

Notice Of Intent To Act Upon a Regulation

The Nevada State Board of Dental Examiners will hold a public hearing at 6:00PM on the 16th day of May, 2024, at 2651 N. Green Valley Parkway, Suite 104, Henderson, Nevada 89014. The purpose of the hearing is to receive comments from all interested persons regarding the Adoption of regulations that pertain to Chapter 631 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. ***The need for and the purpose of the proposed regulation or amendment.***

-The proposed regulation results from a legislative directive SB 310 revising provisions governing the submission of a complaint, the investigation of a complaint, review of said investigation and the imposition of disciplinary action and revising which acts constitute unprofessional conduct.

2. ***If the proposed regulation is a temporary regulation, the terms or the substance of the proposed regulation to be adopted, amended, or repealed, or a description of the subjects and issues involved.***

N/A

3. ***If the proposed regulation is a permanent regulation, a statement explaining how to obtain the approved or revised text of the proposed regulation.***

-The proposed regulation is available on the website of the Nevada State Board of Dental Examiners; it is also available at the office of the Nevada State Board of Dental Examiners located at 2651 N. Green Valley Parkway, Suite 104, Henderson, Nevada 89014.

4. *The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:*

(a) *Both adverse and beneficial effects; and*

(b) *Both immediate and long term effects.*

Regulated Business

-The estimated beneficial economic effect on the regulated businesses will be to potentially reduce the number of instances in which dental practitioners expend monies to respond to complaints while providing further due process assurances that complaints are addressed fairly and equitably. There is no anticipated adverse economic effect upon the regulated businesses at this time.

-The anticipated immediate effect on the regulated businesses will be to increase the number of complaints resolved expeditiously through mutual resolutions while potentially reducing the number of complaints that proceed to full hearing and the associated expense of said hearings. The anticipated long term effect on the regulated businesses will be to renew the confidence of dental practitioners in the complaint process and in the Nevada State Board of Dental Examiners.

Public

-The estimated beneficial economic effect on the public will be reduced costs to the public as monies expended to address complaints against dental practitioners and potential subsequent treatment will decrease with quicker resolution of complaints; there is no projected negative economic effect on the public.

-The anticipated immediate effect on the public will be faster resolution of complaints against dental practitioners thereby reducing the time and expense necessary to address and resolve public complaints; public confidence with the Nevada State Board of Dental Examiners service will concomitantly increase. The long term effect will be the same over time.

5. *The methods used by the agency in determining the impact on a small business.*

-The Nevada State Board of Dental Examiners solicited written and oral comments, objections and suggestions from various stakeholders at meetings designed to address the legislative directive of SB 310 proposing revisions to the complaint and investigatory process along with the imposition of disciplinary action and revisions as to which acts constitute unprofessional conduct.

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

N/A

7. *A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.*

N/A

8. *If the regulation is required pursuant to federal law, a citation and description of the federal law.*

N/A

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

N/A

10. *Whether the proposed regulation establishes a new fee or increases an existing fee.*

N/A

11. *If the proposed regulation is a temporary regulation, each address at which the test of the regulation may be inspected and copied.*

N/A

Persons wishing to comment upon the action of the Nevada State Board of Dental Examiners may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to Nevada State Board of Dental Examiners, 2651 N. Green Valley Parkway, Suite 104, Henderson, Nevada 89014. Written submissions must be received by the Nevada State Board of Dental Examiners on or before May 14, 2024. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada State Board of Dental Examiners may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be Adopted will be on file at the State Library, Archives and Public Records, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be Adopted will be available at the Nevada State Board of Dental Examiners for inspection and copying by

members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us/>. Copies of this notice and the proposed regulation will also be mailed to members of the public at no charge upon request.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

- 1) Nevada State Board of Dental Examiners, 2651 N. Green Valley Parkway, Henderson, Nevada 89014 - www.dental.nv.gov
- 2) Legislative Counsel Bureau - www.leg.state.nv.us
- 3) State Library and Archives - www.nsla.nv.gov
- 4) Green Valley Library, 2797 N. Green Valley Parkway, Henderson, Nevada 89014

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

LCB File No. R073-22

April 11, 2024

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

AUTHORITY: §§ 1, 3, 4 and 8, NRS 631.190 and 631.360; § 2, NRS 631.190, 631.360 and 631.3635; § 5, NRS 631.190, 631.360, 631.363 and 631.3635; § 6, NRS 631.190, 631.350, 631.355, 631.360 and 631.363; § 7, NRS 631.190, as amended by section 14 of Senate Bill No. 310, chapter 523, Statutes of Nevada 2023, at page 3408, and NRS 631.350, as amended by section 34 of Senate Bill No. 310, chapter 523, Statutes of Nevada 2023, at page 3424; § 9, NRS 631.190, 631.360 and 631.363; § 10, NRS 631.190, 631.350, 631.360 and 631.363.

A REGULATION relating to oral health; revising provisions governing the submission of a complaint against a provider of oral health care; enacting and revising provisions governing the investigation of such a complaint, the review of such an investigation and the imposition of disciplinary action; revising the acts which constitute unprofessional conduct; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law: (1) requires the Board of Dental Examiners of Nevada to investigate a complaint alleging grounds for initiating disciplinary action against a person who practices dentistry, dental hygiene, dental therapy or expanded function dental assistance in this State; and (2) authorizes the Board to appoint one of its members and any of its employees, investigators or other agents to conduct an investigation and informal hearing concerning a violation of the laws or regulations concerning dentistry. (NRS 631.360, as amended by section 35 of Senate Bill No. 310, chapter 523, Statutes of Nevada 2023, at page 3425, NRS 631.363) **Section 8** of this regulation clarifies that a complaint may be submitted against any person who practices dentistry, dental hygiene, dental therapy or expanded function dental assistance in this State. **Section 8** also revises the required contents of the complaint and prescribes the time at which a complaint may be withdrawn. After a complainant has submitted a complaint, **section 8** provides that the Board will submit a copy of the complaint to an attorney for the Board with the personally identifiable information concerning the person who is the subject of the complaint redacted. **Section 2** of this regulation requires the attorney to determine whether: (1) the Board has jurisdiction over the complaint; and (2) the complaint sets forth facts which, if proven, would constitute grounds for initiating disciplinary action. If the attorney determines that the Board lacks jurisdiction over the complaint or that the complaint does not set forth such facts, **section 2** requires the attorney to recommend to a review panel that the complaint be dismissed. **Section 2**

prescribes the procedure for a review panel to accept or reject such a recommendation. If the review panel rejects a recommendation to dismiss a complaint, **section 2** requires the review panel to refer the complaint to the Executive Director of the Board for the appointment of an investigator.

Existing law authorizes the Board to initiate an investigation upon its own motion. (NRS 631.360) **Section 3** of this regulation prescribes the procedure by which: (1) the Executive Director and an attorney for the Board may recommend that the Board initiate a complaint and refer the matter for an investigation; and (2) the Board may accept or reject such a recommendation.

Section 9 of this regulation prescribes the procedure governing the appointment of an investigator to investigate a complaint upon referral of the complaint to the Executive Director for such an investigation. If the Executive Director appoints an investigator, **section 9** requires: (1) the investigator to notify the person who is the subject of the complaint of the investigation; and (2) the person who is the subject of the investigation to provide certain records to the investigator. **Section 7** of this regulation provides that failure to provide such records constitutes unprofessional conduct for which additional disciplinary action may be imposed. **Section 9** also removes authorization for an investigation to go beyond the scope of the complaint into other matters which appear to constitute a violation. **Section 9** additionally provides that the Board will remand a complaint if the Board determines, after an investigation, that the subject of the complaint has not engaged in conduct that is grounds for disciplinary action.

Section 4 of this regulation authorizes the Board to retain a screening consultant and a dental expert to evaluate a complaint for which an investigator has been appointed. **Section 4** requires each screening consultant and dental expert to provide to the investigator a written opinion concerning whether the person who is the subject of the complaint has engaged in conduct that constitutes grounds for disciplinary action. **Section 4** requires: (1) the investigator to provide to the person who is the subject of the complaint a copy of the opinion; and (2) the person who is the subject of the complaint to respond to the opinion.

Existing law requires the Board to appoint a review panel to review an investigation or informal hearing. (NRS 631.3635) **Section 5** of this regulation prescribes the procedure for conducting such a review and requires the review panel to consider certain information. After conducting the review, **section 5** requires the review panel to recommend that the Board: (1) remand the complaint; (2) dispose of the complaint by informal stipulation; or (3) appoint a hearing panel to conduct a formal or informal hearing. **Section 6** of this regulation provides that the Board will appoint a hearing panel made up of members of the Board when a review panel recommends a formal hearing. **Section 6** authorizes the hearing panel to request that the Board obtain the services of a hearing advisor to attend a formal hearing and advise the hearing panel. **Section 6** prescribes the required procedure for conducting a formal hearing and rendering a decision at the conclusion of the hearing. **Section 9** prohibits the disclosure of the results of an investigation or any related information to the hearing panel before the hearing.

Senate Bill No. 366 of the 2019 Legislative Session and Senate Bill No. 310 of the 2023 Legislative Session enacted provisions to authorize licensed dental therapists and licensed expanded function dental assistants, respectively, to practice in this State. (Chapter 532, Statutes of Nevada 2019, at page 3198; chapter 523, Statutes of Nevada 2023, at page 3403) **Section 7** adds references to those professions where appropriate in existing regulations designating certain acts to be unprofessional conduct. **Section 7** also: (1) removes certain acts which currently

constitute unprofessional conduct; and (2) provides that conduct relating solely to a dispute over finances does not constitute unprofessional conduct.

Existing regulations require that any hearing conducted pursuant to a delegation of authority by the Board be recorded and transcribed in permanent form by a shorthand reporter licensed to do business in this State. (NAC 631.255) **Section 10** of this regulation clarifies that this requirement applies to both formal and informal hearings.

Section 1. Chapter 631 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. 1. *Not later than 30 days after receiving a complaint filed pursuant to NAC 631.240, an attorney for the Board shall determine whether the Board has jurisdiction over the complaint and whether the allegations in the complaint warrant an investigation pursuant to NAC 631.250. If the attorney determines that:*

(a) The Board lacks jurisdiction over the complaint or the complaint does not set forth facts which, if proven, would constitute grounds for initiating disciplinary action, the attorney shall:

(1) Refer the complaint to the review panel appointed pursuant to NRS 631.3635, accompanied by a written recommendation to dismiss the complaint; and

(2) Provide to the review panel a copy of the complaint from which all personally identifiable information concerning the person who is the subject of the complaint has been redacted.

(b) The Board has jurisdiction over the complaint and the complaint sets forth facts which, if proven, would constitute grounds for initiating disciplinary action, the attorney shall refer the complaint to the Executive Director for the appointment of an investigator pursuant to NAC 631.250. The referred complaint must be accompanied by written notice of the decision of the attorney.

2. Any written recommendation pursuant to subsection 1 must include an attestation by the attorney for the Board that the attorney:

(a) Has not communicated with any person concerning the subject matter of the complaint; and

(b) Has not been unduly influenced in his or her decision concerning the complaint.

3. Not later than 45 days after receiving a recommendation to dismiss a complaint from an attorney for the Board pursuant to paragraph (a) of subsection 1, a review panel shall:

(a) Reject the recommendation and refer the complaint to the Executive Director for the appointment of an investigator pursuant to NAC 631.250, accompanied by written notice of the decision; or

(b) Accept the recommendation and dismiss the complaint.

4. Any determination made pursuant to subsection 3 must include an attestation by each member of the review panel that the member:

(a) Has no knowledge of the identity of the person who is the subject of the complaint;

(b) Has not communicated with any person concerning the subject matter of the complaint; and

(c) Has not been unduly influenced in his or her decision concerning the complaint.

Sec. 3. 1. If the Board receives information that leads the Executive Director and an attorney for the Board to conclude that a licensee may have engaged in conduct that is grounds for disciplinary action pursuant to NRS 631.350, the Executive Director and attorney for the Board may submit to the Board a written recommendation that the Board initiate an investigation upon its own motion. Such a written recommendation must:

(a) List each allegation that constitutes grounds for disciplinary action pursuant to NRS 631.350;

(b) Provide evidence for each such allegation, which may include, without limitation, statements of witnesses, public or private records, audio or visual recordings, documents, exhibits or other evidence;

(c) Redact any personally identifiable information of the person who is the subject of the recommendation; and

(d) Be accompanied by an attestation from the Executive Director and the attorney for the Board that the Executive Director and the attorney:

(1) Are aware of the identity of the person who is the subject of the recommendation; and

(2) Will not disclose the identity of the person to:

(I) Any screening consultant appointed pursuant to section 4 of this regulation; or

(II) The review panel appointed pursuant to NRS 631.3635 or any member thereof.

2. If the Board determines, upon receiving a recommendation to initiate an investigation upon its own motion pursuant to subsection 1, that:

(a) The Board lacks jurisdiction over the matter or the recommendation does not set forth facts which, if proven, would constitute grounds for initiating disciplinary action, the Board will reject the recommendation without prejudice.

(b) The Board has jurisdiction over the matter and the recommendation sets forth facts which, if proven, would constitute grounds for initiating disciplinary action, the Board will initiate a complaint and refer the complaint to the Executive Director for the appointment of an investigator pursuant to NAC 631.250.

3. A referral of a complaint to the Executive Director pursuant to paragraph (b) of subsection 2 must:

(a) List each allegation that constitutes grounds for disciplinary action pursuant to NRS 631.350; and

(b) Provide evidence for each such allegation, which may include, without limitation, statements of witnesses, public or private records, audio or visual recordings, documents, exhibits or other evidence.

Sec. 4. 1. The Board may retain a screening consultant to evaluate a complaint for which an investigator has been appointed pursuant to NAC 631.250. A screening consultant must:

(a) If the person who is the subject of the complaint is:

(1) A dentist, have been licensed as a dentist in this State and have actively practiced in this State in the same specialty as the person who is the subject of the complaint for at least 5 years;

(2) A dental therapist, have been licensed as a dentist or dental therapist in this State and have actively practiced in this State for at least 5 years;

(3) A dental hygienist, have been licensed as a dentist, dental therapist or dental hygienist in this State and have actively practiced in this State for at least 5 years; or

(4) An expanded function dental assistant, have been licensed as a dentist, dental therapist or expanded function dental assistant in this State and have actively practiced in this State for at least 5 years;

(b) Not have received any disciplinary action from the Board in the immediately preceding 10 years; and

(c) Have expertise in the subject area of the complaint.

2. In addition to the screening consultant retained pursuant to subsection 1, the Board may, upon the written request of the Executive Director, retain additional dental experts to evaluate a complaint. Each such dental expert must:

(a) Have been licensed as a dentist, dental therapist, dental hygienist or expanded function dental assistant and:

(1) Be actively practicing in this State; or

(2) Have actively practiced in another jurisdiction of the United States for at least 5 years; and

(b) Have not received any disciplinary action in the immediately preceding 10 years.

3. If a request is made pursuant to subsection 2 to retain a dental expert who is not actively practicing in this State, the request must include, without limitation, the reasons for retaining an expert who is not actively practicing in this State.

4. An investigator shall provide to each screening consultant retained pursuant to subsection 1 and each dental expert retained pursuant to subsection 2 copies of:

(a) The complaint; and

(b) Any patient records, written responses to the complaint or other information relating to the complaint received pursuant to NAC 631.250.

5. The investigator shall redact all personally identifiable information concerning the person who is the subject of the complaint from the documents described in subsection 4 before providing the documents to the screening consultant or dental expert, as applicable.

6. *Except as otherwise provided in subsection 7, not later than 45 days after receiving documentation pursuant to subsection 4, a screening consultant or dental expert shall provide to the investigator:*

(a) The written opinion of the screening consultant or dental expert, as applicable, concerning whether the person who is the subject of the complaint has engaged in conduct that constitutes grounds for disciplinary action pursuant to NRS 631.350. The opinion must set forth the evidence supporting each ground for such disciplinary action.

(b) An attestation by the screening consultant or dental expert, as applicable, that the screening consultant or dental expert:

(1) Has no knowledge of the identity of the person who is the subject of the complaint;

(2) Has not communicated with any person concerning the allegations or relevant conduct in the complaint; and

(3) Has not been unduly influenced in his or her decision concerning the complaint.

7. *The Executive Director or the attorney for the Board responsible for the investigation of a complaint may grant a reasonable extension to the time prescribed in subsection 6 for a screening consultant or dental expert to provide an opinion and attestation.*

8. *Upon receiving an opinion provided pursuant to subsection 6, the investigator shall provide to the person who is the subject of the complaint a copy of the opinion. That person shall respond to the opinion not later than 30 days after receiving the copy of the opinion.*

Sec. 5. 1. *After the conclusion of any investigation performed or informal hearing held pursuant to NRS 631.363, the investigator shall forward to the review panel appointed pursuant to NRS 631.3635:*

(a) A copy of the complaint;

(b) Copies of the patient records and any written response or other information received pursuant to NAC 631.250;

(c) Copies of any other information relating to the complaint collected by the investigator or the Board;

(d) Copies of any determinations of the investigator concerning the complaint; and

(e) A copy of each written opinion rendered by a screening consultant or dental expert pursuant to section 4 of this regulation.

2. The investigator shall redact all personally identifiable information concerning the person who is the subject of the complaint from any documents described in subsection 1 before providing the documents to the review panel.

3. When conducting a review of an investigation or informal hearing, a review panel may request additional information from any screening consultant or dental expert retained pursuant to section 4 of this regulation, the investigator or the person who is the subject of the complaint. The screening consultant, dental expert, investigator or person who is the subject of the complaint, as applicable, shall respond not later than 60 days after receiving the request.

4. When conducting a review pursuant to NRS 631.3635 of an investigation and any informal hearing, a review panel shall consider:

(a) All information provided to the review panel pursuant to subsections 1 and 3; and

(b) Any other information deemed relevant by the review panel.

5. After conducting a review pursuant to NRS 631.3635, the review panel shall make a recommendation to the Board. The review panel may recommend that the Board:

(a) Remand the complaint;

(b) Dispose of the complaint by informal stipulation;

(c) Appoint a hearing panel to hold an informal hearing pursuant to NRS 631.363; or

(d) Appoint a hearing panel to hold a formal hearing.

Sec. 6. 1. *The Board will delegate to a hearing panel the authority to take dispositive action on each complaint for which a review panel has recommended a formal hearing pursuant to section 5 of this regulation. Each hearing panel must consist of three members of the Board. The Board will designate one member of the hearing panel to serve as Chair of the hearing panel.*

2. A hearing panel may request that the Board obtain the services of a hearing advisor to attend a formal hearing and advise the hearing panel on matters relating to the hearing, including, without limitation, the admissibility of evidence and decisions regarding motions. If the hearing panel requests the advice of the hearing advisor concerning the findings of fact and conclusions of law resulting from a formal hearing, the hearing advisor shall provide such advice not later than 30 days after the conclusion of the hearing.

3. Before taking dispositive action on a complaint, a hearing panel shall review and consider the findings and recommendation made by the review panel pursuant to section 5 of this regulation.

4. Each member of a hearing panel has one vote on the disposition of a complaint. The decision of the hearing panel must be approved by a majority vote of the hearing panel. Not later than 45 days after the conclusion of a hearing, the hearing panel shall issue its findings of fact and conclusions of law. The findings of fact and conclusions of law must be signed by each member of the hearing panel. A hearing panel is not required to issue findings of fact or conclusions of law in matters for which the hearing panel does not conduct a formal hearing.

5. Failure to take any action in a time period prescribed by this section is not grounds for dismissal of a complaint.

6. A hearing panel may not order a person who is not the subject of a complaint to reimburse a patient pursuant to paragraph (l) of subsection 1 of NRS 631.350.

Sec. 7. NAC 631.230 is hereby amended to read as follows:

631.230 1. In addition to those specified by statute and subsection 3 of NAC 631.177, the following acts constitute unprofessional conduct:

- (a) The falsification of records of health care or medical records.
- (b) Writing prescriptions for controlled substances in such excessive amounts as to constitute a departure from prevailing standards of acceptable dental practice.
- (c) ~~The consistent use of dental procedures, services or treatments which constitute a departure from prevailing standards of acceptable dental practice even though the use does not constitute malpractice or gross malpractice.~~
- ~~(d)~~ (d) The acquisition of any controlled substances from any pharmacy or other source by misrepresentation, fraud, deception or subterfuge.
- ~~(e) Making an unreasonable additional charge for laboratory tests, radiology services or other testing services which are ordered by the dentist and performed outside his or her own office.~~
- ~~(f)~~ (d) The failure to report to the Board as required in NAC 631.155 . ~~for to sign any affidavit required by the Board.~~
- ~~(g)~~ (e) Employing any person in violation of NAC 631.260 or failing to ~~report to the Board as~~ *make the attestation* required by that section.

~~(h)~~ (f) The failure of a dentist who is administering or directly supervising the administration of general anesthesia, deep sedation or moderate sedation to be physically present while a patient is under general anesthesia, deep sedation or moderate sedation.

~~(h)~~ (g) Administering moderate sedation to more than one patient at a time, unless each patient is directly supervised by a person authorized by the Board to administer moderate sedation.

~~(h)~~ (h) Administering general anesthesia or deep sedation to more than one patient at a time.

~~(k)~~ (i) The failure to have any patient who is undergoing general anesthesia, deep sedation or moderate sedation monitored with a pulse oximeter or similar equipment required by the Board.

~~(h)~~ (j) Allowing a person who is not certified in basic cardiopulmonary resuscitation to care for any patient who is undergoing general anesthesia, deep sedation or moderate sedation.

~~(m)~~ (k) The failure to obtain a patient's written, informed consent before administering general anesthesia, deep sedation or moderate sedation to the patient or, if the patient is a minor, the failure to obtain his or her parent's or guardian's consent unless the dentist determines that an emergency situation exists in which delaying the procedure to obtain the consent would likely cause permanent injury to the patient.

~~(n)~~ (l) The failure to maintain a record of all written, informed consents given for the administration of general anesthesia, deep sedation or moderate sedation.

~~(o)~~ (m) The failure to report to the Board, in writing, the death or emergency hospitalization of any patient to whom general anesthesia, deep sedation or moderate sedation was administered. The report must be made within 30 days after the event.

~~(n)~~ (n) Allowing a person to administer general anesthesia, deep sedation or moderate sedation to a patient if the person does not hold a permit to administer such anesthesia or sedation unless the anesthesia or sedation is administered in a facility for which a permit is held as required by NRS 449.442.

~~(o)~~ (o) The failure of a dentist who owns a dental practice to provide copies of the records of a patient to a dentist ~~(o)~~, *dental therapist*, dental hygienist *or expanded function dental assistant* who provided the services as an employee or independent contractor of the dentist when the records are the basis of a complaint before the Board. Nothing in this paragraph relieves the treating dentist ~~(o)~~, *dental therapist*, dental hygienist *or expanded function dental assistant* from the obligation to provide records of the patient to the Board.

~~(p)~~ (p) The failure of a dentist who owns a dental practice to verify the license of a dentist ~~(o)~~, *dental therapist*, dental hygienist *or expanded function dental assistant* before offering employment or contracting for services with the dentist ~~(o)~~, *dental therapist*, dental hygienist *or expanded function dental assistant* as an independent contractor.

~~(s)~~ The failure of a dentist who owns a dental practice and participates in the diagnosis and treatment of any patient to ensure that the services rendered by a dentist or dental hygienist who is an employee or independent contractor of that dentist meet the prevailing standards of acceptable dental practice. If a dentist or dental hygienist who is an employee or independent contractor of the dentist is found by substantial evidence to have provided services below the prevailing standards of acceptable dental practice, the dentist who owns the dental practice may be required to reimburse the patient to whom the services were provided pursuant to paragraph ~~(l)~~ of subsection 1 of NRS 631.350.

~~(t)~~ *This paragraph must not be construed to provide that it is unprofessional conduct for a dentist who owns a dental practice to offer employment to, or enter into a contract for services with, a dentist, dental therapist, dental hygienist or expanded function dental assistant who fraudulently misrepresents that he or she is appropriately licensed.*

(q) The failure ~~[of a dentist who owns a dental practice]~~ to record the name of the dentist ~~[or]~~ , *dental therapist*, dental hygienist *or expanded function dental assistant* who provided the services in the records of a patient each time the services are rendered.

~~(u)~~ (r) The failure of a dentist who is registered to dispense controlled substances with the State Board of Pharmacy pursuant to chapter 453 of NRS to conduct annually a minimum of one self-query regarding the issuance of controlled substances through the Prescription Monitoring Program of the State Board of Pharmacy.

(s) *The failure to provide records of a patient to an investigator when required by NAC 631.250.*

2. ~~[For purposes of NRS 631.347, a plan or practice requiring a patient to select a dentist from a specific group does not provide the patient with a reasonable opportunity to select a dentist of his or her own choice, and constitutes unprofessional conduct on the part of any dentist participating in such a plan or practice, unless it, or another plan concurrently available to the patient, allows the patient to:~~

~~—(a) Have an annual opportunity, lasting for a minimum of 30 days, to select a dentist of his or her own choice for all dental work to be performed during the subsequent 12 months. Any new patient added to the plan or practice must immediately be given an initial opportunity, lasting at least 30 days, to select the coverage supplied by the plan or practice or a dentist of his or her own choice.~~

~~—(b) Receive the allowance for a procedure performed by a dentist of his or her own choice in substantially the same amount as he or she would if he or she used the services of one of the group of dentists specified by the plan or practice.~~ *Conduct relating solely to a dispute over finances does not constitute unprofessional conduct.*

Sec. 8. NAC 631.240 is hereby amended to read as follows:

631.240 1. Any aggrieved person may file a complaint with the Board against a ~~licensee.~~ *person who practices dentistry, dental hygiene, dental therapy or expanded function dental assistance in this State. The Board will prescribe the form for filing the complaint and make the form available on an Internet website maintained by the Board.* The complaint must:

- (a) Be ~~written.~~ *submitted on the form prescribed by the Board;*
- (b) ~~Be signed and verified.~~ *Unless the complaint is submitted anonymously, contain an attestation under oath by the complainant; ~~and~~*
- (c) ~~Contain specific charges.~~ *Provide evidence for each allegation; and*
- (d) *If the complainant is a patient, include authorization for the disclosure of the patient's health information to the Board and the use of that information in the investigation of and proceedings based on the complaint.*

2. ~~The Board will send a notice and a copy of the complaint to the licensee. The licensee must file a response to the complaint within 15 days after receiving the notice and copy of the complaint.~~ *Upon receiving a complaint from an aggrieved person pursuant to subsection 1, the Board will submit a copy of the complaint, which may have the personally identifiable information concerning the person who is the subject of the complaint redacted, to an attorney for the Board for a determination pursuant to section 2 of this regulation.*

3. *A complainant may withdraw a complaint:*

(a) At any time before a screening consultant is retained to evaluate the complaint pursuant to section 4 of this regulation; or

(b) With the permission of the Board, at any other time.

Sec. 9. NAC 631.250 is hereby amended to read as follows:

631.250 1. If ~~[the Board conducts an investigation upon a complaint against a licensee, the]~~ *a complaint is referred to the Executive Director for the appointment of an investigator pursuant to section 2 or 3 of this regulation, the Executive Director shall appoint an investigator. An investigator appointed pursuant to this subsection is an agent of the Board.*

2. Upon the appointment of an investigator pursuant to subsection 1, the investigator shall notify the person who is the subject of the complaint of the investigation by certified mail with return receipt requested and electronic mail. The notice must include, without limitation:

(a) A copy of the complaint; and

(b) An attestation from the Executive Director and the investigator that the Executive Director and the investigator:

(1) Are aware of the identity of the person who is the subject of the complaint; and

(2) Will not disclose the identity of the person to:

(I) The screening consultant appointed pursuant to section 4 of this regulation; or

(II) The review panel appointed pursuant to NRS 631.3635 or any member thereof.

3. The Board and the investigator will ~~[not]~~ limit the scope of ~~[its]~~ the investigation to the matters set forth in the complaint. ~~[but will extend the investigation to any additional matters which appear to constitute a violation of any provision of chapter 631 of NRS or of this chapter.~~

~~—2.]~~ *4. A person who receives notification pursuant to subsection 2 that he or she is the subject of an investigation:*

(a) Except as otherwise provided in this paragraph, shall, not later than 30 days after receiving the notice, provide to the investigator all records concerning any patient to whom the investigation pertains for the 5 years immediately preceding the date of the complaint. The Executive Director may grant reasonable requests from a person who is the subject of an investigation to extend the time period prescribed by this paragraph.

(b) May provide to the investigator a written response to the complaint and any other information that the person determines may be useful in investigating the complaint.

5. If, after its investigation, the Board ~~{dismisses}~~ *determines that the person who is the subject of* the complaint ~~{, the dismissal does not operate as a limitation on or a detriment to any subsequent investigation or other action by}~~ *has not engaged in conduct that is grounds for disciplinary action pursuant to NRS 631.350, the Board* ~~{~~ *—3.}* *will remand the complaint. The allegations in the complaint must not be used in any subsequent complaint or investigation unless the Board receives additional information from the complainant that is relevant to the complaint.*

6. Whenever the Board directs that an investigation be conducted into a disciplinary matter, the results of the investigation or any information relating to the investigation will not be examined by and must not be disclosed to, the members of the ~~{Board}~~ *hearing panel appointed pursuant to section 6 of this regulation* before the ~~{Board's}~~ hearing on the matter.

Sec. 10. NAC 631.255 is hereby amended to read as follows:

631.255 If the Board has delegated its responsibility pursuant to the provisions of subsection 3 of NRS 631.350 or NRS 631.363, the *formal or informal* hearing conducted as a result of that delegation of authority must be recorded and transcribed in permanent form by a shorthand reporter licensed to do business in this State.

