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BEFORE THE NEVADA STATE BOARD OF DENTAL EXAMINERS

IN REGARDS TO THE MATTER OF:

REQUEST FOR ADVISORY OPINION
REGARDING NRS 631.347AS REQUESTED
BY Dr. VILAS BALAKRISHNA

AO-07-_____

On May 10, 2007 pursuant to agenda item 2 at a properly noticed public meeting held at the Board's offices in Las Vegas the Nevada State Board of Dental Examiners (the "Board") issued the following advisory opinion.

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| Dr. Tony Guillen | Present (by phone) |
| Dr. Donna Hellwinkel | Present |
| Dr. Willaim Pappas | Present |
| Dr. Joel T. Glover | Present |
| Mrs. Rosanne "Missy" Matthews | Present |
| Mrs. Sharon Peteron | Present |
| Mrs. Bonnie Bryan | Present |
| Mr. James "Tuko" McKernan | Present |

ADVISORY OPINION

I.

BACKGROUND

1. As set forth in NAC 631.279¹ through authority of NRS 631.190 and NRS 233B.120, the Board is authorized to provide advisory opinions.

¹ NAC 631.279 Proceedings to determine applicability and construction of statutes and regulations.

1. Any applicant or licensed dentist or dental hygienist may obtain a determination or advisory opinion from the Board as to the applicability of any provision of chapter 631 of NRS or any regulation adopted pursuant thereto by bringing an action for a declaratory judgment before the Board.

2. The Board will construe any statute or regulation reviewed pursuant to this section in a manner consistent with the declared policy of the State of Nevada.

1 2. Nevada Dental Licensee Vilas Balakrishna requested, pursuant to NAC 631.279, the
2 Board issue an advisory opinion regarding NRS 631.347 and a discounted dental plan he wanted
3 to offer through his dental practice.
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5 3. Public notice of the above-referenced request for an advisory opinion was provided in
6 accordance with state law.
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8 4. The above-referenced request for an advisory opinion was considered by the Legislative
9 and Dental Practice Committee of the Board at a May 10, 2007, public meeting held at the
10 Board's offices in Las Vegas.
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12 II. 13 DISCUSSION

14 NRS 631.347 provides:

15 Participation in plan requiring patients to select dentist from preselected group
16 unless plan for personal selection offered; authorized disciplinary action. Participating in any plan or practice in which patients are required to select a
17 dentist from a preselected group constitutes unprofessional conduct unless those
18 patients are also offered a plan which provides them with a reasonable
19 opportunity to select a dentist of their own choice. The Board may not revoke the
20 license of a person who participates in such a plan or practice but may take any
21 other action authorized in this chapter regarding unprofessional conduct. (Added
22 to NRS by 1983, 1107)

21 Dr. Balakrishna advised of his desire to offer a discounted dental plan through his dental
22 practice and, therefore, the issue presented for the requested advisory opinion is whether Dr.
23 Balakrishna's plan would comply with provision of NRS 631.347 as it relates to plans and
24 practice.
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26 Dr. Dwight Meierhenry was present and addressed the Board. Dr. Meierhenry was a
27 Board member at the time what would become NRS 631.347 was adopted by the Nevada
28 Legislature and was a witness noted in the legislative history as present at the time. Dr.

1 Meiehenry addressed the Board regarding the compilation of the dental plan issued as it related
2 to prepaid insurance plans, dental plans, and co-payments. Dr. Meierhenry addressed the issue
3 the Board faced in 1983 when the statute was written to protect patient choice regarding prepaid
4 dental plans. The patient would retain choice within the plan or practice. Whatever benefit the
5 patient had through the prepaid fee was theirs to use at a dentist of their choice.

6 Mr. Hunt, Board counsel, also addressed the Board regarding the history of the statute as
7 it relates to insurance plans. Mr. Hunt referenced a visit with the Nevada Insurance
8 Commissioner regarding dental plans and a patient's option to enter or exit a plan.

9 Dr. Balakrishna explained his plan options for his practice. He noted there is a
10 "membership" fee in order to obtain the discount for services. Discussion was had regarding
11 "insurance" division as a plan may be classified; dental discount plan as a plan may be classified;
12 and practice limitations.

13 Dr. Glover inquired about actuarial certification with insurance division (NRS 695). Ms.
14 Kelly identified that Dr. Balakrishna's plan as described may be compliant with provisions of the
15 division of insurance but in violation of NRS 631.347 which is the statute enforced by the Board.
16 Ms. Kelly further explained that the statute does not differentiate plan from practice, it is stated
17 as either, a plan or practice, that forces the patient to choose from a pre-selected group, not
18 giving choice, while having a "membership fee" may violate the statute as written.

19 Mrs. Peterson inquired about incentives offered versus discount plan offering. Dr.
20 Meierhenry offered that paying for the benefit, the membership, for the plan, is what may violate
21 the provisions of the statute as it was intended to afford patients the choice in a practice and/or
22 plan, when paying for a dental benefit. Ms. Shaffer inquired about the membership period and
23 whether a yearly guarantee of fees was made with option to renew yearly in the plan. Dr.
24 Balakrishna explained his payment options of the plan he offered to patients.

25 Mr. Hunt inquired whether these plan options were submitted to the Board. Mr. Hunt
26 inquired about the implementation of the plan and its differentiation from insurance. Ms. Kelly
27 asked again about this plan limiting the patient choice to the "practice" which the statute
28

1 prohibits. Dr. Pappas inquired about whether there was a contract the patient signed. Mrs.
2 Peterson inquired of Dr. Meierhenry about what "plan" meant. Dr. Meierhenry indicated that the
3 intent was not to define "plan" other than if there was a charge for such, and how the "plan" may
4 be marketed. Mr. Hunt then directed members to NRS 631.347 and noted the "practice"
5 reference and prohibition of not offering choice to the patient. Dr. Meierhenry indicated the
6 concern at the time of the statute was the reality of the marketing/advertising a discount and what
7 services/treatment costs were being discounted.
8

9
10 **III.**
CONCLUSION

11 After considering and discussing public comment pursuant to the authority set forth in
12 NAC 631.279, NRS 631.190 and NRS 233B.120, Board Member, Dr. Tony Guillen motioned
13 that the Board issue an advisory opinion that the dental plan currently described and presented by
14 Dr. Balakrishna would violate the provision of NRS 631.347. The motion was seconded by
15 Board Member Dr. Donna Hellwinkel. After opportunity to discuss the motion a vote was taken
16 wherein the motion passed unanimously.
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20 Kathleen Kelly
21 Executive Director
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