

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, January 19, 2017

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Souza, Senators Martin, Lee, Harris, Anthon, Agenbroad, Foreman, and Jordan

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the Committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Heider** called the meeting of the Senate Health and Welfare Committee (Committee) to order at 3:00 p.m.

PASSED THE GAVEL: Chairman Heider passed the gavel to Vice Chairman Souza to conduct the rules review.

DOCKET NO. 19-0101-1601 **Rules of the Idaho State Board of Dentistry.** **Susan Miller** introduced herself as the Executive Director of the Board of Dentistry. **Ms. Miller** explained all changes in the pending rule. The docket deleted a reference to a document in Section 004 and added relevant portions of that document to Section 041. Section 010 clarifies the five-year time limit for accepting exams only applies to applications for licensure by examination. There is no time limit on acceptance of examinations for candidates applying by credential. Section 014.02 specifies examinations for dentist licensure must be board approved and include a periodontal examination section. Section 15.02 requires dental hygiene license examinations to be board approved and include a clinical local anesthesia examination. Not all testing agencies currently include these specific exams, and the Board of Dentistry wants to maintain them as components of the clinical exams for licensure. Section 018 clarifies the cardiopulmonary resuscitation (CPR) rule applies to applicants for initial licensure as well as licensees who currently practice. Sections 030.01.1 and 030.2.a would allow dental hygienists to administer nitrous oxide under general supervision rather than the more stringent indirect supervision. There is a high safety record, and it is reasonable for hygienists to be able to administer nitrous oxide for patient comfort when the dentist is out of the office.

Ms. Miller advised Section 035.03 is a technical correction to update the reference to a previous section that was renumbered. Section 035.04 removed a reference to expanded functions, allowing the Board of Dentistry to approve curriculum in both the fundamentals and expanded functions of dental assisting. In Section 40.05, the rule expanded the unprofessional conduct section to include any prescription drug, rather than only controlled substances, in an effort to address the issue of dentists prescribing outside their scope of practice. One strikeout of "controlled substances" was missed, and a correction will be made in future rulemaking for consistency. Section 040.28 added a new subsection to include false, misleading, or deceptive advertising to the list of unprofessional conduct. Advertising is referenced in Idaho Code § 54-924, which provides grounds for refusal, revocation, or suspension of a dentist license, and the rule also provides grounds for discipline under Idaho Code § 54-924(7).

Ms. Miller explained Section 041 is a new section regarding minimum requirements for patient records. This section added language taken from the document formerly incorporated by reference in Section 004 and are not new requirements. Section 042 is a new rule regarding minimum infection control and sterilization requirements. The rule partially eliminates reliance on the CDC Infection Control Guidelines that are currently incorporated by reference. Section 046 deleted the general advertising provisions due to concerns about defensibility and antitrust issues. However, the rule maintains the requirements for specialty advertising to ensure the public knows whether they are seeing a general practitioner or a specialist.

Ms. Miller said Sections 050 and 051 deleted a reference to CPR under the continuing education requirements. The CPR requirement is separate from the education requirement, and the change clarifies for practitioners they cannot claim CPR hours for license renewal. Section 050.01 added a continuing education requirement for dentists of one credit hour on the use of the Idaho Prescription Monitoring Program to increase awareness and usage of that program. The first sentence of Section 055 was moved to the end of the paragraph for clarity. Section 058 is a new rule requiring every dental office to maintain minimum emergency drugs where anesthetic agents are administered, as recommended by the American Dental Association Council of Scientific Affairs.

Ms. Miller stated Sections 060 and 061 added pediatric advanced life support to the life support certification requirements, as suggested by former Senator Schmidt during a previous rule review. Section 060.03 added a piece of equipment as an option for certain sedation permit holders and includes an additional technical correction. Sections 060 and 061 added clarifications for the non-renewal and reinstatement process for sedation permits. Finally, Section 61.01.c removed the requirement for general anesthesia and deep sedation permit holders, who are typically oral surgeons or dental anesthesiologists, to be admitted to a recognized hospital. The Board of Dentistry's Anesthesia Committee reviewed the rule and recommended removing the admission requirement.

Senator Martin inquired whether there was a public hearing or opportunity for people to comment on the rule changes. **Ms. Miller** responded no public hearings were held because none were requested. The docket has been in process for well over one year and the Board of Dentistry invited participation by the Idaho Dental Association and the Idaho Dental Hygiene Association, and it also notified licensees of the proposed rule changes through newsletters. The Board of Dentistry received good feedback from the Idaho Dental Association and made some revisions based on that input. **Senator Martin** asked whether there was opposition to the final draft. **Ms. Miller** answered there was none.

Senator Lee asked whether the drugs mentioned in Section 058 are typically something most dentists keep in the office, and if not, what is the anticipated cost to the provider to implement the rule. **Ms. Miller** said most dental offices have a basic emergency kit. A pre-packaged emergency kit can cost a few hundred dollars, but there are less expensive ways to obtain the drugs through pharmacies. The Board of Dentistry inspects about 75 offices per year and part of the inspection process is to look at the emergency drug kits, which often contain expired drugs. **Senator Lee** asked whether the kit is an annual cost and what costs a provider should anticipate for budgeting purposes if the rule is implemented. **Ms. Miller** replied she did not know how long most of the drugs last but it likely one year or more. Most offices do carry a basic emergency kit as a good practice standard. While this would place an additional requirement on the permit holders, a very high percentage of offices are already maintaining the kit.

There being no more questions, **Senator Martin** moved to approve **Docket No. 19-0101-1601**. **Chairman Heider** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
22-0103-1601**

Rules for the Licensure of Physician Assistants. **Angela Wickham** introduced herself to the Committee as the Associate Director of the Idaho State Board of Medicine. **Ms. Wickham** provided background information about the Idaho State Board of Medicine, established in 1892 as a self-governing agency operating with dedicated funds from licensing fees. The Board of Medicine has primary responsibility for licensure and regulation of physicians, physician assistants, athletic trainers, dietitians, and respiratory therapists. It regulates physicians who supervise physician assistants, residents, interns and externs, and athletic trainers. The Board of Medicine also has primary responsibility for the coordination and implementation of malpractice pre-litigation hearings. Its mission is to protect and enhance the public's health, safety, and welfare by establishing and maintaining standards of excellence used in regulating the practice of medicine through licensure, discipline, and education.

Ms. Wickham informed the Committee the pending rule: 1.) updates the titles of the accrediting boards; 2.) clarifies the educational and certification requirements for licensure and renewal of licensure; 3.) adds the ability of a physician assistant to order controlled substances for office use; 4.) streamlines the process for physician assistants to volunteer; and 5.) includes other small housekeeping changes.

Ms. Wickham said the Board of Medicine sought input from the Idaho Academy of Physician Assistants, the Idaho Medical Association, professionals from the Idaho State University Physician Assistant Program, licensed physician assistants, and other interested parties. Negotiations continued throughout the comment period. Several meetings were conducted informally with these stakeholders, and the draft rule was available on the Board of Medicine's website for review and comment. The Board of Medicine conducted a formal public hearing on the rules on November 2, 2016. There was no testimony given at that time, and the rules were approved in December 2016. The pending rule clarifies previously vague or non-existent language, removes redundant language, and provides guidance to needed physician assistants and their supervising physicians who often practice in under-served rural areas of Idaho.

Senator Lee asked for an explanation of the reference to "the committee" in Section 010.02. **Ms. Wickham** answered it is the Physician Assistant Advisory Committee that reports directly to the Board of Medicine. **Senator Lee** further inquired where that explanation appears in the rules. **Ms. Wickham** replied it is not included in the pending rule docket because the docket does not include the entire text of the physician assistant rules. **Senator Lee** commented the reference might be vague and confusing for people and suggested clarifying it in future rulemaking.

Senator Harris moved to approve **Docket No. 22-0103-1601**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-1601-1601**

Rules of the State Board of Dentistry. **Mitch Toryanski** introduced himself to the Committee as legal counsel for the Idaho Bureau of Occupational Licenses, representing the State Board of Dentistry. The mission of the Board of Dentistry is to protect the health, safety, and welfare of the public through licensing and regulation of those who provide prosthetic dental appliances, or dentures. The pending rule: 1.) allows the Board of Dentistry more flexibility on meeting dates and time of year they can administer the dentistry exam; 2.) requires the Board of Dentistry to notify exam applicants about their eligibility to take the exam and, if approved, the date and location the exam will be administered; and 3.) adds supervisor requirements for the internship program.

Mr. Toryanski explained to become a dentist, a person must pass an exam established by the Board of Dentistry; attend two years of formal training at an accredited educational institution; and serve a two-year internship under the supervision of a licensed dentist or dentist. The rules do not currently specify any qualifications for a supervisor, and it could be a newly-minted dentist who just finished his or her internship the day before with no actual experience. The Board of Dentistry feels having no actual days of experience is insufficient to protect the public. The pending rule proposes that: 1.) supervisors be approved by the Board of Dentistry before becoming a supervisor; 2.) they not have been the subject of discipline for the five years preceding their service as a supervisor; and 3.) whether a dentist or dentist, they must have actively practiced three of the five years immediately preceding their employment as a supervisor. The docket also includes general guidelines for how patient records should be kept and specifies minimal information to maintain, as well as a seven-year record retention requirement.

Mr. Toryanski advised the Board of Dentistry approved the rule changes in an open meeting noticed to the public and sent a postcard to all licensees informing them of the changes and inviting their comments. Five comments were received. One was from the Board of Dentistry, saying they had no concern or comment. There were three comments that took exception to having any experience requirements to be a supervisor. One comment said five years experience was too long and instead suggested three years experience with at least one year active experience immediately preceding appointment as a supervisor. The Board of Dentistry considered all of these comments, and agreed that three years experience to be a supervisor was in fact sufficient. Thus, the rule was amended to require only three years experience in the five preceding years.

Senator Lee inquired about the meaning of the term "jurisdiction" in Section 300.07.a.ii regarding the internship supervisor requirements. **Mr. Toryanski** answered that discipline refers to whether a license has been suspended or revoked or some action taken against it. The term "jurisdiction" means places other than Idaho. For example, if a dentist from Minnesota had been disciplined in Minnesota within five years of appointment as a supervisor, that would be disqualifying. **Senator Lee** asked whether this section relates to any criminal convictions or civil issues. **Mr. Toryanski** confirmed the section applies only to discipline against a license in Idaho or any other state or territory.

Senator Martin asked whether there were objections to the rule changes.

Mr. Toryanski replied there were three objections to having any experience requirement as a precondition of being appointed a supervisor.

There being no more questions, **Chairman Heider** moved to approve **Docket No. 24-1601-1601**. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-1701-1601**

Rules of the State Board of Acupuncture. **Mr. Toryanski** presented the docket to the Committee on behalf of the State Board of Acupuncture. The pending rule strikes Section 500 of the rules, eliminating the requirement that practitioners register any business or trade name they may use with the Board of Acupuncture. There is no statute that requires the Board of Acupuncture to collect this information, and there is no compelling reason to do it because the Board of Acupuncture regulates individuals, not businesses. Further, the Secretary of State collects business and trade name information, and it is available to the public.

Mr. Toryanski stated the Board of Acupuncture approved the rule changes in an open meeting noticed to the public and sent a postcard to all 184 licensees informing of the changes and inviting their comments. No comments were received.

There being no more questions, **Senator Martin** moved to approve **Docket No. 24-1701-1601**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-1901-1601**

Rules of the Board of Examiners of Residential Care Facility Administrators. **Mr. Toryanski** introduced himself on behalf of the State Board of Examiners of Residential Care Facility Administrators (RCFA). **Mr. Toryanski** informed the Committee the docket is a pending fee rule to align the rules of the Board of Examiners of RCFA with changes to Idaho Code § 67-2614 made by H 332 (2016). The changes result in: 1.) a reinstatement fee of \$35 rather than \$25; 2.) no impact to the General Fund since the Board of Examiners of RCFA operates only on dedicated funds; and 3.) an increase to the Board's dedicated fund of about \$330 for the estimated 33 out of 477 licensees who will fail to renew their licenses and must reinstate.

There being no questions, **Senator Foreman** moved to approve **Docket No. 24-1901-1601**. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-2701-1601**

Rules of the Idaho State Board of Massage Therapy. **Mr. Toryanski** informed the Committee he represents the State Board of Massage Therapy. In 2016, the Legislature passed H 519, which allowed massage therapy students to receive compensation while in school so they could work off tuition expense, and authorized the Board of Massage Therapy to establish requirements for temporary licenses and provisional permits.

Mr. Toryanski added the Board of Massage Therapy proposes to lower the initial license fee and the license renewal fee from \$75 to \$65. The Board of Massage Therapy's fund balance has been steadily increasing over the last five years and it is now more than twice its budget of \$112,000 per year. In general, boards are advised to keep 100 to 150 percent of their budget in a balance, but more than that is unnecessary, and the Board of Massage Therapy wants to return its excess balance to the licensees.

Mr. Toryanski explained a temporary license is for applicants who have submitted applications showing they have met all the requirements for the license, but the Board of Massage Therapy has not met to take action on the application. A provisional permit is for applicants who have met all the requirements for licensure except the national exam. Provisional permittees are authorized to work under the supervision of a licensed massage therapist. The purpose of both the temporary license and provisional permit is to enable people to get to work as quickly as possible after they are trained. The rule establishes a \$25 processing fee for both. Finally, the rule docket removes one exam as a nationally-recognized licensing exam, which is currently used for certification but not for licensure.

Mr. Toryanski stated the Board of Massage Therapy approved the rule changes in an open meeting noticed to the public and sent a postcard to all 2,195 licensees informing of the changes and requesting comments. No comments were received. However, there were four responses that included only clarifying questions about the definitions of temporary license and provisional permit.

There being no questions, **Senator Agenbroad** moved to approve **Docket No. 24-2701-1601**. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Souza passed the gavel back to Chairman Heider.

ADJOURNED: There being no further business at this time, **Chairman Heider** adjourned the meeting at 3:42 p.m.

Senator Heider
Chair

Jeanne Jackson-Heim
Secretary