

LCB File No. R190-03

**PROPOSED REGULATION OF THE
STATE CONTRACTORS' BOARD**

NOTICE OF INTENT TO ACT UPON A REGULATION

**Notice of Workshop and Hearing for the Adoption, Amendment or Repeal of Regulations
Of
The State of Nevada Contractors' Board**

The State of Nevada Contractors' Board ("Board") will hold a workshop and public hearing on Wednesday, December 3, 2003. The workshop will begin at 2:00 p.m. and the hearing will commence immediately following the workshop. The workshop and hearing will be video-conferenced between the Board's Henderson Office located at 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074 and the Reno Office located at 9670 Gateway Drive, Reno, Nevada 89521. The purpose of the workshop and hearing is to receive comments from all interested persons regarding the adoption, amendment or repeal of regulations that pertain to Chapter 624 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.060 and 233B.0603:

1. The need for and purpose of the proposed regulation or amendment.

The purpose of the proposed regulation is to amend Chapter 624 of the Nevada Administrative Code to clarify certain provisions regarding the residential recovery fund and the disciplinary hearing process.

2. Either the terms or the substance of the regulations to be adopted, amended or repealed or a description of the subjects and issues involved.

The proposed regulation clarifies the manner in which residential recovery fund claims must be completed and changes certain provisions of the rules of practice for disciplinary matters before the Board. A copy of the proposed regulation may be obtained by writing to the Board's offices at 9670 Gateway Drive, Reno, Nevada 89521.

3. The estimated economic effect of this proposed regulation on the business which it is to regulate and on the public.

(a) Adverse and beneficial effects.

There should be minimal economic impact on the industry.

(b) Both immediate and long-term effects.

Minimal.

4. The estimated cost to the Agency for enforcement of the proposed regulation.

Minimal.

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary.

The proposed regulation does not overlap or duplicate any regulation of other state or local governmental entities.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

Does not apply.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

Does not apply.

8. Whether proposed regulation establishes a new fee or increases an existing fee.

Does not apply.

Persons wishing to comment upon the proposed action of the Board may appear at the scheduled public workshop and hearing or may address their comments, data, views or arguments, in written form to the Executive Officer of the Nevada State Contractors' Board, 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074 or in Reno at 9670 Gateway Drive, Suite 100, Reno, Nevada 89521. Written submissions must be received by the Board on or before Wednesday, November 26, 2003. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted, amended or repealed will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notices and the regulation to be adopted will be available at the State Contractors' Board, 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074 and 9670 Gateway Drive, Suite 100, Reno, Nevada 89521. In all counties in which an office of the Board is not maintained, a copy of this notice and the text of the proposed regulation will also be available for public inspection and copying at the main public library during business hours. This notice and the text of the proposed regulation will be available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the Board, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice has been mailed to all persons on the agency's mailing list of administrative regulations and posted at the following locations:

Washoe County Court House
Washoe County Library
Reno City Hall
Las Vegas City Hall
Sawyer State Building
Clark County Library
Offices of the State Contractors' Board in Reno and Henderson

LCB File No. R190-03

**PROPOSED REGULATION OF THE
STATE CONTRACTORS' BOARD**

**DISCIPLINARY ACTION AND PRACTICE BEFORE THE BOARD
PROPOSED CHANGES
NAC 624.6975 THROUGH NAC 624.7296**

NAC 624.6975 Definitions. (NRS 624.100) As used in NAC 624.6975 to 624.7296, inclusive, unless the context otherwise requires, the words and terms defined in NAC 624.6978 to 624.6987, inclusive, have the meanings ascribed to them in those sections.

NAC 624.6976 "Board" defined (NRS 624.100, 624.010, 624.140(2) and 624.170) "The Board means the State Contractors Board, a hearing officer designated by the State Contractors Board or any member of the State Contractors Board designated to take testimony and proofs concerning matters within the jurisdiction of the Board.

NAC 624.6978 "Complaint" defined. (NRS 624.100) "Complaint" means a document issued by the executive officer of the board to a respondent that includes a short and plain statement alleging a violation of a provision of this chapter or chapter 624 of NRS.

NAC 624.6981 "Contested case" defined. (NRS 624.100) "Contested case" has the meaning ascribed to it in NRS 233B.032.

NAC 624.6984 "Notice of hearing" defined. (NRS 624.100) "Notice of hearing" means a document that includes the information required by NRS 233B.121.

NAC 624.6987 "Respondent" defined. (NRS 624.100) "Respondent" means a licensee or an applicant for a contractor's license who is charged in a complaint with a violation of the provisions of this chapter or chapter 624 of NRS.

NAC 624.699 Receipt of written documents by board. (NRS 624.100) A written document shall be deemed received by the board if the document is:

1. Filed at the office of the board in Henderson, Nevada, or Reno, Nevada, and addressed to the executive officer of the board; or
2. Presented to the board at a hearing.

NAC 624.700 Allegations against licensees; investigations; possible actions. (NRS 624.100, 624.341)

1. Any aggrieved person may file with the board an allegation against any licensee. The allegation must:

- (a) Be written and signed;
- (b) Describe the specific grievance; and
- (c) Include any related documentation.

2. If the board finds that an investigation is necessary, the board's staff shall commence the investigation within 10 days after the date the allegation was filed.

3. If it appears from the investigation that a licensee may have violated the provisions of this chapter or chapter 624 of NRS, the executive officer may:

(a) Request the licensee to take appropriate corrective action~~;~~ *or*

(b) Request the licensee to meet informally with the board's staff and the complainant; ~~and~~
to resolve the issue or

(c) Require the licensee to appear before the board and show cause why disciplinary action should not be taken against him.

NAC 624.710 Notice of address change; probation in lieu of immediate suspension or revocation of license. (NRS 624.100)

1. The address of an applicant or licensee which is on file with the board shall be deemed to be his correct address. An applicant or licensee shall provide to the board, within 30 days, written notice of any change of his address.

2. If the board has grounds to suspend or revoke a contractor's license or otherwise discipline a contractor, the board may place him on probation until he completes his existing contracts and may thereafter suspend or revoke his license or otherwise discipline him.

NAC 624.713 Notice of contemplated action: Contents; response. (NRS 624.100, 624.335)

1. A notice that the board provides to a licensee pursuant to NAC 624.7256 will include:

(a) A copy of the complaint;

(b) The date by which the licensee is required to submit an answer or responsive pleading and any supporting documents to the board;

(c) A statement that the licensee is entitled to a hearing only if he complies with the provisions set forth in paragraph (b); and

(d) A statement that the failure of the licensee to comply with the provisions of subsection 2 may cause the board to enter a default order against the licensee.

2. The answer required by paragraph (b) of subsection 1 must be in writing, signed by the respondent or his representative, and include a specific response to each allegation in the complaint. The response must admit or deny the allegation, or state that the respondent has insufficient information to admit or deny the allegation.

NAC 624.716 Notice of contemplated action: Hearing; default order; request for reconsideration. (NRS 624.100)

1. If a licensee receives a notice from the board pursuant to NAC 624.7256, the licensee is entitled to a hearing only if he complies with the provisions of paragraph (b) of subsection 1 of NAC 624.713. If the licensee fails to comply with those provisions, the board will hold a hearing to determine whether it will enter a default order against the licensee.

2. The board may consider at the hearing:

(a) The complaint and any amended complaints provided to the licensee;

(b) Any notices provided to the licensee pursuant to NAC 624.7256;

(c) Any communication between the board and the licensee; and

(d) Any other evidence relating to the allegations set forth in the complaint or amended complaints.

3. The board may:

- (a) Include evidence presented at the hearing in its findings of fact and conclusions of law; and
 - (b) Enter a default order against the licensee.
4. If the board enters a default order against the licensee, the board will:
- (a) Send to the licensee by certified mail, return receipt requested, a copy of the default order, including any findings of fact and conclusions of law, not later than 10 days after the board enters its order; and
 - (b) Take such disciplinary action against the licensee as it deems appropriate.
5. A licensee against whom a default order is entered may submit to the board a written request for reconsideration of the order not later than 15 days after he receives a copy of the order. The written request must set forth the reasons for reconsideration by the board.
6. The **{board} Executive Officer** will review the request to determine whether there is good cause for reconsideration of the order. If the **{board} Executive Officer** determines that good cause for reconsideration exists, the board will schedule a hearing and notify the licensee, in writing, of the time and place of the hearing.

NAC 624.720 Notice of impaired financial responsibility or violation of law. (NRS 624.100) If the board believes that a licensee's financial responsibility is impaired or that he is in violation of chapter 624 of NRS or this chapter, the board will so notify the licensee.

NAC 624.725 Contents of administrative citation. (NRS 624.361) A written citation issued pursuant to NRS 624.341 must include, to the extent applicable:

1. The name and last known business or residential address of the licensee or applicant for a contractor's license;
2. A numbered identification of the licensee or applicant, including, without limitation, the social security number of the licensee or applicant, or the driver's license number of the licensee or applicant, including the name of the state which issued that driver's license;
3. The date on which the citation is issued;
4. The number of the citation;
5. A list of the sections of this chapter or chapter 624 of NRS which the licensee or applicant is alleged to have violated and a description of the alleged violation;
6. Corrective actions, if any, ordered against the licensee or applicant;
7. Administrative fines, if any, to be assessed against the licensee or applicant;
8. The reimbursement costs, if any, which the licensee or applicant is ordered to pay to cover the costs of any investigation;
9. The date by which the licensee or applicant must complete any corrective actions ordered;
10. The date by which the licensee or applicant must pay any administrative fines or reimbursement of investigative costs;
11. A description of the manner in which the licensee or applicant may contest the citation, including, without limitation, the period during which the licensee or applicant may contest the citation and the consequences of failing to contest the citation timely;
12. The signature of the person on whom the citation is served;
13. The signature of the investigator of the board who conducted the investigation against the licensee or applicant;
14. The signature of the supervisor of that investigator;
15. The signature of the executive officer or his designee; and

16. Any other information required by the board.

NAC 624.7253 Liberal construction of provisions governing practices in contested cases; deviation from provisions. (NRS 624.100)

1. The provisions of NAC 624.6975 to 624.7296, inclusive, govern practices in any contested case before the board and the board will liberally construe those provisions to determine all matters before the board in a just, speedy and economical manner.

2. The board may allow a deviation from the provisions of NAC 624.6975 to 624.7296, inclusive, if the board determines that the deviation would not have a material adverse effect on the substantial interests of the parties and good cause for the deviation exists. If the board allows such a deviation, it will include in the record the deviation and the reasons for the deviation.

NAC 624.7256 Time and place of hearing; notice; time for objection. (NRS 624.100)

1. The board will:

(a) Set the date, time and place of a hearing for a contested case; and

(b) At least 21 days before the hearing, send a copy of the complaint and notice of hearing by certified mail, return receipt requested, to the respondent at the address on file with the board, or by personal service in the manner provided in NRS for service in civil actions. The complaint and notice of hearing may be included in the same document. A proof of service must be attached to the original of any document that is served by mail.

2. There is a rebuttable presumption that a complaint and notice of hearing has been received by a respondent 10 days after the date the complaint and notice of hearing is deposited with the United States Postal System.

3. An objection that any notice required by NAC 624.6975 to 624.7296, inclusive, was not provided in the manner set forth in those provisions will be deemed waived unless the objection is raised by the respondent before the introduction of any evidence into the record at a hearing of the board.

NAC 624.7259 Addition or dismissal of cause for disciplinary action; amendment or withdrawal of complaint by board. (NRS 624.100)

1. The executive officer of the board may add or dismiss a cause for disciplinary action against a respondent before the board holds a hearing on that cause of action.

2. The board *or Executive Officer* may amend a complaint at any time. Notice of an amended complaint must be given in the same manner as a notice of an original complaint. The board will grant a continuance if an amendment materially alters the complaint in such a way that the respondent will be unable to prepare his case in a timely manner.

3. The executive officer of the board may withdraw a complaint at any time before the board holds a hearing on the complaint. After the hearing is commenced, only the board may withdraw a complaint.

NAC 624.7263 Request for continuance; granting of continuance. (NRS 624.100)

1. A respondent or his representative may request a continuance of a hearing upon a showing of good cause. A request for a continuance must be submitted to the executive officer of the board in writing on a form prescribed by the board. The request must be received by the executive officer at least 10 days before the hearing.

2. A request for a continuance must specify the reasons constituting good cause for granting the continuance. A request for a continuance that is received less than 10 days before the hearing must indicate that the request is the result of an emergency which arose less than 10 days before the hearing.

3. The executive officer of the board may grant a continuance before a hearing is held. The board may grant a continuance at any time after the hearing is commenced.

NAC 624.7266 Form of papers submitted to board. (NRS 624.100) All papers submitted to the board by a party in a contested case must be typewritten on one side only, on white paper that is 8 1/2 by 11 inches in size. The first page of each document must include the names of the parties in the contested case and the number, if any, assigned to the case by the board.

NAC 624.7269 Consolidation of contested cases. (NRS 624.100) The board may consolidate two or more contested cases if the board determines that the issues are substantially similar and the interests of the parties will not be prejudiced by the consolidation. The presiding officer of the hearing will determine the order of procedure at a consolidated hearing.

NAC 624.7273 Motions: Contents; opposition; written reply; decision by board. (NRS 624.100)

1. A motion, unless made at a hearing, must be made in writing.
2. A written motion must set forth the nature of the relief requested and the grounds for the relief.
3. A party, *except the Board* who wishes to oppose a motion must serve and file a written response to the motion not later than 10 days after his receipt of the motion.
4. The moving party may serve and file a written reply only if an opposition to the motion has been served and filed.
5. The board may issue a decision on a motion without oral argument.

NAC 624.7276 Subpoenas: Application; issuance and service. (NRS 624.100)

1. A party may apply to the board for the issuance of a subpoena pursuant to NRS 624.170. An application for the issuance of a subpoena must:

- (a) Be submitted in writing;
 - (b) Include a statement of the facts that demonstrate the reasons why the subpoena is necessary; and
 - (c) Be received by the board at least 10 days before the hearing for which the subpoena is issued.
2. If the board issues a subpoena, the party who requests the subpoena shall:
- (a) Serve a copy of the subpoena on all other parties in the manner prescribed by Rule 45(c) of the Nevada Rules of Civil Procedure;
 - (b) File proof of such service with the board; and
 - (c) Pay the costs related to the issuance and service of the subpoena. The board may require payment of the costs before the issuance of the subpoena.

NAC 624.7279 Representation of parties; rules of conduct; provision of information to attorney; withdrawal of attorney. (NRS 624.100)

1. Any party who appears at a hearing may represent himself or may be represented by an attorney licensed to practice law in this state.

2. Each person who appears at a hearing shall comply with the standards of ethical and courteous conduct required in the courts of this state. If a person fails to comply with those standards of conduct, the board may:

- (a) Exclude the person or his representative from the hearing; or
- (b) Terminate the hearing.

3. ~~3.]~~ If a party is represented by an attorney, the board will provide to the attorney any notice, document or other paper that the board is required to provide to the party

4. The respondent shall provide the board staff, ten (10) calendar days before hearing, any and all documents to be presented as evidence or exhibits at the hearing

5. The respondent shall provide the Board's staff at least (10) calendar days before the hearing with copies of all documents which the respondent intends to introduce as evidence at the hearing.

6. The Board may, in its sole discretion, refuse to consider any documents or exhibits which have not been previously provided to the Board's staff at least ten (10) calendar days in advance of the hearing.

7. 4] An attorney may withdraw from representing a party if he provides written notice of his withdrawal to the board and the party whom he represented.

NAC 624.7283 Failure to appear; presentation of evidence. (NRS 624.100)

1. The failure of a party to appear at a hearing shall be deemed a waiver of the party's right to present evidence. After presentation to the board of an offer of proof that the absent party was given proper notice, and upon a determination by the board that proper notice was given to the absent party, the board may hear evidence without the participation of the absent party and may make its decision based on such evidence.

2. The board may limit the time each party is allowed to present evidence.

NAC 624.7286 Order of proceedings. (NRS 624.100)

1. Except as otherwise provided in this section, a hearing in a contested case will be conducted in the following order:

- (a) The hearing will be called to order and the parties will be introduced on the record.
- (b) The complaint, notice of hearing, ~~and~~ answer *and the Board's file relating to the complaint* may be placed in evidence.
- (c) Any preliminary motions or stipulations will be considered.
- (d) The board or its attorney will present its case.
- (e) The respondent will present his case.
- (f) If allowed by the board, rebuttal evidence and closing arguments will be presented.
- (g) The board may deliberate the case.

2. A member of the board may question a witness at any time.

3. The board may waive any provision of this section, including taking witnesses out of order, to expedite or ensure the fairness of the hearing.

NAC 624.7289 Examination of witnesses. (NRS 624.100)

1. ~~1.]~~ A party may call any other party or witness as an adverse witness. The party may question such a witness as if conducting a cross-examination.

2. All witness testimony is taken under oath at the time of the hearing.

2. A party who is surprised by the testimony of a witness, called in good faith as a witness on his behalf, may question the witness as if conducting a cross-examination.

NAC 624.7293 Petition for rehearing or reconsideration. (NRS 624.100) Except as otherwise provided by law:

1. A petition for a rehearing or reconsideration of a decision issued by the board must be served on all parties not later than 15 *calendar* days after the date of service of a copy of the decision. The petition must state the specific grounds upon which relief is requested.

2. Any responses to a petition must be served not later than 15 *calendar* days after the receipt of the petition.

3. If a respondent submits a petition for reconsideration of ~~[a decision issued by the board, the board will base its decision to grant or deny the petition only upon the evidence that was submitted to the board at a prior hearing]~~, *the Board's decision, the Executive Office will grant or deny the petition.*

4. If a respondent submits a petition for a rehearing and wishes to present new evidence, the respondent must provide to the board a statement setting forth the reasons for his failure to introduce the new evidence at the previous hearing and a detailed description of the new evidence proposed to be introduced.

5. ~~[The board may designate one of its members]~~ *The Executive Officer is designated* to review a petition for a rehearing or reconsideration. A decision concerning the petition will be made not later than 15 *calendar* days after the petition is filed with the board. If a new hearing is ordered, the decision concerning the petition will include the time, date and place of the hearing and the reasons for ordering a new hearing.

6. ~~[6. Unless a member of the board is designated to review a petition described in subsection 5, the board]~~ *The Executive Officer* will review the petition to determine whether there is good cause for a rehearing or reconsideration of its decision. If the ~~[board]~~ *Executive Officer* determines that good cause for a rehearing exists, the board will schedule a hearing and notify the respondent, in writing, of the time, date and place of the hearing.

7. *The rehearing or reconsideration shall be held within ninety (90) days from the date of approval by the Executive Officer*

8. ~~[7.]~~ The ~~[board]~~ *Executive Officer* will provide notice of its order approving or denying the petition to all parties at least 5 days before the expiration of the period for filing a petition for judicial review.

~~[8.]~~ 9 If ~~[the board orders a rehearing]~~ *a hearing is conducted*, the board may require the respondent to pay the costs of the rehearing.

NAC 624.7296 Computation of periods. (NRS 624.100) Except as otherwise provided by law, in computing periods for the purposes of carrying out the provisions of NAC 624.6975 to 624.7296, inclusive, the first day on which any act occurs that causes a period to begin to run is not counted, and the last day of the period is counted, unless the last day is a Saturday, Sunday or legal holiday. If the last day is a Saturday, Sunday or legal holiday, the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.