

**UNDERSTANDING THE NEVADA BOARD OF DENTAL EXAMINERS'
COMPLAINT, INVESTIGATORY AND DISCIPLINARY PROCESS¹**

I.

HOW DOES BOARD INVOLVEMENT IN A DISPUTE OCCUR?

1. **Verified Complaint*:** An identified patient or other interested or aggrieved person files a Verified Complaint with the Board. The Board **shall** (i.e., is required by statute to) investigate these complaints as long as the Board has jurisdiction over the allegations, i.e., the allegations set forth facts which, if proven, would constitute grounds for discipline by the Board pursuant to NRS Chapter 631 and/or NAC Chapter 631. The determination of whether the allegations of the Verified Complaint are within the Board's jurisdiction is made by the Disciplinary Screening Officer Coordinator. If the Disciplinary Screening Officer Coordinator determines that the Board does not have jurisdiction, the complaint is declined (i.e., no action will be taken by the Board), and the complainant is notified in writing and is provided information regarding their administrative, civil and/or peer review remedies.

(NAC 631.240; NRS 631.360(1); NRS 631.346 – NRS 631.349; NAC 631.230).

OR

2. **Authorized Investigation*:** If the Board is alerted (e.g., by the Board of Pharmacy or an anonymous source with corroborating evidence) of alleged actions or irregularities that may constitute unprofessional conduct, the Executive Director or Disciplinary Screening Officer Coordinator may request that the Board authorize an investigation based upon the information received. The request for an Authorized Investigation is made without identification to the Board of the licensee to be investigated. Thus, upon authorizing an investigation, the Board members are unaware of the subject of the investigation.

(NRS 631.360(1); NRS 631.346 – NRS 631.349; NAC 631.230)

*Please note that the Verified Complaint and/or the Authorized Investigation (sometimes referred to as an Authorized Complaint) discussed in this section arise out of grievances presented to the Board by persons or entities outside of the Board. These complaints initiate the investigatory process described

¹ This guide has been created to help address frequently-asked questions regarding the Nevada State Board of Dental Examiner's complaint, investigatory and disciplinary process. The information contained herein is a summary of the disciplinary process and administrative procedures currently implemented by the Nevada State Board of Dental Examiners pursuant to NRS 631, NAC 631, NRS 622, NRS 22B and NAC 233. While we have tried to be as comprehensive as possible, this summary should not be considered to be all inclusive, and the reader should be aware that the Board's policies and procedures are governed by the Nevada Revised Statutes and Nevada Administrative Code, not the statements in this document. Citations to certain statutes and regulations should not be interpreted as an admission by the Board that there are no other applicable statutes or regulations governing a specific policy or procedure. Nothing contained in this summary should be considered legal advice. The reader should review the statutes and regulations for a more in-depth understanding of the procedures and regulations that control the investigative and disciplinary process regarding dentists and hygienists in the State of Nevada. Licensees should contact independent counsel for specific questions regarding the legal significance of any of the procedures described in this guide.

below in Section II. The Verified Complaint or Authorized Complaint is DIFFERENT than the Formal Complaint “to initiate discipline” referenced in NRS 631.368(2). The Formal Complaint is discussed in Section III below, and may be filed with the Board to initiate disciplinary action in the event attempts to resolve an investigated matter are unsuccessful.

3. **Response:** The dentist or hygienist (collectively referred to herein as “Licensees”) that is the subject of a Verified Complaint or Authorized Investigation is given notice of the Verified Complaint or Authorized Investigation and is given the opportunity to file a response to the allegations with the Board. Licensees are entitled to be represented by an attorney during investigative and disciplinary proceedings. Following an appearance by an attorney, service of any notices, pleadings, or orders upon the attorney is valid service upon the licensee. If the Verified Complaint was declined by the Disciplinary Screening Officer Coordinator for lack of jurisdiction, no response is required and no action will be taken by the Board.

(NAC 631.240(2); NAC 631.285; NAC 631.290)

II. INVESTIGATION

1. **Who Investigates?** The Board may appoint one of its members, employees, investigators or other agents to conduct the investigation of a Verified Complaint or Authorized Investigation.

(NRS 631.363).

It is the policy of the Board to appoint Disciplinary Screening Officers (DSOs) as the investigators to investigate Verified Complaints and Authorized Investigations. The Board approves a DSO panel in January of each year, and delegates to the Executive Director the task of assigning an approved DSO to each Verified Complaint or Authorized Investigation.

2. **What Does the DSO Do?** The DSO reviews the Verified Complaint or Authorized Investigation, the licensee’s response, pertinent dental and/or medical records, prior investigations against the licensee and any supplemental documentation submitted by the complainant or licensee. The DSO may also request additional records or documentation from the complaint, the licensee or other treating dental or medical professionals. The DSO may also have discussions with the licensee and/or complainant, and may choose to evaluate the patient. The DSO’s investigation is not limited to the Verified Complaint or Authorized Investigation presently before the DSO. The scope of the investigation may be extended to any additional matters which appear to constitute a violation of any provision of NRS chapter 631 or NAC chapter 631 and prior Verified Complaints or Authorized Investigations may be re-examined, regardless of their prior disposition.

(NRS 631.363; NAC 631.250(1))

3. **What Are the DSO’s Options Following Investigation.** Following his or her investigation, the DSO submits preliminary findings and recommendations, as follows:

- a. **Remand:** The DSO may remand the matter without further action if the DSO finds that, based upon the DSO's professional medical judgment and experience, there was (1) no action constituting a violation of any provision of NRS Chapter 631 or NAC Chapter 631 or (2) insufficient evidence to establish a violation. A remand does not necessarily mean that the DSO thought the treatment was perfect; it simply means that based on the information available to the DSO (1) in the DSO's professional opinion, the treatment fell within the acceptable parameters of reasonable care and/or (2) that there were no violations of Nevada law warranting the Board to take action against the licensee's license and/or (3) that there was not a preponderance of the evidence to establish that a violation of Nevada law has occurred which allows the Board to take action.

A remand does not operate as a limitation on or a detriment to any subsequent investigation or other action by the Board. If remanded, the complainant and licensee will be informed that, although the DSO has remanded the matter and no action will be taken at that time, the complaint will remain in the licensee's file and, to the extent that there are ever any future complaints, the remanded matters may be reviewed again.

(NAC 631.250(1); NAC 631.250(2))

A remand may include a good-faith reimbursement to the patient, but this cannot be a condition of remand.

Letters of remand do not constitute "action" by the Board, they are not public record, nor are they reportable to the National Practitioner's Data Bank. The fact of a remand is confidential, but a remanded case may be re-examined in the event of a subsequent similar Verified Complaint or Authorized Investigation.

(NAC 631.250(1); NAC 631.250(2))

- b. **Findings of Violations and Recommendations for Corrective Action or Discipline.** If the DSO finds, based upon his or her medical judgment and experience, that an actionable violation has occurred, the DSO shall submit preliminary findings and recommendations concerning those findings to a Review Panel. In the event the DSO finds an actionable violation of any provision of NRS 631 or NAC 631, the DSO may recommend the following:

- i. **Corrective Action/No Discipline:** In cases where the actionable violation is such that the DSO wishes to impose some conditions upon the licensee for remedial purposes, such as monitoring or certain continuing education requirements, but does not believe that discipline is warranted or necessary, the DSO may recommend that corrective action requirements be imposed. This remedy is usually considered when the licensee does not have a history of prior remands and/or prior stipulations, though each case may stand on its own merit and underlying facts. Examples of corrective action recommended by the DSO may include, but are not limited to, reimbursement to the patient, additional continuing education courses in one or more specified areas, reporting to the Board and/or monitoring of the licensee's practice or patient care.

- ii. **Disciplinary Action:** Discipline may be recommended in cases in which the licensee has a history of prior remands and/or prior corrective or disciplinary actions and/or where the specific complaint being investigated is of such a nature that the DSO feels that disciplinary restrictions should be placed upon the licensee in the form of suspension, probation, fine, public reprimand or other mandatory requirement. Though prior remands, stipulation or discipline may be considered by the DSO, each case may stand on its own merits and underlying facts. Examples of disciplinary action recommended by the DSO may include, but are not limited to, probation, suspension, patient reimbursement, issuance of a public reprimand, restrictions on practice and/or fines.

(NRS 631.350(1))

- c. **Review Panel.** The Review Panel appointed pursuant to Section 1(1) of [SB 256] shall review the preliminary findings and recommendations submitted by the DSO as follows:
 - i. If, based upon its review of the preliminary investigation conducted by the DSO, the Review Panel finds that a preponderance of the evidence does **not** exist to support the DSO's preliminary findings, the matter shall be remanded without action. The information provided above in paragraph II(3)(a) is also applicable in the event of a remand of a Verified Complaint or Authorized Investigation following the Review Panel's review of the DSO's investigation, findings and recommendations.
 - ii. If, based upon its review of the preliminary investigation conducted by the DSO, the Review Panel finds that a preponderance of the evidence **does** exist to support the DSO's preliminary findings and recommendations, the matter shall be returned to the DSO for further proceedings, including but not limited to, an informal hearing pursuant to NRS 631.363 and/or negotiation of a consent or settlement agreement governed by the provisions of NRS Chapter 622.
 - iii. If, based upon its review of the preliminary investigation conducted by the DSO, the Review Panel finds that a preponderance of the evidence exists to support the DSO's preliminary findings, but the Review Panel does not find that the DSO's recommendations are appropriate based upon those findings, the Review Panel shall submit its proposed recommendations to the DSO for review and consideration prior to the investigator initiating further proceedings, including but not limited to an informal hearing pursuant to NRS 631.363 and/or negotiation of a consent or settlement agreement governed by the provisions of NRS Chapter 622.
 - iv. Pursuant to SB 256, the Review Panel proceedings are not subject to Nevada's Open Meeting Law. The Review Panel proceedings are closed meetings.
 - v. The Review Panel's review may include, but is not limited to, (1) review of the complaint, (2) review of the licensee's response, if any; (3) review of pertinent dental and/or medical records; (4) review of the DSO's preliminary findings and

recommendations based upon review of the above-materials, report of discussion with the licensee, if any, and/or report of discussion with and/or evaluation of the complainant or patient by the investigator, if any.

(SB 256: NRS 631.____; NAC 631.____)

- d. **Negotiation, Stipulation and Possible Resolution.** Following the Review Panel's review and determination that a preponderance of the evidence exists to support the DSO's preliminary findings and/or recommendations, the DSO may offer the licensee the opportunity to resolve the matter through a Corrective Action Non-Disciplinary Stipulation or a Disciplinary Stipulation. All stipulations include a provision requiring the licensee to reimburse the Board for the costs and fees associated with the investigation of the Verified Complaint or Authorized Investigation. (NRS 622.400). If a stipulation is agreed upon, the licensee agrees to an examination under oath to confirm his or her voluntary agreement to, and understanding of, the terms of the stipulation agreement. There are two types of stipulated agreements, and it is in the DSO's discretion, with approval by the review panel as discussed above, whether or not to offer one of these stipulations:

- i. **Corrective Action Non-Disciplinary Stipulation:** This is usually offered when the licensee does not have a history of prior remands and/or prior stipulations, though each case may stand on its own merit and underlying facts. A Corrective Action Non-Disciplinary Stipulation does not revoke or suspend a licensee's license, nor does it subject the licensee to probation, fine or public reprimand on the basis of the violation. The Board does not consider a Corrective Action Non-Disciplinary Stipulation to be discipline and, therefore, does not report it to the National Practitioner Data Bank. However, if the conditions of a Corrective Action are not met, suspension may occur pursuant to the terms of the stipulation and such suspension is considered discipline and is reportable to the NPDB. Though it is not a public reprimand, upon acceptance by the Board, a Corrective action Non-Disciplinary Stipulation is public record.

(NRS 622.330)

Entering into a Corrective Action Non-Disciplinary Stipulation is voluntary. Benefits of entering into a Non-Disciplinary Stipulation include, but are not limited to, early resolution of the matter, minimization of costs and fees and reduction of the risk of stiffer penalties if the matter were to proceed to a full Board hearing. Also, because the Board does not report a Corrective Action to the National Practitioner's Data Bank, there is less risk that the licensee's provider contracts or hospital privileges will be affected (though the Board cannot guarantee that these things will not be affected, as these determinations are made exclusively by the insurers or hospitals without input from the Board). Additionally, entering into a stipulated agreement maintains the confidentiality of the investigative materials giving rise to the stipulation.

The Board is not bound by the DSO's offer of a non-disciplinary resolution. As such, if the matter proceeds to a full Board hearing, the Board may initiate discipline regardless of the DSO's prior offer (after Review Panel approval) to enter into a non-disciplinary stipulation.

A licensee agreeing to enter into a Corrective Action Non-Disciplinary Stipulation agrees to waive certain due process rights, such as a full Board hearing, any and all rights to seek judicial review and/or to initiate any litigation against the Board, Board Counsel, Staff, Agents, of the Board or the DSO, whether in their official or individual capacities, for any claims arising from the investigation.

- ii. **Disciplinary Stipulation:** This may be considered where there is a history of remand, corrective action and/or discipline, though each case stands on its own merits and underlying facts, such that certain violations may warrant discipline regardless of whether the licensee has a disciplinary or investigative history with the Board. If the licensee agrees to a Disciplinary Stipulation, it will be submitted to the Board for approval. If approved, the Disciplinary Stipulation becomes public record. Disciplinary stipulations typically contain provisions for revocation, suspension, probation, fine and/or public reprimand and are therefore reportable to the National Practitioner Data Bank. The Disciplinary Stipulation will become a public record upon acceptance by the Board.

Entering into a Disciplinary Stipulation is voluntary. Benefits of entering into a Disciplinary Stipulation include but are not limited to, early resolution of the matter, minimization of costs and fees and potential litigation, as well as reduction of the risk of stiffer penalties if the matter were to proceed to a full Board hearing. Additionally, entering into a stipulated agreement maintains the confidentiality of the investigative materials giving rise to the stipulation unless the stipulation allows for a waiver of this confidentiality in the event that the stipulation is later publically challenged.

The Board is not bound by the terms, conditions or recommendations underlying an offered disciplinary stipulation. As such, if the matter proceeds to a full Board hearing, the Board may initiate discipline that is different or more restrictive than that offered at the time of a proposed stipulation.

A licensee agreeing to enter into a Disciplinary Stipulation agrees to waive any and all rights to seek judicial review and/or to initiate any litigation against the Board, Board Counsel, Staff, Agents, of the Board or the DSO, whether in their official or individual capacities, for any claims arising from the investigation.

(NRS 631.350(5), NRS 631.350(6))

- e. **Informal Hearing:** In the event that (1) the DSO and/or Review Panel does not remand the investigation; (2) the DSO and/or Review Panel does not believe it appropriate to offer a stipulation and/or (3) the licensee declines an offer to enter into a Corrective Action Non-Disciplinary Stipulation or Disciplinary Stipulation, the DSO may conduct an Informal Hearing.

(NRS 631.363)(Please note, the Informal Hearing pursuant to NRS 631.363 is not the same as the full Board Hearing discussed in NRS 631.360.)

The Informal Hearing is conducted as follows:

- i. The licensee shall be given at least ten (10) days' notice of the Informal Hearing. (NRS 631.363)
 - ii. The Informal hearing must be transcribed in permanent form by a court reported licensed to do business in Nevada. (NAC 631.255)
 - iii. The Informal Hearing is voluntary and a licensee may choose to appear with or without counsel or not to appear at all. The Informal Hearing will proceed whether or not the licensee chooses to appear.
 - iv. The DSO, Board Counsel, Licensee, Counsel for the licensee and the court reporter are the only individuals permitted to participate in the Informal Hearing.
 - v. During the Informal Hearing, the DSO and/or Board counsel will ask questions of the Licensee pertaining to the subject of the Verified Complaint, Authorized Investigation and/or any matters concerning which the scope of the investigation has been expanded.
 - vi. If, at the conclusion of the Informal Hearing, the DSO determines that there has been a violation of any of the provisions of NRS 631 and/or NAC 631, the DSO will prepare Findings and Recommendations. (NRS 631.363(3))
 - vii. The DSO's Findings and Recommendations will be presented the Board and the Licensee for consideration. **Please Note: Often, additional information will be learned during the Informal Hearing. Thus, the Findings and Recommendations following an Informal Hearing are not restricted by any prior proposed or offered stipulation. For example, if a non-disciplinary stipulation was proposed prior to the Informal Hearing, the findings and recommendations following an informal hearing may or may not include recommendations that include disciplinary measures.**
 - viii. The Licensee may choose to consent to the Findings and Recommendations. (NRS 631.363(5))
 - ix. If the Licensee consents to the DSO's Findings and Recommendations, the Board, at its option, may adopt the Findings and Recommendations as its final order without conducting a full Board hearing on the matter. (NRS 631.363(5))
- f. **Remand:** If, through the process of additional discussion, negotiation and/or Informal Hearing, the DSO determines that remand is the appropriate remedy despite earlier findings to the contrary, it is within the DSO's discretion to remand the matter or present Findings and Recommendations concerning disciplinary action following the Informal Hearing.
- g. **Return to Review Panel:** If, following an Informal Hearing described in this section, the DSO prepares Findings and Recommendations pursuant to NRS 631.363(3), the Review Panel shall conduct a subsequent (2nd) review of the full investigation, which now includes a transcript of the Informal Hearing, as follows:

- i. If the Review Panel agrees with the DSO's Findings and Recommendations (also referred to as the DSO's Report), the Review Panel shall adopt the DSO's Report for submission to the Board.
 - ii. If the Review Panel does not agree with the DSO's Findings and/or Recommendations, the Review Panel shall present its alternate Findings and Recommendations for submission to the Board for review and consideration together with the DSO's Findings and Recommendations. At any subsequent Full Board Hearing conducted by the Board, the Board may consider the DSO's report and/or the Review Panel's report, but is not bound by either.
- h. **Confidentiality:** With the exception of a fully executed Stipulation Agreement or Findings and Recommendations to which the Licensee has consented, everything discussed above in Section I and Section II, including the Verified Complaint or Authorized Investigation, the Response, the medical records, documents obtained or generated during the investigation (including proposed stipulations which were not ultimately agreed upon or consented to), the Informal Hearing transcript and exhibits and any communications between the Licensee (or his or her Counsel), Board Counsel, and the DSO are part of the investigation and are confidential. (NRS 631.368(1)). This confidentiality applies not only to the public, but also to the Board members until such time as a full Board hearing is noticed. (NAC 631.250(3)). Upon review of any of the above-referenced material by the Board members in the context of a Full Board Hearing, these documents will become public record.

"The results of the investigation and 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 hearing on the matter." (NAC 631.250(3)). As used in NAC 631.250(3), the "Board's hearing on the matter" refers to the *Full Board Hearing* discussed below; it does not refer to the Informal Hearing discussed above. Therefore, prior to notice of a full Board hearing governed by NRS 631.360(2)-(7), the Board members are not to have access to, or knowledge of, any information relating to the investigation, including but not limited to, the Verified Complaint or Authorized Investigation, the Licensee's Response, the medical records, documents obtained or generated during the investigation (including proposed stipulations which were not ultimately agreed upon or consented to), the Informal Hearing transcript and exhibits and any communications between the Licensee (or his or her Counsel), Board Counsel, and the DSO.

In other words, the investigation will remain confidential from the public and the Board members if there is a remand or stipulated agreement, but part or all of the investigation may become public record if formal charges are brought pursuant to a Formal Complaint. Stipulated agreements, Findings and Recommendations and Formal Complaints are always public record.

(NRS 631.360(2)-(7); NRS 631.368; NAC 631.250(3))

III.

FULL BOARD HEARING/DISCIPLINARY ACTION

1. **Formal Complaint:** In the event that (1) the Licensee chooses not to accept the DSO's post- Informal Hearing Findings and Recommendations or (2) the Board refuses to adopt Findings and Recommendations to which the Licensee has consented, a Formal Complaint may be filed by the prosecutor (Board Counsel) requesting a Full Board Hearing. This is the "complaint or other document filed by the board to initiate disciplinary action" referenced in NRS 631.368(2), which is a public record. Failure to file an answer within the time frame prescribed in the complaint creates a rebuttal presumption that the Licensee admits generally to the allegations contained in the Complaint.

(NRS 631.360; NAC 631.350)

2. **Notice:** The Licensee that is the subject of the Formal Complaint shall be notified via personal service or certified mail of the charges at least ten (10) days prior to the date of the full Board Hearing. If an appearance has been made by counsel, service to the Licensee's attorney shall be considered service to the Licensee.

(NRS 361.360(2); NAC 631.290)

3. **Motions:** If made prior to the full Board Hearing, all motions must be in writing, must set forth the nature of the relief sought, the grounds therefore, and the points and authorities relied on in support. The opposing party has twenty (20) days to serve and file a written opposition, and the moving party may serve and file a reply within ten (10) of receipt of the opposition. There will be no oral argument unless specifically requested by the Board. Filing shall be made with the Secretary-Treasurer of the Board.

(NAC 631.310; NAC 631.320)

4. **Subpoenas:** The Board may compel the attendance of witnesses or production of documents or objects by subpoena. A party to a proceeding before the Board may submit an application in writing to the Executive Director of the board requesting a subpoena.

(NRS 631.360(4); NAC 631.355)

5. **Full Board Hearing:** At the time and place set forth in the Notice, the charges and evidence to support the Formal Complaint will be presented to the Board. The Licensee is entitled and encouraged to be represented by counsel. Board Counsel will act as the prosecutor and a Deputy Attorney General will represent the Board for purposes of the full Board Hearing. Upon motion by a party or request of the Board, the Board may request or permit briefs to be filed. A briefing schedule will be set by the Board as appropriate.

(NRS 361.360; NRS 631.368(2); NAC 631.390; NAC 631.400)

6. **Failure to Appear:** If a party fails to appear at a hearing scheduled by the Board and no continuance has been requested or granted, the Board will hear the evidence, consider the matter and dispose of it on the basis of the evidence before it.

(NAC 631.380)

7. **Participation by the DSO and/or Review Panel:** The Board may consider the report and/or findings and recommendations filed by the DSO and/or the Review Panel, but is not bound by them. The DSO or member(s) of the Review Panel may provide testimony concerning their findings but may not participate in the decision rendered by the Board.

(NRS 631.363(4); NAC 631.395)

8. **Decision:** Should the Board find there is a violation of any of the provision of NRS 631 or NAC 631, the Board may impose discipline, if any, pursuant to NRS 631.350. Disciplinary options available to the Board include but are not limited to, revocation, suspension, probation, restriction of practice, community service, examination, participation in a drug/alcohol program, fines, reimbursement to a patient, public reprimand, or any combination of these. The Board may issue its decision at any time after closing arguments at the Full Board Hearing, but will issue its order or render its decision no later than ninety (90) days after the hearing or submission of the case.

(NRS. 631.350; NAC 631.410)

IV. APPEAL

1. **Petition for Reconsideration or Rehearing:** A request for reconsideration or rehearing must be made within fifteen (15) days of the date of service of the Board's final decision. An order granting or denying the petition must be served on all parties at least five (5) days before the expiration of the time for filing the petition for judicial review. If the petition is granted, the subsequent order shall be deemed the final order for the purpose of judicial review.

(NRS 233B.130(4))

2. **Judicial Review:** Once a final decision of a full Board Hearing is rendered by the Board, a Licensee may petition the District Court for judicial review. The petition for judicial review must be filed within thirty (30) days after service of the Board's final decision.

(NRS 233B.130)

3. **Scope of Judicial Review:** Judicial review of a final decision of the Board must be conducted by a Court, without a jury. The Court's review is confined to the record. The District Court shall not substitute its judgment for that of the Board with respect to the weight of evidence on a question of fact. The District Court may remand or affirm a final decision of the Board or set it aside in whole or in part if substantial rights of the Licensee have been prejudiced because of a final decision of the Board. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:

- (a) In violation of constitutional or statutory provisions;

- (b) In excess of the statutory authority of the agency;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion.

(NRS 233B.135)

4. **Appellate Court:** The Board or the Licensee may appeal the District Court's ruling to the appellate court of competent jurisdiction pursuant to the rules fixed by the Nevada Supreme Court.

(NRS 233B.150)