State of Nevada
Governor's Office of Finance
Division of Internal Audits

Audit Report

Nevada State Board of Dental Examiners

DIA Report No. 19-04
June 25, 2019

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Nevada State Board of Dental Examiners

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Strengthening oversight of investigative and enforcement activities will help ensure the health, safety, and welfare of the public are protected and Board activities are transparent and impartial. Board oversight is lacking for some Disciplinary Screening Officer (DSO) Coordinator decisions and some duties conflict with other responsibilities. The Executive Director is authorized to conduct compliance monitoring, which may not be in the best interest of the public. Moreover, the Executive Director assigns the majority of investigations to a limited pool of DSOs.

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Avoiding conflicts of interest in actuality and in appearance will help increase transparency and ensure the separation of private and public interests for the protection and benefit of the public. Avoiding conflicts of interest will require the Board to consult with the Nevada Commission on Ethics to determine Board compliance with Ethics Law. Three Board members, the DSO Coordinator, and some DSOs may have violated Ethics Law. Potential violations include: not separating private and public interests, using Board positions for personal gain, improperly voting on Board matters, and using Board positions for private opportunities immediately following Board service.

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Complying with state contracting requirements will help ensure transparency in Board operations, protect the interests of the state, and reduce liability and costs to the state. Compliance will require the Board to consult with the Office of the Attorney General and the Purchasing Division to determine contracting procedures appropriate for Board operations. NAC requires: services of an independent contractor to be awarded pursuant to NRS 333 and NAC 333; contracts to conform to the form, terms, and conditions prescribed by the OAG; and contracts to include any insurance provisions required by the state Risk Manager. The Board procures professional services to support the Board's investigative and enforcement process but does not enter into written contracts for the services as required by NRS. The Board provides general liability insurance coverage to professional service providers and reimburses costs not provided for in a written contract. These practices and the nature of the services provided to the Board increase liability and costs to the state.

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Complying with the APA to increase transparency in Board rulemaking and rules of practice will ensure Board regulations are evaluated through the public rulemaking process and are consistent with statutory authority and legislative intent. Complying with the APA will also help ensure adopted rules of practice are clearly defined and are implemented through formal administrative procedures with Board oversight and public disclosure. Some Board procedures apply to the public in general or to all licensees and affect the private rights or procedures available to the public. These procedures have not been formally adopted by the Board as regulation or defined in the DPA. Changes to the Board's rules of practice were implemented without public notice or Board adoption at a public meeting.

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INTRODUCTION

At the direction of the Executive Branch Audit Committee, the Division of Internal Audits conducted an audit of the Nevada State Board of Dental Examiners. Our audit focused on the Board's investigative, enforcement, and regulatory processes. The audit's scope and methodology, background, and acknowledgements are included in Appendix A.

Our audit objective was to develop recommendations to:

- ✓ Enhance Dental Board operations.

Nevada State Board of Dental Examiners Response and Implementation Plan

We provided draft copies of this report to the Nevada State Board of Dental Examiners (Board) for its review and comments. The Board's comments have been considered in the preparation of this report and are included in Appendix B. In its response, the Board accepted our recommendations. Appendix C includes a timetable to implement our recommendations.

NRS 353A.090 requires within six months after the final report is issued to the Executive Branch Audit Committee, the Administrator of the Division of Internal Audits shall evaluate the steps the Board has taken to implement the recommendations and shall determine whether the steps are achieving the desired results. The administrator shall report the six month follow-up results to the committee and the Board officials.

The following report (DIA Report No. 19-04) contains our *findings, conclusions,* and *recommendations*.

Enhance Dental Board Operations

The Nevada State Board of Dental Examiners (Board) can enhance operations by:

- Strengthening oversight of investigative and enforcement activities;
- Consulting with the Commission on Ethics to avoid conflicts of interest;
- Complying with state contracting requirements; and
- Complying with the Nevada Administrative Procedure Act (APA).

Enhancing operations will help increase transparency in Board processes and activities; ensure the health, safety, and welfare of the public; and protect the state's interest by reducing liability and costs.

Strengthen Oversight of Investigative and Enforcement Activities

The Nevada State Board of Dental Examiners (Board) should strengthen oversight of investigative and enforcement activities.[1] Strengthened oversight will help ensure the health, safety, and welfare of the public are protected, and Board activities are transparent.

Nevada Revised Statutes (NRS) 622.080 requires regulatory bodies to carry out and enforce governing provisions for the protection and benefit of the public. Likewise, the Nevada Office of the Attorney General's (OAG) guidance to boards and commissions specifies, "The interest in safeguarding public health, safety, and welfare is the primary purpose of a board or commission and the basis of its existence."[2]

The Board has established investigative and enforcement policies and practices that require enhanced oversight, clarification, and change in duties assigned to the Executive Director and appointees. A detailed discussion of the Board's investigative and enforcement process is included in Appendix D.

[1] Investigations for purposes of our analysis include verified complaints and Board authorized investigations.
[2] State of Nevada. *Nevada Board and Commission Manual*. Carson City, Nevada: Office of the Attorney General, 2015.

Board Oversight Lacking For DSO Coordinator Decisions

Board oversight is lacking for some Disciplinary Screening Officer (DSO) Coordinator decisions related to investigation of potentially actionable Dental Practice Act (DPA) violations and complaint dispositions.[3,4] Lack of Board oversight may allow one individual to make or heavily influence decisions affecting the health, safety, and welfare of the public and licensees' livelihoods without independent review.[5]

Complainants Not Allowed to Verify Complaints

The Board should strengthen oversight of investigative and enforcement activities by allowing all complainants to verify complaints prior to conducting preliminary or formal complaint investigations and by incorporating preliminary complaint investigations into the DSO/review panel process.[6] Strengthening oversight will help ensure complainants can exercise their statutory right to file complaints against licensees and complaints are investigated to protect the health, safety, and welfare of the public. Changing the complaint verification process to comply with statute will require preliminary complaint investigations to be conducted by DSOs, not the DSO Coordinator.

Board Practice for Verified Complaints May Violate NRS and NAC

The Board's practice of the DSO Coordinator reviewing complaints prior to verification and initiating a formal investigation may violate NRS and Nevada Administrative Code (NAC). NRS 631 and NAC 631 do not grant the Board or its appointees authority to dismiss complaints prior to allowing complainants to verify their complaints.

NAC 631.240 provides that any aggrieved person may file a complaint with the Board against a licensee. The complaint must be written, signed, and verified by the complainant and contain specific charges. NRS 631.360 requires the Board to investigate verified complaints containing matters that if proven would constitute grounds for initiating disciplinary action.

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[3] A Disciplinary Screening Officer is a licensee appointed by the Board to conduct investigations or evaluations.
[4] NRS 631 and NAC 631 constitute the Board's authorizing statutes and regulations collectively referred to as the Dental Practice Act.
[5] Licensees include dentists, dental hygienists, and dental specialty practitioners.
[6] A verified complaint is a notarized sworn statement by the complainant swearing to certain conditions including complaint confidentiality and the contents of the complaint.

DSO Coordinator Has Broad Authority Over Complaint Dispositions

The Board created the DSO Coordinator position in 2004 and assigned broad authority over complaint disposition to the position. The same individual has served in the position since 2007. The DSO Coordinator performs limited investigative activities, yet makes decisions that affect complaint disposition prior to allowing complainants to verify their complaints.

The DSO Coordinator conducts preliminary complaint investigations for almost all complaints prior to initiating a formal investigation.[7] The DSO Coordinator determines whether the Board has jurisdiction and if potentially actionable matters exist under the DPA. The Board requires complainants to submit a notarized verification of their complaint and a records release form if the DSO Coordinator determines the complaint criteria exist. The DSO/review panel investigative process begins after the Board receives these documents.

Complainants are notified in writing that the Board has declined a complaint if the DSO Coordinator determines the complaint criteria do not exist. If the complaint is dismissed, no further Board action is taken and complainants are not allowed to verify their complaints. Consequently, the DSO Coordinator has sole authority to dismiss complaints prior to complainant verification and without further review based on the results of his preliminary complaint investigation. This process restricts complainants' right to a Board investigation provided by the DPA and may not protect the health, safety, and welfare of the public.

Potentially Actionable Complaints Dismissed by DSO Coordinator

We reviewed data for all complaints received during calendar years 2016 through 2018. The DSO Coordinator dismissed 44 percent of all complaints received by the Board during this period without independent review or further investigation. Of the dismissed complaints, 19 percent were related to potentially actionable matters. Some complaint data did not indicate Board responses to complaints, reasons complaints were dismissed, or explanations of why complaints did not progress to full investigation.

[7] Excludes controlled substance complaints reviewed by the Executive Director pursuant to NRS 631.364.

Additionally, determinations for complaint dismissals were not always consistent across complaints. For example, some complaints containing potentially actionable matters were dismissed because they also contained allegations of matters outside the Board's jurisdiction, such as fee disputes. Other complaints with similar potentially actionable matters and no fee disputes were moved forward to verification and/or investigation. This inconsistency indicates that at least some complaints dismissed by the DSO Coordinator should have been investigated. We did not find, however, any apparent bias or preferential treatment in decisions only that there were inconsistencies in the decisions.

DSO Coordinator Duties
Conflict with Other Responsibilities

Some DSO Coordinator duties conflict with other responsibilities. The DSO Coordinator acts as both an investigator and as a review panel member. Moreover, the DSO Coordinator has conducted preliminary complaint investigations for complaints filed against his employer. These conflicts may prevent complainants and licensees from receiving an independent and impartial review process.

DSO Coordinator Acts as Investigator
And Review Panel Member

The DSO Coordinator reviews all non-hygienist DSO investigative findings and recommendations as a member of the review panel. The DSO Coordinator reviews matters he already determined were potentially actionable under DPA during preliminary complaint investigation. His actions compromise the Board's independent review process and violate NRS. NRS 631.3635(3) requires investigators who conduct investigations or formal hearings to refrain from participating in the review panel.

DSO Coordinator Reviewed
Complaints against Employer

We reviewed data for all complaints received during calendar years 2016 through 2018. The DSO Coordinator conducted preliminary complaint investigations for five complaints filed against the UNLV School of Dental Medicine, where he is employed full-time as a member of both faculty and administration.

Although documented reasons for the complaint dispositions appear reasonable, allowing the DSO Coordinator to conduct preliminary complaint investigations for these complaints present the appearance of a conflict of interest with his role at the School of Dental Medicine. NRS 281A.020 requires public employees to avoid conflicts of interest by properly separating private interests from public duties.

Executive Director Duties May Not Be in the Best Interest of the Public

The Executive Director is responsible for licensee compliance monitoring according to Board stipulation agreements, which may not be in the best interest of the public. The Board should require licensee compliance monitoring to be conducted by DSOs instead of at the discretion of the Executive Director. This will help ensure that licensees under investigation are reviewed by an individual qualified to perform investigations through an independent and transparent process.

Moreover, the Board should strengthen oversight of investigative and enforcement activities by conducting compliance monitoring noted in stipulation agreements meant to protect the health, safety, and welfare of the public.

Board Practices Conflict with OAG Guidance and Could Expose Board to Liability

The Executive Director's ability to conduct licensee compliance monitoring requires professional judgement and has the potential to affect the livelihood of licensees subject to Board enforcement actions. The Executive Director does not have the education or experience that qualifies her to exercise professional judgement in these areas. Professional judgement can be most practically provided by independent licensed investigators or DSOs licensed under NRS 631.

The Executive Director did not provide evidence of education, certification, or other training that would attest to qualifications to understand, evaluate, and make judgments on licensee compliance monitoring. However, NRS 622.220 requires an executive director employed by regulatory bodies to possess a level of education or experience or combination of both to qualify them to perform the administrative and managerial tasks required of the position.

Moreover, the Nevada Board and Commission Manual issued by the OAG warns "[t]o the extent that a function involves fundamental policy of the board or commission, requires exercise of judgment and discretion, or substantially affects an individual's legal rights, it should not be delegated to the executive director or executive secretary. If the executive director or executive secretary nevertheless improperly performs a function such as revoking a license, the board or commission may be subject to liability."

Allowing the Executive Director to conduct licensee compliance monitoring goes against the OAG warning and opens the Board to potential liability because the Executive Director is not qualified to perform compliance monitoring.

Compliance Monitoring
Not Being Performed

The Board must investigate and resolve verified complaints. The Executive Director or her appointee is authorized to monitor stipulation agreements requiring licensee compliance monitoring. The Executive Director reports she delegates to DSOs responsibility for compliance monitoring of licensees required to maintain daily logs evidencing corrective action implementation. However, the Board further reports that they are unable to conduct any compliance monitoring because of staff shortages. As a result, the Board may not be fulfilling its responsibility to protect the health, safety, and welfare of the public.

Qualified Dentists May Not Have Equal Opportunity to Provide Services

The Board should strengthen oversight of investigative and enforcement activities by increasing its pool of general dentistry DSOs in southern Nevada to provide a greater number of qualified dentists with equal opportunity to provide services to the Board. Increasing the pool of DSOs will also help avoid the appearance of favoritism in the assignment of investigations to DSOs.

Executive Director Assigned Majority of
Investigations to Limited Pool of DSOs

The Board delegated to the Executive Director the duty to assign investigations to DSOs from a list approved by the Board each calendar year. The Executive Director assigned the majority of investigations to a limited pool of DSOs during the period reviewed. The Executive Director reports she assigns investigations to DSOs based on licensee specialty, geographic area of the affected patient, DSO experience, and DSO caseload.

The majority of complaints the Board receives relate to general dentistry and originate in southern Nevada, where the DSO general dentistry pool is limited to five DSOs. Limiting the DSO pool gives the appearance of favoritism in the assignment of investigations and does not provide qualified dentists in the area with equal opportunity to provide services to the Board.

Data for investigations conducted during calendar years 2016 through 2018 revealed that the Executive Director assigned 64 percent of all verified complaints to four (11 percent) of 36 DSOs appointed during the period. The four DSOs were assigned 56 percent of complaints and received 55 percent of all payments to DSOs in fiscal year 2018.

No Apparent Preferential Treatment
For Dental Association Members

This audit request was based, in part, on public comment presented before several state Board of Examiners meetings and the Executive Branch Audit Committee in 2018. We analyzed Board data for all complaints received during calendar years 2016 through 2018 to determine whether there was preferential treatment in complaint dispositions for licensees who were also members of a Nevada professional dental association.

Our analysis revealed on average, percentages of Board actions against association members and non-members were proportional within 5 percent. It does not appear that there was preferential treatment in Board actions for dental association members. Exhibit I summarizes Board actions against dental association members versus non-members.

Exhibit I

Board Actions
Dental Association Members vs. Non-Members

Attribute Tested	Members	Non-Members
Nevada dental licensees	876	1,347
% of total licensees	39%	61%
% of Board actions	35%	65%
Difference	4%	-4%
% of all complaints	35%	65%
% of Board actions	35%	65%
Difference	0%	0%
% of investigated complaints	38%	62%
% of Board actions	35%	65%
Difference	3%	-3%

Source: Board compiled licensee, complaint, and investigation data.

Conclusion

Board oversight is lacking for DSO Coordinator decisions that may restrict the rights of complainants and licensees. The DSO Coordinator's duties may conflict with other duties and some Executive Director duties may not be in the best interest of the public. Moreover, certain DSOs are being assigned the majority of complaint investigations by the Executive Director.

Strengthening oversight of investigative and enforcement activities will help ensure the health, safety, and welfare of the public are protected, and Board activities are transparent.

Recommendation

1. Strengthen oversight of investigative and enforcement activities.

Consult with Commission on Ethics to Avoid Conflicts of Interest

The Nevada State Board of Dental Examiners (Board) should avoid conflicts of interest in actuality and in appearance to increase transparency and ensure the separation of private and public interests for the protection and benefit of the public.[8] Avoiding conflicts of interest will require the Board to consult with the Nevada Commission on Ethics (Commission) to determine Board compliance with Nevada Revised Statutes (NRS) 281A, referred to as Ethics Law.[9]

NRS Requires Public Office to Be Held for Sole Benefit of the Public

Board members may not be using their public office for the sole benefit of the public, which reduces transparency in Board activities and may reduce the public's confidence in the integrity and impartiality of Board operations.

NRS 281A.020 provides it is the state's policy that public office is a public trust and held for the sole benefit of the people. The Commission interprets this to mean that "care must be taken by public officers/employees to comply with…[the] provisions [of NRS 281A] and maintain the integrity of public service by avoiding actual conflicts or even the appearance of impropriety by properly separating private interests from public duties."[10]

Three Board Members May Have Violated Ethics Law

Three Board members may have violated Ethics Law during calendar years 2015 through 2019 by participating in Board matters or other activities that could be interpreted as unethical according to statute. These three Board members may not have separated private and public interests as required by NRS, which reduces transparency in government and is contrary to the Board's responsibility to carry out its duties for the protection and benefit of the public.

NRS 281A.400 prohibits public officers and employees from seeking or accepting any gift, service, favor, employment, engagement, emolument, or economic opportunity for themselves or any person to whom they have a commitment in a private capacity, which would tend to improperly influence a reasonable person in their position to depart from the faithful and impartial discharge of their duties. Exhibit II summarizes potential Ethics Law violations by Board member.

[8] The terms "public officer" and "public employee" have meanings ascribed by NRS 281A. For purposes of our analysis, Board members are defined as public officers and Board statutory employees are defined as public employees.
[9] The Nevada Commission on Ethics is the state entity charged with interpreting and enforcing NRS 281A.
[10] State of Nevada Commission on Ethics. Commission Opinion No. 16-61A (2016).

Exhibit II

Potential Ethics Law Violations by Board Member

Board Member	Issue	Potential Violation
1	a) Familial relationship to business colleague of Disciplinary Screening Officer (DSO) Coordinator and four DSOs at the UNLV School of Dental Medicine.	a) Did not disclose family relationship and abstain from voting during Board action to appoint DSO Coordinator and DSOs in 2018 and 2019.
2	a) Employed as faculty at UNLV School of Dental Medicine and is a colleague of the DSO Coordinator and four DSOs also employed there. b) Vice president of non-state professional dental association. A DSO appointed in 2018 was also president of the same non-state professional dental association as the Board member.	a) Did not disclose relationships and abstain from voting during Board action to appoint DSO Coordinator and DSOs in 2018 and 2019. b) Did not disclose relationship and abstain from voting during Board action to appoint DSO in 2018.
3	a) Board president of local dental health non-profit organization. A DSO appointed in calendar years 2015 through 2019 is also a board member of the same local dental health non-profit organization. b) Appointed as Board review panel member in September 2017 for service in calendar year 2018.	a) Did not disclose relationship and abstain from voting during Board action to appoint DSOs in 2015 through 2019. b) Did not abstain from Board vote to set review panel compensation at January 2018 Board meeting.

Source: Board minutes and publicly available information.

Board Members May Have Used Board Positions for Personal Gain

Board members may have used their Board positions for personal gain for themselves or for their colleagues. For example, one Board member was also a member of the review panel but did not abstain from the Board's vote to set review panel compensation. NRS prohibits public officers and employees from using their position in government for personal gain. Prohibited activities include securing or granting unwarranted privileges, preferences, exemptions, or advantages for themselves, any business in which they have a significant pecuniary interest, or any person to whom they have a commitment in a private capacity.[11,12]

[11] NRS 281A.139 defines pecuniary interest as any beneficial or detrimental interest in a matter that consists of, is measured in, or is otherwise related to money.

[12] NRS 281A.065 defines commitment in a private capacity as a commitment, interest, or relationship of a public officer or employee to a person: who is an employer or relative of the public officer, employee, or related party; with whom the public officer or employee has a substantial continuing business relationship; or with whom the public officer or employee has any other similar commitment, interest, or relationship. Related party includes a public officer or employee's spouse, domestic partner, or member of their household.

Board Members Improperly
Voted on Board Matters

Board members improperly voted on matters pertaining to Board appointments of the Disciplinary Screening Officer (DSO) Coordinator and DSOs. All three Board members failed to abstain from the vote to appoint persons with whom they had a commitment in a private capacity at the time of the vote or disclose the nature of the relationships, in violation of Ethics Law.

NRS 281A.420 prohibits public officers from voting on or advocating for the passage or failure of a matter when the independence of judgment of a reasonable person in the situation would be materially affected by the public officer's acceptance of a gift or loan, significant pecuniary interest, or commitment in a private capacity to the interests of another person. Additionally, public officers and employees are prohibited from approving, disapproving, voting, abstaining from voting, or acting upon such matters without disclosing information regarding the nature of the relationship in public at the time the matter is considered.

Board Members Acknowledge
Ethics Law Requirements

The Board provides members with a manual that includes the Nevada Office of the Attorney General's Open Meeting Law, Board and Commission, and Administrative Rulemaking manuals. These manuals provide information and guidance on federal and state requirements for duties carried out by public bodies, officials, and employees.

The Board reports new members attend an orientation upon appointment that includes training on Ethics Law provisions. As required by NRS 281A.500(3), Board members complete a form acknowledging they have received, read, and understand statutory ethical standards for public officers and employees following completion of training. Consequently, Board members ought to be aware of appropriate and ethical behavior in carrying out their duties.

Board Member, DSO Coordinator, and DSOs Are Also Nevada State Public Employees

A Board member, the DSO Coordinator, and four current DSOs are also employed by the UNLV School of Dental Medicine as members of faculty or administration.[13] These individuals are subject to Ethics Law requirements that prohibit conflicts between private and public interests. Their business relationships at the School of Dental Medicine in relation to their public service to the Board are considered commitments in a private capacity according to Ethics Law.

[13] The Board member is both a public officer and a public employee.

The Nevada System of Higher Education Bylaws specify, "Faculty members performing compensated outside professional or scholarly service are subject to the code of ethical standards of the State of Nevada…which governs the conduct of public officers and employees."[14] These individuals may be in violation of Ethics Law related to the same matters as Board members 2 and 3 with ties to the School of Dental Medicine discussed in Exhibit II.

DSO Coordinator and DSOs Are Former Board Members

The DSO Coordinator and several Board-appointed DSOs previously served as Board members. These individuals may have secured an advantage for themselves through their positions as former Board members, resulting in appointment to these paid positions following the conclusion of their Board terms. The DSO Coordinator and DSOs are compensated at $50 an hour to provide services to the Board, which provides appointees to these positions with a significant pecuniary interest. Former Board members were paid almost $17,000 (52 percent) of $32,500 in payments to DSOs and the DSO Coordinator in fiscal year 2018.

Former Board Members Use Positions For Private Opportunity

Former Board members may have secured an advantage for themselves in a private opportunity through their Board positions. Data for DSOs appointed between January 2015 and February 2019 revealed that 11 (31 percent) of the last 36 DSOs and seven (28 percent) of 25 current DSOs appointed by the Board previously served as Board members. Two of the current DSOs and the DSO Coordinator (12 percent) were appointed immediately following the conclusion of their Board terms. The Board's practice of appointing DSOs immediately following Board service violates Ethics Law.

Public officers and employees are prohibited from seeking other employment or contracts for themselves or any person to whom they have a commitment in a private capacity through the use of their official position. The Commission found that even if a public officer or employee does not specifically initiate contact or actively seek private employment or a business opportunity, other circumstances may be present warranting consideration under Ethics Law. These circumstances may include whether the opportunity would have been provided but for the public position held or if the opportunity closely relates to the public officer or employee's previous public duties.[15]

[14] Nevada System of Higher Education Bylaws, Title 4, Chapter 3, Section 9.4.
[15] State of Nevada Commission on Ethics. Commission Opinion No. 16-61A (2016).

Lack of Written Contract Does Not Exempt Activity from Ethics Law

The Board does not enter into contracts with Board-appointed professional service providers who provide DSO, review panel, and various inspection, evaluation, and consulting services because it does not deem them independent contractors. The commission has found that even though a consulting arrangement may not appear in a written contract, this does not exempt related public officer or employee activities from consideration under Ethics Law.[16] Therefore, even oral contracts are subject to the contracting and employment prohibitions of NRS 281A.400.

Conclusion

Three Board members, the DSO Coordinator, and some DSOs may have violated Ethics Law. Avoiding conflicts of interest in actuality and in appearance will help increase transparency and ensure the separation of private and public interests for the protection and benefit of the public. Avoiding conflicts of interest will require the Board to consult with the Nevada Commission on Ethics to determine Board compliance with NRS 281A, referred to as Ethics Law.

Recommendation

2. Consult with the Commission on Ethics to avoid conflicts of interest.

[16] State of Nevada Commission on Ethics. Commission Opinion No. 05-16A (2005).

Comply with State Contracting Requirements

The Nevada State Board of Dental Examiners (Board) should comply with state contracting requirements in Nevada Revised Statutes (NRS) 333 and Nevada Administrative Code (NAC) 333 to help ensure transparency in Board operations, protect the interests of the state, and reduce liability and costs to the state. Compliance will require the Board to consult with the Office of the Attorney General (OAG) and the Purchasing Division to determine contracting procedures appropriate for Board operations.

Board Not Contracting With Professional Service Providers

The Board does not enter into written contracts with Board-appointed professional service providers because the Board deems them appointees and not independent contractors. This practice reduces transparency in Board contracting activities and violates NRS 333 and NAC 333.

We reviewed approved minutes for the first Board meeting of each year when the Board votes on appointees, for calendar years 2015 through 2019. The Board-appointed between 72 and 77 professional service providers each year during the period without entering into written contracts. This represents a potential 371 contracts that may not have been procured in accordance with NRS 333 and NAC 333. Exhibit III summarizes the number of Board-appointed professional service providers by year for the period reviewed.

Exhibit III

Board-Appointed Professional Service Providers 2015 – 2019

Professional Service Provider Type[a]	2015	2016	2017	2018	2019	Total All Years
Disciplinary Screening Officers (DSO)	25	26	25	24	25	125
Non-Board Review Panel Members[b]	n/a	n/a	n/a	2	2	4
Anesthesia Evaluators / Inspectors	23	22	27	26	27	125
Infection Control Inspectors	25	25	25	20	22	117
Total by Provider Type	*73*	*73*	*77*	*72*	*76*	***371***

Source: Board meeting minutes.

Notes:

[a] We limited our scope to the professional service provider types listed in Exhibit III, and included only providers appointed at the first Board meeting of each calendar year.

[b] The Board's review panel was appointed in 2018 pursuant to legislation enacted in the 2017 legislative session.

Board's Professional Service Providers Are Independent Contractors

The Board procures professional services for investigative, inspection, evaluation, and other Dental Practice Act (DPA) related support services for the Board's investigative and enforcement process.[17] The Board's professional service providers include Disciplinary Screening Officers (DSOs), non-Board review panel members, and various other inspectors and evaluators who are considered independent contractors pursuant to criteria defined in NRS.

Board Appoints Professional Service Providers

The Board appoints professional service providers annually to provider lists. These provider lists are used by the Executive Director to assign Board investigations or evaluations. Specialized investigations or evaluations that cannot be conducted by providers on Board approved lists are assigned to other professional service providers directly by the Board at a public meeting. The Board's professional service providers conduct investigations or evaluations that include but are not limited to: confidential records; sanitary conditions; oral examinations of patients; licensee compliance monitoring activities; or other DPA related support activities.

Professional Service Providers Are Not Board Employees

The Board's professional service providers are dentists, hygienists, and other dental specialty practitioners who are licensed under the DPA. These individuals are not employees of the Board, do not provide services to the Board on a full-time basis, and are self-employed.

Board Does Not Control Aspects of Contracted Work

The Board's professional service providers conduct investigations or evaluations in various non-Board locations such as the places of business for licensees being investigated or evaluated, or the professional service providers' own places of business. Consistent with the NRS 608 description of an independent contractor, the Board does not control when the work is performed or other aspects of contracted work, including the means, manner of performance, or results of the work performed.

[17] Professional service providers who are not licensees are excluded for purposes of this analysis, including attorneys, accountants, lobbyists, and other non-licensee service providers.

Board's Assessment of Independent Contractors Conflicts with NRS

The Board reports it does not consider its professional service providers independent contractors because independent contractors determine their scope of work and compensation. This assessment conflicts with NRS.

NRS 608.0155(1) provides that a person is conclusively presumed to be an independent contractor if the person: has an employer identification number, social security number, or has filed as self-employed with the Internal Revenue Service; is required to have a state or local business license, occupational license, or insurance or bonding to perform the agreed-upon services; and satisfies at least three of five specific criteria. The following criteria specified in this section of NRS are applicable to the Board's professional service providers:

- Except where necessary to exercise control to comply with any statutory, regulatory, or contractual obligations, the person has control and discretion over the means and manner of the performance of any work and the result of the work;
- The person has control over when the work is performed except when a completion schedule is agreed upon by the contracting parties; and
- The person is not required to work exclusively for one person or entity.

Therefore, the Board's professional service providers are considered independent contractors because they meet the criteria provided in NRS.

Board Practices Do Not Comply with State Contracting Requirements

Board practices do not comply with the state's contracting requirements because it does not enter into contracts with professional service providers subject to the provisions of NRS 333 and NAC 333. Further, transparency in the Board's selection process is reduced because the Board confers the duty of evaluating professional service provider qualifications to individual reviewers prior to Board appointment.

Limited Review of Applications for Professional Service Providers

Reviews of applications for licensees seeking to become Board investigators, inspectors, or evaluators are limited. An individual reviewer determines whether applicants meet qualification criteria and recommends those meeting criteria to the Board for appointment. Applications are returned to applicants not meeting these criteria. There is no secondary review of applicant evaluation determinations and no historical record of the process.

DSO and infection control inspector applications are evaluated by the DSO Coordinator. Anesthesia inspector and evaluator applications are evaluated by the Chair of the Board's Anesthesia Committee, currently a member of the Board. This practice lacks transparency because there is no documentation of the selection process.

The Board could directly evaluate applicants or defer the task to an evaluation subcommittee made up of more than one reviewer. This process would include documenting evaluation activities as part of state contracting activities. This would help reduce the potential for evaluation errors, ensure impartial evaluations, and create a historical record of the process. The Board could implement an applicant evaluation procedure by coordinating with the state Purchasing Division to implement request for qualification procedures into its contracting process.

Contracts Valued at $2,000 or More
Subject to BOE Approval Process

The Board's current practice of not contracting with its professional service providers violates NRS because cumulative payments exceed the minimum contract limits and increase liability and costs to the state. NRS 333.700 requires each proposed contract with an independent contractor to be submitted to the state Board of Examiners (BOE).[18]

All professional services provided by independent contractors valued at $2,000 or more must have a contract to protect the interests of the state. These contracts are subject to the BOE contract approval process and are approved on a tiered basis by contract dollar amount. Contracts valued at $2,000 to less than $50,000 are approved by the Clerk of the BOE or designee. Contracts $50,000 or greater are approved by the BOE directly.[19] Contracts do not become effective without BOE or Clerk of the BOE approval.

[18] BOE members are the Governor, the Attorney General, and the Secretary of State.
[19] The Clerk of the BOE is the Director of the Office of Finance or designee.

Professional Service Provider Costs
Exceeded Minimum Contract Limits

The lack of transparency in Board operations did not ensure the interests of the state were protected, increased liability, and violated NRS because written contracts were not in place. Financial data for the most recently completed fiscal year ending June 30, 2018 revealed:

- Costs for 10 (22 percent) of 45 professional service providers for the year exceeded the state's minimum contract limit requiring a written contract.
- Costs for these 10 individuals totaled approximately $42,300 (69 percent) of $61,500 total professional service provider costs for the period.[20]
- Ninety percent of DSO costs were associated with seven independent contractors whose costs exceeded the state's minimum contract limit, both alone and when combined with other costs.

Exhibit IV summarizes fiscal year 2018 professional service provider costs exceeding the state's minimum contract limit requiring a written contract.

Exhibit IV

Fiscal Year 2018 Professional Service Provider Costs Exceeding State's Minimum Contract Limit Requiring a Written Contract

Professional Service Provider	DSO	Review Panel	Anesthesia	Infection Control	Total by Provider
1	$ 6,575	$ -	$ -	$ -	$ 6,575
2	7,896	-	-	-	7,896
3	3,047	-	-	800	3,847
4	2,494	-	2,039	-	4,533
5	-	-	2,712	-	2,712
6	2,643	-	-	-	2,643
7	-	-	237	4,115	4,352
8	3,550	775	-	-	4,325
9	-	-	-	2,464	2,464
10	2,913	-	-	-	2,913
Total by Service:	*$ 29,118*	*$ 775*	*$ 4,988*	*$ 7,379*	***$ 42,260***
All Provider Compensation:	*$ 32,455*	*$ 2,759*	*$ 14,821*	*$ 11,505*	***$ 61,540***
Percent of Total:	*90%*	*28%*	*34%*	*64%*	***69%***

Source: Board financial accounting data for fiscal year 2018.

[20] Costs include compensation, travel, and reimbursement of miscellaneous investigation expenditures.

Board Practice Increases Liability and Costs to the State

The Board's practice of procuring professional services without written contracts and providing coverage for them under the Board's general liability insurance policy increases liability to the state, regardless of the monetary value of services provided.

Specific state-required contract terms must be included in contracts between a state agency and an independent contractor in conformance with requirements issued by the OAG. These contract terms help ensure liability and costs to the state are reduced, including but not limited to: limits on the state's liability; indemnification from the contractor; professional liability insurance; warranties; provisions for reimbursement of costs; and choice of Nevada law and jurisdiction. These protections are not available to state agencies as legal remedies when written contracts are not in place.

Professional Services May Increase Liability and Risk of Loss

The nature of professional services provided to the Board may increase the state's liability and risk of loss, regardless of the monetary value of the services being provided. The Board needs to enter into contracts for all professional services to ensure the state's interests are protected and liability and costs to the state are reduced, including for services valued at less than $2,000.

Professional service providers conduct investigations and evaluations in various non-Board business locations such as licensees' or professional service providers' places of business. These activities may include oral examinations of patients that have the potential to affect the health, safety, and welfare of the public if a patient is harmed. These activities may also affect licensees' livelihoods dependent on investigation or evaluation results.

Additionally, the Board reimburses unanticipated costs related to investigations or evaluations to independent contractors, which may increase costs to a level that exceeds the state's minimum contract limit requiring a written contract. These include costs for damages to the professional service providers' places of business, litigation costs, or costs to investigate multiple complaints against the same licensee.

Board Reimburses Costs Without Contracts

The Board reimburses investigation or evaluation costs to professional service providers without contracts in place. Board approvals to reimburse these costs without contracts in place violate the provisions of NRS 333.700.

For example, the Board approved reimbursement to a DSO for the cost to repair a "hand-crafted glass windowed door." The door shattered when slammed by an angry patient the DSO had been examining in relation to a Board investigation conducted at his private place of business.[21] In another instance in 2018, the Board approved reimbursement of litigation costs to a DSO personally named in a lawsuit against the Board, even though the court did not approve the DSO's request to recover legal fees.

These costs may be reasonable given the costs were incurred in relation to professional services provided to the Board. However, there were no written contracts in place to ensure allowability of the costs, determination of liable parties, or conformance with state contracting provisions.

NRS 333.700(3)(a) allows independent contractor travel, subsistence, and other personal costs to be reimbursed by state agencies if the costs and cost amounts are provided for in a contract. The state's professional services contract templates include language to this effect.

Board Provides Liability Coverage for Independent Contractors

The Board reports it provides coverage for professional service providers under the Board's general liability insurance policy because the Board does not consider them independent contractors. State contracting templates include clauses for contractor indemnification and requirements for contractor professional liability insurance to protect against this type of arrangement.

Providing professional liability insurance coverage to professional service providers increases liability to the state, may increase the cost of Board general liability insurance coverage, and violates NRS. NRS 333.700(3)(b) prohibits agencies from providing state insurance coverage to independent contractors.

[21] Board minutes do not reflect the cost of the door.

Board Must Comply with NRS 333 and NAC 333

The Board must comply with NRS 333 and NAC 333 as an agency of the state. The OAG determined that fee-funded boards are agencies of the state and subject to financial and administrative oversight by both the legislative and executive departments of the state.[22] Further, NRS 333.020 includes boards in its definition of a using agency.

NRS 333.700 provides that using agencies may contract with independent contractors and requires such contracts to be written and procured in accordance with the provisions of NRS 333. NAC 333.150(1) requires: services of an independent contractor to be awarded pursuant to NRS 333 and NAC 333; contracts to conform to the form, terms, and conditions prescribed by the OAG; and contracts to include any insurance provisions required by the state Risk Manager.

Conclusion

The Board procures professional services to support the Board's investigative and enforcement process, but does not enter into written contracts for the services as required by NRS. The Board additionally provides general liability insurance coverage to professional service providers and reimburses costs not provided for in a written contract. These practices and the nature of the services provided to the Board increase liability and costs to the state.

Complying with state contracting requirements in NRS 333 and NAC 333 will help ensure transparency in Board operations, protect the interests of the state, and reduce liability and costs to the state. Compliance will require the Board to consult with the Office of the Attorney General and the state Purchasing Division to determine contracting procedures appropriate for Board operations.

Recommendation

3. Comply with state contracting requirements.

[22] Office of the Attorney General, Opinion No. 2018-07, December 21, 2018.

Comply with the Nevada Administrative Procedure Act (APA)

The Nevada State Board of Dental Examiners (Board) should comply with the Administrative Procedure Act (APA) to increase transparency in Board rulemaking and rules of practice.[23] Complying with the APA will ensure Board regulations are evaluated through the public rulemaking process and are consistent with statutory authority and legislative intent. Participation in the rulemaking process by interested members of the public is central to the procedural requirements of the APA.

Complying with the APA will also help ensure adopted rules of practice are clearly defined and are implemented through formal administrative procedures with Board oversight and public disclosure.

Board Activities Affecting Private Rights Defined as Regulations

The APA defines board activities as regulation when they affect the private rights or procedures available to the public and are applicable to the public in general or to all licensees. The Board should comply with the APA by ensuring all Board procedures or duties meeting these criteria are formally adopted in regulation to ensure consistency with statutory authority and legislative intent. Complying with APA will also increase transparency in Board rulemaking.

Legislature Reviews and Authorizes Regulations

The Nevada Constitution grants power to the Legislature to review, authorize, modify, or veto state agency regulations. In exercising its power, the Legislature created the APA with the intent to establish the minimum procedural requirements for rulemaking and adjudication procedures of all state executive branch agencies. The APA includes boards in its definition of agencies and confers no additional rulemaking authority to agencies other than that provided for in the APA.

Therefore, the Board is subject to legislative oversight of its rulemaking process and to APA provisions. By not adhering to APA requirements, the Board's regulations have not been evaluated for statutory authority and consistency with legislative intent. Failing to adhere to APA requirements opens the Board to federal antitrust liability.

[23] NRS 233B is referred to as the Administrative Procedure Act (APA).

NRS Requires Board to Adopt
Regulations and Define Duties

The state Administrative Rulemaking manual published by the Nevada Office of the Attorney General (OAG) specifies that rulemaking authority is delegated to executive agencies by specific statute because agencies have no inherent authority to adopt regulations.

Mandatory rules are those that agencies are required by statute to adopt. The Legislature uses the word "shall" in defining such mandatory rules. NRS 631.190 mandates that the Board shall define the duties of committees, review panels, examiners, officers, employees, agents, attorneys, investigators, and other professional consultants it appoints to carry out the provisions of the Dental Practice Act (DPA).

NRS 233B.038(1) defines a regulation as "[a]n agency rule, standard, directive or statement of general applicability which effectuates or interprets law or policy, or describes the organization, procedure or practice requirements of any agency." NRS 233B.031 includes boards of the state Executive Department in the definition of agencies authorized by law to make regulations or to determine contested cases.

Administrative rulemaking procedures apply to the Board. It is mandatory for the Board to adopt regulations to carry out the provisions of NRS 631, including defining duties of Board appointees.

DSO Coordinator Position and
Duties Not Defined in Regulation

Board duties conferred to the Disciplinary Screening Officer (DSO) Coordinator allow this position to exercise control and heavily influence Board procedures that have the potential to affect the health, safety, and welfare of the public and licensees' livelihoods without oversight. These procedures meet the definition of a regulation as defined by the APA.

The DSO Coordinator duties are defined in the Board's DSO practice manual, as well as in the Board's publicly published patient complaint process and flowchart. However, the DSO Coordinator position and its duties are not defined in the DPA. Moreover, the creation of the position and its duties as required by the DPA has not been evaluated through the public rulemaking process to ensure they are consistent with statutory authority and legislative intent.

Board Oversight Lacking for Board Rules of Practice

Board oversight is lacking for the creation, revision, and implementation of Board rules of practice. A change to the Board's rules of practice was implemented based on the interpretation of a section of the DPA by the Board's General Counsel. However, rules of practice cannot be implemented or revised without Board adoption.

NRS 233B.050 requires the Board to adopt rules of practice setting forth the nature and requirements of all forms, instructions, and formal and informal procedures used by the Board. The rules of practice must be available for public inspection.

Review Panel Oversight Required Beginning in 2018

Prior to 2019, it was the Board's interpretation of the DPA and the Board's practice to allow DSOs to dismiss complaints at their discretion. Consequently, DSOs dismissed 77 percent of all verified complaints closed in calendar year 2018 without review panel or Board oversight.

NRS 631 was amended to require the Board to appoint a panel of three people to review investigations and informal hearings conducted by DSOs beginning in 2018.[24] The review panel must review all files and records collected or produced by DSOs, DSO findings of fact and conclusions, and any other information the panel finds necessary. The Board reports the review panel began reviewing recommendations to dismiss verified complaints in 2019, a full year after the statutory requirement.

Change in Board Rules of Practice Implemented Without Oversight

The Board's Executive Director advised the change to the DSO/review panel process in 2019 requiring review panel oversight of DSO dismissals did not require Board action. The Board General Counsel's legal opinion was the requirement is set in statute in NRS 631.3635 and no Board action is required. However, no section of the DPA grants authority to DSOs to dismiss complaints. While this section of NRS describes basic requirements for the review panel process, it does not describe DSO or review panel duties in detail.

[24] Senate Bill 256 of the 2017 legislative session.

The Board's DSO/review panel procedures are considered rules of practice under APA. Current publicly available Board procedures do not reflect changes to the DSO/review panel process implemented in 2019 and the change was not adopted by the Board at a public meeting. Therefore, changes to the Board's rules of practice were implemented without public notice or Board adoption in a public meeting.

Consequently, a fundamental change in Board practices affecting the legal and private rights of licensees and private citizens was implemented without Board oversight, public disclosure, or formal administrative procedures. This reduced transparency of Board activities, processes, and procedures. Moreover, the process and related procedures could potentially be considered regulation under the APA because they apply to the public in general and to all licensees, effectuate and interpret law and policy, and affect the private rights and procedures available to the public.

Regulations Establish Standards That Have the Force and Effect of Law

Properly adopted regulations establish a standard of conduct that has the force and effect of law. The Board has no inherent authority to adopt regulations. This authority is granted to the Board by the Legislature and cannot be delegated unless allowed by a specific statute. NRS 631.190 mandates the Board to adopt rules and regulations necessary to carry out the provisions of the DPA. The Board is not ensuring compliance with the APA or the DPA.

Conclusion

Some Board procedures apply to the public in general or to all licensees and affect the private rights or procedures available to the public. However, these procedures have not been formally adopted by the Board as regulation or defined in the DPA. Additionally, changes to the Board's rules of practice were implemented without public notice or Board adoption at a public meeting.

Complying with the APA to increase transparency in Board rulemaking and rules of practice will ensure Board regulations are evaluated through the public rulemaking process and are consistent with statutory authority and legislative intent. Complying with the APA will also help ensure adopted rules of practice are clearly defined and are implemented through formal administrative procedures with Board oversight and public disclosure.

Recommendation

4. Comply with the Nevada Administrative Procedure Act (APA).

Appendix A

Scope and Methodology, Background, Acknowledgements

Scope and Methodology

We began the audit in January 2019. In the course of our work, we interviewed management and discussed processes inherent to the Nevada State Board of Dental Examiners' (Board) responsibilities. We additionally interviewed management and staff from the Nevada Commission on Ethics, the state Purchasing Division, and members of local dental organizations.

We researched Board internal and publicly available records for fiscal years 2014 through 2019, applicable Nevada Revised Statutes (NRS), Nevada Administrative Code (NAC), State Board of Examiners' meeting data, opinions issued by the Nevada Office of the Attorney General and the Nevada Commission on Ethics, court records and case law, prior audits, and other federal and state guidelines.

We concluded fieldwork in May 2019.

We conducted our audit in conformance with the *International Standards for the Professional Practice of Internal Auditing.*

Background

Nevada State Board of Dental Examiners Overview

The Nevada State Board of Dental Examiners (Board) is an independent occupational licensing Board that was created during the 1951 legislative session of the Nevada Legislature. The Board's purpose is to regulate and enforce provisions in NRS 631 and NAC 631 governing the practice of dentistry, dental hygiene, and related specialties. NRS 631 and NAC 631 are collectively referred to as the "Dental Practice Act" (DPA). NRS 622 defines the general provisions governing regulatory bodies and mandates professional and occupational licensing boards to enforce statutory provisions for the protection and benefit of the public.

Board Membership

The Board consists of 11 members appointed by the Governor. Member qualifications are defined in statute and require:

- Six members who are licensed in dentistry, are residents of Nevada, and have ethically engaged in the practice of dentistry in Nevada for at least five years. Three of these members must be from Carson City, Douglas County, or Washoe County; four must be from Clark County; and one may be from any county in Nevada.
- One member who has been a Nevada resident for at least five years and represents the interests of persons or agencies that regularly provide health care to patients who are indigent, uninsured, or unable to afford health care. This member may be a licensee.[25]
- Three members who are licensed in dental hygiene, are residents of Nevada, and have been actively engage in the practice of dental hygiene for at least five years before their appointment to the Board. One of these members must be from Carson City, Douglas County, or Washoe County; one must be from Clark County; and one may be from any county in Nevada.
- One member who is a member of the general public. This member must not be a dentist or dental hygienist, or the spouse, parent, or child of a dentist or dental hygienist.

Currently, the Board consists of seven dentists, three dental hygienists, and one member of the general public. The current Board president is a dental hygienist and was elected to the position by the Board at its February 22, 2019 meeting.

Board Funding Sources

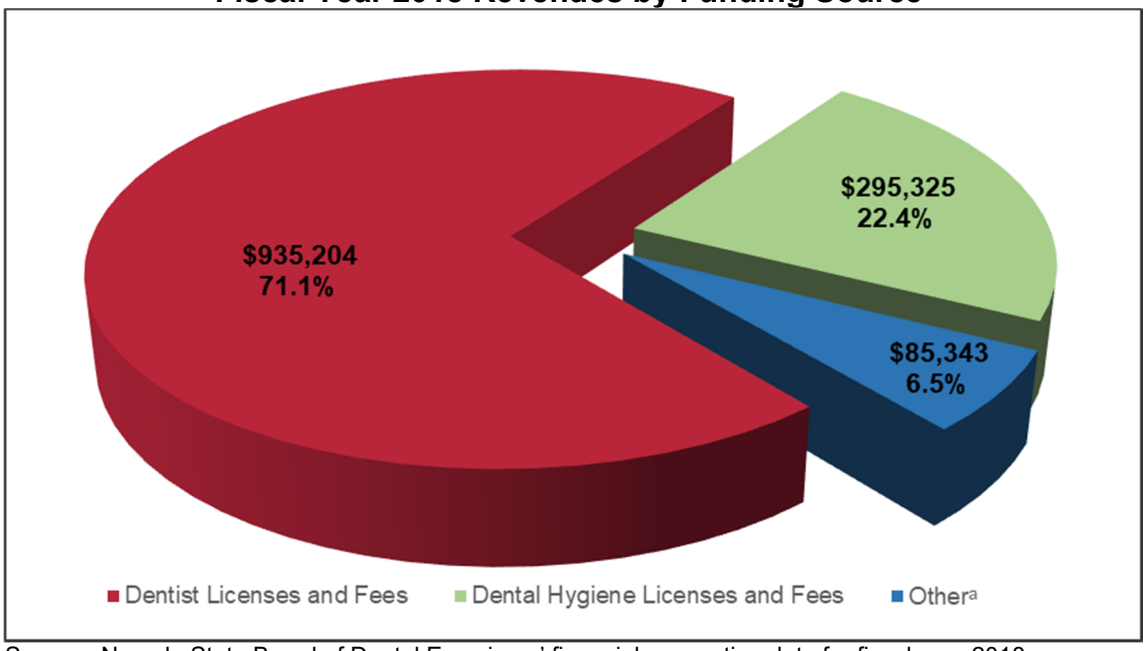
The Board is primarily funded by fee-based revenues collected from licensees and from provision of continuing education courses. The Board does not receive state general fund appropriations and its fiscal activity is not included in and does not affect the state's Executive Budget. Additionally, the Board maintains its own accounting and payroll systems and hires its own staff. Accordingly, the Board is exempt from the provisions of: the state's budget act, NRS Chapter 353, "State Financial Administration"; the state's internal control act, NRS Chapter 353A, "Internal Accounting and Administrative Control"; and the state's personnel act, NRS Chapter 284, "State Personnel System."

The Board's total revenues for fiscal year (FY) 2018 were approximately $1.3 million. Exhibit V summarizes the Board's revenues by funding source for FY 2018.

[25] Licensees include dentists, dental hygienists, and dental specialty practitioners.

Exhibit V

Nevada State Board of Dental Examiners
Fiscal Year 2018 Revenues by Funding Source



Source: Nevada State Board of Dental Examiners' financial accounting data for fiscal year 2018.
Note:
[a] Other includes CEU provider fees, license verification fees, and miscellaneous income.

Acknowledgments

We express appreciation to the management and staff of the Board, Office of the Attorney General, Nevada Commission on Ethics, and the Purchasing Division for their cooperation and assistance throughout the audit.

Contributors to this report included:

Warren Lowman
Administrator

Heather Domenici, CPA, MAcc
Executive Branch Auditor

Appendix B

Nevada State Board of Dental Examiners
Response and Implementation Plan

Nevada State Board of Dental Examiners

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June 6, 2019

Mr. Warren Lowman
Administrator/Division of Internal Audits
State of Nevada Governor's Office of Finance
209 East Musser Street, #302
Carson City, Nevada 89701

Re: Firnal Draft Audit Report – Nevada State Board of Dental Examiners DIA Report No. 19-04

Dear Mr. Lowman,

This correspondence is provided pursuant to your request for response to the Final Draft Audit Report[1] provided to the Board on May 20, 2019, as revised pursuant to email correspondence from you on June 5, 2019. Please note that, pursuant to your instruction, the report is deemed confidential and is not to be shared with the members of the Nevada State Board of Dental Examiners (hereinafter referred to as "NSBDE" or the "Board") before the report is submitted to the Executive Branch Audit Committee. This has the effect of preventing the Board members from taking any action to respond to the draft audit report pursuant to the Nevada Open Meeting Law. The comments contained herein, therefore, are merely intended to provide such information and response as can be provided by the Board's Chair, in consultation with the Board's Executive Director and General Counsel, but without consultation, input or action by the Board. Thus, this response should be considered as unofficial and non-binding upon the Board until such time as the Board has the opportunity to act upon it.

Response/Comments Regarding The Audit Report

I. Introduction/General Comments

Though not stated in the body of the report, this audit was presumably conducted pursuant to NRS 353A.038(5) and 353A.045. NRS 353A.038(5) requires the Executive Branch Audit Committee to approve, with or without revision, each annual plan for auditing agencies presented by the Administrator pursuant to NRS 353A.045. Certain agencies, including the NSBDE are exempted from the long-term and annual work plans developed pursuant to NRS 353A.045(2). To the extent that section is not applicable to this audit, NRS 353A.045(4) requires

[1] References herein to the "audit report" or "draft audit report" refer to the Final Draft Audit Report sent to the Board on May 20, 2019. Though stated to be the "Final Audit Report," the actual document contains a "DRAFT" watermark on each page and is, therefore, referred to herein as the Draft Audit Report and/or Final Draft Audit Report.

the Administrator, in consultation with the Director, to prepare a plan for auditing executive branch agencies and present the plan to the Committee for its review and approval. Each plan must state the agencies which will be audited, the proposed scope and assignment of those audits and the related resources which will be used for the audits. Upon notification of the instant audit, the Board requested a copy of the audit plan prepared pursuant to this statute. The document produced in January 2019 did not contain the audit of the NSBDE approved in October 2018, did not contain the scope and assignment of the audit or the related resources to be used for the audit. ***See attached Exhibit A***. NRS 353A.045(5) authorizes the Administrator to perform the audits of the programs and activities of the agencies "in accordance with the plan approved pursuant to NRS 353A.038(5)" and prepare audit reports of his or her findings. Because the required information concerning this audit was not included in the audit plan as mandated by NRS 353A.038(5) and NRS 353A.045(4), it is unclear whether the proper steps were taken to authorize this audit as required by statute.

Furthermore, NRS 353A.045(10) also requires that the Administrator consult with the Legislative Auditor concerning the plan for auditing and the scope of audits to avoid duplication of effort and undue disruption of the functions of agencies that are audited pursuant to NRS 353A.045(5). As this Committee is well aware, in 2016, this Board was audited by the Legislative Auditors at the request of the Sunset Subcommittee of the Legislative Commission, and approved by the Legislative Commission in February 2016. The scope of that audit, though also inclusive of financial inquiries not addressed by the instant audit, included many of the exact same issues as the instant audit, namely the complaint and investigative process, the oversight of the Board's investigators and the Board's contracts. A legal opinion was sought in the 2016 audit for questions beyond the scope of the LCB auditors' expertise, and that legal opinion included an overview of the Board's appointment of DSOs, without concern over the issues brought forth in the instant audit. Additionally, the Board's processes have been reviewed by the Office of the Attorney General, Judge Elizabeth Gonzalez and Judge Timothy Williams, both of the Eighth Judicial District Court, none of whom have found statutory violations by the Board related to the Board's investigatory processes.[2] Despite this overlap, and despite the fact that, to this Board's knowledge, no other occupational licensing Board's procedures and processes have been audited in this manner once, let alone twice in just over two years, there is no evidence that the consultation required by NRS 353A.045(10) ever took place.

The Board also notes that, to the extent the scope of the audit was defined, if at all, per the information provided to the Board, it was to cover the years 2016-2018. Despite this, much

[2] A finding was made by Judge Williams that a subpoena issued by the Board's Executive Director was unenforceable based "solely" on the fact that it was issued by the Executive Director. Though a regulation has been enacted allowing the Executive Director to issue subpoenas during the adjudicatory phase of a disciplinary action, he found that this regulation did not apply to an investigation. However, he noted that the Board absolutely has the authority to issue subpoenas during the investigation and a simple regulatory change will correct the problem. However, no finding was made that the process addressed by the instant audit and the LCB audit violated any statute or portion of the Dental Practice Act ("DPA").

of the audit's discussion concerns the time frame from 2014-2015, years which were already the subject of an audit. This is also in contravention of NRS 353A.045(10). The duplication of effort, especially without the required consultation, has caused undue disruption to the function of this Board, and has required this Board to expend additional time and resources to assist the auditors and to respond to what appears to be a duplicative audit. The failure to conduct this required consultation and to tailor this audit accordingly, also calls into question the validity of this audit. Further, it is the Board's position that the legal conclusions drawn by the auditors are inappropriate and beyond the scope of their expertise, especially when it is considered that this Board's processes have been scrutinized more than any other without any finding by any legal authority to support the conclusions found in the instant audit. For this reason, though the Board is accepting of any suggestions to improve its functioning and will work with the auditors to ensure that the Board functions as well and as efficiently as possible, the Board takes issue with, and rejects, many of the legal findings and conclusions made in this audit that go beyond the scope, expertise and jurisdiction of this audit.

The objective stated in the introductory section of the draft report states that the very broad and vague objective of this audit was to "enhance Dental Board operations." It is noted, however, that the audit was initially approved in response to incorrect, defamatory allegations made by various attorneys on behalf of the Las Vegas Dental Association ("LVDA") during recent Board of Examiners meetings in the LVDA's continued attempts to harass and malign the Board in its attempts to avoid regulation by the Board. As described to the Board by Mr. Lowman, "the current audit is with respect to the complaint process and the implantation of the Review Panel for fiscal years 2016 through 2018," with the intent of addressing the LVDA's concerns within that context. ***See attached Exhibit B.*** This confirmation of the scope of the audit was made following members of the LVDA's blatant public mischaracterization of this audit, describing it as Governor Sisolak's decision to open an "investigation into Dental Board members" concerning alleged misappropriation.

Despite the "very serious" nature of the "concerns" expressed before the Board of Examiners at the end of 2018, and the allegations made against the Board which led to this audit, the draft audit report specifically addresses only one of LVDA's assertions, namely the incorrect contention that the NSBDE's complaint process, employees and investigators allegedly favor members of the Nevada Dental Association and/or negatively target dentists who are not members of that Association. Those comments repeatedly, and incorrectly, alleged that "100% of the NSBDE members are members of the NDA," that "100% of the investigators" (also referred to as "DSOs") are members of the NDA and that "100% of the action taken by the Board" was taken against non-NDA members. In contrast, however, the audit found that no such preferential treatment exists, noting that the number of complaints submitted, number of investigated complaints and the number of Board actions were proportional to the overall total of members and non-NDA members in Nevada.

However, the audit report does not address the lack of findings consistent with other serious and defamatory allegations made publicly at recent Board of Examiners' meetings. When questioned about this, we were advised by Mr. Lowman and Ms. Domenici that all of the LVDA's allegations were considered during the audit and, if they are not addressed in the audit report, then the lack of comment indicates that no evidence to support such claims was found by the auditors. Nevertheless, despite these allegations being the stated precipitating factor for this audit, the Board was advised that the auditors did not find it necessary to specially note the lack of support regarding these allegations. Thus, this response wishes to make clear that, per the statement of the auditors, there has been no finding or evidence to support any of the following allegations made against the Board by the LVDA and/or their attorneys:[3]

Allegations that the Dental Board has "unlawfully delegated nearly all of its authority to Board staff, contract investigators and Board counsel."

Allegations that there is a "total lack of oversight, excessive spending or a failure to insure due process of law in the disciplinary process."

Allegations regarding the findings of the 2016 audit were not addressed by the instant audit and were not noted to be correct or factually supported by the 2016 audit report.

Allegations that the DSOs are the "final arbiters of fact or discipline."

Allegations that the Review Panel is a "rubber stamp" of the DSOs or that the Board is a "rubber stamp" of the DSOs and/or Review Panel.

Allegations of misappropriation or criminal activity. In fact, the Board was advised that "if issues arise that [the auditors] assess as a question of criminality, [the auditors] pass that question to the Office of the Attorney General for investigating. The Board has not been advised that any such information was found or relayed to the OAG, and no such concern was included in the audit report.

Allegations that the Dental Board is made up entirely of Nevada Dental Society [sic] members.

Allegations that the Dental Board refers complaints to the NDA in lieu of investigating complaints by the members of the public against NDA members.

Allegations that 100% of the DSOs are NDA members.

[3] The Board does not concede that the auditors have the authority or expertise to make legal determinations or legal conclusions; however, since the audit made numerous legal conclusions without addressing the lack of findings with respect to these allegations, the Board finds it necessary to note the lack of findings regarding these allegations.

Allegations that complaints against Board members were not investigated or were dismissed by Board staff, improperly or otherwise.

Allegations that "nothing has been done" in response to the 2016 audit.

Allegations that the Board was "shielded" from the 2016 audit findings "until recently."

Allegations that the disciplinary process is conducted in an "arbitrary and capricious" manner.

Allegations that legal fees have not decreased.

The attorney making these allegations in public comment also failed to advise the Board of Examiners, and the audit report also does not acknowledge, that the very claims made to the Board of Examiners leading to this audit have also been made in a court of law during the course of three lawsuits brought by members of the LVDA against the Board, its Executive Director, General Counsel (past and present), Deputy Attorney General and various investigators. The fact that the Board has prevailed in all of these actions, and the fact that the courts have not made any findings that the Board is in violation of its statutory mandate with respect to its investigation process, was known to the LVDA and its attorneys prior to the comments made before the Board of Examiners. This information was also provided to the auditors, but is also not referenced in the audit report, a report which makes legal conclusions that are potentially contrary to the legal findings and conclusions of the judges who have heard these matters.

Although the Board disagrees with many of the legal conclusion drawn by the auditors for the reasons stated in this response, it is important to note that none of the findings or conclusions made by the instant audit implicate or assert that any bias, any willful or intentionally improper action, any criminal activity, or any violation of any dentist's rights or due process occurred as a result of those actions that the auditors deem potentially improper. As discussed below, none of the findings indicate that any of the possible "violations" as determined by the auditors in any way affected the rights of any of the dentists who have been investigated and there were no findings that the outcome of any investigation would or should have been altered if the alleged "possible violations" had not occurred.

II. Recommendation to "Strengthen oversight of investigative and enforcement activities." (Draft Audit Report, pp. 2 – 8)

A. Audit Recommendations Regarding Board Oversight for DSO Coordinator Decisions (Draft Audit Report, pp. 3-5)

The DSO Coordinator does not conduct any investigation prior to the verification of a complaint. To state otherwise is incorrect and any statement to this effect in the audit report is

rejected by the Board. The DSO merely reviews the patient's complaint to determine, assuming all information in the patient's complaint is true, whether those allegations *could* constitute a violation of the DPA. The DSO Coordinator does not determine that a violation has or has not occurred. If the complaint does not contain sufficient information to make this determination (i.e., no dentist's name is provided) additional specific information is requested from the patient. This is not an investigation into the merits of the patient's complaint. Further, any complaints which address UNLV School of Dental Medicine are also reviewed by the Executive Director for jurisdiction in light of the DSO Coordinator's affiliation with the school.

Contrary to the statements in the audit, the DSO Coordinator does not act as both an investigator and review panel member. He reviews the patient's complaints for jurisdiction only, but does not conduct any investigation of matters that are sent for verification. Only matters verified would thereafter be reviewed by the review panel following an investigation by a DSO, not the DSO Coordinator. As one member of a three- member panel appointed pursuant to statute, he reviews the preliminary investigation conducted by the DSO and, together with the other review panel members, makes findings and recommendations as required by statute and regulation. He specifically recuses himself from any panel review of any licensees who are employed by his employer, the UNLV School of Dental Medicine. In anticipation of potential conflicts such as this, alternate review panel members were appointed by the Board to sit on the Review Panel the event one or more of the panel members has a conflict, and these alternates have been called upon with respect to review of complaints and investigations against licensees who are or were employed by UNLV's School of Dental Medicine. Thus, there is no conflict in this regard, and this finding of possible conflict from the DSO Coordinator's service as a member of the review panel is rejected by the Board.

To the extent that the auditors, based upon "data" (not a review of the patients' complaints), believe that some of the DSO determinations regarding jurisdiction were inconsistent, the Board accepts the audit's recommendations to improve consistency if necessary; however, perceived inconsistencies, if they exist[4], are vastly different from a conclusion that the entire DSO Coordinator review process is or may be a "violation" of NRS or NAC.[5] Such a blanket conclusion of statutory violation is rejected by the Board.

Unlike every other professional licensing board's governing statute, NRS 361.360 mandates that all verified complaints shall be investigated. Thus, verification of every complaint,

[4] The Board cannot respond to the merits of the finding of perceived inconsistencies because it was not provided with any information to identify which complaints the auditors viewed as inconsistent. A general statement that "some infection control complaints resulted in an infection control inspection and others did not" does not assist the Board's ability to respond because each complaint is reviewed on its own merits and the "data" reviewed may not contain distinguishing factors or factual differences leading to seemingly different results.

[5] It is also noted, however, that in light of the Board's acceptance of the audit's recommendation to allow all patient complaints to be verified and to conduct the required investigation of all verified complaints, this will no longer be an issue, as the preliminary jurisdictional review will no longer be conducted prior to verification.

as suggested by the audit, will require the Board to investigate all matters, regardless of whether it can ultimately take any action or not. This makes the inclusion in the DPA of the unique requirement for verification and the requirement to investigate all verified complaints irrelevant and contrary to the holding of *Moore v. Bd. of Trustees of Carson-Tahoe Hosp.*, 88 Nev. 207, 210, 495 P.2d 605 (1972)(A board or commission only has the jurisdiction to determine issues over which is given responsibility by statute.) The Nevada Supreme Court "avoid[s] statutory interpretation that renders language meaningless or superfluous," *Hobbs v. State*, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011).

Thus, the policy of determining jurisdiction prior to verification has been the reasonable interpretation of NRS 631.360 for decades and, despite the unprecedented amount of scrutiny given this Board and its processes in recent years, not a single legal authority has called this interpretation or practice into question. If it is the auditor's opinion that all complaints should be verified regardless of jurisdictional concerns and/or that the jurisdictional question should be answered as part of the investigation after the submission of the verified complaint, the Board will accept this recommendation. However, it is noted that this will necessary result in the expenditure of additional resources, as there will be considerably more investigations that will take place, which may require the hiring of additional staff. Licensees will need to be informed of the submission of every complaint and ensuing investigation regardless of the Board's jurisdiction over the same, the licensee must be given the opportunity to respond to the complaint and investigation, records will need to be requested, a DSO will need to be assigned and the ultimate jurisdictional question will need to be presented to the Review Panel. The licensee may feel the need to hire counsel to defend him- or herself against allegations about which the Board ultimately may not have authority to act, resulting in increased costs to the licensees. This practice will almost certainly burden the Board financially, which may lead to additional costs being passed along to the licensees. More importantly, this practice may also delay the process as to all complaints due to the increase in the number of investigations being conducted and delay resolution of patient's concerns, thereby impeding the Board's ability to protect the public and resolve complaints as expeditiously as possible.

The audit report opines that the Board's practice of the DSO Coordinator reviewing complaints prior to verification "may violate NRS and Nevada Administrative Code." Though, as stated above, the Board will accept the auditor's recommendation, and proceed to verify and investigate all patient complaints based solely on the auditor's interpretation of the statute, it is noted that statutory interpretation is not always black and white. Thus, the Board takes serious issue with, and rejects, any finding or implication that there has or may have been a "violation" of statute or regulation as a result of the Board's reasonable interpretation of this statute and the practice of determining jurisdiction before verification which, as stated, has not been deemed improper by any legal authority.

Importantly, it is noted that, despite this recommendation and (disputed) findings, nothing in the audit states or implies that this practice has affected the rights of any licensee. The

concern expressed by the auditors is that some patients' allegedly actionable complaints may not have been investigated, not that any investigated complaints incorrectly or improperly proceeded to verification or investigation. Finally, the audit specifically notes that the auditors "did not find, however, any apparent bias or preferential treatments in decisions [regarding jurisdiction or verification by the DSO Coordinator]."

B. Audit Recommendation Regarding the Executive Director Duties (Draft Audit Report, pp. 5-7)

The Audit notes that the Executive Director is responsible for licensee compliance monitoring of stipulation agreements, incorrectly drawing the erroneous conclusion that the Executive Director monitors the licensees for clinical or standard of care compliance requiring professional judgment. This is patently false and, as has been explained, the Executive Director has not, does not and will not in the future conduct any standard of care or clinical compliance monitoring. The Executive Director ensures that necessary logs are kept, that all fines or agreed upon payments are made and that the licensee completes the number of continuing education hours required by a stipulation. This does not take any specialized medical or dental education, knowledge, training or judgment.[6] Use of the DSOs for this purpose, at additional expense that must be passed to the licensees, is a waste of resources and an unnecessary use of their time.

On the other hand, to the extent that monitoring involves review of the records for compliance with standard of care issues or to ensure proper clinical judgment of the licensee being monitored, this monitoring is always done by a licensed dentist, either the DSO that originally investigated the matter, another DSO and/or the DSO Coordinator.

When advised of these facts, the auditors responded that, in their opinion, the language of the few stipulations that they looked at indicated that the Executive Director *could* conduct monitoring of clinical or standard of care issues, even if she did not actually do so, and they found this to be problematic.[7] While the Board has ***never*** interpreted the language of the stipulations in this manner, and while the Executive Director has ***never*** monitored a dentist or

[6] The current Executive Director has been the Executive Director since 2013, served as the Interim Executive Director from 2012-2013 and was the Deputy Executive Director from 2002 to 2012. To state or insinuate that she may not have the requisite education or experience to qualify her to perform the ministerial portions of the monitoring is not only insulting, but it is patently false.

[7] The Board was advised that the auditors handpicked stipulations entered into with members of the LVDA to review, "since they were the ones complaining." It is unknown which stipulations were looked at, or who may currently consider themselves as a member of the LVDA, as the Board has never received a membership list from that association. However, no licensee currently known to be a member of the LVDA has been the subject of a stipulation since May, 2016, prior to the present General Counsel's tenure with the Board.

hygienist regarding clinical matters,[8] if the auditor's recommendation is to change the language of the stipulations to remove this alleged possibility, the auditors have been advised that this language has been amended in recent stipulations and the Board accepts the recommendation to further refine the language as necessary. However, there is a vast difference between an opinion that they feel certain language makes it *possible* that the Executive Director *could* do this monitoring, and a definitive statement that the Executive Director is responsible for this monitoring and further that she does not have the professional judgment to do so. This latter conclusion is entirely false. It is also inappropriate to state that non-existent though theoretically possible monitoring is inconsistent with the OAG's Boards and Commissions manual, without advising that the concern is a theoretical one, not the result of any actual activity by the Board or its Executive Director.

There is further no basis for the audit's finding that the Executive Director does not have the level of education or experience, or a combination of both, to qualify her to perform the administrative and managerial tasks required of her position.[9] Thus, the determination that the Executive Director is conducting compliance monitoring that is beyond the scope of her education, expertise or professional judgment, or that she does not have the requisite education or experience to perform the functions that have been assigned to her is vehemently rejected by the Board. The Board further feels that is it inappropriate to include these incorrect findings in the audit report when the auditors have been advised that their understanding of the monitoring language is erroneous and inconsistent with the facts of what occurs during the monitoring.

With respect to the "inability" to conduct compliance monitoring with respect to the maintenance of patient logs, it should be noted that the monitoring of compliance with required daily logs was not accomplished in only (3) matters during the three year period that the audit examined. These three stipulations were monitored as to all other aspects and all other stipulations entered into during this time have been monitored with respect to all requirements included in the agreements. Furthermore, the language of future stipulations will be changed to require the licensees to send their daily logs to the Board, rather than to merely be required to make them available upon request. This will ensure that all licensees are monitored in this regard.

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[8] This information pertains only to the current Executive Director. It is unknown what previous Executive Directors may or may not have done with respect to licensee monitoring and it is noted that, at least one past Executive Director was, in fact, a dentist and may have been qualified to review clinical or standard of care issues.

[9] Though not stated explicitly, it is believed that this conclusion was with respect only to the auditor's concern that there is the potential for the Executive Director to monitor the clinical aspects of licensee stipulations. However, without this explicit limitation on this finding, it may be taken out of context and must be addressed.

C. Audit Recommendation Regarding "Equal Opportunity to Provide Services" for Qualified Dentists (Draft Audit Report, p. 7)

The audit recommends that the Board increase its pool of general dentistry DSOs in Southern Nevada. This recommendation fails to take into consideration that the Board continuously seeks dentists to fulfil these positions via its website, word of mouth, and acceptance of applications from any dentist who wishes to serve in this capacity. The auditors were advised of this continuous recruitment effort and the Board would like nothing more than to have qualified dentists who wish to serve in this position. However, the Board cannot order or mandate that dentists serve as DSOs. Frankly, the constant harassment, and defamation that is faced by anyone associated with this Board has made it quite difficult to recruit dentists who are willing to accept this unwarranted scrutiny and expose themselves to the barrage of frivolous allegations and false and defamatory comments that have plagued this Board and anyone associated with it for several years. To further insinuate that there is an appearance of favoritism in the assignment of investigations to DSOs is entirely without support, and ignores the fact that more dentists are not willing to serve in this capacity due to no fault of the Board or its staff.

The statement that the DSO pool of general dentists is "limited" and that "limiting" the DSO pool gives the appearance of favoritism is a blatant mischaracterization of the reason for the limited pool of general dentist DSOs. This statement incorrectly insinuates that the limited number of DSOs is the result of some decision by the Board to limit the number of DSOs. The Board, however, does not limit the pool of Southern Nevada general dentist DSOs to five (5). Rather, currently only these five have been willing or interested in serving in this capacity. We have recently received an application for another Southern Nevada general dentist DSO that the Board will be considering at the next meeting. However, the Board has never turned away qualified dentists wishing to engage in public service as a DSO.

The audit also makes note of the fact that the majority of investigations were assigned to a small number of DSOs. However, for any given case, the number of DSOs to whom a matter may be assigned is not the full number of DSOs on the panel. The full panel consists of DSOs who specialize in all areas of dentistry, including endodontics, general dentistry, hygiene, oral and maxillofacial surgery, orthodontics, periodontics and prosthodontics. Matters are assigned to DSOs that practice in the same specialty as the licensee being investigated. In other words, if there is an oral surgeon under investigation, an oral surgeon DSO will be assigned; if the matter involves an orthodontics, an orthodontist DSO will be assigned, and so on. With rare exceptions, assignments are also based upon the location of the patient, so that if the patient needs to be evaluated, the DSO will be able to do so without the DSO needing to travel, at Board expense, to the patient's location. The audit noted that 64% of investigations for calendar years 2016 to 2018 were assigned to four (4) DSOs. However, the auditors were also advised that 75% of all investigations were conducted with respect to general dentists in Southern Nevada (67% of all verified patient complaints submitted to the Board by patients were submitted against general dentists in Southern Nevada and 8% of all complaints involved authorized investigations of

general dentists in Southern Nevada.) ***See attached Exhibit C.*** Complaints against general dentists by patients residing in Southern Nevada are assigned to general dentist DSOs in Southern Nevada. Thus, for 75% of the complaints investigated, the DSO pool was not made up of 36[sic][10] dentists as stated by the audit. Rather, the DSO pool for 75% of the investigations consists of only five (5) dentists. Therefore, a finding that 64% of verified complaints were assigned to four DSOs is entirely consistent with the fact that there are only five (5) DSOs available to investigate approximately 75% of the complaints. The audit's finding that 64% of all verified complaints were assigned to four DSOS, therefore, is not unusual, is not indicative of favoritism, is not the result of anyone "handpicking" certain DSOs for certain matters but is entirely consistent with the number of complaints submitted with regard to general dentists in Southern Nevada and the number of DSOs available to review complaints against general dentists involving patients in Southern Nevada. It would also follow, therefore, that these four to five DSOs should receive 64-75% of all payments to DSOs; however, the auditors found that the four DSOs investigating 64% of the complaints only received 55% of all payments to DSOs in fiscal year 2018. Thus, the insinuation that certain DSOs are being assigned a disproportionate amount of matters and/or are being paid a disproportionate amount for their service is incorrect.

Based on the foregoing, the Board accepts the audit's recommendations that additional general dentist DSOs in Southern Nevada would be beneficial. The Board, however, rejects any suggestion or finding that the Board is responsible for the limited number of DSOs available to investigate the majority of the verified complaints submitted. The Board further rejects any suggestion or finding that the assignments of matters to DSOs is the result of favoritism, a lack of transparency, or the result of anything other than the number of complaints submitted and the number of DSOs that can be assigned to those complaints. To suggest otherwise is inappropriate and incorrect.

III. Recommendation to Consult with Commission on Ethics to Avoid Conflicts of Interest (Draft Audit Report, pp 9-13)

A. Audit Discussion Regarding Voting on Certain Matters

The Board accepts the recommendation to consult with the Commission on Ethics regarding the alleged potential violations noted by the audit.[11] The Board, however, does not accept many of the statements made in the audit with respect to this recommendation and takes

[10] In 2016, a panel of 26 DSOs was reappointed. In 2017, a panel of 25 DSOs was reappointed. In 2018, a panel of 24 DSOs was appointed. Currently, there are 23 DSOs, only 5 of whom are general dentists in Southern Nevada. Thus, it is unclear how the determination that there are 36 DSOs was made.

[11] The Board notes that the possible violations detailed in the audit do **not** concern or in any way support the erroneous and defamatory allegations made before the Board of Examiners concerning alleged – but entirely unfounded and erroneous – allegations of misappropriation with respect to votes to approve certain charitable contributions as part of stipulations entered into by licensees in 2014 and 2015.

exception to the auditor's usurping of the sole jurisdiction of the Ethics Commission to make legal determinations concerning alleged ethical violations. It is also noted that not one of the actions that the auditors state "may" be violations would, had they not occurred, changed the outcome of any vote or action by the Board. Thus, if any corrections need to be made, the Board will, of course, make them; however, it is important to note that neither the rights of any licensee nor any member of the public were in any way impacted by any vote the audit discusses. Additionally, the Board rejects any finding by the audit that any member used his or her Board position for personal gain or improperly voted on Board matters.

The Nevada Commission on Ethics has exclusive jurisdiction and authority to interpret and enforce Nevada's Ethics in Government Law set forth at NRS Chapter 281A, subject to judicial review. Pursuant to NRS 281A.280, the Commission has jurisdiction to investigate and take appropriate action regarding any alleged violation of NRS Chapter 281A, only upon the filing of an Ethics Complaint or the initiation of an Ethics Complaint by the Commission. The Ethics Commission also has the legal authority to intervene in court to address any concern about another agency making such legal findings or trying to impose an ethics violation against a public officer or employee. Thus, the audit's legal conclusions (without a full investigation and without seeking a legal opinion from the Ethics Commission specific to their concerns) that certain individuals "may have violated Ethics Law . . . by participating in [] activities that could be interpreted as unethical according to statute," that some individuals "improperly voted on matters . . ." or "may have used their Board positions for personal gain for themselves or for their colleagues," or that certain abstentions were necessary during various votes, are inappropriate, beyond the scope of their jurisdiction or authority and impede on the Ethics Commission's exclusive jurisdiction to conduct such investigations or make such determinations.

While the Commission's published opinions are available to the public, and some have been referenced in the audit, each published opinion specifically states that it relies upon the facts and circumstances presented in the case. Thus, unless the specific facts are identical to the facts giving rise to the audit's concerns, the cited opinions may not be applicable. A brief review of the opinions cited by the audit show that the facts and circumstances are not identical and do not address the facts of the issues presented by the audit.

Further, the Ethics Law contains a "safe harbor" provision which protects public officers and employees from a finding of willful violation for reasonable, good faith reliance upon agency legal counsel. All votes described in the audit were made with the knowledge and in the presence of both the Deputy Attorney General assigned to the Board as well as past or present General Counsel for the Board and with knowledge of the Board members' other affiliations. The Office of the Attorney General has provided guidance regarding matters from which a board member should abstain and it is not believed that the issues set forth in the audit required abstention. However, the Ethics Commission, not the Office of Finance, has the sole jurisdiction to make these determinations. In doing so, the Commission must evaluate whether a public officer has a "pecuniary interest" or a "commitment in a private capacity to another person" that

is materially affected by a matter before the public officer in his/her official capacity. This necessarily requires a case-by-case analysis by the Commission. It is also noted that the audit's legal conclusions do not take into account the "materiality" requirement necessary for the finding of violations.

Consultation with the Office of Attorney General has indicated that there may not have been any duty to abstain in the instances cited by the audit. Further, it has been noted that, while also under the guidance of a DAG assigned by the AOG, board members of other professional licensing boards are also faculty members of universities and do not abstain in the way discussed in the audit.

Thus, while the Board will gladly consult with the Ethics Commission and the OAG to ensure that all votes and actions are appropriate and in conformity with NRS 281A, the Board finds it inappropriate and beyond the jurisdiction of the audit to include legal conclusions prior to such consultation with and opportunity for the Ethics Commission to evaluate these issues as required by and pursuant to the procedures outlined in NRS 281A.

B. Audit Discussion of Possible Violations Resulting from Prior Service as a Board Member

The audit incorrectly states that, because certain DSOs previously served as Board members,[12] their appointment as DSOs upon the conclusion of the their terms as Board members may have been the result of securing an advantage for themselves in a private opportunity through their Board positions. This finding is wholly and strenuously rejected by the Board. As discussed by a former Deputy Attorney General at a Board meeting in January 2017, though Board members are not routinely assigned to matters as a DSO, Board members are also automatically considered DSOs and do not need to be separately appointed for that purpose. ***See attached Exhibit D, p. 6.*** Thus, continuing to serve as a DSO once they are no longer Board members is merely an extension of their community service, not the result of seeking an advantage based on that service. In addition, the few former board members/current DSOs that would meet the vague description offered by the audit have not been Board members for several years, so it is unclear when these alleged "advantages" may have been secured. It is noted that only one current DSO that was also previously a Board member was (re)appointed as a DSO during the time frame that was to be addressed by this audit, namely 2016-2018. It is also noted

[12] In addition to the DSO Coordinator, the current panel of DSOs contains three (3) DSOs that previously served as Board members. The DSO Coordinator has not served as a Board member since approximately 2006, far outside the scope and jurisdiction of this audit. Another DSO has not served as a Board member since approximately 2004, again, far outside the scope and jurisdiction of this audit. The terms of the other two former Board members ended in 2015 and 2016; however, each of these individuals had been DSOs ***before*** being appointed to the Board, were automatically deemed to be DSOs while on the Board, and were then reappointed as DSOs following their service as Board members. Service as a DSO is merely continued service to the public and the dental community. It is not obtaining a private opportunity through Board positions. In return for obtaining this alleged "advantage," receive $50/hour, which is far less than the average amount an expert in the dental profession could demand.

that this DSO had been a DSO **first**, ***then*** became a board member appointed by the Governor, ***then*** was re-appointed as a DSO after their term as a Board member ended. To conclude that this is a conflict of interest, especially without the benefit of an Ethics Commission review is inappropriate, incorrect and beyond the jurisdiction of this audit.

Further, in consultation with the OAG, the Board has learned that other professional licensing boards have hired former board members as staff. These include a former board member being hired as a Board's Executive Director and a former board member being hired as a staff investigator. Deputy Attorney Generals from the OAG assigned to regulatory boards are also often hired as in house counsel by the boards they have served. Thus, a finding in this regard has implications far beyond the NSBDE and, if this is the conclusion of this audit, it will affect all licensing boards. As noted elsewhere in this response, despite active attempts to recruit DSOs, the number of licensees willing to serve in this capacity is quite low. Thus, disallowing former board members to serve as DSOs will further decrease the number of available DSOs.

IV. Recommendation to Comply With State Contracting Requirements (Draft Audit Report, pp. 14-21)

A. Audit Conclusion that Board Appointees Must Be The Subject of State Services Contracts

The Board accepts the audit's recommendation to consult with the Office of the Attorney General and the State Purchasing Division to determine whether the Board's long-standing, well-known and never-before-questioned policies regarding the Board's appointees should be changed. The Board notes that this consultation has been done in the past with the results being the policies that the audit now calls into question. The Board does not object to again consulting with these offices pursuant to the audit's concerns.

The Board, however, rejects any statement or suggestion contained in the audit that any policy regarding these appointees was done with the intent to reduce transparency, has actually or potentially resulted in a lack of transparency, or was in any way knowingly improper. The Board takes exception to the legal conclusions drawn by the auditors and the implication that the actions deemed inappropriate were done by the Board without consultation with the appropriate state offices. To the extent the practices are now or in the future deemed incorrect by the Office of the Attorney General and/or the State Purchasing Division, the Board will revise them. However, it must be made abundantly clear that nothing was done surreptitiously, there has been absolutely no lack of transparency and the alleged requirement of contracts for these individuals, if in fact necessary, is a formality that in no way would have changed any amounts paid to these

individuals,[13] any amounts expended by the State, the way in which investigations are conducted or the outcome of those investigations.

It should be noted that the Board has been advised that several other Boards, including but not limited to the State Board of Architecture, the State Board of Accountancy, the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Board, Nevada Physical Therapy Board, and the State Board of Psychological Examiners may also use Nevada licensees as outside investigators in investigations and disciplinary matters. To the extent that all of these individuals are not also the subject of state contracts as discussed in the audit, the NSBDE is, pursuant to a single audit's opinion which is contrary to the information that has been given to the Board in the past, being held to a standard different from other professional licensing boards in Nevada. Thus, to the extent that this audit recommendation is adopted by the Committee, all professional licensing boards must be held to the same requirements.

The DSOs, inspectors and evaluators are appointed by the Board pursuant to NRS 631.190(2) which states that the Board shall "appoint such committees, review panels, **examiners**, officers, employees, **agents**, attorneys, **investigators** and other **professional consultants** and define their duties and incur such expense as it may deem proper or necessary to carry out the provisions of this chapter . . ." (Emphasis added.) NRS 631.363(1) states that the Board "may appoint one of its members and any of its employees, investigators, or other agents to conduct an investigation and informal hearing concerning any practice by a person constituting a violation of the provisions of this chapter or the regulations of the Board."

The individuals identified in the audit are appointees of the Board to whom the Board has delegated certain functions of the Board pursuant to these statutes. NRS 333.700(2) defines an independent contractor as a "natural person, firm or corporation who agrees to perform services for a fixed price according to his, her or its own methods and without subjection to the supervision or control of the other contracting party, except as to the results of the work, and not as to the means by which the services are accomplished." In fact, however, these Board appointees are subject to the supervision and control of the Board, must conduct their investigations pursuant to the policies and procedures of the Board and must agree to perform these services for the price fixed by the Board, not by a fee or amount requested by them that is consistent with the reasonable and customary fees that an expert or consultant would be able to demand in the open market. On the other hand, the Board does not control the results of their work; rather the Board is free to accept or reject the results of the investigations, but is in no way bound by them. Thus, the Board does not believe that these individuals are independent contractors as defined by NRS 333.700(2), and this belief has never been contradicted by the OAG, despite their full knowledge and advice regarding how the Board pays and defines these individuals.

[13] These amounts are included in the Board's budget which is overseen and reconciled by an outside, contracted bookkeeper and/or accountant. This budget is presented to the Board for approval every year and routinely updated and discussed with the Board at regularly-scheduled Board meetings open to the public.

Furthermore, pursuant to discussion and consultation with, and request by, the Office of the Attorney General, the Office of Attorney General has been advised yearly of these appointees for the express purpose of having them added to the state's general liability fund and the OAG has accepted the Board's payment for their inclusion. In fact, as recently as May 15, 2019, the Board consulted with the Office of the Attorney General regarding the inclusion of these individuals in the general liability fund. According to the OAG's tort claims manager, Nancy Katafias, these individuals have been covered by this self-insured fund at least since 2007, and possibly longer. The Board was also advised that "if the investigators/evaluators are doing work for the board, they **should be covered for general liability purposes.** Being covered under the State's self-insured fund provides that the State will defend and pay awarded damages if they have a liability claim against them." ***See attached Exhibit E.*** Since the OAG advised that these individuals "should be covered," and NRS 333.700(b) advises that individuals subject to the contracting requirements of NRS 333.700 must not be covered by insurance provided by the State, then it stands to reason that the Board was correct, and/or at least reasonable, in its determination that these individuals were not subject to the state services contract requirements. However, if it is correct that they should not have been added to the General Liability Fund, additions paid for by the Board, the amounts paid by the Board for this purpose, in consultation with the OAG, should be returned to the Board.

Furthermore, the Board's contracts, as well as payments to the DSOs were all evaluated by the Legislative Audit in 2016 without this conclusion. As stated above, this duplicative evaluation, with differing results across multiple audits in a short period of time is contrary to the requirements of NRS 353A.045(10), resulting in undue disruption of the function of the Board and resulting in differing standards not only from other Boards, but also from a recent audit of the same Board.

Finally, as noted above, the Board does not have enough people willing to serve in this capacity, and this requirement will make it more difficult, if not impossible, for the Board to comply with the recommendation to add additional DSOs. To add the requirement that they must be treated as independent contractors without the protections currently afforded to them, will result in even fewer people willing to serve in these capacities and/or in increases to the amounts that will need to be paid to them in order for them to agree to take on the extra liability. The former will directly affect the health and welfare of the public, and the latter may result in additional amounts being passed along to the licensees. Obviously, if this is the requirement as determined by the OAG and the Purchasing Division, the Board will make necessary revisions to its policies; however, there will likely be a negative impact to the Board, the public and/or licensees from such a requirement.

B. Audit Discussion of Review of Applications

The "selection process" for DSOs, inspectors and evaluators is not "limited" and none of these individuals are "selected" or appointed by any person or body other than the full Board during public meetings pursuant to the Open Meeting Law. The small number of applications received by the Board for these appointments are initially reviewed by individuals to make sure they meet the threshold requirements, i.e., have they been practicing in Nevada for the requisite number of years, and do they hold the requisite licenses or permits necessary to allow them to conduct the investigations, evaluations or inspections. That is all. This does not take a "team" or "committee" to determine. If they meet these threshold requirements, they are referred to the Board for a vote concerning their appointment. If they do not, they are advised that they do not meet the threshold requirements and are advised that they may again apply when they do or that they may petition the Board directly. To suggest that a team or committee is necessary to fact check whether an individual has been licensed for a certain amount of time or holds a certain permit is not warranted. There is no lack of transparency whatsoever in this "selection process." To suggest otherwise is incorrect and based upon what appears to be a misunderstanding of what is entailed in the review of applications prior to Board consideration. The Board, not the State Purchasing Division, as suggested by the audit, is the appropriate body to determine the qualifications for these positions. The threshold requirements for consideration do not contain any room for subjectivity and, once it is determined that those threshold requirements are met, the decision is in the hands of the Board whether or not to appoint any given individual.

C. Audit Discussion of Reimbursement Costs to Certain DSOs

The audit does not state that these reimbursements were improper or unreasonable, in fact it concedes that they "may be reasonable given the costs were incurred in relation to professional services provided to the Board." The audit's concern is that the reimbursements were made without a written contract. The requirement for the contracts is discussed above and will not be repeated here. Pursuant to NRS 631.190, the Board may incur any such expense that it deems proper or necessary. The requests for these reimbursements were brought before the Board and, after discussion, the Board deemed them proper and/or necessary. There has been no violation in this regard. It also must be noted that there is a serious misunderstanding of the court's ruling concerning reimbursement of legal fees to one of the DSO's. The court did **not**, as erroneously stated in the audit, fail to approve the DSO's request to recover legal fees as a general matter. The court found only that, pursuant to NRS 622.410, the ***plaintiff*** in that case was not responsible for reimbursing the DSO for his legal fees based upon the language of NRS 622.410's fee-shifting statute. The court made absolutely no finding, conclusion or order that the Board could not or should not reimburse the DSO, nor was any finding or conclusion made that the DSO was not entitled to recover his fees from any source other than the plaintiff in that matter.

V. Audit Recommendation to Comply with the Nevada Administrative Practice Act (APA) (Draft Audit Report, pp 22 – 25)

The NSBDE has consistently complied with the Nevada Administrative Practice Act. The Board disagrees with the auditors with respect to the conclusion that the areas identified by the audit require the implementation of additional regulations. The first area identified by the audit concerns the duties of the DSO Coordinator. NRS 631.190(2) states that the Board shall "appoint such committees, review panels, examiners, officers, employees, agents, attorneys, investigators and other professional consultants and define their duties and incur such expense as it may deem proper or necessary to carry out the provisions of this chapter." The audit further acknowledges that the DSO's duties were in fact defined in publically-available documentation, all of which was previously reviewed by the Legislative Auditors without comment regarding the need for additional regulations. However, to the extent that there was a need for additional regulation beyond this statutory allowance and in contrast to the multiple levels of scrutiny that this process has undergone without comment of this nature, it is now a moot point, as the DSO Coordinator position will be eliminated as a direct result of this audit's recommendation that all matters should be verified and investigated without first being reviewed for jurisdiction. Further, the verification and release of records forms are now available on the Board's website.

With respect to the Review Panel oversight of DSO remands of matters, regulations were approved pursuant to the requirements of the APA. Approved regulations were submitted to LCB over a year and a half ago, and have not been returned despite multiple requests for status. Despite this, the Board was statutorily mandated to proceed with the Review Panel and has done so as required. Although the initial determination was made that remands would not require the Board to make any disposition and could not adversely affect the licensee's license or rights, and thus did not need to be reviewed by the Panel, following the public comment regarding this issue, the statute was reevaluated along with the approved regulations. Nothing in the already-approved regulations or in NRS 631.3635 precludes the submission of recommendations for remand to the Review Panel. In fact, NRS 631.3635 can reasonably be read in either context. Regulations are not necessary when authority is granted by statute and, as stated, the authority for the panel to review all matters is contained within the statute.

The statement that there is no authority for complaints to be dismissed without Board oversight is also an incorrect legal conclusion[14] that is directly contrary to the practices of many professional licensing boards and contrary to the instructions contained within the OAG's Boards and Commissions Manual.

[14] NRS 631.363(1) allows the Board to appoint an investigator to conduct an investigation and informal hearing. NRS 631.363(3) requires the DSO to prepare writing findings to be presented to the Board only when the investigator believes the Board should take additional action. Logically, therefore, if the investigator does not determine that additional action by the Board is appropriate, there is nothing further to be done, and the investigator has the authority to remand the matter. This procedure was reviewed by the OAG without any findings that dismissals in this manner were inappropriate.

Despite the foregoing, the Board will review its regulations and consult with the OAG. To the extent that, in consultation with the OAG, it is determined that additional regulations are necessary, the Board will proceed to enact them.

VI. **Appendix D**

There are a number of misstatements and incorrect assertions contained within the body of Appendix D. Though the Board does not find it necessary to formally respond and point out each of the misstatements, it does reserve its right to address them with the Committee as necessary or requested.

Should you have any further questions, please do not hesitate to contact the Board's Executive Director or General Counsel at (702) 486-7044.

Very truly yours,

Yvonne L. Bethea

Yvonne Bethea, RDH, BSDH
President
Nevada State Board of Dental Examiners

EXHIBIT "A"

EXHIBIT "A"

NSBDE Response to Final Draft Audit Report
DIA Report No. 19-04
June 6, 2019

Melanie Bernstein Chapman

From: Warren K. Lowman
Sent: Monday, January 7, 2019 3:48 PM
To: Melanie Bernstein Chapman
Subject: October 2018 Audit Plan
Attachments: Audit Plan.docx

As requested.

WARREN LOWMAN
Administrator/Division of Internal Audits
Governor's Finance Office/State of Nevada
(775) 687-0125

Division's Audit Plan

Audits Requested October 2018

Department	Division/Description	Estimated Completion Date
Administration	Administrative Services Division – Accounting for Bonds	June 2019
Public Safety	Parole and Probation	October 2019
Corrections	Preferred Providers	October 2019
Administration	Buildings and Grounds	October 2019
Agriculture	Grants Management	January 2020

Audits Previously Approved

Department	Division/Description	Approved By Committee	Estimated Completion Date
Boards and Commissions 2	Organization Structure	June 2017	June 2019
Conservation and Natural Resources	Forestry - Organization Structure	January 2018	June 2019
Conservation and Natural Resources	Environmental Protection	June 2017	October 2019
Education	Charter Schools	February 2017	January 2020

Possible Action: The Committee may wish to request additional audits or revise the proposed schedule.

EXHIBIT "B"

EXHIBIT "B"

NSBDE Response to Final Draft Audit Report
DIA Report No. 19-04
June 6, 2019

Debra Shaffer

From: Warren K. Lowman
Sent: Thursday, February 21, 2019 8:44 AM
To: Debra Shaffer
Cc: Heather Domenici; Susan Brown
Subject: RE: Governor opens investigation into Dental Board members on Jan 11, 2019

Ms. Shaffer,
You are correct, "the current audit is with respect to the complaint process and the implementation of the Review Panel for fiscal years 2016 through 2018." We discussed addressing the LVDA claims within that context. During the audit, if other issues arise we will address them with you fully. We are partners in this audit to achieve the best recommendations to enhance efficiency and effectiveness of board management. To clarify, if issues arise that we assess as a question of criminality, we pass that question to the Office of the Attorney General for investigating. We do not conduct criminal investigations. We conduct audit engagements.

The public record shows Governor Sandoval agreed with division administrator Weinberger's proposal to audit the Nevada Dental Board at the October 17, 2018 Executive Branch Audit Committee. The Governor noted the testimony provided in public comment was very serious and warrants a follow-up to the legislative audit. The committee voted unanimously to add the Dental Board audit to the division's audit plan.

The division opened the audit on January 11, 2019 at our audit opening conference with you, the board president, general counsel, and DSO. We discussed our audit plan and objectives, including initial methodology and information request. As part of our January 11 work in Las Vegas, we met with the Las Vegas Dental Association to discuss their very serious testimony, concerns, and information they provided, in part, during the cited EBAC meeting and Board of Examiners meeting(s). LVDA's characterization of our audit as an investigation opened by the Governor is their' s alone.

We thank you and the board for your cooperation on this audit and our ongoing review of all of Nevada's Title 54 Boards. We look forward to continuing to work with you to complete the audits. If you have other questions or concerns, please let me know.

WARREN LOWMAN
Administrator/Division of Internal Audits
Governor's Finance Office/State of Nevada
(775) 687-0125

From: Debra Shaffer
Sent: Wednesday, February 20, 2019 6:06 PM
To: Warren K. Lowman
Cc: Heather Domenici
Subject: FW: Governor opens investigation into Dental Board members on Jan 11, 2019

Dear Mr. Lowman & Ms. Domenici:

Please be advised, I am in receipt of the below email disseminated by Felipe Paleracio, DDS, President of the Las Vegas Dental Association to one of our Board Members, Dr. Moore and allegedly "several" others. The email "subject" states "Governor opens investigation into Dental Board members on Jan 11, 2019". The email contains attachments, to include, but not limited to, copies of emails between Ms. Domenici, Mr. Lowman and the Las Vegas Dental Association, written statements

to the BOE and information regarding the NNDHP. Three attachments were removed because they contained documents which are confidential by statute and/or are clearly noted as "confidential." Notably, the emails between Ms. Domenici, Mr. Lowman and the Las Vegas Dental Association appear to have omissions and/or have been altered.

Dr. Paleracio claims that as of January 11, 2019 the Governor has opened an investigation into Dental Board members and these same claims were made during public comment at the February 12, 2019 meeting of the BOE (see above attachment). This date coincides with the date the Las Vegas Dental Association met with you. If the public claims/statements/allegations regarding an alleged "investigation" by the "Governor's investigators" contained in the email from Dr. Paleracio and/or under public comment at the 02/12/2019 BOE meeting are accurate, please advise the Board in writing as it is our understanding that the current audit is with respect to the complaint process and the implementation of the Review Panel for fiscal years 2016 through 2018.

If you have questions please feel free to contact me.

Thank you,

Debra Shaffer-Kugel
Debra Shaffer-Kugel, Executive Director
Nevada State Board of Dental Examiners
6010 S Rainbow Blvd, Ste A-1
Las Vegas, Nevada 89118
(702) 486-7044
(702) 486-7046 (Fax)
dashaffer@nsbde.nv.gov

From: Kevin Moore [mailto:mfd3llc@gmail.com]
Sent: Friday, February 15, 2019 12:31 PM
To: Debra Shaffer; joanshad@hotmail.com; bettypate@me.com; Michael Sanders; Dr. Byron Blasco; gabrielle cioffi-kogod; Jason Champagne; Las Vegas Dental Association; Yvonne Bethea; david lee
Subject: Fwd: Governor opens investigation into Dental Board members on Jan 11, 2019

Deb Shaffer said she didn't get the following attachments. Please accept my apologies for having an email fail!

---------- Forwarded message ---------
From: **Las Vegas Dental Association** <lvda@lasvegasdentalassociation.com>
Date: Thu, Feb 14, 2019 at 12:40 AM
Subject: Governor opens investigation into Dental Board members on Jan 11, 2019
To: <drbyronblasco@gmail.com>, <mfd3llc@gmail.com>, <michael.sanders@unlv.edu>, <jchampagne@champagnedental.com>, <painlsg@pisanidentistry.com>, <rjobe@sierraviewdental.com>

Felipe Paleracio D.D.S.
President
Email: lvda@lasvegasdentalassociation.com
Website: https://lasvegasdentalassociation.com
Las Vegas Dental Association (LVDA)
(702) 970-0512

EXHIBIT "C"

EXHIBIT "C"

NSBDE Response to Final Draft Audit Report
DIA Report No. 19-04
June 6, 2019

Nevada State Board of Dental Examiners

6010 S. Rainbow Boulevard, Building A, Suite 1 • Las Vegas, Nevada 89118 • (702) 486-7044 • (800) DDS-EXAM • Fax (702) 486-7046

Complaints Investigated 2016 through 2018

Total Complaints & Auth Invest Investigated: **393** **(420 less 27 withdrawn/wrong dentist)**

2016 through 2018: 67% of the verified complaints and 8% of the authorized investigative complaints investigated were against general dentists in Southern Nevada.

Total Verified Complaints So. Nevada: **300**

*Total Number General: 265
Total Number Specialists: 27
Total Number Dental Hygienists: 8

Total Auth Invest Complaints So. Nevada: **37**

* Total Number General: 31
Total Number Specialists: 2
Total Number Dental Hygienists: 4

Total Verified Complaints No. Nevada: **48**

Total Number General: 36
Total Number Specialists: 11
Total Number Dental Hygienists: 1

Total Auth Invest Complaints No. Nevada: **8**

Total Number General: 7
Total Number Specialists: 1
Total Number Dental Hygienists: 0

nsbde@nsbde.nv.gov

EXHIBIT "D"

EXHIBIT "D"

NSBDE Response to Final Draft Audit Report
DIA Report No. 19-04
June 6, 2019

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

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

PUBLIC MEETING

Friday, January 20, 2017
10:37 a.m.

Minutes

Board Meeting

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.

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

Pledge of Allegiance

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

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

Others Present: John Hunt, Board Legal Counsel; Debra Shaffer-Kugel, Executive Director; Brett Kandt, Deputy Attorney General, Board Co-Counsel.

Public Attendees: Michael McKellab; Radha Chanderraj, Chanderraj Law Offices; Andy Moore; Gustavo Leon; Erika Smith; Bradley Strong; MaryAnne P. (MD, Anes); Robert Talley, NDA; Marke Funke, NDA; Paul Cardinale; (Some public attendees did not wish to sign-in, one attendee present with a video camera on behalf of the LVDA).

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

Gus Leon, a Nevada resident, read a letter on behalf of William Gussow, DDS.

Tina Tsou read a statement (posted for the record). Upon Ms. Tsou's reaching her time limit, Ms. Smith, at the direction of Mr. Ruiz, stated that she wanted to forfeit her 3 minutes so that Ms. Tsou could finish reading her statement; Mr. Brandt stated that it was not acceptable. Ms. Smith proceeded to finish reading Ms. Tsou's statement.

Dr. Adrian Ruiz stated that at the request of two assemblymen, Mr. Hunt's application not be considered.

Mrs. Shaffer-Kugel read a statement into the record on behalf of the Hansen Family.

Dr. Blasco stated that a letter was received from Dr. Tina Brandon-Abbatangelo addressed to Governor Sandoval, which he read into the record.

Dr. Pisani read a letter submitted by Dr. Gregory Greenwood regarding his experience with the Board's disciplinary process.

Ms. Gabriel read a letter from Mr. Walter Cannon, Esquire regarding the disciplinary process.

Dr. Bradley Strong read a statement into the record.

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. Election of Officers-NRS 631.160 (For Possible Action)

(a) President (For Possible Action)

Dr. Pisani nominated Dr. Blasco for president.

MOTION: Dr. Pisani made the motion to nominate Dr. Blasco as President. The motion was seconded. All were in favor of the motion.

(b) Secretary-Treasurer (For Possible Action)

MOTION: Dr. Johnson made the motion to nominate for Dr. Champagne as Secretary-Treasurer. Motion was seconded by Dr. Pisani. All were in favor of the motion.

*4. Discussion/Consideration of Recommendations from the Employment Committee. The Board may appoint one of the named individuals to the position of general counsel. -NRS 631.190 (For Possible Action)
(Pursuant to NRS 241.030, the board may, by motion, enter into closed session to consider the character, alleged misconduct, professional competence, or physical or mental health of a person.)

1. Melanie Bernstein Chapman, Esquire
2. Radha Chanderraj, Esquire
3. Boone L. Cragun, Esquire
4. Matthew Forstadt, Esquire
5. Christy Lyn M. Galiher, Esquire
6. David M. Gardner, Esquire
7. Jacob Hafter, Esquire
8. Brigid Higgins, Esquire
9. John Hunt, Esquire
10. John Kelleher, Esquire
11. Keith E. Kizer, Esquire
12. Leland E. Lufty, Esquire
13. Gary J Mathews, Esquire
14. Michael McKellab, Esquire
15. Andy Moore, Esquire
16. Karissa D Neff, Esquire
17. Erven Nelson, Esquire
18. Michael Royal, Esquire
19. Lawrence Semenza, Esquire
20. Kevin S Smith, Esquire
21. Jesse H Smith, Esquire
22. Marla Zlotek, Esquire
23. Bert Wuerster, Esquire

Dr. Pisani, Chair of the Employment Committee, indicated that at their meeting held prior to the Board meeting, the committee members and the Committee selected six (6) applicants to hold interviews with, which would take placed in the next 30 days. He asked that the Board table any further discussion of this agenda item.

MOTION: Dr. Pisani made the motion to table this agenda item. Motion was seconded by Dr. Champagne. All were in favor of the motion.

*5. Executive Director's Report (For Possible Action)

a. Minutes - NRS 631.190 (For Possible Action)

(1) Board Meeting -11/04/2016
(2) Board Meeting-12/01/2016

Mr. Kandt asked that the draft minutes be amended to the 11/04/2016 meeting to indicate that the Attorney General's office will assist the Board to ensure the due process. Dr. Pisani correction to 12/01 meeting he was excused and that Mrs. Villigan was present.

MOTION: Dr. Pisani made the motion to approve the draft minutes with the noted changes. Motion was seconded by Dr. Johnson. All were in favor of the motion.

b. Financials - NRS 631.180/NRS 631.190

(1) Review Balance Sheet and Statement of Revenues, Expenses and Balances for period July 1, 2016 through November 30, 2016

Mrs. Hummel stated to the Board that the amended report was simply a formatting change. She noted to the Board that they formerly had an Administrative Assistant part-time and that they are under budget since the position had not been replaced. She added that there were no notable changes.

*c. Correspondence - NRS 631.190 (For Possible Action)

(1) Letter from the American Board of Orthodontics requesting the Board require Board Certification prior to issuance a specialty license in Orthodontia. This request may require a statute change to NRS 631.250/NRS 631.255 (For Possible Action)

Mrs. Shaffer-Kugel stated that the letter was asking that the Board consider requiring board certification before issuance of a specialty license. She explained how they can be licensed by being board eligible. She explained further, that they are required to become certified within 6 years of being granted their specialty license via based on being board eligible. It was noted that while licensees may apply for a general dental license, although they may not advertise themselves as specialist, nor may they bill as a specialist unless they hold a specialty license. Dr. Pinther asked that Mrs. Shaffer-Kugel draft a letter stating the Board's position and how the process is define in the statutes and regulations that govern the Board. Mrs. Shaffer-Kugel stated that the ABO could also seek a legislative change to the statue should they wish to pursue this request further.

MOTION: Dr. Pisani made the motion to have the Executive Director draft a letter as suggested by Dr. Pinther. Motion was seconded by Dr. Blasco. All were in favor of the motion.

(2) Letter from CE Zoom requesting the board to consider contracting with them to conduct the Board's CE audits. If applicable in NAC 631.177(4), the Board may request a presentation from CE Zoom (For Possible Action)

Mrs. Shaffer-Kugel stated that the Board received a letter from this CE Zoom and that from her understanding the website allows boards' to go online to conduct an audit through the company website and allows licensees to access and save their CE's through the website. Dr. Pisani commented that the Board was just fine the way it currently runs their CE audits. Mrs. Shaffer-Kugel noted that they do have those that don't complete the required CE's. Dr. Blasco commented that as someone who has done the audits, the review process can be time consuming but not arduous. Dr. Sanders stated that if the audit was not an onerous task then he didn't believe that this proposal would be a benefit to the Board.

MOTION: Dr. Pisani made the motion to authorize the Executive Director to send a letter to CE Zoom stating that they would not be using their services. Motion was seconded by Dr. Champagne. All were in favor of the motion.

*d. Authorized Investigative Complaints-NRS 631.360 (For Possible Action)

(1) Dr. V-NRS 631.3475(5) and NAC 631.230(1)(b)
(2) Dr. W-631.3475(5) and NAC 631.230(1)(b)
(3) Dr. X-631.3475(5) and NAC 631.230(1)(b)

Mrs. Shaffer-Kugel went over the alleged violations of Drs. V, W, and X.

MOTION: Dr. Blasco made the motion to authorize the investigations on Drs. V, W, and X. Motion was seconded by Dr. Champagne. All were in favor of the motion.

(4) Dr. Y-NRS 631.3475 (1) and NAC 631.2241 (For Possible Action)

Mrs. Shaffer-Kugel went over the alleged violations of Dr. Y.

MOTION: Dr. Pisani made the motion to authorize the investigation on Dr. Y. Motion was seconded by Dr. Champagne. All were in favor of the motion.

(5) Dr. Z-NRS 631.3475(5) and NAC 631.230 (1)(b)(For Possible Action)

Mrs. Shaffer-Kugel went over the alleged violations of Dr. Z.

MOTION: Dr. Blasco made the motion to authorize the investigation on Dr. Z. Motion was seconded by Dr. Pisani. All were in favor of the motion.

Mr. Hunt noted that the Board lists licensees anonymously so that it protects the due process of the licensee.

*6. Board Counsel's Report (For Possible Action)

Mr. Hunt stated that the Attorney General has reviewed the complaint process and the open meeting law complaints, and found no violations in any of the complaints received.

a. Legal Actions/Lawsuit(s) Update

(1) District Court Case(s) Update

Mr. Hunt stated that there were no pending matters, with the exception that there was a pending permanent injunction on someone who was previously found guilty years ago for the illegal practice of dentistry. He stated that they have since violated that injunction, and that they were working with the Attorney General office on this matter.

*b. Consideration to Approve or Reject the following Stipulation Agreements (For Possible Action)

Mr. Hunt noted briefly how the complaint process works.

Old Business: (For Possible Action)

(1) Leslie Kotler, DDS (For Possible Action)

Mr. Hunt went over the provisions of the stipulation agreement.

MOTION: Dr. Blasco made the motion to adopt the stipulation agreement. Motion was seconded by Dr. Champagne. All were in favor of the motion.

New Business: (For Possible Action)

(1) Bobby Soleiman, DDS (For Possible Action)

Mr. Hunt went over the provisions of the stipulation agreement.

MOTION: Dr. Pisani made the motion to adopt the stipulation agreement. Motion was seconded by Dr. Champagne. All were in favor of the motion; Dr. Shahrestani abstained.

(2) Timothy Wilson, DDS (For Possible Action)

Mr. Hunt went over the provisions of the stipulation agreement. Paul Cardinale, counsel for Dr. Wilson, was present. Mr. Cardinale stated his firm worked heavily with the Board and disagreed with the negative comments being made and found that there was always fairness and openness by the Board and counsel.

MOTION: Dr. Sanders made the motion to adopt the stipulation agreement. Motion was seconded by Dr. Pisani. Discussion: Dr. Blasco inquired of Mr. Cardinale if there were any violations of their process pursuant to the statues, and whether he had any knowledge of any violations during the process. Mr. Cardinale stated that he had never witnessed any violations, that all was fair. All were in favor of the motion.

(3) Frank D Nguyen, DDS (For Possible Action)

Mr. Hunt went over the provisions of the stipulation agreement.

MOTION: Dr. Pisani made the motion to adopt the stipulation agreement. Motion was seconded by Dr. Champagne. All were in favor of the motion.

(4) Kenneth Duffie, DDS (For Possible Action)

Mr. Hunt went over the provisions of the stipulation agreement. Dr. Sanders recused himself from discussion of this item. Counsel for Dr. Duffie, Mr. Paul Cardinale, was present.

MOTION: Dr. Shahrestani made the motion to adopt the stipulation agreement. Motion was seconded by Dr. Champagne. All were in favor of the motion; Dr. Sanders abstained.

*7. New Business (For Possible Action)

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

(1) Conscious Sedation (For Possible Action)
(a) Shahriar H Agahi, DMD
(b) Keaton M Tomlin, DMD
(c) Arshid Torkaman, DDS

Dr. Johnson recommended approval.

MOTION: Dr. Sanders made the motion to approve. Motion was seconded by Pisani. All were in favor of the motion; Dr. Johnson and Dr. Blasco abstained.

(2) General Anesthesia (For Possible Action)
(a) Kenneth L. Reed, DMD

Dr. Johnson stated that he recommended approval.

MOTION: Ms. Tyler made the motion to approve. Motion was seconded by Dr. Champagne. All were in favor of the motion; Dr. Johnson and Dr. Blasco abstained.

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

(1) Judy Ann White, RDH – State of Nevada Oral Health Program

Dr. Blasco indicated that he review the application and recommended approval.

MOTION: Dr. Pisani made the motion to approve. Motion was seconded by Dr. Champagne. All were in favor of the motion.

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

(1) Joel A. Casar, DMD

Mrs. Shaffer-Kugel indicated that Dr. Casar had no pending matters, and recommended approval.

MOTION: Dr. Blasco made the motion to approve. Motion was seconded by Dr. Pisani. All were in favor of the motion.

*d. Approval of Board Member as Editor of Newsletter-NRS 631.190 (For Possible Action)

Mrs. Shaffer-Kugel indicated that Mrs. Wark was the previous editor. She stated that a new editor was needed to review news article for the Board's newsletters that are sent out twice a year. Dr. Sanders volunteered to be the newsletter editor.

MOTION: Dr. Pisani made the motion to appoint Dr. Sanders as the new editor. Motion was seconded by Ms. Tyler. All were in favor of the motion.

*e. Re-Appointment of Disciplinary Screening Officers-NRS 631.190 (For Possible Action)

(1) Rick B Thiriot, DDS
(2) Donna Hellwinkel, DDS
(3) Tina Brandon Abbatangelo, DDS
(4) Bradley Roberts, DDS
(5) Bradley Strong, DDS
(6) Jason Ferguson, DDS
(7) Michael Webberson, DDS
(8) Dennis Arch, DDS
(9) Edward Hershaft, DDS
(10) Larry Frugoli, DMD
(11) A. Ted Twesme, DDS
(12) James Jones, DDS
(13) Richard Dragon, DDS
(14) Thomas Myatt, DDS
(15) Kenneth Lang, DDS
(16) David Welmerink, DDS
(17) Dawn McClellan, DDS
(18) Michael Squitieri, DDS
(19) Gary Braun, DMD
(20) Edward Gray, DDS
(21) Mark Degen, DDS, MD
(22) Gary Gerraci, DDS
(23) Joyce Herceg, RDH
(24) Sharon Peterson, RDH
(25) James G Kinard, DDS

Mrs. Shaffer-Kugel stated that every year the Board reappoints DSO's as a formality. Mr. Hunt inquired if the Board needed to be listed as they can be used as DSO's for complaint investigations. Mr. Kandt stated that from an open meeting law standpoint, it did not require an action. He noted that board members are always permitted to fill in as a board DSO.

MOTION: Ms. Tyler made the motion to re-appoint the DSO's listed. Motion was seconded by Dr. Pisani. Discussion: In response to an inquiry made by Ms. Tyler, Mr. Kandt stated that if any DSO is assigned a matter that they have a potential conflict with they are to notify the Board immediately so that the case may be reassigned. Mr. Hunt noted that anyone that applies to be a DSO are vetted and calibrated as part of the process to becoming an investigator. He added that annually all DSO's are calibrated to ensure that all current policies are being implemented, which includes reminding them to notify the Board if there are any potential conflicts when assigned a case. All were in favor of the motion.

*f. Re-appointment of Anesthesia Evaluators/Inspectors-NRS 631.190 (For Possible Action)

General Anesthesia Evaluators	Conscious Sedation Evaluators
(1) Lowell K. Anderson, DMD	(1) Michael G Almaraz, DDS
(2) Michel J Daccache, DDS	(2) Jon P Galea, DDS
(3) Steven E DeLisle, DDS	(3) Ryan S Gifford, DDS
(4) Edward J Gray, DMD, MD	(4) Dawn L McClellan, DDS
(5) Brendan G Johnson, DDS	(5) Jade A Miller, DDS
(6) Thomas P Myatt, DDS	(6) D. Kevin Moore, DDS
(7) Patrick A O'Connor, DDS	(7) Joshua L Saxe, DDS
(8) Amanda Jo Okundaye, DDS	(8) Paul D Schwarz, DMD
(9) Gregory Hunter, DMD	(9) Perry T. Francis, DDS
(10) Albert T Twesme, DDS	(10) Gilbert A Trujillo, DDS
(11) Gary Geracci, DDS	(11) David J Trylovich, DDS
(12) Blaine D. Austin, DDS	(12) Jason E Ferguson, DDS
(13) Steven Saxe, MD, DMD	(13) Josh Branco, DMD
(14) Troy D. Savant, DDS	

MOTION: Dr. Pisani made the motion to appoint the evaluators listed for both general anesthesia and conscious sedation. Motion was seconded by Dr. Blasco. All were in favor of the motion.

*g. Re-appointment of Infection Control Inspectors-NRS 631.190 (For Possible Action)

(1) John L Aramini, DDS	(10) Joshua M Ignatowicz, DMD	(19) Gail M Corthell, RDH
(2) James McKernan, RDH	(11) Nelson D Lasiter, DMD	(20) Linda L Fairley, RDH
(3) John C DiGrazia, DDS	(12) Gordon J Murray, DDS	(21) Elvera L Kajans, RDH
(4) Bradley A Ditsworth, DMD	(13) Brett A Noorda, DMD	(22) Betty L McGuire, RDH
(5) Stephen N Fleming, DDS	(14) William P O'Gara, DDS	(23) George F Rosenbaum, DDS
(6) Rickey L Grant, DMD	(15) Pamela J Patten, DDS	(24) Brad A Wilbur, DDS
(7) Steven W Hall, DDS	(16) Mary M Bosnos, RDH	(25) Joyce Herceg, RDH
(8) Christine L Haskin, DDS	(17) Kathryn M Spargo, RDH	
(9) Donna Jo Hellwinkel, DDS	(18) Catherine B Buckley, RDH	

MOTION: Dr. Sanders made the motion to appoint the inspectors listed. Motion was seconded by Ms. Tyler. All were in favor of the motion.

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

No public comment was made.

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)

9. Announcements: Dr. Blasco thanked Dr. Pinther for his work as president. Dr. Pinther commented that he was happy to have served as the Board's president.

*10. Adjournment (For Possible Action)

MOTION: Dr. Sanders made the motion to adjourn. Motion was seconded by Dr. Blasco. All were in favor of the motion.

Meeting Adjourned at 12:12 p.m.

Respectfully submitted by:

Debra Shaffer-Kugel, Executive Director

EXHIBIT "E"

EXHIBIT "E"

NSBDE Response to Final Draft Audit Report
DIA Report No. 19-04
June 6, 2019

Debra Shaffer

From: Nancy L. Katafias <NKatafias@ag.nv.gov>
Sent: Thursday, May 16, 2019 8:02 AM
To: Tawnya N. Cook; Debra Shaffer
Subject: RE: General Liability Ins

Good morning Debra,

We don't have an insurance policy; pursuant to NRS Chapter 41, the State of Nevada is self-insured for liability purposes.

I have looked as far back as fiscal year 2007 and the investigators/evaluators were covered then. I started in fiscal year 2009 so I am not familiar with any of the history prior to that time.

If the investigators/evaluators are doing work for the board, they should be covered for general liability purposes. Being covered under the State's self-insured fund provides that the State will defend and pay awarded damages if they have a liability claim against them.

Hope this helps...

Nancy

Nancy Katafias
Tort Claims Manager
Office of the Attorney General
(775) 684-1252
nkatafias@ag.nv.gov

From: Tawnya N. Cook <TCook@ag.nv.gov>
Sent: Wednesday, May 15, 2019 4:14 PM
To: Nancy L. Katafias <NKatafias@ag.nv.gov>
Subject: FW: General Liability Ins

Please see the below inquiry. Do you know if they should be covered? I went back and it appears they were covered prior to me starting this position, so I'm not sure when/why they were added. Do you know the history on this?

Tawnya Cook
Program Officer
Office of the Attorney General
DMV Legal - Tort Claims Unit
555 Wright Way
Carson City, NV 89711
775-684-1263 – Phone
775-684-4601 – Fax
tcook@ag.nv.gov

From: Debra Shaffer <dashaffer@nsbde.nv.gov>
Sent: Wednesday, May 15, 2019 3:44 PM
To: Tawnya N. Cook <TCook@ag.nv.gov>
Subject: General Liability Ins

Tawnya-

Can you provide the Board with a copy of the General Liability Insurance Policy? Also, con you confirm that the Investigators/Evaluators are considered other members of the Board under this policy and the year the Investigators/Evaluators were the added to the policy? Thank you.

Debra Shaffer-Kugel
Debra Shaffer-Kugel, Executive Director
Nevada State Board of Dental Examiners
6010 S Rainbow Blvd, Ste A-1
Las Vegas, Nevada 89118
(702) 486-7044
(702) 486-7046 (Fax)
dashaffer@nsbde.nv.gov

Appendix C

Timetable for Implementing Audit Recommendations

In consultation with the Nevada State Board of Dental Examiners (Board), the Division of Internal Audits categorized the recommendations contained within this report into two separate implementation time frames (i.e., *Category 1* – less than six months; *Category 2* – more than six months). The Board should begin taking steps to implement all recommendations as soon as possible. The Board's target completion dates are incorporated from Appendix B.

Category 1: Recommendations with an anticipated implementation period less than six months.

Recommendation	Time Frame
1. Strengthen oversight of investigative and enforcement activities. (page 9)	Dec 2019
2. Consult with the Commission on Ethics to avoid conflicts of interest. (page 14)	Dec 2019
3. Comply with state contracting requirements. (page 22)	Dec 2019
4. Comply with the Nevada Administrative Procedure Act (APA). (page 26)	Dec 2019

The Division of Internal Audits shall evaluate the action taken by the Board concerning the report recommendations within six months from the issuance of this report. The Division of Internal Audits must report the results of its evaluation to the Executive Branch Audit Committee and the Board.

Appendix D

Discussion on the Investigative and Enforcement Process For the Nevada State Board of Dental Examiners

Overview

The Nevada State Board of Dental Examiners (Board) is an independent occupational licensing board tasked with the regulation and enforcement of the provisions in Nevada Revised Statutes (NRS) 631 and Nevada Administrative Code (NAC) 631 governing the practice of dentistry, dental hygiene, and related specialties. NRS 631 and NAC 631 are collectively referred to as the "Dental Practice Act" (DPA). The Board is granted oversight of investigative and enforcement activities as part of duties defined in the DPA.

Complaints

The Board is required to investigate complaints against dental practitioners, dental hygienists, and other related dental specialty practitioners if complaint allegations would constitute grounds for discipline under the DPA, if proven. The Board provides the public with a form for complaint submission, but complainants may submit their complaint via written correspondence as long as required information is included.

With the exception of controlled substance complaints reviewed by the Executive Director, it is the Board's practice for the Disciplinary Screening Officer (DSO) Coordinator to review all complaints the Board receives to determine whether Board jurisdiction and matters deemed potentially actionable under DPA exist. If the DSO Coordinator determines Board jurisdiction and/or DPA violations do not exist, the complaint is dismissed, the complainant is notified in writing, and no action will be taken by the Board.

The Board requires complainants to submit a notarized verification that is sworn and deposed regarding their complaint and a records release form if the DSO Coordinator determines complaint criteria exist. Formal investigation is initiated once the verified complaint is submitted by the complainant.

Verified complaints are different than formal complaints. Formal complaints are filed by the Board's General Counsel to request a formal Board hearing. The Board interprets the reference in NRS 631.368(2) to the "complaint or other document filed by the Board to initiate disciplinary action" to mean formal complaint. Therefore, the Board deems the content of verified complaints to be investigatory

and confidential, while formal complaints are deemed public records by the Board. There is some potential for confusion regarding the difference between a verified complaint and a formal complaint because the DPA does not define them.

Complaints dismissed without formal Board action never progress past investigation and all related documentation is considered confidential in conformance with NRS 631.368. Therefore, related documentation is not considered to be public record and matters contained in complaint allegations are not reportable to federal authorities.

Investigations and Review Panel Oversight

Licensees are provided with notice of the verified complaint filed against them or of the approval of a Board authorized investigation.[26] Licensees have 15 days to respond to the notice and are allowed to have an attorney represent them during any proceedings. Following receipt of a response from a licensee, a Board-appointed DSO is assigned to investigate the verified complaint or authorized investigation.

The Board has delegated to the Executive Director the duty to assign investigations to DSOs from a list approved by the Board each calendar year. The Board reports that the Executive Director assigns investigations to DSOs based on: licensee specialty; geographic area of the affected patient; DSO experience; and DSO caseload. Most complaints the Board receives relate to services provided by general dentists. The Board currently has seven appointed DSOs practicing in general dentistry, two in northern Nevada and five in southern Nevada.

Senate Bill 256 of the 2017 legislative session amended NRS 631 to require the Board to appoint a panel of three people to review investigations and informal hearings conducted by DSOs beginning January 1, 2018. It was the Board's practice at that time to continue to allow DSOs to dismiss complaints without review panel or Board oversight, as had been the Board's practice prior to the creation of the review panel.

The review panel is required to be made up of one dentist Board member and one dental hygienist Board member, plus one additional non-Board member who is either a dentist if the licensee is a dentist or a dental hygienist if the licensee is a dental hygienist. Review panel members are required to review and consider various documentation, including but not limited to: all files and records collected and produced by an investigator; any written findings of fact and conclusions prepared by an investigator; and any other information deemed necessary by the

[26] The Board approves authorized investigations based on grievances presented to the Board by other persons or entities, or based on information discovered during the course of an investigation of a previous complaint or authorized investigation.

review panel. DSOs who perform investigations cannot participate on the review panel that conducts the review.

Beginning in 2019, Board procedure was revised to require DSOs to present all findings, recommendations, and supporting documentation for proposed complaint dismissals to the review panel for review. Review panel proceedings are not subject to open meeting law.

The Board dismisses complaints following investigation if the DSO and/or the review panel deemed: (1) the treatment fell within acceptable parameters of reasonable care and/or (2) there were no violations of Nevada law warranting Board action and/or (3) there was not a preponderance of evidence to establish a violation of Nevada law occurred that allows the Board to take action.

Based on its review of DSO findings and recommendations, the review panel may:

1. Determine a preponderance of evidence does not exist to support the DSO's preliminary findings. The complaint is dismissed and the complainant is advised of administrative, civil, and peer review remedies afforded to complainant under state and federal law; or
2. Determine a preponderance of evidence exists to support the DSO's preliminary findings and recommendations. The matter is returned to the DSO for further proceedings including holding an informal hearing or negotiating a non-disciplinary corrective action or disciplinary action stipulation; or
3. Determine a preponderance of evidence exists to support the DSO's preliminary findings, but the review panel does not support the DSO's recommendations. The matter is returned to the DSO with the review panel's proposed recommendations for review and consideration in further proceedings. Proceedings may include an informal hearing or negotiation of a non-disciplinary corrective action or disciplinary action stipulation.

Informal Hearings and Board Actions

If a verified complaint or authorized investigation is not dismissed, the DSO may offer a non-disciplinary corrective action or disciplinary action stipulation agreement (stipulation agreement) to the licensee. Non-disciplinary corrective action may include licensee monitoring, continuing education requirements, or patient reimbursement. Disciplinary action may include suspension, probation, fines, public reprimand, patient reimbursement, restrictions on practice, and/or other mandatory requirements. Stipulation agreement terms go into effect immediately following approval by the Board at a public meeting. Stipulation agreements not approved by the Board are returned to the DSO for further negotiation or an informal hearing.

In the event the DSO and/or review panel do not believe it appropriate to offer a stipulation agreement or the licensee declines to enter into a stipulation agreement, the DSO conducts an informal hearing after providing 10 days' notice to the licensee. The informal hearing is voluntary and proceeds whether the licensee chooses to attend, with or without legal counsel.

The DSO prepares findings and recommendations for review panel review following conclusion of the informal hearing. If the review panel agrees with the DSO's findings and recommendations, they are presented to the licensee and the DSO's report is adopted for submission to the Board for consideration at a public meeting. The findings and recommendations go into effect if the licensee agrees to them and the Board adopts them.

A formal complaint is filed to request a formal Board hearing if the Board does not adopt the informal hearing findings and recommendations, even if the licensee agreed to them. A formal complaint is also filed if the licensee does not agree with the informal hearing findings and recommendations.

The determination of whether to adopt or reject findings and recommendations for discipline or corrective action rests solely with the Board. Additionally, the Board is not bound by the DSO's offer of non-disciplinary corrective action and may initiate discipline at its discretion.

Formal Board Hearings

The licensee is notified at least 10 days prior to the date of a formal Board hearing. Various aspects of due process are observed during this process including provisions governing motions and Board discretion on whether to hear oral arguments. The Board has the authority to issue a subpoena to compel the attendance of witnesses or production of documents or objects. The charges and evidence supporting the formal complaint filed by the Board's General Counsel are presented to the Board at a public hearing.

The licensee may be represented by legal counsel at the hearing, with General Counsel acting as prosecutor and a Deputy Attorney General representing the Board. The Board may request or permit briefs to be filed and may consider findings and recommendations and/or reports submitted for its consideration by the DSO and/or review panel. The DSO and/or review panel members may provide testimony concerning their investigation, findings, and recommendations, but may not participate in the Board's decision.

The decision made by the Board at or following the close of the formal hearing is final, unless a petition for reconsideration or rehearing is granted. In this case, the subsequent order is the final order for purposes of judicial review. Licensees may file a petition with the district court for judicial review of the Board's decision within 30 days of issuance of the decision following procedures governed by NRS 233B.