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PURPOSE OF THE REPORT

In accordance with a Legislative Budget and Audit Committee request and the provisions of Title 24 of the Alaska Statutes, this special report has been prepared to evaluate the Alaska Board of Dental Examiners' licensing and examination practices.

We were requested to review the Board's examination practices to determine whether they are setting standards which are artificially high in order to limit competition. In addition, we performed a follow-up review of actions taken by the Board in response to House and Senate Letters of Intent adopted in conjunction with the passage of CSHB 614(HESS) (title am), an act extending the termination date of the Board of Dental Examiners, during the second session of the 14th Alaska State Legislature.

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ORGANIZATION AND FUNCTION

The Alaska Board of Dental Examiners was created in 1955. The Board consists of seven members; four licensed dentists, one dental hygienist, and two public members which are appointed by the Governor subject to confirmation of the Legislature. Board members serve terms of four years.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing. Administrative functions of the Board are provided by Occupational Licensing, such as processing applications, maintaining licensing files, answering inquiries, and providing investigative support.

The primary function of the Board is to ensure a minimum quality of dental care to Alaskans by licensing qualified applicants and establishing regulations necessary to enforce statutes. The Board regulates dentists, dental specialists, and dental hygienists who perform services in the State. Special permits are issued by the Board to Federal agencies that supply dentistry to residents of isolated areas remote from major population centers.

The responsibility and authority for evaluating the competence of candidates for dental licensure are vested in the Board. A clinical and written examination has been developed by the Board to assess a candidate's competency. The clinical examination is a two day practical examination, requiring candidates to complete an amalgam and a gold inlay restoration procedure. Dental hygienists are also required to take a clinical and written examination. Although dental specialists are not required to take an examination, they must be licensed dentists in Alaska and may be required to have completed additional years of education in their specialty area.

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REPORT CONCLUSIONS

AUDITOR COMMENTS/CONCLUSIONS

The Alaska Board of Dental Examiners has historically been the subject of much criticism. Criticism has been prompted by high failure rates experienced on past dental examinations and by the Board's decision not to provide a means for dental licensure by credentials as allowed by Alaska law. Though it is an inherent nature of all licensing boards to restrict entry into regulated professions to only those applicants possessing satisfactory qualifications, it has been suggested that the Alaska Board of Dental Examiners may be overly restricting entry into the dental profession in Alaska through adherence to licensing standards which are artificially high in order to limit competition. In our review of the Board's examination and licensing practices and procedures we did not find evidence which supports this contention. We did find, however, that entry into the dental profession in Alaska has been effectively limited due, in part, to the Board's failure to provide a means for dental licensure by credentials and, in part, to the commonness of high failure rates on past dental examinations.

We have included recommendations in this report which, if implemented, would serve to minimize the natural tendency to restrict entry into the dental profession in Alaska by allowing easier access to dental licensure in the State, while at the same time continuing to ensure adequate protection to the public by only allowing licensure to those dentists who are qualified and competent to practice dentistry. Our recommendations are included in the findings and recommendations section of this audit report.

REGULATION OF THE DENTAL PROFESSION

All fifty states plus Puerto Rico, the Virgin Islands, and the District of Columbia, regulate dentists through licensure. Regulation through licensure of qualified dentists is necessary to protect the public's health, safety, and welfare. Though specific requirements for licensure vary between jurisdictions, two common elements involve the need to ensure that all candidates for initial licensure possess satisfactory theoretical knowledge and can demonstrate satisfactory clinical skills. Theoretical knowledge is measured by the use of written examinations while clinical skills are assessed through the use of practical, or clinical, examinations requiring procedures to be performed on patients. Successful completion of both written and clinical examinations, in some form, is required prior to initial licensure in all jurisdictions. (See Appendix B and Appendix C.)

ALASKA DENTAL EXAMINATION

Subject Matter and Administration

Like elsewhere, the Alaska dental examination consists of both a written and clinical examination. Topics covered on the written portion of the Alaska dental exam include oral diagnosis, oral medicine, radiology, prosthetics, and Alaska statutes and regulations governing the practice of dentistry. The clinical portion of the examination requires candidates to complete amalgam and gold inlay preparations and restorations on actual patients. (Until the most recent exam, a gold foil preparation and restoration was also a clinical requirement). The subject matter of both portions of the Alaska dental examination, as well as the overall administration of the exam, are commensurate with similar examinations administered by other states and by regional dental testing boards or agencies. (See Appendix A.)

Test Results

The failure rate on the Alaska dental examination has historically been higher than that experienced on similar exams administered elsewhere. For example, in 1981 Alaska failed 48.1% of all dental candidates, compared to a 15.5% failure rate for the nation taken as a whole. (See Appendix F.) Alaska dental exam failure rates on the five examinations given between November 1983 and November 1985 oscillated from 33.3% to 88.9%, with an average failure rate of approximately 59.3%. (See Appendix G.)

The Alaska Board of Dental Examiners is aware of public concern related to high failure rates on the Alaska dental examination. The Board has been reviewing, for some time, their exam scoring procedures in an attempt to identify areas where improvements could be made. As a result of this review, and in response to House and Senate Letters of Intent adopted during the most recent legislative session, the Board took action at their June 1986 Board meeting to restructure the content of the examination and to revise the scoring procedures used in conjunction with the grading of the clinical portions of the same. The Board eliminated the gold foil subject of the clinical examination and adopted a new "criterion based" scoring system recommended by a consultant hired to calibrate examiners for the August 1986 dental exam. The Board also resolved to provide for examiner calibration on at least an annual basis in order to promote consistency between examiners.

The restructured examination and newly adopted scoring procedures were utilized for the most recent Alaska dental exam which was conducted on August 15-17, 1986. The pass rate associated with this particular examination was 75%, the highest experienced on any Alaska dental exam in the last 9 years. Though it is premature to conclude that the Alaska dental examination and associated scoring procedures are no longer in need of any revision, a pass rate of 75% does indicate that positive steps have been taken. Alaska's pass rate on the August 1986 dental exam compares more favorably with pass rates on dental exams administered by other western states and by various regional dental testing boards or agencies. (See Appendix H.)

LEGISLATIVE INTENT

Both bodies of the Alaska State Legislature adopted Letters of Intent during the most recent legislative session in conjunction with the passage of CSHB 614 (HESS) (title am), an act extending the termination date of the Board of Dental Examiners. The two Letters of Intent are the result of legislative concerns formulated during Sunset hearings conducted by the House and Senate committees on health, education, and social services (HESS) while contemplating the continuation of the Board. Legislative intent and actions taken to date by the Alaska Board of Dental Examiners in response to that intent is summarized below.

A. House HESS Committee Intent

1. Complete continued competency regulations.

Board action to date: The Board has been working towards adoption of regulations along this line for quite some time. Proposed regulations requiring proof of continuing education at license renewal dates for both dentists and dental hygienists were reviewed at the Board's June 13-14, 1986 Board meeting and subsequently adopted by the Board at their August 16, 1986 meeting. The Board appears to have complied with the intent of the Legislature related to this issue.

2. Develop new procedures for credentialling including credentialling for dental specialties.

Board action to date: The Alaska Board of Dental Examiners heard testimony at their June 13-14, 1986 meeting, and again at their August 16, 1986 meeting, regarding the credentialling of dental specialists and the theoretical ramifications of licensure by credentials in general. Beyond this, the Board has

taken little action which appears to be moving Alaska closer to reinstating licensure by credentials, as allowed by AS 08.36.234, or to providing licensure by credentials for dental specialists.

The current Board's position, though not the position of all members, was reiterated by the Board's President for the benefit of those present at the June 13-14, 1986 Board meeting. He noted that the Alaska Board of Dental Examiners would not accept administrative credentialling and was opposed to any form of credentialling without at least an oral examination. (Current law does not provide for an oral examination, only a personal interview.) The Board has not taken steps to either repeal the emergency regulation by which licensure by credentials was ceased, or to develop new procedures for credentialling including credentialling for dental specialties.

3. Restructure the examination, including elimination of the gold foil portion of the test, and scoring procedures, including calibration of scoring techniques.

Board action to date: The gold foil portion of the clinical examination was eliminated, and a new "criterion based" scoring system adopted by the Alaska Board of Dental Examiners prior to the administration of the August 15-17, 1986 Alaska dental examination. In addition to actions taken to effect the above, the Board also resolved at their June 13-14, 1986 meeting to provide for examiner calibration on at least an annual basis, preferably prior to each exam. Actions taken by the Board in restructuring the examination and its scoring procedures have been in compliance with the intent of the Legislature.

4. Evaluate the possibility of joining the Northwest Regional Examining Board.

Board action to date: At their June 13-14, 1986 meeting the Board of Dental Examiners formed a committee, in response to legislative intent, to look into the possibility of Alaska's affiliation with the Western Regional Examining Board (WREB). ("Northwest" is a misnomer in the House Letter of Intent). The committee reported to the Board at the August 16, 1986 Board meeting that as a result of their inquiries the WREB had extended an invitation to the Alaska Board for one member to attend and observe their September 28-30, 1986 dental exam at the WREB's expense. The Board opted to accept the invitation and, in addition,

resolved to seek funding to cover the expense of sending the dental hygienist member of the Alaska Board to a WREB dental hygienist exam. The purpose of this trip would be to evaluate the possibility of Alaska's affiliation with the WREB for testing Alaska's dental hygienist candidates.

As evidenced by the above, the Alaska Board of Dental Examiners is in the midst of evaluating the possibility of joining the Western Regional Examining Board. The evaluation is being conducted in order to adhere to the intent of the Legislature.

B. Senate HESS Committee Intent

1. Exercise statutory authority under AS 08.36.234 to license dentists by credentials, including credentialling for dental specialties. (The intent of the Senate HESS Committee mirrors that of the House HESS Committee on this issue, but in addition, urges the Alaska Board to repeal the existing regulation under which the Board ceased licensing by credentials.)

Board action to date: See actions taken per item A.2. above.

In addition to these specific items, the Letters of Intent adopted by both the House and the Senate called for reports to be submitted to the Legislature by the first day of the first session of the 15th Alaska State Legislature. It is expected at this time that the Alaska Board of Dental Examiners will comply with these requests.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Alaska Board of Dental Examiners should issue dental licenses to qualified dentists based on their performance records in lieu of requiring they pass an examination. (Licensure by credentials).

Alaska Statute 08.36.234 established provisions by which Alaska dental licenses could be issued to dentists already licensed in another state, territory, or region without requiring that they pass the Alaska dental examination if certain specific provisions were met. Issuing a license using a performance record in place of an examination is termed licensure by credentials.

The American Dental Association (ADA) believes, as noted in their stated policy on guidelines for licensure, that an evaluation of a practicing dentist's theoretical knowledge and clinical skill based on his/her performance record can provide as much protection to the public as would an evaluation based on examination. The ADA also believes that requiring a candidate who is seeking licensure in several jurisdictions to demonstrate his/her theoretical knowledge and clinical skill on separate examinations for each jurisdiction seems unnecessary duplication. Twenty states, including the District of Columbia, currently provide for some means of dental licensure by credentials, as did Alaska prior to October 17, 1984. (See Appendix D.)

The Alaska Board of Dental Examiners allowed for the issuance of dental licenses based on candidate's credentials during the period June 1, 1980 to October 17, 1984. (Eight of 83 dental licenses issued during that time were based on credentials - See Appendix E.) The Board adopted, by emergency order, a regulation effective October 17, 1984, which resulted in the cessation of licensure by credentials (12 AAC 28.950). This action was prompted by problems with the procedures followed by the Board when conducting personal interviews of candidates as required by AS 08.36.234(7). These problems were originally addressed by both the Ombudsman's office and the office of the Attorney General.

In January of 1983, the Ombudsman's office found fault with the credential licensing process used by the Board while investigating a complaint that the process was unfair and arbitrary. The Attorney General's office subsequently determined that the Alaska Board of Dental Examiners was, in effect, conducting an "oral examination" in lieu of an "interview," by requiring case studies be presented during the interview process. This, they said, was not proper

since there were no regulations which gave notice to applicants that the "interview" would be conducted as an examination, and that the requirement of a "personal interview" could not, by any stretch of law or logic, be construed as implementing an examination requirement in the absence of such regulations. The Attorney General's position prompted the "reinterview" and licensure of 14 candidates previously denied licensure by credentials, bringing to 22 the total number of Alaska dental licenses issued in this manner. (This amounts to approximately 17% of all dental licenses issued since June 1, 1980 - See Appendix E.)

Contrary to the belief of the American Dental Association, the majority of the members of the Alaska Board of Dental Examiners do not believe that a licensed dentist's clinical skill can be adequately assessed without examination. Due to this belief, the Board has not taken steps to rescind the regulation that stopped licensure by credentials. In addition, they have not developed policies or procedures, drafted regulations, or introduced legislation which, if adopted, would allow Alaska to return to licensing dentists based on credentials in a manner acceptable to the Board.

Licensure by credentials is a viable alternative to licensure by examination for candidates already licensed in another jurisdiction. The failure on the part of the Alaska Board of Dental Examiners to provide a means for dental licensure by credentials, as allowed by Alaska Statute, effectively limits entry into the dental profession in the State. It is not in the best interest of the citizens of our State to overly restrict entry into any regulated profession in Alaska. We, therefore, recommend that the Alaska Board of Dental Examiners take whatever steps are necessary, including the repeal of section 12 AAC 28.950 of the Alaska Administrative Code and adoption of clarifying regulations specifying the procedures to be adhered to during the interview process, in order to reinstitute dental licensure by credentials for those dentists already licensed in another state, territory, or region.

Recommendation No. 2

The Alaska Board of Dental Examiners should affiliate with one or more of the four existing regional testing services for the examination of dental candidate's clinical skills in lieu of administering a State-run clinical examination.

The current Alaska dental examination is administered by the Alaska Board of Dental Examiners twice annually and consists of both a written and clinical examination. The written examination is designed primarily to test a candidate's theoretical knowledge of basic biomedical and dental sciences while the clinical examination is used to determine whether the candidate possesses satisfactory clinical skill.

An applicant must receive a score of at least 75% on each subject of both examinations to receive an overall passing grade and hence be eligible for licensure.

Written examinations are of the objective type, with responses to test questions being recorded on answer sheets which are graded with the aid of an answer key or template. Alaska utilizes excerpts from the written examination administered by the Northeast Regional Board of Dental Examiners for the written portions of Alaska's exam covering oral diagnosis, oral medicine, and radiology. The portions of the written examination covering prosthetics, and Alaska Statutes and regulations governing the practice of dentistry, have been developed by the Alaska Board of Dental Examiners.

Unlike the written examination, the grading of the clinical exam is subjective in nature. The clinical portion of the examination requires candidates to complete amalgam and gold inlay preparations and restorations on actual patients in a clinical setting. (Until the most recent exam, a gold foil preparation and restoration was also a requirement.) Candidates are graded at various steps during the completion of each clinical procedure by several examiners appointed by the Alaska Board of Dental Examiners. In all cases, examiners must be practicing dentists licensed in the State. More often than not, they are members of the Alaska Board. Grades are assigned by examiners based on their perception of whether a candidate's work meets certain sets of established criteria designed to measure clinical ability. An average of the scores assessed by each examiner determines the candidate's final grade on each operative subject.

At a recent examiner calibration session, held in preparation for the August 1986 dental exam, the Alaska Board of Dental Examiners concurred with a statement made by an expert on the subject of dental examinations and scoring techniques to the effect that all dental examinations are virtually the same in both content and administration, and that the differences in pass/fail rates between jurisdictions revolves solely around the scoring and grading of the individual examination itself. (See Appendix A for examination structure and general information on various regional and State dental exams.) At the same meeting, the Alaska Board was informed of a national trend showing dental exam failure rates moving towards a range of between 30% to 35%, with slightly higher failure rates noted in the western states than in the east. As shown below, Alaska's pass/fail rates have not paralleled this national trend, the primary cause for this being dental candidate's inability to attain passing scores on the clinical (subjective) portion of the Alaska dental examination.

The overall failure rate on the five Alaska dental examinations administered between November 1983 and November 1985 oscillated from 33.3% to 88.9%, with an average failure rate approximating 59.3%. The failure rate on the written portion of the examination for the same period was only 1.8%, with only one failure in 55 initial attempts. The overall pass rate on the most recent Alaska dental exam, administered in August 1986, was 75%, with 10 of 11 candidates passing the written portion. (See Appendix G.) An overall pass rate of 75% indicates that recent changes in Alaska's examination content and scoring procedures may have had a positive effect on the outcome of this exam; however, it is premature to conclude that this is more than an isolated incident and in fact evidences a change in previously established trends. (75% is the highest pass rate experienced on the Alaska dental examination since 1977.)

Clinical examination failure rates, and in turn overall dental exam failure rates, of the magnitude of those experienced prior to August 1986, are excessive not only in comparison to the above noted national trend, but also in comparison to failure rates on similar examinations administered by other western states and various regional dental testing boards or agencies. The State of Washington's dental exam failure rate over the last five years has been in the range of 35% to 37% for in-state dental school graduates and approximately 50% for out-of-state graduates. Oregon's failure rate is commonly in the range of 10% to 20%. On Oregon's most recent examination, 90% of all candidates examined received passing scores. California's 1984 failure rate was 48%, compared to 45% in 1983. (See Appendix H.)

As shown in Appendix C, regionally administered clinical examinations are utilized by 26 states in place of State administered clinical exams. An additional 6 states, including the District of Columbia, utilize regional clinical exams in conjunction with a State performance examination, while one state administers their own clinical exam only for candidates from non-accredited schools. 1985 failure rates on regional clinical examinations administered by the Northeast Regional Board of Dental Examiners (NERB) and the Central Regional Dental Testing Service (CRDTS) were 19.8% and 10.8%, respectively. The average failure rate on the examination administered by the Western Regional Examining Board (WREB) for the last 5 years has been 23.2%, with a high of 33% and a low of 19%. (See Appendix H.)

A factor known to have partially contributed to candidate failure on Alaska's clinical examination is the lack of consistent assessment of scores by dental examiners. One case was noted where a candidate's scores assigned by four

different examiners on the same step of an operative procedure ranged from 0% to 80%, with actual scores being 0, 60, 80, and 0. Though this is an extreme example, the existence of this type of situation indicates a dire need for modification in the evaluation process.

Regardless of the exact causes for Alaska's high failure rates on past dental examinations, changes must be made which will serve to foster the public's faith in the State's means for regulating entry into the dental profession. Procedures must be adhered to which will allow the clinical portion of the Alaska dental examination to be conducted in an objective manner, with the emphasis on passing all candidates who evidence satisfactory knowledge of the basic principles of operative dentistry and possess satisfactory clinical skill - even those who possess only the "minimum" qualifications. Pass rates on the Alaska dental examination should be commensurate with those being experienced on dental examinations administered elsewhere in the nation.

In order to accomplish the above, the Alaska Board of Dental Examiners should affiliate with one or more of the four existing regional dental testing services for the testing of candidates clinical ability. Another alternative would be to merely accept for licensure any candidate who has successfully completed any of the four regional boards. The first approach would allow Alaska the opportunity for input into the development of the clinical examination, while the second would require us to rely on the ability of states affiliated with the regional organizations to maintain an examination which tests procedures and methods commensurate with current trends in dental education and acceptable dental practices. In either case, the Alaska Board of Dental Examiners will benefit from disassociating themselves from the onus of administering the subjective clinical examination by placing this burden on an established, impartial, dental testing organization located outside of the State. The public will, in turn, benefit through the Board's ability to focus their efforts on other pertinent issues related to the dental profession in the State of Alaska.

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APPENDIXES

Source for Appendixes A - D: American Dental Association 1986 publication, titled, "Facts About States - For the dentist seeking a location."

Source for Appendix F: American Dental Association 1982 publication, titled, "Facts About States - For the dentist seeking a location."

APPENDIX A

State and Regional Boards: Structure of Exams and General Information*

The following chart outlines the structure of the board exams for each state and region. Among the new developments in 1985: Idaho has joined the Western Regional Examining Board.

The supporting papers needed to take the boards are generally the same in every state: recent photographs, copies of your national board scores, a certificate of graduation, fingerprints, copies of your dental school transcripts (and sometimes undergraduate transcripts), proof of liability insurance coverage, and other dentists' verification of your high moral character. Not every state requires all of these, but it pays to collect them all, especially if you're planning to take exams in several states.

Nearly every state requires you to supply your own patients and the proper indications for the procedures you'll perform. Most states also expect you to provide your own handpieces, instruments, and supplies. Several states supply some of these for a nominal fee, and in other states, dental supply firms attend the board exams and have limited supplies on hand for your use. In any case, you should go to the exam with everything you think you may need.

Most states do not accept reciprocity from other states, but many do allow licensure by credentials; that is, they will grant a license to practice if you have already passed a board exam in another state and have worked there for a certain number of years.

Thirty-two states belong to regional testing systems. The regional boards do only the clinical testing phase for the different states.

| Regional Testing Service/State Board | Exam Frequency | Fee | Written | Practical | Additional Information |
|--------------------------------------|---------------------------------|-------|--|---|--|
| Northeast ¹ | Winter, spring, summer | \$275 | Simulated clinical examinations; (1) diagnosis, oral medicine, and radiology; (2) comprehensive treatment planning | Class V gold foil or class II amalgam; class II, III, IV gold foil or class II inlay, $\frac{3}{4}$ or full crown; diagnosis and scaling of periodontal patient; complete denture exercise with patient (impression of either arch to esthetic try-in of maxillary denture) | Candidates are permitted to take the NERB examination only once during a cycle. |
| Southern ² | May/June, July/August, December | \$300 | Treatment planning, oral pathology | Class II amalgam; MOD inlay/onlay; class III or IV composite, denture exercise on patient (impressions upper and lower, to esthetic try-in) | Candidates must submit proof of malpractice insurance with their applications. |
| Central ³ | May, June, August, December | \$350 | Prosthodontics, periodontics, emergency/basic life support | Periodontal clinical; Class II amalgam; cast restoration, an inlay, onlay, $\frac{3}{4}$ crown, or $\frac{1}{2}$ crown; composite restoration; simulated clinical judgment | Applications must be received 45 days before examination date. Nebraska allows reciprocity from other states. Must furnish own patients. |
| Western ⁴ | March, June, September | \$375 | Oral pathology, prosthetics | Class II amalgam, periodontics, gold casting (onlay to full crown, no inlay), endodontics | Must furnish own patient, instruments, and handpieces. Expendable materials (except gold) are supplied. |
| Alabama | June (may vary) | \$120 | Theoretical exam on Alabama jurisprudence and radiation safety | Prosthetics, endodontics, prophylaxis, operative | Must furnish own patients. Must furnish own instruments, and supplies. No reciprocity with other states. |
| Alaska | June, November | \$200 | Oral diagnosis and treatment planning, jurisprudence, prosthetics | Class II amalgam, class V gold foil, class II gold inlay ^{a)} | Must furnish own patients, handpieces, instruments, and supplies. No reciprocity with other states. No licensure by credentials. |
| California | 6 times a year | \$150 | Oral diagnosis and treatment planning, written perio. Radiation safety (optional). | Class II amalgam. Periodontal exam includes written diagnostic and clinical. Crown and bridge prepare two abutments; construct wax pattern on one. Full denture set-up. | |

APPENDIX A

| Regional Testing Service/State Board | Exam Frequency | Fee | Written | Practical | Additional Information |
|--------------------------------------|---|-------|--|---|--|
| Florida | June, December | \$280 | Laws and rules of Florida | On mannequin: cast gold class II MOD onlay on bicuspoid tooth; class II amalgam; pin amalgam endodontic access on posterior and anterior tooth. On patient; periodontal exercise, prosthetic impression and articulation. | Must furnish own patients (Supply companies will usually help.) About 52% pass annually. Must have taken national board within 10 years. No reciprocity with other states. |
| Georgia | June. | \$200 | Jurisprudence, periodontics and oral pathology slide exam (multiple choice) | Clinical class II amalgam, class III composite, cast gold class II inlay or onlay; laboratory; preparations and gold casting on dentiform, denture set-up. | Must furnish own patients instruments, and handpieces. No reciprocity with other states. |
| Hawaii | twice a year; announced 60 days before exam | \$250 | Jurisprudence, oral diagnosis, treatment planning | Class III or II gold foil; class II amalgam; MOD onlay and 1/2 crown with 1 indirect wax-up, complete denture set | Must furnish own patients but Hawaii does run ad in local college newspapers. Must furnish own handpieces, instruments, and supplies. No reciprocity with other states. |
| Indiana | twice a year | \$100 | Theoretical exam if all parts of national boards have not been completed; jurisprudence on Indiana laws. | Class II amalgam: class II, III, IV foil, or class I, V gold foil and composite, or MOD inlay or crown; prosthetic problem solving; Lab: anterior porcelain bonded to metal preparation; 3/4 crown prep on oclusoid, wax, cast and finish; upper denture set-up; periodontal scaling and curettage; diagnosis and treatment planning. | Must have valid CPR certification before exam. Must furnish own patient. Must obtain malpractice insurance before the exam. Must furnish original dental school diploma. |
| Louisiana | May/June (annually) | \$100 | Ethics and jurisprudence, office emergencies, oral surgery, periodontics, oral pathology | Amalgam and composite, onlay procedure, removable prosthodontics, endodontics, occlusion | Must furnish own patients, liability insurance, equipment, and supplies. Content of examination is subject to change at the discretion of the board. |
| Mississippi | June (annually) | \$200 | Jurisprudence, dental anatomy, radiography | One MOD, DO, or MO amalgam; one four-surface amalgam replacing at least one cusp; one class III composite; one full gold crown; removable prosthetics | No reciprocity. All information subject to change for each examination. Must have valid CPR. Must furnish own patients. |
| Nevada | March, July (annually) | \$200 | Must have passed national board examination. | Complete denture fabrication; either a class II, III, or IV gold foil or a class II cast gold restoration, inlay, or onlay (restoration must be finished in one day); class II amalgam | Must furnish own patients, instruments, and supplies, including pre- and postoperative radiographs. Some disposable items will be available. No reciprocity. |
| New Mexico | January, June | \$150 | Jurisprudence, oral diagnosis, office emergencies | Class II amalgam; gold casting; MOD inlay; class III, IV or V gold foil | Must furnish own patients, instruments and high low speed handpiece. Supply company assists with exam. No reciprocity. No licensure by credentials. |
| New York ^{3,6} | August, December | \$245 | Equivalent to Northeast Regional Board | Equivalent to Northeast Regional Board | Equivalent to Northeast Regional Board but valid only in New York. Open to eligible graduates of non-accredited and accredited schools. Must furnish own patients and instruments. |

APPENDIX A

| Regional Testing Service/State Board | Exam Frequency | Fee | Written | Practical | Additional Information |
|--------------------------------------|----------------------------|-------|---|--|--|
| North Carolina | May, August | \$75 | Jurisprudence, periodontics, occlusion | Class II inlay or onlay; class II amalgam; oral surgery; removable prosthodontics (complete upper denture, partial design); periodontics; lab exercises: endodontics, crown preps | Must furnish own patients and instruments. No reciprocity. No licensure by credentials. No specialty exams. |
| Oklahoma | May, June, and December | \$200 | Jurisprudence | Prosthetic denture set-up; clinical operative procedures | Must furnish own patients and instruments. Must have valid CPR. |
| Oregon | June, December | \$50 | Jurisprudence, oral diagnosis, treatment planning, oral pathology, and general dentistry | Selection from the following: amalgam restoration, cast gold restoration, periodontics, prosthodontics | No reciprocity or temporary licenses. Must furnish own patients and instruments. Specialty exams available. |
| South Carolina | Summer | \$200 | Ethics and Jurisprudence | Clinical includes 2 class II amalgams, 2 composites; prosthetics: impressions, CR records, set mandibular and maxillary 6 interior teeth. Laboratory: Wax up 3-unit bridge, prep onlay, wax and cast on a dentiform. | |
| Texas | May/June, August/September | \$100 | Jurisprudence | 3-unit fixed bridge; 2 class II amalgams; 2 composite restorations; prepare diagnosis and treatment plan from photographs, x-rays, models, etc.; denture set-up, ready for flasking | Must furnish own patients. No reciprocity or temporary licenses. |
| Virgin Islands | June, November | \$65 | Operative dentistry, pharmacology, prosthodontics, oral surgery and pain control, oral pathology and radiology, endodontics-periodontics, anatomic sciences, and dental anatomy from the national board exams if have not passed the national boards during the last two years. | Periodontics, radiology, oral surgery, operative dentistry | |
| Washington | June, September | \$120 | | Class II amalgam; class II, III, V gold foil; MOD inlay and a periodontal section | Must furnish own patients, instruments, handpieces, and supplies. Some companies may have supplies for use at no cost. No reciprocity with other states. |

NOTES: ¹ Includes Connecticut, District of Columbia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia.

² Includes Arkansas, Kentucky, Tennessee, and Virginia.

³ Includes Colorado, Iowa, Minnesota, Missouri, Kansas, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.

⁴ Includes Arizona, Idaho, Montana, and Utah.

⁵ In addition to participating in the Northeast Regional Board, New York administers a separate series of examinations.

⁶ The fee shown for New York includes license fee, exam fee, and first triennial registration fee.

a) Class V gold foil no longer a clinical examination requirement.

* SOURCE: The above information is compiled annually by American Student Dental Association and is published in the *ASDA Handbook*, Fall 1985, pages 78-82. Reprinted with permission of American Student Dental Association.

APPENDIX B

Written Examination Requirements*

Recognizes Certificate of
National Board Dental Examinations

| <u>State</u> | <u>Accepts Scores on National Board Exam</u> | <u>Time Limit (Years)</u> | <u>Additional Written Examinations</u> |
|----------------------|--|-----------------------------------|--|
| Alabama | Yes | 0 | Yes |
| Alaska | Yes | 0 | Yes |
| Arizona | Yes | 0 | Yes |
| Arkansas | Yes | 0 | Yes |
| California | Yes | 0 | -- |
| Colorado | Yes | 15 | Yes |
| Connecticut | Yes | 0 | Yes |
| Delaware | No ^{1/} | -- | -- |
| District of Columbia | Yes | -- | -- |
| Florida | Yes | 10 | Yes |
| Georgia | Yes | 0 | Yes |
| Hawaii | Yes | 5 | Yes |
| Idaho | Yes | 0 | Yes |
| Illinois | Yes | 0 | -- |
| Indiana | Yes | 0 | Yes |
| Iowa | Yes | 0 | -- |
| Kansas | Yes | 0 | Yes |
| Kentucky | Yes | 0 | -- |
| Louisiana | Yes | -- | -- |
| Maine | Yes | -- | -- |
| Maryland | Yes | 0 | Yes |
| Massachusetts | Yes | 5 | Yes |
| Michigan | Yes | -- | -- |
| Minnesota | Yes | 0 | -- |
| Mississippi | Yes | 0 | Yes |
| Missouri | Yes | -- | -- |
| Montana | Yes | 0 | Yes |
| Nebraska | Yes | 0 | -- |
| Nevada | Yes | 0 | Yes |
| New Hampshire | Yes | 0 | Yes |
| New Jersey | Yes | 0 | Yes |
| New Mexico | Yes | -- | -- |
| New York | Yes | 0 | -- |
| North Carolina | Yes | -- | Yes |
| North Dakota | Yes | -- | -- |
| Ohio | Yes | 0 | Yes |
| Oklahoma | Yes | 0 | Yes |
| Oregon | Yes | 0 | Yes |
| Pennsylvania | Yes | 0 | -- |
| Rhode Island | Yes | 0 | -- |
| South Carolina | Yes | 0 | -- |
| South Dakota | Yes | -- | -- |
| Tennessee | Yes | 0 | -- |
| Texas | Yes | 0 | -- |
| Utah | Yes | 0 | -- |
| Vermont | Yes | 0 | -- |
| Virginia | Yes | 0 | -- |
| Washington | Yes | 0 | -- |
| West Virginia | Yes | 0 | Yes |
| Wisconsin | Yes | 0 | -- |
| Wyoming | Yes | -- | -- |
| Virgin Islands | Yes | -- | -- |

*For graduates of accredited dental schools. Data as of January 1, 1986.
Source: Joint Commission on National Dental Examinations

^{1/} Delaware conducts their own written examinations.

APPENDIX C

Clinical Examination Requirements

| State | Regional Test ^{1/} | Time Limit (Years) | State Performance Examination | Limit to Times Taken |
|--------------------------|-----------------------------|--------------------|-------------------------------|----------------------------|
| Alabama | — | — | Yes | 2 times and (c) |
| Alaska | — | — | Yes | — |
| Arizona | WREB | 5 | Yes | 2 times and education |
| Arkansas | SRTA | 5 | — | 3 times and (d) |
| California | — | — | Yes | Unlimited |
| Colorado | CRDTS | 5 | No | 3 times |
| Connecticut | NERB | 5 | No | Unlimited |
| Delaware | — | — | Yes | — |
| District of Columbia (f) | NERB | 5 | Yes | 3 times and education |
| Florida | — | — | Yes | 3 times and education |
| Georgia | — | — | Yes | 3 times and education |
| Hawaii | — | — | Yes | — |
| Idaho | WREB | — | No | — |
| Illinois | NERB | 10 | Yes | Unlimited |
| Indiana | — | — | Yes | — |
| Iowa | CRDTS | 5 | No | 2 times, education and (c) |
| Kansas | CRDTS | 5 | No | 2 times, education and (c) |
| Kentucky | SRTA | 5 | No | Unlimited |
| Louisiana (f) | — | — | Yes | 3 times and education |
| Maine (f) | NERB | 5 | No | — |
| Maryland | NERB | 5 | No | 2 times and education |
| Massachusetts | NERB | 5 | No | — |
| Michigan (f) | NERB | 10 | (e) | 3 times and education |
| Minnesota | CRDTS | 5 | No | — |
| Mississippi | — | — | Yes | 2 times and education |
| Missouri | CRDTS | 5 | No | 3 times and education |
| Montana | WREB | 3 | No | — |
| Nebraska | CRDTS | 5 | No | 2 times and education |
| Nevada | — | — | Yes | 2 times and (b) |
| New Hampshire | NERB | 5 | No | (c) |
| New Jersey | NERB | 15 | No | — |
| New Mexico (f) | — | — | Yes | Unlimited |
| New York | NERB | 0 | Yes | 2 times and (d) |
| North Carolina | — | — | Yes | Unlimited |
| North Dakota (f) | CRDTS | 5 | No | — |
| Ohio | NERB | 5 | No | 2 times and education |
| Oklahoma | — | — | Yes | 2 times and (c) |
| Oregon | — | — | Yes | Unlimited |
| Pennsylvania | NERB | — | No | — |
| Rhode Island | NERB | — | No | Unlimited |
| South Carolina (f) | — | — | Yes | Unlimited |
| South Dakota (f) | CRDTS | 5 | No | — |
| Tennessee | SRTA | 5 | Yes | — |
| Texas | — | — | Yes | 3 times (c) |
| Utah (f) | WREB | 3 | No | — |
| Vermont | NERB | 5 | No | — |
| Virginia | SRTA | 5 | No | 3 times |
| Washington | — | — | Yes | Unlimited |
| West Virginia (f) | NERB | — | No | — |
| Wisconsin | CRDTS | 5 | No | — |
| Wyoming (f) | CRDTS | 5 | Yes | 2 times and education |
| Virgin Islands (f) | — | — | Yes | 2 times and education |

Data as of January 1, 1986 unless otherwise indicated.

- (a) Skip one testing before re-taking third time.
- (b) Must wait one year before re-taking.
- (c) Must have approval of the Board.
- (d) Remedial training.
- (e) Yes, for graduates of non-accredited schools.
- (f) 1982 data.

^{1/}

CRDTS - Central Regional Dental Testing Service
 NERB - Northeast Regional Board of Dental Examiners
 SRTA - Southern Regional Testing Agency
 WREB - Western Regional Examining Board

Source: Joint Commission on National Dental Examinations

APPENDIX D

Summary of Requirements for Licensure by Credentials in Certain States Granting Licensure by Credentials

The states that grant licensure by credentials have individual requirements, of which the following is an overview. All states require a jurisprudence examination; however, this might be a formal, written examination, or a signed statement attesting that the candidate is familiar with the laws governing dentistry in the state. Candidates should write to the individual states for complete information and application.

| State | Will accept applications from | Letters of recommendation | Personal interview | Years in practice |
|---------------------|--|---------------------------|--------------------|-------------------|
| Arkansas | R | 2 | X | 5 |
| Distict of Columbia | Specialists Only | | X | |
| Indiana | All states | 3 | X | 5 |
| Iowa | R | 2 | X | 5 |
| Kansas | R | 5 | | 5 |
| Maine | All states | 0 | X* | 5 ¹ |
| Maryland | All states | 3 | X | 5 ¹ |
| Massachusetts | R | 1 | X | 5 |
| Michigan | On an individual basis | 4 | Rarely | No Limit |
| Minnesota | All states | 4 | X | 2 ² |
| Missouri | All states | 2 | | 5 |
| Nebraska | All states | 2 | X | 1 ³ |
| New Hampshire | R | 3 | X | 5 |
| New York | All states | 3 | | 5 |
| North Dakota | Has an option, but has not granted licensure by credentials in 5 years | | | |
| Oklahoma | R | 10 | | 5 |
| Pennsylvania | All states | 2 | | 5 |
| Rhode Island | R | 3 | | 5 |
| Tennessee | R | 1 ⁴ | | 5 |
| Vermont | At the discretion of the board | 2 | | 5 |

R = states that will issue licenses by credentials only to candidates from states with a reciprocal agreement.

*The state of Maine will require a personal interview with a candidate who passed a state board examination more than 1 year before applying to Maine for a license.

¹Will issue a licensure by credentials to candidates who pass the Northeast Regional Board Examination in lieu of active practice.

²Two years of the past 3 years must have been in active practice.

³This requirement will change to 3 years of active practice.

⁴One letter of recommendation from each state board in each state in which the dentist has practiced.

Source: "Licensure by Credentials — Is it Working?", report published in the *Journal of the American Dental Association*, Vol 111, July 1985, pages 19-32.

APPENDIX E

ALASKA DENTAL LICENSES ISSUED

Information presented in this appendix was compiled from the dental license issue log maintained by the Department of Commerce and Economic Development's Division of Occupational Licensing.

| | <u>June 1, 1980 through October 17, 1984</u> ^{1/} | <u>October 17, 1984 through June 30, 1986</u> | <u>Total June 1, 1980 through June 30, 1986</u> |
|---------------------------------------|--|---|---|
| Number issued based on credentials | 8 | 14 ^{2/} | 22 |
| Number issued based on examination | <u>75</u> | <u>31</u> | <u>106</u> |
| Total number issued | <u>83</u> | <u>45</u> | <u>128</u> |
| By credentials as percentage of total | <u>9.6%</u> | <u>31.1%</u> | <u>17.2%</u> |

^{1/} The Alaska Board of Dental Examiners issued licenses based on candidates' credentials, pursuant to AS 08.36.234, from June 1, 1980 through October 17, 1984. At that time they ceased issuing licenses by credentials, by emergency order, as promulgated in 12 AAC 28.950.

^{2/} Licenses issued based on reinterview of candidates previously denied licensure by credentials, as recommended by the Ombudsman's office and the Attorney General's office.

APPENDIX F

Total Dental Licensure Results by State Board in 1981

| State Board | Total | Passed | Percent passed | Failed | Percent failed |
|---------------------------|---------------|---------------|----------------|--------------|----------------|
| Alabama..... | 87 | 84 | 95.5% | 3 | 3.5% |
| Alaska, 1/..... | 27 | 14 | 51.9% | 13 | 48.1% |
| Arizona..... | 137 | 137 | 100 | 0 | 0.0 |
| Arkansas..... | 49 | 49 | 100 | 0 | 0.0 |
| California..... | 1,535 | 781 | 50.9 | 754 | 49.1 |
| CRDTS*..... | 995 | 729 | 73.3 | 266 | 26.7 |
| Colorado..... | 225 | 225 | 100 | 0 | 0.0 |
| Connecticut..... | 191 | 191 | 100 | 0 | 0.0 |
| Delaware..... | 29 | 17 | 58.6 | 12 | 41.4 |
| District of Columbia..... | | | | | |
| Florida..... | 601 | 315 | 52.4 | 286 | 47.6 |
| Georgia..... | 200 | 200 | 100 | 0 | 0.0 |
| Hawaii..... | 26 | 16 | 61.5 | 10 | 38.5 |
| Idaho..... | 44 | 29 | 65.9 | 15 | 34.1 |
| Illinois..... | 507 | 469 | 92.5 | 38 | 7.5 |
| Indiana..... | 173 | 126 | 72.8 | 47 | 27.2 |
| Iowa..... | 122 | 122 | 100 | 0 | 0.0 |
| Kansas..... | 82 | 82 | 100 | 0 | 0.0 |
| Kentucky..... | 151 | 151 | 100 | 0 | 0.0 |
| Maine..... | 52 | 52 | 100 | 0 | 0.0 |
| Maryland..... | 305 | 305 | 100 | 0 | 0.0 |
| Massachusetts..... | 357 | 357 | 100 | 0 | 0.0 |
| Michigan..... | 95 | 95 | 100 | 0 | 0.0 |
| Minnesota..... | 188 | 188 | 100 | 0 | 0.0 |
| Mississippi..... | 52 | 39 | | 13 | |
| Missouri..... | 218 | 218 | 100 | 0 | 0.0 |
| Montana..... | 30 | 30 | 100 | 0 | 0.0 |
| Nebraska..... | 98 | 98 | 100 | 0 | 0.0 |
| Nevada..... | 59 | 28 | 48.3 | 30 | 51.7 |
| New Hampshire..... | 47 | 47 | 100 | 0 | 0.0 |
| New Jersey..... | 478 | 478 | 100 | 0 | 0.0 |
| New Mexico..... | 42 | 36 | 85.7 | 6 | 14.3 |
| New York..... | 857 | 677 | 79 | 180 | 21.0 |
| North Carolina..... | 147 | 117 | 79.6 | 30 | 20.4 |
| NERB*..... | 2,628 | 2,280 | 86.8 | 348 | 13.2 |
| North Dakota..... | 31 | 31 | 100 | 0 | 0.0 |
| Ohio..... | 341 | 341 | 100 | 0 | 0.0 |
| Oklahoma..... | 130 | 130 | 100 | 0 | 0.0 |
| Oregon..... | 147 | 147 | 100 | 0 | 0.0 |
| Pennsylvania..... | 576 | 576 | 100 | 0 | 0.0 |
| Rhode Island..... | 42 | 42 | 100 | 0 | 0.0 |
| South Carolina..... | 91 | 91 | 100 | 0 | 0.0 |
| South Dakota..... | 40 | 32 | 80 | 8 | 20.0 |
| SRTA*..... | 597 | 572 | 95.8 | 25 | 4.2 |
| Tennessee..... | 166 | 166 | 100 | 0 | 0.0 |
| Texas..... | 519 | 464 | 89.4 | 55 | 10.6 |
| Utah..... | | | | | |
| Vermont..... | 22 | 22 | 100 | 0 | 0.0 |
| Virginia..... | 178 | 178 | 100 | 0 | 0.0 |
| Washington..... | 237 | 149 | 62.9 | 88 | 37.1 |
| West Virginia..... | 63 | 63 | 100 | 0 | 0.0 |
| Wisconsin..... | 211 | 211 | 100 | 0 | 0.0 |
| Wyoming..... | 47 | 32 | 68.1 | 15 | 31.9 |
| WREB*..... | 467 | 403 | 86.3 | 64 | 13.7 |
| Puerto Rico..... | 75 | 70 | 93.3 | 5 | 6.7 |
| TOTAL..... | 14,786 | 12,488 | 84.5 | 2,298 | 15.5 |

*Regional Testing results are not included in total.

Source: Council on Dental Education, American Dental Association.

1/

Alaska statistics were not published by the American Dental Association. Information included here was obtained from the Department of Commerce and Economic Development's Division of Occupational Licensing. Alaska results are not included in totals.

APPENDIX C

RECENT ALASKA DENTAL EXAMINATION STATISTICS

Information in this appendix was compiled and provided by the Department of Commerce and Economic Development's Division of Occupational Licensing.

| | <u>November 1983</u> | <u>June 1984</u> | <u>November 1984</u> | <u>June 1985</u> | <u>November 1985</u> | <u>August 1986</u> ^{4/} |
|---|--------------------------|----------------------|--------------------------|----------------------|--------------------------|--------------------------------------|
| Number of applicants examined ^{1/} | 18 | 18 | 18 | 34 | 25 | 20 |
| Number Failed ^{2/} | 6 | 16 | 8 | 21 | 16 | 5 |
| Number Passed ^{3/} | 12 | 2 | 10 | 13 | 9 | 15 |
| Percentage Failure Rate | 33.3% | 88.9% | 44.4% | 61.8% | 64.0% | 25.0% |
| Percentage Pass Rate | 66.7% | 11.1% | 55.6% | 38.2% | 36.0% | 75.0% |

^{1/} Totals include candidates taking all or part of the examination.

^{2/} Totals include candidates failing all or part of the examination.

^{3/} Totals include candidates passing entire examination or those passing remaining parts not passed at prior examinations.

^{4/} The dental examination scheduled for June 1986 was postponed until August 1986 in order that a new examination site could be located and to allow restructuring of the examination's content and scoring procedures.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

APPENDIX F

Total Dental Licensure Results by State Board in 1981

| State Board | Total | Passed | Percent passed | Failed | Percent failed |
|---------------------------|--------|--------|----------------|--------|----------------|
| Alabama..... | 87 | 84 | 95.5% | 3 | 3.5% |
| Alaska. 1/..... | 27 | 14 | 51.9% | 13 | 48.1% |
| Arizona..... | 137 | 137 | 100 | 0 | 0.0 |
| Arkansas..... | 49 | 49 | 100 | 0 | 0.0 |
| California..... | 1,535 | 781 | 50.9 | 754 | 49.1 |
| CRDTS*..... | 995 | 729 | 73.3 | 266 | 26.7 |
| Colorado..... | 225 | 225 | 100 | 0 | 0.0 |
| Connecticut..... | 191 | 191 | 100 | 0 | 0.0 |
| Delaware..... | 29 | 17 | 58.6 | 12 | 41.4 |
| District of Columbia..... | | | | | |
| Florida..... | 601 | 315 | 52.4 | 286 | 47.6 |
| Georgia..... | 200 | 200 | 100 | 0 | 0.0 |
| Hawaii..... | 26 | 16 | 61.5 | 10 | 38.5 |
| Idaho..... | 44 | 29 | 65.9 | 15 | 34.1 |
| Illinois..... | 507 | 469 | 92.5 | 38 | 7.5 |
| Indiana..... | 173 | 126 | 72.8 | 47 | 27.2 |
| Iowa..... | 122 | 122 | 100 | 0 | 0.0 |
| Kansas..... | 82 | 82 | 100 | 0 | 0.0 |
| Kentucky..... | 151 | 151 | 100 | 0 | 0.0 |
| Maine..... | 52 | 52 | 100 | 0 | 0.0 |
| Maryland..... | 305 | 305 | 100 | 0 | 0.0 |
| Massachusetts..... | 357 | 357 | 100 | 0 | 0.0 |
| Michigan..... | 95 | 95 | 100 | 0 | 0.0 |
| Minnesota..... | 188 | 188 | 100 | 0 | 0.0 |
| Mississippi..... | 52 | 39 | | 13 | |
| Missouri..... | 218 | 218 | 100 | 0 | 0.0 |
| Montana..... | 30 | 30 | 100 | 0 | 0.0 |
| Nebraska..... | 98 | 98 | 100 | 0 | 0.0 |
| Nevada..... | 58 | 28 | 48.3 | 30 | 51.7 |
| New Hampshire..... | 47 | 47 | 100 | 0 | 0.0 |
| New Jersey..... | 478 | 478 | 100 | 0 | 0.0 |
| New Mexico..... | 42 | 36 | 85.7 | 6 | 14.3 |
| New York..... | 857 | 677 | 79 | 180 | 21.0 |
| North Carolina..... | 147 | 117 | 79.6 | 30 | 20.4 |
| NEEB*..... | 2,628 | 2,280 | 86.8 | 348 | 13.2 |
| North Dakota..... | 31 | 31 | 100 | 0 | 0.0 |
| Ohio..... | 341 | 341 | 100 | 0 | 0.0 |
| Oklahoma..... | 130 | 130 | 100 | 0 | 0.0 |
| Oregon..... | 147 | 147 | 100 | 0 | 0.0 |
| Pennsylvania..... | 576 | 576 | 100 | 0 | 0.0 |
| Rhode Island..... | 42 | 42 | 100 | 0 | 0.0 |
| South Carolina..... | 91 | 91 | 100 | 0 | 0.0 |
| South Dakota..... | 40 | 32 | 80 | 8 | 20.0 |
| SRTA*..... | 597 | 572 | 95.8 | 25 | 4.2 |
| Tennessee..... | 166 | 166 | 100 | 0 | 0.0 |
| Texas..... | 519 | 464 | 89.4 | 55 | 10.6 |
| Utah..... | | | | | |
| Vermont..... | 22 | 22 | 100 | 0 | 0.0 |
| Virginia..... | 178 | 178 | 100 | 0 | 0.0 |
| Washington..... | 237 | 149 | 62.9 | 88 | 37.1 |
| West Virginia..... | 63 | 63 | 100 | 0 | 0.0 |
| Wisconsin..... | 211 | 211 | 100 | 0 | 0.0 |
| Wyoming..... | 47 | 32 | 68.1 | 15 | 31.9 |
| WREB*..... | 467 | 403 | 86.3 | 64 | 13.7 |
| Puerto Rico..... | 75 | 70 | 93.3 | 5 | 6.7 |
| TOTAL..... | 14,786 | 12,488 | 84.5 | 2,298 | 15.5 |

*Regional Testing results are not included in total.

Source: Council on Dental Education, American Dental Association.

1/

Alaska statistics were not published by the American Dental Association. Information included here was obtained from the Department of Commerce and Economic Development's Division of Occupational Licensing. Alaska results are not included in totals.

APPENDIX H

EXAMINATION STATISTICS: WESTERN STATES AND REGIONAL TESTING BOARDS/AGENCIES ^{1/}

WASHINGTON - Over the last five years the failure rate for Washington state dental school graduates has been from 35% to 37%. Out-of-state graduates' failure rate has been approximately 50%. (These statistics include results from exam retakes - retake failure rate approximates 50%, regardless of whether candidates are in-state or out-of-state graduates.)

OREGON - Results from the most recent (June 1986) Oregon dental exam are as follows:

| | | |
|----------------------------------|-----|-------------------|
| Number of candidates taking exam | 70 | (69 1st attempts) |
| Number Failing | 7 | |
| Number Passing | 63 | |
| Percentage Failure Rate | 10% | |
| Percentage Pass Rate | 90% | |

Historically Oregon's passage rate has been in the 80 and 90 percentile range.

| <u>CALIFORNIA</u> - | <u>1984</u> ^u | <u>1983</u> [*] |
|----------------------------------|--------------------------|--------------------------|
| Number of candidates taking exam | 1567 | 1884 |
| Number Failing | 753 | 849 |
| Number Passing | 814 | 1035 |
| Percentage Failure Rate | 48% | 45% |
| Percentage Pass Rate | 52% | 55% |

* (Statistics exclude results of retakes by California dental school graduates.)

NEVADA - Current statistics related to pass/fail rates for Nevada state dental examinations were not available for release by the Nevada State Board of Dental Examiners.

WESTERN REGIONAL EXAMINING BOARD (WREB) - The average annual pass rate on the WREB exam for the past five years is 76.8%, with a high of 81% and a low of 67%. This equates to an average failure rate of 23.2%, with a high of 33% and a low of 19%.

CENTRAL REGIONAL DENTAL TESTING SERVICE (CRDTS) - CRDTS evaluates approximately 1000 dental candidates per year, including candidates repeating the examination. The 1985 failure rate for the operative clinical examination administered by CRDTS was 10.8%.

NORTHEAST REGIONAL BOARD OF DENTAL EXAMINERS (NERB) - In the past ten years, failure rates on the NERB examination have ranged from a high of 34.4% in 1983 to a low of 19.8% in 1985. A failure, in these calculations, is a candidate who fails at least one of the five tests in his/her first examination attempt.

SOUTHERN REGIONAL TESTING AGENCY (SRTA) - Dental examination pass/fail statistics are not generated on an annual basis by SRTA, but instead are prepared for specific test sites. This information was not made available.

^{1/} Information obtained in this appendix was provided by the individual state boards or regulating bodies and by representatives of the various regional boards or testing agencies.

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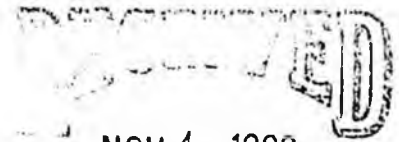
BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

November 3, 1986



NOV 4 - 1986

LEGISLATIVE
AUDIT

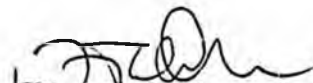
Mr. Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
P.O. Box W
Juneau, AK 99811

Dear Mr. Wilkerson:

Thank you for the opportunity to review and comment on the preliminary audit findings of the Board of Dental Examiners. At this time, the department's position to the audit recommendations remains as noted in our response to the interim letter dated September 10.

The department agrees with recommendation number one, and will assist the board in the repeal of 12 AAC 28.950. Prior to taking a position for or against recommendation number two, the department is seeking more information regarding regional testing and its feasibility. There are many factors which must be investigated. Recently, the chairman of the Dental Board attended the Western Regional Exam in California; we will be receiving a report on this exam at the next board teleconference meeting which is scheduled for November 13.

Sincerely,


Loren H. Lounsbury
Commissioner

LHL/mst4921m
103086a

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STEVE COWPER, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

DIVISION OF OCCUPATIONAL LICENSING

THE ALASKA BOARD OF DENTIAL EXAMINERS

Robert E. Warren, Chairman

December 16, 1986

DEC 22 1986

Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811-3300

Re: "A Special Report on The Department of Commerce and
Economic Development, Board of Dental Examiners
August 27, 1986" (Confidential Preliminary Audit)

Audit Control Number: 08-4271-86-S

Dear Mr. Wilkerson:

On behalf of the Alaska Board of Dental Examiners, I offer the following response to the above-referenced confidential Preliminary Audit Report. As you know, that Report contains two recommendations. The Board provisionally concurs with one recommendation but strongly disagrees with the other.

1. Areas of Agreement. Recommendation Number 2, set forth on pages 12-15 of the Report, proposes that "The Alaska Board of Dental Examiners should affiliate with one or more of the four existing regional testing services for the examination of dental candidate's [sic] clinical skills in lieu of administering a State-run clinical examination." (Report, page 12.)

The Board provisionally agrees with this recommendation and is in the process of taking active steps to implement it. Geographically, the most logical affiliation for Alaska is the Western Regional Examining Board (WREB). As noted in Appendix A to the Report (at page 20, note 4), the WREB includes Arizona, Idaho, Montana and Utah.

Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
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On September 28-30, 1986, the Board's Hygenist member, Chris Baxter, and I personally attended the WREB autumn, 1986 examination, which was conducted at Loma Linda University in Loma Linda, California. I directly observed the entire four-day examination as it was administered to the 70 dental candidates and the 31 hygenist candidates. In my professional opinion, the examination as administered by the WREB was comprehensive, thorough, and fair.

More recently, on December 5-6, 1986, I attended the WREB Examination Review Committee meeting in Phoenix, Arizona. While in Phoenix, I also attended the WREB General Membership Meeting and the meeting of the Board of Directors. My conclusion from my direct observations is that the WREB is a competent and highly professional testing agency.

At the upcoming January 15, 1987 meeting of the Alaska Board of Dental Examiners, the question of whether Alaska should join the WREB will be voted upon. Prior to the vote, I will present my field research and findings with respect to the WREB. Also, Dr. David Low, past President of the WREB and current Chairman of the WREB Examination Committee, will make a presentation. My recommendation will be that Alaska should join the WREB, thereby recognizing a passing grade on the WREB examination as satisfying the examination requirement of AS 08.36.130 and AS 08.36.160.

I might note in passing that only a portion of my travel expenses have been paid by the WREB and I have donated the balance of my travel expenses and my professional time. The State of Alaska has not absorbed any of these costs.

2. Areas of Disagreement. Recommendation Number 1, set forth at pages 11-12 of the Report, proposes that "The Alaska Board of Dental Examiners should issue dental licenses to qualified dentists based on their performance records in lieu of requiring they pass an examination. (Licensure

Gerald L. Wilkerson
Legislative Auditor
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by credentials)." The Board strongly disagrees with this Recommendation.

In our experience, licensure by credentials runs a serious and substantial risk of authorizing incompetent or otherwise undesirable individuals to practice dentistry in Alaska for two reasons. First, licensure by credentials provides inadequate opportunity to investigate and verify the applicant's professional, clinical skills. Second, because there is presently no central clearing house of professional dental information in the United States, it is extremely difficult to weed out individuals who are the subject of outstanding complaints or disciplinary review proceedings in other states. In practice, the Board has found licensure by credentials to be inconsistent with the Board's responsibilities as established by AS 08.36.070(a).

AS 08.36.234 establishes licensure by credentials as a permitted practice: "The [B]oard may provide for the licensing without examination of a dentist who [satisfies the criteria of subsections (1)-(8)]." (Emphasis added.) The decision whether or not to implement this practice must be made in light of the more basic responsibilities of the Board. AS 08.36.070(a) mandates that the Board shall:

(1) examine applicants and issue licenses to those applicants it finds qualified;

. . .

(8) adopt regulations ensuring that renewal of registration is contingent upon proof of continued professional competence by a licensed dentist....

(Emphasis added.)

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Legislative Auditor
Division of Legislative Audit
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As all dental patients know, the essence of dentistry is performing minutely delicate and precise procedures in the confined and extremely vulnerable area of the patient's mouth. In short, the practice of dentistry is at least as much craftsmanship as it is science. The only way to evaluate an individual dentist's abilities as a craftsman is to review examples of his work. The critical failure of licensing by credentials is that it does not adequately provide this review.

The premise of expedited licensing of dentists who have practiced for at least five years prior to applying for an Alaska license (See AS 08.36.234(3)) is that the prior period of practice in and of itself establishes technical professional competence. In reality, there are two flaws in this premise.

First, the standards of competence vary considerably from state to state and from region to region. Proof of continued professional competence is not required in many states. The consequence of accepting any individual's past practice as satisfactory credentials will, over time, lead to the lowering of competency standards in Alaska.

Second, in the case of dentists who have practiced in the military or in non-uniformed federal service (e.g., the Public Health Service), there has been no requirement of board certification or state licensing agency review of their competence. In Alaska, this is a matter of particular concern, since many dentists come to Alaska either in military or non-uniformed federal service and practice in remote areas virtually unsupervised.

AS 08.36.234(4) requires, as a prerequisite to licensure by credentials, that the applicant "...is not the subject of an unresolved complaint, review procedure or disciplinary proceeding undertaken by a dental licensing jurisdiction." In

Gerald L. Wilkerson
Legislative Auditor
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December 16, 1986
Page 5

reality, it is very difficult to verify this fact or to expose a misrepresentation of fact by an applicant. There presently exists no central clearing house of information regarding unresolved complaints or disciplinary proceedings. The varying privacy law standards of the several states has the effect of making this information unobtainable for many out-of-state applicants. And in the case of military and federal dentists, the individual may never have practiced in the state in which he or she obtained a license. In these instances the outside licensing-state board has no pertinent information on file, and only limited information about dental officers is available through a military commanding officer.

Our experience in Alaska with dentists licensed by credentials tends to confirm the seriousness of the risks of admitting incompetent or otherwise undesirable individuals into the practice of dentistry here. There have been numerous patient complaints against credentialled dentists filed with the State Division of Occupational Licensing. In one instance, the Board received a fortuitous report from the Illinois Attorney General's office that a licensed-by-credentials candidate had been charged with numerous counts of sexual abuse of patients in Illinois. Since these were pending charges that had not been entered of record, our earlier investigation of this applicant had not been able to uncover this information.

The Alaska Board of Dental Examiners' position on licensure by credentials is perhaps best summarized by Dr. George Hansen, President-Elect of the Alaska Dental Society. As he stated at the August 16, 1986 meeting of the Board of Dental Examiners, "If the Board's goal is to protect dentists' freedom to practice, there should be licensure by credentials. But if the goal of the Board is to protect the public, the Board must examine applicants."

Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
Re: Report/Board of Dental
Examiners
December 16, 1986
Page 6

In closing, I would note for the record that none of the audit staff personnel who prepared the August 27, 1986 Special Report attended either a dental examination or a credentials interview.

Thank you for having given me this opportunity to respond to the Preliminary Report. My apologies for any inconvenience my delay in responding to the Report may have caused. In the interest of responding accurately to Recommendation Number 2, I concluded it would be best to wait until I returned from the December WREB Examination Review Committee meeting before composing this letter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "R. E. Warren 12/15/86".

ROBERT E. WARREN, D.D.S.
Chairman
Alaska Board of Dental Examiners

rew:dkd

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE BUDGET AND AUDIT COMMITTEE

January 6, 1987

Members of the Legislative Budget
and Audit Committee:

We have reviewed the Alaska Board of Dental Examiner's response to our preliminary report. Our comments follow:

Recommendation No. 1

There is nothing in the Board's response to make us change our position regarding dental licensure by credentials. Alaska Statute 08.36.234 is intended to provide a means for dental licensure without examination through the evaluation of a practicing dentist's theoretical knowledge and clinical skill based on their performance record. To this end, the provisions and requirements appear reasonable. Verification of a candidate's compliance with these provisions can be assured with minimal investigation if questions arise concerning the authenticity or validity of information provided on the candidate's application for licensure.

Investigations

The State of Alaska is currently active with the National Disciplinary Information System (NDIS). NDIS is a project of the National Clearinghouse on Licensure, Enforcement, and Regulation (CLEAR) which reports bi-monthly on disciplinary actions taken against licensed professionals in a number of professional disciplines. Its purpose is to alert state authorities and board members to disciplinary actions taken in other states so more complete information can be obtained about licensed professionals in their state. Review of reports provided through NDIS in conjunction with the review of a credential candidate's application provides an additional means for verifying that all final disciplinary actions have been disclosed.

Division of Occupational Licensing staff have stated that they do not foresee insurmountable difficulties in performing additional investigations and background checks of individual applicants if requested by the Board. Investigations of this nature commonly would identify and disclose situations where dentists are the subject of an unresolved

complaint, review procedure, or disciplinary proceeding undertaken by a dental licensing jurisdiction. The existence of unresolved issues of this nature may serve as grounds for denial by the Board of licensure without examination pursuant to AS 08.36.234(4).

It is our belief that Alaska law currently provides the Board adequate opportunity and means to investigate and verify a credential applicant's qualifications, as well as identify situations where incomplete or questionable information is attested to by applicants on their application for dental licensure.

Technical Ability and Professional Competence

We concur with the Board's belief that the only way to evaluate an individual dentist's abilities as a "craftsman" (technical skill) is to review examples of his/her work; however, we disagree that licensure by credentials is critically flawed in that it does not provide consideration of this issue.

In order to obtain a dental license in Alaska based on credentials, a candidate must possess a license from another state, territory, or region with licensing requirements at least equivalent in scope, quality, and difficulty to those of this state at the time of licensure (AS 08.36.234(2)). In all jurisdictions, initial licensure is based, at least in part, on the successful completion of a clinical examination wherein a dentist's "craftmanship" is assessed. This requirement, coupled with the requirement that an applicant has been engaged in continuous active practice averaging at least 20 hours per week for each of the five years immediately preceding the application (AS 08.36.234(3)), serve to evidence adequate clinical skill and continued application of those skills.

The requirement of five years of practice prior to eligibility for licensure by credentials is not intended to, nor does it, in and of itself establish technical professional competence as is suggested by the Board. It is a combination of this requirement, the requirement that an applicant be licensed in another jurisdiction, as well as fulfillment of the other requirements of AS 08.36.234, that serve as a basis for deeming a credential candidate technically and professionally competent to practice dentistry in Alaska.

Patient Complaints

Complaints lodged with the Division of Occupational Licensing do not support the Board's contention that there have been numerous complaints against credentialed dentists and,

as a result, a serious risk incurred from licensing dentists in this manner. Our review of the Division's complaint logs identified a total of 47 complaints filed since June 1, 1980 involving 35 individual dentists, only one of whom was licensed by credentials.



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

All members, The Alaska Legislature
Juneau, Alaska

April 1, 1987

To all members, The Alaska Legislature:

I am writing all of you as in an effort to emphasize the importance and significance of speedy passage of the House Bill entitled " An Act relating to the regulation of the practice of dentistry."

I am presently a fourth year dental student at the University of Washington. I am writing as a spokesperson for the applicants that are planning on becoming practicing dentists in 1987 in the State of Alaska.

The dental licensing examination is a requirement all applicants must successfully pass before they may begin dental practice in each respective state. It is very costly to the State to put on such an Exam for the small number of applicants to Alaska. This fact, coupled with recent budget cuts, has led to a recent vote by the State of Alaska Board of Dental Examiners to join a testing service called the Western Regional Examining Board (WREB). This is the same service that is used for Dental Licensing Exams for the States of Montana, Idaho, Utah, and Arizona. The Exams are given at least 4 times per year and they are usually held in California, Arizona or Oregon.

The current Law in Alaska, Sec. 08.36.130 of the Dentistry Act states: "an examination shall be given at least once a year and at times and at places determined by the board to be convenient and economical for the applicants and the state." At present, the Alaska Dental Board cannot tell applicants for certain if or when the next Exam will be. They suggest there may be one "sometime in August" but are not sure. **They are waiting for the results of *this* Legislation.** We, as applicants, are left in the uncomfortable position of total uncertainty.

The law states the exam must be "...convenient and economical for the applicants and the state." At present it is neither convenient nor economical for anyone. Since Alaska does not have its own Dental School, all applicants must be trained out of the state. The applicants must fly or drive to Alaska from all parts of the country to take the Exam. This is costly and inconvenient for the applicants. The State has already determined that it is in the states best interest to join the WREB. This is cost effective for the state.

The main question that remains is *when* will the exceptance of scores from the WREB take place to allow licensure for the practice of dentistry in Alaska. A decision to except results from this Exam effective immediately will solve both problems at once. The State of Alaska would not need to stage another costly licensing Exam and the dental applicants would have a variety of testing sites and dates to choose from that are either at or near their respective dental schools.

The Western Regional Exam is offered next in Portland, Oregon on May 23-25th, 1987. Spaces available for applicants to this Exam are filling up. If this Legislation is passed and is effective immediately, applicants can take the WREB Exam in May and begin practicing dentistry in Alaska in June. If this is not passed in time, it is conceivable an applicant could take the WREB Exam in May, pass the exam , but not be licensed for practice in Alaska. These applicants would then have to retake the same exact Exam at some unspecified later date. In addition, if an applicant is to wait for an Exam that may be given in Alaska in mid-August, they would sit idle from graduation in June until late August (when the test results are published). This would be a very inconvenient use of over two months of time for the applicant.

I hope this helps to clarify the importance of this Bill as it relates to the State and the impact it has upon new dentists in the State of Alaska. **I urge you all to please help all parties involved by working toward a speedy passage of this Bill.** I believe it is in everyone's best interest.

-3-

Thank you very much for your prompt attention to this matter. I look forward to returning to our beautiful State.

Sincerely,

Kirk Johnson

Kirk Johnson
University of Washington
Dental School

10536 39th Ave N.E.
Seattle, WA 98125
(206) 543-7072

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SSHB 228
Publish Date: 4/8/87

Revision Date: _____

Agency Affected: Commerce & Economic Dev.

Title: An Act relating to regulation of the practice of dentistry; and providing for an effective date.

BRU: Occupational Licensing

Special: Reps. Menard, Gruenberg & Boucher Components: _____

Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | 0 | 0 | 0 | 0 | 0 | 0 |
| TRAVEL | 0 | 4.3 | 4.3 | 4.3 | 4.3 | 4.3 |
| CONTRACTUAL | 0 | 0 | 0 | 0 | 0 | 0 |
| SUPPLIES | 0 | 0 | 0 | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 | 0 |
| LAND & STRUCTURES | 0 | 0 | 0 | 0 | 0 | 0 |
| GRANTS, CLAIMS | 0 | 0 | 0 | 0 | 0 | 0 |
| MISCELLANEOUS | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL OPERATING | 0 | 4.3 | 4.3 | 4.3 | 4.3 | 4.3 |

| | | | | | | |
|---------|---|---|---|---|---|---|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

| | | | | | | |
|---------|---|---|---|---|---|---|
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|---|-----|-----|-----|-----|-----|
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER | 0 | 4.3 | 4.3 | 4.3 | 4.3 | 4.3 |
| TOTAL | 0 | 4.3 | 4.3 | 4.3 | 4.3 | 4.3 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS : (Attach a separate page if necessary)

(See Attached)

Prepared by: Jennifer Strickler, Management Analyst

Phone: 465-2144

Division: Occupational Licensing

Date: 4/15/87

Approved by Commissioner: Anthony Smith

Date: _____

Agency: Commerce and Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

SSHB 228

FISCAL NOTE

The bill broadens the dental examination statutes to allow the board to utilize a regional board examination. Because of the time commitment required of board members in using the regional exam, it was necessary to increase the number of members to alleviate the burden associated with administering the exam.

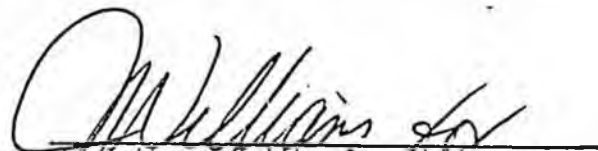
The regional board exam agency will assume costs associated with transporting members to assist with the exam. However, increasing the size of the board will also require funding for the new members to attend board meetings. Therefore, the \$4,300.00 provides funding for the two new members to travel to the four dental board meetings required by statute, assuming one member is appointed from Southeast and the other appointed from the Northern region of the State. This cost is also expected to be covered through program receipts.

HB 228: An Act relating to the regulation of the practice of dentistry.

In response to legislative intent, the Dental Board has explored the feasibility of Alaska's affiliation with the Western Regional Examining Board (WREB). Two members of the board, a dentist and a dental hygienist, attended a WREB examination in September 1986. In addition, a member of the WREB board came to Alaska to meet with the full Dental Board to explain how the WREB functions. HB 228 amends the current statute regulating dentists to permit participation in WREB.

The department supports the Dental Board's affiliation with the regional testing service. The current Alaska dental exam is difficult and expensive to administer. Twenty-six states utilize regionally administered examinations. WREB conducts six uniform clinical examinations per year at a location selected by WREB. The total cost of testing is the applicant's responsibility. The average cost of the exam is \$400.00 per candidate depending on the total number of candidates taking a given exam. All participating states are required to send Dental Board members to conduct and grade the examination. The current board has only four dental members which would mean each member would be required to spend approximately 18 days per year out of state. Although WREB pays all costs of travel and per diem, the time commitment required would pose a hardship unless the number of dentists on the existing board was increased. Section 1 of the bill increases the number of dentists on the board from four to six, which should alleviate the hardship. The cost of adding the two new members will be offset by WREB assuming the travel and per diem for board members to conduct the exam.

The department believes affiliation with WREB will not only eventually save the state money but dental candidates for licensure will benefit by utilizing an established, impartial dental testing organization.


J. Anthony Smith, Commissioner
DATE: 4/6/87

S B

231

BILL NO: SB 231

DATE: April 10, 1987

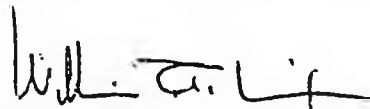
TITLE: An Act relating to sexual abuse of a minor

CONTACT: Barbara Miklos
Executive Director
Council on Domestic
Violence & Sexual
Assault

DEPARTMENT OF
PUBLIC SAFETY
P
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The Council on Domestic Violence and Sexual Assault supports the concept of SB 231 which adds a provision to the sexual abuse of a minor statutes to include an offense against a victim who is residing as a member of a social unit in the same household with the offender. Such a relationship is not covered in statutes describing first and second degree sexual abuse of a minor, yet a notable number of minors are sexually assaulted by live-in partners of the parent who are recognized by the child as a parental or authoritative figure. In many instances, encouragement is given to accept live-in partners as surrogate parents and to comply with any parental authority which may be extended. In essence this "sets up" a child to yield to an adult who is not the legally-recognized custodian, but who is in a position to exert a great degree of control and influence. Therefore, the child is vulnerable to this authority and should be specifically protected in statute.

The language in Section 11.41.434(a)(2)(C) is too broad because it could include consensual sexual penetration of a 15-year-old by a 19-year-old. Also the Council feels that the word illegitimate in Section (B) should be replaced with a term with less stigma on the child. It could read "a child born out of wedlock".



William R. Nix
Acting Commissioner

Backup

HOUSE COMMITTEE REPORT

(7)

Date referred: 5/15/87

FURTHER REFERRALS: Judiciary
Finance

DATE: May 16, 1987

The Health, Education and Social Services Committee has considered CSSB 231(Hess)

"An Act relating to sexual abuse of a minor."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

ROD E. GILL No Rec.

Alfred Stanley No Rec.

John E. Ellis No Rec.

Nita Kopyara no rec

Mark G. Quenby no rec

Bill Hulse No Rec.

Daniel Danley no rec

Nita Kopyara
CO-CHAIRMAN'S SIGNATURE



Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCHV
JUNEAU, AK 99811
465-3759

M E M O R A N D U M

TO: REPRESENTATIVE JOHN SUND
CHAIR, HOUSE JUDICIARY COMMITTEE

FROM: REPRESENTATIVE NILO KOPONEN
REPRESENTATIVE JOHNNY ELLIS
CO-CHAIRS, HOUSE HESS COMMITTEE

RE: CSSB 231 (HESS) "Sexual abuse of a minor"

DATE: 5/16/87

We request the Judiciary Committee consider this bill over the interim as it considers the other child abuse bills, HB 229 and HB 237.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: CSB 231 HESS
Publish Date: 4-8-87

REQUEST: _____

Revision Date: _____

Title: "An Act related to sexual
abuse of a minor"

Sponsor: Halford, Jones, Duncan

Requestor: _____

Agency Affected: Dept. of Corrections

BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS :

This legislation should have minimal impact on the Department of Corrections.

SR

Prepared by: Susan E. Knighton, Research Analyst IV
Division: Statewide Programs

Phone: 465-3376
Date: 4-21-87

Approved by Commissioner: Susan Humphrey-Barnett
Agency: Department of Corrections

Date: 4-21-87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: CS SB 231 HESS
Publish Date: _____

Revision Date: _____

Agency Affected: Public Safety

Title: An Act relating to sexual
abuse of a minor

BRU: Council on Domestic
Violence & Sexual Assault

Sponsor: Halford, Jones, etc.

Components: _____

Requestor: Senate HESS

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|--|--|--|--|--|--|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS

Prepared by: Barbara Miklos, Executive Director
Division: Council on Domestic Violence & Sexual Assault

Phone: 465-4356
Date: 4-10-87

Approved by Commissioner: [Signature]
Agency: Public Safety

Date: 4/13/87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

Public Safety

*JMR
4/17/87*

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version CS SB 231 *MESS*
Publish Date: 4/2/87

REQUEST:

Revision Date: 4/10/87
Title: "An Act relating to sexual abuse of a minor."
Sponsor: Halford, Jones, et.al.
Requestor: Senate Judiciary

Agency Affected: Administration
BRU: Office of Public Advocacy

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | 0 | 0 | 0 | 0 | 0 |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|--|---|---|---|---|---|
| GENERAL FUND | | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|-----------|--|---|---|---|---|---|
| FULL-TIME | | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS:

Prepared by: *Brant McGee* Brant McGee, Public Advocate
Division: Office of Public Advocacy
Approved by Commissioner: *Garrey Peska* Garrey Peska
Agency: Department of Administration

Phone: 274-1684

Date: 4/10/87

Date: 4/13/87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

Public Advocacy

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: CS SB 231 HESS
Publish Date: _____

REQUEST:
Revision Date: April 10, 1987
Title: "An Act relating to sexual abuse of a minor"
Sponsor: Sen. Halford
Requestor: Senate Judiciary

Agency Affected: Department of Administration
BRU: Public Defender Agency
Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|--|-----|-----|-----|-----|-----|
| GENERAL FUND | | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

| | | | | | | |
|-----------|--|-----|-----|-----|-----|-----|
| FULL-TIME | | -0- | -0- | -0- | -0- | -0- |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS

Prepared by: Dana Fabe, Public Defender *[Signature]* Phone: 279-7541
 Division: Public Defender Agency Date: April 10, 1987
 Approved by Commissioner: Garrey Peska *[Signature]* Date: 4/13/87
 Agency: Department of Administration

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

Public Defender

POSITION PAPER

SB 231

The Alaska Public Defender Agency and the Office of Public Advocacy are totally reactive agencies which provide representation to indigent persons when appointed by the court. These agencies do not make policy nor do they initiate litigation. Only proposed legislation with fiscal or program ramifications for these agencies can be said to have a direct agency impact. Thus, the Public Defender Agency and Office of Public Advocacy submit position papers for legislation which will affect these agencies fiscally or programatically or will require these agencies to litigate constitutional issues raised by the legislation.

Fiscal impact: X None See attached fiscal note

Program impact: None See analysis below X

Constitutional impact: None See analysis below X

This bill is apparently designed to expand the offense of sexual abuse of a minor in the first degree to include persons who have authority over a child in the household but are not legally related to that child. Unfortunately, this bill is drafted so broadly that it could apply to a number of situations which may not merit the eight-year presumptive term for a first-offender of this offense.

Specifically, the bill would allow conviction of an eighteen year old exchange student who has a romantic relationship with the seventeen year old daughter of the family with whom he is living. If sexual penetration including digital penetration were to occur, that eighteen year old would be subject to prosecution and conviction with an eight-year presumptive term. Similarly, if two adults with teenage children were to begin to live together, and the teenagers, age eighteen and seventeen were to have a romantic relationship which involved any sexual penetration, the eighteen year old could be convicted of this offense.

Since the apparent goal of this legislation is to make culpable persons in a quasi-stepparent relationship with a child victim, regardless of whether that adult is married to the victim's parent or guardian, the statute should be framed more specifically to target that population.

Based on the information above, the Alaska Public Defender Agency and the Office of Public Advocacy oppose this bill.

Dana Fabe
Dana Fabe, Director
Public Defender Agency

4/10/87
Date

Brant McGee
Brant McGee, Director
Office of Public Advocacy

4/10/87
Date

Garrey Peska
Commissioner Garrey Peska
Department of Administration

4/13/87
Date

M E M O

TO: Senator Jay Kerttula
Chairman
Senate Judiciary Committee

DATE: April 24, 1987

FROM: Dana Fabel 
Public Defender

RE: Senate Bill No. 229

I have prepared a brief analysis highlighting the most problematical constitutional and policy issues raised by SB 229. The bill appears to be designed to overrule a variety of appellate decisions unfavorable to the state in cases involving child victims. Since many of the decisions are constitutionally based, the corresponding provisions of the bill appear to be unconstitutional. In this analysis, I will try to pinpoint the most problematical sections of the bill.

1. Repeated sexual abuse of a minor. The bill creates a new set of offenses entitled Repeated Sexual Abuse of a Minor in the First, Second and Third Degrees (Sections 5-8). These offenses, which require a "pattern and practice" of sexual abuse involving three or more incidents, will apply primarily to incest and family sexual abuse cases. As the Court of Appeals has noted in State v. Andrews, virtually all family sexual abuse cases involve repeated abuse.

A person who is convicted on the first offense of Repeated Sexual Abuse of a Minor in the First Degree, will be subject to a 13-year presumptive jail term. The current offense of Sexual Abuse of a Minor in the First Degree carries an 8-year presumptive term for a first offender, as does Sexual Assault in the First Degree. Thus, the typical family incest offender will be punished much more harshly than a person charged with a violent rape of an adult due to the repetitive nature of incest behavior. On a second felony offense a defendant would receive 25 years presumptively, even if the prior felony were a theft conviction when the defendant was a young adult.

Repeated Sexual Abuse of a Minor in the Second Degree is a Class A felony requiring an 8-year presumptive term for the first offender. The conduct proscribed in this statute is any sexual contact, including fondling conduct. Under this statute, the incest offender convicted of Repeated Sexual Abuse of a Minor in the Second Degree would receive an 8-year presumptive term. The current offense of Sexual Abuse of a Minor in the Second Degree is a Class B felony with no presumptive term for the first offender. Thus, an assailant who grabbed and fondled a child on the bike path would face no presumptive term since he would not meet the "repeated contact" requirement of Repeated Sexual Abuse of a Minor in the Second Degree, while the incest offender who fondled would receive 8 years.

In summary, the only impact of this statute is to significantly raise the presumptive term for an incest offender on his first conviction. The proposed bill is not necessary to ensure adequate punishment of incest offenders. If the state can prove three incidents under the current Sexual Abuse of a Minor statute, they are presently free to file three counts and argue for consecutive imprisonment, which could total 24 years if the judge found it to be necessary. The bill will be expensive in that it will cause higher jail populations, as well as more jury trials and appeals.

2. Non-unanimous jury verdicts. As noted above, it is an element of Repeated Sexual Abuse of a Minor that three or more incidents of the prohibited conduct have occurred. Section 8 of the bill provides that the jury need not be unanimous as to any particular incident.

This provision is in direct conflict with Covington v. State, a 1985 decision of the Alaska Court of Appeals. Covington requires that jurors must unanimously agree that the same criminal act has been proved beyond a reasonable doubt. The Covington holding is based upon the defendant's constitutional right to a unanimous verdict. No state has reached a contrary result. This proposed provision is unconstitutional.

3. Prior inconsistent statements as sole evidence at trial. Section 11 of the bill attempts to change the current state of the law as announced in Brower v. State, a 1986 Court of Appeals case. The Brower decision covers situations where an alleged victim gives a statement about an offense but later recants or fails to remember the details of the offense. Under Brower, the prior inconsistent statement can come in as substantive evidence to support a conviction. However, there must be some evidence to corroborate the statement, since there is no ability to cross examine the inconsistent statement which was made out of court.

The bill's proposal, which would allow a prior inconsistent statement to support a conviction even if it were the sole evidence at trial, is constitutionally infirm, since the federal constitution prohibits conviction except upon proof beyond a reasonable doubt. The Court of Appeals' decision in Brower took no radical or novel approach; the Brower holding is consistent with all other courts which have considered this question. The constitutional minimal standard for the proof required for a conviction cannot be reduced by legislative action.

4. Prior bad acts--changes to Evidence Rule 404. This proposed section in the bill (Section 14) states that in a prosecution for physical or sexual assault on a child, evidence of prior bad acts of the defendant involving the same victim or other victims is admissible to show the defendant's disposition to commit the offense.

This provision is arguably not constitutional, since in a very long line of cases the Alaska Appellate Courts have held that evidence of prior bad acts by a defendant are not admissible to prove the defendant's propensity to commit crimes. The rationale for these cases is rooted in the constitutional guarantee of due process and the requirement of proof beyond a reasonable doubt. This change does not appear to be necessary since the existing rules of evidence, particularly as interpreted by the Alaska Courts, broadly opened the doors to evidence of prior bad acts when that evidence is probative of sometime other than criminal disposition.

These are the most problematical of the bill's provisions. There are other problems with the bill which are outlined in greater detail in an earlier memo prepared for Representatives Ellis and Koponen on HB 237, an identical bill which was introduced in the House.

I appreciate this opportunity for input on this bill. Please do not hesitate to contact me if I can provide any further information on this or any other proposed legislation.

DF:sh

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April 9, 1987

Representative John Ellis
Representative Niilo Koponen
Co-Chairmen
Health, Education & Social Services Committee
P. O. Box V
Juneau, Alaska 99811

Dear Representatives Ellis and Koponen:

I understand that House Bill 237 has been referred to your committee for consideration. Although I certainly understand the concern of its drafters for the safety and welfare of child victims, the proposed changes contained in the bill do not appear to be necessary to vigorous prosecution and effective enforcement of laws preventing assaults on children. Many of the changes in the bill appear to be designed to overrule a variety of appellate decisions unfavorable to the state in cases involving child victims. Since some of the decisions are constitutionally based, the corresponding attempted changes appear unconstitutional. Furthermore, other provisions would substantially increase the presumptive jail term for a first incest conviction, rendering that term much more severe than the sentence required for a violent rape of an adult which results in serious physical injury.

Following is my analysis of the bill.

A. SECOND DEGREE MURDER

Section 1 proposes two changes to the second degree murder statute (AS 11.41.110(a)):

1. Neitzel change. The bill would change AS 11.41.110(a)(2) to define second degree murder as "knowingly enga[ing] in conduct [instead of: intentionally performing an act] that results in the death of another person under circumstances manifesting an extreme indifference to the value of human life." This change simply brings the language of the statute in accordance with the interpretation of the statute adopted by the Court of Appeals in Neitzel v. State, 655 P.2d 325 (Alaska App. 1982). The change does not present a problem and

could reduce confusion without substantively changing the law. Section 3 proposes a parallel change in the first degree assault statute, AS 11.41.200(a)(3), and is also not a substantive change in the law as it is presently applied.

2. Extreme indifference to the welfare of a child under 16. Proposed AS 11.41.110(a)(4) creates a new subsection of second degree murder, defined as "under circumstances manifesting an extreme indifference to the welfare of a child under 16, the person engages in a pattern or practice of abuse of that child that results in the death of the child." Abuse is defined in section 2 to include bodily impact, restraint, and confinement. "Pattern or practice" is defined in section 8 (proposed AS 11.41.610(2)) to mean "three or more incidents of the prohibited conduct."

It is not clear to me what the purpose of this section is. It appears to be unnecessary since if a person's conduct, even once, displays manifest indifference to the value of a child's life, and the child dies, that is unambiguously included in AS 11.41.110(a)(2). Requiring a "pattern or practice of abuse" might be interpreted to exclude murder prosecutions under AS 11.41.110(a)(2) when the person has only abused the child once or twice.

If the point of the new section is to insure that evidence of any pattern or practice of abuse will always be admissible, the statute is still unnecessary. Existing case law establishes that a history of abuse will ordinarily be admissible. E.g., Garner v. State, 711 P.2d 1191 (Alaska App. 1983); see also Abruska v. State, 705 P.2d 1261, 1264 & n.1 (Alaska App. 1985).

B. FIRST DEGREE ASSAULT

Section 3 creates a new category of first degree assault for any person who engages in a pattern of abuse which results in serious physical injury to a child under 16.

The proposed new assault provision is unnecessary. Given the broad definition of "dangerous instrument" adopted in Wettanen v. State, 656 P.2d 1213 (Alaska App. 1983), many assaults on a child would fit under existing AS 11.41.200(a)(1) (recklessly causes serious injury with a dangerous instrument). Many other assaults, particularly those as part of a pattern of abuse, would fit under AS 11.41.200(a)(3) (the Neitzel-type assault statute). Further, a prosecution under AS 11.41.200(a)(3) would be more likely than a charge under the new offense to open the door to evidence of assaults on other victims; evidence of such other assaults would not be relevant under proposed AS 11.41.200(a)(4) and the current rules of evidence, but such evidence could often be relevant to establish extreme indifference to the value of

life by showing that the defendant knew the likely consequences of his actions.

Further, AS 11.41.200(a)(4) could be read dangerously broadly. A parent who three times "confined" his child to his room for reasonable discipline could be liable under this class A felony if, one time, the child hurt himself seriously while in his room.

C. REPEATED SEXUAL ABUSE OF A MINOR

Sections 5-8 create a new set of offenses titled Repeated Sexual Abuse of a Minor (RSAM) in the First, Second, and Third Degree. "Repeated" is given meaning in section 8 as "pattern or practice," defined as three or more incidents. Section 13 provides penalties for RSAM in the First Degree, an unclassified felony, setting a presumptive term for first offenders of 13 years (and 25 and 35 years, respectively, for second and third offenders), with a maximum of 50 years. RSAM in the Second Degree is an A felony, with a presumptive five-year term for a first offender.

Effectively, the proposed offense of RSAM in the first degree declares that all family sexual abuse cases will be treated far more harshly than violent rape of a stranger. As the Court of Appeals has noted, virtually all family sexual abuse cases involve repeated abuse. State v. Andrews, 707 P.2d 900, 908-09 (Alaska App. 1985), aff'd, 723 P.2d 85 (Alaska 1986); see Benboe v. State, 698 P.2d 1230, 1232 (Alaska App. 1985) (single incident of abuse may make crime among least serious in its class). To penalize the family offender more harshly than the bike-path rapist is an illogical and unfair result. The typical defendant charged under RSAM will be a middle-aged man who has abused his step-daughter on a number of occasions. He will have no criminal record of any sort and will be an upstanding member of the community in all other respects than his sexual offense. Yet, he will face a presumptive term of 13 years. If he had a prior felony conviction as a young adult, perhaps for a property crime such as theft, he would face a presumptive term of 25 years.

By contrast, the bike-path rapist, who is convicted of one sexual assault and has a misdemeanor record, a serious alcohol problem, or a sociopathic personality which makes him predictably dangerous, faces a presumptive term of only 8 years for his first offense and 15 years for his second violent rape.

RSAM in the second degree parallels the first degree offense and covers any pattern of sexual contact with a child under 16 or of sexual penetration with a child aged 13-15 who is at least 3 years younger than the defendant. This is made a class A felony, in contrast to the present statute, which treats basically the same conduct as a class B felony. See AS 11.41.436. The father

who fondles his 12-year-old on a few occasions would now face a presumptive term of 8 years in prison; the bike-path assailant who grabs and fondles a child once would face no presumptive term.

Increasing the presumptive terms for sexual offenses will undoubtedly increase the number of cases going to trial. While the present 8-year presumptive term for first degree sexual abuse of a minor is certainly long, more defendants will plead guilty to an 8-year term than a 13-year term. Similarly, although the present sanctions for sexual contact with a minor are stiff (0-10 years), there is no presumptive term applicable to first offenders. Clearly more people will plead guilty to class B charges than to the new class A charge. Any increase in the number of trials will mean increased costs for the prosecutors, court system, and Public Defender Agency. Every time the number of trials increases, appeals increase, too, with corresponding extra burdens on the appellate courts, Office of Special Prosecutions & Appeals and the Public Defender appellate case load.

The proposed new statutes are not necessary. If the state can prove three incidents of sexual abuse, the state is presently free to file three charges of sexual abuse of a minor in the first degree. Although the convicted defendant would face a presumptive term of 8 years, rather than 13, Andrews v. State establishes that consecutive terms can be imposed, and the possible maximum term would be 90 years. Thus, the defendant whose pattern of abuse deserves more serious punishment than 8 years can be sentenced more severely by imposition of consecutive terms.

The problems with the proposed RSAM crimes are compounded when considered in the light of other provisions in the bill. All of the repeated sexual abuse of a minor crimes described above include as an element that the defendant "hav[e] authority over a child under the age of 16." "Having authority over a child" is defined in section 8, proposed AS 11.41.610(1), to mean:

- (a) the child is entrusted to the defendant's care by authority of law [e.g., foster parents];
- (b) the child is the defendant's son or daughter, including adopted children and step-children;
- (c) the child resides as a member of a social unit in the same household as the child; or

(d) the child has been temporarily entrusted to the defendant's care [e.g., babysitter, older sibling, day care worker].

These definitions, particularly (c) and (d), are so broad that virtually every sexual abuse of a minor case would involve a person having authority over a child. The definition of "having authority over a child" is so far reaching that a 16-year-old boy who, on several occasions has consensual sexual foreplay involving digital penetration with his new step-sister just prior to her 13th birthday, would be exposed to the 13-year presumptive term should he be waived into adult court. An 18-year-old involved with a 15-year-old step-sister under similar circumstances could be prosecuted for RSAM in the second degree with a presumptive 8-year term on the first offense.

D. PRIOR INCONSISTENT STATEMENTS AS SOLE EVIDENCE AT TRIAL

Section 11, proposed AS 12.845.025, is an attempt to overrule Brower v. State, 728 P.2d 645 (Alaska App. 1986). This proposal states that in a prosecution for any offense, evidence of a prior inconsistent statement is sufficient to support a conviction despite a complete dearth of corroborating evidence.

The question whether an uncorroborated prior inconsistent statement is sufficient to support a conviction is a uniquely judicial determination, not one susceptible to legislative fiat. The federal constitution prohibits conviction except upon proof beyond a reasonable doubt. In re Winship, 397 U.S. 358. A court's holding on a question of the sufficiency of certain evidence is an interpretation of the constitutional requirement of proof beyond a reasonable doubt. Thus, the Court of Appeals' decision in Brower took no radical or novel position; the Brower holding is consistent with all other courts which have considered this question. The constitutional minimal standard for the proof required for a conviction cannot be reduced by legislative action. Section 11 is, therefore, unconstitutional.

E. NONUNANIMOUS JURY VERDICTS

Section 8, proposed AS 11.41.600, provides that in the statutes requiring a "pattern or practice," each juror must be convinced beyond a reasonable doubt that at least three incidents of the prohibited conduct occurred, but the jury need not be unanimous as to any particular incident. This provision is an attempt to overrule Covington v. State, 703 P.2d 436, opin. on reh., 711 P.2d 1183 (Alaska App. 1985).

Covington requires that, where a defendant is charged with one count of criminal conduct, in order to convict the defendant,

jurors must unanimously agree that the same criminal act has been proved beyond a reasonable doubt. The Covington holding is based upon the defendant's constitutional right to a unanimous verdict. Johnson v. Louisiana, 406 U.S. 356, 362 (1972). No state has reached a contrary result. The legislature cannot overrule Covington. Proposed AS 11.41.600(2) is unconstitutional.

F. CHANGES TO EVIDENCE RULE 404

Section 14 proposes a new subsection to Evidence Rule 404. The proposed new section states that, notwithstanding A.R.E. 404(b), in a prosecution for physical or sexual assault on a child, evidence of prior acts by the defendant involving the same or another victim is admissible to show the defendant's disposition to commit the offense.

This is arguably not constitutional. In a very long line of cases, the Alaska appellate courts have held that evidence of prior bad acts by a defendant are not admissible to prove the defendant's propensity to commit crimes. E.g., Eubanks v. State, 516 P.2d 726 (Alaska 1973); Oksoktaruk v. State, 611 P.2d 521 (Alaska 1980); Lerchenstein v. State, 697 P.2d 312 (Alaska App. 1985), aff'd, 726 P.2d 546 (Alaska 1986). The rationale for these cases is rooted in the constitutional guarantee of due process and the requirement of proof beyond a reasonable doubt. U.S. Const., amend. VI; Alaska Const., art. I, § 7. When evidence of a defendant's character, as shown through prior bad acts, is admitted to show his propensity to commit a crime, there is a grave likelihood that the jury will convict the defendant because he appears to be a bad person, not because the evidence proves beyond a reasonable doubt that he committed the crime with which he was charged. Michaelson v. United States, 335 U.S. 469 (1948).

Prior bad acts, relevant to show only disposition, are also excluded because admitting such evidence prolongs trials, causing added expense to all parties and the court system. Rather than have a five-day trial focused on the criminal act alleged in the indictment, if prior bad acts were invariably admissible, trials could take two to three times as long, as witnesses are called by both sides to establish and refute incidents entirely collateral to the real issues at trial. Longer trials also mean longer transcripts; increasing the cost of appeals means more defendants would need public defenders.

The existing Rules of Evidence, as interpreted by the Alaska courts, broadly open the doors to evidence of prior bad acts when such evidence is probative of something other than criminal disposition. E.g., Coleman v. State, 621 P.2d 869 (Alaska 1980); Adkinson v. State, 611 P.2d 528 (Alaska 1980); Oswald v. State, 715 P.2d 276 (Alaska App. 1976). Further, the Alaska courts

already recognize and have recently expanded an exception to Evidence Rule 404(b) for cases where the defendant is charged with sexual misconduct and the state wishes to offer evidence of prior misconduct with the same victim or another victim having highly relevant common characteristics (e.g., another child in the same family), particularly where the evidence of misconduct with the other[s] approaches being evidence of a habit. Burke v. State, 624 P.2d 1240 (Alaska 1980); Soper v. State, Op. No. 675 (Alaska App., Jan. 23, 1987), pet. hearing denied (April 3, 1987). Thus, the state is currently able to introduce evidence of prior bad acts in child sexual assault cases when it is probative.

Please let me know if I can provide you with any further information on this or any other proposed legislation. I appreciate this opportunity for input.

Very truly yours,

Dana Fabe
Public Defender

DF:rjb

SB

264

5-0793B ✓
 Utermohle
 4/27/88

Original sponsors: Josephson, Abood,
 and Fischer

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
 SOCIAL SERVICES COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 264 (HESS)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the practice of chiropractic; and
 7 providing for an effective date."

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

9 * Section 1. FINDINGS. The legislature finds that chiropractic is a
 10 separate and distinct branch of the healing arts and that doctors of chiro-
 11 practic are skilled and highly trained primary health care providers de-
 12 serving of the same degree of responsibility, authority, and respect as
 13 other health care professionals.

14 * Sec. 2. AS 08.20.055 is amended to read:

15 Sec. 08.20.055. BOARD REGULATIONS. The board shall adopt sub-
 16 stantive regulations necessary to effect the provisions of this chap-
 17 ter, including regulations establishing standards for

18 (1) continuing education; and

19 (2) the application, performance, and evaluation of chiro-
 20 practic core methodology.

21 * Sec. 3. AS 08.20.100 is amended to read:

22 Sec. 08.20.100. PRACTICE OF CHIROPRACTIC [WITHOUT LICENSE PRO-
 23 HIBITED]. A person may not practice chiropractic or use chiropractic
 24 core methodology in the state without a license.

25 * Sec. 4. AS 08.20.100 is amended by adding new subsections to read:

26 (b) A person licensed under this chapter may

27 (1) analyze, diagnose, or treat the chiropractic condition
 28 of a patient by chiropractic core methodology or by ancillary method-
 29 ology;

- 1 (2) accept referrals for chiropractic treatment;
- 2 (3) consult on chiropractic matters;
- 3 (4) refer patients to other health care professionals;
- 4 (5) sign

5 (A) certificates of physical examinations for children
6 before they enter school;

7 (B) reports for excuses from employment and from
8 attendance at school or participation in sports activities; and

9 (C) authorizations for sick leave;

10 (6) perform preemployment and workplace health examina-
11 tions;

12 (7) provide disability and physical impairment ratings; and

13 (8) provide retirement health and disability authorizations
14 and recommendations.

15 (c) A person licensed under this chapter is not authorized to
16 sign affidavits exempting school children from immunization require-
17 ments under AS 14.30.125 or to administer or interpret the results of
18 infectious disease tests required by statute or regulation.

19 * Sec. 5. AS 08.20.120(a) is repealed and reenacted to read:

20 (a) An applicant shall be issued a license to practice chiro-
21 practic if the applicant

22 (1) has a high school education or its equivalent;

23 (2) has successfully completed at least two academic years
24 of study in a college of liberal arts or sciences or has engaged in
25 the active licensed practice of chiropractic for three of the four
26 years preceding the filing of the application;

27 (3) is a graduate of a school or college of chiropractic
28 that requires the completion of a minimum of 4,000 hours of formal
29 education and training in order to graduate, including

1 (A) 150 hours of chiropractic philosophy or princi-
2 ples;

3 (B) 1200 hours of basic sciences, including anatomy,
4 chemistry, physiology, and pathology;

5 (C) 1400 hours of preclinical technique, including
6 diagnosis, chiropractic technique, and x-ray; and

7 (D) 700 hours of clinical training;

8 (4) completes 120 hours of formal training in physiological
9 therapeutics;

10 (5) passes an examination given by the board; and

11 (6) passes, to the satisfaction of the board, the parts of
12 the examination of the National Board of Chiropractic Examiners re-
13 quired by the board.

14 * Sec. 6. AS 08.20.120(a) is repealed and reenacted to read:

15 (a) An applicant shall be issued a license to practice chiro-
16 practic if the applicant

17 (1) has a high school education or its equivalent;

18 (2) has successfully completed at least two academic years
19 of study in a college of liberal arts or sciences or has engaged in
20 the active licensed practice of chiropractic for three of the four
21 years preceding the filing of the application;

22 (3) is a graduate of a school or college of chiropractic
23 that

24 (A) is accredited by or a candidate for accredita-
25 tion by the Council on Chiropractic Education or a successor
26 accrediting agency recognized by the board; or

27 (B) if an accrediting agency under (A) of this
28 paragraph does not exist, requires the completion of a minimum of
29 4,000 hours of formal education and training in order to

1 graduate, including

2 (i) 150 hours of chiropractic philosophy or
3 principles;

4 (ii) 1200 hours of basic sciences, including
5 anatomy, chemistry, physiology, and pathology;

6 (iii) 1400 hours of preclinical technique, includ-
7 ing diagnosis, chiropractic technique, and x-ray; and

8 (iv) 700 hours of clinical training;

9 (4) completes 120 hours of formal training in physiological
10 therapeutics;

11 (5) passes an examination given by the board; and

12 (6) passes to the satisfaction of the board those parts of
13 the examination of the National Board of Chiropractic Examiners re-
14 quired by the board.

15 * Sec. 7. AS 08.20 is amended by adding a new section to read:

16 Sec. 08.20.155. PROFESSIONAL DESIGNATION. Notwithstanding the
17 provisions of AS 08.02.010 relating to specialist designations, a
18 person licensed under this chapter may not designate a specialty
19 unless the person has completed a postgraduate specialty program at an
20 accredited school approved by the board and the person has passed a
21 certification exam for the specialty approved by the board. All
22 specialty designations must include the term "chiropractic."

23 * Sec. 8. AS 08.20.170(a) is amended to read:

24 (a) The board may, after a hearing, impose a disciplinary sanc-
25 tion on a person licensed under this chapter when the board finds that
26 the licensee

27 (1) secured a license through deceit, fraud, or intentional
28 misrepresentation;

29 (2) engaged in deceit, fraud, or intentional

1 misrepresentation in the course of providing professional services or
2 engaging in professional activities;

3 (3) advertised professional services in a false or mislead-
4 ing manner;

5 (4) has been convicted of a felony or other crime which
6 affects the licensee's ability to continue to practice competently and
7 safely;

8 (5) intentionally or negligently engaged in or permitted
9 the performance of patient care by persons under the licensee's super-
10 vision which does not conform to minimum professional standards estab-
11 lished by regulation regardless of whether actual injury to the pa-
12 tient occurred;

13 (6) failed to comply with this chapter, with a regulation
14 adopted under this chapter, or with an order of the board;

15 (7) continued to practice after becoming unfit due to

16 (A) professional incompetence;

17 (B) addiction or severe dependency on alcohol or a
18 drug which impairs the licensee's ability to practice safely;

19 (C) physical or mental disability;

20 (8) engaged in lewd or immoral conduct in connection with
21 the delivery of professional service to patients; or

22 (9) failed to satisfy continuing education requirements
23 adopted by the board.

24 * Sec. 9. AS 08.20 is amended by adding a new section to read:

25 Sec. 08.20.230. PRACTICE OF CHIROPRACTIC. The practice of
26 chiropractic

27 (1) addresses ramifications of health and disease with a
28 special emphasis on biomechanical analysis, interpretation and treat-
29 ment of the structural and functional integrity of skeletal joint

1 structures, and the physiological efficiency of the nervous system as
2 these matters relate to subluxation complex; and

3 (2) involves the diagnosis, analysis, or formulation of a
4 chiropractic diagnostic impression regarding the chiropractic condi-
5 tions of the patient to determine the appropriate method of chiro-
6 practic treatment.

7 * Sec. 10. AS 08.20 is amended by adding a new section to read:

8 Sec. 08.20.900. DEFINITIONS. In this chapter

9 (1) "ancillary methodology" means employing within the
10 chiropractic practice those methods, procedures, modalities, devices,
11 and measures commonly used by trained and licensed health care pro-
12 viders and includes

13 (A) physiological therapeutics; and

14 (B) counseling on dietary regimen, sanitary measures,
15 physical and mental attitudes affecting health, personal hygiene,
16 occupational safety, lifestyle habits, posture, rest, and work
17 habits that enhance the effects of chiropractic adjustment;

18 (2) "chiropractic" is the clinical science of human health
19 and disease that focuses on the detection, correction, and prevention
20 of the subluxation complex and the employment of physiological thera-
21 peutic procedures preparatory to and complementary with the correction
22 of the subluxation complex for the purpose of enhancing the body's
23 inherent recuperative powers, without the use of surgery or prescrip-
24 tion drugs; the primary therapeutic vehicle of chiropractic is chiro-
25 practic adjustment;

26 (3) "chiropractic adjustment" means the application of a
27 precisely controlled force applied by hand or by mechanical device to
28 a specific focal point of the anatomy for the express purpose of
29 creating a desired angular movement in skeletal joint structures in

1 order to eliminate or decrease interference with neural transmission
2 and correct or attempt to correct subluxation complex; "chiropractic
3 adjustment" utilizes, as appropriate, short lever force, high velocity
4 force, short amplitude force, or specific line-of-correction force to
5 achieve the desired angular movement, as well as low force neuro-
6 muscular, neuro-vascular, neuro-cranial, or neuro-lymphatic reflex
7 technique procedures;

8 (4) "chiropractic core methodology" means the treatment and
9 prevention of subluxation complex by chiropractic adjustment as indi-
10 cated by a chiropractic diagnosis and includes the determination of
11 contra-indications to chiropractic adjustment, the normal regimen and
12 rehabilitation of the patient, and patient education procedures;
13 chiropractic core methodology does not incorporate the use of pre-
14 scription drugs, surgery, needle acupuncture, obstetrics, or x-rays
15 used for therapeutic purposes;

16 (5) "chiropractic diagnosis" means a diagnosis made by a
17 person licensed under this chapter based on a chiropractic examina-
18 tion;

19 (6) "chiropractic examination" means an examination of a
20 patient conducted by or under the supervision of a person licensed
21 under this chapter for the express purpose of ascertaining whether
22 symptoms of subluxation complex exist and consisting of an analysis of
23 the patient's health history, current health status, results of diag-
24 nostic procedures including x-ray and other diagnostic imaging de-
25 vices, and postural, thermal, physical, neuro-physical, and spinal
26 examinations that focuses on the discovery of

27 (A) the existence and etiology of disrelationships of
28 skeletal joint structures; and

29 (B) interference with normal nerve transmission and

1 expression;

2 (7) "manipulation" means an application of a resistive
3 movement by applying a nonspecific force without the use of a thrust,
4 that is directed into a region and not into a focal point of the
5 anatomy for the general purpose of restoring movement and reducing
6 fixations;

7 (8) "physiological therapeutics" means the therapeutic
8 application of forces and substances that induce a physiologic re-
9 sponse and use or allow the natural processes of the body to return to
10 a more normal state of health; physiological therapeutics encompasses
11 the diagnosis and treatment of disorders of the body, utilizing

12 (A) manipulation;

13 (B) the natural healing forces associated with air,
14 cold, heat, electricity, exercise, light, massage, water, nutri-
15 tion, sound, rest, and posture;

16 (C) thermotherapy, cryotherapy, high frequency cur-
17 rents, low frequency currents, interferential currents, hydro-
18 therapy, exercise therapy, rehabilitative therapy, meridian
19 therapy, vibratory therapy, traction and stretching, bracing and
20 supports, trigger point therapy, and other forms of therapy;

21 (9) "subluxation complex" means a biomechanical or other
22 disrelation or a skeletal structural disrelationship, misalignment, or
23 dysfunction in a part of the body resulting in aberrant nerve trans-
24 mission and expression.

25 * Sec. 11. AS 14.30.070(a) is amended to read:

26 (a) The governing body of each school district shall provide for
27 and require a physical examination of every child attending school in
28 the district. The examination shall be made when the child enters
29 school or, in areas where no physician resides, as soon thereafter as

1 is practicable, and thereafter at regular intervals considered advis-
2 able by the governing body of the district. For purposes of this
3 subsection, physical examinations may be conducted by a chiropractor.

4 * Sec. 12. AS 14.30.120 is amended to read:

5 Sec. 14.30.120. CERTIFICATE OF PHYSICAL EXAMINATION. The school
6 board, when physical examinations are made, shall deliver to the
7 parent, guardian, or other person having the responsibility for or
8 control of the child a report signed by the physician or nurse making
9 the examination, specifying the findings with respect to the health
10 and physical well-being of the child. For purposes of this subsec-
11 tion, physician examinations may be conducted by a chiropractor.

12 * Sec. 13. AS 08.20.220 is repealed.

13 * Sec. 14. Section 6 of this Act takes effect four years after the ef-
14 fective date of sec. 5 of this Act.

A M E N D M E N T #1

Offered in the HOUSE

TO: SB 264

Page 9, after line 8:

Insert the following new bill sections to read:

"* Sec. 13. AS 14.30.070(a) is amended to read:

(a) The governing body of each school district shall provide for and require a physical examination of every child attending school in the district. The examination shall be made when the child enters school or, in areas where no physician or chiropractor resides, as soon thereafter as is practicable, and thereafter at regular intervals considered advisable by the governing body of the district.

* Sec. 14. AS 14.30.070(c) is amended to read:

(c) Examinations shall be made by a competent physician or chiropractor, except that if the services of a physician or chiropractor cannot be obtained or if authorized by the commissioner of health and social services examinations may be made by a nurse.

* Sec. 15. AS 14.30.120 is amended to read:

Sec. 14.30.120. CERTIFICATE OF PHYSICAL EXAMINATION. The school board, when physical examinations are made, shall deliver to the parent, guardian, or other person having the responsibility for or control of the child a report signed by the physician, chiropractor, or nurse making the examination, specifying the findings with respect to the health and physical well-being of the child."

Renumber the following bill sections accordingly.

A M E N D M E N T #2

Offered in the HOUSE

TO: SB 264

Page 6, line 8:

Delete "health care providers"

Insert "chiropractors"

A M E N D M E N T

#3

Offered in the HOUSE

TO: SB 264

Page 5, line 24:

Delete "all"

Delete "but"

A M E N D M E N T #1

Offered in the HOUSE

TO: SR 264

Page 4, line 11:

Delete "(a)"

Page 4, lines 18 - 19:

Delete all material.

A M E N D M E N T #5

Offered in the HOUSE

TO: SB 264

Page 2, line 20, after "active":

Insert "licensed"

Page 3, line 15, after "active":

Insert "licensed"

A M E N D M E N T #6

Offered in the HOUSE

TO: SB 264

Page 2, line 13, after "retirement":

Insert "health and disability"

A M E N D M E N T #7

Offered in the HOUSE

TO: SB 264

Page 2, line 5:

Delete all material.

Reletter the following subparagraphs accordingly.