

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

3444 HLAB DENTAL EXAMINERS

320

# IMPORTANT!

This Friday (Nov. 9), the State Board of Dental Examiners will be considering the future of licensure by credentials in the State of Alaska

MEETING PLACE: Frontier Building 3601 C Street Room 722

TIME: 9:00 am Discussion on credentialling 3:00 pm - 4:30 pm

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**BOARD'S POSITION:** The Board of Dental Examiners has placed a 120 day moratorium on licensure (began September 15) by credentials. The Board feels that the strict interpretation of current statute language freely allows practitioners to apply for licensure without any evaluation of clinical ability. This, they feel, constitutes an emergency situation seriously endangering the public's well being. The board is looking to legislatively amending the credentialling language to provide more quality control.

**ALASKA DENTAL SOCIETY'S POSITION:** A resolution was passed at the September 28 executive council meeting - as follows:

"...that the Alaska Dental Society give legislative support that may be necessary to the Board of Dental Examiners. A letter should be sent to the board from the society\* stating that organized dentistry supports their move to suspend credentialling, and, further, the society supports a separate type of credentialling system - just for specialists, with a specialist in attendance, and move back to licensure by examination for all general practitioners, thus eliminating licensure by credentials for general dentists." \*sent October 30, 1984

**ATTORNEY GENERAL'S POSITION:** The AG's office feels that an emergency situation does NOT exist and strongly indicates that current statute language will be maintained. Further, the AG's office has said it will oppose the Board's attempt to restrict candidates for licensure by credentials - and, in fact, award an Alaskan license to any candidate who meets current statute requirements.

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PLEASE ATTEND THIS MEETING AND VOICE YOUR OPINION ON THIS ISSUE. THE POTENTIAL FOR UNREGULATED LICENSURE IS DANGEROUSLY APPARENT. CLINICAL EVALUATION IS ABSOLUTELY NECESSARY IF THE QUALITY OF CARE STANDARDS IN ALASKA ARE TO BE MAINTAINED!!

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W. Marshall Dotson, D.D.S.  
President  
South Central District Dental Society

# MEMORANDUM

State of Alaska

*Pete F*

TO: Peter B. Froehlich  
Assistant Attorney General  
Department of Law

DATE: September 26, 1984

FILE NO:

TELEPHONE NO: *366-152-PS*

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

SUBJECT: Emergen. Regulations

The Board of Dental Examiners requested that I approach your office and ascertain the feasibility of emergency regulations projected to set aside the issuance of licenses by credentialing until such time as a statutory change could be made allowing them to conduct an oral examination of the applicants.

Upon my return to Juneau, I touched base with Diane Colvin and it was determined that it just did not seem feasible that an emergency existed. However, I do sympathize with the board as they do not feel comfortable with the current way things are going in issuing licenses to just those who are applying with no consideration to the public in general. They are making an attempt to resolve the issue and issue licenses to only those qualified.

For your information, it should be noted that one of the board members did have a copy of the minutes from the June 1980 meeting that advised the board on how to conduct the "credentialing examinations." The board also elected, at its last meeting, to follow your suggestions as amplified by Dick Monkman in reinterviewing the applicants who participated in the June credentialing examination. Four of those were conducted. At the time of the meeting, we have since sent letters out to the remaining six and, for your information, they are out-of-State. My position on this is that if they desire to be reinterviewed and raise an issue about the cost for time and travel, we should then possibly consider reinterviewing them but by teleconference.

Your assistance in this issue would be greatly appreciated.

HDT/wfs0847Wd  
92684b

# MEMORANDUM

# State of Alaska

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

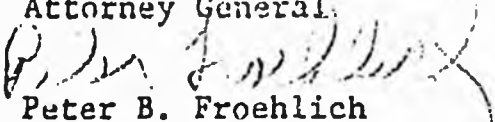
DATE: September 27, 1984

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

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# State of Alaska

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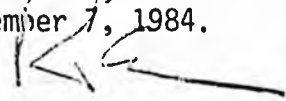
PUBLIC NOTICE  
SUPPLEMENTAL NOTICE OF ADOPTION OF EMERGENCY REGULATIONS OF THE  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
BOARD OF DENTAL EXAMINERS

As required by AS 44.62.250, notice is given that, under authority vested by AS 08.36.070(7), the Board of Dental Examiners adopted 12 AAC 28.450 as an emergency regulation effective October 17, 1984 and on November 9, 1984 reaffirmed and clarified that action and supplemented its October 5, 1984 Finding of Emergency. The emergency regulation 12 AAC 28.450 stops the acceptance and processing of applications for dental licenses by credentials.

This action is not expected to require an increased appropriation.

Notice is also given that the Board of Dental Examiners intends to make this regulation permanent under AS 44.62.260, and any person interested may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at Suite 722 of the Frontier Building, Anchorage, Alaska, at 10:00 a.m. on Friday, November 30, 1984.

In addition, written statements and arguments may be sent to Division of Occupational Licensing, Regulations Specialist, Pouch D-LIC, Juneau, Alaska 99811, to be received no later than December 7, 1984.

  
Richard A. Lyon, Commissioner

Date November 13, 1984

P BUXTON(PB):

Did we have everybody sign that? She just sent that around for the folks that are present here. We have invited Mr. Froehlich to talk to us today about the dental credentialing license problem that we are having at the moment and also input is welcome. I don't know exactly how we are going to do this yet but we want input also from the general public if that is what you feel like doing and depending on how long this last, we will probably limit it to like four minutes or something like that on the discussion from the public. Does that sound okay to you, Pete?

P FROEHLICH(PF):

Yes.

PB:

Is four minutes appropriate?

PF:

Sounds good. I mean, I don't know what..how much people have to say.

PB:

Okay.

PF:

Can we just have people around the room indicate who they are and what they are?

PB:

Fine by me. What they do for a living, you mean? Separate the doctors from the lawyers.

K HENDERSON(KH):

I am Kevin Henderson with the Division of Occupational Licensing.

K GOUWENS:

I am Kay Gowens from the Attorney General's Office.

NELSON COHEN(NC):

Nelson Cohen, attorney.

MEL WARREN:

Mel Warren, ortho

PF:

Should I give...

PB:

Yes, I would like you to just to kind of give us whatever background that you think would be necessary to catch people up and go into what you had to say to us and we will discuss that.

PF:

Okay, first of all. My name is Peter Froehlich and I am Assistant Attorney General in the Department of Law located in Juneau and in the department I perform sort of a dual role. I fill a split decision position. Part of that is with the commercial section of our office which 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 and works with drafting and editing bills for legislation and regulations that are prepared for reviewed in our offices for all of our clients. There is two of us that perform that goal for the whole department. I did just, most of you probably know met briefly with the board off the record and most of what we have discussed there was all concerning credentialling and will I think come up in the decision that ensues here. Essentially I want to talk about this credentialling issues. 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 rely the apologies from ... of the Department of Law and from...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, and all the members of this 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 some type of conflicting advise by our office and those sorts...there is nothing that we can do now to undo some

of...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...where we are now is a result of 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...there was essentially an outcry...a lot 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 cred...what has been called the 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 of those procedures set out in those regulations seemed to have been followed carefully. There is no apparent legal defect in the conduct of that exam, despite the fact that a small percentage, only a very small percentage of the 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 one through 8, number seven of which was a personal interview, and the board had as a matter of practice adopted...or had 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 orderly advised through a regulation specialist in 1980..right after the statute was adopted...that they could do what they had done...that they could use the case presentation sort of oral exam 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 repeated the advise that I had given the board..interviewees or credential applicants from the June exam or interview who had not been approved for licensure by credentials should be reinterviewed for his license..the board chose to reinterview. He also advised them..the board...that one of their options to deal with credentialling still maintained 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 of licensure by an emergency legislation, the board felt that there was an emergency situation..that option was mentioned. And, in fact, the board chose that option. On September 15, they voted to suspend credential licensing and there was really an unusually long gap between the time of that vote and the time that a document...of finding of emergency was signed by the chairman in Soldotna and had 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. So according to the statutes authorizing agencies to adopt emergency regulations after they have done so, they had to give notice in the pretty much the same way as notice has been given of a proposed permanent regulation...published in at 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 regulations, 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 occasionally and has a staff.. meets in Anchorage, has a staff in Juneau, a chairman in Soldotna, and so on. All of the purposes of the Administrative Procedure Act that deal with the emergency regs were satisfied. The public was notified within several days of the actual effective date or filing date of the emergency regulations concerning 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, is somewhat conclusionary and 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 agency that adopt emergency regulations. It is up to the board..up to the agency with regulation adopting 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 an emergency regulation once it is filed by the Lt. Governor is for the agency itself to change..repeal it or for 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 with applications on the table from the last six weeks too. We...I convinced the attorney, Mr. Cohen, to postpone that action until the board is presented with essentially with an opportunity to deal with it itself and possibly avoid the cost and burden and so on of litigation. And that is one of things that we have to deal with

today...that immediate solution to the credentialing. This remains the long range solution. I have distributed a few .. 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 the chair's pleasure would be.

H TREAGER(HT):

I have one question concerns kind of a clarification. You state earlier that the clinical examination...or the examination of clinical proficiencies during the credentialing process was that which evolved...it was my understanding that it was (undisc.) from the start and it was okayed through the AG's Office of that interpretation was not evolving process with the way it was initially? Is that correct?

PF:

Well, I think that was generally correct. Let me tell you some of what I have found out in research that I have been able to do. As was discussed at the board's last meeting, at a meeting shortly after the effective date of the statute in 1980, there was a statement by the regulation specialist that she had talked to somebody in the Attorney General's Office said it was okay to use case presentations at the interview or to require case presentations at the interview as long as you told people ahead of time that they would have to bring...and what they should expect at the interview.

HT:

And this was done from the start of the process? On the board's part?

PF:

Yes, apparently so. I don't know what happened before 1980. I have the impression that..I am pretty sure that the instructions to applicants have evolved quite bit. That is, there has never been...if somebody looked in the Code of Admin...the Administrative

Code and wanted to find out credential exam, they wouldn't find anything at all. There is not regulation that mentions the word. If they looked in the statute, they would find the statute that mentioned that uses the word "interview" but if they write a letter to the division and said we want to apply for cred...or I want to apply for credential license...or license by credential, they would get back an application form with some instructions on it that would say by the way, at the interview, you will be examined on this, that and so...and those instructions, I think, have been revised several times and I think...

HT:

As have the clinical examination book.

PF:

Right.

HT:

They get revised periodically due to the difficulty in certification.

PF:

But one of the defects with the status quo prior to the June..or through the June exam was that there was never any regulation or any real legal requirement for anything more than interview and no notice of any. And essentially that had never..well, it had been mentioned by our office in connection with Mr. Alpert's.. Dr. Alpert's case. I found memorandums from 1983, a year...approximately a year ago..a little over a year ago, with mention that .. I mean, it wasn't totally new. But nobody had said, okay, you have to change this practice until this summer.

UNKNOWN:

When I was first applying to the board, I got a list of proposed regulations for credentialing. We brought those up at the first meeting I attended and I thought Harry was the one that said, well, these aren't even german and we wasted a lot of time. What happened to those and why were those rejected and why didn't we adopted...

HT:

After the June experience, the Attorney General's Office said hold up on them until this issue is resolved. Now, I am speaking specifically of the credentialing regulations.

UNKNOWN:

Regulations. Yes, that is the one that I am talking about. We had them handed out to us...you, evidently the board had spent quite some time drafting and that listed the case presentations and everything in the regs.

HT:

They got back to my office with a note on it from the regulations specialist that the board did not consider these the course of the credentialing. Some point in time they were ... I don't know if you have those with you .. some point in time they were reviewed by someone.

PF:

Those are essentially, as I understand it, an outcome of the Ombudsman's and the Attorney General's Office review of Dr. Alpert's appeal of the denial of his credential license and they are also ..the part that deals with what happens at a credential interview is verbatim from the instructions (undisc.) and so on and frankly, that may have (undisc.) if it were done in 1980 but with this link we have now, I don't think that has been the scope of the statute.

HT:

Bert.

B BENEVILLE(BB);

I think it is important that everybody be aware of the fact that the board has responded close to the law and to the public interest. It was the board's feeling that the public interest was best served by this interview/case study type of a review. We responded to the law by asking the Attorney General's Office in effect whether this legal (undisc.) and it wasn't until the last meeting, which Monkman was here that they told us it wasn't and we responded to the law in that case by reviewing of the people. So I think for the record, the board has done what I consider to be a proper public servant.

PF:

I think there is no question about that and I don't think there ever has been. There is a really a question of almost procedural type issues compliance with adopting regulations instead of putting things in instructions, making sure that practices conform with the statutes and so on.

UNKNOWN:

Where do we go from here?

PF:

So we have got a...where we go from here is we have got two problems. We have got the problem of still having six guys that want...or had their applications in between whatever it was and the 15th and then we have got the continuing problem of what I feel is a problem is that once this 120 days is up, then it is opened back up to where there is no examination/case presentations.

UNKNOWN:

Well, it seems like there is another problem and that is that our implementation of the emergency regulation doesn't seem to be too valid either and if we ...

PF:

Well, that is what we have been told.

UNKNOWN:

...his options here at the bottom...the immediate ... emergency repeal of emergency regulation with or without a second emergency suspension with a more specific Finding of Emergency. I think that sounds like we are...we've made an error. That is where it is we didn't specify what the emergencies were, at least...

PF:

That is exactly right and that's really a pretty technical or procedural type of deficiency. The board clearly has authority to adopt regulations concerning credential licensing and that means if you have authority to adopt regulations, you also have authority to adopt emergency regulations, if you jump through all the hoops (undisc.), and one of those hoops is setting out the facts which constitute the emergency reg.

UNKNOWN:

So, Pete, is this one...

PF:

I think the supplemental...option #3 under the immediate...maintain the current emergency suspension but adopt a supplemental Finding of Emergency with a more specific ... well, in haste here during lunch hour, this is a little hard..got jumbled up but with a more specific Finding of Emergency and also reaffirm the adoption suspension. That is one of the options available and the other thing...the long piece of paper that I handed out..actually it is two pages..it says Possible Finding of Facts of Findings of Emergency. That is the beginnings of, I think, perhaps if the board could...let's see..this is some findings that essentially amount to a time line or summary of the recent history of the situation since September 15..can be used for a Finding of Emergency to repeal ... to an emergency repeal of the emergency suspension or knocking out the last two or so. They could also be used and then adding appropriate findings. Specifically, about why it is an emergency. Why is it dangerous in credential licensing, if you can't examine people? They could be used for the supplemental findings, as well. So...I wanted to first talk about the long range options. But I realize that it is probably impossible to totally separate the long and the short range here. I think that the long range solutions are a little easier..

UNKNOWN:

The options?

PF:

Well, they are more clear cut. First, change the statute, as I already mentioned so that it says..so it gives you authority to do sort of a quasi credential licensing. You license people if they have certain credentials but you still do some examining of them in person to make sure they have the level of competence that you feel is necessary. And then after the statute is changed with just a couple word changes...only a couple of words that need to be changed, you would adopt a regulation which would

specific what exactly would happen at this oral examination for credential application. That one takes a while, as I mentioned obviously, and nothing will...no laws will be passed by the Legislature until springtime and then you would need to adopt a regulation.

UNKNOWN:

What time in the springtime would you expect that?

PF:

Well, it is hard to say but, you know, May or June is when...it is possible for laws to come out of the Legislature sooner than that...February or March but generally...most of them seem to come at the end.

UNKNOWN:

How about if they are proposed regulations changes...or statute changes proposed by the Administration? It comes right out of the Attorney General's Office or the...

PF:

It would probably take longer.

UNKNOWN:

Can the Division of Commerce and Economic Development do it by regulation?

PF:

I don't think...in light of where we are now .. I don't think so. What it would require is interpreting the word...interpreting a way around the words "without examination" and interpreting the word "interview" mean examination or to somehow be expanded to include case presentations, answering questions accurately about statutes. I really am not sure all of what does happen. I haven't been at one of these but it is something obviously that can be passed or failed and most ... I mean, the common meaning of the word "interview" is not..doesn't carry with that connotation. You just interview and that is it. You are done...your interview.

UNKNOWN:

Not in my office.

PF:

You may not be hired but you have completed the basic requirements for applying for a job. That is what we are talking about.

UNKNOWN:

Dick.

D MADSEN(DM):

It appears to me that there may be another here, too. I don't know if it has really been fully considered but...that is the possibility of repealing the emergency action that was taken.. the regulation and allowing for some process by which people who applied in the meantime and between the time of the meeting and between the time the order was actually signed to allow them just the interview process and then it is the statute..08.36.234 is discretionary with the board for licensing without examination, we could just establish a policy this meeting to not provide for that until we have legislative changes that would make it fairly reasonable for everybody.

PF:

Okay, I agree that is an option and that is essentially immediate option #2. Emergency repeal of this current emergency suspension along with a second emergency suspension or by lifting the current suspension, you allow into the credential licensing process with just an interview the people whose applications on the table and then by simultaneously doing another emergency with a more specific Finding of Emergency...

DM:

No, what I am saying is do away with that.

UNKNOWN:

What he is saying...

DM:

Just repeal the previous action with regard to the emergency.

PF:

Right. Okay.

DM:

But then obviously there are some people that are in a quasi unknown position. Okay, deal with them consistent with what we have done today with regard to those interview so no one is hurt. In other words, everyone is in the same position. But, henceforth, for any new applicants who just since discretionary do not have any licensing by credentials at all.

UNKNOWN:

The word in the statute says, the board may provide licensing without exam.

DM:

And then we can take care of the legislative changes we need.

PF:

Okay, my concern with that is that to .. just is sort of what got us here. In my part is the practice of adopting policies without adopting regulations. In other words, what you are suggesting is a policy really should be done by a regulation and if we don't have time or there is emergency reasons why we can't go through the full process of public hearing and so on, then we can do it by an emergency regulation.

DM:

But my point is if we are not going to do it at all, I don't think we need regulations telling us how to do something we are not going to do.

PF:

Well, not how to do something you are not going to do but to do ...I think it is better to have an emergency regulation...to do by reg..to cut off by regulation what has been done as a matter of practice because you are essentially cutting off..expected or contrary to expectations that have been based on past practice. I mean, there is...

UNKNOWN:

Well, our past practice was based on the way we were doing at the time, not at the way you are interpreting we should do it now. So I think it would be justified.

PF:

It could be. Let me just say that there is case law that says that when an agency departs from an established practice, it should..even though there is no regulation that implemented that practice, it should do so by adopting regulation. Now, I am not saying that it is absolutely necessary but it is cleaner and better. It would cut off existing practice with credential licensing by doing a regulation. If you want to do it right away..emergency regulation..if you have got the facts to explain why it is critical for public health. So, I guess...does everybody understand?

UNKNOWN:

What about your other long time suggestions? Excuse me, Bert. You said the first one was to change the words "interview" and substitute "examine."

PF:

Right. Okay, and then adopt a regulation that specifies what happens in the exam. The second one is to simply adopt a permanent regulation cutting off credential licensing, along the lines..similar to what we have just been saying. The statute says "may"...you have discretion. You can decide not to do credential license. You don't have to license by credential. You should...again, you are cutting off...you are acting contrary to an expectation that has been built up. You are changing a practice that should be done by regulation and you should build a record. Have a hearing, build a record that indicates that you are doing this reasons that have to do with protecting the public from people who haven't proven competence rather than to exclude competition. Because in all of this, that is always a danger that we...regulatory boards have many actions that they take and have the appearance of being competitive even when that is not anywhere near the intent. So a record should be built. Attention is focused on this. It is easy enough to come up with that evidence. The third option then for the long range is simply to continue credential license and interview people like you reinterviewed

the June applicants today. Rather than examining them. And that is an option that is clearly in line with the statute and it doesn't take...doesn't take any action on the part of the board except if you wanted to come into place immediately, you would have to do an emergency repeal of the 120 days suspension work (undisc.) or see if somebody challenge it and have it thrown out.

UNKNOWN:

With your option (b) about changing the regulation to do away with credentialing all together, would that be more advisable than to have legislation drafted to wipe the statute off the practice act to begin with?

PF:

Well, I don't know what would be more advisable. It sort of depends on whether you want to keep your...first of all, it is easier to do because it is easier...even though it sometime (undisc.) to go through, it takes time to go through the steps of the public notice, waiting for the Attorney General's Office to review a regulation, so on and so on. To get a regulation filed, it takes three to six months. It still is a lot faster and less burdensome than trying to get a bill through the Legislature. It is more easily accomplished. It also keeps the option available. The statute would still be there that says "may" ... meaning you may not so it could be changed for you in the future. Those two points (undisc.) might seem better.

UNKNOWN:

How many states have licensing by credentials?

UNKNOWN:

One, Missouri.

UNKNOWN:

That is the only other state?

UNKNOWN:

To my knowledge.

UNKNOWN:

So there is only two states that have license by credential, Alaska and...

UNKNOWN:

Missouri.

UNKNOWN:

Anybody else got any different information?

UNKNOWN:

Somebody is shaking their head over there.

UNKNOWN:

I think there are at least 15 states have a form of reciprocal.

HT:

But not direct credentialling.

UNKNOWN:

Ours is unilateral.

HT:

Unilateral credential.

UNKNOWN:

They are essential.

UNKNOWN:

We are just talking about credential licensure.

UNKNOWN:

So approximately 14 states though would allow people to get a license in that state without actually going into the new state and doing some sort of demonstration. George?

GEORGE:

How do you not find that to be accurate? I find that there are a number of states...number is about 14 that have regional examinations and having taken examination in one state of that region, you may then apply to the other states, by having passed an examination. That is a great deal different from...

UNKNOWN:

That is not really reciprocity. That is just you passed a general examination that was acceptable to each state.

UNKNOWN:

Sort of like credentialling within a group of states but not (undisc.).

UNKNOWN:

They took an exam that was acceptable that was essence designed by all 13 states or something.

UNKNOWN:

But the base of this credential (undisc.).

UNKNOWN:

Without them recognizing ours, I guess...unilateral.

UNKNOWN:

(undisc.) seems to me, if you are concerned about a one-way reciprocity...members of the national organization of licensing boards (undisc.).

UNKNOWN:

My question really, Pete, was aimed at your interpretation..if we changed it...if we just elected to say that we may and just elect not to. If it says we may, which we may not also...there is not any tremendous amount of national information that lead us to believe that we would be out of wack with the rest of the world. Maybe what we have done in Alaska for a few years would be out of sync but it sort of would be out of sync with what appears to be the common practice with the rest of the United States.

PF:

Yes, I think that is good back up and I guess I can't say that you cannot accomplish the negative exercise of your option there by just doing it without a regulation. I can just say that it would be better ...

UNKNOWN:

Let's get some public.

UNKNOWN:

I think it is time we hear some public.

E MERCER:

Before you do, I need to change the tape.

UNKNOWN:

Change the tape first and then ....

-----END OF TAPE 3, Side A-----

UNKNOWN:

...apply for another state for license, if you do not apply in that five years, I believe that you have to be reexamined? Is that correct?

UNKNOWN:

George?

GEORGE:

I can tell you from a fact..personal experience, it is three years in Montana and the rest of the Western regional board it may also be three years.

UNKNOWN:

Here we are having a situation where people come in and present credentials and how long has it been since they have been examined? No other state can they do that. Also presenting these credentials, you have to have...this is 1980 when this came about when I stressed in Dental Society got no way of verifying credentials they are presenting are actually their credentials. They could be forged, falsified credentials. We have no affidavit from patients they have treated, actual treatment they performed on them. There is no way of showing that is actually what they have done. And we just accepted them at face value, which I think is absurd. And I said that in 1980 (undisc.) so now, we are back again saying, gee, how are we going to do this and make sure that these people are qualified. Well, most of them haven't taken the board in approximately five years. Also we have no way of showing that this actually their treatment of these patients. These are situations that I think should be considered. Thank you.

UNKNOWN:

The regional board (undisc.) passed the board exam, most all, should at least (undisc.) regional board, you are required to go to the state you desire licensure in and take a local statute or local statute examination in that state before you can get license and that is an examination.

UNKNOWN:

All right, on these regional boards, if you apply for licensing saying at the end of the fourth year, is there any stipulation in order to get your license there that you have had to in fact practice dentistry on a full time basis...40 hours a week.

UNKNOWN:

I think there is. But after the fifth year, it doesn't matter.

PB:

What was your name?

MARK WILLIAMS:

Mark Williams.

PB:

And what do you do, Mark?

MARK:

Prosthodontics.

UNKNOWN:

I know...I talked to people in Wyoming and what they do with theirs..the people take a midwest region and then come to Wyoming for an interview and the fellow at the interview appointment there ...or the fellow on the board mentioned that what they do is a real indepth discussion of the properties, the various drugs that are used in dental practices and that is one of the major portions of the examination that they give people that are applying for licensure by credential.

UNKNOWN:

Paul.

PB:

One of the problems the board has tried to address and seems where most of the complaints have come have been from the area of particula: of specialists...dental specialists whether it be prosthodontist or orthodontist what have you. In the letter that was sent to the board from the Dental Society both on a local and the one here on the State level, is there anybody here representing the Dental Society today?

UNKNOWN:

Just Jerry Zemlicka.

PAUL:

But it seems to me that the interpretation, at least, I had of their letter was that they were interested in finding some way to retain the credential process or a licensure process for specialists but yet for general dentists maybe do away with it and require examination. Is that my correct interpretation?

UNKNOWN:

That is what I got out of it just kind of what I got from the letter. Dr. Smole.

SMOLE:

I would like to respond to a concern that I think I picked from Dr. Locker concerning the duration of time between a person submits his credentials for Alaska licensure and the time that he took an examination in another state, it seems to me that he is very concerned about that duration of time and if that is so, it would seem that the same time frame might also be a difficulty for those currently licensed in Alaska who have been licensed for many years who have not recently taken an examination. There is also a part of the statute that deals with the duties and responsibilities of the board in assuring continued competence of those currently licensed in the State and I would like to ask the board how that continued competence is taken care of on a one-to-one basis.

PB:

Right now we don't want to start getting into us having to write regulations for the continued competence thing. I think we will just stick to what we have got right now.

SMOLE:

But it is in the law now, is it not, Dr. Buxton?

PB:

Right. There is a statute that deals with continuing competency and matter of fact there is a lot of things in the statutes that there are not regulations for.

DRAGER:

It seems to me like you would want to put regulations applying to some of us who want to get into this State and practice dentistry here and it seems like on the other hand, if a regulation like this

is being disobeyed flagrantly where there is no control over those who are practicing here...it seems like a double standard to me.

What do you think, Doctor?

UNKNOWN:

I got your point.

DRAGER:

Very double standard. If you keep those out, and those that are here, there is actually no control over ...

UNKNOWN:

Well, the statutes that Dr. Smole were eluding to have just been rewritten into the new Dental Practice Act which was enacted as ... at the end of the last Legislature. This board has met one time since then to adopt regulations to govern those types of things. We need some time and most of our time has been taken up with this credentialing situation and we haven't had time to adopt regulations for the other things that are under concern.

DRAGER:

In other words, you don't have time to be concerned with those that are practicing here and to see that they are practicing consistently and they are practicing competently. It seems like there is a little priority that is out of place here.

UNKNOWN:

In answer to that, we are very aware of complaints that are flashed against people that are licensed in the State and to a degree that is one way of following the competency of those people that are licensed here. Obviously, we don't have the same control, nor information available to us for people that have been outside the State. I don't think it something that is being totally ignored. It is being handled kind of in a different direction.

UNKNOWN:

But you do have an opportunity to get information from your counterparts state boards in another state?

UNKNOWN:

I don't (undisc.).

DRAGER:

Why aren't you getting that then?

UNKNOWN:

As far as I know, we are.

PB:

You are out of order. What we are discussing here is the credentialling licensing. We are not going to start getting into the area of continuing competency and setting up the stuff that is necessary at this time.

RORAFF:

I did want to make some notes for the record. I am not certain which people we are speaking about or how many of the six when you are referring to those who have submitted applications for credentialling. I submitted my application prior to September 15 so I don't know what group I am in. I was trying to follow all the changes and the opinions and the laws and the interpretations of the Attorney General's Office and so on. In fact, I postponed and changed some of my plans because of the fact that they were constantly changing. So I propose a place to put together all my credentials and I think I put a reasonably good packet together, which should be satisfactory. And with the interpretations and so on that I eluded to of the time, it appeared to me that I satisfied all the requirements of that time. So now I was surprised to find and notified that I could not take the examination...after I had satisfied all the needs. So I just wanted to clarify for the record. So I don't know where I set and when I can take the exam or when I will be considered for it or why I was denied the opportunity.

PB:

Dr. Williams.

WILLIAMS:

I would like to address Bob's question about some of the specialty license problems. Alaska is ... I don't know the numbers .. but I think it is somewhat unique...maybe not unique but it is not a national standard to have specialty licenses, which Alaska does have. It has been done by credentials in the past and I think that a specialty license is appropriate but there the mechanism

of credentialling is probably the only acceptable way for licensing specialists because...and there may be a problem with having specialists take the general dental license because if they are practice as a specialist, they limit their practice to their specialty and it may or may not be appropriate for the exam that is given to general dentists, which is primarily a restorative exam, as far as the clinical aspect, may not be appropriate to all the specialties so the credentialling is probably the only viable mechanism for the specialist to be licensed as a specialist.

UNKNOWN:

Are you saying then that a specialist shouldn't be licensed as a general dentist and that shouldn't be a requirement for a specialty license. Are you agreeing with that? That they should just get a specialty license period and not have a general dentistry license?

WILLIAMS:

No, I think that probably...well, I don't know that for a fact. I think most specialist have a general dental license before they pursue their specialty training. I don't know that.

UNKNOWN:

I mean in the State of Alaska?

WILLIAMS:

I think that the exam may be inappropriate if they are going to practice the specialty.

UNKNOWN:

The statute today says that a specialist has got to have a general dentist license and then he gets his specialty license second. Now if I understand what you are saying is you think that you should not necessarily have to have a general dental license in order to have a specialty license, is that what you are saying?

WILLIAMS:

As the examination is given in Alaska, yes. I mean, if an oral surgeon orthodontist is not likely to placing amalgam restoration and inlay restorations in their practice, if they are going to truly practice their specialty.

UNKNOWN:

Is it important or maybe it is not that if someone that is a specialist that was looking at somebody's mouth be able to recognize dental problems other than their relating to a specialty and be able to refer him out.

WILLIAMS:

Oh, for sure. There is no question that they need to be well trained in the aspects of general dentistry.

UNKNOWN:

Then how...

WILLIAMS:

But the clinical examination may not be appropriate for ...

UNKNOWN:

Just for my own interest in edification, how do you know that that person is competent to do that if he has been practicing some specialty somewhere else for 15 years?

WILLIAMS:

I know (undisc.). I know that if I have the answer for you. As it has been done in the past, you had to graduate from ADA approved program that was accredited by the American Dental Association in that specialty.

UNKNOWN:

Do the dentists in the room think that would be a problem that basical... a specialist would be able to recognize any kind of problem.

UNKNOWN:

As order of precedent, I understand that only one state accepts a specialty license to practice without a general dentistry license and that is Oregon. I think that is only state that will accept just the specialty license to practice without having the general dentist license first. So...

UNKNOWN:

So, you say there is no precedent for it, except Oregon.

UNKNOWN:

Except Oregon.

UNKNOWN:

Mr. Chairman?

PB:

Art, I don't know whether you asked me a question or giving me information last time.

RORAFF:

I left it with a question. I still don't have the answer.

UNKNOWN:

Okay, you wanted to know what group you are in.

RORAFF:

I don't where I am in this. I stated my position and I felt that I was here to have an examination under the opinions that were done previously.

PB:

Pete.

PF:

Yes, maybe I can answer that. I guess that when I specified the dates of September....between September 15 and October 17, I think that was slightly inaccurate. What I mean is the people that did not apply in time...that have applications in now but haven't been interviewed so therefore they have applications in the hopper that are effected by this suspension because the suspension is not just of applications that is receiving them in but also in processing. So if there was an application on the effective date of this suspension that was in the secretary's office, secretary of the board, ready for her review or even that she had already approved for interviews, that person would have been effected by this and I think that the six people...your name is familiar. I think that you are one of them.

UNKNOWN:

In other words, if this decision is retroactive to previous applications and we are operating under a previous...regulation.

PF:

Let's say suspends processing, as well as receiving applications. So in the sense, you can say that it is retroactive. I guess I

wouldn't quite use those words.

UNKNOWN:

Ed, do you have anything that will clarify that?

E MERCER:

The clarification, I am quite sure, is Dr. Hickel.

UNKNOWN:

Dr. Roraff.

E MERCER:

I am sorry. It would have been..he would have received his application but it would have been in the timeframe of the suspension of (undisc.). He would not (undisc.) receive notification of approval (undisc.).

UNKNOWN:

Did they get any kind of notification at all what their status was?

E MERCER:

They had gct notification that the board had suspended credentialing based on the emergency regulations for 120 days.

PF:

I have six copies of...copies of six letters that were sent to the six people that were effected by the suspension and Dr. Roraff is one of them.

UNKNOWN:

Is one of them?

PF:

Yes. I don't know if the board wants me to read the names of the other five.

UNKNOWN:

I would be interested in hearing the names.

PF:

Dr. Arthur R. Roraff, Dr. Robert G. Hebel, Dr. Bruce Lee Sahakian  
Dr. William J. Kohn, Dr. Bernard J. Minarik, Dr. John L.  
Drager.

BENNER:

I would like to inquire a Division of Occupational Licensing status my file (undisc.) in our files (undisc.) June of 1983.

HT:

(undisc.). Brenner? Appointments on two previous occasions was set up with you to appear before the board and both times you failed to show.

BENNER:

Yes, I responded to those letters indicating because of the short notice interview, I was (undisc.) and I did receive a...

HT:

Dr., there is no copies of your correspondence in the file.

BENNER:

Well, would it be appropriate to say that I did receive a notice of a interview (undisc.) board. I have a copy of that letter and my attorney has a copy.

HT:

Did you appear at the June?

BENNER:

I did not appear at the June board. I did respond by letter. My attorney also has a copy of that letter.

HT:

That is my response is that you were set up by (undisc).

BENNER:

I don't know. I addressed a letter to you, Mr. Treager, on 12 October this year, which I have not received response. My attorney also has a copy of that letter.

HT:

I don't dispute that. I don't have it.

BENNER:

I approached Mr. Mercer at the September 14 meeting and asked him to clarify my situation. He told me that your top priority when you returned to Juneau would be to examine my file and (undisc.) short period of time. On 12 October, I had not received any notification from office and I have dictation on Mr. Mercer...

UNKNOWN:

Maybe this would be...I am just wondering, we are getting off track again. It is real easy to do.

UNKNOWN:

I would like to make a motion.

UNKNOWN:

Yes.

UNKNOWN:

I would like a motion that we repeal the emergency order that was effective October 5 and that would put it on table for purposes of discussion, specifically of that..we need discussion period.

UNKNOWN:

Well, I would second the motion if all the public testimony is over.

JOHN SPARAGA

I have one comment I would like to make. My name is John Sparaga for the record. This man..this fellow..I don't know your name.

PB:

Peter Froehlich.

SPARAGA:

Peter used discussion about the word "interview" versus an examination. I have real trouble with that and the use of semantics involved since as I said, a person comes to my office for any purpose..hiring an employee, etc., an interview is for the purpose to see whether I will accept that person or not and I can't understand Peter's use of the .. common use of the word...you have to come through the phases of this licensing by credential...attend the interview, etc., etc. Yet in the same paragraph you refute the need for an interview and make it only a formality with what as you said once you go through the interview, you have done your part and then therefore you are in and I can't see that. I think the definition of interview would be familiarizing for intent of examination for purposes of whatever you want to interview a person for. So I am frustrated with your use and then all of a sudden throw out the need for the idea of interview. I can't understand that. I mean, it doesn't make sense. It is not common thinking in English.

PF:

Well, if I can respond to that.

PB:

Yes, please.

PF:

Well, I don't question the need for an interview. I just look at the statute and see that is what it says and then I go to the dictionary and .. as you did as well..my common understanding of semantics and meaning of English words and examination is a different word than interview and it has a different meaning and it carries with it the connotation of the possibility of passing or failing a test. An interview is something where essentially...well, I don't think it has any of those. You go to it and that is about it.

SPARAGA:

No, that is not it. There is always an action or nonaction taken after an interview in any situation, is there not? When you are interviewed for admission to a law school, you have an interview. If you do poorly in your interview, your chances of acceptance is poor, is that not true?

PF:

That's right.

SPARAGA:

Common use of the word interview is that way in any thing.

PF:

I think there are some limited possibilities for someone failing an interview as I think the word..as the narrow meaning that I give to it includes and that would be if as a result ... the most obvious way would be not showing up. I would assume that the legislative purpose for requiring an interview is to insure that there is some relationship between the person and state, make sure they are not sitting in their office in a city someplace down south applying for credential licenses everywhere but that they actually have some physical connection to Alaska. That is the first thing. I think questions would be at a normal inter-

view be asked concerning the facts on the application and concerning compliance with the other seven items in the list... or six. I don't think you would probably need to ask somebody whether they had paid the fee. You could ask them about their graduation from an accredited school and their practice for at least 20 hours a week for five years and so on and so on and you can evaluate the demeanor of the person in answering those questions to determine whether they have the impression of truth tell and if a person was particular fidgety or seemed overly nervous without explanation, maybe further investigation by the investigators or staff to the board would be warranted...action would be delayed. Things like that.

SPARAGA:

For instance by an examination.

PF:

Pardon.

SPARAGA:

For instance, if you have a concern, you might want to say, well, we would like to further examine this person.

PF:

No, credential licensing means if you have the credentials...meaning pieces of papers that prove that you did some things in your life, then you get the license.

SPARAGA:

Then why have the interview, if it is going to be useless and unusable?

PF:

Well, for the reasons I just specified.

SPARAGA:

Well, that doesn't make sense. You are not going to utilize it.

PF:

To determine whether...

SPARAGA:

You are interviewing...

PF:

I am not saying that it makes sense or not and I am not defending the Legislature's wisdom in saying that is an option of the board

SPARAGA:

And I am saying you are incorrect.

PF:

Okay.

UNKNOWN:

That is what makes lawsuits involving.

PB:

There is quite a few people, or at least some, that have some in and haven't signed that. If you would please...if you haven't signed it, if you would introduce yourself and what you are here for.

TOM WELLS:

My name is Tom Wells and I am an oral surgeon in Anchorage as specialist and have some concern about what goes on here.

PB:

Do you have any comments to make?

WELLS:

Yes.

PB:

Would you like to make them?

WELLS:

I came to the meeting with the impression that credentialing is automatic under the Attorney General's current ruling that which case would open up to anybody that could produce papers could get a license and I can denturists, con artists, all kinds of people producing paperwork. If there is no way to examine said credential said paperwork, what is to prevent somebody from processing this paperwork through Juneau, buying a license with their paperwork and practicing in McGrath or wherever they damn well please with no regulations, observations, credential, peer review, any kind of judgment. I think that anybody in the State desires a certain amount of protection. We protect the fish. We protect...for multitude of services provided. There has got to be at least some judgment pressed on people who come to the State and I don't see that there is guidelines to this type of thing.

in Alaska. They did that. I am just defining the words.

PF:

Well, if I can respond in sort of a conclusion to my response of this gentleman. I think the purpose of an interview is to evaluate the credentials. That is to determine their accuracy and their validity by asking questions about them and about the facts that they represent but I don't think that an interview is to evaluate the competency of the person that has presented you with these credentials. That is the whole different between credential licensing and ordinary licensing and is the difference between an interview and an examination. So, I hope that is more clear.

COX:

My name is Dr. Kohn from Fairbanks. Just to answer...I think the board or the Department of Commerce put together a pretty complete application. I know in my own case it took a long time to get all that information together..You have personal data. There is a picture of the candidate, education. We had to go into that... certified copy of our diploma from our dental school, a certified copy whatever regional board we had to take, as well as letters of recommendations from people who had worked with us or supervised us in the past. And I thought it was a pretty complete packet and gave a pretty good at who I was and what I had accomplished in dentistry and a good gage of what other...and I think..respected people thought of my work in dentistry. To me all that information was very easily checked by..you would have a picture of the candidate. My grades throughout all my schools are matters of public record and can easily (undisc.). Even if someone did slip through and forged all of this, you can always check...just checking school records and matching up photographs. I realize that takes more time and maybe someone would go through occasionally but if every candidate was checked with the information that was put down there and checking references, I don't see a problem with fraud or people really unqualified slipping through.

PE:

Dr. Locker.

LOCKER:

Well, one of the problems with someone slipping through, so to speak, is the fact that the board has absolutely no means to revoke a license. I can think of one example just recently that took a matter of probably six years or longer to revoke a license and then I am not sure his license was revoked. It was taken away (undisc.). You get individuals in here that are not treating people the way that meet the standards of community or the acceptable practices of standards of dentistry and you don't have a way of taking that license. How many people, for example, Dr. Jaeger hurt before you finally got his license. I was on Peer Review in '76 and we started a file on Dr. Jaeger at that time.

UNKNOWN:

Would a clinical examination prevent this absolutely?

LOCKER:

You can not test a person's moral in a clinical exam but you can test his competency and if he can perform the standards, you would only hope that he has the moral values and standards to perform the way he should.

UNKNOWN:

Did this individual that you mentioned receive his license by clinical examination or credentialing?

LOCKER:

I would assume he would assume he probably received it by clinical. I do not know. That means he doesn't have any moral standards. The point isn't whether he was capable of doing the dentistry, the point is we couldn't get his license once we found he wouldn't do it.

UNKNOWN:

Did he lose his license because of clinical competence or moral standards?

LOCKER:

He lacked in moral standards to perform in a competent manner to his patients so therefore we revoked.

UNKNOWN:

Well, I would just like to answer both questions if I could. First of all, I agree with what you said. You also I think pay \$200 when you send your application, is that correct? You would assume that \$200 went for something other than swelling the public poppers. That money should be spent for checking people to make sure that they are who they say they are. Second, with regard to your comment, under 08.36.315, the board may revoke the license if it was obtained by fraud, deceit or intentional misrepresentations. So it could be done. There is a mechanism there by statute.

UNKNOWN:

But what if his performance does not... (undisc.) proper treating his patients?

UNKNOWN:

Same statute, different section listing about a dozen different grounds for discipline including suspension or revocation or conditioning or limited licenses or putting licensees on probation. One of the items is #7..continue to practice...the licensee continues to practice after becoming unfit due to professional incompetence.

UNKNOWN:

How long does it take to revoke a license?

UNKNOWN:

I might add too that these are new statutes that weren't (undisc.) until the first of June so the things that Dr. Locker are referring to are under the old Practice Act and the old Practice Act did not have the teeth...it did not give the board the power and the AG.. Attorney General's Office never gave the board the support to go after the people. The investigative process has to be complete. We can't spend the time combing the streets trying to find bad apples.

UNKNOWN:

I would like to point out that there is a total of eight boards that give licensure by credentials. One being physicians, veterinarians, there is optomistrists..a few others.

UNKNOWN:

Okay, I might add to that...or ask this question. Is that fairly consistent with other states in those areas?

UNKNOWN:

I think so.

UNKNOWN:

And do you see the problem that we run into as being one of the very few, if not one of the only states that have this type of a policy. I mean, if it were a national policy versus one or two states having that policy and being put into possession as more of a catch-all for the indiscriminate practitioner, we will call him, to go in because it is easy to get in. Do you see the problem there? The potential problem to the public, which we are...

UNKNOWN:

But there is also checks.

UNKNOWN:

As pointing out at our last meeting too, there is a tremendous difference the national board (undisc.) boards that physicians take and those that dentists take. Most dental competencies throughout the country are tested by clinical examination and physicians don't undergo any type of clinical examination. They are tested for competency or their national boards are three or four times the length of ours and a lot more in depth.

UNKNOWN:

I think that (undisc.) application for licensure by credentials. Every part of that can be checked on and should be checked on. Everybody that applies has to have had a license in the United States which inclines that you take a national (undisc.) that you have also passed some sort of clinical examination.

UNKNOWN:

And we have no way of seeing whether the work the fellow does in his office is going to be of the quality that we expect to have people when they are practicing in Alaska. There is no way to check that up. We can't drag the guy's patients up here.

UNKNOWN:

One of the...I would like to ask, too.

PB:

Peter.

UNKNOWN:

One of the statutes 1 through 7, and I would like your interpretation on this..#2 in 08.36.234 says has been licensed to practice dentistry in another state, territory or region .. and the point I want to make...with licensing requirements at least equivalent in scope, quality and difficulty to those of this state at the time of licensure. What would be your interpretation of that? There is different types of clinical exams throughout the country. Regional exams..some require the same or similar procedures that we do. Some do not. If we continue this practice of credentialling, do you think we should delineate those examinations that we recognize as being equal to scope, in difficulty of that of our own?

UNKNOWN:

I think it would be a real good idea. Let people know what it means because only you, the board, can say that. I..you would have to have the exams and compare them or you would have to say something that has to include at least three hours of clinical, equivalent hours of...yes. And it would have to be in a regulation.

UNKNOWN:

In a regulation.

UNKNOWN:

That way the person is on notice and he won't come all the way up here and then find out that perhaps his...

UNKNOWN:

Right, he writes to the division and says please send me your pamphlet with your laws on licensing of dentists, he gets it. It is not in the statute but it is in the regulation.

UNKNOWN:

Because that has been a real bone in contention. I mean, all of a sudden there is a no guidelines. What examinations are equal in scope and, of course, you ask the candidate and they say, sure, mine was probably more difficult than Alaska.

COHEN:

Thank you, Mr. Chairman. I am Nelson Cohen. I concerned filing the TRO, which is restraining order before 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 concerned that I shared and a lot of other people shared and they can be handled better in open discussion as opposed to a courtroom. I feel that the board has got a lot of things that are legitimate to discuss and they are obviously do that. One of them..one of the primary things seems to be enforcement...laws that are already in effect, there seems to be for some reason a lack of communication on the part of whomever I am not sure but there are several laws which are effect right now some of which were just passed September 9, 1984 became effective then that directly effect this board. I have heard no one mention those things yet. I think particularly what I am referring to is in general that this board has the tools to make sure that anyone who tries to get into this State to practice is competent and is a qualified dentist that you would be proud to have practicing beside you. It also has the tools right now to make sure that those who practice here today continue to be competent. Now, we are focusing only on the first of those two and on one of the things that have been mentioned already is the application. And there has been concerns about whether or not certain things can be verified. I wonder if the board has had the opportunity to inquire about exactly what verification process has gone into. I understand from Mr. Treager, Mr. Mercer that they will entertain specific requests from this board as to what it is this board wants to do to check up on those people..those dentists who come here to try to get in by credentialing. That is, if you make a specific request that they check up on the neighborhood that person came from that may be able to be accomplished in certain cases, maybe in all cases. You may have a situation that Dr. Locker mentioned taking care of by changing the application. Affidavits could be provided but there is a con-

cern that somebody a liar and he fabricated his whole life. Let's have some affidavits there with names and addresses so that Treager's office can call these people. We don't really have a concern, it seems to me though, for the validity of the applications or for the qualifications behind the people who are here before you today...the ones who have already filed applications...the ones that should have been checked up on by now. Those people, I submit to you, if you have opportunity to talk with them, to read their applications are people who are eminently qualified. Some of these people are board certified, national board certification in oral surgeon, for instance, among others ...those people are not the kind of people that you are here today trying to worry about. Those are not the kind of people who turn into Bobby Layman's or Dr. Jaeger or any of these others. The problems that we have had in the past with dentists turning sour, I think the conversation is made clear today, is not a problem that can be stopped through the qualification period, the licensing by credentials. That is not where you get it. You get it later on through Peer Review and that is already enforced today. The new statute says that the board may authorize its representative to inspect the practice facility. You can walk right into somebody's practice now, as of today, to inspect to see whether or not they are doing what you think they ought to be doing, whether or not they are meeting your standards. That is in black and white and it is in effect today. It is law. So I think in sum, the board has the tools to protect the public. That is really not our concern today and the immediate issue you have before you regarding the emergency regulation, I frankly feel, is a discredit to this board that that would be passed and you would allow it to remain in effect the way it is worded right now and I congratulate you if you take the action and get rid of it right now. It is almost...i won't say silly...your intentions were well meaning. I can see the purposes behind it. They are outstanding purposes if you are trying to protect the public but to do it through an emergency regulation the way it was done is

all wrong it seems to me in my opinion, both procedural and substantively. There is no immediate danger to the public right now from the people who are before you trying to get admitted. In regards to your long term assuming that you go forward and get rid of the emergency regulation, it seems to me that it would be necessary to do what Peter has suggested and that is for you to go forward with his legislative alternative to have it taken care of that and I suggest this to you that it is either done that way or through adopting a regulation...a regulation... a real regulation...one that is going to stand up under the scrutiny of the courts, not something that says people in our State are immediately in danger today because certain applicants applied applications and they might get licensed That is what it boils down it seems to me in my interpretation. And your regulation is one which does not depart from established practice. It is one that you have open hearings on and you take care of things in a normal order of business so that everybody has an opportunity to be heard and that when the board makes its decision it is a well-founded, well-reasoned decision and perhaps looked at other states not necessary to copy but for guidance. Take the best from all of them and develop whatever you want on your own. So my suggestion to the board is to fulfill its obligation to the public and protect by implement the laws, using the laws that are already effect and making specific recommendations to Mr. Treager's office as to how to check up on people, change the application if necessary. And my further recommendation is to get rid of the emergency order immediately and to allow the interviews to proceed for those applicants who are on file at this time who have not previously had interviews including Dr. Benner, who tried to explain that he has written letters a couple of times and explain to the board that he wasn't able to make on short notices those examination. It shouldn't be held against him. He just like the other three who have been set in a category...well, there is six, excuse me. But the ones I am interested in frankly is Dr. Drager, Dr. Kohn and Dr. Sahakian.

Those three have their applications have their applications on file right now, along with Dr. Benner and I recommend that the board hear the interviews from those individuals and issues licenses just as you did last time to Dr....to several of the dentists who came before you for interviews. It is funny that you would claim, it seems to me in the course...I am not trying to point fingers, but when you claim their is an emergency, it seems to me strange that the same regulation is being used to allow the same dentists who are in the same categories to get in today without an interview. Thank you.

UNKNOWN:

I wholeheartedly agree with you on the maintenance of the practicing dentists competence in ensuring that the public is protected from the practitioner that has gone sour. Be sure that the practicing dentist..the licensed dentists continues and that is one of the areas that we need to look at and need to really work on it and it is something new. The other thing that I think that we need to make clear is that dentistry is a technically competence type of practice. The public, and that is the purpose of the board is to protect the public, if indeed you pass an examination, there is no assurance, and that has been stated, that you are going to continue to do that. However, if you cannot pass that, if you cannot perform it, you can be damn assured that it will not be done and why do you subject the public to it then. What is your justification of allowing the shotgun approach on the public?

COHEN:

May I respond?

UNKNOWN:

Yes.

COHEN:

I don't think it is a shotgun approach. I think what you have got is proof, substantial proof that goes into every job a man has held or a woman has held in making the application..every place that they have lived, every place that they have worked... their entire dental career is in front of you in black and

white. They are saying to you that we come to you qualified and the Legislature...this State said that when they come before you that way, that they can get admitted without an examination. The State has spoken to that. I mean, the law is there in black and white and that is what we are dealing with. That is why there was a problem with the June interviews, which were examinations in fact were changed. We are back to deal with that law and I think we have got to deal with it until it is changed. I suggest the best way to do that is to get rid of the emergency regulation, I think, wouldn't hold up at all and to get that law that you disagree with the interview changed so you have an examination. You can do that but do it the right way so it holds up and the right way it seems to me to do is to either promulgate a rule or go through the Legislature.

UNKNOWN:

So one thing is that along with what Tim was saying is you are talking about we have got it black and white and we haven't it. We did not have things black and white...not since that time we haven't. Okay. What we had black and white were x-rays that people showed us of work they had done, study models of work they had done. Now, that was black and white. That you could see. That you could point at and say, look this doesn't meet our standards. Now, if we can get to the point of having that again, that is great. I think it is close as the nearest pen because you can have those applicants make a showing...a sufficient showing that all you have to do is investigate it.

UNKNOWN:

I don't follow you.

COHEN:

Well, you have a background on an applicant. The background is complete. It shows everywhere he worked.

UNKNOWN:

It doesn't show his work. I am telling you, it doesn't show his work.

COHEN:

That is right and I agree with you. It doesn't show his work  
but to determine whether that was competence.

UNKNOWN:

And that is what counts in your mouth is what is somebody does  
in there....

-----END OF TAPE 3, Side B-----

UNKNOWN:

...people in Occupational Licensing but they talk..when there is a question, somebody calls up and asks them a question, they don't...don't believe they will give people an answer like yeah we have had a lot of trouble with this guy but we haven't been able to prove anything. What they will say is yes or no. Yes, he has had this action brought against him. They won't say this case has been on record for six years like in the instance of the other guy we were talking about. If they would have called up...if he would have applied to another state for licensure by credential and that other state or who-over calls up the Board of...or the Division of Occupational Licensing, they would have to say, no this guy hasn't ever had a conviction against him for any problems. So there this walks right in. Do you hear what I am saying? Bureaucracy is so slow on catching up to this stuff.

COHEN:

Well, I was in Assistant U.S. Attorney for four years and prosecuted Bobby Leman and when I got involved after the prosecution was over with that Dental Board here...dental boards in other places, I was making specific inquiries about prior history of him and other people in general to find out what their policy was on how they handled those things and I had no problem whatsoever with getting responses and I don't know whether there was anything special that happened when I was an assistant back in the past or not. Maybe that is what you need is the AG's office to call for you...to get that kind of information.

UNKNOWN:

We were specifically told in the matter of Dr. Jaeger that if we agreed with the stipulation that was agreed to by Monkman and Jaeger's attorney...that if it went down that way and that he was allowed to retire in July or whatever it was, that if any other state had inquired about his record in Alaska, it would have been clean. That is what we were told by the Attorney General.

COHEN:

There is the stipulation that was entered into. I mean, the board has the power to revoke, to suspend...

UNKNOWN:

Yes, but I am just saying that...

COHEN:

It wasn't done that.

UNKNOWN:

But what the concern of these doctors is that the same thing can happen in reverse this way and whatever investigation Treager's office would do it may not turn up the information that they are concerned with which has to deal with competency.

COHEN:

And again what we get back to is the difference clinical competency and morals and there is probably no way you will ever take care of that.

UNKNOWN:

One of the...it seems like a lot of the applicants we get are from the federal services as well at least on the public...in the private sector with the patient has an opt to go Peer Review or whatever and it is on public record filed with the department or what have you. It seems like the federal services ...I was in them myself don't have that necessarily that way.

UNKNOWN:

Well, I think that was spoken to at the last meeting. Dr. Smole answered that question for the board. Maybe you would like to hear it from him again.

SMOLE:

Yes, I would be glad to. We have an organized system and as you know bureaucracies really do, particularly the federal bureaucracy, do have requirements that look at quality. They have many regulations. The case of dentistry, we have an organized quality evaluation system where each dentist is evaluated in his own clinical environment with reference to a very specific set of criteria that evaluates a very broad scope of his dental

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practice not limited to three areas of operative dentistry. But we are looking at the safety features of his office..his radiation equipment, his use of nitrous oxide, his use of emergency drugs and whether or not they are available and updated in the clinic. We are looking at complete restorative work that he might do beyond operative dentistry. We observe surgical procedures and we have written criteria that reference those procedures and I think that the military does have a system where they do look at those sorts things in an organized manner.

PB:

Dick.

D MADSEN:

Yes, I think we have got a pretty good sense of where everybody is coming from here and maybe to move things along, we will try it again. I would at this time move that we repeal the emergency regulations that we permit all present applicants to be interviewed and next that we issue a new emergency regulation which suspends licensing by credentials until we have further examination or legislative action.

PB:

Okay, there has been...

D MADSEN:

Kind of cover it all at once.

UNKNOWN:

Can I suggest one possible amendment for your consideration. Maybe we should also take the steps to make that emergency suspension permanent because it is likely that a legislative solution would take more than 120 days.

UNKNOWN:

I agree.

UNKNOWN:

Can we just do one at a time?

UNKNOWN:

No. Do it all at once.

UNKNOWN:

I second the motion.

UNKNOWN:

Okay, I want to hear the motion.

D MADSEN:

First we repeal the presently existing emergency regulation.

UNKNOWN:

So repeal...

D MADSEN:

Repeal what is in existence right now...the emergency regulation.

And permit all present applicants for licensure by credentials

to be examined, not tested...interviewed rather is what I mean.

UNKNOWN:

Permit all present applicants to be interviewed.

D MADSEN:

And last that we issue a new emergency regulation carefully

drafted setting out what we think would be...concerns that we

have in accordance with the statute and ability that we have.

UNKNOWN:

I second it.

D MADSEN:

That new one obviously is to suspend all licensure by credentials.

UNKNOWN:

Well, then I think to speak it the second is because the main reason we have no regulations or affidavits currently in vogue or in practice to assure that ... and until we get those, I don't feel comfortable with opening it up for credentialing.

UNKNOWN:

I agree with (undisc.) that we have now. I would like to know what status these applications ought to be whether they are in the mail, postmarked today, somewhere in the process, whatever but to go into it...to another emergency deal, I am not quite sure that is the best way...maybe the only way. My thought would be to have a second motion that would in fact exercise our ability to may have license by credential to elect not to have licensing

by credential in a separate motion and then we would have licensing by credentials until such time as the legislative process changed the rules.

UNKNOWN:

Well, I think our attorney has more or less recommended that we go ahead ... more or less recommended that we go ahead and do it by adoption of emergency regulation rather than (undisc.).

D MADSEN:

I was following his suggestion when I made my motion.

UNKNOWN:

More defensible.

UNKNOWN:

Other than doing it the way I suggested which is the way that most states do it...most states don't have it.

UNKNOWN:

Because of departing from the established practice.

UNKNOWN:

That is what I want to do originally.

UNKNOWN:

Well, all I want to do is stay out of court and if we do that... say we have another emergency (undisc.) not doing it, then we have got to come up with all these reasons why it is an emergency and all the rest of this kind of stuff (undisc.) get rich. (undisc.) with the next guy that wants to apply by credentials.

UNKNOWN:

I don't think I have any clients who haven't applied.

UNKNOWN:

Where is if we do it the other way, we don't have to address the definition of what emergency exist today.

UNKNOWN:

... trying to make and what I think we are trying to do is I disagree with some respects said over here because I don't think we have all the tools. That is why we are here with this problem.

UNKNOWN:

I agree.

UNKNOWN:

We don't. Therefore, what we are doing I think is saying anybody who has reasonably relied on our past practices, they are protected all right? Which they should be. But let's stop it and let's do it right.

UNKNOWN:

Right now, if we do it this way, we are still obligated to come up with a definition of emergency.

UNKNOWN:

Yes, we were with the last one that the drafter in the division wasn't familiar enough with all the facts and didn't have the knowledge.

UNKNOWN:

I agree that we ought to be able to examine the competence. I think we are all in agreement on that. It is just a matter of how we do it.

PF:

If we do the emergency regulation approach, that is, reinstating another emergency, then I would propose...if that is what the board adopts..then I propose that I sit down with one or several board members that have the expertise and the knowledge and try to put that into correct form for a Finding of Emergency and then return it to the board for formal action before you are done today and I have notified the typist just in case to be on standpoint...in case whatever you decide today needs to be prepared on paper.

PB:

So it is your opinion, Peter, that that is the way we should go rather than taking Bert's line of just saying...taking the option of may and just discontinuing it completely.

PF:

Yes, I think it would be better.

UNKNOWN:

I call for the question.

PB:

Okay, there has been a motion to repeal the emergency regulation and permit all present applicants to be interviewed and issued a new emergency regulation correctly worded to suspend all credentialing applications.

UNKNOWN:

My first question was where is the process of the application and then contacts..

PB:

I think we need to talk about it where there seems to be quite a bit of question at the table as to what we are deciding here.

MERCER:

Applications to process, such as applications (undisc.).

UNKNOWN:

I think we just may have to take it on a case-by-case basis but basically if somebody is relying on our past practice (undisc.), I don't know where you draw the line.

MERCER:

(undisc.) licensure by credentials (undisc.).

PB:

I think Peter should be able to answer that. Pete, when will take..if we go up and pass this and you go up and get it typed and we have got the emergencies established and validated, when would this take effect? In other words, who should be included and not included?

PF:

Right. That is a good question. There is two different questions. The soonest that it could take effect would be next Tuesday, the next business day down in Juneau that the Lt. Governor could file it. But you can also make an emergency regulation effective at some time ... it can be effective immediately upon filing by the Lt. Governor or at a time certain. That is any time after that and that may be the approach to use here. That was just a suggestion that Kay Gouwens, who I introduced earlier, also from the Attorney General's Office from Anchorage, that she relayed to me.

Since there may be applications in the mail or in various stages, pick a time period that seems reasonable...10 days from today or two weeks or .. I mean, x...received by the division by x date. I am not sure what that time period should be. I mean, that would be totally under discretion.

UNKNOWN:

You have one problem that I foresee is Alaska Statute...unless I am mistaken..require a specialist to have a specialty license in Alaska and you may have a problem in that somebody who has a general dental license in Alaska receiving specialty training and comes back in that period and cannot practice as a specialist and you have no mechanism for examining him as a specialist.

UNKNOWN:

No, we have that.

UNKNOWN:

We are all right there.

UNKNOWN:

If they have a general dentistry license.

UNKNOWN:

But you have to get your specialty license by credentialling.

UNKNOWN:

No, no. You do not. We just review it.

UNKNOWN:

Okay, I am mistaken then.

UNKNOWN:

What about the person that is going to come in the future..let's say an oral surgeon that has been practicing in California for 20 years?

UNKNOWN:

Well, we are going to assume...address that when we feel that we have got the ways to assure that credentialling process is going to be done properly under the guidelines that everybody has testified to today.

UNKNOWN:

There is going to be some discussion on specialty licenses.

UNKNOWN:(WOMAN)

I just want to make point. I have following the conversation closely. If you suspend the emergency regulations for say a period of 10 days and then reenvoke them, who exactly are you protecting? I mean, I think the board says..the board is saying to the public there is no emergency for 10 days and those people that are applying now..it is all right. But after a period of 10 days, then anything after that is an emergency.

UNKNOWN:

I agree with that.

UNKNOWN:(WOMAN)

I am fearful of the way this is going to be received..this board action would be received.

UNKNOWN:

Prospective emergency..anticipate...

WOMAN:

I don't mean to muddy the water but I was just sitting here listening to the conversation thinking this is not sounding very good.

UNKNOWN:

The board feels that we have one now but we are told that the way it was written has no teeth because we didn't support the emergency so..

WOMAN:

So, no, there is not going to be any emergency for 10 days and then suddenly there is an emergency again.

UNKNOWN:

I don't know. Let Pete.

PF:

I think it revolves around the Finding of Emergency which is this piece of paper that is required by the statute that says agencies can adopt emergency regulations and it has to specifically set out the facts that constitute an emergency. In the case of the emergency suspension that is now in effect that we are talking about repealing, that Finding of Emergency

which is about this long, single spaced, no paragraphing or numbering. It is hard to read. It is not very clear or specific as to why it is an emergency or why it is in the public interest or how it protects the public or what the real concern is here. It essentially...it is too bad that I didn't copy that when I was copying that when I was copying stuff. It talks about the inconsistent advise that the board has received in the past on this interview for this exam.

UNKNOWN:

That is our emergency.

PF:

Well, I think we have been consistent on the emergency part. It is just that when you do emergency regs, you have to be careful and specific and clear in your findings and the second time...that was not done adequately or as well as it could have been the first time around. We can make sure with me working with a couple of the board members here today that it is done that way the second time. It is not the existence of the emergency...that it is anymore of an emergency x period of time from now than it was on September 15. It is that we can do it more thoroughly and correctly this time.

UNKNOWN:

But again, why wouldn't..

WOMAN:

If I may just respond to that and finish (undisc.) interpret again. And I don't even know if this is the proper thing to say but I think that not only are you doing what is best for the issue but you must also deal with the preception that the public has of actions you are taking and it is just my very personal opinion, if you continue...the preception of the public is not going to be what you wish it to be and you really..I think it is helpful to have public support.

UNKNOWN:

I agree.

UNKNOWN:

Again, back to the thought that I had before is why deal with the second emergency deal? Why not just appeal this emergency thing and then just use what our interpretation of the statute is which we may or may not issue license by credential and then just not do it for awhile.

UNKNOWN:

(undisc.) continues to applies because of our previous practice and saying that we relied on that..I have changed my practice, I quit. I (undisc.) from Alaska.

UNKNOWN:

Then why can't we say that we won't do it for six months or we don't do for...

UNKNOWN:

Well, we (undisc.).

UNKNOWN:

Because one is defensible and one is not.

UNKNOWN:

Why don't just maintain the emergency suspension and adopt supplemental Finding of Emergency with more specific wording and reaffirm it. That seems to be what she is saying and it also seems to be that an emergency is an emergency and it stays an emergency.

UNKNOWN:

The difference is the way it effects the people with pending applications.

UNKNOWN:

That is what we have taken...we don't mind taking care of that part but I agree with...preception is reality and when people perceive out there to be the intention of the board is going to be reality in their minds and I am not a dentist. So I really don't care whether or not people perceive your antitrust or whatever it might be but I just don't see why we want to let them even have a shot at it.

UNKNOWN:

I am not a dentist either but I think our situation is that we are suppose to protect the public and not necessarily be concerned about how they feel about what we are doing.

UNKNOWN:

Well, I agree with. Either way we are doing the same thing, Dick. We are still not going to be doing licensing by credential any way we do it.

UNKNOWN:

We protect them inspite themselves.

UNKNOWN:

Is there somewhere in between? On one hand, you say open the door to credentialling and on the other hand, you say it an emergency (undisc.)? What about getting rid of the emergency and is it possible to have some sort of moratorium on credentialling for six months?

UNKNOWN:

That is what we are saying.

UNKNOWN:

But not call it an emergency.

UNKNOWN:

(undisc.) terminology emergency closure.

UNKNOWN:

I have no great preference one way or another. I think that motion was just to get on table.

UNKNOWN:

Get some discussion on it.

UNKNOWN:

I will be glad to amend it.

UNKNOWN:

Why don't we take care of the repeal first and then let's just have a second.

UNKNOWN:

Do you want to separate adopt and repeal it (undisc.) some idea as to what we have got for backup.

UNKNOWN:

Well, I think we are all basically of the same mind. It is just what kind of a box we want to put it in..whether we want to put it in a box ... we just going to cease interviewing...licensing by credentials for the time being or whether we are going to have another emergency regulation to stop it.

UNKNOWN:

So, Pete, how does it hold up to cease it? You just can't...we tried that...we discussed doing that before and we were told that what we need to do is that 120 day suspension.

PF:

Okay, the Administrative Procedure Act says that the way that State agencies are suppose to adopt policies that effect the public is by going through...by adopting regulations. I mean, not just policies that are voted on as resolutions or instructions that are put in application forms and usually that takes...it has to go through a time consuming process before the regulation can become effective. But you can make the regulation effective immediately or any time thereafter, if there is an emergency. That is, as I said an immediate threat to the public health, safety and welfare quote. And if all these procedural hoops are jumped through and a Finding of Emergency sets out some specific facts of why it is an emergency. So..I mean, I think the word emergency especially when...as you suggest, an emergency..what we are talking about does sound pretty strange. An emergency repeal of an emergency suspension and then an emergency reinstatement of the same thing. But that is just...we are trying to work within the Administrative Procedure Act, which people are trying to rewrite it now. It is not a perfect document or anything. Those are the administrative legal...

UNKNOWN:

Pete, how long would it take if you went through a regular... promulgated a rule and made it a regulation? If did it...done an emergency, which seems to (undisc.) which some people are concerned about? What is the shortest period of time.

PF:

Well, I would say..well, probably two months because...you can't adopt it...well, more than two months because there is two unavoidable 30-day time periods. One is you can't adopt a regulation until 30 days after you give the public notice. So it has to be 30 days between the date the notice is signed by the chairman or by Harry Treager and the date the adoption order is signed. At least 30 days there and at least 30 days while it is sitting in the Lt. Governor's Office after he has filed it before it can become effective.

UNKNOWN:

And then it wouldn't be (undisc.) in court necessarily like an emergency reg?

PF:

Right. Then you have got emergency out of it but you talking about...add an extra 15 to 30 days for minimum absolutely expedited processing in the Division of Occupational Licensing, the Attorney General's Office and Lt. Governor's Office.

It would take at least two weeks to three...and you are getting it at Christmas time.

UNKNOWN:

Do all the people that are being considered under this...the six or seven people..all have their application in prior to the signing of this emergency stuff?

UNKNOWN:

Yes.

UNKNOWN:

They do.

UNKNOWN:

Okay, are they necessarily covered under the emergency act. In other words, they have had their application in before, can we review their applications on credentialling and not have them covered under this emergency stop order and simply amend the emergency stop order until we get regulation?

PF:

(undisc.) no objection to a Finding (undisc.) because there was no emergency created by their applications.

UNKNOWN:

I mean is that way out of...we are seeking a way out of the... we don't go revoking a emergency order. We continue the one we are going to be immediately amending it today so that indeed we are not open to more applications during this time until we can get ..

PF:

We can include in the supplemental Findings or reaffirmation of the original adoption of the thing. The thing about that is that it would be a hard and fast cutoff. Applications received prior to October 17 only..

UNKNOWN:

Was in the mail?

PF:

Well, maybe you could stretch it for in the mail...postmarked on the 18th.

UNKNOWN:

That's really going to work because you said that basically that the order...the emergency we have now isn't going to stand up when he comes after us.

PF:

To be realistic, I mean, how careful you are depends on your vulnerability, your likelihood.

UNKNOWN:

Okay, so we are going to strengthen the order we have now?

PF:

It is right. It is immediate option #3 on this list. Maintain emergency suspension but adopt fundamental...or supplemental Finding Emergency.

UNKNOWN:

But cut it off at the previous date?

PF:

Right. And that is really in terms of clarification. That is focusing on receipt of...it is a suspension of receipt of applications rather than just...

UNKNOWN:

Okay, but theoretically between the time we strengthen it, which is going to be this afternoon, anybody that has got an application in could in fact say well, my application was under the previous ..

PF:

That is right.

UNKNOWN:

..unrestrained rule, therefore it probably makes more sense to common up with a time certain somewhere else to prevent all of that.

PF:

Yes, and the only way to do that is by emergency...an emergency which has that fairly unusual appearance.

UNKNOWN:

I don't know...I don't care.

PF:

I don't know what you have got on the table that was received after October 17. I mean, that is legitimate...

MERCER:

Very little. If I have any application (undisc.) no documentation and there has been timely response to them so they are in the very preliminary stages (undisc.).

UNKNOWN:

I wonder if we might not add just one thing and that's .. if we do this, no matter what we do, I think it is going to be reported and the people are going to pick this up. And I wonder if we shouldn't just at least state what our policy is. It may go out looking like we just want to discontinue with licensing by credentials all together and I don't think that is our general idea..our intent. I think we want to do it and the policy of

the board is there is a justification for licensing for credentials, it is just that we do not feel at the present time under the present statute that we can adequately protect the public interest.

UNKNOWN:

By reviewing the competence of the applicants.

UNKNOWN:

I don't want it to just appear that we just said, boom, slam the door in everybody's face.

UNKNOWN:

I agree.

UNKNOWN:

So we need the motion?

UNKNOWN:

I think it is best for Pete to make the motion.

PF:

Me? Okay. I will maybe take a shot at trying to word a possible motion for a board member to make. That we...I guess that the suggestion would be that we follow immediate option #3 which is maintain emergency...the emergency suspension...the October 17 emergency suspension but adopt supplemental Findings of Emergency with more specificity as to why it is an emergency and also reaffirm and clarify the suspension that .. reaffirm it and clarify it that it effects only applications received after October 17. I guess that is pretty...probably a lot of extra words. Hang on a second, I will try again.

UNKNOWN:

Are you going to withdraw yours?

UNKNOWN:

Yes.

UNKNOWN:

October what? 17th?

PF:

Right.

PB:

So, Dick, you withdraw your motion.

D MADSEN:

I would move to withdraw mine with the consent of the second  
(undisc.).

UNKNOWN:

Do you have a new motion?

UNKNOWN:

As soon as he gets it revised. He is going to write it down.

PF:

Okay, I think I have got it. It hasn't changed a whole lot  
but. It would be to..along the lines of what is on the hand-  
out of options as immediate option #3. Maintain the October  
17 emergency suspension of credential licensing but adopt a  
supplemental Finding of Emergency along with...let's say...  
which elaborates more specifically on the emergency and which  
reaffirms the adoption of the suspension and clarifies that  
it applies only to applications received after October 17.  
Does that sound like?

UNKNOWN:

Complete applications, does that make a difference?

PF:

It could, yes.

UNKNOWN:

Completed applications.

UNKNOWN:

It doesn't seem real clean. It seems like there is something  
...

PF:

Kay, does that sound like it..covers what we are talking about?

K GOUWENS:

Yes, I guess so. The only question I guess that I haven't  
heard addressed by it is whether there are people out there  
who have in some way relied on the board's old system (undisc.)  
prejudice (undisc.) concerns and I guess that is why I suggested  
they insert it.

PF:

Right. The thing about that is that I think that with supplemental Finding, we are in a much more defensible position with this emergency suspension. I mean if we get some clarification and specificity on record, on paper, to be filed in the Lt. Governor's Office with the first one.

UNKNOWN:

I guess we are dealing with two questions here, aren't we? One is the maintenance of the emergency order and the second is how to deal with those applications received prior to the cutoff date.

PF:

Right. And we are dealing with that second thing by clarifying that the original intent was only to effect applications received after the effective date.

UNKNOWN:

So those people prior to October 17 will have a licensure by credential interview before this board without any examination portion (undisc.)?

UNKNOWN:

That is right.

ROFAFF:

I have got one point. I have heard no word whether or not the application I submitted was complete.

UNKNOWN:

I don't know the answer to that question. The division people might.

MERCER:

As far as I know, it was complete (undisc.) because of the emergency suspension. It is complete to the best of my knowledge but it has not been approved by the secretary of the board at this moment.

UNKNOWN:

So you fit in with...

UNKNOWN:

What date was it received?

MERCER:

All these applications...all six of these are within...outside of the effective date.

UNKNOWN:

Before October 17?

MERCER:

Right. So he is (undisc.) assuming his application is okay.

UNKNOWN:

Are you one of the people on the list, then you are in.

UNKNOWN:

(undisc.)

UNKNOWN:

Does that seem clear enough for you? Is that..

COHEN:

I think that for the people for applied, it is clearly fair and I think that you have got a really tough decision because you are changing a policy and somebody is going to get hurt somewhere down the line and I don't know of anybody who hasn't applied personally and that is all I can tell you. I think that the way that you are doing it may be about the only way you can do it short of simply saying that we are rescind the emergency, interview those up to October 15..or 17 rather and we are going to sit on the rest until 10 weeks from now when we have a new one that has none of these drawbacks to it where somebody can come in and say hey there is really not an emergency and I filed my November 20 and hell there is no real emergency so I want my interview the way all these other people have. The cleaner way to do it leaves you open to those applications that come in between October 17 and when the new regulations goes into effect and I just don't know how to speak to what numbers you are talking about or what problems you may run into. The cleanest way is to do it that way. It seems to me it is irreapproachable. It is solid. You have a new rule and nobody can attack it. You gave everybody notice and there was hearings on it and you promulgated rules, accepted and signed and all that other good

stuff. But for those 10 weeks, you don't know who is going to apply and what you have to rely on is what you have now, which frankly isn't so bad for the moment. I mean, it is a temporary interim stop gap measure...cleanest way to do it.

UNKNOWN:

I see it, we can't do it by regulation and try to do what (undisc.) accomplish.

PF:

In terms of exam, determine qualifications (undisc.).

UNKNOWN:

The statute pretty well sets it out. That is what has to be changed.

GOUWENS:

Maybe I am missing the boat here. (undisc.) couldn't they be regs say that they are changing this past policy of exercising the discretion of allowing people in by credentialling and that reg would stay in place pending a legislative change or (undisc.) credentialling.

PF:

And that is another reason why...if that is the intent to make this permanent, why there should be another Finding and an adoption order anyway because you have to do that in order to make something..to make an emergency thing permanent. That wasn't done in this original Finding and adoption order and we are still within the time window because we are only how many...less than 20 days after October 17 so we can still hurry up and make it.

COHEN:

I missed something there. Run that by me again.

PF:

Well, to make this..I gather that the intent of the board would also be to make this...to take the necessary steps to make the suspension permanent instead of having it last just 120 days.

COHEN:

We are talking about changing it so that they can have an examination..the way they want an examination and they want to get their thinking about getting rid of the emergency order and either instituting a new one or keeping..either supplementing the one they have or getting rid of the one they have and writing a new one or my suggestion was the cleanest one to do is get rid of the one you have and begin immediately to promulgate a rule that will say that you are not going to do anything at all on licensing by credentials until you have an opportunity to deal with the Legislature. Now, promulgate the rule you said would take 10 weeks.

UNKNOWN:

Right.

UNKNOWN:

That is solid.

UNKNOWN:

He is saying a 10 week window. He saying the same thing. Make a permanent emergency thing until it is changed.

UNKNOWN:

Right, is that what you are saying?

PF:

Right. Except what Mr. Cohen is talking about is to have a window between now and 10 weeks from now during which credential applications would be received and the applicants would be interviewed but not examined.

UNKNOWN:

Would they have to be completed applications received within that window?

COHEN:

You can certainly do it that way.

PF:

But see that doesn't accomplish what as I get as the board's (undisc.).

UNKNOWN:

That is a minimal time that you are talk'ng about.

PF:

Right.

UNKNOWN:

It may be six months. It could go for a long time so...right, we would really have a problem. So I think that the emergency stop order .. and maybe an extension of that...

PF:

Right. The only way to extend that is to make it permanent and we can..

COHEN:

You have got an attorney on the board that thinks it is defensible and I am not going to say it is not defensible. I certainly don't have any interest here today with my clients to say that a new emergency order that is going to allow for my people to get in is going to not be valid down the road. I have no interest in that so let me just make that clear.

PF:

Not only are you beefing up the defensibility of the emergency suspension but you are also by clarifying it eliminating the ..all of the known potential challenges. So essentially you are limiting to people to whom ... get some you would have to defend it. So you are accomplishing two things.

UNKNOWN:

We can take of that in the...

PF:

In the motion.

UNKNOWN:

...in the suspen...by maintaining and supplementing, we can go to an unlimited time.

PF:

Yes, I would have to add that to the proposed motion.

UNKNOWN:

So we would have to do that within the 120 day period?

UNKNOWN:

We can do that now.

PF:

Yes, but we have only used up..what 22 days so it can still be done.

UNKNOWN:

Who is going to get that done?

PF:

I think it is me.

UNKNOWN:

You think is you.

PF:

That is what I am here for. I mean, I am looking around to.. I would like to have maybe one or two board members that can help me elaborate with detail and specificity in the findings so maybe we can get one or two people that can do that and then we can prepare something, typed up to present to the whole board. We could do that without injuring the quorum.. or taking away from the quorum.

UNKNOWN:

So do you want us to pass this resolution first?

UNKNOWN:

No, I am not telling you to pass it or do anything.

UNKNOWN:

No, I am saying shouldn't at least pass it first and then go up and write the specifics so you can go on with your business.

UNKNOWN:

I would like someone to repeat it so I can understand.

UNKNOWN:

Okay, he is going to repeat.

PF:

Okay, to maintain the October 17 emergency suspension of credential licensing but to also adopt a supplemental Finding of Emergency with more specificity and reaffirm the adoption of the emergency suspension, clarify that it applies only to applications...

UNKNOWN:

Completed applications.

PF:

Pardon.

UNKNOWN:

Completed applications.

PF:

That is applies only to applications which were not complete by October 17...better say what it does apply to...comma, and that the board intends to make it permanent. And permanent means longer than 120 days in this context because that is only..it is either emergency reg for 120 from October 17 or it is called a permanent reg. I think we have the understanding that it was stated by the board here that policy is that we are working toward legislative (undisc.).

UNKNOWN:

And I think it should be stated there too permanent until regulation or statute changes can be made.

PF:

Okay. Yes.

UNKNOWN:

So that our full intent is in the wording of the amendment.

-----END OF TAPE 4, Side A-----