

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

LCB FILE NO. R073-22I

**The following document is the initial draft regulation proposed
by the agency submitted on 05/26/2022**

DISCIPLINARY ACTION

NAC 631.230 Unprofessional conduct. (NRS 631.190, 631.346, 631.347, 631.350)

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 if~~ the use ~~does not~~ constitutes malpractice or gross malpractice.
- (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) 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 ~~attest report~~ attest 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 moderate sedation to be physically present while a patient is under general anesthesia, deep sedation or moderate sedation.
- (i) 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.
- (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 moderate 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 moderate sedation.
- (m) 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) The failure to maintain a record of all written, informed consents given for the administration of general anesthesia, deep sedation or moderate 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 moderate 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 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](#).

(q) The failure of a dentist who owns a dental practice to provide copies of the records of a patient to a dentist, [dental therapist](#), 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, [dental therapist](#), 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, [dental therapist](#), or dental hygienist before offering employment or contracting for services with the dentist, [dental therapist](#), or dental hygienist as an independent contractor [unless the employee or independent contractor fraudulently misrepresents credentials-](#)

~~(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, [dental therapist](#), 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 self-query regarding the issuance of controlled substances through the Prescription Monitoring Program of the State Board of Pharmacy.

~~(v) If the Board takes action pursuant to [NRS 631.350 \(l\)](#) the person required to reimburse is defined as the licensee subject to the action.~~

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.~~

~~[Bd. of Dental Exam'rs, § XXVII, eff. 7-21-82] — (NAC A 10-21-83; 7-30-84; 9-13-85; 9-16-85; 4-3-89; 11-28-90; R005-99, 9-7-2000; R023-06, 9-18-2006; R159-08, 4-23-2009; R020-14, 6-23-2014; R004-17, 5-16-2018)~~

NAC 631.235 “Insurer” defined for purposes of NRS 631.348. (NRS 631.190, 631.348) For the purposes of NRS 631.348, “insurer” includes any entity licensed or required to be licensed by the Commissioner of Insurance pursuant to title 57 of NRS, Medicare, Medicaid or any third party payor.

(Added to NAC by Bd. of Dental Exam'rs, eff. 7-30-84)

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 submitted on the public complaints form on the Nevada State Dental Examiners website written;~~

~~— (b) Be attested to signed and verified by the complainant ; and~~

~~— (c) Contain specific charges. Must qualify as violations of NRS 631 or NAC 631 which are listed specifically on the public complaints form.~~

~~2. The Board will send a notice and a copy of the complaint to the licensee. The licensee may must file a response to the complaint within 30 15 days after receiving the notice and copy of the complaint.~~

~~— [Bd. of Dental Exam'rs, § XVII, eff. 7 21 82] — (NAC A 4 3 89)~~

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1. A complaint filed by an aggrieved person must be:

(a) Attested under oath and filed on a form prescribed on the Board website.

(b) Submitted with sufficient evidence to support the allegations in order to make a determination of whether the Board has jurisdiction in the matter and whether there is sufficient evidence to support the allegation of a violation. The complaint form shall list each violation of unprofessional conduct under Chapter 631. The complainant shall indicate on the complaint form, the specific violation that correlates with the allegation and shall provide sufficient evidence to support the allegation of the violation. Allegations involving financial disputes do not qualify as violations of professional misconduct. The complaint form shall contain the authorization for use/disclosure of protected health information of the complainant.

(c) The complaint form shall be redacted of any information identifying the accused person before it is reviewed for jurisdiction by the Board counsel.

(d) Upon receipt of a complaint filed pursuant to paragraph (a), (b) and (c) the Board Counsel shall make a determination whether to accept jurisdiction in the matter and whether the evidence submitted with the complaint is sufficient to warrant an investigation pursuant to NRS 631.360 in the matter. This determination shall be made within 30 days after receiving the redacted complaint. Board counsel shall attest on the document for the determination:

- (i) have no knowledge of the identity of the accused person and
- (ii) had no communication with any person with regard to the subject matter of the complaint
- (iii) have not been unduly influenced in making the determination

(e) If the Board Counsel determines the Board does not have jurisdiction in the matter or the complainant fails to submit sufficient evidence in the matter, the redacted complaint will be referred to the Review Panel with a recommendation to dismiss the complaint. Upon receiving a recommendation from the Board counsel, the Review Panel will within 45 days:

- (i) reject the recommendation without prejudice and instruct the Executive Director to assign the matter to a Nevada licensed investigator; or
- (ii) accept the recommendation and recommend the Board dismiss the redacted complaint. The Board counsel's recommendation shall be presented, with the redacted complaint, to the Board for dismissal.

(f) Each member of the Review Panel shall attest on the document of their recommendation:

- (i) have no knowledge of the identity of the accused person; and
- (ii) had no communication with any person with regard to the subject matter of the complaint
- (iii) have not been unduly influenced in making the recommendation

(g) If the Board receives a recommendation of the Review Panel to dismiss the redacted complaint the Board will within 60 days:

- (i) reject the recommendation without prejudice and instruct the Executive Director to assign the matter to a Nevada licensed investigator; or
- (ii) accept the recommendation and dismiss the complaint.
- (iii) the Executive Director shall, in writing, obtain the identity of the licensee and notify the complainant and the accused person of the dismissal within ten days.

(h) If the Board counsel determines that the Board has jurisdiction in the matter to investigate all or a portion of the complaint, the Executive Director shall assign the redacted complaint to a Nevada licensed investigator. The Executive Director shall notify the licensee that the matter has been forwarded to a Nevada licensed investigator.

(i)The Executive Director and the Nevada licensed investigator shall attest on the notice of complaint that they:

- (i) have knowledge of the identity of the accused person; and
- (ii) will maintain the identity of the accused person confidential from the Board Dental Expert and the Review Panel.

NAC 631 Authorized Board Investigation upon its own motion:

1. If the Board receives information that leads the Executive Director and Board counsel to reasonably conclude that a licensee may have committed a violation under the jurisdiction of chapter 631, the Executive Director and Board counsel may make a recommendation to the Board that the Board initiate a complaint upon its own motion.

2. A recommendation from the Executive Director and Board counsel pursuant to subsection 1 must:

- (a) contain a written statement setting forth the information that supports the recommendation; and

- (b) list the specific violation of unprofessional conduct under Chapter 631.
- (c) Include any reliable and competent form of proof, including, without limitation, statements of witnesses, public or private records, audio or visual recordings, documents, exhibits, concrete objects or another form of proof, that supports the recommendation.
- (d) redact the identifying information of the accused person

3. The Executive Director and the Board counsel shall attest on the recommendation of the authorized investigation that they:

- (i) have knowledge of the identity of the accused person; and
- (ii) will maintain the identity of the accused person confidential from the Board Dental Expert and the Review Panel.

4. Upon receiving a recommendation from the Executive Director and General Counsel pursuant to subsection 1, the Board will:

- (a) Reject the recommendation without prejudice; or
- (b) Accept the recommendation and initiate a notice of complaint upon its own motion pursuant to NRS 631.360

Such a motion shall:

- (1) be a determination by the Board that it has jurisdiction in the matter and the evidence is sufficient to warrant an investigation in the matter; and
- (2) will direct the Executive Director to investigate the complaint as required pursuant to NRS 631.360

5. The notice of complaint shall contain:

- (a) contain a written statement setting forth the information that supports the recommendation; and
- (b) list the specific violation of unprofessional conduct under Chapter 631; and
- (c) Include any reliable and competent form of proof, including, without limitation, statements of witnesses, public or private records, audio or visual recordings, documents, exhibits, concrete objects or another form of proof, that supports the recommendation.

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

1. If the Board conducts an investigation upon a complaint against a licensee, the Board will ~~not~~ limit the scope of its investigation to the matters set forth in the public complaints form and but will not extend the investigation to any additional matters beyond the complaint, which appear to constitute a violation of any provision of chapter 631 of NRS or of this chapter.

2. If, the investigation deems that there is no violation of NRS 631 or NAC 631~~after its investigation~~, the Board shall dismisses the complaint. The complaint shall not be remanded over the licensee to be used in the dismissal does not operate as a limitation on or a detriment to any subsequent complaints or investigations or other action by the Board unless the Board receives additional information from the complainant relevant to that complaint.

3. 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 disciplinary committee of the Board before the Board's hearing on the matter.

[Bd. of Dental Exam'rs, § XVIII, eff. 7-21-82]

4. The Nevada licensed investigator shall forward the notice of complaint to the accused person to the addresses on file at the Board via ~~certified~~ registered U.S. Mail and electronic mail.

5. The accused person shall have thirty (30) days upon receipt of the notice of complaint to provide all records for the patient within the past 5 years.

6. The Executive Director may grant reasonable requests for extensions as needed by the licensee.

7. Failure to provide requested records pertaining to the notice of complaint may be deemed unprofessional conduct pursuant to NAC 631.230.

NAC 631... Assignment of matter to Board Dental Expert

1. Upon receipt of the records and/or written response including any expert opinions from the accused person the Nevada licensed investigator shall redact any identifying information of the accused person from the records and response and forward to a Board Dental Expert.

2. The Board shall retain a Board Dental Expert to review the redacted complaint and records. The complaint and the dental records shall be redacted of any identifying information about the accused person.

3. A Board Dental Expert shall be licensed dental professionals with no board action within the past ten years and a minimum of 5 years actively practicing in Nevada. Redacted complaints against licensed dentists or specialists shall be sent to Board Dental Expert dentists or specialists. Redacted complaints against dental therapists shall be sent to Board Dental Expert dentists or Board Dental Expert dental therapists. Redacted complaints against registered dental hygienists shall be sent to Board Dental Expert dentists, Board Dental Expert dental therapists or Board Dental Expert registered dental hygienists. Redacted complaints shall be assigned to Board Dental Expert's with expertise in the relevant subject matter of the complaint.

4. The Board Dental Expert shall include in their expert opinion and attest to the Nevada licensed investigator within 45 days of receipt of the records:

- (a) whether there was a breach of the standard of care under Chapter 631; and
- (b) provide sufficient evidence that supports the specific violation which correlates with the allegation
- (c) have no knowledge of the identity of the accused person and

(d) had no communication with any person with regard to the subject matter of the complaint

(e) have not been unduly influenced in making the determination

5. The Executive Director may grant reasonable extensions to the Board Dental Expert as needed to

complete the expert opinion.

6. The Board Dental Expert's opinion shall be deemed confidential, except from the licensee,

pursuant to NRS 631.368.

7. The Board may retain other expert opinions from dental professionals who have experienced no board action within the past ten years and a minimum of 5 years actively practicing outside the state of Nevada. The Executive Director must submit, in writing, a reasonable reason for using an out of state Board Dental Expert.

8. The Nevada licensed investigator shall forward a copy of the Board Dental Expert opinion to the accused person within 15 days of receipt of the opinion.

9. The accused person shall have thirty (30) days upon receipt of the Board Dental Expert opinion to provide a written response including any expert opinions.

10. A complainant may withdraw their complaint:

(a) at any time before the Nevada licensed investigator forwards the matter to the Board Dental Expert; or

(b) With the consent of the Board, after the Nevada licensed investigator forwards the matter to the Board Dental Expert.

NAC 631..... Assignment of file to Review Panel

1. Pursuant to NRS 631.3635, the Nevada licensed investigator shall forward the redacted complaint, Board Dental Expert opinion and accused person's redacted records and response including any expert opinions relating to the investigation to a Review Panel appointed by the Board pursuant to NRS 641.3635.

2. The Review Panel shall conduct a review of an investigation or informal hearing conducted pursuant to NRS 631.363, review and consider, without limitation:

(a) All files and records collected or produced by the investigator, Board, and/or Board Dental Expert.

(b) Any written findings of fact and conclusions prepared by the investigator; and

(c) Any other information deemed necessary by the review panel.

3. The Review panel may:

(i) make a recommendation to dismiss the complaint; or

(ii) request the Board Dental Expert, Nevada licensed investigator or licensee to respond to any other questions presented by the Review Panel. They shall have 60 days to respond to the Review Panel; or

(iii) make a recommendation for an informal disposition by stipulation. If an informal disposition is made, the parties may waive the requirement for findings of fact and conclusions of law.

(iv) make a recommendation for an informal hearing

(v) make a recommendation for a formal hearing

4. The Review Panel shall present their findings and recommendations to a Hearing Panel delegated by the Board to conduct a formal hearing pursuant to NRS 631.350(3)

NAC 631..... Board Delegation to a Hearing Panel

1. Pursuant to NRS 631.350 (3) and NRS 622a.170 (2) the Board shall designate a Hearing Panel to take

any disciplinary action pursuant to NRS 631.350.

2. The Hearing Panel may retain the services of a Hearing Advisor who is an independent contractor retained by the Board to attend hearings and advise the hearing panel. The Hearing Advisor may advise the Hearing Panel regarding

any aspects of the hearing as well as the admissibility of any evidence produced during administrative proceedings.

3. The Hearing Panel shall have three (3) members of the Nevada State

Board of Dental Examiners Disciplinary Committee to preside over any formal hearing conducted pursuant to NRS 631.350 (3) and NRS 622a.170 (2). One member shall be named the Chair for the formal hearing.

4. Each member of the Hearing Panel shall have one vote as to the verdict of any formal hearing conducted by the Panel.

5. Any disciplinary action taken by the Hearing Panel is subject to the same procedural requirements which apply to disciplinary actions taken by the Board, and the Hearing Panel has those powers and duties given to the Board in relation thereto. Before taking any disciplinary action the Hearing Panel shall review and consider the findings of a review panel pursuant to NRS 631.365

6. The Hearing Advisor may advise the Hearing Panel in reviewing the Order and findings of fact and conclusions of law within thirty (30) days after the conclusion of any disciplinary hearing. All members of the Hearing Panel must attach their signature on the Findings within forty five (45) days after the conclusion of the hearing.

7. Failure to comply with the above timetable is not grounds for dismissal of the underlying charges

NAC 631..... Board Approval of Hearing Panel actions.

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1. The Board shall consider the actions taken by the Hearing Panel at the first Board meeting after the Findings have been adopted by the Hearing Panel.

2. The Board may either adopt the Findings as presented or they may reject the findings and schedule a subsequent hearing where the full Board may

consider the matter.

Commented [ADM1]: Violates NRS 631.355 (2) Hearing panel decision is final.

NAC 631.255 Record of hearing conducted by investigator or hearing officer or panel. (NRS [631.190](#), [631.350](#), [631.360](#), [631.363](#)) If the Board has delegated its responsibility pursuant to the provisions of subsection 3 of [NRS 631.350](#) or [NRS 631.363](#), the [informal or formal](#) 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.

(Added to NAC by Bd. of Dental Exam'rs, eff. 4-3-89)