

Nevada State Board of Dental Examiners



6010 S. Rainbow Blvd., Bldg. A, Ste.1 • Las Vegas, NV 89118 • (702) 486-7044 • (800) DDS-EXAM • Fax (702) 486-7046

BULLETIN

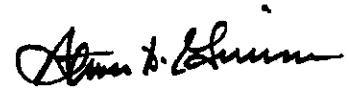
The Nevada State Board of Dental Examiners is issuing this Bulletin to advise licensed dentists of an individual by the name of Andrea Smith (aka Andrea Brooksby) provided dental hygiene treatments without holding a valid license to practice dental hygiene in the State of Nevada.

The Board has taken the appropriate action in District Court regarding the illegal practice of dental hygiene by Ms. Andrea Smith.

As a reminder, before hiring any dentist or dental hygienist to render treatment in your office, you are required pursuant to NAC 631.230 to verify with the Board the license of the dentist or dental hygienist to ensure compliance.

Should you have any contact with Ms. Smith, please contact the Board office at (702) 486-7044.

Thank you.



CLERK OF THE COURT

1 **NOTC**

2 John A. Hunt, Esq. (NSBN 1888)
3 Bert Wuester Jr., Esq. (NSBN 5556)
4 **MORRIS POLICH & PURDY, LLP**
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8 email: jhunt@mpplaw.com
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10 Attorneys for Plaintiff

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **NEVADA STATE BOARD OF DENTAL**
11 **EXAMINERS,**

11 Plaintiff,

12 vs.

13 **ANDREA BROOKSBY SMITH, aka**
14 **ANDREA SMITH, an individual; and DOES I-**
15 **V and ROE CORPORATIONS I-V,**

16 Defendants.

Case No. A-15-718338-C
Dept. No. 32

13 **NOTICE OF ENTRY OF ORDER**
14 **GRANTING**
15 **PERMANENT INJUNCTION**

17 **PLEASE TAKE NOTICE** that an ORDER GRANTING PERMANENT INJUNCTION
18 was filed on the 29th day of September 2015, a true and correct copy of which is attached hereto.
19

20 DATED this 2nd day of October, 2015.

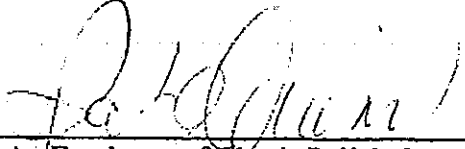
21 **MORRIS POLICH & PURDY, LLP**

22 By /s/ John A. Hunt, Esq.
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Attorneys for Plaintiff

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that on the 2nd day of October, 2015, pursuant to NRCPC
3 5(b)(2)(B), I placed a true and correct copy of the foregoing **NOTICE OF ENTRY OF**
4 **ORDER GRANTING PERMANENT INJUNCTION** in the United States Mail, at Las
5 Vegas, Nevada , with first-class postage fully prepaid, addressed to the following:
6

7 Andrea Brooksby Smith
8 aka Andrea Smith
9 Cheyenne Advanced Dental Arts
10 8960 W. Cheyenne Avenue, #190
11 Las Vegas, Nevada 89129

12 By: 
13 An Employee of Morris Polich & Purdy, LLP

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CLERK OF THE COURT

1 **Code:**
 2 John A. Hunt, Esq. (NSBN 1888)
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DISTRICT COURT
CLARK COUNTY, NEVADA

NEVADA STATE BOARD OF DENTAL
EXAMINERS,

Plaintiff,

vs.

ANDREA BROOKSBY SMITH, aka
ANDREA SMITH, an individual; and DOES I-
V and ROE CORPORATIONS I-V,

Defendants.

Case No. A-15-718338-C
Dept. No. 32

ORDER re: GRANTING
PERMANENT INJUNCTION

WHEREAS on September 9, 2015, this matter on for hearing upon Plaintiff, Nevada State Board of Dental Examiners' ("Plaintiff" or the "Board"), request/application for Preliminary Injunction, as more fully noted in the *Temporary Restraining Order* filed on May 21, 2015.

Plaintiff appeared by and through its attorneys, John A. Hunt, Esq. and Bert Wuester Jr., Esq. of the law firm Morris Polich & Purdy, LLP. Defendant, Andrea Brooksby Smith, aka Andrea Smith ("Defendant" or "Smith"), appeared in proper person.

The Court having reviewed the pleadings and papers on file herein (see specific documents referenced below), having heard the sworn testimony of the witnesses, examined the exhibits admitted into evidence during the hearing, and heard argument of Smith and counsel for

1 the Board, and good cause being present, hereby finds and orders as follows.

2
3 I.
FINDINGS & CONCLUSIONS

4 1. The Board filed with the Eighth Judicial District Court, Clark County, Nevada, its
5 *Verified Complaint* ("Complaint") against Defendant on May 13, 2015, and on May 15, 2015,
6 filed *Plaintiff's Ex Parte Application for Temporary Restraining Order & Preliminary Injunction*
7 ("*Application*"). Further, on May 21, 2015, a *Temporary Restraining Order* ("TRO") was filed.
8 On May 21, 2015, a Summons was issued for Smith.

9
10 2. On May 26, 2015, Smith was served with a copy of the Summons, Complaint,
11 Application, TRO, and copies of MP Investigation Surveillance video dated 3-30-15 and 4-21-
12 15. See Affidavit of Service filed May 27, 2015.

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14 3. On June 4, 2015, at 9:00 a.m. the above captioned matter came on for hearing upon the
15 Board's request/application for Preliminary Injunction, as more fully noted in the TRO and
16 Application. At the hearing, Smith advised she had just recently retained counsel (i.e., Mr.
17 Cannon) but that he could not be present at the hearing due to prior commitments. The Court,
18 upon being advised of Smith's recent retaining of counsel, noted it was inclined to continue the
19 hearing on the Board's request for a preliminary injunction to allow time for Smith's counsel to
20 review the matter and file a response to the Board's request for preliminary injunction. The
21 Court ordered that Smith shall have until and including Thursday, June 18, 2015, to file and
22 serve her opposition, if any, to the *Plaintiff's Ex Parte Application for Temporary Restraining*
23 *Order & Preliminary Injunction* filed on May 15, 2015. In addition, the Court ordered that the
24 *Temporary Restraining Order* filed on May 21, 2015, shall be and is hereby extended to and
25 including July 8, 2015. It was also ordered that with respect to *Plaintiff's Ex Parte Application*
26 *for Temporary Restraining Order & Preliminary Injunction* filed on May 15, 2015, the matter
27 was hereby set for an evidentiary hearing beginning at 9:00 a.m. on Wednesday, July 8, 2015.
28

1 At the evidentiary hearing, parties may present evidence via witness testimony in court, via
2 phone, or via affidavit or declaration. Also, pursuant to the stipulation of Smith made in open
3 court, it was ordered that Smith shall not use a Cavitron device or Cavitron like device (i.e.,
4 ultrasonic scaler) until further order of the Court. See Order filed June 15, 2015 (generated from
5 the June 4, 2015, hearing).
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7 4. On July 8, 2015, a *Stipulation and Order* was filed which, in part, continued the
8 preliminary injunction hearing from July 8, 2015, at 9:00 a.m. to September 9, 2015, at 1:30 p.m.
9 and continued the force and effect of the *Order* filed June 15, 2015, as well as the TRO filed
10 May 21, 2015.
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12 5. On August 4, 2015, Smith's attorney filed his *Motion to Withdraw as Attorney of Record*
13 *on an Order Shortening Time* which was set for hearing on August 11, 2015, at 9:00 a.m. The
14 hearing was vacated and taken off-calendar and the motion was granted pursuant to court
15 minutes dated August 6, 2015. On August 17, 2015, an *Order to Withdraw as Attorney of*
16 *Record* was filed relative to Smith's attorney, Walter R. Cannon, Esq. of the law firm Olson,
17 Cannon, Gornley Angulo & Stoberski.
18

19 6. On September 2, 2015, Smith, in proper person, filed *Defendants [sic] Reply to*
20 *Plaintiff's Allegations and Pleading* ("Smith's Reply"). On September 4, 2015, the Board filed
21 *Plaintiff's Response to Defendants [sic] Reply to Plaintiff's Allegations and Pleading* (the
22 "Board's Response").
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24 7. Before the commencement of the September 9, 2015, hearing the Board, pursuant to
25 NRCP 65(a)(2)¹; moved the Court to consolidate the hearing on the Board's request for
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27 _____
28 ¹As to a permanent injunction, the Board requested the Court, pursuant to NRCP 65(a)(2),

1 preliminary injunction with a trial on the merits. Defendant did not oppose the request. The
2 Court, after considering the matter and finding good cause, the request for consolidation pursuant
3 to NRC 65(a)(2) was GRANTED and it was ordered that the trial of the action on the merits to
4 be advanced and consolidated with the hearing of the application for preliminary injunction.
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7 8. At the beginning of the September 9, 2015, hearing, the exclusory rule was invoked. As
8 a consequence, the parties' witnesses and/or potential witnesses were excluded from the
9 courtroom until called to testify. This included L. Scott Brooksby, DDS, Paige Thomas, and
10 Gary A. Braun, DMD, MS.
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13 9. At the hearing on September 9, 2015, the issue of potential criminal prosecution relative
14 to illegal practice of dental hygiene and/or aiding and abetting the illegal practice of dental
15 hygiene was addressed. This included the prospect of Smith and/or L. Scott Brooksby, DDS (to
16 the extent they are called to testify or elect to take the stand to testify) invoking their privilege
17 against self-incrimination under the Fifth Amendment to the United States Constitution. The
18 Court on the record and in open court addressed this matter with Smith which included, but was
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22 consolidate the hearing on the Board's request for preliminary injunction with a trial on the
23 merits. On such a point, NRC 65(a)(2) provides:

24 **(2) Consolidation of Hearing With Trial on Merits.** Before or after the
25 commencement of the hearing of an application for a preliminary injunction, the
26 court may order the trial of the action on the merits to be advanced and
27 consolidated with the hearing of the application. Even when this consolidation is
28 not ordered, any evidence received upon an application for a preliminary
injunction which would be admissible upon the trial on the merits becomes part of
the record on the trial and need not be repeated upon the trial. This subdivision
(a)(2) shall be so construed and applied as to save to the parties any rights they
may have to trial by jury.

1 not necessarily limited to, Smith being advised she has the right to invoke her privilege against
2 self-incrimination under the Fifth Amendment to the United States Constitution.

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5 10. At the hearing on September 9, 2015, Board exhibits 1-6 were offered and admitted and
6 Smith's exhibit A was offered and admitted.

7
8 11. At the hearing on September 9, 2015, the Board called the following individuals as
9 witnesses who offered testimony after being sworn by the Court's clerk: Debra Shaffer-Kugel,
10 the Board's executive director; Paige Thomas; and Gary A. Braun, DMD, MS. Smith cross-
11 examined the witnesses and the Court asked questions of the witnesses.
12

13
14 12. At the hearing on September 9, 2015, Smith called herself as her only witness. Smith
15 voluntarily testified after being sworn by the Court's clerk. Smith was cross-examined by the
16 Board's attorney and the Court asked questions of Smith which Smith voluntarily answered.
17

18
19 13. The Board, pursuant to NRS 631.190, is authorized to carry out the provisions of chapter
20 631 of the Nevada Revised Statutes.
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22
23 14. Exercise of jurisdiction by the above-captioned court over Defendant in this civil action
24 is appropriate pursuant to NRS 14.065.
25

26 15. At all times relevant herein, Defendant, Andrea Brooksby Smith, aka Andrea Smith was:
27 A) a resident of the County of Clark, State of Nevada; B) an individual over the age of majority;
28

1 C) not in the service of the United States military; D) not an incompetent; and E) has represented
2 her name is Andrea Brooksby Smith and/or Andrea Smith.
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4
5 16. The Board, pursuant to NRS 631.190(6), keeps a register of all dentists and dental
6 hygienists licensed in the State of Nevada; said register contains the names, addresses, license
7 numbers, and renewal certificate numbers of said dentists and dental hygienists.
8

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10 17. The Board has not issued as "license" as defined by NRS 631.070, to Smith.
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12 18. At all times relevant herein Smith was not a legally qualified physician or surgeon. See
13 NRS 631.115(1).
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16 19. At all times relevant herein Smith was not a dentist of the United States Army, Navy, Air
17 Force, Public Health Service, Coast Guard or Department of Veterans Affairs. See NRS
18 631.115(2)
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21 20. NRS 631.400(5), provides "[i]f a person has engaged or is about to engage in any acts or
22 practices which constitute or will constitute an offense against this chapter, the district court of
23 any county, on application of the Board, may issue an injunction or other appropriate order
24 restraining the conduct. Proceedings under this subsection are governed by Rule 65 of the
25 Nevada Rules of Civil Procedure, except that no bond or undertaking is required in any action
26 commenced by the Board."
27
28

1 21. That Defendant, Andrea Brooksby Smith, aka Andrea Smith, has engaged in acts or
2 practices which constitute offenses against chapter 631 of the Nevada Revised Statutes and/or
3 chapter 631 of the Nevada Administrative Code. Namely, as more fully noted herein, Smith has
4 practiced dental hygiene, and/or as a dental hygienist in this state without a license.
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6 22. That the above-captioned Court is a district court of a county of the State of Nevada and
7 is therefore, pursuant to NRS 631.400(5), specifically authorized, upon application of the Board,
8 to issue an injunction or other appropriate order restraining conduct which constitutes or will
9 constitute an offense against chapter 631 of the Nevada Revised Statutes and/or chapter 631 of
10 the Nevada Administrative Code.
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12 23. Pursuant to NRS 631.400(5), the Board's application for an order restraining conduct
13 which constitutes or will constitute an offense against chapter 631 of the Nevada Revised
14 Statutes is to be governed by Rule 65 of the Nevada Rules of Civil Procedure, except that no
15 bond or undertaking is required in any action commenced by the Board.
16

17 24. An injunction is also authorized under NRS 33.010 which provides, in pertinent part, as
18 follows:
19

20 An injunction may be granted when the defendant is about to do some act in
21 violation of plaintiff's right respecting the subject of the action, and tending to
22 render the judgment ineffectual.

23 25. As more fully noted herein, the Board has shown by a preponderance of the evidence that
24 Smith has engaged in practices which constitute an offense against chapter 631 of the Nevada
25 Revised Statutes and/or chapter 631 of the Nevada Administrative Code.
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1 26. The Board has demonstrated it and/or the public could suffer irreparable harm if
2 injunctive relief is not issued.

3
4 27. The public interest in enjoining Defendant is greater than the interests of Defendant to
5 continue to practice dental hygiene in the State of Nevada without a license. See Ellis v.
6 McDaniel, 95 Nev. 455, 596 P.2d 222 (1979) (discussion the interest of the public in whether to
7 grant injunctive relief).

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10 28. The balance of hardships between the Board and Smith favors the issuance of injunctive
11 relief or other appropriate order, pursuant to NRS 631.400(5).

12
13 29. The issuance of injunctive relief or other appropriate order in this matter will not have a
14 significant adverse impact on any public interest.

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16 30. Also, in addition to the above, as noted at the close of the hearing on September 9, 2015,
17 the following further findings and/or conclusions were specifically made by the Court from the
18 bench:

19 A. The Board's investigation of Smith (a non-licensee) and its seeking injunctive or
20 other appropriate order from the district court in this matter was and is appropriate,
21 authorized by the legislature, and appropriate to protect the public. In totem, the Board
22 acted well within its authority. See NRS 631.400(5); see also Exhibit 1, Board Meeting
23 Agenda for October 3, 2014, at pg. 2, and Exhibit 2, Board Meeting Minutes from the
24 October 3, 2014, meeting, at pg. 5, attached to the Board's Response.

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26 B. A dentist who is licensed in the State of Nevada may authorize a dental assistant
27 in his or her employ and under his or her supervision to expose radiographs. See NAC
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2 631.220(1)(a). Here, however, based upon a preponderance of the evidence presented, x-
3 rays were taken by Smith at the dental offices of L. Scott Brooksby, DDS, i.e., Cheyenne
4 Advanced Dental Arts, 8960 W. Cheyenne Ave, #190, Las Vegas, Nevada, but in doing
5 so, the patient did not wear and/or was not covered with a lead apron while the
6 radiographs were being taken. At a minimum, the Court finds this practice of the patient
7 not wearing a lead apron during x-rays being taken to be of concern. On such issue,
8 NAC 631.260 provides:

9 **NAC 631.260 Radiographic procedures: Lead apron required; certified statement and attestation of qualifications required for certain persons who assist in procedures. (NRS 631.190)**

10 **1. Each patient who is undergoing a radiographic procedure must be covered with a lead apron.**

11
12 **2. Each licensee who employs any person, other than a dental hygienist, to assist him or her in radiographic procedures shall include with his or her application for renewal of his or her license a certified statement:**

13 **(a) Containing the name of each person so employed, his or her position and the date he or she began to assist the licensee in radiographic procedures; and**

14 **(b) Attesting that each such employee has received:**

15 **(1) Adequate instruction concerning radiographic procedures and is qualified to operate radiographic equipment as required pursuant to subsection 3 of NAC 459.552;**

16 **(2) Training in cardiopulmonary resuscitation at least every 2 years while so employed;**

17 **(3) A minimum of 4 hours of continuing education in infection control every 2 years while so employed; and**

18 **(4) Before beginning such employment, a copy of this chapter and chapter 631 of NRS in paper or electronic format.**

19 **[Bd. of Dental Exam'rs, § XXV, eff. 7-21-82]—(NAC A 7-30-84; 9-13-85; 9-6-96; R020-14, 6-23-2014) (Underline emphasis added.)**

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24 **C. The Court finds Smith engaged in the illegal practice of dental hygiene on April**
25 **21, 2015, relative to her use of a cavitron device and/or relative to her cleaning of Paige**
26 **Thomas' teeth, activities for which a dental hygiene license is required. Same was in**
27 **violation of NAC 631.210(1)(a) and (1)(b) which provide:**

1 **NAC 631.210 Dental hygienists: Authorization to perform certain**
2 **services; referral of patient to authorizing dentist for certain**
3 **purposes. (NRS 631.190, 631.310, 631.313, 631.317)**

4 1. A dentist who is licensed in this State may authorize a dental
5 hygienist in his or her employ to:

6 (a) Remove stains, deposits and accretions, including dental calculus.

7 (b) Smooth the natural and restored surface of a tooth by using the
8 procedures and instruments commonly used in oral prophylaxis, except
9 that an abrasive stone, disc or bur may be used only to polish a restoration.
10 As used in this paragraph, "oral prophylaxis" means the preventive dental
11 procedure of scaling and polishing which includes the removal of calculus,
12 soft deposits, plaques and stains and the smoothing of unattached tooth
13 surfaces in order to create an environment in which hard and soft tissues
14 can be maintained in good health by the patient.

15 D. In part, evidence of Smith's illegal practice of dental hygiene, as noted above,
16 includes, but is not necessarily limited to:

17 i. Exhibit 5, the photograph which depicts Smith utilizing a cavitron on
18 Paige Thomas.

19 ii. Exhibit 2, the billing statement reflecting, in part, \$70.00 for an oral
20 prophylaxis which was testified to be referring to a teeth cleaning. Also, the Court
21 took judicial notice of the definition of oral prophylaxis via a medical dictionary
22 definition.

23 iii. Dr. Braun's opinions that Smith's activity was the practice of dental
24 hygiene which were based, in part, upon the videos (Exhibits 3 and 4), Smith's
25 use of a cavitron, and Smith's removal of tarter/calculus.

26 E. Based upon the evidence and testimony of Dr. Braun, Mrs. Shaffer-Kugel, and
27 Smith, the Court finds there to be other concerns regarding the following
28 matters/activities by Smith and/or occurring at the dental offices of L. Scott Brooksby,
 DDS, i.e., Cheyenne Advanced Dental Arts, 8960 W. Cheyenne Ave, #190, Las Vegas,

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Nevada:

i. The patient physically holding/steadying the x-ray device during the taking of x-rays.

ii. Smith touching with her hand the cavitron's foot pedal and then immediately resuming to clean the teeth of Paige Smith without first changing her gloves.

iii. Smith touching with her hand her hair and/or touching with her hand her face and then immediately resuming to clean the teeth of Paige Smith without first changing her gloves.

F. In part, Smith testified regarding a variety of matters, including the following:

i. Smith testified she has worked on a part time basis for her father, L. Scott Brooksby, DDS at the dental offices of L. Scott Brooksby, DDS, i.e., Cheyenne Advanced Dental Arts, 8960 W. Cheyenne Ave, #190, Las Vegas, Nevada since December 2014.

ii. With regards to the activities she performed on Paige Smith on April 21, 2015, (i.e., Smith performing teeth cleanings), Smith further testified that on more than twenty (20) other occasions she performed such activities on other patients at her father's dental practice.

iii. Smith further testified that it was fair to say that such activity (i.e., her performing teeth cleanings on patients) was ongoing since December 2014 until being served with the TRO on or about May 26, 2015.

iv. Smith testified she has no formal training as a dental assistant and/or dental hygienist and has never attended school for either.

v. Smith testified she only received "on the job training" at her father's dental practice. Smith testified she has never received any training relative to

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human infection control matters.

vi. Smith acknowledged the activity she undertook with regards to Paige Thomas on April 21, 2015, included teeth cleaning.

v. Smith testified she believed she could perform teeth cleaning based, in part, upon what she observed at her father's dental office, based upon her conversations with dental assistant(s) and dental hygienist(s), and based upon conversation with her father, L. Scott Brooksby, DDS.

vi. Smith testified that her father was aware of her performing teeth cleanings on patients at his dental office.

G. Based upon the evidence and testimony, the Court finds that Smith's father, L. Scott Brooksby, DDS, allowed Smith to clean patient's teeth at his dental office. The Court further finds that common sense should and could have caused Smith to recognize the use of a cavitron device requires training she has not received. The Court further finds that based upon the evidence and testimony of Smith, that Smith's father, L. Scott Brooksby, DDS, condoned and authorized Smith's activities in cleaning patients' teeth at his dental office.

H. Based upon the evidence and testimony by Smith that she, on more than twenty (20) occasions from between December 2014 and May 26, 2015 (i.e., being served with the TRO), cleaned the teeth of patients, Smith illegally practiced dental hygiene in the State of Nevada by cleaning teeth of patients without a license on more than twenty (20) occasions.

31. The Court retains and/or has continuing jurisdiction regarding this matter. Same includes, but is not necessarily limited to, contempt powers relative to violations of the Court's orders.

1 32. That, based upon this hearing being consolidated with the merits pursuant to NRC
2 65(a)(2), as noted above, this Order re: Permanent Injunction addresses and fully resolve all
3 matters and/or claims for relief alleged by the parties, including those in the Board's Verified
4 Complaint filed May 13, 2015, with the exception of the Board's claim for attorney's fees and
5 costs which may be addressed via appropriate filing(s) and/or motion practice at a later date,
6 pursuant to applicable statute and/or rule. In addition, with regards to any claims for relief or
7 requests for relief as contained in *Defendants [sic] Reply to Plaintiff's Allegations and Pleading*
8 filed September 2, 2015, the same are hereby denied.
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10 33. If any finding is properly a conclusion or if any conclusion is properly a finding, it shall
11 be so deemed. Further, if any order, as referenced below, is properly a finding or conclusion, it
12 shall also be so deemed.
13

14 **II.**
15 **ORDER**

16 1. **IT IS ORDERED** that the Board's request for a Permanent Injunction is *granted* as to
17 Defendant, Andrea Brooksby Smith, aka Andrea Smith. Specifically, Smith is permanently
18 enjoined from practicing dental hygiene in the State of Nevada (this includes, but is not
19 necessarily limited to, at dental offices of L. Scott Brooksby, DDS, i.e., Cheyenne Advanced
20 Dental Arts, 8960 W. Cheyenne Ave, #190, Las Vegas, Nevada), without a license properly
21 issued from the Nevada State Board of Dental Examiners. With regards to dental hygienist and
22 dental hygiene, NAC 631.210 provides:

23 NAC 631.210 Dental hygienists: Authorization to perform certain services;
24 referral of patient to authorizing dentist for certain purposes. (NRS 631.190,
631.310, 631.313, 631.317)

25 1. A dentist who is licensed in this State may authorize a dental hygienist in his
26 employ to:

27 (a) Remove stains, deposits and accretions, including dental calculus.

28 (b) Smooth the natural and restored surface of a tooth by using the procedures and
instruments commonly used in oral prophylaxis, except that an abrasive stone,

1 disc or bur may be used only to polish a restoration. As used in this paragraph,
2 "oral prophylaxis" means the preventive dental procedure of scaling and polishing
3 which includes the removal of calculus, soft deposits, plaques and stains and the
4 smoothing of unattached tooth surfaces in order to create an environment in which
5 hard and soft tissues can be maintained in good health by the patient.

6 (c) Provide dental hygiene care that includes:

7 (1) Assessment of the oral health of patients through medical and dental
8 histories, radiographs, indices, risk assessments and intraoral and extraoral
9 procedures that analyze and identify the oral health needs and problems of
10 patients.

11 (2) Development and implementation of a dental hygiene care plan to
12 address the oral health needs and problems of patients described in subparagraph
13 (1).

14 (3) Evaluation of oral and periodontal health after the implementation of
15 the dental hygiene care plan described in subparagraph (2) in order to identify the
16 subsequent treatment, continued care and referral needs of the patient.

17 (d) Take the following types of impressions:

18 (1) Those used for the preparation of diagnostic models;

19 (2) Those used for the fabrication of temporary crowns or bridges; and

20 (3) Those used for the fabrication of temporary removable appliances,
21 provided no missing teeth are replaced by those appliances.

22 (e) Perform subgingival curettage.

23 (f) Expose radiographs.

24 (g) Place and remove a periodontal pack.

25 (h) Remove excess cement from cemented restorations and orthodontic
26 appliances. A dental hygienist may not use a rotary cutting instrument to remove
27 excess cement from restorations or orthodontic appliances.

28 (i) Train and instruct persons in the techniques of oral hygiene and preventive
procedures.

(j) Recement and repair temporary crowns and bridges.

(k) Recement permanent crowns and bridges with nonpermanent material as a
palliative treatment.

(l) Place a temporary restoration with nonpermanent material as a palliative
treatment.

(m) Administer local intraoral chemotherapeutic agents in any form except
aerosol, including, but not limited to:

(1) Antimicrobial agents;

(2) Fluoride preparations;

(3) Topical antibiotics;

(4) Topical anesthetics; and

(5) Topical desensitizing agents.

(n) Apply pit and fissure sealant to the dentition for the prevention of decay.
Before performing any of the services set forth in this subsection, the dental
hygienist must obtain authorization from the licensed dentist of the patient on

1 whom the services are to be performed and the patient must have been examined
2 by that dentist not more than 18 months before the services are to be performed.
3 After performing any of the services set forth in this subsection, the dental
4 hygienist shall refer the patient to the authorizing dentist for follow-up care or any
5 necessary additional procedures that the dental hygienist is not authorized to
6 perform.

7 2. A dentist who is licensed in this State may authorize a dental hygienist in his
8 employ and under his supervision to:

9 (a) Remove sutures.

10 (b) Place and secure orthodontic ligatures.

11 (c) Fabricate and place temporary crowns and bridges.

12 (d) Fit orthodontic bands and prepare teeth for orthodontic bands if the bands are
13 cemented or bonded, or both, into the patient's mouth by the dentist who
14 authorized the dental hygienist to perform this procedure.

15 (e) Perform nonsurgical cytologic testing.

16 (f) Apply and activate agents for bleaching teeth with a light source.

17 (g) Use a laser that has been cleared by the Food and Drug Administration to
18 perform intrasulcular periodontal procedures or tooth whitening procedures if:

19 (1) The use of such a laser for those purposes is within the scope of the
20 education, experience and training of the dental hygienist;

21 (2) Before operating the laser, the dental hygienist has provided proof to
22 the supervising dentist that the dental hygienist has successfully completed a
23 course in laser proficiency that:

24 (I) Is at least 6 hours in length; and

25 (II) Is based on the Curriculum Guidelines and Standards for
26 Dental Laser Education, adopted by reference pursuant to NAC 631.035;
27 and

28 (3) The supervising dentist has successfully completed a course in laser
proficiency that:

(I) Is at least 6 hours in length; and

(II) Is based on the Curriculum Guidelines and Standards for
Dental Laser Education, adopted by reference pursuant to NAC 631.035.

The dental hygienist must obtain authorization from the licensed dentist of
the patient on whom the services authorized pursuant to this subsection are
to be performed.

3. If a dentist who is licensed in this State has in his employ and under his
supervision a dental hygienist who has:

(a) Successfully completed a course of continuing education in the administering
of local anesthetics or nitrous oxide-oxygen analgesia, or both, which has been
approved by the Board; or

(b) Graduated from an accredited program of dental hygiene which includes the
administering of local anesthetics or nitrous oxide-oxygen analgesia, or both, in

1 its curriculum, the dentist may authorize the dental hygienist to administer local
2 anesthetics or nitrous oxide-oxygen analgesia, or both, as appropriate, if the dental
3 hygienist has received from the Board a certificate certifying the hygienist to this
4 level of proficiency. The dental hygienist must obtain the authorization from the
5 licensed dentist of the patient on whom the services are to be performed.

6 4. A dental hygienist in a health care facility may administer local intraoral
7 chemotherapeutic agents and, if he has complied with paragraph (a) or (b) of
8 subsection 3, may administer local anesthetics or nitrous oxide-oxygen analgesia,
9 or both, as appropriate, if he first:

10 (a) Obtains written authorization from the licensed dentist of the patient to whom
11 the local anesthetics, nitrous oxide-oxygen analgesia or local intraoral
12 chemotherapeutic agents are to be administered; and

13 (b) Submits to the Secretary-Treasurer a written confirmation from the director of
14 the health care facility that the facility has licensed medical personnel and
15 necessary emergency supplies and equipment that will be available when the local
16 anesthetics, nitrous oxide-oxygen analgesia or local intraoral chemotherapeutic
17 agents are administered.

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

23 (a) Issues a special endorsement of the dental hygienist's license.

24 (b) Approves the treatment protocol submitted by the dental hygienist which
25 includes an explanation of the methods that the dental hygienist will use to:

26 (1) Treat patients; and

27 (2) Refer patients to a dentist for:

28 (I) Follow-up care;

(II) Diagnostic services; and

(III) Any service that the dental hygienist is not authorized to
perform.

6. The Board may revoke the authorization described in subsection 5 if the:

(a) Dental hygienist fails to renew his license or it is cancelled, suspended or
revoked;

(b) Board receives a complaint filed against the dental hygienist;

(c) Dental hygienist commits an act which constitutes a cause for disciplinary
action; or

(d) Dental hygienist violates any provision of this chapter or chapter 631 of NRS.
Nothing in this subsection prohibits a dental hygienist from reapplying for
authorization to perform the services described in subsection 5 if the Board
revokes the authorization pursuant to this subsection.

1
2 7. As used in this section:

3 (a) "Health care facility" has the meaning ascribed to it in subsection 1 of NRS
4 449.800.

5 (b) "Health facility" has the meaning ascribed to it in subsection 6 of NRS
6 449.260.

7 (c) "School" means an elementary, secondary or postsecondary educational
8 facility, public or private, in this State. [Bd. of Dental Exam'rs, § XXIII, eff. 7-
9 21-82]—(NAC A 7-30-84; 4-3-89; 3-11-96; R154-97, 1-14-98; R217-99, 4-3-
10 2000; R231-03, 5-25-2004; R139-05, 12-29-2005)

11 2. **IT IS FURTHER ORDERED** that Smith shall be and is hereby also permanently
12 enjoined from using a Cavitron device or Cavitron like device (i.e., ultrasonic scaler) in the State
13 of Nevada without a dental hygienist license properly issued from the Nevada State Board of
14 Dental Examiners.

15 3. **IT IS FURTHER ORDERED** that Defendant, Andrea
16 Brooksby Smith, aka Andrea Smith, is prohibited from employment
17 or work at or in a dental office in the State of Nevada until such time
18 as she complies with the following conditions. So there is no
19 misunderstanding, Smith is required to comply with the following
20 requirements/conditions before she can undertake or continue in an
21 employment capacity or work at or in a dental office in the State of
22 Nevada:

23 1. Obtain adequate instruction concerning
24 radiographic procedures and become qualified to operate
25 radiographic equipment as required pursuant to
26 subsection 3 of NAC 459.552.

27 2. Obtain training in cardiopulmonary resuscitation at
28 least every 2 years while so employed at a dental office.

1
2 3. Obtain a minimum of 4 hours of continuing
3 education in infection control every 2 years while so
4 employed at a dental office

5 4. Obtain and review a copy of chapter 631 of the
6 Nevada Administrative Code and chapter 631 of the
7 Nevada Revised Statutes in paper or electronic format.

8 With regards to the above-referenced conditions/requirements,
9 Smith shall provide the Court and the Board with written and/or
10 documentary evidence she has complied with all such
11 conditions/requirements before she can undertake or continue in an
12 employment capacity or work at or in a dental office in the State of
13 Nevada.

14 4. **IT IS FURTHER ORDERED** the Board may refer this matter to the appropriate law
15 enforcement agency in light of the language at NRS 631.400(1) and (2) which provides:

- 16 1. A person who engages in the illegal practice of dentistry in this State is
17 guilty of a category D felony and shall be punished as provided in NRS
18 193.130, unless a greater penalty is provided pursuant to NRS 200.830 or
19 200.840.
20 2. Unless a greater penalty is provided pursuant to NRS 200.830 or 200.840,
21 a person who practices or offers to practice dental hygiene in this State
22 without a license, or who, having a license, practices dental hygiene in a
23 manner or place not permitted by the provisions of this chapter:
24 (a) If it is his or her first or second offense, is guilty of a gross
25 misdemeanor.
26 (b) If it is his or her third or subsequent offense, is guilty of a category D
27 felony and shall be punished as provided in NRS 193.130.

28 5. **IT IS FURTHER ORDERED**, pursuant to NRCP 65(d), this Order granting Permanent
injunction is binding upon the "parties to the action, their officers, agents, servants, employees,
and attorneys, and upon those persons in active concert or participation with them who receive

1 actual notice of the order by person service or otherwise.”

2
3 6. **IT IS FURTHER ORDERED** that the orders herein shall remain in full force and effect
4 until further order of this court.

5
6 7. **IT IS FURTHER ORDERED**, pursuant to NRS 631.400(5), the Board is not required to
7 post a bond for the payment of costs and damages as may be incurred by the adverse parties. See
8 also NRCP 65(c) (“No such security shall be required of the State or of an officer or agency
9 thereof.”)

10
11 DATED & DONE this 14 day of Sept, 2015.

12
13
14 **THE HONORABLE ROB BARE**
15 **EIGHTH JUDICIAL DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**
17 **DEPARTMENT 32; COURTROOM 3C**

18 Respectfully submitted:

19 **MORRIS POLICH & PURDY, LLP**

20 By John A. Hunt this 14 day of September, 2015.
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