



State of Idaho
Division of Occupational and Professional Licenses
Health Professions Bureau

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Negotiated Rulemaking Minutes of 06/07/2023

Division Katie Stuart, Executive Officer
Staff: Stephanie Lotridge, Executive Officer
Madyson Crea, Board Support Specialist

The meeting was called to order at 2:00 PM by Ms. Stuart.

Ms. Stuart stated that board staff would accept comments on specific rule chapters in the order they were listed on the notice as follows:

Idaho Board of Dentistry – 24.31.01
Idaho Board of Dentistry – 24.16.01
State Occupational Therapy Licensure Board – 24.06.01
Physical Therapy Licensure Board – 24.13.01
Idaho Board of Podiatry – 24.11.01
Board of Veterinary Medicine – 24.38.01

IDAHO BOARD OF DENTISTRY – 24.31.01

Ms. Lotridge read the following comments for the Board of Dentistry into the record:

Written Comment 5/17/2023

Dear Committee Members, My name is Kristy Garrett, and I am a Registered Dental Hygienist in South East Idaho. I have been licensed in Idaho since 1985, and originally licensed in Washington state in 1980.

I am currently a member of the Idaho Oral Health Alliance, and an active member of the American Dental Hygienist Association, and the Idaho Dental Hygiene Association. I have been active on the board of IDHA for many years, including my time as President in 2007-2008.

I became involved in these organizations to increase the possibility of utilizing my full skill set, and education to the benefit of my patients.

I am in full support of the Dental Board's proposed change to strike the wording of "extended access" in section 012 Restorative Endorsement. I believe that as in many cases with dental hygienists, the direct supervision of a dentist will allow patients to be safe, and receive excellent dental care.

I am grateful to still be practicing at a time where this change has come to fruition. I thank the board for their consideration, and many hours of work to craft a Practice Act that benefits the citizens of Idaho. Sincerely, Kristy G. RDH, BS, ER

Written Comment 06/02/23

On behalf of the Idaho State Dental Association (ISDA) we appreciate this opportunity to provide comments on Docket 24.31.01, the Idaho State Board of Dentistry's Zero-Based Rulemaking. The ISDA is proud to represent and serve as a voice for dentistry in Idaho. It is important for our members to have this opportunity. The rules established by the State of Idaho affect each one of the members of our association as well as the residents of Idaho.

While we appreciate the stated goal to eliminate unnecessary rule language and regulation, we are concerned this effort is now going too far, eliminating language that helps providers and supports patient safety. Rules are designed to keep the public safe and minimize the grey areas for providers to navigate in order to be in compliance with our professional practice act. Eliminating important rules for the purpose of reducing words can lead to uncertainty and allows for more subjective determinations based on who is currently serving on the state board. Our rules need to be clear and concise, not subject to interpretation. As you move through the ZBR process, please consider maintaining language that supports patient safety and minimizes those grey areas for professional compliance.

42 Nitrous Oxide/Oxygen, 43 Minimal Sedation, 44 Moderate Sedation, General Anesthesia and Deep Sedation, and 047 Determination of Degree of Sedation by the Board

The sedation rules are slated to either be removed or moved to board policy documents. As we discussed in our meeting on May 15, we have concerns that some of these provisions are important to retain in rule for patient safety. We realize some provisions are more suggestion than compliance related and appreciate the suggestion of getting additional input from those who have deep sedation certification and have served on the board's sedation committee. We are also willing to task some membership to participate in this important process. We would suggest rules pertaining directly to patient safety remain in rule to avoid any confusion. When it comes to sedation rules, Idaho is already on par with our neighboring states, including Utah. This shows how important it is to have specific sedation rules that guide our dental team. We look forward to reviewing any suggestions made by either the Sedation Committee or a volunteer group.

On additional point we believe supports this effort is the fact that policy and guidance documents do not have the full force and effect of law as was made abundantly clear in HB174a. Guidance and policy documents are meant to serve as guiding documents for agencies and the public. Rules are needed to fill in those gray areas of code and assist regulated professionals work in compliance with the law to better ensure patient safety.

Rule 23- Dental Hygienists- License Endorsements, .01 Extended Access Endorsement, .02 Restorative Endorsement

The ISDA seeks to have clarification around this rule. Specifically, we would request a clear reference regarding direct supervision for work under a restorative endorsement be included under Rule 33 covering dental hygiene practice to link these two provisions.

Rule 33- Dental Hygienists- Practice

The ISDA would like to see this rule remain as is. We believe the current structure, which includes the scope of work in addition to prohibitive acts, better serves patients and maintains patient safety. We would prefer to see this level of clarity remain.

Rule 25- Specialty Advertising- sections 01, 02, 03

We understand the Board's interest in reformatting this section of the rule as well as removing redundant language. However, we would urge caution since these provisions in

rule were hard fought over and worked on to get to a point of providing less opportunity for judgement and greater clarity on what can and cannot be done – all of which protects the public. We would request the stricken sentences in .01 and .03 be retained as is. Rules are designed to protect patients and provide sideboards for bad actors. Patients deserve transparency in who their providers are and what credentialing they have when selecting their dental team. Omitting too much of this language has the potential to confuse patients and create grey areas in advertising that will increase complaints and raise patient concerns. Additionally, the meaning of prominent varies from person to person, it is too subjective. If the intent of the advertisement is to be deceptive, there is nothing here that would protect the visibility of information for the public. There must be a specific size requirement for the disclaimer.

Rule 11 - Application and License Fee

We believe that eliminating this section may result in more confusion with licensees. For example, a dentist or dental hygienist applying for a license may not know license fees are prorated or that application fees are not refundable. We would recommend having specific language here to reduce confusion and what will likely be a lot of calls and questions for staff. This might be appropriate information to move to guidance, so long as it is easily accessed for licensed providers.

Rule 49 - Incident Reporting

ISDA would recommend keeping the rule as is. The current language clearly relates the reporting to sedation. The proposed change expands the rule beyond its current focus, to add reporting requirements for licensees for incidents that could occur unrelated to a dental procedure or work. We believe that change to expand the scope of the rule so broadly should be considered separately.

Rule 31- Infection Control

Since dental offices are required to comply with CDC guidelines, we want to make sure these dental offices can easily access the CDC guidelines. Our one request would be to include a direct link to the CDC guidelines that is easily found and accessible on the board of dentistry's website.

One final comment we would like to make is recommending the board consider updating their mission statement. As currently written, the mission statement only addresses dentists and dental hygienists. Since the board regulates and permits licensure to dental therapists, now might be a good time to update the mission statement to include dental therapists.

Thank you for taking the time to review our comments. We understand the initiative in keeping with Governor Little's efforts to reduce and simplify our rules. We believe the suggestions we outlined above keep in line with Governor Little's goals, while maintaining patient safety and providing clarity to all licensed oral health care providers. Sincerely, Mike M., CAE | Interim Executive Director | Idaho State Dental Association

Ms. Lotridge asked for any other comments for the dentistry rule chapter. Hearing none, Ms. Stuart moved on to the Board of Dentistry.

IDAHO BOARD OF DENTISTRY – 24.16.01

Ms. Stuart read the following comment for the Board of Dentistry into the record:

Written Comment 5/30/23

Thank you and your staff for the work that you are doing on the Administrative rules for Denturistry. I have two quick comments: KS2 - I believe that we need a standardized exam. The Oregon and Washington models are great since scope of practice etc. is substantially equivalent to Idaho. They have considerably more experience administering the exams due to the larger volume of applicants. KS6 - My opinion is that we should not restrict a licensee's ability to have more than one intern if said licensee has the physical capacity in their practice to accommodate more than one. It just feels too restrictive to me. The law should allow as much freedom within statutory limits as possible. Again thank you for working with our group. You are appreciated. Respectfully, Darcy K.

Ms. Stuart asked for comments on the denturistry rule chapter. Hearing none, she moved on to the State Occupational Therapy Licensure Board.

STATE OCCUPATIONAL THERAPY LICENSURE BOARD – 24.06.01

Ms. Stuart read the following comment for the occupational therapy rule chapter into the record:

Written Comment 5/22/23

I wanted to state my concern about the proposed revision to 011.04 "Supervision-Students." My concern is that removing direct on-sight supervision will allow for the abuse of student use in various settings. Students need to be guided, mentored, and given immediate feedback about their performance. They graduate from programs as generalists and do not possess all the necessary skills to effectively treat patients and complete documentation accurately. We also cannot expect that OT programs are fully preparing students for hands-on experiences (in my experience, students are very poorly prepared for the demands and critical thinking needed in fast-paced therapy environments) and this could potentially lead to significant safety issues with patients. Rules need to be direct and able to be interpreted appropriately and I can see this rule revision being taken lightly and allowing facilities to utilize students in ways they are not prepared for (ie taking on a full caseload of patients and only briefly discussing at the end of the day). This does not allow for optimization of their skills and could potentially turn out ill-prepared practitioners. Please keep direct supervision, and preferably line-of-sight in order to maintain the integrity of the OT profession. Thank you, Molly C., OTR/L

Ms. Stuart invited comments on the occupational therapy rule chapter. Hearing none, she moved on to the Physical Therapy Licensure Board.

PHYSICAL THERAPY LICENSURE BOARD – 24.13.01

Ms. Stuart read the following comments for the physical therapy rule chapter into the record:

Written Comment 5/17/2023

Dear Board Staff, I have been a physical therapist for over 22 years, most of that time in the state of Idaho. I have reviewed the changes proposed to the administrative rules that govern my profession. I have only one concern with the proposed changes, but it is a major concern.

I was shocked to see that the entire section "180. DRY NEEDLING CERTIFICATION" was omitted from the rules. I have been dry needling since it became legal for PTs in Idaho to do so. Prior to dry needling patients, I attended 2 different 27-hour continuing education courses. The two classes had very different formats and instructional style, but

what was emphasized very clearly in both classes was the importance of safety in the practice of dry needling, and the instruction in specific techniques of needle insertion to various muscles throughout the body to ensure both safe and effective treatment technique.

Evidence In Motion (formerly Kinetacore) is a reputable organization which provides several levels of dry needling continuing education. They very clearly explain the reason why continuing education is needed for the safe and effective performance of dry needling. Specifically, of the 214 entry-level and 27 dry needling-specific job tasks analyzed, 123 were identified as directly relevant to the competent performance of dry needling. Additionally, of the 116 entry-level and 22 dry-needling specific knowledge requirements, 117 were identified as important for competency in dry needling. It was determined that 86% of the knowledge requirements needed to be competent in dry needling are acquired during a physical therapist's entry-level education, and therefore 14% of the knowledge requirements related to competency in dry needling must be acquired through post-graduate education. This includes but is not limited to the psychomotor skills needed to handle the needles and palpate the tissues.

Which brings me to safety. Dry needling is very safe when performed correctly. Dry needling has the potential to be injurious if performed incorrectly. Through continuing education, we are instructed in how to provide dry needling treatment without causing the patient a pneumothorax, without puncturing a kidney, without puncturing the intestines, without puncturing the spinal cord or DRG, and without puncturing any of the major veins, arteries, or peripheral nerves. An undereducated practitioner of dry needling may unknowingly do any of these things in their attempt to perform intramuscular needling. An undereducated PT may provide dry needling to a patient for whom it is contraindicated, not knowing that it is contraindicated. Causing a patient bodily injury as a result of providing a treatment in which the physical therapist is undereducated is malpractice. It is not good for the patient. It is not good for that physical therapist, It is not good for the profession of physical therapy as a whole. It undermines our professionalism.

I strongly urge you to keep section "180. DRY NEEDLING CERTIFICATION" in the governing rules, in its entirety. Sincerely, Diana S. MPT, OCS

Written Comment 5/18/2023

Dry Needling Proposed Changes. Hello, I have a clarifying question regarding the proposed physical therapist practice changes. Is the board proposing to revoke dry needling capabilities from physical therapists in Idaho and make it unlawful? Or is it trying to transition to a "silent" state such as Oklahoma where there is just no formal mention of it in the practice act? These are very different things and would have severe impact on health outcomes and patient care. A concerned therapist, Dr. Jeff D., DPT

Written Comment 5/18/23

It is not a rule change per se in Idaho. The ability to receive verbal orders is not included as a part of the practice act. Due to this and the interpretation of limitations of assistants it is currently not included in the practice that a PT assistant can accept a verbal order. In other states, it is included in the practice act that as a licensed clinician, PT Assistants are able to communicate with supervising physicians and therapists and so have the ability to accept and document verbal orders given. This addition to the practice act would allow assistants to document, additional progression or regression of patient status in an

appropriate manner without changing the plan of care which would be required for a physical therapist to do. This would streamline better care for patients. Improve coordination of care with physicians. This addition will also improve and relieve Physical Therapists by allowing Assistants under their supervision and direction to perform these duties in maintaining an updated medical record and POC.

It is not the intention of this rule to allow assistance to change, or modify the plan of care, other than under the direction and description allowed by supervising physical therapist or prescribing physician. I feel that this rule would be extremely beneficial to practice, as well as would help Idaho to continue to maintain its standards as many other states allow this practice, as it has been added to the practice act. I appreciate your consideration.
Sincerely, Gregory B.

Written Comment 5/19/2023

I like the reduction of redundancy that appears to have taken place in the Physical Therapy rules and regs. My main concern is regarding defining what is skilled care and what is not (what can be completed by an aide). In Idaho, a very high and alarming number of aides are being used to provide care that is then billed as skilled care. Aides cannot independently perform or provide skilled care or services that are billed and I'm worried that eliminating some of that language from our rules/regs document will inadvertently condone this behavior, which puts the public at risk. This tendency combined with the elimination of supervision ratios of aides could lead to even more over-utilization of these non-skilled/non-professionals. Thank you, Tyler, PT

Ms. Stuart opened it up to the public for verbal comments on the physical therapy rule chapter. Hearing none, she moved on to the Board of Podiatry

IDAHO BOARD OF PODIATRY – 24.11.01

Ms. Stuart requested public comment on the Idaho Board of Podiatry rule chapter. Hearing none and having no written comment, Ms. Lotridge moved on to the Board of Veterinary Medicine.

BOARD OF VETERINARY MEDICINE – 24.38.01

Ms. Lotridge stated she has not received written comment for the Board of Veterinary Medicine and asked for comment from members of the public present.

Eric B. from IVMA wanted to reiterate the concerns stated at the last negotiated rulemaking meeting. Specifically, regarding the language struck in the record keeping rule.

Jennifer P. asked for clarification on definition and dental extractions allowed to be performed by technicians.

Ms. Lotridge asked for further comment on the veterinary medicine rule chapter. Hearing none, public comment was once more invited on the following boards:

Idaho Board of Dentistry – 24.31.01

Idaho Board of Dentistry – 24.16.01

State Occupational Therapy Licensure Board – 24.06.01

Physical Therapy Licensure Board – 24.13.01

Idaho Board of Podiatry – 24.11.01

Board of Veterinary Medicine – 24.38.01

Hearing no further public comment Ms. Stuart reminded the public members in attendance that the ZBR notice lists an email address to which they can submit written comments. She stated the email is: support.hp@dopl.idaho.gov

Additionally, Ms. Stuart encouraged the public members in attendance to visit the Division calendar for Board meeting dates. She invited the public to attend upcoming board meetings and informed them that the Boards listed on the notice will vote to go proposed in June. Those in attendance were again invited to provide comments.

No further comments were given.

Adjourn

There being no further business, the meeting was adjourned at 2:20 PM.