

NEVADA STATE BOARD  
of  
DENTAL EXAMINERS



BOARD MEETING & WORKSHOP

SEPTEMBER 29, 2017

9:00 A.M.

**PUBLIC BOOK**

PLEASE DO NOT REMOVE BOOK FROM OFFICE

PROPOSED REGULATION CHANGES TO NAC 631.030 AND NAC 631.090

**NAC 631.030 Provision of certain information and documentation by applicant for licensure; examination for certain licenses. (NRS 631.190, 631.220, 631.255, 631.272, 631.274, 631.290)**

1. An applicant for licensure must provide the following information and documentation in his or her application:

(a) The date and place of his or her birth;

(b) Certification of graduation from an accredited dental school or college or from an accredited school or college of dental hygiene, whichever is applicable;

(c) Whether he or she has applied for similar licensure in another state or a territory of the United States or the District of Columbia and, if so, the name of the state or territory of the United States or the District of Columbia, the date and the result of his or her application;

(d) If he or she has practiced dentistry or dental hygiene in another state or a territory of the United States or the District of Columbia, certification from the licensing authority of each state or territory of the United States or the District of Columbia in which he or she has practiced or is practicing that he or she is in good standing and that there are not any disciplinary proceedings affecting his or her standing pending against him or her in the other state or territory of the United States or the District of Columbia;

(e) Whether he or she has terminated or attempted to terminate a license from another state or territory of the United States or the District of Columbia and, if so, the reasons for doing so;

(f) If he or she is not a natural born citizen of the United States, a copy of his or her certificate of naturalization or other document attesting that he or she is legally eligible to reside and work in the United States;

(g) All scores obtained on the examination in which he or she was granted a certificate by the Joint Commission on National Dental Examinations and the date it was issued;

(h) Whether he or she has ever been convicted of a crime involving moral turpitude or has entered a plea of nolo contendere to a charge of such a crime and, if so, the date and place of the conviction or plea and the sentence, if any, which was imposed;

(i) Whether he or she has had any misdemeanor or felony convictions and, if so, any documents relevant to any misdemeanor or felony convictions;

(j) ~~Whether any malpractice judgment has been entered against him or her and, if so, any documents relevant to the malpractice judgment;~~ ***Whether he or she has been held civilly or criminally liable in the District of Columbia or any state or territory of the united States for misconduct relating to his or her occupational or profession***

(k) Whether he or she has a history of substance abuse and, if so, any documents relevant to the substance abuse;

(l) Whether he or she has been refused permission to take an examination for licensure by this State, any other state or territory of the United States or the District of Columbia, or any regional testing agency recognized by the Board and, if so, any documents relevant to the refusal;

(m) Whether he or she has been denied licensure by this State, any other state or territory of the United States or the District of Columbia and, if so, any documents relevant to the denial;



(n) Whether he or she has had his or her license to practice dentistry or dental hygiene suspended **or** revoked ~~or placed on probation in this State~~, another state or territory of the United States or the District of Columbia and, if so, any documents relevant to the suspension, revocation or probation;

(o) ~~Whether his or her practice of dentistry or dental hygiene has been subject to mandatory supervision in this State, another state or territory of the United States or the District of Columbia and, if so, any documents relevant to the mandatory supervision~~ ***A copy of current certification in administering cardiopulmonary resuscitation***

(p) Whether he or she has received a public reprimand or is currently involved in any disciplinary action concerning his or her license to practice dentistry or dental hygiene in this State, another state or territory of the United States or the District of Columbia and, if so, any documents relevant to the reprimand or disciplinary action;

(q) Two sets of certified fingerprint cards and an authorization form allowing the Board to submit the fingerprint forms to law enforcement agencies for verification of background information; and

(r) ~~Any other information requested by the Board.~~ ***A completed and signed application form issued by the Board, including a properly executed request to release information;***

(s) ***If applicable, the certified statement and proof required by subsection 5 3***

2. ~~An applicant for licensure with examination must deliver to the Board, at least 45 days before the examination:~~ ***An applicant for licensure by endorsement pursuant to NRS 622 must provide the following information and documentation with his or her application***

(a) The information and documentation listed in subsection 1; ***and***

~~(b) If applicable, the certified statement and proof required by subsection 5; 3~~ ***(b) Certification from the corresponding licensing authority of each state or territory of the United States or the District of Columbia in which he or she has practiced or is practicing that he or she has an unrestricted license in good standing and that there are not any disciplinary proceedings affecting his or her standing pending against him or her in the other state or territory of the United States or the District of Columbia; and***

~~(c) A completed and signed application form issued by the Board, including a properly executed request to release information;~~ ***(c) Proof that the applicant has actively practiced dentistry or dental hygiene for the 5 years immediately preceding the date of submission of the application.***

~~(d) A copy of current certification in administering cardiopulmonary resuscitation; and~~

~~(e) A copy of his or her malpractice insurance policy showing the effective dates, which must cover his or her examination dates, and the limits of liability.~~

3. ~~An applicant for licensure pursuant to NRS 631.272 must deliver to the Board, at least 45 days before the meeting of the Board to consider the applicant for licensure, the documents listed in subsection 2 and proof that the applicant has actively practiced dentistry for the 5 years immediately preceding the date of submission of the application. If the applicant fails to deliver to the Board, at least 45 days before the meeting of the Board to consider the applicant for licensure, any of the documents required pursuant to this subsection, the Executive Director or the Secretary-Treasurer shall reject the application and inform the applicant that he or she is not eligible for consideration for licensure pursuant to NRS 631.272 until the next scheduled meeting of the Board.~~

~~4. Each applicant for licensure must, at least 45 days before the meeting of the Board to consider the applicant for licensure, pass an examination on the contents and interpretation of this chapter and chapter 631 of NRS. The examination will be given on the first Monday of each~~

~~month. If the first Monday of the month is a legal holiday, the examination will be given on the first Tuesday of the month.~~

–5. 3. An applicant for licensure who wishes to use laser radiation in his or her practice of dentistry or dental hygiene must provide to the Board:

(a) A statement certifying that each laser that will be used by the licensee in the practice of dentistry or dental hygiene has been cleared by the Food and Drug Administration for use in dentistry; and

(b) Proof that he or she has successfully completed a course in laser proficiency that:

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

(2) Is based on the *Curriculum Guidelines and Standards for Dental Laser Education*, adopted by reference pursuant to [NAC 631.035](#).

**NAC 631.090 Examination for license to practice dentistry. ([NRS 631.190](#), [631.240](#))**

Except as otherwise provided in [NRS 622.090](#), in fulfillment of the statutory requirements of subparagraph (1) of paragraph (b) of subsection 1 of [NRS 631.240](#), an applicant taking the *Western Regional Examining Board or the* clinical examination approved by the Board and the American Board of Dental Examiners must:

1. Pass the Dental Simulated Clinical Examination;
2. Demonstrate proficiency in endodontics as the organization administering the clinical examination requires;
3. Demonstrate proficiency in fixed prosthodontics as the organization administering the clinical examination requires;
4. Demonstrate proficiency in restorative dentistry as the organization administering the clinical examination requires;
5. Demonstrate proficiency in periodontics as the organization administering the clinical examination requires; and
6. Perform such other procedures as the Board requires.



Senate Bill No. 69—Committee on  
Commerce, Labor and Energy

CHAPTER.....

AN ACT relating to state government; requiring certain regulatory bodies to adopt regulations governing the issuance of a license by endorsement to a natural person who holds a comparable license issued by the District of Columbia or any state or territory of the United States and meets certain other requirements; prohibiting the appointment as a member of a regulatory body of a person who has served as a member for 12 years or more under certain circumstances; revising provisions relating to the payment of fees for legal services on a contingent basis; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides for the regulation of certain occupations and professions in this State. (Title 54 of NRS) The various state agencies, boards and commissions that are authorized to license and regulate particular occupations or professions are generally referred to as "regulatory bodies." (NRS 622.060)

**Section 3** of this bill requires a regulatory body that is not otherwise authorized or required by specific statute to issue a license to engage in an occupation or profession in this State to a natural person who has been issued a comparable license by another jurisdiction to adopt regulations providing for the issuance of a license by endorsement to engage in an occupation or profession in this State to a natural person who: (1) holds a corresponding valid and unrestricted license to engage in that occupation or profession in the District of Columbia or any state or territory of the United States; (2) possesses qualifications that are substantially similar to the qualifications required for issuance of a license to engage in that occupation or profession in this State; and (3) satisfies certain other requirements.

**Section 4** of this bill establishes term limits for members of regulatory bodies. Specifically, **section 4** provides that a person may not be appointed as a member of a regulatory body if the person has served as a member of that regulatory body, or at the expiration of his or her current term if he or she is so serving will have served, 12 years or more at the time of his or her appointment, unless the person is serving as a member of a regulatory body with less than 250 licensees.

Existing law establishes specific requirements that must be satisfied before certain state agencies or officials may enter into a contingent fee contract with an attorney or law firm and sets certain limitations on the amount of the fee that may be paid to an attorney or law firm retained in any matter that is the subject of a contingent fee contract. (NRS 228.111-228.1118) **Section 5** of this bill prohibits any regulatory body from entering into such a contract. **Section 8** of this bill makes a conforming change. **Section 8.5** of this bill revises the limitations on the amount of the fee that attorneys or law firms retained in any matter that is the subject of a contingent fee contract may be paid.

Existing law requires each regulatory body to submit a quarterly report to the Director of the Legislative Counsel Bureau that includes certain information concerning the disciplinary actions taken and the number of licenses issued by the regulatory body during the immediately preceding calendar quarter. (NRS 622.100) **Section 7** of this bill requires the regulatory body also to include in the report: (1)



the total number of applications for licensure received by the regulatory body; (2) the number of applications rejected by the regulatory body as incomplete; (3) the average number of days between the date of rejection of an application as incomplete and the resubmission by the applicant of a complete application; (4) a list of each reason given by the regulatory body for the denial of an application and the number of applications denied by the regulatory body for each such reason; and (5) the number of applications reviewed on an individual basis by the regulatory body or the executive head of the regulatory body.

Section 18 of Senate Bill No. 516 of this session creates the Office of Workforce Innovation in the Office of the Governor. Section 19 of Senate Bill No. 516 of this session requires the Governor to appoint the Executive Director of the Office of Workforce Innovation. **Section 9.5** of this bill requires the Executive Director of the Office of Workforce Innovation, on or before January 1 of each year, to submit to the Director of the Legislative Counsel Bureau a written report that includes: (1) the number of persons in this State who are engaged in an occupation or profession that is regulated by a regulatory body; and (2) the demand for the services of such persons engaged in such a regulated occupation or profession.

EXPLANATION - Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 622 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

**Sec. 2.** (Deleted by amendment.)

**Sec. 3.** *1. Except as otherwise provided by specific statute relating to the issuance of a license by endorsement, a regulatory body shall adopt regulations providing for the issuance of a license by endorsement to engage in an occupation or profession in this State to any natural person who:*

*(a) Holds a corresponding valid and unrestricted license to engage in that occupation or profession in the District of Columbia or any state or territory of the United States;*

*(b) Possesses qualifications that are substantially similar to the qualifications required for issuance of a license to engage in that occupation or profession in this State; and*

*(c) Satisfies the requirements of this section and the regulations adopted pursuant thereto.*

*2. The regulations adopted pursuant to subsection 1 must not allow the issuance of a license by endorsement to engage in an occupation or profession in this State to a natural person unless such a person:*





(a) *Is a citizen of the United States or otherwise has the legal right to work in the United States;*

(b) *Has not been disciplined by the corresponding regulatory authority of the District of Columbia or any state or territory in which the applicant currently holds or has held a license to engage in an occupation or profession;*

(c) *Has not been held civilly or criminally liable in the District of Columbia or any state or territory of the United States for misconduct relating to his or her occupation or profession;*

(d) *Has not had a license to engage in an occupation or profession suspended or revoked in the District of Columbia or any state or territory of the United States;*

(e) *Has not been refused a license to engage in an occupation or profession in the District of Columbia or any state or territory of the United States for any reason;*

(f) *Does not have pending any disciplinary action concerning his or her license to engage in an occupation or profession in the District of Columbia or any state or territory of the United States;*

(g) *Pays any applicable fees for the issuance of a license that are otherwise required for a natural person to obtain a license in this State;*

(h) *Submits to the regulatory body a complete set of his or her fingerprints and written permission authorizing the regulatory body to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report or proof that the applicant has previously passed a comparable criminal background check; and*

(i) *Submits to the regulatory body the statement required by NRS 425.520.*

3. *A regulatory body may, by regulation, require an applicant for issuance of a license by endorsement to engage in an occupation or profession in this State to submit with his or her application:*

(a) *Proof satisfactory to the regulatory body that the applicant:*

(1) *Has achieved a passing score on a nationally recognized, nationally accredited or nationally certified examination or other examination approved by the regulatory body;*

(2) *Has completed the requirements of an appropriate vocational, academic or professional program of study in the occupation or profession for which the applicant is seeking a license by endorsement in this State;*



(3) *Has engaged in the occupation or profession for which the applicant is seeking a license by endorsement in this State pursuant to the applicant's existing licensure for the period determined by the regulatory body preceding the date of the application; and*

(4) *Possesses a sufficient degree of competency in the occupation or profession for which he or she is seeking licensure by endorsement in this State;*

(b) *An affidavit stating that the information contained in the application and any accompanying material is true and complete; and*

(c) *Any other information required by the regulatory body.*

4. *Not later than 21 business days after receiving an application for a license by endorsement to engage in an occupation or profession pursuant to this section, the regulatory body shall provide written notice to the applicant of any additional information required by the regulatory body to consider the application. Unless the regulatory body denies the application for good cause, the regulatory body shall approve the application and issue a license by endorsement to engage in the occupation or profession to the applicant not later than:*

(a) *Sixty days after receiving the application;*

(b) *If the regulatory body requires an applicant to submit fingerprints and authorize the preparation of a report on the applicant's background based on the submission of the applicant's fingerprints, 15 days after the regulatory body receives the report; or*

(c) *If the regulatory body requires the filing and maintenance of a bond as a requirement for the issuance of a license, 15 days after the filing of the bond with the regulatory body, whichever occurs later.*

5. *A license by endorsement to engage in an occupation or profession in this State issued pursuant to this section may be issued at a meeting of the regulatory body or between its meetings by the presiding member of the regulatory body and the executive head of the regulatory body. Such an action shall be deemed to be an action of the regulatory body.*

6. *A regulatory body may deny an application for licensure by endorsement if:*

(a) *An applicant willfully fails to comply with the provisions of paragraph (h) of subsection 2; or*

(b) *The report from the Federal Bureau of Investigation indicates that the applicant has been convicted of a crime that*





would be grounds for taking disciplinary action against the applicant as a licensee and the regulatory body has not previously taken disciplinary action against the licensee based on that conviction.

7. The provisions of this section are intended to supplement other provisions of statute governing licensure by endorsement. If any provision of statute conflicts with this section, the other provision of statute prevails over this section to the extent that the other provisions provide more specific requirements relating to licensure by endorsement.

**Sec. 4.** 1. Except as otherwise provided in subsection 2, notwithstanding any other provision of law, a person may not be appointed as a member of a regulatory body if the person has served as a member of that regulatory body, or at the expiration of his or her current term if he or she is so serving will have served, 12 years or more at the time of his or her appointment.

2. The provisions of subsection 1 do not apply to a person who has served as a member of a regulatory body which has less than 250 licensees.

**Sec. 5.** 1. Notwithstanding the provisions of NRS 228.111 to 228.1118, inclusive, and any other provision of law, a regulatory body shall not employ, retain or otherwise contract with an attorney or law firm pursuant to a contingent fee contract.

2. As used in this section, "contingent fee contract" means a contract for legal services between a regulatory body and an attorney or law firm, pursuant to which the fee of the attorney or law firm is payable, in whole or in part, from any money recovered in a matter governed by the contract.

**Sec. 6.** (Deleted by amendment.)

**Sec. 7.** NRS 622.100 is hereby amended to read as follows:

622.100 1. Each regulatory body shall, on or before the 20th day of January, April, July and October, submit to the Director of the Legislative Counsel Bureau in an electronic format prescribed by the Director:

(a) A summary of each disciplinary action taken by the regulatory body during the immediately preceding calendar quarter against any licensee of the regulatory body; and

(b) A report that includes:

(1) *For the immediately preceding calendar quarter:*

(I) The number of licenses issued by the regulatory body ~~{during the immediately preceding calendar quarter;}~~ ;

(II) The total number of applications for licensure received by the regulatory body;



*(III) The number of applications rejected by the regulatory body as incomplete;*

*(IV) The average number of days between the date of rejection of an application as incomplete and the resubmission by the applicant of a complete application;*

*(V) A list of each reason given by the regulatory body for the denial of an application and the number of applications denied by the regulatory body for each such reason; and*

*(VI) The number of applications reviewed on an individual basis by the regulatory body or the executive head of the regulatory body; and*

(2) Any other information that is requested by the Director or which the regulatory body determines would be helpful to the Legislature in evaluating whether the continued existence of the regulatory body is necessary.

2. The Director shall:

(a) Provide any information received pursuant to subsection 1 to a member of the public upon request;

(b) Cause a notice of the availability of such information to be posted on the public website of the Nevada Legislature on the Internet; and

(c) Transmit a compilation of the information received pursuant to subsection 1 to the Legislative Commission quarterly, unless otherwise directed by the Commission.

3. The Director, on or before the first day of each regular session of the Legislature and at such other times as directed, shall compile the reports received pursuant to paragraph (b) of subsection 1 and distribute copies of the compilation to the Senate Standing Committee on Commerce and Labor and the Assembly Standing Committee on Commerce and Labor, each of which shall review the compilation to determine whether the continued existence of each regulatory body is necessary.

**Secs. 7.3 and 7.6.** (Deleted by amendment.)

**Sec. 8.** NRS 228.1111 is hereby amended to read as follows:

228.1111 1. ~~The~~ *Subject to the limitations of section 5 of this act, the Attorney General or any other officer, agency or employee in the Executive Department of the State Government shall not enter into a contingent fee contract unless:*

(a) The Governor, in consultation with the Attorney General, has determined in writing:

(1) That the Attorney General lacks the resources, skill or expertise to provide representation in the matter that is the subject of the proposed contract; and





(2) That representation pursuant to a contingent fee contract is cost-effective and in the public interest; and

(b) The proposed contract complies with the requirements of NRS 228.111 to 228.1118, inclusive.

2. Before entering into a contingent fee contract, the Attorney General or other officer, agency or employee, as applicable, must obtain approval from the Interim Finance Committee to commit money for that purpose.

**Sec. 8.5.** NRS 228.1116 is hereby amended to read as follows:

228.1116 1. ~~{Except as otherwise provided in subsection 2, a retained attorney or law firm is not entitled to a fee, exclusive of any costs and expenses described in that subsection, of more than:~~

~~—(a) Fifteen percent of that portion of any amount recovered of less than \$10,000,000;~~

~~—(b) Ten percent of that portion of any amount recovered of \$10,000,000 or more but less than \$15,000,000;~~

~~—(c) Five percent of that portion of any amount recovered of \$15,000,000 or more but less than \$20,000,000; and~~

~~—(d) Two percent of that portion of any amount recovered of \$20,000,000 or more.~~

~~—2.} The total fee payable to all retained attorneys or law firms in any matter that is the subject of a contingent fee contract must not exceed ~~{~~\$10,000,000,~~}~~ 25 percent of the amount recovered, exclusive of any costs and expenses provided for by the contract and actually incurred by the retained attorneys or law firms, regardless of the number of actions or proceedings or the number of retained attorneys or law firms involved in the matter.~~

~~{3.} 2. A contingent fee:~~

(a) Is payable only from money that is actually received pursuant to a judgment or settlement agreement.

(b) Must not be based on any amount attributable to a fine or civil penalty, but may be based on an amount attributable to punitive damages.

~~{4.} 3. As used in this section, “amount recovered” does not include any money paid as costs.~~

**Sec. 9.** Section 3 of this act is hereby amended to read as follows:

Sec. 3. 1. Except as otherwise provided by specific statute relating to the issuance of a license by endorsement, a regulatory body shall adopt regulations providing for the issuance of a license by endorsement to engage in an occupation or profession in this State to any natural person who:



(a) Holds a corresponding valid and unrestricted license to engage in that occupation or profession in the District of Columbia or any state or territory of the United States;

(b) Possesses qualifications that are substantially similar to the qualifications required for issuance of a license to engage in that occupation or profession in this State; and

(c) Satisfies the requirements of this section and the regulations adopted pursuant thereto.

2. The regulations adopted pursuant to subsection 1 must not allow the issuance of a license by endorsement to engage in an occupation or profession in this State to a natural person unless such a person:

(a) Is a citizen of the United States or otherwise has the legal right to work in the United States;

(b) Has not been disciplined by the corresponding regulatory authority of the District of Columbia or any state or territory in which the applicant currently holds or has held a license to engage in an occupation or profession;

(c) Has not been held civilly or criminally liable in the District of Columbia or any state or territory of the United States for misconduct relating to his or her occupation or profession;

(d) Has not had a license to engage in an occupation or profession suspended or revoked in the District of Columbia or any state or territory of the United States;

(e) Has not been refused a license to engage in an occupation or profession in the District of Columbia or any state or territory of the United States for any reason;

(f) Does not have pending any disciplinary action concerning his or her license to engage in an occupation or profession in the District of Columbia or any state or territory of the United States;

(g) Pays any applicable fees for the issuance of a license that are otherwise required for a natural person to obtain a license in this State; *and*

(h) Submits to the regulatory body a complete set of his or her fingerprints and written permission authorizing the regulatory body to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report or proof that the applicant has previously passed a comparable criminal background check . ~~and~~





~~(i) Submits to the regulatory body the statement required by NRS 425.520.†~~

3. A regulatory body may, by regulation, require an applicant for issuance of a license by endorsement to engage in an occupation or profession in this State to submit with his or her application:

(a) Proof satisfactory to the regulatory body that the applicant:

(1) Has achieved a passing score on a nationally recognized, nationally accredited or nationally certified examination or other examination approved by the regulatory body;

(2) Has completed the requirements of an appropriate vocational, academic or professional program of study in the occupation or profession for which the applicant is seeking a license by endorsement in this State;

(3) Has engaged in the occupation or profession for which the applicant is seeking a license by endorsement in this State pursuant to the applicant's existing licensure for the period determined by the regulatory body preceding the date of the application; and

(4) Possesses a sufficient degree of competency in the occupation or profession for which he or she is seeking licensure by endorsement in this State;

(b) An affidavit stating that the information contained in the application and any accompanying material is true and complete; and

(c) Any other information required by the regulatory body.

4. Not later than 21 business days after receiving an application for a license by endorsement to engage in an occupation or profession pursuant to this section, the regulatory body shall provide written notice to the applicant of any additional information required by the regulatory body to consider the application. Unless the regulatory body denies the application for good cause, the regulatory body shall approve the application and issue a license by endorsement to engage in the occupation or profession to the applicant not later than:

(a) Sixty days after receiving the application;

(b) If the regulatory body requires an applicant to submit fingerprints and authorize the preparation of a report on the applicant's background based on the submission of the



applicant's fingerprints, 15 days after the regulatory body receives the report; or

(c) If the regulatory body requires the filing and maintenance of a bond as a requirement for the issuance of a license, 15 days after the filing of the bond with the regulatory body,

↳ whichever occurs later.

5. A license by endorsement to engage in an occupation or profession in this State issued pursuant to this section may be issued at a meeting of the regulatory body or between its meetings by the presiding member of the regulatory body and the executive head of the regulatory body. Such an action shall be deemed to be an action of the regulatory body.

6. A regulatory body may deny an application for licensure by endorsement if:

(a) An applicant willfully fails to comply with the provisions of paragraph (h) of subsection 2; or

(b) The report from the Federal Bureau of Investigation indicates that the applicant has been convicted of a crime that would be grounds for taking disciplinary action against the applicant as a licensee and the regulatory body has not previously taken disciplinary action against the licensee based on that conviction.

7. The provisions of this section are intended to supplement other provisions of statute governing licensure by endorsement. If any provision of statute conflicts with this section, the other provision of statute prevails over this section to the extent that the other provisions provide more specific requirements relating to licensure by endorsement.

**Sec. 9.5.** Section 20 of Senate Bill No. 516 of this session is hereby amended to read as follows:

Sec. 20. The Executive Director of the Office of Workforce Innovation shall:

1. Provide support to the Office of the Governor, the Governor's Workforce Development Board created by NRS 232.935 and the industry sector councils established by the Governor's Workforce Development Board on matters relating to workforce development.

2. Work in coordination with the Office of Economic Development to establish criteria and goals for workforce development and diversification in this State.

3. Collect and systematize and present in biennial reports to the Governor and the Legislature such statistical





details relating to workforce development in the State as the Executive Director of the Office may deem essential to further the objectives of the Office of Workforce Innovation.

4. At the direction of the Governor:

(a) Identify, recommend and implement policies related to workforce development.

(b) Define career pathways and identify priority career pathways for secondary and postsecondary education.

(c) Discontinue career pathways offered by the State which fail to meet minimum standards of quality, rigor and cross-education alignment, or that do not demonstrate a connection to priority industry needs.

(d) In consultation with the Governor's Workforce Development Board, identify industry-recognized credentials, workforce development programs and education.

(e) Maintain and oversee the statewide longitudinal data system that links data relating to early childhood education programs and K-12 public education with data relating to postsecondary education and the workforce in this State.

(f) Collect accurate educational data in the statewide longitudinal data system for the purpose of analyzing student performance through employment to assist in improving the educational system and workforce training program in this State.

(g) Apply for and administer grants, including, without limitation, those that may be available from funding reserved for statewide workforce investment activities.

(h) Review the status and structure of local workforce investment areas in the State, in coordination with the Governor and the Governor's Workforce Development Board.

(i) Report periodically to the Governor's Workforce Development Board concerning the administration of the policies and programs of the Office of Workforce Innovation.

(j) On or before March 31 of each year, submit to the Governor a complete report of the activities, discussions, findings and recommendations of the Office of Workforce Innovation.

(k) Oversee the State Apprenticeship Council and the State Apprenticeship Director pursuant to NRS 610.110 to 610.185, inclusive, and perform such other functions as may be necessary for the fulfillment of the intent and purposes of chapter 610 of NRS.



(l) Suggest improvements regarding the allocation of federal and state money to align workforce training and related education programs in the State, including, but not limited to, career and technical education.

*(m) On or before January 1 of each year, collect and analyze data as needed to create a written report for the purposes of this paragraph, and submit such a report to the Director of the Legislative Counsel Bureau. The report must include, without limitation:*

*(1) Statistical data based on an analysis of the number of persons within this State who are engaged in an occupation or profession that is regulated by a regulatory body in relation to the total population of this State or any geographic area within this State;*

*(2) The demand within this State or any geographic area within this State for the types of services provided by persons within this State who are engaged in an occupation or profession that is regulated by a regulatory body; and*

*(3) Any other factors relating to the types of services provided by persons within this State who are engaged in an occupation or profession that is regulated by a regulatory body that adversely affect public health or safety.*

*↳ As used in this paragraph, "regulatory body" has the meaning ascribed to it in NRS 622.060.*

**Sec. 10.** The provisions of section 4 of this act apply only to time served as a member of a regulatory body pursuant to an appointment made after the effective date of this act.

**Sec. 11.** 1. The provisions of section 5 of this act do not apply to an agreement between a regulatory body and an attorney or law firm entered into before the effective date of this act, but do apply to any renewal or extension of such an agreement.

2. The provisions of section 8.5 of this act do not apply to a contingent fee contract entered into before the effective date of this act, but do apply to any renewal or extension of such a contingent fee contract. As used in this subsection, "contingent fee contract" has the meaning ascribed to it in NRS 228.111.

**Sec. 12.** The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.

**Sec. 13.** A regulatory body that is required to adopt regulations pursuant to section 3 of this act shall adopt such regulations not later than February 1, 2018.





**Sec. 14.** 1. This section and sections 1 to 8.5, inclusive, and 10 to 13, inclusive, of this act become effective upon passage and approval.

2. Section 9.5 of this act becomes effective on July 1, 2017, if and only if Senate Bill No. 516 of this session is enacted by the Legislature and approved by the Governor.

3. Section 9 of this act becomes effective on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

↪ are repealed by the Congress of the United States.





NEVADA STATE BOARD OF DENTAL EXAMINERS  
 6010 S. Rainbow Boulevard, Suite A1  
 Las Vegas, NV 89118



Video Conferencing available for this meeting at the Nevada State Board of Medical Examiners Office  
 Conference Room located at: 1105 Terminal Way, Suite #301; Reno, NV 89502

**PUBLIC MEETING**

Friday, July 21, 2017  
 9:06 a.m.

**Board Meeting DRAFT Minutes**

**Please Note:** The Nevada State Board of Dental Examiners may hold board meetings via video conference or telephone conference call. The public is welcomed to attend the meeting at the Board office located at 6010 S. Rainbow Blvd, Suite A1; Las Vegas, Nevada 89118; or in the Conference room of the Nevada State Board of Medical Examiners office located at 1105 Terminal Way, Suite #301; Reno, NV 89502 (when applicable).

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

Public Comment time is available after roll call (beginning of meeting) and prior to adjournment (end of meeting). Public Comment is limited to three (3) minutes for each individual. You may provide the Board with written comment to be added to the record.

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

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

Dr. Blasco called the meeting to order and Mrs. Shaffer-Kugel conducted the following roll call:

- Dr. Timothy Pinther (“Dr. Pinther”) -----PRESENT
- Dr. Byron Blasco (“Dr. Blasco”) -----PRESENT
- Dr. Jason Champagne (“Dr. Champagne”) -----EXCUSED
- Dr. Gregory Pisani (“Dr. Pisani”) -----PRESENT
- Dr. Brendan Johnson (“Dr. Johnson”) -----PRESENT
- Dr. Ali Shahrestani (“Dr. Shahrestani”) -----PRESENT
- Dr. R. Michael Sanders (“Dr. Sanders”) -----PRESENT
- Ms. Theresa Guillen (“Ms. Guillen”) -----PRESENT
- Ms. M Sharon Gabriel (“Ms. Gabriel”) -----PRESENT
- Ms. Mary Teresa Chandler (“Ms. Chandler”) -----PRESENT

**Others Present:** John Kelleher, Board General Counsel; Sophia Long, Deputy Attorney General/Board General Co-Counsel; Debra Shaffer-Kugel, Executive Director.

**Public Attendees:** Dr. Richard Dragon, NDA; Brian Reeder, Ferrari Affairs/NDA; Trini Guillen, DDS; Lue Guillen; Robert Talley, DDS/NDA; Michael Navratil, Counsel for Dr. LaLande; Sara Mercier, RDH; Karen Portillo, RDH/Future Smiles.



Pledge of Allegiance

2. **Public Comment:** (Public Comment is limited to three (3) minutes for each individual)

There was no public comment.

**Note:** No vote may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020)

\*3. **Public Workshop:**

Notice of Public Workshop, Request for Comments and review of Nevada Administrative Code Chapter 631 related to the practice of dentistry and proposed regulation changes and/or amendments pertaining to the following; Use of laser radiation, in practice: Documentation required with application for renewal of license (NAC 631.033) Continuing education: Approved subjects; minimum requirements for clinical subjects; maximum credit for certain types of courses and activities (NAC 631.175)

The purpose of the workshop is to receive comments from all interested persons and to consider the review of Nevada Administrative Code Chapter 631 and regulation changes and amendments. The general topics include the following; Use of laser radiation, in practice: Documentation required with application for renewal of license (NAC 631.033) and Continuing education: Approved subjects; minimum requirements for clinical subjects; maximum credit for certain types of courses and activities (NAC 631.175)

Dr. Blasco directed attention to the Boards' Executive Director, Mrs. Shaffer-Kugel to lead the Public Workshop and Hearing introducing the proposed regulation changes to NAC 631.033 and NAC 631.175, and opened the floor for comments from the board members or public.

**NAC 631.033:** Mrs. Shaffer-Kugel stated that the Board in the past had drafted regulations regarding continuing education (CE) requirements for the use of botulinum toxins and dermal fillers. She noted that Senate Bill, SB101, had passed and noted that while the bill listed botulinum toxins and dermal fillers that it did not list "other facial injectables." She noted further that SB101 only addressed dentist' administering said injectables, and therefore, prohibits the administration of the injectables by dental hygienists, dental assistants, and also medical assistants.

Mrs. Shaffer-Kugel stated to the Board that the proposed regulations were updated to reflect the new language in SB101. There was brief discussion regarding the use of dermal fillers. Dr. Pisani inquired if Dr. Blasco found the proposed CE requirements to be to his satisfaction, to which he responded affirmatively. Mrs. Shaffer-Kugel inquired if the Board wanted to specify that dentist' shall only administer on a patient of record. The board responded affirmatively to the proposed additional language.

The following changes were proposed:

- 1) Add that "dentists' shall only administer to patients of record"
- 2) Change the terms "dermal fillers" to "facial injectables" - *withdrawn\**

*\*Mrs. Shaffer-Kugel noted that this proposed change would require a statutory change and that they could submit a BDR to the legislature during the next legislative session in 2 years. Ms. Long suggested that they Board, perhaps, contact the Medical and Pharmacy board's to see if they have definitions for dermal fillers and facial injectables so that the Board may use it as a reference.*

- 3) Add "approved by the FDA" to the CE requirements

Mrs. Shaffer-Kugel read the changes made to 631.033 as discussed by the board to ensure that the changes made were agreed upon. With no further discussion, corrections, or changes offered from the members of the Board or public, Dr. Blasco called for a motion.

**MOTION:** Dr. Pinther moved that the changes discussed and proposed be accepted, seconded by Guillen.

With no discussion the motion was unanimously approved by the members of the Board present at this meeting.

119 **NAC 631.175:** Mrs. Shaffer-Kugel stated that a requirement was passed for those with a controlled  
120 substance permit and that they were now required to complete a one hour course on the misuse and abuse  
121 of prescription medications; however, that it was her recommendation that the Board be proactive and require  
122 that licensees complete two hours.  
123

124 The following changes were proposed:

- 125 1) Modify from "1 hour" to "2 hours"

126  
127 Mrs. Shaffer-Kugel read the proposed changes made to NAC 631.175 as discussed by the board to ensure  
128 that the changes made were agreed upon. With no further discussion, corrections, or changes offered from  
129 the members of the Board or public, Dr. Blasco called for a motion:  
130

131 **MOTION:** Dr. Sanders moved that the change discussed and proposed be accepted, seconded by Dr. Johnson.  
132 With no discussion the motion was unanimously approved by the members of the Board present at  
133 this meeting.  
134

135 Mrs. Shaffer-Kugel stated that she would submit the proposed language to the LCB and that if they are  
136 approved by the LCB that the regulations would come before the Board for approval of enactment.  
137

138 **The Workshop concluded at 9:28 a.m.**

139  
140 **\*4. Executive Director's Report** (For Possible Action)  
141

142 **\*a. Minutes - NRS 631.190** (For Possible Action)  
143

- 144 (1) Board Meeting - 05/12/2017
- 145 (2) Board Meeting (Telephone Conference) - 05/25/2017
- 146 (3) Board Meeting (Telephone Conference) - 06/01/2017  
147

148 Dr. Blasco asked if the members of the Board had an opportunity to review the minutes listed on the agenda  
149 for approval. With an affirmative response, he asked if there were any changes or corrections to be noted. It  
150 was noted to correct spelling of the name of deputy Attorney General present at the May 12, 2017 board  
151 meeting. No other changes were offered. A motion was called for:  
152

153 **MOTION:** Ms. Chandler moved that the Board approve the minutes as presented with the spelling correction,  
154 seconded by Dr. Sanders. Without discussion, the motion was unanimously approved by the  
155 members of the Board.  
156

157 **\*b. Financials - NRS 631.180/NRS 631.190**  
158

- 159 (1) Review Balance Sheet and Statement of Revenues, Expenses and Balances for period  
160 July 1, 2016 through May 31, 2017 (For Informational Purposes)  
161

162 Dr. Blasco directed attention to Ms. Stacie Hummel, the board accountant, to go over with the Board the  
163 balance sheet and statement of revenues, expenses, and balances. Mrs. Hummel addressed the board and  
164 noted that there were no areas of significance or concerns to discuss. She stated that they are at the end  
165 of the fiscal year and that they are preparing for their annual audit of their year-end budget. There was no  
166 further discussion.  
167

- 168 (2) Approval or Rejection of Proposed Budget for FY 2018 (For Possible Action)  
169

170 Dr. Blasco directed attention to Ms. Stacie Hummel. Mrs. Shaffer-Kugel stated that she and Mrs. Hummel  
171 worked on the budget and they noted where any changes were made. She inquired if there were any  
172 questions. With no questions or further discussion, Dr. Blasco called for a motion:  
173

174 **MOTION:** Ms. Chandler moved that the Board approve the proposed budget, and was seconded by Dr.  
175 Sanders. The motion was unanimously approved by the Board.  
176  
177  
178



179 \*c. **Authorized Investigative Complaints-NRS 631.360** (For Possible Action)  
180

- 181 (1) Dr. W - NRS 631.3485(2) and NRS 631.3475(5)  
182

183 Dr. Blasco directed the attention to Mrs. Shaffer-Kugel. Mrs. Shaffer-Kugel addressed the Board and read into  
184 the record the Statutes of the alleged violations of Dr. W.  
185

186 **MOTION:** Dr. Pinther moved that the board authorize the investigation on Dr. W, and was seconded by Ms.  
187 Gabriel. The motion was unanimously approved by the Board.  
188

- 189 (2) ~~Dr. X, Dr. Y and Dr. Z~~ RDH X, RDH Y, and RDH Z - NRS 631.242  
190

191 Dr. Blasco directed the attention to Mrs. Shaffer-Kugel. Mrs. Shaffer-Kugel addressed the Board and noted  
192 that a correction needed to be made and that the authorized investigation was to be against "RDH X, RDH Y  
193 and RDH Z," and not "Dr.'s X, Y, and Z." She read into the record the statutes of the alleged violations of  
194 RDH X, RDH Y, and RDH Z.  
195

196 **MOTION:** Ms. Guillen moved that the board authorize the investigation on RDH X, RDH Y, and RDH Z, and was  
197 seconded by Ms. Chandler. The motion was unanimously approved by the Board.  
198

199 \*d. **Contracts: NRS 631.190** (For Possible Action)  
200

- 201 (1) inLumon - Licensing System Support & Maintenance Contract  
202

203 Dr. Blasco directed the attention to Mrs. Shaffer-Kugel to discuss the contract with inLumon. Mrs. Shaffer-  
204 Kugel stated that they were nearly finished building the system with inLumon. She explained that inLumon  
205 would provide the support and maintenance for the system since the Board did not have an IT staff person.  
206 She added that with inLumon the board office staff would be able to handle changes rather quickly,  
207 compared to having to wait for the previous company to make the changes needed on their availability, which  
208 would cause some delays. Per Dr. Pisani's inquiry, she stated that she was aware of the board members  
209 receiving calls regarding the license verification page, but that before making the verification page available for  
210 use to the public, the staff wanted to ensure that the license information was transferred correctly. Dr.  
211 Blasco called for a motion:  
212

213 **MOTION:** Dr. Pisani moved that the Board approve the contract with inLumon, and was seconded by Dr.  
214 Pinther. The motion was unanimously approved by the Board.  
215

216 \*e. **Travel: NRS 631.190** (For Possible Action)  
217

- 218 (1) Approval for Board Members & Staff to travel to the American Association of Dental  
219 Board (AADB) & AADA Meeting October 15-18, 2017 Atlanta, GA (For Possible Action)  
220

221 Dr. Blasco directed the attention to Mrs. Shaffer-Kugel. Mrs. Shaffer-Kugel stated that this was to approve  
222 travel to the AADB meetings in October.  
223

224 **MOTION:** Ms. Guillen moved that the Board approve the travel to the AADB meeting in October, and was  
225 seconded by Ms. Chandler. The motion was unanimously approved by the Board.  
226

227 \*f. **Approval to hire new staff member** - NRS 631.190 (For Possible Action)  
228

- 229 (1) Patricia Quinn  
230

231 Dr. Blasco directed the attention to Mrs. Shaffer-Kugel. Mrs. Shaffer-Kugel addressed the board and stated  
232 that with the introduction of the in-house counsel and the review panel, that additional assistance would be  
233 needed. After no further discussion, Dr. Blasco called for a motion.  
234

235 **MOTION:** Dr. Pinther moved that the Board approve the hiring of the new staff member Patricia Quinn, and  
236 was seconded by Dr. Sanders. The motion was unanimously approved by the Board.  
237  
238

239 \*g. Correspondence:  
240

- 241 (1) Review and Discuss correspondence from Western Regional Examining Board regarding  
242 clinical exam changes for 2018  
243

244 Dr. Blasco noted that he was the WREB representative for Nevada and noted components changes that were  
245 made in the exam., which he briefly discussed. There was discussion regarding NAC and NRS and how it  
246 delineates which components of the exam must be completed for the ADEX exam, only; however, that it did  
247 not do so for the WREB exam. Discussion was held regarding the desire to amend NAC 631.090 to include  
248 the WREB exam so that it is delineated as it is for the ADEX exam. Mrs. Shaffer-Kugel stated that she will  
249 include NAC 61.090 in the Workshop scheduled for September 2017.  
250

251 Dr. Blasco noted that the ADA was trying to create a national dental exam, as they are receiving a lot of  
252 pressure from dental students to move forward with a non-patient exam.  
253

254 \*5. General Counsel's Report (For Possible Action)  
255

256 a. Legal Actions/Lawsuit(s) Update  
257

- 258 (1) District Court Case(s) Update  
259

260 Dr. Blasco directed the attention to the Board general counsel, John Kelleher. Mr. Kelleher addressed the  
261 board and noted that there were 2 cases to discuss. The first (1) case was filed by the LVDA in March 2017,  
262 though those listed in the case were never served, he noted that the plaintiffs had recently filed a voluntary  
263 dismissal and therefore were no longer moving forward with the case. Mr. Kelleher indicated that the second  
264 case was regarding Marco Casco, an individually who was found to have been practicing dentistry illegally  
265 years ago and was found practicing again recently. He added that the judge over the case ordered Mr.  
266 Casco to reimburse the board and including the fees of the board's former legal counsel. Furthermore, that  
267 on July 12<sup>th</sup> Mr. Casco filed an appeal to contest the judgement. Mr. Kelleher noted that he enlisted the  
268 assistance of the Nevada Attorney General for this case.  
269

270 \*b. Request to amend the Disciplinary Stipulation Agreement entered into with the Board on  
271 March 24, 2017 regarding the probationary period-NRS 631.350 (For Possible Action)  
272

- 273 (a) Carla LaLande, DMD  
274

275 Dr. Blasco directed the attention to the Board general counsel, John Kelleher. Mr. Kelleher addressed the  
276 board and stated that Dr. LaLande was requesting that her Stipulation agreement be amended to remove the  
277 remainder of the probationary period. He stated that historically the board does not amend stipulation  
278 agreements, with the exception of requests for additional time to complete CE's and to arrange for payment  
279 arrangements for monies owed. However, that in this particular case, the dentist was unaware of the actions  
280 of her staff and that in his opinion, did not foresee an issue of the same nature in the near future. Counsel  
281 for Dr. LaLande, Michael Navratil, was present and stated that his client - Dr. LaLande had gone above and  
282 beyond to assure that her staff would never make the same error again. Dr. Pisani inquired if during the  
283 probationary period if there was any monitoring. Mrs. Shaffer-Kugel stated that Dr. LaLande had to document  
284 that her staff had properly been trained in HIPPA requirements. Mr. Navratil stated that they were requesting  
285 that the Board suspend the probationary period. Mr. Kelleher noted to the Board that this particular case  
286 would be distinguishable from other cases, and that he would be able to argue so if other cases with  
287 requests for amendments were presented. Mrs. Shaffer-Kugel suggested that the stipulation agreement  
288 perhaps state that should the board receive complaints from patients affected by this that the board may  
289 impose probation again or other actions. With no further discussion, Dr. Blasco called for a motion:  
290

291 **MOTION:** Dr. Pisani moved that the Board approve the request from Dr. LaLande to amend her stipulation  
292 agreement to suspend the probation requirement, and was seconded by Dr. Sanders. Dr. Pisani  
293 amended his motion to add that should the Board receive a complaint regarding the records  
294 involved, that the Board may impose probation or other actions against Dr. LaLande. Dr. Sanders  
295 agreed to amendment. The motion was unanimously approved by the Board.  
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**\*6. New Business** (For Possible Action)

**\*a. Request for an Advisory Opinion whether it is permissible for a person licensed as an Oral & Maxillofacial Surgeon to provide denture treatments pursuant to NRS 631.250 or NRS 631.255 –NAC 631.279** (For Possible Action)

- (1) Jay K Selznick, DMD

Dr. Blasco directed the attention to Mrs. Shaffer-Kugel. Mrs. Shaffer-Kugel noted that Dr. Selznick was not present at the meeting. She stated that Dr. Selznick was requesting an advisory opinion in regards to him being able to provide denture services to the patients that he treats in the underserved areas that he renders services in since they do not have access to a provider that makes dentures. She noted that his specific specialty does not list dentures under their scope of practice, and that the statute states “shall” the board cannot go outside of his scope of practice. Mr. Kelleher stated that under Dr. Selznick’s current specialty license the statute prohibited him from expanding his scope of practice; however, that he may choose to request to revert his license to a general license so that he could expand his scope of practice. Dr. Blasco for a motion:

**ADVISORY OPINION/MOTION:** Dr. Pisani motion to not issue an opinion since the statute clearly states that a specialist is limited to practicing within their scope as defined by the American Board of Oral and Maxillofacial surgeons. The motion was seconded by Dr. Sanders. The motion was unanimously approved by the Board.

**\*b. Approval of Reactivation of Dental License – NAC 631.170(4)** (For Possible Action)

- (1) Trinidad Guillen, DDS

Dr. Blasco directed the attention to Mrs. Shaffer-Kugel. Dr. Trinidad Guillen was present and approached the board. Mrs. Shaffer-Kugel went over Dr. Guillen’s history and the reactivation requirements. She stated that Dr. Champagne reviewed the reactivation application of Dr. Trinidad Guillen and noted that Dr. Guillen had not practiced in over two (2) year which requires that approval of the reactivation must be approved by the Board. Dr. Guillen addressed the Board and stated that he would act in an administrative capacity at his practice, however, that insurance companies would not contract with his office since he did not hold an active license. Lou Guillen, Dr. Guillen’s office manager, addressed the Board and stated that they had been operating without issue until several months ago when diversified dental stated that they would not contract with them because Dr. Guillen’s license was not active, which slowly trickled into a domino effect with other insurance companies. Mrs. Shaffer-Kugel stated that in the past the Board has reinstated a license with limitations, and noted that Dr. Guillen did not intend to provide patient care that they could then limit his ability to practice so that he would only be allowed to work in the capacity of the dental director. Dr. Blasco noted to Dr. Guillen that he would be limited to diagnosing and treatment planning.

**MOTION:** Dr. Pisani moved that the Board approve the reactivation application of Dr. Trinidad Guillen and limit his practice to diagnosis and treatment planning, and was seconded by Ms. Chandler. Discussion: Mrs. Shaffer-Kugel noted that if in the future Dr. Guillen wanted to remove the limitations that he would have to come before the board again for approval. The motion was unanimously approved by the Board; Ms. Guillen abstained.

**\*c. Approval of Public Health Endorsement – NRS 631.287** (For Possible Action)

- (1) Vanessa Acevedo, RDH – Volunteers in Medicine of Southern Nevada
- (2) Sara N. Mercier, RDH – Future Smiles
- (3) Karen M. Portillo, RDH – Future Smiles

Dr. Blasco directed the attention to Mrs. Shaffer-Kugel. Mrs. Shaffer-Kugel stated that Dr. Champagne reviewed the applications for public health endorsements, and noted that the applications met the criteria and that Dr. Champagne recommended approval.

**MOTION:** Dr. Pinther moved that the Board approve the public health endorsement applications, and was seconded by Dr. Pisani. The motion was unanimously approved by the Board; Ms. Chandler abstained.



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**\*d. Approval of Voluntary Surrender of License – NAC 631.160** (For Possible Action)

- (1) Larry E. McEntire, DDS
- (2) Whitney B. Hackstaff, DDS
- (3) Louis J. Patetta Jr., DDS
- (4) Derick Wang, DMD
- (5) Robert W. Bauter, DDS
- (6) Tara Boshnack, DDS
- (7) Michael M. Day, DDS
- (8) Jennifer H. Ginn, DDS
- (9) Junghun Ji, DDS
- (10) Otis B. Kittle, DDS
- (11) Carmen A. Fernandez, DDS
- (12) Mark Sampsel, DDS
- (13) Erin Ma, DMD
- (14) Rebecca Lavene, DMD

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Dr. Blasco directed the Board’s attention to Mrs. Shaffer-Kugel. Mrs. Shaffer-Kugel stated that the licensees had no pending actions or matters with the Board, and noted that once approved the voluntary surrenders were absolute and irrevocable. A motion was called for.

**MOTION:** Ms. Gabriel moved that the Board accept the voluntary surrenders, seconded by Dr. Johnson. Without discussion, the motion was unanimously approved by the members of the Board.

8

**\*e. Approval for Anesthesia-Permanent Permit – NAC 631.2233** (For Possible Action)

- (1) General Anesthesia** (For Possible Action)
  - (a) James Yong Kim, DDS

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Dr. Blasco directed the Board’s attention to Dr. Brendan Johnson. Dr. Johnson stated that he reviewed the application for Dr. James Y. Kim and that the application was in order and that he recommended approval. A motion was called for.

**MOTION:** Dr. Pinther moved that the Board approve Dr. Kim for a general anesthesia permit; seconded by Ms. Guillen. Without discussion, the motion was unanimously approved by the members of the Board; Dr. Johnson abstained.

- (2) Conscious Sedation** (For Possible Action)
  - (a) John Dilibero, DDS
  - (b) Lawrence Drake, DDS
  - (c) John E Stephenson, DDS
  - (d) Nam M Phan, DMD
  - (e) Leila Zokaei, DDS

Dr. Blasco directed the Board’s attention to Dr. Brendan Johnson. Dr. Johnson stated that he reviewed the applications for the licensees listed above and that the applications were in order and recommended approval. A motion was called for.

**MOTION:** Dr. Pisani moved that the Board approve the licensees listed for conscious sedation permits; seconded by Dr. Sanders. Without discussion, the motion was unanimously approved by the members of the Board; Dr. Johnson abstained from the motion.

**\*f. Approval for Anesthesia-Temporary Permit – NAC 631.2254** (For Possible Action)

- (1) General Anesthesia** (For Possible Action)
  - (a) Daniel C. Martin, DDS
  - (b) Harry Golnazarian, DDS

Dr. Blasco directed the Board’s attention to Dr. Brendan Johnson. Dr. Johnson stated that he reviewed the applications for the licensees listed above and that the applications were in order and recommended approval. A motion was called for.

**MOTION:** Dr. Pinther moved that the Board approve the licensees listed for temporary conscious sedation permits; seconded by Ms. Guillen. Without discussion, the motion was unanimously approved by the members of the Board; Dr. Johnson abstained from the motion.

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51  
52 (2) **Conscious Sedation** (For Possible Action)

- 53 (a) Jared K. Bauerle, DMD  
54 (b) Thomas Godfrey, DDS  
55 (c) Aida F. Cappiello, DDS  
56

57 Dr. Blasco directed the Board's attention to Dr. Brendan Johnson. Dr. Johnson stated that he reviewed the  
58 applications for the licensees listed above and that the applications were in order and recommended approval.  
59 A motion was called for.  
60

61 **MOTION:** Dr. Sanders moved that the Board approve the licensees listed for temporary conscious sedation  
62 permits; seconded by Dr. Shahrestani. Without discussion, the motion was unanimously approved by  
63 the members of the Board; Dr. Johnson abstained from the motion.  
64  
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66 \*g. **Approval for a 90-Day Extension of Anesthesia Permit – NAC 631.2254(2)** (For Possible Action)

67  
68 (1) **Conscious Sedation** (For Possible Action)

- 69 (a) Mark A. Ferrari, DDS  
70 (b) Douglas K. Kern, DMD  
71

72 Dr. Blasco directed the Board's attention to Dr. Johnson. Dr. Johnson stated that they are seeking a 90-day  
73 extension. Dr. Blasco called for a motion:  
74

75 **MOTION:** Dr. Pisani moved that the board approve the 90-extensions of permits, and seconded by Dr. Pinther.  
76 The motion was unanimously approved by the members of the Board.  
77  
78

79 **h. Legislative Session Report** (For Informational Purposes Only)

80  
81 Dr. Blasco directed the Board's attention to Mrs. Shaffer-Kugel. Mrs. Shaffer-Kugel gave a brief update on the  
82 recent legislative session and the bills that have an effect on the board. Dr. Johnson inquired on the lobbyist  
83 that was supposed to provide the report being given by Mrs. Shaffer-Kugel. She stated that had asked for a  
84 report but had yet to receive one. There was lengthy discussion regarding licensure by endorsement. Mrs.  
85 Shaffer-Kugel stated that one bill was in regards to the Board establishing a review panel to be comprised of  
86 1 dental board member, 1 dental hygiene board member, and 1 other dental/dental hygienist that is not a  
87 board member. She added that the non-board member would be determined based on the case – for  
88 example, if it is a dental complaint a dentist would be assigned, or if it is a dental hygiene complaint then a  
89 dental hygienist would be assigned. There was further discussion regarding the review panel. The board  
90 agreed that every January they would vote to designate a dental and dental hygiene board members to sit  
91 on the panel. Mrs. Shaffer-Kugel noted that the use of a panel would take effect January 1, 2018. She  
92 advised that the board construct regulations to establish how the board will construct the panel, the rotation  
93 of panel members, and to note when a specialist is to be used for a particular case. Dr. Blasco stated that  
94 he was officially requesting the presence of the Board employed lobbyist to be present at the next meeting in  
95 September.  
96  
97  
98

99 \*7. **Resource Group Reports** (For Possible Action)

100  
101 \*a. **Legislative and Dental Practice** (For Possible Action)

102 (Chair: Dr. Pinther; Dr. Champagne; Dr. Blasco; Dr. Sanders; Ms. Guillen)  
103

104 Dr. Pinther stated that there was no report.  
105  
106

107 \*b. **Legal and Disciplinary Action** (For Possible Action)

108 (Chair: Dr. Pisani; Dr. Blasco; Dr. Shahrestani; Dr. Sanders; Ms. Chandler)  
109

110 Dr. Pisani stated that there was no report.  
111  
112  
113

114 \*c. **Examinations Liaisons** (For Possible Action)

115  
116 \*(1) **WREB/HERB Representatives** (For Possible Action)

117 (Dr. Blasco; Ms. Gabriel)

118  
119 Dr. Blasco gave a brief report of the most recent meeting he attended.

120 Ms. Gabriel provided a summary the most recent HERB meeting.

121  
122  
123  
124 \*(2) **ADEX Representatives** (For Possible Action)

125 (Timothy Pinther, DDS)

126  
127 Dr. Pinther stated that he would be attending the ADEX meeting in August 2017.

128  
129  
130 \*d. **Continuing Education** (For Possible Action)

131 (Chair: Dr. Blasco; Dr. Shahrestani, Dr. Pisani; Ms. Gabriel; Ms. Chandler)

132  
133 Dr. Blasco stated that there was no report.

134  
135  
136 \*e. **Committee of Dental Hygiene** (For Possible Action)

137 (Chair: Ms. Guillen; Ms. Gabriel; Dr. Shahrestani; Ms. Chandler)

138  
139 Ms. Gabriel stated that there was no report.

140  
141  
142 \*f. **Specialty** (For Possible Action)

143 (Chair: Dr. Pisani; Dr. Johnson; Dr. Pinther)

144  
145 Dr. Pisani stated that there was no report.

146  
147  
148 \*g. **Anesthesia** (For Possible Action)

149 (Chair: Dr. Johnson; Dr. Pinther; Dr. Champagne; Dr. Sanders)

150  
151 Dr. Johnson stated that there was no report.

152  
153  
154 \*h. **Infection Control** (For Possible Action)

155 (Chair: Ms. Gabriel; Dr. Blasco; Dr. Champagne; Dr. Pisani; Ms. Chandler)

156  
157 Ms. Gabriel stated that there was no report.

158  
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160 \*i. **Budget and Finance Committee** (For Possible Action)

161 (Chair: Dr. Champagne; Dr. Blasco; Dr. Pinther; Ms. Guillen)

162  
163 Dr. Blasco stated that there was no report.

164  
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166 **8. Public Comment:** (Public Comment is limited to three (3) minutes for each individual)

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168 Dr. Talley addressed the board regarding SB69 and stated that he is the lobbyist for the NDA and wanted to  
169 note that the Governor's office had made it abundantly clear that Licensure by Endorsement was not intended  
170 to be licensure by credential, though the language in the bill insinuated otherwise. He added would furnish  
171 information to the Board regarding the legislature's intent with SB69 to assist the Board when establishing the  
172 regulations for this new requirement. Mrs. Shaffer-Kugel read in to the record a section of SB69.

173  
174  
175 **Note:** No vote may be taken upon a matter raised under this item of the agenda until the matter itself has  
176 been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020)



178 **9. Announcements**

179 Mrs. Shafer-Kugel made the following announcements:

180 • Verification page was now available on the board website

181 • A full board hearing being held on August 25<sup>th</sup> and travel being arranged.

182  
183 Dr. Pinther inquired if there were any plans to hold a board member and board staff meeting or retreat in the  
184 near future to maintain team moral.

185  
186 **\*10. Adjournment** (For Possible Action)

187 Dr. Blasco called for a motion to adjourn.

188  
189 **MOTION:** Dr. Pisani moved that the July 21, 2017 meeting of the Nevada State Board of Dental  
190 Examiners be adjourned. Motion was seconded by Dr. Pinther, and without discussion,  
191 unanimously approved by the Board.

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198 **Meeting adjourned at 11:28 a.m.**  
199 **Respectfully Submitted by**

200  
201  
202  
203 \_\_\_\_\_  
204 Debra Shaffer-Kugel, Executive Director

DRAFT MINUTES  
9/11/2017 - Board Teleconference



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



Telephone Conferencing site for this meeting was at the Nevada State Board of Dental Examiners Office  
Conference Room: 6010 S Rainbow Blvd, Suite A1, Las Vegas, Nevada 89118

Telephone Conference

**DRAFT MINUTES**

PUBLIC MEETING

Monday, September 11, 2017  
 6:09 p.m.

Board Meeting Agenda

**Please Note:** The Nevada State Board of Dental Examiners may hold board meetings via telephone conference call. The public is welcomed to attend the telephone conference meeting at the Board office located at 6010 S. Rainbow Blvd, Suite A1; Las Vegas, Nevada 89118.

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

Public Comment time is available after roll call (beginning of meeting) and prior to adjournment (end of meeting). Public Comment is limited to three (3) minutes for each individual. You may provide the Board with written comment to be added to the record.

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

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

Dr. Blasco called the meeting to order and Mrs. Shaffer-Kugel conducted the following roll call:

Dr. Timothy Pinther ("Dr. Pinther") -----PRESENT	Dr. Ali Shahrestani ("Dr. Shahrestani") ----- EXCUSED
Dr. Byron Blasco ("Dr. Blasco") -----PRESENT	Dr. R. Michael Sanders ("Dr. Sanders") -----PRESENT
Dr. Jason Champagne ("Dr. Champagne") --PRESENT	Ms. Theresa Guillen ("Ms. Guillen") -----PRESENT
Dr. Gregory Pisani ("Dr. Pisani") -----EXCUSED	Ms. M Sharon Gabriel ("Ms. Gabriel") -----PRESENT
Dr. Brendan Johnson ("Dr. Johnson") -----PRESENT	

**Others Present:** Sophia Long, Deputy Attorney General Co-Counsel; Debra Shaffer-Kugel, Executive Director.

**Public Attendees:** No public attendees.

2. Public Comment: (Public Comment is limited to three (3) minutes for each individual) No public comment.

Note: No vote may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020)
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\*3. New Business (For Possible Action)

\*a. Approval to appoint the named individual to the position of general counsel -NRS 631.190  
(For Possible Action)

(1) Melanie Bernstein-Chapman, Esquire

Dr. Blasco called for a motion.

MOTION: Dr. Sanders made the motion to approve the appointment of Melanie Bernstein-Chapman to the position of general counsel for the Nevada State Board of Dental Examiners, and seconded by Dr. Pinther.

Discussion: Dr. Pinther inquired on the background and qualifications of Mrs. Bernstein-Chapman. Mrs. Shaffer-Kugel stated that during the initial employment process of searching for a new general counsel, the employment committee that oversaw the process had narrowed down the qualifying applicants to four individuals. She noted that one applicant withdrew, one was voted out unanimously, and that the board elected to nominate the previously hired Mr. John Kelleher. Dr. Blasco added that Mrs. Bernstein-Chapman was one of the better qualifying finalists. All were in favor of the motion.

\*b. Approval/Rejection of Employment Contract for Melanie Bernstein-Chapman, Esquire  
(For Possible Action)

Dr. Blasco stated that Mrs. Bernstein-Chapman was offered the same contract as Mr. Kelleher. He asked there were any questions. None were offered. Dr. Blasco called for a motion.

MOTION: Dr. Pinther made the motion to approve the contract for Mrs. Bernstein-Chapman and the Nevada State Board of Dental Examiners, was seconded by Dr. Johnson. All were in favor of the motion.

4. Public Comment: (Public Comment is limited to three (3) minutes for each individual) No public comment.

Note: No vote may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020)

5. Announcements: No announcements were made.

\*6. Adjournment (For Possible Action)

Dr. Blasco called for a motion to adjourn the meeting of September 11, 2017 at 6:15 p.m.

MOTION: Dr. Johnson made the motion to adjourn, seconded by Dr. Sanders. All were in favor of the motion.

Meeting Adjourned at 6:15 p.m.

Respectfully submitted by:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Debra Shaffer-Kugel, Executive Director

\*\*\* THESE MINUTES BEING PROVIDED ARE DRAFT MINUTES AND ARE NOT TO BE USED AS A FINAL ACCOUNT OF THE DISCUSSIONS AND ACTIONS TAKEN BY THE BOARD AT THIS INDICATED MEETING. THESE DRAFT MINUTES ARE SUBJECT TO REVIEW, EDITING AND OFFICIAL APPROVAL BY THE BOARD PURSUANT TO NRS 241.035.\*\*\*

**Nevada State Board of Dental Examiners**  
**Balance Sheet**  
As of July 31, 2017

	<u>Jul 31, 17</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
10000 · Wells Fargo-Operating	665,905
10015 · Wells Fargo - Saving	1,030,974
10010 · Wells Fargo-Reserves	<u>1,053,699</u>
<b>Total Checking/Savings</b>	<u>2,750,578</u>
<b>Accounts Receivable</b>	
11000 · Accounts Receivable	<u>113,540</u>
<b>Total Accounts Receivable</b>	<u>113,540</u>
<b>Other Current Assets</b>	
11050 · Reimbursements Receivable	8
11200 · Prepaid Expenses	15,407
11210 · Prepaid Insurance	3,335
18000 · Deferred Outflows-Pension	<u>88,435</u>
<b>Total Other Current Assets</b>	<u>107,185</u>
<b>Total Current Assets</b>	<u>2,971,303</u>
<b>TOTAL ASSETS</b>	<u><u>2,971,303</u></u>
<b>LIABILITIES &amp; FUND BALANCE</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
<b>Accounts Payable</b>	
20000 · Accounts Payable	<u>29,433</u>
<b>Total Accounts Payable</b>	<u>29,433</u>
<b>Other Current Liabilities</b>	
22125 · DDS Deferred Revenue	1,150,646
22136 · RDH Deferred Revenue	200,612
20500 · Fines Payable-State of Nevada	650
23750 · Accrued Vacation/Sick Leave	59,270
23820 · Employee HSA/Ins Payable	5
23821 · Employee Deferred Comp Payable	<u>125</u>
<b>Total Other Current Liabilities</b>	<u>1,411,308</u>
<b>Total Current Liabilities</b>	<u>1,440,741</u>
<b>Long Term Liabilities</b>	
20601 · Pension Liability	465,513
21001 · Deferred Inflows-Pension	<u>66,247</u>
<b>Total Long Term Liabilities</b>	<u>531,760</u>
<b>Total Liabilities</b>	<u>1,972,501</u>
<b>Fund Balance</b>	<u>998,802</u>
<b>TOTAL LIABILITIES &amp; FUND BALANCE</b>	<u><u>2,971,303</u></u>

**Nevada State Board of Dental Examiners**  
**Statement of Revenues, Expenses and Fund Balance**  
July 2017

	<u>Jul 17</u>	<u>Budget</u>	<u>\$ Over Budget</u>
<b>Ordinary Income/Expense</b>			
<b>Income</b>			
<b>40000 · Dentist Licenses &amp; Fees</b>			
40100 · DDS Active License Fee	44,021	48,875	(4,854)
40102 · DDS Inactive License Fee	2,558	2,675	(117)
40135 · DDS Activate/Inactive/Suspend	11,725	1,063	10,662
40136 · DDS Activate Revoked License	900		900
40140 · Specialty License App	250	500	(250)
40145 · Limited License App	375	250	125
40115 · Limited License Renewal Fee	775	1,010	(235)
40116 · LL-S Renewal Fee	207	200	7
40150 · Restricted License App		100	(100)
40180 · Anesthesia Site Permit App		1,665	(1,665)
40182 · CS/GA/Site Permit Renewals	3,033	3,225	(192)
40183 · GA/CS/DS or Site Permit Reinp		850	(850)
40175 · Conscious Sedation Permit Appl	3,000	2,500	500
40170 · General Anesthesia Permit Appl	500	2,250	(1,750)
40184 · Infection Control Inspection	2,500	1,875	625
40212 · DDS ADEX License Application	1,200	3,600	(2,400)
40205 · DDS Credential Appl Fee-Spclty		2,400	(2,400)
40211 · DDS WREB License Application	7,800	10,800	(3,000)
<b>Total 40000 · Dentist Licenses &amp; Fees</b>	<u>78,844</u>	<u>83,838</u>	<u>(4,994)</u>
<b>50000 · Dental Hygiene Licenses &amp; Fees</b>			
40213 · RDH Endorsement License App	300		300
40105 · RDH Active License Fee	17,567	16,500	1,067
40106 · RDH Inactive License Fee	671	670	1
40130 · RDH Activate/Inactive/Suspend	500	900	(400)
40110 · RDH LA/N2O Permit Fee	1,600	800	800
40224 · RDH ADEX License Application		1,200	(1,200)
40222 · RDH WREB License Application	5,100	4,800	300
<b>Total 50000 · Dental Hygiene Licenses &amp; Fees</b>	<u>25,738</u>	<u>24,870</u>	<u>868</u>
<b>50750 · Other Licenses &amp; Fees</b>			
40220 · License Verification Fee	875	625	250
40227 · CEU Provider Fee		775	(775)
40225 · Duplicate License Fee	50	50	
40555 · Fines		50	(50)
40185 · Lists/Labels Printed	800	500	300
40600 · Miscellaneous Income		80	(80)
<b>Total 50750 · Other Licenses &amp; Fees</b>	<u>1,725</u>	<u>2,080</u>	<u>(355)</u>
<b>Total Income</b>	<u>106,307</u>	<u>110,788</u>	<u>(4,481)</u>



**Nevada State Board of Dental Examiners**  
**Statement of Revenues, Expenses and Fund Balance**  
July 2017

Expense	Jul 17	Budget	\$ Over Budget
<b>60500 · Bank Charges</b>			
60500-1 · Bank Service Fees		25	(25)
60500-2 · Merchant Fees	2,945	1,550	1,395
<b>Total 60500 · Bank Charges</b>	2,945	1,575	1,370
<b>63000 · Dues &amp; Subscriptions</b>	437	525	(88)
<b>65100 · Furniture &amp; Equipment</b>	14,644	1,500	13,144
<b>65500 · Finance Charges</b>		5	(5)
<b>66500 · Insurance</b>			
66500-1 · Liability	614	915	(301)
66500-2 · Workers Compensation	520	400	120
<b>Total 66500 · Insurance</b>	1,134	1,315	(181)
<b>66520 · Internet/Web/Domain</b>			
66520-2 · E-mail, Website Services	362	313	49
66520-3 · Internet Services	199	200	(1)
66520-4 · Jurisprudence Exam Website		198	(198)
<b>Total 66520 · Internet/Web/Domain</b>	561	711	(150)
<b>73500 · Information Technology</b>			
73500-1 · Computer Repair/Upgrade	180	850	(670)
<b>Total 73500 · Information Technology</b>	180	850	(670)
<b>66600 · Office Supplies</b>	1,935	825	1,110
<b>66650 · Office Expense</b>			
68710 · Miscellaneous Expenses		413	(413)
<b>68700 · Repairs &amp; Maintenance</b>			
68700-1 · Janitorial	500	500	
68700-2 · Copier Maintenance (7545P)	608	384	224
68700-3 · Copier Maintenance (7435P)		157	(157)
<b>Total 68700 · Repairs &amp; Maintenance</b>	1,108	1,041	67
68725 · Security	70	70	
68715 · Shredding Services	349	138	211
68720 · Utilities	517	550	(33)
<b>Total 66650 · Office Expense</b>	2,044	2,212	(168)
<b>67000 · Printing</b>	198	1,000	(802)
<b>67500 · Postage &amp; Delivery</b>	1,164	1,125	39
<b>68500 · Rent/Lease Expense</b>			
68500-1 · Equipment Lease	379	125	254
68500-2 · Office	5,872	5,940	(68)
68500-4 · Storage Warehouse	88	95	(7)
<b>Total 68500 · Rent/Lease Expense</b>	6,339	6,160	179
<b>75000 · Telephone</b>			
75000-1 · Telephone-Office	93	90	3
<b>Total 75000 · Telephone</b>	93	90	3

**Nevada State Board of Dental Examiners**  
**Statement of Revenues, Expenses and Fund Balance**  
**July 2017**

	<u>Jul 17</u>	<u>Budget</u>	<u>\$ Over Budget</u>
<b>73600 · Professional Fee</b>			
73600-1 · Accounting/Bookkeeping	2,685	1,500	1,185
73600-4 · Legislative Services	3,000	3,000	
73600-2 · Legal-General	1,188	800	388
<b>Total 73600 · Professional Fee</b>	<b>6,873</b>	<b>5,300</b>	<b>1,573</b>
<b>73700 · Verification Services</b>	2,352	1,250	1,102
<b>72000 · Employee Wages &amp; Benefits</b>			
72100 · Executive Director	11,323	10,988	335
72300 · Credentialing & Licensing Coord	4,165	5,014	(849)
72132 · Site Inspection Coordinator	3,008	3,372	(364)
72200 · Technology/Finance Liaison	4,547	4,318	229
72130 · Public Info & CE Coordinator	2,638	2,880	(242)
72160 · Legal Counsel	8,782	9,717	(935)
72165 · Legal Assistant		4,529	(4,529)
72010 · Payroll Service Fees	146	141	5
72005 · Payroll Tax Expense	644	733	(89)
72600 · Retirement Fund Expense (PERS)	9,481	10,892	(1,411)
65525 · Health Insurance	5,264	6,887	(1,623)
<b>Total 72000 · Employee Wages &amp; Benefits</b>	<b>49,998</b>	<b>59,471</b>	<b>(9,473)</b>
<b>72400 · Board of Directors Expense</b>			
72400-1 · Director Stipends	720	720	
72400-2 · Committee Mtgs-Stipends		188	(188)
72400-3 · Director Travel Expenses		500	(500)
72400-9 · Refreshments - Board Meetings	101	213	(112)
<b>Total 72400 · Board of Directors Expense</b>	<b>821</b>	<b>1,621</b>	<b>(800)</b>
<b>60001 · Anesthesia Eval Committee</b>			
60001-1 · Evaluator's Fee	1,104	1,000	104
60001-4 · Travel/Misc. Expense	149	290	(141)
<b>Total 60001 · Anesthesia Eval Committee</b>	<b>1,253</b>	<b>1,290</b>	<b>(37)</b>
<b>73650 · Investigations/Complaints</b>			
72550 · DSO Coordinator	200	400	(200)
73650-1 · DSO Consulting Fee	1,650	2,580	(930)
73650-2 · DSO Travel Expense		125	(125)
73651-1 · DSO Review Panel Fee		1,200	(1,200)
73651-2 · DSO Review Panel Travel Expense		250	(250)
73650-3 · Legal Fees-Investigations	1,609		1,609
73650-4 · Staff Travel		50	(50)
73650-7 · Miscellaneous Investigation Exp	575	1,325	(750)
<b>Total 73650 · Investigations/Complaints</b>	<b>4,034</b>	<b>5,930</b>	<b>(1,896)</b>

**Nevada State Board of Dental Examiners**  
**Statement of Revenues, Expenses and Fund Balance**  
July 2017

	<u>Jul 17</u>	<u>Budget</u>	<u>\$ Over Budget</u>
<b>60002 · Infection Control Inspection</b>			
60002-1 · Initial Inspection Expense	150	920	(770)
60002-2 · Reinspection Expense	117	85	32
60002-3 · Random Inspection Expense		45	(45)
60002-4 · Travel/Misc. Expense	32	210	(178)
<b>Total 60002 · Infection Control Inspection</b>	<u>299</u>	<u>1,260</u>	<u>(961)</u>
<b>Total Expense</b>	<u>97,304</u>	<u>94,015</u>	<u>3,289</u>
<b>Net Ordinary Income</b>	9,003	16,773	(7,770)
<b>Other Income/Expense</b>			
<b>Other Income</b>			
40800 · Interest Income	39	70	(31)
<b>Total Other Income</b>	<u>39</u>	<u>70</u>	<u>(31)</u>
<b>Net Other Income</b>	<u>39</u>	<u>70</u>	<u>(31)</u>
<b>Net Income Over Expenses</b>	<u><u>9,042</u></u>	<u><u>16,843</u></u>	<u><u>(7,801)</u></u>



# CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada  
Acting By and Through Its

NEVADA STATE BOARD OF DENTAL EXAMINERS  
6010 S. Rainbow Blvd, A-1  
Las Vegas, NV 89118  
(702) 486-7044 fax (702) 486-7046

and

EDULOKA LIMITED  
Db; inLumon  
9645 Gateway Drive, Suite A  
Reno, Nevada 89521  
T: 775-324-0938  
F: 1.206.338.2638  
(800) 246-0541  
Email: info@inlumon.com

(NAME, CONTACT PERSON, ADDRESS, PHONE, FACSIMILE NUMBER OF INDEPENDENT CONTRACTOR)

WHEREAS, NRS 333.700 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

- 1. REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.
- 2. DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year. "Current State Employee" means a person who is an employee of an agency of the State. "Former State Employee" means a person who was an employee of any agency of the State at any time within the preceding 24 months.
- 3. CONTRACT TERM.** This Contract shall be effective from January 1, 2018 (subject to Board of Examiners' approval) to December 31, 2018, unless sooner terminated by either party as specified in paragraph ten (10).
- 4. NOTICE.** Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of termination for default, or notice of termination without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.
- 5. INCORPORATED DOCUMENTS.** The parties agree that this Contract, inclusive of the following attachments, specifically describes the scope of work. This Contract incorporates the following attachments in descending order of constructive precedence:



ATTACHMENT AA: SCOPE OF WORK  
ATTACHMENT BB: INSURANCE SCHEDULE: And

A Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract.

6. **6. CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph five (5) at a cost of \$ 2100.00\_\_\_\_\_ per month (state the exact cost or hourly, daily, or weekly rate exclusive of travel or per diem expenses) with the total Contract or installments not to exceed \$ \_\_\_\_\_\$25,200.00\_\_\_\_\_. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. **7. ASSENT.** The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. **8. BILLING SUBMISSION: TIMELINESS.** The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same calendar year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to the Contractor.

9. **9. INSPECTION & AUDIT.**

a. **Books and Records.** Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

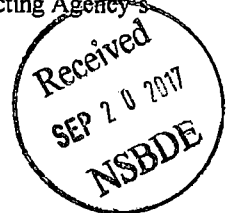
b. **Inspection & Audit.** Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. **Period of Retention.** All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. **10. CONTRACT TERMINATION.**

a. **Termination Without Cause.** Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties, or unilaterally by either party without cause.

b. **State Termination for Non-appropriation.** The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.



c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

- i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
- ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
- iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
- v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
- vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph four (4), and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

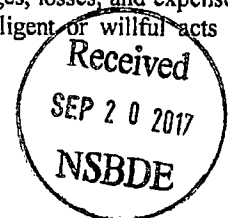
- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
- ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
- iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
- iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph twenty-one (21).

11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include, without limitation, one hundred and twenty-five dollars (\$125.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190. In the event that the Contractor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Contractor to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.

12. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

14. INDEMNIFICATION. To the fullest extent permitted by law Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.





15. INDEPENDENT CONTRACTOR. Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, nor representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine "independent contractor" status, and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

	<u>Contractor's Initials</u>	
	YES	NO
1. Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	_____	_____ <i>KB</i>
2. Will the Contracting Agency be providing training to the independent contractor?	_____	_____ <i>KB</i>
3. Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	_____	_____ <i>KB</i>
4. Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?	_____	_____ <i>KB</i>
5. Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	_____	_____ <i>KB</i>
6. Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?	_____	_____ <i>KB</i>
7. Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?	_____	_____ <i>KB</i>

16. INSURANCE SCHEDULE. Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in Attachment BB, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

The Contractor shall not commence work before:

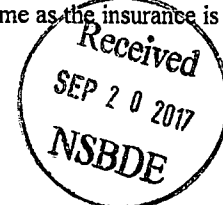
- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in Attachment BB, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until:

1. Final acceptance by the State of the completion of this Contract; or
  2. Such time as the insurance is no longer required by the State under the terms of this Contract;
- Whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of, and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer



required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

**General Requirements:**

- a. **Additional Insured:** By endorsement to Contractor's general liability insurance policy, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. **Waiver of Subrogation:** Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307, for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.
- c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.
- e. **Policy Cancellation:** Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown on page one (1) of this contract:
- f. **Approved Insurer:** Each insurance policy shall be:
  - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
  - 2) Currently rated by A.M. Best as "A-VII" or better.

**Evidence of Insurance:**

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

1) **Certificate of Insurance:** The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized insurer to bind coverage on its behalf. The state project/contract number; description and contract effective dates shall be noted on the certificate, and upon renewal of the policies listed Contractor shall furnish the State with replacement certificates as described within Insurance Coverage, section noted above.

**Mail all required insurance documents to the State Contracting Agency identified on page one of the contract.**

- 2) **Additional Insured Endorsement:** An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85) , signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per General Requirements, subsection a above.
- 3) **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the underlying Schedule from the Umbrella or Excess insurance policy may be required.

**Review and Approval:** Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

17. **COMPLIANCE WITH LEGAL OBLIGATIONS.** Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will



be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

18. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

19. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the State.

21. STATE OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract

24. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offer or for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)



25. LOBBYING. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

- a. Any federal, state, county or local agency, legislature, commission, counsel or board;
- b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
- c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. WARRANTIES.

a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State.

27. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. NOTIFICATION OF UTILIZATION OF CURRENT OR FORMER STATE EMPLOYEES. Contractor has disclosed to the State all persons that the Contractor will utilize to perform services under this Contract who are Current State Employees or Former State Employees. Contractor will not utilize any of its employees who are Current State Employees or Former State Employees to perform services under this contract without first notifying the Contracting Agency of the identity of such persons and the services that each such person will perform, and receiving from the Contracting Agency approval for the use of such persons.

29. ASSIGNMENT OF ANTITRUST CLAIMS. Contractor irrevocably assigns to the State any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state of Nevada or federal antitrust laws in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at the State's option, the right to control any such litigation on such claim for relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's obligations under this Contract to irrevocably assign to the State, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of state of Nevada or federal antitrust laws in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

30. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict of laws that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.

31. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.





IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

B. Karitha Raj.  
Independent Contractor's Signature

9/18/2017  
Date

PRESIDENT  
Independent's Contractor's Title ~~President Graphic Imaging Services, Inc.~~  
EduLoka Limited

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature - Board of Examiners

APPROVED BY BOARD OF EXAMINERS

Approved as to form by:

On \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Deputy Attorney General for Attorney General

On \_\_\_\_\_  
(Date)



**INDEMNIFICATION CLAUSE:**

Contractor shall indemnify, hold harmless and, not excluding the State's right to participate, defend the State, its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs, (hereinafter referred to collectively as "claims") for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State.

**INSURANCE REQUIREMENTS:**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

**1. Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000



- Each Occurrence \$1,000,000
- a. The policy shall be endorsed to include the following additional insured language:  
"The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

**2. Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the State of Nevada.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

**2. Professional Liability (Errors and Omissions Liability)**

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

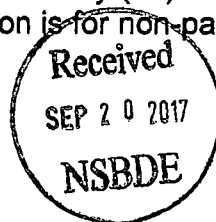
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

**B. ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

- 1. On insurance policies where the State of Nevada is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
- 2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

**C. NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the State, except when cancellation is for non-payment of premium, then ten (10)



days prior notice may be given. Such notice shall be sent directly to **(State of Nevada Department Representative's Name & Address)**.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A-VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to **(State Department Representative's Name and Address)**. The State project/contract number and project description shall be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATES RISK MANAGEMENT DIVISION.**

F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies or Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Attorney General's Office or the Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.





# Nevada State Board of Dental Examiners



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

TENTATIVE

## Calendar of Events for 2018

### Board Meetings Dates.

Friday January 19, 2018

Friday March 23, 2018

Friday May 18, 2018

Friday July 13, 2018

Friday September 21, 2018

Friday November 9, 2018

### American Association of Dental Board Meetings.

Mid-Year Meeting – AADB- Chicago, IL – April 2018

Annual Meeting- AADB- TBA

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July 17, 2017

Ms. Debra Shaffer-Kugel  
Executive Director  
Nevada Board of Dental Examiners  
6010 S. Rainbow Blvd., Ste. A-1  
Las Vegas, NV 89118

**RE: Dental Specialty Advertising**

Dear Ms. Shaffer-Kugel,

We serve as legal counsel to the American Board of Dental Specialties (ABDS), and the four respective boards currently comprising the ABDS. As you may be aware, a recent case decided in the US Court of Appeals for the Fifth Circuit relates to these individual boards and the ability of their respective Diplomates to advertise themselves as 'specialists.' That decision is enclosed.

Your Board's current regulations, de facto or de jure, limit specialty/specialist advertising to ADA recognized specialties. I am writing to formally request that the Board of Dentistry recognize the ABDS boards/areas of practice as specialties and include them, and any future ABDS recognized specialties, under the applicable law of your State.

The ABDS was formed to offer a specialty recognition process, similar to the American Board of Medical Specialties (ABMS), which is not controlled by a private professional Association such as the American Dental Association, or any Council or Commission of the ADA. The focus of the ABDS is on recognizing certifying boards as "specialty boards." To be recognized by the ABDS, a certifying board seeking recognition must require a minimum of two (2) full-time, formal, advanced educational programs that are a minimum of two (2) years in duration and are presented by recognized educational institutions; or require 400 didactic hours of post dental school education and the equivalent of one (1) year of clinical practice. A certifying board that is seeking membership in the American Board of Dental Specialties must: 1) reflect a distinct



and well-defined area of expertise in dental practice; 2) develop a rigorous standard of preparation and evaluation in the area of dentistry; 3) provide evidence of psychometric evaluation of a written and oral examination; 4) provide an effective mechanism to maintain certification; and 5) exist as an independent, self-governing entity comprised of dentists whose main purpose is to evaluate candidates for board certification. The documentation and application requirements are numerous, and I am confident that the Board of Dentistry will be satisfied that the ABDS maintains rigorous standards for recognition.

Moreover, as you may know, the ADA recently revised its Code of Ethics to allow dentists to advertise a specialty not recognized by the ADA. I am enclosing ADA Resolution No. 65, along with the explanatory preface and the amended Section 5.H of the ADA Principles of Ethics and Code of Professional Conduct. As you can see, the ADA itself has determined that its specialty list is nonexclusive, and its Code of Ethics no longer prohibits lawfully advertising non-ADA specialties. To that end, I would urge your Board to modify its existing regulations to comport with the relevant court decisions, and in accordance with Resolution 65 of the ADA.

Lastly and importantly, recognizing the ABDS and its certifying boards would avoid First Amendment issues related to commercial free speech and the attendant liability under 42 U.S.C. § 1983, as well as eliminate any antitrust concerns.

Thank you.

Sincerely,



Frank R. Recker, DDS

Enclosures  
FRR/sle



**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

June 19, 2017

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 16-50157  
\_\_\_\_\_

**AMERICAN ACADEMY OF IMPLANT DENTISTRY; AMERICAN SOCIETY OF DENTIST ANESTHESIOLOGISTS; AMERICAN ACADEMY OF ORAL MEDICINE; AMERICAN ACADEMY OF OROFACIAL PAIN; JAY E. ELLIOTT, D. D. S.; MONTY BUCK, D. D. S.; JAROM C. HEATON, D. D. S.; MICHAEL A. HUBER, D. D. S.; EDWARD F. WRIGHT, D. D. S., M. S.,**

**Plaintiffs - Appellees**

v.

**KELLY PARKER, in her official capacity as Executive Director of the Texas State Board of Dental Examiners, TAMELA L. GOUGH, D. D. S., M. S., in her official capacity as a Member of the Texas Board of Dental Examiners; STEVE AUSTIN, D. D. S., in his official capacity as a Member of the Texas Board of Dental Examiners; TIM O'HARE, in his official capacity as a Member of the Texas Board of Dental Examiners; KIRBY BUNEL, JR., D. D. S., in his official capacity as a Member of the Texas Board of Dental Examiners; WILLIAM R. BIRDWELL, D. D. S., in his official capacity as a Member of the Texas Board of Dental Examiners; EMILY A. CHRISTY, in her official capacity as a Member of the Texas Board of Dental Examiners; JAMES W. CHANCELLOR, D. D. S., in his official capacity as a Member of the Texas Board of Dental Examiners; RODOLFO G. RAMOS, JR., D. D. S., in his official capacity as a Member of the Texas Board of Dental Examiners; LEWIS WHITE, in his official capacity as a Member of the Texas Board of Dental Examiners; WHITNEY HYDE, in her official capacity as a Member of the Texas Board of Dental Examiners; RENEE CORNETT, R. D. H., in her official capacity as a Member of the Texas Board of Dental Examiners; D. BRADLEY DEAN, D. D. S., in his official capacity as a Member of the Texas Board of Dental Examiners; CHRISTIE LEEDY, D. D. S., in her official capacity as a Member of the Texas Board of Dental Examiners; LOIS PALERMO, R. D. H., in his official capacity as a Member of the Texas Board of Dental Examiners; EVANGELIA MOTE, in her official capacity as a Member of the Texas Board of Dental Examiners,**

**Defendants - Appellants**





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Appeals from the United States District Court  
for the Western District of Texas

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Before ELROD, SOUTHWICK, and GRAVES, Circuit Judges.

LESLIE H. SOUTHWICK, Circuit Judge:

The plaintiffs challenge a provision in the Texas Administrative Code regulating advertising in the field of dentistry. The district court held that the provision violated the plaintiffs' First Amendment right to engage in commercial speech. It therefore enjoined enforcement of the provision as applied to the plaintiffs. The defendants appealed. We AFFIRM.

FACTUAL AND PROCEDURAL BACKGROUND

Texas law prohibits dentists from advertising as specialists in areas that the American Dental Association ("ADA") does not recognize as specialties. See TEX. ADMIN. CODE § 108.54. The plaintiffs seek to enjoin enforcement of Section 108.54, as they wish to advertise in areas recognized as specialties by other dental organizations but not by the ADA. They argue the First and Fourteenth Amendments give them the right to do so.

This appeal involves several plaintiffs. The organizational plaintiffs include the American Academy of Implant Dentistry, the American Society of Dental Anesthesiologists, the American Academy of Oral Medicine, and the American Academy of Orofacial Pain. These organizations are national organizations with member dentists. The purpose of each organization is to advance the interests of dentists practicing in the organization's respective practice area. Each organization sponsors a credentialing board and offers credentials to members who demonstrate expertise in their respective field.



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The individual plaintiffs are five dentists, three of whom are in private practice and two of whom are professors at the University of Texas Health Science Center School of Dentistry. The individual plaintiffs limit their practice to one of the following practice areas: implant dentistry, dental anesthesiology, oral medicine, and orofacial pain. Each of the individual plaintiffs has been certified as a "diplomate" by one of the organizational plaintiffs' credentialing boards, indicating that the plaintiff has achieved that board's highest honor by meeting certain requirements set by the board "including training and experience beyond dental school."

The Texas Occupations Code provides that the Texas State Board of Dental Examiners may "adopt and enforce reasonable restrictions to regulate advertising relating to the practice of dentistry . . . ." See TEX. OCC. CODE § 254.002(b). The plaintiffs take issue with one of the Board's regulations, Texas Administrative Code Section 108.54. Section 108.54 provides:

A dentist may advertise as a specialist or use the terms "specialty" or "specialist" to describe professional services in recognized specialty areas that are: (1) recognized by a board that certifies specialists in the area of specialty; and (2) accredited by the Commission on Dental Accreditation of the American Dental Association.

TEX. ADMIN. CODE § 108.54(a). Part (b) lists the ADA's nine recognized specialty areas as the ones that meet the requirements of part (a).<sup>1</sup> The Board does not itself certify specialties but instead relies exclusively on the ADA for that purpose. Section 108.54 also requires certain ADA-related education or board-certification qualifications in order to advertise as a specialist. See TEX. ADMIN. CODE § 108.54(c).

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<sup>1</sup> Those recognized specialty areas are endodontics, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, dental public health, oral and maxillofacial pathology, and oral and maxillofacial radiology. See TEX. ADMIN. CODE § 108.54(b).



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Section 108.54 prohibits the individual plaintiffs from advertising as specialists or referring to their practice areas as specialties because their practice areas are not recognized as such by the ADA. The ADA has considered whether to grant specialty recognition to the plaintiffs' respective practice areas, but thus far it has denied that recognition. Nevertheless, the plaintiffs are not completely forbidden from advertising their practice areas. In 2012, two of the individual plaintiffs in this case and the American Academy of Implant Dentistry challenged a separate provision of the Texas Administrative Code that restricted the plaintiffs from advertising their credentials and holding themselves out as specialists in implant dentistry. The Board responded by revising an existing regulation and adding another. *See* TEX. ADMIN. CODE §§ 108.55, 108.56. Section 108.55 allows general dentists who do some work related to the specialty areas listed in Section 108.54(b) to advertise those services as long as they include a disclaimer that they are a general dentist and do not imply specialization. Section 108.56 provides that dentists may advertise "credentials earned in dentistry so long as they avoid any communications that express or imply specialization . . ." *See also* TEX. ADMIN. CODE § 108.57 (prohibiting false, misleading, or deceptive advertising).

Under the current regulations, the plaintiffs may advertise credentials they have earned and the services they provide only if they clearly disclose that they are a "general dentist" and do not "imply specialization." *See* TEX. ADMIN. CODE §§ 108.55, 108.56. The plaintiffs complain that this regime prevents them from truthfully holding themselves out as "specialists" in their fields.

In March 2014, the plaintiffs brought this action against the executive director and members of the Board in their official capacities. The plaintiffs challenged Section 108.54 on First and Fourteenth Amendment grounds, and the parties eventually filed cross-motions for summary judgment. The district court granted summary judgment to the plaintiffs in part, concluding that



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Section 108.54 “is an unconstitutional restriction on Plaintiffs’ First Amendment right to free commercial speech.” The court enjoined the defendants “from enforcing Texas Administrative Code § 108.54 to the extent it prohibits Plaintiffs from advertising as specialists or using the terms ‘specialty’ or ‘specialist’ to describe an area of dentistry not recognized as a specialty by the American Dental Association, or any other provision of Texas law inconsistent with [the district court’s] opinion.” The court determined the plaintiffs’ “remaining Fourteenth Amendment claims are without merit” and granted summary judgment to the defendants on those claims. The defendants appealed.

#### DISCUSSION

We review a judgment on cross-motions for summary judgment *de novo* “with evidence and inferences taken in the light most favorable to the nonmoving party.” *White Buffalo Ventures, LLC v. Univ. of Texas at Austin*, 420 F.3d 366, 370 (5th Cir. 2005). Summary judgment is proper when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a).

This case involves commercial speech, which is protected by the First Amendment. See *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 761–62 (1976). “Commercial expression not only serves the economic interest of the speaker, but also assists consumers and furthers the societal interest in the fullest possible dissemination of information.” *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of New York*, 447 U.S. 557, 561–62 (1980).

Though commercial speech is protected by the First Amendment, courts give to it “lesser protection . . . than to other constitutionally guaranteed expression.” *Id.* at 563. A four-part test applies:





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At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

*Id.* at 566. “The party seeking to uphold a restriction on commercial speech carries the burden of justifying it.” *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 71 n.20 (1983). Within this framework, we consider the plaintiffs’ challenge to Section 108.54. We conclude that the Board fails to justify Section 108.54 under the *Central Hudson* analysis. We do not reach the plaintiffs’ Fourteenth Amendment argument.

Before we begin our analysis, we measure the reach of the district court’s ruling. The parties dispute whether the district court enjoined Section 108.54 facially or as applied. We find that answer in the district court’s own words: Section 108.54 “is an unconstitutional restriction on Plaintiffs’ First Amendment right to free commercial speech.” We interpret that language to mean that Section 108.54 is held to be unconstitutional only as applied to these plaintiffs. Neither the district court nor we address whether this language would also fail a facial challenge.

*I. Lawful Activity, Not Misleading*

In order for commercial speech to be protected under the First Amendment, “it at least must concern lawful activity and not be misleading.” *Central Hudson*, 447 U.S. at 566. “The first part of the test is really a threshold determination whether the speech is constitutionally protected . . . .” *Byrum v. Landreth*, 566 F.3d 442, 446 (5th Cir. 2009).



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The parties do not dispute that the relevant speech in this case concerns lawful activity. Texas law permits the individual plaintiffs to limit their practice to the fields of implant dentistry, dental anesthesiology, oral medicine, and orofacial pain. We agree, then, that advertising as a specialist in one of these practice areas concerns lawful activity.

The parties disagree as to whether the speech would be misleading or just potentially misleading. The distinction is important. “States may not place an absolute prohibition on certain types of potentially misleading information . . . if the information also may be presented in a way that is not deceptive.” *In re R.M.J.*, 455 U.S. 191, 203 (1982). “But when the particular content or method of the advertising suggests that it is inherently misleading or when experience has proved that in fact such advertising is subject to abuse, the States may impose appropriate restrictions.” *Id.*

The Board argues that the relevant speech here is inherently misleading because the term “specialist,” in the context of unregulated dental advertising, is devoid of intrinsic meaning. The Board urges us to categorize the term “specialist” in a completely unregulated context, reasoning “the State need only show that an unregulated, unadorned, and unexplained claim of ‘specialist’ status in a particular practice area is inherently misleading[.]” In support, the Board offers witness testimony from several dentists regarding what they perceive “specialist” to mean. Observing that the witnesses characterize “specialist” differently, the Board reasons the term “specialist” has no agreed-upon meaning, is devoid of intrinsic meaning, and is therefore inherently misleading.

It has been “suggested that commercial speech that is devoid of intrinsic meaning may be inherently misleading, especially if such speech historically has been used to deceive the public.” *Peel v. Attorney Registration & Disciplinary Comm’n of Illinois*, 496 U.S. 91, 112 (1990) (Marshall, J. &



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Brennan, J., concurring in the judgment). The Court noted, for example, that a trade name is “a form of commercial speech that has no intrinsic meaning.” *Friedman v. Rogers*, 440 U.S. 1, 12 (1979). “A trade name conveys no information about the price and nature of the services offered . . . until it acquires meaning over a period of time . . .” *Id.* The term “specialist,” by contrast, is not devoid of intrinsic meaning. All of the testimony offered by the Board demonstrates that the term “specialist” conveys a degree of expertise or advanced ability. Although different consumers may understand the degree of expertise in different ways, that only shows the term has the potential to mislead. It does not mean the term is devoid of intrinsic meaning and, therefore, inherently misleading.

The Board nevertheless urges that the use of the term “specialist” is unprotected because, unlike in *Peel*, the “specialist” designation might be used without reference to any certifying organization. The Court in *Peel* considered a claim of “certification as a ‘specialist’ by an identified national organization[.]” *Peel*, 496 U.S. at 105. The problem here is the absence of any group imprimatur behind the label “specialist.” Nonetheless, the term “specialist” is not rendered devoid of intrinsic meaning, and thereby inherently misleading, simply because the organization responsible for conferring specialist credentials on a particular dentist is not identified in the advertisement. See *Ibanez v. Florida Dep’t of Bus. & Prof’l Regulation, Bd. of Accountancy*, 512 U.S. 136, 145 & n.9 (1994). Whether the absence of that information contributes to the potentially misleading character of the speech is a separate question.

Moreover, there is no evidence that the term “specialist” has been or will be used in a way that is distinct from its ordinary meaning. In one appeal, we held that the use of the term “invoice” in automobile advertising was inherently misleading because it was “calculated to confuse the consumer[.]”



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*Joe Conte Toyota, Inc. v. Louisiana Motor Vehicle Comm'n*, 24 F.3d 754, 757 (5th Cir. 1994) (quotation marks omitted). It was misleading because an advertised price of "\$49.00 over invoice" could mean a multitude of prices other than the dealer's true cost because "holdbacks, incentives, and rebates" were included in the dealer's cost. *Id.* The word "invoice" did "not mean what it appear[ed] to mean" and conveyed no useful information to the consumer. *Id.*

Here, the individual plaintiffs intend to use "specialist" in the same manner as dentists practicing in ADA-recognized specialties, namely, to convey useful, truthful information to the consumer. Unlike in *Joe Conte*, the relevant term — "specialist" as opposed to "invoice" — will be used in a way that is consistent with its ordinary meaning.

Finally, the Board suggests that the plaintiffs' proposed speech is inherently misleading simply because it does not comply with the regulatory requirements imposed by the Board. According to the Board, Section 108.54 "is what gives 'specialist' a standardized, reliable meaning in dental advertising in Texas." The Board's argument would grant it the ability to limit the use of the term "specialist" simply by virtue of having created a regime that defines recognized and non-recognized specialties. *See Byrum*, 566 F.3d at 447. Even if appropriate regulation is warranted because the "specialist" designation might be potentially misleading, it is not inherently misleading merely because it does not align with the Board's preferred definition of that term.

Our fundamental issue is whether the speech is subject to First Amendment protection. "Truthful advertising related to lawful activities is entitled to the protections of the First Amendment." *In re R.M.J.*, 455 U.S. at 203. The dentists' proposed speech "may be presented in a non-deceptive manner and [is] not 'inherently likely to deceive' the public." *See Pub. Citizen, Inc. v. Louisiana Attorney Disciplinary Bd.*, 632 F.3d 212, 219 (5th Cir. 2011)



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(quoting *In re R.M.J.*, 455 U.S. at 202). “Given the complete absence of any evidence of deception, the Board’s concern about the possibility of deception in hypothetical cases is not sufficient to rebut the constitutional presumption favoring disclosure over concealment.” *Ibanez*, 512 U.S. at 145 (quotation marks and citations omitted). By completely prohibiting dentists from advertising as specialists simply because their practice area is one not recognized as a specialty by the ADA, “truthful and nonmisleading expression will be snared along with fraudulent or deceptive commercial speech[.]” See *Edenfield v. Fane*, 507 U.S. 761, 768–69 (1993).

The plaintiffs’ proposed speech is not inherently misleading. Even so, the Board may regulate potentially misleading speech if the regulation satisfies the remaining elements of the *Central Hudson* test. See *id.* at 769. In order to meet its burden, the Board must “show[] that the restriction directly and materially advances a substantial state interest in a manner no more extensive than necessary to serve that interest.” *Ibanez*, 512 U.S. at 142 (citing *Central Hudson*, 447 U.S. at 566). We now look at those issues.

## II. Substantial Interests

The parties agree that the Board has asserted substantial interests. The plaintiffs dispute two of the interests articulated by the Board: “preventing the public from being misled to believe that qualification as a ‘specialist’ under non-ADA-approved criteria is equivalent to qualification as a ‘specialist’ under ADA-approved criteria,” and “exercising its ‘power to establish standards for licensing practitioners,’ *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792 (1975)[.]” The plaintiffs argue that these are not substantial interests.

These interests appear to be related to the state’s interest in “ensuring the accuracy of commercial information in the marketplace, establishing uniform standards for certification and protecting consumers from misleading





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professional advertisements.” The Board considers the plaintiffs’ objections to be “inconsequential” because the plaintiffs concede “the State has a substantial interest in protecting the public from misleading advertising[.]” As the plaintiffs point out, however, the Board may not assert a substantial interest in Section 108.54 itself simply because “States have a compelling interest in the practice of professions within their boundaries[.]” *See also Goldfarb*, 421 U.S. at 792.

Regardless of these questions, we agree with the district court that the Board has a substantial interest in “ensuring the accuracy of commercial information in the marketplace, establishing uniform standards for certification and protecting consumers from misleading professional advertisements.” These interests satisfy this part of *Central Hudson*.

### *III. Directly Advances the Governmental Interest*

Next, we turn to whether the regulation directly advances the substantial governmental interests asserted. *See Central Hudson*, 447 U.S. at 566. This step of the *Central Hudson* analysis “concerns the relationship between the harm that underlies the State’s interest and the means identified by the State to advance that interest.” *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555 (2001). The Board’s burden on this point is significant: “the free flow of commercial information is valuable enough to justify imposing on would-be regulators the costs of distinguishing the truthful from the false, the helpful from the misleading, and the harmless from the harmful.” *Ibanez*, 512 U.S. at 143 (quotation marks omitted). “This burden is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.” *Edenfield*, 507 U.S. at 770–71. The Board may satisfy its burden with



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“empirical data, studies, and anecdotal evidence,” or “history, consensus, and simple common sense.” *See Pub. Citizen*, 632 F.3d at 221 (quoting *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 628 (1995)).

The Board says it is common sense that Section 108.54 advances the interest in establishing a uniform standard for specialization and allows consumers to distinguish between general dentists and specialists. The Board also submits that Section 108.54 protects consumers from potentially misleading speech. We note that the Board has not done much heavy lifting here. Indeed, it points to the fact that Section 108.54 provides a standard, but it offers no justification for the line that it draws other than its unsupported assertion that the ADA “should maintain the national gold standard . . . .” Its only suggestion as to why the plaintiffs’ proposed speech would be misleading is that the speech does not comport with the ADA’s list of designated specialties.

The Board attempts to support its position with the personal experiences of Board members and two surveys considered in another case. *See Borgner v. Brooks*, 284 F.3d 1204, 1211–13 (11th Cir. 2002). The personal experiences of the Board members add little to the Board’s argument, and the *Borgner* surveys hardly bolster its position. The *Borgner* surveys are not in the record and the district court could not “mak[e] an independent evaluation of their applicability to the facts before it . . . .” Moreover, those surveys were provided in support of a different regulatory regime that permitted “advertisement of an implant dentistry specialty” and membership in a credentialing organization “so long as these statements are accompanied by the appropriate disclaimers.” *Id.* at 1210. Doubt has also been raised as to the validity of the surveys. *See id.* at 1217 n.5 (Hill, J., dissenting); *see also Borgner v. Florida Bd. of Dentistry*, 123 S. Ct. 688, 689 (2002) (Thomas, J. & Ginsburg, J., dissenting from denial of certiorari).



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The Board also discusses its long history of reliance on the ADA's recognition of specialties. Other states have taken a similar approach. In supplemental briefing, however, the parties identified a recent change in the ADA's own approach to dental-specialty advertising under the ADA Principles of Ethics and Code of Professional Conduct. The ADA now concludes it is ethical for dentists, within certain parameters, to "announce as a specialist to the public" in any of the nine practice areas recognized as specialties by the ADA and "in any other areas of dentistry for which specialty recognition has been granted under the standards required or recognized in the practitioner's jurisdiction . . . ." The ADA observed that "states have begun to recognize specialties beyond the nine dental specialties recognized by the ADA."

The Board has provided little support in its effort to show that Section 108.54 advances the asserted interests in a direct and material way. *See Went For It*, 515 U.S. at 625–26. Ultimately, though, the Board's position collapses for a more fundamental reason: it fails at the outset to "demonstrate that the harms it recites are real . . . ." *See Edenfield*, 507 U.S. at 771. The Board attempts to meet its burden on this point with testimony from several witnesses describing complications experienced when patients visited a general dentist for a procedure that should have been performed by a specialist. One of the Board's members, for example, described treating a patient who experienced complications after visiting a general dentist to have nine implants placed. The patient said, "if I had only known that there was a specialist[.]" Another Board member described a similar problem, testifying that "patients will come to [his specialty] practice after experiencing a complication in a general dentist's office." A third witness testified that the "overall failure rate and complication rate was higher for nonspecialists who were placing dental implants." Nevertheless, harm from a general dentist performing work within an ADA-recognized specialty at a lower quality than



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would a specialist is not a harm that Section 108.54 remedies.<sup>2</sup> Section 108.54 regulates how a dentist may advertise his or her practice, not the kind of services a dentist can provide. The Board does not suggest that any of the complications described in the witness testimony were experienced by patients visiting dentists who held themselves out as specialists, but who were not qualified to do so.

In summary, we must examine “the relationship between the harm that underlies the State’s interest and the means identified by the State to advance that interest.” *Lorillard*, 533 U.S. at 555. The Board does not identify anything else to demonstrate real harms that Section 108.54 alleviates to a material degree. *See Edenfield*, 507 U.S. at 771. Absent that demonstration, and with little support behind its chosen means, we conclude that the Board has not met its burden at this step of the *Central Hudson* analysis.

#### IV. *Not More Extensive than is Necessary*

Even if the Board demonstrated that Section 108.54 directly advanced the interests asserted, it fails to demonstrate that it is “not more extensive than is necessary to serve” those interests. *See Central Hudson*, 447 U.S. at 566. This last step “complements” the third step of the analysis. *See Lorillard*, 533 U.S. at 556. Here, “the Constitution requires ‘a fit between the legislature’s ends and the means chosen to accomplish those ends—a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served.’” *Byrum*, 566 F.3d at 448 (quoting *Bd. of Trs. of the State Univ. of New*

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<sup>2</sup> In his deposition, one of the plaintiffs in this case stated he was “aware of . . . instances where general dentists, without any form of specialty, have advertised as implant experts and that [has] been a problem[.]” The “problem” was business competition, as the plaintiff wished to advertise that he — unlike those other dentists — was a specialist.



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*York v. Fox*, 492 U.S. 469, 480 (1989)). “[T]he existence of ‘numerous and obvious less-burdensome alternatives to the restriction on commercial speech . . . is certainly a relevant consideration in determining whether the “fit” between ends and means is reasonable.’” *Went For It*, 515 U.S. at 632 (quoting *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 417 n.13 (1993)). The cost of the restriction must be “carefully calculated,” and the Board “must affirmatively establish the reasonable fit . . . require[d].” *Fox*, 492 U.S. at 480.

Section 108.54 completely prohibits the plaintiffs from advertising as specialists in their fields solely because the ADA has not recognized their practice areas as specialties. The Board has not justified Section 108.54 with argument or evidence. Without more in the record, we find an improper fit between the means and the objective.

The Board has not suggested it considered less-burdensome alternatives. To the extent that advertising as a specialist is potentially misleading, “a State might consider . . . requiring a disclaimer about the certifying organizations or the standards of a specialty.” *See Peel*, 496 U.S. at 110 (plurality opinion). Sufficient disclaimers are a means to address consumer deception. *Pub. Citizen*, 632 F.3d at 223. Indeed, we held in *Public Citizen* that the State failed to meet its burden where it merely submitted a “conclusory statement that a disclaimer could not alleviate [the] concerns” it earlier identified. *Id.* A State might also consider “screening certifying organizations . . . .” *See Peel*, 496 U.S. at 110 (plurality opinion). The California legislature took precisely that approach when regulating the use of the term “board certified” among physicians and surgeons. *See Am. Acad. of Pain Mgmt. v. Joseph*, 353 F.3d 1099, 1107, 1111 (9th Cir. 2004). Similarly, the district court in our case noted that “[o]ne obvious less-burdensome alternative would be to peg the term ‘specialty’ or ‘specialist’ to a set of statutory or regulatory qualifications that signify the credentialing board has met some uniform standard of minimal





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competence.” This is not a novel approach. For example, one court believed California’s regulatory scheme “appeared to rely upon the ADA in making recognition decisions,” but in response to a predecessor lawsuit the dental board “developed its own recognition standards which [were] reduced to a proposed regulation.” See *Bingham v. Hamilton*, 100 F. Supp. 2d 1233, 1235 (E.D. Cal. 2000). We express no opinion regarding the merits of these alternative approaches, but we note the existence of several less-burdensome alternatives. See *Went For It*, 515 U.S. at 632.

The Board submits that the individual plaintiffs can “engage in a substantial amount of commercial speech regarding their dental practices.” The plaintiffs can advertise the credentials they have earned and the services that they provide, albeit within certain parameters. See TEX. ADMIN. CODE §§ 108.55, 108.56. Nonetheless, the existence of other forms of commercial speech does not eliminate the overbreadth of the regulation on specialty advertising that is truthful and has not been shown to be misleading commercial speech. The Board’s position is especially troublesome because there is no indication whatsoever that it “carefully calculated” the costs associated with Section 108.54. See *Fox*, 492 U.S. at 480.

We do not suggest that the Board may not impose appropriate restrictions in the area of dental specialist advertising. The plaintiffs agree that advertising as a specialist is potentially misleading and that reasonable regulation is appropriate. We hold only that the Board has not met its burden on the record before us to demonstrate that Section 108.54, as applied to these plaintiffs, satisfies *Central Hudson’s* test for regulation of commercial speech. We reiterate a limitation noted by the district court: “While the challenged restriction *might* be permissible in the abstract, it is not permissible on the record currently before the Court.”



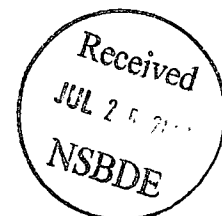
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Although the Board has not met its burden in this case, a “regulation that fails *Central Hudson* because of a lack of sufficient evidence may be enacted validly in the future on a record containing more or different evidence.” See *Pub. Citizen*, 632 F.3d at 221. Our holding neither forbids nor approves the enactment of a similar regulation supported by better evidence.

\* \* \*

The Texas Academy of Pediatric Dentistry, the Texas Society of Oral and Maxillofacial Surgeons, and the Texas Association of Orthodontists submitted an opposed motion to file an amicus brief. That motion was carried with the case. The motion is DENIED.

AFFIRMED.



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JAMES E. GRAVES, JR., Circuit Judge, dissenting:

I disagree with the majority that Rule 108.54<sup>1</sup> of the Texas Administrative Code is unconstitutional as applied to the plaintiffs (hereinafter collectively referred to as "Academy"). The advertising proposed by Academy is inherently misleading. Misleading commercial speech is not entitled to First Amendment protection. Because I would reverse the district court's grant of summary judgment on Academy's First Amendment claim and its enjoinder of the provision as applied to Academy, I respectfully dissent.

Academy wants to advertise as specialists in certain subsets of dentistry that are not recognized as specialties by the American Dental Association ("ADA") and are prohibited from doing so by the rules of the Texas State Dental Board of Dental Examiners (the "Board"). Academy brought a facial and as-applied constitutional challenge against the Board arguing that Rule 108.54, which regulates specialty advertising for dentists, unconstitutionally infringes on commercial speech protected by the First Amendment.

The district court partially granted both parties' cross-motions for summary judgment. Academy was granted summary judgment on its First Amendment claim, invalidating the ordinance as applied to Academy. The Board was granted summary judgment on Academy's equal protection and due process claims. The Board appeals the First Amendment claim. Academy failed to file a cross-appeal, but then attempts to revive a Fourteenth Amendment due process claim in the appellees' brief.

As the majority correctly states, we apply the four-part test from *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557 (1980), as follows:

At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come

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<sup>1</sup> See Appendix, No. 1, herein for 22 Tex. Admin. Code § 108.54 in its entirety.



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within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

*Id.* at 566.

As a threshold determination, for commercial speech to be protected under the First Amendment, “it at least must concern lawful activity and not be misleading.” *Central Hudson*, 447 U.S. at 566. Advertising that is inherently misleading receives no protection, while advertising that is potentially misleading may receive some if it may be presented in a way that is not deceptive. *In re R.M.J.*, 455 U.S. 191, 203 (1982).

This case is analogous to *American Board of Pain Management v. Joseph*, 353 F.3d 1099 (9th Cir. 2004), which involved a California statute that limits a physician from advertising as board certified in a medical specialty without meeting certain requirements. There, the Ninth Circuit said:

The State of California has by statute given the term “board certified” a special and particular meaning. The use of that term in advertising by a board or individual physicians who do not meet the statutory requirements for doing so, is misleading. The advertisement represents to the physicians, hospitals, health care providers and the general public that the statutory standards have been met, when, in fact, they have not.

Because the Plaintiffs' use of “board certified” is inherently misleading, it is not protected speech. But even if the Plaintiffs' use of “board certified” were merely potentially misleading, it would not change the result in this case, as consideration of the remaining three Hudson factors confirms that the State may restrict the use of the term “board certified” in advertising.

*Joseph*, 353 F.3d at 1108.



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Such is the case here. Texas has by statute given the term specialist a particular meaning. See 22 Tex. Admin. Code § 108.54; see also 22 Tex. Admin. Code §§ 119.1-119.9 (setting out special areas of dental practice).

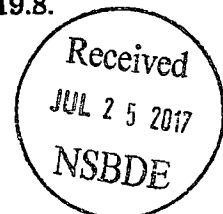
Additionally, it is only “in the context of unregulated dental advertising” that the Board contends the term “specialist” is devoid of intrinsic meaning and is inherently misleading. But with regard to the regulated dental advertising and the recognized specialty areas, the term has a special meaning and special requirements.

Further, the areas that Academy seeks to have designated as specialties are actually more like subsets, which are already encompassed within general dentistry and multiple of the existing recognized specialties. See 22 Tex. Admin. Code §§ 119.1-119.9; see also Tex. Occ. Code § 251.003 (setting out the provisions of the practice of dentistry). The majority opinion allows that, instead of a general dentist having to comply with the academic, educational or certification necessary to become, for example, a prosthodontist, a general dentist can simply get “certified” in one small aspect of the branch of prosthodontics, i.e., implants, and advertise at the same level as someone who actually completed an advanced degree in an accredited specialty.<sup>2</sup>

The majority relies on *Peel v. Attorney Registration and Disciplinary Commission of Illinois*, 496 U.S. 91 (1990), to conclude that “specialist” is not devoid of intrinsic meaning. In *Peel*, the issue involved letterhead and a statement that the attorney was a “certified civil trial specialist by the National Board of Trial Advocacy.” The Court concluded that this was not inherently misleading, saying that “it seems unlikely that petitioner's

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<sup>2</sup> “Prosthodontics is that branch of dentistry pertaining to the restoration and maintenance of oral functions, comfort, appearance, and health of the patient by the restoration of natural teeth and/or the replacement of missing teeth and contiguous oral and maxillofacial tissues with artificial substitutes.” 22 Tex. Admin. Code § 119.8.



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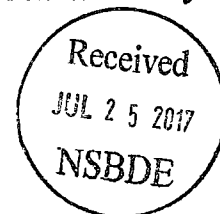
statement about his certification as a 'specialist' by an identified national organization necessarily would be confused with formal state recognition." *Id.* at 104-05. The Court further reiterated that a "State may not, however, completely ban statements that are not actually or inherently misleading, such as certification as a specialist by bona fide organizations such as NBTA" and pointed out that "[t]here is no dispute about the bona fides and the relevance of NBTA certification." *Id.* at 110. However, that is not the case here where, as the Board correctly asserts, the term "specialist" may be used without reference to any identified certifying organization and there is a dispute about the bona fides and relevance of the certifications.

Thus, despite what the majority says, the problem is not merely that "the organization responsible for conferring specialist credentials on a particular dentist is not identified in the advertisement." Nevertheless, *Ibanez v. Florida Dep't of Bus. & Prof'l Regulation, Bd. of Accountancy*, 512 U.S. 136, 145, n.9 (1994), is also distinguishable. *Ibanez* involved an attorney who advertised her credentials as CPA (Certified Public Accountant) and CFP (Certified Financial Planner). Again, there were no questions about the certifications. Further, footnote 9, which addressed only a point raised in a separate opinion, says that a consumer could easily verify Ibanez' credentials – as she was indeed a licensed CPA through the Florida Board of Accountancy and also a CFP. More importantly, Ibanez was not practicing accounting. Further, under 22 Tex. Admin. Code §§ 108.56 additional credentials or certifications are clearly allowed to be advertised in Texas.<sup>3</sup>

In *Joe Conte Toyota, Inc. v. Louisiana Motor Vehicle Commission*, 24 F.3d 754 (5th Cir. 1994), this court relied on evidence in the record to support the district court's finding that the use of the term "invoice" in the automobile

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<sup>3</sup> See Appendix, No. 3, herein for 22 Tex. Admin. Code § 108.56 in its entirety.





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industry was inherently misleading. That evidence included testimony of various car dealers that “invoice” means different things. *Id.* at 757. Here, we have testimony that “specialist” in unregulated dental advertising means different things. The majority’s statement that “[h]ere, the individual plaintiffs intend to use ‘specialist’ in the same manner as dentists practicing in ADA-recognized specialties” is erroneous. In fact, the plaintiffs intend to use “specialist” to encompass subsets of existing specialties that do not necessarily require the same academic, educational or certification required of the specialties recognized by both the ADA and Texas.

For these reasons, I would conclude that the term “specialist” in the context of unregulated dental advertising is inherently misleading and, thus, not protected by the First Amendment.

Moreover, even if Academy’s proposed speech was only potentially misleading, the Board would still be able to regulate it under the remaining elements of the *Central Hudson* test quoted previously herein. As the Board asserts, the evidence provided, at the very least, creates a question of fact sufficient to survive summary judgment.

The Supreme Court said in *Ibanez*:

Commercial speech that is not false, deceptive, or misleading can be restricted, but only if the State shows that the restriction directly and materially advances a substantial state interest in a manner no more extensive than necessary to serve that interest. *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm’n of N.Y.*, 447 U.S. 557, 566, 100 S.Ct. 2343, 2351, 65 L.Ed.2d 341 (1980); *see also id.*, at 564, 100 S.Ct., at 2350 (regulation will not be sustained if it “provides only ineffective or remote support for the government’s purpose”); *Edenfield v. Fane*, 507 U.S. 761, 767, 113 S.Ct. 1792, 1798, 123 L.Ed.2d 543 (1993) (regulation must advance substantial state interest in a “direct and material way” and be in “reasonable proportion to the interests served”); *In re R.M.J.*, 455 U.S., at 203, 102 S.Ct., at 937 (State can regulate commercial



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speech if it shows that it has “a substantial interest” and that the interference with speech is “in proportion to the interest served”).

*Ibanez*, 512 U.S. at 142-43.

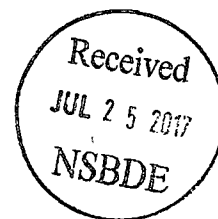
The majority acknowledges that the Board has a substantial interest. But, the majority then concludes that the Board has not demonstrated that Rule 108.54 directly advances the asserted interests. I disagree. The Board presented evidence demonstrating how Rule 108.54 would directly and materially advance the asserted interests. That evidence included “empirical data, studies, and anecdotal evidence” or “history, consensus, and simple common sense.” See *Pub. Citizen Inc. v. La. Attorney Disciplinary Bd.*, 632 F.3d 212 (5th Cir. 2011).

The majority dismisses the empirical data and studies referenced in *Borgner v. Brooks*, 284 F.3d 1204, 1211-13 (11th Cir. 2002), because the actual studies are not in the record. The absence of those studies in the record does not undermine the reliability or persuasiveness of the Eleventh Circuit’s analysis and conclusions about those same studies including, but not limited to, the following:

These two surveys, taken together, support two contentions: (1) that a substantial portion of the public is misled by AAID and implant dentistry advertisements that do not explain that AAID approval does not mean ADA or Board approval; and (2) that ADA certification is an important factor in choosing a dentist/specialist in a particular practice area for a large portion of the public.

*Id.* at 1213.

Additionally, the majority dismisses deposition testimony and evidence of complications saying, in part, that the harms would not be remedied by Rule 108.54 because it merely regulates how a dentist may advertise. I disagree. Rule 108.54 regulates what a dentist may hold himself out as being to the public, i.e., a general dentist with or without certain credentials or a specialist.



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The majority further dismisses witness testimony because it does not necessarily pertain to general dentists who violated the existing rule by holding themselves out as specialists in advertisements. The point of the testimony was to offer support for the fact that an ADA-recognized specialist has a higher success rate and fewer complications than a general dentist who may perform a subset of those recognized specialties. Also, what the Board does clearly establish is that the harms Rule 108.54 seeks to prevent are very real. This was established by way of both anecdotal evidence and simple common sense. With regard to consensus, the Board introduced evidence that numerous other states limit dental-specialty advertising.

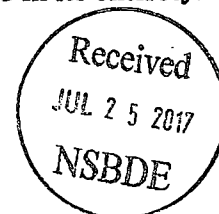
Rules 108.55-56 allow any pertinent information about individual plaintiffs' qualifications to be advertised to consumers. See 22 Tex. Admin. Code §§ 108.55-56.<sup>4</sup> Rules 108.55-56 also clearly establish that Rule 108.54 is not more extensive than necessary. Dentists are able to advertise any and all dental credentials and certifications so long as they do not hold themselves out as specialists in areas where they have not complied with the statutory requirements.

Thus, even if the speech was only potentially misleading, I would conclude that the Board can still regulate it under the *Central Hudson* test.

For these reasons, I would reverse the district court's grant of summary judgment on Academy's First Amendment claim and its enjoinder of the provision as applied to Academy. Therefore, I respectfully dissent.

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<sup>4</sup> See Appendix, No. 2, herein for 22 Tex. Admin. Code § 108.55 in its entirety.



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**APPENDIX**

1. Rule 108.54 states:

(a) **Recognized Specialties.** A dentist may advertise as a specialist or use the terms "specialty" or "specialist" to describe professional services in recognized specialty areas that are:

(1) recognized by a board that certifies specialists in the area of specialty; and

(2) accredited by the Commission on Dental Accreditation of the American Dental Association.

(b) The following are recognized specialty areas and meet the requirements of subsection (a)(1) and (2) of this section:

(1) Endodontics;

(2) Oral and Maxillofacial Surgery;

(3) Orthodontics and Dentofacial Orthopedics;

(4) Pediatric Dentistry;

(5) Periodontics;

(6) Prosthodontics;

(7) Dental Public Health;

(8) Oral and Maxillofacial Pathology; and

(9) Oral and Maxillofacial Radiology.

(c) A dentist who wishes to advertise as a specialist or a multiple-specialist in one or more recognized specialty areas under subsection (a)(1) and (2) and subsection (b)(1)-(9) of this section shall meet the criteria in one or more of the following categories:

(1) Educationally qualified is a dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association.

(2) Board certified is a dentist who has met the requirements of a specialty board referenced in subsection (a)(1) and (2) of this section, and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status, or has complied with the provisions of § 108.56(a) and (b) of this subchapter (relating to Certifications, Degrees, Fellowships, Memberships and Other Credentials).

(3) A dentist is authorized to use the term 'board certified' in any advertising for his/her practice only if the specialty



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board that conferred the certification is referenced in subsection (a)(1) and (2) of this section, or the dentist complies with the provisions of § 108.56(a) and (b) of this subchapter.

(d) Dentists who choose to communicate specialization in a recognized specialty area as set forth in subsection (b)(1)-(9) of this section should use "specialist in" or "practice limited to" and should limit their practice exclusively to the advertised specialty area(s) of dental practice. Dentists may also state that the specialization is an "ADA recognized specialty." At the time of the communication, such dentists must have met the current educational requirements and standards set forth by the American Dental Association for each approved specialty. A dentist shall not communicate or imply that he/she is a specialist when providing specialty services, whether in a general or specialty practice, if he or she has not received a certification from an accredited institution. The burden of responsibility is on the practice owner to avoid any inference that those in the practice who are general practitioners are specialists as identified in subsection (b)(1)-(9) of this section.

22 Tex. Admin. Code § 108.54.

2. Rule 108.55 states:

(a) A dentist whose license is not limited to the practice of an ADA recognized specialty identified under § 108.54(b)(1)-(9) of this subchapter (relating to Advertising of Specialties), may advertise that the dentist performs dental services in those specialty areas of practice, but only if the advertisement also includes a clear disclosure that he/she is a general dentist.

(b) Any advertisement of any specific dental service or services by a general dentist shall include the notation "General Dentist" or "General Dentistry" directly after the name of the dentist. The notation shall be in a font size no smaller than the largest font size used to identify the specific dental services being advertised. For example, a general dentist who advertises "ORTHODONTICS" and "DENTURES" and/or "IMPLANTS" shall include a disclosure of "GENERAL DENTIST" or "GENERAL DENTISTRY" in a font size no smaller than the largest font size used for terms 'orthodontics,' 'dentures' and/or 'implants.' Any form of broadcast



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advertising by a general dentist (radio, television, promotional DVDs, etc) shall include either "General Dentist" or "General Dentistry" in a clearly audible manner.

(c) A general dentist is not prohibited from listing services provided, so long as the listing does not imply specialization. A listing of services provided shall be separate and clearly distinguishable from the dentist's designation as a general dentist.

(d) The provisions of this rule shall not be required for professional business cards or professional letterhead.

22 Tex. Admin. Code § 108.55.

3. Rule 108.56 states:

(a) Dentists may advertise credentials earned in dentistry so long as they avoid any communications that express or imply specialization in a recognized specialty, or specialization in an area of dentistry that is not recognized as a specialty, or attainment of an earned academic degree.

(b) A listing of credentials shall be separate and clearly distinguishable from the dentist's designation as a dentist. A listing of credentials may not occupy the same line as the dentist's name and designation as a dentist. Any use of abbreviations to designate credentials shall be accompanied by a definition of the acronym immediately following the credential.

[Image with examples]

(c) The provisions of subsection (b) of this section shall not be required in materials not intended for business promotion or public dissemination, such as peer-to-peer communications.

22 Tex. Admin. Code § 108.56.





**BILL OF COSTS**

**NOTE: The Bill of Costs is due in this office *within 14 days from the date of the opinion, See FED. R. APP. P. & 5<sup>th</sup> CIR. R. 39.* Untimely bills of costs must be accompanied by a separate motion to file out of time, which the court may deny.**

\_\_\_\_\_ v. \_\_\_\_\_ No.  

The Clerk is requested to tax the following costs against: \_\_\_\_\_

COSTS TAXABLE UNDER Fed. R. App. P. & 5 <sup>th</sup> Cir. R. 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket Fee (\$500.00)								
Appendix or Record Excerpts								
Appellant's Brief								
Appellee's Brief								
Appellant's Reply Brief								
Other: <span style="border: 1px solid black; padding: 2px 20px;"> </span>								
Total \$ <span style="border: 1px solid black; padding: 2px 20px;"> </span>					Costs are taxed in the amount of \$ <span style="border: 1px solid black; padding: 2px 20px;"> </span>			

Costs are hereby taxed in the amount of \$ \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_,

LYLE W. CAYCE, CLERK

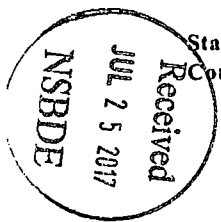
By \_\_\_\_\_ Deputy Clerk

I \_\_\_\_\_, do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This \_\_\_\_\_ day of \_\_\_\_\_.

(Signature)

**\*SEE REVERSE SIDE FOR RULES  
GOVERNING TAXATION OF COSTS**

Attorney for \_\_\_\_\_ 28 of 31



**FIFTH CIRCUIT RULE 39**

**39.1 Taxable Rates.** *The cost of reproducing necessary copies of the brief, appendices, or record excerpts shall be taxed at a rate not higher than \$0.15 per page, including cover, index, and internal pages, for any for of reproduction costs. The cost of the binding required by 5<sup>th</sup> CIR. R. 32.2.3 that mandates that briefs must lie reasonably flat when open shall be a taxable cost but not limited to the foregoing rate. This rate is intended to approximate the current cost of the most economical acceptable method of reproduction generally available; and the clerk shall, at reasonable intervals, examine and review it to reflect current rates. Taxable costs will be authorized for up to 15 copies for a brief and 10 copies of an appendix or record excerpts, unless the clerk gives advance approval for additional copies.*

**39.2 Nonrecovery of Mailing and Commercial Delivery Service Costs.** *Mailing and commercial delivery fees incurred in transmitting briefs are not recoverable as taxable costs.*

**39.3 Time for Filing Bills of Costs.** *The clerk must receive bills of costs and any objections within the times set forth in FED. R. APP. P. 39(D). See 5<sup>th</sup> CIR. R. 26.1.*

**FED. R. APP. P. 39. COSTS**

(a) **Against Whom Assessed.** The following rules apply unless the law provides or the court orders otherwise:

- (1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;
- (2) if a judgment is affirmed, costs are taxed against the appellant;
- (3) if a judgment is reversed, costs are taxed against the appellee;
- (4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) **Costs For and Against the United States.** Costs for or against the United States, its agency or officer will be assessed under Rule 39(a) only if authorized by law.

(c) **Costs of Copies** Each court of appeals must, by local rule, fix the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(d) **Bill of costs: Objections; Insertion in Mandate.**

- (1) A party who wants costs taxed must – within 14 days after entry of judgment – file with the circuit clerk, with proof of service, an itemized and verified bill of costs.
- (2) Objections must be filed within 14 days after service of the bill of costs, unless the court extends the time.
- (3) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must – upon the circuit clerk's request – add the statement of costs, or any amendment of it, to the mandate.

(e) **Costs of Appeal Taxable in the District Court.** The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

- (1) the preparation and transmission of the record;
- (2) the reporter's transcript, if needed to determine the appeal;
- (3) premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and
- (4) the fee for filing the notice of appeal.

Received  
JUL 25 2017  
NSBDE

**United States Court of Appeals**

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130

June 19, 2017

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing  
or Rehearing En Banc

No. 16-50157 Amer Acdmy of Implant Dentry, et al v. Kelly  
Parker, et al  
USDC No. 1:14-CV-191

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Enclosed is a copy of the court's decision. The court has entered judgment under FED R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED R. APP. P. 39 through 41, and 5<sup>TH</sup> CIR. R.s 35, 39, and 41 govern costs, rehearings, and mandates. **5<sup>TH</sup> CIR. R.s 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED R. APP. P. 40 and 5<sup>TH</sup> CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5<sup>TH</sup> CIR. R. 41 provides that a motion for a stay of mandate under FED R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.



The judgment entered provides that defendants-appellants pay to plaintiffs-appellees the costs on appeal.

Sincerely,

LYLE W. CAYCE, Clerk

*Allen C. McIlwain*

By:

Allen C. McIlwain, Deputy Clerk

Enclosure(s)

Mr. Bill L. Davis  
Mr. Renea Hicks  
Mr. Frank R. Recker  
Ms. Amy Lynne Rudd



Resolution No. 65 New

Report: N/A Date Submitted: August 2016

Submitted By: Council on Ethics, Bylaws and Judicial Affairs

Reference Committee: D (Legislative, Health, Governance and Related Matters)

Total Net Financial Implication: None Net Dues Impact: \_\_\_\_\_

Amount One-time \_\_\_\_\_ Amount On-going \_\_\_\_\_ FTE 0

ADA Strategic Plan Objective: Membership-Obj. 1: Leaders and Advocates in Oral Health

How does this resolution increase member value: See Background

**AMENDMENT TO SECTION 5.H. OF THE ADA PRINCIPLES OF ETHICS AND CODE OF PROFESSIONAL CONDUCT**

**Background:** The professional landscape concerning the recognition of specialties has undergone dramatic change. Over the past several years, compelled by court decisions, states have begun to recognize specialties beyond the nine dental specialties recognized by the ADA. The Council on Ethics, Bylaws and Judicial Affairs (the Council) has been advised that the trend of states recognizing specialties in addition to those recognized by the ADA is expected to continue, either through voluntary state action or as the result of additional litigation. Faced with the changing environment concerning specialty recognition, the Council has examined the ADA *Principles of Ethics and Code of Professional Conduct* (the *Code*), and in particular Section 5.H. of the *Code, Announcement of Specialization and Limitation of Practice*, to ensure that the *Code* remains aligned with the legal landscape of specialty recognition in all jurisdictions and hereby proposes amendments to that section of the *Code*. Section 5.H. with the amendments proposed by the Council is appended hereto as **Appendix 1**.

*Broadening the Specialties that can be Ethically Announced.* Section 5.H. of the *Code* states: "The dental specialties recognized by the American Dental Association and the designation for ethical specialty announcement and limitation of practice are..." and then proceeds to list the nine dental specialties recognized by the ADA. As noted above, however, there is movement in certain jurisdictions to recognize areas of dentistry as specialties beyond those recognized through the specialty recognition process established by the ADA.

Consider a jurisdiction that recognizes oral medicine as a specialty and allows a dentist who has successfully completed an advanced dental education program in oral medicine accredited by the Commission on Dental Accreditation to announce as a specialist in oral medicine. A dentist who did so, however, might be accused of violating the *Code* because oral medicine is not one of the nine specialties recited for which "ethical specialty announcement" is presently permitted.

The Council proposes to amend Section 5.H. of the *Code* so that it aligns with the changes in the scope of specialty recognition in some jurisdictions. The amendment to Section 5.H. of the *Code* would permit educationally qualified dentists practicing in areas of dentistry recognized as specialties in their jurisdictions, but not by the ADA, to announce as specialists. The Council requested that the Council on Dental Education and Licensure (CDEL) review and comment on this proposed revision of Section 5.H. of the *Code* and have been informed that CDEL is supportive of the amendment.



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1 *Exclusivity of Practice.* The other portion of Section 5.H. of the *Code* reviewed by the Council is that  
2 which requires dentists announcing as specialists to limit their practices exclusively to the announced  
3 specialty. Thus, as presently written, dentists cannot ethically practice any aspect of dentistry except for  
4 the announced specialty or specialties. This is so even though the specialist dentists hold D.D.S. or  
5 D.M.D. degrees and, in many jurisdictions, hold the exact same licenses awarded to general dentists after  
6 successfully completing the exact same licensing examination as general dentists. Consequently, the  
7 Council examined amending Section 5.H. to remove the exclusivity limitation  
8

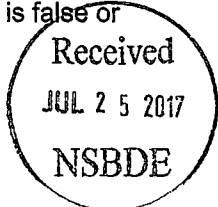
9 When the Council requested comment from CDEL with respect to this proposed amendment to Section  
10 5.H. of the *Code*, CDEL responded that it had reservations concerning the proposal and suggested that  
11 the Council request input from the specialty organizations concerning the exclusivity provisions of Section  
12 5.H. The Council did so, asking the nine specialty organizations for their input on whether it was  
13 necessary for specialists to practice exclusively in their areas of specialty in order to maintain the skill and  
14 expertise needed to announce as a specialist and whether there were reasons other than maintenance of  
15 skill and expertise for limiting a specialist's practice to an announced specialty.  
16

17 Responses from six specialty organizations were received. One reply was not responsive of the inquiries  
18 made and instead addressed the issue of a general dentist practicing in areas within the scope of a  
19 specialty and general dentists using specialist designations in practice announcements. Four responses  
20 indicated that exclusivity of practice was not believed to be required in order for specialists to maintain  
21 their expertise in the specialty (although one response indicated that ability to maintain the appropriate  
22 level of expertise in the specialty must be considered on an individual basis). In addition, three of the  
23 responses received knew of no reason to restrict an announced specialist to practicing solely in the  
24 announced specialty except if there was such a restriction imposed by license. Two responses received  
25 from the specialty organizations indicated that the limitation of practice to the announced specialty is  
26 needed to assure, protect and or inform the public and third parties such as payment programs and  
27 professional liability insurers concerning the practitioner's expertise and concentration in providing  
28 competent care in the specialty.  
29

30 Having carefully considered the reservations expressed by CDEL and the views expressed by the  
31 specialty organizations that responded to the Council's inquiries, the Council is of the belief that dentists  
32 holding specialty degrees should be permitted to announce their specialty to the public and also be  
33 permitted to practice to the full scope of the dental licenses that they hold so long as they maintain  
34 adequate expertise in the specialty. A dentist's training – be it D.D.S. or D.M.D. degree alone, the  
35 successful completion of a residency in general dentistry or the awarding of a specialty degree – is a fact  
36 that is reasonably easy to verify.  
37

38 Moreover, the Council does not believe there is any ethical impropriety in, for example, a dentist  
39 announcing as a specialist while practicing other areas of dentistry so long as the dentist is permitted to  
40 do so under the licensing provisions of the jurisdiction in which the dentist practices, the public is not  
41 misled by the dentist's announcement, the announcement is not false in any material respect, and the  
42 dentist maintains his or her level of skill and expertise in the specialty practice area and is clinically  
43 competent in the other areas of dentistry in which the dentist practices. To the contrary, the existing  
44 provision requiring exclusivity may be viewed as restricting dentists' ability to engage in free competition  
45 and as creating a legal risk to the association. The removal of this restriction will alleviate that risk.  
46

47 With respect to the concerns that the exclusivity provisions of Section 5.H. of the *Code* serve to assure,  
48 inform and protect patients and the public, the Council notes that other provisions of the *Code* serve to  
49 provide that protection. Section 2 of the *Code*, Nonmaleficence, reminds dentists that they have the duty  
50 to refrain from harming patients. Section 2.A., Education, imposes the duty for dentists to keep their  
51 knowledge and skills current, while Section 2.B., Consultation and Referral, obligates dentists to refer  
52 patients whenever the welfare of the patient will be safeguarded or advanced by the referral. Section 4 of  
53 the *Code* provides that dentists shall treat patients fairly; Section 5 imposes the duty to communicate  
54 truthfully while Section 5.F. admonishes that dentists should not advertise in a manner that is false or



1 misleading in any material respect. The Council believes that, taken as a whole, the Code places  
2 sufficient ethical obligations upon dentists who announce as specialists and who wish to practice beyond  
3 the scope of the specialty to provide ample protection to the public.

4  
5 The amendments proposed by the Council will support the primary goal of dentists as set forth in the  
6 Preface to the Code – benefitting the patient. For example, general dentists in rural parts of the country  
7 often by necessity refer patients to specialists located a substantial distance from where the referring  
8 dentist and patient are located. With the amendments proposed by the Council, the referring dentist and  
9 specialist can confer and agree, with the consent of the patient, to the completion of dental treatments by  
10 the specialist where the completion requires treatment beyond the scope of the specialty involved.  
11 Allowing treatment completion by specialists will save the patient time, as the treatment will be able to be  
12 completed without an additional trip to the referring dentist's office and potential discomfort that might  
13 arise between the visit to the specialist and the return visit to the referring dentist.

14  
15 Based on the Council's considered review of Section 5.H. of the Code as summarized above, the Council  
16 recommends the adoption of Resolution 65.

17  
18 **Resolution**

19  
20 **65. Resolved**, that Section 5.H. of the ADA Principles of Ethics and Code of Professional Conduct be  
21 amended as set forth below (additions underscored, deletions ~~stricken through~~):

22  
23 **5.H. ANNOUNCEMENT OF SPECIALIZATION AND LIMITATION OF PRACTICE.**

24 ~~This section and Section 5.I are designed to help the public make an informed selection between~~  
25 ~~the practitioner who has completed an accredited program beyond the dental degree and a~~  
26 ~~practitioner who has not completed such a program. A dentist may ethically announce as a~~  
27 specialist to the public in any of the ~~The dental specialties recognized by the American Dental~~  
28 Association including and the designation for ethical specialty announcement and limitation of  
29 ~~practice are: dental public health, endodontics, oral and maxillofacial pathology, oral and~~  
30 ~~maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics,~~  
31 ~~pediatric dentistry, periodontics, and prosthodontics, and in any other areas of dentistry for which~~  
32 specialty recognition has been granted under the standards required or recognized in the  
33 practitioner's jurisdiction, provided the dentist meets the educational requirements required for  
34 recognition as a specialist adopted by the American Dental Association or accepted in the  
35 jurisdiction in which they practice. ~~Dentists who choose to announce specialization should use~~  
36 ~~"specialist in" or "practice limited to" and shall devote a sufficient portion of their practice to the~~  
37 announced specialty or specialties to maintain expertise in that specialty or those specialties.  
38 Dentists whose practice is devoted exclusively to an announced specialty or specialties may  
39 announce that their practice "is limited to" that specialty or those specialties. limit their practice  
40 exclusively to the announced dental specialties, provided at the time of the announcement such  
41 ~~dentists have met in each recognized specialty for which they announce the existing educational~~  
42 ~~requirements and standards set forth by the American Dental Association. Dentists who use their~~  
43 ~~eligibility to announce as specialists to make the public believe that specialty services rendered in~~  
44 ~~the dental office are being rendered by qualified specialists when such is not the case are engaged~~  
45 ~~in unethical conduct. The burden of responsibility is on specialists to avoid any inference that~~  
46 ~~general practitioners who are associated with specialists are qualified to announce themselves as~~  
47 ~~specialists.~~

48  
49 **GENERAL STANDARDS.**

50 ~~The following are included within the standards of the American Dental Association for determining~~  
51 ~~the education, experience and other appropriate requirements for announcing specialization and~~  
52 ~~limitation of practice:~~





1 ~~1. The special area(s) of dental practice and an appropriate certifying board must be approved by~~  
2 ~~the American Dental Association or be recognized by the jurisdiction in which the dentist practices.~~

3  
4 ~~2. Dentists who announce as specialists must have successfully completed an educational program~~  
5 ~~accredited by the Commission on Dental Accreditation, two or more years in length, as specified by~~  
6 ~~the Council on Dental Education and Licensure, or be diplomates of an American Dental~~  
7 ~~Association recognized certifying board recognized by the American Dental Association or the~~  
8 ~~jurisdiction in which the announcing dentist practices. The scope of the individual specialist's~~  
9 ~~practice shall be governed by the educational standards for the specialty in which the specialist is~~  
10 ~~announcing.~~

11 ~~3. The practice carried on by dentists who announce as specialists shall be limited exclusively to~~  
12 ~~the special area(s) of dental practice announced by the dentist.~~

13  
14 ~~STANDARDS FOR MULTIPLE SPECIALTY ANNOUNCEMENTS.~~

15 ~~The educational criterion for announcement of limitation of practice in additional specialty areas is~~  
16 ~~the successful completion of an advanced educational program accredited by the Commission on~~  
17 ~~Dental Accreditation (or its equivalent if completed prior to 1967) in each area for which the dentist~~  
18 ~~wishes to announce. Dentists who are presently ethically announcing limitation of practice in a~~  
19 ~~specialty area and who wish to announce in an additional specialty area must submit to the~~  
20 ~~appropriate constituent society documentation of successful completion of the requisite education in~~  
21 ~~specialty programs listed by the Council on Dental Education and Licensure or certification as a~~  
22 ~~diplomate in each area for which they wish to announce.~~

23 \* In the case of the ADA, the educational requirements include successful completion of an advanced  
24 educational program accredited by the Commission on Dental Accreditation, two or more years in length,  
25 as specified by the Council on Dental Education and Licensure, or being a diplomate of an American  
26 Dental Association recognized certifying board for each specialty announced.

27 **BOARD RECOMMENDATION: Vote Yes.**

28 **BOARD VOTE: UNANIMOUS. (BOARD OF TRUSTEES CONSENT CALENDAR ACTION—NO**  
29 **BOARD DISCUSSION)**



APPENDIX 1

5.H. ANNOUNCEMENT OF SPECIALIZATION AND LIMITATION OF PRACTICE.

A dentist may ethically announce as a specialist to the public in any of the dental specialties recognized by the American Dental Association including dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, and prosthodontics, and in any other areas of dentistry for which specialty recognition has been granted under the standards required or recognized in the practitioner's jurisdiction, provided the dentist meets the educational requirements required for recognition as a specialist adopted by the American Dental Association or accepted in the jurisdiction in which they practice. Dentists who choose to announce specialization should use "specialist in" and shall devote a sufficient portion of their practice to the announced specialty or specialties to maintain expertise in that specialty or those specialties. Dentists whose practice is devoted exclusively to an announced specialty or specialties may announce that their practice "is limited to" that specialty or those specialties. Dentists who use their eligibility to announce as specialists to make the public believe that specialty services rendered in the dental office are being rendered by qualified specialists when such is not the case are engaged in unethical conduct. The burden of responsibility is on specialists to avoid any inference that general practitioners who are associated with specialists are qualified to announce themselves as specialists.

In the case of the ADA, the educational requirements include successful completion of an advanced educational program accredited by the Commission on Dental Accreditation, two or more years in length, as specified by the Council on Dental Education and Licensure, or being a diplomate of an American Dental Association recognized certifying board for each specialty announced.



August 29, 2017

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

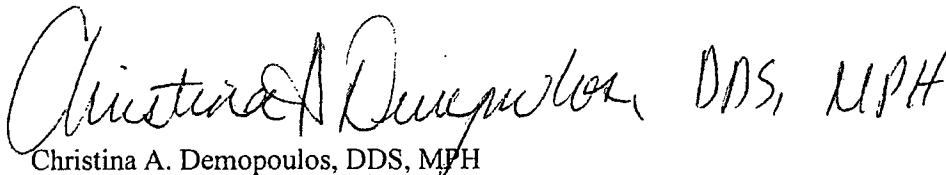
Dear Nevada State Board of Dental Examiners,

I am enclosing an application for public health endorsement for Elyana Smith, RDH. She is one of the hygienists with the UNLV School of Dental Medicine/Seal Nevada South Program and the Early Childhood Caries Prevention Project (ECCPP). The Seal Nevada South Program is an approved public health program. I have enclosed a copy of the protocol that we use for the placement of sealants and fluoride varnish. The protocol has also been approved by the NSBDE. Elyana will be offering oral health education, oral hygiene instruction, oral health screenings, dental sealants and fluoride varnish at Title 1 elementary schools in Clark County as part of the Seal Nevada South Program.

The Early Childhood Caries Prevention Project is a new program through the UNLV School of Dental Medicine. I have submitted the protocol to be reviewed by the NSBDE. The public health endorsed hygienists will be offering oral health education, oral hygiene instruction, oral health screenings; fluoride varnish, parent/child engagement, and case management to Early Head Start and Head Start Center (0-5 years of age) families in Nevada.

Please let me know if you have any questions regarding the "Application for Public Health Endorsement" document submitted on behalf of Elyana Smith, RDH with the UNLV School of Dental Medicine/Seal Nevada South Program.

Sincerely,



Christina A. Demopoulos, DDS, MPH  
Diplomate, American Board of Dental Public Health  
Seal Nevada South Program  
Early Childhood Caries Prevention Project  
UNLV School of Dental Medicine

August 29, 2017

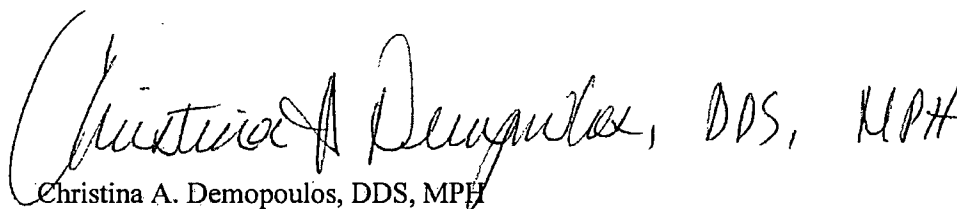
Nevada State Board of Dental Examiners  
6010 S. Rainbow Blvd., Bldg A, Ste. 1  
Las Vegas, NV 89118

Dear Nevada State Board of Dental Examiners,

I am enclosing an update for a few of our dental hygienists that have a Public Health Endorsement with our Seal Nevada South Program. The UNLV School of Dental Medicine is submitting a protocol for a new program titled Early Childhood Caries Prevention Project (ECCPP). The hygienists will be offering oral health education, oral hygiene instruction, oral health screenings, fluoride varnish, parent/child engagement and case management at Early Head Start and Head Start Centers in Nevada as part of the ECCPP.

Please let me know if you have any questions regarding the "Notification of Additional Program through Special Health Endorsement" document submitted on behalf of the following hygienists: Melissa Argueta, RDH; Catherine Carreiro, RDH; Esther Coghlan, RDH; Heather Felkins, RDH; and Youlanda Payan-Bates, RDH;

Sincerely,



Christina A. Demopoulos, DDS, MPH  
Diplomate, American Board of Dental Public Health  
Seal Nevada South Program  
Early Childhood Caries Prevention Project  
UNLV School of Dental Medicine

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AUG 29 2017

NSBDE

**UNLV School of Dental Medicine**

**Early Childhood Caries Prevention Project (ECCPP)**

**Description/Protocol**

The Early Childhood Caries Prevention Project (ECCPP), in partnership with Ronald McDonald House Charities®, is a three-year study designed to develop a comprehensive evidence-based/promising practice protocol in federally funded Early Head Start and Head Start Centers. The ECCPP will be offered to all Early Head Start/Head Start Centers in Nevada. The project aims to reduce the incidence of childhood caries by the age of five by providing family and child engagement and education, bi-annual oral health screenings and fluoride varnish applications, working with families to establish a dental home, and case management for those children identified as high risk.

The information collected in this project will help to understand the dental needs of children in the Early Head Start/Head Start Centers that participate in the study. It will also help to learn about ways to improve the dental health of other children and families in the community. We will collect data on the oral health screening form along with the parent/caregiver survey. The data collected will include; • Patient information (child's name; date of birth, sex) • Oral health treatment (decay status, fluoride applications) • Parent/Caregiver survey (child's eating habits, dental health and dental visits). All data collected will be kept confidential to the extent provided by law. No reference will be made in published materials that could link the parent or child to this project. All records will be stored in a locked facility for three years after completion of the project. After the storage time, the information gathered will be destroyed. Electronic records will be stored on a secure server and accessed by a password protected computer.

***Oral Health Screening/Fluoride Varnish***

Oral health screenings will be conducted twice a year using a standardized oral health screening form aligned with the variables collected in an expanded Basic Screening Survey (BSS) which was developed by the Association of State and Territorial Dental Directors (ASTDD) for local and state assessments. Each of the public health endorsed dental hygienists and dentists will be calibrated by ASTDD prior to conducting the oral health screenings. The BSS protocol is very similar to the protocol currently used by the UNLV School of Dental

Medicine/Seal Nevada South Program. A few extra variables related to Silver Diamine Fluoride were added to the ECCPP protocol. Children will also receive two applications of fluoride varnish each year. The same protocol used for Seal Nevada South will be used for the ECCPP.

RECEIVED

***Family and Child Engagement***

AUG 29 2017

The public health endorsed hygienists and dentists will receive online training for the Cavity Free Kids Curriculum prior to providing educational intervention opportunities for the participating families. Each family will receive a module specific to their child's oral health risk (based on the baseline parent/caregiver survey). Each of the modules has specific self-management goals that will be used to facilitate behavior change in the child and family using motivational interviewing strategies. The Health Coordinators at each of the Early Head Start and Head Start Centers will work closely with the ECCPP staff to ensure that each family is monitored closely regarding their self-management goals.

NSBDE

***Case Management***

For our case management, the UNLV School of Dental Medicine (SDM) staff has an established protocol (the same protocol will be used as for the Seal Nevada South Program) to call the families for follow-up care at SDM. All children with urgent needs are contacted to ensure that they have a dental home. For those living in Clark County, those without insurance are referred to the Saturday Morning Children's Clinic (SMCC) which offers free dental treatment for children from 5-12 years of age. The ECCPP & Seal Nevada South Program Director supervises pre-doctoral dental students in the SMCC so can ensure that the ECCPP students are scheduled and receive the necessary treatment. Children with private insurance or Medicaid/CHIP, but no established dentist are referred to the SDM Advanced Program in Pediatric Dentistry for follow-up care. Children with an established dentist are contacted and encouraged to visit their established dentist for treatment. Children with recommended treatment (ie cavities, but not urgent need) are also contacted with the aforementioned protocol. Children with routine treatment (ie no cavities or concerns) do not receive a follow-up call from SDM, but the Health Coordinators and Center Directors are notified that they can contact the Program Director if questions arise. The Program Director will work with community partners to ensure a dental home is accessible by families living outside of Clark County, Nevada.

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AUG 29 2017  
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**UNLV School of Dental Medicine**  
**Early Childhood Caries Prevention Program (ECCPP)**  
**SCREENING/FLUORIDE VARNISH PLACEMENT PROTOCOL**

**Oral Health Screenings**

- 1) Oral health screenings are performed by a licensed dentist or public health endorsed dental hygienist.
- 2) ECCPP screeners will use the same protocol as the Seal Nevada South Program and must have completed the Basic Screening Survey (BSS) training provided by the Association of State and Territorial Dental Directors (ASTDD) before conducting oral health screenings.
- 3) Parents must sign consent form before child is screened.
- 4) Dental screenings will be performed twice a year.
- 5) Findings from the oral health screenings will be documented on an oral health screening form and will be discussed with the parent/caregiver.

**Fluoride Varnish**

- 1) Assess teeth according to the oral health screening protocol.
- 2) If visible food is present on occlusal surfaces, wipe off with 2X2 gauze or dry brush with clean toothbrush.
- 3) Apply the fluoride varnish according to the manufacturer's guidelines (paint varnish on all teeth avoiding any large, open areas of decay).
- 4) Give parent/patient post-op instructions.

**Post-Op Instructions for Fluoride Varnish (will depend on the type of fluoride varnish used; manufacturer's guidelines will be reviewed)**

- 1) Eat a soft, non-abrasive diet for the rest of the day.
- 2) No hot drinks
- 3) Do not brush or floss for at least 6 hours – if placed in the afternoon then advice not to brush until the next morning.
- 4) Depending on fluoride varnish type teeth may appear dull and yellow – this will brush off at next brushing.

**Parent and Child Engagement (Cavity Free Kids Curriculum)**

- 1) Parent and child education will be provided using one of the 5 online modules for the Cavity Free Kids Curriculum (evidence-based program developed for parents of younger children).
- 2) All members of the ECCPP team that will be providing oral health education will be trained with the Cavity Free Kids curriculum
- 3) Parents will work with ECCPP staff and Health Coordinators to identify self-management goals to help improve the oral health of their child and family.

**Case Management**

- 1) No Obvious Problem- no visible decay/infection
  - a. Recommended routine care and provide information about finding a dental home in their community.
- 2) Recommended Care-possible start of decay/infection
  - a. Recommend dental visit, parent will be contacted with information on finding a dental home in their community
- 3) Urgent Care- child has pain and/or visible infection



- a. Parents will be contacted for referral of proper treatment as soon as possible (recommend treatment within 48 hours)

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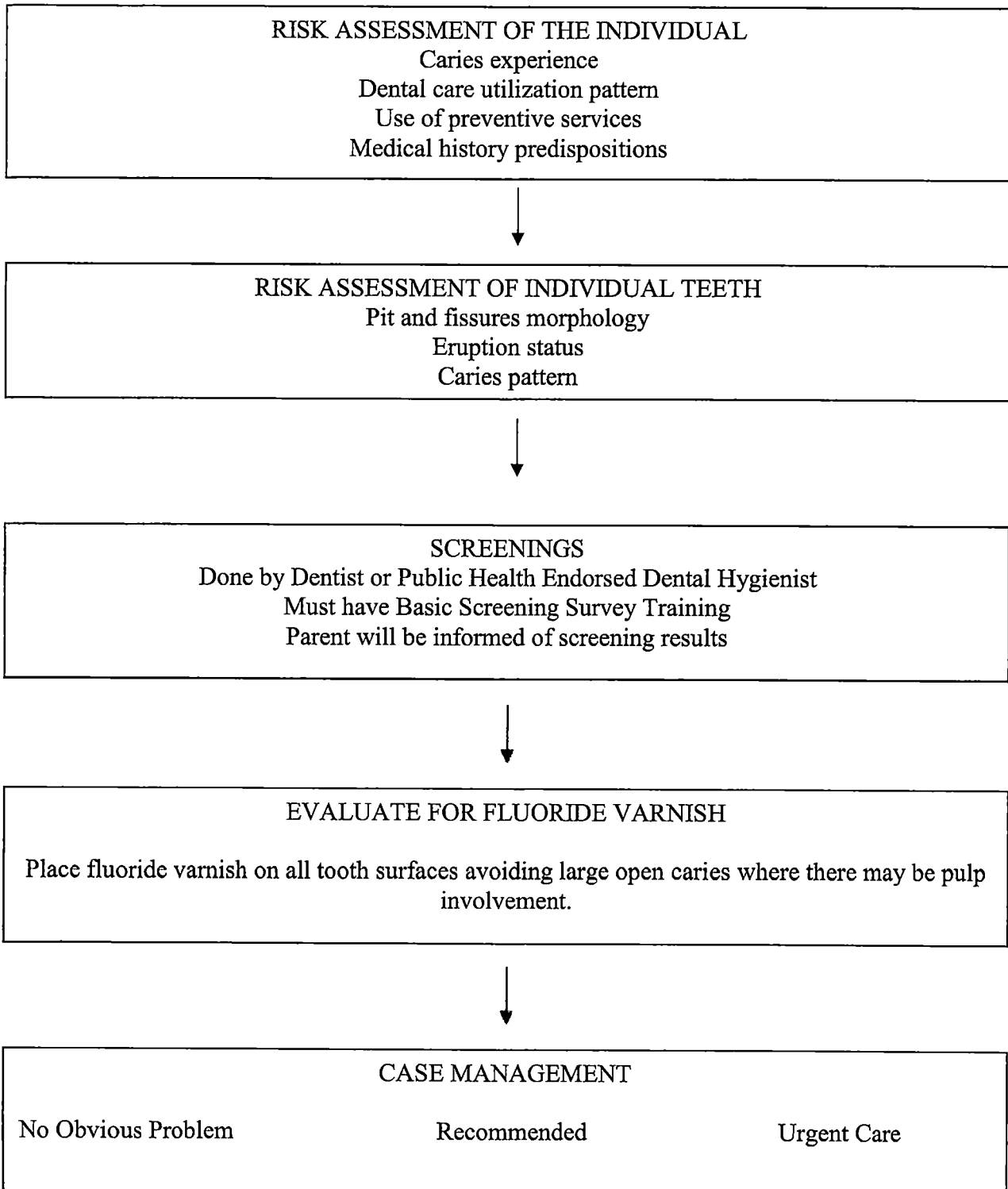
**Following Preventive Care (for each child)**

- 1) Dispose of mask, gloves, disposable mirror and gauze in trash.  
2) Wipe goggles/eye protection with See Clear wipes (follow MSDS guidelines) AUG 29 2017

**End of the Day**

- 1) Dispose of jacket in the trash, wipe goggles/eye protection; follow OSHA guidelines to wipe down chair and portable dental equipment (follow protocol in ECCPP Policy/Procedure Manual).

NSBDE





# Nevada State Board of Dental Examiners

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



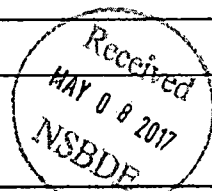
I hereby make application for Nevada Dental Hygiene licensure by: (Please check one below)

Licensure by ADEX Exam (NRS 631.300): \$600 <input checked="" type="checkbox"/>		Licensure by WREB Exam (NRS 631.300): \$600 <input type="checkbox"/>	
Limited Licensure (NRS 631.271): \$125		Restricted Geographical (NRS 631.274): \$150	
Resident: <input type="checkbox"/>	Instructor: <input type="checkbox"/>	Underserved County(ies): <input type="checkbox"/>	FQHC or Non-Profit: <input type="checkbox"/>
Indicate Residency Program:	Indicate Instructor Facility:	Indicate County(ies)	Indicate FQHC Facility or Non Profit
Military Spouse by Reciprocity/Credential: \$300.00 <input type="checkbox"/>			

**NOTE:** An application is considered complete when the application, all required documents, background information, and fees are on file with the Board office. APPLICATION FEES MUST BE PAID IN ADVANCE AND MAY NOT BE REFUNDED PURSUANT TO NEVADA REVISED STATUTE (NRS) 631.345. YOU WILL BE NOTIFIED WITHIN 15 BUSINESS DAYS UPON APPROVAL OF YOUR APPLICATION BY THE BOARD.

Please type or print legibly. All questions must be answered. If additional space is needed, attach a separate sheet identifying additional information by Section number. Applicants acknowledge they have a continuing responsibility to update all information contained in this application until such time as the Board takes final action on this application. Failure of an applicant to update the information prior to final action of the Board is grounds for subsequent disciplinary action.

Last: Chioffe		First: Anna		Middle: Michelle		Suffix:		
Soc. Security #:	Age:	Male <input type="checkbox"/>	Birthdate:	Birthplace (City, County, State, & Country):				
		Female <input checked="" type="checkbox"/>						
Have you ever been known by any other name?							Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If yes, state in full every other name by which you have been known, the reason therefore, and the inclusive dates so known:								
If a married woman, state maiden name: King								
If a name change was made by court order, attach a CERTIFIED COPY of the court order.								
Are you a U.S. born citizen?							Yes <input type="checkbox"/>	No <input type="checkbox"/>
If no, are you naturalized?							Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, naturalization #		Naturalization Date:		Place:				
If no, were you born abroad of US citizens?							Yes <input type="checkbox"/>	No <input type="checkbox"/>
If no, are you a legal resident?							Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is your application for naturalization pending?							Yes <input type="checkbox"/>	No <input type="checkbox"/>
Date of Application:		Place:						
*You must submit appropriate proof of Citizenship or legal documentation for lawful entitlement to remain in the U.S. and work in the U.S.*								



cc #1600-

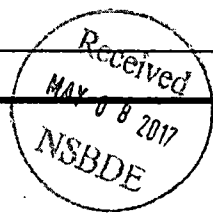
**(A) HOME ADDRESS & PREVIOUS ADDRESS HISTORY**

<b>Current Home Address:</b> [REDACTED]	<b>City:</b> [REDACTED]	<b>State:</b> [REDACTED]	<b>Zip code:</b> [REDACTED]
<b>Mailing Address:</b> This is the address that all correspondence from NSBDE will be mailed. <input checked="" type="checkbox"/> <b>if same as current home address please check box.</b>			
<b>Mailing Address (if different):</b> [REDACTED]	<b>City:</b> [REDACTED]	<b>State:</b> [REDACTED]	<b>Zip Code:</b> [REDACTED]
<b>Telephone Residence:</b> [REDACTED]	<b>Telephone Cell:</b> [REDACTED]	<b>Email address:</b> [REDACTED]	

**(B) PREVIOUS STREET ADDRESSES**

List all home addresses for the past seven (7) years. If you cannot recall certain information please indicate cannot recall. Do not leave blank. Please be sure that if you were in school you have a home address listed in the same state you went to school. (Please add additional pages as needed)

<b>1. Address :</b> [REDACTED]	<b>City:</b> [REDACTED]	<b>State:</b> [REDACTED]	<b>Zip Code:</b> [REDACTED]
<b>County:</b> [REDACTED]	<b>Dates:</b> 6/1/1996 to 5/1/2017 <i>Current</i>		
<b>2. Address :</b> [REDACTED]	<b>City:</b> [REDACTED]	<b>State:</b> [REDACTED]	<b>Zip Code:</b> [REDACTED]
<b>County:</b>	<b>Dates:</b> to		
<b>3. Address :</b> [REDACTED]	<b>City:</b> [REDACTED]	<b>State:</b> [REDACTED]	<b>Zip Code:</b> [REDACTED]
<b>County:</b>	<b>Dates:</b> to		
<b>Address :</b> [REDACTED]	<b>City:</b> [REDACTED]	<b>State:</b> [REDACTED]	<b>Zip Code:</b> [REDACTED]
<b>County:</b>	<b>Dates:</b> to		
<b>5. Address :</b> [REDACTED]	<b>City:</b> [REDACTED]	<b>State:</b> [REDACTED]	<b>Zip Code:</b> [REDACTED]
<b>County:</b>	<b>Dates:</b> to		
<b>6. Address :</b> [REDACTED]	<b>City:</b> [REDACTED]	<b>State:</b> [REDACTED]	<b>Zip Code:</b> [REDACTED]
<b>County:</b>	<b>Dates:</b> to		
<b>7. Address :</b> [REDACTED]	<b>City:</b> [REDACTED]	<b>State:</b> [REDACTED]	<b>Zip Code:</b> [REDACTED]
<b>County:</b>	<b>Dates:</b> to		
<b>8. Address :</b> [REDACTED]	<b>City:</b> [REDACTED]	<b>State:</b> [REDACTED]	<b>Zip Code:</b> [REDACTED]
<b>County:</b>	<b>Dates:</b> to		
<b>9. Address :</b> [REDACTED]	<b>City:</b> [REDACTED]	<b>State:</b> [REDACTED]	<b>Zip Code:</b> [REDACTED]
<b>County:</b>	<b>Dates:</b> to		
<b>10. Address :</b> [REDACTED]	<b>City:</b> [REDACTED]	<b>State:</b> [REDACTED]	<b>Zip Code:</b> [REDACTED]
<b>County:</b>	<b>Dates:</b> to		



**(C) MILITARY SERVICE**

Have you ever served in the military? (If yes, you must answer the questions below) Yes  No

Date of Service: From _____ to _____		Military Occupation Specialty/Specialties:	
Branch of Service:	Army/Army Reserve <input type="checkbox"/>	Marine Corps/Marine Corps Reserve <input type="checkbox"/>	
	Navy/Navy Reserve <input type="checkbox"/>	Air Force/ Air force Reserve <input type="checkbox"/>	
	Coast Guard/ Coast Guard Reserve <input type="checkbox"/>	National Guard <input type="checkbox"/>	

Date of Service: From _____ to _____		Military Occupation Specialty/Specialties:	
Branch of Service:	Army/Army Reserve <input type="checkbox"/>	Marine Corps/Marine Corps Reserve <input type="checkbox"/>	
	Navy/Navy Reserve <input type="checkbox"/>	Air Force/ Air force Reserve <input type="checkbox"/>	
	Coast Guard/ Coast Guard Reserve <input type="checkbox"/>	National Guard <input type="checkbox"/>	

**(D) EDUCATION & CERTIFICATIONS**

**DENTAL HYGIENE EDUCATION:**

Dental Hygiene School: Palm Beach State College

City: Lake Worth State: Florida

Years Attended: (month/year) 08/2005 to 05/2007 Graduation Date: (month/year) 05/08/2007 to

Degree Earned: Associates  Bachelors

**(E) LASER USE AND CERTIFICATION**

I utilize laser radiation in the performance of my practice of dental hygiene. Yes  No

I certify that each laser I use in my practice of dental hygiene has been cleared by the United States Food and Drug Administration for use in dental hygiene. Yes  No

Attach a copy of proof of course completion of laser proficiency indicating successful completion of a recognized course pursuant to Board regulation NAC 631.033 and NAC 631.035 based on the curriculum guidelines and standards for dental laser education as adopted by the Academy of Laser Dentistry.

**(F) CONTINUED CLINICAL COMPETENCY**

Have you been out of active practice for one or more years just prior to completing this application? Yes  No

If yes, attach a separate sheet with details of how you have maintained your clinical skills.

**(G) HISTORY OF IMPAIRMENT**

(1) Do you now, or have you ever, abused alcohol, other chemical substances, or do you have any medical/mental impairments or emotional condition(s) that would impair your ability to perform as a licensee pursuant to NRS and NAC Chapters 631? (If yes, submit details on separate sheet) Yes  No

(2) Do you now, or have you ever had, any contagious or infectious disease(s) that would impair your ability to perform as a licensee pursuant to NRS and NAC Chapters 631? (If yes, submit details on separate sheet) Yes  No



**(H) DENTAL HYGIENE PRACTICE & EMPLOYMENT HISTORY**

Have you ever been employed as a dental hygienist?

Yes  No

*es, list the following information for the past ten years including the dates you practiced dental hygiene: the names of all employers and the reason for leaving each practice. If you were unemployed for any period of time please write the month and year of unemployment. (Use additional sheets if necessary)*

Current Practice Address (if any):		City:	State:	Zip Code:
Telephone:	Fax:	Email address:		

**(I) PREVIOUS EMPLOYMENT**

1. Address: 2700 NE 14th Street, Suite #102	City: Pompano Beach	State: FL	Zip Code: 33062
--	------------------------	--------------	--------------------

From: [REDACTED] To: [REDACTED] (Include month/year)	Telephone: [REDACTED]
--	-----------------------

Name of Employers: [REDACTED]	Reason for leaving: [REDACTED]
----------------------------------	-----------------------------------

2. Practice Address: 7000 W. Camino Real, Suite #120	City: Boca Raton	State: FL	Zip Code: 33433
---	---------------------	--------------	--------------------

From: [REDACTED] To: [REDACTED] (Include month/year)	Telephone: [REDACTED]
--	-----------------------

Name of Employers: [REDACTED]	Reason for leaving: [REDACTED]
----------------------------------	-----------------------------------

3. Practice Address: 301 SE 16th Street	City: Fort Lauderdale	State: FL	Zip Code: 33316
--	--------------------------	--------------	--------------------

From: [REDACTED] To: [REDACTED] (Include month/year)	Telephone: [REDACTED]
--	-----------------------

Name of Employers: [REDACTED]	Reason for leaving: [REDACTED]
----------------------------------	-----------------------------------

4. Practice Address: 7025 Beracasa Way, Suite #203	City: Boca Raton	State: FL	Zip Code: 33433
---	---------------------	--------------	--------------------

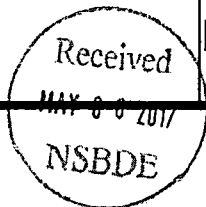
From: [REDACTED] To: [REDACTED] (Include month/year)	Telephone: [REDACTED]
--	-----------------------

Name of Employers: [REDACTED]	Reason for leaving: [REDACTED]
----------------------------------	-----------------------------------

5. Practice Address: 8903 Glades Road, Suite #D4	City: Boca Raton	State: FL	Zip Code: 33434
---	---------------------	--------------	--------------------

From: [REDACTED] To: [REDACTED] (Include month/year)	Telephone: [REDACTED]
--	-----------------------

Name of Employers: [REDACTED]	Reason for leaving: [REDACTED]
----------------------------------	-----------------------------------



**(J) EXAMINATION AND LICENSURE HISTORY**

**NATIONAL BOARD EXAMINATION**

Date Taken: 12/12/2006 PASS  FAIL

Please list below all dental hygiene clinical examinations in which you have participated:  
(Use additional sheets if necessary)

**CLINICAL EXAMS:**

ADEX  Date(s) of Clinical Examination: 06/02/2007 to 06/02/2007 PASS  FAIL

WREB  Date(s) of Clinical Examination: to PASS  FAIL

**OTHERS EXAMS:**

Regional/State, Territory, DC:

Date(s) of Clinical Examination: to PASS  FAIL

Regional/State, Territory, DC:

Date(s) of Clinical Examination: to PASS  FAIL

Regional/State, Territory, DC:

Date(s) of Clinical Examination: to PASS  FAIL

Have you ever applied for a license to practice dental hygiene? Yes  No

If yes, list the following for each state, territory or the District of Columbia. Use additional sheets if necessary:

State, Territory, DC: Florida Date of Application: 06/02/2007

Result of Application (Granted, Denied, Pending): Granted

State, Territory, DC: Date of Application:

Result of Application (Granted, Denied, Pending):

State, Territory, DC: Date of Application:

Result of Application (Granted, Denied, Pending):

- 1 Have any proceedings been initiated against you to revoke or suspend your dental hygiene license? Yes  No
- 2 At the time you filed this application, were any disciplinary proceedings pending against you, including complaints or investigations, in any other state, territory or the District of Columbia? Yes  No
- 3 Have you ever been terminated or attempted to terminate or surrender a dental hygiene license in any state, territory or the District of Columbia? Yes  No
- 4 Have you ever been denied a dental hygiene license in this state, another state, or a territory of the U.S. or the District of Columbia? Yes  No

If you answered 'yes' to questions J1, J2, J3 and/or J4, provide a full explanation of each answer on a separate sheet and attach to this application.



**(K) MALPRACTICE**

Have you ever had any claims of malpractice filed against you?

Yes  No

If yes, list all malpractice, negligence lawsuits and claims you have ever had against you. Include dates, names, settlements or resolutions. Please include malpractice and lawsuits that were dismissed. Provide additional pages as needed.

Do you or have you ever carried malpractice (professional liability) insurance?

Yes  No

List all malpractice carriers since licensed or for the past 10 years (which ever is longer). Leave no time gaps and account for periods with no insurance. Provide additional pages as needed.

Carrier:		Policy Number:	
Address:	City:	State:	Zip Code:
From:	To:	(Include month/year)	Telephone:
Carrier:		Policy Number:	
Address:	City:	State:	Zip Code:
From:	To:	(Include month/year)	Telephone:
Carrier:		Policy Number:	
Address:	City:	State:	Zip Code:
From:	To:	(Include month/year)	Telephone:
Carrier:		Policy Number:	
Address:	City:	State:	Zip Code:
From:	To:	(Include month/year)	Telephone:
Carrier:		Policy Number:	
Address:	City:	State:	Zip Code:
From:	To:	(Include month/year)	Telephone:
Carrier:		Policy Number:	
Address:	City:	State:	Zip Code:
From:	To:	(Include month/year)	Telephone:





**(L) MORAL CHARACTER**

As a member of any profession or association connected with the practice of dental hygiene, or as a staff member at a hospital, outpatient clinic, or surgery center, or as a holder of public office:

- 1 Have you ever been suspended or otherwise disqualified? Yes  No
- 2 Have you ever been reprimanded, censored, restricted or otherwise disciplined? Yes  No
- 3 Have any charges or complaints, formal or informal, ever been made or filed against you, or have any proceedings been instituted against you? (Dental Society, Associations, Hospitals, or States) Yes  No
- 4 (a) Have you ever been arrested, convicted, charged with, entered a plea of nolo contendere or pleaded guilty to the violation of any law [misdemeanor(s) or felony(ies)]? Yes  No
- (b) Have you ever received a citation or been cited for any traffic violations? Yes  No

If your answer is 'yes' to any of the foregoing questions (1-4), furnish a written statement of each occurrence giving the complete facts. For each incident, state the date, case number, the nature of the charge the disposition of the matter, and the name and address of the authority in possession of the records thereof. You must provide certified copies of any arrest or conviction and/or any plea agreements entered into for any felony(ies) or misdemeanor(s).

- 5 Have you ever been declared a ward of any court, or adjudged as incompetent, or have any proceedings ever been brought to have you declared a ward of any court or adjudged as incompetent, or have you ever been committed to any institution? Yes  No
- 6 Have you ever been dropped, suspended, expelled or disciplined by any school or college for any cause whatsoever: Yes  No

If your answer is 'yes' to questions 5 or 6, furnish a written statement of each occurrence giving the complete facts. For each incident, state the date, the nature of the charge the disposition of the matter, and the name and address of the authority in possession of the records thereof.

- 7 Have you ever been denied participation in, or suspended from, the Medicaid or Medicare benefit program? Yes  No
- 8 Have you ever had a civil court action in which you were either the plaintiff or defendant? (please include all civil actions civil disputes, negligence or personal injury) Yes  No

If your answer is 'yes' to questions 7 or 8, furnish a written statement of each occurrence giving the complete facts. For each incident, state the date, the nature of the charge the disposition of the matter, and the name and address of the authority in possession of the records thereof.

**(M) STATEMENT OF CHILD SUPPORT**

Pursuant to state and federal mandated requirements, I further certify that (CHECK the appropriate box):

- 1 I am NOT subject to a court order for the support of one or more children.
- 2 I AM subject to a court order for the support of one or more children and: (continue to 2a or 2b below)
- 2a I am NOT in compliance with a plan approved by the district attorney or other public agency enforcing the order for the payment of the amount owed pursuant to the court order for the support of one or more children.
- 2b I AM in compliance with a plan approved by the district attorney or other public agency enforcing the order for the payment of the amount owed pursuant to the court order for the support of one or more children.



**(N) AFFIDAVIT AND PLEDGE**

I hereby expressly waive all provisions of law forbidding any physician or other person who has attended or examined me or who may hereafter attend or examine me from disclosing any knowledge or information that is thereby acquired, and I hereby consent that such knowledge or information may be disclosed to the Nevada State Board of Dental Examiners.

The person named as the applicant in the foregoing application and questionnaire, being first duly sworn, deposes and says: I am the applicant for dental hygiene licensure referred to; and I have carefully read and understand the questions in the foregoing questionnaire and have answered them truthfully, fully, and completely, without mental reservation of any kind. I further understand I have a continuing obligation to inform the Board should any of my answers since filing this application change prior to the Board issuing my license. In the event I fail to update the answers which have changed since submitting this application, I understand that such failure is ground for revocation of any license issued or denial of the application.

I hereby authorize educational and other institutions, my references (past and present), business and professional associates (past and present), insurance carriers, professional societies, governmental agencies and instrumentalities (local, state, federal or foreign), and independent information gathering services to release to the Nevada State Board of Dental Examiners any information, files or records requested by the Board in connection with the processing of this application.

I hereby pledge myself to the highest standards and ethics in the Practice of Dental Hygiene and further pledge to abide by the laws and regulations pertaining to the practice of dental hygiene. I understand that a violation of this pledge may be deemed sufficient cause for the revocation of a license issued by the Board.

I hereby understand and agree that the title of all licenses shall remain with the Nevada State Board of Dental Examiners and subject to surrender by Order of said Board.

I UNDERSTAND THAT ANY OMISSIONS, INACCURACIES, OR MISREPRESENTATIONS OF INFORMATION ON THIS APPLICATION ARE GROUNDS FOR REJECTION OF THIS APPLICATION AND THE REVOCATION OF A LICENSE WHICH MAY HAVE BEEN OBTAINED THROUGH THIS APPLICATION.

**APPLICANT**

*Anna Michelle Chioffe*  
Applicant Signature

Chioffe, Anna M.  
Applicant (printed) Last Name, First, MI, Suffix (e.g., Jr.)

5-1-17

Date of Signature (must correspond with notary date)

Applicants Date of Birth (month/day/year)

Social Security Number

**NOTARY**

State of Florida County of Palm Beach

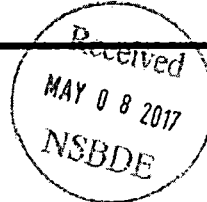
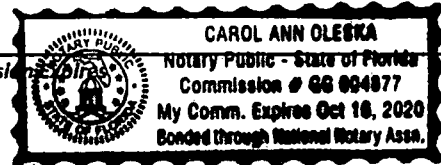
The statement on this document are subscribed and sworn before me this

1<sup>st</sup> day of May, 20 17

*Carol Ann Oleksa*

Notary Public

My Commission





Nevada State Board of Dental Examiners

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

VOLUNTARY SURRENDER OF LICENSE



STATE OF OH  
COUNTY OF Franklin

I, Michelle Scott, hereby surrender my Nevada  
Dental /Dental Hygiene (circle one) license number 6014 on 1 day of  
July, 2017.

By signing this document, I understand, pursuant to Nevada Administrative Code (NAC) 631.160, the surrender of this license is absolute and irrevocable. Additionally, I understand that the voluntary surrender of this license does not preclude the Board from hearing a complaint for disciplinary action filed against this licensee.

Michelle Scott  
\_\_\_\_\_  
Licensee Signature

July 1st 2017  
\_\_\_\_\_  
Date

Heather M Bowman  
\_\_\_\_\_  
Notary Signature



**HEATHER M BOWMAN**  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
October 31, 2017

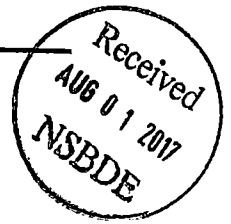
Licensee Current Mailing Address: [Redacted]

Home Phone \_\_\_\_\_ Cell Phone: [Redacted]



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## VOLUNTARY SURRENDER OF LICENSE

STATE OF Nevada

COUNTY OF Washoe

I, Dennis Bruce FARNESI, D.M.D. hereby surrender my Nevada  
Dental/Dental Hygiene (circle one) license number 634 on 28 day of  
July, 2017.

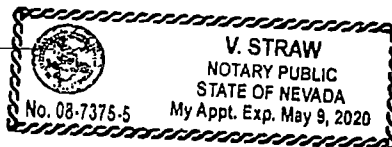
By signing this document, I understand, pursuant to Nevada Administrative Code (NAC) 631.160, the surrender of this license is absolute and irrevocable. Additionally, I understand that the voluntary surrender of this license does not preclude the Board from hearing a complaint for disciplinary action filed against this licensee.

Dennis Bruce Farnesi  
Licensee Signature

July 25, 2017  
Date

[Signature]  
Notary Signature

State of Nevada  
County of Douglas  
This instrument was acknowledged  
before me on 7/28/17  
by Dennis Bruce Farnesi  
[Signature]  
Notary Seal  
Notary Public  
My Commission expires: 5/9/2020

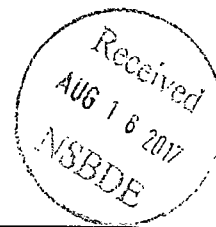


Licensee Current Mailing Address: [Redacted]  
Home Phone: [Redacted] Cell Phone: [Redacted]



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**VOLUNTARY SURRENDER OF LICENSE**

STATE OF Michigan

COUNTY OF Washtenaw

I, Patricia A. Diaz, hereby surrender my Nevada  
Dental /Dental Hygiene (circle one) license number 54-75C on 7 day of  
August, 2017.

By signing this document, I understand, pursuant to Nevada Administrative Code (NAC) 631.160, the surrender of this license is absolute and irrevocable. Additionally, I understand that the voluntary surrender of this license does not preclude the Board from hearing a complaint for disciplinary action filed against this licensee.

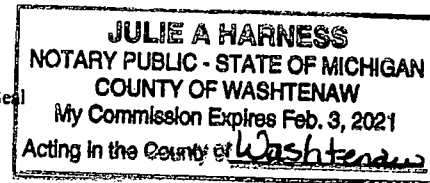
[Handwritten Signature]  
Licensee Signature

7-8-17

Date

[Handwritten Signature]  
Notary Signature

Notary Seal



Acknowledged by Patricia Diaz before me on the 7<sup>th</sup> day of August, 2017.

Licensee Current Mailing Address:



Home Phone

N/A

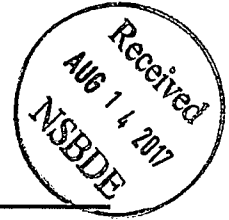
Cell Phone:





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**VOLUNTARY SURRENDER OF LICENSE**

STATE OF ILLINOIS

COUNTY OF WILL

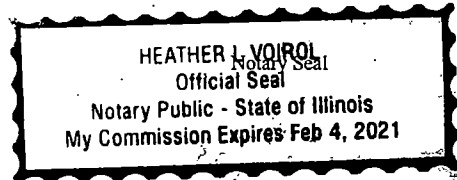
I, Kimberly J. Hibben, hereby surrender my Nevada  
Dental /Dental Hygiene (circle one) license number 102007 on 10<sup>th</sup> day of  
AUGUST, ~~2007~~ 2017

By signing this document, I understand, pursuant to Nevada Administrative Code (NAC) 631.160, the surrender of this license is absolute and irrevocable. Additionally, I understand that the voluntary surrender of this license does not preclude the Board from hearing a complaint for disciplinary action filed against this licensee.

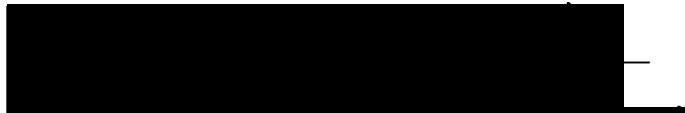
Kim Hibben  
Licensee Signature

8-10-17  
Date

[Signature]  
Notary Signature



~~Licensee Current Mailing Address:~~



Home Phone \_\_\_\_\_

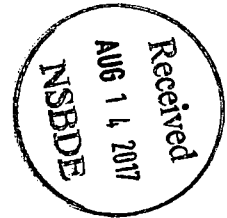
~~Cell Phone:~~ \_\_\_\_\_



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## VOLUNTARY SURRENDER OF LICENSE



STATE OF California

COUNTY OF San Luis Obispo

I, Vikram R. Tikar, hereby surrender my Nevada  
Dental Dental Hygiene (circle one) license number A 6303 on 11 day of  
August, 2017.

By signing this document, I understand, pursuant to Nevada Administrative Code (NAC) 631.160, the surrender of this license is absolute and irrevocable. Additionally, I understand that the voluntary surrender of this license does not preclude the Board from hearing a complaint for disciplinary action filed against this licensee.

[Signature]  
Licensee Signature

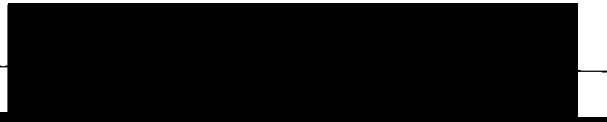
8/11/17  
Date

[Signature]  
Notary Signature

Notary Seal



Licensee Current Mailing Address:



Home Phone



Cell Phone:





**Nevada State Board of Dental Examiners**

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**VOLUNTARY SURRENDER OF LICENSE**

STATE OF ct  
COUNTY OF NewHaven

I, Uttampal Singh, hereby surrender my Nevada  
Dental /Dental Hygiene (circle one) license number 5740 on 17<sup>th</sup> day of  
August, 2017.

By signing this document, I understand, pursuant to Nevada Administrative Code (NAC) 631.160, the surrender of this license is absolute and irrevocable. Additionally, I understand that the voluntary surrender of this license does not preclude the Board from hearing a complaint for disciplinary action filed against this licensee.

Uttampal Singh  
Licensee Signature

08/17/17  
Date

Notary Seal

Carmen Ripoll  
Notary Signature

**CARMEN R. RIPOLL**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES JUNE 30, 2022

Licensee Current Mailing Address: 

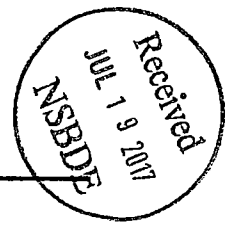
Home Phone:  Cell Phone: 





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## VOLUNTARY SURRENDER OF LICENSE

STATE OF Nevada

COUNTY OF Carson

I, Paul Kleintjes, DDS, hereby surrender my Nevada  
Dental Dental Hygiene (circle one) license number 746 on 17<sup>th</sup> day of  
July, 2017.

By signing this document, I understand, pursuant to Nevada Administrative Code (NAC) 631.160, the surrender of this license is absolute and irrevocable. Additionally, I understand that the voluntary surrender of this license does not preclude the Board from hearing a complaint for disciplinary action filed against this licensee.

Paul Kleintjes DDS  
Licensee Signature

7-17-2017  
Date

Kristen Brodie  
Notary Signature

Notary Seal



Licensee Current Mailing Address: [REDACTED]

Home Phone: [REDACTED] Cell Phone: [REDACTED]



# Nevada State Board of Dental Examiners

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## VOLUNTARY SURRENDER OF LICENSE

STATE OF North Carolina

COUNTY OF Mecklenburg

I, James Michael Beckm Jr, DDS, hereby surrender my Nevada  
Dental /Dental Hygiene (circle one) license number S2-55C on 10 day of  
July, 2017.

By signing this document, I understand, pursuant to Nevada Administrative Code (NAC) 631.160, the surrender of this license is absolute and irrevocable. Additionally, I understand that the voluntary surrender of this license does not preclude the Board from hearing a complaint for disciplinary action filed against this licensee.

[Signature]  
\_\_\_\_\_  
Licensee Signature

7/11/17  
\_\_\_\_\_  
Date

[Signature]  
\_\_\_\_\_  
Notary Signature

Notary Seal

**JEFFREY M MURRAY**  
**NOTARY PUBLIC**  
Mecklenburg County, North Carolina  
My Commission Expires Nov. 7th, 2017

Licensee Current Mailing Address:

[Redacted]

Home Phone: [Redacted]

Cell Phone: [Redacted]

[Redacted]



# Nevada State Board of Dental Examiners

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## VOLUNTARY SURRENDER OF LICENSE

STATE OF Texas

COUNTY OF Comal

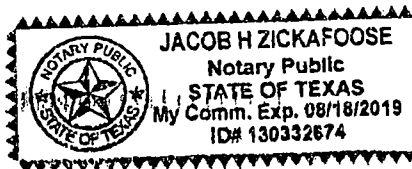
I, James W. Chancellor, hereby surrender my Nevada  
Dental /Dental Hygiene (circle one) license number 686 on 24<sup>th</sup> day of  
August, 2017.

By signing this document, I understand, pursuant to Nevada Administrative Code (NAC) 631.160, the surrender of this license is absolute and irrevocable. Additionally, I understand that the voluntary surrender of this license does not preclude the Board from hearing a complaint for disciplinary action filed against this licensee.

James W. Chancellor  
Licensee Signature

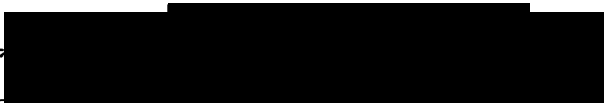
August 24<sup>th</sup>, 2017  
Date

Jacob H. Zickafoose  
Notary Signature



Notary Seal

Licensee Current Mailing Address:



Home Phone:



Cell Phone:

