STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS,
BUSINESS & PROFESSIONAL LICENSING
BOARD OF DENTAL EXAMINERS

MINUTES OF MEETING
May 18, 2018

These minutes were prepared by the staff of the Division of Corporations, Business and Professional Licensing. They have been reviewed and approved by the Board.

By authority of AS 08.01.070(2) and AS 08.36.040 and in compliance with the provisions of Article 6 of AS 44.62, a meeting of the Board of Dental Examiners was held May 18, 2018, by teleconference.

The meeting was called to order by Dr. Paul Silveira, President, at 9:01 a.m.

Roll Call

Those present, constituting a quorum of the board, were:

Dr. Paul Silveira, President – Valdez
Dr. David Nielson – Anchorage
Ms. Gail Walden – Wasilla
Ms. Robin Wahto - Anchorage
Dr. Thomas Kovaleski – Chugiak

In attendance from the Division of Corporations, Business & Professional Licensing, Department of Commerce, Community and Economic Development were:

Ms. Amber Treston, Licensing Examiner – Juneau
Ms. Sher Zinn, Regulation Specialist II - Juneau
Ms. Sara Chambers, Deputy Director - Juneau
Ms. Joan Wilson, Assistant Attorney General - Anchorage
Ms. Chelsea Childers, Records & Licensing Supervisor – Juneau

Members of the public in attendance:

Dr. Shane Rhoton – Fairbanks

Agenda Item 1 – Review of Agenda

Dr. Silveira started the meeting by thanking everyone who was able to join the teleconference this morning. Explained that teleconferences are difficult as we cannot

see each other as they are speaking. Dr. Silveira requests that everyone please state their name prior to making a comment. It is the intention of the board to iron out the problems and discrepancies we have with the new regulations. Developing new regulations is difficult and it is easy to get focused on one part and lose track of another area. His experience in working with regulations is that you determine where the problem area is and then try to come up with solutions that will work for most people. Dr. Silveira moves on to reviewing the agenda and asks the board if they have any changes that they would like to make to the agenda.

Dr. Wenzell joined the meeting at 9:04 a.m.

Dr. Kovaleski states that there is a discrepancy with the nitrous application and the regulation it pertains to. Walden agrees that there is a nitrous discrepancy but she was not sure if they have time to discuss this today. It is determined that there is time during Agenda Item 7 and the nitrous application has been added to the agenda.

Agenda Item 2 – Public Comment

Dr. Shane Rhoton – He introduces himself and states: “I am a general dentist in Alaska since June of 2008. Upon graduating dental school I moved my family to Alaska to build a new life with a new career. I applied for my license and the application process was well outlined and the licensing board had a very clear pathway a new graduate must follow to guarantee licensure. I followed their guidelines to the tee and my license was issued in due time. There was never any question whether my investment in time in school and significant financial burden would come to fruition as long as I followed their outlined recipe. I worked for the U.S. Army for three and half years and upon fulfilling my obligations associated in the practice I now own. I bought the practice nearly 5 years ago. As an associate I learned how to treat the patients that the practice had been built around. This included being able to treat kids on a daily basis below the age of 13 as frequently as two to three times a day we will treat a patient below the age of 13 with oral conscious sedation using Midazolam syrup. In addition, I would sedate one to two adults with Valium and Halcion above the FDA approved at home dosage. I have learned great practice over the years and have over 1,000 successful cases with zero hospitalizations and/or incidences requiring emergent care. I have always managed patients safe and effectively. I decided two years ago to better treat my patient base it would be wise to invest in state of the art equipment and facility and upgraded my entire business to accommodate this patient base. I rebuilt my office with new state of the art surgical suites that are private, isolated, very spacious to accommodate for a potential emergency personnel. They are spacious enough for multiple assistants so direct supervision could be implemented with a dedicated assistant to monitor the patient’s vitals and record them in addition to my primary dental assistant. Surgical grade chairs that fully articulate to better position the sedated patient and manage them in the event of a medical emergency. Appropriate emergency medications on hand in the room with proper storage and such medications. Continuous monitoring of the patient with pulse oximetry, capnography, blood pressure, temperature and pulse. These drastic measures were brought on to better treat my patients and provide them a safe and

more appropriate up to date environment to be sedated and treated. These changes were my own doings and not required by the dental board. As new sedation regulations were discussed by the board I followed the discussions and had no issue once so ever with the new patient safety measures being discussed, as I had by my own choosing, incorporated many, if not all of them, into my new practice. When the new rules came out I was made aware in late March of this year. I quickly realized that we had many patients on the schedule, many of which I would no longer be able to sedate, both adult and pediatric. And therefore would be unable to treat them as I always have. As I am sure the board is aware at this point there have been over 60 emails back and forth with the State's professional licensing division, the board's executive secretary, Amber, and myself trying to get a deed on how I can become compliant so I could continue to treat my patients as I have always done. My privilege to practice as I have done for 10 years has been removed by the board and not revoked and I wish to restore it with the proper compliance measures as soon as possible. With all the back and forth emails and communication between the different individuals at one point or another I have been given three answers to my question. All of them contradict each other and all of them are false or have partial truth. All of them lead them to where I am today. I am unable to identify a path to restore my removed privileges. I have proposed an exact same path that two associate providers used to get their moderate sedation permits and I have been denied stating that their path was only grandfather privileges and would no longer apply to new applicants. If this is true it must be noted that the board considers it safe to practice oral sedation on patients below the age of 13 by permit only. Many of these grandfather permit holders have fewer than 15 pediatric sedations on record but they can indirectly supervise multiple pediatric sedations by the new sedation guidelines. I, however, was not offered grandfather privilege's with my ability to document over 1,000 pediatric and adult oral conscious sedations with no hospitalizations or emergencies. State of the art facility above and beyond the boards safe practice requirements that directly affect patient safety. I am simply asking for the board to consider grandfather privileges for those doctors who can submit the documented cases and meet all facility requirements set forth by the board, meet all patient safety measures and safe practice measures set forth by the board. If need be attend equal CE as those grandfathered into their moderate sedation permits. If this doesn't meet the grandfathered requirements can the board please identify a pathway moving forward for those doctors, like me, who have dedicated their professional life and investments to safe treatment of the orally sedated patients. I never thought my privileges as a doctor would be removed with no identifying pathway by the removing agency to become compliant. Please consider immediate corrective measures to those who have been drastically effected by the new adopted sedation regulations."

Agenda Item 3 – Regulation Review

Dr. Silveira states that one of the things he noticed is that they have a contradiction for minimal pediatric sedation. The intent was to have practitioners trained to a moderate level if they are going to be administering minimal sedation to patients under the age of 13. One of the requirements the board has is that the applicant provide documentation

of at least 25 patients who have undergone moderate sedation. However, if someone is only practicing using minimal sedation and we require them to have moderate sedation levels documented he does not know how these applicants will be able to qualify for the moderate sedation permit. The problem with minimal sedation is that the patient can easily slip into a deeper level of sedation which would then be classified as moderate sedation can happen. The AAPD addresses this. Dr. Silveira states that this is why the board decided to require the practitioner to be trained to a moderate level.

Dr. Rhoton interrupts the board chair and states that he believes there has been some miscommunication between Amber, Sher, Sara Chambers and himself. Zinn states that the time for public comment is over and the board is not allowed to accept public comment after the public comment period is over. Dr. Rhoton apologizes for his interruptions. Dr. Rhoton then asks if it is pointless for him to be on the phone. He asks if he should just hang up.

Dr. Silveira states that he is welcome to stay on the phone. Dr. Rhoton asks why would he stay on the line if the board will not accept any further public comment and there is no opportunity for him to communicate with the board? He states he has been trying for 3 months to communicate with the board. He hopes all of this is going onto public record so that it is public information that the board will not communicate with the doctors they remove privileges from and caused drastic lifestyle changes for. Drastic.

Assistant Attorney General Wilson reminds Dr. Rhoton that although public comment is closed if the board members have questions of Dr. Rhoton they can certainly ask him. Dr. Rhoton speaks over AAG Wilson and states it is a waste of his time to be on the phone call if the board will not openly communicate with him. He states, “Sher butts in and says I am not allowed to public comment.” AAG Wilson asks if Dr. Rhoton heard her comment. She restates that although public comment is closed if the board has further questions of him during their discussion the board may ask him questions throughout the meeting. She asks for his patience as he obviously has information he feels is worth sharing with the board. He may have the opportunity to provide those comments when the board asks upon him versus interrupting the board’s discussion. She would suggest that it is worth his time to listen in.

Dr. Nielson states that he appreciates what Dr. Rhoton has said and that he is looking for a way to continue practicing the way he has been in the past. Looking at the minimal and moderate sedation permit the board has elected to regulate the level of sedation and not the route and to separate adult and pediatric. What they decided to do was to allow an enteral medication to be administered along with nitrous oxide as long as the patient was within a minimal level of consciousness. The dentist could administer these medications without a permit when working on an adult. However, when working with children the board decided that if you were administering Nitrous Oxide alone the dentists would not require a permit. However, if the dentist adds any other medication to that then they will require a moderate sedation permit because of the possibility that the pediatric patient would potentially go from a minimal to moderate level of consciousness. They are regulating to the higher level of sedation with that age group.

Dr. Nielson thinks that if they clarify a couple things: 28.015(f) what is sufficient training as determined by the board. He has a recommendation for this, not sure if we can reword this.

Walden asks Treston about the grandfathered permit holders who went from a parenteral permit holder to a minimal or moderate sedation permit was it intended to be for both an adult and a pediatric patient? Was there pediatric endorsements listed on the permits when they were sent out? Treston states that the new permits went out to all the dentists who held a parenteral sedation permit prior to the new regulations going into effect on April 14, 2018. The letter that the dentists received asked that they provide a PALS certificate to the licensing examiner and request to have the information added to their license. However, not all dentists have sent in their PALS certificates at this time and it is difficult to determine which doctors are administering sedation medications to children under the age of 13 without them openly providing that information to the board.

Dr. Nielson states that the intent was to have the endorsement supplied at the time of renewal because they will be required to abide by the regulations to obtain their endorsement on the moderate sedation permit at the time of renewal. As of right now, all it says for the renewal is that the dentist must have 4 hours of CE in hands on airway management and it must be in a pediatric course. After further discussion they realized that PALS could count for this CE which is redundant. The oversight that Dr. Rhoton is thinking about is what the moderate sedation permit holders have to do in addition to the PALS certificate in order to receive this pediatric endorsement for moderate sedation. He sees how this is confusing. The board failed to specify further didactic CE requirements. The question would be how someone would get grandfathered in with a pediatric moderate sedation endorsement and not be required to submit additional didactic training in pediatric training beyond PALS. He is not sure if they need to address this right now. He does not think they should automatically hand someone a moderate sedation permit just because they had the parenteral sedation permit previously. He believes someone who has gone through a CODA accredited pediatric residency program they have completed at least 60 hours of training and completed 50 patient cases where 25 they are the operator. He states since they already have a standard of 60 hours of CE and 20 documented moderate sedation cases for the class work if you want to administer moderate sedation he believes this should be the standard for the pediatric endorsement as well. Dr. Nielson recommends that if the dentist is not going to complete a residency program then they should complete 60 hours of CE that is approved by the board and provide proof of administration of sedation on 20 individually managed cases. So it will be a similar criteria as CODA would require for a pediatric residency program to be accredited. What is confusing in (f) is that it says every applicant must provide proof of 25 individually managed cases. To him, he believes it is implied if you completed a residency program. There are no courses out there right now that have this requirement. He has checked with multiple other states and he believes they are ahead of other states. Colorado requires an additional 30 hours of pediatric training to obtain the pediatric endorsement. Walden asks about any options from universities that may have some of these courses

available. Basically everything we are discussing is in the American Dental Association guidelines as far as the hours of 60 hours of CE and 20 moderate parenteral and moderate enteral. Dr. Nielson states that ADA decided to separate pediatrics out on purpose. They left this up to the AAPD and they assume everyone is graduating from a residency. They have guidelines for training but not all the exact requirements. He believes there was a course that provided 20 hours of CE locally for dentists who were traveling to the bush. However, when CODA started getting more stringent the program stopped offering this course. Dr. Nielson has done research into courses available and all the courses he found are enteral minimal sedation for pediatrics that offer a 20 hour CE course. These would not qualify for the 60 hour requirement for the moderate sedation permit. However, if someone found CE from different locations they could piece them together to get the 60 hour class. His feeling is that with having the pediatric residency program people will argue access.

Dr. Wenzell asks Dr. Kovaleski how many sedations the residents typically perform in their residency program at ANMC. Dr. Kovaleski answers that they are likely performing 50 sedation cases and a lot of them are doing even more that. They attempted to offer this training for the dentists going to the bush but they could never meet the new requirements of 25 or 50 sedation cases so they had to drop that portion of the course. That is no longer offered at this point.

Dr. Nielson states that not all residency programs are created equally when it comes to sedation training. The one here at ANMC is really focused on it and not all are at that level. He believes they should stick with the minimum CODA standards of 60 CE hours and documentation of 20 individually managed sedation cases. Dr. Kovaleski wants to make it clear that although this program is held at the Alaska Native Medical Center it is actually owned by NYU Lutheran Medical Center. So it is not Dr. Kovaleski's program but it does exist within his facility.

AAG Wilson suggests that they go into executive session if they are going to go much further at this point. She states that if they are proposing new language then they are proposing a new regulation project and that requires public notice. She understands that the meeting today is to determine sufficient training for pediatric moderate sedation as determined by the board. She states that they mentioned something about the applicant providing proof of administering for at least 20 individually managed cases on patients younger than 13 years of age to establish competency in clinical experience in managing a compromised airway. She believes the board needs to define what level of administration of sedation they are talking about for these 20 patients. It does not appear to be moderate sedation by use of the language. Dr. Nielson asks AAG Wilson if *sufficient training in moderate pediatric sedation as determined by the board* can that be written somewhere else as a guideline and the examiner can inform the applicants what "sufficient training will be considered…" Or if someone finds a course that would be approved by the board then they could list the courses that meet the standards to the board. If they need more language than this then they need to have a new regulation project. Walden asks if the *or sufficient training* needs to list the number of CE hours?

Dr. Nielson believes that as far as his suggestion then that would be the guideline in sufficient training.

AAG Wilson states that she does not want the public session to go into an attorney-client communication and Nielson suggest going into executive session to discuss things further.

Dr. Rhoton interrupts stating that he knows he cannot publicly comment but if the board is not going to involve the people that you're drastically affecting then it's a pointless meeting a pointless conversation. Dr. Rhoton addresses Dr. Nielson and states that if he is going to talk and not talk with someone and just talk about somebody or a situation this is pointless. He says that he has so much more to say than what was in his initial public comment. He asks if it is pointless for the public to listen in. Dr. Nielson states that he is not scared of a regulation project but he wants to change some things on the renewal portion of what is required for additional training for pediatric patients. He is open to a regulation project as that would encourage another public comment period and allow the dentists that these regulations effect to take them into account.

Dr. Rhoton interrupts and states that with no disrespect but no one said anything about it because it was never discussed that there would not be an identified pathway. He states that the board removed privileges that people built their life around and the board was to identify a pathway which you still cannot identify. And if you do try to identify it you say you are leading a pack and there is no identified path unless one completes a residency. There is no public comment on this because he took on patient safety measures well beyond the board with capnography, direct supervision, surgical suites, and medications. He did all that himself. He states he is already 10 steps ahead of the board but now the board is putting regulations in front of him and his livelihood. So, yeah, people get a little upset when you shut down their practice and you remove privileges when you are there to remove them. Dr. Nielson asks Dr. Rhoton if he has a parenteral sedation permit currently. Dr. Rhoton states, no I do not. So I have asked the board and I asked Sara Chambers if I did go to a parenteral course and submitted PALS courses along with over 1,000 sedation cases. He states that he was told no and there are no pathways for him to continue his practice. Dr. Nielson states that he would like to strengthen the renewal portion and add CE for the pediatric endorsement.

On a motion duly made by Dr. Nielson, seconded by Dr. Silveira, and approved by roll call vote, it was

> **RESOLVED to go in to executive session in accordance with Alaska Statute 44.62.310(c)(3) for the purpose of discussing attorney-client communication.**
>
> **Silveira – yea, Nielson – yea, Kovaleski – yea, Walden – yea, Wahto – yea, Wenzell - yea**
> **6 yeas, 0 nays. Motion passed.**

Off the record at 9:43 a.m.
On the record at 10:32 a.m.

Roll Call

Those present, constituting a quorum of the board, were:

Dr. Paul Silveira, President – Valdez
Dr. David Nielson – Anchorage
Ms. Gail Walden – Wasilla
Ms. Robin Wahto - Anchorage
Dr. Thomas Kovaleski – Chugiak
Dr. Dominic Wenzell - Girdwood

In attendance from the Division of Corporations, Business & Professional Licensing, Department of Commerce, Community and Economic Development were:

Ms. Amber Treston, Licensing Examiner – Juneau
Ms. Sher Zinn, Regulation Specialist II - Juneau
Ms. Joan Wilson, Assistant Attorney General - Anchorage
Ms. Chelsea Childers, Records & Licensing Supervisor – Juneau

Members of the public in attendance:

Dr. Shane Rhoton – Fairbanks

Agenda Item 4 – Regulation 28.015(f) Define sufficient training

Dr. Silveira opens the discussion by stating that the reason the board is having this teleconference is to discuss sedation regulations. The point of this is to protect children with sedation. This has been a problem in the United States of children dying from sedation. It has become the goal of the board to come up with regulations that will not only protect children but also to not over restrict access to care. So that dentists can do what they need to in a safe manner to be able to treat children under sedation. With any regulations what they've come up with is not perfect but it is the goal and intent to make a clear pathway to be able to obtain permits. The board needs to work out the details that are causing problems. Dr. Nielson states they are going to make a new regulation project with the goal to treat everybody equally when it comes to different permit levels and how to define the pathway for the pediatric endorsement. The way the language is currently the licensees who were grandfathered in with the parenteral sedation are treated differently than those who are new applicants for the moderate sedation permits. The goal of the new regulation project is to make it clear when the dentists renew their permit they will be required to do a certain number of sedations in pediatric cases along with documented cases to obtain an endorsement for pediatric sedation. Another pathway where someone can get a pediatric sedation permit only with just children. The

goal is to make it the same and fair for everybody. Will get a new regulation in progress and get it out for public comment but currently…

Rhoton interrupts and wants to make it clear on the record that the board is not providing a pathway. Continuing with the same adopted regulations. He will not regain privileges. He cannot sedate anyone. He says that the board has also restricted him from administering sedation medications to adults. He states that this is not just about pediatrics it is about adults as well. He states that due to the new regulations he cannot administer a half a milligram of Halcion Dr. Silveira interjects and limits the public comment for public comment time. Dr. Rhoton asks, “Is it pointless for me to continue talking. If I can't talk then it is pointless for me to listen because if I can’t comment then this is pointless.” Dr. Silveira states that Dr. Rhoton needs to stop interrupting or we will need to adjourn the meeting because we are not getting any board business accomplished. He explains that Dr. Rhoton may listen or not listen that is his choice but he needs to be quiet at this point.

Dr. Silveira states that 25 moderate sedation cases for each renewal period. If someone is only doing minimal sedation on children that will be a problem.

Dr. Silveira states that the problem is dentists need a pathway on where to go moving forward. At the point of renewal there may be extra course work required that will be addressed with the new regulation. People who take a moderate sedation course work and obtain a PALS certificate they need to know that this will be the same for new applicants.

On a motion made by Dr. Kovaleski, seconded by Dr. Nielson, and approved by roll call vote, it was

> **RESOLVED to define sufficient training in pediatric moderate sedation as determined by the board under 12 AAC 28.015(f): a non-grandfathered licensee under 12 AAC 28.015(i) must get a moderate sedation permit as defined by 12 AAC 28.015(d) and (e) and a PALS certificate.**
>
> **Silveira – yea, Nielson – yea, Kovaleski – yea, Walden – yea, Wahto – yea, Wenzell – yea**
> **6 yeas, 0 nays. Motion passed.**

This will allow dentists a current pathway to obtain a minimal and moderate sedation permit and there will be a regulation project for the renewal period. A task force will be put together to work with AAG Greider. Dr. Nielson states that the goal of the regulation project will be to clarify what is necessary upon renewal of a moderate sedation permit to obtain a pediatric endorsement on their permit. Also will discuss what records need to be kept on file in the event of an audit. Dr. Nielson and Dr. Wenzell have volunteered to work on this project.

Agenda Item 5 – Regulation 28.060(e)(8)(c) checklist

Dr. Nielson starts the discussion by reading the regulation 12 AAC 28.060 (e)(8)(A)(B)and(C):

(8) conduct a training exercise at least two times each calendar year and log each exercise; the log must be signed and dated and must include

(A) the names and positions of facility personnel or practitioners present;

(B) proof of current certification in cardiopulmonary resuscitation (CPR), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS) for each person involved in patient care; and

(C) a completed checklist provided by the board, or an equivalent, to establish competency in handling procedures, complications, and emergency incidents;

Discussion about what to include on the checklist took place. Page 3 of Minnesota checklist regarding allied staff credentials would cover (A) and (B). Page 9-13 would be sufficient for the checklist. Treston will compose a checklist and provide that to the board to be amended or approved. When it comes time for inspections of dental offices that perform sedations then the board will likely require the whole form to be completed.

Agenda Item 6 – Application Modification

Moderate sedation permit application needs clarification on the course verification. There are two verification forms currently. Will modify Course Verification to read Program Verification and the wording on #3 and #5 should be one or the other. Programs may be concerned about marking a “No” answer thinking they will harm an applicant’s approval. If given the option of one or the other then it will be made clear on how to fill the form out correctly. Treston will modify the form to read #3 or #5 and submit the drafted form to the board for approval.

Discussed changing the Continuing Education Course Verification form as well. Will need to modify it to include pediatric moderate sedation permit consistent with the AAPD guidelines. Dr. Nielson states that it can be modified at a later time to incorporate the two different permit options.

Dr. Kovaleski brings up the discrepancy on the nitrous oxide application 12 AAC 28.345 and recommends changing the application to coincide with the correct regulation.

Agenda Item 7 – Adjourn

Treston informs the board members that there are 2 credential applicants that are ready for their interviews. Dr. Nielson volunteers to interview the applicants next week. Will notify Treston of a time that works best.
Off the record at 11:30 a.m.

Respectfully Submitted:

Amber Treston
Occupational Licensing Examiner

Approved:

Paul Silveira, DMD, President

Date: 9/12/18