

**PROPOSED REGULATION OF THE
STATE BOARD OF HEALTH**

LCB File No. R077-12

August 22, 2012

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

AUTHORITY: §§1-4, 6-12 and 14-17, NRS 640D.090; §5, NRS 640D.090, 640D.110, 640D.130 and 640D.140; §13, NRS 640D.090 and 640D.150; §18, NRS 640D.090 and 640D.100.

A REGULATION relating to music therapy; providing for the licensing of persons who provide music therapy services; providing that all applications for a license to practice music therapy must be filed with the Executive Officer of the State Board of Health; prescribing additional requirements for applications for a license or for the renewal or reinstatement of such a license; establishing certain fees relating to licensure; establishing procedures governing complaints against applicants, licensees and persons who provide music therapy services without a license; providing for the discipline of licensees for certain violations; establishing procedures for the suspension or revocation of a license; establishing the procedure for appeals to the Board of decisions by the Executive Officer imposing discipline on a licensee; establishing the Music Therapy Advisory Group and providing its duties; and providing other matters properly relating thereto.

Section 1. Chapter 640D of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, “Executive Officer” means the Executive Officer of the Board.*

Sec. 3. *Except as otherwise provided in NRS 640D.080, all persons who practice music therapy in this State must be licensed pursuant to this chapter and chapter 640D of NRS.*

Sec. 4. *1. All applications submitted pursuant to this chapter must be filed with the Executive Officer.*

2. In addition to any applicable statutory requirements, an application for the issuance of a license to practice music therapy, the renewal of such a license or the reinstatement of such a license must include:

(a) The applicant's full name, including his or her first name, middle name if applicable and last name.

(b) Any other name that has been used by the applicant.

(c) The applicant's date of birth.

(d) The applicant's physical address and the applicant's mailing address if different than the physical address.

(e) A telephone number at which the applicant can be reached.

(f) A method of electronic communication, including, without limitation, an electronic mail address, a telephone number that will accept electronic mail or any other method by which the Executive Officer may communicate with the applicant other than by telephone or United States mail. The Executive Officer may exempt an applicant from the requirements of this paragraph if the applicant attests that the methods set forth in this paragraph are not feasible for him or her and acknowledges that the United States mail is the only means by which to communicate with the applicant.

(g) The certification number issued to the applicant by the Certification Board for Music Therapists or its successor organization.

(h) The status of any disciplinary action against the applicant by the Certification Board for Music Therapists or its successor organization.

(i) A statement by the applicant acknowledging the mandatory reporting requirements concerning the abuse, neglect, exploitation or isolation of an older person set forth in NRS

200.5093, the abuse, neglect, exploitation or isolation of a vulnerable person set forth in NRS 200.50935 and the abuse or neglect of a child set forth in NRS 432B.220.

(j) Any other information required by the Executive Officer to determine the applicant's identity or eligibility for licensure.

3. An application which is not complete or which does not include payment of all applicable fees must be returned to the applicant within 10 working days after receipt of the application.

4. The Executive Officer shall determine what constitutes satisfactory proof that an applicant satisfies the requirements for licensure.

5. An applicant who is certified by the Certification Board for Music Therapists or its successor organization shall be deemed to have satisfied the requirements for licensure set forth in subparagraphs (2) and (5) of paragraph (c) of subsection 1 of NRS 640D.110.

6. The Executive Officer shall determine what constitutes satisfactory proof required by paragraphs (b) and (c) of subsection 1 of NRS 640D.130 to be included with an application for renewal.

7. An applicant shall notify the Executive Officer of any change to the information contained in his or her application within 15 days after the change. The notification may be made in writing, by electronic mail or by any other method authorized by the Executive Officer. The failure of an applicant to comply with the requirements of this subsection constitutes grounds for the denial of the application or the suspension or revocation of the applicant's license.

Sec. 5. 1. The following nonrefundable fees must be paid by a licensee or an applicant for a license to practice music therapy, as applicable:

- (a) *For the issuance of a license*.....\$200
- (b) *For the renewal of a license*150
- (c) *For the late renewal of a license*20
- (d) *For the reinstatement of a license*.....200
- (e) *For the issuance of a duplicate license*.....20

2. The amount of the fees charged by the Central Repository for Nevada Records of Criminal History and the Federal Bureau of Investigation for the handling of the fingerprint cards and issuance of the reports of criminal histories must be paid by an applicant for a license to practice music therapy.

Sec. 6. 1. *If the Central Repository for Nevada Records of Criminal History determines that a background investigation of a licensee or an applicant for a license to practice music therapy cannot be completed because pertinent information is missing, the Executive Officer shall send a notice to the licensee or applicant which specifies the missing information and provides that the licensee or applicant must:*

(a) Submit the missing information to the Central Repository for Nevada Records of Criminal History within 30 days after receipt of the notice; or

(b) Submit satisfactory evidence to the Executive Officer that the missing information cannot be obtained.

2. If a background investigation cannot be completed because the licensee or applicant has been arrested or issued a citation, or has been the subject of a warrant for alleged criminal conduct, and there has been no disposition of the matter, the licensee or applicant shall:

(a) Notify the Executive Officer immediately upon the scheduling of any judicial proceeding concerning the matter; and

(b) Notify the Executive Officer immediately upon the disposition of the matter and forward to the Central Repository for Nevada Records of Criminal History evidence of the disposition of the matter as soon as it is available.

3. As used in this section, “disposition” has the meaning ascribed to it in NRS 179A.050.

Sec. 7. If a licensee or an applicant for a license to practice music therapy wishes to challenge the accuracy of the information provided by the Central Repository for Nevada Records of Criminal History, the licensee or applicant must notify the Executive Officer within 10 working days after being notified of the results of the background investigation that the licensee or applicant is challenging the accuracy of the information. Except as otherwise provided in subsection 2 of section 8 of this regulation, the Executive Officer shall give the licensee or applicant not less than 30 days after the Executive Officer receives notice of the challenge to provide satisfactory evidence to the Executive Officer that the information is incorrect before suspending the license or denying the application.

Sec. 8. The Executive Officer, upon determining that a licensee or an applicant for a license to practice music therapy has been convicted of a crime set forth in paragraph (a) of subsection 1 of NRS 449.174:

- 1. May revoke, suspend or refuse to renew the license or deny the application; or*
- 2. If the licensee or applicant has notified the Executive Officer pursuant to section 7 of this regulation that the licensee or applicant is challenging the accuracy of information provided by the Central Repository for Nevada Records of Criminal History, may suspend the license or deny the application pending the resolution of the challenge.*

Sec. 9. *A licensee whose license expires must reapply for a license in the manner prescribed by NRS 640D.110 and section 3 of this regulation.*

Sec. 10. *Any notice that is required by the provisions of this chapter or chapter 640D of NRS to be delivered by mail or electronically to a licensee or an applicant for a license to practice music therapy shall be deemed to be validly given if the notice is sent to the last address or electronic mail address that was provided to the Executive Officer by the licensee or applicant.*

Sec. 11. 1. *Upon receipt of a complaint that a person is engaging in the practice of music therapy without a license, the Executive Officer shall send a certified letter to the person about whom the complaint was made which:*

(a) Directs the person immediately to cease and desist from the practice of music therapy; and

(b) Requires the person to submit to the Executive Officer within 10 days an application for a license to engage in the practice of music therapy or satisfactory evidence that the person is not engaged in the practice of music therapy.

2. *If the person fails to submit the application or evidence required pursuant to subsection 1 timely the matter must be referred to the Office of the Attorney General and the district attorney of the county in which the alleged violation occurred for investigation and possible prosecution.*

Sec. 12. 1. *The Executive Officer shall receive a complaint against a licensee or an applicant for a license to practice music therapy from any person.*

2. *The Executive Officer shall forward each complaint to the Certification Board for Music Therapists or its successor organization for investigation of the complaint. If the*

Certification Board for Music Therapists or its successor organization refuses to investigate the complaint, the Executive Officer may conduct an investigation.

3. If, after reviewing the findings of an investigation conducted pursuant to subsection 2, the Executive Officer finds grounds for taking disciplinary action, the Executive Officer shall, after notice and hearing, issue a decision in the matter in the manner provided in section 13 of this regulation.

4. The failure of a licensee to cooperate with an investigation conducted pursuant to subsection 2 constitutes grounds for disciplinary action against the licensee.

Sec. 13. *If the Executive Officer finds grounds for taking disciplinary action against a licensee for:*

1. Habitual drunkenness or addiction to the use of a controlled substance while practicing as a music therapist, the Executive Officer shall:

(a) For a first violation, issue a decision suspending the license of the licensee for a period of 30 days.

(b) For a second or subsequent violation, issue a decision revoking the license of the licensee.

2. Allowing another person to use the license of the licensee, the Executive Officer shall:

(a) For a first violation, issue a decision imposing an administrative fine of \$500.

(b) For a second violation, issue a decision imposing an administrative fine of \$500 and suspending the license of the licensee for a period of 30 days.

(c) For a third or subsequent violation, issue a decision imposing an administrative fine of \$500 and revoking the license of the licensee.

3. *A violation of any provision of this chapter or chapter 640D of NRS, the commission of any unethical act which is contrary to the public interest or a failure to comply with the Code of Professional Practice of the Certification Board for Music Therapists or its successor organization which is not likely to and does not result in harm to or have a negative effect on a client and which is not likely to and does not compromise the ability of a client to achieve his or her highest practicable physical, mental or psychosocial well-being, the Executive Officer shall:*

(a) For a first or second violation, issue a decision imposing an administrative fine of \$25.

(b) For a third or subsequent violation, issue a decision imposing an administrative fine of \$50.

4. *A violation of any provision of this chapter or chapter 640D of NRS, the commission of any unethical act which is contrary to the public interest or a failure to comply with the Code of Professional Practice of the Certification Board for Music Therapists or its successor organization which results in not more than minimal discomfort to a client or which has the potential to compromise the physical or psychological status of a client if intervention is not provided, the Executive Officer shall:*

(a) For a first violation, issue a decision imposing an administrative fine of \$100.

(b) For a second violation, issue a decision imposing an administrative fine of \$250.

(c) For a third or subsequent violation, issue a decision imposing an administrative fine of \$300.

5. *A violation of any provision of this chapter or chapter 640D of NRS, the commission of any unethical act which is contrary to the public interest or a failure to comply with the Code of Professional Practice of the Certification Board for Music Therapists or its successor*

organization which causes actual harm to a client and results in a decline in the clinical status of the client, a physical injury that severely impacts the functional ability of the client or a psychological injury that limits substantially the major life activities of the client, or which can be predicted with substantial probability to result in the death of or serious harm to the client, the Executive Officer shall:

(a) For a first violation, issue a decision imposing an administrative fine of \$500, except that if the Executive Officer determines that the harm was intentional the Executive Officer shall issue a decision imposing an administrative fine of \$500 and revoking the license of the licensee.

(b) For a second violation, issue a decision imposing an administrative fine of \$500 and suspending the license of the licensee for a period of 30 days, except that if the Executive Officer determines that the harm was intentional the Executive Officer shall issue a decision imposing an administrative fine of \$500 and revoking the license of the licensee.

(c) For a third or subsequent violation, issue a decision imposing an administrative fine of \$500 and revoking the license of the licensee.

6. Negligence, fraud or deception in connection with the music therapy services a licensee is authorized to provide, the Executive Officer shall:

(a) For a first violation, issue a decision imposing an administrative fine of \$500, except that if, but for the fraud or deception of the licensee, the application for a license by the licensee would have been denied, the license of the licensee would have been suspended or revoked or the licensee would have been subject to disciplinary action, the Executive Officer shall issue a decision imposing such denial, suspension, revocation or disciplinary action as would otherwise have been imposed.

(b) For a second violation, issue a decision imposing an administrative fine of \$500 and suspending the license of the licensee for a period of 30 days, except that if, but for the fraud or deception of the licensee, the application for a license by the licensee would have been denied, the license of the licensee would have been suspended or revoked or the licensee would have been subject to disciplinary action, the Executive Officer shall issue a decision imposing such denial, suspension, revocation or disciplinary action as would otherwise have been imposed.

(c) For a third or subsequent violation, issue a decision imposing an administrative fine of \$500 and revoking the license of the licensee.

Sec. 14. *A licensee shall pay all costs incurred in connection with any disciplinary action taken against the licensee.*

Sec. 15. 1. *A person whose license is suspended shall comply with the terms of the suspension that are specified by the Executive Officer, including, without limitation:*

(a) Informing the Executive Officer of the name and address of his or her employer or, if self-employed, the name and address of his or her business.

(b) Submitting to the Executive Officer copies of evaluations of his or her performance by his or her employer.

(c) Undergoing counseling with a qualified professional counselor.

(d) Undergoing treatment for addiction, if the suspension was related to the abuse of alcohol or a controlled substance or some other condition that may be assisted with treatment, by a qualified health care provider.

(e) Entering into a contract to obtain alcohol or drug rehabilitation services if the suspension was related to the abuse of alcohol or a controlled substance.

- (f) Submitting to the Executive Officer copies of reports prepared by a qualified professional counselor or qualified health care provider.*
- (g) Submitting to the Executive Officer self-evaluation reports.*
- (h) Submitting to the Executive Officer copies of the results of random screenings for alcohol or controlled substances.*
- (i) Meeting with the Executive Officer or a designated representative of the Executive Officer at specified intervals.*
- (j) Working under supervision as approved by the Executive Officer or a designated representative of the Executive Officer.*
- (k) Completing successfully any educational courses required by the Executive Officer.*
- (l) Submitting to the Executive Officer a report from a qualified professional counselor or qualified health care provider which sets forth that, in the opinion of the professional counselor or health care provider, the music therapist presents no risk of harm to his or her clients or the general public.*
- (m) Completing successfully a rehabilitation program specified by the Executive Officer.*
- 2. The Executive Officer may terminate the suspension of the license at any time.*
 - 3. If at any time the Executive Officer determines that the licensee has violated the terms of the suspension or that the progress and performance of the licensee under the suspension are unsatisfactory, the Executive Officer may extend the period of the suspension, modify the terms of the suspension or revoke the license of the licensee.*
 - 4. The licensee shall pay all costs incurred by the licensee to comply with the terms of the suspension of his or her license which are specified by the Executive Officer pursuant to this section.*

Sec. 16. 1. *The Executive Officer shall, in each order of revocation, prescribe a period during which a licensee may not apply for the reinstatement of his or her license. The period must not be less than 1 year or more than 10 years.*

2. An applicant for the reinstatement of a license must:

- (a) Submit an application for reinstatement on a form prescribed by the Executive Officer;*
- (b) Satisfy all the requirements for renewal of a license;*
- (c) Attest that he or she has not, during the period of revocation of his or her license, violated any state or federal statute or regulation governing the practice of music therapy; and*
- (d) Attest that there is no disciplinary action pending against the licensee before the Certification Board for Music Therapists or its successor organization.*

3. The Executive Officer may designate requirements in addition to the requirements of subsection 2 that must be satisfied before an applicant will be considered for reinstatement of his or her license, including, without limitation, completion of additional courses or programs if the applicant's license has been revoked for more than 2 years.

4. The Executive Officer:

- (a) Shall review an application for the reinstatement of a license to determine whether the application satisfies the requirements of this section; and*
- (b) May deny an application for the reinstatement of a license which the Executive Officer determines does not satisfy those requirements.*

5. In considering an application for the reinstatement of a license which has been revoked, the Executive Officer shall evaluate:

- (a) The severity of the act which resulted in the revocation of the license;*
- (b) The conduct of the applicant after the revocation of the license;*

(c) The lapse of time since the revocation of the license;

(d) The degree of compliance by the applicant with any conditions the Executive Officer specified as a prerequisite for the reinstatement of the license;

*(e) The degree of rehabilitation attained by the applicant as evidenced by statements to the Executive Officer from qualified people who have professional knowledge of the applicant;
and*

(f) The truthfulness of the attestations made by the applicant pursuant to subsection 2.

6. After completing his or her evaluation, the Executive Officer shall deny or grant the reinstatement of the license.

7. If the Executive Officer takes any disciplinary action against a licensee after the reinstatement of his or her license, the first such disciplinary action shall be deemed to be the licensee's first offense.

Sec. 17. 1. *If a person is aggrieved by a decision of the Executive Officer pursuant to this chapter or chapter 640D of NRS relating to the denial, suspension, refusal to renew or revocation of a license, the imposition of an administrative sanction or any other disciplinary action, the aggrieved person may file an appeal of the decision with the Board.*

2. In any appeal filed with the Board pursuant to subsection 1, unless otherwise provided by the Board:

(a) The procedures set forth in NAC 439.300 to 439.395, inclusive, apply; and

(b) For the purposes of NAC 439.300 to 439.395, the decision of the Executive Officer that is the basis of the appeal shall be deemed to be the decision of the Health Division of the Department of Health and Human Services.

3. *As used in this section “disciplinary action” has the meaning ascribed to it in NAC 439.304.*

Sec. 18. 1. *The Music Therapy Advisory Group authorized pursuant to NRS 640D.100 is hereby established.*

2. *The Advisory Group consists of the following five members appointed by the Board:*

(a) *Three members who are licensees;*

(b) *One member who is a representative of the American Music Therapy Association or its successor organization; and*

(c) *One member who is a representative of the Certification Board for Music Therapists or its successor organization.*

3. *The term of each member of the Advisory Group is 4 years. A member may be reappointed.*

4. *If a vacancy occurs in the membership of the Advisory Group, the Board will appoint a qualified person to fill the vacancy.*

5. *The Advisory Group shall meet at least once per year or as otherwise called by the Chair or at the direction of the Board or the Executive Officer.*

6. *To the extent practicable and allowed by law, the Advisory Group shall conduct its meetings by telephone, videoconference or other electronic means.*

7. *At the first meeting each year, the members of the Advisory Group shall select a Chair from among the members. The Chair serves as the liaison to the Board and the Executive Officer.*

8. *The Executive Officer shall provide administrative assistance to the Advisory Group.*

9. A majority of the members of the Advisory Group constitutes a quorum for the transaction of business. A member is deemed present at a meeting if the member is available to participate at the meeting by telephone, videoconference or other electronic means.

10. The Advisory Group may:

(a) Facilitate the development of materials which may be used to educate the public concerning music therapy;

(b) Facilitate the exchange of information between licensees, the American Music Therapy Organization or its successor organization, the Certification Board for Music Therapists or its successor organization, the Board and the Executive Officer; and

(c) To provide recommendations to the Board and the Executive Officer concerning regulations or practices that affect licensees, review disciplinary actions, appeals, denials or revocations of licenses and terms of the suspension or reinstatement of licenses.

11. The Advisory Group shall advise the Board and the Executive Officer on issues relating to music therapy if requested.