

**REVISED ADOPTED REGULATION OF THE
BOARD OF DENTAL EXAMINERS OF NEVADA**

LCB File No. R023-06

Effective September 18, 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 631.350; §4, NRS 631.130, 631.190 and 631.300 §5, 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; requiring an attorney representing a party before the Board to have certain qualifications; providing for the determination of a quorum of the Board in administering certain examinations; making certain actions on the part of a dentist cause for disciplinary action; 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 and 3 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 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. 4. 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. 5. 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.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R023-06**

The Board of Dental Examiners of Nevada adopted regulations assigned LCB File No. R023-06 which pertain to chapter 631 of the Nevada Administrative Code on May 18, 2006..

Notice date: 10/10/2005; 1/24/2006
Hearing date: 5/18/2006

Date of adoption by agency: 5/18/2006
Filing date: 9/18/2006

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

A public workshop was held on October 10, 2005 after a 15 day notice was posted in compliance with the Nevada administrative rulemaking requirements. A second public workshop was held in January 24, 2006 after a 15 day notice was posted in compliance with the Nevada Administrative Rulemaking requirements. A public hearing and adoption was held on May 18, 2006 after a thirty day notice to the main library in all counties in Nevada along with the Las Vegas and Carson City offices of the Attorney General, State Library and Archives, Notice List maintained by the board; and the Clark County Health District. Public comment was sought; however no written comments were forthcoming at the workshops, nor the hearing. There was public comment provided at the first workshop by representatives of the Nevada Dental Association: Maury Astley and Dr. Pete DiGrazia. Concern was expressed about contacting the board office to verify licensure when a hygienist or dentist was hired. Board staff indicated that license verification was confirmed regularly by phone, fax, or email. Referral to the board website was made for online license verification as well. There was also comment made regarding patient records and custody of records by the licensed owner of the practice being provided to an associate or former associate. There was also comment from a dental practitioner that should a dental associate follow diagnosis and treatment plan of another dentist which is deemed to be below standard for the issue precipitating treatment that the diagnosing dentist should not be responsible as the associate had the option to follow the plan outlined or follow their own diagnosis and treatment plan. This contradiction is specifically what the regulatory language is attempting to address. Draft regulations were amended to address the records being provided to an associate or independent contractor if needed to respond to a complaint noticed by the Board pursuant to practitioner input from the NDA representatives. Draft regulation language was not changed regarding the shared responsibility of the diagnosing practitioner and implementing practitioner for a treatment that is determined to be below standard. A copy of the written minutes of the meeting may be obtained by contacting the Nevada State Board of Dental Examiners at (702) 486-7044 or by writing to the Board at 6010 S. Rainbow Blvd, A-1, Las Vegas, NV 89118.

2. The number of persons who:
 - (a) Attended the hearing: Approx. 20 10/10/2005
 Approx. 25 1/24/2006
 - (b) Testified at the hearing: 3 (2 from NDA) 10/10/2005
 2 (from NDA) 1/24/2006
 - (c) Submitted to the agency written comments: NONE

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Public notices of the workshops and hearing were posted at a site in each county along with the Las Vegas and Carson City offices of the Attorney General, State Library and Archives, the Clark County Health District, and mailings of said notices to interested parties including affected practitioner associations within Nevada. Representation from one affected practitioner association was present at the meetings. (Maury Astley and Dr. Pete DiGrazia represented NDA. Concern was expressed about contacting the board office to verify licensure when a hygienist or dentist was hired. Board staff indicated that license verification was confirmed regularly by phone, fax, or email. Referral to the board website was made for online license verification as well. There was also comment made regarding patient records and custody of records by the licensed owner of the practice being provided to an associate or former associate. There was also comment from a dental practitioner that should a dental associate follow diagnosis and treatment plan of another dentist which is deemed to be below standard for the issue precipitating treatment that the diagnosing dentist should not be responsible as the associate had the option to follow the plan outlined or follow their own diagnosis and treatment plan. This contradiction is specifically what the regulatory language is attempting to address. Draft regulations were amended to address the records being provided to an associate or independent contractor if needed to respond to a complaint noticed by the Board pursuant to practitioner input from the NDA representatives. Draft regulation language was not changed regarding the shared responsibility of the diagnosing practitioner and implementing practitioner for a treatment that is determined to be below standard.) A discussion during the 1/24/2006 workshop took place regarding how often verification of licensure would be recommended. A copy of the written minutes of the workshop and meeting may be obtained by contacting the Nevada State Board of Dental Examiners at (702) 486-7044 or by writing to the Board at 6010 S. Rainbow Blvd, A-1, Las Vegas, NV 89118.

4. If the regulations were adopted without changing any part of the proposed regulations, a summary of the reasons for adopting the regulations without change.

The regulations were adopted at the Nevada State Board of Dental Examiners hearing on May 18, 2006. Public comments at the workshops and hearing on October, 10, 2005 and January 24, 2006 were solicited and were incorporated for changes to the regulations before final posting and adoption on May 18, 2006, please see above for reference to the changes.

5. The estimated economic effect of the adopted regulations on the businesses that it is to regulate and on the public. These must be stated separately, and each case must include: (a) both adverse and beneficial effects; and (b) both immediate and long-term effects.

- (a) Both adverse and beneficial effects.

There are no expected adverse economic effects for licensees. The beneficial effects are to hopefully identify more specifically in regulation what is authorized or prohibited by statute. Hiring an unlicensed dentist or dental hygienist is prohibited by NRS 631.346, the regulation regarding does not cause an adverse economic effect but does further clarify the process to obtain license verification by contacting the board, which is the state licensing authority. The regulations pertaining to patient records and sharing in the diagnosis and treatment of patients is again further clarification of existing prohibitions, authorizations, and duties defined pursuant to statute.

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

Immediate and long term effects are to clarify more specifically the statutes of Chapter 631.

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

There are no greater costs to the board for enforcement of these regulations than what is already incurred through application of the statutes currently.

7. A description of any regulations of other state or government agencies that the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating agency.

There are no other state or government agency regulations that the proposed amendments duplicate.

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

There are no federal regulations providing these provisions.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

These regulations do not provide or involve a new fee.