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I. FINDINGS OF FACT

1. In 2007, Dr. Capurro began attending the University of Nevada Las Vegas School of Dental Medicine (“UNLV SDM”), seeking to obtain a Doctor of Dental Medicine degree. *See* Exhibit 26, p. 638 (UNLV_000638).

2. During her third year of dental school, Dr. Capurro was diagnosed with a disability involving a visual impairment. Exhibit 25, p. 17 (labeled CAPURRO 002).

3. Approximately nine months after receiving notice of Dr. Capurro’s disability, UNLV’s Disability Resource Center sent a letter to Drs. Woodall and Brownstein of the UNLV SDM, advising that UNLV SDM was required to accommodate Dr. Capurro’s disability by, among other things, allowing her to “complete her DMD requirements via simulation with experiences and competencies being completed on a mannequin or with an OSCE.” Exhibit 25, p. 18 (labeled CAPURRO 003).

4. On May 14, 2011, Dr. Capurro was awarded a Doctor of Dental Medicine (“DMD”) degree from UNLV SDM. Exhibit 25, p. 16.

5. In connection with her DMD degree, on or about May 3, 2011, UNLV SDM issued a transcript for Dr. Capurro (the “Original Transcript”), containing a notation that Dr. Capurro “has agreed not to present her diploma as eligibility to seek licensure.” *See* Exhibit 26, at 663 (UNLV_000663).

6. On or about July 1, 2014, UNLV SDM issued a new Official Transcript to replace the Original Transcript (the “Revised Transcript”), which removed the notation set forth above. *See* Exhibit 26, at 638 (UNLV_000638).

7. In or around April 2014, Dr. Capurro requested that the Board issue an advisory opinion regarding whether Dr. Capurro meets the requirements for dental hygiene licensure pursuant to NRS 631.290 and NRS 631.300. Exhibit 25, p. 22 (CAPURRO 007). On April 25, 2014, the Board determined that Dr. Capurro did not meet the eligibility requirements for dental hygiene licensure set forth in NRS 631.290. *See id.* p. 23 (CAPURRO 008). At the same time, least one Board member stated that Dr. Capurro may qualify for a limited dental license. *See* Transcript from Hearing on September 21, 2021, forthcoming.

8. On or about May 1, 2014, the Board sent Dr. Capurro an application packet for limited licensure with the State of Nevada. *See* Exhibit 25, pp. 26-27 (CAPURRO 011-CAPURRO 012). During a public Board meeting on August 1, 2014, the Board considered whether to approve Dr. Capurro for a limited dental license under NRS 631.271. *See* Exhibit 121, p. 8 (CAPURRO000338). Dr. Timothy Pinther “indicated that he reviewed the application, that it met the criteria, and recommended approval.” *Id.* A motion was then made to approve Dr. Capurro for the limited dental license, and the vote passed by a unanimous vote. *See id.*

9. On August 1, 2014, the Board issued Dr. Capurro a limited license for the practice of dentistry in the State of Nevada. Exhibit 25, p. 27.

1 10. On or about April 2, 2014, Karen West, DMD, MPH (“Dr. West”), then the Dean of UNLV
2 SDM, sent a letter to Dr. Capurro offering her employment with UNLV SDM, in the position of “Visiting
3 Assistant Professor” from July 1, 2014 to June 30, 2015. Exhibit 26, p. 954-956 (UNLV_000954 –
4 UNLV_000956). Dr. Capurro accepted the position. *See id.* at p. 956 (UNLV_000956).

5 11. On October 24, 2016, however, Dr. West sent Dr. Capurro a subsequent offer letter, which
6 offered Dr. Capurro a revised position of Visiting Assistant Professor at the UNLV SDM. *See* Exhibit 26,
7 pp. 944 – 947 (UNLV_000944 – UNLV_000947). Dr. West indicated that, under the new letter, Dr.
8 Capurro would “be assigned by the UNLV School of Dental Medicine to serve the role of the State Dental
9 Health Officer to the Nevada Division of Public and Behavioral Health as determined by the contract
10 between the State of Nevada Department of Health and Human Services and Board of Regents, NSHE.”
11 *See id.* at p. 944 (UNLV_000944). She further stated, that Dr. Capurro would “be eligible for all of the
12 University fringe benefits which are available to all academic faculty/professional staff,” and that Dr.
13 Capurro’s “faculty duties will be assigned by Dr. West, Dean of the School of Dental Medicine, after
14 consultation with the Bureau of Child, Family and Community Wellness Oral Health Program,” many of
15 which were listed generally in the letter. *See id.* Dr. Capurro accepted the position on October 26, 2016.
16 *See id.*

17 12. UNLV SDM entered into four interlocal contracts with DHHS providing for UNLV SDM
18 to provide to DHHS a UNLV SDM faculty member to serve as the State DHO between the time period of
19 August 1, 2016 and June 30, 2021. Exhibit 27 (Interlocal Contracts) (DHHS000001-120). Each of these
20 contracts included a Scope of Work that provided the duties that the Visiting Faculty Member would
21 perform as DHO.

22 13. UNLV SDM entered into contracts with Dr. Capurro on a yearly basis between 2016 and
23 2020. Each of these contracts included language that incorporated by reference the interlocal contract
24 between UNLV SDM and DHHS, through which UNLV SDM provided Dr. Capurro to DHHS to serve as
25 the state DHO. Exhibit 26 (2016-2017 Contract: UNLV_000552) (2017-2018 Contract: UNLV000866-
26 867) (2019-2020 Contract: UNLV000928-000933) (2020-2021 Contract: UNLV000923-000928).

27 14. On March 12, 2019, Dr. Capurro was admitted into A.T. Still University College of
28 Graduate Studies in the school’s Dental Public Health Residency Program. Exhibit 25, p. 68 (Acceptance
letter from ATSU) (CAPURRO053). ATSU and UNLV SDM entered into two additional agreements
allowing Dr. Capurro to complete her dental residency at UNLV SDM. Exhibit 25, p. 69-79) (Educational
Affiliation Agreement and Scope of Work) (CAPURRO054-066); Exhibit 28 (ATSU_000335-336) (UNLV
SDM Prof. serve as preceptor).

 15. UNLV SDM entered into an interlocal contract with Nevada Department of Education to
provide oral health study that included screenings and fluoride varnish treatment at daycare facilities in
2020. UNLV000082-112.

 16. In October, 2020, Dr. Capurro noted that her employment contract did not include specific
language allowing her to travel throughout the state. She contracted UNLV administration, UNLV SDM

1 general counsel, and the Board General Counsel for guidance as to whether she could travel and perform
2 the duties outlined in the UNLV SDM-DOE interlocal agreement. Exhibit 1, Exhibit 2, Exhibit 26 (UNLV
3 000054-78 – emails with UNLV SDM).

4 17. Board General Counsel advised Dr. Capurro that the limited license was not subject to
5 geographic restrictions. Exhibit 2; Su Deposition. Similarly, UNLV SDM Dean Garcia provided Dr.
6 Capurro a Memorandum dated October 28, 2020, that specifically advised Dr. Capurro that the
7 memorandum explained the limits of her license and specifically allowing Dr. Capurro to perform services
8 under the license in support of the UNLV SDM-DOE contract. Exhibit 25 (Capurro 015).

9 18. On November 19, 2020, Board Executive Director DiMaggio unlawfully expired Dr.
10 Capurro’s license. Exhibit 25, p. 31 (Capurro 16-17). On December 20, 2020, District Court Judge Bare
11 issued a preliminary injunction ordering the Board to reinstate Dr. Capurro’s license and to provide her
12 with due process if the Board chose to investigate Dr. Capurro’s ability to hold a limited license again.

13 19. On January 7-8, 2021, Board General Counsel and Executive Director reached out to third
14 parties demanding production of documents in relation to an investigation the Board was undertaking of
15 Dr. Capurro. Exhibit 143, Exhibit 113.

16 20. On January 20, 2021, the Board authorized the investigation of Dr. Capurro. On March 16,
17 2021, Board President Moore issued subpoenas to third parties for documents relating to the investigation
18 of Dr. Capurro. On May 5, 2021, Board President Moore made public comments on a pending state
19 legislation about Dr. Capurro, her ability to hold a license, and dental services he believed she had provided.

20 **II. CONCLUSIONS OF LAW [The Board May Select any/all of the Following]**

21 **A. Count I: Dr. Capurro Satisfied the Requirements for a Limited License under NRS 631.271.**

22 Dr. Capurro met each and every requirement to hold a limited license between August 1, 2014, and
23 June 30, 2021, including requirements pursuant to NRS 631.271(1)(a), (1)(c), and (1)(e).

24 a. NRS 631.271(1)(a) requires the limited license applicant to be “qualified for a license to
25 practice dentistry” in this state. The statute is silent on the meaning of “qualified.” Therefore, the Board
26 must use the term’s “plain and ordinary meaning.”¹ The term qualified means “fitted (as by training or
27 experience) for a given purpose.” Dr. Capurro successfully completed all required training at UNLV SDM,
28 graduated from UNLV SDM, and served as an instructor of dentistry at UNLV SDM upon graduation.
Additionally, Dr. Sanders found Dr. Capurro to be a dedicated, skilled and thorough dental student, who
possessed the ability to perform open mouth screenings and provide fluoride varnishes to patients.
Therefore, the evidence establishes that Dr. Capurro was fitted by training and experience to practice
dentistry in Nevada, and as such is qualified for a license to practice dentistry in Nevada.

b. NRS 631.271(1)(c) requires that an applicant “has entered into a contract with: (1) the
Nevada System of Higher Education to provide services as a dental intern, dental resident, or instructor of
dentistry . . . at an educational or outpatient clinic, hospital or other facility of the Nevada System of Higher

¹ Lofthouse v. State, 136 Nev. 378, 611 (Nev. 2020).

1 Education; or (2) An accredited program of dentistry . . . of an institution which is accredited by a regional
2 educational accrediting organization that is recognized by the United States Department of Education to
3 provide services as a dental intern, dental resident or instructor of dentistry, dental hygiene or dental therapy
4 at an educational or outpatient clinic, hospital or other facility of the institution and accredited by the
5 Commission on Dental Accreditation of the American Dental Association or its successor specialty
6 accrediting organization[.]” The statute does not define “services” or “instructor,” nor does it require any
7 minimum amount of instruction required under the contract. It only requires that the applicant has entered
8 into a contract to provide one of these three services.

9 i. UNLV SDM is an educational facility of NSHE. Dr. Capurro continuously
10 entered into a contract to provide services as an instructor of dentistry and maintained the title of Visiting
11 Assistant Professor at UNLV SDM between 2014 and June 30, 2021. Dr. Capurro’s duties each year under
12 the contract included providing services as an instructor of dentistry at UNLV SDM. UNLV SDM
13 additionally entered into an interlocal contract with DHHS. Dr. Capurro’s contract with UNLV SDM also
14 provided that she performs the services provided in the DHHS interlocal contract. Under this contract, such
15 duties also included serving as an instructor of dentistry in her role as DHO, which UNLV SDM benefitted
16 from and paid her for.

17 ii. Dr. Capurro also entered into a contract with ATSU to serve as a dental resident in
18 the field of dental public health. ATSU is accredited by a regional educational accrediting organization that
19 is recognized by the US Department of Education and by the Commission on Dental Accreditation of the
20 American Dental Association or its successor. ATSU and UNLV SDM entered into additional agreements
21 providing for Dr. Capurro to perform her duties as a dental resident at UNLV SDM. Dr. Capurro’s duties
22 as a public dental health resident included analyzing the data gathered from rural health screening surveys.
23 Dr. Capurro performed this analysis in her office, which was housed at UNLV SDM. Accordingly, Dr.
24 Capurro satisfies the requirements of NRS 631.271(1)(c) both through her contract with UNLV SDM and
25 through her residency with ATSU, which was performed at UNLV SDM.

26 c. NRS 631.271(e) requires applicants to meet at least one of the four listed requirements.
27 The evidence reflects that Dr. Capurro met two of them.

28 i. Dr. Capurro meets NRS 631.271(1)(e)(2). Dr. Capurro presented to the Board a
certificate granted by the Western Regional Examining Board which contains a notation that she passed
within five years of her initial application a clinical examination administered by WREB in dental hygiene.
Exhibit 25, p. 20 (WREB Pass Results) (CAPURRO 005).

ii. Dr. Capurro meets NRS 631.271(1)(e)(4). As discussed above, Dr. Capurro entered into a
contract with UNLV SDM to provide services as an instructor of dentistry on a yearly basis between 2011
and 2020. Each year, UNLV SDM submitted to the Board written confirmation that Dr. Capurro had been
appointed to a position in the program for the express purpose of renewing her limited license, including in
October 2020. Exhibit 110.

1 Accordingly, because Dr. Capurro satisfied all of the requirements to hold a limited license under
2 NRS 631.271 from August 1, 2014 through June 30, 2021, the Board concludes that the Prosecution has
3 failed to prove Count I by a preponderance of the evidence.

4 **B. Count II: Dr. Capurro Did Not Violate the Nevada Dental Practice Act.**

5 Count II of the First Amended Complaint alleges that at least once between April 2016 and April
6 2021, Dr. Capurro “provided services constituting the practice of dentistry to minor patients at ‘rural’
7 locations or facilities other than the ‘educational or outpatient clinic, hospital or other facility’ where Dr.
8 Capurro was employed pursuant to her Limited License.” Complaint, ¶ 40. Count II further alleges that Dr.
9 Capurro provided “open-mouth” screenings including visual observation of a child’s dental health with a
10 mouth mirror and light. Complaint, ¶ 41. The Complaint alleges that this alleged conduct violates NRS
11 631.271(3)(a) and (b); NRS 631.400(3)(a); NRS 631.3475(2) and (4); NRS 631.349, and/or NAC
12 631.230(1)(c). Complaint, ¶42.

13 There is no evidence in the record that Dr. Capurro provided services to “minor patients” that
14 constituted a departure from prevailing standards of acceptable dental practice. Therefore, NAC
15 631.230(1)(c) does not apply. There is no evidence that Dr. Capurro harmed any “minor patients,” provided
16 “substandard” care, or demonstrated “professional incompetence” in the care provided. Therefore NRS
17 631.3475(2) and (4) do not apply. NRS 631.400 discusses only the criminal penalties that may arise from
18 prohibited acts. Such penalties are outside the jurisdiction of the Board and not requested in the Complaint.
19 Therefore NRS 631.400(3)(a) does not apply. There is no evidence that Dr. Capurro engaged in the private
20 practice of dentistry, or that she accepted compensation for the practice of dentistry other than the salary
21 that she received through NSHE in relation to her employment with UNLV SDM. Thus, NRS 631.271(3)(b)
22 does not apply.

23 NRS 631.271(3)(a) provides that a limited license holder may only practice dentistry: “(1)
24 At the educational or outpatient clinic, hospital or other facility where the person is employed; and (2) In
25 accordance with the contract required by paragraph (c) of subsection 1.” Dr. Capurro did not violate these
26 regulations.

27 The evidence here reflects that Dr. Capurro may have performed screenings on a trip in May of
28 2017, and a trip in November of 2020. Dr. Capurro’s contract with UNLV SDM covering May, 2017,
specifically provided that pursuant to the Contract, Dr. Capurro could “practice pursuant to” her “limited
license” **“in any location within the State of Nevada.”** In essence, UNLV SDM’s contract with DHHS
provided other facilities affiliated with UNLV SDM where Dr. Capurro could perform services under the
limited license. This language was specifically included after consultation by UNLV SDM with the Board
in 2016. Dr. Capurro’s performance of open mouth screenings in May 2017 in rural Nevada therefore
complies with both NRS 631.271(3)(a) and (b).

Dr. Capurro’s July 1, 2020 contract with UNLV SDM was revised by the school to remove this
language but noted that Dr. Capurro’s appointment as Visiting Assistant Professor at UNLV SDM “serves
in part, in support of the ‘Interlocal contract between public agencies, A contract between the State of

1 Nevada Acting by and through its Department of Health and Human Services, Division of Public and
2 Behavioral Health' in your role as Nevada State Dental Health Officer . . . Interlocal contract terms apply
3 to this position.” The terms of the Interlocal contract required the DHO to, among other things, “determine
4 the needs of the residents of this State for public dental health,” “Collaborate with community partners,
5 dental and medical providers, and the public to increase utilization of Early and periodic Screening,
6 Diagnosis, and Treatment (EPSDT) oral health screenings, prevention services, and dental treatment,
7 “provide support to Special Olympics, Special Smiles dental screenings/fluoride varnish application at
8 Special Olympics events in Las Vegas and Reno,” and provided an extensive budget, which includes a
9 travel budget that included “professional and public education,” and materials budget that included supplies
10 to perform oral screenings and prevention services treatment for underserved and vulnerable populations.”
11 Exhibit 25, pp. 48-66 (2020 Employment and interlocal contracts) (Capurro032-51).

12 Additionally, on October 28, 2020, the school provided Dr. Capurro a Memorandum written by
13 Dean Garcia and approved by the school’s Office of General Counsel. The Memorandum specifically stated
14 it was intended to “clarify and help define scope of practice under the limited licensure awarded to you by
15 the State of Nevada Board of Dental Examiners.” Exhibit 25, p. 30 (Dean Garcia Oct 28, 2020,
16 Memorandum) (Capurro 015). The memorandum further noted that Dr. Capurro’s “ability to practice”
17 under the limited license “is limited to and defined by” UNLV SDM “as an NSHE institution.” The
18 memorandum further states that Dr. Capurro “may provide dental screening services for children in support
19 of deliverable described in the award.” The “award” referenced was the interlocal agreement between
20 UNLV SDM and Nevada Department of Education providing for visits to daycare facilities in rural Nevada.
21 The Scope of Work of this award specifically provides for open mouth screenings and fluoride varnish
22 application. Exhibit 26 (UNLV DOE contract) (UNLV_000084). Additionally, General Counsel Su also
23 advised Dr. Capurro there was no geographical limitation prohibiting her from undertaking these trips and
24 providing these services when asked by Dr. Capurro in October 2020. Exhibit 2 (Email dated October 26,
25 2020 from Dr. Capurro to Su). Given this evidence, it is clear Dr. Capurro’s performance of open mouth
26 screenings and application of fluoride varnish in November 2020, was also consistent with NRS 631.271(a).

27 Accordingly, the Board finds that the prosecution has failed to prove Count II by a preponderance
28 of the evidence. Because the prosecution has failed to prove Counts I and II, the Board cannot prevail on
Count III, its request for attorneys’ fees, which is denied.

C. Dr. Capurro’s License Expired, and thus, the Board May Not Revoke it.

Under NRS 631.271(5), “[a] limited license expires 1 year after its date of issuance.” Because Dr.
Capurro’s license expired on June 30, 2021, the Board lacks jurisdiction to decide Count I of the Complaint,
seeking revocation of Dr. Capurro’s license, and Count I is therefore dismissed.

D. Dr. Capurro’s Conduct Was Privileged under the Public Authority and Entrapment by Estoppel Doctrines.

Under the entrapment by estoppel doctrine, “when an official tells [a] defendant that certain conduct
is legal and the defendant believes the official,” the defendant may not be punished, *i.e.*, convicted or found

1 guilty, for listening to state actors. *See U.S. v. Tallmadge*, 829 F.2d 767, 773 (9th Cir. 1987). The “public
2 authority” defense similarly provides that where a defendant reasonably relied on the authority of a public
3 official to engage in certain conduct which is later alleged to be unlawful, the defendant may not be found
4 guilty or punished for the violations that a public official told her should could engage in. *See U.S. v.*
5 *Baptista-Rodriguez*, 17 F.3d 1354, 1368 n.18 (1994). Dr. Capurro’s conduct was all directed and/or ratified
6 by her contracts with UNLV SDM and DHHS, and the Board granted her a limited dental license between
7 2014 and 2021. As such, Dr. Capurro’s conduct was privileged at all times, and this matter is dismissed.

6 **E. This Matter Must Be Dismissed for Failure to Afford Dr. Capurro Due Process.**

7 a. *The Board conducted an unauthorized investigation of this matter.* NRS 631.360(1)
8 provides that, “[e]xcept as otherwise provided in NRS 631.364, the Board may, upon its own motion, and
9 shall, upon the verified complaint in writing of any person . . . investigate the actions of any person who
10 practices dentistry, dental hygiene or dental therapy in this State.” During a Board hearing on January 20,
11 2021, the Board authorized an investigation into whether Dr. Capurro may have failed to meet the
12 requirements for licensure pursuant to NRS 631.271. *See* Exhibit 111, p. 2 (CAPURRO000239). Prior to
13 having such authorization, however, and after a District Court Judge ordered the Board to afford Dr.
14 Capurro due process in connection with her license, Board Counsel contacted third parties seeking records
15 and information relating to whether Dr. Capurro satisfied the criteria for her limited license. *See, e.g.,*
16 Exhibit 113; Exhibit 143. Because Board Counsel engaged in an unauthorized investigation of this matter,
17 this matter must be dismissed.

15 b. *The Board did not follow statutes requiring the appointment of an impartial investigator*
16 *and an informal hearing.* Nevada law requires the Board to appoint an impartial investigator prior to a
17 review panel reviewing a disciplinary investigation. *See* NRS 631.363(1) (“The Board may appoint one of
18 its members and any of its employees, investigators or other agents to conduct an investigation and informal
19 hearing concerning any practice by a person constituting a violation of the provisions of this chapter or the
20 regulations of the Board.”); NRS 631.3635(1) (“The Board *shall* appoint a panel to review an investigation
21 or informal hearing conducted pursuant to NRS 631.363.”). The Board concedes that no impartial
22 investigation was appointed in this matter. Exhibit 120 (CAPURRO000328). Instead, the prosecutors
23 including Board Counsel and the Board’s Executive Directors—whose conduct is at issue in the litigation
24 regarding whether their previous revocation of Dr. Capurro’s license is at issue—conducted the
25 investigation. *Id.* Not only were these not impartial parties, but they had already had opinions, made
26 determinations, conducted investigations, and knew they were going to also be the prosecutors in this
27 matter. This deprived Dr. Capurro of a fair first level of review with an investigator, which is mandated by
28 law, and which is the Board’s policy, *see* Exhibit 116, and for those reasons, this matter is dismissed.

26 This further deprived Dr. Capurro of the right to elicit testimony from the investigator regarding
27 the investigation, as set forth in NAC 631.195 (“An investigator appointed pursuant to NRS 631.363 may
28 provide testimony regarding the investigator’s findings and conclusions about a matter at a hearing before
the Board but may not participate in the decision rendered by the Board in that matter.”). For this reason

1 the case is dismissed. The Board also was required to give Dr. Capurro an informal hearing before a formal
2 hearing under NRS 631.363(1) and the Board’s own policies. *See* NRS 631.363(1) (above); Exhibit 116,
3 p. 7 (CAPURRO000264). Because Dr. Capurro was deprived of this additional level of review, this matter
is dismissed.

4 c. *The Board failed to appoint a Preliminary Screening Officer.* According to the Board’s
5 then-Executive Director, Frank DiMaggio, the Board’s “investigator” position was eliminated and replaced
6 by the PSC. *See* Exhibit 107, pp. 53-54 (CAPURRO000133-CAPURRO000134). (“The board did not
7 appoint another investigator. The board has appointed preliminary screening consultants . . . [w]ho review
8 cases that come as a disciplinary – possible disciplinary violation.”). Mr. DiMaggio states, that in the
9 Board’s investigatory process, once the Board has collected all data or records, “the file would be sent to
10 one of the appointed preliminary screening consultants for their review and for their report.” *See id.* at p.
11 56 (CAPURRO000136), lines 2-20. Notwithstanding this self-professed policy of the Board’s, the Board
12 neglected or refused to appoint a PSC to conduct an initial and impartial review of the investigation in this
13 matter. *See* Exhibit 108, p. 14 (CAPURRO000216), lines 11-14. Board Counsel stated that the reason for
14 this was that no PSCs were trained or ready, *see id.* lines 15-25, but his statement is patently false—on
15 September 15, 2020, the Board authorized its Executive Director to appoint Board members to perform the
duties of a PSC, in the interim, until PSCs could be hired and trained. *See* Exhibit 118, pp. 5-6
(CAPURRO000280 – CAPURRO000281). As such, even if the Board’s policies were validly changed to
include a PSC, instead of an investigator, the Board violated its own policies by refusing to appoint an
impartial PSC to review Dr. Capurro’s case. This case must therefore be dismissed.

16 d. Board Members had Improper *Ex Parte* Communications with Third Parties about this
17 Proceeding. “Unless required for the disposition of ex parte matters authorized by law, members or
18 employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in
19 a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with
20 any person or party, nor, in connection with any issue of law, with any party or the party’s representative,
21 except upon notice and opportunity to all parties to participate.” NRS 233B.126. Board President Kevin
22 Moore, also the Presiding Officer over this proceeding, had ex parte communications with third parties
23 about the exact factual and legal issues to be determined in this case weeks before this case began. Exhibit
24 115. Not only does this demonstrate Dr. Moore’s bias, and his admitted “opinion” about these issues before
25 the matter began, as stated during the Hearing on September 21, 2021, but it shows a complete violation of
26 this statute. This is made even more apparent by the fact that Mike Moore, David Moore, Gary Moore, and
Sandra Chan all made similar public comments, tending to show that Dr. Moore had further ex parte
communications about this matter with those individuals as well. Because Dr. Moore violated Nevada law
and demonstrated his bias toward this matter prior to the hearing, this matter must be dismissed.

27 **F. *Dr. Capurro was Deprived of a Fair Hearing.***

28 Members of the Board participating in the Hearing were directly involved in the investigation of
this matter. “[A]ny records or information obtained during the course of an investigation by the Board or

1 a review panel . . . and any record of the investigation or review are confidential.” NRS 631.368. Any
2 person who investigates a disciplinary matter “may not participate in the decision rendered by the Board in
3 that matter.” At the very least, Board President Moore was an active participant in the investigation of this
4 matter, because he issued subpoenas to third parties for purposes of this hearing. *See* Exhibits 31-33. As
5 such, he had prior knowledge and opinions of this matter (as he stated during the Hearing on September 21,
6 2021), and because he and the Board members knew about the facts and circumstances in this litigation,
7 including by being advised of such in connection with a closed meeting on March 16, 2021, this matter
8 must be dismissed.

9 Board Counsel violated the Lawyer-Witness Rule. Under Nevada law, it is impermissible for an
10 attorney to prosecute a case where he or she is also a witness. Board Counsel Phil Su violated this rule by
11 being a fact witness, prosecutor, Board Counsel and investigator. This improperly influenced the Board,
12 and this matter must be dismissed.

13 **G. *The Board Improperly Used Documents without Providing Notice to Dr. Capurro.***

14 The Board was required to provide all documentation to Dr. Capurro prior to the commencement
15 of the hearing, so that Dr. Capurro could prepare a defense to the same. In this case, however, the
16 prosecution subpoenaed new documents during the hearing, which Dr. Capurro did not have an opportunity
17 to defend against, and for that reason, this matter must be dismissed. *See* NDE_000001 – NDE_000124.

18 **H. *The Board Made Arguments Not Listed in the Complaint.***

19 Similarly, the Board argued that Dr. Capurro tried to defraud the Board and UNLV by coercing
20 them to include language in her contract to evade Nevada law. It also argued that Dr. Capurro was not
21 qualified for her dental license, due to her disability. Because these allegations were not made in the
22 complaint, Dr. Capurro did not have an opportunity to defend against the same, and this case must be
23 dismissed.

24 **I. *The Board Violated Dr. Capurro’s Civil Rights.***

25 The United States Constitution states that a defendant shall not “be compelled in any criminal case
26 to be a witness against himself.” U.S. Const. Amend. V; *see also* Nev. Const. Art. 1, sec. 8. A direct
27 reference to a defendant’s decision not to testify is *always* a violation of the Fifth Amendment. *See Griffin*
28 *v. California*, 380 U.S. 609 (1965) (Fifth Amendment forbids comment by the prosecution on the accused’s
silence). Beginning on the first day of the Hearing and on several occasions thereafter, the Board
prosecutors made statements that Dr. Capurro had asserted her Fifth Amendment privilege in connection
with the investigation and hearing of this matter, and suggesting that she was hiding information on that
basis. *See, e.g.*, Transcript of Hearing on May 21, 2021, p. 93, lines 21-23 (arguing why Dr. Capurro’s
counsel objected to certain documents: “So that is probably why they don’t want them included, but it’s
highly relevant. And I must state that Dr. Capurro’s [sic] has pled the Fifth when I tried to depose her.”).
Because the prosecutors violated Dr. Capurro’s Fifth Amendment rights, this matter is dismissed.

“Title II of the ADA provides that ‘no qualified individual with a disability shall, by reason of such
disability be excluded from participation in or be denied the benefits of the services, programs, or activities

1 of a public entity, or be subjected to discrimination by any such entity.” *See Barden v. City of Sacramento*,
2 292 F.3d 1073, 1075 (9th Cir. 2002). Section 504 of the Rehabilitation Act contains a similar provision,
3 and both statutes apply to professional licensing agencies. *See id.* at 1075-76. The Board has asserted
4 throughout the Hearing that Dr. Capurro is not qualified to hold a limited dental license under NRS 631.271,
5 because she (i) performed clinical coursework on simulated patients, rather than live persons, while in
6 dental school; (ii) her original transcript, which was rescinded and revised by UNLV SDM because of Dr.
7 Capurro’s disability, stated that she could not present her degree for licensure; and (iii) due to her disability,
8 Dr. Capurro could not use high-speed dental devices on patients, which is not a requirement for limited
9 dental license holders or any of the work Dr. Capurro has been alleged to have done in this proceeding. **By**
10 introducing the Original Transcript and accusing Dr. Capurro of failing to qualify for licensure due to her
11 disability, the Board has unlawfully discriminated against Dr. Capurro under the ADA and Section 504 of
12 the Rehabilitation Act the prosecutors violated Dr. Capurro’s Fifth Amendment rights, and this matter must
13 be and is dismissed.

14 Under the First Amendment to the United States Constitution, a public official or body may not
15 retaliate against an individual for engaging in protected conduct. *See CarePartners, LLC v. Lashway*, 545
16 F.3d 867, 876 (9th Cir. 2008). An individual’s right to seek review or a “stay” of agency action undoubtedly
17 constitutes protected activity under the First Amendment. *See id.* at 877. Throughout the Hearing, Board
18 members and prosecutors made numerous statements about how Dr. Capurro asked for this hearing, and
19 blamed her for exercising her right as a licensee to request a hearing on the allegations against her. The
20 same Board members and prosecutors stated—falsely—that a district court ordered the Board to hold a
21 hearing, based on Dr. Capurro’s filing of a lawsuit, and planned to hold a public hearing in this matter
22 before the investigation even began. *See Exhibit 113, p. 1 (UNLV0433)*. This planned formal hearing,
23 along with blaming Dr. Capurro for causing the hearing to continue, and the Board’s spending time and
24 resources rarely, if ever, spent on a hearing such as this one, demonstrate that the Board used this Hearing
25 to retaliate against Dr. Capurro in violation of her First Amendment rights. In light of this violation, this
26 matter is dismissed.

J. The Board Arbitrarily and Capriciously Prosecuted this Matter.

27 “Unexplained inconsistency between agency actions is a reason for holding an interpretation to be
28 an arbitrary and capricious change.” *See Organized Village of Kake v. U.S. Dep’t of Agric.*, 795 F.3d 956,
966 (9th Cir. 2015). Other limited dental license holders who have contracts with UNLV SDM provide
medical services outside the four walls of UNLV SDM, and specifically in rural locations in Nevada,
including Elko. Those persons were not prosecuted by the Board. The Board’s prosecution of Dr. Capurro
without prosecuting other similarly situated professionals for the same conduct is arbitrary and capricious
and this matter must be dismissed.

THE BOARD THEREFORE DISMISSES THIS MATTER IN ITS ENTIRETY.