

# NEVADA STATE BOARD of DENTAL EXAMINERS



## **Public Comments & Documents Submitted for the Record**

**January 22, 2016**  
**Board Meeting**

January 20, 2016

Nevada State Board of Dental Examiners  
6010 S Rainbow Boulevard, Suite A-1  
Las Vegas, Nevada 89118

Dear Board Members:

I speak on behalf of myself today and a former Board member who takes pride in the due diligence of the legislative and regulatory process. I would like to address the historical purpose of the Committee on Dental Hygiene in hopes that this Board would carry out the legislative intent of their predecessors. The Committee was legislatively created in 2003 in response to NDHA's concern that decisions pertaining to dental hygiene education, licensure and practice were being made by the majority practitioners of the Board who were not familiar with dental hygiene education and did not practice the profession. Caryn Solie, myself and others on behalf of NDHA submitted a BDR to increase the dental hygiene members of the Board from 2 to 4 in order to provide greater voting equity. Prior to the legislative session we met with Dr. Larry Champagne, Dr. Rick Thiriot, and Dr. Steve Vaughn, to discuss our concerns to allow the dental hygiene members of the Board to serve in the same capacity as dentist members of the Board; as experts within their chosen profession. As a collaborative group, we respectfully reworked the BDR and agreed to ask for a 3rd dental hygiene member of the Board and create in statute a Committee on Dental Hygiene as a recommending body of experts. I profoundly remember Dr. Champagne's commitment that the Committee on Dental Hygiene would function as a resource to the Board like any other committee of the board in the same capacity. The role of the committee was to do the work on behalf of the Board, creating efficiency. The functions of the committee were specifically created with the legislative intent that the Committee would provide the Board with expert recommendations in consideration of public interest and safety as sworn to by oath.

NDHA brought forward recommendations to the Committee on Dental Hygiene on May 22, 2015. We requested support for regulatory changes to NAC 631.210 and NAC 631.220 because dentists (albeit not those seated on this Board) have been for several years making decisions to direct dental hygienists to perform procedures outside their scope of practice either

knowingly or unknowingly and assuming any risk in doing so. The issue laid before the Board was not a matter of whether the proposed regulatory changes be judged as a risk the dentist should take; dentists were already taking the risk. The risk of concern was to the dental hygienists who were in fear. Fear of practicing outside their scope of practice to retain their jobs or fear of losing their jobs if they refused to practice outside their scope of practice. This type of risk is not the risk assumed by the dentist/employer/supervisor; it is the risk to the licensed dental hygienist as a regulated, supervised employee. This risk addresses the exact purpose for which the Committee on Dental Hygiene was created; to utilize the expertise of those who know the profession most. The full Board's decision to debate the Committee's recommendations in ignorance of the reasons why the issues were brought forth are disheartening. It is sad that risk to the practice of dental hygiene is not respected the same as risk to the practice of dentistry. The committee's recommendations should be considered as a whole and it undermines the intent of the committee if professional allegiances separate roles when it comes to a full board vote. The integrity of the process and both professions is lost.

I urge the Board members to re-examine the context of risk and public safety and if you do not reconsider the original Committee recommendations that acknowledge the professional opinions and practices of the majority of dentists in this state, I ask the full board to consider a plan of action to address such a wide spread issue of regulatory violation.

Thank you for allowing me to express my impassioned concerns,

A handwritten signature in black ink that reads "Shari Peterson". The signature is fluid and cursive, with the first name "Shari" and last name "Peterson" clearly distinguishable.

Shari Peterson, RDH, M.Ed.

# AFFIDAVIT OF ANDREA L. SMITH (aka ANDREA L. BROOKSBY)

STATE OF NEVADA)

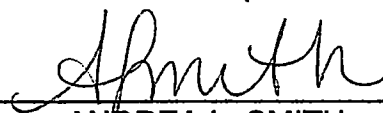
ss.

COUNTY OF CLARK)

I, ANDREA L. SMITH, depose and testify the following is true to the best of my recollection:

1. I have personal knowledge of all matters set forth in this Affidavit.
2. I am employed as a dental assistant in the office of Scott Brooksby, DDS.
3. Nevada Revised Statute 631.360(1) states that the Nevada State Board of Dental Examiners ("NVBDE") requires a "verified complaint" in order for an investigation or disciplinary action to be initiated.
4. The NVBDE never received a "verified complaint in writing" that I was "illegally practicing dental hygiene without a license."
5. An "investigation" was ordered and conducted under the direct supervision of the board's private attorney, John Hunt, Esq., who is employed by the NVBDE as a third party contractor.
6. The "investigation" was done without the NVBDE approving and/or authorizing such an investigation.
7. On March 30, 2015, "investigators" came into Scott Brooksby, DDS's office of Cheyenne Advanced Dental Arts without identifying themselves and conducted "surveillance" without permission.
8. On April 21, 2015, these same "investigators" returned again to the same office without identifying themselves to conduct "surveillance" for a second time.
9. On April 28, 2015 and May 6, 2015, the "investigators" collected my personal information from Nevada State Department of Motor Vehicles and other records without my knowledge, authorization of the board, or a court order.
10. To the best of my knowledge, such third party contractors conducting "investigations" are required to be licensed with the Nevada State Private Investigator's Licensing Board.
11. On May 15, 2015, Bert Wueter, Esq., Mr. Hunt's associate, applied for and received a temporary restraining order from Clark County 8<sup>th</sup> Judicial District Court and filed a lawsuit against me for practicing dental hygiene without a license without prior authorization or approval from the NVBDE.
12. On May 22, 2015, the NVBDE gave approval for an "investigation" based on documentation obtained through the aforementioned unauthorized means without my permission or knowledge.
13. The NVBDE claims I violated NAC 631.220(2)(e), a vague regulation that is listed under duties of a dental assistant that only requires a dentist or dental hygienist to make a final determination "that the teeth to be polished are free of calculus or other extraneous material."
14. On December 4, 2015, John Hunt, Esq. obtained an order for a Nevada District Court Judge to pay his "fees and costs" in the amount of \$27,358.30 (TWENTY-SEVEN THOUSAND THREE HUNDRED FIFTY-EIGHT DOLLARS and THIRTY CENTS).

FURTHER AFFIANT SAYETH NAUGHT.



ANDREA L. SMITH

The foregoing instrument was acknowledged by me this 21 day of JANUARY, 2016,

by: Andrea L. Smith who is/are personally known by me or who has/have

produced: Nevada Drivers License as identification and who did take an oath.

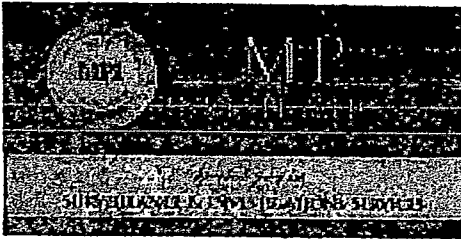


Notary Public

State of Nevada, County of Clark

My Commission Expires: June 9, 2018

(SEAL)



9850 S Maryland Pkwy.  
Ste A-5 #187  
Las Vegas, NV 89183  
702-260-7479 Fax 702-270-8261  
NV PI #1062 AZ PI#1636369  
TAX ID#26-2733022

Date	Invoice #
6/5/2015	3405A

MPI File#	Regarding Info
3405A	L. Scott Brookshy

Your Claim #

Unknown

Mr. John Hunt, ESQ.  
Board Legal Counsel with the law firm  
Morris Polich & Purdy, LLP  
500 S. Rancho Dr.  
Suite 17

Date	Description	Investigative Time	Expense
4-28-15	Receive & Review File NO CHARGE		0.00
	<del>Computerized Inquiries</del>	0.2	19.00
	Computerized Inquiries (Expense)		75.00
	<del>Department of Motor Vehicle Records</del>	0.2	19.00
	Department of Motor Vehicle Records (Expense)		75.00
5-6-15	Travel to	0.7	66.50
	Mileage to	29	21.75
	Surveillance 5:45a.m.-2:00p.m. = <b>WED NOT OPEN</b>	8.25	783.75
	Travel From	0.7	66.50
	Mileage from	29	21.75
	<del>Additional DMV Records</del>		75.00
5-8-15	Travel to	0.7	66.50
	Mileage to	29	21.75
	Surveillance 6:57a.m.-10:30a.m. <b>FRI NOT OPEN</b>	3.5	332.50
	Travel From	0.7	66.50
	Mileage from	29	21.75
5-22-15	Travel to	0.7	66.50
	Mileage to	29	21.75
	Surveillance 5:59a.m.-2:00p.m. <b>FRI NOT OPEN</b>	8	760.00
	Mileage During Assignment	36	27.00
	Travel From	0.7	66.50
	Mileage from	29	21.75
6-1-15	Report	1	95.00

surveillance on Days we are not open. **Wed/Fri**  
Travel time & distances are the same.

Finance charges of 12% per annum will be assessed on your unpaid balance after 10 days from due date.

Due Date	7/5/2015
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Total

\$2,790.75

**NRS 481.063 Collection and deposit of fees for publications of Department and private use of files and records of Department; limitations on release and use of files and records; regulations.**

6. Except as otherwise provided in paragraph (a) and subsection 7, if a person or governmental entity provides a description of the information requested and its proposed use and signs an affidavit to that effect, the Director may release any personal information, except a photograph, from a file or record relating to a driver's license, identification card, or title or registration of a vehicle for use:

(b) In connection with any civil, criminal, administrative or arbitration proceeding before any federal or state court, regulatory body, board, commission or agency, including, but not limited to, use for service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to an order of a federal or state court.

12. It is unlawful for any person to:

(a) Make a false representation to obtain any information from the files or records of the Department.

(b) Knowingly obtain or disclose any information from the files or records of the Department for any use not permitted by the provisions of this chapter.

13. As used in this section:

(b) "Personal information" means information that reveals the identity of a person, including, without limitation, his or her photograph, social security number, individual taxpayer identification number, driver's license number, identification card number, name, address, telephone number or information regarding a medical condition or disability. The term does not include the zip code of a person when separate from his or her full address, information regarding vehicular accidents or driving violations in which he or she has been involved or other information otherwise affecting his or her status as a driver.

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The PI would have been allowed to obtain the information IF they were acting under the NVSD Board and had been authorized prior to the information being obtained. This authorization was not obtained until May 22, 2015.

I was billed for information accessed as of April 28, 2015 and May 6, 2015.

January 18, 2016

Nevada Dental Board Member:

I have some issues I'd like to bring to your attention. My concern is that board members are unaware of how dental licensees are being treated under the current disciplinary process for the Nevada State Board of Dental Examiners ("NVBDE"). These issues include, but are not limited, to the following:

1. Firstly, I was recently "investigated" by your Dental Screening Officer ("DSO"), Bradley Strong, DDS regarding a matter of mistaken Identity (see Letter from Nevada State Board of Pharmacy dated December 4, 2015). I objected to having Dr. Strong as my DSO not only because of his proximity to my business but because he had previously been assigned as the DSO in a similar case of mistaken identity in 2008. However, John Hunt, Esq. refused to grant my request essentially stating that you can do whatever you want even regardless whether there is the appearance of conflict of interest.
2. Secondly, in a recent appearance before the Sunset Subcommittee for the Legislative Commission on December 15, 2015, John Hunt, Esq. testified, "We try to have every case resolved within 90 days." However, my recent complaint took 16 months before the DSO finally recommended that it be remanded. Please keep in mind that the original complaint filed against me on September 15, 2014 involved a patient who contested having to pay a \$42 copay for her insurance and was unhappy that additional dental work needed to be done on her teeth in spite of signing an informed consent where such patient was informed of the risks of dental work prior to any procedure(s) being performed (see Affidavit dated December 30, 2015).
3. Thirdly, I have made several requests to the NVBDE's attorney, John Hunt, Esq., for a "detailed breakdown" of all monies I have paid to the NVBDE. On December 15, 2015, John Hunt, Esq. told the Sunset Subcommittee, "Every one of those costs have to be identified and given to the individual." I have yet to receive "those costs" from Mr. Hunt (incl., legal fees, DSO fees, investigative fees, etc.) in violation of Nevada law (see NRS 239.010(3)).
4. Finally, since 2008 I've had to defend myself in nine complaints filed against me, most all of which were remanded. These complaints have cost me over \$160,000 in defense costs, and over \$58,000 in "fees and costs" for NVBDE's attorney, for a total of over \$218,000.

Therefore, I am respectfully requesting the NVBDE do the following:

- (1) Review NVBDE's disciplinary process—Many if not all of my complaints could have been resolved simply, quickly, and much less expensively through mediation and/or arbitration without a DSO or attorney, whom NVBDE paid over \$103,000.00 during fiscal year ending June 2015;
- (2) Resolve NVBDE complaints in a timely manner; and
- (3) Provide NVBDE licenses with detailed breakdown of "fees and costs" upon request.

Should you have any questions, please feel free to contact me directly at (592) 394-3832.

Very Truly Yours,

*Adrian Ruiz*

Adrian Ruiz, DDS

cc: Nevada State Board of Dental Examiners

encl.

# AFFIDAVIT OF ADRIAN RUIZ, DDS

STATE OF NEVADA)

ss.

COUNTY OF CLARK)

I, ADRIAN RUIZ, DDS, depose and testify the following is true to the best of my recollection:

1. I have personal knowledge of all matters set forth in this Affidavit.
2. On or about June 16, 2010, I appeared before the Nevada State Board of Dental Examiners ("BDE") for the first part of a formal hearing.
3. I attended the hearing in order to have an opportunity to provide an explanation for a complaint filed by a patient wherein I was falsely accused of unprofessional conduct and malpractice.
4. Prior to the part of the hearing where I was to testify, John Hunt, Esq. said to me that "if you continue to defend yourself the board will suspend your license to practice dentistry."
5. In addition, John Hunt, Esq. went on to also tell me that "if you continue with the hearing your expenses will double."
6. Mr. Hunt told me that if I wanted to avoid losing my license and increasing the costs of defending myself that I should sign the Stipulation Agreement he had drafted.
7. Mr. Hunt's Stipulation Agreement required that I pay in excess of \$44,000.00 (FORTY FOUR THOUSAND DOLLARS AND NO CENTS), which primarily including the legal fees and costs he had incurred as the BDE's private attorney and with whom he is employed as the BDE's "general counsel."
8. I told Mr. Hunt that I specifically objected to his hiring a licensed dentist, Bradley Strong, DDS, to "investigate" me as a conflict of interest since such dentist practices only one mile from my own dental practice and is in direct competition with me for patients.
9. Mr. Hunt responded by telling me that "Doctor Strong will no longer be your investigator."
10. However, in 2015, Mr. Hunt again assigned Strong to investigate me for prescriptions attributed to me that were written by a pain management medical physician who has the same last name as mine.
11. These pain medications were erroneously included on the report for the Prescription Monitoring Program under my name as an obvious mistake.
12. In spite of this being a simple matter of mistaken identity, Mr. Hunt again initiated an "investigation" and again hired my competitor, Bradley Strong, DDS, to "investigate" me.
13. Again I complained about Mr. Hunt hiring Dr. Strong as a conflict of interest but this time Mr. Hunt sent me a lengthy letter justifying his decision to do so over my objections (see letter from John Hunt, Esq. dated June 18, 2015) and to which a rebuttal was sent in reply (see letter from Adrian Ruiz, DDS dated November 16, 2015).

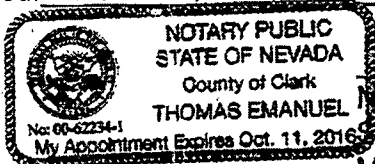
FURTHER AFFIANT SAYETH NAUGHT.

Adrian Ruiz  
ADRIAN RUIZ, DDS

The foregoing instrument was acknowledged by me this 30<sup>TH</sup> day of NOVEMBER, 2015,

by: ADRIAN RUIZ who is/are personally known by me or who has/have

produced: NEVADA DENTAL LICENSE as identification and who did take an oath.



Thomas Emanuel  
Notary Public

State of Nevada, COUNTY OF CLARK

My Commission Expires: OCTOBER 11, 2016

(SEAL)





# Nevada State Board of Pharmacy

431 W. PLUMB LANE • RENO, NEVADA 89509  
(775) 850-1440 • 1-800-364-2081 • FAX (775) 850-1444  
E-mail: [pharmacy@pharmacy.nv.gov](mailto:pharmacy@pharmacy.nv.gov) • Website: [bop.nv.gov](http://bop.nv.gov)

December 4, 2015

Adrian Ruiz, DDS  
1680 Tangiers Drive  
Henderson, Nevada 89012

Re: Nevada State Board of Pharmacy Case No. 15-044-PH-S  
Data entry errors by multiple pharmacies

Dear Dr. Ruiz,

The Nevada State Board of Pharmacy has completed its investigation of the above referenced case involving pharmacy technicians entering the wrong Dr. Ruiz as the prescriber on several prescriptions in multiple pharmacies. In our imperfect electronic world today, it is obvious that these technicians, who fill hundreds of prescriptions daily under rather frantic circumstances, are working from "drop down" screens and simply chose Adrian Ruiz rather than Adriana Ruiz in all of these instances. No excuse, but that is what occurred.

Each pharmacy involved (CVS, Nellis Care, Sav-On, Walgreen's and Wal-Mart) have all been contacted and mandated to correct their errors, which has been accomplished. These corrections were then transmitted to our PMP, so your profile should now be in order.

This matter is a prime example of why each practitioner should check their own PMP profile on a regular basis. The PMP really is nothing but a data base, the data for which is transmitted to it from the pharmacies. "Garbage in and garbage out" with any such system as they say.

We have written several articles in our Board of Pharmacy Newsletter highlighting the importance of identifying the correct prescriber when filling a prescription. We will write another.

Thank you for reporting to us; it is only through such reporting that we can remedy similar issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry L. Pinson", with a long, sweeping horizontal stroke extending to the right.

Larry L. Pinson, Pharm. D.  
Executive Secretary



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
*Olympia, Washington 98504*

December 30, 2015

Lyle Scott Brooksby  
8960 W Cheyenne Ave Unit 190  
Las Vegas, NV 89129-8929

Subject: Case No: 2015-9099

Dear Lyle Brooksby:

The Dental Quality Assurance Commission has completed our review of the self-report you submitted. We closed the case without disciplinary action because the risk is minimal and not likely to reoccur.

We may reconsider this decision if we receive new information or identify a pattern of similar concerns.

You have the right to request any publicly disclosable information contained in the file. To do so, submit a written request to the Department of Health, Public Disclosure and Records Center, P.O. Box 47865, Olympia, WA 98504-7865; fax 360-586-2171; email [pdrc@doh.wa.gov](mailto:pdrc@doh.wa.gov). Please include the case number as listed above.

If you have questions, please call the complaint intake unit at 360-236-2620 or email [hsqacomplaintintake@doh.wa.gov](mailto:hsqacomplaintintake@doh.wa.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristi Cholski", is positioned above the typed name.

Kristi Cholski  
Office of Customer Service  
Complaint Intake Unit

**Statement to NV State Board of Dental Examiners**  
(Scott Brooksby, DDS, January 22, 2016)

Good Morning.

My name is Scott Brooksby. I am providing each of the board members today with a letter, along with supporting documentation, outlining my concerns and requests. These are being submitted not only for your consideration but for the public record as well.

In short, the original complaint in my case involved a patient who needed some dental repair but refused to return to the office for follow-up treatment. This case was then unilaterally expanded by the board's private attorney, John Hunt, to include other matters unrelated to the complaint. According to the Attorney General's office, the hearing is supposed to be conducted by the DSO, it was not.

Mr. Hunt proceeded to conduct "investigations" into areas in which he has no background, education, or training either dentistry or medicine, such as ozone, and he included such "research" in his legal fees and costs. These are supposed to be investigated by the DSO, not the attorney. The DSO's statement in your packet shows that he did no investigations as required by law.

The board's attorney and his "investigations" resulted in total "fees and costs" being charged to me in the amount \$39,000 and to my daughter, Andrea Brooksby, a dental assistant who only earns \$23,000 annually, in the amount of \$27,358.30. Please note that the State of Washington reviewed this same case and dismissed it as "having minimal risk and not likely to reoccur" and assessed no "fees and costs" in making its determination.

Therefore, I am respectfully requesting the NVBDE review each of the issues raised in the letter I have provided you today, determine whether third party contractors, such as John Hunt and his employees or hires, are required to be licensed by the Nevada Private Investigator's Licensing Board, and eliminate all legal fees generated by the board's private attorney.

In summary, it makes no sense for dental licensees to pay for their own legal defense fees as well as for the board's attorney fees when the board is already using funds generated from its licensees' dues to pay the board's attorney over \$103,000 annually. In addition, many, if not all, of the complaints filed with the board could be resolved more quickly and efficiently with dispute resolution such as mediation or arbitration. For example, this option is available for attorneys with the State Bar at no additional cost and when attorneys have a Hearing they are only charged "costs," which is usually less than \$500.

Thank you!

## **AFFIDAVIT OF SCOTT BROOKSBY, DDS**

**STATE OF NEVADA)**

**ss.**

**COUNTY OF CLARK)**

I, SCOTT BROOKSBY, DDS, depose and testify the following is true to the best of my recollection:

1. I have personal knowledge of all matters set forth in this Affidavit.
2. During May 2014, I placed two fillings on a financially indigent patient who had decay in a tooth that was very close to the nerve. I removed the infected soft decay and recommended using a medical ozone gas to remove the hard decay of the tooth by killing bacterial and neutralizing acids before filling the tooth, which the patient agreed to do. At the front desk, the patient was upset that there were two fillings in the same tooth as she did not want to pay for both. A week later, the patient called and said that one of the fillings had fallen out, but when I tried to schedule her to come in for us to replace the filling at no cost she refused to come because "it was too expensive" to travel to my office and claimed that I was "involved with Oscar Goodman," a former mayor of Las Vegas who was involved with her "stalker." She then filed a complaint with the Nevada State Board of Dental Examiners ("BDE").
3. The BDE sent me notice of the complaint and I provided copies of the patient chart. A couple of months later, a prosthodontist from the UNLV School of Dentistry called to tell me that he was "investigating" the complaint and wanted to visit my office. When he arrived, I showed him the ozone machine, shared with him research associated with the use of ozone in dentistry, and pointed out to him that I had been approved by the Nevada State Board of Dental Examiners to teach a course on the use of ozone in dentistry.
4. During September 2014, the prosthodontist contacted me to tell me that he had seen the patient and there was decay in her tooth. I told him that such a finding would be expected given the fact that the tooth had been exposed for several months. He then told me that I would have to pay the costs of the investigation and sign a stipulation agreement. I refused to such an agreement since the last time I had done so it painted me in a bad light and came with excessively high fees and costs from the BDE.
5. On or about January 9, 2015, I appeared for an informal hearing, presented copies of the patient records as previously demanded by the BDE, and told the BDE's attorney, John Hunt, Esq., that I neither had any desire to stay nor would I sign a stipulation agreement. Mr. Hunt then told me that I had to come in and go on record as having delivered the patient records. Mr. Hunt then began asking about other things unrelated to the complaint such as the fact that my website stated I could put people to sleep using hypnosis in which I'd been trained. The BDE's Executive Director, Debra Shaffer-Kugel, then pointed out that there was language in the "Dental Practice Act" indicating pharmacologic and non-pharmacologic method of sleep induction required a conscious sedation permit.
6. Mr. Hunt then brought up the fact that I had the initials "MACP: after my name. I explained this meant I was a member of the American College of Prosthodontists. Mr. Hunt replied

that the use of such initials was a violation of the American Dental Association ("ADA") code of ethics. I responded that I was not a member of the ADA.

7. Mr. Hunt then brought up that the notes in my patient record indicated that my dental assistant had used a laser and that was "against the law." I corrected Mr. Hunt out that the notes stated the patient had used a "healing laser" on herself. Mr. Hunt refused to accept my explanation in spite of the fact that the notes in the record did not support his position.
8. Mr. Hunt then brought up the idea that ozone was "a poisonous gas" and that it should not be used in the mouth. I corrected Mr. Hunt that ozone has, in fact, been used in dentistry for at least 20 years, I had been using it for the past three years without any adverse effects, and the use of ozone had consistently allowed me to reverse decay in my patients. Additionally, I stated that if the BDE had given me advance notice of these other "complaints: I could have come to their informal meeting better prepared to answer their questions. During this time, Ms. Shaffer was busy on her cell phone searching for examples of problems associated with the use of ozone. She was able to locate only one such incidence, but when I asked her about the details of it in order to determine its relevance she said "that was all that was reported" and "it was dangerous."
9. Following my informal meeting with Hunt and Shaffer, I received a subpoena for all my records from 2010 to the present regarding the "use of hypnosis" in my practice. In researching my records I could only find one patient from 1993 where we had actually used hypnosis and I communicated this information to BDE via email. I then faxed this information to the Board offices. Nevertheless, the subpoena demanded that I bring the requested records and appear at office of John Hunt, Esq. on January 24, 2015 at 10 a.m. I informed the BDE via email that I would not be in Mr. Hunt's office on the aforementioned date since I had already provided the requested documentation. Mr. Hunt then called my office and left a message on my answering machine telling me that I must appear on January 24th at 10 a.m. or "you will be fined." However, when I showed up at Mr. Hunt's office on Saturday, January 24<sup>th</sup> at 10 a.m., neither Mr. Hunt nor anyone was there. I then wrote the time and date on a copy of my email and slipped it under the front door of Mr. Hunt's office.
10. The next week, I was subpoenaed again asking for the same information. Again, I appeared at the appointed time and place, dropped off the requested information, and prepared to leave. Before I could do so, Mr. Hunt told me that he wanted to talk to me. I told Mr. Hunt that I had met the conditions of the subpoena and left.
11. In March 2015, I received notice from the BDE that it planned to hold a hearing.
12. Additionally, I received a letter from Mr. Hunt indicating he had found evidence that the type of ozone machine I used in my office had been involved in an FDA recall. I checked with the individual against whom the FDA had taken action and he said the "recall" had affected less than 20 (TWENTY) such machines and this was because they had been sold as complete units. Otherwise, the FDA allowed ozone machines to be used in the office of health practitioners so long as such machines were constructed for their own internal use and I received a copy of an FDA email confirming this fact.
13. Prior to the hearing, but on May 22, 2015, Mr. Hunt handed me a large binder and indicated that it contained everything that we had discussed. However, this binder also contained other articles that I had never seen and Mr. Hunt testified before the BDE during the hearing that he had previously given it to me.

14. The week following the hearing, when I contacted the BDE and requested a copy of their decision the BDE told me it would not be available for 90 (NINETY) days. However, the first working day after the hearing, a process server came to my office and served my daughter, a dental assistant, with a temporary restraining order that stated she was "practicing dental hygiene without a license" and that she was being sued by Mr. Hunt and BDE. The BDE provided documentation that included undercover videos where a patient had come to the office with her "boyfriend" who was in another treatment room. The first of these two videos had audio, but the second video did not as it appeared to have been removed. The BDE claimed the dental assistant had claimed she was a hygienist, but there was no evidence of this occurring at any time during either of the videos.
15. We hired an attorney who indicated that Mr. Hunt had disclosed to him the BDE findings from the May 22<sup>nd</sup> hearing and stated that I would need to pay \$39,000.00 (THIRTY THOUSAND DOLLARS AND NO CENTS) for me and \$10,000.00 (TEN THOUSAND DOLLARS AND NO CENTS) for my daughter "to make this all go away." I declined to do so because neither I nor my attorney had received a copy of the BDE findings from the hearing as previously requested. Because my attorney did not believe we could properly address the false and questionable claims of the BDE with the Administrative Law proceedings as provided in Chapter 631 of the Nevada Revised Statutes he attempted to get a settlement. When I declined he removed himself from the case.
16. Again, in June 2015, the BDE served me with notice that I was again "under investigation."
17. On July 31, 2015 I attended a BDE board meeting and during the public comments section I attempted to share with the BDE members concerns I had about its employees, Debra Shaffer-Kugel and John Hunt, Esq., but Mr. Hunt told the BDE that because I had an "open case" I was not permitted to address the board.
18. When I contacted the Office of the Governor to lodge a complaint against the BDE his office told me they had "no jurisdiction over the board." I filed a complaint with the Nevada State Bar and they also told me they had "no jurisdiction." I contacted the Office of the Attorney General and they likewise told me they had "no jurisdiction." Finally, I contacted the Nevada State Ethics Commission and they said that they had "no jurisdiction." I found this lack of government supervision odd given the U.S. Supreme Court had recently ruled that if a dental board has no state supervision over their activities that such dental board is in violation of the antitrust laws (see North Carolina State Board of Dental Examiners vs Federal Trade Commission, 135 S.Ct 1101, Feb 25, 2015).
19. During the court hearing for permanent injunction against my daughter, my daughter explained to the judge that it was our understanding that a dental assistant could remove tartar above the gum line and that a dental assistant was allowed to use any instrument other than a drill to remove cements from crowns and orthodontic brackets above or below the gum line.
20. However, in May 2015, when I was in the process of renewing my dental license, there was a new law requiring that the dentist read with the dental assistant what the law allowed. In the process of so doing, we read where the dentist or dental hygienist had to make sure that the teeth were free of tartar before the dental assistant could do the coronal polishing with a rubber cup or a brush. As soon as we realized we could no longer allow a dental assistant to remove tartar we stopped having her do so, which was prior to receiving any legal action from the BDE.

21. In spite of this explanation of good faith action, the judge imposed a permanent restraining order and warned my daughter that if she ever did it again that she would "go to jail." Mr. Hunt demanded the judge also include the use of an ultrasonic scaler in the restraining order, for which a restriction is not found in Nevada law, which the judge ordered, this restriction dental assistant daughter from cleaning cement as all other dental assistants are allowed to do by law.
22. In November 2015, we received a letter from the BDE indicating that according to our records we use "Lime Away" to clean dentures. Although the BDE told me such use is not malpractice it is "unprofessional conduct" because I am doing something that no other dentist is allegedly doing.
23. During the BDE meeting on November 25, 2015, I appeared before the BDE and requested a modification in the excessive investigative costs generated by its attorney John Hunt, Esq. The BDE declined to be of any assistance with my request because the agenda included a "waiver" as opposed to "modification." Instead the BDE put me on a payment program of \$4883.47 (FOUR THOUSAND EIGHT HUNDRED EIGHTY THREE DOLLARS AND FORTY SEVEN CENTS) per month with the stipulation that if I am late that my license "will be instantly revoked" and I will have "to pay to have it reinstated."
24. All of the foregoing alleged complaints were pursued by the BDE's employees Shaffer and Hunt without any patient being harmed or any malpractice being committed and thus, excessive fees and costs were run up by BDE employees over nothing more than philosophical differences in the standard of care.

**FURTHER AFFIANT SAYETH NAUGHT.**


  
SCOTT BROOKSBY, DDS

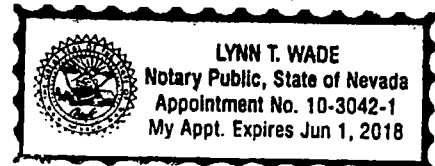
State of Nevada  
County of Clark

The foregoing instrument was acknowledged by me this 30 day of NOVEMBER, 2015,

by: Lyle S Brooksby who is/are personally known by me or who has/have

produced: NV Drivers License as identification and who did take an oath.

  
Notary Public  
State of Nevada  
My Commission Expires: 6/1/2018 (SEAL)





**Morris  
Polich &  
Purdy<sup>LLP</sup>**

## **Morris Polich & Purdy LLP**

ATTORNEYS AT LAW  
1055 WEST SEVENTH STREET, 24TH FLOOR  
LOS ANGELES, CALIFORNIA 90017-2503  
(213) 891-9100  
FACSIMILE: (213) 488-1178

**General Billing Questions:**

(213) 417-5174  
(213) 417-5101  
(213) 417-5157  
(213) 417-5177

# **INVOICE**

FEDERAL I.D. No. 95-2582807

**THIS BILL IS PAYABLE UPON RECEIPT  
PLEASE REMIT TO L.A. OFFICE**

Nevada Board of Dental Examiners  
6010 South Rainbow Blvd., Bldg. A, Suite 1  
Las Vegas, NV 89118

Attention: Debra Shaffer

Office: Las Vegas  
Date: February 11, 2015  
Invoice No: 211482  
File No: 3336 JZH

LEGAL SERVICES RENDERED AND COSTS ADVANCED THROUGH January 31, 2015

CASE NUMBER: 3336-37956

DEN - Brooksby, L. Scott DDS re: Informal Hearing - Stip II  
Reference: 74127-02772

DATE	DESCRIPTION	HOURS	AMOUNT
01/08/15	Continue to prepare for informal hearing. Revise and review corrective action stipulation. JZH	3.00	630.00
01/09/15	Prepare for and attend meeting with DSO and DSK prior to informal Hearing. Prepare for and attend informal hearing. Post Informal Hearing meeting with DSO, DSK and BEW to discuss and begin drafting Findings and Recommendations. JZH	5.50	1,155.00
01/09/15	Conferences with JAH following the informal hearing regarding outcome, including issues pertaining to hypnosis, ozone therapy, and advertisement. Gather file and informal hearing materials, including exhibits marked at the hearing. BEW	2.50	462.50
01/12/15	Research regarding dental ozone protocol uses; pull and review materials; further and additional review of file materials and exhibits from informal hearing on 1/9/15 in preparation for work on findings, recommendations, and consent. BEW	2.00	370.00

**Received**

**FEB 18 2015**

**NSBDE**

Irvine • 18200 Von Karman Avenue, Suite 200 • Irvine • CA 92612 • 949.769.7900  
San Diego • 600 W. Broadway, Suite 500 • San Diego • CA 92101 • 619.557.0404  
San Francisco • One Embarcadero Center, Suite 400 • San Francisco • CA 94111 • 415.984.8500  
Nevada • 500 South Rancho Drive, Suite 17 • Las Vegas • NV 89106 • 702.882.8300



**Morris, Polich & Purdy, LLP**  
**ATTORNEYS AT LAW**

DEN - Brooksby, L. Scott DDS re: Informal Hearing - Stip II  
File Number: 3336-37956  
Invoice No.: 211482

February 11, 2015

Page 2

01/14/15	Continue with review of informal hearing materials and work on draft findings, recommendations and consent. BEW	3.00	555.00
01/15/15	Further and additional review of materials regarding use of ozone therapy; conference with JAH regarding same; email same with attachments to Dr. Braun for consideration. BEW	2.50	462.50
01/20/15	Review e-mail from DSO and review articles from British Ozone, Coachran Data base, Delta dental and National Science Biology, Application of ozone in dentistry. JZH	0.80	168.00
01/21/15	Review e-mail from Board and correspondence from Dr. Brooksby regarding subpoenaed documents. Telephone call to DSK regarding same. Prepare subpoena and correspondence to Dr. Brooksby regarding same. Telephone call to Dr. Brooksby. JZH	1.50	315.00
01/23/15	Review e-mail from Dr. Blasco containing email from Dr. Brooksby. Telephone call to DSK regarding same. Legal Research self created bias to recuse Board. JZH	0.70	147.00
01/26/15	Review e-mail from Respondent with email from Dr. Orr regarding use of hypnosis. Telephone call to DSK regarding same. Telephone call to Dr. Tweseme. Review material submitted by Orr. JZH	1.10	231.00
01/26/15	Further and additional conferences with JAH regarding status of Dr. Brooksby's response(s) to subpoena(s); due date for second subpoena; discussion regarding findings, recommendations, and consent; discussion regarding transcript from informal hearing and including certain admissions in findings, recommendations, and consent; begin review of same. BEW	2.50	462.50
01/30/15	Review e-mail from Dr. Brooksby regarding transcript. Prepare email to Dr. Brooksby regarding same. JZH	0.20	42.00

Total Fees: \$5,000.50

Received

FEB 18 2015

NSBDE

Irvine • 18200 Von Karman Avenue, Suite 200 • Irvine • CA 92612 • 949.769.7800  
San Diego • 600 W. Broadway, Suite 500 • San Diego • CA 92101 • 619.557.0404  
San Francisco • One Embarcadero Center, Suite 400 • San Francisco • CA 94111 • 415.984.8500  
Nevada • 500 South Rancho Drive, Suite 17 • Las Vegas • NV 89106 • 702.862.8300

**Morris, Polich & Purdy, LLP**  
**ATTORNEYS AT LAW**

DEN - Brooksby, L. Scott DDS re: Informal Hearing - Stip II  
File Number: 3336-37956  
Invoice No.: 212261

March 11, 2015

Page 2

02/11/15	Prepare for and attend production of records, pursuant to a subpoena. Place on record the documents received by Dr. Brooksby. Research use of ozone in dental practices. Prepare email to DSO and DSK forwarding copies of the produced records. JZH	5.50	1,155.00
02/23/15	Continue to revise Findings and Recommendations. Prepare supplemental documentation for review by DSO. Prepare email to DSO regarding same. Telephone call to DSK regarding same. JZH	2.00	420.00
02/24/15	Continue revising Finding and Recommendations. Continue research regarding ozone and hypnosis. Telephone call to DSO and DSK regarding same. JZH	5.50	1,155.00
02/25/15	Continue research regarding the use of ozone in dentistry. JZH	1.50	315.00
02/26/15	Prepare for and attend meeting with DSK, DSO and BEW. JZH	3.00	630.00
02/26/15	Review of draft Findings, Recommendations, and Consent and email from DSO regarding same. Meeting with DSO, JAH, and D. Shaffer-Kugel regarding Findings, Recommendations, and Consent document, as well as status of related matters. BEW	3.00	555.00
02/27/15	Following on yesterday's meeting with DSO, JAH, and D. Shaffer-Kugel, work on editing draft Findings, Recommendations, and Consent. BEW	1.00	185.00

Total Fees: \$5,173.50

**TIME AND FEE SUMMARY**

TIMEKEEPER	INIT	RATE	HOURS	FEES
John A. Hunt	JZH	210.00	17.50	3,675.00
Bert E. Wuester	BEW	185.00	8.10	1,498.50
TOTALS			25.60	5,173.50

**EXPENSES**

Irvine • 18200 Von Karman Avenue, Suite 200 • Irvine • CA 92612 • 949.768.7900  
San Diego • 600 W. Broadway, Suite 500 • San Diego • CA 92101 • 619.557.0404  
San Francisco • One Embarcadero Center, Suite 400 • San Francisco • CA 94111 • 415.984.8500  
Nevada • 500 South Rancho Drive, Suite 17 • Las Vegas • NV 89106 • 702.862.8300

Received

MAR 17 2015

NSBDE

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## DISCIPLINARY SCREENING OFFICER COSTS

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Nevada State Board of Dental Examiners  
6010 S. Rainbow Blvd., Bldg. A. Ste 1  
Las Vegas, NV 89118

## DSO SUMMARY FORM

NAME: Dr Gary A. Braun

CASE:

Brooksby / Fujack

DATE: LICENSEE (DENTIST/ HYGIENIST)

16-Sep-14 Case received/ reviewed

23-Sep-14 Interview

24-Sep-14 Interview

9-Oct-14 Write reports

9-Jan-15 Informal Hearing

Complainant Name

Brooksby

Fujack

Hours x \$50.00 hr

1

1

1

1

4

Postage

TOTAL:

SIGNATURE: Gary A. Braun

APPROVED BY: [Signature]

REIMBURSEMENT BY CHECK # \_\_\_\_\_

TRAVEL TOTAL \_\_\_\_\_

SALARY TOTAL \_\_\_\_\_

Also \$400



Nevada State Board of Dental Examiners  
6010 S. Rainbow Blvd., Bldg. A, Ste 1  
Las Vegas, NV 89118

## DSO SUMMARY FORM

NAME: Dr Gary A. Braun

CASE:

Brooksby / Fujack

DATE:	LICENSEE (DENTIST/ HYGIENIST)	Complainant Name	Hours x \$50.00 hr	Poste
20-May-15	Trial preparation	Brooksby	1.5	
21-May-15	Trial preparation	Brooksby	2.5	
22-May-15	Trial	Brooksby	8	

TOTAL:

SIGNATURE: Gary A. Braun

APPROVED BY: [Signature]

REIMBURSEMENT BY CHECK # \_\_\_\_\_

POSTED

12

TRAVEL TOTAL \_\_\_\_\_

SALARY TOTAL \_\_\_\_\_

\$750.00

## AFFIDAVIT OF SCOTT BROOKSBY, DDS

STATE OF NEVADA)

ss.

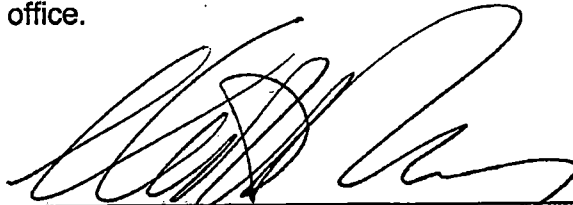
COUNTY OF CLARK)

I, SCOTT BROOKSBY, DDS, depose and testify the following is true to the best of my recollection:

1. I have personal knowledge of all matters set forth in this Affidavit.
2. A dental patient, Marlia Fujack, presented to my office on April 3, 2014.
3. Ms. Fujack indicated that she had been in pain for "the last two weeks," she chipped her front tooth from "eating banana chips," and she was experiencing "sharp pains" on the right side of her mouth when talking.
4. Ms. Fujack had previously gone to Clear Choice Dental for her pain as well as to a Quick Care facility for emergency treatment where she was prescribed Amoxicillin.
5. During Ms. Fujack's initial visit to my office we had asked if she would like to proceed with a complete dental examination with x-rays and she agreed.
6. Upon reviewing Ms. Fujack's x-rays we outlined with Ms. Fujack her dental problems and proposed a timeline to follow in order to get her both pain-free and decay-free.
7. Ms. Fujack and I both agreed that her first treatment should be for the removal of teeth #2 and #4 and she then scheduled an appointment for April 10, 2014.
8. On April 10, 2014, we preformed the two extractions without any complications and Ms. Fujack indicated that she was "very happy." We let Ms. Fujack know that on her next office visit on May 5, 2014 we would address her cracked tooth #9.
9. Prior to Ms. Fujack 's next office visit on May 5, 2014, we had received a Thank You card with a hand-written letter thanking my office and me "for being so kind to her."
10. On May 5, 2014, we saw Ms. Fujack and addressed tooth #9, which was the tooth Ms. Fujack indicated she had broken while eating banana chips. While preparing Ms. Fujack's tooth for removal, we removed some decay that was close to a nerve. A laser was used to remove tissue that had grown into the decayed area and was bleeding. We used medical ozone to neutralize any acids in the remaining tooth structure as well as to eliminate any remaining bacteria and restored Ms. Fujack's tooth with DILF and MILF restorations. The facial surface of Ms. Fujack's tooth was veneered at no additional charge. We then refined the restoration and the occlusion, by smoothing and polishing it, and inspected the tooth to confirm there were no catches and overhangs.
11. Following Ms. Fujack's visit on May 5, 2014, we recommended a restoration be done on tooth #10 in order to avoid a root canal. Ms. Fujack indicated that she would wait for "five to six months" before continuing with any further treatment "due to finances."
12. Three days later, on May 8, 2014, Ms. Fujack returned complaining that her "bite was off" since we did the filling and that she was now biting her cheek on the right side, although Ms. Fujack previously indicated she had been experiencing these symptoms "for months" and the filling we placed was on her left side.
13. We then checked and refined Ms. Fujack's occlusion on tooth #9 and told her if there were any more problems with that tooth we would address it at "no charge."

14. On May 21, 2014, Ms. Fujack called and left a message that her filling had started to break. We returned her call and left a message on her answering machine whereby we requested Ms. Fujack to return to the office so that we could address her problem. We also told Ms. Fujack that we stand behind our work and we would do whatever was necessary to correct the problem.
15. On May 22, 2014, Ms. Fujack returned our call and told us she was afraid to return to the office as she had not only had lost confidence in us but Ms. Fujack was now convinced that we were "working with Mayor Oscar Goodman and her stalker to make life miserable."
16. On May 27, 2014, a Sunday, Ms. Fujack called and left a message that her filling had completely fallen out. I called her back and left a message that I would pay \$15 for her gas or bus fare, but that I needed to see her to address the problem and that leaving it untreated would result in Ms. Fujack requiring the root canal she had been trying to avoid or loss of the tooth altogether.
17. Ms. Fujack called back during lunchtime and I restated that I was willing to address my work at no additional charge and pay the gas for her to return to the office, but Ms. Fujack invited me instead to come to her home to see what needed to be done. I told Ms. Fujack that we treat these kinds of problems in our office.
18. In September 2014, Ms. Fujack had her tooth #9 evaluated by another dentist, who called out office to report there was decay on the tooth, which was to be expected since Ms. Fujack had been without a filling since her last office visit in May 2014.
19. I sent a written notice to Ms. Fujack stating that my office would either pay for her repair or refund her money in exchange for Ms. Fujack signing a release of liability, but Ms. Fujack never responded.
20. On August 19, 2015, I reissued a check to Ms. Fujack for \$600, the full amount of her dental work on that tooth paid to my office.


FURTHER AFFIANT SAYETH NAUGHT.

  
SCOTT BROOKSBY, DDS

The foregoing instrument was acknowledged by me this 13 day of JANUARY, 2016,

by: Scott Brooksbey who is/are personally known by me or who has/have

produced: State Drivers License as identification and who did take an oath.

 (SEAL)  
Notary Public  
State of Nevada County of Clark  
My Commission Expires:





STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
*Olympia, Washington 98504*

December 30, 2015

Lyle Scott Brooksby  
8960 W Cheyenne Ave Unit 190  
Las Vegas, NV 89129-8929

Subject: Case No: 2015-9099

Dear Lyle Brooksby:

The Dental Quality Assurance Commission has completed our review of the self-report you submitted. We closed the case without disciplinary action because the risk is minimal and not likely to reoccur.

We may reconsider this decision if we receive new information or identify a pattern of similar concerns.

You have the right to request any publicly disclosable information contained in the file. To do so, submit a written request to the Department of Health, Public Disclosure and Records Center, P.O. Box 47865, Olympia, WA 98504-7865; fax 360-586-2171; email [pdrc@doh.wa.gov](mailto:pdrc@doh.wa.gov). Please include the case number as listed above.

If you have questions, please call the complaint intake unit at 360-236-2620 or email [hsqa.complaintintake@doh.wa.gov](mailto:hsqa.complaintintake@doh.wa.gov).

Sincerely,

Kristi Cholski  
Office of Customer Service  
Complaint Intake Unit