

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

LCB File No. R023-06

April 25, 2006

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

AUTHORITY: §§1 and 2, NRS 631.190 and 631.363; §3, NRS 631.190 and 631.360; §4, NRS 631.190 and 631.350; §5, NRS 631.160, 631.190 and 631.360; §6, NRS 631.130, 631.190 and 631.300 §7, NRS 631.190, 631.346, 631.349 and 631.350.

A REGULATION relating to dentists; prohibiting an investigator from participating in certain decisions rendered by the Board of Dental Examiners of Nevada; providing procedures for a party to a proceeding before the Board to request a subpoena; requiring an attorney representing a party before the Board to have certain qualifications; making certain actions on the part of a dentist cause for disciplinary action; authorizing the Executive Director of the Board to issue subpoenas; providing for the determination of a quorum of the Board in administering certain examinations; and providing other matters properly relating thereto.

Section 1. Chapter 631 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *An investigator appointed pursuant to NRS 631.363 may provide testimony regarding the investigator's findings and conclusions about a matter at a hearing before the Board but may not participate in the decision rendered by the Board in that matter.*

Sec. 3. 1. *A party who wishes to request the Executive Director to subpoena a witness must submit an application in writing to the Executive Director stating the reasons why a subpoena is requested.*

2. If a party applies for a subpoena for the production of health records as defined by NRS 629.021, papers, accounts or other documents, the Executive Director may request that the party submit additional information as he deems appropriate.

3. The Executive Director, upon receipt of an application for a subpoena, shall:

(a) Grant the application and issue the subpoena;

(b) Deny the application; or

(c) Schedule a hearing to decide whether to grant or deny the application.

4. If an application for a subpoena is denied, the applicant may petition the Board for reconsideration.

Sec. 4. *1. A party to a proceeding before the Board is entitled to be heard in person or by his attorney.*

2. An attorney appearing as counsel in any proceeding must be an attorney at law, admitted to practice and in good standing before the highest court of any state. If an attorney is not admitted and entitled to practice before the Supreme Court of Nevada, an attorney so admitted and entitled to practice must be associated with that attorney.

Sec. 5. NAC 631.023 is hereby amended to read as follows:

631.023 1. The Executive Director shall attend all meetings and hearings of the Board and take minutes of the proceedings.

2. The Executive Director shall keep in his office:

(a) The minutes of matters considered by the Board;

(b) The records of the Board's finances;

(c) The applications submitted to the Board; and

(d) The records of cases in which the Board has denied an application, suspended or revoked a license or certificate, or taken any other disciplinary action.

3. The Executive Director shall:

(a) Account for all money received by the Board;

(b) Examine all applications for licensure and require that the approved forms are properly executed;

(c) Ensure that the provisions of this chapter which relate to licensure are observed by applicants and licensees;

(d) Act as custodian of the Board's official seal;

(e) Affix the seal to any document to be executed on behalf of the Board or to be certified as emanating from the Board; and

(f) Perform such other duties as the Board may direct.

4. The Executive Director must have a bond executed in the amount of \$250,000 to indemnify the Board for any loss of its money which is caused by his actions. The premium for the bond must be paid from the money of the Board.

5. The Executive Director may issue a subpoena on behalf of the Board to compel a person to:

(a) Appear at a hearing conducted by the Board; or

(b) Produce documents or objects needed for an investigation or hearing conducted by the Board.

6. The Executive Director may, before the commencement of a hearing before the Board, grant a continuance of the hearing.

Sec. 6. NAC 631.120 is hereby amended to read as follows:

631.120 1. The practical part of the dentist's or dental hygienist's examination must be performed in the presence of a quorum of the examining members of the Board. *Examiners appointed by the Board to conduct examinations pursuant to NRS 631.170 may be counted in determining whether a quorum is present as set forth in subsection 3 of NRS 631.170.*

2. Each applicant must furnish his own patients, materials and instruments for the examination. The Board will furnish the dental chair and light.

3. At the end of each day of the practical part of the examination, the Board will collect and safely store all of the materials and work of each applicant. The materials and work will be returned at the beginning of the next day of the examination. The applicant is responsible for all of his equipment and instruments, except as otherwise directed by instructions given at the examination.

4. The applicant may not bring any study models or impressions into the examination room except as allowed by instructions given at the examination.

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) 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 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 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 on Accreditation of Healthcare Organizations; 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.

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 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 within which to select a dentist of his 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 own choice.

(b) Receive the allowance for a procedure performed by a dentist of his own choice in substantially the same amount as he would if he used the services of one of the group of dentists specified by the plan or practice.