

## LCB File No. R078-08

### PROPOSED REGULATION OF THE STATE BOARD OF COSMETOLOGY

(These provisions were previously located in R030-08)

**NAC 644.465 Complaint filed by Executive Director or investigator or member of Board.** (NRS 644.110) The following provisions govern review of a complaint filed by the Executive Director or one of the Board's members or investigators:

1. The Executive Director shall ~~[assign the report for]~~ *conduct an* investigation ~~[by a staff investigator, who shall]~~ *of the complaint or cause an investigation to be conducted and* prepare an investigative report *of the findings of the investigation.*

2. If a member of the Board filed the complaint, the Executive Director shall, after receiving the investigative report, send the investigative report to ~~[a member other than the member who filed the complaint for a]~~ *the President of the Board, another member appointed to review complaints, or complaint review officer appointed by the Board, to* ~~[determination of]~~ *determine* whether there are sufficient facts to warrant an administrative action.

3. If the *President of the Board, other member of the Board, or complaint review officer* determines that there are such facts, he shall notify the Executive Director to set the matter for mediation or hearing.

4. A staff investigator may file a complaint ~~[only if an]~~ *after conducting an investigation and preparing an* investigative report ~~[has been prepared]~~. The investigative report must be submitted with the complaint. The Executive Director shall submit the complaint to the President of the Board or other presiding officer for a determination of whether there are sufficient facts to warrant an administrative action.

5. If the President of the Board or other presiding officer determines that there are sufficient facts to warrant an administrative action, he shall notify the Executive Director to set the matter for mediation or hearing.

**NAC 644.470 Complaint filed by person other than Executive Director or investigator or member of Board.** (NRS 644.110) The following provisions govern review of a complaint filed by a person who is not the Executive Director or one of the Board's members or investigators:

1. ~~[Upon the receipt of a complaint filed by a person other than the]~~ *The* Executive Director ~~[or a member or investigator of the Board, the Executive Director shall review the document to determine whether the matter is proper for administrative review and whether the complaint has been properly verified]~~ *shall conduct or cause to be conducted an investigation and the preparation of an investigative report that shall contain the findings of the investigation.*

2. ~~[Thereafter, the Executive Director shall assign the complaint to a staff investigator for a report on the allegations of the complaint. The investigator shall investigate the complaint and report his findings to the Executive Director as quickly as feasible but not]~~ *The investigation and preparation of the investigative report shall be conducted as soon as reasonably possible and in no case* later than 90 days after receipt of the complaint.

3. ~~[After receiving the investigator's report, the Executive Director shall transmit the complaint and report to]~~ *If the President [of the Board] or [to another] other member [appointed to review complaints, to determine whether] determines that there are sufficient facts to warrant an administrative hearing, he shall notify the Executive Director to set the matter for mediation or hearing.*

4. If the President or other member ~~[determines that there are sufficient facts to warrant an administrative hearing, he shall notify the Executive Director to set the matter for mediation or hearing]~~ *has determined the matter should be mediated, the Executive Director or Board appointed mediator shall determine if the parties involved are willing to participate in mediation of the matter. If the parties agree to participate in mediation, the Executive Director or Board appointed mediator shall conduct the mediation process.*

5. If ~~[the President or other member determines that there are not sufficient facts to warrant an administrative hearing, the facts alleged in the complaint must be submitted to the Board for the Board's review at the next scheduled meeting to determine whether the Board wishes to conduct a hearing on the matter or whether the facts, if assumed to be true, do not constitute a ground for disciplinary action. If the assumed facts do not constitute a ground for disciplinary action, the complaint will be dismissed. If the Board determines that the assumed facts warrant administrative action, the Executive Director shall set the matter for mediation or hearing]~~ *the mediation process is conducted and the parties agree to a mutually acceptable resolution to the complaint the matter will be considered resolved. If either party does not accept the mediation resolution, it shall be the Executive Director or Board appointed mediator's determination whether to set the matter for hearing based on the sufficiency of evidence warranting a hearing.*

6. *The decision as to sufficiency of evidence to warrant an administrative hearing by the President of the Board or the other member is final and no further action will be taken unless appealed to the Board.*

7. *The decision by the Executive Director or Board appointed mediator when conducting mediation between parties is final unless appealed to the Board.*

8. *The Board shall have the authority to review the materials provided by the appellant and the decisions made by the President of the Board, other member of the Board, or the Executive Director and set the appeal for hearing or decline to hear the appeal. Upon the decline to hear the appeal, the previous action of the agency shall be final.*

**NAC 644.475 Disqualification of member of Board from adjudication of matter.** (NRS 644.110) Any member of the Board who files a complaint, causes an investigation of or acts as a prosecutor in a matter, *is the subject of the investigation* or brings a matter to the attention of an inspector, is disqualified from taking part in the adjudication of the matter. Such a member is not disqualified from acting as a witness at the hearing of the matter.

**NAC 644.484 Duties of Executive Director.** (NRS 644.110)

1. If a matter is set for mediation and the mediation is not successful, the Executive Director *or the Board appointed mediator* shall ~~[set the matter for]~~ *determine if the matter is appropriate for an administrative hearing before the Board.*

2. If ~~[a matter is set for hearing,]~~ the Executive Director *or the Board appointed mediator* ~~determines that the matter should be set for [shall determine whether the]~~ hearing ~~[should be formal or informal and]:~~

(a) ~~Prepare~~ *The Executive Director shall cause to be prepared* a complaint and notice of hearing and serve it on each person against whom the complaint is made; or

(b) Refer the case to the Attorney General for preparation of a complaint and notice of hearing and for service on each person against whom the complaint is made.

3. In cases in which the Executive Director has prepared a complaint and notice of hearing and has served it on each person against whom the complaint is made, the Executive Director shall organize and facilitate the presentation of witnesses and other evidence to the Board and be an active participant in the hearings.

**NAC 644.485 Petition to appear before the Board.** (NRS 644.110) A person may petition to appear and be heard on any matter before the Board, as follows:

1. The petitioner may use Form No. 3 or a similar form, which may be obtained from the Board. The petition must contain a brief summary of the subject matter and contain the reasons for bringing the matter before the Board.

2. The petition must be received by the Board at least 30 business days before the meeting at which the petitioner wishes to be heard, but the Executive Director may waive this time requirement.

3. Upon receipt of the petition, the Executive Director or any member of the Board may make an initial evaluation to determine whether the subject of the petition is a proper item for mediation or ~~for the agenda of a formal or informal~~ hearing and, if so, whether a special meeting of the Board must be called for the hearing.

4. If the Executive Director or member evaluates the petition as presenting a ground for a disciplinary action involving a fine, the revocation or suspension of a license, or the probation of a licensee, the petitioner must file a formal complaint, and the Executive Director shall notify the petitioner of the requirements for making the complaint.

5. If the evaluation results in a determination that there is no possibility for a fine, the revocation or suspension of a license, or the probation of a licensee, and if the item is a subject within the jurisdiction of the Board, the matter stated in the petition will be placed on the agenda as an item of new business for discussion and action.