

NEVADA STATE BOARD  
of  
DENTAL EXAMINERS



FORMAL HEARING  
NSBDE v. NAM PHAN, DMD

NOVEMBER 8, 2019

9:00 A.M.

**PUBLIC BOOK**

1 **BEFORE THE NEVADA STATE BOARD OF DENTAL EXAMINERS**

2 NEVADA STATE BOARD OF DENTAL  
3 EXAMINERS,

4 Complainant,

5 vs.

6 NAM PHAN, DDS

7 Respondent.  
8

**Case No. 6033-1456**

**NOTICE OF FILING OF  
COMPLAINT & NOTICE OF  
HEARING**

**Date of Hearing: 11/08/2019**

**Time of Hearing: 9:00 am**

9  
10 **TO: NAM PHAN, DDS, Respondent; and**  
11 **TO: LAWRENCE SEMENZA, Respondent's Attorney of Record**

12 **PLEASE BE ADVISED** that on or about the 26<sup>th</sup> day of August, 2019, a Complaint was  
13 filed with the Nevada State Board of Dental Examiners (the "Board") which, at least in part,  
14 makes allegations that could result in disciplinary action against the license issued to Respondent  
15 by the Board. A copy of said Complaint is attached to this Notice which, pursuant to NAC  
16 631.290, is being personally served on Respondent's attorney of record, and which is  
17 incorporated by reference herein.

18  
19 **NOTICE IS HEREBY GIVEN**, pursuant to NRS 631.360, that the Board has scheduled  
20 a public hearing to consider the allegations contained in the Complaint. The public hearing  
21 concerning the above-referenced matter will occur on the following date(s) and time(s) at the  
22 following location:

23 **DATE : Friday, November 8, 2019, and**  
24 **Daily thereafter until concluded**

25 **TIME : 9:00 a.m.**

26 **LOCATION : Grant Sawyer Building**  
27 **555 E. Washington Ave.**  
28 **Las Vegas, Nevada 89101**

1           **YOU ARE ADVISED** that the hearing will be held pursuant to Nevada Revised Statutes  
2 (“NRS”) Chapters 233B.121, *et seq*, 622A.300 *et seq*, and 631, and the Nevada Administrative  
3 Code (“NAC”) Chapter 631. The purpose of the hearing is to consider evidence regarding the  
4 allegations in the Complaint asserting violations of the Dental Practice Act, including but not  
5 limited to, NRS 631.3475(1), NRS 631.3475(2), NRS 631.3475(4), NRS 631.349, and/or NAC  
6 631.230 (1)(c), and to determine whether Respondent should be subject to discipline pursuant to  
7 NRS Chapter 631.350 and/or NAC Chapter 631.

8           **YOU ARE FURTHER ADVISED** that the hearing is to be an open meeting pursuant to  
9 Nevada’s Open Meeting Law and may be attended by the public. During the hearing, the Board  
10 may choose to go into closed session to consider the character, alleged misconduct, professional  
11 competence or physical or mental health of Respondent. A verbatim record will be made by a  
12 court reporter. You are entitled to a copy of the transcript, at your cost, of the open and closed, if  
13 any, portions of the hearing.

14           **YOU ARE FURTHER ADVISED** that, pursuant to NRS 622A.320(1), you have the  
15 right to answer the Complaint within **twenty (20) days** of service of the Complaint. You have  
16 the right to appear and to be heard at the hearing in your defense, either personally or through  
17 counsel of your choice, at your cost.

18           **YOU ARE FURTHER ADVISED** that, at the hearing, the Board has the burden of  
19 proving the allegations in the Complaint. The Board may, and intends, to call witnesses and to  
20 offer exhibits and evidence regarding the allegations in the Complaint. Respondent also has the  
21 right to call and examine witnesses, offer exhibits/evidence, and cross-examine opposing  
22 witnesses on any matter relevant to the issues involved. Respondent has the right to request that  
23 the Board issue subpoenas to compel witnesses to testify and/or present evidence on your behalf.  
24 When making a request to the Board for issuance of a subpoena, you may be required to  
25 demonstrate the nature and relevance of the witness’ testimony and/or evidence.

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**YOU ARE FURTHER ADVISED** that, if a violation is found and discipline is imposed, the Board may also recover reasonable attorney's fees and costs pursuant to NRS 622.400.

DATED this 28 day of August, 2019.

NEVADA STATE BOARD OF DENTAL EXAMINERS

By:   
MELANIE BERNSTEIN CHAPMAN, ESQ.  
General Counsel

**AUG 26 2019**

**NEVADA STATE BOARD OF  
DENTAL EXAMINERS**

**STATE OF NEVADA**

**BEFORE THE BOARD OF DENTAL EXAMINERS**

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NEVADA STATE BOARD OF DENTAL  
EXAMINERS,

Case No. **6033-1456**

Complainant,

**COMPLAINT**

vs.

NAM PHAN, DDS

Respondent.

Complainant, the Nevada State Board of Dental Examiners (hereinafter referred to as the "Board"), by and through its attorney, Melanie Bernstein Chapman, Esq, and pursuant to NRS 631.360 and NRS 631.363, hereby issues this Complaint against Respondent, Nam Phan, DDS (hereinafter referred to as "Respondent" or "Dr. Phan"), and alleges as follows:

**GENERAL ALLEGATIONS**

**Parties and Jurisdiction**

1. The Board is empowered to enforce the provisions of Chapter 631 of the Nevada Revised Statutes ("NRS"). NRS 631.190.

2. The Board, pursuant to NRS 631.190(6), keeps a register of all dentists and dental hygienists licensed in the State of Nevada; said register contains the names, addresses, license numbers, and renewal certificate numbers of said dentists and dental hygienists.

3. On July 14, 2010, the Board issued Respondent a license to practice dentistry in the State of Nevada (License # 6033).

4. Respondent is licensed by the Board and, therefore, has submitted himself to the disciplinary jurisdiction of the Board.

**Patient, Cerri Cowden**

5. Via a *Notice of Complaint & Request for Records* dated January 3, 2017, Respondent was notified of the verified complaint received from patient Cerri Cowden. The

1 same was accompanied by a copy of Ms. Cowden's written Verified Complaint, and certain  
2 records which referenced specific dates, activities, and allegations regarding the care and  
3 treatment by Respondent.

4 6. On April 3, 2017, per Respondent's request, records obtained by the Board from  
5 the office of Ronald Gardner, DDS concerning Ms. Cowden were forwarded to Respondent.

6 7. On May 22, 2017, the Board received Respondent's written response in response  
7 to Ms. Cowden's Verified Complaint, a copy of which was forwarded to Ms. Cowden and  
8 Bradley Roberts, DDS, DSO, on or about May 23, 2017.

9 8. Pursuant to NRS 631.363, Investigator, Dr. Bradley Roberts, (also referred to as  
10 the "DSO"), was assigned to conduct an investigation and informal hearing concerning the  
11 verified complaint filed by Ms. Cowden.

12 9. On or about June 7, 2017, the Board received records concerning Ms. Cowden  
13 from Brenden Johnson, DDS.

14 10. On June 8, 2017, Respondent was provided copies of the dental records received  
15 from Dr. Brendan Johnson, which had been sent to DSO Roberts on that date.

16 11. On or about June 21, 2017, the Board received records concerning Ms. Cowden  
17 from Nathan Schwartz, DDS. On June 22, 2017, Respondent was provided a copy of a letter sent  
18 to DSO Roberts, which included dental records regarding Ms. Cowden from Dr. Nathan  
19 Schwartz.

20 12. On or about March 27, 2018, the Board received additional records from third-  
21 party custodian of records Boulder City Smiles concerning Cerri Cowden in the form of dental  
22 imaging taken at or about the time of Respondent's treatment of Ms. Cowden. A copy of this  
23 dental imaging was also provided to Respondent's attorneys by Boulder City Smiles.

24 13. On or about June 14, 2018, the Board was notified that Dr. Phan had retained new  
25 counsel.

26 14. On or about June 18, 2018, per the request of Respondent's new counsel,  
27 Respondent's counsel was provided with all documents previously provided to Respondent  
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1 and/or his prior counsel, including, copies of the Notice of Complaint, Ms. Cowden's Verified  
2 Complaint, Respondent's Response to the Verified Complaint, various notices of informal  
3 hearing, correspondence, dental records concerning Ms. Cowden, including radiographic images,  
4 and the Review Panel Findings.

5 15. On or about August 17, 2018 a second copy of a CAT scan taken by Dr. Brenden  
6 Johnson regarding Ms. Cowden was sent to Dr. Phan's counsel. On or about August 30, 2018,  
7 the Board received a CD of the CT scan images taken by Dr. Brenden Johnson.

8 16. On August 31, 2018, a copy of the CD containing CT scan images taken by Dr.  
9 Brenden Johnson was received by counsel for Dr. Phan.

10 17. On September 10, 2018, following Respondent's decision not to attend his  
11 informal hearing, counsel for Dr. Phan was again provided, per his request, with all radiographic  
12 images that had been obtained by the Board during the course of the investigation into Ms.  
13 Cowden's Verified Complaint.

#### 14 Informal Hearing

15 18. On August 2, 2017, Respondent was served with the Notice of Informal Hearing  
16 and Subpoena Duces Tecum, sent via certified mail, return receipt requested, and regular mail to  
17 Respondent and his counsel of record.

18 19. The USPS "domestic return receipt" provides that Respondent received the Notice  
19 of Informal Hearing on August 4, 2017.

20 20. The Notice of Informal Hearing regarding the verified complaint of Cerri Cowden  
21 set the informal hearing for 10:00 a.m. on Friday, September 22, 2017, at the offices of Morris,  
22 Polich & Purdy, LLP, 500 South Rancho Drive, Suite 17, Las Vegas, Nevada 89106.

23 21. In part, the Notice of Informal Hearing indicated pursuant to NAC 631.250(1),  
24 that the Disciplinary Screening Officer shall not limit the scope of this investigation to the  
25 matters set forth in the authorized investigation noted above, "but will extend the investigation to  
26 any additional matters which appear to constitute a violation of any provision of Chapter 631 of  
27 the Nevada Revised Statutes or the regulations contained in Chapter 631 of NAC of this  
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1 Chapter.”

2 22. The informal hearing was rescheduled on multiple (5) occasions due to  
3 Respondent’s requests and/or that of his former or present counsel.

4 23. On one additional occasion, the informal hearing was rescheduled due to a Board  
5 scheduling conflict.

6 24. Ultimately, the informal hearing was scheduled to take place on July 16, 2018 at  
7 the office of the Nevada Board of Dental Examiners.

8 25. Pursuant to SB 256 (2017), later codified as NRS 631.3635, the Board’s Review  
9 Panel met on February 9, 2018 to review and evaluate the preliminary investigation concerning  
10 Ms. Cowden’s verified complaint.

11 26. The Review Panel independently reviewed and evaluated the Verified Complaint  
12 of Cerri Cowden; Respondent’s Response to the Verified Complaint; Dr. Phan’s records  
13 regarding patient, Cerri Cowden; dental records regarding Cerri Cowden obtained from Brendan  
14 Johnson, DDS, Nathan Schwartz, DDS, and Ron Gardner, DDS; and, DSO Roberts’ preliminary  
15 findings and recommendations. “Records” as used herein included all available x-rays,  
16 radiographs and/or photographs.

17 27. Dr. Roberts did not participate in the Review Panel meeting held on February 9,  
18 2018.

19 28. The Review Panel found that there was a preponderance of the evidence to  
20 support DSO Roberts’ preliminary findings and recommendations regarding potential violations  
21 of the Dental Practice Act and returned the matter to DSO Roberts for continued investigation,  
22 including an informal hearing pursuant to NRS 631.363

23 29. On or about February 12, 2018, Respondent was served with a copy of the  
24 Review Panel Findings via service to his attorney’s office.

25 30. At the request of Respondent’s attorney for a continuance of the informal hearing  
26 scheduled for June 25, 2018, on June 19, 2018, Respondent was served with the Sixth (6<sup>th</sup>)  
27 Renotice of Informal Hearing, scheduling the informal hearing for July 16, 2018.  
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1           31.     On July 14, 2018, following the numerous continuances of the informal hearing,  
2 counsel for Respondent advised counsel for the Board that Respondent had elected not to  
3 participate in the informal hearing, and would not be attending.

4           32.     As Respondent was advised in the multiple notices scheduling the informal  
5 hearing, Respondent's attendance at the informal hearing was voluntary; however, pursuant to  
6 applicable statutes, the informal hearing is to take place with or without Respondent's  
7 participation.

8           33.     On July 16, 2018, at 10:00 a.m. the above-referenced and properly-noticed  
9 Informal Hearing was held at the Board office in Las Vegas, Nevada, regarding the verified  
10 complaint of Cerri Cowden as addressed in the Notice of Investigative Complaint. The informal  
11 hearing was held pursuant to NRS 631.363 and NAC 631.250 and 631.255.

12           34.     In attendance at the July 16, 2018, informal hearing was the DSO, Bradley  
13 Roberts, DDS, and the Board's attorney, Melanie Bernstein Chapman, Esq.

14           35.     Neither Respondent nor Respondent's attorney attended the informal hearing.

15           36.     Following the informal hearing, written findings of fact and conclusions were  
16 drafted, pursuant to NRS 631.363(3). *See, Findings and Recommendations of the Informal*  
17 *Hearing Held Pursuant to NRS 631 and NAC 631*, dated August 8, 2018.

18           37.     On August 9, 2018, pursuant to SB 256, the Review Panel conducted a second  
19 review of the preliminary investigation, which now included the transcript of the informal  
20 hearing held on July 16, 2018 and the *Findings and Recommendations of the Informal Hearing*  
21 *Held Pursuant to NRS 631 and NAC 631* (hereinafter "Findings and Recommendations").

22           38.     Following its review, the Review Panel approved and adopted the Findings and  
23 Recommendations.

24           39.     The Review Panel instructed that the Findings and Recommendations were to be  
25 presented to Respondent pursuant to NRS 631.363(3) for consent to, or rejection of, the F&R  
26 pursuant to NRS 631.363(5).

27           40.     The Review Panel further found that, in the event Respondent rejects the Findings  
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1 and Recommendations, additional disciplinary procedures pursuant to NRS Chapter 631 and  
2 NAC Chapter 631, including the filing of a Formal Complaint and a full disciplinary hearing  
3 before the Nevada State Board of Dental Examiners, were appropriate.

4 41. On August 13, 2018, the Findings and Recommendations were forwarded to  
5 Respondent for review and consent pursuant to NRS 631.363(5) together with documents to  
6 facilitate his acceptance or rejection of the Findings and Recommendations.

7 42. Correspondence sent with the Findings and Recommendations advised that the  
8 Findings and Recommendations had been submitted to and approved by the Review Panel and  
9 that a failure to respond on or before September 4, 2018 would be deemed a rejection of the  
10 Findings and Recommendations and would result in the filing of a formal complaint (charging  
11 document).

12 43. Per his counsel's request, Respondent requested, and received, extensions of time  
13 until September 18, 2018, to decide whether or not to consent to the August 9, 2018 Findings and  
14 Recommendations.

15 44. Respondent did not consent to the Findings and Recommendations.

16 45. Respondent did not respond to the Findings and Recommendations, thereby  
17 rejecting the Findings and Recommendations.

18 46. Requests to Respondent's counsel for the status of Respondent's consent or  
19 rejection of the Findings and Recommendations were not answered.

20 47. There is a preponderance of the evidence to support the Findings and  
21 Recommendations and/or there is a preponderance of the evidence to support a conclusion that  
22 the Respondent violated one or more provisions of NRS Chapter 631 and/or NAC Chapter 631.

23  
24 **Count I**  
**Violations of NRS Chapter 631 and NAC 631**

25 48. The Board repeats and realleges the allegation contained in paragraphs 1 through  
26 47 and reincorporates the same as if fully set forth herein.

27 49. Respondent's treatment of Patient, Cerri Cowden, violated NRS 631.3475(1),  
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1 NRS 631.3475(2), NRS 631.3475(4), NRS 631.349, and/or NAC 631.230 (1)(c).

2 50. NRS 631.3475 provides, in pertinent part:

3 **NRS 631.3475 Malpractice; professional incompetence; disciplinary action in**  
4 **another state; substandard care; procurement or administration of controlled**  
5 **substance or dangerous drug; inebriety or addiction; gross immorality; conviction**  
6 **of certain crimes; failure to comply with certain provisions relating to controlled**  
7 **substances; failure to obtain certain training; certain operation of medical facility.**  
8 The following acts, among others, constitute unprofessional conduct:

- 9 1. Malpractice;  
10 2. Professional incompetence;  
11 \*\*\*  
12 4. More than one act by the dentist or dental hygienist constituting substandard care in  
13 the practice of dentistry or dental hygiene;  
14 \*\*\*\*

15 51. NRS 631.349 provides, in pertinent part:

16 **NRS 631.349 Examples of unprofessional conduct not complete list or**  
17 **authorization of other acts; Board may hold similar acts unprofessional conduct.**

18 The acts described in NRS 631.346 to 631.3485, inclusive, must not be construed as a  
19 complete list of dishonorable or unprofessional conduct, or as authorizing or permitting  
20 the performance of other and similar acts, or as limiting or restricting the Board from  
21 holding that other or similar acts constitute unprofessional or dishonorable conduct.

22 52. NAC 631.230 provides, in pertinent part:

23 **NAC 631.230 Unprofessional Conduct.**

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

26 The following acts, among others, constitute unprofessional conduct:  
27 \*\*\*\*

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

\*\*\*\*

53. Respondent's treatment of patient, Cerri Cowden constituted unprofessional  
conduct as defined above in the following respects:

- a. Before placing implants in the positions of #23 and #26, Respondent did not review,  
or failed to properly evaluate, the CT Scan or Cone Beam Imaging to determine the  
three-dimensional contours of the bone underlying the soft tissue in order to  
accurately or appropriately determine the advisability of performing the implant  
procedure and/or the proper method to perform the implant procedure in light of the

1 patient's anatomy as shown in the imaging. As such, Respondent failed to  
2 acknowledge or appreciate the findings of the pre-procedure CAT scan to determine  
3 whether Ms. Cowden was a candidate for the implants and, if so, the proper method  
of placement.

- 4 b. Respondent's records concerning Ms. Cowden do not indicate that the review,  
5 evaluation and/or assessments described above in paragraph 53(a) were undertaken or  
6 accomplished.
- 7 c. During Respondent's treatment of patient, Cerri Cowden, Respondent failed to use a  
8 surgical guide to direct him in placing implants in the proper position which would  
9 have been the standard of care after viewing and properly evaluating the pre-surgical  
10 CAT scan.
- 11 d. Respondent improperly placed the two implants in question through the lingual plate  
12 of the lower jaw, as is shown in the CAT scan performed by the subsequent treating  
13 dentist.
- 14 e. Respondent did not take, or was unable to produce proof of taking, any post-  
15 procedure imaging which would have advised him of the improper placement of the  
16 implants in the positions of teeth #23 and #26, causing a bridge to be improperly  
17 placed on defectively-placed implants without the patient's knowledge.
- 18 f. Respondent's records concerning the care and treatment of patient Cerri Cowden are  
19 incomplete, inadequate and below the standard of care.

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**Count II**  
**Recovery of Attorney's Fees and Costs**

54. The Board repeats and realleges every allegation contained in paragraphs 1  
19 through 53 and reincorporates the same as if fully set forth herein.

55. NRS 622.400 provides:

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

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

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

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

7 (a) Costs of an investigation.

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

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

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

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

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

15 (g) Expenses for research, including, without limitation, reasonable  
16 and necessary expenses for computerized services for legal  
17 research.

18 56. This action relates to the Board, a regulatory body, undertaking action as part of  
19 its investigative, administrative, and disciplinary proceedings against Respondent as to the  
20 enforcement of provisions of chapter 631 of the Nevada Revised Statutes and/or chapter 631 of  
21 the Nevada Administrative Code which the Board has the authority to enforce and, therefore,  
22 NRS 622.400(1) is satisfied.

23 57. That, as a result of NRS 622.400(1) being satisfied, as alleged immediately above,  
24 should NRS 622.400(1)(a) or (b) be satisfied, the Board shall recover from Respondent its  
25 attorney's fees and costs.

26 **Wherefore, it is prayed:**

27 1. That the Board conduct a formal hearing regarding the above-referenced matters  
28 constituting violations of the provision of chapter 631 of the NRS and/or NAC 631;



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**VERIFICATION**

Dr. Gregory J. Pisani, DDS, having been duly sworn, hereby deposes and states under penalty of perjury that he is a member of the Nevada State Board of Dental Examiners and was a member the Review Panel of the Nevada State Board of Dental Examiners that reviewed and evaluated the investigation concerning Case No. 6033-1456; that he has read the foregoing complaint; and that based upon information discovered in the course of the investigation into the verified complaint of Cerri Cowden and reviewed by the Review Panel, he believes that the allegations and charges in the foregoing Complaint against Respondent are true, accurate and correct.



**Gregory J. Pisani, DDS**  
Member, Nevada State Board of Dental Examiners  
Member, Review Panel of the Nevada State Board of Dental Examiners (2018)