

BEFORE THE NEVADA STATE BOARD OF DENTAL EXAMINERS

IN REGARDS TO THE MATTER OF:

RDH Peterson's request for the Advisory Opinion regarding whether a dental hygienist with a special health endorsement issue pursuant to NAC 631.210(5) is exempted from NRS 631.3452(1)(e)

AO-13-0307

On March 7, 2013, pursuant to agenda item 6 (h)(1) at a properly noticed meeting held at the Nevada State Board of Dental Examiners ("Board") office located at 6010 S Rainbow Boulevard, Suite A-1, Las Vegas, Nevada 89118 the "Board" issued the following advisory opinion.

Dr. Jade A Miller	Excused
Dr. M. Masih Soltani	Excused
Dr. Jason Champagne	Present
Dr. Timothy Pinther	Present
Dr. James G Kinard	Present
Dr. J. Stephen Sill	Present
Dr. Byron Blasco	Present
Ms. Solie	Present
Mrs. Leslea Villigan	Present
Mrs. Theresa Guillen	Present
Mrs. Lisa Wark	Present

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.

II.
REQUESTED OPINION

Pursuant to NRS 631.279, Nevada licensee, Sharon Peterson, RDH, has requested advisory opinion on behalf of the Nevada Dental Hygiene Association on whether a Dental hygienist who has been issued a special health endorsement pursuant to NAC 631.210(5) is exempt from the provisions of NRS 631.3452(1)(e).

2. Public notice of the above-referenced request for an advisory opinion was provided in accordance with state law.

II.
DISCUSSION

Ms. Peterson explained the history and legislative intent of the special health endorsement statute for dental hygienists. Ms. Peterson stated since the adoption of NRS 631.3452 she was advised by the former Executive Director that dental hygienists who hold special health endorsements are required to be under the supervision of a dental director pursuant to NRS 631.3452. Ms. Peterson stated it is her belief this was not the intent of the statute and was requesting an advisory opinion as to whether a Dental hygienist who has been issued a special

¹ NAC 631.279 Proceedings to determine applicability and construction of statutes and regulations. (NRS 631.190)

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.

health endorsement pursuant to NAC 631.210(5) is exempt from the provisions of NRS 631.3452(1)(e).

Board Counsel explained to the options available to Board on whether to issue an advisory opinion sought pursuant to NAC 631.279. Board Counsel then stated for the record RDH Peterson's specific request. Board Counsel then read into the record NRS 631.3452(1)(e) which states:

Supervising dental hygienists, dental assistants and other personnel involved e) in direct patient care and authorizing procedures performed by the dental hygienists, dental assistants and other personnel in accordance with the standards of supervision established by law or regulations adopted pursuant thereto.

Board Counsel then made specific reference to the language contained in NRS 631.3452(1)(E) which states "*with the standards of supervision established by law or regulation.*"

Board Counsel then read into the record NAC 631.210(5) which states:

5. The Board may authorize a dental hygienist to perform the services set forth in paragraphs (a) to (n), inclusive, of subsection 1 without supervision by a dentist and without authorization from the licensed dentist of the patient on whom the services are to be performed, at a health facility, a school or a place in this State approved by the Board after the Board:

- (a) Issues a special endorsement of the dental hygienist's license.*
- (b) Approves the treatment protocol submitted by the dental hygienist which includes an explanation of the methods that the dental hygienist will use to:*
 - (1) Treat patients; and*
 - (2) Refer patients to a dentist for:*
 - (I) Follow-up care;*
 - (II) Diagnostic services; and*
 - (III) Any service that the dental hygienist is not authorized to perform.*

Board Counsel then advised the Board upon considering the language contained in NRS 631.3452 and NAC 631.210(5) the Board could conclude that a hygienist who has been issued a special health endorsement pursuant to NAC 631.210(5) is exempt from the provisions of NRS 631.3452(1)(e). Board Counsel further advised the Board where a dental office or clinic established pursuant to NRS 631.3452 is staffed by dental hygienists who do not have a special health endorsement pursuant to NAC 631.210(5) those hygienist are not exempt from the provisions of NRS 631.3452. and those hygienist must be supervised by a dental director licensed to practice dentistry in the State of Nevada as required by NRS 631.3452. However a dental office or clinic established pursuant to NRS 631.3452 that is staffed only by hygienist who have been

issued a special health endorsement pursuant to NAC 631.210(5) are not required to have a dental director licensed to practice dentistry in the State of Nevada as required by NRS 631.3452.

III. DELIBERATIONS

After considering and discussing public comment pursuant to the authority set forth in NAC 631.279, NRS 631.190 and NRS 233B.120, RDH Solie made the following motion:

“That the Board issues an Advisory Opinion a hygienist who has been issued a special health endorsement pursuant to NAC 631.210(5) is exempt from the provisions of NRS 631.3452(1)(e).

Further that the Board issued an Advisory Opinion that a dental office or clinic established pursuant to NRS 631.3452 that is staffed only by hygienist who have been issued a special health endorsement pursuant to NAC 631.210(5) are not required to have a dental director licensed to practice dentistry in the State of Nevada as required by NRS 631.3452.

Further that the Board issue an Advisory Opinion that where a dental office or client established pursuant to NRS 631.3452 is staffed by dental hygienists who do not have a special health endorsement pursuant to NAC 631.210(5) those hygienist are not exempt from the provisions of NRS 631.3452 and those hygienist must be supervise by a dental director licensed to practice dentistry in the State of Nevada as required by NRS 631.3452.

The motion was seconded by Ms. Wark.

Dr. Kinard called for the motion:

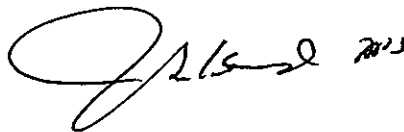
Dr. Jade A Miller	excused
Dr. M. Masih Soltani	excused
Dr. Jason Champagne	yes
Dr. Timothy Pinther	yes
Dr. James G Kinard	yes
Dr. J. Stephen Sill	yes
Dr. Byron Blasco	yes
Ms. Caryn Solie	yes
Mrs. Leslea Villigan	yes
Mrs. Theresa Guillen	yes
Mrs. Lisa Wark	yes

ADVISORY OPINION

The motion having passed unanimously the following Advisory Opinion(s) is hereby issued by the BOARD:

1. That a hygienist who has been issued a special health endorsement pursuant to NAC 631.210(5) is exempt from the provisions of NRS 631.3452(1)(e).
2. That a dental office or clinic established pursuant to NRS 631.3452 that is staffed only by hygienist who have been issued a special health endorsement pursuant to NAC 631.210(5) are not required to have a dental director licensed to practice dentistry in the State of Nevada as required by NRS 631.3452.
3. That where a dental office or clinic established pursuant to NRS 631.3452 is staffed by dental hygienists who do not have a special health endorsement pursuant to NAC 631.210(5) those hygienist are not exempt from the provisions of NRS 631.3452 and dental offices or clinics and hygienist must be supervise by a dental director licensed to practice dentistry in the State of Nevada as required by NRS 631.3452.

SO ORDERED:

A handwritten signature in black ink, appearing to read 'J. Kinard DDS', is written over a faint, larger signature.

JAMES G KINARD, DDS, PRESIDENT
Nevada State Board of Dental Examiners