

**REVISED PROPOSED REGULATION OF THE
SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY AND
HEARING AID DISPENSING BOARD**

LCB File No. R016-17

September 13, 2017

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-12, NRS 637B.132.

A REGULATION relating to professions; creating the Advisory Committee on Fitting and Dispensing Hearing Aids; revising provisions governing administrative proceedings before the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Board; establishing procedures governing complaints and certain petitions submitted to the Board; authorizing the Board to recover attorney's fees and costs relating to disciplinary proceedings; authorizing certain payments to a witness in a proceeding held by the Board; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Assembly Bill No. 115 of the 78th Legislative Session combined the Board of Hearing Aid Specialists with the Board of Examiners for Audiology and Speech Pathology to create the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Board. (NRS 637B.100, as amended by section 44 of Assembly Bill No. 115, chapter 404, Statutes of Nevada 2015, at page 2303; section 72 of Assembly Bill No. 115, chapter 404, Statutes of Nevada 2015, at page 2322) **Section 12** of this regulation repeals the entirety of chapter 637A of NAC, which contains provisions previously adopted by the Board of Hearing Aid Specialists and which governed the practice of fitting and dispensing hearing aids, subjects now incorporated into chapter 637B of NAC by this regulation and LCB File No.'s 050-15 and 129-15, adopted by the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Board.

Section 2 of this regulation creates the Advisory Committee on Fitting and Dispensing Hearing Aids to make recommendations relating to certain subjects to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Board. **Section 3** of this regulation sets forth requirements for the membership and duties of the Committee.

Existing regulations set forth specific procedures for administrative proceedings before the Board. (NAC 637B.050-637B.390) **Section 12** of this regulation repeals certain of these provisions. **Section 4** of this regulation provides that each hearing of a contested case before the Board will be conducted in accordance with the provisions of: (1) the Nevada Administrative Procedure Act (chapter 233B of NRS); (2) chapter 637B of NAC; and (3) if the hearing concerns

a disciplinary proceeding, chapter 622A of NRS, governing administrative procedure before certain regulatory bodies, and certain provisions of chapter 637B of NRS.

Section 5 of this regulation sets forth procedures governing complaints filed with the Board. **Section 6** of this regulation authorizes the Board to recover reasonable attorney's fees and costs relating to disciplinary proceedings.

Section 7 of this regulation sets forth requirements governing the submission of petitions which request a formal hearing by the Board or the adoption, amendment or repeal of a regulation by the Board.

Existing regulations require a petition for a declaratory order or an advisory opinion of the Board to be submitted in a specified format. (NAC 637B.380) **Section 10** of this regulation requires such a petition to be submitted in the same manner as a petition for the adoption, amendment or repeal of a regulation by the Board. **Section 11** of this regulation revises the duties of the Board upon submission of a petition for a declaratory order or an advisory opinion.

Section 8 of this regulation provides for the payment of fees and reimbursement for mileage to a witness who participates in a proceeding held by the Board.

Section 1. Chapter 637B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this regulation.

Sec. 2. *The Advisory Committee on Fitting and Dispensing Hearing Aids is hereby created. The Committee consists of not less than three and not more than five members appointed by the Board for a term of 2 years. Members may be reappointed to serve additional terms at the discretion of the Board.*

Sec. 3. 1. *The Advisory Committee on Fitting and Dispensing Hearing Aids is composed of the following members:*

(a) At least two members of the Board, one of whom must represent dispensing audiologists and one of whom must represent hearing aid specialists; and

(b) Not more than three additional members who are dispensing audiologists or hearing aid specialists or any combination thereof.

2. Each member of the Committee must be a dispensing audiologist or hearing aid specialist licensed pursuant to chapter 637B of NRS, as applicable, at the time of his or her appointment and must maintain current licensure with the Board.

3. The Committee shall select a Chair from among the members of the Committee who are members of the Board.

4. The Committee shall make recommendations to the Board on all matters relating to the fitting and dispensing of hearing aids, including, without limitation:

(a) Regulations governing the fitting and dispensing of hearing aids;

(b) A program of apprenticeship for the fitting and dispensing of hearing aids;

(c) Examinations and passing scores for written and practical examinations for the fitting and dispensing of hearing aids; and

(d) Investigations of complaints relating to the fitting and dispensing of hearing aids.

5. A quorum of the Committee is three members, at least one of whom must be a member of the Board.

6. Each member of the Committee who is not a member of the Board serves without compensation.

Sec. 4. *1. Each hearing of a contested case will be conducted in accordance with the provisions of this chapter and chapter 233B of NRS and, if the hearing concerns a disciplinary proceeding, chapter 622A of NRS and NRS 637B.250 to 637B.288, inclusive.*

2. As used in this section, “contested case” has the meaning ascribed to it in NRS 233B.032.

Sec. 5. 1. *Any person who believes that another person licensed by the Board has violated a provision of this chapter or chapter 637B of NRS may file a complaint with the Board on a form provided by the Board.*

2. The Board may, on its own, initiate a complaint against a person licensed by the Board.

3. A complaint must, without limitation:

(a) Identify one or more grounds for disciplinary action; and

(b) Contain a statement of facts in sufficient detail to enable the Board to understand the allegations.

4. The Executive Director of the Board, in consultation with legal counsel, shall review each complaint and decide if the complaint merits an investigation.

5. The Executive Director of the Board shall bring before the Board any complaint found to have merit.

6. For any proceedings regarding a complaint filed against an apprentice, the Board may require that the apprentice be accompanied by any hearing aid specialist or dispensing audiologist who signed, dated or reviewed a record regarding a patient related to the complaint.

Sec. 6. *Pursuant to NRS 622.400, the Board may recover from a person reasonable attorney's fees and costs relating to any disciplinary proceedings involving the person.*

Sec. 7. 1. *The Board may act on its own motion. Any other request for the adoption, amendment or repeal of a regulation of the Board or for a formal hearing by the Board must be submitted to the Board as a petition.*

2. Any interested person may submit a petition to the Board for the adoption, amendment or repeal of a regulation of the Board or for a formal hearing by the Board.

3. *The petition must be in writing and addressed to the Chair of the Board.*

4. *An original and two legible copies of the petition must be filed with the Board. The Board may, when appropriate, direct that a copy of each petition be made available to any other person who the Board determines may be affected by the petition.*

5. *The petition must contain:*

(a) *The full name and mailing address of the petitioner;*

(b) *If the adoption of a new regulation is proposed, the body or substance of the proposed regulation and the supporting facts and arguments;*

(c) *If the amendment or repeal of an existing regulation is proposed, the specific section of the Nevada Administrative Code that the petitioner is proposing to amend or repeal and the supporting facts and arguments for the amendment or repeal thereof;*

(d) *If a formal hearing by the Board is requested, the relevant facts which support the request; and*

(e) *A statement that the petition is made in accordance with the applicable provisions of the Nevada Revised Statutes.*

6. *The petition must be signed by the petitioner. The signature constitutes a representation by the signer that:*

(a) *He or she has read the petition; and*

(b) *To the best of his or her knowledge, information and belief, the statements made therein are true.*

Sec. 8. *A witness who participates in a proceeding held by the Board is entitled to receive fees and reimbursement for mileage in the same amounts and under the same conditions as for witnesses in the courts of this State.*

Sec. 9. NAC 637B.001 is hereby amended to read as follows:

637B.001 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 637B.0015 to ~~637B.007,~~ **637B.0045**, inclusive, have the meanings ascribed to them in those sections.

Sec. 10. NAC 637B.380 is hereby amended to read as follows:

637B.380 1. The Board will consider petitions for declaratory orders or advisory opinions as to the applicability of any statutory provision or any regulation or decision of the Board.

2. A petition for a declaratory order or an advisory opinion must be in writing and

~~substantially in the format of Form No. 1.*~~

~~*See adopting agency for form.~~ ***submitted in the same manner as a petition for the adoption, amendment or repeal of a regulation by the Board.***

Sec. 11. NAC 637B.390 is hereby amended to read as follows:

637B.390 1. Upon submission of a petition for a declaratory order or an advisory opinion, the Board will, within 90 days :

(a) Schedule a meeting to discuss and grant or deny the petition in writing, stating its reasons ; ~~;~~ or ~~initiate~~

(b) Initiate proceedings for adoption of an appropriate regulation.

2. A copy of any denial or other correspondence from the Board to the petitioner will be served by mailing a copy thereof to the petitioner.

Sec. 12. NAC 637A.001, 637A.002, 637A.003, 637A.004, 637A.005, 637A.006, 637A.007, 637A.008, 637A.010, 637A.015, 637A.030, 637A.035, 637A.040, 637A.050, 637A.060, 637A.070, 637A.080, 637A.090, 637A.095, 637A.100, 637A.105, 637A.110, 637A.115, 637A.120, 637A.130, 637A.140, 637A.181, 637A.185, 637A.190, 637A.195,

637A.200, 637A.205, 637A.210, 637A.220, 637A.400, 637A.430, 637A.435, 637A.440, 637A.445, 637A.450, 637A.455, 637A.460, 637A.465, 637A.470, 637A.475, 637A.480, 637A.485, 637A.490, 637A.495, 637A.500, 637A.505, 637A.510, 637A.515, 637A.520, 637A.525, 637A.530, 637A.535, 637B.0035, 637B.004, 637B.005, 637B.0055, 637B.006, 637B.007, 637B.050, 637B.060, 637B.080, 637B.120, 637B.130, 637B.135, 637B.160, 637B.170, 637B.175, 637B.181, 637B.185, 637B.191, 637B.195, 637B.201, 637B.205, 637B.211, 637B.215, 637B.221, 637B.225, 637B.231, 637B.240, 637B.260, 637B.275, 637B.280, 637B.340 and 637B.370 are hereby repealed.

TEXT OF REPEALED SECTIONS

637A.001 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 637A.002 to 637A.008, inclusive, have the meanings ascribed to them in those sections.

637A.002 “Apprentice” defined. “Apprentice” means a person who works as an apprentice to a hearing aid specialist and who is registered pursuant to the provisions of this chapter.

637A.003 “Board” defined. “Board” has the meaning ascribed to it in NRS 637A.021.

637A.004 “Hearing aid” defined. “Hearing aid” has the meaning ascribed to it in NRS 637A.0217.

637A.005 “License” defined. “License” has the meaning ascribed to it in NRS 637A.0223.

637A.006 “Licensee” defined. “Licensee” means a person licensed pursuant to the provisions of chapter 637A of NRS.

637A.007 “Manufacturer” defined. “Manufacturer” has the meaning ascribed to it in NRS 637A.0227.

637A.008 “Person” defined. “Person” has the meaning ascribed to it in NRS 0.039.

637A.010 Severability. If any of the provisions of this chapter or any application thereof to any person, thing, or circumstance is held invalid, it is intended that such invalidity not affect the remaining provisions, or application, that can be given effect without the invalid provision or application.

637A.015 Filing date of documents received by Board. A document that must be filed with or provided to the Board shall be deemed to be filed on the date it is postmarked or received by the Secretary of the Board, whichever is earlier.

637A.030 Educational requirements. An applicant for a license as a hearing aid specialist or an apprentice to a hearing aid specialist must possess:

1. An associate’s degree or higher degree from an accredited college or university in hearing aid technology, audioprosthology, or other curriculum approved by the Board which includes the testing of hearing and the dispensing and modification of hearing aids;
2. A bachelor’s degree or higher degree in any field and satisfactory completion of the independent study course of the International Institute for Hearing Instruments Studies;
3. A master’s degree in clinical audiology from an accredited college or university; or
4. A doctoral degree in audiology.

637A.035 Certification requirements. In addition to the educational requirements prescribed by NAC 637A.030, an applicant for a license as a hearing aid specialist who does not possess a doctoral degree in audiology must:

1. Be certified by the National Board for Certification in Hearing Instrument Sciences; or
2. Obtain a certificate of clinical competence in audiology from the American Speech-Language-Hearing Association.

637A.040 Applications: False information; failure to complete.

1. Any applicant who furnishes false information or omits pertinent information in his or her application will be denied the right to take the examination. If the applicant has already been licensed before the falseness of the information is known to the Board, the license may be suspended or revoked.

2. Failure of an applicant to complete all forms and provide all information required by law or regulation may be cause for an application to be rejected by the Board.

637A.050 Examinations: Administration; contents; reexamination.

1. The Board will administer the examination for licensure or arrange for its administration.

2. The examination must consist of a written portion and a practical portion which are objective and applied in a consistent manner. The content of the written portion of the examination must be prepared and approved by an independent professional who specializes in such testing. The content of the practical portion of the examination must be prepared and approved by a committee consisting of the following members:

- (a) One member of the Board;
- (b) One licensed dispensing audiologist; and
- (c) One licensed hearing aid specialist.

3. The examination must examine the applicant in the following areas as they relate to the fitting of hearing aids:

- (a) Laws, rules, and regulations of this State and the United States;
- (b) Basic testing procedures;
- (c) Ear impressions;
- (d) Diagnoses;
- (e) Hearing aid specifications;
- (f) Verification of the fitting of hearing aids; and
- (g) Follow-up treatment.

4. An applicant who fails the examination may receive a description of the material which he or she answered incorrectly or inspect his or her examination paper, if it is available, at a reasonable time and place convenient to the Board. An applicant who has failed only certain portions of the examination may be reexamined only on those portions which he or she failed.

637A.060 Examination fee. An applicant for licensure as a hearing aid specialist must pay a nonrefundable examination fee in the form of a certified check or postal money order in the following amounts:

For the initial examination \$200

If only a portion of the examination is taken, for that portion of the examination:

Written 120

Whole practical 120

Statutes and the code of ethics 50

637A.070 License fees. The following fees must be paid by licensees to the Secretary of the Board:

Application fee \$250
Initial license fee 100
Annual license fee for a hearing aid specialist 200
Annual license fee for an apprentice to a hearing aid specialist 100
Duplicate license fee 20
Inactive status fee 100
Lapsed renewal fee 100
Reinstatement fee 100

637A.080 Renewal of license.

1. Each licensee may file with the Secretary of the Board before June 30 of each year an application for renewal.

2. The Board will not consider an application for renewal unless it is:

(a) Completed fully; and

(b) Accompanied by:

(1) The annual license fee;

(2) Proof of calibration for each audiometer used by the licensee for the testing of clients;

and

(3) Proof that the licensee has completed the continuing education requirements prescribed by NAC 637A.095.

3. If the application for renewal does not satisfy the requirements of subsection 2, the Board will:

- (a) Return the application to the licensee; and
- (b) Deem the application to have not been filed.

637A.090 Identification cards.

1. At the time a certificate of registration or a license is issued and on each renewal of a license, an identification card, bearing the expiration date of the certificate, license, or renewal, will be issued to each apprentice or licensee which he or she shall keep in his or her possession at all times during the performance of his or her duties.

2. On the request of any client or prospective client, a member of the Board, or any peace officer, the apprentice or licensee shall permit the identification card to be inspected for the purpose of identification or as proof that all current fees have been paid.

637A.095 Requirements for continuing education; exemption.

1. Except as otherwise provided in subsection 3, a licensee who is on active or inactive status and an apprentice who is on active or inactive status must complete 12 hours of continuing education relating to the fitting of hearing aids each year in a program which has been approved by the Board, International Institute for Hearing Instruments Studies, American Academy of Audiology, American Speech-Language-Hearing Association, Academy of Doctors of Audiology or Educational Audiology Association.

2. For each licensee, the requirement of continuing education begins on July 1 of the year his or her license is issued.

3. Upon the written request of a licensee, the Board may exempt him or her from the requirement of continuing education if the licensee cannot meet the requirement because of ill health, military service or undue hardship.

637A.100 Surrender of identification card.

1. If a license is revoked or suspended for a fixed period, the licensee shall surrender his or her license and identification card to the Board within 5 days after receipt of a notice of revocation or suspension.

2. If an apprentice loses his or her sponsorship for any cause, he or she shall immediately surrender his or her identification card to the sponsor for return to the Board with his or her certificate of registration. Upon the application of a new sponsor, a new identification card will be issued to the apprentice and his or her certificate of registration will be forwarded to the new sponsor.

637A.105 Sponsorship of apprentice.

1. A sponsor of an apprentice must obtain the approval of the Board. A sponsor must:

(a) Be licensed as a hearing aid specialist pursuant to the provisions of chapter 637A of NRS for at least 1 year; and

(b) Be in good standing with the Board.

2. In determining whether to approve a licensee as a sponsor pursuant to subsection 1, the Board will consider the licensee's record of disciplinary action.

3. A licensee may not sponsor more than two apprentices at one time.

637A.110 Statement of supervision. An application for a certificate of registration as an apprentice must be accompanied by a statement of the sponsor of the applicant setting forth the type of supervision which will be given the apprentice and an outline of the training program to

be followed in preparing the apprentice for future examination. The statement must also list the subjects to be covered and the books and other training materials to be used.

637A.115 Completion of training under supervision of sponsor; report by sponsor; limitations on practice.

1. An apprentice shall complete, under the direct and physical supervision of his or her sponsor, at least 300 hours of training, not less than 160 hours of which must be as follows:

(a) Twenty-five hours of pure tone air conduction, masking, bone conduction, and speech audiometry with recorded or live voice;

(b) Twenty-five hours of evaluation of hearing aids, including sound field measurements and real ear measurements with recorded and live voice;

(c) Twenty hours of fitting and counseling clients with hearing aids, including the verification of fitting;

(d) Ten hours of earmold orientation, including types of earmolds, terminology and uses for earmolds;

(e) Fifteen hours of earmold impressions and otoscopic examinations of the ear;

(f) Fifteen hours of troubleshooting of defective hearing aids;

(g) Twenty hours of taking the case history of actual clients;

(h) Ten hours of the laws governing the licensure of persons for fitting and dispensing hearing aids, including the regulations of the Food and Drug Administration and the Federal Trade Commission relating to the fitting and dispensing of hearing aids;

(i) Ten hours of the psychological and social impact of the loss of hearing on clients; and

(j) Ten hours of the appropriate and ethical marketing and sales procedures for hearing aids.

2. A sponsor of an apprentice shall submit a report to the Board each quarter which describes the training completed by the apprentice in the preceding quarter and the supervision of the training by the sponsor.

3. An apprentice shall not maintain, run, or operate an office or a satellite office in which hearing aids are dispensed.

637A.120 Proof of supervision and review of work.

1. The Board may require an apprentice or his or her sponsor to show proof that the schedule of training and supervision of the apprentice is being reasonably followed.

2. All work completed by an apprentice must be reviewed and signed by the sponsor.

3. As used in this section, “supervision” means physical supervision and review of the work of an apprentice.

637A.130 Withdrawal of sponsor.

1. A licensee who sponsors an apprentice may relieve himself or herself of further responsibility by returning the certificate of registration of the apprentice to the Board by registered mail, with a letter explaining fully the circumstances under which the sponsorship of the apprentice is being withdrawn. If the certificate cannot be returned, a full explanation must be included in the letter.

2. Any apprentice whose certificate is revoked because of the withdrawal of a sponsor for reasons of misconduct may request a hearing by the Board and, if a majority of the members present find him or her blameless of the charges, he or she may seek sponsorship with the same or another licensee, and on application by a new sponsor, his or her certificate may be returned with no payment of a fee or penalty. If the Board finds him or her guilty, it may revoke or suspend the certificate for a specified time.

3. Two official disciplinary actions within any 12-month period is cause for the Board to refuse issuance of a permanent license to an apprentice.

637A.140 Display of certificate. Each apprentice shall display his or her certificate of registration in the office of his or her sponsor.

637A.181 “Conduct which is harmful to the public or any conduct detrimental to the public health or safety” interpreted. For the purposes of NRS 637A.250, the Board will consider as “conduct which is harmful to the public or any conduct detrimental to the public health or safety” any of the following acts:

1. A violation of any provision of this chapter.
2. A violation of the Code of Ethics of the Hearing Aid Industry adopted by reference pursuant to NAC 637A.185.
3. The failure of a manufacturer to comply with the provisions set forth in NRS 597.264 to 597.2667, inclusive.

637A.185 Code of ethics. The Board hereby adopts by reference as its code of ethics the Code of Ethics of the Hearing Aid Industry, prepared by the International Hearing Society, adopted October 1983 and revised October 1998. Copies of the code may be obtained from the Society at 16880 Middlebelt Road, Suite 4, Livonia, Michigan 48154, or from the Board free of charge. Each licensee will be furnished a copy of the code by the Board and shall govern his or her conduct in accordance with its provisions.

637A.190 Office of licensee.

1. A licensee shall:
 - (a) Inform the Board of the name and location of each office of the licensee.
 - (b) Publicly display his or her license at each office of the licensee.

(c) Ensure that each office of the licensee is accessible to the public during business hours.

(d) Ensure that each office of the licensee contains adequate equipment and supplies for serving the needs of the clientele of the licensee.

2. If an office of the licensee is a part of a building normally used as a residence, it must be in a space set aside for this purpose only and have an entrance by which the public may have access to the office without going through any part of the residence.

3. If an office of the licensee is changed from the address shown in the files of the Board, the licensee shall file notice thereof with the Secretary of the Board, together with the new address, within 10 working days after the change. Failure to give notice is cause for disciplinary action.

4. As used in this section, “office of the licensee” means any office or place of business from which a licensee dispenses hearing aids.

637A.195 Compliance with federal regulations; waiver by client of medical evaluation.

1. A licensee shall comply with the provisions of 21 C.F.R. §§ 801.420 and 801.421, as those provisions existed on April 1, 1994.

2. If a licensee offers a client a waiver to the medical evaluation as authorized by 21 C.F.R. § 801.421, the licensee shall:

(a) Verbally explain the waiver to the client before the client signs the waiver; and

(b) Provide the written waiver on a form separate from any other form which the client is required to sign.

637A.200 Minimum procedures on prospective candidates for hearing aids; exception.

1. Except as otherwise provided in subsection 3, a licensee shall take the pertinent case history of, and perform personally the following minimum procedures bilaterally on, each prospective candidate for a hearing aid:

(a) Pure tone audiometry, including air conduction testing and bone conduction testing through an annually calibrated system.

(b) Live voice, only if a separate sound-treated room is available, or recorded voice audiometry, including speech reception threshold testing, most comfortable and uncomfortable level testing, and speech discrimination testing presented through a speech audiometer.

(c) Effective masking, when applicable.

(d) Before a hearing test and an ear impression is performed, an otoscopic examination of the ear canal in which the tympanic membrane is visualized.

(e) After an ear impression is performed, an otoscopic examination in which the tympanic membrane is visualized.

2. The licensee shall perform each procedure set forth in subsection 1 in a proper environment to obtain accurate results.

3. The minimum procedures set forth in subsection 1 are not required if the person supplies the licensee with complete results of the required tests which have been given within the previous 6 months by a qualified tester who is licensed pursuant to the provisions of chapter 637A or 637B of NRS.

637A.205 Health care records.

1. Each licensee shall prepare and maintain health care records for each client he or she treats. The records must be maintained for not less than 5 years after the record is prepared. The records may be created, authenticated and stored in a computer system that limits access to those

records or is maintained in any other form that ensures that the records are easily accessible by the licensee.

2. Each health care record maintained pursuant to subsection 1 must include, without limitation:

- (a) The name, address, telephone number and date of birth of the client;
- (b) The medical history of the client as it relates to his or her loss of hearing;
- (c) The dates on which the hearing aid was delivered, fitted and adjusted, and notations of all procedures performed on such dates;
- (d) Audiograms of the client;
- (e) The specifications of the hearing aid, including the serial number of the hearing aid as indicated by the manufacturer of the hearing aid;
- (f) The settings for the hearing aid;
- (g) The progress and disposition of the case;
- (h) A copy of the contract for the sale of the hearing aid; and
- (i) A copy of any waiver of the medical evaluation as authorized by 21 C.F.R. § 801.421.

3. The Board may designate a person to supervise the health care records of a licensee who ceases to practice as a hearing aid specialist and fails to provide for the continuation of treatment for a client. The Board will not appoint a person to supervise those records if the person is a licensee or is related to a licensee within the third degree of consanguinity or affinity. The person so appointed shall not disclose or authorize the disclosure of any health care record of a client to any person other than the client or his or her legal representative.

4. The health care records of a client must be available for inspection or copying by the client or a legal representative of the client who presents written authorization issued by the

client to inspect and copy the records. A copy of the health care records must be produced within 5 working days after a request is submitted. A licensee may not charge more than 60 cents for each page copied.

5. As used in this section, “health care records” means any reports, notes, orders, photographs, X rays, or other recorded data or information whether maintained in written, electronic or other form which is received or produced in the course of testing, servicing or dispensing a hearing aid and which contains information relating to the medical history, examination, diagnosis or treatment of a client.

637A.210 Advertising. The Board considers the following actions to constitute misconduct or unprofessional conduct:

1. Making a false or misleading statement or representation in the advertisement or solicitation of services.
2. Knowingly advertising a model or type of hearing aid for sale when that model or type cannot be purchased by members of the general public.
3. Advertising a manufacturer’s product or using a manufacturer’s name or trademark in a manner which falsely implies that a relationship exists between the licensee and the manufacturer.

637A.220 Professional responsibility.

1. Except as otherwise provided in NAC 637A.430 to 637A.535, inclusive, a licensee shall provide information to the Board within 10 days after a request for the information is made by the Board.
2. A licensee shall not represent himself or herself as an audiologist or other medical professional or use any other term to represent himself or herself which is false or misleading.

3. Unless otherwise provided by the Board, a licensee shall provide for the service and repair of each hearing aid he or she sells or fits.

4. A licensee shall provide to each person who orders or purchases a hearing aid a bill of sale which includes:

(a) The name of the licensee, the address of the principal place of business of the licensee and the number of the license of the licensee.

(b) A description of the make, model and serial number of the hearing aid.

(c) The amount charged for the hearing aid and, if applicable, an itemization of any amount to be deducted from any refund.

(d) The condition of the hearing aid, indicating whether it is new, used or reconditioned.

(e) The name of the person or entity responsible for providing a refund.

5. If a person cancels an order to purchase a hearing aid before taking possession of the hearing aid, a licensee shall refund the amount paid by the person for the hearing aid. The licensee may deduct from the refund an amount not to exceed \$75 per hearing aid for work that was performed to order the hearing aid.

6. A licensee shall provide to each person who purchases a hearing aid a written guarantee that the person may return the hearing aid:

(a) Within 30 days after receipt of the hearing aid; or

(b) If the hearing aid is returned to the manufacturer for service or repair during the 30-day period, within 30 days after the hearing aid is returned to the possession of the person who purchased the hearing aid.

↳ Except as otherwise provided in subsection 8, if the hearing aid and all accessories which accompanied the hearing aid are returned to the licensee in the same condition as they were

received, the licensee shall provide the person with a refund within 30 days after the hearing aid is returned.

7. A licensee shall schedule at least one appointment with each person who purchases a hearing aid. The appointment must take place not later than 21 days after the hearing aid is delivered to the person.

8. If a hearing aid is returned to a licensee pursuant to subsection 6, the licensee may charge a fee for fitting the person with the hearing aid if the fee is specified in the original agreement between the licensee and the person. Unless a higher fee is authorized by the Board, the fee must not exceed \$150 per hearing aid or 20 percent of the purchase price of the hearing aid, whichever is less.

9. A violation of the provisions of this section is a ground for disciplinary action.

637A.400 Grounds for initiation. The following acts, among others, constitute grounds for initiating disciplinary action against a licensee:

1. Any violation of this chapter or chapter 637A of NRS.
2. Failure by a licensee to cooperate with the Board during an investigation of an informal complaint, including, without limitation, failing to timely respond to the Board regarding a copy or summary of the informal complaint sent to the licensee by the staff.
3. Failure by a licensee to cooperate with the Board during an investigation of a formal complaint, including, without limitation, failing to timely respond to the Board regarding a copy or summary of the formal complaint sent to the licensee by the staff.
4. Failure to attend a disciplinary hearing without having obtained a waiver of the requirement of his or her attendance pursuant to subsection 2 of NAC 637A.530.

5. Conducting business after the license issued to the licensee has lapsed or if the license has not been renewed.

6. Willfully making false reports, records or claims in the licensee's business.

7. Failure to comply with a settlement agreement, an order of the Board or any other disposition of a prior disciplinary action.

8. Advertising the business of the licensee in a manner that is:

(a) False; or

(b) Intended or has a tendency to:

(1) Deceive or mislead the public; or

(2) Create unrealistic expectations in any particular case.

9. Being subject to disciplinary action by which the Board, or any other entity in this State or in another state which has issued a license, certificate, registration or other credential to a licensee in a related field, revokes or suspends the license, certificate, registration or other credential or takes any other disciplinary action against the licensee.

10. Delivering a lesser quantity or quality of hearing aid than the hearing aid for which the licensee bills the customer, with the intent to defraud the customer.

637A.430 Definitions. As used in NAC 637A.430 to 637A.535, inclusive, unless the context otherwise requires, the words and terms defined in NAC 637A.435 to 637A.455, inclusive, have the meanings ascribed to them in those sections.

637A.435 "Complainant" defined. "Complainant" means a person filing a complaint with the Board concerning a licensee.

637A.440 "Party" defined. "Party" includes:

1. The respondent;

2. The attorney, if any, representing the respondent; and
3. The legal counsel for the Board.

637A.445 “Presiding officer” defined. “Presiding officer” means:

1. The Chair of the Board; or
2. The person appointed to chair a hearing on a formal complaint.

637A.450 “Respondent” defined. “Respondent” means the licensee accused in an informal complaint or formal complaint before the Board.

637A.455 “Staff” defined. “Staff” means the staff of the Board.

637A.460 Informal complaint: Filing; subject matter.

1. A person may file an accusation with the Board concerning the goods or services provided by a licensee or the activities of a licensee.
2. The Board will initially consider any accusation regarding a licensee as an informal complaint.
3. Except as otherwise provided in NRS 233B.120, a petition filed pursuant to NRS 233B.120 may be processed as an informal complaint.

637A.465 Informal complaint: Action by staff; notification of respondent.

1. Upon receipt of an informal complaint filed pursuant to NAC 637A.460, the staff shall examine the informal complaint to determine whether it:
 - (a) Has been properly verified; and
 - (b) Alleges sufficient facts to warrant further proceedings.
2. If the staff determines that the informal complaint has been properly verified and alleges sufficient facts to warrant further proceedings, the staff shall notify the respondent by sending a copy or a summary of the informal complaint by certified mail to the respondent.

3. The notification must set forth the alleged violations of a provision of this chapter or of chapter 637A of NRS arising in the informal complaint and request a response from the respondent for review by the Board before a hearing is set.

4. The transmission of the copy or summary of the informal complaint shall be deemed to be a notice of intended action pursuant to subsection 3 of NRS 233B.127.

637A.470 Informal complaint: Response; failure to respond; review.

1. Upon the receipt of a copy or summary of an informal complaint that has been filed against the respondent pursuant to NAC 637A.465, the respondent shall submit to the Board a written response to the informal complaint within 15 days after the date on which the informal complaint was served. Service shall be deemed to be complete when a true copy of the document, properly addressed and with postage paid, is deposited with the United States Postal Service.

2. A response to an informal complaint must:

- (a) Respond to the allegations made in the informal complaint; and
- (b) Be accompanied by all documentation that would be useful to the staff in its review of the allegations made in the informal complaint and the responses made by the respondent to those allegations.

3. In addition to any other disciplinary action, if the respondent fails to respond as required pursuant to subsection 1, he or she shall be deemed to have admitted the allegations in the informal complaint. Based on these admissions, the Board may enter a finding and impose appropriate discipline on the respondent in the same manner as if the allegations had been proven by substantial evidence at a hearing of the Board held on the complaint.

4. In cases in which a response is filed as required pursuant to subsection 1, the staff shall review the informal complaint and the responses made thereto, may enlist the aid of a member of the Board or other qualified persons in the review and may take any other reasonable action necessary to further the review.

637A.475 Informal complaint: Investigation; request for records; failure to cooperate.

1. After the initial review of the informal complaint and the responses made thereto conducted pursuant to NAC 637A.470, the staff may:

(a) Investigate the allegations and employ such people as they deem necessary to further the investigations;

(b) Consult with experts in the appropriate fields, including, without limitation, the employment of such persons for the purposes of an investigation or a hearing;

(c) Investigate new leads and allegations that may come to their knowledge in the course of the investigation;

(d) Enlist the aid of a member of the Board or another qualified person in the conduct of the investigation; and

(e) Take any other reasonable action necessary to further the investigation.

2. During an investigation of an informal complaint, the staff, or investigator, if any, may demand that a respondent produce his or her records or other evidence for inspection or copying, with or without prior notice to the respondent and with or without a subpoena. Unless the requested records are made confidential pursuant to law, the respondent shall not refuse any such request for records.

3. If the respondent initially refuses or fails to cooperate with a request for records in violation of this section, the Board may immediately suspend his or her license until the respondent complies with the request for records or other evidence.

4. If the respondent continues to refuse or fail to cooperate with a request for records or other evidence in violation of this section after the Board has suspended his or her license pursuant to subsection 3, the Board may take such further disciplinary action against the respondent as the Board determines necessary.

637A.480 Removal and copying of records and other evidence.

1. If the staff, or investigator, if any, determines that a specific record or other specific evidence is material to or necessary for an investigation conducted pursuant to NAC 637A.475, the staff or investigator may remove the record or evidence and provide a copy of the record or evidence to the owner of that record.

2. If the record or other evidence can be readily copied at the location where the record or evidence is located, the staff or investigator shall make a copy of the record or evidence at that location.

3. If the record or other evidence cannot be readily copied at the location where the record or evidence is located, the staff or investigator may remove the record or evidence from that location to copy the record or evidence.

4. If the staff or investigator removes a record or other evidence to be copied pursuant to subsection 3, the staff or investigator shall provide the person to whom the record or evidence being removed belongs with a receipt for the record or evidence and, not later than 5 business days after the record or evidence is removed, provide a copy of the record or evidence to that person.

637A.485 Action following completion of investigation; notice of hearing and formal complaint.

1. When an investigation of an informal complaint conducted pursuant to NAC 637A.475 is complete, the staff, and investigator, if any, shall determine whether substantial evidence exists to sustain the alleged violation of a statute or regulation set forth in the informal complaint.

2. If the staff and investigator determine that no allegation of a violation of a statute or regulation set forth in the informal complaint can be sustained, the staff shall notify, in writing, the complainant and the respondent of this determination.

3. If the staff and investigator determine that a violation of a statute or regulation as alleged in the informal complaint can be sustained, the legal counsel for the Board shall:

(a) In compliance with NRS 622.330, offer mediation, settlement agreements, stipulations of facts and liability or informal hearings; or

(b) Prepare a notice of hearing and a formal complaint.

4. A notice of hearing and a formal complaint must:

(a) Be a plain statement of the facts and applicable provisions of statutes and regulations regarding the alleged acts of the respondent alleged to be in violation of the statutes and regulations governing the practice of fitting and dispensing hearing aids;

(b) Include the date, time and place that the Board will hear the matter, if this information is known at the time when the notice of hearing and a formal complaint are sent to the respondent; and

(c) Be signed by the legal counsel for the Board and, if a member of the Board was active in the investigation, by that member of the Board.

5. The staff shall send a notice of hearing and a formal complaint prepared pursuant to subsection 4 to the respondent by certified mail.

637A.490 Answer: Filing; contents; failure to file.

1. A respondent who receives a notice of hearing and a formal complaint pursuant to NAC 637A.485 must file his or her answer to the notice of hearing and the formal complaint not later than 15 days after the date on which the notice of hearing and the formal complaint were served. Service shall be deemed to be complete when a true copy of the document, properly addressed and with postage paid, is deposited with the United States Postal Service.

2. An answer to a notice of hearing and a formal complaint filed by a respondent must include a response to each allegation and statement made in the notice of hearing and the formal complaint by either admitting to or denying the allegation or statement.

3. In addition to any other disciplinary action, if the respondent fails to file an answer as required pursuant to subsection 1, he or she shall be deemed to have admitted each allegation and statement contained in the notice of hearing and the formal complaint. Based on these admissions, the Board may enter a finding and impose appropriate discipline on the respondent in the same manner as if the allegations had been proven by substantial evidence at a hearing of the Board held on the formal complaint.

637A.495 Joining of formal complaints. The Board may join two or more formal complaints into one formal complaint if:

1. The causes of action of each formal complaint are against the same person and deal with substantially the same or similar violations of statutes and regulations; and

2. The joining of the formal complaints will serve the best interests of the Board, complainants and respondent.

637A.500 Exchange of evidence and lists of witnesses; failure to comply.

1. Not later than 10 days after a respondent files an answer to a formal complaint pursuant to NAC 637A.490, the legal counsel for the Board and the respondent shall exchange:

(a) A copy of all documents and other evidence that are reasonably available to the party and that the party reasonably anticipates will be used by the party at the hearing; and

(b) A written list of all persons who the party reasonably anticipates will be called to testify at the hearing by the party. The list must include the name and address of each potential witness and a general description of the anticipated subject matter of his or her testimony.

2. If, after initially providing the documents and list of witnesses pursuant to subsection 1, a party reasonably anticipates that other documents or witnesses will be used in support of his or her position, or if any of the documents or information previously provided changes, the party shall supplement and update his or her submission to the other parties.

3. If a party fails to provide documentation or information as required by this section, the presiding officer shall exclude the undisclosed document or the testimony of the witness at the hearing, unless the party seeking to include the document or witness demonstrates to the Board that the evidence or witness was not available upon diligent investigation before the date on which the exchange was required and that the evidence or witness was given or communicated to the other parties immediately after it was obtained.

637A.505 Discovery. Discovery may only be done in accordance with the provisions of NAC 637A.430 to 637A.535, inclusive. The Board will not allow for the taking of depositions.

637A.510 Prehearing conference. The presiding officer may order a prehearing conference and may enter such prehearing orders as the presiding officer determines are appropriate for the efficient conduct of the hearing, including, without limitation:

1. The exchange of written direct testimony of witnesses;
2. The exclusion of particular testimony or evidence;
3. The admission of particular testimony and other exhibits by agreement of the parties;
4. The advance marking of all exhibits;
5. The exchange by the parties of written prehearing statements or briefs similar to pretrial statements filed in district court; and
6. Settlement negotiations. Settlement negotiations, and the statements of parties relating thereto, made at a prehearing conference are not admissible in evidence at the hearing unless the parties agree and the agreement is incorporated in a prehearing order.

637A.515 Motions.

1. A motion concerning any matter before the Board must be made in writing, unless the motion is made during the hearing on that matter. The presiding officer may deny as untimely:
 - (a) Any motion made during a hearing if the motion could have reasonably been made before the hearing; and
 - (b) Any motion that is filed on a date that does not provide the opposing parties a reasonable time to respond.
2. A written motion must set forth the nature of the relief sought by and the grounds for the motion.
3. A party may oppose a written motion by filing a written response to the motion with the Board and all the parties to the proceeding to which the motion relates within 10 days after the written motion is filed.
4. If a written response to a motion is filed, the party who made the motion may file and serve a written reply to the response.

5. Except as otherwise provided in this section, the presiding officer shall rule on all written motions on a matter at or before the hearing scheduled on the matter. The presiding officer may rule on a motion without oral argument or may allow oral arguments to be made before ruling on the motion. If the presiding officer allows oral arguments on a written motion to be made, the presiding officer shall set a time and date for hearing the oral arguments.

6. The presiding officer may require the Board to vote to decide a motion.

637A.520 Rulings on preliminary matters.

1. The presiding officer may issue rulings on all preliminary matters, including, without limitation, scheduling matters, protective orders, the admissibility of evidence and other procedural or prehearing matters.

2. A ruling on a preliminary matter is subject to reconsideration by the entire Board upon the request of a member of the Board or upon the motion of a party.

3. The failure of a party who is adversely affected by a ruling on a preliminary matter to move for reconsideration of the ruling does not constitute:

(a) Consent to the ruling; or

(b) Waiver of any objection previously made to the ruling.

4. For the purposes of this section, a matter is preliminary if it is not dispositive of a contested case or a substantive issue therein.

637A.525 Procedure at hearing; documents included in record; posthearing briefs.

1. The presiding officer shall call the hearing to order and proceed to take the appearances on behalf of the Board or respondent.

2. The notice of hearing, any petition, answer, response or written stipulation and, if the hearing concerns a disciplinary proceeding, the complaint or any other responsive pleading

become a part of the record without being read into the record, unless a party requests that the document be read into the record.

3. The legal counsel for the Board shall present the evidence for the Board first and, if the Board allows closing arguments, shall present the closing arguments for the Board last.

4. Unless otherwise ordered by the presiding officer, and except as otherwise provided in this section, the order of presentation is as follows:

(a) Opening statement by the legal counsel for the Board.

(b) Opening statement by the respondent or the attorney for the respondent who may choose to make the opening statement at the beginning of the respondent's case.

(c) For each witness offered by the legal counsel for the Board:

(1) Direct examination by the legal counsel for the Board;

(2) Cross-examination by the respondent or the attorney for the respondent;

(3) Redirect examination by the legal counsel for the Board;

(4) Recross-examination by the respondent or the attorney for the respondent; and

(5) Examination by the members of the Board.

(d) For each witness offered by the respondent, the same order as for witnesses offered by the legal counsel for the Board.

(e) If applicable, closing arguments by the respondent or the attorney for the respondent.

(f) If applicable, closing arguments by the legal counsel for the Board.

5. A member of the Board may, at any time during the hearing:

(a) Question a witness; and

(b) Request or allow additional evidence, including, additional testimony or documentary evidence.

6. A consolidated hearing before the Board will proceed in the same manner as described in this section with the order of the parties and evidence to be determined in the discretion of the presiding officer.

7. Posthearing briefs may be allowed by the presiding officer or upon a majority vote of the members of the Board. If such briefs are allowed, the Board will establish a time by when such briefs must be submitted.

637A.530 Appearance and representation of parties.

1. Except as otherwise provided in subsection 2, a party may appear at a hearing in person or by an attorney.

2. A party shall attend a hearing on the merits in person unless the presiding officer waives the requirement of the attendance of the party.

3. In addition to any other disciplinary action, if a party who is required to attend a hearing in person fails to do so without having obtained a waiver of the requirement of his or her attendance pursuant to subsection 2, the Board may:

(a) Determine that his or her failure to attend the hearing in person shall be deemed:

(1) An admission of all matters and facts contained in the record with respect to the party;
and

(2) A waiver of the right to an evidentiary hearing; and

(b) Take action based upon the admission or upon any other evidence, including affidavits, without any further notice or a hearing.

4. If a party retains an attorney to represent him or her before the Board, the attorney shall so notify the Board not later than 10 days after he or she is retained. Thereafter:

(a) The attorney shall sign all motions, oppositions, notices, requests and other papers, including requests for subpoenas; and

(b) The Board will serve all notices, motions, orders, decisions, and any other papers or pleadings upon the attorney.

5. An attorney appearing as counsel in any proceeding must be an attorney at law, admitted to practice and in good standing before the highest court of any state. If the attorney is not admitted and entitled to practice before the Supreme Court of Nevada, he or she must be otherwise authorized to practice law in this State.

637A.535 Final order or decision of Board.

1. After a hearing on the merits in a disciplinary proceeding, if the Board finds that the respondent is:

(a) Not guilty as charged in the formal complaint, the Board will issue a final order or decision dismissing the charges and notify the respondent that the charges have been dismissed.

(b) Guilty as charged in the formal complaint, the Board will:

(1) Before agreeing on a punishment, consider all relevant factors, including, without limitation:

(I) The danger to the health or safety of the public from the violation;

(II) The economic benefit received by the respondent from the violation;

(III) Any mitigation or aggravation by the respondent of the effects of the violation;

(IV) The extent to which the respondent demonstrates his or her good faith;

(V) Any previous history of violations by the respondent;

(VI) Whether the respondent knew or, as a competent person, should have known that the action complained of was a violation of law, regulation or a condition of his or her license;

(VII) Whether the respondent has initiated remedial measures to prevent similar violations;

(VIII) The magnitude of penalties imposed on other licensees for similar violations;

(IX) The proportionality of the penalty in relation to the misconduct; and

(X) If the respondent offered evidence of mitigating factors, all such evidence;

(2) Agree upon punishment that may, in addition to any other sanction authorized pursuant to this chapter or chapter 637A of NRS:

(I) Fulfill certain training or educational requirements; and

(II) In accordance with NRS 622.400, pay costs incurred by the Board relating to the disciplinary proceedings; and

(3) Issue and serve the final order or decision of the Board on the respondent.

2. A final order or decision by the Board that is adverse to the respondent must:

(a) Be in writing;

(b) Except as otherwise provided in subsection 5 of NRS 233B.121, include findings of fact and conclusions of law; and

(c) Specifically set forth the punishment imposed on the respondent.

3. A final order or decision of the Board in a disciplinary proceeding is effective on the earliest of:

(a) The date on which the final order or decision is personally served on the respondent;

(b) The date on which the final order or decision is posted at the premises of the respondent;

or

(c) The third day after the date on which the final order or decision is deposited in the United States mail as certified mail addressed to the address of record of the respondent.

637B.0035 “Complainant” defined. “Complainant” means a person filing a complaint with the Board concerning a licensee.

637B.004 “Investigator” defined. “Investigator” means an investigator of the Board who is investigating a complaint filed with the Board and includes, without limitation, any member of the Board who is active in such an investigation.

637B.005 “Party” defined. “Party” includes:

1. The respondent;
2. The attorney, if any, representing the respondent; and
3. The legal counsel for the Board.

637B.0055 “Presiding officer” defined. “Presiding officer” means:

1. The Chair of the Board; or
2. The person appointed to chair a hearing on a formal complaint.

637B.006 “Respondent” defined. “Respondent” means the licensee accused in an informal complaint or formal complaint before the Board.

637B.007 “Staff” defined. “Staff” means the staff of the Board.

637B.050 Scope, construction, deviation and severability.

1. NAC 637B.050 to 637B.390, inclusive:
 - (a) Govern all practice and procedure before the Board.
 - (b) Will be liberally construed to secure a just, speedy and economical determination of all issues presented to the Board.
2. In special cases, where good cause appears, the Board may permit deviation from NAC 637B.050 to 637B.390, inclusive, insofar as it may find compliance therewith to be impractical or unnecessary.

3. If any provision of NAC 637B.050 to 637B.390, inclusive, or any application thereof to any person, thing or circumstance is held invalid, it is intended that such invalidity not affect the remaining provisions or applications to the extent they can be given effect.

637B.060 Computation of time. The time within which any act must be done under NAC 637B.050 to 637B.390, inclusive, is computed by excluding the first day and including the last day unless the last day is Saturday, Sunday or a legal holiday, and then the last day is excluded and the time is extended to the next regular business day.

637B.080 Additional information. Additional information with reference to proceedings before the Board or the status of any matter may be secured by applying to the Administrator.

637B.120 Participation by staff. Members of the Board's staff may appear at any proceeding and exercise all rights of participation as parties to the proceeding.

637B.130 Appearance by party. A party may enter his or her appearance at the beginning of a hearing, or at any time as may be designated by the presiding officer, by giving his or her name and address and stating his or her position or interest to the presiding officer. The information must be recorded in the transcript of the hearing.

637B.135 Attendance and representation of party.

1. Except as otherwise provided in subsection 2, a party may appear at a hearing in person or by an attorney.

2. A party shall attend a hearing on the merits in person unless the presiding officer waives the requirement of the attendance of the party.

3. In addition to any other disciplinary action, if a party who is required to attend a hearing in person fails to do so without having obtained a waiver of the requirement of his or her attendance pursuant to subsection 2, the Board may:

(a) Determine that the failure of the party to attend the hearing in person shall be deemed:

(1) An admission of all matters and facts contained in the record with respect to the party;

and

(2) A waiver of the right to an evidentiary hearing; and

(b) Take action based upon the admission or upon any other evidence, including affidavits, without any further notice or a hearing.

4. If a party retains an attorney to represent him or her before the Board, the attorney shall so notify the Board not later than 10 days after he or she is retained. Thereafter:

(a) The attorney shall sign all motions, oppositions, notices, requests and other papers, including requests for subpoenas; and

(b) The Board will serve all notices, motions, orders, decisions, and any other papers or pleadings upon the attorney.

5. An attorney appearing as counsel in any proceeding must be an attorney at law, admitted to practice and in good standing before the highest court of any state. If the attorney is not admitted and entitled to practice before the Supreme Court of Nevada, he or she must be otherwise authorized to practice law in this State.

637B.160 Withdrawal of attorney. Any attorney of record wishing to withdraw from a proceeding before the Board shall, in writing, immediately notify the Board or the presiding officer, the party whom he or she represented, and any other parties to the proceeding.

637B.170 Verification, amendment and construction of pleadings.

1. All pleadings, except complaints brought on the Board's motion, must be verified.

2. The Board will, when substantial rights of the parties are not violated thereby, allow any pleading to be amended or corrected or any omission therein to be supplied.

3. All pleadings will be liberally construed with a view to effect justice between the parties, and the Board or presiding officer will, at every stage of any proceeding, disregard errors or defects in the pleadings or proceedings which do not affect the substantial rights of the parties.

637B.175 Informal complaint: Filing, form and contents of accusation; limited waiver of confidentiality; petition for declaratory order or advisory opinion.

1. A person may file an accusation with the Board concerning the goods or services provided by a licensee or the activities of a licensee. Such an accusation must be on a form provided by the Board. If a complainant is the client of and is complaining about his or her treatment by a licensee, the Board will provide the complainant with a form for a limited waiver of confidentiality regarding his or her records which the complainant must sign and return to the Board. Such an accusation will not be further reviewed or processed by the staff or legal counsel until the signed limited waiver is received by the staff.

2. A complainant shall include in the accusation information that is sufficiently detailed so as to enable the respondent to prepare a response.

3. The Board will initially consider any accusation regarding a licensee as an informal complaint.

4. Except as otherwise provided in NRS 233B.120, a petition filed pursuant to NRS 233B.120 may be processed as an informal complaint.

637B.181 Informal complaint: Examination by staff; notice to respondent.

1. Upon receipt of an informal complaint filed pursuant to NAC 637B.175, the staff shall examine the informal complaint to determine whether it:

- (a) Has been properly verified; and
- (b) Alleges sufficient facts to warrant further proceedings.

2. If the staff determines that the informal complaint has been properly verified and alleges sufficient facts to warrant further proceedings, the staff shall notify the respondent by sending a copy or a summary of the informal complaint by certified mail to the respondent.

3. The notification must set forth the alleged violations of a provision of this chapter or of chapter 637B of NRS arising in the informal complaint and request a response from the respondent for review by the Board before a hearing is set.

4. The transmission of the copy or summary of the informal complaint shall be deemed to be a notice of intended action pursuant to subsection 3 of NRS 233B.127.

637B.185 Informal complaint: Response; failure to respond; review by staff.

1. Upon the receipt of a copy or summary of an informal complaint that has been filed against him or her pursuant to NAC 637B.175, the respondent shall submit to the Board a written response to the informal complaint within 15 days after the date on which the informal complaint was served. Service shall be deemed to be complete when a true copy of the document, properly addressed and with postage paid, is deposited with the United States Postal Service.

2. A response to an informal complaint must:

- (a) Respond to the allegations made in the informal complaint; and
- (b) Be accompanied by all documentation that would be useful to the staff in its review of the allegations made in the informal complaint and the responses made by the respondent to those allegations.

3. In addition to any other disciplinary action, if the respondent fails to respond as required pursuant to subsection 1, he or she shall be deemed to have admitted the allegations in the informal complaint. Based on these admissions, the Board may enter a finding and impose

appropriate discipline on the respondent in the same manner as if the allegations had been proven by substantial evidence at a hearing of the Board held on the complaint.

4. In cases in which a response is filed as required pursuant to subsection 1, the staff shall review the informal complaint and the responses made thereto, may enlist the aid of a member of the Board or other qualified persons in the review and may take any other reasonable action necessary to further the review.

637B.191 Investigation of informal complaint: Authority of staff; production of records and other evidence.

1. After the initial review of the informal complaint and the responses made thereto conducted pursuant to NAC 637B.185, the staff may:

(a) Investigate the allegations and employ such people as they deem necessary to further the investigations;

(b) Consult with experts in the appropriate fields, including, without limitation, the employment of such persons for the purposes of an investigation or a hearing;

(c) Investigate new leads and allegations that may come to their knowledge in the course of the investigation;

(d) Enlist the aid of a member of the Board or other qualified person in the conduct of the investigation; and

(e) Take any other reasonable action necessary to further the investigation.

2. During an investigation of an informal complaint, the staff, or investigator, if any, may demand that a respondent produce his or her records or other evidence for inspection or copying, with or without prior notice to the respondent and with or without a subpoena. Unless the

requested records are made confidential pursuant to law, the respondent shall not refuse any such request for records.

3. If the respondent initially refuses or fails to cooperate with a request for records in violation of this section, the Board may immediately suspend his or her license until the respondent complies with the request for records or other evidence.

4. If the respondent continues to refuse or fail to cooperate with a request for records or other evidence in violation of this section after the Board has suspended his or her license pursuant to subsection 3, the Board may take such further disciplinary action against the respondent as the Board determines necessary.

637B.195 Investigation of informal complaint: Removal and copying of records or other evidence.

1. If the staff, or investigator, if any, determines that a specific record or other specific evidence is material to or necessary for an investigation conducted pursuant to NAC 637B.191, the staff or investigator may remove the record or evidence and provide a copy of the record or evidence to the owner of that record.

2. If the record or other evidence can be readily copied at the location where the record or evidence is located, the staff or investigator shall make a copy of the record or evidence at that location.

3. If the record or other evidence cannot be readily copied at the location where the record or evidence is located, the staff or investigator may remove the record or evidence from that location to copy the record or evidence.

4. If the staff or investigator removes a record or other evidence to be copied pursuant to subsection 3, the staff or investigator shall provide the person to whom the record or evidence

being removed belongs with a receipt for the record or evidence and, not later than 5 business days after the record or evidence is removed, provide a copy of the record or evidence to that person.

637B.201 Investigation of informal complaint: Procedure upon completion; notice of hearing and formal complaint.

1. When an investigation of an informal complaint conducted pursuant to NAC 637B.191 is complete, the staff, and investigator, if any, shall determine whether substantial evidence exists to sustain the alleged violation of a statute or regulation set forth in the informal complaint.

2. If the staff, and investigator, if any, determine that no allegation of a violation of a statute or regulation set forth in the informal complaint can be sustained, the staff shall notify, in writing, the complainant and the respondent of this determination.

3. If the staff, and investigator, if any, determine that a violation of a statute or regulation as alleged in the informal complaint can be sustained, the legal counsel for the Board shall:

(a) In compliance with NRS 622.330, offer mediation, settlement agreements, stipulations of facts and liability or informal hearings; or

(b) Prepare a notice of hearing and a formal complaint.

4. A notice of hearing and a formal complaint must:

(a) Be a plain statement of the facts and applicable provisions of statutes and regulations regarding the alleged acts of the respondent alleged to be in violation of the statutes and regulations governing the practice of audiology and speech pathology;

(b) Include the date, time and place that the Board will hear the matter, if this information is known at the time when the notice of hearing and a formal complaint are sent to the respondent; and

(c) Be signed by the legal counsel for the Board and, if a member of the Board was active in the investigation, by that member of the Board.

5. The staff shall send a notice of hearing and a formal complaint prepared pursuant to subsection 4 to the respondent by certified mail.

637B.205 Formal complaint: Answer; failure to answer.

1. A respondent who receives a notice of hearing and a formal complaint pursuant to NAC 637B.201 shall file his or her answer to the notice of hearing and the formal complaint not later than 15 days after the date on which the notice of hearing and the formal complaint were served. Service shall be deemed to be complete when a true copy of the document, properly addressed and with postage paid, is deposited with the United States Postal Service.

2. An answer to a notice of hearing and a formal complaint filed by a respondent must include a response to each allegation and statement made in the notice of hearing and the formal complaint by either admitting to or denying the allegation or statement.

3. In addition to any other disciplinary action, if the respondent fails to file an answer as required pursuant to subsection 1, he or she shall be deemed to have admitted each allegation and statement contained in the notice of hearing and the formal complaint. Based on these admissions, the Board may enter a finding and impose appropriate discipline on the respondent in the same manner as if the allegations had been proven by substantial evidence at a hearing of the Board held on the formal complaint.

637B.211 Formal complaints: Consolidation. The Board may join two or more formal complaints into one formal complaint if:

1. The causes of action of each formal complaint are against the same person and deal with substantially the same or similar violations of statutes and regulations; and

2. The joining of the formal complaints will serve the best interests of the Board, complainants and respondent.

637B.215 Formal complaint: Exchange of evidence and lists of witnesses.

1. Not later than 10 days after a respondent files an answer to a formal complaint pursuant to NAC 637B.205, the legal counsel for the Board and the respondent shall exchange:

(a) A copy of all documents and other evidence that are reasonably available to the party and that the party reasonably anticipates will be used by the party at the hearing; and

(b) A written list of all persons who the party reasonably anticipates will be called to testify at the hearing by the party. The list must include the name and address of each potential witness and a general description of the anticipated subject matter of his or her testimony.

2. If, after initially providing the documents and list of witnesses pursuant to subsection 1, a party reasonably anticipates that other documents or witnesses will be used in support of the party's position, or if any of the documents or information previously provided changes, the party shall supplement and update his or her submission to the other parties.

3. If a party fails to provide documentation or information as required by this section, the presiding officer shall exclude the undisclosed document or the testimony of the witness at the hearing, unless the party seeking to include the document or witness demonstrates to the Board that the evidence or witness was not available upon diligent investigation before the date on which the exchange was required and that the evidence or witness was given or communicated to the other parties immediately after it was obtained.

637B.221 Discovery; depositions. Discovery may only be done in accordance with the provisions of NAC 637B.050 to 637B.390. The Board will not allow for the taking of depositions.

637B.225 Prehearing conference and orders. The presiding officer may order a prehearing conference and may enter such prehearing orders as the presiding officer determines are appropriate for the efficient conduct of the hearing, including, without limitation:

1. The exchange of written direct testimony of witnesses;
2. The exclusion of particular testimony or evidence;
3. The admission of particular testimony and other exhibits by agreement of the parties;
4. The advance marking of all exhibits;
5. The exchange by the parties of written prehearing statements or briefs similar to pretrial statements filed in district court; and
6. Settlement negotiations. Settlement negotiations, and the statements of parties relating thereto, made at a prehearing conference are not admissible in evidence at the hearing unless the parties agree and the agreement is incorporated in a prehearing order.

637B.231 Motions.

1. A motion concerning any matter before the Board must be made in writing, unless the motion is made during the hearing on that matter. The presiding officer may deny as untimely:
 - (a) Any motion made during a hearing if the motion could have reasonably been made before the hearing; and
 - (b) Any motion that is filed on a date that does not provide the opposing parties a reasonable time to respond.
2. A written motion must set forth the nature of the relief sought by and the grounds for the motion.

3. A party may oppose a written motion by filing a written response to the motion with the Board and all the parties to the proceeding to which the motion relates within 10 days after the written motion is filed.

4. If a written response to a motion is filed, the party who made the motion may file and serve a written reply to the response.

5. Except as otherwise provided in this section, the presiding officer shall rule on all written motions on a matter at or before the hearing scheduled on the matter. The presiding officer may rule on a motion without oral argument or may allow oral arguments to be made before ruling on the motion. If the presiding officer allows oral arguments on a written motion to be made, the presiding officer shall set a time and date for hearing the oral arguments.

6. The presiding officer may require the Board to vote to decide a motion.

637B.240 Filing and availability of pleadings, motions and other papers. The original and two legible copies of each pleading, motion or other paper must be filed with the Board. The Board may direct that a copy of each pleading or other document designated by the Board be made available by the party filing it to any other person whom the Board determines may be affected by the proceeding and who desires a copy.

637B.260 Proof of service. With all documents required to be served by the Board, except its decisions and orders, an acknowledgment of service or the following certificate will be included:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding (by delivering a copy thereof in person to) (by mailing a copy thereof, properly addressed, with postage prepaid to).

Dated at, this(day) of(month) of(year)

Signature

637B.275 Procedure; inclusion of certain documents in record; posthearing briefs.

1. The presiding officer shall call the hearing to order and proceed to take the appearances on behalf of the Board or respondent.

2. The notice of hearing, any petition, answer, response or written stipulation and, if the hearing concerns a disciplinary proceeding, the complaint or any other responsive pleading become a part of the record without being read into the record, unless a party requests that the document be read into the record.

3. The legal counsel for the Board shall present the evidence for the Board first and, if the Board allows closing arguments, shall present the closing arguments for the Board last.

4. Unless otherwise ordered by the presiding officer, and except as otherwise provided in this section, the order of presentation is as follows:

(a) Opening statement by the legal counsel for the Board.

(b) Opening statement by the respondent or the attorney for the respondent who may choose to make the opening statement at the beginning of the respondent's case.

(c) For each witness offered by the legal counsel for the Board:

(1) Direct examination by the legal counsel for the Board;

(2) Cross-examination by the respondent or the attorney for the respondent;

- (3) Redirect examination by the legal counsel for the Board;
 - (4) Recross-examination by the respondent or the attorney for the respondent; and
 - (5) Examination by the members of the Board.
- (d) For each witness offered by the respondent, the same order as for witnesses offered by the legal counsel for the Board.
- (e) If applicable, closing arguments by the respondent or the attorney for the respondent.
- (f) If applicable, closing arguments by the legal counsel for the Board.
5. A member of the Board may, at any time during the hearing:
- (a) Question a witness; and
 - (b) Request or allow additional evidence, including additional testimony or documentary evidence.
6. A consolidated hearing before the Board will proceed in the same manner as described in this section with the order of the parties and evidence to be determined in the discretion of the presiding officer.
7. Posthearing briefs may be allowed by the presiding officer or upon a majority vote of the members of the Board. If such briefs are allowed, the Board will establish a time by when such briefs must be submitted.

637B.280 Continuances.

- 1. The Board may before or during a hearing, and upon a proper showing, grant a continuance for submission of additional proof or other reasonable purpose.
- 2. Requests for continuances must be submitted pursuant to NAC 637B.231.

637B.340 Official notice of Board. In addition to the facts mentioned in subsection 5 of NRS 233B.123, the Board may take official notice of:

1. Regulations, official reports, decisions and orders of the Board or any other regulatory agency of the State of Nevada.
2. Contents of certificates and permits issued by the Board.
3. Any provision of NRS.

637B.370 Records of hearings. Any person desiring a copy of the record of a hearing may obtain it from the Office of the Board, or the official reporter, upon payment of the fees fixed therefor.