



NEVADA STATE BOARD OF DENTAL EXAMINERS
 6010 S Rainbow Boulevard, Suite A-1
 Las Vegas, Nevada 89118
 (702) 486-7044



Formal Hearing to be held at the Nevada State Board of Dental Examiners office

NOTICE OF PUBLIC MEETING

Friday, May 22, 2015

1 p.m.

Saturday May 23, 2015

9 a.m.

FORMAL HEARING AGENDA

Nevada State Board of Dental Examiners v. L. Scott Brooksby, DDS

Please Note: The Nevada State Board of Dental Examiners may 1) address agenda items out of sequence to accommodate persons appearing before the Board or to aid the efficiency or effectiveness of the meeting; 2) combine items for consideration by the public body; 3) pull or remove items from the agenda at any time. The Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person. See NRS 241.030. Prior to the commencement and conclusion of a contested case or a quasi judicial proceeding that may affect the due process rights of an individual the board may refuse to consider public comment. See NRS 233B.126.

At the discretion of the Chair, public comment is welcomed by the Board, but will be heard only when that item is reached and will be limited to five minutes per person. A public comment time will also be available as the last item on the agenda. The Chair may allow additional time to be given a speaker as time allows and in his/her sole discretion. Once all items on the agenda are completed the meeting will adjourn.

Asterisks () denote items on which the Board may take action.
 Action by the Board on an item may be to approve, deny, amend, or table.*

1. Call to Order, roll call, and establish quorum

Pledge of Allegiance

*2. Formal Hearing: Nevada State Board of Dental Examiners vs. L. Scott Brooksby, DDS
 (For Possible Action)

The purpose of this hearing is to consider the allegations regarding/related to the the verified complaint/complaint by the Nevada State Board of Dental Examiners for the violations of NRS 631 and NAC 631 and take such action the Board deems appropriate, pursuant to NRS 631.350. (Pursuant to NRS 241.030(1)(a), the board may, by motion, enter into closed session)

3. Public Comment: (Public Comment is limited to five (5) minutes for each individual)

Note: Prior to the commencement and conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual the board may refuse to consider public comment. See NRS 233B.126.

*4. Adjournment (For Possible Action)

* For Possible Action: Indicates items which may be acted upon by the Board.

Agenda Items may be taken out of order by motion of the Board. The Board may remove an agenda item or delay discussion relating to any item on the agenda at any time. (See NRS 241)

Pursuant to NRS 241.030(a), the board may, by motion, enter into closed session to consider the character, alleged misconduct, professional competence, or physical or mental health of a person.

AGENDA POSTING LOCATIONS

Clark County Government Center, 500 Grand Central Parkway, Las Vegas, Nevada
Elko County Courthouse, Room 106, Elko, Nevada
Washoe County Courthouse, 75 Court Street; Reno, Nevada
Office of the N.S.B.D.E., 6010 S Rainbow Boulevard, #A-1, Las Vegas, Nevada
On the Internet at the Nevada State Board of Dental Examiners website: dental.nv.gov
Nevada Public Posting Website: notice.nv.gov

Persons/facilities who want to be on the mailing list must submit a written request every six (6) months to the Nevada State Board of Dental Examiners at the address listed in the previous paragraph. With regard to any board meeting or telephone conference, it is possible that an amended agenda will be published adding new items to the original agenda. Amended Nevada notices will be posted in compliance with the Open Meeting Law.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify Angelica Bejar, at (702) 486-7044 ext 36 no later than 48 hours prior to the meeting. Requests for special arrangements made after this time frame cannot be guaranteed.

Pursuant to NRS 241.020(2) you may contact Angelica Bejar at (702) 486-7044 ext 36 to request supporting materials for the public body or you may download the supporting materials for the public body from the Board's website at dental.nv.gov In addition, the supporting materials for the public body are available at the Board's office located at 6010 S Rainbow Blvd, Ste A-1, Las Vegas, Nevada.

PLEASE DO NOT CONTACT THE BOARD OFFICE REGARDING APPROVAL OF AGENDA ITEMS. NOTIFICATION WILL BE SENT BY MAIL WITHIN 15 BUSINESS DAYS

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STATE OF NEVADA
BEFORE THE BOARD OF DENTAL EXAMINERS

NEVADA STATE BOARD OF DENTAL
EXAMINERS,

Complainant,

vs.

L. SCOTT BROOKSBY, DDS,

Respondent.

Case No. 74127-02772

**NOTICE OF FILING OF
COMPLAINT,
DATE(S) SET FOR FORMAL
HEARING, & RELATED
MATTERS**

TO: L. SCOTT BROOKSBY, DDS, Respondent.

PLEASE BE ADVISED on or about the 13th day of March, 2015, a Complaint was filed with the Nevada State Board of Dental Examiners (the "Board") which, in part, makes allegations which could result in disciplinary action against your license issued by the Nevada State Board of Dental Examiners.

YOU ARE FURTHER ADVISED the Board has scheduled a public hearing to consider the allegations contained in the Complaint. The public hearing is scheduled to commence on **Friday, May 22, 2015, at 1:00 p.m.** at the offices of the Nevada State Board of Dental Examiners, 6010 S. Rainbow Boulevard, Suite A-1, Las Vegas, Nevada 89118. If necessary, the hearing shall continue to **Saturday, May 23, 2015, commencing at 9:00 a.m.**

YOU ARE FURTHER ADVISED the hearing will be held pursuant to Nevada Revised Statutes ("NRS") chapters 233B, 622A, and 631 and Nevada Administrative Code ("NAC") chapter 631. The purpose of the hearing is to consider evidence regarding the allegations in the Complaint and to determine whether Respondent should be subject to discipline pursuant to NRS

1 and NAC chapters 631.
2

3 **YOU ARE FURTHER ADVISED** the hearing is to be an open meeting under Nevada's
4 Open Meeting Law and may be attended by the public. During the hearing, the Board may
5 choose to go into closed session to consider the character, alleged misconduct, professional
6 competence, or physical or mental health of Respondent. A verbatim record will be made by a
7 court reporter. You are entitled to a copy of the transcript, at your cost, of the open and closed
8 portions of the hearing.
9

10 **YOU ARE FURTHER ADVISED** you have the right to answer the Complaint. You
11 have the right to appear and be heard at the hearing in your defense, either personally or through
12 counsel of your choice, at your cost. At the hearing, the Board has the burden of proving the
13 allegations in the Complaint and can call witnesses and offer exhibits/evidence regarding the
14 allegations in the Complaint.
15

16 **YOU ARE FURTHER ADVISED** if a violation is found and discipline is imposed, the
17 Board may also recover reasonable attorney's fees and costs pursuant to NRS 622.400.
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19 **YOU ARE FURTHER ADVISED** you have the right to call and examine witnesses;
20 offer exhibits/evidence, and cross-examine opposing witnesses or any matter relevant to the
21 issues involved.
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YOU ARE FURTHER ADVISED you have the right to request the Board issue subpoenas to compel witnesses to testify and/or present evidence on your behalf. When making a request to the Board for issuance of a subpoena, you may be required to demonstrate the nature and relevance of the witness' testimony and/or evidence.

DATED AND DONE this 13th day of March, 2015.

NEVADA STATE BOARD OF DENTAL EXAMINERS

By  _____
DEBRA SHAFFER-KUGEL, Executive Director

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STATE OF NEVADA
BEFORE THE BOARD OF DENTAL EXAMINERS

NEVADA STATE BOARD OF DENTAL
EXAMINERS,

Complainant,

vs.

L. SCOTT BROOKSBY, DDS,

Respondent.

Case No. 74127-02772

COMPLAINT

Complainant, Nevada State Board of Dental Examiners (hereinafter referred as the "Board"), by and through its attorneys, for its Complaint against Respondent, L. Scott Brooksby, DDS (hereinafter referred to as "Respondent" or "Dr. Brooksby") alleges and complains as follows:

GENERAL ALLEGATIONS

1. The Board is empowered to enforce the provisions of Chapter 631 of the Nevada Revised Statutes ("NRS"). NRS 631.190.
2. The Board, pursuant to NRS 631.190(6), keeps a register of all dentists and dental hygienists licensed in the State of Nevada; said register contains the names, addresses, license numbers, and renewal certificate numbers of said dentists and dental hygienists.
3. On July 8, 1989, the Board issued Respondent a license to practice general dentistry in the State of Nevada, license #2543.
4. Respondent is licensed by the Board and, therefore, has submitted himself to the disciplinary jurisdiction of the Board.

1 5. On November 5, 1990, the Board issued Respondent a specialty license in the area of
2 prosthodontics, license #S5-09.
3

4 STIPULATION IN CASE 00-637 AND SPECIALTY LICENCE STATUS

5 6. Respondent entered into a *Stipulation* with the Board in Case No. 00-637 (approved by
6 the Board on or about January 18, 2001). In part, the *Stipulation* suspended Respondent's
7 specialty license for one (1) year. Id., at ¶10.a. Further, the *Stipulation* provides, in part, that
8 upon reinstatement of Respondent's specialty license, he would be restricted from performing
9 endodontic treatment, periodontal treatment, and surgical procedures. Id., at ¶10.c.(i)(ii) and (iii).
10

11 7. A true and accurate copy of the *Stipulation* in Case No. 00-637 referenced in the
12 preceding paragraph is attached hereto as **Exhibit 1**.
13

14 ORDER OF REINSTATEMENT OF SPECIALTY LICENSE
15 DATED AUGUST 20, 2010, IN CASE NO. 00-637

16 8. With respect to the restrictions upon Respondent's specialty license as referenced in the
17 *Stipulation* at paragraph 10.c.(i)(ii) and (iii), the *Order of Reinstatement of Specialty License*
18 dated August 20, 2010, in Case No. 00-637, provides, in pertinent part:

19 On August 20, 2010, at a properly noticed meeting your request to remove certain
20 restrictions pursuant to Paragraph 10(c)(i)(ii)(iii) of the Stipulation Agreement
21 entered into with the Nevada State Board of Dental Examiners on January 18,
22 2001 was considered.

23 The Board approved to remove the restrictions referenced in Paragraph
24 10(c)(i)(ii)(iii) and your request to reinstate your specialty license in the specialty
25 area of Prosthodontics.

26 Upon submission of the required reinstatement fee of \$200.00 pursuant to NAC
27 631.029 your specialty license will be reinstated to an **active status**.

28 Id. (emphasis in original).

9. A true and accurate copy of the *Order of Reinstatement of Specialty License* dated August

1 20, 2010 referenced in the preceding paragraph is attached hereto as **Exhibit 2**.

2
3 PATIENT, MARLIA FUJACK

4 10. Via a *Notice of Complaint & Request for Records* dated September 5, 2014, the Board
5 notified Respondent of a verified complaint received from Marlia Fujack. On September 12,
6 2014, the Board received Respondent's response (w/attachments) to Ms. Fujack's verified
7 complaint, a copy of which was provided to Ms. Fujack on September 15, 2014. The Board also
8 received Ms. Fujack's additional written information dated October 5, 2014. In addition, the
9 Board received Respondent's December 5, 2014, correspondence. The Board subsequently
10 received Respondent's additional written information dated December 11, 2014, which included
11 a copy of correspondence dated December 8, 2014, from Ms. Fujack to Respondent, a copy of
12 which was provided to Ms. Fujack on December 16, 2014.

13
14 INFORMAL HEARING

15 11. On November 5, 2014, via correspondence dated October 29, 2014, sent via certified
16 mail, return receipt requested and via regular mail to L. Scott Brooksby, DDS, 8960 W.
17 Cheyenne Ave, Suite 190, Las Vegas, Nevada 89129, Respondent was provided notice of
18 informal hearing set for 10:00 a.m. on Friday, January 9, 2015, at Morris, Polich & Purdy, LLP,
19 500 South Rancho Drive, Suite 17, Las Vegas, Nevada 89106, regarding the above-referenced
20 verified complaint of Ms. Fujack.

21
22 The informal hearing notice also advised that pursuant to NAC 631.250(1), the
23 Disciplinary Screening Officer shall not limit the scope of the investigation "but will extend the
24 investigation to any additional matters which appear to constitute a violation of any provision of
25 Chapter 631 of the Nevada Revised Statutes or the regulations contained in Chapter 631 of NAC
26 of Chapter."

1 12. On November 10, 2014, the above-referenced notice of informal hearing and Subpoena
2 Duces Tecum were personally served upon Respondent. See Affidavit of Service dated November
3 14, 2014.

4
5 13. On January 9, 2015, the above-referenced informal hearing was held in Las Vegas,
6 Nevada, regarding the above-referenced verified complaint of Ms. Fujack and/or as more fully
7 addressed in the notice of informal hearing. The informal hearing was held pursuant to NRS
8 631.363 and NAC 631.250 and 631.255.

9
10 14. In attendance at the January 9, 2015, informal hearing was Dr. Brooksby, Respondent;
11 Gary Braun, DMD, MS, Disciplinary Screening Officer; Debra Shaffer-Kugel, Executive
12 Director of the Board, and Board attorney, John A. Hunt, Esq.

13
14 15. Following the informal hearing, written findings of fact and conclusions were drafted,
15 pursuant to NRS 631.363(3). See Findings and Recommendations of the Informal Hearing held
16 Pursuant to NRS 631 and NAC 631 & Consent of L. Scott Brooksby, DDS, to the Findings and
17 Recommendations Pursuant to NRS 631.363(5) dated March 5, 2015 (hereinafter "FR&C"). The
18 FR&C were forwarded to Respondent for review and consent by Respondent, pursuant to NRS
19 631.363(5). Respondent via correspondence dated March 9, 2015, advised he did not consent to
20 the FR&C.

21
22 **ALLEGATIONS/CLAIMS REGARDING**
23 **RESPONDENT'S TREATMENT OF PATIENT, MARLIA FUJACK**

24 16. The Board repeats and realleges the allegation contained in paragraphs 1 through 15 and
25 reincorporates the same as if fully set forth herein.

1 17. Respondent's treatment of Patient, Marlie Fujack, violated NRS 631.075, NRS 631.095,
2 and NRS 631.3475(1), (2), and/or (4), in the following respects:

3 A. Respondent failed to remove all carious lesions on the mesial and distal surfaces
4 in the preparation of the placement of a composite restoration on Tooth #9.

5 B. Respondent failed to properly contour the facial aspect of Tooth #9, resulting in
6 the unacceptable retention of plaque.

7 C. Respondent failed to properly bond the restoration for Tooth #9, resulting in the
8 restoration failing.

9 D. Respondent failed to place rubber dam to isolate Tooth #9 from contamination.
10 Having a rubber dam in place could have prevented moisture from affecting bonding.

11 E. Respondent's placement of the composite restoration on Tooth #9 lacked proper
12 retention resulting in the failure of the composite restoration placed in Tooth #9.

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16 **ALLEGATIONS/CLAIMS REGARDING**
17 **RESPONDENT'S VIOLATIONS OF NRS 631.348(2) AND/OR NAC 631.270(1)(d)**
18 **WITH REGARDS TO CERTAIN ADVERTISEMENTS/STATEMENTS**

19 18. The Board repeats and realleges the allegation contained in paragraphs 1 through 17 and
20 reincorporates the same as if fully set forth herein.

21
22 19. Respondent has violated NRS 631.348(2) and/or NAC 631.270(1)(d) with regards to
23 Respondent's advertisement/statement wherein he contends he possesses "[] the ability to safely
24 put a patient to sleep he can usually overcome most fears associated with dental care[]" (see
25 Exhibit 1E from the informal hearing) and his advertisement/statement wherein Respondent
26 contends he possesses the credential "M.A.C.P." (see Exhibit 1F from the informal hearing).

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**ALLEGATIONS/CLAIMS REGARDING
RESPONDENT'S DENTAL ASSISTANT USING A LASER**

20. The Board repeats and realleges the allegation contained in paragraphs 1 through 19 and reincorporates the same as if fully set forth herein.

21. At the informal hearing, discussion was had regarding Carol Crawford, a dental assistant at Respondent's dental practice, using a healing laser of 50 hz with a variable for five minutes on each setting on Patient, Maria Fujack.

22. NAC 631.220 sets forth the services a dentist who is licensed in the State of Nevada may authorize a dental assistant in his or her employ and under his or her supervision to perform. The use of laser is not within the scope of services for a dental assistant, as set forth at NAC 631.220. Accordingly, Respondent violated NRS 631.313(1) and/or NRS 631.313(3)(d) in that Respondent's dental assistant used a laser with regards to Patient, Maria Fujack.

**ALLEGATIONS/CLAIMS REGARDING
RESPONDENT'S USE OF HYPNOSIS AND VIOLATION OF
NRS 631.265 and/or NAC 631.2213**

23. The Board repeats and realleges the allegation contained in paragraphs 1 through 22 and reincorporates the same as if fully set forth herein.

24. At the informal hearing, Respondent represented under oath that prior to performing dental procedure(s), he places patients in a state of sleep and/or places patients in a state of minimally depressed level of consciousness, depressed consciousness, or in a state of depressed consciousness via hypnosis.

1 25. NRS 631.025, NRS 631.027, and NRS 63.055, respectively, define "conscious sedation,"
2 "deep sedation," and "general anesthesia" as follows:

3 NRS 631.025 "Conscious sedation" defined. "Conscious sedation" means a
4 minimally depressed level of consciousness, produced by a pharmacologic or
5 nonpharmacologic method or a combination thereof, in which the patient retains
6 the ability independently and continuously to maintain an airway and to respond
appropriately to physical stimulation and verbal commands.

7 NRS 631.027 "Deep sedation" defined. "Deep sedation" means a controlled
8 state of depressed consciousness, produced by a pharmacologic or
9 nonpharmacologic method or a combination thereof, and accompanied by a
10 partial loss of protective reflexes and the inability to respond purposefully to
verbal commands.

11 NRS 631.055 "General anesthesia" defined. "General anesthesia" means a
12 controlled state of unconsciousness, produced by a pharmacologic or
13 nonpharmacologic method or a combination thereof, and accompanied by partial
14 or complete loss of protective reflexes and the inability independently to maintain
an airway and respond purposefully to physical stimulation or verbal commands.

15 26. Respondent's act of placing patients in a state of sleep and/or placing patients in a state of
16 minimally depressed level of consciousness, depressed consciousness, or in a state of depressed
17 consciousness via hypnosis prior to performing dental procedure(s) is a nonpharmacologic
18 method of conscious sedation, deep sedation, or general anesthesia.

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21 27. Respondent does not possess a permit issued by the Board authorizing him to administer
22 or supervise directly the administration of general anesthesia, conscious sedation, or deep
23 sedation to dental patients and, as a consequence, Respondent's use of hypnosis (as addressed
24 herein) is in violation of NRS 631.265 and/or NAC 631.2213.
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1 **ALLEGATIONS/CLAIMS REGARDING**
2 **RESPONDENT VIOLATING NAC 631.2237 IN CONNECTION**
3 **WITH HIS USE OF HYPNOSIS**

4 28. The Board repeats and realleges the allegation contained in paragraphs 1 through 27 and
5 reincorporates the same as if fully set forth herein.

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7 29. As noted above, it is alleged Respondent's act of placing patients in a state of sleep
8 and/or placing patients in a state of minimally depressed level of consciousness, depressed
9 consciousness, or in a state of depressed consciousness via hypnosis prior to performing dental
10 procedure(s) is a nonpharmacologic method of conscious sedation, deep sedation, or general
11 anesthesia. As a consequence, NAC 631.2237 mandates certain procedures before
12 administration of general anesthetic, deep sedation, or conscious sedation, including written
13 consent and medical history.
14

15
16 30. Respondent has violated NAC 631.2237 by failing to obtain written consent and medical
17 history from patients prior to administration of hypnosis which, as noted above, is alleged to be a
18 nonpharmacologic method of conscious sedation, deep sedation, or general anesthesia.
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20 **ALLEGATIONS/CLAIMS REGARDING**
21 **RESPONDENT VIOLATING NAC 631.230(1)(k), (m), (n), and (q) IN CONNECTION**
22 **WITH HIS USE OF HYPNOSIS**

23 31. The Board repeats and realleges the allegation contained in paragraphs 1 through 30 and
24 reincorporates the same as if fully set forth herein.

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26 32. NAC 631.230(1)(k), (m), (n), and (q), provide:
27
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1 1. In addition to those specified by statute and subsection 3 of NAC 631.177,
2 the following acts constitute unprofessional conduct:

3 * * *

4 (k) The failure to have any patient who is undergoing general anesthesia,
5 deep sedation or conscious sedation monitored with a pulse oximeter or similar
6 equipment required by the Board.

7 * * *

8 (m) The failure to obtain a patient's written, informed consent before
9 administering general anesthesia, deep sedation or conscious sedation to the
10 patient or, if the patient is a minor, the failure to obtain his or her parent's or
11 guardian's consent unless the dentist determines that an emergency situation
12 exists in which delaying the procedure to obtain the consent would likely cause
13 permanent injury to the patient.

14 (n) The failure to maintain a record of all written, informed consents
15 given for the administration of general anesthesia, deep sedation or conscious
16 sedation.

17 * * *

18 (p) Allowing a person to administer general anesthesia, deep sedation or
19 conscious sedation to a patient if the person does not hold a permit to administer
20 such anesthesia or sedation unless the anesthesia or sedation is administered:

21 (1) In a facility approved by The Joint Commission; or

22 (2) By an anesthesiologist in an office for which a certificate of site
23 approval has been issued.

24 33. Respondent violated NAC 631.230(1)(k), (m), (n), and (q), and thus his actions
25 constituted unprofessional conduct relative to his use of hypnosis which, as noted above, is a
26 nonpharmacologic method of conscious sedation, deep sedation, or general anesthesia.

27 **ALLEGATIONS/CLAIMS REGARDING**
28 **RESPONDENT'S USE OF AN OZONE MACHINE**

34. The Board repeats and realleges the allegation contained in paragraphs 1 through 33 and
reincorporates the same as if fully set forth herein.

35. At the informal hearing, Respondent represented under oath he uses an ozone machine in
treating dental patients, including Patient, Marlia Fujack. It is further noted that Respondent

1 indicated his method to capture the potential toxic ozone gas is to place a high speed suction
2 right next to the gas. During the informal hearing Respondent acknowledged the presence of
3 “affected dentin” after he placed the composite restoration on Tooth #9 of Patient, Marlia Fujack.
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6 36. At the informal hearing, Respondent represented under oath he had a friend in Southern
7 California calibrate his ozone machine. Respondent further testified that at the levels he is using
8 ozone he does not need the ozone machine calibrated. Respondent testified he took a course in
9 Upland, California, about three (3) years ago regarding learning how to use the ozone machine.
10

11
12 37. Respondent was served with a *Subpoena Duces Tecum* dated January 22, 2015, which, in
13 part, commanded Respondent to produce certain documents and materials, including:

14 **3. Any and all documents which evidence the date of purchase of the ozone**
15 **generator;**

16 **4. Any and all documents which evidence the calibration of the ozone generator;**

17 **5. Copy of the handbook regarding the operation of the ozone generator.**
18

19 Id., at 1:24-27 (emphasis in original).
20

21 38. Respondent, on February 11, 2015, in response to the *Subpoena Duces Tecum* dated
22 January 22, 2015, produced, in pertinent part, the instruction manual for the ozone generator
23 Respondent uses. The instruction manual produced by Respondent states, in part, it is for a
24 Enaly (Shanghai Enaly M&E Ltd.) 1000BT-12 Ozone Generator.
25

26
27 39. The Food and Drug Administration (“FDA”) in an enforcement report for the week of
28

1 May 21, 2014, advises of the recall regarding “the Enaly 1000 BT-12 Ozone Generator because
2 it is not approved or cleared by the FDA for medical use.”
3

4
5 40. A true and accurate copy of the above-referenced FDA enforcement report for the week
6 of May 21, 2014 is attached hereto as **Exhibit 3**.

7
8 41. The Code of Federal Regulations (“CFR”), Title 21 (Food and Drugs) provides, in
9 pertinent part at 21 CFR 801.415 with regards to ozone and ozone generating devices:

10
11 **(a) Ozone is a toxic gas with no known useful medical application in specific,**
12 **adjunctive, or preventive therapy. In order for ozone to be effective as a**
13 **germicide, it must be present in a concentration far greater than that which**
14 **can be safely tolerated by man and animals.**

15
16 **(b) Although undesirable physiological effects on the central nervous system,**
17 **heart, and vision have been reported, the predominant physiological effect of**
18 **ozone is primary irritation of the mucous membranes. Inhalation of ozone can**
19 **cause sufficient irritation to the lungs to result in pulmonary edema. The**
20 **onset of pulmonary edema is usually delayed for some hours after exposure;**
21 **thus, symptomatic response is not a reliable warning of exposure to toxic**
22 **concentrations of ozone. Since olfactory fatigue develops readily, the odor of**
23 **ozone is not a reliable index of atmospheric ozone concentration.**

24
25 **(c) A number of devices currently on the market generate ozone by design or as a**
26 **byproduct. Since exposure to ozone above a certain concentration can be injurious**
27 **to health, any such device will be considered adulterated and/or misbranded**
28 **within the meaning of sections 501 and 502 of the act if it is used or intended for**
use under the following conditions:

(1) In such a manner that it generates ozone at a level in excess of 0.05
part per million by volume of air circulating through the device or causes an
accumulation of ozone in excess of 0.05 part per million by volume of air (when
measured under standard conditions at 25 °C (77 °F) and 760 millimeters of
mercury) in the atmosphere of enclosed space intended to be occupied by people
for extended periods of time, e.g., houses, apartments, hospitals, and offices. This
applies to any such device, whether portable or permanent or part of any system,
which generates ozone by design or as an inadvertent or incidental product.

1 (2) To generate ozone and release it into the atmosphere in hospitals or
2 other establishments occupied by the ill or infirm.

3 (3) To generate ozone and release it into the atmosphere and does not
4 indicate in its labeling the maximum acceptable concentration of ozone which
5 may be generated (not to exceed 0.05 part per million by volume of air circulating
6 through the device) as established herein and the smallest area in which such
7 device can be used so as not to produce an ozone accumulation in excess of 0.05
8 part per million.

9 (4) **In any medical condition for which there is no proof of safety and
10 effectiveness.**

11 (5) To generate ozone at a level less than 0.05 part per million by volume
12 of air circulating through the device and it is labeled for use as a germicide or
13 deodorizer.

14 (d) This section does not affect the present threshold limit value of 0.10 part per
15 million (0.2 milligram per cubic meter) of ozone exposure for an 8-hour-day
16 exposure of industrial workers as recommended by the American Conference of
17 Governmental Industrial Hygienists.

18 (e) The method and apparatus specified in 40 CFR part 50, or any other equally
19 sensitive and accurate method, may be employed in measuring ozone pursuant to
20 this section.

21 Id. (bold emphasis added).

22 43. Respondent's dental practice has a website which, in part, addresses ozone. In part,
23 Respondent's dental office's website advertises applying ozone to the teeth:

24 Bacteria that cause cavities are so small that a million of them fit on the head of a
25 pin. When five or six of these bacteria eat a hole through the side of a tooth,
26 millions can follow them, yet we as dentists can not see the holes until a
27 substantial amount of tooth structure has been destroyed. Applying ozone to the
28 teeth, either individually or in an entire arch using a custom fit tray, can kill the
bacteria in these microscopic holes. The ozone then stimulates the cells within the
tooth to begin repairing themselves. Doing this at regular checkups has the
potential to literally stop cavities in their tracks. In our office we charge \$280
for each tray and that includes two ozone treatments. After that, we can use the
trays after each checkup for only \$30. If this works as the research seems to
indicate, it is one of the least expensive ways to prevent dental disease and to

1 avoid shots and drilling.

2 Id., at pg. 2.

3

4 44. A true and accurate copy of print-out from Respondent's dental practice's website is
5 attached hereto as **Exhibit 4**.

6

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8 45. In addition to any other allegations herein regarding Respondent's actions in placement
9 of a composite restoration to Patient, Marlia Fujack's, Tooth #9 , Respondent's application of
10 ozone gas to Tooth #9 administered by an FDA unapproved, recalled, and non-calibrated
11 medical device is below the standard of care in violation of NRS 631.075, NRS 631.095, NRS
12 631.3475(1), (2), and/or (4).

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15 46. Respondent's use of the ozone device resulted in Respondent placing a composite
16 restoration over the presence of existing decay at Tooth #9 of Patient, Marlia Fujack, which is
17 below the standard of care in violation of NRS 631.075, NRS 631.095, NRS 631.3475(1), (2),
18 and/or (4), as more fully addressed herein.

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21 47. Respondent failed to obtain an informed consent or record in Patient, Marlia Fujack's,
22 chart that Respondent was going to administer ozone gas on Tooth #9, which is below the
23 standard of care.

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ALLEGATIONS/CLAIMS
RECOVERY OF ATTORNEY'S FEES AND COSTS

48. The Board repeats and realleges every allegation contained in paragraphs 1 through 47 and reincorporates the same as if fully set forth herein.

49. NRS 622.400 provides:

1. A regulatory body may recover from a person reasonable attorney's fees and costs that are incurred by the regulatory body as part of its investigative, administrative and disciplinary proceedings against the person if the regulatory body:

(a) Enters a final order in which it finds that the person has violated any provision of this title which the regulatory body has the authority to enforce, any regulation adopted pursuant thereto or any order of the regulatory body; or

(b) Enters into a consent or settlement agreement in which the regulatory body finds or the person admits or does not contest that the person has violated any provision of this title which the regulatory body has the authority to enforce, any regulation adopted pursuant thereto or any order of the regulatory body.

2. As used in this section, "costs" means:

(a) Costs of an investigation.

(b) Costs for photocopies, facsimiles, long distance telephone calls and postage and delivery.

(c) Fees for court reporters at any depositions or hearings.

(d) Fees for expert witnesses and other witnesses at any depositions or hearings.

(e) Fees for necessary interpreters at any depositions or hearings.

(f) Fees for service and delivery of process and subpoenas.

1 (g) Expenses for research, including, without limitation, reasonable and
2 necessary expenses for computerized services for legal research.

3
4 50. This action relates to the Board, a regulatory body, undertaking action as part of its
5 investigative, administrative, and disciplinary proceedings against Respondent as to the
6 enforcement of provisions of chapter 631 of the Nevada Revised Statutes and/or chapter 631 of
7 the Nevada Administrative Code which the Board has the authority to enforce and, therefore,
8 NRS 622.400(1) is satisfied.
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11 51. That, as a result of NRS 622.400(1) being satisfied, as alleged immediately above, the
12 Board may, should NRS 622.400(1)(a) or (b) be satisfied, recover from Respondent its attorney's
13 fees and costs.

14 **Wherefore, it is prayed:**

15
16 1. The Board conduct a hearing regarding the above-referenced matters constituting
17 violations of the provision of chapter 631 of the NRS and/or NAC;

18 2. Upon conclusion of said hearing, the Board take such action as it deems appropriate
19 pursuant to NRS 631.350, and any other applicable provision of chapter 631 of the NRS and/or
20 NAC;

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22 3. To the extent the Board deems appropriate, assess against Respondent as provided by law
23 regarding attorney's fees and costs incurred by reason of the investigation, administration, and
24 prosecution, and hearing of this matter;

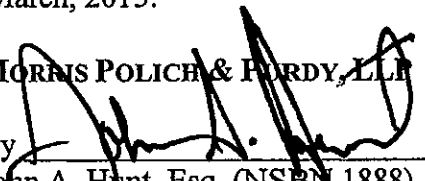
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26 4. To the extent the Board deems appropriate, impose a fine upon Respondent in an amount
27 deemed appropriate, pursuant to NRS 631.350(1)(c);
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1 5. To the extent the Board deems appropriate, order that Respondent reimburse any at-issue
2 patient(s), pursuant to NRS 631.350(1)(l);

3 6. To the extent the Board deems appropriate, issue a public reprimand upon Respondent,
4 pursuant to NRS 631.350(1)(e), based upon any findings of Respondent's violations of the
5 above-referenced provisions of chapter 631 of the Nevada Revised Statutes and Nevada
6 Administrative Code; and
7

8 7. Take such further action provided for and allowed pursuant to relevant authority.

9 Respectfully submitted this 13 day of March, 2015.

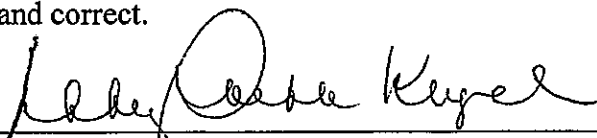
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VERIFICATION

STATE OF NEVADA)
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COUNTY OF CLARK) ss:

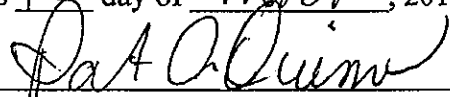
The foregoing Complaint has been prepared from information known to me or communicated to me and/or the Board and its staff and/or upon the information available and as referenced in the Complaint and any exhibit(s). Based on such information, it is believed the allegations in the Complaint are true and correct.



Debra Shaffer-Kugel, Executive Director, Nevada State Board of Dental Examiners

SUBSCRIBED and SWORN to before me

this 13th day of March, 2015.



NOTARY PUBLIC
(notary seal)



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