

PUBLIC BODY MATERIALS
BOARD MEETING 08/02/2013
AGENDA ITEM 3(C)

Mark D Duncan, DDS

NEVADA STATE BOARD OF DENTAL EXAMINERS
6010 S Rainbow Boulevard, #A-1
Las Vegas, NV 89118
Videoconference Meeting
Friday, May 1, 2009 at 9:00am

Videoconferencing was available at the Board office, 6010 S Rainbow Boulevard, Suite A-1, in Las Vegas and at the State of Nevada Board of Medical Examiners, 1105 Terminal Way, Suite 301 in Reno.

Minutes

Call to Order

1. Roll call and Establish a Quorum

Agenda item 1: Roll call and Establish Quorum: Dr. Pappas called the meeting to order and Ms. Kelly conducted the following roll call:

Dr. Tony Guillen-----	PRESENT
Dr. M Masih Soltani-----	EXCUSED
Dr. Donna Hellwinkel-----	PRESENT
Dr. Michael Lloyd-----	PRESENT
Dr. William Pappas-----	PRESENT
Dr. Jade Miller-----	PRESENT
Dr. J. Stephen Sill-----	PRESENT
Mrs. Rosanne "Missy" Matthews-----	PRESENT
Mrs. Leslea Villigan-----	PRESENT
Mr. James "Tuko" McKernan-----	PRESENT
Mrs. Bonnie Bryan-----	EXCUSED

Others Present: John Hunt, Board Legal Counsel; Kathleen Kelly, Executive Director; Debra Shaffer, Deputy Executive Director

Public attendees: Mary Bobbett, RDH, SNDHA; John R. Bailey, Bailey Kennedy; Mark Duncan, DDS; Carlos Bordador; Christine Haskin, DDS, UNLV SDM; Ah Young Kim; Lancette VanGuilder, RDH.

***2. Notice of Workshop and Request for Comments regarding review and rulemaking to consider amending Nevada Administrative Code Chapter 631 pertaining but not limited to continuing education requirement for CDC Infection Control mandatory courses for all licensees and amending NAC 631.178 which requires compliance with CDC Guidelines for Infection Control in Dental Health-Care Settings 2003 to include notice the Board will conduct random audits of dental offices to ensure compliance with the requirements of NAC 631.178.**

Dr. Miller indicated that he was working on some projects as a member of the Board of Health and that there are many ways to be proactive about ensuring that dental offices are abiding and following CDC guidelines. He

suggested that the Board institute measures and encouraged that the Board adopt some mechanics to enforce such measures. Dr. Guillen commented that Dr. Miller and he recently, as members of the Anesthesia Evaluation Committee, while evaluating offices checked for compliance with infection control measures and saw that quite a few offices do not keep or maintain adequate records. Dr. Guillen suggested having a staff member accompany one of the dentists to check for infection control at offices. Dr. Miller indicated that many dentists need to be educated in infection control and that as the Dental Board they have a responsibility to give notice to practitioners about proper infection control. Dr. Miller suggested mailing correspondence to providers indicating what the requirements are to ensure that CDC guidelines are being followed. Dr. Pappas suggested potentially conducting random audits for office inspections and potentially requiring a mandatory course on infection control be taken once a year by providers. Dr. Lloyd and Dr. Guillen both agreed that a mandatory course on infection control should be required of all practitioners. Dr. Miller suggested having a question added to applications and renewals asking all licensees if they have read and are abiding CDC guidelines. Ms. Kelly indicated that adding such a question is feasible; she commented that such a question would serve as a reminder to licensees about CDC guidelines. There is discussion about potentially tying infection control to complaints and having DSOs check for compliance. Mr. Hunt commented that in order to be able to inspect offices through complaints there would need to be an investigation, it would have to be part of a stipulation agreement, the Board would need to have a warrant; or they could propose a regulation change or adopting a new regulation that would grant the Board permission to enter dental practices for random audits. Dr. Lloyd suggested adding a question to renewal forms asking dentists to certify that they and their staff are trained in infection control, and/or have OSHA certification; to which several of the Board members commented in approval. Dr. Pappas asked for comments from the public. Dr. Duncan suggested requiring offices to keep a weekly monitoring log that they would have to submit along with their CE's when renewing their licenses, which would obligate dentists to stay on top with monitoring. Dr. Haskins commented that at the Dental School they require that their faculty take a series of eight (8) online courses for training; she further indicated that there were plenty of online courses that were available through an approved AGD website that are available for free. Dr. Sill inquired what the web address was for the website, to which Dr. Haskin's stated was www.dentalcare.com, and that there were numerous courses available on a variety of topics, as well as courses that could be used for staff training that are all available for free. Dr. Pappas thanked Dr. Haskins for the helpful information and indicated that he felt the Board was ready to develop language to be presented at the next scheduled Board meeting. Dr. Pappas brought the workshop to a close.

***3. Executive Director's Report**

Ms. Kelly asked if she could request to go out of agenda order to item [5(a)].

MOTION: Dr. Sill made the motion to go out of order to agenda item [5(a)]. Second by Mr. McKernan. All in favor.

***5. New Business**

***a. Consideration of Application- NRS 631.240 (Pursuant to NAC 631.050)**

1. Mark D Duncan, DDS-(Pursuant to NRS 241.030, the board may, by motion, enter closed session.)

Dr. Duncan asked if the Board would go into closed session.

MOTION: Dr. Guillen made the motion to go into closed session. Second by Mr. McKernan. All in favor.

Entered closed session at: 9:55 am.

Returned from closed session at: 11:07 am.

***5. New Business**

***a. Consideration of Application- NRS 631.240 (Pursuant to NAC 631.050)**

- 2. Mark D Duncan, DDS-(Pursuant to NRS 241.030, the board may, by motion, enter closed session.)

Mr. Hunt stated for the record the Board is to affirm or reverse the decision made by the Secretary/Treasurer. Mr. Hunt indicated that he attempted to contact the Oklahoma Board regarding whether in the event of a patient death, must it be reported to the Oklahoma Board, to which he found that yes it must be reported within thirty (30) days. Mr. Hunt further indicated that in accordance to Oklahoma Rule 195-20-1-12, it states that in the event of a death of a patient it must be reported to the Board within thirty (30) days of occurrence. Mr. Hunt inquired if Dr. Duncan reported the death of a patient, to which he indicated that he did not.

MOTION: Dr. Guillen made the motion to affirm the rejection of the Secretary/Treasurer and licensure. Second by Dr. Sill. Roll call vote to affirm the denial of licensure:

Dr. Tony Guillen-----yes
 Dr. Jade Miller-----yes
 Dr. Donna Hellwinkel-----yes
 Dr. Michael Lloyd-----abstained
 Dr. William Pappas-----yes
 Dr. M Masih Soltani-----excused
 Dr. J. Stephen Sill-----yes
 Mrs. Rosanne "Missy" Matthews-----yes
 Mrs. Leslea Villigan-----yes
 Mr. James "Tuko" McKernan-----yes
 Mrs. Bonnie Bryan-----excused

Motion to affirm the denial of licensure is agreed to.

***b. Consideration of Application- NRS 631.255 (Pursuant to NAC 631.050)**

- 1. Leonardo Bordador, DMD-(Pursuant to NRS 241.030, the board may, by motion, enter closed session.)

Mr. Hunt asked of Dr. Bordador and his attorney, Mr. Bailey, if they would like to go into a closed session, to which Mr. Bailey indicated the he did not see a reason for the Board to go into closed session. Mr. Hunt noted that originally Dr. Bordador had begun practicing with a Dr. Truong prior to being granted a license. Mr. Hunt indicated that Dr. Bordador entered into a stipulation with the Board. Mr. Hunt indicated that Dr. Bordador, per stipulation agreement, was not allowed to apply for a Nevada dental license for a period of two (2) years. Mr. Hunt briefly reiterated what the provisions of the stipulation agreement were. He further indicated that two (2) years have passed and that his application for licensure was denied by the Secretary/Treasurer, to which Dr. Bordador petitioned to come before the Board for consideration of application. Mr. Hunt asked of Dr. Bordador and Mr. Bailey if they understood that this was not a hearing, to which they answered affirmatively. He further

asked if they understood that in accordance to Administrative code 631.233(b) that the Board’s hearing of this petition was not to be deemed a contested case; Mr. Bailey answered affirmatively. In addition, he inquired if they understood that should the Board decide to affirm the decision made by the Secretary/Treasurer that such a decision would be reported to the National Practitioners Data Bank (NPDB) as a denial of licensure; to which they answered affirmatively. Mr. Bailey indicated to the Board that Dr. Bordador had complied and fulfilled the requirements of the stipulation and indicated that they were available to answer any questions the Board may have. Dr. Bordador approached the Board and commented that two (2) years ago he made a big mistake. He explained his excitement to begin working in his new profession after graduating from Dental school. He further explained that he submitted his application for licensure when he entered into a management agreement at Dr. Truong’s dental practice. He indicated that because of his bad decision he entered into a stipulation agreement with the Board that did not allow him to apply for licensure for two (2) years; he further explained the hardships this has put his family through being that his family wanted to be near relatives in Las Vegas but had to move out of state for employment as a dentist. Dr. Bordador acknowledged that he was in such a predicament for his own misstep. He indicated to the Board that he was not asking for reconsideration of his application but rather “begging” that the Board give him a second chance and grant him licensure. Mr. Hunt inquired where Dr. Bordador had been practicing during the past two (2) years; Dr. Bordador replied that he had been practicing in the State of New York. Mr. Hunt inquired if he had any filings of malpractice, complaints, and/or Board actions, to which Dr. Bordador indicated that he did not. Dr. Pappas commented to Dr. Bordador that he asked for the Board’s help; however, pointed out to Dr. Bordador that he referred in NPDB that his entrance into a stipulation agreement was based solely on him illegally entering into a corporate management agreement and omitted that he also was treating patients without a license, which is a severe ethical and illegal breach. Dr. Bordador indicated that he did not go into specific detail because he wanted to be as brief as possible and that furthermore, the Board is well aware of what the reasons were for his stipulation agreement, and therefore, did not feel he needed to disclose that much information, and simply wanted to be as brief as possible due to limited space. Dr. Pappas noted to Dr. Bordador that if he wanted to be as brief as possible that it would make more sense to include the most severe reasons as opposed to the least severe, especially if given a limited amount of space to explain. Mr. Bailey commented that Dr. Bordador did not intentionally omit to disclose the information of him practicing without a license, especially knowing that such and all information is disclosed in the NPDB report. Furthermore, that the Board itself is the one to give a full explanation and report to the NPDB and therefore, are well aware of what the misconducts were. Dr. Pappas stated that even when the Board brought forward Dr. Bordador when the events occurred he tried to deny then, that he was not practicing dentistry illegally and moreover, it was not until he was shown the video surveillance that showed him treating patients did he admit to practicing without a license. Dr. Hellwinkel inquired if Dr. Bordador took a clinical exam, to which Dr. Bordador answered that he did not. It is clarified by Ms. Kelly that Dr. Bordador has not taken a clinical exam ever that he has a PGY1 license in the State of New York, and that he applied before his two (2) year restriction was met under stipulation.

MOTION: Dr. Hellwinkel made the motion to reverse the Secretary/Treasurers decision and grant licensure. Second by Dr. Guillen. Roll call vote to grant licensure:

Dr. Tony Guillen-----yes
 Dr. Jade Miller-----yes
 Dr. Donna Hellwinkel-----yes
 Dr. Michael Lloyd-----abstained
 Dr. William Pappas-----no
 Dr. M Masih Soltani-----excused
 Dr. J. Stephen Sill-----yes
 Mrs. Rosanne “Missy” Matthews-----yes
 Mrs. Leslea Villigan-----yes
 Mr. James “Tuko” McKernan-----yes
 Mrs. Bonnie Bryan-----excused

Motion is agreed to, approval for licensure.

***c. Request for Advisory Opinion pursuant to NAC 631.279 by the Nevada Dental Hygienist's Association**

1. Administration of OraVerse by Registered Dental Hygienist

Ms. VanGuilder indicated that she was requesting, on her behalf, for the opinion of the Board if Hygienists would be allowed to use OraVerse. Dr. Guillen inquired if the medication would be used after every use of local anesthetic. Ms. VanGuilder did indicate that due to the cost per cartridge of OraVerse, the use would be rather restricted. Some of the Board members expressed concern of possible paresthesia. Dr. Pappas commented that anytime a dentist or hygienist reintroduces a needle they run the risk of clipping a nerve, and therefore, causing paresthesia, nevertheless, there's always a risk whenever anyone reintroduces a needle. Dr. Sill indicated that he felt that it would be appropriate for hygienists to use.

MOTION: Dr. Sill made the motion to allow hygienists to use OraVerse under direct supervision of a dentist. Second by Dr. Guillen. Discussion: Ms. Kelly indicated that hygienists permitted to administer local anesthesia would be allowed to use OraVerse. All in favor.

MOTION: Dr. Guillen made the motion to return to original agenda order. Second by Dr. Sill. All in favor.

***3. Executive Director's Report**

***a. Financial Review**

Ms. Kelly indicated that currently the expenses exceeded the income. She did indicate that the allocation of income was only current through the end of February, but that she would be running the report again. She announced to all Board members that the close of the fiscal year is June 30, 2009, and asked that everyone who has not done so, to please submit their expense reports. Ms. Kelly clarified for the Board as she did for Legislature, the difference of Reserves and cash on-hand. Dr. Hellwinkel inquired when the Board would discuss the proposed budget for fiscal year 2010. Ms. Kelly indicated that she will have it prepared in June and have it ready for discussion in August.

***b. Approval for Board Member Travel to Las Vegas for Full Board
Hearing June 6, 2009**

1. Tony Guillen, DDS
2. Donna Hellwinkel, DDS
3. Masih Soltani, DDS
4. James McKernan, RDH

MOTION: Dr. Guillen made the motion for to approve travel for Board members. Second by Dr. Sill. All in favor.

***4. Board Counsel's Report**

***a. Legal Actions/Lawsuit(s) Update**

1. Consideration of Stipulation Agreement

a. Kenneth Le, DDS

Mr. Hunt indicated that the DSO that investigated this case found that Dr. Le showed little understanding of the procedure rendered. Per the stipulation agreement Dr. Le would not be able to perform such procedures until he has completed CE's in that area. Mr. Hunt indicated that it was a matter of Dr. Le trying to do too much at one time.

MOTION: Dr. Guillen made the motion to adopt the stipulation. Second by Dr. Sill. All in favor.

***5. New Business**

***d. Approval of Reactivation of Inactive License- NAC 631.170(4)**

1. Janet M Von Holten, RDH

Dr. Pappas indicated that Ms. Von Holten has been inactive since July 2006. Dr. Lloyd indicated that she practiced for six (6) years prior to putting her license on retired status. Dr. Pappas inquired if Ms. Von Holten met the CE requirements. Ms. Kelly answered affirmatively.

MOTION: Dr. Miller made the motion to accept the reactivation with no additional requirements. Second by Mr. McKernan. All in favor.

***e. Approval for site permits - NAC 631.2236**

***1. General Anesthesia**

a. Michael Alterman, DDS

1. 169 N Nellis Blvd, Las Vegas, NV 89110

Dr. Guillen indicated the inspection was conducted and recommended that the Board grant the GA permit.

MOTION: Dr. Lloyd made the motion to approve. Second by Mr. McKernan. All in favor.

***f. Approval for 90-day extension of anesthesia permit – NAC 631.2254(2)**

***1. Conscious Sedation Permit**

a. Sun Park, DMD

Dr. Guillen asked that the Board grant the extension because they were a bit behind with evaluations.

MOTION: Mr. McKernan made the motion to grant the extension. Second by Dr. Miller. All in favor.

***g. Approval for dental licensure by WREB-NRS 631.240**

1. Jared Acosta, DMD
2. Giridhara K Chittivelu, DMD
3. Richard B Webster, DDS
4. Cody T Wilson, DMD
5. Todd J Baggaley, DMD

Dr. Lloyd indicated that all applicants satisfied the requirements and recommended approval.

MOTION: Dr. Guillen made the motion to approve all applicants. Second by Dr. Miller. All in favor.

***h. Approval for dental hygiene licensure by WREB- NRS 631.300**

1. Danielle J Cluka, RDH
2. Janie M Howell, RDH
3. Nhi K Nguyen, RDH

Dr. Lloyd indicated that all applicants satisfied the requirements and recommended approval.

MOTION: Mr. McKernan made the motion to approve all applicants. Second by Dr. Guillen. All in favor.

***6. Resource Group Reports**

- *a. Legislative and Dental Practice
(Chair: Dr. Guillen; Dr. Hellwinkel; Dr. Pappas; Dr. Miller; Mrs. Villigan; Mrs. Matthews; and Mrs. Bryan)**

Ms. Kelly briefly discussed and explained the different Senate and Assembly bills and their current status. She briefly discussed bills that pertain to the Board, and some bills that pertained to state staff employees.

- *b. Legal and Disciplinary Action
(Chair: Dr. Hellwinkel; Mrs. Bryan; Mrs. Villigan; Dr. Lloyd; and Dr. Soltani)**

Dr. Hellwinkel indicated that currently the Board has twenty-eight (28) approved DSOs that work for the Board; she further indicated that there are currently sixty-three (63) open investigations based on patient complaints, eight (8) open authorized investigations; she further indicated that there are four (4) cases involving illegal practice, and three (3) District court cases regarding illegal practice. Additionally, she indicated that in 2008 there were seventeen (17) Board actions, and in District court there were three (3) illegal practice cases. Dr. Hellwinkel indicated that from January 2009 through April 2009 there have been three (3) Board actions. Mr. Hunt briefly elaborated what the three (3) Board actions were involving injunctive relief.

***c. Examinations**

- (1) **Dental**
(Dr. Pappas; Dr. Lloyd and Mrs. Matthews)

Dr. Pappas indicated that the Board was going to be administering an exam that weekend that consisted of traditional exams and wrap-up of the series portion of the exams.

- (2) **Dental Hygiene**
(Chair: Mrs. Matthews; Mrs. Villigan; Mr. McKernan;
Dr. Sill)

Mrs. Matthews indicated that the Board was administering a Hygiene exam that weekend.

- *d. Continuing Education**
(Chair: Dr. Guillen and Dr. Sill)

Dr. Guillen indicated that class proposals are continuously being submitted.

- *e. Dental Hygiene**
(Chair: Mrs. Matthews; Mrs. Villigan; Mr. McKernan; and Dr.
Sill)

No report.

- *f. Specialty**
(Chair: Dr. Miller; and Dr. Sill)

No report.

- *g. Anesthesia**
(Chair: Dr. Guillen; Dr. Miller; and Dr. Pappas)

Dr. Guillen indicated that the committee was still conducting five (5) year re-evaluations.

7. **Comments from the Public:** No comments.
8. **Announcements:** Ms. Kelly indicated that calibration for the exams will be held at UNLV SDM.
- *9. **Adjournment:** Dr. Guillen made the motion to adjourn. Second by Mr. McKernan. All in favor.

Meeting Adjourned at 12:17 pm.

Respectfully submitted by:

Kathleen J. Kelly

Code:NOE
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Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NEVADA STATE BOARD OF DENTAL
EXAMINERS,

Plaintiff,

vs.

MARK DUNCAN, an individual; and
DOES I-V and ROE CORPORATIONS
I-V,

Defendant.

Case No. A-10-620466-C
Dept.. VI

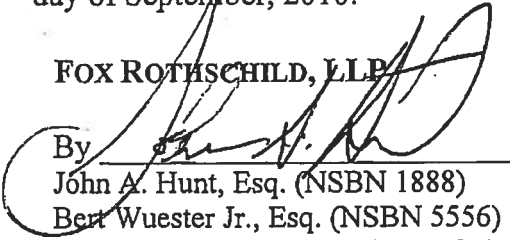
**NOTICE OF ENTRY
STIPULATION, ORDER,
JUDGMENT & PERMANENT
INJUNCTION**

**NOTICE OF ENTRY
OF STIPULATION AND ORDER**

PLEASE TAKE NOTICE that a STIPULATION, ORDER, JUDGMENT & PERMANENT INJUNCTION was filed on the 22nd day of September, 2010, in the above-referenced matter, a copy of which is attached hereto.

Respectfully submitted this 24th day of September, 2010.

FOX ROTHSCHILD, LLP

By 
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Bert Wuester Jr., Esq. (NSBN 5556)
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Ph. (702) 262-6899; fax (702) 597-5503
Attorneys for Plaintiff

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 24th day of September, 2010, I deposited in the United States Mail, postage prepaid, a true and correct copy of the foregoing NOTICE OF ENTRY OF STIPULATION, ORDER, JUDGMENT & PERMANENT INJUNCTION, addressed as follows:

Hutchison & Steffen, LLC
Attn: L. Kristopher Rath, Esq.
10080 W. Alta Dr., Suite 200
Las Vegas, Nevada 89145
Attorney for Defendant

and

Nevada State Board of Dental Examiners
Attn: Kathleen Kelly, Executive Director
6010 S. Rainbow Blvd., A-1
Las Vegas, NV 89118
Plaintiff

By *Vincent Carrano*

An Employee of Fox Rothschild, LLP



CLERK OF THE COURT

1 Code:SAO
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11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **NEVADA STATE BOARD OF DENTAL**
14 **EXAMINERS,**

15 Plaintiff,

16 vs.

17 **MARK DUNCAN, an individual; and**
18 **DOES I-V and ROE CORPORATIONS I-**
19 **V,**

20 Defendants.

Case No. A-10-620466-C
Dept. No. VI

21 **STIPULATION, ORDER,**
22 **JUDGMENT, & PERMANENT**
23 **INJUNCTION**

24 **WHEREAS,** Plaintiff, Nevada State Board of Dental Examiners ("Plaintiff" or the
25 "Board"), by and through its attorneys and Defendant, Mark Duncan ("Defendant" or
26 "Duncan"), by and through his attorney, hereby provide as follows:

27
28 1. **THE PARTIES HEREBY RECOGNIZE AND ACKNOWLEDGE** the Board filed
with the Eighth Judicial District Court, Clark County, Nevada, its *Verified Complaint*
("Complaint") against Duncan on July 9, 2010, and on July 12, 2010, filed *Plaintiff's Ex Parte*
Application for Temporary Restraining Order & Preliminary Injunction (Application"). A
Temporary Restraining Order ("TRO") was filed on July 16, 2010.

09/22/10 04:36:35 PM

1 2. THE PARTIES FURTHER RECOGNIZE AND ACKNOWLEDGE on July 20,
2 2010, a copy of the Summons, Complaint, Application, and TRO were served upon Duncan by
3 leaving with Kara Wagner, administrative assistant, at 1401 Hillshire Drive, #200, Las Vegas,
4 Nevada. In addition, on July 26, 2010, a copy of the Summons, Complaint, Application, and
5 TRO were served upon Duncan personally at 1401 Hillshire Drive, #200, Las Vegas, Nevada.
6 On July 28, 2010 a partial opposition to the TRO and preliminary injunction was file on behalf
7 of Duncan. On August 17, 2010 an answer to the complaint was filed on behalf of Duncan.
8

9 3. THE PARTIES FURTHER RECOGNIZE AND ACKNOWLEDGE the TRO set a
10 hearing on the Board's request/application for Preliminary Injunction for 8:30 a.m. on July 29,
11 2010.
12

13 4. THE PARTIES FURTHER RECOGNIZE AND ACKNOWLEDGE a *Stipulation &*
14 *Order (re: extension of the Temporary restraining Order filed July 16, 2010, and continuance of*
15 *hearing on Board's Motion/Request for Preliminary Injunction)* was filed on July 29, 2010,
16 which, in pertinent part, continued the TRO and continued the hearing on the Board's
17 Motion/Request for Preliminary Injunction from July 29, 2010, at 8:30 a.m. to August 31, 2010,
18 at 8:30 a.m.
19

20 5. THE PARTIES FURTHER RECOGNIZE AND ACKNOWLEDGE they are
21 desirous of resolving the above-captioned matter and, therefore, the parties stipulate and agree as
22 more fully addressed below.
23

24 6. THE PARTIES HEREBY STIPULATE AND AGREE the Board is empowered to
25 enforce the provisions of Chapter 631 of the Nevada Revised Statutes. N.R.S. § 631.190.
26
27

- 1 7. **THE PARTIES HEREBY STIPULATE AND AGREE** at all times relevant herein
2 Duncan was: A) a resident of the County of Clark, State of Nevada; B) is an individual over the
3 age of majority; C) not in the service of the United States military; and D) not an incompetent.
4
- 5 8. **THE PARTIES HEREBY STIPULATE AND AGREE** exercise of jurisdiction by the
6 above-captioned court over Defendants in this civil action is appropriate pursuant to N.R.S. §
7 14.065.
8
- 9 9. **THE PARTIES HEREBY STIPULATE AND AGREE** at all times relevant herein
10 Duncan was not a legally qualified physician or surgeon. See N.R.S. § 631.390(1).
11
- 12 10. **THE PARTIES HEREBY STIPULATE AND AGREE** at all times relevant herein
13 Duncan was not a dentist of the United States Army, Navy, Air Force, Public Health Service,
14 Coast Guard or Department of Veterans Affairs. See N.R.S. § 631.390(2).
15
- 16 11. **THE PARTIES HEREBY STIPULATE AND AGREE** the Board has no record of
17 Duncan on its register of dentists and dental hygienists licensed in this state. See N.R.S. §
18 631.190(6).
19
- 20 12. **THE PARTIES HEREBY STIPULATE AND AGREE** the Board has not issued a
21 "license" as defined by N.R.S. § 631.070, to Duncan.
22
- 23 13. **THE PARTIES HEREBY STIPULATE AND AGREE** on or about May 1, 2009,
24 pursuant to agenda item 5(A), the Board denied Duncan licensure.
25
26
27

1 14. THE PARTIES HEREBY STIPULATE AND AGREE that Duncan hereby admits,
2 acknowledges, and recognizes that in August 2009 and in violation of NRS 631.395(9) Duncan
3 did, without a license, practice dentistry in the state of Nevada, as defined at NRS 631.215(1)(c),
4 (e), (j), and or (l), upon Eva Melo, As set forth in the *Declarations of Fabiano Melo* and the
5 *Declaration of Eva Melo* which were attached as Exhibits 2 and 3 to *Plaintiff's Ex Parte*
6 *Application for Temporary Restraining Order & Preliminary Injunction* filed July 12, 2010.
7

8
9 15. THE PARTIES HEREBY STIPULATE AND AGREE that Duncan acknowledges
10 and admits that at all times relevant hereto he was aware of and understood all of the provisions
11 contained in the following provisions of N.R.S. § 631.215(1):provides:

12 1. Any person shall be deemed to be practicing dentistry who:

- 13 (a) Uses words or any letters or title in connection with his or her name which in
14 any way represents the person as engaged in the practice of dentistry, or any
15 branch thereof;
16 (b) Advertises or permits to be advertised by any medium that the person can or
17 will attempt to perform dental operations of any kind;
18 (c) Diagnoses, professes to diagnose or treats or professes to treat any of the
19 diseases or lesions of the oral cavity, teeth, gingiva or the supporting structures
20 thereof;
21 (d) Extracts teeth;
22 (e) Corrects malpositions of the teeth or jaws;
23 (f) Takes impressions of the teeth, mouth or gums, unless the person is authorized
24 by the regulations of the Board to engage in such activities without being a
25 licensed dentist;
26 (g) Examines a person for, or supplies artificial teeth as substitutes for natural
27 teeth;
28 (h) Places in the mouth and adjusts or alters artificial teeth;
(i) Does any practice included in the clinical dental curricula of accredited dental
colleges or a residency program for those colleges;
(j) Administers or prescribes such remedies, medicinal or otherwise, as are needed
in the treatment of dental or oral diseases;
(k) Uses X-ray radiation or laser radiation for dental treatment or dental
diagnostic purposes, unless the person is authorized by the regulations of the
Board to engage in such activities without being a licensed dentist;

1 (l) Determines:

2 (1) Whether a particular treatment is necessary or advisable; or

3 (2) Which particular treatment is necessary or advisable; or

4 (m) Dispenses tooth whitening agents or undertakes to whiten or bleach teeth by
5 any means or method, unless the person is:

6 (1) Dispensing or using a product that may be purchased over the counter
7 for a person's own use; or

8 (2) Authorized by the regulations of the Board to engage in such activities
9 without being a licensed dentist.

10 16. **THE PARTIES HEREBY STIPULATE AND AGREE** that Duncan hereby admits,
11 acknowledges, and recognizes this *Stipulation, Order, Judgment, and Permanent Injunction*
12 ("*Stipulation and Order*") shall serve as a permanent injunction prohibiting him from practicing
13 dentistry (as more fully referenced and defined above and in other applicable and relevant
14 provision of chapter 631 of the Nevada Revised Statutes and/or chapter 631 of the Nevada
15 Administrative Code) in the state of Nevada without first obtaining proper licensure to practice
16 dentistry.

17 17. **THE PARTIES HEREBY STIPULATE AND AGREE** that Duncan hereby admits,
18 acknowledges, and recognizes that the Board may take this *Stipulation and Order* into
19 consideration should Duncan apply for licensure to the Board.

20 18. **THE PARTIES HEREBY STIPULATE AND AGREE** that Duncan hereby admits,
21 acknowledges, and agrees to pay the Board the sum of Three Thousand Five Hundred and
22 no/100 Dollars (\$3,500.00) as and for attorney's fees and costs incurred by the Board in regards
23 to this matter. See N.R.S. § 622.410. Duncan shall pay said \$3,500.00 amount within sixty (60)
24 days of his executing this *Stipulation and Order*. Payments shall be delivered to the Board at its
25 Las Vegas, Nevada, offices.

26 In the event of Duncan's failure to provide timely payment of the fees and costs to the
27 Board as required herein, i.e., within sixty (60) days of his executing this *Stipulation and Order*,

1 the Board may have this document recorded at any time prior to full payment. Duncan
2 acknowledges, recognizes, and admits this \$3,500.00 amount shall be and is hereby reduced to
3 judgment against Duncan and said amount shall be and is hereby subject to statutorily imposed
4 interest accruing at the rate provided for in N.R.S. § 17.130 and/or N.R.S. § 99.040 from sixty-
5 one (61) days after Duncan executes this Stipulation and Order.

6 If Duncan fails to timely make payment of the above-referenced \$3,500.00 amount (i.e., ,
7 i.e., within sixty (60) days of his executing this Stipulation and Order), the Board, without any
8 prior notice may, at its option, begin execution upon said judgment as allowed by law with the
9 appropriate credit being given for any payment already made by Duncan.

10
11 **19. THE PARTIES HEREBY STIPULATE AND AGREE** that Duncan hereby admits,
12 acknowledges, and recognizes he shall reimburse to Fabiana Melo, DDS, of 485 Broadway,
13 Suite 700, Milbrae, California 94030, Five Thousand and xx/100 Dollars (\$5,000.00) prior to or
14 at the same time of execution of this Stipulation and Order. Duncan shall provide the Board
15 evidence of said payment.

16
17 **20. THE PARTIES HEREBY STIPULATE AND AGREE** nothing in this Stipulation and
18 Order shall preclude Duncan from presenting didactic lectures at the Las Vegas Institute
19 (hereinafter "LVI") which do not involve live patients in any way. Said didactic lectures may
20 include demonstrations on inanimate models. Such inanimate models may include impressions
21 taken of student dentists for bite registration analysis to be discuss by Duncan during his didactic
22 lectures. Impressions of patient is strictly prohibited for discussion during Duncan's didactic
23 lectures. Nothing in this Stipulation and Order shall preclude Duncan from authoring articles for
24 Dental Publications. This Stipulation and Order shall preclude Duncan from participating in the
25 diagnosis, treatment or treatment planning of patients who receive care in the LVI Clinic.
26 Furthermore, Duncan will not have any after hours access to the LVI Clinic and will not have
27 access to keys to the clinic. Duncan's participation at the LVI Clinic shall be strictly limited to

1 work done outside the LVI Clinic's operatory areas. Specifically, Duncan shall remain outside
2 all operatory areas, including any space within five feet of the mouth of a live patient. Duncan
3 shall not perform clinical demonstrations on any live patients in the LVI Clinic without the
4 requisite licensing from the Board. Furthermore, Duncan shall provide a copy of this Stipulation
5 and Order reciting his restrictions to the Director of LVI.
6

7 **21. THE PARTIES HEREBY STIPULATE AND AGREE** that Duncan hereby admits,
8 acknowledges, and recognizes he has read all of the provisions contained herein, understands the
9 same, and agrees with each of them in their entirety.
10

11 **22. THE PARTIES HEREBY STIPULATE AND AGREE** that Duncan hereby admits,
12 acknowledges, and recognizes he has been made aware of and has been advised by an attorney of
13 his choosing that by entering into this Stipulation and Order he is waiving certain valuable due
14 process rights.
15

16 **23. THE PARTIES HEREBY STIPULATE AND AGREE** that Duncan hereby admits,
17 acknowledges, and recognizes he shall provide to the Board a copy of a photo identification,
18 driver's license, and/or copy of passport as well as fingerprints. Such photo identification,
19 driver's license, and/or passport and fingerprinting shall be provided the Board at or before the
20 execution of this Stipulation and Order. (Note: Duncan may present himself to the Board's
21 offices for fingerprinting as same is available at the office.)
22

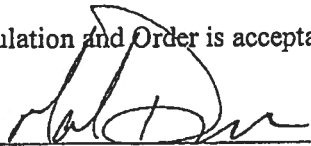
23 **24. THE PARTIES HEREBY STIPULATE AND AGREE** that Duncan hereby admits,
24 acknowledges, and recognizes he has been advised by counsel of his choosing, L. Kristopher
25 Rath, Esq. of the law firm Hutchison & Steffen, LLC, and has had ample opportunity to discuss
26 and review this matter with the counsel of his choosing.
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25. THE PARTIES HEREBY STIPULATE AND AGREE that Duncan hereby admits, acknowledges, and recognizes he has entered into this Stipulation and Order voluntarily, without coercion or duress, and in the exercise of his own free will.

26. THE PARTIES HEREBY STIPULATE AND AGREE that Duncan hereby admits, acknowledges, and recognizes he waives any and all rights to seek judicial review or otherwise challenge or contest the validity of the provisions contained in this Stipulation and Order.

27. THE PARTIES HEREBY STIPULATE AND AGREE the above and foregoing Stipulation and Order is acceptable to the parties hereto.


By  this 19 day of August, 2010
Mark Duncan

ACKNOWLEDGMENT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this 19th day of August, 2010, before me the undersigned Notary Public in and for said County and State, personally appeared **Mark Duncan** known to me to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he did so freely and voluntarily and for the uses and purposes therein mentioned. WITNESS my hand and official seal.



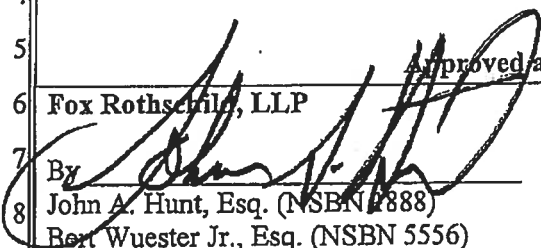

NOTARY PUBLIC
(notary seal)

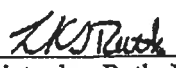
Fox Rothschild LLP
3800 Howard Hughes Parkway
Suite 500
Las Vegas, Nevada 89169

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Approved as to form and content:


Fox Rothschild, LLP
By 
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Bert Wuester Jr., Esq. (NSBN 5556)
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Attorney for Defendant

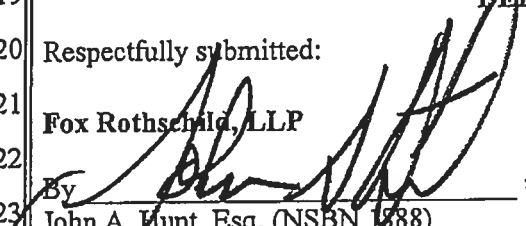
ORDER

IT IS SO ORDERED.

DATED & DONE this 21 day of September, 2010.


THE HONORABLE ELISSA F. CADISH
EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA
DEPARTMENT VI, COURTROOM 15B T.P.

Respectfully submitted:

Fox Rothschild, LLP
By 
John A. Hunt, Esq. (NSBN 1888)
Bert Wuester Jr., Esq. (NSBN 5556)
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
ph. (702) 262-6899; fax (702) 597-5503
email: junt@foxrothschild.com

this 20 day of August, 2010

1 email: bwuester@foxrothschild.com

2 Attorney for Plaintiff

3 Nevada State Board of Dental Examiners v. Mark Duncan

4 Eighth Judicial District Court, Clark County, Nevada

5 Case No. A-10-620466-C; Dept. VI

6 *Stipulation, Order, Judgment, & Permanent Injunction*

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