

NEVADA STATE BOARD
of
DENTAL EXAMINERS



FORMAL HEARING

(NSBDE v. ANTONINA CAPURRO, DMD) DAY 7

TUESDAY JULY 27, 2021

6:00 P.M.

PUBLIC BOOK

First Amended Complaint:

FILED

APR 16 2021

**NEVADA STATE BOARD OF
DENTAL EXAMINERS**

STATE OF NEVADA

BEFORE THE BOARD OF DENTAL EXAMINERS

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3 NEVADA STATE BOARD OF DENTAL
4 EXAMINERS,

5 Complainant,

6 vs.

7 ANTONINA CAPURRO, DMD

8 Respondent.
9

Case No. LL-384-14-1978

FIRST AMENDED COMPLAINT

10 Complainant, the Nevada State Board of Dental Examiners (hereinafter referred to as the
11 "Board" or "NSBDE"), by and through its attorneys, Board Counsel Phil W. Su, Esq. and Ogonna
12 M. Brown, Esq., of the law firm Lewis Roca, and pursuant to NRS 631.360 and NRS 631.363,
13 hereby issues this **FIRST AMENDED Complaint** against Respondent, Antonina Capurro, DMD
14 (hereinafter referred to as "Respondent" or "Dr. Capurro"), and alleges as follows:

15 **GENERAL ALLEGATIONS**

16 **Parties and Jurisdiction**

17 1. The Board is empowered to enforce the provisions of Chapter 631 of the Nevada
18 Revised Statutes ("NRS" or "NEV. REV. STAT.") 631.190.

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

23 3. On August 1, 2014, the Board issued Respondent a limited license to practice
24 dentistry in the State of Nevada (License # LL-384-14, hereinafter referred to as "License" or
25 "Limited License").

26 4. Respondent is licensed by the Board and, therefore, has submitted herself to the
27 administrative and disciplinary jurisdiction of the Board.

1 licensure. She also provided documentation regarding her A.T. Still residency program,
2 including transcripts and a letter of acceptance into the program. Dr. Capurro indicated at that
3 time that she had spoken with Debra Shaffer-Kugel, the prior NSBDE Executive Director and
4 Melanie Chapman Esq., the former General Counsel to the NSBDE. Dr. Capurro stated that she
5 “found reassurance that [her] license [had] been reviewed and renewed by the Board at uniform
6 intervals over the last six years.”

7 10. On or about November 19, 2020, Executive Director DiMaggio mailed Dr.
8 Capurro a certified letter via informing Dr. Capurro that her Limited License “has been updated
9 to ‘expired’ effective November 19, 2020” because Dr. Capurro’s did not qualify for a limited
10 license pursuant to NRS 631.271. This statute provides, in pertinent part:

11 1. The Board shall, without a clinical examination required by [NRS](#)
12 [631.240](#), [631.300](#) or [631.3121](#), issue a limited license to practice dentistry, dental hygiene or
13 dental therapy to a person who:

- 14 (a) Is qualified for a license to practice dentistry, dental hygiene or dental therapy in this State;
15 (b) Pays the required application fee;
16 (c) Has entered into a contract with:

17 (1) The Nevada System of Higher Education to provide services as a dental intern, dental
18 resident or instructor of dentistry, dental hygiene or dental therapy at an educational or outpatient
19 clinic, hospital or other facility of the Nevada System of Higher Education; or

20 (2) An accredited program of dentistry, dental hygiene or dental therapy of an institution
21 which is accredited by a regional educational accrediting organization that is recognized by the
22 United States Department of Education to provide services as a dental intern, dental resident or
23 instructor of dentistry, dental hygiene or dental therapy at an educational or outpatient clinic,
24 hospital or other facility of the institution and accredited by the Commission on Dental
25 Accreditation of the American Dental Association or its successor specialty accrediting
26 organization;

27 (d) Satisfies the requirements of [NRS 631.230](#), [631.290](#) or [631.312](#), as appropriate; and

28 (e) Satisfies at least one of the following requirements:

(1) Has a license to practice dentistry, dental hygiene or dental therapy issued pursuant to
the laws of another state or territory of the United States, or the District of Columbia;

(2) Presents to the Board a certificate granted by the Western Regional Examining Board
which contains a notation that the person has passed, within the 5 years immediately preceding the
date of the application, a clinical examination administered by the Western Regional Examining
Board;

(3) Successfully passes a clinical examination approved by the Board and the American
Board of Dental Examiners; or

(4) Has the educational or outpatient clinic, hospital or other facility where the person
will provide services as a dental intern or dental resident in an internship or residency program
submit to the Board written confirmation that the person has been appointed to a position in the
program. If a person qualifies for a limited license pursuant to this subparagraph, the limited
license remains valid only while the person is actively providing services as a dental intern or
dental resident in the internship or residency program and is in compliance with all other
requirements for the limited license.

1 8. The Board may revoke a limited license and a permit issued pursuant to this section, if
2 any, at any time if the Board finds, by a preponderance of the evidence, that the holder of the
license violated any provision of this chapter or the regulations of the Board.

3 11. Since Dr. Capuro's stated Employment Agreement stated that she held "no
4 teaching responsibilities at UNLV School of Dental Medicine," she did not qualify for a limited
5 license pursuant to NRS 631.271. Likewise, Dr. Capuro did not qualify for a limited license
6 pursuant to any other exception outlined in NRS 631.271(1)(c) and/or (e).

7 Respondent's Complaint for Injunctive Relief in Eighth District Court

8 12. On November 25, 2020, Dr. Capurro filed a Complaint against the Board
9 demanding declaratory and injunctive relief for the expiration of her license. The matter was
10 commenced in Eighth Judicial District Court, Clark County, Nevada ("State Court"), and
11 ultimately assigned to Department 2, before Judge Rob Bare as Case No. A-20-825438-J ("State
12 Court Action"). The Complaint alleged that (1) there existed an actual controversy between the
13 Board and Dr. Capuro regarding whether or not the Board lawfully "expired" Dr. Capuro's
14 license and (2) that Dr. Capuro is entitled to an order reinstating her license and enjoining the
15 Board from taking her license without providing her due process.

16 13. Dr. Capuro also filed a Motion for Temporary Restraining Order and Permanent
17 Injunction contemporaneously with the aforementioned Complaint, in which she again sought an
18 order from the Court reinstating her license, and enjoining the Board from taking her license
19 without providing her appropriate due process.

20 14. The State Court held a hearing on Dr. Capurro's Motion for Temporary
21 Restraining Order and Permanent Injunction on December 8, 2020. At the conclusion of the
22 hearing, the Court ordered that the "expiration" of Dr. Capurro's Limited License was either a
23 "revocation" or an "annulment" under NEV. REV. STAT. § 233B.127(3), and that Due Process
24 required the Board to provide Dr. Capurro with a hearing if they decided to take further action
25 against Dr. Capurro's license.

26 Authorized Investigation of Respondent's Limited License

27 15. On February 19, 2021, the Board notified Dr. Caruro that it had initiated and
28 investigation regarding whether she met the requirements for licensure pursuant to NRS 631.271.

1 16. Pursuant to NAC 631.250, the Board further notified Dr. Capuro that the Board
2 was not limited in the scope of its investigation to the matters set forth in the complaint but could
3 extend the investigation to any additional matters which appear to constitute a violation of any
4 provision of chapter 631 of NRS or [chapter 631 of the NAC].”

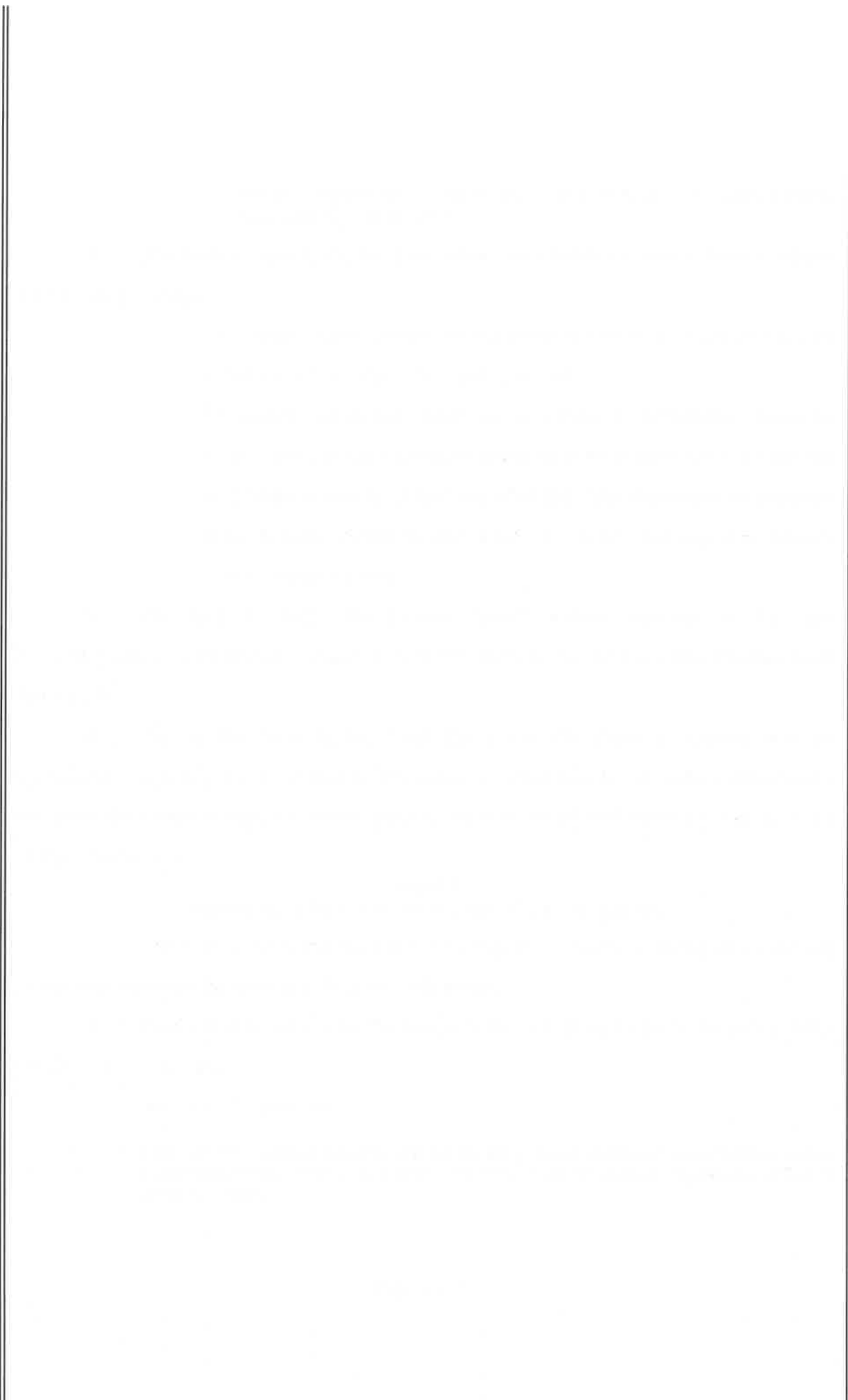
5 17. On or about March 5, 2021, Dr. Capuro submitted a written response to the *Notice*
6 *of Complaint & Request for Records*, and provided documentary exhibits in support of her
7 responses.

8 18. On or about February 24, 2021, Ogonna Brown Esq., (Brown) counsel for the
9 Board, issued Subpoenas to (i) A.T. Still University of Health Sciences; (ii) University of Las
10 Vegas, Nevada - School of Dental Medicine, and (iii) Nevada Department of Health and Human
11 Services, (collectively, the “third party Subpoenas”) seeking relevant documents in those
12 entities’ possession and the depositions of their person(s) most knowledgeable regarding those
13 documents. The third party Subpoenas were considered and granted by the Executive Director
14 pursuant to NAC 631.355, and were drafted to be issued either by the Executive Director or by
15 Brown.

16 19. On February 26, 2021, Brown issued a Subpoena upon Dr. Capurro, through Dr.
17 Capurro’s counsel in an effort to depose Dr. Capurro in furtherance of the investigation. Dr.
18 Capurro refused to attend the scheduled deposition and instead asserted her Fifth Amendment
19 right against self-incrimination.

20 20. To that end, on March 4, 2021, Dr. Capurro filed a Motion to Quash and for
21 Protective Order with the State Court, (i) asserting the Fifth Amendment right against self-
22 incrimination and (ii) contesting the validity of the third party Subpoenas on the basis that all
23 Subpoenas must be issued by the Board and not the Executive Director or Board counsel.

24 21. The State Court granted the Motion to Quash, and Dr. Capurro refused to testify
25 based upon the Fifth Amendment. The Court found that since the Board “alleges that Capurro
26 does not qualify for a license, and thus may be engaging in the illegal practice of dentistry
27 pursuant to NRS 631.400 (a class D felony), and are purportedly investigating her based upon
28 the same,” that Dr. Capuro had the right to not testify.



1 1. The Board shall, without a clinical examination required by [NRS](#)
2 [631.240](#), [631.300](#) or [631.3121](#), issue a limited license to practice dentistry, dental hygiene or dental
therapy to a person who:

3 (a) Is qualified for a license to practice dentistry, dental hygiene or dental therapy in this State;

4 (b) Pays the required application fee;

5 (c) Has entered into a contract with:

6 (1) The Nevada System of Higher Education to provide services as a dental intern, dental
resident or instructor of dentistry, dental hygiene or dental therapy at an educational or outpatient
clinic, hospital or other facility of the Nevada System of Higher Education; or

7 (2) An accredited program of dentistry, dental hygiene or dental therapy of an institution
which is accredited by a regional educational accrediting organization that is recognized by the
United States Department of Education to provide services as a dental intern, dental resident or
instructor of dentistry, dental hygiene or dental therapy at an educational or outpatient clinic,
hospital or other facility of the institution and accredited by the Commission on Dental Accreditation
of the American Dental Association or its successor specialty accrediting organization;

8 (d) Satisfies the requirements of [NRS 631.230](#), [631.290](#) or [631.312](#), as appropriate; and

9 (e) Satisfies at least one of the following requirements:

10 (1) Has a license to practice dentistry, dental hygiene or dental therapy issued pursuant to
the laws of another state or territory of the United States, or the District of Columbia;

11 (2) Presents to the Board a certificate granted by the Western Regional Examining Board
which contains a notation that the person has passed, within the 5 years immediately preceding the
date of the application, a clinical examination administered by the Western Regional Examining
Board;

12 (3) Successfully passes a clinical examination approved by the Board and the American
Board of Dental Examiners; or

13 (4) Has the educational or outpatient clinic, hospital or other facility where the person will
provide services as a dental intern or dental resident in an internship or residency program submit
to the Board written confirmation that the person has been appointed to a position in the program.
If a person qualifies for a limited license pursuant to this subparagraph, the limited license remains
valid only while the person is actively providing services as a dental intern or dental resident in the
internship or residency program and is in compliance with all other requirements for the limited
license.

14 ****

15 8. The Board may revoke a limited license and a permit issued pursuant to this section, if any,
16 at any time if the Board finds, by a preponderance of the evidence, that the holder of the license
17 violated any provision of this chapter or the regulations of the Board.

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20 34. Dr. Capurro failed to meet the requirements for limited licensure pursuant to NRS
21 [631.271\(a\)](#) because the dental doctorate degree conferred upon her does not authorize her to pursue
22 clinical examination, or to engage in the clinical practice of dentistry or dental hygiene;

23 35. Dr. Capurro failed to meet the requirements for limited licensure pursuant to NRS
24 [631.271\(c\)](#) because she “does not provide services as a dental intern, dental resident or instructor
25 of dentistry or dental hygiene” pursuant to a contract with either:

26 (i) the Nevada System of Higher Education, or

27 (ii) “[a]n accredited program of dentistry, dental hygiene or dental therapy of an
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1 institution which is accredited by a regional educational accrediting organization that is
2 recognized by the United States Department of Education to provide services as a dental
3 intern, dental resident or instructor of dentistry, dental hygiene or dental therapy at an
4 educational or outpatient clinic, hospital or other facility of the institution and accredited
5 by the Commission on Dental Accreditation of the American Dental Association or its
6 successor specialty accrediting organization”;

7 36. Dr. Capurro failed to meet any of the enumerated requirements of NRS 631.271(e)
8 because she:

- 9 (i) is not licensed in another state or territory;
- 10 (ii) has not presented to the Board a certificate granted by the Western Regional
11 Examining Board noting that she has passed a dental clinical examination
12 administered by the Western Regional Examining Board;
- 13 (iii) has not successfully passed a clinical examination approved by the Board
14 and the American Board of Dental Examiners; and
- 15 (iv) failed to have the educational or outpatient clinic, hospital, or other facility
16 where she will “provide services as a dental intern or dental resident in an
17 internship or residency program,” as contemplated by NRS 631.271, submit
18 to the Board written confirmation that she has been appointed to a position
19 in the program. If a person qualifies for a limited license pursuant to this
20 subparagraph, the limited license remains valid only while the person is
21 actively providing services as a dental intern or dental resident in the
22 internship or residency program and is in compliance with all other
23 requirements for the limited license.

24 37. Pursuant to NRS 631.271(8), the Board may find that a limited license is no longer
25 valid and revoke a limited license if it finds, by a preponderance of the evidence, that the holder
26 of the license violated any provision of NRS 631 or the regulations of the Board.
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1 38. Respondent's failure to meet the requirements of NRS 631.271(1)(a), (1)(c) and/or
2 (1)(e) constitutes violations that permits the Board to issue an order of revocation pursuant to NRS
3 631.271(8).

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5 **Count II**
6 **Violations of NRS 631.271(3)(a) and (b); NRS 631.400(3)(a); NRS 631.3475(2) and (4); NRS**
7 **631.349, and/or NAC 631.230 (1)(c).**

8 39. The Board repeats and re-alleges the allegation contained in paragraphs 1 through
9 38 and reincorporates the same as if fully set forth herein.

10 40. On at least one occasion during the five year period preceding the filing of this
11 Complaint, Respondent has provided services constituting the practice of dentistry to minor
12 patients at "rural" locations or facilities other than "the educational or outpatient clinic, hospital or
13 other facility" where Dr. Capurro was employed pursuant to her Limited License ("Off-Site
14 Locations").

15 41. The services that Respondent provided at such Off-Site Locations included, but are
16 not limited to, "open-mouth" screenings including a visual observation of the child's dental health
17 with a mouth mirror and a light.

18 42. The services Respondent provided at such Off-Site Locations violates NRS
19 631.271(3)(a) and (b); NRS 631.400(3)(a); NRS 631.3475(2) and (4); NRS 631.349, and/or NAC
20 631.230 (1)(c).

21 43. As stated above, NRS 631.271 states:

22 **NRS 631.271 Limited license to practice dentistry, dental hygiene or dental**
23 **therapy; permit authorizing certain persons to practice dentistry or dental**
24 **hygiene; regulations. [Effective January 1, 2020.]**

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26 3. Except as otherwise provided in subsection 4, a person to whom a limited
27 license is issued pursuant to subsection 1:

28 (a) May practice dentistry, dental hygiene or dental therapy in this State only:
(1) At the educational or outpatient clinic, hospital or other facility where
the person is employed; and

(2) In accordance with the contract required by paragraph (c) of subsection
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(b) Shall not, for the duration of the limited license, engage in the private practice of dentistry, dental hygiene or dental therapy in this State or accept compensation for the practice of dentistry, dental hygiene or dental therapy except such compensation as may be paid to the person by the Nevada System of Higher Education or an accredited program of dentistry, dental hygiene or dental therapy for services provided as a dental intern, dental resident or instructor of dentistry, dental hygiene or dental therapy pursuant to paragraph (c) of subsection 1.

8. The Board may revoke a limited license and a permit issued pursuant to this section, if any, at any time if the Board finds, by a preponderance of the evidence, that the holder of the license violated any provision of this chapter or the regulations of the Board.

44. NRS 631.400 provides, in pertinent part:

NRS 631.400 Prohibited acts; penalties; injunctive relief. [Effective through December 31, 2019.]

3. Unless a greater penalty is provided by specific statute, a person who is licensed to practice dentistry who practices dentistry in a manner or place not permitted by the provisions of this chapter:

- (a) If it is his or her first or second offense, is guilty of a gross misdemeanor.
- (b) If it is his or her third or subsequent offense, is guilty of a category D felony and shall be punished as provided in [NRS 193.130](#).

45. NRS 631.3475 provides, in pertinent part:

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

- 2. Professional incompetence;

- 4. More than one act by the dentist or dental hygienist constituting substandard care in the practice of dentistry or dental hygiene;

46. NRS 631.349 provides, in pertinent part:

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

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unprofessional conduct.

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

47. NAC 631.230 provides, in pertinent part:

NAC 631.230 Unprofessional Conduct.

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

The following acts, among others, constitute unprofessional conduct:

(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.

48. Respondent’s treatment of minor patients at Off-Site Locations or facilities other than “the educational or outpatient clinic, hospital or other facility” where Dr. Capurro was employed pursuant to her Limited License constitutes unprofessional conduct as defined above in the following respects:

- a. Respondent performed clinical procedures in manner outside the scope of her Limited License, as set forth in NRS 631.271(3)(a) and (b).
- b. Respondent attempted to diagnose and treat patients in a manner outside the scope of her Limited License, as set forth in NRS 631.271(3)(a) and (b).

**Count III
Recovery of Attorney’s Fees and Costs**

49. The Board repeats and re-alleges every allegation contained in paragraphs 1 through 48 and reincorporates the same as if fully set forth herein.

50. NRS 622.400 provides:

1 **NRS 622.400 Recovery of attorney’s fees and costs incurred by regulatory**
2 **body in certain regulatory proceedings.**

3 1. Except as otherwise provided in this section, a regulatory body may recover
4 from a person reasonable attorney’s fees and costs that are incurred by the
5 regulatory body as part of its investigative, administrative and disciplinary
6 proceedings against the person if the regulatory body:

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

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

14 2. A regulatory body may not recover any attorney’s fees and costs pursuant
15 to subsection 1 from a person who was subject to an investigative, administrative
16 or disciplinary proceeding of the regulatory body unless the regulatory body
17 submits an itemized statement of the fees and costs to the person.

18 3. As used in this section, “costs” means:

19 (a) Costs of an investigation.

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

22 (c) Fees for hearing officers and court reporters at any depositions or hearings.

23 (d) Fees for expert witnesses and other witnesses at any depositions or
24 hearings.

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

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

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

51. This matter relates to the Board, a regulatory body, undertaking action as part of its
22 investigative, administrative, and disciplinary proceedings against Respondent as to the
23 enforcement of provisions of chapter 631 of the Nevada Revised Statutes and/or chapter 631 of
24 the Nevada Administrative Code which the Board has the authority to enforce and, therefore, NRS
25 622.400(1) is satisfied.

52. That, as a result of NRS 622.400(1) being satisfied, NRS 622.400(1)(a) or (b)
27 requires that the Board may recover from Respondent its attorney’s fees and costs.

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Wherefore, it is prayed:

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

2. That should the Board determines what, if any, disciplinary action it deems appropriate pursuant to NRS 631.271, NRS 631.350, and any other applicable provision of Chapter 631 of the NRS and/or NAC;

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


4. That to the extent the Board deems appropriate, the Board should issue a public reprimand upon Respondent, pursuant to NRS 631.350(1)(e), based upon any findings of Respondent's violations of the above-referenced provisions of Chapter 631 of the Nevada Revised Statutes and Nevada Administrative Code;

5. That, to the extent the Board deems appropriate, Respondent's limited Dental License should be deemed invalid and revoked pursuant to NRS 631.350(1)(b) and NRS 631.271(8); and


6. That, to the extent the Board deems appropriate, the Board should take other and further action as may be just and appropriate, provided for and allowed pursuant to relevant authority.

Respectfully submitted this 16th day of April, 2021.

Nevada State Board of Dental Examiners

By 
Phil W. Su, Esq. (NBN 10450)
6010 S Rainbow Blvd, Suite A-1
Las Vegas, Nevada 89118

LEWIS ROCA ROTHGERBER CHRISTIE LLP

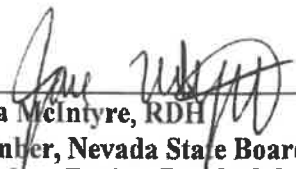
By 
Ogonna M. Brown, Esq. (NBN 7589)
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Attorneys for Defendant
Nevada State Board of Dental Examiners

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VERIFICATION

Jana McIntyre, RDH, having been duly sworn, hereby deposes and states under penalty of perjury that she 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. LL-384-14-1978; that she has read the foregoing FIRST AMENDED Complaint; and that based upon information discovered in the course of the Authorized Investigation, which was reviewed by the Review Panel, she believes that the allegations and charges in the foregoing Complaint against Respondent are true, accurate and correct.

Date: April 16, 2021



Jana McIntyre, RDH
Member, Nevada State Board of Dental Examiners
Member, Review Panel of the Nevada State Board of
Dental Examiners (2021)

Answer to First Amended Complaint: