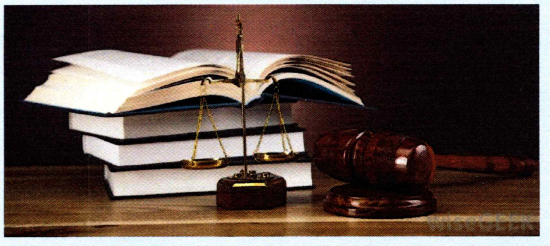
NEVADA STATE BOARD OF DENTAL EXAMINERS

Providing information and education to Nevada's dental health care professionals

SPRING-SUMMER 2018

New Law Controlled In The State For Prescribing Substances Of Nevada



The state of Nevada has implemented new laws that affect certain practitioners, to include, dentists. If you are a dentist who holds a permit issued by the Nevada State Board of Pharmacy to prescribe controlled substances ("CS") this law affects you.

On January 1, 2018, AB 474 went into effect. This law requires a dentist to adhere to certain requirements before prescribing controlled substances to their patients for the treatment of pain. **First, before a dentist writes an initial prescription, the dentist must evaluate for the following:**

- Whether the CS, if previously prescribed, is working as intended and as expected to treat the patient's symptoms
- Whether there is reason to believe that the patient is not using the CS as prescribed or is diverting for the use by another person
- Whether the patient's PMP report indicates that the patient issuing the CS inappropriately or is using other CS not prescribed and unbeknownst to the practitioner
- Whether the patient has a history of substance abuse and whether there is reason to believe that the patient is currently misusing or is addicted to the CS
- Whether there is reason to believe that the patient is using other drugs (including alcohol or illicit)
- The number of early refill attempts or number of times the patient claimed that the CS is lost or stolen
- Whether blood or urine tests indicate inappropriate use of the CS or the presence of unauthorized CS in patient's system
- Any major change in the patient's health that would affect the medical appropriateness of the CS

Before writing an initial prescription for a controlled substance, each dentist must;

- Have a bona fide relationship with the patient
- Establish a preliminary diagnosis and treatment plan
- Perform a patient risk assessment. The patient risk assessment includes, obtaining and reviewing the patient's medical/dental history and conduct a physical examination of the patient and assess their mental health, their risk of abuse, dependency and addiction.
- Obtain and personally review the patient's PMP report
- Discuss non-opioid treatment options with the patient
- If the practitioner decides to write an initial prescription
  - (a) It must be for no more than a 14 day supply if treating acute pain
  - (b) It must not be for >90MME daily for an opiate naïve patient; and
  - (c) An Informed Consent must be completed by the patient

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KNOW YOUR DUE PROCESS RIGHTS

The Board has become aware that some or all of its Licensees have been the recipients of a recent email inquiry from an attorney in Las Vegas. This inquiry alluded to a possible class action law suit seeking to call into question the stipulation agreements that various licensees have entered into with the Board over the past 15 years. At this time, the Board does not have any evidence that such a lawsuit has been filed. Subsequent emails from this attorney referenced purported allegations of due process violations, as well as a 2016 Legislative Audit of the Board. In response, the Board has received many questions concerning the impetus for these allegations. We hope that the following information will help to answer some of your questions.

In 2015, various complaints were submitted to the Office of the Attorney General (OAG) for the State of Nevada. These complaints were submitted by Nevada licensed dentists and a hygienist who had signed stipulated agreements to resolve complaints initiated by patients. All of the licensees were represented by counsel and signed the stipulations only after consultation with and advice from their attorneys. The complaints to the OAG made numerous allegations against the Board and its agents related to the stipulated resolutions of the complaints, including alleged civil extortion, duress, abuse of power, violation of due process and fraud. Following review of the licensees' complaints and the circumstances underlying the stipulations, the OAG determined that the allegations against the Board were unfounded. You may access the full response of the OAG on the Board's website, at http://dental.nv.gov/Home/Features/Allegations_of_Due_Process_Violations/

In addition, the Board was the subject of a legislative audit in 2016. You can read the full audit report, the Board's response, various corrective actions that were undertaken by the Board, as well as a recent letter from the Legislative Counsel Bureau which advises that all recommendations contained in the audit report have been fully implemented by the Board. These documents can also be found at http://dental.nv.gov/Home/Features/Allegations_of_Due_Process_Violations/

Finally, Licensees are encouraged to review the document entitled "Understanding the NSBDE Investigation and Disciplinary Process." This document will provide an overview of the process and procedure that is undertaken for every complaint submitted by a member of the public and for every investigation authorized by the Board. A Flow Chart is also available which illustrates this process in a more concise format. These documents may be accessed at http://dental.nv.gov/Home/Features/Complaint_Resources/

American Dental Association to Develop Dental Clinical Examination

The American Dental Association Board of Trustees authorized the formation of the Dental Licensure Objective Structured Clinical Examination ("DLOSCE").

- At the request of the ADA Council on Dental Education and Licensure (CDEL), a business plan was developed by the ADA Department of Testing Services (DTS) under the direction and guidance of CDEL.
- Both CDEL and the ADA/ADEA Joint Licensure Task Force strongly endorsed the business plan.
- As recommended by the ADA Board of Trustees Budget and Finance Committee, in February 2017 the Board of Trustees approved the requested funds to begin examination development in 2017.

The ADA feels it is uniquely positioned to build a high quality clinical licensure examination.

Listed below are some of their reasons:

- The development of the DLOSCE supports current ADA policy calling for the elimination of patients from the dental licensure examination process.
- The ADA possesses the in-house expertise to develop an OSCE through its Department of Testing Services (DTS), which is staffed by testing professionals with advanced degrees in psychological measurement and related fields.
- The ADA also supports OSCE development to help support licensure portability for practicing dentists.
- Lastly and most importantly, the ADA feels that a DLOSCE can protect the public health more effectively than existing clinical licensure solutions.

The DLOSCE pilot exam will be available in late 2019, with anticipated deployment in 2020.

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A dentist must obtain informed written consent after discussing the following with the patient:

- The potential risks and benefits of using the CS
- The proper use, storage and disposal of the CS
- The treatment plan and possible alternatives treatment options
- Risk of the CS exposure to a fetus of a childbearing age woman
- If the CS is an opioid, the availability of an opioid antagonist; and
- If the patient is an emancipated minor, the risks that the minor will abuse, misuse, or divert the CS and ways to detect those issues

There are other requirements should you prescribe controlled substances after 30 days, 90 days and 365 days. The information is available on the Board's website by visiting www.dental.nv.gov and click on the heading "AB474-Prescribing in Nevada." The section has numerous sample forms to include, but limited to, informed consent, patient risk assessment and resources available for your use and review.

The Nevada State Board of Pharmacy Task Force is monitoring for dentist who issue, fraudulent, illegal, unauthorized or otherwise inappropriate prescription for a controlled substance listed as a schedule II, III, IV and will notify the Board in writing. The Board will provide written notification to the licensee and may investigate the matter. Should there be a preponderance of evidence of a violation, the Board shall impose disciplinary action to include but not be limited to continuing education.

The Board suggests you take a few moments and visit our website at www.dental.nv.gov to peruse all the information pertaining to AB474.

BOARD ACTIONS
APRIL 2017 - MAY 2018

Mark Escoto, DDS	Lic 2679
Stephen P Hahn, DDS	Lic 4733
Lisa T Hoang, DDS	Lic 6393
Joshua M Ignatowicz, DMD	Lic 5539
Leslie M Kotler, DMD	Lic 7009
Michelle Martinez-Pham, DDS	Lic 5004
Michael D Wilson, DDS	Lic 4288

In Memory Of

Lloyd B Austin, DDS
Katayoun K Barin, DDS
Blaine R Dunn, DDS
Thomas H Gallagher, DDS
Don C Gilbreth, DMD
James M Jones, DDS
A Raoul Leavitt, DDS
Bruce Pendleton, DDS

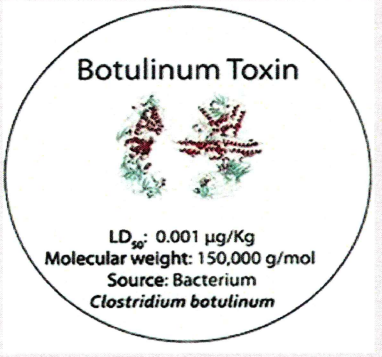
Senate Bill 101 now allows dentists in the state of Nevada to inject Clostridium botulinum and dermal or soft tissue fillers to a patient of record. A dentist who has received the training for Clostridium botulinum, dermal and/or soft tissue fillers shall present proof of such training upon request of a patient or any state or local governmental agency.

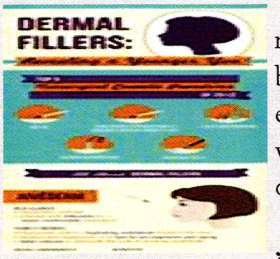
The Board has finalized the regulations for the injection of Clostridium botulinum, dermal and/or soft tissue fillers. The regulations will require a dentist to successfully complete a didactic and hands-on course of study approved by the Board in the injection of such neuromodulators and fillers that:

(a) Is at least 24 hours in length.

(b) Includes at least 4 hours of didactic instruction and at least 4 hours of hands-on instruction in the following areas;

(1) The use of neuromodulators that are derived from Clostridium botulinum or that is biosimilar to or the bioequivalent of such a neuromodulator in the treatment of temporomandibular joint disease and myofascial pain syndrome;





(2) The use of neuromodulators that are derived from Clostridium botulinum or that is biosimilar to or the bioequivalent of such a neuromodulator for dental and facial esthetics, and

(3) The use of dermal and/or soft tissue fillers for dental and facial esthetics

As part of licensure renewal, the Board will require the dentist who wishes to inject Clostridium botulinum, dermal and/or soft tissue fillers to a patient of record provide a statement certifying that each neuromodulator has been or will be injected by the holder and that each dermal and/or soft tissue fillers has been or will be injected by the holder. The regulation also defines "patient of record."

****Before attending a Clostridium botulinum, dermal and/or soft tissue filler certification course, please contact the Board to verify if the course has been granted Board approval.**

Single Use Means Single Use

As you may be aware, UNLV's Faculty Practice Dental Clinic recently advised 184 patients that single-use healing abutments may have been reused during their treatments. The notification assured the patients that any reuse had occurred following sterilization of the abutments. There has been discussion in the news and on social media regarding whether this practice poses any threat of transmission of disease or infection and/or a greater risk of implant failure. Despite what appears to be a debate regarding the safety of the practice of sterilizing and reusing single use devices, including healing abutments, the Board takes this opportunity to clarify its position regarding medical devices marketed, sold, labeled or manufactured as "single use" devices. As explained below, reuse, even after sterilization, of single-use devices can result in discipline pursuant to Nevada Revised Statutes (NRS) Chapter 631 and/or Nevada Administrative Code (NAC), Chapter 631.

NRS Chapter 631 and NAC Chapter 631 regulate the practice of dentistry in Nevada. The Board is charged with enforcing the provisions contained therein. NAC 631.178 states as follows:

NAC 631.178 Adoption by reference of certain guidelines; compliance with guidelines required. (NRS 631.190)

1. Each person who is licensed pursuant to the provisions of chapter 631 of NRS shall comply with:

   a. The provisions of the *Guidelines for Infection Control in Dental Health-Care Settings-2003* adopted by the Centers for Disease Control and Prevention which is hereby adopted by reference. The publication is available, free of charge, from the Centers for Disease Control and Prevention at the Internet address **http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5217a1.htm**; and

   b. As applicable to the practice of dentistry, the provisions of the *Guideline for Disinfection and Sterilization in Healthcare Facilities, 2008*, adopted by the Centers for Disease Control and Prevention which is hereby adopted by reference. The publication is available, free of charge, from the Centers for Disease Control and Prevention at the Internet address **http://www.cdc.gov/ncidod/dhqp/pdf/guidelines/Disinfection_Nov_2008.pdf**

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2. The Board will periodically review the guidelines adopted by reference in this section and determine within 30 days after the review whether any change made to the guidelines is appropriate for application in this State. If the Board does not disapprove a change to the guidelines within 30 days after the review, the change is deemed to be approved by the Board.

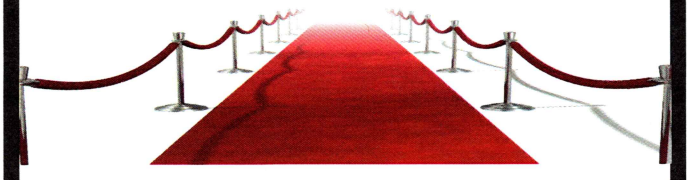
According to the CDC Guidelines for Infection Control in Dental Health-Care Settings, 2003, "The oral cavity is colonized with numerous microorganisms. Oral surgical procedures present an opportunity for entry of microorganisms (i.e., exogenous and endogenous) into the vascular system and other normally sterile areas of the oral cavity (e.g., bone or subcutaneous tissue); therefore, an increased potential exists for localized or systemic infection. Oral surgical procedures involve the incision, excision, or reflection of tissue that exposes the normally sterile areas of the oral cavity. Examples include biopsy, periodontal surgery, apical surgery, implant surgery, and surgical extractions of teeth (e.g., removal of erupted or nonerupted tooth requiring elevation of mucoperiosteal flap, removal of bone or section of tooth, and suturing if needed) (see Hand Hygiene, PPE, Single Use or Disposable Devices, and Dental Unit Water Quality)."

The CDC also notes that, according to the Food and Drug Administration a single-use device, also referred to as a disposable device, is intended for use on one patient during a single procedure. It is not intended to be reprocessed (i.e., cleaned and disinfected or sterilized) and used on trays. The labeling may not identify the device as single-use or disposable. If a device does not have reprocessing instructions, regardless of labeling, it should be considered single-use and disposed of appropriately (i.e., according to federal, state, and local regulations) after one use. (*See,* https://www.cdc.gov/oralhealth/infectioncontrol/questions/single-use-devices.html)

Based on the foregoing, it is the Board's position that "single use" means that the medical device is intended to be used on an individual patient during a single procedure and then discarded. It is not intended to be reprocessed and used on another patient. Therefore, regardless of any individual practitioner's belief as to the efficacy of sterilization of single use devices, including healing abutments, the Board treats any reuse of single use devices as unprofessional conduct, in violation of NRS 631.3475(4) (substandard care); NAC 631.178 (violation of CDC guidelines) and/or NAC 631.230(c) (departure from prevailing standards of care). Violations of these statutes and regulations by the reuse of single use devices, even if only reused after sterilization, may result in discipline.

WELCOME
NEWLY APPOINTED MEMBERS & STAFF

Betty L Pate, RDH
Yvonne L Bethea, RDH
Nikki Harris, Public Member
Melanie B Chapman, Esq
Patricia Quinn, Legal Assistant



The Board welcomes the newly appointed Board members, counsel & staff and looks forward to working together to ensure that qualified professionals are licensed to practice dentistry and dental hygiene and further ensure that those who violate the laws regulating the dental and dental hygiene professions are sanctioned appropriately.

Theresa Guillen, RDH

The Board thanks you for your dedication and service to your profession and to the citizens of the State of Nevada.

Licensure by Endorsement—A New Pathway for Licensure

The Nevada State Board of Dental Examiners has a new pathway for licensure for both dentists and dental hygienists. Effective June 9, 2017, Senate Bill 69 (SB69) was enacted by the Legislature. This method of licensure is for certain professions and is codified under Chapter 622 of the Nevada Revised Statute.

Through the rulemaking process the Board amended NAC 631.030 to adopt permanent regulations to outline the documentation and information required for licensure by endorsement in addition to the required statutes.

This method of licensure shall grant an applicant who meets the eligibility requirements set forth in NRS 631.230 or NRS 631.290, NRS 622 (SB69) and the regulations adopted by the Board to a person seeking a dental or dental hygiene license in the state of Nevada.

For more information regarding this method of licensure you may visit the Board's website at www.dental.nv.gov under the heading "Apply for a License."

2017 Dental Professional Workforce Survey

This announcement is a follow up to a letter you should have received from Dr. Raven, Acting Chief Medical Officer, requesting for your participation in the Nevada 2017 Dental Workforce Survey.

If you have already completed this survey, please consider this a "thank you" for your promptness.

If the questionnaire link has been set aside to finish later, please follow the link below and complete the survey as soon as possible. We realize this is a busy time of year and appreciate your assistance in answering this survey.

Survey for Dentists:

www.surveymonkey.com/r/dentists-2017

Survey for Dental Hygienists:

www.surveymonkey.com/r/dentalhygienists-2017

Please contact Dr. Capurro with questions at **acapurro@health.nv.gov**

RISKY BUSINESS STORING MEDICAL / DENTAL RECORDS IN SELF STORAGE

Vickie Riley, Assured Document Mgmt

Identity Theft

Self-Storage units generally do not have the high level security needed to protect patient's confidential records from unauthorized individuals. Self storage units are generally connected together and only utilize a pad lock to prevent unauthorized persons from gaining entry into the unit and having access to patient files that maintain patient's confidential and personal information that is used for fraud, identity theft and other criminal activity. Self storage units are targeted by burglars. Historically, the walls do not go all the way up the ceiling leaving the unit vulnerable. The neighbor next door may be storing hazardous materials or could be a criminal hoping to steal items stored in your unit.

Risk of Elements

Storage units do not typically have the safety measures in place to protect the contents from fire, floods or natural disasters. Additionally, if the storage unit is in a moisture prone environment patient records may be damaged due to mold and mildew from poor insulation. Storage units that have a fire suppression system leave the patients records exposed to water or chemical damage.

Surveillance

Most storage units have cameras that are in place to monitor the premises, not individual storage units. Criminals tend to target storage units precisely for this reason, randomly breaking into units to see the contents. Most storage unit companies have a clause in their contracts acknowledging they are not liable for stolen or missing items.

HIPPA

The federal government has published its final regulations (Final Rule) implementing Health Information Technology for Economic and Clinical Health (HITECH) Act. The new rules expand the obligations of health care providers to protect patients' protected health information (PHI), extend these obligations to a host of other companies who, as "business associates," have access to PHI, and increase the penalties for violations of any of these obligations. The Final Rule was published January 25, 2013 and became effective March 26, 2013. The compliance date is six months from the effective date: September 23, 2013.

The Final Rule significantly modifies the definition of a business associate. Previously, BA's were limited to entities that "use or disclose" PHI in order to provide a service on behalf of a covered entity. Now, the definition includes any organization that "creates, receives, maintains, or transmits PHI for a function regulated by HIPAA". Entities that, under the expanded definition, are considered business associates include all medical records storage companies. A medical records storage company that has access to PHI (electronic or hardcopy) is a business associate even if the entity does not view the information or does so on a random or infrequent basis. Therefore, if you are housing your patient records with a storage entity, you should have in place a "Business Associate Agreement" to ensure HIPPA compliance. Violations of the Final Rule may result in Civil Monetary Penalties.

When housing your patient records you want to select a company like Assured Document Management that carries professional liability coverage that exceeds the standards for the industry and offers "Business Associate Agreements". Self Storage facilities do not offer "Business Associate Agreements" nor do they have professional liability coverage.