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

In the Matter of	)	OAH No. 17-0607-DEN
DR. SETH LOOKHART	)	Board No. 2017-0421/0526/527/ 528/529/546/547/549/635/814

DECISION

I. Introduction

Seth Lookhart holds a general dental license and a permit for parenteral sedation. The Division of Business, Corporations, and Professional Licensing filed an accusation against Dr. Lookhart after he was arrested and charged with Medicaid fraud and other crimes in the operation of his dental practice. Following his trial and conviction on all 46 counts, and by stipulation of the parties, the matter went to hearing on the limited issue of the appropriate sanction under the undisputed facts. This decision concludes that Dr. Lookhart's broad-ranging criminal and otherwise unprofessional conduct clearly warrants revocation of his dental license and sedation permit.

II. Facts

The parties stipulated to the allegations in the Division's Second Amended Accusation, filed February 11, 2020.[1]

A. Background

Seth Lookhart was first issued an Alaska dentist license (DEND1564) in June 2014. In May 2015, he was issued a parenteral sedation permit (DENP86).[2] Because this case involves admissions of wrongdoing as to both principles of dental sedation and Medicaid billing rules (as well as the interaction between the two), parameters of those are introduced briefly, below.

Generally speaking, sedation occurs along a continuum from conscious or minimal sedation to general anesthesia.[3] Minimal sedation is defined as "a minimally depressed level of

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[1] The parties July 22, 2020 stipulation reads: "Dr. Lookhart admits counts 1 – 17 of the Division's Second Amended Accusation and admits the factual basis for these accusations as laid out in the Second Amended Accusation."

[2] Second Amended Accusation, ¶ 1.

[3] American Dental Association's (ADA's) Guidelines for the Use of Sedation and General Anesthesia by Dentists (hereafter, "Guidelines"), available online at:

consciousness, produced by a pharmacological method, that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command."[4]

Moderate sedation is "a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation."[5] The Guidelines note that the drugs and/or techniques used to achieve moderate sedation "should carry a margin of safety wide enough to render unintended loss of consciousness unlikely."[6]

Deep sedation is defined as "a drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation."[7]

During the time in question, Alaska's parenteral sedation permits authorized administration of sedation up to and including moderate sedation.[8] After the license and permit suspensions in this case, the Board changed its sedation permitting system to eliminate the parenteral sedation permit, replacing it with a "moderate sedation" permit. For purposes of this case, it is undisputed that Dr. Lookhart's permit allowed him to perform up to moderate sedation, and did not cover deep sedation or general anesthesia.

The Alaska Medicaid program only covers dentist-administered sedation where the dental services provider provides written justification that the patient is uncontrollable under local anesthetic alone.[9] Listed qualifying examples are a severe intellectual or developmental disability, severe behavioral problems, extreme apprehension, or a prolonged or difficult surgical procedure. Where sedation is covered, it is paid in fifteen-minute increments for up to a maximum of three hours.[10]

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http://www.ada.org/~/media/ADA/Education%20and%20Careers/Files/anesthesia_use_guidelines.pdf, at p. 3. The Board has adopted the Guidelines, which define various terms used in the Accusation and in the criminal charges.

4 Guidelines, p. 1. Additionally, "although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected."

5 Guidelines, p. 2. In moderate sedation, "no interventions are required to maintain a patient airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained."

6 Ex. E, p. 3.

7 Guidelines, p. 2.

8 Parenteral sedation refers to sedation in which drugs are administered in a manner that bypasses the gastrointestinal tract. Guidelines, p. 4. The parenteral sedation permit has since been replaced by a moderate sedation permit. See 12 AAC 28.010, repealed and reenacted in 2018.

9 7 AAC 110.155 (a).

10 *See State v. Lookhart et al*, Superior Court Case No. 3AN-17-02990CR, April 17, 2027 Information, p. 13 (DIV00429).

B. Background and admissions

Both Dr. Lookhart's license and his parenteral sedation permit have been suspended since his 2017 arrest for the acts giving rise to both a criminal prosecution and this licensing action. In the related criminal proceeding, Dr. Lookhart and his wholly-owned LLC have since been tried for and convicted of dozens of crimes relating to his dental practice.

Collectively, Dr. Lookhart and his LLC incurred 85 convictions, with Dr. Lookhart incurring 46 individual convictions as follows:

- Medical Assistance fraud (AS 47.05.210(a)(1).
    - Counts 1—3 (billing for I.V. sedation without valid written justification, totaling at least $1,295,489.25),
    - Count 4 (billing Medicaid more than charged other payors, with total billing of $1,329,874.07);
    - Count 5 (billing for sedation for tooth cleaning, which is non emergent, totaling $18,442.08);
    - Count 6 (billing for sedation for tooth whitening, which is not covered by Medicaid, totaling $1,067.39);
    - Count 7 (billing for sedation for implants, which are not covered by Medicaid, in a total of $5,629.26);
    - Count 8 (using false dates of service in billing for 3-4 surface fillings after a July 2016 policy change on coverage for this service, totaling $25,982.11);
    - Count 9 (billing Medicaid for services performed on an individual other than the billed recipient, totaling $9,898.83);
    - Count 10 (billing Medicaid using false dates of service for patients who received services on dates when they were not eligible to receive services, totaling $23,099.01);
    - Count 43 (billing for more units of I.V. sedation than were actually provided, totaling $311,871.78).
- Scheme to defraud (AS 11.46.600(a)(2)):
    - Counts 11— 12 (engaging in a scheme to defraud Medicaid by false or fraudulent pretense as described above);
    - Count 13 (engaging in a scheme to defraud Alaska Dental Arts LLC by diverting payments owed to Alaska Dental Arts LLC to Lookhart Dental LLC, in a total amount of $412,500).
- Theft (AS 11.46.130, .210) Count 14.
- False entry (AS 47.05.210(a)(5)):

- Counts 15 – 26 (submitting claims with backdated dates of service, totaling $68,915,49);
- Count 27 (submitting claim for service not received, totaling $2,212.51);
- Counts 28 – 32 (submitting claims with false date of service to meet recipient eligibility requirements, totaling $13,731.41).

- Violation of AS 47.07 or 47.08 or their regulations (AS 47.05.210):
  - Count 33 (7 AAC 110.144: billing for I.V. sedation under nonallowable circumstances);
  - Count 34 (7 AAC 145.005(h): charging a higher billing rate for Medicaid patients);
  - Count 35 (7 AAC 145.020(a): failure to bill Medicaid the provider's lowest billed rate);
  - Count 36 (7 AAC 110.145(a)(1): billing Medicaid for sedation for non-emergency dental services);
  - Count 37 (7 AAC 145.005 and 105.100(2): billing Medicaid for services not provided on the billed date or provided to an ineligible recipient);
  - Count 38 (7 AAC 110.145(d)(8): billing Medicaid for sedation for uncovered dental services).
- Failure to meet the minimal standards of dentistry (AS 08.36.315(6)(A), .340). Count 39 (tooth extraction while hoverboarding).
- Reckless endangerment (AS 11.41.250: creating a substantial risk of physical injury to another person):
  - Count 44 (texting while patients under sedation or anesthesia);
  - Count 45 (simultaneously having two patients under sedation or anesthesia);
  - Count 46 (providing deep sedation and general anesthesia to patients who are ASA III or ASA IV).
- Supervising an unlicensed person performing acts of dentistry (AS 08.36.340, .100):
  - Counts 40-41 (allowing office manager to perform a dental extraction);
  - Count 42 (permitting office manager to prescribe medications).

Dr. Lookhart admits that over a ten-month period in 2016 and 2017, he and Lookhart Dental wrongfully received over $1.6 million in Medicaid reimbursements, as well as defrauding Alaska Dental Arts of $412,000 by diverting funds from that entity to his own LLC. He further admits to an array of conduct below the minimum standard of care, including: sedating at a level beyond what his permit allowed, beyond what he was trained to perform, and in a manner that endangered his patients' lives; sedating patients whose serious and in some instances life-

threatening medical conditions made them improper candidates for sedation; inserting an I.V. into a patient's jugular vein, for which he is untrained and which he admits was performed in a manner that risked death or serious injury; performing procedures for which he did not have consent; sedating multiple patients at once; sending text messages while sedated patients were in his care; and, infamously, videotaping himself extracting a sedated patient's tooth while riding a hoverboard.[11]

C. Text message evidence

Throughout the course of the events outlined above, Dr. Lookhart communicated about at least some of these acts through text messages which were eventually obtained by the Division and which became evidence in the criminal trial.[12] Dr. Lookhart admits that the messages show that he:

- Sedated beyond the scope of his permit;
- Provided deep sedation without informed consent;
- Provided unnecessary sedation to increase Medicaid billings;
- Texted while his patients were sedated;
- Ran multiple sedations at once, leaving sedated patients unattended;
- Sedated ASA III/IV patients – those living with a severe systemic disease (III) or a severe systemic disease that is a constant threat to life (IV) – outside his training and ADA sedation guidelines;
- Used a reversal agent on a sedated patient to be able to leave work early; and
- "Endangered the lives of many of his patients."[13]

Even though sedation for adult dental care under Medicaid is permitted only under specified, exceptional circumstances, Dr. Lookhart's texts described his system of sedating all Medicaid patients, saying, "I won't see them unless they are going to be sedated." He also frankly described his practice of always sedating Medicaid patients for the maximum three hours Medicaid will cover for sedation: "Once they are sedated, I just max their time for 3 hours…. Basically just leave them on the meter."[14] In another discussion he noted, "[o] nce that patient is asleep for them all time stops. You could take two hours to set up the op and they wouldn't know."[15] He described this as "the beauty of sedation, man. You're paid to be slow."[16]

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11 Parties' Factual Stipulation; Second Amended Accusation.

12 Some of the texts are specifically quoted in the Accusation; a more detailed collection is contained in the agency record.

13 Second Amended Accusation, ¶ 8.

14 Second Amended Accusation, ¶ 9, p. 4.

15 Second Amended Accusation, ¶ 9, p. 7.

16 Second Amended Accusation, ¶ 9, p. 6.

Dr. Lookhart's texts also described his practice of sedating multiple patients at once, for example, writing: "Guess who has two IVs going and one oral sedation right now."[17] Another text recounted that he had "[run] triple sedated almost all day."[18]

The texts also detailed Dr. Lookhart's scheme of defrauding Medicaid by "making a deal with patients" to provide services not covered by Medicaid in exchange for the patient agreed to come in for two three-hour sedation appointments: "I'll make a deal with patients saying I'll do the [root canal] and crown both for free but you have to be sedated and it had to be two appointments so six hours of sedation. They get a free rct and crown and I get [$]4200 spread over two days."[19]

Dr. Lookhart's texts confessed to a failure to inform patients that they even had a choice to reject sedation. When asked how he encouraged his patients to choose sedation, he responded: "You don't…. Don't give them an option. In other words make them tell you no they don't want it."[20]

The texts described these sedation practices as done for Dr. Lookhart's benefit, rather than his patients'. "Sedation is super good for me though. For example on a day like today, 100% of my patients were sedated …. I was able to take home $38K."[21] His texts characterized his Medicaid patients as a means to an end, referring to the three-hour sedation period as "leav[ing] them on the meter," telling a staff member to start a patient's sedation because "[we] have to get that meter started," and describing a busy day of appointments as "Medicaid[ing] it up."[22]

In terms of how sedation was practiced at his office, Dr. Lookhart described allowing his dental assistants to administer sedation – starting IVs and giving an initial dose of versed. He offered that the assistant "is pretty OK with starting IVs," and began sedation on 3-4 patients each week, adding "It's nice to never even have to talk to a patient. LOL."[23] He stated that the dental assistants would start sedation "whenever we get behind on sedation," describing this act as "basically just IV stuff."[24]

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17 Second Amended Accusation, ¶ 9, p. 7.
18 Second Amended Accusation, ¶ 9, p. 7.
19 Second Amended Accusation, ¶ 9, p. 6.
20 Second Amended Accusation, ¶ 9, p. 5.
21 Second Amended Accusation, ¶ 9, p. 5.
22 Second Amended Accusation, ¶ 9, pp. 4-5.
23 Second Amended Accusation, ¶ 9, p. 6.
24 Second Amended Accusation, ¶ 9, p. 7.

The texts admitted sedating patients who had just eaten: "If they come in and eat McDonald's in the waiting room they will still get sedated."[25] They described sedating patients who had confessed to IV drug use immediately before the appointment, saying a patient had informed him "she shot up heroin 45 minutes ago," and that the patient was now sedated.[26] And they suggested that Dr. Lookhart heavily sedated patients he found difficult. ("Q: Why did you start so high? A: Because she's a pain in the butt."[27])

The texts described a consistent practice of deep sedation beyond Dr. Lookhart's parenteral permit. He explained that he "currently run[s]" a mixture of fentanyl and versed "at deep sedation."[28] On one occasion, he stated that he had "sedated lighter than [he] should" that day, because he "just thought it would be interesting to see what a true moderate level of sedation is." (His conclusion about moderate sedation was that "it is terrible!"[29]) The implication, obviously, is that Dr. Lookhart was typically sedating *deeper* than moderate sedation – a level clearly not allowed by his permit. In another text he admitted that he "rarely run[s] moderate sedation."[30]

Dr. Lookhart's voluminous text messages also describe several incidents in which patients' vitals crashed while they were over-sedated. In one instance, he wrote:

> Had my first patient where I was slightly uncomfortable. The HR was at 20. Then 22. Then 19. Then 20. For like 15 mins and her bp was crazy high. Dropped some atropine, and 3 min later boom hr back to 130.[31]

On another occasion, he related having to administer a reversal agent after a patient stopped breathing.

> I had to reverse a guy. Freaking dude straight up stopped breathing. He was super fidgety moving around … Guy went way to deep …. Super dark blue on the face…. Oxygen was cranked … Chin tilt. … No waves for breathing. Kept going down… He was in the 80's … Then 70's…. Then 60's .. 50's . 40's … 30' [sic] … Then hovered at 32… Still no waves. [32]

In the course of these text conversations, Lookhart was asked whether his practices were legal, he noted that sedation occurred over a spectrum, and that for him to get caught, "they

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25 Second Amended Accusation, ¶ 9, p. 4.
26 Second Amended Accusation, ¶ 9, p. 7.
27 Second Amended Accusation, ¶ 9, p. 6
28 Second Amended Accusation, ¶ 9, p. 6.
29 Second Amended Accusation, ¶ 9, p. 5
30 Second Amended Accusation, ¶ 9. p. 6.
31 Second Amended Accusation, ¶ 9, p. 7.
32 Second Amended Accusation, ¶ 9, p. 7.

would literally have to be there watching me do it. And do it more than once."[33] When asked – in response to reporting that his patients are in deep sedation 80% of the time – what would happen if an employee reported him, he offered this response:

> Everybody responds differently, no dose can be said to guarantee moderate sedation. Since I have to be able to manage one level deeper than where I intended on sedating, I intended moderate but I went one level deeper to deeper sedation and I managed it until they returned to moderate sedation.[34]

He noted that "at that point it becomes her word vs. the Dr's word," and mused that the Board could "come watch me sedate patients and see for them self (sic) my level of sedation to determine my word vs. disgruntled ex-employees word."[35]

D. Admitted incidents of improper billing

In addition to the extensive text message evidence describing his billing and sedation practices, Dr. Lookhart has also admitted to specific acts of improper billing, described below.

1. Billing Medicaid for IV unjustified sedation

7 AAC 110.115 limits Medicaid billing for IV sedation to those situations where "a patient is uncontrollable under local anesthesia alone." In addition to this restriction, 7 AAC.110.145(a)(1) prohibits billing Medicaid for sedation for non-emergency dental services. And 7 AAC.110.145(d)(8) prohibits billing Medicaid for sedation for uncovered dental services.

Dr. Lookhart admits to impermissibly billing Medicaid for IV sedation associated with non-emergency procedures, such as teeth cleaning. He was convicted of Medical Assistance Fraud, a Class C Felony, for billing Medicaid more than $18,000 for IV sedation for tooth cleaning procedures.[36]

Dr. Lookhart also admits to impermissibly billing Medicaid for IV sedation for dental procedures not covered by Medicaid. He was convicted of Medical Assistance Fraud for billing Medicaid more than $6,500 for IV sedation associated with tooth whitening, and with dental implants, neither of which are covered by Medicaid.[37]

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33 Second Amended Accusation ¶ 9, p. 5.
34 Second Amended Accusation ¶ 9, p. 5.
35 Second Amended Accusation ¶ 9, pp. 5-6.
36 Second Amended Accusation, ¶ 20, p. 12, Count 5.
37 Second Amended Accusation, ¶ 20, p. 12, Counts 6 and 7.

In addition to the felony convictions, Dr. Lookhart was convicted of three Class A misdemeanors under AS 47.05.210(a)(7) for violating 7 AAC 110.115,[38] 7 AAC.110.145(a)(1),[39] and 7 AAC.110.145(d)(8).[40]

2. Billing Medicaid for IV sedation without documentation

Medicaid will only reimburse providers for sedation dentistry where proper documentation is submitted to justify the claim. Dr. Lookhart admits to having billed Medicaid for sedation without submitting proper documentation.

Dr. Lookhart was convicted of three Class B Felony counts of Medical Assistance Fraud associated with billing for IV sedation without any valid written justification, without written justification that the sedation was for patient comfort, or without written justification that the sedation was based on anxiety and/or comfort, for unauthorized billings in a total amount of $1,295,489.25.[41]

3. Falsified billing submissions

Medicaid will only reimburse providers for procedures performed on eligible recipients. Dr. Lookhart admits to having backdated claims in order to secure reimbursement for services provided at a time that the patient was not actually eligible for Medicaid. He was convicted of Class C Medical Assistance Fraud for billing Medicaid more than $23,000 using false dates of service for patients who received services on dates when they were not eligible to receive services,[42] and more than $9,800 for services that were actually provided to someone other than the identified recipient.[43]

Dr. Lookhart also admits to having created false dates of service for claims that would be disallowed due to changes in Medicaid policy. He was convicted of Class C Medical Assistance Fraud for using false dates of service to bill more than $25,000 for 3-4 surface fillings after a July 2016 Medicaid policy change regarding coverage of that procedure.[44]

He was also convicted of 17 misdemeanor counts of False Entry for submitting claims to Medicaid that contained a false entry (Count 15) or backdated dates of service (Counts 16-26),

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38 Second Amended Accusation, ¶ 20, p. 16; Count 33.
39 Second Amended Accusation, ¶ 20, p. 17; Count 36.
40 Second Amended Accusation, ¶ 20, p. 17; Count 38.
41 Second Amended Accusation, ¶ 20, p. 11, Counts 1-3.
42 Second Amended Accusation, ¶ 20, pp. 12-13; Count 10
43 Second Amended Accusation, ¶ 20, p. 12; Count 9.
44 Second Amended Accusation, ¶ 20, p. 12; Count 8.

when a patient did not receive services (Count 27), or with a false date of service to meet a recipient's eligibility requirement (Counts 28-32).[45]

In addition, Dr. Lookhart was convicted of a Class A misdemeanor under AS 47.05.210(a)(7) for violating 7 AAC.005(a), which prohibits billing Medicaid for services not provided on the billed dates of service and/or provided to a person who was not eligible on the date of service.[46]

4. Billing Medicaid at a higher rate than other payors

Medicaid regulations require that providers not charge Medicaid more than other payors are charged.[47] Dr. Lookhart admits he charged Medicaid a higher rate per unit of IV sedation than he charged other payors. He was convicted of Class B Medical Assistance Fraud for billing Medicaid at a higher rate than he billed other payors, with a total overpayment in excess of $1.3 million.[48]

In addition, Dr. Lookhart was convicted of two Class A misdemeanors under AS 47.05.210(a)(7) for violating 7 AAC 145.005(h), which prohibits charging a Medicaid recipient a higher rate for any unit of service than the provider charges others,[49] and 7 AAC 145.020(a), which requires that Medicaid be charged the lowest rate billed or discounted for any other purchaser of services for a unit of service provided on a specific date.[50]

5. Billing Medicaid for IV sedation services that were not performed

Dr. Lookhart also admits to billing Medicaid for IV sedation services that were not performed. He was convicted of Class B felony Medical Assistance Fraud for billing Medicaid more than $310,000 for units of IV sedation in excess of what was actually provided.[51]

6. Scheme to Defraud Medicaid

In addition to the eleven individual counts of felony Medical assistance fraud, Dr. Lookhart and Lookhart Dental were also convicted of two counts of Scheme to Defraud, a class B felony, for the conduct described above.[52]

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45 Second Amended Accusation, ¶ 20, pp. 13-16, Counts 15-36.
46 Second Amended Accusation, ¶ 20, p. 17, Count 37
47 7 AAC 145.005(h); 7 AAC 145.020(a).
48 Second Amended Accusation, ¶ 20, p. 12; Count 4 (billing Medicaid more than charged other payors).
49 Second Amended Accusation, ¶ 20, p. 17, Count 34.
50 Second Amended Accusation, ¶ 20, p. 17, Count 35.
51 Second Amended Accusation, ¶ 20, p. 18, Count 43.
52 Second Amended Accusation, ¶ 20, p. 12, Counts 11, 12.

E. Admitted theft from business partner

In addition to admitting to widespread billing fraud against Medicaid, Dr. Lookhart admits to defrauding his business partner of more than $412,000 by diverting to Lookhart Dental LLC Medicaid payments that were owed to Alaska Dental Arts. Dr. Lookhart and Lookhart Dental were each convicted of Class B theft and engaging in a scheme to defraud Alaska Dental Arts.[53]

F. Admitted incidents of dentistry below the minimum standard of care

In addition to the wide-ranging financial improprieties and billing fraud described above, Dr. Lookhart also admits to numerous incidents in which his patient care fell below even the minimum professional standards of dentistry.

1. Extracting the wrong teeth

Dr. Lookhart treated a patient, J.P.S. over a six-month period in 2016.[54] J.P.S.'s treatment plan called for the extraction of all upper teeth and most of his lower teeth, with four lower front teeth to be left intact to be fitted for a partial denture. While J.P.S. was under deep sedation – a level of sedation Dr. Lookhart was not authorized to use – Dr. Lookhart removed the lower four front teeth that were supposed to be left intact. He also failed to extract a lower molar that he was supposed to remove, although, incredibly, he did bill Medicaid for its removal.[55] Whereas JPS's treatment plan called for a partial lower denture, Dr. Lookhart instead placed a full denture – which was ultimately revealed to be the wrong denture.[56]

Dr. Lookhart admits that his treatment of J.P.S. fell below minimum professional standards. He specifically admits that he removed J.P.S.'s teeth outside the scope of patient consent, failed to remove a tooth that should have been removed, and further provided substandard care by providing sedation to two patients concurrently, and that in so doing he engaged in patient care below the minimum professional standards of dentistry.[57] He further admits that his conduct caused J.P.S. physical pain and required him to seek follow up care from another dentist.[58]

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53 Second Amended Accusation, ¶ 20, p. 12, Counts 13, 14.
54 Second Amended Accusation, ¶¶ 11-12.
55 Second Amended Accusation, p. 9, ¶ 12.
56 Second Amended Accusation, pp. 8-9, ¶¶ 11-12.
57 Second Amended Accusation, ¶ 27, Count 12.
58 Second Amended Accusation, pp. 8-9, ¶¶ 11-12.

2. Needlessly sedating a patient who had no escort, and falsifying records re: same

Dr. Lookhart saw another patient, T.M., in November 2016. T.M. came to Dr. Lookhart for dental fillings, and did not want I.V. sedation for this procedure.[59] Despite T.M. having driven herself to the office, not having an escort, and telling the staff she did not want sedation, Dr. Lookhart's staff persuaded T.M. to accept sedation by telling her she would only receive a small amount of sedation.[60]

T.M. was given a total of 7.5 mg of Versed, a large amount; was discharged 35 minutes after the final dose; and was allowed to walk down two flights of stairs and drive herself home.[61] Although T.M. had no escort, and drove herself home shortly after being sedated, Dr. Lookhart's records falsely reflect that she was accompanied by an escort.[62]

Dr. Lookhart admits that talking T.M. into sedation, misrepresenting that she had an escort, and permitting her to drive herself home was conduct that fell below the minimum professional standards of dentistry.[63]

3. Over-sedating at least two patients to near death, and failing to call 911 either time

Dr. Lookhart admits to at least two different incidents in which he over-sedated patients whose vitals then crashed, yielding medical conditions "inconsistent with signs of life."[64] On both occasions, Dr. Lookhart failed to call 911, instead taking the chance that he would be able to revive his critically at-risk patients. While both patients were revived, Dr. Lookhart admits that his practice of sedation failed to meet the minimal standards of care for the provision of IV sedation, and that his conduct impermissibly and inappropriate risked their lives.[65]

4. Placing an IV in a patient's jugular vein

In February 2017, Dr. Lookhart placed a sedation IV into a patient's jugular vein, ostensibly for "patient comfort."[66] There was no medical necessity for insertion of an IV in the

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59 Second Amended Accusation pp. 9-10, ¶ 16.
60 Second Amended Accusation, pp. 9-10, ¶ 16.
61 The FDA package insert for Versed reflects that for sedation during procedures, "a total dose greater than 5 mg is not usually necessary to reach the desired endpoint." https://www.accessdata.fda.gov/drugsatfda_docs/label/2017/208878Orig1s000lbl.pdf, p. 37 (last accessed 8/14/2020).
62 Second Amended Accusation, pp. 9-10, ¶ 16.
63 Second Amended Accusation, p. 23, ¶ 27, Count 13.
64 Second Amended Accusation, p. 10, ¶ 19; p. 24, ¶ 29, Count 15.
65 Second Amended Accusation, p. 10; ¶19.
66 Second Amended Accusation, p. 10, ¶ 18; p. 24, ¶ 28, Count 14.

patient's jugular vein, and Dr. Lookhart lacked any training in such a procedure.[67] The size and gauge of the needles and the location of the IV posed a risk of death or serious bodily injury to his patient. In addition to needlessly risking his patient's life, he photographed his sedated patient without consent, and texted the photo to his wife with the caption "First time for me."[68]

Dr. Lookhart admits that his unwarranted placement of the jugular IV constituted practice beneath the minimal professional standards of dentistry.[69]

5. The hoverboard incident

In a now infamous incident, Dr. Lookhart's office manager videotaped him performing a tooth extraction on a sedated patient, V.W., while riding a hoverboard. In the July 2016 incident, which was videotaped without his patient's consent, Dr. Lookhart rode a hoverboard into the procedure room, leaned over a moderately or deeply sedated V.W., extracted a tooth, then exited the room – all while on the hoverboard.[70]

Dr. Lookhart admits to leaving VW "unattended by appropriate staff" while sedated, and admits to "[making] a mockery of V.W. by raising his arms in victory and goofing for the camera." Following these events, Dr. Lookhart distributed the video to friends and family members, jokingly referring to his conduct as "a new standard of care." V.W., who had not consented to being videotaped under sedation nor to being the test subject of Dr. Lookhart's "new standard of care," reported feeling very groggy for 24-48 hours after the procedure.

Dr. Lookhart was convicted of a misdemeanor failure to meet the minimal standards of dentistry for performing an extraction while hoverboarding and for filming and distributing the video outside his dental practice.[71]

6. Other acts of dentistry below the minimal standard of care

In addition to the above specific incidents, Dr. Lookhart was also convicted of three counts of reckless endangerment, a Class A misdemeanor, for texting while his patients were under sedation or anesthesia, for having multiple patients under sedation or anesthesia at once, and for providing deep sedation and general anesthesia to patients with chronic diseases for which such sedation is counter-indicated.[72] Dr. Lookhart admits to each of these acts, and admits

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67 Second Amended Accusation, p. 24, ¶ 28, Count 14.
68 Second Amended Accusation, p. 10, ¶ 18.
69 Second Amended Accusation, p. 24, ¶ 28, Count 14.
70 Second Amended Accusation, ¶¶ 6-7. A copy of the videotape is in the agency record as DIV 00592.
71 Second Amended Accusation, ¶ 20, p. 17, Count 39.
72 Second Amended Accusation, ¶ 20, p. 18, Count 44.

that each one constituted performance of patient care below the minimum standards of dentistry.[73]

Dr. Lookhart further admits to performing deep sedation and general anesthesia outside the scope of parenteral sedation permit.[74]

G. Admitted incidents of permitting employees to perform unlicensed dentistry

Dr. Lookhart also admits to allowing his unlicensed employees – specifically, his office manager, who is not a dental professional – to perform unlicensed acts of dentistry. On at least three occasions during December 2016, Dr. Lookhart's office manager prescribed medications, including controlled substances, on his behalf.[75]

Dr. Lookhart's texts message records include texts from the office manager and other staff reflecting this practice. In one text, the office manager told Dr. Lookhart: "I prescribed her more Percocet and ibuprofen[.]" In another, she texted Dr. Lookhart: "I meant to have you sign a couple of RXs before you left in case we had emergency folk." And in a text conversation with a dental assistant, the office manager used Dr. Lookhart's DEA number to approve the prescription of a controlled substance, writing: "Tylenol 3. Dispense 18 tabs. Take 1-2 PO before bedtime," before adding Dr. Lookhart's DEA number.[76]

Dr. Lookhart admits to permitting his assistants to administer I.V. drugs outside his immediate presence, and that doing so was a violation of 12 AAC 28.600.[77]

Dr. Lookhart also permitted the office manager to actually perform a tooth extraction. In that incident, in October 2016, the office manager extracted two teeth from patient R.D., who was sedated and who had not given consent for an unlicensed clerical worker to perform his dental procedure.[78] The office manager's text records show her texting a friend that she "pulled out two teeth on a guy yesterday," and that "Seth let me do it."[79], [80] Dr. Lookhart was convicted

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[73] Second Amended Accusation, p. 21, ¶ 26, Count 5 (texting while patients sedated); p. 21, ¶ 27, Count 6 (sedating two patients concurrently); p. 22, ¶ 28, Count 7 (sedating ASA III/IV patients).

[74] Second Amended Accusation, p. 24, ¶ 30, Count 16.

[75] Second Amended Accusation, ¶ 13.

[76] Second Amended Accusation, ¶13.

[77] Second Amended Accusation, p. 24, ¶ 30, Count 16.

[78] Second Amended Accusation, ¶ 10.

[79] While R.D. was sedated, the office manager videotaped him sitting in the chair with a bleeding hole where his tooth had been. (This is the same office manager videotaped the "hoverboard incident" without that patient's consent). Second Amended Accusation, p. 8, ¶ 9 (sic).

[80] Dr. Lookhart had also not informed R.D. of any alternatives to IV sedation. Second Amended Accusation, ¶ 10.

of three misdemeanor counts of supervising an unlicensed person performing an act of dentistry.[81]

Dr. Lookhart admits that permitting his office manager to prescribe medications, and permitting her to extract or assist in the extraction of a tooth were each violations of AS 08.36.315(b), which prohibits dentists from permitting the performance of patient case by persons under their supervision who lack the required credentials.[82]

H. Arrest and summary suspension

Dr. Lookhart was charged and arrested on April 17, 2017. On a petition from the Division, the Board issued a summary suspension of Lookhart's license on the basis that his continued practice would pose a danger to public health and safety.

The Board suspended Dr. Lookhart's license in June 1, 2017. Dr. Lookhart, through counsel, requested a hearing to challenge the summary suspension. Shortly before the scheduled hearing, he agreed to waive his challenge to the summary suspension, and for his license to remain suspended pending the full hearing on the accusation. In the meantime, the parties agreed that the licensing appeal should trail the criminal matter. Thus, the licensing appeal remained stayed until the January 2020 conclusion of the criminal trial.

I. Criminal trial and conviction

Dr. Lookhart was ultimately tried on 46 criminal charges, 39 of which were also tried against his dental practice, in a six-week bench trial before Anchorage Superior Court Judge Michael Wolverton. On January 17, 2020, Judge Wolverton returned a verdict finding Dr, Lookhart guilty on all 46 counts, and likewise finding his LLC guilty of all 39 counts. In his remarks when delivering his verdict, Judge Wolverton described the evidence against Dr. Lookhart as "overwhelming"

Because of the COVID pandemic, the sentencing in the criminal case was delayed several times. The sentencing is still pending as of the date of this proposed decision. While the sentence has not yet imposed, Judge Wolverton has issued an order finding that the State proved each of the following aggravators upon which it has asserted that the Court should impose an enhanced sentence:

- Directly caused a physical injury;[83]

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81 Second Amended Accusation, p. 18, ¶ 20, Counts 40-42.
82 Second Amended Accusation, p. 22, ¶¶ 30-31, Counts 8-9.
83 AS 12.55.035(c)(1).

- Manifesting deliberate cruelty to another person;[84]
- Leading the group of persons participating in the criminal offense;[85]
- Employing a dangerous instrument in furtherance of a felony;[86]
- Knowing or (or reasonably should have) that the victim of the felony offense was particularly vulnerable due to advanced age, disability, ill health, or any other reason rendering them substantially incapable of resisting;[87]
- Creating an imminent risk of physical injury to three or more persons;[88]
- Knowing his offense involved more than one victim;[89]
- Conduct being among the most serious conduct included in the definition of the criminal offense;[90]
- Committing an offense under an agreement that he would be paid to do so, with the pecuniary incentive beyond that inherent in the offense itself;[91]
- Belonging to an organized group of five or more persons – the LLC – and the offense was committed to further the group's criminal objectives;[92]
- Conduct was designed to obtain substantial pecuniary gain and had only a slight risk of prosecution and punishment;[93]
- The offense being one of a continuing series of criminal offenses committed in the furtherance of illegal business activities from which the defendant derives a major portion of his income;[94] and
- Knowingly directing the criminal conduct at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin.[95]

The Court's April 24 Order concluded that the State had proven each of the above beyond a reasonable doubt, and that all thirteen aggravators are therefore "available for possible enhancement of the sentencing ranges."[96]

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84 AS 12.55.035(c)(2).
85 AS 12.55.035(c)(3).
86 AS 12.55.035(c)(4).
87 AS 12.55.035(c)(5).
88 AS 12.55.035(c)(6).
89 AS 12.55.035(c)(9).
90 AS 12.55.035(c)(10)
91 AS 12.55.035(c)(11). This aggravator refers to counts in which Dr. Lookhart committed both sedation fraud and fraud related to backdating a claim for fillings. As described by the State: "As an example, the primary purpose of Count I is I.V. sedation fraud, but the pecuniary incentive for the I.V. sedation fraud was bolstered by backdating fillings with the I.V. sedation." *State v. Lookhart*, 3AN-17-02990CR, Written Portion of the State's Closing and Opposition to Motion for Judgment of Acquittal, 12/9/19, p. 75.
92 AS 12.55.035(c)(14).
93 AS 12.55.035(c)(16).
94 AS 12.55.035(c)(17).
95 AS 12.55.035(c)(22).
96 *State v. Lookhart*, 3AN-17-2990CR, Decision and Order Finding Aggravators Notice[d] By State (April 24, 2020).

J. Second Amended Accusation

By agreement of the parties, the licensing case was stayed while the criminal case went forward. Following Dr. Lookhart's conviction, the parties requested a hearing on the licensing matter. A two-week hearing was then scheduled, with the parties also stipulating to the administrative law judge reviewing portions of the criminal trial transcript.

On February 11, 2020, the Division filed a 17-count Second Amended Accusation reflecting Dr. Lookhart's criminal convictions. The Second Amended Accusation, which is the operative document for this proceeding, contains a 19-page factual summary and then 17 individual counts across six broad areas of concern:

- AS 08.36.315(2): deceit, fraud, or intentional misrepresentation against Medicaid (Count 1) and Alaska Dental Arts (Count 2).
- AS 08.36.315(5): Convictions of felony or other crime affecting ability to continue safe/competence practice (Count 3)
- AS 08.36.315(6)(A): Practicing below minimum professional standards of dentistry
    - Count 4: hoverboard incident;
    - Count 5: texting while patients sedated;
    - Count 6: sedating two patients concurrently;
    - Count 7: sedation to ASAIII/IV patients;
    - Count 12: removing wrong teeth and other patient care issues with J.P.S.;
    - Count 13: sedating a patient (T.M.) without an escort and letting her drive home;
    - Count 14: placing IV sedation in patient S.C.'s jugular vein;
    - Count 15: causing "conditions inconsistent with life" during sedation of patients C.N. and D.W.
- AS 08.36.315(6)(B): patient care by unlicensed individual(s) under his care
    - Count 8: extraction of tooth by office manager;
    - Count 9: prescribing, including Scheduled substances, by office manager.
- Ethical/immoral conduct
    - Count 10, AS 08.36.315(9), immoral conduct: hoverboard incident;
    - Count 11: ADA Code of Ethics; failure to comply with a regulation (AS 08.36.315(7).
- Practicing outside the scope of his parenteral sedation license
    - Count 16: performing deep sedation and general anesthesia, as violation of the chapter under AS 08.36.315(7);

- Count 17: performing deep sedation and general anesthesia as prescribing or dispending drugs in violation of a law under AS 08.36.315(14).

K. Abbreviated hearing

As noted, the matter was scheduled for a 2-week trial in March 2020. In mid-February, the same day that it filed its Second Amended Accusation, the Division moved for partial summary adjudication on 11 of the 17 counts in the Accusation. After some discussions between the parties and the administrative law judge, an agreement was reached to vacate the hearing and reschedule it once a ruling had been issued on the Division's motion.

Shortly thereafter, the COVID pandemic reached Alaska in earnest, leading to additional delays. After months of extensions of the deadline for Dr. Lookhart's response to the Division's Summary Adjudication motion, the parties eventually approached the administrative law judge with a stipulation.

Ultimately, rather than complete briefing on the Division's motion or present the full case for a hearing, the parties elected to stipulate to the facts and charges in the Second Amended Accusation, and to thus limit the hearing to the question of appropriate sanctions.

The abbreviated hearing was held via videoconference on July 30, 2020. The Division was represented by Assistant Attorney General Joan Wilson. Dr. Lookhart was represented by Chester Gilmore. Testimony was taken from Dr. Lookhart, Division Investigator Jasmin Bautista, and former Board Member Dr. Paul Silveira, DDS.[97]

Dr. Lookhart did not testify, but did submit – over the Division's objection – a letter to the Board.[98] In the letter, Dr. Lookhart states that he wishes to address the Board "directly and not in a legal setting," so that the Board can "hear an apology from [his] own mouth" and "that we can come to a resolution as colleagues amongst colleagues."[99]

Dr. Lookhart describes his letter as "an olive branch, a sincere apology, accepting responsibility where due and a resolve and commitment to do better." He then reminisces about the day – just six years ago – that he received his dental degree, describing having his "goals clearly set forth, not goals of monetary gain, but wanting to provide the highest quality of care to

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97 The testimony of Dr. Silveira was extremely truncated due to the ALJ raising concerns about the impropriety of having a former board member testify about board decision making, which is a matter of deliberative privilege.

98 Ex. A.

99 Ex. A, p. 1.

as many people as possible." Upon starting to practice, he suggests, his "optimism" was "interrupted with fear, doubt and even worry."

To review, within three years of graduating from dental school, Dr. Lookhart had stolen $1.6 million from the Alaska Medicaid program and nearly half a million dollars from another dental practice, committed numerous instances of gross and even criminal malpractice, violated a wide swatch of ethical rules governing the profession, and broken dozens of laws.

Reflecting on these "foolish, naïve decisions of [his] past, Dr. Lookhart still expresses "[no] doubt that [he] was able to render care and alleviate pain to many people who were in dire need," but admits that he "should have maintained better discipline and focus while serving the patient base [he] grew to love." Dr. Lookhart expresses that it has been "extremely difficult and even painful" to have spent three of the six years since his dental school graduation unable to practice, he claims to have spent the time "reflecting" and "developing a sacred reverence for the trust" of the board, colleagues, and the public. The letter opines that it is fortunate for Dr. Lookhart to have committed his crimes so early in his career, so that he has time to turn himself around now that – as a result of the three-year suspension – he has been "able to assure [him]self unequivocally that any malice, deceit, or hypocrisy was purged from within."

Both prior to and after the hearing, the parties submitted briefing on the question of whether license revocation is appropriate under these circumstances. The record closed on August 5, 2020.

III. Discussion

The parties have stipulated that the above events occurred, and have asked the administrative law judge to address only the appropriate sanction to therefore be imposed. Dr. Lookhart contends that his three years of license suspension pending the criminal trial constitutes sufficient discipline, and that the Board should reinstate his license under probation "with sufficient restrictions to assure the safety of the public and a structured pathway to allow Dr. Lookhart to earn his return to the practice of dentistry."[100] The Division contends that the only appropriate disciplinary sanction in this matter is license revocation under AS 08.01.075(a)(1).

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[100] Lookhart Post-Hearing brief, p. 4.

A. Principles of professional licensing

It is well established that a professional license is a valuable property right protected by the constitutional requirements of due process of law.[101] However, the United States Supreme Court has also "recognize[d] that the States have a compelling interest in the practice of professions within their boundaries, and that as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions."[102]

Courts in Alaska and elsewhere have recognized that "[f]itness to practice a regulated profession demands more than the professional's capacity to perfunctorily complete required activities."[103] Professional licensing boards, including this one, have adopted codes of ethics recognizing the profession's special position of trust within society, and acknowledging the heightened ethical obligations that accompany this trust.

Decisions applying professional licensing statutes often reference the need for professions to ensure "reliability and honesty" of their members.[104] Professional licensing schemes typically include measures of honesty and forthrightness amongst the requirements for licensure, as well as including dishonest and morally turpitudinous conduct amongst the bases for disciplinary sanctions.

This Board has adopted the American Dental Association's *Principles of Ethics and Code of Professional Conduct* ("the Code") as the ethical standards applicable to all dentists in the state.[105] The Introduction to the Code acknowledges:

> The dental profession holds a special position of trust within society. As a consequence, society affords the profession certain privileges that are not available to members of the public-at-large. In return, the profession makes a commitment to society that its members will adhere to high ethical standards of conduct.

The Code further acknowledges that "continued public trust in the dental profession is based on the commitment of individual dentists to high ethical standards of conduct."

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101 *Dent v. State of West Virginia*, 219 U.S. 114, 121 (1889); *Herscher v. State*, 568 P.2d 996, 1002-1003 (Alaska 1977).

102 *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792 (1975).

103 *Wendte v. State, Bd. of Real Estate Appraisers*, 70 P.3d 1089, 1093 (Alaska 2003).

104 *Wendte v. State, Bd. of Real Estate Appraisers*, 70 P.3d 1089, 1093 (Alaska 2003) (Also, quoting with approval the superior court's observation "that when professionals commit crimes involving moral turpitude 'their fitness to hold a position of trust is necessarily called into question.' ").

105 12 AAC 28.905.

B. This Board's disciplinary authority

Alaska Statute 08.36.315 sets forth the bases upon which this Board may exercise its disciplinary powers under AS 08.01.075. Of relevance to the facts of this case, the Board "may revoke or suspend the license of a dentist" if it finds, after a hearing, that the dentist has engaged in *any* of the following:

> "(2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing or billing for professional dental services or engaging in professional activities;"…
>
> "(5) has been convicted of a felony or other crime that affects the dentist's ability to continue to practice dentistry competently and safely;"
>
> "(6) engaged in the performance of patient care, [,] regardless of whether actual injury to the patient occurred,
>
> > (A) that did not conform to the minimal professional standards of dentistry; or
> >
> > (B) when the dentist, or a person under the supervision of the dentist, did not have the permit, registration, or certificate required under AS 08.32 or this chapter;"
>
> "(7) failed to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board;"…
>
> "(9) engaged in lewd or immoral conduct in connection with the delivery of professional service to patients;"…
>
> "(12) falsified or destroyed patient or facility records[;]" or
>
> "(14) procured, sold, prescribed, or dispensed drugs in violation of a law, regardless of whether there has been a criminal action or harm to the patient."

Through the parties' prehearing stipulation, Dr. Lookhart has admitted violations of each of the foregoing sections.

In exercising its discretionary authority to impose sanctions under AS 08.36.315, the Board may consider the nature and circumstances of the conduct at issue, community reaction to conduct, the licensee's experience and professional record, any other relevant information, and its actions in comparable prior cases.[106]

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[106] *Wendte v. State, Bd. of Real Estate Appraisers*, 70 P.3d 1089, 1095, fn. 33 (Alaska 2003) (suspension of appraisal license after theft conviction) (upholding consideration of "payment of restitution, … [licensee's] post-incarceration conduct, community reaction to the crime, and the nature of [the] crime"); *Matter of Gerlay*, OAH No. 05-0321-MED (Alaska State Medical Board 2008).

C. Review of precedent

The legislature has directed that licensing Boards apply disciplinary sanctions consistently, and explain significant departures from prior decisions in factually comparable cases.[107] Both parties have devoted extensive briefing to examinations of prior decisions of this Board and of other Alaska licensing boards to support their distinct positions. As a threshold matter, there are simply no prior cases of this or any other Alaska board involving facts that are truly comparable to those presented here. Nonetheless, a review of prior licensing cases is a useful starting point for discussion.

1. Prior dental board decisions

a. *Matter of Ness*

Both parties argue that the Board's 2004 decision in *Matter of Ness*,[108] and the 2006 Superior Court decision partially reversing the Board,[109] support their position.[110] In *Ness*, the ALJ and then the Board of Dental Examiners concluded that a physician's performance of surgery and post-operative care on a single patient, R.R., fell below the minimum professional standards. Dr. Ness provided unnecessary treatment and performed surgery for which the patient was not an appropriate candidate, and then failed to timely refer the patient to an appropriate specialist when the need arose.

The sanctions recommended by the ALJ and adopted by the Board consisted of fines totaling $20,000, completion of specified continuing education credits, four months of suspension, and five years of probation. After the Board adopted ALJ's proposed decision, including recommended sanctions, Dr. Ness appealed, alleging that the suspension was too severe "for a single act of negligence involving one patient one time." The Superior Court agreed, finding the suspension too harsh for "a first case of improper procedure in a seventeen-year career." Given the circumstances of that case – including the "single act" of negligence over a long career, and the affected patient's positive view of Dr. Ness – the Court concluded, the suspension was "an unwarranted punishment which does not assist in achieving the goal of instilling the respect and confidence of the public."

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107 AS 08.01.075(f) ("A board shall seek consistency in the application of disciplinary sanctions. A board shall explain a significant departure from prior decisions involving similar facts in the order imposing the sanction.")

108 *Matter of Ness*, OAH No. 04-250-DEN (Alaska Board of Dental Examiners 2006).

109 *Ness v. Alaska Board of Dental Examiners*, 3AN-060-8587CI.

110 Division Post-Hearing Brief, pp. 2-3.

Even without addressing whether the Superior Court's order in *Ness* is controlling on this Board in terms of future precedent in other cases, Dr. Lookhart's reliance on *Ness* is woefully misplaced. As the Accusation and the convictions describe, Dr. Lookhart engaged in countless bad acts. And unlike Dr. Ness's actions, Dr. Lookhart's were not simply negligent, but intentional. Dr. Ness himself argued to the Superior Court that his case was distinguishable from cases involving "drugs, sex, or dishonesty," in which Boards have suspended licenses for longer periods. Dr. Lookhart, on the other hand, was convicted of and admits to a widespread fraudulent scheme which he used to enrich himself at the expense of a benefits program for poor and disabled people, and at his patients' peril. And Dr. Ness's single ill-advised act was within the scope of his license, albeit unwise and poorly performed, while Dr. Lookhart's misconduct involves deliberatively practicing outside the limits of his license (as well as allowing assistants to do so).

Lastly, unlike Dr. Ness, who had practiced without issue for seventeen years before his single negligent act, Dr. Lookhart's litany of bad acts began at virtually the start of his career and continued until he was caught and arrested. There is no counterbalancing career of good works here, but instead a dangerous, arrogant scheme concocted and carried out by a newcomer to the profession.

b. Matter of Greenough

The parties also look to the Board's 1994 decision involving Dr. Harry Greenough, who had had twice entered into stipulations with the board relating to improper prescribing of controlled substances before the events giving rise to the disciplinary decision. Those events involved a fraudulent misrepresentation involving a prescription, as well as criminal convictions for Medicaid and insurance fraud.[111] In *Greenough*, as here, the parties stipulated to central facts and asked the hearing officer to propose the nature and extent of appropriate discipline. Unlike here, however, and for unknown reasons, the Division's Accusation in *Greenough* only sought suspension of the dental license; revocation was not at issue before the Board in that case.

The prescription incident in *Greenough* involved an arrangement between Dr. Greenough and an endodontist by which, because Dr. Greenough had previously surrendered his DEA certificate, the endodontist would prescribe scheduled medicines when needed by Dr. Greenough's patients. In the incident in question, Dr. Greenough attempted to have the

[111] Ex. C.

endodontist call in a prescription painkiller for a dental patient, but upon learning the endodontist was out of town, called the pharmacy pretending to be the endodontist. During the same time, and separate from the prescribing incident, Dr. Greenough was charged with Medicaid and insurance fraud. The details of Dr. Greenough's fraud were not described in the decision, but he pleaded no contest to two Class C felonies (second degree theft and falsifying business records), and his sentence included restitution of roughly $5,000. In his licensing case, he stipulated that he had "been convicted of offenses involving multiple instances of intentionally deceptive and fraudulent behavior."[112]

Administrative Hearing Officer David Stebing recommended a two-year suspension followed by five years of probation.[113] In addressing the Division's decision not to seek revocation, Hearing Officer Stebing characterized this choice as "exhibit[ing] justice tempered by mercy, given Greenough's long history of disciplinary problems and the fact that both the Carrs incident and the billing fraud convictions separately provide a basis for revocation."[114] The Board adopted the recommend suspension, and certain other measures, noting: "these disciplinary actions are taken to protect the public interest; to promote the integrity of board orders; to deter other dentists from engaging in Medicaid fraud and insurance fraud; and to deter other dentists from unlawful prescriptive practices."[115]

Dr. Lookhart argues that *Matter of Greenough* supports his position that a three-year suspension is sufficient to satisfy the goals of Board discipline, given the two-year suspension in that case. But the Division correctly notes that in 1994 the Division in *Greenough* had only requested a two-year suspension. Indeed, the hearing officer himself noted that Dr. Greenough's fraudulent billing – in the amount of $5,000 and with two Class C felonies – would have provided a separate basis for revocation. While the Board in *Greenough* was limited under the Administrative Procedure Act to the discipline requested by the Division in its Accusation, the Board adopted in full the hearing officer's decision – including its lengthy discussion of and conclusion that the fraudulent billing would justify revocation.

Here, of course, Dr. Lookhart's fraudulent billing was a $2 million scheme, which is orders of magnitude greater than Dr. Greenough's $5,000 fraudulent billing, and includes the added layer of stealing more than a million dollars from the public benefits program for indigent

112 Ex. C, pp. 20-21.
113 Ex. C, p. 60.
114 Ex. C, p. 57.
115 Ex. C, p. 62.

patients. And Dr. Lookhart incurred dozens of felony convictions, compared to Dr. Greenough's two. And Dr. Greenough presented undisputed evidence "that he is a highly competent and caring dentist."[116] There is no such evidence as to Dr. Lookhart. In short, the facts of *Greenough* are not "substantially similar" to the facts here, and that decision – by a Board never asked to consider revocation – does not control the outcome here.

c. Other decisions

The Division notes that the Alaska Supreme Court decision in *State v Smith* did not overturn or question the Board's revocation of Dr. Smith's license.[117] Dr. Smith engaged in reckless sedation practices which led to the death of two patients, and the Board eventually revoked his license. On the merits, the Supreme Court's decision addressed a separate matter relating to restrictions on Dr. Smith's ongoing practice while the revocation case was pending. But as the Division notes, *Smith* is at least useful in showing that the Board has previously revoked for reckless indifference to patient wellbeing in the context of shoddy sedation practices and other "gross malpractice."[118]

Dr. Lookhart points to the consent agreement adopted in *Matter of Lockwood*.[119] Dr. Lockwood was convicted of a tax evasion scheme involving more than half a million dollars in unpaid taxes, and was sentenced to five years in prison. Through a consent agreement, the Board retroactively suspended his license for three years. Dr. Lookhart argues that *Lockwood* is relatively analogous and supports a three-year suspension here. The Division points to consent agreements in which the Board has accepted license surrenders for lesser misconduct, and to both contested and adjudicated decisions by other Alaska health care boards specifically addressing revocation for health care fraud, and argues that these support the conclusion that revocation is warranted here.

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116 Ex. C, at 52.

117 *State v. Smith*, 593 P.2d 625 (1979).

118118 Division post-hearing brief, p. 2. The evidence against Dr. Smith included: "He put patients under anesthesia for hours at a time and, on occasion, when procedures ran into the lunch hour and the patients were not yet awake, he would clear the instrument tray and pull out his lunch and eat it off the tray. When lint would collect on the anesthetic machine, he was known to take a steel pick to pick it out and then use the same pick immediately afterward in a patient's mouth. On occasion he would instruct his assistants to mix drugs together in the same syringe even though there was a great risk of drug contamination. His office lacked basic emergency equipment. He seldom closely monitored patients. He was known to undertake surgical procedures on the weekend or evenings by himself. Patients who remained "under" after the conclusion of the procedure were taken to an empty recovery room where they would be left alone. Sometimes these individuals would leave without further contact with the doctor or his assistants. The assistants themselves were seldom trained except to the extent the doctor himself provided instruction." *State v. Smith*, 593 P.2d 625, 632, n. 2 (Alaska 1979) (internal citations omitted).

119 Ex. I

Neither *Lockwood* nor the other consent agreements are controlling here given the Alaska Supreme Court's finding that sanctions established through memoranda of agreement do not carry the precedential significance, for disciplinary purposes, of decisions in contested cases.

> A memorandum of agreement is not a decision because it is not the result of a contested hearing and does not represent a determination of the issues presented. It is a negotiated settlement agreement with a lesser significance than a decision. It yields sanctions or conditions acceptable to the Board, but does not have formal standing under AS 08.01.075(f).[120]

However, to the extent that the memoranda of agreement are significant, on balance both they and the non-Dental cases support the Division's position that the Board has on multiple occasions accepted voluntary license surrenders for significantly fewer or narrower acts of misconduct,[121] and that other Alaska health care boards have specifically revoked provider licenses for health care fraud, including Medicaid fraud.[122]

2. Discipline by other states' dental and medical boards

While neither precedential nor dispositive, dental licensing decisions from other states can also provide useful guidance in framing the severity of the conduct here and how the profession has viewed such conduct. Unsurprisingly, there are a wealth of dental and other medical licensing decisions across jurisdictions in which licensing boards have concluded that revocation is the appropriate sanction for fraudulent billing schemes.

Very recently, the Court of Appeals of North Carolina upheld the license revocation of dentist Carlos Privette for fraudulent billings to that state's Medicaid program. The claims against Dr. Privette covered 25 categories of alleged misconduct involving nearly 100 patients. Dr. Privette was accused of over 800 individual instances of alleged improper billing and over 200 instances of alleged negligent care. The Board revoked Dr. Privette's license, finding that he had violated state rules and regulations governing the profession, had engaged in immoral

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120 *State, Dep't of Commerce, Cmty. & Econ. Dev., Div. of Corps., Bus. & Prof'l Licensing v. Wold,* 278 P.3d 266, 270, fn. 8 (Alaska 2012).

121 Division's Pre-Hearing Brief, p. 9 (citing *Matter of Nelson* (January 2014 voluntary surrender following standard of care complaints by two patients); *Matter of Cho* (January 2002 voluntary surrender of sedation permit following investigation of questionable sedation practices)).

122 See *Matter of Gottlieb*, Medical Board Case No. 2800-00-0018 (January 2004 revocation of medical license following conviction for health care fraud arising out of systematic multiyear scheme to defraud Medicaid); *Matter of Kaniadakis*, Medical Board Case No. 2804-99-005 (January 2004 revocation of podiatrist's medical license following 16-count health care fraud conviction and 2013 denial of reinstatement re: same); *Matter of Ghosh*, Medical Board Case Nos. 2014-000786 and 2016-000343 (2018 default revocation of license of physician who fled the country during administrative appeal of reinstatement denial following Medicaid fraud conviction).

conduct, had engaged in fraudulent billing, had been negligent in the practice of dentistry, and had committed fraudulent or misleading acts in the practice of dentistry.[123]

In *Weiss v. New Mexico Board of Dentistry*, the Supreme Court of New Mexico upheld the revocation of a dental license following convictions for Medicaid fraud. The Court held that the Board's finding that Dr. Weiss had engaged in a "'protracted course of conduct' involv[ing] grossly incompetent performance of dental services, the obtaining of fees by fraud or misrepresentation, and the making of false or misleading statements regarding the value of his dental treatments" was adequate to justify the Board's conclusion that Dr. Weiss "was not sufficiently rehabilitated to warrant the public trust" (a specific requirement for revocation under the New Mexico statute).[124]

The California Court of Appeal upheld the revocation of Sohair Hanna's dental license after Dr. Hanna pleaded no contest to Medicaid fraud. Based on an accusation alleging fraudulent Medicaid claims for ten patients over a two-year period and that she had been convicted of a crime substantially related to her duties as a licensed dentist, the Board revoked her license.[125] The Court of Appeal agreed with the Board that a Medicaid conviction is "substantially related to a professional's fitness or capacity to practice her profession."[126] The Court further upheld the Board's weighing of factors relevant to revocation – specifically, the decision to revoke despite no prior criminal record, satisfaction of restitution, and an otherwise spotless 16-year licensure – with the Board citing a 10-month period of "significant Medi-Cal fraud," and noting that "felony fraudulent billing is a serious offense involving moral turpitude."[127]

The Illinois Department of Financial and Professional Regulation likewise revoked the dental license of Athina Danigeles for billing irregularities and professional incompetence as to

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123 *Privette v. N. Carolina Bd. of Dental Examiners*, 841 S.E.2d 612 (N.C. Ct. App. 2020).

124 *Weiss v. New Mexico Bd. of Dentistry*, 798 P.2d 175, 181 (N.M. 1990) ("The Board considered testimonial and documentary evidence which showed that Weiss performed numerous examinations on nursing home patients, for which he billed Medicaid, lasting less than one minute per patient and consisting of the patient's opening his or her mouth so that Weiss could look inside. In his practice, Weiss billed for services he did not perform (such as billing for dentures not delivered and charging for porcelain-fused-to-metal crowns while providing less costly non-precious metal ones); for performing multiple procedures where one would suffice; and for hasty, unauthorized treatment of four nursing home patients, one of whom was treated by Weiss without his having been informed of the patient's medical history." *Id.*, 798 P.2d at 183).

125 *Hanna v. Dental Bd. of California*, 151 Cal. Rptr. 3d 335, 337 (Cal. App. 2012).

126 *Id.*, 151 Cal.Rptr.3d at 338, citing *Matanky v. Board of Medical Examiners* (Cal. App. 1978) 144 Cal.Rptr. 826 ("Intentional dishonesty ... demonstrates a lack of moral character and satisfies a finding of unfitness to practice medicine").

127 *Id.*, 151 Cal.Rptr.3d at 339.

four patients. The 27-count complaint against Dr. Danigeles alleged fraudulent misrepresentation, unethical conduct, false statements in dental records, standard of care violations, and billing irregularities.[128] The Appellate Court of Illinois upheld Dr. Danigeles's license revocation (and the imposition of a $125,000 fine). After first noting that the purpose of the licensing statute was "to protect the public health and welfare from those not qualified to practice dentistry," the Court summarized that

> Danigeles' license was revoked based on her unethical and unprofessional conduct regarding four patients. Specifically, Danigeles was found to have fraudulently billed two insurance companies numerous times, including double billing and charging for work not performed. Further, she falsely stated on the insurance claim forms that the patients did not have a secondary insurance when that was plainly untrue. Danigeles' repeated and brazen conduct put the public's welfare in jeopardy.[129]

The Arizona Court of Appeals upheld that state's Board of Dental Examiners' order revoking Brent Robison's orthodontia license for fraudulent billing practices in a scheme involving an employer's self-insurance dental plan. Although the plan contemplated the employer paying half the cost of the employee's orthodontia up to $5,000, the dentist billed the employer without requiring the patient to pay their share. The Board found that Dr. Robison had overbilled the employer by more than $650,000, and that his billing practices constituted unprofessional conduct.[130]

New York's licensing body has revoked dental licenses for participation in Medicaid fraud or other billing fraud schemes, even on a much smaller scale than what occurred in this case. In *Matter of Yohanan*, that Board revoked Udi Yohanan's dental license after he was convicted of petit larceny for submitting claims for dental work he had not performed. In upholding the revocation, the reviewing court noted it "has routinely upheld the penalty of revocation in previous cases concerning criminal convictions involving Medicaid or insurance fraud."[131] And in *Matter of Sabuda*, the Board revoked Thomas Sabuda's dental license due to his having fraudulently billing Medicaid "in excess of $50,000" and pleading guilty to a single

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128 *Danigeles v. Illinois Dep't of Fin. & Prof'l Regulation*, 41 N.E.3d 618, 621 (Ill. App. (1st) 2015).

129 *Danigeles v. Illinois Dep't of Fin. & Prof'l Regulation*, 41 N.E.3d 618, 641.

130 *Robison v. Arizona State Bd. of Dental Examiners*, No. 1 CA-CV 14-0533, 2015 WL 7451410, at *3 (Ariz. Ct. App. Nov. 24, 2015). The revocation order in *Robison* was "subject to a five year stay during which Dr. Robison [would] be on disciplinary probation.

131 *Yohanan v. King*, 113 A.D.3d 971, 972 (2014) (citing *Matter of Baman v. State of New York*, 85 A.D.3d 1400, 1402 [2011]; *Matter of Genco v. Mills*, 28 A.D.3d 966, 967 [2006]; *Matter of Zharov v. New York State Dept. of Health*, 4 A.D.3d 580, 580 [2004]).

count of third-degree grand larceny. Rejecting his challenge to the revocation, the reviewing court concluded: "In light of petitioner's fraudulent and deceitful conduct and the harm caused to the Medicaid system as a result, we cannot find that respondents exceeded their discretion in revoking petitioner's license."[132] The *Sabuda* Court also cited an earlier decision, *Beldengreen v. Sobol*, in which revocation was upheld for a dentist who was convicted of two counts of second-degree grand larceny for "two separate Medicaid fraud schemes involving the theft of huge sums of money."[133]

The New York State Board for Professional Medical Conduct has similarly repeatedly revoked medical licenses of physicians found to have engaged in fraudulent billing practices, finding that "such conduct demonstrates deliberate deceit which 'violates the trust the public bestows on the medical profession and/or violates the medical profession's moral standards'."[134] And the Supreme Court, Appellate Division has "consistently held that license revocation is an appropriate penalty when a licensed professional is convicted of defrauding the Medicaid system—a clear violation of the public trust[.]"[135] The New York board has also found that the fraudulent practice of medicine – that is, ordering unwarranted treatment in order to bill the patient's insurer for the unnecessary treatment, and, in some instances, billing for procedures that were not actually performed – constitutes sufficient grounds for license revocation.[136]

D. The appropriate discipline in this case

Dr. Lookhart relies heavily on the Superior Court's statement in *Ness* that the goal of a licensing decision is to protect the public, not to punish the licensee.[137] As a threshold matter, of course, protecting the public certainly includes deterring misconduct. So, while the Board does not seek retributive punishment, it is empowered to sanction licensees with measures that are not purely rehabilitative in nature – for example, the Board's authority to impose fines. And the revocation sanction itself aims at both incapacitation of the dangerous practitioner as well as deterrence of future misconduct within the profession. Thus, setting aside whether a Board can

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132 *Matter of Sabuda v. New York State Educ. Dep't*, 195 A.D.2d 837, 838 (NY Supreme Court, App. Div., 3rd Dept. 1993).

133 *Matter of Beldengreen v. Sobol*, 175 A.D.2d 423, 424 (1991).

134 *Patin v. State Bd. for Prof'l Med. Conduct*, 77 A.D.3d 1211, 1215 (2010) (quoting *Matter of Prado v. Novello*, 301 A.D.2d 692, 694 (2003)). Of note, *Patin* and *Prado* each involved a handful of patients – paling in comparison to the scope of Dr. Lookhart's fraudulent acts.

135 *Teruel v. De Buono*, 244 A.D.2d 710, 713 (1997) (collecting cases).

136 *Tsirelman v. Daines*, 61 A.D.3d 1128, 1131 (2009).

137 *Matter of Ness*, 3AN-06-8587CI, Superior Court Decision, at 6 ("The ultimate goal in fashioning appropriate sanctions is not punishment; the goal is to protect the public and instill public respect and confidence").

properly act to "punish" a licensee for flagrant violations of the statutes, regulations, and ethical principles governing the profession – the undisputed facts here support a finding that the goals of protection of the public and deterrence require revocation.

Dr. Lookhart attempts to analogize his misconduct to that in prior Board decisions in which lesser sanctions were imposed.[138] But the scope of Dr. Lookhart's misconduct is more wide-ranging and severe than in any of those cases, and they do not restrict the Board from revocation here. As described above, Dr. Lookhart has admitted an astonishing range of misconduct, most if not all of which was done to enrich himself at the expense of his patients' safety and the public purse.

In examining the breadth and scope of Dr. Lookhart's misconduct, and its concomitant harm to the profession, it is useful to return to the ADA Code adopted by this Board as the ethical standards governing the profession. "The ADA Code is, in effect, a written expression of the obligations arising from the implied contract between the dental profession and society." In evaluating the conduct in this case against the expectations of the Code, it is telling that Dr. Lookhart violated *each* of the Code's five fundamental principles: patient autonomy, non-maleficence, beneficence, justice, and veracity.

In expressing the principle of patient autonomy, the Code tells us that "[t]he dentist has a duty to respect the patient's rights to self-determination and confidentiality." Dr. Lookhart violated his patients' rights to self-determination in his admitted failure to inform patients about their non-sedation options, and he failed to respect his patients' right to privacy when filming them and allowing them to be filmed or photographed without their consent. Dr. Lookhart violated the duty to do no harm ("non-maleficence") by sedating patients beyond his permit and training, including the jugular vein incident and the two admitted near-death incidents; by sedating patients for whom sedation was medically improper; by allowing untrained, unlicensed staff to perform acts of dentistry on his patients; and by allowing a recently sedated patient to drive herself home. Dr. Lookhart violated the dentist's duty of beneficence by mistreating patients, and by engaging in conduct that brings derision and mistrust upon the profession. Dr. Lookhart violated the dentist's duty of justice by enriching himself through stealing from the governmental benefits program designed to provide dental and medical care to indigent patients. And Dr. Lookhart violated the dentist's duty to veracity by submitting $1.6 million in false

[138] Lookhart Post-Hearing Brief, pp. 2-3.

claims – through overbilling, falsified treatment dates, misrepresentations on bills, and other means, by defrauding his business partner, and by performing unnecessary procedures for personal gain. In short, the conduct at issue in this case implicates every aspect of the Code of Ethics.

Of further and related concern is that the nature of the misconduct – that is, the context of sedation dentistry – made it particularly difficult to detect. As Dr. Lookhart noted in his text messages, and as pointed out by Superior Court Judge Wolverton in delivering the verdicts in the criminal case, much of Dr. Lookhart's misconduct happened not only out of the public eye, but even out of his own patients' awareness. Because many of his acts of misconduct involved sedating patients, this is a case in which the wrongdoing was easy to conceal – and easy precisely because of the trust Dr. Lookhart's patients placed in him when they allowed him to sedate them.

The wide-ranging scope of the misconduct further supports revocation. Alaska Statutes 08.01.075 and 08.36.315 vest the Board with the power to revoke a dental license for *any* of the seventeen violations alleged in the Accusation and admitted by Dr. Lookhart.

Revocation would be justified if the only misconduct here was the Medicaid fraud. Alaska Statute 08.36.315(2) permits the Board to revoke the license of a dentist who has "engaged in deceit, fraud, or intentional misrepresentation in the course of providing or billing for professional dental services or engaging in professional activities." Plainly, numerous of Dr. Lookhart's convictions implicate deceit, fraud, and intentional misrepresentation in the course of both providing and billing for dental services. Further, as many jurisdictions have concluded, theft from a public benefits program in particular implicates a degree of moral turpitude that is fundamentally incompatible with licensure in the profession. This is certainly true where, as here, the theft occurred on a broad scale through numerous deceptions (e.g. false dating of claims, false identification of the patient, and falsely billing for services not performed) and numerous acts that placed remuneration over patient need (e.g. unwarranted sedation, and lengthier than necessary periods of sedation).

Revocation might have been justified if the only misconduct here was the theft from his business partner. In addition to the fraudulent conduct violating AS 08.36.316(2), conviction of felony theft is grounds for revocation. Here, the seriousness of the crime is magnified by the fact that the theft was not a one-off event but an ongoing scheme to defraud. These facts alone might have warranted revocation. But set in the larger context of Dr. Lookhart's large scale Medicaid

fraud and standard of care violations, they clearly support the conclusion that revocation is appropriate here.

Revocation would also have been justified if the only misconduct here was the numerous standard of care violations. Dr. Lookhart engaged in wildly dangerous, reckless conduct in sedating patients beyond the scope of either his permit or his training, and for unnecessary procedures, and on at least two occasions, with nearly deadly consequences. Dr. Lookhart failed to obtain informed consent for sedation, engaged in dangerous sedation practices (such as sedating patients who had just eaten, who had just used illegal drugs, or who had medical conditions incompatible with sedation), nearly killed at least two patients, repeatedly failed to meet even the minimum standards of care for the profession, and repeatedly violated the Code of Ethics. These facts alone – and the shocking breadth of Dr. Lookhart's safety and standard of care violations – would have warranted a decision by this Board to revoke his license.

Taken collectively, Dr. Lookhart's misconduct – stealing more than $1.6 million from Medicaid and more than $400,000 from his business partner, widespread and dangerous failures to meet the minimum standard of care, allowing his staff to perform unlicensed acts of dentistry, and multiple violations of patient privacy and dignity – was a breathtaking affront to the dental profession. The Board must set a sanction that will ensure public safety and restore trust to the profession. Further, as the Division notes, the Board's decision here will set a standard for future cases; as the Division bluntly states: "If this case does not require it, no future case will." For all of these reasons, and given the sheer magnitude of admitted misconduct, the clear and obvious sanction here is revocation.

IV. Conclusion

Seth Lookhart's admitted widespread criminal misconduct harmed his patients, the public purse, and the public's trust in the dental profession. Pursuant to AS 08.01.075(a)(1) and 08.36.315, his dental license and sedation permit are hereby permanently revoked as of the effective date of this decision.

Dated: September 14, 2020

Signed
Cheryl Mandala
Administrative Law Judge

Adoption

The ALASKA BOARD OF DENTAL EXAMINERS 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 distribution of this decision.

DATED this 16th day of October, 2020.

By: Signed `
Signature
David Nielson, DDS
Name
Chair, 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.]