

ALASKA LEGISLATURE COMMITTEE FILED 1905-1900

3226 HESS HB 614

MEMORANDUM

TO: HOUSE HESS COMMITTEE MEMBERS
FROM: NANCY BENNETT, COMMITTEE STAFF
DATE: MARCH 10, 1986
RE: TODAY'S AGENDA

We have three bills scheduled for today:

HB 614 - Relating to the Board of Dental Examiners

This bill was introduced by the Committee to continue the board for four years following the Sunset Review hearing conducted in February. There is also a sunset review report in your folder.

SB 263 - Relating to disqualification for certain state loan programs for failure to pay child support

This bill has been in subcommittee. Representative Taylor has a proposed amendment to offer.

We also have a new memo from Senator Faiks.

HB 255 - Enabling the Department of Health and Social Services to enter into custody agreements regarding indian children

We are having a teleconference on this bill, which would put into state law federal provisions allowing agreements to be entered into regarding the custody of native children.

We also have a bill relating to municipal sales tax and food stamps before us to consider for introduction

Introduced: 2/17/86
Referred: Labor & Commerce,
Health, Education & Social Services
and Finance

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICE COMMITTEE

1 IN THE HOUSE

2 HOUSE BILL NO. 614

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act extending the termination date of the Board
7 of Dental Examiners; and providing for an effective
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 08.03.010(c)(6) is amended to read:

11 (6) Board of Dental Examiners (AS 08.36.010) -- June 30,
12 1990 [1986].

13 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
14 10.070(c).

TESTIMONY FOR HESS SUB-COMMITTEE
for 3-20-86
REGARDING BOARD OF DENTAL EXAMINERS

Gentlemen:

My name is Joseph Riederer, and I appreciate the opportunity to be here and add to my testimony of 3-10-86.

Dr. Jerry Zemlicka, a current member of the Dental Board, phoned me on 3-11 and expressed a great deal of concern over the copy of my testimony he had received for 3-10-86. He stated he would have no choice but to discuss my son and his two automatic failures in June 1985, and I indicated to him that I certainly had no problem with that. Dr. Zemlicka, also in the conversation, indicated that he personally had favored passing Mark at 74.05. He later stated that he had no part in the decision of his Dental Board failures, so this did not add up to me. He indicated he thought a 50% variation in grading between examiners was reasonable, that I thought was an amazing statement. He also indicated that he thought my percentages and understanding was all wrong. He agreed that there were changes needed in time constraints and changes in some of the procedures, but asked why I had not come to the Board instead of the Legislature. Dr. Zemlicka indicated the Dental Board had a big problem with the State Attorney General's office over dental credentialing candidates who were appealing or litigating their failure to gain licensure by credential. Dr. Zemlicka indicated the Attorney General's Office would want to let some of these candidates in, even though they were convicted felons and/or in one instance, a child molester, and this was consuming a great deal of the Board's time.

Regarding the automatic failure rate on recent Dental Boards, I will pass out a sheet to show this has run as high as 53% in recent exams, and this does not include the total failure rate. Written to the left of the typed statements are the number of candidates taking each exam, so it is clear that many of the examinees have had more than one automatic failure at any one exam. My son was one of these that had an automatic failure in two subjects in June of 1985. I would like to mention that when he took the clinical portion of the National Board Dental Exam, after dental school, he was in the 96 percentile rating when compared with National Board Dental examinees for the rest of the nation.

The Board members may say only those with poor clinical skills have such a high automatic failure rate. The numbers are clear that a great many are receiving multiple automatic failures. I would like to specifically mention a "native" Alaskan Dental graduate who was an honor student at the University of Oregon and

received the Award in his class for being the Overall Outstanding Dental Student in an academic way, and with regard to attitude and operative ability. He also was among the candidates who received an automatic failure in recent years, and along with other circumstances surrounding it, was outraged by the clinical exam proceedings.

September 24, 1985, the Legislative Audit Committee stated that the cessation of licensing by credentials restricts entry into the Dental Profession in Alaska for out of state dentists wishing to practice in Alaska. The Board should address the policies and procedures and introduce legislation clarifying statutes over Licensure by Credentials.

The report continues, The Board Dental Examiners should adopt regulations to provide requirements for proof of continued professional competence for dentists and dental hygienists and dental specialists. It goes on to say that continuing education is one method that provides a reasonable means of assuring continuing competency in the profession. As I mentioned to Dr. Zemlicka on 3/11/86, I think that any Dental Board that cannot pass a continuing education requirement, doesn't seem to me to be in the 20th Century. Dr. Zemlicka stated this requirement had been passed, but on 3/18/86, the Occupational Licensing Division did not verify that.

Dr. Paul Buxton, in a letter to Commissioner LOUNSBURY on 12/11/85, stated that the Board has been, and is currently working on regulations to provide requirements for proof of continued competency. At this point, the drift is towards requiring a specified amount of continuing education courses and a minimum number of hours worked in Clinical Operative Dentistry each year, but that arriving at the exact number of hours has been a difficult task to accomplish, as well as coming up with a whole new policing agency to make sure these requirements are met.

Dr. Buxton continues, the Board is adamantly opposed to licensing by credentials. I would be happy to provide his full text. He states that Licensure by Credentials does not work to assure operative clinical competence. He stated that the clinical exam that is given twice each year is a viable legally tested form of evaluation, that entry level of minimum competency of applicants.

At the present time, it is certainly my opinion that this Clinical Exam is a very subjective exam and very inconsistent and represents a form of limited entry program for incoming dentists in the State of Alaska. I have in my hand a Hearing Officer report in the matter of William G. Kohn and the matter of Bruce L. Sahakian. Both dentists had filed applications to receive dental licenses as provided for in Licensure by Credentials. Both had been notified that they were not eligible for Licensure by Credential. Dr. Kohn had been a dental practitioner in the Public Health Service assigned to the Tanana Chief Conference in

Fairbanks, and Dr. Sahakian was a dental practitioner in the U.S. Public Health Service in Anchorage. Each had worked for the Health Service at the least the five years immediately preceding his application. At the hearing, the State was represented by Assistant Attorney General K.E. Gowens and the applicants were represented by Nelson P. Cohen, Attorney at Law. As you read the report, it did not appear that the Attorney General's office would have any part in trying to defend the Dental Board's action. Hearing Officer Frank Flavin said that the applicants had established a preponderance of evidence that the 1978 NERB Clinical Exam was at least equivalent in "scope, quality, and difficulty" to the Alaska exam of 1978, thus satisfying AS08.36.234(2), and it was the recommendation of the Hearing Officer that the applicant's applications for dental licensure be approved. On August 10, 1985, Dr. Buxton signed the final order that the proposed decision is hereby adopted. In effect, these two licenses had to be granted after a rational review. It obviously cost many thousands of dollars and months of time to pursue a decision in this manner.

I had indicated I would obtain recent pass rates from Washington and Oregon and California. On March 7, 1986, the Department of Professional Licensing from the State of Oregon reported a pass rate of approximately 70-80% "with the vast majority of those passing on the first try". The last pass rates for the State of California is approximately 85% for California graduates with out of state graduates at a 41% pass rate and Foreign graduates at 27%. The statistics for California Dental School graduates are all first attempt results. The out of state and foreign graduates statistics were the result of all attempts. The State of Washington reported a lowest rate of 32.4% in September 1985, a 49% pass rate in June of 1985, a 44% pass rate in September of 1984, and a 45% pass rate in June of 1984. While the pass rates for the State of Washington are low, they are not new and knowledgeable observers have commented that they have a limited entry program of their own there, also.

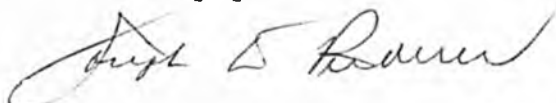
As I mentioned previously, I believe the present Dental Board Clinical Exam is very subjective and inconsistent and that the high failure rate is not due only to poor clinical skills of the applicant.

I HOPE THAT THE
Legislature will investigate why the Board suspended by regulation the provision for Licensure by Credentials. I hope the Legislature can determine why the point grading system for the clinical exam was repealed on March 4, just one day after much effort, the operative score sheets from an exam were obtained. I hope that a special Legislative Audit Committee can be appointed to obtain the "rest of the story" on some of these issues. I think

there are reasonable people in the Alaskan community who question whether the Board of Dental Examiners should, in fact, be re-established in light of their recent activities.

Thank you for your attention to my concerns.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Joseph D. Riederer".

Joseph D. Riederer, M.D.



ALASKA DENTAL SOCIETY NEWSLETTER

Volume 1

Number 7

July, 1984

FRACTURED THOUGHTS ON JUNE BOARDS

BY

James Cerney

For most of us few times of trauma are more permanently etched in our minds than when we took our Alaska State Boards. For twenty-six dentists, only very few hygienists, and the State Board of Dental Examiners, that trauma has resurfaced.

Last month, thirty dentists took the State Board and twenty-six failed. Of those thirty dentists, eighteen attempted to gain license by examination and twelve by credentialing. Two dentists passed the Board by examination and two passed by credentialing. I have been unable to obtain exact statistics on the dental hygiene examination, but I understand that about eighteen took the exam. Of these, I have heard that only about three failed to pass.

For the dental portion, the failure rate seems extremely high. A high failure rate might suggest that a large number of those seeking licensure are unqualified. A high failure rate could also suggest that a problem in credibility and possibly liability might exist for those concerned with the examination.

The question of credibility arises if the contents of the examination are not good indicators of



ADLBERG

knowledge or ability; if the grading of the examination is inconsistent and excessively strict; or if the administration and scheduling of the examination was poorly done and becomes then a frustration to the candidate not to mention members of the Alaska State Board of Dentistry.

The question of liability also arises if the high failure rate is not due to applicant lack of ability but is instead due to examination content or the grading method. In this instance, a liability could occur against the State Board of Dental Examiners. But if the high failure rate is because of the poor administration of the examination resulting in frustration, then the liability could be incurred against the Division of Occupational Licensing.

After hearing the stories of some Board candidates and from a telephone conversation with two Board members, I have gathered the following information. (I also talked with one Board proctor). In all fairness, I tried to contact the Division of Occupational Licensing. In the next issue I will do a follow-up story from interviewing some of the Board's candidates and the Division of Occupational Licensing.

Now for some fractured thoughts:

1. Four Board members and proctors administered the exam. The Board members were: A. Hansen, Leslie Lubhoff, Paul Buxton and Jerry Zemlicka. Proctors were: George Hansen, Jerry Stranik, Bob Warren, Marshall Dotson. In a telephone interview with Paul Buxton, President of the Board, I was told that it is true that Zemlicka and he were new members of the Board but they had proctored the Board before. George Hansen and Bob Warren had also proctored the exam before. The experience of the Board was not a real problem.

2. The Director of Occupational Licensing, Harry Treager, was hospitalized during the time of the examination. Two of his staff from Juneau, Ed Mercer and Jane English, were in Anchorage to help administer the exam. Ed Mercer is the new officer who administered the examination for the Division of Occupational Licensing. Much of the criticism that has occurred has been in the direction of a scheduling session prior to the examination (in the evening) never held. In addition, he was more than one hour late in coming to the written examination. He neglected to obtain a proctor for the slide portion of the written examination. And for one session of the exam, he turned the examination over to a person who was not connected with either the Board of Dental Examiners or the Division of Occupational Licensing. Both George Hansen and Paul Buxton

Continued on page 6

Continued from page 1

... quick to point out that though Ed Mercer, though he made an initial mistake that he was "quick to learn" and probably did well in his capacity. Art Hansen made a motion to the Board to demand Ed Mercer's resignation. No action was taken; I believe.

The Board of Dental Examiners themselves were quite upset about the situation. As there is a need to appoint people to the Board, Governor Sheffield has been very slow to appoint these people. The Governor has stated that this is a "low priority item". After appointment has been made, the legislators have been slow in confirmation. Next, the Board has been upset with the administration of the examination. Paul Buxton stated that the clinical portion of the examination went smoothly, but this was not until the second day. The action of the Division of Occupational Licensing made the first day disastrous. Next, one candidate that I talked to felt that there was very poor verbal and written communication between the Division of Occupational Licensure and the candidates. There seemed to be many unanswered letters between the candidates and the Division of Occupational Licensing. Information on the Board that is usually sent in a timely manner was very late in its arrival for last month's candidates.

I have my own concerns. I have seen our Board make tremendous advances toward credibility and true consumer protection over the past eight years. Now because of one poorly administered examination, much of the credibility the Board has fought for may be lost. With the above, if fingers are to be pointed, let it be to the Division of Occupational Licensing. Both the Board members and the candidates were frustrated by the Division's administration of the examination. This may be the true liability.

All may not be lost however. In the past Mr. Treager has given excellent response to the concerns of the dentists and made concessions. Mr. Treager's hospitalization, though untimely, was unfortunate. Because of the absence of his leadership, this may have triggered many of the problems.

Finally, I believe both the Division of Occupational Licensing and the Alaska State Board of Dental Examiners are concerned with your thoughts. Paul Buxton said he would appreciate all concerns addressed to him at: Mr. Paul Buxton, Box 1376 Soldotna, Alaska 99669. The phone is 262-5454. Letters to the Division should be sent to: Mr. Harry Treager, State of Alaska, Division of Occupational Licensing, Pouch D, Juneau, Alaska 99811. The Phone is: 465-2580.

*****WHO IS ED SIMS?*****
In my spare time, I am trying to round up advertisers for the Newsletter. Next, a little about myself. My father was in the U.S. Army, and we had the good fortune to be stationed at Ft. Richardson in the sixties. After retiring in 1972, we moved back to Alaska. My interests

include bicycling, motorcycling, photography, drawing, and traveling to name a few.

I graduated from Dimond High School in 1976, and then the University of Oregon in 1980. I am a proud alumnus of the University of the Pacific School of Dentistry in 1983. After six months as an associate of Dr. John Miller in Anchorage, I am currently on my own.

My office is at 406 W. First Avenue in Anchorage. If you know of any individual or firm that I could contact about advertising in the Newsletter, please let me know at 277-7596. Or feel free to drop by Wednesday to find

LETTERS TO THE EDITOR

Dear Jerry:

The privileges we enjoy should not be taken for granted. We have a rich heritage that did not evolve without sacrifice and a great deal of selfless dedication by our predecessors. Without vocal, appreciative, and supportive members, values get diluted, goals disintegrated, and personal commitments are denigrated.

The April 1984 issue of the J.A.D.A. focuses the profession's attention on our heritage and the effort and accomplishments of mainly average dentists who have the betterment of their profession foremost in mind.

The June 1984 Alaska Dental Society Newsletter relates our Executive Council's overwhelming concern with the state legislature. This is an attitude not universally shared by the entire Society. A very considerable amount of time and members' dollars are spent in playing the questionable game.

Is it important to "establish credibility" with the Department of Occupational Licensing? The Board and our professions did this before the Department was formed. It exists to take the paperwork off the Board. It does such menial tasks and requires no professional knowledge or judgement.

Likewise, what conflict exists between the Board of Dental Examiners and the Executive Council of our Society? Are they not common members of the Society?

The Newsletter also contained a financial report by the Society's treasurer, Dr. Hansen. It is disturbing to the point of being offensive to this member.

The membership should not condone the extravagant and ill-advised expenditures which today total \$19,400 over an already padded budget. Good management of our Society requires conservative use of our limited funds. It needs the consensus of the whole membership. Who gave them the power to spend in excess of the approved budget? Need they not justify it? Whose money is it? It is our money!

Expenditures need to be necessary, worthy of support of the Society; using more volunteer work; at the least cost; and of value to as many members as possible.

Without action we will lose members as well as thousands of dollars.

By Dr. Robert A. Smithson

How to keep a dentist busy. See page number 8.

By Dr. Gerald Stranik

TOTAL # OF PERSONS FAILING EACH EXAM

18

EXAMINATION STATISTICS
DENTAL EXAMINATION

AUTOMATIC FAILURES FY '84 - FY '86

<u>FY '84</u>	<u>GOLD INLAY</u>	<u>AMALGAM</u>	<u>GOLD FOIL</u>
<u>November 1983:</u>			
Total Examinees by Subject	14	12	14
Automatic Failures	2	1	2
Percent of Automatic Failures	14%	8%	14%

<u>June 1984:</u>			
Total Examinees by Subject	17	15	16
Automatic Failures	9	7	4
Percent of Automatic Failures	53%	47%	25%

18
Candidates

<u>FY '85</u>	<u>GOLD INLAY</u>	<u>AMALGAM</u>	<u>GOLD FOIL</u>
<u>November 1984:</u>			
Total Examinees by Subject	15	11	13
Automatic Failures	3	0	3
Percent of Automatic Failures	20%	0%	23%

18

<u>June 1985:</u>			
Total Examinees by Subject	31	29	32
Automatic Failures	9	3	0
Percent of Automatic Failures	29%	10%	0%

34

<u>FY '86</u>	<u>GOLD INLAY</u>	<u>AMALGAM</u>	<u>GOLD FOIL</u>
<u>November 1985:</u>			
Total Examinees by Subject	20	15	14
Automatic Failures	5	1	0
Percent of Automatic Failures	25%	7%	0%

25

AUTOMATIC FAILURE

12 AAC 28.250. ERRORS OR OMISSIONS REQUIRING FAILING GRADE. (a) If a majority of the examiners agree that an applicant has committed any of the following errors or omissions in cavity preparation, the applicant will receive a grade of zero in that subject of clinical examination:

- (1) incomplete caries removal;
- (2) destruction of supporting tissues;
- (3) unnecessary mechanical exposure of pulp; and
- (4) alteration of preparation between checks by examiners.

(b) If a majority of the examiners agrees that an applicant has committed any of the following errors or omissions in restoration, the applicant will receive a grade of zero in that subject of the clinical examination:

- (1) open margins; and
 - (2) destruction of hard or soft supporting tissue in finishing. (Eff. 4/8/79, Reg. 70)
- Authority: AS 08.36.070(1) and (7)
AS 08.36.190

EXAMINATION STATISTICS
DENTAL EXAMINATION

June 1984:

	<u>WRITTEN</u>	<u>GOLD INLAY</u>	<u>AMALGAM</u>	<u>GOLD FOIL</u>
Total Examinees by Subject	14	17	15	16
Total Passing by Subject	14	4	6	7
Total Percent Passing	100%	24%	40%	44%
Initial Examinees by Subject	13	13	13	13
Total Passing by Subject	13	4	6	5
Total Percent Passing	100%	31%	46%	38%
Repeat Examinees by Subject	1	4	2	3
Total Passing by Subject	1	0	0	2
Total Percent Passing	100%	0%	0%	67%

Clinical Only

Initial Examinees (Entire Exam)	(13)
Number Passing No Parts	5
Number Passing One Part	2
Number Passing Two Parts	5
Number Passing All Parts	(1)
Repeat Examinees (Entire Exam)	2
Number Passing No Parts	1
Number Passing One Part	0
Number Passing Two Parts	1
Number Passing All Parts	0
Total Taking One Part	2 —
Total Passing	1 —
Total Percent Passing	50%
Total Taking All Subjects	16
Total Passing All Subjects	1
Total Percent Passing	(6%)
Total Taking Examination	18
Total Passing	2
Total Percent Passing	11%

BOARD OF CHIROPRACTIC EXAMINERS

LICENSED BY CREDENTIALS IN FY 85 = 2* licensed by credentials but were required to take an additional portion of the exam. One licensee was required to be tested for physiotherapy; and the other was required to be tested for x-ray.

Applicants can, and have been required to take parts of the state exam even though seeking licensure by credentials.

Licensure by Credentials

Sec. 08.20.140. Licensure by Credentials. The board may issue a license without examination to an applicant presenting satisfactory proof of the possession of a license or certificate of registration in good standing in a state or territory of the United States, or a foreign country, if the requirements for registration at the date of his license are essentially equivalent to those in this chapter.

NOTE: It is the responsibility of the applicant to obtain and furnish, with his/her application, all necessary documents and data required. Documents and transcripts are to be certified as true or they will be returned.

The following must be submitted before you will be considered for licensure by credentials:

1. Complete and notarized application.
2. The appropriate fee of \$200.00 (No cash please)
3. Certified copies of your:
 - a. Liberal arts transcript.
 - b. Transcripts from the chiropractic college attended.
 - c. Certified true copy of your diploma from the chiropractic college attended.
4. The National Board of Chiropractic Examiners transcript of grades with the appropriate seal.
5. Present satisfactory proof of the possession of a license or certificate of registration in good standing in a state or territory of the United States or a foreign country. (Necessary forms are attached.)

The burden of proof of equivalency of examination taken by the applicant in another state or territory lies with the applicant.

The Board of Chiropractic Examiners of the State of Alaska will make judgement as to whether it was an equivalent examination. The Alaska Chiropractic Examination contains the following:

1. State written examination.
2. Clinical proficiency to include, but is not limited to:
 - a. manipulative technique
 - b. physiotherapy
 - c. clinical exam procedures
3. X-ray interpretation and technique.
4. Any additional information required by the examining board to complete your application.

BOARD OF DENTAL EXAMINERS

NUMBER LICENSED BY CREDENTIALS IN FY 85 = 12

Sec. 08.36.234. Licensure by credentials. The board may provide for the licensing without examination of a dentist who

- (1) is a graduate of a dental college accredited by the Commission on Accreditation of the American Dental Association, or its successor agency and holds a certificate from the American Dental Association Joint Commission on National Dental Examinations that the dentist has passed the written examination given by the commission;
- (2) has been licensed to practice dentistry in another state, territory, or region with licensing requirements at least equivalent in scope, quality and difficulty to those of this state at the time of licensure;
- (3) has been engaged in continuous active practice averaging at least 20 hours per week for each of the five years immediately preceding the application;
- (4) is not the subject of an unresolved complaint, review procedure, or disciplinary proceeding undertaken by a dental licensing jurisdiction;
- (5) has not previously had a license to practice dentistry revoked;
- (6) has not failed the clinical examination of this state;
- (7) is personally interviewed by the board;
- (8) pays all required fees.

BOARD OF DISPENSING OPTICIANS

LICENSED BY CREDENTIALS IN FY 85 = 7

LICENSE BY CREDENTIALS

A person with a valid license as a dispensing optician from another state, territory, district or possession of the United States shall be issued a license without examination for those professional areas in which he/she is licensed upon payment of any fee and documentation which the board may require by regulation.

Requirements:

- (b) Complete notarized application with photo attached.
- (c) Notarized documents supporting claim of 6,000 hours and a practicing optician in good standing.
- (d) Proof of licensure in another state.
- (e) Fees
 - (1) Initial fee = \$50.00 for each category

STATE MEDICAL BOARD

Physicians by Credentials - 1985 98
Requirements:

Sec. 08.64.200. Qualifications of physician applicants. Except for foreign medical graduates as specified in AS 08.64.225, each physician applicant shall

- (1) Repealed by Sec. 19 ch 48 SLA 1983.
- (2) submit a certificate of graduation from a legally chartered medical school accredited by the Association of American Medical Colleges and the Council on Medical Education of the American Medical Association;
- (3) submit a certificate from a recognized hospital certifying that the applicant has satisfactorily performed the duties of resident physician or intern for a period of one year;
- (4) not have a license to practice medicine in another state, province, or territory which is currently suspended or revoked for disciplinary reasons; and
- (5) be a citizen of the United States or be lawfully admitted for permanent residence. (Sec 35-3-85 ACLA 1949; am Sec 1 ch 22 SLA 1963; am Sec 1 ch 18 SLA 1963; am Sec 5 ch 77 SLA 1969; am Secs 5, 6 ch 148 SLA 1970; am Sec 1 ch 85 SLA 1972; am Sec 5 ch 101 SLA 1974; am Sec 19 ch 48 SLA 1983)

Sec. 08.64.250. License by credentials. The board may waive the examination requirement and license by credentials if the physician or podiatry applicant meets the requirements of AS 08.64.200 or 08.64.209, submits proof of continued competence as required by regulation, pays the required fee and has

- (1) an active license from a board of medical examiners established under the laws of a state or territory of the United States or a province of Canada issued after thorough examination; or
- (2) passed an examination given by the National Board of Medical Examiners or the Federation of State Medical Boards of the United States if the applicant is a physician, or passed an examination given by the National Board of Podiatry Examiners if the applicant is a podiatrist. (Sec 35-3-85 ACLA 1949; am Sec 1 ch 22 SLA 1960; am Sec 13 ch 77 SLA 1969; am Sec 8 ch 69 SLA 1970; am Sec 12 ch 148 SLA 1970; am Sec 10 ch 48 SLA 1983)

Sec. 08.64.255. Interview required. All applicants for a license under AS 08.64.250 shall be interviewed in person by at least one member of the board before a license will be issued. The interview shall be recorded, and, if the application is denied on the basis of the interview, the denial shall be stated in writing with the reasons for it, and the record shall be preserved. (Sec 14 ch 77 SLA 1969, am Sec 13 ch 148 SLA 1970)

Sec. 08.64.260. Re-examination. (a) If the applicant fails the examination, the applicant may, on the same application and payment of a re-examination fee, take another examination not less than six months nor more than two years after the date of the first examination. If the applicant fails a second examination, the applicant may, after a year or more of further study or training approved by the board, make a new application for licensure.

**ARTICLE 1
LICENSING**

Section

10. License by endorsement
15. Application for license by examination
20. License by examination
30. Re-examination fees (Repealed)
35. Temporary permit application requirements
38. Locum tenens permit application requirements
40. Recognized hospital
50. Biographical data required

12 AAC 40.010. LICENSE BY ENDORSEMENT.

(a) An applicant for licensing by endorsement shall submit either:

- (1) evidence satisfactory to the board that the applicant has passed an examination in the medical and basic science subjects as a prerequisite to licensure in a State of the United States or Province of Canada; or

(2) an official transcript from

(A) the Federation of State Medical Boards documenting successful passage of the FLEX exam;

(B) the National Board of Medical Examiners documenting successful passage of the NBME exam;

(C) the National Board of Examiners of Osteopathic Physicians and Surgeons documenting successful passage of the NBOPS exam; or

(D) the National Board of Podiatry Examiners documenting successful passage of the NBPE exam.

(b) Applicants are responsible for requesting transcripts and paying any fees associated with having transcripts sent to the board. (Eff. 12/30/70, Reg. 38; am 5/18/85, Reg. 94)

Authority: AS 08.64.100
AS 08.64.210
AS 08.64.250

BOARD OF NURSING

NUMBER LICENSED BY ENDORSEMENT IN FY 85 =

RN's	-	467	
LPN's	-	<u>145</u>	
		612	Total

Sec. 08.68.200. License by endorsement. The board may issue a license by endorsement to practice as a registered or practical nurse, whichever is appropriate, to an applicant who

(1) is licensed as either a registered or practical nurse under the laws of another state or territory, if in the opinion of the board the applicant meets the qualifications required for licensing in the state, and meets the requirements of AS 08.68.170; or

(2) meets the requirements of AS 08.68.170 and has successfully completed the Canadian Nurses' Association Testing Service examination if the board determines it is comparable to the examination administered by this state. (Sec 11 Ch 90 SLA 1957; am Sec 1 Ch 37 SLA 1970; am Sec 4 Ch 129 SLA 1974; am Sec 10 Ch 14 SLA 1982)

BOARD OF EXAMINERS IN OPTOMETRY

(FY 85)

LICENSED BY CREDENTIALS = 0

The board has never waived the written examination for any applicant applying for Alaska license. All applicants take the examination.

Sec. 08.72.170. Issuance of certificate by waiver of written examination. (a) The board may waive the written portion of the examination requirement for an applicant who:

(1) meets the qualifications of AS 08.72.140;

(2) holds a current license by examination in another state or a province of Canada and has been established in ethical optometric practice for at least three years before the application, or shows satisfactory evidence of having passed the written portion of the examination given by the National Board of Examiners in Optometry; and

(3) has not had a certificate or license revoked for cause in any state, territory or foreign country.

(b) A waiver of the practical or oral portions of the examinations may not be given. (§ 35-3-142 ACLA 1949; am § 8 ch 76 SLA 1969; am § 12 ch 75 SLA 1980)

PHARMACISTS BY CREDENTIALS IN 1985.....24

Sec. 08.80.110. Qualifications for registration. An applicant for registration as a pharmacist shall

- (1) be fluent in the reading, writing and speaking of the English language;
- (2) furnish the board with at least two affidavits from reputable citizens, that the applicant has known for at least one year, attesting to the applicant's good moral character and freedom from addiction to the use of drugs or alcoholic liquors;
- (3) be a graduate of a college of pharmacy recognized by the National Association of Boards of Pharmacy;
- (4) pass an examination by a board of pharmacy which has been approved by the National Association of Boards of Pharmacy;
- (5) have completed at least 1,500 hours of internship training under the direct supervision of a licensed pharmacist in a licensed pharmacy, 160 hours of which must have been completed after graduation. (am Sec 9, 10 ch 166 SLA 1980)

Sec. 08.80.115. Repealed by Sec 40 ch 177 SLA 1978.

Sec. 08.80.140. License by credentials. The board may license an applicant who has been certified as a registered pharmacist by the National Association of Boards of Pharmacy if the applicant meets the requirements under AS 08.80.110 and passes the state jurisprudence examination. (Sec 8 ch 194 SLA 1955; am Sec 3 ch 24 SLA 1968; am Sec 3 ch 72 SLA 1969; am Sec 8 ch 206 SLA 1972; am Sec 12 ch 166 SLA 1980)

STATE PHYSICAL THERAPY BOARD

NUMBER LICENSED BY CREDENTIALS IN FY 85 = 19

Sec. 08.84.050. Qualifications for licensing. To be eligible for licensure by the board as a physical therapist or physical therapy assistant, an applicant, unless a graduate of a foreign school of physical therapy located outside the United States, shall

(1) Repealed by Sec. 2 ch 55 SLA 1980.

(2) have graduated from a school of physical therapy approved by the Council on Medical Education and Hospitals of the American Medical Association, or the American Physical Therapy Association;

(3) pass to the satisfaction of the board an examination prepared by the Professional Examination Service Association or by a national testing service approved by the board to determine the applicant's fitness for practice as a physical therapist or physical therapy assistant, or be entitled to licensure without examination as provided in AS 08.84.060;

(4) meet qualifications for licensure established in regulations adopted by the board under AS 08.84.010(b)(8). (sec. 3 ch 74 SLA 1957; am secs 1, 8 ch 49 SLA 1969; am secs 1, 2 ch 26 SLA 1970; am sec 25 ch 245 SLA 1970; am sec 2 ch 71 SLA 1974; am sec 2 ch 208 SLA 1975; am sec 2 ch 55 SLA (1980)

Sec. 08.84.060. Licensure by acceptance of credentials. The board may license without examination an applicant who is a physical therapist or physical therapy assistant licensed under the laws of another state or territory or the District of Columbia, if the requirements for licensure in that state or territory or the District of Columbia, were, at the date of the applicant's licensure, substantially equal to the requirements in this state. (sec 6 ch 74 SLA 1957; am sec 4 ch 26 SLA 1970; am sec 4, ch 71 SLA 1974; am sec 6 ch 55 SLA 1980)

BOARD OF PSYCHOLOGY AND PSYCHOLOGICAL ASSOCIATES

NUMBER LICENSED BY CREDENTIALS IN FY 85 = 7

Sec. 06.88.150. License by credentials. A person who is licensed or certified as a psychologist by an authority other than Alaska is entitled to be licensed in Alaska without examination if

(1) the person holds a doctoral degree with primary emphasis on psychology from an accredited school with an approved program;

(2) the examination and qualification requirements for his out-of-state license or certificate were essentially similar to or higher than the examination and qualification requirements for licensure under this chapter; or

(3) he is a diplomate in good standing of the American Board of Examiners in Professional Psychology;

(4) he completes and returns the proper application forms, submits proof of continued competency as required by regulation of the board, and pays the credential review fee. (am ch 58 SLA 1980)

BOARD OF VETERINARY EXAMINERS

NUMBER LICENSED BY CREDENTIALS IN FY 85 = 9

Sec. 04.98.184. Licensure by credentials. The board shall approve the issuance of a license to an applicant who holds a valid license to practice veterinary medicine in another state, territory, or country with licensing requirements substantially similar to or higher than those of this state which were in effect at the time the applicant obtained a license in the other jurisdiction if the applicant

(1) has graduated from an accredited school of veterinary medicine or has successfully passed the examination of the American Veterinary Association's Education Commission for Foreign Graduates;

(2) has been engaged in the active practice of veterinary medicine for at least five of the seven years before filing the application;

(3) has not failed the state written or practical examination;

(4) has no disciplinary proceedings, unresolved complaints, or professional association review proceedings pending at the time a license is to be issued, and has not had a veterinarian license revoked for cause in another jurisdiction; and

(5) has paid required fees. (Sec 11 ch 41 SLA 1960)

MEMORANDUM

State of Alaska

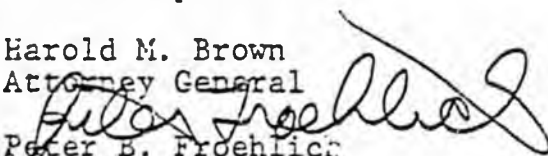
TO: Kevin Henderson
Regulations Specialist
Division of Occupational
Licensing
Department of Commerce & Economic
Development

DATE: March 17, 1986

FILE NO: 993-86-0091

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General

By: 
Peter B. Froehlich
Assistant Attorney General
Commercial Section

SUBJECT: Repeal of 12 AAC
28.260 on grading
of clinical exam

I received the notice of this proposed regulation action on Friday, March 14, and discussed it with you today Monday, March 17.

I understand that, in response to complaints about the current clinical exam grading system, the Board of Dental Examiners is working on a new grading system. However, I have serious reservations about the proposal to simply repeal the existing detailed provisions describing the current grading system without replacing them with new provisions describing a new system. Updating the current grading system and eliminating some of the unnecessary detail are both good ideas. But, the new grading system has to be described in regulation, to at least some extent, so that applicants and others are properly notified of what standards they will be measured against in what subject areas. Please review the definition of "regulation" by AS 44.62.-640(a)(3) and the discussion in Chapter 3 of the Drafting Manual for Administrative Regulations (Department of Law, 9th ed., 1985), in this regard.

It appears that the proposed new grading system must be put in regulation form and a supplemental notice published which includes reference to that new system. Let me know if I can help you or the board on this project.

PBF:md

cc: Paul Buxton, D.D.S., Chair
Board of Dental Examiners

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

MAR 19 1986

DIVISION OF
OCCUPATIONAL LICENSING

On a motion duly made, seconded, and carried unanimously, it was:

RESOLVED to repeal section 12 AAC 28.280(a) and amend 12 AAC 28.280(b) to read: The applicant will be given written notice of his or her final grade for each subject of the clinical examination, and whether or not the applicant passed or failed.

It was requested that Kevin Henderson, Regulations Specialist, devise the proper language for the change in 12 AAC 28.280.

Request for Reinstatement of Dental Hygienist License for Kathleen Kemp: Kay Gouwens, Assistant Attorney General, was available to clarify and interpret AS 08.32.081, and assist the board in a decision in the case of Kathleen Kemp. The board, staff, and Kay Gouwens further discussed the particulars of Ms. Kemp's case.

On a motion duly made, seconded, and carried unanimously, it was:

RESOLVED that the request of Kathleen Kemp for reinstatement of her dental hygienist license is denied pursuant to AS 08.32.081.

It was requested that the division write a letter to Ms. Kemp, informing her of the denial of reinstatement and her right to request an administrative hearing.

On a motion duly made, seconded, and carried unanimously, it was:

RESOLVED that the division issue Kathleen Kemp a cease and desist order, effective November 8, 1985, and that the vote on this motion constitutes approval by a majority of the board members.

Credentialling Regulation: Discussion was held regarding the board's regulation stopping licensure by credentials. Members of the board feel that, since there is no specific way to be assured that another state's requirements are at least equal to the State of Alaska, taking the clinical examination would be a "cut and dried" method of assuring competence, i.e., if the applicant passes, he/she receives a license, if the applicant fails, he/she does not receive licensure. In the past, credential applicants were required to complete an interview with the board. The board required applicants to present case presentations during their interview. This was determined to be a form of actually examining the applicant. Kay Gouwens suggested that the board implement regulations to state exactly what procedures would absolutely be required to be licensed by credentials. If the board is to require case presentations during the interview, it would take a statute change. Kay Gouwens informed the board that in the manner the regulation is written suggests that the board intends to take further action, although the statute is discretionary in that it states that the board may provide licensing without examination.

Scope of Practice of Dental Hygienist: Leslieann Luboff presented questions to the rest of the board to clear up some "gray areas" regarding the scope of practice of dental hygienist. The questions dealt with certain functions and whether they would be considered practicing dentistry. The gray areas seem to appear when a dentist requests a hygienist to perform a certain function which may be considered the practice of dentistry. Some functions are not defined in the scope of practice of the dental hygienist. Although the hygienist is under the supervision of a dentist, there still is concern as to whether these functions can legally be performed by the hygienist.

On a motion duly made, seconded, and carried unanimously, it was:

RESOLVED that the organized hygiene and dental societies and components submit to the board, for review, proposed regulations defining the specific functions of a dental hygienist.

It was requested that a letter be written to the Alaska Dental Society regarding the scope of practice of a dental hygienist. Dr. Zemlicka will write the letter.

Local Anesthetic Permits: Discussion was held regarding the procedure for applicants to receive their local anesthetic permits. Apparently, there have been complaints regarding the time it takes to receive permits. It was generally agreed that the current system is the most efficient and quickest method for these applicants to receive their permits. Dr. Warren does suggest that these applicants give him prior notice that he has to approve their applications.

On a motion duly made, seconded, and carried unanimously, it was:

RESOLVED that the division write a letter to the Anchorage Community College explaining the procedure for obtaining a local anesthetic permit.

The board reviewed the check sheet for Dr. Warren to complete when he reviews a file for a local anesthetic permit.

On a motion duly made, seconded, and carried unanimously, it was:

RESOLVED to approve the local anesthetic check sheet.

Review of Revised Dental Application: The draft dental application form was reviewed for the board's comments and suggestions. It was requested that the application be numbered such that the applicant would be assured he/she does have the complete application, i.e., page 1 of 4, 2 of 4, and so forth.

MEMORANDUM

State of Alaska

TO: Honorable Richard A. Lyon
Commissioner
Department of Commerce & Economic
Development

DATE: December 31, 1984

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Permanent amendment
to emergency regulation
ceasing acceptance of applications
for license by credential (12 AAC
28.450)

By: *Pete B. Froehlich*
Pete B. Froehlich
Assistant Attorney General
and Assistant Regulations Attorney

RECEIVED
JAN 04 1985
OFFICE OF THE
COMMISSIONER

Under AS 44.62.060, we have reviewed the amendment by the Board of Dental Examiners to this regulation, originally adopted by emergency action filed on October 17, 1984, and approve it for "permanent" filing by the lieutenant governor. A duplicate original of this memorandum is being furnished to the lieutenant governor, along with the new regulation and related documents, including the board's November 9, 1984 Supplemental Finding of Emergency

The October 16, 1984, public notice, the November 13, 1984 supplemental notice and the December 13, 1984, adoption order all state that the adoption of this regulation is not expected to require an increased appropriation. Therefore, AS 44.62.195 does not require a fiscal note.

In accordance with AS 44.62.125(b)(6), some corrections have been made in this regulation, as shown on the attached copy.

PBF:dlm

cc w/enc.: Paul S. Buxton, D.D.S., Chair
Board of Dental Examiners

Register

1985

PROFESSIONAL AND
VOCATIONAL REGULATIONS

CHAPTER 2P.
BOARD OF DENTAL EXAMINERS

~~EMERGENCY REGULATION~~

12 AAC 28 is amended by adding a new section to read:

12 AAC 28.450. CESSATION OF LICENSING BY CREDENTIALS.

In the absence of specific regulations implementing AS 08.36.234
or legislation clarifying that statute, no applications for licensure
by credentials will be accepted. (Eff. 10/17/84, Reg. 925; am 1/19/85, Reg.)

Authority: AS 08.36.070 ~~77e~~
AS 08.36.234

Publisher: Please add new § 450 to the contents list for Article 4.

Tnx,
PBF
12/28/84

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

20 1984

DIVISION OF
VOCATIONAL LICENSING

MEMORANDUM

State of Alaska

TO: Arthur H. Peterson
Assistant Attorney General and
Regulations Attorney
Department of Law

DATE: December 21, 1984

FILE NO:

TELEPHONE NO:

FROM: Richard A. Lyon, Commissioner
Department of Commerce & Economic
Development

SUBJECT: Dental Board Emergency
Regulation 12 AAC 28.450

The Board of Dental Examiners has adopted emergency regulation 12 AAC 28.450, dealing with the cessation of acceptance of applications for licensing by credentials as a permanent regulation.

Attached for your review in accordance with AS 44.62.060(b), for filing in accordance with AS 44.62.260(b), are the following:

1. A copy of the original Affidavit of Notice of Adoption of the original emergency regulation and a copy of the public notice as published.
2. A copy of the original Affidavit of Publication, as executed by the Anchorage Daily News. Affidavits from the Juneau Empire and Fairbanks Daily News-Herald will follow when received.
3. A copy of original Finding of Emergency and Adoption Order, signed by the board chairman, with a copy of the original regulation.
4. A copy of the Supplemental Finding of Emergency signed by the board chairman.
5. A copy of the Supplemental Notice of Adoption of Emergency Regulation as published.
6. Affidavit of publication executed by Kevin Henderson, Regulations Specialist. The original affidavits of publication will be forwarded to you when received.
7. The original Affidavit of Oral Hearing.
8. A copy of the transcripts of the oral hearing held on November 30, 1984 in Anchorage.
9. Original letters of written comment received.

Arthur H. Peterson

-2-

December 21, 1984

10. The original and two copies of the final form of the permanent regulation as adopted by the board.
11. The original adoption order, signed by the board chairman, adopting 12 AAC 28.450 as a permanent regulation.

A copy of the November 9, 1984 board meeting minutes, and a transcript of the December 19, 1984 conference call, which reflects the board's action to make this regulation permanent, will be forwarded to you for inclusion in the project file.

Upon completion of your review, please forward these with your opinion to the Lieutenant Governor for filing.

Thank you for your assistance.

KH/sa0509s
122134b

Attachments

Examination Calibration: Dr. Robert Christoferson of the University of Pacific in San Francisco calibrated the dental members of the board for the dental exams.

After discussion, and on a motion duly made, seconded and carried unanimously, it was

RESOLVED to request funds to reimburse Dr. Gustoffsen for his costs, specifically, airline ticket and room and a \$500.00 honorarium for his time spent in Alaska to calibrate the board; that this be a continuing action, every two years he be brought up to calibrate the examining teams, both dental and dental hygiene.

Discussion followed. Even though the State is strapped for money the Board should be insistent. If the board is going to function efficiently and to mandated responsibilities, this would be essential.

Credential Application: On a motion duly made, seconded and carried unanimously, it was

RESOLVED to enter executive session to review the applications of Dr. Robert Biesterfeld and Dr. Michael Benner.

At 10:13 a.m., Dr. Biesterfeld appeared for interview before the Board. The Chairman asked whether the applicant wished the interview to be taped or to be off the record. The interview was taped. The Board asked identification questions and questions about disciplinary procedures pending and initiated against license. There were none. There were questions about prior examinations. After further questions, with no discussion and on a motion duly made, seconded and carried unanimously by roll call, it was:

RESOLVED to grant Dr. Biesterfeld his license by credentials.

The meeting was joined by Nelson Cohen, Attorney-at-Law, as an observer.

There was discussion of whether the interviews were conducted in executive session and whether the interviews being recorded automatically made them open to the public. It was thought that if either the board or the candidate wished the interview to be conducted in executive session and recorded, this could be done.

At 10:40 a.m. Dr. Benner appeared before the board for credentials interview.

The chairman asked whether the applicant wanted the interview to be on public record or in executive session. The applicant required public record. The Board asked identification questions and questions about disciplinary procedures pending and initiated against license. There were none. This applicant has previously appeared before the board. Because there were new members of the board present, it was requested that the applicant briefly explain his side of the entire process and getting another interview. There were questions about prior licenses and examinations. After further questions with no discussion and on a motion duly made, seconded, and carried unanimously by roll call, it was:

RESOLVED to grant Dr. Michael Benner his license by credentials.

Dr. Benner made a comment for the record. He stated that he was being transferred to another location. He stated that if he had attained his license prior to this date, it is very likely that he would have remained in the State of Alaska in a civilian dental capacity. He felt it unfortunate that he had missed this opportunity.

The meeting was joined by Chuck Ward, Investigator from the Division of Occupational Licensing.

Review of teleconference of February 8, 1985. On a motion duly made, seconded and carried unanimously, it was

RESOLVED to accept the minutes of the February 8, 1985 teleconference.

Election of Secretary: Leslieann Luboff gave a review of the duties of the secretary. After a discussion of the workloads and availability of the different board members, it was decided that it would be feasible to divide the responsibilities of the secretarial function. During this discussion, the meeting was joined by Harry Treager, Director of Occupational Licensing. After further discussion Dr. Robert Warren was nominated and nomination seconded for the position of Secretary of the Alaska State Board of Dental Examiners. On a unanimous vote, Dr. Warren was appointed to the position of secretary.

Investigative Report: On a motion duly made, seconded and carried unanimously, it was

RESOLVED to enter executive session to hear the investigative report.

After executive session a motion was made, seconded and carried unanimously to accept the investigative report. The investigator requested that the board identify by number the cases on which action (closure, continuation, opening) was being taken.

Applications for licensure by credentials:

Sandra Bailey
Michelle Tobias

These hygienists apparently did not meet the requirements of AS 08.32.030(3) " . . . has been in active clinical dental hygiene practice averaging no less than 14 hours per week for each of the two years immediately preceding application for state licensure." Their applications were denied. They disagreed with this decision and, through various methods, requested reconsideration by the board. The board first discussed the application of Sandra Bailey. After discussion and evaluation of the file and other materials, a motion was made and seconded to accept Sandra Bailey for licensure by credentials.

After discussion and on a roll call vote, the motion failed with 5 nays and 1 aye.

The Board discussed the application of Michelle Tobias. After discussion and evaluation of her letter of explanation, and on a motion duly made, seconded and carried unanimously, it was

RESOLVED to accept Michelle Tobias for licensure by credentials for dental hygiene.

A motion was duly made and seconded to reconsider the application for licensure by credentialing of Sandra Bailey. Discussion followed. The stated reason for reconsideration was to look at the amount of time spent in hygiene practice, from the date of beginning hygiene practice in that year to the date of application. This would be January 1984 to January 1985. According to the formula being used, she would need to have worked 728 hours for the year to qualify for licensure by credentials. The members of the board present at this meeting, who were also present at the teleconference of March 29, 1984, stated that it was never the intention to require a dental hygienist to work each and every week of the two years; that a hygienist could average the hours worked in a year to meet the 14 hour per week requirement.

It was suggested that, upon proper documentation received concerning the hours worked by Sandra Bailey, she would receive her license as a dental hygienist.

On a motion duly made, seconded and carried unanimously, it was

RESOLVED to request from the Attorney General clarification of AS 08.32.030(3) Licensure by credentials. " . . . has been in active clinical dental hygiene practice averaging no less than 14 hours per week for each of the two years immediately preceding application for state licensure."

The licensing examiner requested the board's interpretation of the above referenced statute AS 08.32.030 and, if it is different from the interpretation of March 29, 1985, whether it is intended to supersede the March decision.

Dr. Buxton stated that the current interpretation is that for the two years immediately preceding application for licensure (the date on which an application is received in the offices of the Division of Occupational Licensing), an applicant has to have worked an average of no less than 14 hours per week for each of those two years.

On a motion duly made, seconded and carried unanimously, it was

RESOLVED to hold Sandra Bailey's application pending confirmation of the work hours in the twelve months preceding her application (January 1985) and if she qualifies by the attainment of 728 hours that she be granted a license.

Reinstatement Application of Dental Hygienist Kathy Kemp: This application would fall under AS 08.32.081, Lapse and Reinstatement of License. The question was raised as to whether she had been practicing in the State without an active license for the last several years including administering local anesthetics. On a motion duly made, seconded and carried unanimously, it was

RESOLVED to have Kathy Kemp investigated by the Investigative Section, the board to receive the report before any further action was taken on the request for reinstatement.

A letter was received from Dr. Ellenbacher regarding his desire to hire a dental hygienist to work for the Lemon Creek Correctional Institute; hired under his license but not directly supervised by him. He/she would be working under his general supervision which is provided for in the statute. He would like a letter affirming the legality of this arrangement. The secretary was instructed to write this letter.

There was discussion of the need for stationery for the use of the Dental Board.

5. Representative to AADE meeting in Chicago.
6. Regulations, proposed amendments 12 AAC 28.
7. Discussion of Dental/Dental Hygiene Examination.
8. License reinstatement.
9. Letter from Dr. McKrill, Dentistry defined-who can and cannot own a dental practice.

Statement from dental assistants: Nancy Bish spoke in favor of the possibility of adding a section to the Alaska statutes that would specifically list functions to be performed by dental assistants and that would require specific education and training as stated on page 15 of Section 08.36.070(11) of the current Alaska statutes.

I want to speak to you today - first of all, wearing two hats - one as a dental assistant and also as an educator. I believe, as a dental assistant, that the patient desires the highest quality care. If I am assisting someone else in giving that care that is probably okay and perhaps the statutes do not need to mention any education requirements specifically. I would only be assisting with all of these functions. However, if I am actually providing a portion of that care that patient receives, such as exposing radiographs, constructing and placing temporary crowns, placing a metric or wedge, or applying a rubber dam, then I believe that, as a dental assistant, I should be qualified to perform these functions according to specific criteria. The only way to assure the public that the assistant is qualified to perform these functions is to require specific education or training in those areas where it is deemed appropriate and have it listed in the statutes. By doing so, we would not only protect the public against incompetent dental assistants performing functions beyond their educational capabilities but we would also improve the services provided to the public. Secondly, as an educator, I speak to you from a slightly different point of view. Dental assistants are being called upon to perform more and more (indisc.) functions and they are being given increased responsibilities in all aspects of patient care. Yet, they are often not considered to be professionals. They are not required to have any particular educational background. I recently had an applicant to the dental program that (indisc.) called me and asked me to remove her application to the program from consideration and the reason for this was because she found a dentist who would hire her with no experience and train her himself and she would rather get paid and go to work than go to school. And my question is, what does this say about the dental profession's attitude about the value and professionalism of the dental assistant? I would like to see dental

assistants get recognition as professionals and I feel that the first step toward this is including the skills requiring specific education and training in the statutes. Finally, as an educator in the field of dental (indisc.) education, I am faced with the ugly specter of dwindling enrollment. How do I justify to applicants the fact that anyone in the State of Alaska could go to work as a dental assistant? There is no educational requirement. There is no certification requirement or requirements of any kind. I can say philosophically to them, that you know in your heart that you are going to be a better practitioner for having gone to school for a year, but that does not appeal to most of the people. They want to know the benefits they will derive from sacrificing a year that they could have been earning money rather than going to school and becoming a dental assistant. How do we compete with three months school that has been established down the road? Listing the functions in the statutes that require specific education in training would certainly provide the incentive that our applicants need. It would also increase the perception of the dental assistant as being a professional part of the dental team, thus enhancing the pride we have in our profession and increasing the demands for dental assistants' education. Assistants already in the field would have the incentive and opportunity to take continuing education courses in these areas that would be listed in the statutes. This would increase enrollment while raising the level of dental assisting and improving patient care. So, I would like to see Alaska keep with other states or even become more progressive than other states and I would like to see us review the statutes so dental assistants can be recognized for the valuable contributions they make in dental practice. Thank you.

Kathy Watsjold spoke on two levels as a professional dental assistant and also as an educator. Some concerns expressed were that dental auxiliaries in practice are performing expanded functions without formal training. They are performing these functions and increasing dental productivity, yet are not being compensated for these increased responsibilities. She feels it is imperative that the public be protected from unskilled auxiliaries. The goal as a member of the dental health team is to deliver the highest quality dental care to patients. Some functions they would like to see listed in the statute under Section 08.36.070 are the following: Chrono polish, placement of matrix and wedge, temporary crown construction, application of pit and fissure and something in regard to radiation health and safety. The Anchorage Community College's Division of Dental Program has the necessary training capability as well as being able to offer the courses by telecommunications to the outlying bush communities.

Any potential expanded functions have been discussed and changed in some other states; Minnesota, Michigan, Colorado, Washington and California are examples.

Dr. Warren suggested that the instructors at the school could obtain copies of actions in other states for review by the board at an upcoming meeting.

Clarification of statute AS 08.32.110(c)(2), this section does not authorize delegation of an operative or surgical procedure on hard or soft tissues except as allowed in (a)(4) of this section. Ms. Simmons stated that she had "received a laundry list of functions that are not to be performed by dental auxiliaries. This list was sent out by the State Board and was dated November 20, 1981. On this list it states that packing and carving amalgam restorations and placing anterior restorations constitute the practice of dentistry and is a function that cannot be performed by any dental auxiliary." Her question was, is this still applicable for both the dental hygienist and the dental assistant whether they have had further education or not?

Dr. Warren began an answer to this question, deferred it to Mrs. Luboff, who deferred to Mr. Froenlich. Mr. Froenlich stated that, based upon AS 08.32.110(b), which says that the board can add anything else to the list of the things hygienists can do upon completion of training, gave the board quite a bit of leeway to add procedures as long as they are not prohibited under AS 08.32.110(c). Ms. Simmons asked that the "laundry list" be made more accessible to the dental auxiliaries. Her suggestion would be an annual distribution of this list to all licensed dental hygienists and dentists, and possibly published in an upcoming issue of the Dental Society newsletter. Mr. Froenlich noted that this kind of list is not binding on anyone because it is not a regulation. Before people can be held to what is on a list it has to be a regulation.

Input for Anchorage Community College: Ellen Kazor presented to the dental board an offer of its expertise to the dental hygiene examiners in the clinical evaluation. They offered information and assistance in calibration to the Board of Dental Examiners in the dental hygiene portion of the examination. What they would recommend would be three separate workshops. The first one would be a two-hour session to exchange ideas and define terms. The second workshop would involve actually calibrating patients. The final workshop would involve a final patient check for accuracy and actuality of calibration. The school would hold these at the examiners' convenience and would not charge the State. If the board is interested in the offer the school would like acknowledgement in writing and would like three specific points or conditions addressed in the letter.

1. Anchorage Community College dental programs will coordinate and instruct in the calibration using the Anchorage Community College's dental program faculty and facility.

MEMORANDUM

State of Alaska

TO: Harry D. Treager, Director
Division of Occupational Licensing
Dept. of Commerce and Economic
Development

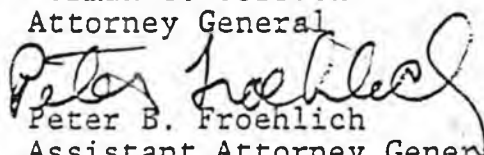
DATE: September 27, 1984

FILE NO: 366-152-85

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Possible Dental
Board Emergency regs
on credential appli-
cations

By: 
Peter B. Froehlich
Assistant Attorney General

This is a quick response to your September 26, 1984, memorandum to me on this subject which was hand-delivered to me today.

I have discussed the possibility of suspending credential applications for dental licenses by emergency regulation with Assistant Attorney's General Diane Colvin and Dick Monkman, as well as with yourself and Jerry Zemlicka.

The conclusion reached by this office is that adoption of such an emergency regulation is within the board's authority. However, the procedures required by AS 44.62.250 must be followed carefully. These procedures are explained in Chapter 5 (pages 31-35) of the Drafting Manual for Administrative Regulations (December 1983, 8th Edition). They include a finding of emergency which thoroughly and concisely sets out the facts which constitute the emergency.

An emergency is an immediate threat to the public peace, health, or safety. Under AS 44.52.250, it is an express state policy that emergencies are to be "held to a minimum and are rarely found to exist." (Emphasis added.) Although Department of Law approval is not required for adoption and filing of an emergency regulation, the Board should be aware that the finding of emergency will be subject to legal challenge. Nonetheless, the decision, along with the responsibility to justify it, is the board's.

PBF/mf

cc: Paul Buxton, Chair
Board of Dental Examiners

Lesliann Luboff, Secretary
Board of Dental Examiners

Jerry Zemlicka, Member
Board of Dental Examiners

*Copies sent
to Dental Board
Monkman 9/27/84.
PBF*

September 14, 1984 Dental Board Meeting

The following quote was made by Dick Monkman, AAG to the Board of Dental Examiners at the board meeting of September 14, 1984, taken verbatim from the tape recordings of the meeting.

"You should consult with Peter Froehlich in our Juneau office. I think there is a good chance that he will agree that for future applicants the board could, by emergency regulation, decide not to accept . . . applications by credentials pending legislative action. But I think that is something you should formally request of Peter Froehlich to get a response in writing that's (undisc.) of the subject. So that's our recommendation. In our view that's the only fair and legal option the board really has in this situation."

STATE OF ALASKA
BOARD OF DENTAL EXAMINERS CONFERENCE CALL
December 19, 1984

By authority of AS 44.62.310(d)(1), a conference call meeting of the Board of Dental Examiners was held on December 19, 1984.

There were present, constituting a quorum of the Board:

Dr. Paul Buxton
Leslie Luboff, R.D.H.
Dr. Timothy Woller
Dr. Jerry Zemlicka
Dick Madsen

Also present were Edward Mercer, Licensing Examiner, Kevin Henderson, Regulations Specialist, Harry Treager, Director from the Division of Occupational Licensing. Also present was Peter Froehlich from the Department of Law.

The meeting commenced at 1:13.

Kevin Henderson, the Regulations Specialist, stated the purpose of the call:

To take a final vote so that the board, as a whole, can adopt regulation 12 AAC 28.450 as a permanent regulation.

12 AAC 28.450. Cessation of Licensing by Credentials. In the absence of specific regulations implementing AS 08.36.234 or legislation clarifying that statute, no applications for licensure by credentials will be accepted.

On a motion duly made, seconded and carried unanimously, it was

RESOLVED, to adopt the regulation as read.

The question was asked of Peter Froehlich what the position of the Department of Law would be on this regulation. If the regulation were challenged, would the Department of Law defend the regulation and the Dental Board or concede and give the applicant his/her license as has happened in the past.

Mr. Froehlich stated that the Department of Law was committed to defending the board. His participation in helping with drafting the wording of the regulation and finding of emergency was to ensure that the correct procedures were followed and terminology was used. This would make the regulation more defensible.

There was a discussion of the conference in Seattle, Washington.

Having no further business to discuss, the conference meeting was adjourned at 1:30 p.m.

Respectfully submitted

By: _____
Edward R. Mercer, Licensing Examiner

For: _____
Leslieann Luboff, Secretary

Dr. Zemlicka expressed an opinion on such situations in the future. He felt that if there were extenuating conditions or if circumstances warranted it, it would be acceptable to have them remove the foil, finish the preparation and place a new foil. In Dr. Greenough's case, he felt that the quality of his work was such that it was not necessary for him to receive additional training.

The board did not feel that they had the legal authority to grant the request for reexamination. The statement was made that the board should consult with its attorney. They should ask where it becomes arbitrary and capricious, what they can do within the boundaries of the statutes so that they are being fair and legal.

Dick Madsen joined the meeting at 10:36 a.m.

The board reviewed the grade sheets of Dr. Harry Greenough.

There was a call for the question.

On a roll call vote, with six naves and one aye, the motion failed.

A motion was made that Harry Treager write to Mr. Greenough and inform him of the decision of the board and communicate to him that he would not be required to take the entire examination. Discussion of this motion also included the amount of additional training he would be required to receive. No vote was taken on this motion.

On a motion duly made, seconded and carried unanimously, it was

RESOLVED that the board meet with their legal counsel and discuss guidelines, that legal guidelines be written as to what extenuating circumstances are for making decisions at the board for allowing a person to do something other than what the rules or guidelines allow.

* Discussion of Attorney General and Legal Counsel: It was stated that the Attorney General's office had gotten the board in as much trouble as anyone else.

Question: Is there any possibility of getting any kind of consistency in who the lawyer is?

It was brought to the attention of the board that a motion had been made at the Alaska Dental Society of the Southcentral level that they provide the funds for a private attorney.

There was discussion of the appropriateness of using an attorney who also represented the Dental Society.

It was also mentioned that the board was limited by statute in what use it could make of outside legal advice.

It was stated that there were times when the board may have to go against the advice of the Attorney General's office, i.e., Clarence Jaeger case. That there was nothing wrong with having outside legal advice.

It was stated by representative of the Alaska Dental Society that they would be willing to sponsor in the Legislature a fiscal note that a private attorney be hired to defend the Dental Board and help them write regulation.

The major problem with the services of the Attorney General's office is they they are stretched so thin. The volume of work is overwhelming. This attorney could be contracted by the Attorney General's office or the Division of Occupational Licensing.

On a motion duly made and seconded and it was

RESOLVED to endorse the position and the lobbying efforts of the Alaska Dental Society in the matter of a lawyer.

Discussion: It was recommended that the Division of Occupational Licensing explore the feasibility of the proposal. The board does have to avoid the appearance of collusion.

After discussion, the motion was amended to include the request of the board that Harry Treager pursue efforts to obtain funding for a private attorney to advise the Dental Board on a more permanent basis.

Meeting/Forum: The Washington State Board of Dental Examiners is sponsoring a forum in Seattle, Washington on January 18, 1985. The purpose is to discuss and explore solutions to the high failure rate on the Washington State Dental Board's and board examinations around the country. Representatives of accredited dental schools and state boards will be in attendance.

1. Methods of preserving the anonymity of candidates.
2. Standardization of grades.

MINUTES OF MEETING
STATE BOARD OF DENTAL EXAMINERS
NOVEMBER 9, 1984
Page 5

denture. The resolution to that problem was a financial resolution. She felt that since she had not had quality service, she did not feel that she should have to pay. She was reimbursed by him. The board entered executive session to discuss the application of Dr. Charles Cole. After executive session, and on a motion duly made, seconded and on a roll call vote, it was

RESOLVED to grant Dr. Charles Cole his license to practice dentistry in Alaska.

This motion failed, with six nays and one abstention.

The board took a break to conduct the examination orientation.

The board reconvened and resumed the board meeting at 1:20.

Continuation of Interviews:

The first interview dentist was Dr. Donald Neiman. He was informed that he had the option of having an open or closed interview session. He didn't care either way. The board asked Dr. Neiman essentially the same questions that they had asked the previous candidates. After further questioning, and on a motion duly made, seconded and carried with six ayes and one abstention, it was

RESOLVED to grant Dr. Donald Neiman a license to practice dentistry in Alaska.

Dr. Toby Elliott had requested from the board the option of a telephone conference interview. The board discussed this request for a few more minutes. The question whether this satisfied the requirement that the applicant had to be personally interviewed by the board was raised. The point was made that he had been interviewed before and he had satisfied that particular requirement. The board also feared the setting of a precedent on this particular issue. The fairness to the other credentialing candidates who had not had this particular option was questioned.

Peter Froehlich from the Attorney General's office joined the board meeting. He was introduced to the board members he had not met. The chairman requested a motion to go into executive session with the Assistant Attorney General, Peter Froehlich. Mr. Froehlich commented on this particular item. He indicated that the board had the power of authority to do so if they felt that it is appropriate, however, he had nothing of a confidential nature to place before the board. The chairman indicated that he did. A motion was made that the board go into executive session and Mr. Froehlich indicated that it should be done correctly and the board should specify the reason for the executive session. On a motion duly made, seconded and carried unanimously, it was

RESOLVED to enter executive session.

MINUTES OF MEETING
STATE BOARD OF DENTAL EXAMINERS
NOVEMBER 9, 1984
Page 6

Public Testimony:

After executive session, the board meeting was opened for public comment and testimony. Members of the public who were present were asked to sign a check-off sheet was available. The board had invited Mr. Froehlich to talk to them today about the credentialing license problems and any comment and testimony that the public wanted to submit was welcome. The chairman did request that the public limit their comments to approximately four minutes or in that range area. It was requested that the people present in the room introduce themselves and indicate who they are and where they are from.

Statement of Introduction and Explanation:

Peter Froehlich: Okay, first of all. My name is Peter Froehlich and I am an Assistant Attorney General in the Department of Law located in Juneau and in the department I perform this sort of a dual role. I fill a split position, part of that is with the commercial section of our office and works with various boards and divisions within the Department of Commerce and the other half of my job is to work with the legislation and regulation section that works with drafting and editing bills for legislation and regulations that are prepared or reviewed in our office through all of our clients. There is two of us that perform that role for the whole department. I did just, as most of you probably know, meet briefly with the board off the record and most of what we have discussed there concerning credential licensing will, I think, come up in the discussion that ensues here. Essentially, I want to talk about this credentialing issue...two points of view...long-range options and immediate options and maybe before that a couple of preliminary things. First of all, while we were in executive session, I did relay the apologies of the department of Law and directly from the Attorney General for the role that our department has had in the confusion and controversy that surround this credential licensing situation. We recognize that this board is, and all the members of the board are trying to do their best to protect the public in the ways that they have been charged by the Legislature. And there has been times, especially...the recent history of this...or the last couple of months...this issue that they have been given either insufficient or delayed or sometimes conflicting advice by our office and those are...there is nothing that we can do now to undo what has happened but we have to take the situation as it stands before us and try to work toward a solution from here. For background, and I am not sure how much background is necessary, but this...where we are now is a result of a series of events that started with the June examinations where two out of ten, I believe it was, credential applicants were approved for licensure. A number of complaints were made to the Governor's office, the Department of Law, to the board and as a result of that, the Department of Law, and specifically me, looked into the conduct of both the clinical exam for general applicants and what has been called

MINUTES OF MEETING
STATE BOARD OF DENTAL EXAMINERS
NOVEMBER 9, 1984
Page 7

a credential exam and we determined that there was a number of regulations...22 sections of regulations, I think it is, concerning the clinical exam and all those procedures set out in those regulations seemed to have been followed carefully. There was no apparent legal defect in the conduct of that exam, in spite of the fact that a small percentage...only a very small percentage of people passed it...but on the other hand concerning the credential exam, we determined that it had developed into just that...into an examination requiring case presentations and so on, whereas the statute said specifically that the authority for credential licensing used the words...the board may license without examination applicants who fulfill requirements 1 through 9, # 7 of which was personal interview and the board had, as a matter of practice, adopted the practice of making that interview into more of what we called an exam. We advised the board that was not authorized by the statute. We discovered that the board had been orally advised through a regulations specialist in 1980, right after the statute was adopted that they could do what they had done. They they could use the case presentation sort of oral examination approach under the word interview. Essentially, we overruled that. I conferred with the board by teleconference in late July and discussed the situation with them and their options. I was unable to attend their meeting, which was in September because of travel plans. An attorney from our Anchorage office went to that meeting and advised the board along similar lines...Dick Monkman...and he mentioned that one of the alternatives...well, he reported the advice that I had given the board then. Interviewees or credential applicants from the June exam or interview who had not been approved by licensure by credentials should be reinterviewed or his license...the board choice to reinterview. He also advised the board that one of their options to deal with credentialing still maintain some quality control (undisc.) would be to change the statute...attempt to change the statute in the next legislature. I think that could be done very simply to leave the words...without exam...and change the word...interview to...examine. But, of course, that is a long-range solution and there would be applications no doubt between that meeting in September and whenever a bill could be passed...springtime at the soonest so the possibility of stopping credential applications and licensure by an emergency regulation, the board felt that there was an emergency situation that option was mentioned and, in fact, the board chose that option and on September 15 voted to suspend credential licensing and there was really an unusually a long gap between the time of that vote and the time that document...Finding of Emergency was signed by the chairman in Soldotna. It has to be drafted in Juneau, mailed to Soldotna, signed and returned to Juneau and filed by the Lt. Governor. That finally happened on October 17. And, according to statutes authorizing agencies to adopt emergency regulations, after they have done so, they have to give notice in pretty much the same way as notice has been given of a proposed permanent regulation...publish in at least

MINUTES OF MEETING
STATE BOARD OF DENTAL EXAMINERS
NOVEMBER 9, 1984
Page 8

one newspaper, sent to all legislators and so on. So, shortly after October 17, the public notice had gone out and people started finding out that this suspension had been put in place and people...a lot of people, started calling my office. I took a look at what was actually executed..the Finding of Emergency...actually I was contacted by an attorney who is here today who represents some of the six people who applied between the September meeting and October 17 for credential licensing and he pointed out a couple of defects in the Finding of Emergency and the emergency regulation. One of which was the time gap and I think that there is legitimate justification for that...communication difficulties in Alaska, the difficulties of dealing with a board that meets only occasionally and has a staff...meets in Anchorage and has a staff in Juneau, chairman in Soldotna and so on. All of the purposes of the Administrative Procedures Act to deal with emergency regs were satisfied. The public was notified within several days of the actual effective date or filing date of the emergency regulations suspending credentialing and that is really the important thing. The other defect that was raised was the adequacy of the Finding of Emergency. By statute, it is to set out the facts which constitute the emergency, the facts which mean an immediate threat to the public health, safety or welfare. The Finding of Emergency, which I assume people have seen...I didn't make copies of that but it is available. It is somewhat conclusionary and it is not very specific but it is an open legal issue whether it is adequate and it is not up to the Attorney General's office to review these things and we don't do so for any agencies that adopt emergency regulations. It is up to the board...up to the agency with regulation adoption authority. If they think it is an emergency and they set out why, they can adopt an emergency regulation. Really, the only way to change what...change the emergency regulation once it is filed by the Lt. Governor is for the agency itself to change it, repeal it or a judge to invalidate it and that is what has been threatened in this case. As a matter of fact, there was talk this week of going for a temporary restraining order striking down this emergency suspension and ordering the board to interview these six people which applications on the table from the last six weeks today...we...I convinced the attorney, Mr. Cohen, to postpone that action until the board has presented with...essentially with an opportunity to deal with it itself and possibly avoid the cause and burden and so on of litigation and that is one of the things that we have to deal with today...that is the immediate solution to the credential situation. This remains the long-range solution. I have distributed a few...let's see, three separate documents to the board. One is a one-page, just a very cursory outline of options that have occurred to me in the short run and long run and I guess maybe this would be before we get into those..maybe this would be a time to entertain questions from the board and whatever is the chair's pleasure.

MINUTES OF MEETING
STATE BOARD OF DENTAL EXAMINERS
NOVEMBER 9, 1984
Page 9

Public Input:

As a point of clarification it was brought up by one of the members of the public that, rather than the credentialing process having been an evolving procedure, that the interview or the oral examination has been from the very beginning of the credentialing process and it had been verbally indicated by the Attorney General's office that this was acceptable. Mr. Froehlich said that his research indicated that it had not started off quite as complex and comprehensive. It was just something that had kind of evolved into more of an oral examination than interview.

It was stated that one of the difficulties with the credentialing process as it now stands is that there were never any regulations implemented to substantiate the statute. The board indicated that it had initiated a regulations project which had not been completed at the time that the controversy began. The chairman felt that it was important that all members and attendants be aware of the fact that the board has responded both to the law and to the public's interest. It was the board's feeling that public interest was best served by this interview case study type of review. They responded to the law by asking the Attorney General's opinion and got what they believed to be an affirmative answer at the 1980 session. It was not until the last meeting when the controversy began that Dick Monkman indicated that they were outside of their authority in requiring this particular of interview. They responded to that particular information by reviewing the processes they have been following. The two problems at this point that the board is presented with is the problem of the six candidates with active applications, whose applications have been received prior to the 15th of October. The second, and continuing problem, is the problem of which direction the credentialing process should go in once the 120-day regulation period of time is up. Mr. Monkman had distributed some handouts when he first arrived at the meeting, setting out what he believed to be the problems with the procedure the board has followed and giving some options. He felt that the deficiency was just a technical, procedural-type deficiency. The board clearly had the authority to adopt regulations concerning credential licenses, and, if you had the authority to adopt regulations, you also have the authority to adopt emergency regulations if you follow all procedural guidelines. Mr. Froehlich recommended that the board adopt option 3. Maintain the current emergency suspension but adopt the supplemental finding of emergency with a more specific explanation. He felt that the long-range solutions for problem number two were a little easier. They are more clear-cut. The first thing to do was to change the statute so that it gives the board the authority to do the oral interview or require the case presentations as they have been doing. The question was asked whether the division or the Department of Commerce & Economic Development could do it by

MINUTES OF MEETING
STATE BOARD OF DENTAL EXAMINERS
NOVEMBER 9, 1984
Page 10

regulation. Mr. Froehlich did not think so. He felt that it would require reinterpreting the way around the words without examination and interpreting the word "interview" to mean examination or to somehow be expanded to include case presentation. He stated that the connotation of the word "examination" is something that can clearly be passed or failed and he did not feel that this was what interview had been intended to mean. Mr. Madsen mentioned that there may be another option. There was a possibility of repealing the emergency action and allowing for some process by which people who apply in the meantime, in between the time of the meeting and the time the order was actually signed, could undergo the interview process, then AS 08.36.234 is discretionary with the board for licensing without examination. The board could establish a policy at this meeting to not provide for that until there is legislative change that would make it fairly reasonable for everyone. Mr. Froehlich's response to that was that that was what had caused the original problem. The board was adopting a policy without adopting regulations. He stated that what they are suggesting should be done by policy really should be done by regulation. The question was asked how many states have licensing by credentials. The information was that only Missouri had it. That made Alaska and Missouri the only two states that had licensure by credentials. One of the public members in the audience disagreed with that and indicated that there were at least 15 states that have some form of reciprocity. It was stated, but not directly, that Alaska's was unilateral, that these particular states were covered by a regional examination. A candidate took an examination in one state that was a member of a regional examination and the license could then be applied to all states within that particular region - sort of like credentialing within a group of states. During the discussion 1) the point was raised that there was a statute that dealt with the requirement that the board adopt regulations to ensure continuing competency of the currently licensed dentists and it seems to smack of a double standard that the board require a higher level of competence from incoming dentists than ongoing dentists. The response was that the statutes that were being referred to had just been rewritten into the new Dental Practice Act which was enacted at the end of the last Legislature and the board had not yet had time to act on it. One of the very real concerns in eliminating the credentialing application process is the harsh impact on specialty license applications of candidates who have not practiced general dentistry because they have devoted themselves exclusively to this special practice. It was the opinion that the examination in that case may not be fair for them and an alternate solution or an alternate solution or examination procedure should be set. After further discussion of public input a motion was made. The motion was that the board repeal the emergency order that was effective October 5. This motion was made for the purpose of putting it on the table for the purpose of discussion. The motion was seconded. There was a discussion of the word "interview" as opposed to the word "examination." Mr. Froehlich being of the opinion that an

MINUTES OF MEETING
STATE BOARD OF DENTAL EXAMINERS
NOVEMBER 9, 1984
Page 11

examination had connotation of pass/fail, an interview did not. Unless there obvious discrepancies or obvious problems in an interview an interview just was. The point was made that under the procedure the board was being forced to follow that if they did not have the right to require presentations of competency or ability that someone could falsify their documents, falsify their papers and just walk in and receive a license with a cursory interview. One of the candidate's response to that particular concern was the fact that all the information that had been gathered that was required was information that was very easily checked. We realize that it may take some time but if someone did a thorough job of tracking that a few people may slip through the cracks but the majority of the people and the system would work. He felt that if the information was checked appropriately there would be no fraud or unqualified people slipping through. The point was made that if a person does slip through it was a long tedious and arduous procedure to revoke or repeal their license and meanwhile they are still operating and still possibly damaging people.

The testimony of Mr. Nelson Cohen is attached in total to the record of these minutes because, in my opinion, it is representative of all aspects of the credentialing discussion.

I am Nelson Cohen. I considered filing a TRO, which is a restraining order we got here today. After having spoken with Peter and discussing things with other people, it seemed to me that the board's concerns for today were concerns that I shared

On a motion duly made and seconded, it was

RESOLVED that the board repeal the emergency regulation that they permit all present applicants to be interviewed and that they issue a new emergency regulation which suspends licensing by credentials until the board has the further examination or legislative action.

An amendment was suggested that the board take the steps to make the emergency suspension permanent because it is unlikely that a legislative solution would be forthcoming in less than 120 days. Further discussion followed. The question was called. There was further discussion after the call for question two points that the board wanted to be very clear on was that if this were adopted when it could into effect and who would be covered by this particular motion or regulation. Mr. Froehlich stated that the effective date would be the first business day in Juneau that could be filed by the Lieutenant Governor's office, but emergency regulation could be made effective at some point in time. Concerning the aspect of who was covered by that since there may be applications in the mail or in various states, he recommend that the board pick a time period that seems reasonable.

MINUTES OF MEETING
STATE BOARD OF DENTAL EXAMINERS
NOVEMBER 9, 1984
Page 12

This would be the cut-off date for receipt of applications for credentialing. After further discussion with explanation and input from Peter Froehlich, the board's attorney, and more public comment, the original motion and second were withdrawn. On a motion duly made and seconded, and carried unanimously, it was

RESOLVED to maintain the October 17 emergency suspension of credential licensing but to also adopt supplemental filing of an emergency with more specificity and reaffirm the adoption of the emergency suspension, clarify that it applies only to completed applications that were complete and received prior to October 17. The motion should also state that the suspension of credentialing is permanent to regulation until statute changes can be made.

Telephone Interview:

The board at this time had decided that they would grant the tele-conference interview to Dr. Elliott. As a point of clarification and information, they asked Peter Froehlich whether they could legally do this. He indicated they could. All they need to do was state on the record what they were doing and it would be okay.

The meeting recessed for two of the board members to go with Mr. Froehlich to work on the wording of the finding of emergency and the other board members to conduct the telephone interview.

The meeting reconvened at 4:50.

Investigation Report:

On a motion duly made and seconded and carried unanimously, the board went into executive session. The board came out of executive session.

On a motion duly made, seconded and carried unanimously, it was

RESOLVED that hearing officers sit alone on cases DE8514, DE8523 and DE8524.

Meeting Minutes:

On a motion duly made, seconded and carried unanimously, it was

RESOLVED to accept the minutes of the meeting of September 14 - 15, 1985 as written.

Appointment of examining committee. Dr. Tauschen, Dr. George Hansen, Dr. Jim Case, Dr. Schlansker, Dr. Marshall Dotson.

DENTAL BOARD MEETING

June 14-15, 1984

Call to question: It was resolved to re-interview all applicants from the June, 1984 credentialing session and to include Dr. Michael Alpert.

On a roll call vote, the motion passed; five yea, one nay.

Scheduling of Re-Interview: The Board discussed how to reschedule the June Dental candidates. Ms. Williams raised the possibility of interviewing Dr. Deubner and Dr. Moellinger that day in the interest of schedule time and distance traveled. Dr. Smole and Dr. Allen made the same request. After discussion, the Board revised the agenda to enable the four applicants in attendance to be interviewed beginning at 2:00 p.m. The applicants not in attendance would be notified of a subsequent interview date.

Further revision of agenda: The revising of the agenda put regulations at 3:30; the Investigative report at 4:00. Mr. Wendell Wright scheduled to appear between 3:00 and 3:30.

Leslieann Luboff requested the Dental Board have the presence of the Attorney General's office at more Board meetings to help keep from again getting on the wrong track.

Mr. Monkeman was in agreement with this. Suggested that the best procedure was to place a call to the Attorney General's office with the request prior to the meeting.

A motion was duly made (Leslieann Luboff, seconded (Robert Warren) to invite the A.G.'s office to attend the next Board meeting November 9, 1984. It was not voted on.

Meeting recessed for lunch 12:00.

Meeting reconvened at 1:32.

Interviews: Meeting entered Executive session at 1:33 to discuss individual cases for licensure by credentials.

On a motion (Robert Warren) duly made and seconded, resolved to grant Alan Robert Deubner a license by credentials.

On a roll call vote; 4 yea, 1 nay.

Executive session: Interviewed William Allen - out 2:36. On a motion (Arthur Hansen) duly made and seconded (Jerry Zemlicka) resolved to grant William Allen a license by credentials.

On a roll call vote; motion passed unanimously.

Executive session: 2:40 to interview Doug Smole. Dr. Smole requested that his credential interview be on the public record. Board reentered public record at 2:42.

The Board by authority AS 44.62.310(c)(2) on a motion duly made, seconded and carried, went into executive session at 9:34 for discussion with Dick Monkeman, Asst. Attorney General to discuss the Alaska Administrative Procedures Act, the credential procedures, individual applicants in the credential procedures.

At 9:36, Board interrupted Executive session to hear from Dr. Smole and attorney. Lt. Colonel Michael Benner also attended.

Dr. Smole: Expressed concern that members of Board had not had access to his complete application and credential packet. Also had concern that the lay members were not present during that process. Disappointing that there was not an opportunity for a professional interchange of information. Dr. Warren asked Dr. Smole if he had been in continuous active clinical practice for 5 years. Dr. Smole answered yes.

Dr. Michael Benner: In his comments expressed two points:

1. Division of Occupational Licensing - no information until two to three weeks prior to the interview then letter informing of interview. Had questions about interview, sent letter, received no reply.
2. Board of Dental Examiners - requirements for licensure by credentials. If he wished to attain diplomat status in Endodontics, he must practice exclusively in the field of Endodontics over a five year period; once he starts residency training, he is not allowed to practice General Dentistry; once through residency training and have started Board certification process, it is impossible to get a license by credential in license.

Board reenters Executive Session 9:57

Board reenters the record at 11:26

Break - 5 minutes

Dick Monkeman, Ass't Attorney General made statement for record: Refer Tape 2, Side B Count. 72.

Because of the importance of this issue, Mr. Monkeman's statement will be transcribed as a part of the minutes on a motion duly made by (Robert Warren) and seconded by Jerry Zemlicka.

In discussion, question was raised to whom military and Public Health dentists report and are reviewed by and how does one check to find if there are any outstanding complaints. A partial answer was that all complaints are registered with the Peer Review Committee.

After discussion, the motion was amended to read that the Board send a letter to the A.G.'s office relaying the June 6, 1980 meeting, page 8 of 11, the criteria for licensure by credentials for dentists, that is case history statutes as per Attorney General's office and express that the Board did the interview in good faith and were following the legal advice of the Attorney General's office since June 6, 1980, that those that failed did so on their case presentations not on the quality of their credentials. The letter should go:

Attorney General's office - Peter Froehlich
Office of the Governor - Carol Derfner
Commissioner of Commerce - Richard Lyon

On a roll call vote, the motion passed unanimously.

On a motion duly made (Dr. Robert Warren) and seconded (Paul Buxton) and carried, the investigative report was accepted.

There was discussion of the budgetary process in which Harry Treager responded to questions and explained some processes.

On a motion duly made (Jerry Zemlicka) and seconded and carried unanimously, the Licensing Examiner was instructed immediately upon return to Juneau, to write letters to the June 1984 credentials candidates who had been denied, and Dr. Michael Alpert, informing them that they will be granted another interview, if they request.

Regulation changes: There was discussion of regulation changes and revision and changes in the Dental examination.

Discussion of 08.360(7) states a person engages in the practice of Dentistry who (7) owns, manages or operates a place where the acts or things described in this section are performed or done. This would relate specifically to the Teamsters Clinic which is not owned by a dentist, and other public health clinics which may be turned over to corporations in the not too distant future.

A suggestion was made by Dr. Zemlicka to request advice from Attorney General's office.

Question was raised as to whether nurses can give Intro-oral injections. After discussion, with reference to nursing statutes, it was decided that this issue requires further study.

Meeting recessed.

To summarize what has preceded:

Dr. Arthur Hansen made a motion which was seconded by Leslieann Luboff. The motion was: That we suspend all credentialling as an emergency proceeding for at least 120 days.

Discussion followed: The reasons for the emergency suspension is that there are not regulations written to support, and legally the state and the public are at jeopardy.

As read, the minutes of the Dental Board meeting of June 6, 1980, page 8 of 11 were read into the record.

This process had also been reviewed by the Ombudsman's office approximately a year previous to this date and they felt that the credentialling as in use at that time was acceptable.

On a roll call vote which passed unanimously, it was so: Resolved to suspend credentialling on an emergency basis for 120 days.

Dr. Jerry Zemlicka made a motion that the board ask the Department of Occupational Licensing and the Attorney General's office to assist in adding to the statute AS 08.36.234, number 7 and state, is personally interviewed by the Board including an oral examination of three case presentations. Dr. Hansen seconded the motion.

After discussion, the motion was amended to read: Resolved, that we ask the Division of Occupational Licensing and the Attorney General's office to assist the Board in revising Statute 08.36.234(7) numbers 7, 8, 9 which should mean number 7, is personally interviewed by the Board which includes passing an oral examination including case presentations. The Board shall promulgate regulations as guidelines to the content of the oral examination.

On a roll call vote, the amended motion passed unanimously.

Dental Hygienist's credentialling: On a motion duly made (Dr. Robert Warren) seconded (Dr. Jerry Zemlicka) and: Resolved to also seek the advice of the Attorney General's office and the Division of Occupational Licensing in revising the statute 08.32.030(6) to read is personally interviewed by a Board member to include an oral examination and (7) to read, has passed a written and/or oral examination on jurisprudence; (8) and pays all fees.

After discussions, amended to read oral and/or written examination.

The motion carried unanimously.

Letter from Jerry Taintor: Dr. Taintor requested a Board opinion on whether the placement of information on his business card could be misleading to the public. After discussion the Board felt that it was and that he should be so advised.

Dick Monkeman stated that the Board had been requiring three case presentations as part of interview process.

Spent considerable time looking at statute and are very firm in their opinion that the Board only has the statutory authority to interview the applicant and not orally examine them.

Recommendation #1 that the Board re-interview all the applicants who failed in June and Dr. Michael Alpert, who is in a similar situation and has gone through an administrative hearing in line with their recommendation and not to orally interview.

Recommendation #2 that the Board feels that this interview requirement is insufficient that the Board go to the legislature and attempt to have the interview requirement changed to an oral examination.

Recommendation #3-^{for} that future applicants - consult with Peter Froelich in Juneau; he may feel that the Board could by emergency regulation could decide not to accept applications by credentials, pending legislative action, if any; felt should formally request of Peter Froelich to get a response in writing.

MEMORANDUM

State of Alaska

TO: Mr. Arthur S. Hansen, Chairman
Board of Dental Examiners
3487 Airport Way
Fairbanks, AK 99701

DATE: April 8, 1981

FILE NO: J-99-144-81

TELEPHONE NO: 465-3600

THRU: Harry Treager
Division of Occupational Licensing
Department of Commerce and Economic Development

FROM: SUBJECT: AS 08.36.180 and 12 AAC 28.290; Re-examination

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Sarah T. Kavasharov
Assistant Attorney General

This is to elaborate on my memorandum of opinion issued April 3, 1981 regarding problems with the regulation cited above. 1/ The regulation is misleading and does not give adequate notice to applicants. The regulation is not incorrect as written. However, it makes clear only when a person must re-take only one subject of the clinical section; it does not make clear when the person is required to re-take the entire clinical section of the dental examination. Also, if it is applied to require a person to re-take the entire clinical section when the person has failed only one subject in the clinical section and received a score of 75% or better in the other two subjects, then such an application is in conflict with the statute and cannot be enforced. The meaning of the statute is, that passage of a subject in either section of the examination requires a score of 75%. 2/ Raising the score required to 80% under any circumstances,

1/ 12 AAC 28.290(b) provides:

(b) An applicant who fails one subject of the clinical section and passes each of the other subjects with a score of at least 80 percent shall be reexamined in only the subject failed.

2/ AS 08.36.180 provides in part:

Sec. 08.36.180. Re-examination. An applicant shall pass each subject of each section of the examination with a score of at least 75 per cent. If an applicant fails in one subject in each section, he may be re-examined in that subject. If an applicant fails in more than one subject in any section, he shall be re-examined in the whole section.

Arthur S. Hansen

April 8, 1981

Page 2

must be accomplished by a statutory change, if that is what the board wishes to do.

Our office has already instructed the division of occupational licensing that the regulation must be amended in order to conform to the statute and to remove ambiguity. We expect Margie Odland will be contacting you; our office will be happy to work with her and with the board to prepare an amended regulation as soon as possible. The regulation must be amended to conform to the present statute, even if you wish to seek a statutory change. Alternatively, you may wish to consider simply repealing the regulation if you plan to seek a statutory amendment right away. Please let me know, through the division of occupational licensing, which course you wish to pursue.

STK/jb

cc: Sen. Arliss Sturgulewski

MEMORANDUM

State of Alaska

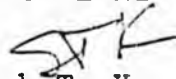
TO Harry Treager
Division of Occupational Licensing
Department of Commerce and Economic
Development

DATE April 3, 1981

TELEPHONE NO 465-3600 ex. 56

FROM WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT

By: 
Sarah T. Kavasharov
Assistant Attorney General

This is to answer your questions relating to the Board of Dental Examiners and Board of Certified Public Accountants.

1. Regarding 12 AAC 28.290 on dental re-examination:

(a). Previous applicants failing one subject of the clinical section since the adoption of the regulation in 1978 should be allowed to retake just that one subject that they failed, if they achieved a score of 75% or better in the other two subjects.

(b). Previous applicants in the above category who have not retaken the entire clinical section should be notified of this change and of the opportunity to take just the subject failed.

2. Regarding the Skipton application for licensing as a CPA, the board has the right to request that a person have some intent to reside in Alaska for licensing in the state. We believe that the fact that Mr. Skipton can obtain a non-resident permit makes it reasonable for the board to refuse to give him a regular Alaska license.

Also, Jim Baldwin tells me that the next Code Revision Commission meeting on the Occupational Licensing bill is important. I hope that you can be there personally.

STK/jb

June 18, 1983
Board of Dental Examiners
Minutes of Meeting
Page 3

Credential Interviews: The board went into executive session to conduct the credential interviews for Dr. Raymond Wilkinson, Dr. Michael Benner, Dr. Wayne Mitchell and Dr. Francis Zeck.

Executive session began at 9:45 a.m.

Executive session closed and the meeting reconvened at 3:40 p.m.

Eldon Ulmer, Chairman, Board of Pharmacy, Chuck Ward, Investigator, and Marion Hardy, Regulations Specialist, joined the meeting.

Mr. Ulmer joined the meeting to discuss the concerns that he has regarding the possible misuse of prescriptive authority by licensed dentists. Mr. Ulmer pointed out a case in which a dentist prescribed Flagyl for jurvesis which, in the opinion of the pharmacist, was not within the scope of practice for a dentist and refused to fill the prescription. Dr. Anderson pointed out that he was informed that the Flagyl was prescribed for an oral infection, and that if the pharmacist had a question regarding the prescription, instead of refusing to fill the prescription, he should have called the dentist and talked to him about it.

Mr. Ulmer left the meeting.

Dr. George Hanson, Mr. Dick Monkman, Assistant Attorney General, Dr. Goodman and Dr. Goodman's attorney joined the meeting.

Mr. Monkman gave the following report to the board:

"Thank you for setting aside time today. We have a somewhat unusual situation - you, solving a license complaint which has been pending for some time. As the board members may know, Dr. James Goodman of Delta Junction was convicted of 22 counts of felony filing false claims to the United States Government with regard to dental services which were to be performed on individuals who did the public health service program in the Delta Junction area. The filing of those false claims is an act which is grounds for revocation of Dr. Goodman's dental license. His attorney and myself have discussed the matter fairly thoroughly. Dr. Goodman would like to resolve this matter without proceeding to a formal hearing under the Administrative Procedures Act and for that reason we have entered into this Stipulation. The Stipulation is fairly self-explanatory, although it is lengthy. The first five pages of the Stipulation set out the terms of the Stipulation and if accepted the Dental Board's order. The remaining portion of the Stipulation are a copy of the (undisc.) sheet of Dr. Goodman's conviction and a copy fo the indictment and they set out the essential grounds of what he was alleged to have done and sets out what he was convicted of, which is essentially 22 of the...I believe...27 counts. Looking through the Order, what we have done essentially is examined the case. It is a recommendation of our department, as well as Dr. Goodman's wishes, that this

Stipulation be entered into and ordered by the Dental board to be in effect. Dr. Goodman is agreeing to a six months suspension of his dental license, the condition that all but 30 days of the suspension essentially be stayed pending as long as he continues to obey the remainder of the Stipulation. He also agrees to provide 18 months of community service in the form of two days per month of free dental care to those members of the public in the Delta Junction and Tok area who are eligible for public health service dentistry. Dr. Goodman began providing this dental care on July 15 of 1982, which was shortly before his conviction. He began providing free dental care to the individuals who...the people who were receiving public health service care for which he was convicted. We have agreed that the 18 months of community service should be deemed to have started when he began this program of free dental care so in essence he will have another six months or so..eight months, I guess...from today until January 15, 1984 providing two days a month of free dental care to these individuals in the Delta area. Dr. Goodman will report to the board after he is done with his community service January 15, 1984. He will provide you with a written report concerning what he did and will come to the next scheduled board meeting to answer any questions or concerns which the board may have. That is essentially the Stipulation. If accepted by the Dental Board, this will constitute an order and essentially a final judgment in this matter as far as Dr. Goodman's license is concerned. If rejected by the board, we will proceed to a hearing."

The board went into executive session at 4:45 p.m. to discuss the proposed Stipulation and order.

Executive session closed and the meeting reconvened at 5:00 p.m.

After discussion, and on a motion duly made, seconded and carried unanimously, it was

RESOLVED, in the matter dealing with James B. Goodman, to accept the Stipulation and order as presented by the Attorney General's office.

Licensure by Credentials: Motion was made and seconded that Dr. Raymond Wilkinson be issued a dental license by credentials.

Discussion: Concern was expressed that, because Dr. Wilkinson did not present cases in general dentistry, he did not meet the requirements for the credential personal interview.

The motion failed unanimously.

Motion was made and seconded that Dr. Michael Benner be issued a dental license by credentials.

MEMORANDUM

TO: Alaska State Board of Dental
Examiners

DATE: December 19, 1978

FILE NO: J-66-360-79

Thru: Don Hostak
Director

TELEPHONE NO:

FROM: Division of Occupational
Licensing

SUBJECT: Dental Hygienists

Department of Commerce and
Economic Development

Bruce M. Botelho *BM*
Assistant Attorney General

On December 7, 1978 you requested an interpretation of AS 08.32.110 and specifically inquired whether a hygienist may perform certain expanded duty functions delegated by a licensed dentist prior to his/her successful completion of a formal course of instruction approved by the board.

For the reasons set forth below, it is my judgment that a hygienist may perform those functions.

On August 30, 1978 chapter 59 SLA 1978, went into effect. Section 9 of chapter 59 repealed and reenacted AS 08.32.110 to read:

Sec. 08.32.110. SCOPE OF WORK OF DENTAL HYGIENISTS. (a) The role of the dental hygienist is to assist members of the dental profession in providing oral health care to the public. A person licensed to practice the profession of dental hygiene in the state may

- (1) remove calcarious deposits, accretions, and stains from the exposed surfaces of the teeth beginning at the epithelial attachment by scaling and polishing techniques;
- (2) apply topical preventive or prophylactic agents;
- (3) apply pit and fissure sealants;
- (4) perform root planing and periodontal soft tissue curettage; and
- (5) perform other dental operations and services delegated by a licensed dentist if the dental operations and services are not prohibited by (c) of this section.

(b) The board shall specify by regulation those additional intra-oral functions which may be performed by a licensed dental hygienist only upon successful completion of a formal course of instruction approved by the board. The board shall promulgate regulations specifying the education requirements, evaluation procedures, and degree of supervision required for each function.

(c) This section does not authorize delegation of

(1) diagnosing, treatment planning, and writing prescriptions for drugs; writing authorizations for restorative, prosthetic, or orthodontic appliances;

(2) operative or surgical procedures on hard or soft tissues except as allowed in (a)(4) of this section; or

(3) other procedures which require the professional competence and skill of a dentist.

Paragraph (a)(5) makes clear that a dental hygienist who is licensed may perform dental operations and services other than those set forth in (a)(1)-(4) if they are delegated by a licensed dentist and if they are not prohibited by paragraph (c) of this section.

It is also readily apparent that paragraph (b) was intended to grant the board authority to restrict the delegability of dental operations and services performed by a licensed dental hygienist, notwithstanding paragraph (a)(5) since the board was specifically empowered to adopt regulations specifying the conditions under which a licensed dental hygienist could perform the expanded duty functions referred to in AS 08.32.110(a)(5).

Since the board has yet to adopt regulations setting forth any conditions, it follows that a licensed dental hygienist may perform those delegated dental operations and services not prohibited by paragraph (c).

BMB:cb

MEMORANDUM

State of Alaska

TO: Edward E. Eboch
Deputy Commissioner
Department of Commerce and
Economic Development

DATE: March 17, 1983

FILE NO: 366-411-83

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Dental Board
Regulation of
Dental Hygienists

Martha A. Fox
By: Martha A. Fox
Assistant Attorney General
Commercial - Juneau

You have asked our opinion on several issues relating to the regulation of the scope of work performed by dental hygienists. 1/

1/ The questions primarily concern interpretation of AS 08.32.110 which provides:

Sec. 08.32.110. SCOPE OF WORK OF DENTAL HYGIENISTS. (a) The role of the dental hygienist is to assist members of the dental profession in providing oral health care to the public. A person licensed to practice the profession of dental hygiene in the state may

(1) remove calcarious deposits, accretions, and stains from the exposed surfaces of the teeth beginning at the epithelial attachment by scaling and polishing techniques;

(2) apply topical preventive or prophylactic agents;

(3) apply pit and fissure sealants;

(4) perform root planing and periodontal soft tissue curettage; and

(5) perform other dental operations and services delegated by a licensed dentist if the dental operations and services are not prohibited by (c) of this section.

(b) The board shall specify by regulation those additional intra-oral functions which may be performed by a licensed dental hygienist only upon successful completion of a formal course of instruction approved by the board. The board shall promulgate regulations specifying the education requirements, evaluation procedures, and degree of supervision required for each function.

Edward E. Eboch, Deputy Commissioner
Department of Commerce & Economic
Development
366-411-83

March 17, 1983
Page 2

1. Is our memorandum of advice dated December 19, 1978, file #J-66-360-79, which interprets the statute governing the scope of work of dental hygienists still correct?

Yes, the memorandum provides an accurate analysis of AS 08.32.110. A copy of the memorandum is attached. It outlines the various provisions contained in AS 08.32.110.

Under AS 08.32.110(a)(5), a licensed dentist may delegate performance of dental operations and services not already specified in AS 08.32.110(a)(1)-(4) to a licensed dental hygienist provided that delegation of those functions is not prohibited by AS 08.32.110(c). Section 110(c) prohibits delegation of certain specified procedures as well as any "other procedures which require the professional competence and skill of a dentist." AS 08.32.110(b) empowers the Board of Dental Examiners to adopt regulations specifying the conditions under which a licensed dental hygienist can perform certain functions delegated under AS 08.32.110(a)(5).

Given these various provisions, the memorandum concludes that to the extent that the Board has issued regulations, as they have, for example, in 12 AAC 28.310 for the administration of local anesthetic agents, those regulations condition the delegation of that particular function under AS 08.32.110(a)(5). To the extent the Board has not issued regulations, additional functions may be delegated to a licensed dental hygienist without conditions, provided that the delegated dental operations or services are not prohibited by AS 08.32.110(c).

(Footnote 1 continued)

(c) This section does not authorize delegation of

(1) diagnosing, treatment planning, and writing prescriptions for drugs; writing authorizations for restorative, prosthetic, or orthodontic appliances;

(2) operative or surgical procedures on hard or soft tissues except as allowed in (a)(4) of this section; or

(3) other procedures which require the professional competence and skill of a dentist.

Edward E. Eboch, Deputy Commissioner
Department of Commerce & Economic
Development
366-411-83

March 17, 1983
Page 3

2. a. Can dental hygienists administer nitrous oxide-oxygen sedation?
- b. Can dental hygienists place and carve amalgam?

These are not legal questions, but questions that must be answered by the Board of Dental Examiners. AS 08.36.070 sets out the general powers and duties of the Board. They include the power and duty "to enforce the provisions of ... AS 08.32 and adopt or amend the regulations necessary to make the provisions of ... AS 08.32 effective." AS 08.36.070(7).

Administering nitrous oxide-oxygen and placing and carving amalgam are not functions specifically allowed by AS 08.32.110(a)(1)-(4), nor are they specifically prohibited from delegation by AS 08.32.110(c)(1) & (2). The Board has not issued regulations conditioning performance of these functions upon completion of additional instruction as it is empowered to do under AS 08.32.110(b). Therefore, these functions may be delegated to dental hygienists under AS 08.32.110(a)(5) provided they are not "procedures which require the professional competence and skill of a dentist." AS 08.32.110(c)(3).

AS 08.32 does not define which procedures, other than those set out in AS 08.32.110(c)(1) and (2), may be performed only by a dentist. Therefore, it is up to the Board under its powers as set out in AS 08.36.070(7) to make the provisions of AS 08.32.110 effective by determining whether procedures are non-delegable because they "require the professional competence and skill of a dentist." When the Board identifies additional non-delegable procedures or functions, it should then adopt regulations prohibiting their delegation. 2/

2/ We are not suggesting that only those functions which are identified by statute or regulation are non-delegable. The prohibition contained in AS 08.32.110(c)(3) operates to prohibit delegation by a licensed dentist of functions which only a dentist can perform regardless of the existence of regulations.

The Board is required by statute to comply with the Administrative Procedure Act (AS 44.62), AS 08.36.080. Adoption of regulations serves to implement policies or determinations of the Board in compliance with APA requirements.

Edward E. Eboch, Deputy Commissioner
Department of Commerce & Economic
Development
366-411-83

March 17, 1983
Page 4

According to a notice from the Board to all dentists, dental hygienists and dental assistants, which you attached to your opinion request, the Board appears to have already determined that the administration or monitoring of nitrous oxide-oxygen is a non-delegable function. Since the administration of nitrous oxide-oxygen does not appear to be prohibited by subparagraphs .110(c)(1) or (2), the Board has presumably determined that administration of nitrous oxide-oxygen is a procedure which only a dentist can perform. As I understand it, at least one rationale for this decision is that nitrous oxide-oxygen is a general anesthetic and overdose cannot be determined until the point where the patient becomes unconscious or lapses into a coma. Given that rationale, the Board's decision is probably reasonable. However the policy should be implemented by adoption of a regulation rather than by notice.

(3) It is not entirely clear what you are asking in question three. My understanding is that you are asking whether the functions defined in AS 08.36.360 as constituting the "practice of dentistry" are by definition "procedures which require the professional competence and skill of a dentist" and are therefore non-delegable under AS 08.32.110(c)(3).

Paragraph .110(a)(5) allows the delegation of "dental operations and services delegated by a licensed dentist if the dental operations and services are not prohibited by (c) of this section." If a particular dental operation or service must be delegated by a licensed dentist, that dental operation or service presumably would be some activity within the definition of "practice of dentistry." Therefore, I would conclude that the activities within the definition of "practice of dentistry" are not by definition non-delegable duties. Again, the prohibitions on delegation of performance of dental operations or services to a dental hygienist are found in AS 08.32.110(c). The determination of which procedures "require the professional competence and skill of a dentist" is the Board's responsibility and it should adopt regulations in accordance with its determinations.

MAF/11b

cc: Harry D. Treager, Director
Division of Occupational Licensing
Department of Commerce and Economic
Development

FINDING OF EMERGENCY

The Department of Commerce and Economic Development, Board of Dental Examiners, finds that an emergency exists and that the attached regulation is necessary for the immediate preservation of the public peace, health, safety or general welfare. A statement of the facts constituting the emergency is:

CH 49 SLA 1980, AS 08.36.234. LICENSURE BY CREDENTIALS. Established that the board may provide for licensing without examination a dentist who meets specific requirements, including AS 08.36.234(7), which requires that an applicant be personally interviewed by the board. Under AS 08.36.234, the board did not adopt regulations to implement the provisions of the statute, however, the board did establish policies and procedures to govern the personal interview process including requiring an applicant to submit to an oral examination by the board and to present three (3) case histories of the applicant's past work for the board to review and pass judgment on. An Assistant Attorney General advised the board that those policies and procedures must be adopted by the board to implement the provisions of the statute. An Assistant Attorney General has reversed the original opinion and has now advised the board that the policies and procedures used in the personal interview is invalid as they lack the necessary statutory authority. The board finds that, in the interest of public protection for dental care, only those applicants who meet the standards of dentistry of the State of Alaska should be afforded a license to practice in this State, either by credentials or by examination, and the personal interview requirements ~~the~~ board has developed under board policies and procedures is a means to determine if the applicant is, in fact, qualified for a license to practice dentistry in Alaska. There is not sufficient time for the board to develop new criteria through the normal administrative process before the next examination, which will be in November, 1984. It has become apparent to the board, the department, and to applicants that there is a great deal of confusion existing as to the proper interpretation of AS 08.36.234(7). Also, the legality of board actions on applicants for licensure by credentials is in question without regulations consistent with AS 08.36.234.

ADOPTION ORDER

Under authority of AS 08.36.070(7), the attached regulation is hereby adopted as an emergency regulation to take effect immediately upon filing by the Lieutenant Governor as provided in AS 44.62.180(3).

Date: Oct 94

Soldotna, Alaska

Paul S. Buxton
Paul S. Buxton, D.O.S., Chairman
Board of Dental Examiners

Norman Gorsuch
I, Stephen McAlpine, Lieutenant Governor for the State of Alaska, certify that on October 17, 1984, at 11:15 A.M., I filed the attached regulation according to the provisions of AS 44.62.

Stephen McAlpine
Stephen McAlpine
Lieutenant Governor

Effective: October 17 1984

Register: 92 November 1985

0694t
100284b

Expires February 13, 1985 unless made permanent by the adopting agency.

BOARD OF DENTAL EXAMINERS

EMERGENCY REGULATION

12 AAC 28 is amended by adding a new section to read:

12 AAC 28.450. APPLICATIONS FOR LICENSING BY CREDENTIALS.
The board policy and procedures of accepting and processing applications for licensing dentists by credentials, in the absence of specific regulations implementing the provisions of AS 08.36.234, is suspended pending board action to adopt regulations required to implement the provisions of AS 08.36.234. (Eff. / / , Reg.)

Authority: AS 08.36.070(7)

Board or Commission	Appointed	Term
---------------------	-----------	------

BOARD OF DENTAL EXAMINERS

AS 08.36; AS 08.32; - 7 members; serves 4 year term, until new member is appointed and qualified

Paul S. Euxton, D.D.S. (chairperson) Box 1376 Soldotna, Alaska 99669 (work) 262-5454 (home) 262-4685		February 1, 1987
Jerry F. Zemlicka, D.D.S. 9191 Lee Smith Drive Juneau, Alaska 99801 (work) 789-0131 (home) 789-9729		February 1, 1989
Robert E. Warren, D.D.S. 625 E. 34th Avenue, Suite 201 Anchorage, Alaska 99503 (work) 274-7691 (home) 277-3402		February 1, 1988
Timothy J. Woller, D.D.S. 460 McKinley Dr. Fairbanks, Alaska 99701 (work) 479-6755 (home) 457-5896		February 1, 1990
Patrick J. Gullufsen, Esq. (public) 725 Dixon Street Juneau, Alaska 99801 (home) 586-6584 (work) 586-6584		February 1, 1989
Hubert J. Gellert (public) 715 L Street, Suite 5 Anchorage, Alaska 99501 (work) 277-2663 (home) 345-1290		February 1, 1989
Christine A. Baxter (hygienist) P.O. Box 58372 Fairbanks, Alaska 99711 (work) 452-1866 (home) 488-3637		February 1, 1989

PAUL S. BUXTON, D.D.S., A.P.C.

11 Dec 85

Nancy this is "response to the report. I was not asked by Lounsbury for comment I had mistaken a letter that was sent to her not to me. Confused?"

Dear Commissioner Lounsbury,

→ This letter is in response to your request for input regarding the legislative audit.

Recommendation #1 - The board has been and is currently working on regulations to provide requirements for proof of continued competency. At this point the drift is toward requiring a specified amount of continuing education courses and a minimum number of hours worked in clinical operative dentistry each year. Arriving at the exact number of hours has been a difficult task to accomplish as well as coming up with a whole new "policing" agency to make sure these requirements are met.

Recommendation #2 - The board is adamantly opposed to licensing by credentials. The statute was originally placed in the Dental Practice Act because the board felt at that time they would be able to adequately check an applicant's past record as well as their skill in operative dentistry by looking at their case presentations. However this procedure was unworkable legally according to the AG's office. The more we looked at and discussed the issue we found there was no

concrete method of evaluation, all ideas were too subjective or unobtainable as was the case of checking on prior litigation against the applicant. Given the way most of these cases are handled, is out of court with no record of offenses, we felt this also was unworkable. Rather than go into too lengthy of a discussion suffice to say licensure by credential does not work to assure operative clinical competence. Many states that had licensure by credential have dropped it and states like California and Washington ~~for many~~ looked very hard at it and found it a nice idea but unworthy of further consideration.

The second paragraph of #2 that states cessation of licensure by credentials restricts entry into the state of out of state dentists is false. Any dentist may take the clinical exam which is given twice each year. The clinical exam is a viable, legally tested form of evaluation at entry level of minimum competency of applicants. The exam is updated yearly and we are currently working on instituting a simpler grading system for the exam with the help of one of the foremost leaders in the field of state clinical

PAUL S. BUXTON, D.D.S., A.P.C.

dental examinations. The board has worked hard and will continue working to assure that entry level dentists meet at least the level of minimum competency.

Sincerely,

Paul S. Buxton DDS

Chairman Board of Dental Examiners

May
this is in HESS
Monday
pls. review

February 20, 1986

Representative Ben Grussendorf
Speaker of the House
P.O Box V
Juneau, Alaska 99811

Dear Mr. Speaker:

The House Committee on Health, Education and Social Services has considered the Sunset Review of the Board of Dental Examiners, and recommends that the board be continued. The Committee has introduced HB 614, to fulfill the findings of the Division of Legislative Audit.

As required by AS 44.60.050 (c), the Committee submits the following findings:

(1) the extent to which the board, commission or program has operated in the public interest.

The board served the public by examining and licensing qualified candidates and proposing changes in regulations. To accomplish these functions, the board has held an average of four meetings and two examination sessions for dentists and dental hygienists during the past two fiscal years.

(2) the extent to which the operation of the board, commission or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The board suspended, by regulation, statutory provision for licensure by credentials because of legal problems surrounding the scope of the interview required for applicants. The Attorney General's office determined that a personal interview required for licensure by credentials should be limited to verifying information rather than requiring case presentations of the applicant's prior work. The board feels it cannot adequately determine an applicant's professional abilities without a case presentation. The Committee requested

information on reciprocity and how other states license applicants, and agrees with the board that protection of the public justifies an in-depth examination of applicants.

- (3) the extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

Legislation was enacted in 1984 defining the rights of dentists practicing in the state, repealing out-of-state examinations because of time and money constraints and the issuance of temporary permits.

- (4) the extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

The board has advertised proposed regulation changes in major Alaskan newspapers, allows applicants to appeal their examination grades and holds open meetings prior to examinations.

- (5) the extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

The board advertises meetings and proposed regulations as required by law and presents and considers all correspondence related to board matters which has been received.

- (6) the efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which the board or commission is administratively assigned, or with the office of the ombudsman have been processed or resolved.

The board has processed and addressed complaints in a timely fashion.

- (7) the extent to which the board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

The board issued 22 licenses in 1984 and 24 licenses in 1985. The board has continued to work toward completion of its continued competency regulations.

- (8) the extent to which state personnel practices, including affirmative action practices, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

The Human Rights Commission and the Equal Employment Opportunity Office have received no complaints relating to the board's activities.

- (9) the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

The board must complete work on the continued competency regulations.

As required by AS 44.60.050 (d), the Committee submits the following findings:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address.

No problems and needs were identified.

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments.

The board shall continue to protect the public by issuing licenses to all qualified candidates who are competent to practice in Alaska.

(3) an identification of any other programs having similar, conflicting or duplicate objectives.

There are no other programs having a duplicate function.

(4) an assessment of alternative methods of achieving the purposes of the program.

There are no viable alternative methods to be considered at this time.

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level.

There may be some desire in the future to combine medical licensing boards, but the committee did not find this desirable at this time since legislation was passed last year requiring licensing fees to be structured so as to cover the operating costs of each licensing board.

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts.

The board serves a legitimate public purpose in screening applicants desiring to practice in the state. Since the practice of dentistry includes the usage of prescribed drugs, and can result in injury or death to a patient, the board should be continued. There is no other body which oversees the practice of these occupations.

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest.

The board may want to consider requesting a statutory change in the future to restructure licensure by credentials into a format which would allow the board to carefully examine applicants and provide for protection of the public.

Representative Max F. Gruenberg, Jr., Co-Chair
House Health, Education and Social Services Committee

Representative Niilo Koponen, Co-Chair
House Health, Education and Social Services Committee

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act extending the termination date of the Board
7 of Dental Examiners; and providing for an effective
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 08.03.010(c)(6) is amended to read:

11 (6) Board of Dental Examiners (AS 08.36.010) -- June 30,
12 1990 [1986].

13 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
14 10.070(c).