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STATE OF NEVADA  
BEFORE THE BOARD OF DENTAL EXAMINERS

NEVADA STATE BOARD OF DENTAL  
EXAMINERS,

Case No. 74127-03048

Complainant,

COMPLAINT

vs.

*Received*

MAR 07 2016

NSBDE

L. SCOTT BROOKSBY, DDS,

Respondent.

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  
2 5. On November 5, 1990, the Board issued Respondent a specialty license in the area of  
3 prosthodontics, license #S5-09.  
4

5 STIPULATION IN CASE 00-637 AND SPECIALTY LICENCE STATUS

6 6. Respondent entered into a *Stipulation* with the Board in Case No. 00-637 (approved by  
7 the Board on or about January 18, 2001). (IH Ex. 27<sup>1</sup>) In part, the *Stipulation* suspended  
8 Respondent's specialty license for one (1) year. *Id.*, at ¶10.a. Further, the *Stipulation* provides,  
9 in part, that upon reinstatement of Respondent's specialty license, he would be restricted from  
10 performing endodontic treatment, periodontal treatment, and surgical procedures. *Id.*, at  
11 ¶10.c.(i)(ii) and (iii).  
12

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

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

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

21 The Board approved to remove the restrictions referenced in Paragraph  
22 10(c)(i)(ii)(iii) and your request to reinstate your specialty license in the specialty  
area of Prosthodontics.

23 Upon submission of the required reinstatement fee of \$200.00 pursuant to NAC  
24 631.029 your specialty license will be reinstated to an active status.

25 *Id.* (emphasis in original). (IH Ex. 25)  
26

27 <sup>1</sup> "IH Ex. #" refers to the exhibit number from the December 3, 2015, Informal Hearing. This reference is for  
28 internal and informal references only. No such exhibits are attached to this Complaint and the reference to certain  
exhibit numbers does not incorporate same by reference.

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FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION  
DATED AUGUST 10, 2015, FROM CASE NO. 74127-02772

8. On May 22, 2015, the Board held a hearing relative to the Board's formal complaint dated and signed March 13, 2015, in the matter captioned Nevada State Board of Dental Examiners v. L. Scott Brooksby, DDS, case number 74127-02772, which resulted in *Findings of Fact, Conclusions of Law, & Decision* dated August 10, 2015 (sometimes the "August 10, 2015, Decision"). (IH Ex. 19). Based upon the *Findings of Fact, Conclusions of Law, & Decision* dated August 10, 2015 resulting in the Respondent being placed on probation which will expire on August 11, 2016.

AUTHORIZED INVESTIGATIVE COMPLAINT

9. Via a *Notice of Investigative Complaint & Request for Records* dated May 26, 2015 (IH Ex. 4), the Board notified Respondent that at a properly notice meeting on May 22, 2015, pursuant to Agenda item 3(c)(3), the Board authorized an investigative complaint regarding whether Respondent possibly violated NRS 631.395(11), NRS 631.346, and NAC 631.230. In pertinent part, the Notice advised Respondent it has been brought to the Board's attention he may have an employee by the name of Andrea Brooksby Smith who is providing dental hygiene treatment(s) to patients without a valid license in the State of Nevada.

10. On May 28, 2015, Respondent was personally served with a copy of the *Notice of Investigative Complaint & Request for Records* dated May 26, 2015, a copy of its Verification of Complaint, and MP Investigations Surveillance dated 04-21-15 and 03-30-15. See Affidavit of Service dated May 29, 2015. (IH Ex. 5)

11. Via letter dated June 9, 2015, request was made to Respondent on behalf of Gary Braun, DMD, MS, Disciplinary Screening Officer assigned to the matters addressed in the *Notice of Investigative Complaint & Request for Records* dated May 26, 2015, seeking a copy of the dental

1 records of patient, Ms. Paige Thomas. (IH Ex. 6)

2  
3 12. On June 9 and 11, 2015, the Board received Ms. Thomas' records from Respondent. (IH  
4 Ex. 7)

5  
6 13. On June 30, 2015, the Board sent Respondent correspondence noting that it had not  
7 received his factual answer to the *Notice of Investigative Complaint & Request for Records* dated  
8 May 26, 2015. (IH Ex. 8)

9  
10 14. Via letter dated July 15, 2015, request was made to Respondent on behalf of Gary Braun,  
11 DMD, MS, Disciplinary Screening Officer assigned to the matters addressed in the *Notice of*  
12 *Investigative Complaint & Request for Records* dated May 26, 2015, seeking copies of his daily  
13 schedules for the period of December 1, 2014, through May 27, 2015. (IH Ex. 9)

14  
15 15. On July 29, 2015, the Board received Respondent's response to the authorized  
16 investigative complaint, a copy of which was provided to Respondent with a letter confirming  
17 the same dated July 31, 2015. (IH Ex. 11)

18  
19 16. Via a *Subpoena Duces Tecum* dated August 3, 2015, Respondent was commanded to  
20 appear at Morris, Pollich & Purdy, LLP, 500 South Rancho, Suite 17, Las Vegas, Nevada 89106  
21 on August 24, 2015, at 10:00 a.m. to produce the following documents:

22  
23 1. Any and all records regarding patients who received dental hygiene services  
24 including, but not limited to, prophylaxis treatments, dental debridement  
25 treatments, periodontal charting during the period of December 1, 2014  
26 through May 27, 2015. Please include billing records, laboratory work orders,  
27 prescription slips, insurance records (including any correspondence or billing  
28 submitted to an insurance provider), health history, charts notes, informed  
consents, daily patient schedules for the dates of treatment, day sheets,  
radiographs, treatment plans and patient logs;

1 Id., pg. 1 (emphasis in original) (see Subpoena Duces Tecum within IH Ex. 20).

2  
3 17. On August 10, 2015, the *Subpoena Duces Tecum* dated August 3, 2015, was personally  
4 served upon Respondent. See Affidavit of Service dated August 10, 2015, within IH Ex. 20.

5  
6 18. On August 24, 2015, Respondent produced certain documents pursuant to *Subpoena*  
7 *Duces Tecum* dated August 3, 2015. See transcript, IH Ex. 20, which included as Exhibit 2 a list  
8 of patients Respondent believed were responsive to the subpoena); see also IH Ex. 29, CD of  
9 documents produced pursuant to subpoena, bates nos. BROOKSBY-AI 000001- BROOKSBY-  
10 AI 000841.

11  
12 19. As noted in the transcript from August 24, 2015 (IH Ex. 20), it was agreed that  
13 Respondent would again appear pursuant to the *Subpoena Duces Tecum* dated August 3, 2015,  
14 and produce x-rays and billing information, on September 9, 2015, at 10:00 a.m. at Morris,  
15 Pollich & Purdy, LLP, 500 South Rancho, Suite 17, Las Vegas, Nevada 89106.

16  
17 20. On September 9, 2015, Respondent failed to appear at 10:00 a.m. at Morris, Pollich &  
18 Purdy, LLP, 500 South Rancho, Suite 17, Las Vegas, Nevada 89106, and did not produce billing  
19 and x-rays pursuant to the *Subpoena Duces Tecum* dated August 3, 2015. See IH Ex. 21,  
20 transcript of non-appearance on September 9, 2015.

21  
22 21. On September 14, 2015, the Board's attorney sent Respondent correspondence regarding  
23 certain matters pertaining to the *Subpoena Duces Tecum* dated August 3, 2015. (IH Ex. 12)

24  
25 22. On September 18, 2015, Respondent appeared at 10:00 a.m. at Morris, Pollich & Purdy,  
26 LLP, 500 South Rancho, Suite 17, Las Vegas, Nevada 89106, to produce billing and x-rays  
27 pursuant to the *Subpoena Duces Tecum* dated August 3, 2015. See IH Ex. 22, transcript of  
28

1 appearance on September 18, 2015; see also IH Ex. 23, billing documents produced on  
2 September 18, 2015, date numbered as BROOSKBYSdT91815000001 to  
3 BROOSKBYSdT91815000125; see also IH Ex. 30, CD of x-rays produced on September 19,  
4 2015 for the period of 12-1-14 to 5-22-15.

5  
6 23. On September 15, 2015, the Board sent Respondent correspondence regarding his failure  
7 to timely comply with certain provisions of the August 10, 2015, Board Decision. (IH Ex. 10).

8  
9 24. Via letter dated September 15, 2015, the Board advised Respondent of an expansion of  
10 the authorized investigative complaint relative to a number of matters. (IH Ex. 13). In pertinent  
11 part, the September 15, 2015, letter provides:

12  
13 On September 9, 2015, a Hearing was held in District Court Clark County Nevada  
14 for Andrea Smith (aka Andrea Brooksby Smith) to seek Permanent Injunction for  
15 the illegal practice of dental hygiene in the State of Nevada by an unlicensed  
16 person.

17 During the Hearing, Ms. Smith's sworn testimony under oath was that on at least  
18 twenty (20) occasions Ms. Smith performed oral prophylaxis on patients which  
19 are duties delegable to dental hygienist as set forth in NAC 631.210 and require  
20 licensure. Further, Ms. Smith advised the court she was hired as a dental assistant  
21 at your dental office located at 8960 W Cheyenne Avenue, Suite 190, Las Vegas,  
22 Nevada 89129. During the sworn testimony under oath, Ms. Smith was  
23 questioned about other concerns in addition to the illegal practice of dental  
24 hygiene identified on the March 30, 2015 and April 21, 2015 appointments of  
25 patient Paige Thomas. The first concern was regarding the failure to utilize a lead  
26 apron on patient Paige Thomas. When questioned about the lack of the lead  
27 apron, Ms. Smith testified she was not aware of the regulation and that lead  
28 aprons are required and that she received little training for radiographic  
procedures through the previous dental assistant.

The second concern identified at the April 21, 2015, appointment, during the oral  
prophylaxis procedure performed on Ms. Thomas, Ms. Smith is seen adjusting the  
cavitron pedal on the floor wearing latex gloves and then returns to the oral  
prophylaxis treatment on Ms. Thomas without changing her gloves. When  
questioned about these concerns, Ms. Smith testified she has not received any  
human infection control training only veterinarian [infection] control training and

1 was never provided a copy of Chapter 631 of the NRS and NAC.

2 \* \* \*

3 You as a licensee who employs any person, other than a dental hygienist, to assist  
4 him or her in radiographic procedures shall include with his or her application for  
5 renewal of his or her license a certified statement containing the name of each  
6 person so employed, his or her position and the date he or she began to assist the  
7 licensee in radiographic procedures; and attested that each such employee has  
8 received adequate instruction concerning radiographic procedures and is qualified  
9 to operate radiographic equipment as required pursuant to subsection 3 of NAC  
10 459.552; has received training in cardiopulmonary resuscitation at least every 2  
11 years while so employed; complete a minimum of 4 hours of continuing education  
12 in infection control every 2 years while so employed; and before beginning such  
13 employment, a copy of this chapter and chapter 631 of NRS in paper or electronic  
14 format.

15 On May 21, 2015, you renewed your specialty license number S5-09 through the  
16 Board's on-line renewal portal. Further, you listed Andrea Smith as your dental  
17 assistant with an employment start date of January 1, 2015 and attested that as of  
18 May 21, 2015, Ms. Smith has received adequate training the radiographic  
19 procedures and is qualified to operate radiographic equipment, has received  
20 training in cardiopulmonary resuscitation at least every 2 years while so  
21 employed, complete a minimum of 4 hours of continuing education in infection  
22 control ever 2 years while so employed and before beginning such employment, a  
23 copy of this chapter and chapter 631 of NRS in paper or electronic format. I have  
24 enclosed copies of the confirmation pages and information you entered and  
25 attested to on May 21, 2015 of you registration for renewal.

26 Lastly, a person is guilty of the illegal practice of dentistry or dental hygiene who  
27 willfully makes, as an applicant for examination, license or registration under this  
28 chapter, a false statement in a material regard in an affidavit required by this  
chapter.

29 Id., pgs. 1-2, 4, respectively. (IH Ex. 13). See also Transcript of Proceedings from September 9,  
30 2015, in the matter of Nevada State Board of Dental Examiners vs. Andrea Brooksby Smith,  
31 Eighth Judicial District Court, Clark County, Nevada, case number A-15-718338-C, department  
32 32. (IH Ex. 28); see also MPP Investigations Surveillance from 3-30-15 (IH Ex. 31), and MPP  
33 Investigations Surveillance from 4-21-15. (IH Ex. 32)

1 25. On September 23, 2015, the Board received Respondent's written response dated  
2 September 22, 2015, to the September 15, 2015, notice of the expansion of the authorized  
3 investigative complaint. A copy of Respondent's response was provided to Respondent with a  
4 September 24, 2015, letter confirming the same. (IH Ex. 14)

5  
6 26. On September 29, 2015, an *Order re: Granting Permanent Injunction* was filed in the in  
7 the matter of Nevada State Board of Dental Examiners vs. Andrea Brooksby Smith, Eighth  
8 Judicial District Court, Clark County, Nevada, case number A-15-718338-C, department 32. (IH  
9 Ex. 24). District Court Judge Rob Bare made certain findings and conclusions in the *Order re:*  
10 *Granting Permanent Injunction* including the following:

11  
12 30. Also, in addition to the above, as noted at the close of the hearing on  
13 September 9, 2015, the following further findings and/or conclusions were  
specifically made by the Court from the bench:

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

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

25  
26 **NAC 631.260 Radiographic procedures: Lead apron**  
27 **required; certified statement and attestation of qualifications**  
28 **required for certain persons who assist in procedures. (NRS**  
**631.190)**

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

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

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

10       (b) Attesting that each such employee has received:

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

14       (2) Training in cardiopulmonary resuscitation at least every  
15       2 years while so employed;

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

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

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

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

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

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

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

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

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

3 **i.** Exhibit 5, the photograph which depicts Smith utilizing a cavitron  
4 on Paige Thomas.

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

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

12 **E.** Based upon the evidence and testimony of Dr. Braun, Mrs. Shaffer-Kugel,  
13 and Smith, the Court finds there to be other concerns regarding the following  
14 matters/activities by Smith and/or occurring at the dental offices of L. Scott  
15 Brooksby, DDS, i.e., Cheyenne Advanced Dental Arts, 8960 W. Cheyenne Ave,  
16 #190, Las Vegas, Nevada:

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

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

22 **iii.** Smith touching with her hand her hair and/or touching with her  
23 hand her face and then immediately resuming to clean the teeth of Paige  
24 [Thomas] Smith without first changing her gloves.

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

27 **i.** Smith testified she has worked on a part time basis for her father,  
28 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 [Thomas]  
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

1 2014 until being served with the TRO on or about May 26, 2015.

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

4 v. Smith testified she only received "on the job training" at her  
5 father's dental practice. Smith testified she has never received any training  
6 relative to human infection control matters.

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

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

13 vi. [sic] Smith testified that her father was aware of her performing teeth  
14 cleanings on patients at his dental office.

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

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

27 Id., Order re: Granting Permanent Injunction, at 8:16 to 12:24. (IH Ex. 24)

28 27. Via letter dated October 8, 2015, the Board advised Respondent of another expansion of  
the authorized investigative complaint relative to a number of matters. (IH Ex. 16). In pertinent  
part, the October 8, 2015, letter provides:

Please be advised, Dr. Gary Braun, Disciplinary Screening Officer assigned to the  
authorized investigative complaint has expanded the scope of the investigation to

1 include the following possible violation of NAC 631.230(1)(c) based upon his  
2 review of the patient records in where you treated the following patients dental  
3 appliances with "lime away" solution; [name of 8 patients redacted]. The use of  
4 "lime away" a hard water bathroom cleaner may constitute "unprofessional  
5 conduct" where the consistent use of dental procedures, services or treatments  
6 which constitute a departure from prevailing standards of acceptable dental  
7 practice even though the use does not constitute malpractice or gross malpractice.

8 Id., pg. 2 (IH Ex. 16); see also Safety Data Sheet regarding Lime-A-Way, Calcium & Rust  
9 Cleaner. (IH Ex. 26)

10 28. On October 26, 2015, the DSO, Gary Braun, DMD, MS, received an email from  
11 Respondent wherein the "From" portion of the email provides "From: Scott Brooksby, DDS,  
12 MACP, DICOI <lscottbrooksby@gmail.com>." (IH Ex. 17)

13 29. On November 21, 2015, the DSO, Gary Braun, DMD, MS, received an email from  
14 Respondent discussing Respondent's use of Lime Away to clean dentures. (IH Ex. 18)

#### 15 INFORMAL HEARING

16 30. Via correspondence dated November 5, 2015, sent via certified mail, return receipt  
17 requested and via regular mail to L. Scott Brooksby, DDS, 8960 W. Cheyenne Ave, Suite 190,  
18 Las Vegas, Nevada 89129, Respondent was provided notice of informal hearing set for 10:00  
19 a.m. on Thursday, December 3, 2015, at Morris, Polich & Purdy, LLP, 500 South Rancho Drive,  
20 Suite 17, Las Vegas, Nevada 89106, regarding the above-referenced authorized investigation.  
21 (IH Ex. 1)

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

1 32. On November 9, 2015, the above-referenced November 5, 2015, notice of informal  
2 hearing was personally served upon Respondent. See Affidavit of Service dated November 13,  
3 2015. (IH Ex. 2)  
4

5 33. Via email on November 27, 2015, Respondent advised the Board's attorney he was not  
6 requesting a continuance of the December 3, 2015, informal hearing. The Board's attorney  
7 confirmed the same with an email to Respondent on November 30, 2015. (IH Ex. 3)  
8

9 34. On December 3, 2015, the above-referenced informal hearing was held in Las Vegas,  
10 Nevada, regarding the above-referenced authorized investigative complaint and/or as more fully  
11 addressed in the notice of informal hearing. The informal hearing was held pursuant to NRS  
12 631.363 and NAC 631.250 and 631.255.  
13

14 35. In attendance at the December 3, 2015, informal hearing was Gary Braun, DMD, MS,  
15 Disciplinary Screening Officer; Debra Shaffer-Kugel, Executive Director of the Board, and  
16 Board attorney, John A. Hunt, Esq. Respondent did not attend the informal hearing.  
17

18 36. Following the informal hearing, written findings of fact and conclusions were drafted,  
19 pursuant to NRS 631.363(3). See Findings and Recommendations of the Informal Hearing held  
20 Pursuant to NRS 631 and NAC 631 & Consent of L. Scott Brooksby, DDS, to the Findings and  
21 Recommendations Pursuant to NRS 631.363(5) dated February 8, 2016 (hereinafter "FR&C").  
22 The FR&C were forwarded to Respondent for review and consent by Respondent, pursuant to  
23 NRS 631.363(5). Respondent did not consent to the FR&C.  
24  
25  
26  
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28

37. The Board repeats and realleges the allegation contained in paragraphs 1 through 36 and reincorporates the same as if fully set forth herein.

**NRS 631.395 Acts constituting illegal practice of dentistry.** A person is guilty of the illegal practice of dentistry or dental hygiene who:

39. NAC 631.260(2) provides:

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:

(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

(b) Attesting that each such employee has received:

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

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

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

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

**Morris Polich & Purdy, LLP**  
500 S. Rancho Drive, Suite 17

1 employee has received adequate instruction concerning radiographic procedures and is qualified  
2 to operate radiographic equipment as required pursuant to subsection 3 of NAC 459.552; has  
3 received training in cardiopulmonary resuscitation at least every 2 years while so employed;  
4 complete a minimum of 4 hours of continuing education in infection control every 2 years while  
5 so employed; and before beginning such employment, a copy of this chapter and chapter 631 of  
6 NRS in paper or electronic format.  
7

8 41. On May 21, 2015, Respondent renewed his specialty license number S5-09 through the  
9 Board's on-line renewal portal wherein Respondent listed Andrea Smith as his dental assistant  
10 with an employment beginning date of January 1, 2015. Respondent further attested that as of  
11 May 21, 2015, Ms. Smith had received adequate training the radiographic procedures and is  
12 qualified to operate radiographic equipment, has received training in cardiopulmonary  
13 resuscitation at least every 2 years while so employed, completed a minimum of 4 hours of  
14 continuing education in infection control ever 2 years while so employed, and before beginning  
15 such employment, received a copy of chapter and chapter 631 of NRS in paper or electronic  
16 format.  
17

18 42. Notwithstanding Respondent's attestations on May 21, 2015, on September 9, 2015, at a  
19 hearing held in the Eighth Judicial District Court, Clark County, Nevada, Andrea Smith (aka  
20 Andrea Brooksby Smith) testified, under oath, that on at least twenty (20) occasions she  
21 performed oral prophylaxis on patients which are duties delegable to dental hygienist as set forth  
22 in NAC 631.210 and require licensure. Further, Ms. Smith advised the court she was hired as a  
23 dental assistant at Respondent's dental office located at 8960 W Cheyenne Avenue, Suite 190,  
24 Las Vegas, Nevada 89129. During the sworn testimony under oath, Ms. Smith was questioned  
25 about other concerns in addition to the illegal practice of dental hygiene identified on the March  
26 30, 2015, and April 21, 2015, appointments of patient Paige Thomas. The first concern was  
27 regarding the failure to utilize a lead apron on patient Paige Thomas. When questioned about the  
28

1 lack of the lead apron, Ms. Smith testified she was not aware of the regulation and that lead  
2 aprons are required and that she received little training for radiographic procedures through the  
3 previous dental assistant. In addition, during the oral prophylaxis procedure performed on Ms.  
4 Thomas, Ms. Smith is seen adjusting the cavitron pedal on the floor wearing latex gloves and  
5 then returns to the oral prophylaxis treatment on Ms. Thomas without changing her gloves.  
6 When questioned about these concerns, Ms. Smith testified she has not received any human  
7 infection control training and only had veterinarian control training and was never provided a  
8 copy of Chapter 631 of the NRS and NAC.

9  
10 43. In light of the above, Respondent violated NRS 631.395(7) and NAC 631.260(2).

11  
12 **ALLEGATIONS/CLAIMS REGARDING RESPONDENT'S**  
13 **VIOLATION OF NAC 631.260(1)**

14 44. The Board repeats and realleges the allegation contained in paragraphs 1 through 43 and  
15 reincorporates the same as if fully set forth herein.

16  
17  
18 45. NAC 631.260(1) provides:

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

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

24 46. NAC 631.220(1)(a) provides a dentist who is licensed in the State of Nevada may  
25 authorize a dental assistant in his or her employ and under his or her supervision to expose  
26 radiographs.

27 47. That with regards to patient Paige Thomas, Respondent allowed radiographic procedures  
28

1 to be undertaken without the patient being covered with a lead apron.

2  
3 48. That on at least one occasion, Respondent violated NAC 631.260(1) by allowing  
4 radiographic procedures to be undertaken on a patient without the patient being covered with a  
5 lead apron.  
6

7  
8 **ALLEGATIONS/CLAIMS REGARDING RESPONDENT'S**  
9 **VIOLATION OF NRS 631.346(1) AND/OR NRS 631.395(11)**

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

12 50. NRS 631.346(1) provides:

13 **NRS 631.346 Employment of unlicensed person; public demonstrations;**  
14 **aiding in unlicensed practice; dental hygienist practicing in unauthorized**  
15 **place; practice with license suspended or without renewal certificate. The**  
16 **following acts, among others, constitute unprofessional conduct:**

17 1. Employing, directly or indirectly, any student or any suspended or  
18 unlicensed dentist or dental hygienist to perform operations of any kind to treat  
19 or correct the teeth or jaws, except as provided in this chapter;  
20 \*\*\*

21 51. NRS 631.395(11) provides:

22 **NRS 631.395 Acts constituting illegal practice of dentistry. A person is**  
23 **guilty of the illegal practice of dentistry or dental hygiene who:**  
24 \*\*\*

25 11. Aids or abets another in violating any of the provisions of this chapter.  
26

27 52. As noted above, on September 9, 2015, at a hearing held in the Eighth Judicial District  
28 Court, Clark County, Nevada, Andrea Smith (aka Andrea Brooksby Smith) testified, under oath,  
that while employed by Respondent at his dental office she did on at least twenty (20) occasions  
perform oral prophylaxis on patients which are duties delegable to dental hygienist as set forth in  
NAC 631.210 and require licensure.

1 53. Ms. Smith is not licensed as a dental hygienist in Nevada.

2  
3 54. That at all times relevant herein, Respondent knew Ms. Smith was not a licensed dental  
4 hygienist in Nevada.  
5

6  
7 55. As addressed above, on September 29, 2015, an *Order re: Granting Permanent*  
8 *Injunction* was filed in the in the matter of Nevada State Board of Dental Examiners vs. Andrea  
9 Brooksby Smith, Eighth Judicial District Court, Clark County, Nevada, case number A-15-  
10 718338-C, department 32. (IH Ex. 24). District Court Judge Rob Bare made certain findings and  
11 conclusions in the *Order re: Granting Permanent Injunction* including the following:  
12

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

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

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

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

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

25 v. Smith testified she only received "on the job training" at her  
26 father's dental practice. Smith testified she has never received any training  
27 relative to human infection control matters.

28 vi. Smith acknowledged the activity she undertook with regards to

1 Paige Thomas on April 21, 2015, included teeth cleaning.

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

6 vi. [sic] Smith testified that her father was aware of her performing teeth  
7 cleanings on patients at his dental office.

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

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

20 Id., *Order re: Granting Permanent Injunction*, at 11:12 to 12:24. (IH Ex. 24)

21  
22 56. In light of the above, Respondent's actions constitute unprofessional conduct pursuant to  
23 NRS 631.346(1) in that he employed, directly or indirectly, Ms. Smith who was at all relevant  
24 times herein an unlicensed dental hygienist to perform operations of any kind to treat or correct  
25 the teeth or jaws, except as provided in this chapter.

26  
27 57. In light of the above, Respondent has aided or abetted another (i.e., Ms. Smith) in  
28 violating provisions of chapter 631 of the NRS and/or NAC and, therefore, is in violation of NRS  
631.395(11).

1                    **ALLEGATIONS/CLAIMS REGARDING RESPONDENT'S**  
2                    **VIOLATION OF NRS 631.348(6)**

3 58.     The Board repeats and realleges the allegation contained in paragraphs 1 through 57 and  
4 reincorporates the same as if fully set forth herein.

5  
6 59.     NRS 631.348(6) provides:

7  
8            **NRS 631.348** Misleading statements; false advertising; fraud in securing  
9            license; practice under misleading name; submitting fraudulent claim to  
             insurer; failure to notify insurer of forgiven debt. The following acts,  
             among others, constitute unprofessional conduct:

10           \*\*\*

11           6. Submitting a false or fraudulent claim for payment to an insurer for dental  
             services rendered; or

12           \*\*\*

13 60.     On more than one occasion, Respondent submitted claims to insurers for dental hygiene  
14 treatments on patients who received dental hygiene treatments from an unlicensed person.

15  
16 61.     In light of the above, Respondent's actions constitute unprofessional conduct, pursuant to  
17 NRS 631.348(6), in that he submitted, on more than one occasion, a false or fraudulent claim for  
18 payment to an insurer for dental hygiene services rendered.

19  
20                    **ALLEGATIONS/CLAIMS REGARDING RESPONDENT'S**  
21                    **VIOLATION OF NAC 631.230(1)(c)**

22 62.     The Board repeats and realleges the allegation contained in paragraphs 1 through 61 and  
23 reincorporates the same as if fully set forth herein.

24  
25 63.     NAC 631.230(1)(c) provides:

26            **NAC 631.230** Unprofessional conduct. (NRS 631.190, 631.346, 631.347,  
27            631.350)

1. In addition to those specified by statute and subsection 3 of NAC 631.177, the following acts constitute unprofessional conduct:

\*\*\*

(c) The consistent use of dental procedures, services or treatments which constitute a departure from prevailing standards of acceptable dental practice even though the use does not constitute malpractice or gross malpractice.

64. Respondent has consistently used "Lime Away" to clean patient's dental appliances.

65. Respondent's consistent use of "Lime Away" to clean patient's dental appliances constitutes a departure from prevailing standards of acceptable dental practice and, therefore, such actions by Respondent constitute unprofessional conduct pursuant to NAC 631.230(1)(c).

**ALLEGATIONS/CLAIMS REGARDING RESPONDENT'S  
VIOLATION OF NRS 631.349 and RESPONDENT'S VIOLATION  
OF THE AUGUST 10, 2015, DECISION**

66. The Board repeats and realleges the allegation contained in paragraphs 1 through 65 and reincorporates the same as if fully set forth herein.

67. NRS 631.349 provides:

**NRS 631.349 Examples of unprofessional conduct not complete list or authorization of other acts; Board may hold similar acts unprofessional conduct.** The acts described in NRS 631.346 to 631.3485, inclusive, must not be construed as a complete list of dishonorable or unprofessional conduct, or as authorizing or permitting the performance of other and similar acts, or as limiting or restricting the Board from holding that other or similar acts constitute unprofessional or dishonorable conduct.

68. The above-referenced *Findings of Fact, Conclusions of Law, & Decision* dated August 10, 2015 (IH Ex. 19), provide, in pertinent part, as to the Board's Order regarding Respondent retaking the jurisprudence test:

6. Pursuant to NRS 631.350(1)(k), Respondent shall retake the jurisprudence test as required by NRS 631.240(2) on the contents and interpretation of NRS 631

1 and the regulations of the Board. Respondent shall have ninety (90) days to  
2 complete the jurisprudence test (the ninety (90) day period shall begin three (3)  
3 days after service of notice of entry upon Respondent of this Order). The  
4 jurisprudence test is administered on the first Monday of each month at 10:00  
a.m. and 2:00 p.m. at the Board's office. Respondent shall contact the Board to  
schedule a time to take the jurisprudence test.

5 See August 10, 2015, Decision, at 17:8-13. (IH Ex. 19)

6  
7 69. Respondent was served with notice of entry of the August 10, 2015, Decision on August  
8 11, 2015. As noted above, the August 10, 2015, Decision provides "Respondent shall have  
9 ninety (90) days to complete the jurisprudence test (the ninety (90) day period shall begin three  
10 (3) days after service of notice of entry upon Respondent of this Order)." Id. Accordingly,  
11 ninety-three (93) days from August 11, 2015, was November 14, 2015. Respondent, however,  
12 did not retake the jurisprudence test until November 18, 2015.

13  
14 70. Wherefore, based upon the above, Respondent has violated the Board's August 10, 2015,  
15 Decision which equates to a violation of NRS 631.349 because Respondent's failure to comply  
16 with the Board's August 10, 2015, Decision amounts to dishonorable or unprofessional conduct.

17  
18 **ALLEGATIONS/CLAIMS REGARDING RESPONDENT'S**  
19 **VIOLATIONS OF NRS 631.3485(1) AND/OR NRS 631.349**

20 71. The Board repeats and realleges the allegation contained in paragraphs 1 through 70 and  
21 reincorporates the same as if fully set forth herein.

22  
23 72. NRS 631.3485(1) provides:

24 **NRS 631.3485 Violation of chapter or regulations; failure to pay fee for**  
25 **license. The following acts, among others, constitute unprofessional conduct:**

26 1. Willful or repeated violations of the provisions of this chapter;  
27  
28

1 73. NRS 631.349 provides:

2  
3 NRS 631.349 Examples of unprofessional conduct not complete list or  
4 authorization of other acts; Board may hold similar acts unprofessional  
5 conduct. The acts described in NRS 631.346 to 631.3485, inclusive, must not  
6 be construed as a complete list of dishonorable or unprofessional conduct, or as  
authorizing or permitting the performance of other and similar acts, or as  
limiting or restricting the Board from holding that other or similar acts constitute  
unprofessional or dishonorable conduct. (Added to NRS by 1983, 1108)

7 74. As addressed above, Respondent entered into a *Stipulation* with the Board in Case No.  
8 00-637 (approved by the Board on or about January 18, 2001). (IH Ex. 27) In part, the  
9 *Stipulation* suspended Respondent's specialty license for one (1) year. *Id.*, at ¶10.a. Further, the  
10 *Stipulation* provides, in part, that upon reinstatement of Respondent's specialty license, he would  
11 be restricted from performing endodontic treatment, periodontal treatment, and surgical  
12 procedures. *Id.*, at ¶10.c.(i)(ii) and (iii).

13  
14 75. As also addressed above, on May 22, 2015, the Board held a hearing relative to the  
15 Board's formal complaint dated and signed March 13, 2015, in the matter captioned Nevada  
16 State Board of Dental Examiners v. L. Scott Brooksby, DDS, case number 74127-02772, which  
17 resulted in *Findings of Fact, Conclusions of Law, & Decision* dated August 10, 2015 (sometimes  
18 the "August 10, 2015, Decision"). (IH Ex. 19). Based upon the *Findings of Fact, Conclusions of*  
19 *Law, & Decision* dated August 10, 2015 resulting in the Respondent being placed on probation  
20 which will expire on August 11, 2016.

21  
22 76. As more fully addressed herein, Respondent has been found to have violated various  
23 NRS and NAC provisions and, via this Complaint, is alleged to have violated additional NRS  
24 and NAC provisions.

25  
26 77. As more fully addressed herein, Respondent is alleged to have violated the August 10,  
27 2015, Decision.  
28

1 78. As more fully addressed herein, Respondent is alleged to have aided and abetted the  
2 illegal practice of dental hygiene, in violation of NRS and/or NAC provisions.

3  
4 79. In light of the above, Respondent violated NRS 631.3485(1) and/or NRS 631.349 in light  
5 of his willful or repeated violations of the provisions of chapter 631.  
6

7 **ALLEGATIONS/CLAIMS**  
8 **RECOVERY OF ATTORNEY'S FEES AND COSTS**

9 80. The Board repeats and realleges every allegation contained in paragraphs 1 through 79  
10 and reincorporates the same as if fully set forth herein.

11 81. NRS 622.400 provides:

12  
13 1. A regulatory body may recover from a person reasonable attorney's fees and  
14 costs that are incurred by the regulatory body as part of its investigative,  
15 administrative and disciplinary proceedings against the person if the regulatory  
16 body:

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

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

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

27 (a) Costs of an investigation.

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

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

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

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

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

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

7  
8 82. This action relates to the Board, a regulatory body, undertaking action as part of its  
9 investigative, administrative, and disciplinary proceedings against Respondent as to the  
10 enforcement of provisions of chapter 631 of the Nevada Revised Statutes and/or chapter 631 of  
11 the Nevada Administrative Code which the Board has the authority to enforce and, therefore,  
12 NRS 622.400(1) is satisfied.  
13

14  
15 83. That, as a result of NRS 622.400(1) being satisfied, as alleged immediately above, the  
16 Board may, should NRS 622.400(1)(a) or (b) be satisfied, recover from Respondent its attorney's  
17 fees and costs.  
18

19  
20 **Wherefore, it is prayed:**

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

23 2. Upon conclusion of said hearing, the Board should take such disciplinary action as it  
24 deems appropriate pursuant to NRS 631.350, and any other applicable provision of chapter 631  
25 of the NRS and/or NAC, including, but not limited to, considering the Revocation of Respondent  
26 license to practice dentistry in light of Respondent's repeated, historic, and intentional disregard  
27  
28

1 of the statutes and regulations which have been enacted to protect the citizens of the State of  
2 Nevada;

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

7 4. To the extent the Board deems appropriate, impose a fine upon Respondent in an amount  
8 deemed appropriate, pursuant to NRS 631.350(1)(c);

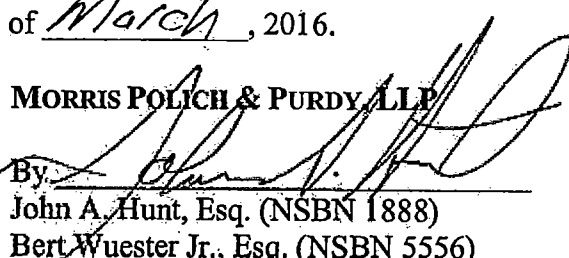
9 5. To the extent the Board deems appropriate, order that Respondent reimburse any at-issue  
10 patient(s), pursuant to NRS 631.350(1)(l);

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

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

18 Respectfully submitted this 7 day of March, 2016.

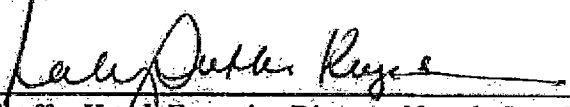
19 **MORRIS POLICH & PURDY, LLP**

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28 Attorney for Complainant

**VERIFICATION**

STATE OF NEVADA       )  
                                  )  
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 7<sup>th</sup> day of March, 2016.

  
\_\_\_\_\_  
NOTARY PUBLIC

(notary seal)



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