

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

LCB FILE NO. R065-18I

**The following document is the initial draft regulation proposed
by the agency submitted on 04/03/2018**

Proposed Changes regarding NAC 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) The acquisition, *issuance, use or possession* 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) The failure to report to the Board as required in NAC 631.155 or to sign any affidavit required by the Board.
 - (g) Employing any person in violation of NAC 631.260 or failing to report to the Board as required by that section.
 - (h) The failure of a dentist who is administering or directly supervising the administration of general anesthesia, deep sedation or conscious sedation to be physically present while a patient is under general anesthesia, deep sedation or conscious sedation.

- (i) Administering conscious sedation to more than one patient at a time, unless each patient is directly supervised by a person authorized by the Board to administer conscious sedation.
- (j) Administering general anesthesia or deep sedation to more than one patient at a time.
- (k) The failure to have any patient who is undergoing general anesthesia, deep sedation or conscious sedation monitored with a pulse oximeter or similar equipment required by the Board.
- (l) Allowing a person who is not certified in basic cardiopulmonary resuscitation to care for any patient who is undergoing general anesthesia, deep sedation or conscious sedation.
- (m) The failure to obtain a patient's written, informed consent before administering general anesthesia, deep sedation or conscious 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) The failure to maintain a record of all written, informed consents given for the administration of general anesthesia, deep sedation or conscious sedation.
- (o) The failure to report to the Board, in writing, the death or emergency hospitalization of any patient to whom general anesthesia, deep sedation or conscious sedation was administered. The report must be made within 30 days after the event.
- (p) Allowing a person to administer general anesthesia, deep sedation or conscious 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.

- (1) In a facility approved by The Joint Commission; or
 - (2) By an anesthesiologist in an office for which a certificate of site approval has been issued.
- (q) The failure of a dentist who owns a dental practice to provide copies of the records of a patient to a dentist or dental hygienist 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 or dental hygienist from the obligation to provide records of the patient to the Board.
- (r) The failure of a dentist who owns a dental practice to verify the license of a dentist or dental hygienist before offering employment or contracting for services with the dentist or dental hygienist 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) The failure of a dentist who owns a dental practice to record the name of the dentist or dental hygienist who provided the services in the records of a patient each time the services are rendered.
- (u) 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]~~ *the required* self-query *(ies)* and/or patient inquiry *(ies)* regarding the issuance of controlled substances through the Prescription Monitoring Program of the State Board of Pharmacy *pursuant to*

chapter 453 of NRS and/or as required by section 60 of Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017.

- (v) *Fraudulent, illegal, unauthorized or otherwise inappropriate prescribing of a controlled substance listed in schedule II, III or IV as set forth in section 22 of Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017 and/or violations of the provisions of sections 52 to 58, inclusive, of Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017 and/or violation(s) of any regulations adopted by the State Board of Pharmacy pursuant to Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017.*

↪ If, following the investigation and disciplinary procedures conducted pursuant to the provisions of NRS Chapter 631 and NAC Chapter 631, it is determined, by a preponderance of the evidence, that a dentist has committed an act or acts constituting unprofessional conduct as set forth in NAC 631.230(1)(v), the Board shall impose disciplinary action including, but not limited to, required additional continuing education pursuant to NRS 631.350(1)(k). The Board or its agent or investigator may, in its discretion, take into consideration a dentist's good-faith attempts at compliance with the provisions of sections 52 to 58, inclusive of Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017 in the determination of whether the dentist has committed an act or acts constituting unprofessional conduct as set forth in NAC 631.230(1)(v).

Revised Proposed Changes regarding NAC 631.240

NAC 631.240 Complaints against licensees. (NRS 631.190)

1. Any aggrieved person may file a complaint with the Board against a licensee. The complaint must:
 - (a) Be written;
 - (b) Be signed and verified by the complainant *on a verification form furnished by the Board*; and
 - (c) Contain ~~[specific charges.]~~ *the complainant's allegations against the licensee.*

2. *The Board may authorize an investigation to be initiated. Upon authorization of such an investigation, the Executive Director of the Board shall:*

- (a) *Prepare and serve a Notice of Investigative Complaint upon the licensee which contains the allegations against the licensee; and,*
 - (b) *Sign and verify the complaint on behalf of the Board.*
3. *An investigative complaint initiated by Board authorization shall be subject to the same policies, procedures and regulations as are applied to a verified complaint initiated by a member of the public.*
- ~~2.4.~~ 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. *Extensions of time in which to file a response to the complaint will be at the discretion of the Executive Director and/or General Counsel of the Board.*
5. *Verification of the complaint filed pursuant to subsection 1 shall include the complainant's agreement to maintain the confidentiality of the investigation, including but not limited to, the verified complaint, the licensee's response and any information or documentation received or obtained by the complainant as a part of the investigation.*
6. *Failure of the complainant and/or complainant's agent or representative, to comply with subsection 5 shall result in the dismissal of the complaint filed pursuant to subsection 1.*

Proposed Changes regarding NAC 631.250

NAC 631.250 Investigation by Board. (NRS 631.190, 631.360, 631.363)

1. If the Board conducts an investigation upon a *verified complaint or authorized investigative* complaint against a licensee, the Board will not limit the scope of its 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. If, after its investigation, the Board dismisses the complaint, the dismissal does not operate as a limitation on or a detriment to any subsequent investigation or other action by the Board.
3. Whenever ~~the Board directs that~~ an investigation ~~be is~~ conducted into a disciplinary matter, ~~the results of the investigation with the exception of a formal charging document filed as the result of said investigation or stipulated agreement,~~ ~~or~~ any information relating to the investigation will not be examined by and must not be disclosed to, the members of the Board before the ~~Board's formal Board~~ hearing on the matter *conducted pursuant to NRS 631.360 or before a properly noticed Board meeting at which the stipulated agreement is to be considered by the Board for approval or rejection.*

4. *Failure of a complainant and/or complainant's agent or representative to adhere to the requirements of subsection 3 shall result in the dismissal of the complaint filed pursuant to NRS 631.360(1) and NAC 631.240(1).*
5. *Any action by a licensee and/or licensee's agent or representative resulting in the dissemination or public discussion of any complaint or investigation pertaining to that licensee and/or information or documentation related thereto, shall be deemed a waiver of the confidentiality of that licensee's complaint, investigation and/or information such that the Board and its agents will not be bound by the confidentiality provisions set forth in NRS 631.368(1) or subsection 3 of this section.*