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March 13, 2002

Lorne J. Malkiewich, Director
State of Nevada
Legislative Counsel Bureau
401 S. Carson Street
Carson City, Nevada 89701-4747

**Re: Nevada State Board of Dental Examiners
Reports of Disciplinary Action Taken**

Mr. Malkiewich:

Our firm represents the interest of the Nevada State Board of Dental Examiners. I am in receipt of your correspondence dated March 7, 2002 regarding the Board's compliance with NRS 622.100.

During the course of the year, the Board's staff, as well as our firm, handles thousands of inquiries and complaints from patients. In order to better understand the Board's procedure for handling complaints, below is an overview of how these inquiries and complaints are processed.

The disciplinary process usually begins with a telephone communication and/or a letter of complaint. These complaints are first handled by the Board's executive director. The Board's executive director then assigns those complaints to a disciplinary screening officers.

Upon review of the complaints by the respective disciplinary screening officers, herein referred to as DSO's, the DSO determines whether to request the complainant file a verified complaint. Sometimes a complaint filed by the complainant is verified from its inception.

NRS 631.360(1) states:

"1. The Board may, upon its own motion, and shall, upon verified complaint in writing of any person setting forth facts which, if proven, would constitute grounds for refusal, suspension or revocation of a license or certification under this chapter, investigate the actions of any persons holding a certificate."

Unless a complaint has been verified a DSO may only contact the complainant and the licensee. Without verification the DSO may not contact third parties. Upon verification of the Complaint the DSO may contact third parties (i.e. witnesses, experts, subpoena records) to determine whether there have been any violations of either NRS 631 or NAC 631. It should be noted pursuant to NRS 631.360(1) the Board may, on its own motion, authorize an investigation. Such investigations usually result from anonymous information which in turn the Board, by motion, must authorize an investigation. Once the complaint is verified it is forwarded to the licensee for response. Pursuant to NAC 631.240(2), a licensee must file a response within 15 days after he receives notice and a copy of the complaint. Upon review of the complaint, answer and conducting a preliminary investigation the DSO has three (3) options.

1. He may remand the matter to the file. In such cases the complainant and licensee are usually informed that although the DSO has remanded the matter to the file in the event there are any complaints in the future the matters remanded may be reviewed in any future disciplinary actions. It should be noted, the remand can be done with or without conditions. Pursuant to NRS 631.368, letters of remand are not a public record nor are they reportable to the National Practitioners Data Bank.

2. He may enter into a stipulation with the licensee. Usually, stipulations are entered into wherein the licensee has had prior letters of remand, therefore warranting additional remedial action. Stipulations are submitted to the Board for approval. The stipulations are a public record and the actions taken, pursuant to the stipulation, may or may not be reportable to the National Practitioners Data Bank. The benefit of a stipulation versus proceeding to an informal hearing, as described below, is with a stipulation there is no transcript regarding the testimony given by the licensee during the course of an informal hearing. In addition, by entering into a stipulation, any

further costs, which are usually assessed to the licensee, in the event the DSO finds there has been a violation of any provision of the Dental Practice Act, are minimized.

3. He may request an informal hearing officer is assigned to the matter. The current Board policy is the DSO handling the initial review is assigned as the informal hearing officer. The assignment of an informal hearing officer is authorized pursuant to NRS 631.363 which states:

"1. The Board may appoint one of its members and any of its employees, investigators or other agents to conduct an investigation and informal hearing concerning any practice by a person constituting a violation of the provisions of this chapter or the regulations of the Board."

After further investigation the informal hearing officer has two (2) options.

1. He again may remand the matter to the files with or without conditions. The remand usually will inform the licensee and the complainant that although no further actions shall be taken by the Board in the event any future complaints are lodged the remanded action may be reviewed in determining future disciplinary action.

2. The DSO/informal hearing officer may request the licensee appear for an informal hearing. Pursuant to NRS 631.363 the licensee shall be given at least ten (10) notice before the setting of an informal hearing. The informal hearing pursuant to NAC 631.255 must be transcribed in permanent form by a shorthand reporter licensed to do business in Nevada. A licensee may choose to appear with or without counsel. The informal hearing officer, Board Counsel, licensee and counsel for the licensee and the court reporter are usually the only individuals present at the informal hearing. In the event the licensee chooses not to appear at the informal hearing findings and recommendations are prepared by the DSO/Informal Hearing Officer and submitted to the Board for consideration. Thereafter, the Board, after receiving the report of the DSO/Informal Hearing Officer, may set the matter for a full Board hearing to consider whether or not to implement the findings and recommendations submitted by the

DSO/Informal Hearing Officer. At the full Board hearing the complainant, licensee, witnesses and experts may give testimony for both sides.

At the conclusion of the informal hearing the informal officer has three (3) options.

1. To remand the matter to the file as previously described above.
2. Remand the matter to the file with a finding there were no violations of either NRS 631 or NAC 631.
3. Pursuant to NRS 631.363(3), the informal hearing officer may issue findings regarding violations in either NRS 631 and/or NAC 631. Upon the finding of a violation of either NRS 631 or NAC 631 the informal hearing officer then makes recommendations as to the appropriate discipline for the identified violations. The findings and recommendations are reduced to writing.

In the event the informal hearing officer issues written Findings & Recommendations pursuant to NRS 631.363(5) the licensee who is investigated may consent to the Findings & Recommendations of the informal hearing officer.

If the licensee chooses not to consent to the findings and recommendation the prosecutor for the Board may file a formal complaint with the Board based upon those findings and recommendations requesting a full Board Hearing.

If the licensee consents to the Findings & Recommendations the Board at its option may adopt the consented to Findings & Recommendations as its final order without conducting a full Board hearing on the matter.

If the Board either refuses to adopt the consented to Findings & Recommendations or if the licensee chooses not to consent to the Findings & Recommendations a formal complaint may be filed by the prosecutor requesting a full Board hearing. In the event there is a full Board hearing pursuant to NRS 631.363(4), the informal hearing

officer shall not participate in the full Board hearing conducted by the Board. However, the Board may consider the Findings & Recommendations of the informal hearing officer. A copy of the Findings & Recommendations must be sent to the licensee being investigated pursuant to NRS 631.363(3). At the conclusion of the full Board hearing the Board may impose discipline, if any, pursuant to NRS 631.350. The disciplinary options available to the Board run the gamut from public reprimand to revocation.

Once a final decision is rendered by the Board pursuant to NRS 233B.130 a licensee may petition the District Court for judicial review. The petition for judicial review must be filed within 30 days after service of final decision of the Board. A licensee may also request a rehearing within 15 days of the date after service of the final decision. Pursuant to NRS 233B.130(4), an order granting or denying the petition for rehearing must be served at least 5 days before expiration of the time for the filing of a petition for judicial review.

Judicial review, pursuant to NRS 233B.135, of a final decision of the Board must be conducted by a Court without a jury and confined to the record. The District Court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The District Court may remand or affirm a final decision of the Board or set it aside in whole or in part if substantial rights of the licensee have been prejudiced because of a final decision of the Board.

The burden of proof is upon the licensee to prove the Board's final decision was based on one of the following grounds:

- a. In violation of constitution or statutory provisions;
- b. In excess of the statutory authority of the Board.
- c. Made upon unlawful procedure;
- d. Affected by other error of law;
- c. Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

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- f. Arbitrary or capricious or characterized by abuse of discretion.

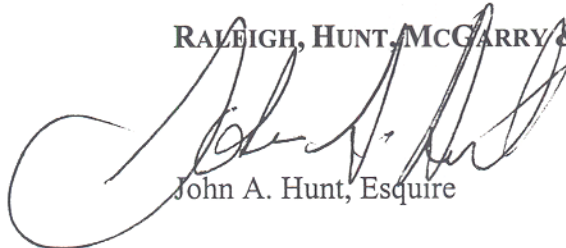
Finally, the Board or the licensee subsequent to the District Court's ruling may appeal the decision to the Nevada Supreme Court.

Having given you an overview of how inquiries and complaints are handled by the Board, please find enclosed copies of the formal actions taken by the Board during the calendar years 2000 and 2001.

Please also be advised, although no formal action is taken on all complaints, patient concerns are always reviewed. If a complaint is reviewed and remanded to the files in the event there are any future complaints those past complaints may be taken into consideration in any future disciplinary action.

I hope the information enclosed is sufficient. If it is not, please do not hesitate to call.

RALEIGH, HUNT, MCGARRY & DRIZIN, P.C.



John A. Hunt, Esquire

JAH:jmb
encl.

cc: William J. Busch, Acting Executive Director

NEVADA STATE BOARD OF DENTAL EXAMINERS
STIPULATIONS & FINDINGS AND RECOMMENDATIONS

	<u>NAME</u>	<u>DATE OF STIPULATION</u>
1.	Sidney Adams, D.D.S.	06/11/00
2.	Alfred E. Bishop, D.D.S.	06/07/01
3.	L. Scott Brooksby, D.D.S.	01/18/01
4.	Myra Jill Conlon Pressell, R.D.H.	01/19/02
5.	Christopher D. Davenport, R.D.H.	12/08/01
6.	Calvin R. Dykes, D.D.S.	06/19/00
7.	Joseph J. Eberle, D.D.S.	06/01/00
8.	Gregory G. Edwards, D.D.S.	10/15/00
9.	Harry C. Fry, D.D.S.	10/15/00
10.	Thomas R. Gonzales, D.D.S.	06/01/01
11.	Marc S. Hascheff, D.D.S.	12/08/01
12.	Lawrence Heward, D.D.S.	05/18/00
13.	Lisa A. Hogan, D.D.S.	07/02/01
14.	Duff Kaster, D.D.S.	06/01/00 06/14/01
15.	Arden V. Means, D.D.S.	01/19/02
16.	Myron S. Mickelson, D.D.S.	01/18/01
17.	Gary Radford	01/31/01

18. John Vennoch, D.M.D.

01/01/00

19. Keith O. Vowles, D.D.S.

11/29/00

10/08/01