

**PROPOSED REGULATION OF THE
SECRETARY OF STATE**

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**The following document is the initial draft regulation proposed
by the agency submitted on 07/31/2020**

Proposed Regulations NAC 240A

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Submitted by Gail Anderson, Deputy Secretary of State for Southern Nevada

Statutory Authority: NRS 240A.250

Section 1

Registrants who do not have a physical place of business in Nevada must designate a registered agent pursuant to chapter 77 of NRS.

RULES OF PRACTICE AND PROCEDURES FOR SUSPENSION OR REVOCATION OF REGISTRATION (NRS 240A.270)

Section 2

Definitions:

Hearing officer – means any person the Secretary of State may designate to conduct a hearing pursuant to sections 3 through 16, who has not previously investigated any matter before him or her.

Staff – means the staff of the Secretary of State

Section 3

1. Parties to disciplinary proceedings under this chapter consist of staff and the registrant whose registration is subject to suspension or revocation, and his or her attorney, if represented.
2. Any party against whom a proceeding is brought will be styled a respondent.
3. Staff may appear at any hearing and have all rights of participation as a party to the proceeding. If counsel is desired, the Attorney General will represent staff.

Section 4

1. Upon the filing of a formal complaint with the hearing officer, the matter shall be set for a hearing within 60 days before a hearing officer.

2. The time of the hearing may be continued by the hearing officer or upon motion of the respondent with the approval of the hearing officer.

3. The hearing officer will give the respondent at least 30 days' prior notice in writing of the date, time and place of the hearing, which notice will contain a copy of the complaint, including, but not limited to:

(a) An exact statement of the charges; and

(b) Copies of all reports, affidavits and depositions in possession of the Secretary of State which may be used in evidence against the respondent.

4. Notice of the hearing may be served by personal delivery to the respondent or by certified mail to his last known business or home address.

5. The respondent shall file an answer within 20 days after service of the notice. The answer must contain an admission or denial of each of the averments contained in the complaint and any defenses upon which the respondent will rely.

6. The answer must be served by personal delivery to the Secretary of State at its office in Las Vegas or Carson City or by mail to the Las Vegas office of the Secretary of State.

Section 5

1. Not less than 5 working days before a hearing before a hearing officer, the respondent must provide to the State:
 - a. A copy of all documents that are reasonably available to the respondent which the respondent reasonably anticipates will be used in support of his or her position; and
 - b. A list of witnesses whom the respondent intends to call at the time of the hearing, which must include for each witness:
 - i. The name of the witness;
 - ii. The contact information for witness; and
 - iii. A brief summary of the expected testimony of the witness.
2. The respondent shall promptly supplement and update any documents and lists provided to the State pursuant to this section.
3. If the respondent fails to provide any document required to be provided by the provisions of this section, the hearing officer may exclude the document.
4. All notices, opinions, decisions, orders or documents filed by any party may be served personally or by certified mail, and if service is made by mail, service is complete when a true copy of the documents, properly addressed and stamped, is deposited in the United States mail.
5. All documents required to be served by any party must contain an acknowledgment or certificate of service.

Section 6

1. All motions, unless made during a hearing, must be in writing.
2. A written motion must be served on the opposing party and the hearing officer at least 10 working days before the time set for the hearing.
3. An opposing party may file a written response to a motion within 7 working days after the receipt of the motion by serving the written response on all parties and the hearing officer.
4. The hearing officer may require oral argument or the submission of additional information or evidence to decide the motion.

Section 7

1. A complaint may be amended at any time.
2. The hearing officer may grant a continuance if the amendment materially alters the complaint or a respondent demonstrates an inability to prepare for the case in a timely manner.
3. The hearing officer may prior to a hearing or during a hearing, and upon proper showing, grant continuances for submission of further or additional proof of any subject matter.

4. A complaint may be withdrawn at any time before the hearing begins.

Section 8

1. If a party fails to appear at a hearing scheduled by a hearing officer and a continuance has not been requested or granted, upon an offer of proof by the staff that the absent party was given proper notice and upon a determination by the hearing officer that proper notice was given, the hearing officer may proceed to consider the case without the participation of the absent party and may dispose of the it on the basis of the evidence before him or her in the manner required by [Sections x – x], inclusive. If a party fails to appear at the hearing or fails to reply to the notice, the charges specified in the complaint may be considered as true.
2. Where, because of accident, sickness or other reasonable cause, a person fails to appear for a hearing scheduled by the hearing officer or fails to request a continuance, the person may, within a reasonable period of time, not to exceed 15 days, apply to the hearing officer to reopen the proceedings, and the hearing officer upon finding such cause sufficient and reasonable will immediately fix a time and place for hearing and give the person notice of the hearing. At the time and place fixed, a hearing must be held at which the person may testify in his or her own behalf or present such other evidence as may be beneficial to his or her cause. Witnesses who have previously testified are not required to appear at the second hearing unless so directed by the hearing officer.

Section 9

1. The hearing officer of a hearing shall:
 - a. Ascertain whether all persons commanded to appear under subpoena are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room.
 - b. Administer the oath to all persons whose testimony will be taken:

Do you and each of you solemnly swear or affirm to tell the truth and nothing but the truth in these proceedings?

- c. Ascertain whether either party wishes to have a witness excluded from the hearing except during the testimony of the witness. A witness may be excluded upon the motion of the hearing officer or upon the motion of either party. If a witness is excluded, he or she will be instructed not to discuss the case during the pendency of the proceeding. The respondent will be allowed to remain present at the hearing. A staff representative who may also be a witness will be allowed to remain present at the hearing.
- d. Ascertain whether a copy of the complaint has been filed and whether an answer has been filed as part of the record in the proceedings.
- e. Hear any preliminary motions, stipulations or orders upon which the parties agree and address any administrative details.

- f. Request staff to proceed with the presentation of its case.
2. Staff may not submit any evidence to the hearing officer before the hearing begins except for the complaint and answer.
3. The respondent may cross-examine witnesses in the order that the State presents them.
4. Witnesses or counsel may be questioned by the hearing officer at any time during the proceeding.
5. Evidence which is to be introduced:
 - a. Must first be marked for identification; and
 - b. May be received by the hearing officer at any point during the proceeding.
6. When staff has completed its presentation, the respondent shall proceed with the introduction of evidence and calling of witnesses on his or her behalf.
7. Staff may cross-examine witnesses in the order that the respondent presents them.
8. When the respondent has completed his or her presentation, staff may call any rebuttal witnesses.
9. When all testimony for the parties has been given and all evidence submitted, the hearing officer may request the parties to summarize their presentations.
10. The hearing officer may waive any provision of this section if necessary to expedite or ensure the fairness of the hearing.
11. The date of decision is the date the written decision is signed by the hearing officer.
12. Upon the presentation of evidence that the respondent received notice of the hearing and has not filed an answer within the time prescribed, his or her default may be entered and a decision may be issued based upon the allegations of the complaint.

Section 10

1. Parties shall enter their appearance at the beginning of a hearing or at any time as may be designated by the hearing officer.
2. Appearances and representation of parties must be made as follows:
 - a. A party may be represented by an attorney at the hearing.
 - b. An attorney appearing as counsel in any proceeding must be admitted to practice law in this state.
3. Following the entry of an appearance by an attorney for a party, all notices, pleadings and orders thereafter served must be served upon the attorney and service is considered valid service for all purposes upon the party represented.

Section 11

Any attorney of record wishing to withdraw from a proceeding before a hearing officer shall, in writing, immediately notify the hearing officer and the party he or she represented and shall provide the address and phone number for the formerly represented party to receive additional notices.

Section 12

A person appearing in a proceeding shall conform to the recognized standards of ethical and courteous conduct. All parties to hearings, their counsel and spectators will conduct themselves in a respectful manner.

Section 13

1. Sworn declarations may be introduced in lieu of testimony if a witness resides outside the State of Nevada.
2. With the approval of the hearing officer, the parties may stipulate as to any fact at issue, either by written stipulation introduced in evidence as an exhibit or by oral statement shown upon the record. Any such stipulation is binding upon all parties to the stipulation, and it may be treated as evidence at the hearing. The hearing officer may require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties.
3. In conducting any investigation, inquiry or hearing, no officer or employee of the Secretary of State is bound by the technical rules of evidence and no informality in any proceeding or in the manner of taking testimony may invalidate any order, decision or regulation made, approved or confirmed by the hearing officer. The Nevada Rules of Civil Procedure do not apply to hearings. Rules of evidence before the courts of Nevada may be generally followed, but may be relaxed in the discretion of the hearing officer if deviation from the technical rules of evidence will aid in ascertaining the facts. Any evidence offered at a hearing must be material and relevant to the issues of the hearing. The hearing officer may exclude inadmissible, incompetent, repetitious or irrelevant evidence, or order that the presentation of that evidence be discontinued. When objection is made to the admissibility of evidence, such evidence may be received subject to later ruling by the hearing officer. Parties objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered. Formal exceptions to rulings are unnecessary and need not be taken.
4. The hearing officer may take official notice of judicially cognizable facts and of recognized technical facts within the hearing officer's specialized knowledge, including the following matters:
 - a. Rules, regulations, official reports, decisions, and orders of the Secretary of State and any regulatory agency of the State of Nevada.
 - b. Contents of decisions, orders, standards, or records of the Secretary of State.
 - c. Matters of common knowledge and technical facts of established character.
 - d. Official documents, if pertinent, when properly introduced into the record of formal proceedings by reference.

Section 14

1. Except as otherwise provided in this subsection, the hearing officer may issue a subpoena requiring the production of books and papers or the attendance of a witness from any place in the State to the place designated for a hearing for the purpose of taking testimony before the hearing officer. Such a subpoena must not compel the production of books or papers that contain individually identifiable health information.

2. A party desiring the hearing officer to issue a subpoena must submit an application in writing to the hearing officer stating the reasons why a subpoena is requested.

3. The hearing officer may require that a subpoena requested by a party for the production of books, waybills, papers, accounts or other documents be issued only after the submission of an application in writing, which specifies as clearly as may be, the books, waybills, papers, accounts or other documents desired.

4. The hearing officer, upon receipt of an application for a subpoena, shall:

(a) Grant the application and issue the subpoena;

(b) Deny the application; or

(c) Schedule a hearing to decide whether to grant or deny the application.

5. All costs incident to a subpoena issued at the request of a respondent must be paid by the person, and the hearing officer may demand payment of the costs before the issuance of a subpoena.

Section 15

1. The hearing officer shall issue a final decision in writing, and it must include findings of fact and conclusions of law, separately stated.

2. Decisions must be rendered within 30 days of the completion of the hearing.

3. A proceeding stands submitted for decision by the hearing officer after the taking of evidence or the filing of briefs or the presentation of such oral argument as may have been permitted by the hearing officer.

4. Decisions of the hearing officer will be served by sending a copy by certified mail to the parties of record or their representatives or by personal service thereof. Additional copies of orders may be obtained upon written request.

Section 16

The hearing officer will cause a record to be made of all hearings, in accordance with NRS 233B.121. Parties desiring transcription of a recording may obtain them from the Office of the Secretary of State upon payment of the fees fixed for them.

CEASE AND DESIST ORDER

Section 17

1. If a person engages in an activity in violation of the provisions of this chapter or chapter 240A of NRS or an order of the Secretary of State, the Secretary of State may issue an order to the person directing the person to cease and desist from engaging in the activity.
2. The order to cease and desist must be in writing and must state that, in the opinion of the Secretary of State, the person has engaged in an activity:
 - a. For which the person has not registered as required by this chapter or chapter 240A of NRS; or
 - b. In a manner that violates the provisions of this chapter or chapter 240A of NRS or an order of the Secretary of State.
3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by this chapter or chapter 240A of NRS after receiving the order.

IMMUNITY FROM CIVIL LIABILITY

Section 18

1. A person who provides a governmental entity, officer or employee with any information relating to a contested case is immune from any civil liability for providing that information if the person acted in good faith and without malicious intent.
2. A governmental entity, officer or employee is immune from any civil liability for:
 - a. Any decision or action taken in good faith and without malicious intent in carrying out the provisions of this chapter or chapter 240A of NRS or any law or regulation governing occupational licensing; or
 - b. Communicating or cooperating with or providing any documents or other information to any other governmental entity, officer or employee conducting an investigation, disciplinary proceeding or civil or criminal prosecution.

CONFIDENTIALITY OF EXAMINATION OR INVESTIGATION

Section 19

Any information obtained during the course of an examination or investigation conducted pursuant to this chapter or chapter 240A of NRS is confidential and must not be available for public inspection or copying, or divulged to any person, except:

1. To the Attorney General.
2. To any state or federal regulatory agency.
3. To a person authorized to receive the information by a court of competent jurisdiction.
4. To a law enforcement official.
5. An order issued by the Secretary of State pursuant to NRS 240A.

6. In connection with an enforcement action brought pursuant to this chapter, chapter 240A of NRS or other law or regulation after a final decision is rendered by a hearing officer.

PROHIBITED ACTS

Section 20

Prohibited acts by registrant:

A registrant may not impede or otherwise interfere with an investigation of the Secretary of State by:

1. Failing to comply with a request by the Secretary of State to provide information or documents;
2. Supplying false or misleading information to an investigator or any other officer or agent of the Secretary of State; or
3. Concealing any facts or documents relating to the business of the registrant.