FLORIDA DENTAL ASSOCIATION

GOVERNMENTAL ACTION COMMITTEE

AGENDA

DATE:	Tuesday, November 16, 2021
NOTICED START TIME:	1:00 p.m. EST
PROJECTED END TIME:	2:00 p.m. EST
LOCATION:	Conference Call

CONFERENCE CALL DIRECTIONS
1. CALL 1-951-797-1058
2. ENTER CONFERENCE CODE: 982799
ANNOUNCE YOUR ENTRY ONTO THE CALL

CHAIR: Dr. Dave Boden, FDA President

COMMITTEE MEMBERS:

Dr. Gerald Bird, Member / President-elect
Dr. Andy Brown, Member / IPP
Dr. Joe Calderone, Member / BOD Liaison
Dr. Dan Gesek, Member / NEDDA
Dr. Steve Hochfelder, Members / CFDDA
Dr. Queanh Phan, Member / WCDDA
Dr. Gabriel Quinones, Member / SFDDA
Dr. Jeff Ottley, Member / NWDDA
Dr. Jay Singer, Member / ACDDA

CONSULTANTS:

Dr. Zack Kalarickal
Dr. Jason Larkin
Dr. Rudy Liddell
Dr. John Paul
Dr. Rachel Perez
Dr. Beatriz Terry

STAFF:
Drew Eason, Executive Director
Joe Anne Hart, Chief Legislative Officer
Casey Stoutamire, Dir. of Third Party Payer
Alexandra Abboud, Gov. Affairs Liaison

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1. **Call to Order** — Dr. Dave Boden
2. **Recognition of Guests, if any** — Dr. Boden
3. **Opening Remarks** — Dr. Boden

4. **Meeting Participant Policy Reminder** — Dr. Boden
   A. Conflict of Interest Statement – Page 3

5. **Adoption of Agenda** — Dr. Boden

6. **Anesthesia Committee Meeting** — Dr. Boden
   A. Agenda — Dr. Calderone, Ms. Stoutamire
   https://ww10.doh.state.fl.us/pub/hcpr/Dentistry/2021/November/Meeting%20Materials_ANESTHESIA%20COMMITTEE_November%2018.pdf

7. **BOD Meeting** — Dr. Boden
   A. Agenda- Page 4 — Dr. Calderone, Ms. Stoutamire
   B. Petition for Variance or Waiver- Page 7
   C. Hygiene Application- Page 14
   D. Dental Radiographer Application- Page 16
   E. Council on Dental Hygiene Report- Page 18
   F. Rule 64B5-9.011 Discussion- Page 22
   G. Rules Report- Page 24
   H. FYI- Alabama Dental Board (Smile Direct) case, PDMP report, ADEX report- Page 54

8. **Announcements** — Dr. Boden

9. **Next GAC Meeting** — Dr. Boden
   - Monday, January 10, 2022 at 7:30am

10. **Adjournment** — Dr. Boden

CONFLICTS OF INTEREST DISCLOSURE POLICY

For reference purposes at this meeting, all participants are advised of the FDA's policy governing the disclosure of conflicts of interest. This policy is codified as Resolution 92H-022, as adopted by the House of Delegates on January 9, 1993, and reads as follows:

> Resolved, that individuals serving as delegates, alternate delegates, officers, trustees, alternate trustees, council or committee members shall, at all times, exercise diligent care and unbiased judgment in assuring that no detriment to the FDA results from conflicts between their personal or business interests and those interests of the FDA. And, be it further
>
> Resolved, that agendas at all official meetings of FDA agencies contain a declaration of conflicts of interest at which time the presiding chairperson will ask all members of that body to express the conflict. And, be it further
>
> Resolved, that if an individual believes that he or she or a member of his or her immediate family may have a conflict of interest, whether personal or business in nature, which pertains to an ownership, contractual, financial or fiduciary interest, then the individual shall promptly and fully disclose the possible conflict to the president of the association and/or chairperson of the body for which the individual serves. And, be it further
>
> Resolved, that failure to disclose a material conflict of interest may be the basis for reconsideration of the question on a given issue according to parliamentary procedure at any further time.

BOARD OF DENTISTRY
GENERAL BUSINESS MEETING AGENDA
November 19, 2021
Rose Plaza Hotel
9700 International Drive
Orlando, FL 32819
(407) 996-9700
7:30 A.M. ET

Participants in this public meeting should be aware that these proceedings are being recorded and that an audio file of the meeting will be posted to the board's website.

I. CALL TO ORDER/ROLL CALL

II. DISCIPLINARY PROCEEDINGS

A. Informal Hearings

i. Jerome J. Petrisko, Case No. 2018-27637
(PCP – Fatmi, Thomas, White)

B. Settlement Agreements

i. John Brown, DMD, Case No. 2019-41302
(PCP – Miro, Morgan, Cherry)

ii. John Dozier, DMD, Case No. 2020-09755
(PCP – Morgan, Miro, and Perdomo)

iii. Frederick Joseph Eck, DDS, Case No. 2020-05247
(July 9, 2021/ PCP – Miro, Morgan, Perdomo)
(March 12, 2021/PCP – Miro, Morgan, Cherry)

iv. Filiberto Herdocia, DDS, Case No. 2016-25160
(PCP – Miro, Morgan, McCawley)

v. James Magee, III, DDS, Case No. 2017-00670
(PCP – Gesek, Melzer, Calderone)

C. Determination of Waiver

i. Tiffany Graves, DR, Case No. 2021-09206
(PCP – Miro, Hill, Perdomo)

D. Voluntary Relinquishment

i. Scott Farber, DDS, Case No. 2018-07866
(PCP – Miro, Morgan, and Perdomo)

ii. Jeffrey Martin, DMD, Case Nos. 2020-38357, 2021-13106, 2021-07846, 2021-09264, 2021-09524, 2021-10051, 2021-10236
(PCP – Waived)

III. PROSECUTION REPORT

A. Assistant General Counsel

IV. RESPONDENT'S MOTION FOR RECONSIDERATION AND REHEARING

A. Tatyana Stepanchuk, DMD
Case No. 2018-00406

V. PETITION FOR MODIFICATION OF FINAL ORDER

i. John Craig, DMD
Case Nos. 2006-07219, 2006-28111

ii. Tatyana Stepanchuk, DMD
Case No. 2018-00406

VI. PETITION FOR VARIANCE OR WAIVER OF RULE

i. Ana Bernard, DDS

VII. REVIEW OF APPLICATIONS

A. Application for Dental Hygiene License

i. Carly Roberts
ii. Carla Lorena Granadillo
iii. Tatyana Ponizhaylo

B. Application for Dental Radiographer License

i. Jaime Lozada Nieves

C. Application for Expanded Function Dental Assisting Program

i. Expanded Functions Dental Assistant

VIII. REPORTS

A. Board Counsel

i. Rules Report
ii. JAPC Correspondence
iii. Alabama Dental Board

B. Executive Director

i. Legislation Update
ii. Financial Reports

C. Chair

D. Board Members

i. Ms. Hill

1. Council on Dental Hygiene Report

ii. Dr. Tejera

1. Anesthesia Committee Report

E. Inspection Report

i. Ron Dilworth

IX. RULE DISCUSSION

A. Rule 64B5-9.011, F.A.C.

X. DISCUSSION

A. Laws and Rules Course

XI. FOR YOUR INFORMATION

A. Florida Prescription Drug Monitoring Program (PDMP) Monthly Report

B. Report of the 17th Annual Meeting of the American Board of Dental Examiners (ADEX)

C. ULA Spotlight

D. American Association of Orthodontists

XII. NEW BUSINESS

A. 2022 Elections

B. Licensure Ratification Lists

C. Anesthesia Ratification List

XIII. OLD BUSINESS

A. Approval of Board Meeting Minutes – August 13, 2021

B. Approval of Council on Dental Hygiene Meeting Minutes – November 2, 2021

XIV. ADJOURNMENT

STATE OF FLORIDA
BOARD OF DENTISTRY

PETITION FOR VARIANCE OR WAIVER OF RULE 64B5-2.021, FLORIDA ADMINISTRATIVE CODE ON BEHALF OF ANA BERNARD, D.D.S.,

_____/

AMENDED PETITION FOR VARIANCE OR WAIVER

COMES NOW Petitioner, Ana Bernard, D.D.S., (hereinafter Dr. Bernard) by and through undersigned legal counsel and hereby petitions the Florida Board of Dentistry (Hereinafter "Board") for a waiver or variance from the application of the provisions set forth in its administrative rule 64B5-2.021, Florida Administrative Code. In support thereof, Dr. Bernard states as follows:

1. Dr. Bernard is a dentist who graduated in 2007 from the Indiana University School of Dentistry in Indianapolis, IN. A copy of her CV is attached as Exhibit 1 to this Petition. For purposes of this Petition, all correspondence and communication should be delivered through undersigned counsel at the address, telephone number or facsimile number provided below.

2. Rule 64B5-2.021, F.A.C., is the Board's rule on additional education requirements for reexamination. Section 64B5-2.021(1) provides educational requirements that must be completed by an applicant who has failed the clinical examination three times before they are able to retake the clinical portion of the dental licensure examination. Section 64B5-2.021(1), F.A.C., states:

> Any applicant who has failed to pass the clinical examination in three attempts shall not be eligible for reexamination until he or she completes a one-year general practice residency, advanced education general dentistry residency, or pedodontic residency or a minimum of one academic year of undergraduate clinical coursework

in dentistry at a dental school approved by the American Dental Association's Commission on Dental Accreditation. At the time of application for reexamination the applicant must furnish proof from the educational institution of successful completion of one of the residency programs listed above or the required coursework. However, for those applicants completing their coursework immediately prior to the examination or those applicants who have completed at least 9 months of a general practice residency, who cannot provide an official transcript, proof of having successfully completed the required coursework or residency shall consist of a statement from the dean of the school where the coursework or residency was completed that the requirements of this rule will have been met prior to the date set for issuance of examination grades. Grades received by a candidate taking the examination pursuant to this exception will not be certified, and grade results will be null and void if successful completion of the coursework or residency has not been established prior to the date set for issuance of examination grades. Successful completion of coursework shall be established by submission of an official transcript.

3. Dr. Bernard seeks to have the Board of Dentistry waive or grant a variance to the requirement set forth in Section 64B5-2.021(1), F.A.C., to grant her the ability to retake the restorative portion of the clinical examination without having to take the required certification or approved courses, but instead accept her multiple years of practice and experience in pediatric, general and restorative in the State of Georgia as a condition to the grant of the requested variance.

4. Dr. Bernard graduated from the "Carol Davila" School of Dentistry at the University of Bucharest in Bucharest, Romania in 1998. She was subsequently accepted and went on to complete the Avrig Dental Clinic Internship in General Dentistry offered by the "Carol Davila" University of Medicine and Pharmacy in 1999. She was licensed as dentist in Romania later that year.

5. In 2000, Dr. Bernard entered a general practice residency at the "Carol Davila" University, which offered her clinical and hospital experience in comprehensive and emergency oral care to a wide range of patients with regard to dental complexity and medically compromising

conditions. The curriculum included 12-hour night shifts (7pm to 7am) covering the hospital's Emergency Dental Care clinic.

6. In 2003, Dr. Bernard moved to the United States and enrolled at the Indiana School of Dentistry in Indianapolis, IN. There, she completed a full course of study (4 years) and graduated in 2007. She took the Northeast Regional Board of Dental Examiners (NERB) exam in her senior year and passed with high marks. Had she taken the exam 3-4 years later, it would have been accepted in Florida and she would not be required to sit for the exam again. She practiced in Indiana for over 5 years. In 2011, she obtained her Florida Health Access dental license and in 2013, she moved to Jacksonville, FL and started working in St Augustine as a dentist for the Florida Department of Health in St. Johns County.

7. Dr. Bernard sat for the NERB in Florida in May 2013 and failed the restorative section. She scored a 95 in the diagnostic skills examination, a 100 in Endodontics, a 91 in Periodontics and a 98 in Prosthodontics. For the restorative portion of the exam, Dr. Bernard sent the amalgam restoration to be evaluated by the examiners and it came back with the marginal ridge fractured. Dr. Bernard has indicated that she is unsure how this occurred, as she states she checked the occlusion several times.

8. In August 2013, Dr. Bernard re-took the restorative section only, but did not pass a second time. The posterior restoration went well, but the examiners stated that her anterior composite restoration had no proximal contact. Dr Bernard believes this was a matter of poor patient selection on her part. The decay did not go into the proximal contact. After she completed the restoration, the tooth still had a proximal contact. Since the decay did not extend to that proximal contact, the restoration could not as well. The patient was dismissed and told by the clinic

floor examiner that he did not need to have that restoration replaced. The two teeth had proximal contact, but only through tooth structure, not restorative material.

9. Dr. Bernard re-took the restorative section for the third time in July 2014. The patient had a posterior cavity that turned out to be a lot deeper than the X-ray showed. She had to request several modifications to go deeper and remove all decay. On her last modification request she noted that there may be pulp exposure but that she needed to continue to remove all decay. The modification request was approved. Dr, Bernard removed all remaining decay and had a pinpoint pulp exposure. She wrote a request to place a pulp capping liner over the pinpoint exposure and then place the restoration. She was given a failing grade for "unjustified pulp exposure." At this point Dr. Bernard was required to give up her Florida Health Access license.

10. In September 2014 Dr. Bernard started working at the Golden Isles Pediatric Dentistry in Kingsland, Georgia, where she has practiced to the present. Dr. Bernard's practice extensively involves restoration work. She sees children, teenagers, and some special needs adults. On average, she places 10-12 restorations per day, which means that she has placed well over 10,000 restorations since her last failed attempt at Florida boards, which was in 2014. It should be noted that Dr. Bernard has not been the subject of any civil claim or disciplinary action. Further, and as reflected in her CV, Dr. Bernard has a history of providing pro-bono work in Florida and Georgia; working to serve the needs of underserved/uninsured populations as well as providing dental services to military service members in Georgia and Indiana.

11. Dr. Bernard has completed extensive continuing education course work involving restorative dentistry. Her continuing education hours are primarily in the area of pediatric dentistry, which focuses heavily of restorative dentistry. Copies of relevant CE Certificates from 2014 to

present are included as Composite Exhibit 2.

12. The purpose of the statute, which Rule 64B5-2.021(1), F.A.C., is intended to implement, is to ensure that every applicant for licensure that has failed the clinical exam 3 times demonstrates that he/she has obtained additional training to ensure competency. The rule purports to achieve this goal by requiring any such applicant to complete a one-year general practice residency, advanced education general dentistry residency, or pedodontic residency or a minimum of one academic year of undergraduate clinical coursework in dentistry at a dental school approved by the American Dental Association's Commission on Dental Accreditation.

13. Dr. Bernard complies with the intent of the statute through alternative means. As a result of her extensive experience during the past 7 years since last taking the exam, during which time she has completed over 10,000 restorations, as well as her continuing education, Dr. Bernard has demonstrated additional competency. Under her particular facts and circumstances, requiring Dr. Bernard to complete a one-year general practice residency to sit for the restorative portion of the exam again does not advance the intent of the statute. Through her considerable amount of education, training, and experience Dr. Bernard is clearly qualified to practice dentistry in Florida.

14. Florida's District Courts of Appeal have held that, where certain licensing requirements are too burdensome for an applicant, it is appropriate to petition for variance or waiver from the burdensome requirement. *See The University of South Florida v. Department of Children and Family Services*, 787 So. 2d 223 (Fla. 2nd DCA 2001). Section 120.542(2), Florida Statutes requires the Board to grant such a variance or waiver when the individual subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means and when application of the rule would create a substantial hardship or would violate

principles of fairness. In this case, the purpose of the underlying statute is to ensure that every dentist or dental hygienist practicing in Florida meets minimum requirements for safe practice and that those applicants that have failed the clinical exam 3 times obtain additional training. Clearly, Dr. Bernard has established, through her extensive education and professional experience in restorative dentistry over the past 7 years since her last exam, that the purpose of requiring additional training, will be achieved. In addition, requiring Dr. Bernard to complete a one-year general practice residency, advanced education general dentistry residency, or restorative residency or a minimum of one academic year under her particular facts would constitute a financial burden and a "substantial hardship." Section 120.542(2), Florida Statutes, provides that "[f]or purposes of this section, *"substantial hardship" means a demonstrated economic*, technological, legal, *or other type of hardship to the person requesting the variance or waiver*" (emphasis added). Although Dr. Bernard is clearly competent and qualified to practice dentistry, she would have to undergo a considerable amount of additional time and expense in order to be allowed to retake the restorative portion of the clinical examination under the rule. Indeed, with her credentials and experience, there should be no doubt that Dr. Bernard is a competent and qualified applicant to the Florida Board of Dentistry. If Dr. Bernard was not afforded a variance from the underlying rule in order to accomplish her professional goals, her ability to practice dentistry will be affected. To prevent such a qualified individual from being able to retake the restorative portion of the clinical examination in accord with the proposed variance violates the principles of fairness.

15. Pursuant to §120.542, Florida Statutes, Dr. Bernard has clearly demonstrated that the purpose of the underlying statute has been achieved by other means and that application of this

rule would create a substantial hardship or would violate principles of fairness.

WHEREFORE, Dr. Bernard respectfully requests that the Board of Dentistry waive or grant a variance to the requirement set forth in Section 64B5-2.021(1), F.A.C., to grant her the ability to retake the restorative portion of the clinical examination without having to take the required certification or approved courses, but instead accept her extensive professional experience and continuing education as a condition to the requested variance.

Respectfully submitted, this 31 day of August, 2021.

Edwin A. Bayó
Fla. Bar No. 0327727
Grossman, Furlow, and Bayó
2022-2 Raymond Diehl Rd.
Tallahassee, FL 32308
(850)385-1314/fax (850)385-4240
On behalf of Petitioner

FLORIDA | Board of Dentistry
APPLICATION SUMMARY

Carla Lorena Granadillo

702/27593; Dental Hygiene

Application Completion Date: September 15, 2021

Ms. Granadillo completed the Clinical portion of the ADEX exam on September 1, 2021 on a Manikin in a jurisdiction other than Florida. This exam was completed after the expiration of the emergency order on June 30, 2021.

466.007 Examination of dental hygienists.—

(4) Effective July 1, 2012, to be licensed as a dental hygienist in this state, an applicant must successfully complete the following:

(a) A written examination on the laws and rules of this state regulating the practice of dental hygiene.

(b) A practical or clinical examination approved by the board. The examination shall be the Dental Hygiene Examination produced by the American Board of Dental Examiners, Inc., (ADEX) or its successor entity, if any, if the board finds that the successor entity's clinical examination meets or exceeds the provisions of this section. The board shall approve the ADEX Dental Hygiene Examination if the board has attained and continues to maintain representation on the ADEX House of Representatives, the ADEX Dental Hygiene Examination Development Committee, and such other ADEX Dental Hygiene committees as the board deems appropriate through rulemaking to ensure that the standards established in this section are maintained organizationally. The ADEX Dental Hygiene Examination or the examination produced by its successor entity is a comprehensive examination in which an applicant must demonstrate skills within the dental hygiene scope of practice on a live patient and any other components that the board deems necessary for the applicant to successfully demonstrate competency for the purpose of licensure.

(5) Effective July 1, 2012, an applicant who has completed the ADEX Dental Hygiene Examination in a jurisdiction other than this state and who has obtained a passing score may practice dental hygiene in this state if the applicant:

(a) Has successfully completed the National Board Dental Hygiene Examination at any time before the date of application;

(b) Has been certified by the American Dental Association Joint Commission on National Dental Examinations at any time before the date of application, as specified by state law;

(c) Has successfully completed a written examination on the laws and rules of this state regulating the practice of dental hygiene;

(d) Has not been disciplined by a board, except for citation offenses or minor violations; and

(e) Has not been convicted of or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession.

(6)(a) A passing score on the ADEX Dental Hygiene Examination administered out of state must be considered the same as a passing score for the ADEX Dental Hygiene Examination administered in this state.

FLORIDA | Board of Dentistry
APPLICATION SUMMARY

Expanded Function Dental Assistant
Application Status: Pending

Expanded Function Dental Assistant is seeking approval to become an Expanded Duties Program. The Florida licensed dentist listed on their application, Donald Newman (DN8737) has had action initiated against the Florida license.

64B5-16.002 (3)(b) Required Training
(3) The Board shall approve a course or program specified in paragraph 64B5-16.002(1)(b), F.A.C., in expanded duties only upon the application of the entity seeking to offer the course or program which establishes compliance with the following requirements. Failure to adhere to these requirements shall subject the course or program to revocation of Board approval.
(b) Documentation of the training and experience of faculty members which establishes their qualifications to teach specified subject areas. Dentists and dental hygienists shall have a minimum of one-year experience in expanded duty functions and expanded duty dental assistants shall have a minimum of 5 years of hands-on experience prior to approval. The student/teacher ratio shall not exceed one instructor to ten students. Applicants who have had a professional license revoked, suspended, or otherwise acted against, in Florida or in another jurisdiction, may be disqualified from participation as instructors

Disciplinary Action

On March 17, 1993 an Administrative Complaint was filed charging Respondent (Dr. Newman) with the following violations:

- Section 466.028(1)(o), Florida Statutes by performing professional services which have not been duly authorized by the patient or client, or his legal representative. failing to meet the minimum standards of performance in diagnosis and treatments, including but not limited to, the undertaking of diagnosis and treatment for which the dentist is not qualified by training or experience
- Section 466.028(1)(y), Florida Statutes by failing to meet the minimum standards of performance in diagnosis and treatments when measured against generally prevailing peer performance
- Section 466.028(1)(m), Florida Statutes by failing to keep written dental records and medical history justifying the course of treatment of the patient including, but not limited to patient histories, examination results, test results, and x-rays, if taken

On August 11, 1993 a Final Order was entered based on a Stipulation reached with the Respondent (Dr. Newman). The Final Order imposed the following penalties:

- Reprimand
- Costs of $6,000 to be paid within thirty (30) days from the date of entry of the final order.
- Respondent's license to practice dentistry shall be placed on probation for two (2) years

- Complete thirty (30) hours of continuing education in risk management, thirty (30) hours in oral surgery, and twenty (20) hours in diagnosis and treatment planning. course in diagnosis. These hours are in addition to the hours required for license renewal.

On August 31, 1994 an Amended Administrative Complaint was filed charging Respondent (Dr. Newman) with the following violations:

- Section 466.028(1)(y), Florida Statutes by failing to meet the minimum standards of performance in diagnosis and treatments when measured against generally prevailing peer performance
- Section 466.028(1)(m), Florida Statutes by failing to keep written dental records and medical history justifying the course of treatment of the patient including, but not limited to patient histories, examination results, test results, and x-rays, if taken

On February 21, 1997, a Final Order was entered based on a Stipulation reached with the Respondent (Dr. Newman). The Final Order imposed the following penalties:

- Reprimand
- Costs of $3,000 to be paid within thirty (30) days from the date of entry of the final order.
- Complete fifteen (15) hours of continuing education in implantology, fifteen (15) hours of crown and bridge, and five (5) hours of risk management withing two (2) years of the date of the Final Order

Council on Dental Hygiene
Approved Rule Amendment Language –
Administration of Nitrous-Oxide by Dental Hygienists
November 2, 2021

64B5-14.002 Prohibitions.

(1) No Change.

(2) Nitrous-oxide inhalation analgesia. No dentist~~s~~ or dental hygienist licensed in this State shall administer nitrous-oxide inhalation analgesia in the practice of dentistry until they have complied with the provisions of this rule chapter. No agents other than nitrous-oxide and oxygen shall be used for inhalation analgesia pursuant to Rule 64B5-14.003, F.A.C.

(3) – (5) No Change.

(6) A hygienist certified by the board to administer local anesthesia shall not administer local anesthesia to a patient sedated by general anesthesia, deep sedation, moderate sedation, or pediatric moderate sedation. If a dentist or dental hygienist has administered nitrous-oxide to the patient, the certified dental hygienist may administer local anesthesia under the direct supervision of the supervising dentist. A patient who has been prescribed a medical drug by their licensed health care provider for the purposes of life functions may be administered local anesthesia by the certified dental hygienist under the direct supervision of the supervising dentist. If, however, the medical drug is prescribed or administered for the purposes of a dental procedure which is intended to induce minimal sedation, the hygienist may not administer local anesthesia to the patient.

(7) – (8) No Change

Rulemaking Authority 466.004(4), 466.017(3), 466.017(6) FS. Law Implemented 466.017(3), 466.017(5) FS. History–New 1-31-80, Amended 4-2081, 2-13-86, Formerly 21G-14.02, 21G-14.002, Amended 12-20-93, Formerly 61F5-14.002, Amended 8-8-96, Formerly 59Q-14.002, Amended 39-03, 11-4-03, 6-15-06, 12-25-06, 12-11-11, 8-5-12, 12-15-14, 7-14-16, 11-13-17, 3-10-20.

64B5-14.003 Training, Education, Certification, and Requirements for Issuance of Permits.

(1) - (3) No Change.

(4) Nitrous-Oxide Inhalation Analgesia.

(a) A dentist may use, or employ and authorize a dental hygienist to administer under indirect supervision, as specified by Rule 64B5-16.006, nitrous-oxide inhalation analgesia on an outpatient basis for dental patients, provided such dentist and dental hygienist have:

1. ~~Has~~ eCompleted no less than a two-day course of training as described in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students (eff. 10/16), which is hereby incorporated by reference and available at http://www.flrules.org/Gateway/reference.asp?No=Ref-11670 or available at http://www.floridadentistry.gov, or its equivalent, or

2. ~~Has~~ tTraining equivalent to that described above while a student in an accredited school of dentistry or dental hygiene; and,

3. ~~Has a~~ A dental nitrous-oxide delivery system with fail-safe features and a 30% minimum oxygen flow.

(b) A dentist utilizing nitrous-oxide inhalation analgesia and such dentist's assistants and ~~/~~ dental hygienist personnel shall be certified in an American Heart Association or American Red Cross or equivalent Agency sponsored cardiopulmonary resuscitation course at the basic life support level to include one man CPR, two man CPR, infant resuscitation and obstructed airway with a periodic update not to exceed two years. A dentist and all assistant/dental hygienist personnel shall also be trained in the use of either an Automated External Defibrillator or a defibrillator and electrocardiograph as part of their cardiopulmonary resuscitation course at the basic life support level. In addition to CPR certification, a dentist utilizing pediatric moderate sedation must be currently trained in PALS (Pediatric Advanced Life Support).

(c) No Change

(d) Nitrous oxide may be used in combination with a single dose enteral sedative or a single dose narcotic analgesic to achieve a minimally depressed level of consciousness so long as the manufacturer's maximum recommended dosage of the enteral agent is not exceeded. Nitrous oxide may not be used in combination with more than one (1) enteral agent, or by more than a single dose, or by dosing a single enteral agent in excess of the manufacturer's maximum recommended dosage unless the administering dentist holds a moderate sedation permit issued in accordance with subsection 64B5-14.003(2), F.A.C., or a pediatric moderate sedation permit issued in accordance with subsection 64B5-14.003(3), F.A.C.

(e) Dental assistants ~~and dental hygienists~~ may monitor nitrous-oxide inhalation analgesia under the indirect supervision of a dentist if the dental assistant ~~or dental hygienist~~ has complied with the training requirements in paragraph 64B5-14.003(4)(b), F.A.C., and has completed, at a minimum, a two-day course of training as described in the American Dental Association's

"Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students" or its equivalent. After the dentist or dental hygienist has induced a patient and established the maintenance level, the assistant ~~or hygienist~~ may monitor the administration of the nitrous-oxide oxygen making only diminishing adjustments during this administration and turning it off at the completion of the dental procedure.

(5) No Change.

Rulemaking Authority 466.004(4), 466.017(3), (6) FS. Law Implemented 466.017(3), (4), (5), (6) FS. History–New 1-31-80, Amended 4-20-81, 2-13-86, Formerly 21G-14.03, Amended 12-31-86, 11-8-90, 2-1-93, Formerly 21G-14.003, Amended 12-20-93, Formerly 61F5-14.003, Amended 88-96, 10-1-96, Formerly 59Q-14.003, Amended 2-17-98, 12-20-98, 5-31-00, 6-7-01, 11-4-03, 6-23-04, 6-11-07, 2-8-12, 8-16-12 (1)(a)-(f), 8-16-12 (5), 8-19-13, 12-16-13, 3-9-14, 7-14-16, 11-13-17, 3-10-20, 8-5-21.

64B5-16.006 Remediable Tasks Delegable to a Dental Hygienist.

(1) No Change

(2) The following remediable tasks may be performed by a dental hygienist who has received training in these procedures in pre-licensure education or who has received formal training

as defined by Rule 64B5-16.002, F.A.C., and who performs the tasks under Direct supervision:

(a)- (h) No Change

(i) Administer nitrous-oxide oxygen to American Society of Anesthesiologists (ASA) Category IV dental patients provided the Dental Hygienist is in full compliance with the requirements of Rule 64B5-14.002(4)(b), F.A.C.

(3) – (5) No Change

(6) The following remediable tasks may be performed by a dental hygienist who has received training in these procedures in pre-licensure education or who has received formal training as defined by Rule 64B5-16.002, F.A.C., and who performs the tasks under Indirect supervision:

(a) – (f) No Change

(g) ~~Monitor the administration of the~~ Administer nitrous-oxide oxygen to American Society of Anesthesiologists (ASA) Category I – III dental patients ~~making adjustments only during this administration and turning it off at the completion of the dental procedure~~ provided the Dental Hygienist is in full compliance with the requirements of Rule 64B5-14.002(4)(b), F.A.C.; and,

(h) Using adjunctive oral cancer screening medical devices approved by the U.S. Food and Drug Administration.

(7) – (11) No Change.

Rulemaking Authority 466.004(4), 466.017(6), 466.023, 466.024 FS. Law Implemented 466.017(6), 466.023, 466.024 FS. History–New 1-18-89,
Amended 11-16-89, 3-25-90, 9-5-91, 2-1-93, Formerly 21G-16.006, Amended 3-30-94, Formerly 61F5-16.006, Amended 1-9-95, 6-12-97, Formerly 59Q-16.006, Amended 1-25-98, 9-9-98, 3-25-99, 4-24-00, 9-27-01, 7-13-05, 2-14-06, 3-24-08, 7-20-09, 10-17-10, 8-5-12, 6-28-17, 8-2917, 2-27-18, 12-9-18, 3-25-20, 3-30-21.

Question from Board Counsel: is there a need to amend the following rule in any way:

64B5-14.006 Reporting Adverse Occurrences.

(1) Definitions:

(a) *Adverse occurrence* – means any mortality that occurs during or as the result of a dental procedure, or an incident that results in the temporary or permanent physical or mental injury that requires hospitalization or emergency room treatment of a dental patient that occurred during or as a direct result of the use of general anesthesia, deep sedation, moderate sedation, pediatric moderate sedation, minimal sedation, nitrous oxide, or local anesthesia.

(b) *Supervising Dentist* – means the dentist that was directly responsible for supervising the Certified Registered Dental Hygienist (CRDH) who is authorized by proper credentials to administer local anesthesia.

(2) Dentists: Any dentist practicing in the State of Florida must notify the Board in writing by registered mail within forty-eight hours (48 hrs.) of any mortality or other adverse occurrence that occurs in the dentist's outpatient facility. A complete written report shall be filed with the Board within thirty (30) days of the mortality or other adverse occurrence. The complete written report shall, at a minimum, include the following:

(a) The name, address, and telephone number of the patient;

(b) A detailed description of the dental procedure;

(c) A detailed description of the preoperative physical condition of the patient;

(d) A detailed list of the drugs administered and the dosage administered;

(e) A detailed description of the techniques utilized in administering the drugs;

(f) A detailed description of the adverse occurrence, to include 1) the onset and type of complications and the onset and type of symptoms experienced by the patient; 2) the onset and type of treatment rendered to the patient; and, 3) the onset and type of response of the patient to the treatment rendered; 4) final disposition of the patient; and,

(g) A list of all witnesses and their contact information to include their address.

(3) A failure by the dentist to timely and completely comply with all the reporting requirements mandated by this rule is a basis for disciplinary action by the Board, pursuant to Section 466.028(1), F.S.

(4) Certified Registered Dental Hygienists: Any CRDH administering local anesthesia must notify the Board, in writing by registered mail within forty-eight hours (48 hrs.) of any adverse occurrence that was related to or the result of the administration of local anesthesia. A complete written report shall be filed with the Board within thirty (30) days of the mortality or other adverse occurrence. The complete written report shall, at a minimum, include the following:

(a) The name, address, and telephone number of the supervising dentist;

(b) The name, address, and telephone number of the patient;

(c) A detailed description of the dental procedure;

(d) A detailed description of the preoperative physical condition of the patient;

(e) A detailed list of the local anesthesia administered and the dosage of the local anesthesia administered;

(f) A detailed description of the techniques utilized in administering the drugs;

(g) A detailed description of any other drugs the patient had taken or was administered;

(h) A detailed description of the adverse occurrence, to include 1) the onset and type of complications and the onset and type of symptoms experienced by the patient; 2) the onset and type of treatment rendered to the patient; and, 3) the onset and type of response of the patient to the treatment rendered; and,

(i) A list of all witnesses and their contact information to include their address.

(5) A failure by the hygienist to timely and completely comply with all the reporting requirements mandated by this rule is a basis for disciplinary action by the Board pursuant to Section 466.028(1), F.S.

(6) Supervising Dentist:

If a Certified Registered Dental Hygienist is required to file a report under the provisions of this rule, the supervising dentist shall also file a contemporaneous report in accordance with subsection (2).

(7) The initial and complete reports required by this rule shall be mailed to: The Florida Board of Dentistry, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258.

(8) When a patient death or other adverse occurrence is reported to the Board pursuant to this rule, the initial report shall be transmitted to the Chairman of the Board's Probable Cause Panel or another designated member of the Probable Cause Panel to determine if there is legal sufficiency that there has been a violation of the practice act. If so, the Adverse Incident Report shall be referred to the Department of Health, Consumer Services Unit as a complaint and the provision of Section 456.073, F.S. shall control.

Rulemaking Authority 466.004(4), 466.017(3), (6) FS. Law Implemented 466.017(3), (5) FS. History–New 2-12-86, Amended 3-27-90, Formerly 21G-14.006, Amended 12-20-93, Formerly 61F5-14.006, Amended 8-8-96, Formerly 59Q-14.006, Amended 11-4-03, 12-25-06, 8-5-12, 11-13-17, 3-10-20.

Schofill, Paulette

From: danid62@aol.com
Sent: Tuesday, August 17, 2021 9:41 PM
To: Schofill, Paulette
Subject: Rules revision

Follow Up Flag: Follow up
Flag Status: Flagged

Ms. Schofill,

Per our conversation last Friday, I would like to bring a rules concern, regarding radiology certification, to the Council on Dental Assisting. Could you please advise as to who the current Chair is and if we could could possibly convene a Council meeting? Ideally, I would like to bring this issue forward at the next Florida Board of Dentistry meeting.

Thank you for your attention and help with this matter, it is truly appreciated.

Kind Regards,

Danielle Driscoll, CRDH, MHSc
Council on Dental Hygiene
Florida Board of Dentistry

64B5-9.011 Radiography Training for Dental Assistants.

(1) Dental assistants may position and expose dental radiographic images only if they have been certified by the Department as dental radiographers or have graduated from a Board-approved dental assisting school or program.

(2) Dental assistants, **who have not graduated from a Board-approved dental assisting school or program**, may be certified as dental radiographers if they comply with the following requirements:
(a) Apply for certification on DH-MQA 1202, Dental Radiography Certification Application (Rev. 05/2019), incorporated herein by reference and available at http://www.flrules.org/Gateway/reference.asp?No=Ref-11194, and available on the Department of Health's website at http://floridadentistry.gov/licensing/dental-radiographer/, and submit the nonrefundable fee prescribed by rule 64B5-15.015, F.A.C.;
(b) Document having completed at least 3 months of continuous on-the-job training through assisting in the positioning of digital radiographic sensors and positioning and exposing of dental radiographic images under the direct supervision of a Florida licensed dentist; and,
(c) Document successful completion of a Board-approved course which meets the requirements of subsection 64B5-9.011(3), F.A.C., within 12 months after completion of the on-the-job training required by subsection 64B5-9.011(2), F.A.C.

(3) Only courses which provide training in the following areas may receive Board approval:
(a) Dental radiography practice and equipment;
(b) Radiation biology and radiation safety techniques;
(c) Hands-on instruction in the positioning of digital radiographic sensors and films through the use of appropriate mannequins that will provide the didactic objectives;
(d) Radiographic anatomy;
(e) Radiographic images, films, and processing;
(f) Intra-oral radiographic techniques;
(g) Supplemental techniques of dental radiography; and,
(h) Infection control and sterilization techniques.
(4) A dental assistant's certification as a dental radiographer must be conspicuously displayed to the public in any dental office where these services are performed.

Rationale:

As currently written, the rule is ambiguous and needs clarity to discern between the certification of dental assisting school/program graduates and on-the-job trained dental assistants.

By nature of graduating from a Board approved dental assisting school or program, the dental assistant is certified through the graduation process and should be able to complete the application process through the Florida Department of Health to obtain a certificate. The on-the-job trained dental assistant must first complete training in the office, then complete a course within 12 months, and once that is done, they can apply for their certificate. By adding the clarification in the above rule (in red), a clear delineation is established between the two processes.

Rule 64B5-9.011 (4) states that the assistant's radiographer certification must be displayed. Many recent graduates have been experiencing significant issues with potential dental employers requiring a radiographer certificate as a condition of employment. As such, it is important that a dental assistant who has graduated from a Board approved dental assisting school/program has the opportunity to obtain the certificate from the Florida Department of Health.

In addition to the change of language, a change in the application has been included to include a section that indicates the applicant has graduated from a Board approved dental assisting school/program. The change also contains a line that requires the graduation date which could be optional. Finally, the last line in the "EDUCATION AND TRAINING" section asks for the applicant to include documentation of graduation to be attached for verification purposes.

BOARD OF DENTISTRY
RULES REPORT
NOVEMBER 2021

Rule Number	Rule Title	Date Rule Language Approved by Board	Date Sent to OFARR	Rule Development Published	Notice Published	Adopted	Effective
64B5-2.014	Licensure Requirements for Applicants from Accredited Schools or Colleges.	08/21/2020 05/21/2021	12/17/2020(RD) 03/01/2021(RN) 06/29/2021(NOC)	12/31/2020	03/12/2021 03/17/2021-JAPC LTR 03/18/2021-JAPC RESPONSE 04/23/2021-RULE TOLLED 04/26/2021-JAPC LTR 04/27/2021-JAPC RESPONSE 06/04/2021-JAPC RESPONSE 07/06/2021- NOTICE OF CHANGE	08/11/2021	08/31/2021
64B5-2.0142	Application for Health Access Dental License.	08/21/2020 05/21/2021	12/17/2020(RD) 03/01/2021(RN)	12/31/2020	03/12/2021 04/23/2021- RULE TOLLED 04/26/2021- JAPC LTR 04/27/2021- JAPC RESPONSE 06/04/2021- JAPC RESPONSE	08/11/2021	08/31/2021
64B5-2.0144	Licensure Requirements for Dental Hygiene Applicants from Unaccredited Dental Schools or Colleges.	08/21/2020 05/21/2021	12/17/2020(RD) 03/01/2021(RN) 06/29/2021(NOC)	12/31/2020	03/12/2021 03/17/2021- JAPC LTR 03/18/2021- JAPC RESPONSE 04/23/2021- RULE TOLLED 04/26/2021- JAPC LTR 04/27/2021- JAPC RESPONSE 06/04/2021- JAPC RESPONSE 07/06/2021- NOTICE OF CHANGE	08/11/2021	08/31/2021
64B5-2.0146	Licensure Requirements for Applicants from Non-Accredited Schools or Colleges.	08/21/2020 05/21/2021	12/17/2020(RD) 03/01/2021(RN) 06/29/2021(NOC)	12/31/2020	03/12/2021 03/17/2021- JAPC LTR 03/18/2021- JAPC RESPONSE 04/23/2021- RULE TOLLED 04/26/2021- JAPC LTR 04/27/2021- JAPC RESPONSE 06/04/2021- JAPC RESPONSE 07/06/2021- NOTICE OF CHANGE	08/11/2021	08/13/2021

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RULES REPORT
NOVEMBER 2021

Rule Number	Rule Title	Date Rule Language Approved by Board	Date Sent to OFARR	Rule Development Published	Notice Published	Adopted	Effective
64B5-7.003	Permit Requirements for Dental Interns and Residents.	08/21/2020 05/21/2021	12/17/2020(RD) 03/01/2021(RN) 07/06/2021(NOC)	12/31/2020	03/12/2021 03/17/2021- JAPC LTR 03/18/2021- JAPC RESPONSE 04/23/2021- RULE TOLLED 04/26/2021- JAPC LTR 04/27/2021- JAPC RESPONSE 06/04/2021- JAPC RESPONSE NOTICE OF CHANGE 07/13/2021	08/18/2021	09/07/2021
64B5-7.0035	Temporary Certificate Requirements for Dentists Practicing in State and County Government Facilities.	08/21/2020 05/21/2021	12/17/2020(RD) 03/01/2021(RN) 07/06/2021(NOC)	12/31/2020	03/12/2021 03/17/2021- JAPC LTR 03/18/2021- JAPC RESPONSE 04/23/2021- RULE TOLLED 04/26/2021- JAPC LTR 04/27/2021- JAPC RESPONSE 06/04/2021- JAPC RESPONSE 07/13/2021- NOTICE OF CHANGE	08/18/2021	09/07/2021
64B5-7.005	Teaching Permits.	08/21/2020	12/17/2020(RD) 03/01/2021(RN)	12/31/2020	03/12/2021 04/26/2021- JAPC LTR 04/27/2021- JAPC RESPONSE 04/23/2021- RULE TOLLED	08/18/2021	09/07/2021
64B5-7.007	Limited License as Allowed in Section 456.015, F.S.	08/21/2020 05/21/2021	12/17/2020(RD) 03/01/2021(RN) 07/06/2021(NOC)	12/31/2020	03/12/2021 03/17/2021- JAPC LTR 03/18/2021- JAPC RESPONSE 04/23/2021- RULE TOLLED 04/26/2021- JAPC LTR 04/27/2021- JAPC RESPONSE 06/04/2021- JAPC RESPONSE 07/13/2021- NOTICE OF CHANGE	08/18/2021	09/07/2021
64B5-9.011	Radiography Training for Dental Assistants.	08/21/2020 05/21/2021	12/17/2020(RD) 03/01/2021(RN) 06/30/2021(NOC)	12/31/2020	03/12/2021 03/17/2021- JAPC LTR 03/18/2021- JAPC RESPONSE 04/23/2021- RULE TOLLED 04/26/2021- JAPC LTR 04/27/2021- JAPC RESPONSE 06/04/2021- JAPC RESPONSE 07/07/2021- NOTICE OF CHANGE	08/11/2021	08/31/2021

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RULES REPORT
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Rule Number	Rule Title	Date Rule Language Approved by Board	Date Sent to OFARR	Rule Development Published	Notice Published	Adopted	Effective
64B5-12.013	Continuing Education Requirements; Specific Continuing Education Course Requirements; and Cardiopulmonary Resuscitation (CPR) Certification.	08/13/2021	08/26/2021(RD/PR)	09/13/2021	09/28/2021 09/30/2021-JAPC LETTER 10/04/2021-JAPC RESPONSE	10/27/21	11/16/21
64B5-13.005	Disciplinary Guidelines	08/13/2021	08/26/2021(RD/PR)	09/13/2021	09/28/2021 9/30/2021-JAPC LETTER 10/04/2021-JAPC RESPONSE 11/19/2021-PUBLIC MEETING		
64B5-14.0025	Application for Permit.	05/21/2021 08/13/2021	06/04/2021(RD/RN) 08/25/2021(NOC)	06/14/2021	07/01/2021 07/06/2021- JAPC LTR 07/07/2021- JAPC RESPONSE 08/13/2021-PUBLIC MEETING 8/20/2021-JAPC RESPONSE 09/14/2021-NOTICE OF CHANGE	10/12/2021	11/01/2021
64B5-14.003	Training, Education, Certification, and Requirements for Issuance of Permits.	08/21/2020 05/21/2021	12/17/2020(RD) 03/01/2021(RN) 06/07/2021(NOC)	12/31/2020	03/12/2021 03/17/2021- JAPC LTR 03/18/2021- JAPC RESPONSE 06/04/2021- JAPC RESPONSE 06/09/2021- NOTICE OF CHANGE	07/16/2021	08/05/2021
64B5-15.008 64B5-15.012	Fee for Renewal of Inactive License. Change of Status Processing Fee.	08/13/2021	08/25/2021(RD/PR) 10/22/2021(NOW)	09/13/2021	09/28/2021 10/27/2021-NOTICE OF WITHDRAWAL 10/29/21-NPR		

BOARD OF DENTISTRY
RULES REPORT
NOVEMBER 2021

Rule Number	Rule Title	Date Rule Language Approved by Board	Date Sent to OFARR	Rule Development Published	Notice Published	Adopted	Effective
64B5-17.001	Required Availability of Dental Records Upon Relocation or Termination of Practice, or Death of Practitioner	08/13/2021	08/26/2021(RD)	09/13/2021			
64B5-17.0011	Change of Address						
64B5-17.002	Written Dental Records; Minimum Content; Retention						
64B5-17.003	Patient Referrals						
64B5-17.004	Emergency Care						
64B5-17.0045	Standards for the Prescribing of Controlled Substances for the Treatment of Acute Pain						
64B5-17.005	Identification of Removable Prosthetic Devices						
64B5-17.006	Prescription Forms						

BOARD OF DENTISTRY
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NOVEMBER 2021

Rule Number	Rule Title	Date Rule Language Approved by Board	Date Sent to OFARR	Rule Development Published	Notice Published	Adopted	Effective
64B5-17.009 64B5-17.010 64B5-17.0105 64B5-17.011 64B5-17.012 64B5-17.013 64B5-17.014 64B5-17.015	Patient Records; Copying Charges; Timely Release Unlicensed Practice of Dentistry Ownership of Dental Instruments by a Dental Hygienist Financial Responsibility Use of Sargenti Material Proprietorship by Nondentists Removal of Amalgam Fillings Office Safety Requirement	08/13/2021	08/26/2021(RD)	09/13/2021			
64B5-25.007	Disposition of Biohazardous Waste	08/21/2020 05/21/2021	12/18/2020(RD/RN) 03/01/2021(NOC	12/31/2020	01/19/2021 01/27/2021- JAPC LTR 03/12/2021- NOTICE OF CHANGE 03/22/2021- JAPC LTR 03/24/2021- JAPC RESPONSE 04/23/2021- JAPC LTR 04/27/2021- JAPC RESPONSE 06/04/2021- JAPC RESPONSE 07/08/2021- NOTICE OF WITHDRAWAL		

BOARD OF DENTISTRY
RULES REPORT
NOVEMBER 2021

Rule Number	Rule Title	Date Rule Language Approved by Board	Date Sent to OFARR	Rule Development Published	Notice Published	Adopted	Effective
64B5-25.007	Disposition of Biohazardous Waste.	05/21/2021	06/30/2021(RN)	12/31/2020	07/08/2021	08/18/2021	09/07/2021

WILTON SIMPSON
President

CHRIS SPROWLS
Speaker

THE FLORIDA LEGISLATURE

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September 30, 2021

Mr. Lawrence Harris
Senior Assistant Attorney General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050

RE: Department of Health: Board of Dentistry
Proposed Rule 64B5-13.005

Dear Mr. Harris:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on September 28, 2021. I have the following comments.

64B5-13.005(1)(a):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	Denial $500 fine and referral to State Attorney's office if not licensed.	Denial/revocation $10,000 fine and referral to State Attorney's office if not licensed.
Second Offense	Probation with conditions $500 fine.	Revocation $10,000 fine permanent denial and revocation.

Section 456.079(2) states:

> The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses, it being the legislative intent that minor violations be distinguished from those which endanger the public health, safety, or welfare; that such guidelines provide reasonable and meaningful notice to the public of likely penalties which may be imposed for proscribed conduct; and that such penalties be consistently applied by the board.

This penalty range appears to enlarge, modify, or contravene section 456.079 because it fails to provide "meaningful notice to the public of likely penalties which may be imposed for proscribed conduct" or notice of "penalties [that are] consistently applied by the board." Also, the rule does not appear to be consistent with the expressed legislative intent pertaining to the specific provisions of section 456.079(2). *See* §§ 120.52(8)(c) and (d), .545(1)(f), Fla. Stat. It appears that this disciplinary guideline enlarges, modifies, or contravenes section 456.079 because it is not based on the severity and repetition of the specific offense; it does not distinguish minor violations from those which endanger the public health, safety or welfare; it does not provide meaningful notice to the public of likely penalties which may be imposed for the proscribed conduct; and does not ensure that penalties will be consistently applied by the board. *See* § 120.52(8)(c), Fla. Stat. If the penalty imposed is within the guidelines range, nearly any penalty could be imposed without explanation for giving different licensees different penalties, thereby potentially vesting unbridled discretion in the board. There would be no reason to go outside the disciplinary guidelines, and no reason to apply section 456.079(2), which requires, "A specific finding in the final order of mitigating or aggravating circumstances shall allow the board to impose a penalty other than that provided for in such guidelines."

Because the potential penalties that may be imposed for the proscribed conduct are extremely broad, the rule appears to lack adequate standards for agency decisions and may subject licensees to erratic enforcement, thereby vesting unbridled discretion in the board and fail to provide a standard by which the board can fairly assess a penalty. *See* § 120.52(8)(d), Fla. Stat. These guidelines include virtually all possible penalties available to the board for any violation of section 456.072(1)(h) or section 464.018(1)(a). These guidelines would allow the imposition of such penalties inconsistently and without explanation, contrary to the expressed legislative intent of section 456.079(2). *See* § 120.545(1)(f), Fla. Stat.

In *Arias v. State, Department of Business and Professional Regulation, Division of Real Estate*, 710 So. 2d 655, 659 (Fla. 3d DCA 1998), a licensee suffered a suspension for violation of a federal regulation. Although the charge (violation of a legal duty), and the penalty range (reprimand to denial or revocation), were actually included in the statute, the court struck the penalty because neither the penalty nor the specific offense were specified in the disciplinary guidelines. The court concluded, "the statutory language at issue in the instant case, combined with the total lack of guidelines for enforcement, left the licensee in a predicament ripe for arbitrary and erratic enforcement, and obviously provided no standards sufficiently governed by the legislature as to constitute a judicially reviewable discretion." *Id*. at 659. Similarly, the broad range of penalties in this rule provide no more meaningful standards for the enforcement of penalties than did the entire statutory list of available penalties in *Arias*.

Thus, it appears the penalty guideline in this rule paragraph is an invalid exercise of delegated legislative authority. *See* § 120.52(8)(c) and (d), Fla. Stat.

64B5-13.005(1)(b):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	Suspension/denial until the license is unencumbered and active in the jurisdiction in which the disciplinary action was originally taken, or up to five years followed by probation and $10,000 fine or revocation.
Second Offense	Imposition of discipline which would have been imposed if the substantive violation occurred in Florida. Probation and $1,000 fine.	Suspension until the license is unencumbered in the jurisdiction in which disciplinary action was taken and $10,000 fine.
Third Offense	One year suspension followed by probation and $5,000 fine.	Revocation and permanent denial and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(c):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	Denial or 2 years suspension, 2 years probation with conditions and $10,000 fine, or revocation.
Second Offense	One year suspension followed by probation and $1,000 fine.	Denial or revocation and $10,000 fine, with conditions.
Third Offense	Revocation and $2,500 fine.	Revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(d):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$500 fine.	1 year probation with conditions and $10,000 fine.
Second Offense	1 year probation with conditions and $3,000 fine.	1 year suspension 2 years probation with conditions and $10,000 fine.
Third Offense	2 years probation with conditions and $5,000 fine.	Revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(e):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	1 year suspension and $10,000 fine.
Second Offense	Probation with conditions and $3,000 fine.	Denial or revocation and $10,000 fine.
Third Offense	Probation with conditions and $5,000 fine.	Revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(g):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	6 months suspension, 1 year probation with conditions and $10,000 fine.
Second Offense	1 year suspension, 2 years probation with conditions and $5,000 fine.	2 years suspension, 2 years probation with conditions and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(h):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	2 years probation with conditions and up to suspension, and $10,000 fine.
Second Offense	1 year probation with conditions, reprimand and $3,000 fine.	Suspension, 1 year probation with conditions and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(i):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$500 fine.	2 years probation with conditions and $10,000 fine.
Second Offense	1 year probation with conditions and $1,000 fine.	2 years probation with conditions and $10,000 fine.
Third Offense	2 years probation with conditions and $2,000 fine.	1 year suspension and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(j):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	1 year probation with conditions and up to suspension, and $10,000 fine.
Second Offense	1 year probation with conditions and $2,500 fine.	Suspension, probation with conditions and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(k):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	6 months suspension followed by probation and $2,500 fine.	Denial or revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(l):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	6 months probation with conditions and $10,000 fine.
Second Offense	1 year probation with conditions and $1,000 fine.	6 months suspension and $10,000 fine.

Third Offense	2 years probation with conditions and $2,500 fine.	Revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(m):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$500 fine.	Probation with conditions and $7,500 fine.
Second Offense	Probation with conditions and $1,000 fine.	Suspension and $10,000 fine.
Third Offense	Probation with conditions and $2,500 fine.	Revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(n):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$500 fine.	Probation with conditions and $7,500 fine.
Second Offense	$1,000 fine.	Probation with conditions and $10,000 fine.
Third Offense	$2,500 fine.	Revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(o):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	Probation with conditions and $8,000 fine.
Second Offense	Probation with conditions and $2,500 fine.	Suspension and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(p):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$500 fine.	Probation with conditions, $10,000 fine and up to suspension.
Second Offense	Probation with conditions and $2,500 fine.	Suspension and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(q):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$500 fine.	Suspension followed by probation with conditions and $10,000 fine.
Second Offense	Probation with conditions and $2,500 fine.	Suspension and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(r):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	Probation with conditions and $10,000 fine.
Second Offense	Probation with conditions and $2,500 fine.	Suspension followed by probation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(t):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$2,500 fine.	Probation with conditions and $8,000 fine.
Second Offense	Probation with conditions and $8,000 fine.	Suspension followed by probation and $10,000 fine.
Third Offense	Probation with conditions and $10,000 fine.	Revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(u):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$500 fine.	Probation with conditions and $8,000 fine.
Second Offense	Probation with conditions and $3,000 fine.	Suspension, probation with conditions and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(v):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$500 fine.	Probation with conditions and $8,000 fine.
Second Offense	Probation with conditions and $3,000 fine.	Suspension followed by probation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(x):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$500 fine.	Probation with conditions and $10,000 fine.
Second Offense	Probation with conditions and $1,000 fine.	Suspension and $10,000 fine.
Third Offense	$2,500 fine.	Revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(y):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$500 fine.	Probation with conditions and $10,000 fine.
Second Offense	Probation with conditions and $1,000 fine.	Suspension and $10,000 fine.
Third Offense	$2,500 fine.	Revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(z):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$2,500 fine.	Probation with conditions, $10,000 fine and suspension.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(bb):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	$10,000 fine.
Second Offense	Probation with conditions and $2,500 fine.	Probation with conditions and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(dd):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
Second Offense	$1,000 fine.	Probation with conditions and $7,500 fine.
Third Offense	Probation with conditions and $2,500 fine.	Suspension and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(ee):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	Probation with conditions and $10,000 fine.
Second Offense	Probation with conditions and $2,500 fine	Probation with conditions and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(ff):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$500 fine.	Probation with conditions and $10,000 fine.
Second Offense	Probation with conditions and $2,500 fine.	Suspension and $10,000 fine.
Third Offense	Probation with conditions and $4,000 fine.	Revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(gg):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	Probation with conditions and $10,000 fine.
Second Offense	Probation with conditions and $2,500 fine.	Suspension and $10,000 fine.
Third Offense	Probation with conditions and $4,000 fine.	Revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(hh):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	Probation with conditions and $10,000 fine.
Second Offense	$2,500 fine.	$10,000 fine.
Third Offense	$3,500 fine.	$10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(ii):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	Denial, revocation and $8,000 fine.
Second Offense	Probation and $1,500 fine.	Denial, revocation and $10,000 fine.
Third Offense	Suspension followed by probation and $3,000 fine.	Denial, revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(jj):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	$7,500 fine.
Second Offense	$2,500 fine.	Probation with conditions and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(kk):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
Second Offense	Probation with conditions and $2,500 fine.	Probation with conditions and $10,000 fine.
Third Offense	Probation with conditions and $5,000 fine.	Suspension and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(ll):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$750 fine.	Probation with conditions and $10,000 fine.
Second Offense	Probation with conditions and $1,000 fine	Probation with conditions and $10,000 fine.
Third Offense	Probation with conditions and $2,500 fine.	Suspension followed by probation and $10,000 fine.

64B5-13.005(1)(mm):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
Third Offense	$1,500 fine.	Probation with conditions and $7,500 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(nn):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	Probation with conditions and $8,000 fine.
Second Offense	$3,500 fine.	Probation with conditions and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(oo):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	Probation with conditions and $8,000 fine.
Second Offense	$3,500 fine.	Probation with conditions and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(pp):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	Probation with conditions and $10,000 fine.
Second Offense	Probation with conditions and $2,500 fine.	Suspension and $10,000 fine.
Third Offense	Probation with conditions and $3,500 fine.	Revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(qq):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	Probation with conditions and $10,000 fine
Second Offense	Probation with conditions and $2,000 fine.	Suspension followed by probation with conditions and $10,000 fine.
Third Offense	Suspension followed by probation with conditions and $3,000 fine.	Revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(rr):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	Probation with conditions and $10,000 fine.
Second Offense	Probation with conditions and $2,500 fine.	Suspension followed by probation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(uu):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$2,500 fine.	Revocation or probation with conditions and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(vv):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$500 fine.	Probation with conditions and $10,000 fine.
Second Offense	Probation with conditions and $1,000 fine.	Probation with conditions and $10,000 fine.
Third Offense	Suspension followed by probation with conditions and $2,500 fine.	Revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(ww):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
Second Offense	$1,000 fine.	Probation with conditions and $8,000 fine.
Third Offense	$2,500 fine.	Suspension followed by probation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(xx):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine.	Probation with conditions and $10,000 fine.
Second Offense	Probation with conditions and $2,500 fine.	Suspension followed by probation with conditions and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(yy):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$500 fine.	Probation with conditions and $8,000 fine.
Second Offense	$1,000 fine.	Suspension followed by probation with conditions and $10,000 fine.
Third Offense	$2,500 fine.	Revocation and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(zz):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$500 fine.	Probation with conditions and $8,000 fine.
Second Offense	$1,000 fine.	Probation with conditions and $10,000 fine.
Third Offense	$2,500 fine.	Suspension followed by probation with conditions and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(aaa):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$500 fine.	Probation with conditions and $8,000 fine.
Second Offense	$1,000 fine.	Probation with conditions and $10,000 fine.
Third Offense	$2,500 fine.	Suspension followed by probation with conditions and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(bbb):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,500 fine.	Probation with conditions and $8,000 fine.
Second Offense	Probation with conditions and $3,000 fine.	Suspension and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(eee):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine, letter of concern	$10,000 fine suspension.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(fff):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
First Offense	$1,000 fine, letter of concern	$10,000 fine, suspension.

See comments to 64B5-13.005(1)(a).

64B5-13.005(1)(lll):
It appears that the following disciplinary guidelines do not comply with the requirements of section 456.079(2).

	MINIMUM	MAXIMUM
Second or Subsequent Offense	Denial or revocation of license and $2,500 fine.	Denial/revocation of license and $10,000 fine.

See comments to 64B5-13.005(1)(a).

64B5-13.005(2)(k):
This rule paragraph allows the board to consider "Any other relevant mitigating or aggravating factor under the circumstances." The statutory authority for inclusion of possible mitigating and aggravating circumstances is found in section 456.079(2), which states, "If applicable, the board, or the department if there is no board, shall adopt by rule disciplinary guidelines to designate possible mitigating and aggravating circumstances and the variation and range of penalties permitted for such circumstances." Given that whatever the board considers to be mitigating or aggravating falls within the realm of "any other mitigating or aggravating factor under the circumstances," it appears this rule paragraph vests unbridled discretion in the board. *See* § 120.52(8)(d), Fla. Stat.

Please let me know if you have any questions. Otherwise, I look forward to your response.

Sincerely,

Marjorie C. Holladay
Chief Attorney

cc: Mr. Edward A. Tellechea, Chief Assistant Attorney General

MCH:df #185016

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November , 2021

Ms. Marjorie C. Holladay
Chief Attorney
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

Re: Department of Health
Board of Dentistry
Existing Rule Chapter 64B5-17, F.A.C.

Dear Ms. Holladay:

I am writing to supplement my July 16, 2021 initial response to your July 9, 2021 correspondence regarding the above-referenced rule chapter. As I anticipated, the Board was able to review your correspondence and the well-taken questions therein, and made the following decisions to resolve the concerns expressed.

64B5-17.0011: The Board agrees with your well-taken comment, and will amend this rule to specify the notification is to the Department of Health, and to define the "place of practice."

64B5-17.002(1): The Board agrees with your comment, and will revise the rule text as indicated.

64B5-17.002(7): The Board agrees subsection 466.018(2), F.S. does not provide authority for this rule; however, subsection 466.018(4), F.S. states:

> (4) In a multidentist practice of any nature, **the owner dentist shall maintain** either the original or a duplicate of all patient records, including dental charts, patient histories, examination and test results, study models, and X rays, of any patient treated by a dentist at the owner dentist's practice facility. **The purpose of this requirement is to impose a duty upon the owner of a multidentist practice to maintain patient records for all patients treated at the owner's practice facility whether or not the owner was involved in the patient's treatment.** This subsection does not relieve the dentist of record in a multidentist practice of the

> responsibility to maintain patient records. An owner dentist of a multidentist practice may be relieved of the responsibility to maintain the original or duplicate patient records for patients treated at the owner dentist's practice facility if, upon request of the patient or the patient's legal representative, she or he transfers custody of the records to another dentist, the patient, or the patient's legal representative and retains, in lieu of the records, a written statement, signed by the owner dentist, the person who received the records, and two witnesses, that lists the date, the records that were transferred, and the persons to whom the records were transferred. Further, the dentist of record may be relieved of the responsibility to maintain the original or duplicate patient records if she or he leaves the practice where the treatment was rendered, transfers custody of the records to the owner of the practice, and retains, in lieu of the records, a written statement, signed by the dentist of record, the owner of the practice, and two witnesses, that lists the date and the records that were transferred. **The owner dentist shall provide reasonable access to duplicate records at cost.**
> **(Emphasis added)**

Accordingly, the Board believes this rule subsection appropriately implements the statutory mandate. In addition, given the prevalence of licensees working as employees of practices owned by other dentists, or in group practices, this rule provision is necessary to clarify responsibilities for records ownership, in order to prevent possible violations of paragraphs 466.028(1)(i), (m), (n), and (mm), F.S., by either employee dentists or owner dentists.

64B5-17.003(5) & 64B5-17.003(7): The Board agrees with your comments, and subsections (5) and (7) will be deleted. In addition, section 456.052, F.S. will be deleted from the "Law Implemented" portion of this rule, and section 456.053, F.S., will be added.

64B5-17.004: Section 466.001, F.S., states:

> 466.001 Legislative purpose and intent.—The legislative purpose for enacting this chapter is to ensure that every dentist or dental hygienist practicing in this state meets minimum requirements for safe practice without undue clinical interference by persons not licensed under this chapter. It is the legislative intent that dental services be provided only in accordance with the provisions of this chapter and not be delegated to unauthorized individuals. **It is the further legislative intent that dentists and dental hygienists who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in this state. All provisions of this chapter relating to the practice of dentistry and dental hygiene shall be liberally construed to carry out such purpose and intent.**

The implemented statutory sections, 466.028(1)(t) and (x), subject a dentist to discipline for misconduct or for failing to meet minimum standards of care. The Board has long held that patients must have emergency access to dental services, and establishing such access

is a bare minimum standard of care to ensure patient health and safety. While the Board wishes each and every dental professional would voluntarily ensure the provision of emergency access to their patients, unfortunately, some do not, and thus fail to meet minimum standards. Because the Board is obligated to provide guidance on minimum standards, the Board believes the cited statutory provisions provide adequate statutory authority for this rule, which has been in place since at least 1987.

64B5-17.0010: The Board agrees with your comments, and paragraph 466.028(1)(bb), F.S. will be deleted from the introductory paragraph and the "Law Implemented" portion of this rule.

64B5-17.0012: The Board agrees with your comments, and sections 466.001 and 466.004, F.S. will be deleted from the "Law Implemented" portion of this rule.

64B5-17.0013: The Board agrees with your comment, and paragraph 466.0185(1)(c), F.S. will be deleted from the "Law Implemented" portion of this rule.

Thank you for your comments and assistance regarding the Board's rulemaking endeavors. As always, please do not hesitate to contact me if you have any questions or further concerns.

Sincerely,

Lawrence D. Harris

Senior Assistant Attorney General
Counsel to the Florida Board of Dentistry

cc: Jessica Sapp, Executive Director
Edward Tellechea, Chief Assistant Attorney General
Leslie Williams, Paralegal Specialist

BOARD COUNSEL RECOMMENDED RULE AMENDMENTS TO RESOLVE JAPC COMMENTS
NOVEMBER, 2021

CHAPTER 64B5-17
DENTAL PRACTICE AND PRINCIPLES

64B5-17.0011 Change of Address.

Each licensee shall provide written notification to the department of the licensee's current mailing address and place of practice. The term "place of practice" means the primary physical location where the licensee practices the profession of dentistry or dental hygiene. ~~All licensees are required to notify the Board in writing within 10 days of any change in their address~~.

Rulemaking Authority 456.035, 466.004(4) FS. Law Implemented 456.035, 466.013 FS. History–New 3-27-90, Formerly 21G-17.0011, 61F5-17.0011, 59Q-17.0011.

64B5-17.002 Written Dental Records; Minimum Content; Retention.

A dentist shall maintain patient dental records in a legible manner and with sufficient detail to clearly demonstrate why the course of treatment was undertaken.

(1) Dental Record: The dental record shall contain sufficient information to identify the patient, support the diagnosis, justify the treatment and document the course and results of treatment accurately, by including, at a minimum, patient histories; X-rays (if taken~~;~~); examination results; test results; records of drugs prescribed, dispensed, or administered; reports of consultation or referrals; and copies of records or reports or other documentation obtained from health care practitioners at the request of the dentist and relied upon by the dentist in determining the appropriate treatment of the patient.

(2) - (6) No Change.

(7) Owner of Dental Practice: All dental records required by this rule and any additional records maintained in the course of practicing dentistry shall be the property of the owner dentist of the dental practice in which the dental patient is seen or treated and the owner dentist shall be ultimately responsible for all record keeping requirements set forth by statute or rule.

(a) The owner dentist is responsible for the records of patients seen or treated by any employee, associate, or visiting dentist.

(b) Multiple owners are severally and equally responsible for the records of patients seen or treated with the dental practice of that dental group.

(c) A lessor or owner dentist is not responsible for the records of an independent dentist who is merely leasing or renting space or staff services for the operation of a separate dental practice within the owner dentist's physical facility.

(8) Electronic Dental Records: Patient records may be kept in an electronic format, provided that the dentist maintains a back-up copy of information stored in the back-up data processing system using disk, tape, or other secure electronic back-up system, onsite or off-site, as long as the back-up system is updated in a time frame that does not exceed seventy-two hours (72 hrs.), to assure that data is not lost due to system failure. Any electronic data system must be capable of producing a hard copy on lawful demand in accordance with and pursuant to federal or state laws and rules.

Rulemaking Authority 466.004(4) FS. Law Implemented 456.057, 456.058, 466.028(1)(m), 466.018(4), FS. History–New 10-8-85, Formerly 21G-17.02, Amended 10-28-91, Formerly 21G-17.002, Amended 11-22-93, Formerly 61F5-17.002, 59Q-17.002, Amended 11-15-99, 4-22-03, 3-14-13, 5-14-15, 4-17-16.

64B5-17.003 Patient Referrals.

(1) Split-fee arrangements relating to the referral of patients by a client to another health care practice are prohibited.

(2) As used herein, the term "health care practice" shall mean a lawful and distinct business entity owned and operated under one name by an individual or group of duly licensed health care providers with facilities at one or more locations such as a solo dental practice, group practice, or professional service corporation, which offers health care services to the public within the limits of the professional licenses held by the owners, employees and agents of the business.

(3) Referral of a patient to another dentist in the same health care practice, so long as any remuneration shared by the dentists is not based upon the number of referrals within the practice and the referral of a patient to another dentist within the practice is in the best interest of the patient, is not a split-fee arrangement.

(4) Fee arrangements between dentists in the same health care practice which are based upon productivity or shared net profits

are not split-fee arrangements.

(5) ~~Referral of a patient to another health care practice in which the referring dentist or any owner, employee or agent of the referring practice or immediate family member thereof has a financial interest, whether direct, indirect, active or passive in nature, is permitted only if the referral is in the best interest of the patient and the patient first consents to the arrangement by signing a written notification form from the referral dentist which informs the patient of (a) the existence of a financial interest; and, (b) the patient's right to request another referral or to independently seek the services recommended. Under no circumstances shall the dentist's financial interest be contingent upon or otherwise related to any referral quota or similar requirement. However, in emergency circumstances where it is in the patient's best interest that such a referral be made without first seeing the patient, the referring dentist shall orally provide the notification required herein. In such emergency situations, the referring dentist shall also make a notation in the patient's record at the time of referral that disclosure was made orally due to emergency circumstances. Written disclosure as required in subsection (5) of this rule, shall be supplied to the patient at the office to which the emergency patient was referred.~~

~~(6)~~ Notification forms signed by patients in accordance with subsection (5), above, shall be maintained in the patient's record.

~~(7) The written notification required by this rule shall be made on the appropriate form set forth in rule 64B5-1.021, F.A.C.~~

Rulemaking Authority 466.004(4) FS. Law Implemented 456.053~~2~~ FS. History–New 8-30-90, Formerly 21G-17.003, 61F5-17.003, 59Q-17.003, Amended 8-19-97.

64B5-17.004 Emergency Care.

It is the responsibility of every dentist practicing in this State to provide, either personally, through another licensed dentist, or through a reciprocal agreement with another agency, reasonable twenty-four (24) hour emergency services for all patients under his continuing care.

Rulemaking Authority 466.004(4) FS. Law Implemented 466.028(1)(t), (x) FS. History–New 4-26-87, Formerly 21G-17.004, 61F5-17.004, 59Q-17.004.

64B5-17.010 Unlicensed Practice of Dentistry.

For the purposes of interpreting sections 466.003(3), 466.026(1)(a) and 466.028(1)(g)~~(bb)~~, F.S., the Board shall not consider it to be the unlicensed practice of dentistry for an unlicensed person to furnish, supply, construct or reproduce an appliance to be worn in the human mouth or to verify the patient's shade-selection outside the dentist's direct supervision for fixed partial prosthesis if:

(1) The appliance is a removable mouth protection device that is inserted and removed by the user without adjustment by a licensed dentist (e.g. athletic mouth guards);

(2) A prescription or dentist's order is not required in order to obtain the appliance;

(3) The appliance does not adjust or otherwise affect the natural features of the face or mouth or affect any appliance placed in the mouth by a licensed dentist;

(4) The appliance or device does not have the potential to cause significant or irreparable damage to the dentition and/or oral tissue;

(5) The request for the shade verification is accompanied by a prescription form or work order written by a licensed dentist to meet the requirements of section 466.021, F.S.;

(6) The dentist has previously completed the initial shade selection;

(7) The shade verification site is approved by the dentist and meets all requirements of sections 466.028(1)(u), 466.031(1) and 466.032(1), F.S.;

(8) During shade verification, no appliances or prosthetic devices are to be placed, removed or sealed in the oral cavity at the site except by a licensed dentist on a patient of record in accordance with the requirements of sections 466.024(5) and 466.028(1)(m), F.S.;

(9) During shade verification, contact to the patient is limited to visual contact only;

(10) During shade verification, soft or hard tissue shall not be manipulated;

(11) During shade verification, the patient shall be instructed on how to retract his or her own lip, and the shade tab shall only be held in proximity, but without physical contact to the patient's dentition; and,

(12) During shade verification, photography shall be limited to the patient's visible dentition during smile and the patient's dentition with the patient retracting their lips.

Rulemaking Authority 466.004(4) FS. Law Implemented 466.026(1)(a), 466.028(1)(g), ~~(bb)~~ FS. History–New 9-5-91, Formerly 21G-17.010, 61F5-

17.010, Amended 5-9-95, Formerly 59Q-17.010, Amended 10-8-03.

64B5-17.012 Use of Sargenti Material.

The Board of Dentistry has determined pursuant to sections 466.001 and 466.028(1)(x) and (ff), F.S., that the use of "Sargenti Cement" (e.g., N2, RC2B, or RC2W or essentially similar compounds) as an endodontic filling material or cement does not meet the minimum standards of performance for competent dental practice in Florida. The Board specifically finds that "Sargenti Cement" containing paraformaldehyde, when used as an endodontic filling material or cement, can cause severe and irreversible damage to patients. "Sargenti Cement" that is improperly used or which escapes beyond the root canal is much more likely to cause significant damage than incorrectly performed endodontic procedures using alternative filling materials or cements. Most licensed dentists in Florida do not use "Sargenti Cement" in endodontic therapy. Therefore, the use of "Sargenti Cement" as an endodontic filling material does not meet the existing minimum standard of performance for competent dental practice in Florida.

Rulemaking Authority 466.004(4) FS. Law Implemented ~~466.001, 466.004(4),~~ 466.028(1)(x), (ff) FS. History–New 5-29-96, Formerly 59Q-17.012.

64B5-17.013 Proprietorship by Nondentists.

(1) No corporation, lay body, organization, or individual other than a licensed dentist or a professional corporation or limited liability company composed of dentists shall engage in the practice of dentistry through the means of engaging the services, upon a salary, commission, or other means of inducement, of any person licensed to practice dentistry in this state. The provisions of this rule are not applicable to dentists working under any of the settings described in section 466.025, F.S.

(2) No dentist shall enter into any agreement with a nondentist which directs, controls, or interferes with the dentist's clinical judgment, or which controls the use of any dental equipment or material while such is being used for the provision of dental services. Nor shall any dentist enter into an agreement which permits any entity which itself is not a licensed dentist to practice dentistry, or to offer dentistry services to the public through the licensed dentist. The clinical judgment of the licensed dentist must be exercised solely for the benefit of his/her patients, and shall be free from any compromising control, influences, obligations, or loyalties. To direct, control, or interfere with a dentist's clinical judgment shall not be construed to include those matters specifically excluded by section 466.0285(1)(c), F.S.

(3) For the purposes of this rule:

(a) The term "clinical" means having a significant relationship, whether real or potential, direct or indirect, to the actual rendering or outcome of dental care, the practice of dentistry or the quality of dental care being rendered to one or more patients.

(b) The term "control" shall mean to exercise authority or dominating influence over; having the authority or ability to regulate, direct, or dominate.

(4) A licensed dentist may enter into an agreement with a nondentist to receive "Practice Management Services." The term "Practice Management Services" is defined to include consultation or other activities or services offered by someone other than a Florida licensed dentist regarding one or more of the following types of products or services:

(a) The suitability of dental office space, furnishings and equipment;

(b) Staff necessary to operate a dental practice;

(c) Regulatory compliance expertise and services;

(d) Methods to increase productivity of a dental practice;

(e) Inventory and supplies required to operate a dental practice;

(f) Information systems designed to produce financial and operational data on the dental practice;

(g) Marketing plans or advertising to increase productivity of a dental practice;

(h) Site selection, relocation, design or physical layout of a dental practice, or

(i) Financial services such as accounting and bookkeeping, monitoring and payment of accounts receivable, payment of leases and subleases, payroll or benefits administration, billing and collection for patient services, payment of federal or state income tax, personal property or intangible taxes, administration of interest expense or indebtedness incurred to finance the operation of the dental practice, or malpractice insurance expenses.

(5) For purposes of implementing the provisions of sections 466.0285, 466.003 and 466.028(1)(g) and (z), F.S., no dentist shall enter into a practice management agreement with anyone other than a dentist or group of dentists which provides or offers to provide, whether by contract or employment, with or without fee, any practice management service which attempts to govern in any way, whether directly or indirectly, the clinical sufficiency, suitability, reliability or efficacy of a particular product, service, process or

activity as it relates to the delivery of dental care. Practice management agreements between dentists and anyone other than a dentist or group of dentists shall not:

(a) Preclude or otherwise restrict, by penalty or operation, the dentist of record's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care;

(b) Allow anyone other than a dentist of record or the dentist of record's practice to supervise and control the selection, compensation, terms, conditions, obligations or privileges of employment or retention of clinical personnel of the practice;

(c) Limit or define the scope of services offered by the dentist of record or the dentist of record's practice;

(d) Limit the methods of payment accepted by the dentist of record or the dentist of record's practice;

(e) Require the use of patient scheduling systems, marketing plans, promotion or advertising for the dentist of record or the dentist of record's practice which, in the judgment of the dentist of record or the dentist of record's practice will have the effect of discouraging new patients from coming into the practice or discouraging patients of record from seeing the dentist or postponing future appointments or which gives scheduling preference to one individual, class or group of existing or new patients over another individual, class or group of existing or new patients;

(f) Directly or indirectly condition the payment or the amount of the management fee on the referral of patients, and in addition, the management fee shall reasonably relate to the fair market value of the services provided;

(g) Penalize the dentist of record or the dentist of record's practice for reporting perceived violations of this section to, or seeking clarification from, appropriate state or federal agencies, departments or boards.

(6) For purposes of implementing the provisions of section 466.028(1)(h), F.S., no dentist shall enter into any agreement, or series of agreements, with anyone other than a dentist or group of dentists, which violates the parameters established in subsection (4) or (5), above, and entering into such a contract constitutes a de facto employment of the dentist by a nondentist. Except as permitted by chapter 542, F.S., licensed dentists are prohibited from agreeing not to compete in the provision of dental services with any entity which is not itself a licensed dentist, or which is not licensed or otherwise permitted by law to provide the services which are the subject of the agreement not to compete.

(7) The provisions of this rule are not intended to impair the validity of any contract in existence as of the effective date of this rule. Any existing contract renewed or extended after the effective date of this rule shall be subject to the provisions of this rule.

Rulemaking Authority 466.004 FS. Law Implemented 466.003, 466.028(1)(g), (z), 466.0285, ~~466.0285(1)(c)~~ FS. History–New 10-16-96, Formerly 59Q-17.013, Amended 3-27-02.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of **Board of Dental Examiners of Alabama**	)	Docket No.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that the Respondent, Board of Dental Examiners of Alabama, has violated the provisions of said Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows:

NATURE OF THE CASE

1. This case challenges actions of the Board of Dental Examiners of Alabama ("Dental Board") that unreasonably exclude emerging competition from certain new and innovative teledentistry platforms, and the dentists who partner with these platforms. The Dental Board is comprised of seven members, six of whom are practicing dentists.

2. In recent years, dentists working with several new firms have started to offer teeth alignment treatment that differs from the traditional treatments offered through dental offices, such as braces or clear aligners prescribed following an in-office appointment with a dentist. In this new treatment model, patients are fitted for clear aligners following a visit to a storefront location, where a digital scan is performed by a dental assistant. The scan is then reviewed by a dentist working remotely. Patient interactions with dental professionals also take place on a remote basis. This mode of treatment often is substantially less expensive than traditional treatments.

3. In 2017 and 2018, the Dental Board took actions to stop the expansion in Alabama of firms providing clear aligners in Alabama through a teledentistry model. First, the Board amended Alabama Administrative Code § 270-X-3.10(o)(2). The Board's interpretation of that amendment, in conjunction with other existing Board regulations, operates to prohibit non-

dentists from performing digital scans without on-site dentist supervision. Thereafter, the Dental Board directed the leading provider of clear aligners through a teledentistry model to cease performing digital scans without on-site dentist supervision.

4. The actions of the Dental Board have deprived consumers in Alabama of low-price, convenient options for teeth alignment treatment without any legitimate justification or defense. The actions of the Dental Board have unreasonably restrained competition and violate Section 5 of the Federal Trade Commission Act.

RESPONDENT

5. Respondent Dental Board is the regulatory body responsible for the licensure and monitoring of the practice of dentistry in the State of Alabama. The Dental Board is organized, exists, and transacts business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at 2229 Rocky Ridge Road, Birmingham, Alabama.

6. The State of Alabama created the Dental Board pursuant to the Alabama Dental Practice Act, Code of Alabama, Title 34, Chapter 9 (Dentists and Dental Hygienists) (Ala. Code § 34-9-1, *et. seq.*) ("Act") to carry out the purposes and enforce the provisions of the Act. It is unlawful for an individual to practice dentistry or to provide dental hygiene services in Alabama without holding a current license to practice issued by the Dental Board.

7. The Dental Board is responsible for the licensure of all dentists practicing in Alabama, including orthodontists.

8. The Dental Board is comprised of seven members: six dentists and one dental hygienist. To be eligible for Dental Board membership, the dentist members must be actively engaged in the practice of dentistry in Alabama for at least five years prior to their selection to the Dental Board. Members of the dental profession select the Dental Board members. Licensed dentists residing and practicing in Alabama vote to elect five of the six dentist members. The Alabama Dental Society selects the sixth. Licensed dental hygienists residing and practicing in the state elect the dental hygienist member.

9. Collectively, the six dentist members can and do control the operation of the Dental Board. While serving on the Dental Board, dentist members continue to engage in the for-profit business of providing dental services.

10. Except to the extent that competition has been restrained as alleged herein, and depending on their geographic location, dentists in Alabama compete with each other and with dentist members of the Dental Board in the provision of dental services. Through their dental practices, dentist board members are distinct economic actors.

JURISDICTION

11. The Dental Board is a "person" within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

12. The acts and practices of the Dental Board, including the acts and practices alleged herein, are in commerce or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44. In particular, dentists and non-dentist providers of dental services in Alabama purchase and receive products and equipment that are shipped across state lines by manufacturers and suppliers located out of state, and transfer money across state lines in payment for these products and equipment.

BACKGROUND

13. "Malocclusion" is a clinical term for the misalignment of or incorrect relation between teeth. Many dentists and orthodontists offer patients treatment for malocclusion. This treatment may include prescribing braces or clear aligners.

14. Braces are the traditional form of treatment for malocclusion. Braces typically employ visible components, including wires or brackets and rubber bands. Braces are installed and adjusted during in-person visits to a dentist's or orthodontist's office, and patients, or their insurance providers, pay dentists or orthodontists directly for these services.

15. Clear aligners are custom-made, removable plastic mouthpieces that are molded to fit the patient's teeth for the treatment of malocclusion. Clear aligners are less conspicuous than braces.

16. Clear aligner therapy consists of supplying the dental patient with a series of mouthpieces sequenced to correct incrementally the malocclusion over a prescribed period. Wearing clear aligners places gentle pressure on the patient's teeth to reposition them gradually.

17. Clear aligner therapy often begins with an intraoral scan of the patient's teeth using a scanning device placed inside the patient's mouth. The intraoral scanning device, also known as an "optical impression device," is a wand-like tool inserted into the patient's mouth to create a three-dimensional digital model of the patient's teeth, bite, gums, and palate. The scanning device enables clinical evaluations without a conventional plaster-cast impression. After the scan is completed, a dentist or orthodontist determines whether the patient is a candidate for clear aligner therapy.

18. Many patients are prescribed clear aligners through a visit to a dentist's or orthodontist's office. A patient will schedule an in-person visit with a dentist or orthodontist for assessment of and possible treatment for malocclusion and may receive a prescription for clear aligners from the dentist or orthodontist. As with braces, patients or their insurance providers typically pay dentists or orthodontists directly for these services.

19. In recent years, several new firms, referred to herein as clear aligner platforms,

have launched a new business model utilizing teledentistry. Under this model, the clear aligner platform may send an "impression kit" to the prospective patient's home, which the patient uses to take impressions of her teeth and then sends to the provider. Alternatively, the prospective patient may visit a storefront location, where a dental hygienist, dental assistant, or other non-dentist professional performs an intraoral scan of the patient's teeth. For reasons of ease and convenience, many patients prefer to initiate treatment with clear aligner platforms by visiting a physical storefront.

20. The typical patient treatment process employed by clear aligner platforms is as follows. After an impression or digital scan of the prospective patient's teeth is taken, the clear aligner platform provides the results to a dentist working remotely. The dentist reviews the results and determines whether the patient is a candidate for clear aligner therapy. If so, the dentist may prescribe a set of clear aligners for the patient. A set of custom-made clear aligners is manufactured and sent to the patient's home. Dental professionals are available for consultations on a remote basis.

21. Several firms employ this teledentistry model to provide clear aligner therapy to patients, including SmileDirectClub, Candid, and Smilelove. These firms typically offer clear aligner therapy at prices substantially below the prices associated with treatment using braces or clear aligners supplied by a dentist or orthodontist in a traditional office setting.

22. Many patients prefer clear aligner therapy supplied through a teledentistry model to treatment through a traditional dentist's or orthodontist's office. These patients find this model to be less expensive and more convenient than clear aligners or braces fitted through in-person office visits to a dentist or orthodontist.

THE CHALLENGED CONDUCT

23. Following the rollout and initial success of the first clear aligner platforms, the Dental Board adopted a regulation impeding their operations. Specifically, in September 2017, members of the Board voted to amend Alabama Administrative Code § 270-X-3.10(o)(2). The Board's interpretation of that amendment, in conjunction with other existing Board regulations, operates to prohibit non-dentist dental personnel, such as dental hygienists and assistants, from taking digital intraoral scans of a patient's teeth without supervision by a dentist who is physically present in the dental facility. The business model employed by emerging clear aligner platforms is not compatible with the Board's interpretation of the amended rule, as dental hygienists or assistants who perform digital scans for the platforms are supervised by dentists working remotely.

24. In September 2018, pursuant to a Dental Board vote, the Dental Board sent a cease-and-desist letter to SmileDirectClub. In the letter, the Dental Board instructed SmileDirectClub that the firm and its affiliated personnel were engaged in the unauthorized practice of dentistry.

25. The actions of the Dental Board described above constitute concerted action for purposes of the antitrust laws.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Noah Joshua Phillips
Rohit Chopra
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In the Matter of **Board of Dental Examiners of Alabama**	)	Docket No.

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dentists from performing digital scans without on-site dentist supervision. Thereafter, the Dental Board directed the leading provider of clear aligners through a teledentistry model to cease performing digital scans without on-site dentist supervision.

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9. Collectively, the six dentist members can and do control the operation of the Dental Board. While serving on the Dental Board, dentist members continue to engage in the for-profit business of providing dental services.

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11. The Dental Board is a "person" within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

12. The acts and practices of the Dental Board, including the acts and practices alleged herein, are in commerce or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44. In particular, dentists and non-dentist providers of dental services in Alabama purchase and receive products and equipment that are shipped across state lines by manufacturers and suppliers located out of state, and transfer money across state lines in payment for these products and equipment.

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have launched a new business model utilizing teledentistry. Under this model, the clear aligner platform may send an "impression kit" to the prospective patient's home, which the patient uses to take impressions of her teeth and then sends to the provider. Alternatively, the prospective patient may visit a storefront location, where a dental hygienist, dental assistant, or other non-dentist professional performs an intraoral scan of the patient's teeth. For reasons of ease and convenience, many patients prefer to initiate treatment with clear aligner platforms by visiting a physical storefront.

20. The typical patient treatment process employed by clear aligner platforms is as follows. After an impression or digital scan of the prospective patient's teeth is taken, the clear aligner platform provides the results to a dentist working remotely. The dentist reviews the results and determines whether the patient is a candidate for clear aligner therapy. If so, the dentist may prescribe a set of clear aligners for the patient. A set of custom-made clear aligners is manufactured and sent to the patient's home. Dental professionals are available for consultations on a remote basis.

21. Several firms employ this teledentistry model to provide clear aligner therapy to patients, including SmileDirectClub, Candid, and Smilelove. These firms typically offer clear aligner therapy at prices substantially below the prices associated with treatment using braces or clear aligners supplied by a dentist or orthodontist in a traditional office setting.

22. Many patients prefer clear aligner therapy supplied through a teledentistry model to treatment through a traditional dentist's or orthodontist's office. These patients find this model to be less expensive and more convenient than clear aligners or braces fitted through in-person office visits to a dentist or orthodontist.

THE CHALLENGED CONDUCT

23. Following the rollout and initial success of the first clear aligner platforms, the Dental Board adopted a regulation impeding their operations. Specifically, in September 2017, members of the Board voted to amend Alabama Administrative Code § 270-X-3.10(o)(2). The Board's interpretation of that amendment, in conjunction with other existing Board regulations, operates to prohibit non-dentist dental personnel, such as dental hygienists and assistants, from taking digital intraoral scans of a patient's teeth without supervision by a dentist who is physically present in the dental facility. The business model employed by emerging clear aligner platforms is not compatible with the Board's interpretation of the amended rule, as dental hygienists or assistants who perform digital scans for the platforms are supervised by dentists working remotely.

24. In September 2018, pursuant to a Dental Board vote, the Dental Board sent a cease-and-desist letter to SmileDirectClub. In the letter, the Dental Board instructed SmileDirectClub that the firm and its affiliated personnel were engaged in the unauthorized practice of dentistry.

25. The actions of the Dental Board described above constitute concerted action for purposes of the antitrust laws.

26. As a result of the Dental Board's actions, SmileDirectClub halted a planned expansion of facilities in Alabama. In addition, the Dental Board's actions were widely publicized, including as a result of related litigation between the Dental Board and SmileDirectClub. Other clear aligner platforms are therefore aware of the Board's conduct.

27. The Dental Board's actions have unreasonably restrained competition for the treatment of malocclusion in Alabama. Consumers in Alabama have been deprived of full competition across all channels through which consumers could access treatment for malocclusion.

28. The Dental Board's actions do not yield procompetitive benefits sufficient to justify their harmful effect on competition.

29. The Dental Board's actions have not been reviewed or approved by any neutral state officials with the power to veto or modify the Board's actions.

VIOLATION ALLEGED

30. The acts and practices described above unreasonably restrain competition and constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such acts and practices or the effects thereof are continuing and will likely continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of October, 2021, issues its Complaint against Respondent.

By the Commission.

April J. Tabor
Secretary

SEAL
ISSUED:

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	**File No. 191-0153**
Board of Dental Examiners of Alabama, a State Agency.	)	

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission ("Commission") initiated an investigation of certain acts and practices of the Board of Dental Examiners of Alabama ("Proposed Respondent"). The Commission's Bureau of Competition has prepared a draft administrative complaint ("Draft Complaint"). The Bureau of Competition and Proposed Respondent enter into this Agreement Containing Consent Order ("Consent Agreement") to cease and desist from engaging in such anticompetitive practices and to provide for other relief to resolve the allegations in the Draft Complaint through a proposed Decision and Order, which is attached, to present to the Commission.

IT IS HEREBY AGREED by and between Proposed Respondent, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Board of Dental Examiners of Alabama is the regulatory board responsible for the licensure, monitoring and safe practice of dentistry in the State of Alabama with its executive officers and principal place of business located at 2229 Rocky Ridge Road, Birmingham, Alabama 35216.

2. Proposed Respondent admits all the jurisdictional facts set forth in the Draft Complaint.

3. Proposed Respondent waives:

   a. any further procedural steps;

   b. the requirement that the Decision and Order contain a statement of findings of fact and conclusions of law;

   c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order entered pursuant to this Consent Agreement; and

d. any claim under the Equal Access to Justice Act.

4. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true.

5. Proposed Respondent shall submit an initial compliance report, pursuant to Commission Rule 2.33, 16 C.F.R. § 2.33, no later than 30 days after the date on which Proposed Respondent executes this Consent Agreement and subsequent compliance reports every 30 days thereafter until the Decision and Order becomes final. After the Decision and Order becomes final, the reporting obligations contained in the Decision and Order shall control and the reporting obligations under this Consent Agreement shall cease. Each compliance report shall set forth in detail the manner in which Proposed Respondent has complied, has prepared to comply, is complying, and will comply with the Consent Agreement and the Decision and Order. Proposed Respondent shall provide sufficient information and documentation to enable the Commission to determine independently whether Proposed Respondent is in compliance with the Consent Agreement and the Decision and Order.

6. Each compliance report submitted pursuant to Paragraph 5 shall be verified in the manner set forth in 28 U.S.C. § 1746 by the President or another officer or employee specifically authorized to perform this function. Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), requires that the Commission receive an original and one copy of each compliance report. Proposed Respondent shall electronically file an original of each compliance report with the Secretary of the Commission at ElectronicFilings@ftc.gov, and an electronic copy of the report with the Compliance Division at bccompliance@ftc.gov.

7. This Consent Agreement, and any compliance reports filed pursuant to this Consent Agreement, shall not become part of the public record of the proceeding unless and until the Commission accepts the Consent Agreement. If the Commission accepts this Consent Agreement, the Commission will place it, together with the Complaint, the proposed Decision and Order, an explanation of the provisions of the proposed Decision and Order, and any other information that may help interested persons understand the order on the public record for the receipt of comments for 30 days.

8. Because there may be interim competitive harm, the Commission may issue and serve its Complaint (in such form as circumstances may require) in this matter at any time after it accepts the Consent Agreement for public comment.

9. This Consent Agreement contemplates that, if the Commission accepts this Consent Agreement, the Commission thereafter may withdraw its acceptance of this Consent Agreement and notify Proposed Respondent, in which event the Commission will take such action as it may consider appropriate. If the

Commission does not subsequently withdraw such acceptance pursuant to the provisions of the Commission Rule 2.34, 16 C.F.R. § 2.34, and it has already issued the Complaint, the Commission may, without further notice to Proposed Respondent issue the attached Decision and Order containing an order to cease and desist and to provide other relief in disposition of the proceeding.

10. The Decision and Order shall become final upon service. Delivery of the Complaint and the Decision and Order to Proposed Respondent by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a), or by delivery to United States counsel for Proposed Respondent identified in this Consent Agreement, shall constitute service to Proposed Respondent. Proposed Respondent waives any rights it may otherwise have to any other manner of service. Proposed Respondent also waives any rights it may otherwise have to service of any appendices attached to or incorporated by reference into the Decision and Order, if Proposed Respondent is already in possession of such Appendices, and agrees that it is bound to comply with and will comply with the Decision and Order to the same extent as if it had been served with copies of the Appendices.

11. The Complaint may be used in construing the terms of the Decision and Order and no agreement, understanding, representation, or interpretation not contained in the Decision and Order or the Consent Agreement may be used to vary or contradict the terms of the Decision and Order.

12. By signing this Consent Agreement, Proposed Respondent represents and warrants that:

    a. it can fulfill all the terms of and accomplish the full relief contemplated by the Decision and Order; and

    b. all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement and the Decision and Order are parties to this Consent Agreement and are bound as if they had signed this Consent Agreement and were made parties to this proceeding, or are within the control of parties to this Consent Agreement and the Decision and Order, or will be after the acquisition.

13. Proposed Respondent has read the Draft Complaint and the proposed Decision and Order. Proposed Respondent agrees to comply with the terms of the proposed Decision and Order from the date it signs this Consent Agreement. Proposed Respondent understands that once the Commission has issued the Decision and Order, it will be required to file one or more compliance reports setting forth in detail the manner in which it has complied, has prepared to comply, is complying, and will comply with the Decision and Order. When final, the Decision and Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time as provided by statute for other orders. Proposed Respondent further understands that it may be liable for

civil penalties in the amount provided by law for each violation of the Decision and Order.

BOARD OF DENTAL EXAMINERS OF ALABAMA

By: Mark R. McIlwain, DMD, MD
President
Board of Dental Examiners of Alabama

Dated: 8/12/21

R. Ashby Pate
Lightfoot, Franklin & White LLC
Counsel for Board of Dental Examiners of Alabama

Dated: 8/13/21

FEDERAL TRADE COMMISSION

PHILIP KEHL Digitally signed by PHILIP KEHL Date: 2021.08.13 10:52:38 -04'00'

By: Philip Kehl
Attorney
Bureau of Competition

GEOFFREY GREEN Digitally signed by GEOFFREY GREEN Date: 2021.08.13 11:12:44 -04'00'

Geoffrey M. Green
Assistant Director
Bureau of Competition

MARK WOODWARD Digitally signed by MARK WOODWARD Date: 2021.08.17 22:10:17 -04'00'

Mark Woodward
Acting Deputy Director
Bureau of Competition

HEATHER JOHNSON Digitally signed by HEATHER JOHNSON Date: 2021.08.18 14:30:06 -04'00'

Heather M. Johnson
Acting Deputy Director
Bureau of Competition

HOLLY VEDOVA Digitally signed by HOLLY VEDOVA Date: 2021.08.17 18:01:46 -04'00'

Holly Vedova
Acting Director
Bureau of Competition

Dated: _____

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of **Board of Dental Examiners of Alabama, a State Agency**	)	**DECISION AND ORDER** Docket No.

DECISION

The Federal Trade Commission initiated an investigation of certain acts and practices of the Board of Dental Examiners of Alabama ("Board" or "Respondent"). The Commission's Bureau of Competition prepared and furnished to Respondent the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondent and the Bureau of Competition executed an Agreement Containing Consent Order ("Consent Agreement") containing (1) an admission by Respondent of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the said Act, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

1. Respondent Board of Dental Examiners of Alabama is the regulatory board responsible for the licensure, monitoring and safe practice of dentistry in the State of Alabama with

its executive offices and principal place of business located at 2229 Rocky Ridge Road, Birmingham, Alabama 35216.

2. The Commission has jurisdiction of the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS HEREBY ORDERED that, as used in this Order, the following definitions, shall apply:

A. "Board" or "Respondent" means the Board of Dental Examiners of Alabama, and its committees, groups, members, employees, agents, representatives, and assigns.

B. "Commission" means the Federal Trade Commission.

C. "Alabama Dental Practice Act" means the Code of Alabama, Title 34, Chapter 9 (Dentists and Dental Hygienists) (Ala. Code § 34-9-1, *et. seq.*).

D. "Clear Aligner Platform" means any Person that provides, or facilitates the provision of, remote treatment for malocclusion through the provision of Clear Aligner Therapy, using remote supervision by a Dentist.

E. "Clear Aligner Therapy" means the use of Intraoral Scanning and fabricated, removable aligners for the treatment of malocclusion.

F. "Dentist" means any individual holding a license, issued by the Board, to practice dentistry in Alabama.

G. "Intraoral Scan" or "Intraoral Scanning" means the capture and creation of dental pictures, photographs, or images using a device, such as an *iTero* brand device or similar device, to scan inside of a patient's mouth. The terms Intraoral Scan and Intraoral Scanning do not include radiographic or x-ray imagining techniques.

H. "Non-Dentist Provider" means any Person other than a Dentist that provides Clear Aligner Therapy.

I. "Person" means both natural and artificial persons, including but not limited to, corporations and unincorporated entities.

II. Injunction

IT IS FURTHER ORDERED that Respondent, in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, shall cease and desist from, directly or indirectly:

A. Requiring any Non-Dentist Provider affiliated with any Clear Aligner Platform to have on-site supervision by a Dentist when performing Intraoral Scanning; and

B. Prohibiting, restricting, impeding, or discouraging any (i) Clear Aligner Platform or (ii) Dentist or Non-Dentist Provider affiliated with any Clear Aligner Platform from providing or facilitating the provision of Clear Aligner Therapy through remote treatment;

Provided, however, nothing in this Order shall prohibit Respondent from filing, or causing to be filed, a court action against a Non-Dentist Provider, Dentist, or Clear Aligner Platform for an alleged violation of the Alabama Dental Practice Act;

For the avoidance of doubt, and other than as set out above in Paragraphs II.A. and II.B., this Order shall not be construed as preventing Respondent from pursuing any administrative remedies against a Dentist or Non-Dentist Provider pursuant to and in accordance with the Alabama Dental Practice Act and Chapter 270 of the Alabama Administrative Code.

III. Notice to Board Members

IT IS FURTHER ORDERED that Respondent shall:

A. No later than 30 days from the date this Order is issued, distribute by electronic mail with return receipt requested, a copy of this Order and the Complaint to:

1. Each Board member;

2. Each officer, director, manager, representative, agent, attorney, and employee of the Board;

3. Each Dentist or Non-Dentist Provider to whom the Board sent any correspondence related to Intraoral Scanning; and

4. Each Clear Aligner Platform identified in Appendix A.

B. For a period of 5 years from the date this Order is issued, distribute by electronic mail with return receipt requested, a copy of this Order and the Complaint to each new Board member, officer, director, manager, attorney, representative, agent or employee, and who

did not previously receive a copy of this Order and the Complaint from Respondent, no later than 30 days from the date that such Person assumes his or her position.

IV. Notice to the Commission

IT IS FURTHER ORDERED that, from the date this Order is issued, Respondent shall notify the Commission no later than 60 days after any publication of advance notice of any proposed change to Chapter 270 of the Alabama Administrative Code that relates to Intraoral Scanning or Clear Aligner Platforms, including modifications to the existing rules or proposals for new rules.

V. Compliance Reports

IT IS FURTHER ORDERED that Respondent shall file verified written reports ("compliance reports") in accordance with the following:

A. Respondent shall submit interim compliance reports 30 days after the Order is issued, and every 60 days thereafter until Respondent has fully complied with Paragraph III.A.; annual compliance reports one year after the date this Order is issued, and annually for the next 5 years on the anniversary of that date; and additional compliance reports as the Commission or its staff may request.

B. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent is in compliance with the Order. Conclusory statements that Respondent has complied with its obligations under the Order are insufficient. Respondent shall include in its report, among other information or documentation that may be necessary to demonstrate compliance:

1. A full description of the measures Respondent has implemented or plans to implement to ensure that it has complied or will comply with each paragraph of the Order;

2. A full description of any enforcement action and the circumstances leading to such enforcement action, including the sending of any cease and desist letter, against any Clear Aligner Platform. Each description should include copies of any cease and desist letter or compliant filed by the Board, as applicable;

3. A full description of any enforcement action and the circumstances leading to such enforcement action, including the sending of any cease and desist letter, against any Dentist or Non-Dentist Provider related to Intraoral Scanning. Each description should include copies of any cease and desist letter or compliant filed by the Board, as applicable; and

4. Copies of notices sent pursuant to Paragraph III of the Order.

Provided, however, that the Board need not provide any information under Paragraphs V.B.2 or V.B.3 the disclosure of which would violate Ala. Admin. Code r. 270-x-1.08(3).

C. Respondent shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent's obligations under the Order and provide copies of these documents to Commission staff upon request.

D. Respondent shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the President or another officer or employee specifically authorized to perform this function. Respondent shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2,41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov.

VI. Change in Respondent

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least 20 days prior to:

A. Any change in the Board of Dental Examiners of Alabama's principal place of business address; or

B. Any other change in Respondent if such change may affect compliance obligations arising out of this Order.

VII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to Respondent, made to its principal place of business as identified in this Order, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative of the Commission and at the expense of Respondent; and

B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VIII. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition in the provision of Clear Aligner Therapy as the Commission alleged in its Complaint.

IX. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor
Secretary

SEAL
ISSUED:

Appendix A

1. SmileDirect Club, LLC
2. Candid Care Co.
3. Smilelove LLC

Analysis of Agreement Containing Consent Order to Aid Public Comment

In the Matter of Board of Dental Examiners of Alabama, File No. 191-0153

I. Introduction

The Federal Trade Commission has accepted, subject to final approval, a consent agreement with the Board of Dental Examiners of Alabama (the "Board"). The Board is an Alabama state agency comprised of six licensed dentists and one licensed dental hygienist. The Board is charged with administering dental licensing in Alabama and carrying out the provisions of the Alabama Dental Practice Act.

The consent agreement contains a proposed order addressing allegations in the proposed complaint that the Board has unreasonably excluded competition from providers of teledentistry-based teeth alignment products and services without adequate supervision from neutral state officials, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

The proposed order has been placed on the public record for 30 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the consent agreement and the comments received and will decide whether it should withdraw from the consent agreement and take appropriate action or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint, the consent agreement, or the proposed order, or to modify their terms in any way. The consent agreement is for settlement purposes only and does not constitute an admission by the Board that the law has been violated as alleged in the complaint or that the facts alleged in the complaint, other than jurisdictional facts, are true.

II. Challenged Conduct

This matter involves allegations that the Board unreasonably impeded competition from new providers of clear aligner therapy in Alabama. The Board is a state regulatory agency controlled by practicing, Alabama-licensed dentists.

Braces and clear aligners (removable, fabricated molds) are treatment options for misalignment or incorrect relation between teeth (called malocclusion). Many patients are prescribed braces or clear aligners following a visit to a dentist's or orthodontist's office.

In recent years, several new firms have launched platforms that facilitate treatment for malocclusion using teledentistry. These firms typically offer clear aligner therapy at prices substantially below the prices associated with treatment using braces or clear aligners supplied

by a dentist or orthodontist in a traditional office setting. To initiate treatment with a clear aligner platform, a prospective patient may visit a storefront location, where a non-dentist professional will perform a digital scan of the patient's teeth and gums to create a 3D image of the patient's mouth. The results of this intraoral scan are provided to a dentist working remotely, who determines whether the patient is a candidate for clear aligner therapy.

For reasons of price and convenience, many consumers prefer clear aligner therapy supplied through a teledentistry model.

After the entry and expansion of clear aligner platforms in Alabama, in September 2017, the Board voted to amend Alabama Administrative Code § 270-X-3.10(o)(2). The Board's interpretation of that amendment, in conjunction with other existing Board regulations, operates to prohibit non-dentist personnel from taking intraoral scans without on-site supervision by a dentist. Following a Board vote, in September 2018, the Board sent SmileDirectClub, LLC ("SmileDirectClub"), a clear aligner platform, a letter directing SmileDirectClub to cease and desist from taking intraoral scans without on-site dentist supervision.

Because of the Board's conduct, consumers in Alabama have been deprived of full competition for the treatment of malocclusion. For example, because of the Board's conduct, SmileDirectClub has halted a planned expansion of storefronts in Alabama.

III. Legal Analysis

Section 5 of the FTC Act prohibits unfair methods of competition, including concerted action prohibited by Section 1 of the Sherman Act.[1] To establish a violation of Section 1, a plaintiff must show (1) concerted action that (2) unreasonably restrains competition.[2]

State regulatory boards comprised of active market participants can violate Section 1 by promulgating and enforcing rules that harm competition in the industry in which board members participate.[3] The Board's rule amendment and cease-and-desist letter harmed competition by impeding consumer access to a low-cost and convenient option for the treatment of malocclusion.

The state action defense is not applicable here. Active market participants control the Board. Therefore, for the Board's conduct to constitute state action, neutral state officials must actively supervise the Board's conduct. The State's supervision mechanisms must provide "realistic assurance that a private party's anticompetitive conduct promotes state policy, rather than merely the party's individual interests."[4]

---

[1] 15 U.S.C. § 45; *see, e.g.*, *FTC v. Cement Inst.*, 333 U.S. 683, 693–94 (1948).
[2] 15 U.S.C. § 1; *see, e.g.*, *National Collegiate Athletic Ass'n v. Alston*, 141 S.Ct. 2141, 2151 (2021); Arizona *v. Maricopa County Med. Soc.*, 457 U.S. 332, 342–43 (1982).
[3] *See N.C. Bd. of Dental Exam'rs v. FTC*, 574 U.S. 494, 510-12 (2015).
[4] *Patrick v. Burget*, 486 U.S. 94, 101 (1988).

Although the Board's rule amendment was reviewed by Alabama's Legislative Services Agency ("LSA"), that review did not satisfy the "constant requirements" of active supervision articulated by the Supreme Court.[5] The LSA did not review the substance of the rule amendment, specifically whether the rule comports with clearly articulated state policy to displace competition.[6] Additionally, the LSA lacked the authority to veto or modify the Board's decisions.[7] Furthermore, the Board's cease-and-desist letter to SmileDirectClub did not receive any review by the LSA or any other state officials.

IV. Proposed Order

The proposed order seeks to remedy the Board's anticompetitive conduct by requiring the Board to cease and desist from requiring on-site supervision by dentists when non-dentists perform intraoral scans on prospective patients.

Section II of the proposed order addresses the core of the Board's anticompetitive conduct. Paragraph II.A. orders the Board to cease and desist from requiring non-dentists affiliated with clear aligner platforms to maintain on-site dentist supervision when performing intraoral scanning. Paragraph II.B. prohibits the Board from impeding clear aligner platforms, or dental professionals affiliated with clear aligner platforms, from providing clear aligner therapy through remote treatment.

Section III requires the Board to provide notice of the proposed order to Board members and employees, and to certain dentists and clear aligner platforms.

Section IV requires the Board to notify the Commission of any changes to its rules related to intraoral scanning or clear aligner platforms.

Section IX provides that the Order will terminate 10 years from the date it is issued.

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[5] *See N.C. Bd. of Dental Exam'rs*, 574 U.S. at 515 ("The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy; and the mere potential for state supervision is not an adequate substitute for a decision by the State. Further, the state supervisor may not itself be an active market participant.") (internal citations and quotations omitted).

[6] Instead, the LSA determined, without explanation, that the rule amendment "does not affect competition at all." *See* Exhibit A to Brief in Support of Motion to Dismiss (Memo to File from Paula M. Greene, Feb. 12, 2018) at 13, 15, *Leeds v. Board of Dental Examiners of Alabama,* No. 2:18-cv-01679, (N.D. Ala. Nov. 21, 2018), ECF No. 33. Because the LSA made this determination, it did not review whether the rule was made pursuant to a clearly articulated state policy. *See* Ala. Code § 41-22-22.1.

[7] Alabama statutes provide a procedure by which certain Board action may be reviewed by the Alabama Legislature's Joint Committee on Administrative Regulation Review. *See* Ala. Code § 41-22-22.1. The Joint Committee did not review the actions at issue in this case.

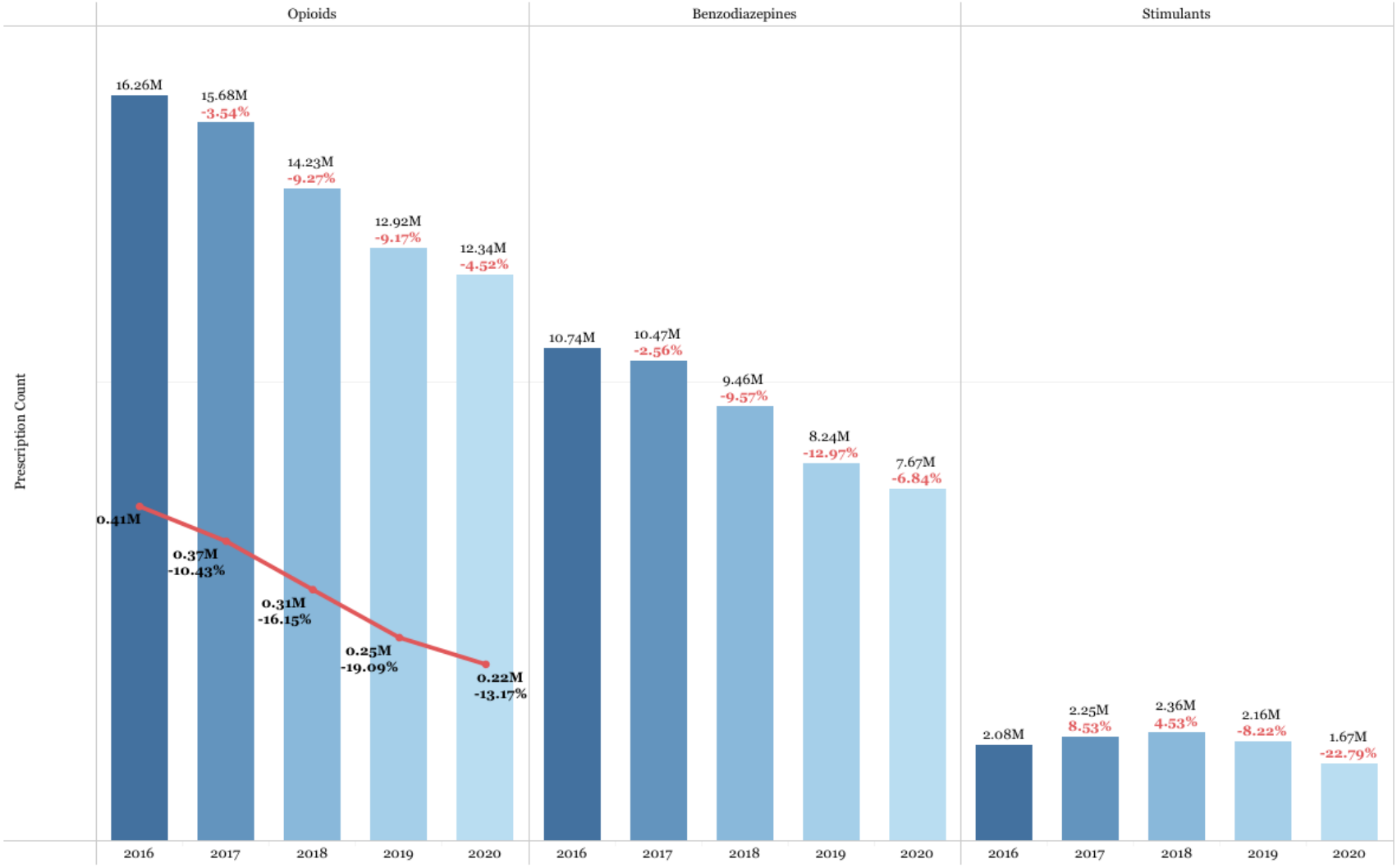
AUGUST 2021

Florida Prescription Drug Monitoring Program (PDMP) Monthly Report

This data was obtained through the Florida Prescription Drug Monitoring Program (PDMP) known as E-FORCSE. PDMPs gather information on controlled substance dispensations and use. For more information, click here.

Prescriptions by Drug Type & Year, Florida, 2016 - 2020

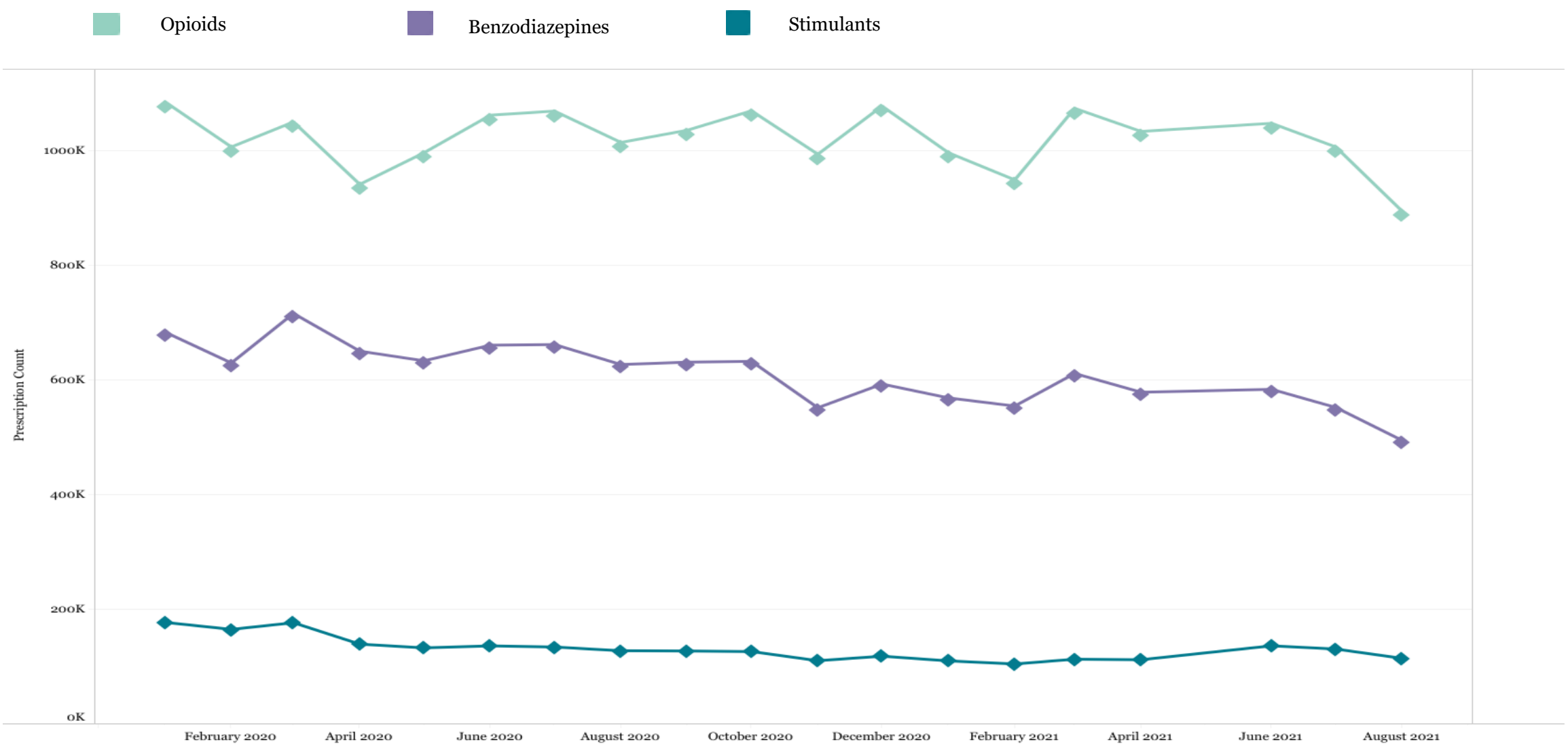
Florida, 2016 - 2020



- *The red line represents the number of Fentanyl prescriptions.*
- *The percentages indicated the percent change from the previous year.*

Prescriptions by Drug Type & Month

Florida, 2020 - 2021



Indicators by Month

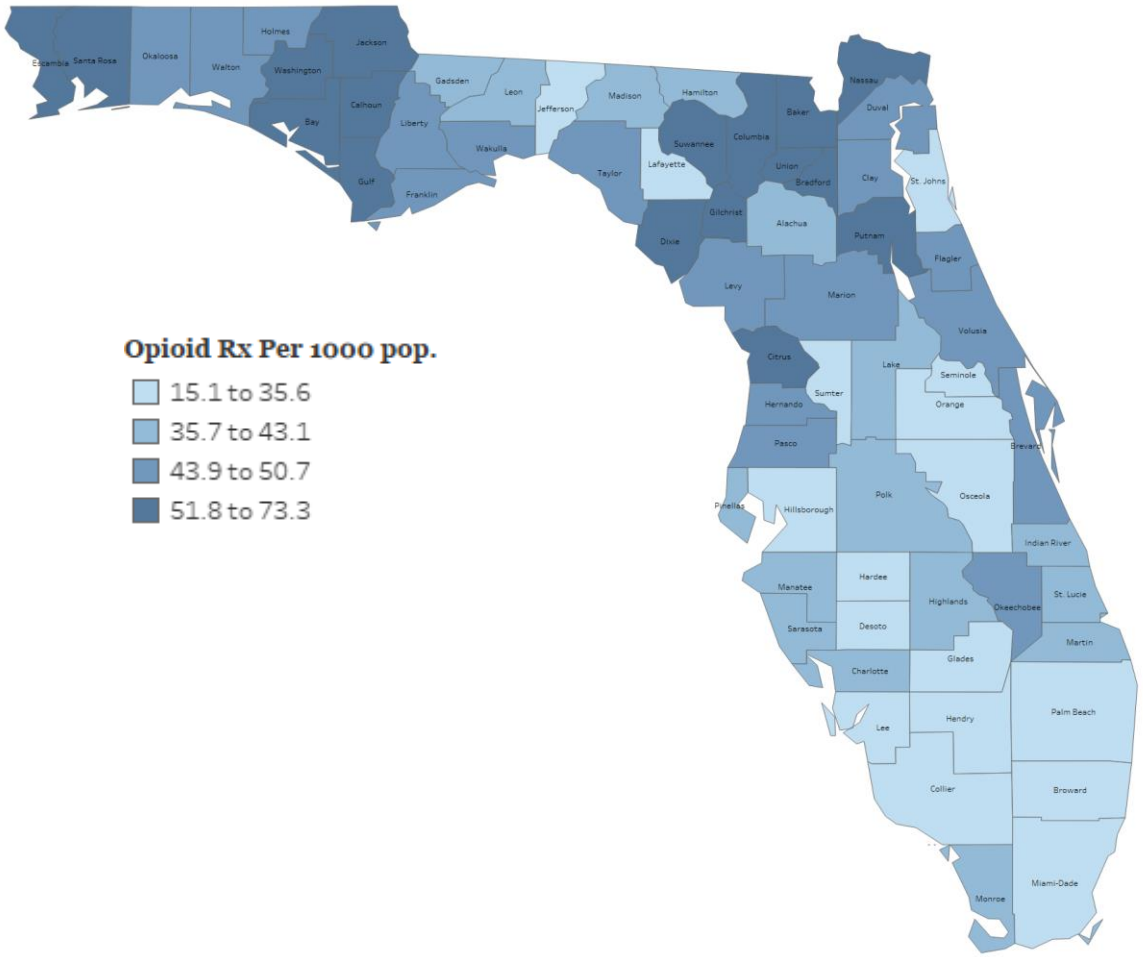
Florida, 2020 - 2021

Indicator Description	Aug 2020	Sep 2020	Oct 2020	Nov 2020	Dec 2020	Jan 2021	Feb 2021	Mar 2021	Apr 2021	May 2021	June 2021	Jul 2021	Aug 2021
# Opioid Prescriptions	1,014,352	1,035,679	1,069,527	993,814	1,077,712	996,456	949,026	1,073,839	1,033,558	994,788	1,047,770	1,006,395	912,996
# Benzodiazepine Prescriptions	626,920	631,018	632,477	551,482	592,879	568,694	554,452	611,288	578,599	550,211	583,630	551,951	507,599
# Stimulant Prescriptions	127,557	127,107	126,167	110,219	118,074	109,892	104,478	112,833	111,880	113,413	136,168	130,508	117,421
# Opioid Patients	782,005	793,222	811,900	771,322	805,725	777,040	749,343	811,670	797,340	780,716	804,834	773,640	716,565
# Benzodiazepine Patients	559,558	561,615	561,427	493,692	518,568	512,958	504,739	536,988	516,812	496,868	517,047	491,122	458,300
# Stimulant Patients	117,207	116,253	114,828	101,720	106,600	102,183	97,638	102,183	102,613	105,092	124,078	119,126	108,442
# Registered Users	132,634	134,725	136,104	137,196	138,245	139,330	140,368	141,524	142,527	143,508	145,049	146,713	148,252
# Patient Inquiries	3,671,301	3,720,140	3,725,433	3,455,257	3,739,624	3,659,877	3,529,604	3,965,548	3,753,303	3,497,707	3,690,995	3,739,980	3,952,774

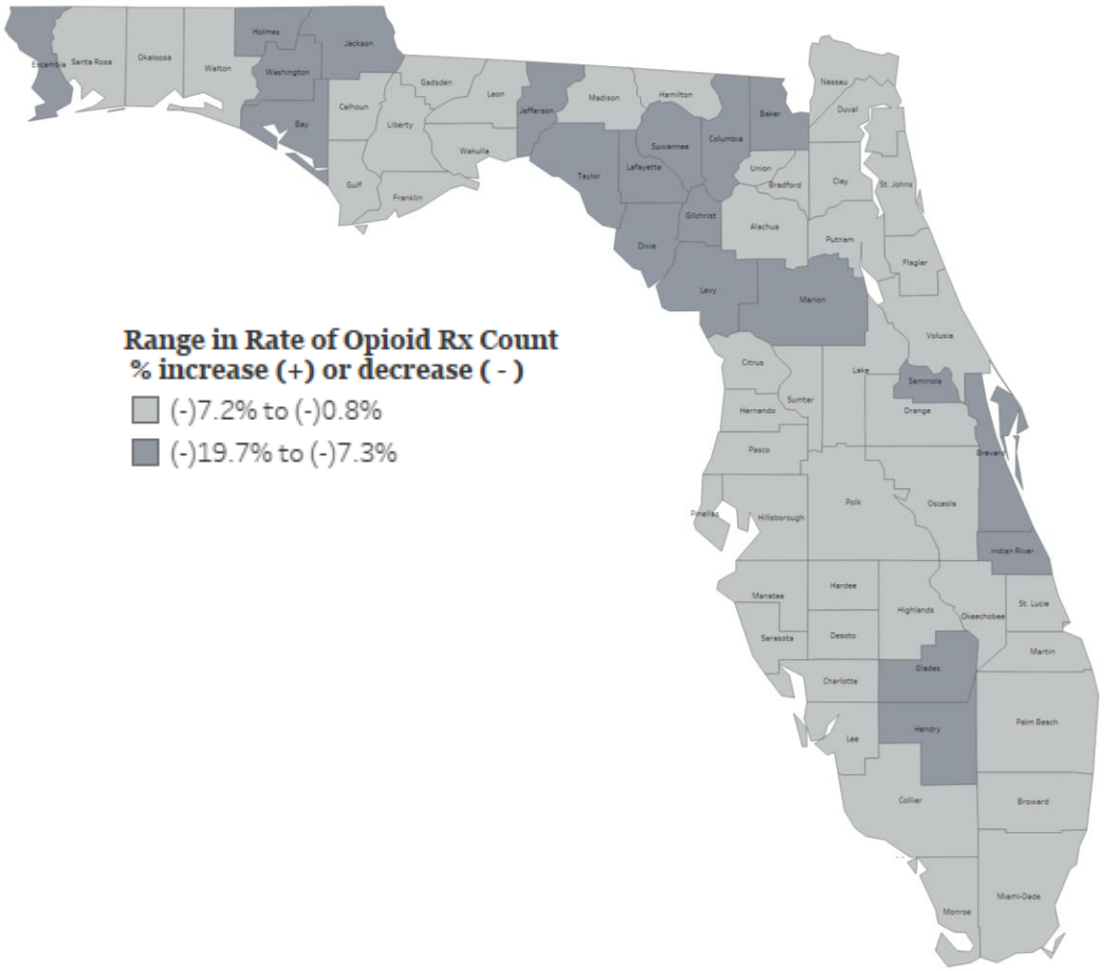
Opioid Prescription Rate & Percent Change by County

Florida, August 2021

Age-Adjusted Opioid Prescription Rate by County, Florida
August 2021

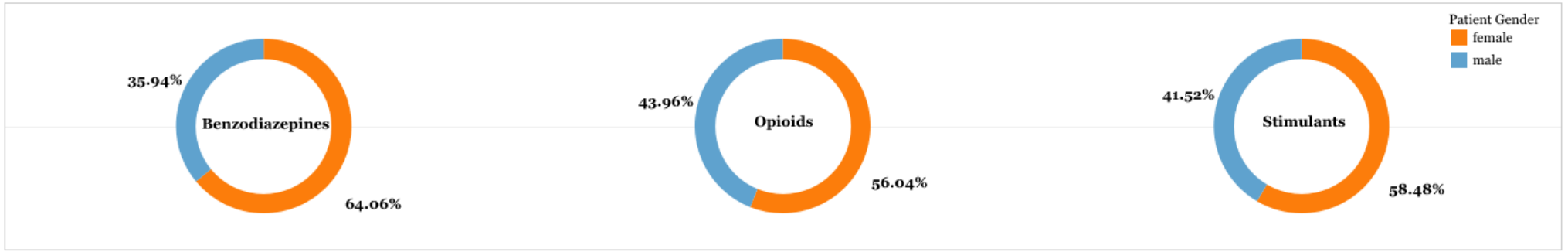


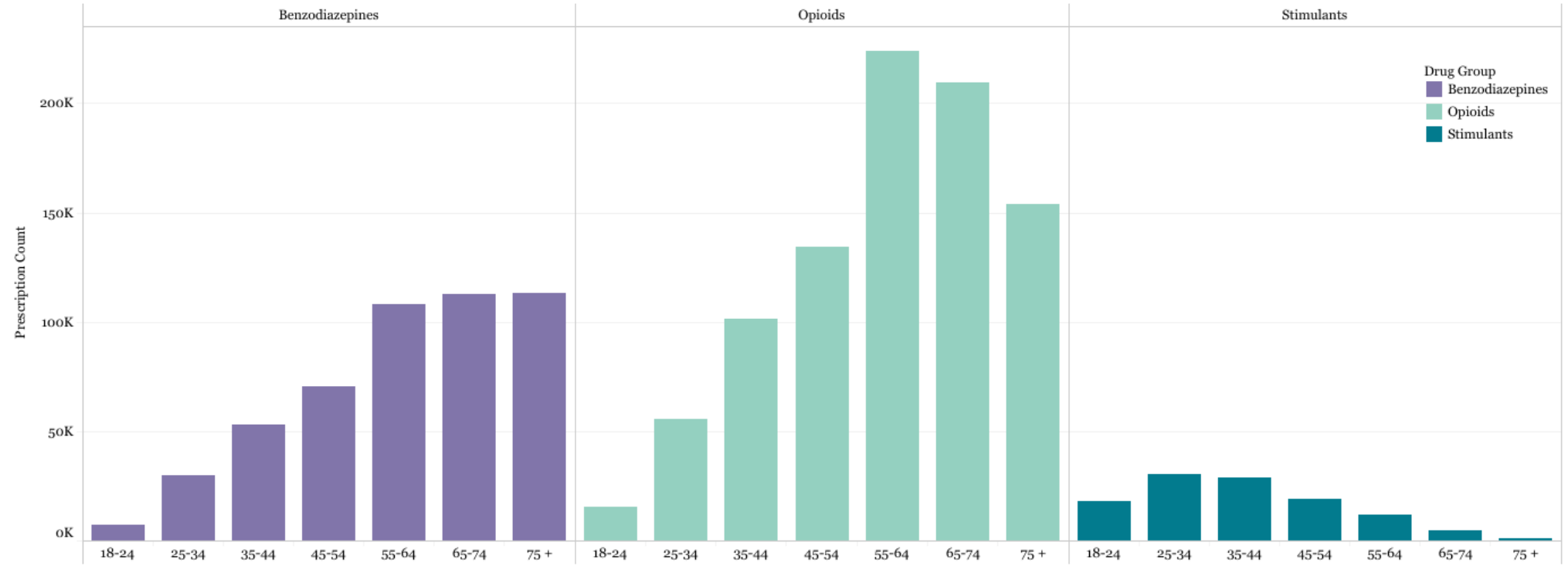
Percent Change in Opioid Prescription Count by County, Florida
Jul – Aug 2021 vs Jul – Aug 2020



Opioid, Benzodiazepine & Stimulant Prescriptions by Sex and Age Group

Florida, August 2021





Opioids Include:

acetaminophen with codeine phosphate, acetaminophen/caffeine/dihydrocodeine bitartrate, acetaminophen/codeine phosphate, acetaminophen/hydrocodone bitartrate, acetaminophen/hydrocodone bitartrate, acetaminophen/oxycodone HCl, acetaminophen/oxycodone HCl, acetaminophen/tramadol HCl, aspirin/caffeine/dihydrocodeine bitartrate, buprenorphine, buprenorphine HCl, buprenorphine HCl/naloxone HCl, buprenorphine HCl, butalbital/acetaminophen/caffeine/codeine phosphate, butorphanol tartrate, carisoprodol/aspirin/codeine phosphate, codeine phosphate/butalbital/aspirin/caffeine, codeine sulfate, fentanyl, fentanyl citrate, hydrocodone bitartrate, hydrocodone bitartrate/acetaminophen, hydrocodone/ibuprofen, hydromorphone HCl, ibuprofen/oxycodone HCl, levorphanol tartrate, meperidine HCl, methadone HCl, morphine sulfate, morphine sulfate/naltrexone HCl, opium/belladonna alkaloids, oxycodone HCl, oxycodone HCl/acetaminophen, oxycodone HCl/aspirin, oxycodone HCl/oxycodone terephthalate/aspirin, oxycodone HCl, oxycodone myristate, oxymorphone HCl, pentazocine HCl/naloxone HCl, tapentadol HCl, tramadol HCl, tramadol HCl/acetaminophen, tramadol HCl.

Benzodiazepines Include:

alprazolam, amitriptyline HCl/chlordiazepoxide, chlordiazepoxide HCl, chlordiazepoxide/clidinium bromide, clobazam, clonazepam, clonazepam, clorazepate dipotassium, diazepam, estazolam, flurazepam HCl, lorazepam, oxazepam, quazepam, temazepam, triazolam.

Stimulants Include:

amphetamine, amphetamine sulfate, dexmethylphenidate HCl, dextroamphetamine
sulf-saccharate/amphetamine sulf-aspartate, dextroamphetamine sulfate, lisdexamfetamine dimesylate, methylphenidate, methylphenidate HCl.

Patients who live in Florida and whose age is greater than or equal to 18 were included in this monthly report. Controlled substance drug schedule was set to II-V.

Data extraction date: 9/3/2021

AMERICAN BOARD OF DENTAL EXAMINERS, INC.

William Pappas, D.D.S., President
Jeffery Hartsog, D.M.D., Vice-President
Conrad McVea, III, D.D.S., Secretary
Renee McCoy-Collins, D.D.S., Treasurer
Bruce Barrette, D.D.S., Past President

Report of the 17th Annual Meeting of the American Board of Dental Examiners, Inc (ADEX) August 6-7, 2021

The following are highlights of the 17th Annual ADEX Meeting:

The ADEX House of Representatives consists of Member States and Jurisdictions, District Hygiene and District Consumer Representatives.

2021 – 2022 Officers were elected: Dr. William Pappas, NV, President; Dr. Jeffery Hartsog, MS, Vice-President; Dr. Conrad "Chip" McVea, III, LA, Secretary; Dr. Renee McCoy-Collins, DC, Treasurer. Dr. Bruce Barrette, WI, will return as Immediate Past President.

ADEX Board of Directors:

- Appointment of TBD, TX, District 3 Director.
- Appointment of Walter Machowski, Jr., DMD, SC, District 6 Director.
- Appointment of Joseph Battaglia, DMD, NJ, District 9 Director.
- Appointment of Naved Fatmi, DMD, FL, District 12 Director.

Appointment of Janet McMurphy, RDH, MS, as Chair of the ADEX Dental Hygiene Examination Committee.

Reinstatement of the '18 Month Rule' effective July 1, 2021.

18-Month Rule – Candidates will have 18 months to successfully complete the required 5-part ADEX dental exam series (including the Diagnostic Skills Examination OSCE but not considering the Periodontal portion as required). That 18 months for CIF candidates, will begin on July 1st of the year prior to their class graduation date. For Traditional candidates it will begin on the date of the first computer-based or clinical exam challenged. If a candidate does not successfully complete the ADEX dental exam series within that period, that candidate must re-take all required parts of the examination, including the computer-based portion.

ADEX House of Representatives:

Accepted new member boards, Utah and Texas, for ADEX membership. Approved ADEX Executive Committee and ADEX Board of Directors to take action on membership for North Dakota when they have submitted their request to join as a member board of ADEX.

Accepted FY2022 ADEX Budget

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Adopted changes by the ADEX Dental Examination Committee to the ADEX Dental Examination:

2022 Exam Changes

Endodontics

The endodontic exam subcommittee addressed questions arising as to the measurement landmarks used in grading the anterior access opening criteria and in an effort to allow each examiner to grade more consistently recommends each testing agency allow their respective standardization/calibration processes include a diagram which indicates each line on the individual landmark on the lingual aspect of the anterior tooth from which the measurements are to be obtained.

These measurements are to be straight line measurements made between two parallel lines that touch the landmark line and the furthest extent of the edge of the access opening dimension being considered. The measurement should be taken with a provided periodontal probe held at 90 degrees to the parallel lines.

Scoring:

The Committee recommends that the following language be printed in both candidate and examiner manuals:

Professional Misconduct:

Professional misconduct is a most serious violation of examination guidelines. Substantiated evidence of professional misconduct (see examples below) during the course of the examination will result in automatic failure of the entire examination series. In addition, there will be no refund of fees and the candidate may not be allowed to reapply for re-examination for one (1) year from the time of the infraction.

Professional misconduct includes, but is not limited to:

1. Falsification or intentional misrepresentation of registration requirements
2. Cheating of any kind
3. Demonstrating complete disregard for the oral structures or welfare of the patient
4. Misappropriation of equipment (theft)
5. Receiving unauthorized assistance
6. Alteration of examination records and/or radiographs
7. Rude, abusive, uncooperative or disruptive behavior towards patients, examiners or other candidates
8. Use of electronic equipment, to include recording devices and/or cameras

Simulated Patient Examination Committee:

- No bench top grading to be done. ALL TYPODONTS ARE TO BE GRADED MOUNTED IN A MANIKIN AND ANATOMICALLY POSITIONED
- Reiterate that exam protocols for CompeDont not changed from patient-based examination
- No clamping ISOLATION DAMS bilaterally—cannot take an action on CompeDont that one could not do for a human patient.
- Pulp Caps: Use of TheraCal® approved by Committee. Pulp chamber coloration SHOULD be changed along with a change in the density and consistency of the pulpal tissue.
    - Indirect: MUST BE THE FINAL MODIFICATION REQUEST AND if submitted and denied, THE PREPARATION SHOULD be graded immediately/ERF for Inappropriate Request for Indirect Pulp Cap and an ITC to the candidate so they are made aware of what has transpired.
    - Direct: same as live patient; if submitted as exposure and not, then 100 pt penalty

- Timelines: no suggested changes for now.
- Penalties: same as live patient exams
- Radiographic Diagnosis and Assignment: The candidate will be given a radiograph with only one maxillary and one mandibular lesion in a quadrant. The radiographs will be assigned across the available lesions for EACH exam day with all permutations of maxillary and mandibular combinations. ONE ANTERIOR AND ONE POSTERIOR LESION WILL BE USED ON EACH EXAM DAY WITH THE OPERMUTATION FOR THE DAY CHOSEN BY THE CHIEF EXAMINER The candidate is allowed 1 misdiagnosis per procedure. A second misdiagnosis makes the candidate ineligible to take that section.
- Failure Notification: The process is the same as the patient based. Only failures that generate an ITC informing the candidate of the failure are communicated to the candidate.

Patient/CompeDont™ Restorative:

Modifications denied and issued an ERF and ITC should be attached to the modification form and submitted during all grading steps. The following are included 1) Inappropriate request for indirect pulp cap (the IPC form will serve as communication of denial) 2) Initial Preparation is not to at least acceptable dimensions (ITC to be attached to modification form) 3) Unsatisfactory completion of modifications required by examiner(ITC to be attached to the modification form)

2023 Exam Changes

Restorative:

Anterior Preparation

Sound Marginal Tooth Structure

SUB

A. The cavosurface margin does not terminate in sound natural tooth structure.

DEF

A. There is explorer-penetrable decalcification remaining on the cavosurface margin.

B. there are large or multiple areas of unsupported enamel which are not necessary to preserve facial aesthetics.

Axial Wall

ACC

MAX CENTRALS & MAX/MAND CUSPIDS: The depth of the axial wall extends ≤ 1.5 mm in depth from DEJ

MAX LATERALS & MAND INCISORS: The depth of the axial wall extends ≤ 1.0mm in depth from the cavosurface margin.

SUB

MAX CENTRALS & MAX/MAND CUSPIDS: The depth of the axial wall extends >1.5mm but ≤ 2.5 mm in depth from DEJ.

MAX LATERALS & MAND INCISORS: The depth of the axial wall extends> 1.0 mm but ≤ 2.0mm in depth from the cavosurface margin.

Axial Wall

Anterior Restoration

Margin Excess/Deficiency

ACC

A. No marginal deficiency. There is no evidence of pits and/or voids at the cavosurface margin.
B. Marginal excess of ≤ 0.5 mm at the restoration-tooth interface, detectable either visually or with the tine of an explorer.

SUB

A. DEFICIENCY: The restoration-tooth interface is detectable visually or with the tine of an explorer, and there is evidence of marginal deficiency ≤ 0.5mm, which can include pits and/or voids at the cavosurface margin.
B. EXCESS: The restoration-tooth interface is detectable visually or with the tine of an explorer and there is evidence of marginal excess > 0.5 mm but ≤ 1.0 mm. There is flash with or without contamination underneath, but it is not internal to the cavosurface margin and could be removed by polishing or finishing.

Adjacent Tooth Structure

DEF

There is gross enameloplasty.

Posterior Composite Preparation

Proximal Clearance

SUB

Proximal clearance at the height of contour extends > 1.0 mm but ≤ 2.0 mm beyond either one or both proximal walls

DEF

Proximal clearance at the height of contour extends > 2.0 mm beyond either one or both proximal walls.

Outline Shape/Continuity/Extension

DEF

A. The outline form is grossly over-extended, compromising and undermining the remaining marginal ridge to the extent that the cavosurface margin is unsupported by dentin.
B. The width of the marginal ridge is ≤ 1 mm.

Isthmus

DEF

The isthmus is > ½ the intercuspal width or the isthmus is < 1.0mm.

Sound Marginal Tooth Structure

SUB

A. The cavosurface margin does not terminate in sound natural tooth structure.

DEF

A. There is explorer-penetrable decalcification remaining on the cavosurface margin.

B. There are large or multiple areas of unsupported enamel which are not necessary to preserve facial aesthetics

Posterior Composite Restoration

Margin Excess/Deficiency

ACC

A. No marginal deficiency. There is no evidence of pits and/or voids at the cavosurface margin.

B. Marginal excess ≤ 0.5 mm at the restoration-tooth interface, detectable either visually or with the tine of an explorer.

SUB

A. DEFICIENCY: The restoration-tooth interface is detectable visually or with the tine of an explorer, and there is evidence of marginal deficiency ≤ 0.5 mm, which can include pits and/or voids at the cavosurface margin.

B. EXCESS: The restoration-tooth interface is detectable visually or with the tine of an explorer, and there is evidence of marginal excess > 0.5 mm but ≤ 1.0 mm. There is flash with or without contamination underneath but it is not internal to the cavosurface margin and could be removed by polishing or finishing.

Adjacent Tooth Structure

DEF

There is gross enameloplasty.

Amalgam Preparation

Proximal Clearance

ACC

Contact is visibly open proximally, and proximal clearance at the height or contour extends ≤ 1.0 mm on either or both proximal walls.

SUB

Proximal clearance at the height of contour is > 1.0 mm but ≤ 2.0 mm on either one or both proximal walls.

DEF

A. The proximal at the height of contour is > 2.0 mm on either one or both proximal walls.
B. The walls of the proximal box are not visually open.

Gingival Clearance

ACC

The gingival clearance is visually open but ≤ 1.0 mm.

SUB

The gingival clearance is > 1.0 mm but ≤ 2.0 mm.

DEF

A. The gingival clearance is > 2.0 mm.
B. Gingival contact is not visually open.

Sound Marginal Tooth Structure

SUB

A. The cavosurface margin does not terminate in sound natural tooth structure.

DEF

A. There is explorer-penetrable decalcification remaining on the cavosurface margin.
B. There are large or multiple areas of unsupported enamel which are not necessary to preserve facial aesthetics

Amalgam Restoration

Margin Excess/Deficiency

ACC

A. No marginal deficiency. There is no evidence of pits and/or voids at the cavosurface margin.

B. Marginal excess ≤ 0.5mm at the restoration-tooth interface, detectable either visually or with tine of an explorer.

SUB

A. DEFICIENCY: The restoration-tooth interface is detectable visually or with the tine of an explorer, and there is evidence of marginal deficiency ≤ 0.5mm, which can include pits and/or voids at the cavosurface margin.
B. EXCESS: The restoration-tooth interface is detectable visually or with the tine of an explorer, and there is evidence of marginal excess > 0.5mm but ≤ 1.0mm.

Adjacent Tooth Structure

DEF

There is gross enameloplasty.

Prosthodontics

No Changes to Report

Periodontics

No Changes to Report

Adopted changes by the ADEX Dental Hygiene Examination Committee to the ADEX Dental Hygiene Examination:

2022 Exam Changes:

Manual Updates and already reported to the testing agencies on July 12, 2021 for ability to include in manuals.

A. Stopping the PTCE Exam-- If candidate is unable to qualify their patient during pre-treatment evaluation they will not be permitted to continue the examination.

B. Candidate Manual Language on Hard and Soft Tissue trauma penalties:

Soft Tissue Damage: Error in tissue management will result in the assessment of penalty points according to the following criteria:

- One point deducted for each site of minor soft tissue damage, up to three sites
- The presence of four or more minor soft tissue damage sites or one major soft tissue

damage site results in an automatic failure.

#Minor Soft Tissue Damage: There is slight soft tissue trauma that is inconsistent with the procedure. Minor soft tissue damage includes: A laceration/abrasion that is ≤ 3mm; A laceration or injury that would not result in the need for suturing, periodontal packing, or further follow-up treatment if this were on a patient.

#Major Soft Tissue Damage includes: A laceration/abrasion that is > 3mm and that would require sutures, periodontal packing, or further follow-up treatment. A laceration/injury that would result in exposure of alveolar bone, flap, or amputation of papilla if this were on a patient.

Hard Tissue Damage: Error in tissue management will result in the assessment of penalty points according to the following criteria:

- One point deducted for each site of minor hard tissue damage, up to three sites
- The presence of four or more minor hard tissue damage sites or one major hard tissue

damage site results in an automatic failure.

Minor Hard Tissue Damage includes slight hard tissue damage that is inconsistent with the procedure or a pre-existing condition. Minor Tissue Trauma may include all hard tissue surfaces that would not require additional definitive treatment if this were on a patient.

Major Hard Tissue Damage includes major damage to the hard tissue that is inconsistent with the procedure and a pre-existing condition. Major Tissue may include all hard tissue surfaces that would require additional definitive treatment if this were on a patient.

2022 Exam Changes:

Add: Unreported Broken Instrument Tip--- Include in list of 'major' soft tissue trauma to be penalized in MTCE-manikin exam on Scoring Rubric.

Remove: Full mouth series must include 16-20 images, depending on the number needed to show the mesial and distal surfaces, DEJ, and alveolar crestal bone of all posterior teeth (on page 25 of PTCE candidate manual)

Remove: All radiographs must be of diagnostic quality, meaning they must be of sufficient quality to accurately diagnose caries, periodontal health, or other dental diseases and abnormalities, and they must show the apices of all fully erupted teeth in the Case Selection, with the exception of the distal root of the 3rd molar (on page 25 of PTCE candidate manual)

Add: The full mouth series must be of diagnostic quality within their case selection and show the DEJ, alveolar crestal bone, mesial and distal surfaces of all teeth and the apices of all fully erupted teeth with the exception of the distal root of the 3rd molar.

2023 Exam Changes:

Adoption of a revised scoring rubric for the PTCE-patient based exam that eliminated the three points that were awarded to the candidate for 'no tissue damage,' reduced the calculus requirement section by 1 point, and increased the calculus detection by 4 points by adding a 4th tooth.

Adoption of penalty points for both hard and soft tissue damage for the PTCE patient-based exam to now mirror the MTCE-manikin exam related to penalties for tissue damage.

REVISED: Scoring Rubric and Tissue Damage Penalty Points

Skills Assessment	Criteria	Points Possible
Initial Case Presentation	A full quadrant with at least six (6) natural, permanent teeth and two posterior teeth from a second quadrant At least two natural, permanent molars; one must be located in the primary quadrant; one of the teeth in the second quadrant must be a molar One of the molars must have both a mesial and a distal contact; Another molar must have at least one contact	3
Calculus Requirements	• Qualifying calculus requirements met by teeth in the selection (8-5-3): o Eight surfaces located on any surfaces of molar/pre-molar teeth o Five surfaces located on M or D of molar/pre-molar teeth o Three surfaces located on M or D of molars	4
Calculus Detection	• 16 surfaces worth 1 point each, evaluated for the presence or absence of qualifying calculus on four assigned teeth	16
Calculus Removal	• 12 surfaces of qualifying calculus worth 5.5 points each • Points can be earned for removal only on the number of surfaces with qualifying calculus verified by examiners. Examiners do select 2 additional surfaces from within the entire Case Selection in an attempt to provide 14 opportunities to identify 12 surfaces with qualifying calculus.	66
Periodontal Probing Measurements	• Six measurements worth one point each	6
Final Case Presentation	• All surfaces in the Case Selection are free of biofilm and extrinsic stain • All surfaces other than the 12 selected surfaces in the Case Selection are free of calculus	1 4
Total		**100**

Soft Tissue Damage: Error in tissue management will result in the assessment of penalty points according to the following criteria:

- One point deducted for each site of minor soft tissue damage, up to three sites
- The presence of four or more minor soft tissue damage sites or one major soft tissue damage site results in an automatic failure.

#Minor Soft Tissue Damage: There is slight soft tissue trauma that is inconsistent with the procedure. Minor soft tissue damage includes: A laceration/abrasion that is ≤ 3mm; A laceration or injury that would not result in the need for suturing, periodontal packing, or further follow-up treatment.

#Major Soft Tissue Damage includes: A laceration/abrasion that is > 3mm and that would require sutures, periodontal packing, or further follow-up treatment. A laceration/injury that would result in exposure of alveolar bone, flap, or amputation of papilla. An unreported broken instrument tip in the sulcus or soft tissue.

Hard Tissue Damage: Error in tissue management will result in the assessment of penalty points according to the following criteria:

- One point deducted for each site of minor hard tissue damage, up to three sites
- The presence of four or more minor hard tissue damage sites or one major hard tissue damage site results in an automatic failure.

Minor Hard Tissue Damage includes slight hard tissue damage that is inconsistent with the procedure or a pre-existing condition. Minor Tissue Trauma may include all hard tissue surfaces that would not require additional definitive treatment.

Major Hard Tissue Damage includes major damage to the hard tissue that is inconsistent with the procedure and a pre-existing condition. Major Tissue may include all hard tissue surfaces that would require additional definitive treatment.

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18th Annual ADEX Meeting is August 5-6, 2022