos

Department of Regulation & Licensing

PER DIEM REPORT

Month January Year 2011

INSTRUCTIONS: Send original (white) and first copy (yellow) to Bureau Director authorized to approve. Approving Bureau Director forwards original and first copy to Deputy Secretary, Department of Regulation and Licensing. Second copy (green) to be retained by claimant. Attach travel voucher if applicable.

NAME OF EXAMINING BOARD OR COUNCIL Board				BOARD OR COUNCIL MEMBER'S NAME John Doe			
Day	Specify Number of Hours	Purpose Code	Where Performed	Day	Specify Number of Hours	Purpose Code	Where Performed
1				17			
2				18			
3				19			
4				20			
5	7	A	DRL- Madison	21			
6				22			
7				23	2	G	Home
8				24			
9				25			
10				26			
11	3	B	Teleconference - Home	27			
12				28			
13				29			
14				30			
15				31			
16							

TOTAL DAYS CLAIMED 2 @ \$ 25.00 = \$50.00

CLAIMANT'S CERTIFICATION The undersigned certifies, in accordance with Sec. 16.53, Wis. Stats., that this account for per diem, amounting to \$25.00, is just and correct; and that this claim is for service necessarily incurred in the performance of duties required by the State, as authorized by law.	APPROVED:
	Bureau Director Date
Claimant's Signature Date	Secretary, Department of Regulation & Licensing
Social Security Number	Date

Purpose Codes:

- A. Attend **Board meetings** in person or via teleconference call.
- B. Attend **Screening Panel** meetings on days other than board meeting days (teleconference calls)
- C. Attend **Hearings**, i.e., legislative, disciplinary or informal settlement conference hearings, on days other than board meeting days.
- D. Attend **Examinations**
- E. Attend **Test Development Sessions**, i.e., test review or analysis sessions, national testing sessions, tour of test facilities, etc.)
- F. Attend Senate Confirmation Hearings
- G. Review DOE cases
- H. Review credentialing applications other than at board meeting.
- G. Other (describe in detail)

Department Policy

Deadline For Submitting Travel Vouchers and Per Diems

Effective: Immediately

Board Members will only be reimbursed for travel upon a motion made by the Board, Council, or Committee designating them as a representative and upon prior approval of the department.

Policy for Submitting Board Meeting Travel Reimbursement

All travel vouchers and per diems must be submitted to the Department after each meeting and no later than the month following the Board meeting.

Policy for Submitting Out-of-State Travel Reimbursement

All travel vouchers and per diem vouchers must be submitted no later than the month following the month in which the out-of-state travel occurred.

Forms Submitted after the Deadline

Due to the Department's budget being an annual appropriation, those vouchers that are not submitted in a timely manner become at risk of not being reimbursed.

Annual Appropriation:

The Department receives authority from the legislature to spend a set amount of money each fiscal year. None of the authorized set amount can be carried forward to the next fiscal year.

Division of Board Services
HOTEL RESERVATIONS POLICY & PROCEDURE

Effective January 1, 2010, the Department has selected the Fairfield Inn & Suites for all future hotel reservations.

Fairfield Inn
2702 Crossroads Dr
Madison, WI 53718
608-661-2700

- If the board member is not going to use the reserved hotel room, it is the responsibility of the board member to cancel the room by calling the hotel themselves.
- If the hotel room is not cancelled, the board member may be responsible to pay the bill.
- If a meeting is cancelled due to a lack of quorum or no business, it is the responsibility of the Department to cancel any room reservations.

QUORUM CONFIRMATION POLICY

- It is every board member's responsibility to ensure there is a quorum to conduct business at all board meetings.
- It is the responsibility of each board member to inform the executive director of any meeting dates in which they will not be able to attend.
- If Division staff does not hear from a board member, they will assume that the board member will be attending the scheduled meeting.
- A quorum check will not be conducted prior to each scheduled board meeting.
- The only time Division staff will conduct a quorum check will be if two or more board members contact the Division indicating they will not be able to attend an upcoming scheduled meeting.
- Every board member will receive a list of all approved meeting dates at the first board meeting of the New Year. Please use this as a reference to assist in planning for the year ahead.

INCLEMENT WEATHER POLICY & PROCEDURE

Quorum Note: For open session you need one more than half of the total board membership. If there is formal discipline you will need 2/3 of the total board membership.

- Teleconference and Live Meeting options should be offered in order to continue with the scheduled meeting.
- Hotel rooms for the night before should be provided for any Board member traveling more than 50 miles from Madison and the meeting starts before 10:00 a.m.
- If a Board member who has a hotel reservation already in place will not attend and/or the meeting is cancelled, the hotel room should be cancelled immediately.

Division of Board Services Board Member Guidebook

This Board Member Guidebook has been prepared for your information and understanding of the policies, expectations, and practices of the Department of Safety & Professional Services and the Division of Board Services. Please read it carefully. Upon completion of your review of this guidebook, sign the statement below, and return it to the Executive Director of your Board, Committee, or Council by the due date. A copy of this acknowledgment appears at the back of the guidebook for your records.

I, _____, have received and read a copy of the Division of Board Services Board Member Guidebook which outlines the policies, expectations, and practices of the Department of Safety & Professional Services and the Division of Board Services, as well as my responsibilities as a member of an attached Board, Council, or Committee.

I have familiarized myself with the contents of this guidebook. By my signature below, I acknowledge, understand, accept and agree to comply with the information contained in the Board Member Guidebook provided to me by the Division of Board Services. I understand this guidebook is not intended to cover every situation which may arise during my term, but is simply a general guide to the goals, policies, practices, and expectations of the Department of Safety & Professional Services.

(Member signature)

Please return by: _____
(put date here)

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(Member signature)

Please return by: _____
(put date here)

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**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Eileen Donohoo		2) Date When Request Submitted: 2/17/12 <small>Items will be considered late if submitted after 4:30 p.m. and less than:</small> <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Dentistry Examining Board			
4) Meeting Date: 3/7/12	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Request for Board recommendation as a deputy examiner for CRDTS	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Please review the CV and cover letter from Dr Christopher Dix for a deputy examiner appointment to CRDTS.			
11) Authorization			
		2/17/12	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			



MARQUETTE
UNIVERSITY

March 13, 2012

Dr. Lindsay Knoells
Dental Examining Board
Dept. of Safety and Public Services
1400 E. Washington Ave.
Madison, WI 53703

Dear Dr. Knoells,

I am writing to express my desire to serve on the Dental Examining Board in particular in the capacity of a CRDTS examiner. Since returning to teaching at Marquette University School of Dentistry in 2008, I have come to appreciate the significant importance of evaluating those individuals who seek the privilege of practicing the profession I chose over 35 years ago.

As one of eight group leaders at MUSoD, I am directly responsible for the clinical training and evaluation of ten D3 and ten D4 students along with another 20-40 students in a 25 chair clinic similar to a large group practice. My responsibilities include semester evaluations of each student's clinical progress and accomplishments. In addition, I administer Competency Examinations in Patient Treatment Planning and Comprehensive Examinations to facilitate Comprehensive Patient Care. As a further commitment to quality outcomes at MUSoD, I am one of ten faculty in charge of Quality Control in the Department of General Dental Sciences. Dealing with the students' needs to apply individual didactic development to a diverse patient population with a diverse set of clinical necessities and desires is a routine part of my duties. I view a position with the Dental Examining Board as a natural extension of my teaching abilities and an important way to help qualify those individuals pursuing a professional dental career.

Your and the Board's consideration of my request is sincerely appreciated.

Thank you,

Christopher R. Dix DDS
Clinical Assistant Professor
Department of General Dental Sciences
Marquette University School of Dentistry, Rm 229C
P.O. Box 1881
Milwaukee, WI 53201-1881
414-288-0501
christopher.dix@marquette.edu

encl: CV

CURRICULUM VITAE

Christopher R. Dix, DDS
February 1, 2012

HOME ADDRESS: 2455 Anita Drive
 Brookfield, WI 53045
 262-786-0783

PROFESSIONAL POSITIONS:

January 2012 - Present	Chair of MUSoD Screening Committee – Charged with Evaluating and Recommending Revision of Patient Screening Protocol
September 2010 - Present	Member of MUSoD Quality Assurance Committee directly dealing with Environmental Safety
May 2010 – Present	Assistant Professor Department of General Dental Sciences – MUSoD CPMG Group Leader Clinic C
May 2010 – Present	Private Practice - Practice Release Day from MUSoD
September 2008 – May 2010	Adjunct Assistant Professor General Dental Sciences MUSoD - Clinical Part-time
September 1977 - May 1979	Instructor Preclinical Crown and Bridge at MUSoD
1976 – May 2010	Private Practice – Full-time

PRIVATE OFFICE ADDRESS:

17585 W. North Ave. Suite 100, Brookfield, WI 53045

COURSES TAUGHT:

2010 – Present (Full-time)

DENT 510 Comprehensive Patient Care Practicum 1 (NKA - DECS 7314)

DENT 513 Comprehensive Patient Care Practicum 2 (NKA - DECS 7324)

DENT 517 Comprehensive Patient Care Practicum 3 (NKA - DECS 7334)

DENT 482 Clinical Dental Practice (NKA - DEIN 7234)

CURRICULUM VITAE

DENT 564 Senior Clinical Practicum in Comprehensive Care 1 (NKA - DECS 7414)

DENT 574 Senior Clinical Practicum in Comprehensive Care 2 (NKA - DECS 7424)

DEIN 7118 Dental Rounds 1

DEIN 7128 Dental Rounds 2

DEIN 7218 Dental Rounds 4

DEIN 7228 Dental Rounds 5

DEIN 7318 Dental Rounds 7

DEIN 7328 Dental Rounds 8

DEIN 7418 Dental Rounds 10

DEIN 7428 Dental Rounds 11

DEIN 7110 Foundations of Oral Health 1 (Two Lectures)

Clinic Coverage

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1977 – 1979 (Part-time)

Pre-Clinical Fixed Prosthodontics 1 (NKA - DEGD 7212)

Pre-Clinical Fixed Prosthodontics 2 and Clinical Occlusion (NKA - DEGD 7222)

COURSES ATTENDED:

MUSoD	Should I Give “Teeth in a Day?” (Dr. Harshit Aggarwal)	2/9/2012	3 Credits
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CURRICULUM VITAE

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Astra	“The Reverse Pathway for the Integration of Aesthetics and Function”	3/26/2011	6 Credits
MUSoD	MUSoD Student Research Day	2/16/2011	3 Credits
MUSoD	Clinical Update 2010	10/22/2010	6 Credits
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Nobel-Biocare	Implant Supported Restorations for The Fully Edentulous Arch	04/28/2010	6.5 Credits
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Align Technology	Invisalign Appliances	02/26/2010	1 Credit
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CURRICULUM VITAE

Stan Sehler	Implant	March 2009
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Badger Laboratory	Implant Course	May 2007
Stan Sehler	Implant Course	March 2007
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PROFESSIONAL ACTIVITIES:

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Power Point presentation with a focus on Success in Dentistry.

Developed and delivered lectures for D1 students on “Dental Terminology”

Actively collaborate on cases with: Dr Charles Bohl - Orthodontist
Dr. Kevin King - Endodontist
Dr. Gary Smith - Periodontist
Dr. Greg Haasch - Endodontist

CURRICULUM VITAE

Dr. Stan Sehler - Periodontist
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Dr. Robert Wallock – Oral Surgeon

Member ADEA

Member ADA

Member WDA

UNIQUE SKILLS AND COMMUNITY INVOLVEMENT:

Head Start Day October 1, 2011 Participant

Member 2020 Committee City of Brookfield for Planning Development in the city

2007 Oconomowoc River clean-up from the former Funk's Dam site to North Lake

2001-2006 Volunteered to Plan, Obtain All Necessary Approvals and Build North Lake Yacht Club Facility (an approximately 5,000 square foot multi-use structure). This involved total control of all aspects of planning, approvals, permitting, bidding and construction.

Agencies worked with:

Town of Merton

Waukesha County Parks and Land Use

Army Corps of Engineers

Wisconsin Department of Natural Resources

Southeast Wisconsin Regional Planning Commission

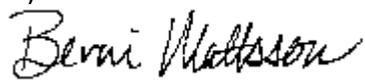
This project involved my managing approximately 85 workers and 25 volunteers throughout the process. The most challenging aspect of this project was working with rezoning a large parcel of the property from Conservancy to Residential with a Conditional Use Permit for the Facility.

1997 After unexpectedly finding out that my leased dental office building was scheduled to be torn down, I located, purchased, planned, received approval, permitted, constructed, and leased excess space in a new 15,456 square foot two story professional office building. The entire process was handled by my wife and myself in the space of 10 months while I continued a full time dental practice. Besides the meetings and paper-work this involved my managing approximately 125 people through various stages of completing the project. The project was finished ahead of schedule and under budget.

1995-Present Volunteered for numerous sailing regattas and as sailing judge for races.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Eileen Donohoo		2) Date When Request Submitted: 2/17/12 <small>Items will be considered late if submitted after 4:30 p.m. and less than:</small> <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Dentistry Examining Board			
4) Meeting Date: 3/7/12	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Request for Board recommendation as a deputy examiner for CRDTS	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Please review the CV and cover letter from Dr Christopher Dix for a deputy examiner appointment to CRDTS.			
11) Authorization			
		2/17/12	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			



MARQUETTE
UNIVERSITY

March 13, 2012

Dr. Lindsay Knoells
Dental Examining Board
Dept. of Safety and Public Services
1400 E. Washington Ave.
Madison, WI 53703

Dear Dr. Knoells,

I am writing to express my desire to serve on the Dental Examining Board in particular in the capacity of a CRDTS examiner. Since returning to teaching at Marquette University School of Dentistry in 2008, I have come to appreciate the significant importance of evaluating those individuals who seek the privilege of practicing the profession I chose over 35 years ago.

As one of eight group leaders at MUSoD, I am directly responsible for the clinical training and evaluation of ten D3 and ten D4 students along with another 20-40 students in a 25 chair clinic similar to a large group practice. My responsibilities include semester evaluations of each student's clinical progress and accomplishments. In addition, I administer Competency Examinations in Patient Treatment Planning and Comprehensive Examinations to facilitate Comprehensive Patient Care. As a further commitment to quality outcomes at MUSoD, I am one of ten faculty in charge of Quality Control in the Department of General Dental Sciences. Dealing with the students' needs to apply individual didactic development to a diverse patient population with a diverse set of clinical necessities and desires is a routine part of my duties. I view a position with the Dental Examining Board as a natural extension of my teaching abilities and an important way to help qualify those individuals pursuing a professional dental career.

Your and the Board's consideration of my request is sincerely appreciated.

Thank you,

Christopher R. Dix DDS
Clinical Assistant Professor
Department of General Dental Sciences
Marquette University School of Dentistry, Rm 229C
P.O. Box 1881
Milwaukee, WI 53201-1881
414-288-0501
christopher.dix@marquette.edu

encl: CV

CURRICULUM VITAE

Christopher R. Dix, DDS
February 1, 2012

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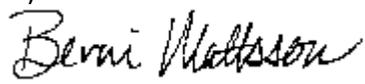
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**State of Wisconsin
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AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: NERB		2) Date When Request Submitted: 1/25/12 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Dentistry Examining Board			
4) Meeting Date: 3/7/12	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Request for comments from NERB on a potential Consultant Member	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Attached is information from NERB offering the Board an opportunity comment on an applicant who wishes to become a Consultant Member. DSPS Credentialing has verified that Dr. Skarie holds an active license with no restrictions. There is no record of disciplinary action against the license.			
11) Authorization			
		1/25/12	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Bureau Director signature (indicates approval to add post agenda deadline item to agenda) Date			
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NORTH EAST REGIONAL BOARD OF DENTAL EXAMINERS, INC.

8484 Georgia Avenue, Suite 900 + Silver Spring, MD 20910

Tel: (301) 563-3300 + Fax: (301) 563-3307

www.nerb.org

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Chairman

David W. Perkins, DMD
Vice-Chairman

LeeAnn Podruch, DDS, JD
Secretary

Myron Allukian, Jr., DDS, MPH
Treasurer

Patricia M. Connolly-Atkins, RDH, MS
Member-at-Large

Cynthia Fong, RDH, MS
Member-at-Large

John M. Iacono, DDS
Member-at-Large

Robert G. Ray, DMD
Member-at-Large

Frank C. Williams, DDS
Member-at-Large

Jack Feldesman, MBA
Director of Finance and Administration

Ellis H. Hall, DDS
Director of Examinations

Michael S. Zeder
Director of Information Technology

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- NEW JERSEY
- NEW YORK
- OHIO
- OREGON
- PENNSYLVANIA
- RHODE ISLAND
- VERMONT
- WEST VIRGINIA
- WISCONSIN

January 5, 2012

Bureau Director
Wisconsin Dentistry Examining Board
1400 East Washington Ave., Rm 12
P.O. Box 8935
Madison, WI 53708

Dear Ms. Kelli Kaalele:

Attached is a list, together with short curriculum vitae of one dentist from your jurisdiction who is applying to become a Consultant Member of the North East Regional Board of Dental Examiners (NERB). The position of Consultant Member is for one year and can be renewed annually following review of the individual's performance during the year of service. Consultant Members, along with current and past members of the participating state dental board, administer the ADEX and NERB clinical examinations for the NERB in Dentistry and Dental Hygiene.

As you are aware, according to our Bylaws, the names of proposed Consultant Members licensed and active in your jurisdictions in the NERB region are sent for informational purposes and/or comment to your board, prior to the consideration of the applicants by the NERB Executive Committee. Your board has the right to recommend or not recommend appointment or re-appointment of the proposed Consultant Member and the NERB will honor that recommendation.

At this time we request confirmation that this proposed new member is registered and hold an active license to practice without restrictions. Please review as appropriate, and provide us with your recommendations for appointment.

Please reply to me at the above address or by fax at 301-563-3307 as soon as possible as we are now processing these applications on an ongoing basis rather than once a year.

Thank you for your attention to this matter.

Sincerely,

LeeAnn Podruch, DDS, JD
Secretary

North East Regional Board of Dental Examiners, Inc.

Active Dental and Dental Hygienist Members

Wisconsin

Please check appropriate box

Name	Type of Examiner	Recommended	Not Recommended	Comments
Skarie, William R.	Dentist			

Name: _____

Signed: _____

Title: _____

Date: _____

William Robert Skarie, D.D.S.

5806 Amir Drive
Weston, WI 54476
715.359.3200
715.359.7778 (fax)
drskarie@skariedental.com

Professional Experience

William R. Skarie, D.D.S., S.C.

- 1976 to 2004: Solo practitioner of dentistry, practicing all aspects of family dentistry in Tigerton, WI, an underserved rural health care setting.
- 2004 to present: solo practice in general dentist with dental office in Weston, WI

Professional Activities

- Past Clinic manager for Tigerton Clinic, a rural medical health care facility.
- Past Advisory Council for Lord's Dental Studio.
- Past North Central Technical College Dental Hygiene Advisory Committee.
- Past Tigerton Clinic, S.C. Board of Directors.
- Past Peer Review Committee Shawano County Dental Society (Chair of committee)
- Seattle Study Club—Central Wisconsin Dental Forum
- Appointed to Wisconsin Dental Examining Board 2003—served on DEB 2006 thru 2007. Board Chair 2007
- AADE 2006-2008
- CRDTS perio and restorative examiner 2007 to present
- CRDTS steering committee 2007

Education

B.A. Biology, 1973 – Indiana University/Purdue University of Indianapolis.
D.D.S., with Distinction, 1976 – Indiana University School of Dentistry.

Professional Memberships

Shawano County Dental Society – 1976 to 2004 (President, two terms)
Central Wisconsin Dental Society—2004-present
Wisconsin Dental Association -- 1976 to present.
American Dental Association – 1976 to present
Central Wisconsin Dental Forum –a Seattle Study Club—1995 to present
Marathon County Dental Society—2004 - 2010

Advisory Council to Lord's Dental Studio—2003
CRDTS 2007 to present

Wausau Early Bird Rotary Club—2006 to present. Active member holding several club positions.

Continuing Education 2010-2011 (documentation and previous CE upon request)

January 2010	RPD Abutments MSOE
February 2010	CRDTS exam U of Minnesota
April 2010	Lou Graham CWDF
September 2010	The Christenson Bottom Line MSOE
September 2010	Occlusion Dr. Jeff Okeson CWDF
October 2010	Dr. Roger Levin CWDF
November 2010	Sleep Apnea Dr. Schmidt CWDF
December 2010	Rotary Endo Joe Camp CWDF
February 2011	CRDTS exam U of Minnesota
March 2011	CRDTS exam Marquette University
May 2011	Mini Implants 3M

Interests and Activities 2011

Gardening, running, fishing, golf, photography



References

References available upon request.

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**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Berni Mattsson		2) Date When Request Submitted: 2/15/12 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Dental Examining Board			
4) Meeting Date: 3/7/12	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? National Dental Examiners Advisory Forum Designee	
7) Place Item in: <input type="checkbox"/> Open Session <input checked="" type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: The Board may wish to designate a representative to attend the National Dental Examiners Advisory Forum. The Joint Commission on National Dental Examinations conducts an annual forum for representatives of state boards of dentistry for the purpose of exchanging information about National Board Dental and Dental Hygiene Examinations. The meeting of the National Dental Examiners' Advisory Forum in 2012 will be held on Monday afternoon, April 23 from 3:00 p.m. – 5:00 p.m. , in the auditorium of the American Dental Association Headquarters Building. This meeting will follow the Mid-Year Meeting of the American Association of Dental Boards (AADB), which will be held on Monday morning, April 23, 2012 from 9:00 a.m. – 3:00 p.m. In addition, the AADB and the Joint Commission will jointly sponsor a reception the evening of April 23 rd at 5:00 p.m. – 7:00 p.m. in the Executive Dining Room on the 22nd floor. Program: Among others, the program will include updates on recent National Board Dental and Dental Hygiene Examination results and a discussion of current and future research and development projects. Participation: All interested members of state boards and others are welcome to attend the Advisory Forum. Funding, however, is limited to one current member of each state board for one day . There is no registration fee for the Advisory Forum. Funding: To qualify for funding, a state board member must be officially designated as the board's one representative. A form to designate the representative is attached and should be returned no later than March 23 rd . A return envelope is provided. This will allow us time to send information to the representative before the meeting. The "Designation of Representative" form submitted after the Advisory Forum will not be accepted.			

11)

Authorization

Berni Mattsson

2/15/12

Signature of person making this request

Date

Supervisor (if required)

Date

Bureau Director signature (indicates approval to add post agenda deadline item to agenda) Date

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**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Berni Mattsson		2) Date When Request Submitted: 2/28/12	
		Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Dentistry Examining Board			
4) Meeting Date: 3/7/12	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Unlicensed Practice Cases	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: The following is provided for the Board's consideration and discussion:			
440.21 Enforcement of laws requiring credential.			
<p>(1)The department may conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 480.</p> <p>(2)If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.</p> <p>(3)In lieu of holding a public hearing, if the department has reason to believe that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may petition the circuit court for a temporary restraining order or an injunction as provided in ch. 813.</p> <p>(4)</p> <p>(a) Any person who violates a special order issued under sub. (2) may be required to forfeit not more than \$10,000 for each offense. Each day of continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover a forfeiture under this paragraph.</p> <p>(b) Any person who violates a temporary restraining order or an injunction issued by a court upon a petition under sub. (3) may be fined not less than \$25 nor more than \$5,000 or imprisoned for not more than one year in the county jail or both.</p> <p>History: 1991 a. 39; 1993 a. 102. Cross-reference: See also ch. SPS 3, Wis. adm. code.</p>			

11)	Authorization
<i>Berni Mattsson</i>	2/28/12
Signature of person making this request	Date
Supervisor (if required)	Date
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)	Date
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.	



2011 ASSEMBLY BILL 547

February 8, 2012 - Introduced by Representative RIVARD, cosponsored by Senator LEIBHAM. Referred to Committee on Homeland Security and State Affairs.

1 **AN ACT to repeal** 15.407 (2) (a), 101.07, 101.177, 101.563, 145.08 (1m), 145.135
2 (title), 145.135 (1) (title), 145.19 (1) (title), 145.19 (5), 157.12 (1) and 457.02 (5);
3 **to renumber and amend** 15.407 (10), 101.01 (11), 101.01 (12), 101.985 (2) (a)
4 (intro.), 101.985 (2) (a) 2., 101.985 (2) (a) 3., 145.135 (1), 145.135 (2) (intro.),
5 145.135 (2) (a) to (f), 145.19 (1), 443.015, 443.03 (1) (b) 1., 443.08 (1), 443.08 (2),
6 443.08 (3) (a), 443.08 (4) (a), 443.08 (4) (b), 443.08 (5), 443.13, 443.14 (1) and
7 443.14 (4); **to amend** 15.407 (1m), 15.407 (2) (b), 15.407 (2) (c), 20.165 (2) (de),
8 20.165 (2) (j), 20.165 (2) (L), 20.320 (3) (title), 20.320 (3) (q), 59.70 (1), 59.70 (5)
9 (title), 59.70 (5) (a), 59.70 (5) (b), 60.70 (5), 60.72 (4), 60.726 (title), 60.726 (2),
10 60.77 (5) (b), 60.77 (5) (bm), 60.77 (5) (bs), 60.77 (5) (j), 101.02 (20) (a), 101.02
11 (21) (a), 101.145 (2), 101.745 (2), 101.952 (3), 101.985 (2) (title), 101.985 (2) (am),
12 101.985 (2) (b), 101.985 (2) (c), 101.985 (2) (d), 101.985 (4), 101.985 (5) (b) 1.,
13 101.985 (7) (a) (intro.), 145.01 (4m), 145.01 (5), 145.01 (10) (a) 2., 145.01 (12),
14 145.045 (1), 145.045 (3), 145.07 (3) (a), 145.07 (5), 145.14 (2) (a), 145.19 (2),

ASSEMBLY BILL 547

1 145.19 (3), 145.19 (4), 145.19 (6), 145.195 (1), 145.195 (2), 145.20 (title), 145.20
2 (1) (a), 145.20 (1) (am), 145.20 (1) (b), 145.20 (2) (intro.), 145.20 (2) (a), 145.20
3 (2) (d), 145.20 (2) (e), 145.20 (2) (f), 145.20 (2) (g), 145.20 (2) (h), 145.20 (3) (a)
4 1., 145.20 (3) (a) 2., 145.20 (3) (b), 145.20 (3) (c), 145.20 (3) (d), 145.20 (4), 145.20
5 (5) (a), 145.20 (5) (am), 145.20 (5) (b), 145.20 (6) (a) 2., 145.24 (1), 145.24 (2),
6 145.24 (3), 145.245 (title), 145.245 (1) (a) 1., 145.245 (1) (ae), 145.245 (4) (intro.),
7 145.245 (4) (b), 145.245 (4) (e), 145.245 (4m) (intro.), 145.245 (4m) (a), 145.245
8 (4m) (b), 145.245 (4m) (c), 145.245 (5) (a) 1., 145.245 (5) (a) 2., 145.245 (5) (a) 3.,
9 145.245 (5m) (a), 145.245 (6) (a), 145.245 (6) (b), 145.245 (7) (a), 145.245 (7) (b),
10 145.245 (7) (c), 145.245 (7) (d), 145.245 (7) (e), 145.245 (8) (a), 145.245 (9) (b),
11 145.245 (9) (c), 145.245 (9) (e), 145.245 (11) (e), 145.245 (11m) (b), 145.245 (11m)
12 (c), 145.245 (11m) (d), 145.245 (13), 145.245 (14) (d), 160.255 (title), 160.255 (1),
13 160.255 (2), 160.255 (3), 160.255 (4), 160.255 (5), 168.11 (1) (b) 1., 200.21 (11),
14 200.29 (1) (c) 3. a., 236.13 (2m), 281.41 (3) (a), 281.41 (3) (b) 3., 281.41 (3) (b) 4.,
15 281.48 (2) (bm), 281.48 (2) (d), 281.48 (2) (f), 281.48 (2) (g), 281.48 (2m), 281.48
16 (3) (e), 281.48 (4g), 281.59 (1m) (c), 281.68 (3) (a) 2. f., 440.21 (4) (a), 440.21 (4)
17 (b), 440.26 (4), 440.91 (2) (intro.), 440.91 (2) (a), 440.91 (8), 443.01 (2), 443.015
18 (title), 443.03 (1) (intro.), 443.03 (1) (a), 443.03 (1) (b) 2., 443.03 (2), 443.035
19 (intro.), 443.035 (1), 443.04, 443.05 (1) (intro.), (a) and (b) and (2), 443.06 (1) (a),
20 443.06 (2) (intro.), 443.06 (3), 443.07 (1) (intro.), 443.07 (1) (a), 443.07 (3), 443.07
21 (5), 443.09 (4m), 443.09 (5), 443.10 (1) (a) to (d), 443.10 (2) (c), 443.10 (2) (d),
22 443.10 (2) (f), 443.10 (2) (h), 443.10 (3), 443.10 (4) (a) and (b), 443.11 (1) (intro.),
23 443.11 (1) (e), 443.11 (2), 443.11 (3), 443.11 (4), 443.11 (5), 443.11 (6), 443.18 (1)
24 (a), 443.18 (2) (a) and (b), 445.06, 448.63 (1) (d) 2., 450.02 (3m) (a) (intro.),
25 450.071 (1), 454.01 (5) (b), 454.08 (2) (a), 459.12 (1), 961.23 (5) and 961.23 (7);

ASSEMBLY BILL 547

1 **to repeal and recreate** 101.985 (2) (a) (title) and 145.19 (title); and **to create**
2 15.407 (2) (d), 101.01 (11) (c), 101.01 (12) (c), 101.05 (5), 101.985 (2) (ab) (intro.),
3 101.985 (2) (ad), 440.03 (13) (am), 440.19, 440.26 (2) (c) 5., 440.26 (5m) (am),
4 440.26 (6) (a) 5., 443.015 (2), 443.03 (1) (b) (intro.), 443.08 (1) (b), 443.08 (2) (b),
5 443.08 (2) (c), 443.08 (3) (a) 2., 443.08 (3) (a) 3., 443.08 (4) (a) 2., 443.08 (4) (a)
6 3., 443.08 (4) (a) 4., 443.08 (4) (b) 2., 443.08 (4) (b) 3., 443.08 (4) (b) 4., 443.08
7 (5) (b), 443.08 (5) (c), 443.14 (1) (b), 443.14 (4) (b) and 450.02 (3m) (a) 4. of the
8 statutes; **relating to:** the authority and responsibility of the Department of
9 Safety and Professional Services, requirements for obtaining certain licenses
10 or other credentials from the Department of Safety and Professional Services,
11 weighing a product that contains opium or another controlled substance, and
12 granting rule-making authority.

Analysis by the Legislative Reference Bureau

DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

This bill makes various changes to the authority and responsibilities of the Department of Safety and Professional Services (DSPS).

BUILDINGS AND SAFETY

Under current law, with certain exceptions, DSPS has authority to regulate places of employment and public buildings in this state in order to protect the life, health, safety, and welfare of the employees and the public who use those places and buildings. Under this authority, DSPS promulgates building codes that establish standards for the construction, repair, and maintenance of places of employment and public buildings.

This bill specifies that, when used with relation to building codes, the terms "place of employment" and "public building" do not include home-based businesses.

Current law provides that DSPS authority to regulate places of employment does not include the regulation of places where persons are employed in farming. This bill specifies, similarly, that DSPS authority to regulate public buildings does not include the authority to regulate buildings used for farming.

Under current law, the Dwelling Code Council (council) reviews the standards and rules for the construction of one-family and two-family dwellings (dwellings) and for modular homes and recommends a uniform dwelling code and a statewide modular home code for adoption by DSPS.

ASSEMBLY BILL 547**SECTION 153**

1 281.68 (3) (a) 2. f. Providing programs and materials that promote the
2 monitoring of private sewage on-site wastewater treatment systems, the reduction
3 in the use of environmentally harmful chemicals, water safety, and the protection of
4 natural lake ecosystems.

5 **SECTION 154.** 440.03 (13) (am) of the statutes is created to read:

6 440.03 (13) (am) A person holding a credential under chs. 440 to 480 who is
7 convicted of a felony or misdemeanor anywhere shall send a notice of the conviction
8 by 1st class mail to the department within 48 hours after the entry of the judgment
9 of conviction. The department shall by rule determine what information and
10 documentation the person holding the credential shall include with the written
11 notice.

12 **SECTION 155.** 440.19 of the statutes is created to read:

13 **440.19 Voluntary surrender of license, permit, or certificate.** A person
14 who holds a license, permit, or certificate of certification or registration issued under
15 chs. 440 to 480 may voluntarily surrender that license, permit, or certificate of
16 certification or registration. The department, examining board, affiliated
17 credentialing board, or board of the department that issued the license, permit, or
18 certificate of certification or registration may refuse to accept that surrender if a
19 complaint has been filed or disciplinary proceeding has been commenced against the
20 person under s. 440.20.

21 **SECTION 156.** 440.21 (4) (a) of the statutes is amended to read:

22 440.21 (4) (a) Any Notwithstanding any other provision of chs. 440 to 480
23 relating to fines, forfeitures, or imprisonment, any person who violates a special
24 order issued under sub. (2) may be required to forfeit not more than \$10,000 for each
25 offense. Each day of continued violation constitutes a separate offense. The attorney

ASSEMBLY BILL 547

1 general or any district attorney may commence an action in the name of the state to
2 recover a forfeiture under this paragraph.

3 **SECTION 157.** 440.21 (4) (b) of the statutes is amended to read:

4 440.21 (4) (b) Any Notwithstanding any other provision of chs. 440 to 480
5 relating to fines, forfeitures, or imprisonment, any person who violates a temporary
6 restraining order or an injunction issued by a court upon a petition under sub. (3)
7 may be fined not less than \$25 nor more than \$5,000 or imprisoned for not more than
8 one year in the county jail or both.

9 **SECTION 158.** 440.26 (2) (c) 5. of the statutes is created to read:

10 440.26 (2) (c) 5. The department may, based on rules adopted by the
11 department, refuse to issue a license under this section to an individual who has
12 committed any of the acts described in sub. (6) (a) 1. to 5.

13 **SECTION 159.** 440.26 (4) of the statutes is amended to read:

14 440.26 (4) **BONDS OR LIABILITY POLICIES REQUIRED.** No license may be issued
15 under this section until a bond or liability policy, approved by the department, in the
16 amount of \$100,000 if the applicant for the license is a private detective agency and
17 includes all principals, partners, members or corporate officers, or in the amount of
18 \$2,000 if the applicant is a private detective, has been executed and filed with the
19 department. Such bonds or liability policies shall be furnished by an insurer
20 authorized to do a surety business in this state in a form approved by the department.
21 The person shall maintain the bond or liability policy during the period that the
22 license is in effect.

23 **SECTION 160.** 440.26 (5m) (am) of the statutes is created to read:

24 440.26 (5m) (am) The department may refuse to issue a private security permit
25 to a person who has been convicted of a misdemeanor or found to have violated any

ASSEMBLY BILL 547**SECTION 160**

1 state or local law that is punishable by a forfeiture, subject to ss. 111.321, 111.322,
2 and 111.335.

3 **SECTION 161.** 440.26 (6) (a) 5. of the statutes is created to read:

4 440.26 (6) (a) 5. Failed to maintain a bond or liability policy as required under
5 sub. (4).

6 **SECTION 162.** 440.91 (2) (intro.) of the statutes is amended to read:

7 440.91 (2) (intro.) Except as provided in sub. (10), every ~~person that~~ individual
8 who sells or solicits the sale of, or that expects to sell or solicit the sale of, 20 or more
9 cemetery lots or mausoleum spaces per year during 2 consecutive calendar years
10 shall be licensed by the board. ~~A person~~ An individual may not be licensed as a
11 cemetery salesperson except upon the written request of a cemetery authority and
12 the payment of the initial credential fee determined by the department under s.
13 440.03 (9) (a). The cemetery authority shall certify in writing to the board that the
14 ~~person~~ individual is competent to act as a cemetery salesperson. An applicant for
15 licensure as a cemetery salesperson shall furnish to the board, in such form as the
16 board prescribes, all of the following information:

17 **SECTION 163.** 440.91 (2) (a) of the statutes is amended to read:

18 440.91 (2) (a) The name and address of the applicant ~~and, if the applicant is~~
19 ~~a business entity, the name and address of each business representative.~~

20 **SECTION 164.** 440.91 (8) of the statutes is amended to read:

21 440.91 (8) Sections 452.13, ~~452.14,~~ 452.15, ~~452.18,~~ 452.21 and 452.22, as they
22 apply to real estate brokers or salespersons, apply with equal effect to cemetery
23 authorities and salespersons.

24 **SECTION 165.** 443.01 (2) of the statutes is amended to read:

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Berni Mattsson		2) Date When Request Submitted: 2/13/12 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Dentistry Examining Board			
4) Meeting Date: March 7, 2012	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? Possible Acceptance of State Exams in Licensure by Endorsement.	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Does the Board want to use the authority given in s. DE 2.04 (1) (e) review a state exam to determine if it substantially equivalent to regional exams or CRDTS? Consider the following scenario: A dentist licensed and actively practicing in Florida for 15 years applies for licensure by endorsement. He graduated from a CODA accredited dental school, completed the national written board exams and took a FL-based state clinical licensure exam for his CA license (15 years ago) – this individual if he applied to Wisconsin today would have to take a regional clinical licensure exam even though he’s been practicing in CA without any disciplinary actions against him for the past 15 years. As it relates to endorsement applicants, under s. DE 2.04 (1) (e), the Board has the authority to require that each applicant have “successfully completed a clinical laboratory demonstration licensing examination on a human subject which, in the board’s judgment, is substantially equivalent to the clinical and laboratory demonstration examination administered by the central regional dental testing service, or, alternatively, has successfully completed a board specialty certification examination of an American dental association accredited specialty within the previous 10 years.” The Board has the authority to decide whether it would accept state exams or not – because the law allows the Board to determine whether “a clinical laboratory demonstration licensing examination on a human subject” is substantially equivalent to the CRDTS exam. If the Board holds the position that only the regional exams are substantially equivalent to the CRDTS exam, it is within the Board’s authority to do so. If the Board holds the position that certain or all state exams are substantially equivalent to the CRDTS exam, it is within the Board’s authority to do so.			

11)

Authorization

Berni Mattsson

2-13-12

Signature of person making this request

Date

Supervisor (if required)

Date

Bureau Director signature (indicates approval to add post agenda deadline item to agenda) Date

Directions for including supporting documents:

1. This form should be attached to any documents submitted to the agenda.
2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director.
3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Lydia Thompson, Legal Counsel Division of Board Services		2) Date When Request Submitted: February 17, 2012 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Dentistry Examining Board			
4) Meeting Date: March 7, 2012	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Dentistry Examining Board Practice Questions Policy	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: Board review and approval of the Dentistry Examining Board Practice Questions Policy.			
11) Authorization			
 Signature of person making this request		2/17/12 Date	
Supervisor (if required)		Date	
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

DENTISTRY EXAMINING BOARD PRACTICE QUESTIONS POLICY

Effective March 7, 2012

The majority of the practice questions received by the Dentistry Examining Board are outside the scope of the Board's core functions and responsibilities. Many of these questions are the type for which private legal counsel should be sought. Available staff time and resources are insufficient to meet the demand.¹

Licensees are responsible for their own professional practice and adherence to the law. The Department of Safety and Professional Services and the Board cannot give legal advice and recommend that you review the statutes and rules and/or seek private legal counsel for your legal questions or business advice. The Department's website contains a plethora of information to assist licensees and the public in finding their own answer to practice questions:

- **Dentistry Examining Board Code Book**
http://drl.wi.gov/board_code_detail.asp?boardid=13&locid=0
- **Practice FAQs**
 - Dentist http://drl.wi.gov/prof_practice_faqs.asp?profid=14&locid=0
 - Hygienist http://drl.wi.gov/prof_practice_faqs.asp?profid=13&locid=0
- **Licensing Requirements**
 - Dentist <http://drl.wi.gov/profdetail.asp?pdetailid=1114&profid=14&locid=0>
 - Hygienist <http://drl.wi.gov/profdetail.asp?pdetailid=1073&profid=13&locid=0>
- **Application Forms**
 - Dentist http://drl.wi.gov/prof_docs_list.asp?profid=14&locid=0
 - Hygienist http://drl.wi.gov/prof_docs_list.asp?profid=13&locid=0
- **Dentistry Continuing Education FAQs**
 - http://165.189.60.145/faq_que_list.asp?fid=32&locid=0
- **Board Position Papers**
http://165.189.60.145/board_doctype.asp?typeid=1&boardid=13&locid=0

The vast majority of dentistry-related licensees are required to successfully complete an examination on the dentistry related statutes and rules. The Board receives numerous inquiries related to the location of specific issues in the statutes and rules. Much of the time, a simple review of the statutes or rules, practice FAQs and position papers may answer several of the types of questions below:

Example 1: Is it legally mandated to display licenses for dentists and hygienists in the workplace?

Example 2: I am a dentist in Wisconsin. I know we need to keep charts for 7 years. Is that true of deceased patients as well?

¹ Please note that if you do submit a question to the Department, it may take up to 14 business days or more before we are able to provide a response.

Example 3: If I am certified in the state of Illinois to administer local anesthetic, can I become certified in the state of Wisconsin to administer local anesthetic without further education classes. Please note my certification classes to become certified in local anesthetic for the state of Illinois will be in April 2012.

Example 4: I represent a dentist in marketing. I was able to obtain information on not being able to use the word "sleep" in sedation dentistry in Wisconsin. Thank you for that. Now, I would like to know if we are able to use the word "dream" in our sedation dentistry marketing campaigns. Please get back to me asap.

Given the limited resources of the Board and the Department, and that legal advice cannot be given, questions related to the following topics will not be answered and should be addressed by private legal counsel:

- Business Advice
- Legal Opinions
- Ongoing Litigation
- Billing Practices

The following are examples of the types of practice questions related to business advice or legal opinions which will **not** be handled by the Department staff or the Board due to limited available resources, and/or a lack of subject matter jurisdiction, and/or the question being related to a topic listed above which should be addressed by private legal counsel. Please note that the types of questions that will not be answered are not limited to the examples below, which are merely submitted as guidelines for your review:

BUSINESS ADVICE: Questions related to business formation, change of ownership, taxation, or legal entities such as business partnerships, corporations, limited liability corporations will not be answered. This would include questions seeking information or guidance from the Board on how to structure and operate business entities. Questions related to the review of a licensee's: advertisements, legality of using certain software or devices, business practices in consideration for the Board's approval or recommendation from the Board as to whether their business practice conforms to the statutes/rules will not be answered. Licensees sometimes submit questions requesting the Board's opinion on the rules of conduct to challenge a work policy, management decision, or employment action (termination, demotion, over-time, attendance, etc.); questions related to employee-employer work issues, terms of employment, and/or labor practices will not be answered.

Example 1: I have a question regarding biological sterilizer testing. I am wondering what the Wisconsin law states for keeping in the dental office records from autoclave spore testing? All information is accessible on line from the company to show autoclaves have been tested weekly and are passing.

Example 2: My question involves the legality of thank you gifts to patients. Is it in any way a violation of state regulations governing dental practices for a dentist to give a patient who refers someone to their office a small gift, like a gift card or an inexpensive home whitening kit, as a gesture of thanks?

Is it a violation of regulations if the office promotes, via mailings, handouts, newspaper advertisements, such an offer (free whitening kit if you send a new patient our way) to existing patients? We are considering running a new patient referral program but would like the input of the DEB before commencing.

Example 3: I represent a dental PC incorporated outside of Wisconsin that is hoping to expand its operations to Wisconsin in the near future. I have spoken to the Department of Financial Institutions, which indicated that we would be able to register as a foreign PC in Wisconsin. However, I would like to check with you to determine whether there are any restrictions on ownership that we should be aware of; in particular, is the owner of a foreign PC registered in Wisconsin required to be a Wisconsin-licensed dentist, or can it be a dentist licensed in another state?

Example 4: I am a general dentist in WI and I have been credentialed for IV sedation in WI. I am getting my office ready for doing sedations and I would like to know if there is a list of "required" equipment and medications that must be present in the office for providing sedation (ie, AED vs defibrillator, medication requirements, etc). I am making sure I have all my I's dotted and T's crossed prior to starting sedation in my practice.

Example 5: In my residency, I often utilized "intranasal" administration of certain medications. This is considered a "parenteral" route of administration in many states (Florida was an exception). My understanding is that if I wanted to administer medications here in Wisconsin intranasally, then I would need to apply for a parenteral sedation permit, would that be correct?

The tricky part is as follows, my training certainly prepared me to deliver sedation medications parenterally (intranasally). While we do complete a one month rotation in general anesthesia where we learn how to start IV's, intubate, etc., I would certainly not be doing IV sedations in office. With this being said, can I apply for a parenteral route permit so that I am able to do intranasal - even though I would not have the cases to do IV sedation (I wouldn't be using this anyhow). How does that work here in Wisconsin? Or would I really only be able to obtain a permit for oral (enteral) conscious sedation?

LEGAL OPINIONS: Questions to confirm a licensee's legal interpretation(s) of the law (federal or state statutes and rules) will not be answered. Questions on the legality of another licensee's actions/conduct/statements/interpretation of the law will not be answered.² Questions from researchers and students related to research papers, analysis or information needed to complete education courses or other education activities, including requesting research materials to complete course assignments and surveys will not be answered. Questions from company representatives and attorneys or law firms regarding their interpretation of Board policies and/or statutes and rules will not be answered.

Example 1: We would like to add the position of hygiene assistant to our practice. Before doing this, I need to know exactly what she can and cannot do. According to DE 12.02 the dentist is able to train an unlicensed person to perform certain procedures.

² If you have concerns about another licensee's conduct, you may review the statutes and rules and contact the other licensee to settle the issue to your satisfaction, or you have the option of filing a complaint with the Department.

Where can we get this form and is there a specific list of what that trained person can then do (ie: take radiographs, charting, reviewing medical and dental history, etc...)?

Example 2: I represent a private company. Other than a dentist or dental hygienist, are there any other licensed personnel/ancillary providers who can take dental x-rays (with orders from the dentist) under general supervision?

If there isn't, would a licensed radiographer under the new Radiography Examining Board be able to take dental x-rays under general supervision (with orders from the dentist)?

Example 3: The question I have is in regards to a conversation I had with my employer and dental exams. He stated that there is no state statute in Wisconsin that dictates how often legally a dental exam by a dentist must be given if the dentist is present while the hygienist is there. Is this a true and current statement? If it is, then wouldn't that mean that a patient could go for years without a dentist examining them? Would this be any sort of liability for the hygienist or just for the dentist if it is due to the dentist's discretion?

Example 4: I am the director of a non-profit organization. Is a dental assistant allowed to perform a dental prophylaxis with scaling and the use of an ultrasonic scaler? If not, can you provide the law that prohibits against such?

Example 5: Have a quick Question that came up in the staff meeting today. If another Dental Office calls to request x-rays emailed to their office for a pt. who is leaving our practice, is it still necessary to have them sign a release form?

If you still have questions after your own review of the applicable law, and you are unable to seek private legal counsel, you may be able to obtain assistance from private associations related to dental practice.

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**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Lyndsay Knoell, Chair		2) Date When Request Submitted: 1/10/12 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Dentistry Examining Board			
4) Meeting Date: 03/07/12	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Informational Item - Carolina Journal news report on teeth whitening case.	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Informational item			
11) Authorization			
Berni Mattsson		1/10/12	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: <ol style="list-style-type: none"> 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting. 			

Feds Rule State Dental Board Illegally Stifled Competition

You don't need to be a dentist to whiten teeth, FTC says

By [Karen McMahan](#)

Jan. 4th, 2012

[More](#) |

RALEIGH — In early December, the Federal Trade Commission voted that the North Carolina Board of Dental Examiners had stifled competition illegally by excluding non-dentists from providing teeth-whitening services or products to consumers.

The commission's Final Order upholds (with minor changes) a July 2011 decision by Chief Administrative Law Judge D. Michael Chappell that requires the dental board to "cease ordering non-dentists to stop providing teeth whitening products or services." The order also requires the board "to stop informing non-dentist teeth whitening providers and certain other persons that it is illegal for non-dentists to perform teeth whitening products or services."

Over the past decade, cosmetic teeth whitening has become increasingly popular and more widely available at day spas, mall kiosks, salons, and other non-dental office settings. State regulators have stepped up enforcement actions against non-dentists for what regulators consider practicing dentistry without a license.

The conflict pitting dentists against non-dentists and federal regulators against state regulators stems from a disagreement over what constitutes the practice of dentistry and raises a number of constitutional questions that legal experts say are likely to end up before the U.S. Supreme Court.

The eight-member dental board was created by the General Assembly to regulate the practice of dentistry. The board has justified tougher enforcement by pointing to a subsection of state law that defines practicing dentistry as including the removal of "stains, accretions, or deposits from human teeth." In the board's view, teeth whitening is deemed a dental treatment that can be provided only by a state-licensed dentist.

Entrepreneurs, however, say they are being targeted unfairly and forced out of business for applying the same teeth-whitening products that are sold over the counter as cosmetics. Consumers can purchase the products — which are approved for use by the Food and Drug Administration — online or in stores and apply to their teeth at home without a prescription or professional supervision.

Joyce Osborn, president and founder of the Alabama-based Council for Cosmetic Teeth Whitening, a trade association, told *Carolina Journal* that the issue is not about public health or safety, or even a concern that non-dentists are motivated only by financial self-interest, as the N.C. dental board asserts. Osborn says dentists want to maintain a lucrative monopoly and protect their own revenues from lower-cost competitors. Dentists charge as much as \$300 to \$700 per treatment, whereas some non-dentists offer the

service for less than \$100.

Osborn, who invented and markets an FDA-cleared teeth-whitening system, says she's battled the N.C. dental board and other state boards for several years. "That's why I founded the council," Osborn said, "to inform and help members on issues of safety, training, best practices, and appropriate marketing."

The council's website says cosmetic teeth whitening has become an \$11 billion industry in less than a decade and "is one of the world's fastest growing market segments."

Constitutional issues

The FTC's complaint against the N.C. dental board is the first of its kind in the nation. It contends that the practice of allowing professions and occupations to be regulated solely by state occupational licensing boards comprised of a majority of the licensees of the profession is anti-competitive and exclusionary because those members have a financial conflict of interest. When members of such a licensing board enforce the state's Dental Practice Act, they are engaging in a conspiracy that violates federal antitrust laws.

A.P. Carlton, Jr., an attorney with Raleigh law firm Allen & Pinnix, represents the state dental board. He said the legal theory underpinning the FTC's action "has never been judicially tested."

In February 2011, the dental board filed a lawsuit against the FTC in the U.S. District Court for the Eastern District of North Carolina, seeking to dismiss the antitrust action on grounds that the FTC is violating a nearly 70-year-old Supreme Court doctrine known as "state action immunity."

This doctrine states that the bona fide actions of state agencies, such as the dental board, are held to be immune from liability under federal antitrust laws. Moreover, the commission has little authority to determine the scope of its own jurisdiction outside of the Commerce Clause unless Congress gives it that power.

The board's case was dismissed on other grounds, but Carlton said the case is being appealed to the 4th U.S. Circuit Court of Appeals.

Jeanette Doran, executive director of the North Carolina Institute for Constitutional Law, told *CJ* that this case could allow the courts to redefine what constitutes interstate commerce. Doran views the teeth-whitening issue as clearly one of interstate commerce if using current jurisprudence. Other interesting questions hinge on the scope of court decisions and whether the ultimate decision in the teeth-whitening case is broad enough to affect other state monopolies.

Doran said she sees no reason why licensing boards could not be reconfigured to give consumers or other non-practitioners a majority of the positions, so long as all members received expert advice and testimony.

In a document prepared for the 2011 Annual Meeting of the American Association of Dental Boards, Carlton warned dentists that the dispute between the state dental board and the FTC is not about teeth whitening but rather is the "FTC's attempt to alter state constitutional authority and state legislated public policy without any constitutional and congressional authority of its own."

Should the FTC's actions be upheld, Carlton said all 2000 state-mandated occupational licensing boards throughout the country will be at risk of having general federal jurisdiction over state boards by overturning state-mandated "occupational and professional peer regulation and review."

Paul Sherman, an attorney at Institute for Justice, a libertarian public interest law firm, says there has been "an explosion" in occupational licensing. "Fifty years ago, fewer than 5 percent of individuals needed a state license to practice their occupation or profession, but that figure is 30 percent and growing," Sherman said.

In Connecticut, Sherman said the State Dental Commission ruled in June that individuals other than a licensed dentist who offered teeth-whitening services, even if the customers applied the product to their own teeth, are committing a crime punishable by up to five years in jail or \$25,000 in civil penalties. The Institute for Justice has filed a lawsuit on behalf three entrepreneurs to challenge that ruling.

Sherman said the only difference between what non-dentist teeth-whitening providers are doing and what a consumer can do at home is the setting. Consumers still apply the products to their own teeth; they're just doing it in a clean, comfortable setting.

Restricting non-dentists from providing these services "merely serves to enrich the dentists, not protect the public," Sherman told *CJ*.

Carlton said that in some cases the customers aren't applying the products to their own teeth, but that third parties are doing so and that violates state law. He also said expert dental opinion universally holds that teeth-whitening without a dental exam is a health risk.

Carlton said the one non-dentist consumer member of the N.C. dental board has said he believes the board was trying to protect the public, not stifle competition.

Now that the full FTC has issued its Final Order, Carlton said the board is considering whether to appeal that decision. If so, the appeal would be to the 4th Circuit.

Karen McMahan is a contributor to Carolina Journal.

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DENTISTRY EXAMINING BOARD
DENTISTRY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 11-034)

PROPOSED ORDER

An order of the dentistry examining board to repeal the note following DE 1.02 (2); and to amend DE 1.02 (2), 2.015 (1) (c), (2) (a) and (b), (3), and (4), and 2.04 (1) (e), relating to the active practice of dentistry, specialty certification, and faculty licenses.

Analysis prepared by the department of safety and professional services.

ANALYSIS

Statutes interpreted:

Sections 447.04 (1) (a) 6., (b) 1., (c), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2), 447.04 (1) (c) 4., Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., requires that examining boards shall promulgate rules for their own guidance and for the guidance of the professions over which they have jurisdiction. Section 227.11 (2), Stats., permits an agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency. Section 447.04 (1), Stats., authorizes the Wisconsin dentistry examining board to grant a license to practice dentistry to any individual who meets the requirements set forth in that subsection.

Related statute or rule:

There are no other related statutes or rules beyond those indicated above.

Plain language analysis:

The dentistry examining board believes that its existing rules create barriers to licensing dentists. Currently, the board's active practice rule does not recognize residency training as a qualifying activity for active practice in endorsement licensure, but the rule does count hours spent in private practice and clinical instruction at a dentistry school accredited by the American Dental Association. The board therefore proposes to change the definition of active practice in s. DE

1.02 (2) to include years spent in post-doctoral dental residency training as qualifying for active practice hours for licensure by endorsement.

Next, the dentistry examining board proposes to amend s. DE 2.015 to extend the faculty license opportunities currently available for prospective faculty members at Marquette University School of Dentistry to prospective faculty members at accredited institutions in Wisconsin that teach dentistry to post-doctoral residents.

Lastly, the dentistry examining board will continue to accept board certification in an accredited specialty to meet the requirements of licensure by endorsement. However, the board proposes to repeal the requirement in s. DE 2.04 (1) (e) that specialty certification must have been obtained within the 10 years preceding a licensure application, as the board has determined it is not necessary to restrict the time for acquiring the specialty certification.

Summary of, and comparison with, existing or proposed federal regulation:

There are no federal regulations regarding the licensure of dentists.

Comparison with rules in adjacent states:

Illinois:

Applicants for dentistry licensure by endorsement in Illinois must have been “lawfully engaged in the practice of dentistry...for at least 3 of the 5 years immediately preceding the filing of his or her application....” For purposes of endorsement licensure, the practice of dentistry includes the practice of a licensed dental specialty. An applicant may also count time spent practicing dentistry in the military service, if such service was within the immediately preceding 5 years. 225 ILCS 25/19. 68 Ill. Admin. Code 1120.410 a).

Applicants for licensure in a dental specialty must have passed an examination for specialty licensure within 3 years prior to specialty licensure. 68 Ill. Admin. Code 1220.320 e).

Persons with full-time appointments to teach dentistry at an approved dental school or hospital situated in Illinois may receive, without examination, a restricted faculty dentistry license. 225 ILCS 25/11 (d).

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1296&ChapterID=24>,
<http://www.ilga.gov/commission/jcar/admincode/068/068012200D04100R.html>.

Iowa:

The Iowa statutes permit licensure of dentists “by credentials” for applicants licensed to practice dentistry in another state, territory, or district of the United States. Such applicants must have been engaged in the legal practice of dentistry in the jurisdiction in which they were licensed for the three consecutive years immediately preceding their application for Iowa licensure. Iowa Code s. 153.21. The statutory definition of the “practice of dentistry” does not preclude practice in the United States military service. Iowa Code s. 153.13.

Neither the Iowa statutes, nor its administrative rules make any reference to certification in a dental specialty in the context of application for licensure by credentials.

Under s. 153.37, Iowa Code, the Iowa dental board may issue a permit to practice dentistry within a college of dentistry and its affiliated teaching facilities to a faculty member of such college who is not otherwise a licensed Iowa dentist. Section 650-13.2 (1), Iowa Admin. Code, specifies that “[t]he board may issue a faculty permit entitling the holder to practice dentistry...as a faculty member within the University of Iowa College of Dentistry...and affiliated teaching facilities.”

<http://search.legis.state.ia.us/nxt/gateway.dll/ic?f=templates&fn=default.htm>.

Michigan:

Michigan applicants for licensure as a dentist by endorsement do not have to have been practicing in the endorsing state for any minimum amount of time. However, if the applicant has practiced in the other jurisdiction for less than 5 years, and had taken a regional or state examination administered by an entity other than the North East Regional Board of Dental Examiners (NERB), he or she must arrange to have the examination taken evaluated by the Michigan board of dentistry for a determination of equivalency to NERB. If the dentistry board finds non-equivalency, the applicant will be required to pass all or part of the NERB examination for Michigan licensure. Michigan Admin. Code R 338.11255 (2) (f).

An applicant for specialty licensure by endorsement must first obtain a license to practice general dentistry. Thus, the foreign-jurisdiction specialty license must meet the requirements for a general dentistry license in Michigan to be used as the basis for endorsement licensure. The new licensee may then use his or her foreign-jurisdiction specialty certification to apply for specialty licensure by endorsement in Michigan. R 338.11267 (1).

Finally, the Michigan dentistry board “may issue a limited license...to an individual who is a graduate dentist...and who is employed by a dental program or a dental auxiliary program as a faculty member.” R 338.11247 (3). There does not appear to be any limitation on the site of the dental program employment other than that it should be in Michigan.

http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33811101&Dpt=LG&RngHigh=. See also, http://www.michigan.gov/lara/0,1607,7-154-27417_27529_27533---,00.html.

Minnesota:

An applicant for dentistry licensure by credentials in Minnesota may become licensed in Minnesota based on his or her performance record if, among other things, the applicant has been in active practice at least 2,000 hours within 36 months of the application date. Section 150A.06, Subd. 4. (a) (1), Minn. Stats. The Minnesota administrative rules provide that the active practice of dentistry in United States government service may also count toward the hours requirement for licensure by credential. Section 3100.1400 A., Minnesota Admin. Rules.

Applicants for general dentistry licensure by credentials may not count specialty practice hours toward the 2,000 active practice requirement. However, licensure in a dental specialty in Minnesota does not require a general dentistry license first. Section 150A.06, Subd. 1c., Minn. Stats. Thus, an applicant for licensure by credentials as a dental specialist may count time spent in active dental specialty practice in another jurisdiction or a postdoctoral specialty education program or United States government service toward the hours requirement. Section 150A.06, Subd. 1c. (b) (3).

To practice dentistry in a school of dentistry, a faculty member must hold either a “limited faculty license,” or a “full faculty license.” Section 150A.06, Subd. 1a. (a), Minn. Stats. The board of dentistry may issue such licenses to faculty members of a Minnesota school of dentistry accredited by the Commission on Dental Accreditation of the American Dental Association. Sections 150A.06, Subd. 1a. (a), (b), Minn. Stats.

<https://www.revisor.mn.gov/statutes/>.

Summary of factual data and analytical methodologies:

The dentistry examining board seeks to remove some unnecessary roadblocks to licensure for dentists. Allowing residency hours to count as active practice hours for licensure by endorsement and allowing board certification, regardless of when obtained, to count in meeting the requirements of licensure by endorsement will make licensure easier for endorsement candidates. Additionally, medical institutions which teach dentistry in post-graduate residency training programs have been requesting for years that the faculty license be extended to other institutions which train dental residents, beyond the Marquette University School of Dentistry. This rule clarifies that faculty licenses may be issued to individuals with job offers from institutions with post-graduate residency training programs and clarifies that the safeguards associated with the faculty license apply to those institutions as well. This change will allow more candidates to obtain a faculty license.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

Under s. 227.137, Stats., as it existed prior to the passage of 2011 Wisconsin Act 21, the requirement for an economic impact report did not apply to the department of regulation and licensing (now named the department of safety and professional services). Under s. 9355 (2) of Act 21, this rule-making proposal is not subject to the new version of s. 227.137, Stats., but proceeds instead under the pre-Act 21 version. Thus, no economic impact analysis of this proposal is required.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

The department estimates that the proposed rule will have no significant fiscal impact.

Effect on small business:

These proposed rules were reviewed by the department’s small business review advisory committee on May 19, 2011. It was determined the rules will not have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The department’s regulatory review coordinator may be contacted by email at Greg.Gasper@Wisconsin.gov, or by calling 608-266-8608.

Agency contact person:

Kris Anderson, Department of Safety and Professional Services, Division of Board Services, 1400 E. Washington Ave., Rm. 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone: 608-261-2385; email: Kristine1.Anderson@Wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Kris Anderson, Department of Safety and Professional Services, Division of Board Services, 1400 E. Washington Ave., Rm. 151, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email: Kristine1.Anderson@Wisconsin.gov. Comments must be received on or before September 7, 2011 at 8:30 a.m. to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. DE 1.02 (2) is amended to read:

DE 1.02 Definitions. As used in rules of the dentistry examining board:

...
(2) “Active practice of dentistry” means having engaged in at least 750 hours of the practice of dentistry within the 12-month period preceding application for licensure in Wisconsin. Hours of practice must be performed in private practice, accredited post-doctoral dental residency training, the armed forces of the United States, the United States public health service, or as a licensed clinical instructor in a school of dentistry accredited by the Commission on Dental Accreditation of the American Dental Association. ~~the American dental association, with a current license to practice dentistry in that jurisdictionDental Association.~~

Note: The requirement of “a current license to practice dentistry in the jurisdiction” applies to clinical instructors at schools accredited by the American dental association, and not to persons practicing with the United States armed forces or public health service because persons practicing with the armed forces of the public health service of the United States have a current license in some jurisdiction as a condition precedent to practice under the auspices of the federal government.

SECTION 2. DE 2.015 (1) (c), (2) (a), (b), (3), and (4) are amended to read:

DE 2.015 Faculty license. (1) (c) Submits a written certification from ~~the dean of a~~ an accredited post-doctoral dental residency training program or accredited school of dentistry in

this state that the applicant has been offered employment as a full-time faculty member in that program or at that school of dentistry.

(2) A license granted under sub. (1) authorizes the license holder to do all of the following:

(a) Practice dentistry only within ~~an~~the primary educational facility that is physically located within a affiliated with an accredited post-doctoral dental residency training program or accredited school of dentistry in this state.

(b) Perform dental procedures that are incident to instruction while at a site affiliated with ~~a~~an accredited post-doctoral dental residency training program or accredited dental school of dentistry located in this state.

(3) A license granted under sub. (1) shall not be transferable to another accredited school of dentistry in this state or accredited post-doctoral dental residency training program without prior approval by the board.

(4) A license granted under sub. (1) is no longer in effect if the license holder ceases to be employed as a full-time faculty member at ~~an~~an accredited post-doctoral dental residency training program or accredited school of dentistry in this state. The license holder shall notify the board in writing within 30 days of the date on which his or her employment as a licensed faculty member under sub. (1) is terminated.

SECTION 3. DE 2.04 (1) (e) is amended to read:

DE 2.04 Endorsement. (1) (e) The applicant has successfully completed a clinical and laboratory demonstration licensing examination on a human subject which, in the board's judgment, is substantially equivalent to the clinical and laboratory demonstration examination administered by the central regional dental testing service, or, alternatively, has successfully completed a board specialty certification examination in a dental specialty recognized by the ~~of an American dental association accredited specialty within the previous 10 years~~Dental Association.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Chairperson
Dentistry Examining Board

**STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD**

IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : **REPORT TO THE LEGISLATURE**
DENTISTRY EXAMINING BOARD : **CR 11-034**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

None.

III. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The Dentistry Examining Board finds that its existing rules create barriers to licensing dentists in Wisconsin. Under the current “active practice” requirement for licensure by endorsement in s. DE 1.02 (2), Wis. Admin. Code, post-doctoral dental residency training is not listed, but time spent in private practice or clinical instruction at a dentistry school accredited by the American Dental Association (ADA) is. The Board therefore requests to change the definition of “active practice” in s. DE 1.02 (2) to include dental residency training as well. Adding residency training to the list of activities that qualify as “active practice” will make that requirement less burdensome, and allow more candidates to obtain licensure by endorsement. This requested change is business-friendly in that it will encourage more dentists to practice in Wisconsin.

Next, the Dentistry Examining Board proposes to amend s. DE 2.015 to extend the “faculty license” currently available only to members of the Marquette University School of Dentistry (MUSoD) faculty to faculty at other Wisconsin institutions that have ADA-accredited post-doctoral dental residency programs. The intent of faculty licensure is to allow instructors of dental education who are licensed in other jurisdictions to perform instruction-related procedures on actual patients. This amendment would enhance the ability of accredited Wisconsin institutions other than MUSoD to hire and retain talented instructors. Good teachers and real-world instruction promote high quality dental education in this state, resulting in better-trained practitioners and safer dental practice. These results make Wisconsin a more attractive environment for dentists considering opening or moving a dental practice here.

The final amendment requested under this proposal concerns another aspect of licensure by endorsement. As currently written, s. DE 2.04 (1) (e) requires applicants for endorsement licensure who are relying on certification in an ADA-accredited dental specialty to have successfully completed their certification examination within the 10 years preceding their endorsement application. The Board intends to continue accepting the dental specialty

certification examination for purposes of the requirement under s. DE 2.04 (1) (e), but proposes to repeal the “within the previous 10 years” limitation. The Board has determined that this limitation is not necessary. Again, this amendment would facilitate more endorsement licensure, thus encouraging more dentistry practice in Wisconsin.

IV. SUMMARY OF PUBLIC COMMENTS AND THE BOARD’S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

Three members of the public registered to speak at the September 7, 2011 public hearing on this rule-making proposal. Dr. Steve Stoll and Mara Brooks, representing the Wisconsin Dental Association (WDA), spoke in favor of the amendments to chs. DE 1 and 2, with three suggested revisions. Dr. Steve Sewall of the Wisconsin Society of Oral and Maxillofacial Surgeons (WSOMS) registered to speak in opposition to the proposal.

The WDA first requested that the Board add the word “accredited” before “post-graduate dental residency training” in the second sentence of amended s. DE 1.02 (2). Doing so would make the “active practice of dentistry” definition consistent with each of the five references in amended s. DE 2.015 to “post-graduate residency training.” The Board adopted this suggestion.

The WDA next proposed replacing the word “graduate” with “doctoral” in all instances of the term “post-graduate” in amended ss. DE 1.02 (2) and 2.015. The WDA explained that the national accreditation standards use “post-doctoral” when referring to residency training programs. The Board adopted this suggestion.

Third, the WDA asked for additional language in amended s. DE 2.015 (2) (a) to make the rule more consistent with the intent of the original faculty licensure provision. The WDA recommended inserting the phrase “affiliated with” before “an accredited post-doctoral residency training program,” and substituting “the” for “an” at the beginning of that phrase. The WDA further suggested inserting “accredited” before “school of dentistry.” The Board adopted those changes.

For its final revision, the WDA recommended defining “full-time faculty,” as used in s. DE 2.015 (1) (c), to mean a faculty member who works five days per week under a 12-month contract with the affiliated educational facility. This was also a point of concern for Dr. Steve Sewall, who testified that the term “full-time faculty” can describe several different work-hours agreements. Dr. Sewall suggested that the Board consider using the definition of “full-time” found in the Wisconsin Statutes. The Board rejected both the WDA’s and Dr. Sewall’s suggestions, fearing that a specific definition of “full-time faculty” may not encompass the wide range of possibilities that term implies. The Board resolved not to define “full-time faculty,” but to decide the applicability thereof to faculty licensure applicants on a case-by-case basis.

As noted, Dr. Sewall registered in opposition to the DE 1, 2 rule-making proposal. However, he gave only the testimony described above, regarding a definition of “full-time faculty” as used in amended s. DE 2.015 (1) (c). Dr. Sewall raised no other objections.

On its own motion, the Board elected to keep the word “primary” before “educational facility” in s. DE 2.015 (2) (a), as that phrase appears in the existing rule.

V. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

The Board accepts the recommendations of the legislative clearinghouse in their entirety.

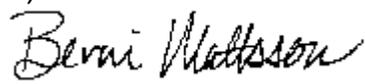
VI. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will have no significant economic impact on small businesses, as the term “small business” is defined in s. 227.114 (1), Stats. Rather, the amendments to ss. DE 1.02, 2.015, and 2.04 proposed herein will reduce the burden on applicants for dentistry licensure by endorsement, and otherwise provide greater opportunity for dentists of foreign jurisdictions to practice while teaching at accredited dental education facilities. Thus, no final regulatory flexibility analysis is necessary.

DE 1, 2 CR 11-034 (Active practice, faculty licenses) Report to legislature 2-28-12

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Berni Mattsson		2) Date When Request Submitted: 2/28/12	
		Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Dentistry Examining Board			
4) Meeting Date: 3/7/12	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Under informational items - ADA/White Dismissal with Prejudice	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: The attached documents are provided for the information and use of the board members.			
11) Authorization <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 60%;">  </div> <div style="width: 35%; text-align: right;"> 2/28/12 </div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Signature of person making this request</div> <div style="width: 35%; text-align: right;">Date</div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Supervisor (if required)</div> <div style="width: 35%; text-align: right;">Date</div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Bureau Director signature (indicates approval to add post agenda deadline item to agenda)</div> <div style="width: 35%; text-align: right;">Date</div> </div>			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

8. Plaintiff's [George M. White] Motion to Set Court Date [Doc. # 36], filed June 10, 2011;
9. Plaintiff's [Keith Allison]¹ Motion to Submit Further Information Relative to This Case as Found by The Federal Trade Commission vs. North Carolina Dental Board's Motion to Dismiss Allegations that It Stifled Competition for Teeth-Whitening [Doc. # 37], filed June 22, 2011;
10. Plaintiff's [Keith Allison] Motion to Submit Settled Case and/or Statutory Laws in Favor of the Public and Plaintiff's Interests [Doc. # 41], filed July 5, 2011;
11. Plaintiff's [Keith Allison] Motion for Judicial Cognizance of Plaintiffs Informing the Court that Until the Date of This Filing, Plaintiffs Have Received No Prior Documents from Defendants [Doc. # 43], filed July 6, 2011;
12. Plaintiff's [Keith Allison] Motion to Submit Additional Allegations of Defendants Participation in Wrong-doings in Violation of Plaintiff's Constitutional Protected and/or Common Law Rights [Doc. # 46], filed August 1, 2011;
13. Plaintiff's [Keith Allison] Motion (Request for Court Clerk to Arrange Neutral Meeting Place) [Doc. # 47], filed August 8, 2011;
14. Plaintiff's [Keith Allison] Motion to Dismiss Defendants Latest in a Long Line of Motions to Dismiss Plaintiff's Motions and/or Filings [Doc. # 48], filed August 8, 2011;
15. Plaintiff's [George M. White] Motion to Inform the Court that Plaintiff's Have Attempted to Contact Defendants Law Firm in Order to Comply With the Court's Order to Set a Meeting No Later Than 11 August 2011 [Doc. #50], filed August 8, 2011;
16. Plaintiff's [Keith Allison] Motion to Submit Report Ordered by the Court [Doc. # 54], filed August 22, 2011; and
17. Plaintiff's [Keith Allison] Motion for Summary Judgment [Doc. # 55], filed August 22, 2011.

The court, after careful consideration of the motions, briefing, and applicable law, **grants:** (1) Defendant Texas Dental Association's Motion to Dismiss; (2) Defendant State Board of Dental Examiners' Motion to Dismiss Plaintiff's Amended Complaint; and (3) Defendant American Dental Association's Motion to Dismiss All Claims Without Leave to Amend. The court **denies as moot** the remaining motions (4-17).

¹The court, for reasons later explained, does not consider Keith Allison to be a proper plaintiff to this lawsuit.

I. Background

The live pleading and only one that is *properly* before the court in this action is Plaintiff's Amended Complaint, filed January 20, 2011, by George M. White ("Plaintiff" or "White"). Defendants in this action are the American Dental Association ("ADA"), the Texas State Board of Dental Examiners (the "Board"), and the Texas Dental Association ("TDA") (collectively, "Defendants"). Plaintiff purports to allege myriad claims against Defendants in an amended pleading that bears no semblance to a model of pellucid draftsmanship. He contends that Defendants, along with state elected officials and judges, have wrongly deprived and conspired to deprive him and other denturists from practicing their chosen profession of denturity or denturism in that he and other denturists are not allowed to practice as "free and liberated denturist[s]" in the State of Texas.

This circuit describes a denturist as "a person other than a dentist (usually a technician) who engages in the practice of the denture phase of prosthodontics. He takes oral impressions of the mouth and then constructs, fits and places dentures." *Rayborn v. Mississippi State Bd. of Exam'rs*, 776 F.2d 530, 530 (5th Cir. 1985). The dictionary definition of denturist is "a dental technician who makes, fits, and repairs dentures directly for the public." Merriam-Webster's Collegiate Dictionary 334 (11th ed. 2004).

Plaintiff purports to set forth twenty-eight claims against Defendants: (1) Violation of Civil Rights Act, 42 U.S.C. § 1983; (2) Conspiracy to Interfere with Civil Rights, 42 U.S.C. § 1985; (3) Failure to Prevent Civil Rights Violations, 42 U.S.C. § 1986; (4) Civil Racketeer Influenced and Corrupt Organizations Act ("RICO") Violations, 18 U.S.C. §§ 1961-1965; (5) Violation of Bivens Doctrine; (6) Intentional Violation and Deprivation of Common Law Torts; (7) Violation of

Constitutional Rights and Protections; (8) Fraud Against Plaintiff; (9) Conspiracy; (10) Fraudulent and Intentional Interference with Prospective Economics Advantage; (11) Negligent Interference with Prospective Economic Advantage; (12) Intentional Infliction of Emotional Distress; (13) Negligent Infliction of Emotional Distress; (14) Destruction of Quality of Life; (15) Destruction of Plaintiff's Creditworthiness; (16) Breach of Fiduciary Duty and Fraud; (17) Breach of Duty; (18) Invasion of Privacy; (19) Interference with Professional and Business Relations; (20) Violation of Constitutional Due Process; (21) Vicarious Liability; (22) Omission of a Duty; (23) Fraudulent Taking of Businesses; (24) Taking Earning Capability; (25) Retaliation for Reporting Criminal Activities; (26) Retaliation for Exercising Due Process Remedies; (27) Right to Life, Liberty, and Property; and (28) Criminal Acts Perpetrated or Aided by Defendants. Plaintiff's true target is that portion of the Texas Dental Practice Act that requires those who practice dentistry in the State of Texas to be licensed. Because of the licensing requirement, White contends the statute is unconstitutional and invalid, and that a number of his constitutional and common law rights are being violated.

All Defendants have filed motions to dismiss and asserted various grounds for dismissal. The common thread among all Defendants is that they have sought dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the basis that Plaintiff has failed to state a claim upon which relief can be granted. The Board, however, contends that it is entitled to immunity, and the court will address that argument first. The court then addresses the 12(b)(6) argument. The court's discussion of 12(b)(6) is an alternative holding with respect to the Board in the event a determination is later made that the Board is not entitled to immunity.

II. Legal Standards

A. Standard for Rule 12(b)(6) - Failure to State a Claim

To defeat a motion to dismiss filed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Reliable Consultants, Inc. v. Earle*, 517 F.3d 738, 742 (5th Cir. 2008); *Guidry v. American Pub. Life Ins. Co.*, 512 F.3d 177, 180 (5th Cir. 2007). A claim meets the plausibility test “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (internal citations omitted). While a complaint need not contain detailed factual allegations, it must set forth “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (citation omitted). The “[f]actual allegations of [a complaint] must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Id.* (quotation marks, citations, and footnote omitted).

In reviewing a Rule 12(b)(6) motion, the court must accept all well-pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff. *Sonnier v. State Farm Mutual Auto. Ins. Co.*, 509 F. 3d 673, 675 (5th Cir. 2007); *Martin K. Eby Constr. Co. v. Dallas Area Rapid Transit*, 369 F. 3d 464, 467 (5th Cir. 2004); *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996). In ruling on such a motion, the court cannot look beyond the pleadings. *Id.*; *Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999), *cert. denied*, 530 U.S. 1229 (2000). The pleadings include the

complaint and any documents attached to it. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000). Likewise, “[d]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff’s complaint and are central to [the plaintiff’s] claims.” *Id.* (quoting *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993)).

The ultimate question in a Rule 12(b)(6) motion is whether the complaint states a valid claim when it is viewed in the light most favorable to the plaintiff. *Great Plains Trust Co. v. Morgan Stanley Dean Witter*, 313 F.3d 305, 312 (5th Cir. 2002). While well-pleaded facts of a complaint are to be accepted as true, legal conclusions are not “entitled to the assumption of truth.” *Iqbal*, 129 S. Ct. at 1950 (citation omitted). Further, a court is not to strain to find inferences favorable to the plaintiff and is not to accept conclusory allegations, unwarranted deductions, or legal conclusions. *R2 Invs. LDC v. Phillips*, 401 F.3d 638, 642 (5th Cir. 2005) (citations omitted). The court does not evaluate the plaintiff’s likelihood of success; instead, it only determines whether the plaintiff has pleaded a legally cognizable claim. *United States ex rel. Riley v. St. Luke’s Episcopal Hosp.*, 355 F.3d 370, 376 (5th Cir. 2004).

B. Standard for Rule 8(a) - Pleading Requirements

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires the pleading to contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Rule 8 only requires “notice” pleading. Accordingly, it is not necessary that the pleader set forth each and every element or factual allegation of a claim. The “short and plain statement,” however, must contain sufficient allegations of fact “that will give the defendant fair notice of what the plaintiff’s claim is and the

grounds upon which it rests.” *Leatherman v. Tarrant Cnty. Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168 (1993).

III. Discussion

A. Eleventh Amendment Immunity

The Board contends that it is immune from suit pursuant to the Eleventh Amendment to the United States Constitution because it is an agency or arm of the State of Texas. The court agrees.

The Eleventh Amendment provides, “[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State or by Citizens of Subjects of any Foreign State.” U.S. Const. amend. XI. “[T]he reference to actions ‘against one of the United States’ encompasses not only actions in which a State is actually named as the defendant, but also certain actions against state agents and state instrumentalities.” *Southwestern Bell Tel. Co. v. City of El Paso*, 243 F.3d 936, 937 (5th Cir. 2001) (quoting *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 429 (1997)); *see also Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 66 (1989) (Eleventh Amendment jurisdictionally bars suits against a state and its agencies unless state waives immunity or Congress, pursuant to section five of the Fourteenth Amendment, intentionally abrogates immunity); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 56-58 (1996); *Texas v. Walker*, 142 F.3d 813, 820 (5th Cir. 1998).

There is no question that the Board is an agency or arm of the State of Texas. “[T]he Texas Board of Dental Examiners is an administrative agency. It is charged with the duty of acting in the enforcement of the statutes regulating the practice of dentistry [in the State of Texas].” *Texas State Bd. of Dental Exam’rs v. Fieldsmith*, 386 S.W.2d 305, 308 (Tex. Civ. App.—Dallas 1965, writ ref’d n.r.e.), *cert. denied*, 382 U.S. 977 (1966). Moreover, the statute creating the Board and outlining

its duties clearly shows that it is an arm of the State. Given that it cannot be seriously disputed that the Board is an arm or instrumentality of the State of Texas, the court finds it unnecessary to conduct an analysis of the factors set forth in *Southwestern Bell Telephone Company v. City of El Paso*.²

The Eleventh Amendment, however, does not bar a federal court from issuing prospective injunctive relief against a state official to prevent a continuing violation of federal law. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102-03 (1984); *AT&T Comms. v. BellSouth Telecomms. Inc.*, 238 F.3d 636, 644 (5th Cir. 2001). In this case, however, Plaintiff did not sue a state official, and, therefore, there is no basis to enjoin any state official's future conduct. None of the exceptions regarding Eleventh Amendment immunity is present. Accordingly, this action is jurisdictionally barred against the Board pursuant to the Eleventh Amendment.

B. Factual Insufficiency of the Complaint

Plaintiff's arguments regarding the underlying statute that serves as the basis for his lawsuit are fundamentally flawed. Plaintiff's Complaint and the arguments made in support of his Complaint are factually and legally deficient. Therefore, none of his purported claims is viable, and dismissal of his Complaint for failure to state a claim upon which relief can be granted is appropriate.

²As articulated by the Fifth Circuit Court of Appeals:

These factors include (1) whether the state statutes and case law view the entity as an arm of the state; (2) the source of the entity's funding; (3) the entity's degree of local autonomy; (4) whether the entity is concerned primarily with local, as opposed to statewide, problems; (5) whether the entity has the authority to sue and be sued in its own name; and (6) whether it has the right to hold and use property.

Southwestern Bell Tel. Co. v. City of El Paso, 243 F.3d 936, 938 (5th Cir. 2001) (citation omitted).

The court has pored over Plaintiff's 62-page Complaint. The Complaint is woefully deficient insofar as asserting the factual bases for the purported claims Plaintiff asserts. The allegations against Defendants are factually baseless. They essentially boil down to one singular premise: Defendants, state judges, and elected officials have deprived or conspired to deprive him and others of the ability to practice as denturists in the State of Texas. Virtually all of White's claims allege an evil or nefarious motive, but none provides the necessary factual bases of the claims for the court to draw a reasonable inference that Defendants are liable for the misconduct alleged. By way of example, White's Complaint *teems* with the following conclusory words or phrases when describing Defendants' conduct: "aided and abetted," "committed" criminal acts or a fraud, "conspired," "engaged in a pattern of conduct," "engaged in a coverup," "failed to prevent," "perpetrated," "retaliated against," and "violated." Such bald assertions do nothing to establish the factual bases for an alleged constitutional or common law claim. The Complaint consists of rambling and conclusory, often nonsensical and incoherent, allegations interspersed with case law and statutory references. While White makes myriad allegations that his constitutional and common law rights have been violated because of the Texas statute requiring those who practice dentistry to be licensed, he sets forth no facts whatsoever that would cause this court to infer or conclude that the statute is not rationally related to Texas's legitimate goal of protecting the health, interest, safety, and welfare of the public. *See Rayborn*, 776 F.2d at 532.

That Plaintiff's Complaint is quite lengthy is of no assistance to the court, and the court deems it to be an unwise investment of scarce judicial resources to provide a blow-by-blow analysis in writing of the Complaint when it has already performed such analysis mentally. Rule 8 only requires "a short and plain statement of the claim showing that the pleader is entitled to relief." The

key in determining whether a complaint is sufficient under Rule 8 is whether the allegations are sufficient to “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Leatherman*, 507 U.S. at 168. Plaintiff’s Complaint is woefully lacking in factual bases and does not provide such notice to Defendants. The court can only accept “well-pleaded facts” as true. Plaintiff’s conclusory factual allegations and legal conclusions are not “entitled to the assumption of truth.” *Iqbal*, 129 S.Ct. at 1950. In short, the claims asserted by Plaintiff in the Complaint are irrational, wholly unsupported by any factual basis, and are the type of fanciful or delusional claims that warrant dismissal.

C. Constitutionality of Texas Statute

The practice of dentistry in Texas is governed by the Dental Practice Act. Tex. Occ. Code Ann. §§ 251-267 (West Tex. 2004). In the State of Texas, a person, among other ways, engages in the practice of dentistry if he or she:

(3) prescribes, makes, or causes to be made or offers to prescribe, make, or cause to be made by any means an impression of any portion of the human mouth, teeth, gums, or jaws:

(A) to diagnose, prescribe, or treat, or aid in the diagnosis, prescription, or treatment, of a physical condition of the human mouth, teeth, gums, or jaws; or

(B) to construct or aid in the construction of a dental appliance, denture, dental bridge, false teeth, dental plate of false teeth, or another substitute for human teeth;

....

(5) fits, adjusts, repairs, or substitutes or offers to fit, adjusts, repair, or substitute in the human mouth or directly related and adjacent masticatory structures a dental appliance, structure, prosthesis, or denture;

(6) aids in the fitting, adjusting, repairing, or substituting or causes to be fitted, adjusted, repaired, or substituted in the human mouth or directly related and adjacent masticatory structures a dental appliance, structure, prosthesis, or denture;

....

(10) represents that the person is a dentist or uses another title that is intended to convey to the public that the services offered by the person are included within the practice of dentistry.

Tex. Occ. Code Ann. § 251.003 (a)(3),(5),(6), and (10) (West 2004). No person may “practice or offer to practice dentistry unless the person holds a license issued by the [State Board of Dental Examiners].” *Id.* § 256.001. The statute also provides for exemptions from the practice of dentistry. *See id.* § 251.004. None of the exemptions, however, applies to Plaintiff.

Even if the court were to conclude that Plaintiff’s Complaint survived a Rule 12(b)(6) motion with respect to the sufficiency of the allegations, it nevertheless fails to state viable claims as a matter of law, as the Texas statute that requires those practicing dentistry in Texas to be licensed is a valid exercise of the State’s police power. Long-standing precedent holds that “a state may, consistent with the Fourteenth Amendment, prescribe that only persons possessing the reasonably necessary qualifications of learning and skill shall practice medicine or dentistry.” *Graves v. Minnesota*, 272 U.S. 425, 426 (1926) (citing *Dent v. West Virginia*, 129 U.S. 114, 122 (1889)). “Every presumption is to be indulged in favor of the validity of the statute” enacting the legislation. *Graves*, 272 U.S. at 428. Statutes or laws enacted under the police power “may only be declared unconstitutional where they are arbitrary or unreasonable attempts to exercise authority vested in [the state] in the public interest.” *Id.* (citations omitted). “States have a compelling interest in the practice of professions within their boundaries, and that as part their power to protect the public

health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions.” *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792 (1975); *see also Rayborn*, 776 F.2d at 531 (rejecting a litigant’s argument that the prohibition against denturism bore no rational relationship to the state’s legitimate objective of protecting the health, safety, and welfare of the public).

Likewise, Texas courts have upheld the right of the State of Texas to regulate the practice of dentistry as a legitimate exercise of its police power. “[T]he Legislature, in the exercise of the police power, may regulate occupations and professions.” *Satterfield v. Crown Cork & Seal Co.*, 268 S.W.3d 190, 217 (Tex. App.—Austin 2008, no pet.). As aptly stated by one Texas court:

It is of course well settled that the practice of dentistry, relating as it does to the public health, is subject to governmental control. The state therefore has the power to prescribe reasonable regulations for the granting of licenses to practice dentistry, and may delegate to an administrative board or agency the authority to pass upon the qualifications of applicants and to grant or refuse licenses.

Francisco v. Board of Dental Exam’rs, 149 S.W.2d 619, 621 (Tex. Civ. App.—Austin 1941, writ ref’d). Based on the federal and state authority cited, Texas clearly has a legitimate, if not compelling, state interest to protect the public health and safety by requiring those who practice dentistry to obtain a license and establish that they are sufficiently skilled and qualified to offer dentistry services to the public. For this reason, it is beyond cavil that the State of Texas, through the exercise of its police power, can constitutionally require those who practice dentistry within its borders to obtain a license to do so. Further, Plaintiff has pleaded no facts alleging that the statute is somehow arbitrary or constitutes an unreasonable exercise of the State’s police power. The Texas statute regulating the practice of dentistry is in no way repugnant to the United States Constitution, and it does not serve as a basis for Plaintiff to assert any common claim under state law.

IV. Amendment of Pleadings

White has amended his original pleading once. He filed his Original Complaint in October 2010. United States Magistrate Judge Paul D. Stickney submitted two Magistrate Judge Questionnaires to White in an effort to clarify the nature of Plaintiff's lawsuit. White filed responses to the Questionnaires. *See* Document Entries 5 and 8 of the Clerk's Docket Sheet. The two responses did nothing to provide the required factual bases to support White's claims. On January 20, 2011, after he had responded to the Magistrate Judge's Questionnaire, White filed the current Complaint, which the court has ruled to be factually and legally deficient.

When considering whether to allow an amendment of the pleadings, a district court "may consider such factors as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, and futility of amendment." *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also Schiller v. Physicians Res. Grp.*, 342 F.3d 563, 566 (5th Cir. 2003) (citation omitted). Plaintiff should not be allowed to amend for two reasons. First, he has had sufficient opportunity to set forth facts to state viable claims if they exist. Allowing further attempts to amend will only result in undue delay. The court is not convinced that Plaintiff can amend his pleadings to state sufficient factual details consistent with what is required to defeat a Rule 12(b)(6) motion. Second, as this court has upheld the constitutionality of that portion of the Texas Dental Practice Act that serves as the basis for Plaintiff's lawsuit, further attempts at amendment to state a claim are futile. There is simply no way that Plaintiff can plead his way around the validity of the statute in question. Accordingly, the court will not permit further amendment of Plaintiff's pleadings.

V. Other Defenses

Defendants have asserted other defenses such as lack of standing, statute of limitations, issue preclusion (collateral estoppel), and claim preclusion (res judicata). As the court has disposed of the motion to dismiss or other grounds, it determines that these defenses need not be addressed and declines to do so.

VI. Status of “Complaint” filed April 11, 2011

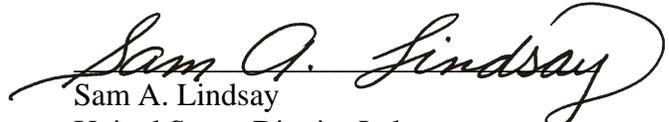
On April 11, 2011, Keith Allison filed a document, purportedly on behalf of himself and a number of other individuals, that the clerk’s office designated as a “Second Amended Complaint with Jury Demand.” *See* Docket Entry 18. In the document, the persons named in the caption state that they desire to join in the lawsuit filed by White as “co-plaintiffs.” White is listed as one of the “Plaintiffs” in this document. Further, this document lists only the American Dental Association as a defendant. To the extent “Plaintiffs” desire this to be a second amended complaint, neither consent of Defendants nor leave of court was obtained by White as required by Rule 15(a) of the Federal Rules of Civil Procedure. Further, to the extent “Plaintiffs” seek to join the original lawsuit, they have not moved pursuant to the Federal Rules of Civil Procedure allowing joinder of parties and have not been permitted by the court to do so. Moreover, to the extent “Plaintiffs” seek to intervene, they have not moved in accordance with Rule 24 of the Federal Rules of Civil Procedure. Finally, as the court will dismiss White’s Complaint with prejudice, there is no action in which “Plaintiffs” can become or join as “co-plaintiffs.”³ Accordingly, their request to become plaintiffs and all motions filed by Keith Allison will be denied as moot.

³As a final note, the docket sheet does not reflect that “Plaintiffs” listed in the document filed April 11, 2011, have served Defendants in accordance with Rule 4 of the Federal Rules of Civil Procedure.

VII. Conclusion

For the reasons herein stated, the court **concludes** that the Board is immune from suit pursuant to the Eleventh Amendment, that Plaintiff George M. White's Complaint fails factually and as a matter of law to state a claim upon which relief can be granted. Accordingly, the court **grants**: (1) Defendant Texas Dental Association's Motion to Dismiss; (2) Defendant State Board of Dental Examiners' Motion to Dismiss Plaintiff's Amended Complaint; and (3) Defendant American Dental Association's Motion to Dismiss All Claims Without Leave to Amend. The court **denies** the remaining motions (4-17). The court **dismisses** this action **with prejudice** as to Plaintiff George M. White. The court **denies as moot** Keith Allison's and other "Plaintiffs'" request to be made a part of this lawsuit. The court will issue judgment by separate document as required by Rule 58 of the Federal Rules of Civil Procedure.

It is so ordered this 16th day of February, 2012.


Sam A. Lindsay
United States District Judge

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