

**ADOPTED REGULATION OF
THE BOARD OF DENTAL EXAMINERS OF NEVADA**

LCB File No. R202-09

Effective August 13, 2010

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §1, NRS 631.190 and 631.215.

A REGULATION relating to dentistry; setting forth activities that constitute the exercise of authority or control over the clinical practice of dentistry; and providing other matters properly relating thereto.

Section 1. Chapter 631 of NAC is hereby amended by adding thereto a new section to read as follows:

1. For the purposes of paragraph (h) of subsection 2 of NRS 631.215, the Board will deem a person to exercise authority or control over the clinical practice of dentistry if the person, by agreement, lease, policy, understanding or other arrangement, exercises authority or control over:

(a) The manner in which a licensed dentist, a dental hygienist or a dental assistant uses dental equipment or materials for the provision of dental treatment;

(b) The use of a laboratory or the decision to purchase or not to purchase dental equipment or materials against the advice of a licensed dentist if the dentist reasonably concludes that such use, purchase or failure to purchase would impair the ability of the dentist or a dental hygienist to provide dental care to a patient consistent with the standard of care in the community;

(c) A decision of a licensed dentist regarding a course or alternative course of treatment for a patient, the procedures or materials to be used as part of a course of treatment or the manner in which a course of treatment is carried out by the dentist, a dental hygienist or a dental assistant;

(d) The length of time a licensed dentist or a dental hygienist spends with a patient or if the person otherwise places conditions on the number of patients a licensed dentist or a dental hygienist may treat in a certain period of time;

(e) The length of time a licensed dentist, a dental hygienist or a dental assistant spends performing dental services, against the advice of the dentist, if the dentist reasonably believes that the ability of the dentist, dental hygienist or dental assistant to provide dental care to a patient consistent with the standard of care in the community would be impaired;

(f) The referrals by a licensed dentist to another licensed dentist or otherwise places any restriction or limitation on the referral of patients to a specialist or any other practitioner the licensed dentist determines is necessary;

(g) The clinical practices of a dental hygienist regarding appropriate dental hygiene care or the duties that a licensed dentist may delegate to a dental hygienist;

(h) Patient records at any time to the exclusion of the applicable licensed dentist or the applicable patient;

(i) A decision of a licensed dentist to refund payments made by a patient for clinical work that is not performed or is performed incorrectly by:

(1) The dentist; or

(2) A dental hygienist employed by the licensed dentist or a professional entity of the licensed dentist;

(j) A decision regarding the advertising of the practice of a licensed dentist if the decision would result in a violation of the provisions of NRS 631.348 by the dentist;

(k) A decision to establish fees for dental services against the advice of a licensed dentist if the dentist reasonably concludes that those fees would impair the ability of the dentist or a dental hygienist to provide dental care to patients consistent with the standard of care in the community;

(l) A decision relating to the clinical supervision of dental hygienists and ancillary personnel regarding the delivery of dental care to patients of a licensed dentist;

(m) The hiring or firing of licensed dentists or dental hygienists or the material clinical terms of their employment relationship with a licensed dentist or a professional entity of a licensed dentist;

(n) A decision regarding the hiring of ancillary personnel against the advice of a licensed dentist or a decision by a licensed dentist to fire or refuse to work with ancillary personnel if that advice, firing or refusal is related to the clinical competence of that ancillary personnel to render dental care to patients, regardless of who employs such ancillary personnel; and

(o) The material terms of any provider contracts or arrangements between a licensed dentist or a professional entity of a licensed dentist and third-party payors against the advice of the dentist, if the dentist reasonably concludes that the contract or arrangement would impair the ability of the dentist to provide dental care to patients consistent with the standard of care in the community.

2. For the purposes of this section:

(a) "Ancillary personnel" means a person, other than a licensed dentist or a dental hygienist, who:

(1) Directly provides dental care to a patient under the supervision of a licensed dentist or a dental hygienist; or

(2) Assists a licensed dentist or a dental hygienist in the provision of dental care to a patient.

(b) “Clinical” means relating to or involving the diagnosis, evaluation, examination, prevention or treatment of conditions, diseases or disorders of the maxillofacial area, oral cavity or the adjacent and associated structures and their impact on the human body, as typically provided by a licensed dentist or, if applicable, a dental hygienist, within the scope of the education, experience and training of the dentist or dental hygienist, in accordance with applicable law and the ethics of the profession of dentistry.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
LCB File No. R202-09**

The following statement is submitted for adopted regulations within Nevada Administrative Code (NAC) 631.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

A public workshop was held August 14, 2009 after a 15 day notice was posted in compliance with the Nevada administrative rulemaking requirements. A second public workshop was held September 12, 2009 after a 15 day notice was posted in compliance with the Nevada Administrative Rulemaking requirements. A third public workshop was held October 9, 2009 after a 15 day notice was posted in compliance with the Nevada administrative rulemaking requirements. A fourth public workshop was held December 4, 2009 after a 15 day notice was posted in compliance with the Nevada administrative rulemaking requirements. A fifth public workshop was held February 19, 2010 after a 15 day notice was posted in compliance with the Nevada administrative rulemaking requirements. A public hearing and adoption of regulations was held April 30, 2010 after a 30 day notice was posted in compliance with the Nevada administrative rulemaking requirements. Public comment was sought in all workshops, hearings and adoptions. 8/14/2009: Ms. Belz began the workshop with a statement that requested lucid and unambiguous definitions of clinical practice of dentistry, clinical judgment of the dentist, and support of the business of a dental practice. Ms. Belz referenced in her statement that the importance of patient care and well-being were the priority in crafting the regulations for SB295. Dr. Saxe read his statement and indicated the importance for the dental professionals to develop statutes and administrative codes to include minimal influence from outside entities. He indicated that the passing of Senate Bill 295 changes this perspective as the Board must now regulate the corporate entities in the business of dentistry. He further indicated that the Board must state specific language in the regulations to prohibit the ownership or affiliation of dental practices by insurance companies as it would establish conflict of interests. He further indicates that the Board must provide language that will protect patients and their treatment. Dr. Saxe indicated that SB 295 allows management companies to become caregivers in his opinion and therefore regulations must hold such companies responsible. In addition, he indicated that specific language should hallmark personal accountability of the owners of the corporation and that specific language should be included to provide for continuity of care of patients and should exclusively discourage the practice from enforcing quotas. He further indicated that managers must be included in the law as they are in California in order for the Board to have specific rights and duties to intervene when a patient's safety becomes compromised. Dr. Saxe indicated that currently the laws allow for only a patient driven complaints system, which will not suffice in a SB295 environment due to lack of personal accountability. In addition, dentists should be able to preserve the right to file a complaint without the fear of corporate retaliation or of being fired. He commented that over the years the dental profession has slowly deteriorated in Nevada due to poor State Legislative decisions. Dr. Saxe thanked the Board for their time. Dr. Pappas asked if Dr. Saxe would please provide a copy of his statement to Board staff to have for the record. Ms.

Fulstone indicated that they did not have a copy of the draft language and asked if they could have copies provided to them. 9/12/2009: Dr. Talley of the NDA read a statement. Dr. Tally requested for clarification on who may have control over dental labs and asked for clarification on some of the definitions and language used so that it may be unambiguous for lay persons. Dr. Steve Saxe read a statement to the Board. He suggested that the Board provide specific language referencing Nevada Revised Statute 41.130, Liability for Personal Injury, when drafting language, and further proposed creating a regulation to include an NRS 41.130 reference to assure accountability and alleviate ambiguity in SB295. He commented that business entities should be governed by the same governing Board of the profession, and therefore, indicated that the best way to govern them would be to place them under the purview and rules of the Board that governs the professionals. He further suggested that they should be subject to any and all rules and guidelines of the Dental Board and that their license to operate could be based upon compliance monitoring by the Board or other guidelines rather than simply paying a filing fee with the Secretary of State. He further suggested that as a licensed entity they should be subject to losing a privileged license should any issues arise. He indicated that SB295 should not be a tool for corporations to have autonomy from liability and lack of accountability to patients and the profession of dentistry. Mr. Crowell indicated that he was present with Ms. Fulstone and gave a brief history of what led to the creation of SB295. Ms. Fulstone commented on the importance of the regulations drafted to not exceed the authority of the statute. Ms. Fulstone, per Dr. Hellwinkel's inquiry, indicated that she and Mr. Crowell represented Interdent and Pacific Dental Services and that she is with the firm Lionel, Sawyer, and Collins. Ms. Fulstone went over both versions of draft language, pointed out the similar sections, and elaborated on the similarities of both documents. Ms. Fulstone suggested using the Board's regulation on clinical and non-clinical subjects under continuing education as guidelines when drafting language. Daniel Christopher responded to Dr. Saxe's comments and concerns on patient records and confidentiality, and noted to Dr. Saxe that the fines for violations of the HIPAA security rule and the HIPAA privacy rule have increased from \$10,000 per violation to a maximum of \$1.5 million per violation; and therefore, considered that to be a significant power of authority to indicate that the dentist has to have control of patient records. Dr. Talley inquired if the NDA may partake in the meeting with Mr. Drizin and Ms. Fulstone to continue working on draft language. 10/9/2009: No comments made. 12/4/2009: Dr. Pappas inquired of Ms. Fulstone if she had any additional information or comments to add, to which she indicated she did not. Dan Christopher thanked Mr. Drizin, Ms. Fulstone, and the Board for their time spent in creating the draft language; he indicated that it accurately reflects the interests of the patients. Ms. Fulstone discussed where to add language on the usage of labs. Ms. Fulstone suggested adding language on labs to sections (1b) and (1c); she indicated that she would like to link it to the clinical aspect and read her suggestion of language to be added to section (1b) to include laboratories. Mr. Christopher commented that in subsection c in regards to laboratories practices must beware if using foreign materials in the laboratory that there is no zinc toxicity in the materials from outside entities, and therefore, because of this precaution practices should be allowed to reject the use of certain laboratories. He further indicated that if a laboratory that delivers poor work is something to be listed as a standard of care issue. He gave examples of poor materials from a feeble laboratory; in addition he indicated that it is the discretion of the Dentists to determine if materials received from a laboratory are substandard. She indicated that it should read as "the purchase or non-purchase of dental materials, or the use of a laboratory, against the advice of the Dentist if the Dentist can at least conclude that the purchase or non-purchase, or use of a

laboratory, would impair the Dentist or Dental hygienists' ability to deliver care to up to the standard care." 2/19/10: Mrs. Peterson, in reference to Dr. Pappas' inquiry on the omission of dental hygienists and dental assistants, suggested changing the language to read: "...licensed dentists, dental hygienists; or dental assistants." 4/30/2010: No comments made. A copy of the written minutes of the meetings may be obtained by contacting the Nevada State Board of Dental Examiners at (702) 486-7044 or by writing to the Board at 6010 S. Rainbow Blvd, A-1, Las Vegas, NV 89118.

2. The number of persons who:

- (a) Attended the workshop/hearing: Approx 37 8/14/2009
Approx 24 9/12/2009
Approx 23 10/9/2009
Approx 31 12/4/2009
Approx 32 2/19/2010
Approx 29 4/30/2010

(b) Testified at the workshop/hearing:

- 2 8/14/09
- 4 9/12/09
- 0 10/9/09
- 3 12/4/09
- 2 2/19/10
- 0 4/30/10

(c) Submitted to the agency written comments:

3 (Interested party representatives met with board counsels and staff to address comments for submission to board at public meeting. All done at the meeting and submitted during public meeting) Any meetings of parties were open and held in the board office. Submission of statements and revised proposals were accepted and disseminated to all interested parties as well as members of the board at public meetings.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Public notices of the workshops and hearing were posted at a site in each county along with the Las Vegas and Carson City offices of the Attorney General, State Library and Archives, the Clark County Health District, and mailings of said notices to interested parties including affected practitioner associations within Nevada. Notices were also posted on the website maintained by the Board. Notification was also made in the board newsletter mailed to all licensees. Comments were recorded at each meeting and are available in the minutes of those meetings which can be inspected at the board office. A copy of the written minutes of the meetings may be obtained by contacting the Nevada State Board of Dental Examiners at (702) 486-7044 or by writing to the Board at 6010 S. Rainbow Blvd, A-1, Las Vegas, NV 89118.

4. If the regulations were adopted without changing any part of the proposed regulations, a summary of the reasons for adopting the regulations without change.

The regulations went through a few revisions during the workshops and all changes were openly and publicly discussed. The regulations were adopted at the Nevada State Board of Dental Examiners hearing on April 30, 2010 without changes to the final version provided by LCB. Five workshops and public comment periods were held to accept and consider all comments and change proposals.

5. The estimated economic effect of the adopted regulations on the businesses that it is to regulate and on the public. These must be stated separately, and each case must include:
(a) both adverse and beneficial effects; and (b) both immediate and long-term effects.

(a) Both adverse and beneficial effects.

There are no expected adverse economic effects for licensees or applicants for licensure. The regulations define clinical practice areas and prohibitions on exerting influence and authority over licensed dentists (and those authorized to perform duties within state law at the direction of a dentist) providing dental care by those unlicensed individuals, entities, or organizations providing allowable goods and services to a dental practice.

The beneficial effects are to identify more specifically in regulation what is authorized in statute as well as prohibited in statute. There may be adverse economic effects on the board resources to investigate and enforce compliance with new statutory provisions for individuals and entities not otherwise licensed by the board providing goods and services to licensed dentists. There is a registration required for these providers of goods and services but no accompanying fee for accepting, verifying, and recording this information within dental board files. Thus the cost of administering and recording this information is done within current revenues of the board from licensee fees in general.

(b) Both immediate and long-term effects.

Immediate effects and long term effects are to clarify more specifically the requirements for dental licensees engaging support services for their practice and what goods and services may not be provided that would manage or control the clinical practice of dentistry.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There will be some cost to the board for processing registration information and enforcement.

7. A description of any regulations of other state or government agencies that the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating agency.

We are aware of no other duplication in regulations either in state or federal regulations.

8. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

There are no federal regulations providing these provisions that the board is aware of.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The regulation does not provide for a fee.