

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
FROM THE BOARD OF DENTAL EXAMINERS**

In the Matter of: )  
 )  
 YOUNG LEE ) OAH No. 18-0527-DEN  
 ) Agency No. 2018-000252  
\_\_\_\_\_ )

**DECISION<sup>1</sup>**

**I. Introduction**

Young Lee is a licensed dentist in Washington who applied for licensure by credentials in Alaska. That application was denied. Dr. Lee requested a hearing to challenge the denial.

The evidence demonstrates that Dr. Lee has a history of discipline with the Washington State Dental Quality Assurance Commission. The Alaska statute, AS 08.36.110(a)(1), sets forth requirements for dental licensure. One of those requirements is that an applicant “has not had a license to practice dentistry revoked, suspended, or voluntarily surrendered in this state or another state.”<sup>2</sup> The undisputed evidence shows that Dr. Lee’s Washington state dental license was suspended in 2004. As a result, Dr. Lee is ineligible for dental licensure in Alaska. His application for licensure is denied.

**II. Procedural History and Issues Presented**

*A. Procedural History*

Dr. Lee’s application was presented to the Alaska Board of Dental Examiners (Board) on April 20, 2018. The Board denied the application under AS 08.36.110(a)(1)(C), (D), (E), and (F).<sup>3</sup> Dr. Lee was sent formal notice of the denial of his application on April 25, 2018. The notice cited to AS 08.36.110(a)(1)(C) – (F), and provided the following reasoning:

Your license to practice dentistry in WA was suspended by the Washington Dental Quality Assurance Commission (DQAC) based upon an investigation and that suspension was reported to the National Practitioner Data Bank. You also entered into a Stipulation for Informal Disposition with DQAC in 2017.<sup>4</sup>

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<sup>1</sup> This decision contains two minor factual changes to address manifest/clerical errors identified in the Division of Corporations, Business and Professional Licensing’s December 5, 2018 Proposal for Action, to wit: that the 2003 **formal** disposition was reported to the National Practitioner Data Bank, and to remove the factual finding, and subsequent reference in the discussion portion, that the 2017 informal discipline arose out of dental services provided in 2000. See 2 AAC 64.350(a). The proposed decision otherwise remains unchanged.

<sup>2</sup> AS 08.36.110(a)(1)(C).

<sup>3</sup> Administrative Record (AR) DIV 216 – 217.

<sup>4</sup> AR DIV 223- 224.

The notice also advised Dr. Lee of the right to request an administrative hearing. He exercised that right, resulting in this case.

Dr. Lee's hearing was held on August 17, 2018. Dr. Lee represented himself and testified on his own behalf. Megyn Weigand represented the Division of Corporations, Business and Professional Licensing (Division). Jeremy Fullenwider, a claims supervisor with Dr. Lee's professional insurance carrier, Daniel Havirco, Jr., staff attorney for the State of Washington Dept. of Health, and Amber Treston, an occupational licensing examiner with the Division, all testified for the Division. The record was left open after the hearing for the parties to submit post-hearing briefing and submit additional arguments based upon prior Alaska Board of Dental Examiners' cases.

*B. Issues Presented*

The evidence at hearing demonstrated four potential reasons for denying Dr. Lee's application, which were:

1. Dr. Lee had a malpractice claim against him, which was settled in 2003 and reported by the National Practitioner Data Bank (NPDB).<sup>5</sup>
2. Dr. Lee had his dental license suspended by the Washington DQAC in 2004, which was reported by the NPDB.<sup>6</sup>
3. Dr. Lee entered into a stipulation to informal disposition with the DQAC in 2007, which was reported by the NPDB.<sup>7</sup>
4. Dr. Lee entered into a stipulation to informal disposition with the DQAC in 2017, which was reported by the NPDB.<sup>8</sup>

The notice advising Dr. Lee of the reasons for the denial of his application, however, only mentioned two of the four potential reasons for denying the application: the dental license suspension, and the 2017 stipulation to informal disposition. That notice also mentioned the reporting of the suspension on the NPDB report. It did not mention the reporting of the 2017 stipulation to informal disposition on the NPDB report. It did not mention either the malpractice claim settlement, nor the 2007 stipulation to informal disposition. The Division did not file, nor

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<sup>5</sup> AR DIV 228 – 229.

<sup>6</sup> AR DIV 112 – 120, 226.

<sup>7</sup> AR DIV 93 – 96.

<sup>8</sup> AR DIV 82 – 85.

did it seek to file, an amended statement of issues.<sup>9</sup> The Division is therefore limited to the issues identified in the April 25, 2018 notice of denial. Accordingly, this decision will only address the license suspension, including the NPDB report, and the 2017 stipulation to informal disposition, not including the NPDB report.

### III. Facts

#### A. *Dr. Lee's Application*

Dr. Lee is a dentist who has been licensed in the State of Washington since 2000. He applied for an Alaska dental license by credentials in December 2017.<sup>10</sup> On his application, Dr. Lee answered “yes” to the following question:

Have you ever had a professional license denied, revoked, suspended, or otherwise restricted, conditioned, or limited, or have you surrendered a professional license, been fined, placed on probation, reprimanded, disciplined, or entered into a settlement with a licensing authority in connection with a professional license you have held in any jurisdiction including Alaska and including that of any military authorities or is any such action pending?<sup>11</sup>

Dr. Lee also answered “yes” to the following question:

Have you ever been the subject of a report from the National Practitioner Data Bank or the American Association of Dental Boards Clearinghouse?<sup>12</sup>

Dr. Lee's application contained an addendum where he disclosed, in addition to other information, that he had entered into an “Agreed Order” with the Washington State Dental Quality Assurance Commission (Washington DQAC) on August 17, 2004, and that he entered into a stipulation to informal disposition with the Washington DQAC on December 17, 2017.<sup>13</sup>

#### B. *Dr. Lee's Prior Discipline History, Both Formal and Informal, and National Practitioner Data Bank Reporting*

##### 1. Formal Discipline

Dr. Lee had a formal discipline action initiated against him by the Washington DQAC in 2003.<sup>14</sup> Dr. Lee, who was represented by counsel, and the Washington DQAC entered into an agreement in 2004 that resolved that discipline action. In addition to other requirements, Dr. Lee's Washington State dental license was suspended for three years. All but 30 days of the suspension

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<sup>9</sup> See AS 44.62.400.

<sup>10</sup> AR DIV 4 – 9.

<sup>11</sup> AR DIV 8.

<sup>12</sup> AR DIV 8.

<sup>13</sup> AR DIV 12.

<sup>14</sup> AR DIV 98 – 102.

period was stayed.<sup>15</sup> While the initial charges included allegations that Dr. Lee “failed to meet the generally accepted standard of care,” the final agreement entered into between Dr. Lee and the Washington DQAC did not contain those allegations, and instead Dr. Lee admitted to unprofessional conduct, which included allowing unlicensed dental hygienists to provide services and failure to comply with regulatory requirements.<sup>16</sup> This disposition was reported on the NDBP as “allowing or aiding unlicensed practice,” not as malpractice.<sup>17</sup>

## 2. Informal Discipline

Dr. Lee had a case with the Washington DQAC in 2017, whereby he entered into a stipulation to informal disposition in December 2017, which was approved by the Washington DQAC on January 26, 2018.<sup>18</sup> In the agreement, Dr. Lee specifically did not admit any of the underlying allegations, and the agreement specifically provided that it “shall not be construed as a finding of unprofessional conduct or inability to practice.”<sup>19</sup> The agreement also provided that it was “not formal disciplinary action” but that it was subject to federal, interstate, and national reporting requirements.<sup>20</sup> Dr. Lee was required to reimburse the Washington DQAC \$1,914.95 and take 27 hours of continuing education in orthodontics, periodontics, and risk management/record keeping.<sup>21</sup>

## IV. Discussion

Dr. Lee has an active dentist’s license from the State of Washington. In December 2017, he applied for a dental license in Alaska. He submitted his application as one for licensure by credentials, which is an option open to dentists who are licensed in another jurisdiction. In order to obtain licensure by credentials, a dentist must, in addition to other requirements, “meet[] the requirements of AS 08.36.110.”<sup>22</sup> AS 08.36.110 contains the following requirements:

An applicant for a license to practice dentistry shall

(1) provide certification to the board that the applicant

\* \* \*

(C) has not had a license to practice dentistry revoked, suspended, or voluntarily surrendered in this state or another state;

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<sup>15</sup> AR DIV 112 – 120.

<sup>16</sup> AR DIV 104 – 105, 113 – 114.

<sup>17</sup> AR DIV 226.

<sup>18</sup> AR DIV 82 – 86.

<sup>19</sup> AR DIV 82.

<sup>20</sup> AR DIV 83.

<sup>21</sup> AR DIV 84.

<sup>22</sup> AS 08.36.234(a).

(D) is not the subject of an adverse decision based upon a complaint, investigation, review procedure, or other disciplinary proceeding within the five years immediately preceding application, or of an unresolved complaint, investigation, review procedure, or other disciplinary proceeding, undertaken by a state, territorial, local, or federal dental licensing jurisdiction;

(E) is not the subject of an unresolved or an adverse decision based upon a complaint, investigation, review procedure, or other disciplinary proceeding, undertaken by a state, territorial, local, or federal dental licensing jurisdiction or law enforcement agency that relates to criminal or fraudulent activity, dental malpractice, or negligent dental care and that adversely reflects on the applicant's ability or competence to practice dentistry or on the safety or well-being of patients;

(F) is not the subject of an adverse report from the National Practitioner Data Bank or the American Association of Dental Boards Clearinghouse for Board Actions that relates to criminal or fraudulent activity, or dental malpractice.<sup>23</sup>

*A. Prior License Suspension*

It is undisputed that Dr. Lee's dental license was suspended in 2004 by the Washington DQAC. On its face, this suspension could render Dr. Lee ineligible for licensure in Alaska. Dr. Lee argued that the suspension should be disregarded because it occurred so long ago. The central issue is how the phrase "has not had a license to practice dentistry revoked, suspended, or voluntarily surrendered" should be read. The most natural, plain language reading is that any revocation, suspension, or surrender in the past disqualifies the applicant, meaning that the Board has no discretion to license such an applicant who has such an event in his or her past. However, one could also read this language to mean that an applicant is only disqualified if he does not presently have a license that is revoked, suspended, or surrendered, *i.e.*, that the status continues as of the time of the application. This reading, which strains the statutory language somewhat, would mean that if a revoked license has been restored, a suspension completed, or a surrender reversed by subsequent reapplication and re-licensure, the applicant is not *automatically* disqualified from licensure in Alaska. Dr. Lee favors the second reading.

Dr. Lee's argument must be examined in light of the rules which govern the interpretation of Alaska statutes. The Alaska Supreme Court has stated that:

In interpreting a statute we "look to the plain meaning of the statute, the legislative purpose, and the intent of the statute. We have declined to mechanically apply the plain meaning rule when interpreting statutes, adopting instead a sliding scale

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<sup>23</sup> AS 08.36.110(a).

approach: “The plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be.”<sup>24</sup>

In support of his argument, Dr. Lee points out that the statutes governing other professional licensing boards do not contain an automatic bar based upon a prior license suspension, regardless of when it occurred or the underlying circumstances. For example, the Medical Board licensing statutes require that an applicant must not have a license “that is currently suspended or revoked for disciplinary reasons.”<sup>25</sup> Those same statutes discuss prior suspensions and revocations, but allow the Board discretion: “may refuse to grant” applicants who have a prior history of suspensions and revocations.<sup>26</sup> The Optometry Board statutes limit licensing to persons who have not been previously disciplined, but given the board “discretion .. to determine if the person is qualified for licensure.”<sup>27</sup> The Chiropractor Board statutes require that an applicant have “held a license in good standing ... for the five years preceding the date of application.”<sup>28</sup> However, unlike the statutes regulating similar professions, recited above, the statute regulating dentists does not contain a time limit on suspensions, does not contain a requirement that the suspension be current, and does not expressly provide the Board with discretion to grant a license notwithstanding the prior suspension. The fact that the Legislature has been able to provide such discretion to other boards, but did not use the same language with this board, actually cuts against Dr. Lee’s position, indicating that the Legislature probably intended the Dental Board to operate under a more restrictive regime. There is no legislative history showing otherwise. In light of this context, and in the absence of legislative history that might suggest a different intent, it is appropriate to read AS 08.36.110 according to its plain language.

Dr. Lee correctly points out that the Board is required to “seek consistency in the application of disciplinary sanctions.”<sup>29</sup> He points to two specific cases. Dr. Lockwood had his license reinstated after it was suspended by the Board. However, Dr. Lockwood’s dental license was suspended by the Board pursuant to a settlement agreement. That settlement agreement included a provision whereby Dr. Lockwood was eligible to apply for reinstatement.<sup>30</sup> Moreover,

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<sup>24</sup> *State, Dept. of Commerce, Community & Economic Dev., Div. of Insurance v. Alyeska Pipeline Service Company*, 262 P.3d 593, 597 (Alaska 2011) (citations omitted).

<sup>25</sup> AS 08.64.200(a)(4).

<sup>26</sup> AS 08.64.240(b); AS 08.64.326(a)(13).

<sup>27</sup> AS 08.72.170(7).

<sup>28</sup> AS 08.20.141(2).

<sup>29</sup> AS 08.01.075(f).

<sup>30</sup> Division’s October 1, 2018 *Reply to Closing Argument*, Attachment B, p. 5.

Dr. Lockwood was not applying for new license; in restoring his license, the board was not applying AS 08.36.110, but rather was applying the terms of the original suspension under AS 08.36.315. The right to reinstatement was written into the terms of the settlement agreement entered into between Dr. Lockwood and the Board. Those circumstances are not present in this case. This case is distinguishable.

Dr. Lee also points to the case of Dr. Shedlock, which is also markedly different from this case. Dr. Shedlock voluntarily suspended his license while he was criminally prosecuted. His license was reinstated after he was acquitted of the criminal charges.<sup>31</sup>

Another potentially comparable case is *In re Fahey*,<sup>32</sup> a settlement approved by the board in 1997. In that case, the board noted that Dr. Fahey had been suspended in Oregon ten years previously. The board fined Dr. Fahey for nondisclosure of that suspension, but it did not take away his Alaska license, nor bar him from renewal. This result, however, is again consistent with a strict ruling of AS 08.36.110. Dr. Fahey already had his Alaska license at the time of the Oregon suspension, and thus he never had to apply for a new license under AS 08.36.110 with a suspension already on his record. Instead, he only had to renew under AS 08.36.250, a statute that does not contain the “has not had a license to practice dentistry revoked, suspended, or voluntarily surrendered” requirement.

The Division points to the recent case of Dr. English. Dr. English applied for licensure in Alaska even though he had his dental license revoked in California. The Board denied his application. Dr. English initially requested a hearing to challenge that denial. He subsequently entered into a stipulated agreement with the Board, whereby his application remained denied.<sup>33</sup> Thus, this board has been consistent in treating past suspensions and revocation in other states as an absolute bar to *new* licensure in Alaska.

The undisputed evidence is shows that Dr. Lee has a prior suspension from Washington. Pursuant to AS 08.36.110(a)(1)(C), and consistent with its action in similar cases, that suspension precludes Dr. Lee from being licensed in Alaska, pursuant to AS 08.36.110(a)(1)(C). The Board has no discretion to grant Dr. Lee a license.<sup>34</sup>

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<sup>31</sup> See October 6, 2014 correspondence and Board Order reinstating Dr. Shedlock’s license, which was attached to Dr. Lee’s September 21, 2018 *Closing Argument*.

<sup>32</sup> Case No. 1200-97-1 (Board of Dental Examiners, April 1, 1997).

<sup>33</sup> See Board Denial letter of May 21, 2014 and Stipulated Agreement lodged with OAH on August 27, 2018.

<sup>34</sup> In addition to the preclusion of Dr. Lee’s licensure under AS 08.36.110(a)(1)(C), the Division argues that there is an additional reason to preclude Dr. Lee’s licensure because the suspension was reported on the NPDB. Under

*B. 2017 Stipulation to Informal Disposition*

Under AS 08.36.110(a)(1)(D), an applicant is barred from licensure if he or she has had an “adverse decision based upon a complaint, investigation, review procedure, or other disciplinary proceeding within the five years immediately preceding application.”<sup>35</sup> It is undisputed that Dr. Lee entered into a stipulation to informal disposition with the Washington DQAC in December 2017, which was approved by the DQAC in January 2018.

Dr. Lee argues that the stipulation is not an “adverse decision.” The Division takes the opposite position.

The stipulation by its own terms does not contain any admissions by Dr. Lee, is not “a finding of unprofessional conduct or inability to practice,” nor does it constitute formal discipline. The statute does not require that the “adverse decision” arise from formal discipline, merely that it be based “upon a complaint, investigation, review procedure, or other disciplinary proceeding within the five years immediately preceding application” or that it be related to criminal or fraudulent activity, etc. The stipulation clearly arose out of a disciplinary proceeding, and it also occurred within the five-year period preceding Dr. Lee’s application. The real issue is whether the stipulation is an “adverse decision” within the meaning of AS 08.36.110(a)(1)(D).

It should first be noted that neither the Dental licensing statutes, AS 08.36.370, nor the Dental licensing regulations, 12 AAC 28.990, contain a definition of either “decision” or “adverse decision.” While the Board has peripherally dealt with this issue in a case involving Dr. Paige, that case involved Dr. Paige not disclosing a 2001 Washington DQAC stipulation to informal disposition, on a 2015 license application. Dr. Paige’s application was granted, and the Division determined after the fact that he had not disclosed the stipulation on the application. The Division and Dr. Paige entered into an agreement for the payment of a civil fine, which was approved by the

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AS 08.36.110(a)(1)(F), a report from the NPDB can independently form a basis for denying a license application if it “relates to criminal or fraudulent activity, or dental malpractice.” In Dr. Lee’s case, the reported suspension was not due to “criminal or fraudulent activity, or dental malpractice.” Instead, the suspension was due to unprofessional conduct, which included allowing unlicensed dental hygienists to provide services and failure to comply with regulatory requirements. As a result, the evidence does not support an additional reason for denial of the license under AS 08.36.110(a)(1)(F).

<sup>35</sup> Similarly, under AS 08.36.110(a)(1)(E), an applicant is barred from licensure if there was an “adverse decision,” without time limitation, related to “criminal or fraudulent activity, dental malpractice, or negligent dental care and that adversely reflects on the applicant’s ability or competence to practice dentistry or on the safety or well-being of patients.” However, there is no admission by Dr. Lee to any of these components “criminal or fraudulent activity, dental malpractice, or negligent dental care” in the stipulation. Accordingly, the Division does not have a basis to proceed under AS 08.36.110(a)(1)(E).



Board. In that agreement, Dr. Paige admitted that he had “an adverse license action in which I entered into a settlement on 2001 with another licensing authority.”<sup>36</sup>

The agreement with Dr. Paige, however, cannot be relied upon to establish clear authority that the Board considers stipulations to informal disposition as “adverse decisions.” This is because Dr. Paige did not contest the Division’s action through requesting a hearing, and the matter was not squarely presented and briefed before the Board. As a result, this is an issue of first impression for the Board.

The statute, AS 08.36.110(D), given the lack of definition for “adverse decision”, could be construed in two ways. The first would be that any discipline, whether formal or informal, agreed to by a party and approved by a dental licensing board, would be an “adverse decision.” This approach is problematic in that any discipline agreement, regardless of how minor the underlying facts or how dated, would be an absolute bar to dental licensing if the discipline occurred in the five years preceding the application. Another alternative would be that the Board to consider stipulations as “adverse decisions” if they squarely involved admitted findings against an applicant. There are undoubtedly other ways for the Board to interpret or address the definition of an “adverse decision,” including adopting a definition by regulation.

The Board, however, does not have to address this issue in this case. Dr. Lee had his dental license suspended in Washington, which constitutes a clear bar to licensure in Alaska. Because his suspension completely resolves this case, the Board does not need to decide whether a disciplinary stipulation in another jurisdiction, without any admissions or findings against an applicant, similarly bars an applicant from licensure in Alaska. Accordingly, this issue should not be decided in this case.

## **V. Conclusion**

Dr. Lee’s Washington state dental license was suspended in 2004. AS 08.36.110(C) requires that an applicant for an Alaska dental license “not [have] had a license to practice dentistry revoked, suspended, or voluntarily surrendered in this state or another state,” without regard to when the revocation, suspension, or voluntary surrender occurred. The 2004 suspension

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<sup>36</sup> Division’s October 1, 2018 *Reply to Closing Argument*, Attachment E.

makes Dr. Lee ineligible for dental licensure in Alaska. His applicant for a dental license is therefore denied.

DATED this 20th day of December, 2018.

By: Signed  
Lawrence A. Pederson  
Administrative Law Judge

### **Adoption**

On behalf of the Alaska Board of Dental Examiners, the undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 15th day of February, 2019.

By: Signed  
Signature  
Paul Silveira, DMD  
Name  
President of Alaska Board of Dental Examiners  
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]