

PROPOSED REGULATION OF THE BOARD OF PSYCHOLOGICAL EXAMINERS

LCB File No. R103-12

NEVADA ADMINISTRATIVE CODE CHAPTER 641

~~[NAC 641.005 “Board” defined. (NRS 641.100) “Board” means the Board of Psychological Examiners.]~~

~~[NAC 641.009 “National examination” defined. (NRS 641.100) “National examination” has the meaning ascribed to it in NRS 641.0243.]~~

~~[NAC 641.015 “Psychologist” defined. (NRS 641.100) “Psychologist” has the meaning ascribed to it in NRS 641.027.]~~

NAC 641.112 State examination of applicant for licensure as a psychologist: Content; review of failed examination; reevaluation; fee; prohibited acts. (NRS 641.100, 641.110, 641.180)

1. The Board will administer a state examination to each applicant for a license as a psychologist.
2. The state examination will consist of questions addressing the practice of professional psychology, including, without limitation, federal and state laws, ethical principles and codes of professional conduct relevant to the practice of psychology in this State. At least 30 days before the state examination, the Board will furnish a description of the content to be covered in the state examination to each applicant.

~~[3.— An applicant who fails the state examination may review his or her state examination upon written request submitted to the Board. The written request must be submitted within 10 days after receiving written notice of the failure.~~

~~[4.— An applicant who fails the state examination may submit a written request to the Board for one reevaluation of his or her state examination within 10 days after receiving written notice of the failure. The Board or its designee may grant or deny an applicant’s request for reevaluation. The Board or its designee will give written notice of its decision within 20 days after receiving the written request for reevaluation. If the request for reevaluation is granted, the Board or its designee will issue a final evaluation of the applicant’s state examination within 60 days after notifying the applicant of its decision to undertake the reevaluation.~~

~~5.]~~ **3.** The fee for the state examination must be paid before the state examination is administered. A fee must be paid each time the applicant takes the state examination.

~~6.]~~ **4.** An applicant shall not:

- (a) Remove any notes taken during the state examination;
- (b) Record the state examination by electronic or other means; or
- (c) Engage in any other conduct that results in the disclosure of the contents of the state examination.

~~[NAC 641.120 National examination. (NRS 641.100, 641.180)~~

- ~~1. The national examination constitutes one portion of the examination for licensure as a psychologist.~~
- ~~2. An applicant for a license may take the national examination after the applicant has graduated with a doctoral degree from:
 - ~~(a) A training program which is accredited by the American Psychological Association or a program which meets the requirements of NAC 641.061; or~~
 - ~~(b) An institution which meets the requirements of subsection 3 of NAC 641.050.]~~~~

NAC 641.1365 Continuing education: Hours awarded for certain activities. ([NRS 641.100](#), [641.220](#)) The Board will award not more than 8 hours of continuing education within a 2-year period to any person licensed *or certified* by the Board who is appointed by the Board to:

1. Conduct or develop an examination; or
2. Serve on a committee approved by the Board.

NAC 641.152 Psychological assistants: Supervision; assignment to specialist. ([NRS 641.100](#), [641.170](#))

1. A psychological assistant may work only under the supervision and control of a psychologist who satisfies the requirements of [NAC 641.1563](#).
2. The supervisor of a psychological assistant is responsible for the adequate supervision of the psychological assistant. For specific skill training, the supervisor may assign the psychological assistant to a specialist, including, without limitation, a person who is licensed in this State as a psychiatrist, *licensed behavior analyst*, social worker or marriage and family therapist or a person who is licensed or certified in this State as an alcohol and drug abuse counselor. The specialist must have clearly established practice and teaching skills that are demonstrable to the satisfaction of the Board. Not more than one-quarter of the number of supervised hours needed to fulfill the required year of postdoctoral experience may be accrued under the direction of specialists.
3. A psychological assistant must be:
 - (a) An employee of the supervisor; or
 - (b) Subject to the control and direction of a supervisor who is affiliated with the same agency or institution at which the psychological assistant works.

NAC 641.170 Requests for Board to adopt, file, amend or repeal regulations. (NRS 641.100) Any interested person or agency may request that the Board adopt, file, amend or repeal any of these regulations by ~~[letter addressed to the President or Secretary-Treasurer of the Board]~~ *filing a request for the adoption, amendment or repeal of a regulation.*

- 2. A request for the adoption, amendment or repeal of a regulation must be in writing and shall be written on the forms provided by the Board or otherwise prepared substantially in the format of the Board's forms provided for this purpose.*
- 3. The following procedure applies to such a request:*
 - (a) Except as otherwise provided in subsection b, upon receiving a request for the adoption, amendment or repeal of a regulation, the Board will place the matter on the agenda for discussion at the next regularly scheduled meeting of the Board.*

(b) If the request is received after the deadline to add items to the next regularly scheduled meeting of the Board or if there is no regularly scheduled meeting of the Board which would allow the Board to decide the request within thirty (30) days as required by NRS 233B.100, the Board will schedule a special meeting to consider this request and the request will be placed on the agenda for discussion at the special meeting.

(c) The Board will then hear the request at the meeting for which it has been agendized and either grant or deny the request.

(d) If the Board denies the request, the requestor will be notified pursuant to NRS 233B.100, and no further action will be taken.

(e) If the Board grants the request, the Board will direct the Executive Director to begin the procedures necessary for adoption of the regulations.

(f) In situations where circumstances may warrant more immediate action than waiting for the next regularly scheduled meeting, the Board President or his or her designee, may call a special meeting to hear the request.

(g) At the time the Board hears the request:

(i) the requester may provide evidence, including documents and testimony to the Board in support of the Requester's proposed action,

(ii) other interested parties may provide evidence, including documents and testimony to the Board in support of the interested party's position on the Requester's proposed action,

(iii) the Board may request legal advice or guidance regarding the Requester's proposed action from its legal counsel, and

(iv) the Board shall deliberate and vote on whether or not to grant the request.

~~[NAC 641.172—Informal disposition of complaints. (NRS 641.100)—If, after investigating a complaint, the Attorney General determines that the complaint does not justify or require formal disciplinary proceedings, the President or a person designated by the President may consider and resolve the complaint through informal conferences, meetings, agreements or other informal action as may be appropriate under the circumstances. Such informal action is held without prejudice to the Board, and formal proceedings may be instituted subsequently by the Board, the President or a person designated by the President for the same or related matters. If new evidence is discovered, the matter may, at any time, be reopened and investigated further if the circumstances so warrant.]~~

~~[NAC 641.174—Answer to formal complaint; motions. (NRS 641.100)~~

~~1.—An answer to a formal complaint reported to the Board by the Attorney General must be filed with the Board and service thereof made on parties of record within 15 days after service of the complaint, unless the Board for good cause extends the time by which the answer must be filed. Any matter that is alleged as an affirmative defense must be separately stated and numbered.~~

~~2.—A respondent who fails to answer a complaint in a timely manner pursuant to subsection 1 shall be deemed to have denied the allegations set forth in the complaint generally and, unless otherwise allowed by the Board, is precluded from establishing any affirmative defense at the hearing. The Board will proceed with the matter based solely upon the issues set forth in the complaint unless the matter is continued by the Board.~~

- ~~3.— Any motion upon the complaint must be filed before the answer is due. If it is not so filed, the objection must be raised in the answer.~~
- ~~4.— If a motion is directed toward an answer, the motion must be filed within 5 days after service of the answer.~~
- ~~5.— All other motions must be timely filed.]~~

NAC 641.175 Representation by attorney; conduct at hearing. (NRS 641.100)

- ~~1. [A respondent may be represented by an attorney licensed to practice law in this State. If the attorney is not licensed to practice law in this State, he or she must be associated with an attorney who is so licensed. The respondent may appear on his or her own behalf.] All persons, witnesses, licensees, and/or certificate holders appearing in a hearing before the Board shall conform to the standards of ethical and courteous conduct required in the courts of this State.~~
- ~~2. [An attorney appearing in a hearing before the Board shall ensure that his or her conduct complies with the Nevada Rules of Professional Conduct.] If a person, witness, licensee, and/or certificate holder fails to conform his or her conduct to the standards required by this section, the Board may:~~
 - ~~(a) Limit the evidence presented by that person, witness, licensee, and/or certificate holder;~~
 - ~~or~~
 - ~~(b) Exclude the person, witness, licensee, and/or certificate holder from the hearing.~~
- ~~3. [All persons appearing in a hearing before the Board shall conform to the standards of ethical and courteous conduct required in the courts of this State.~~
- ~~4.— If a person fails to conform his or her conduct to the standards required by this section, the Board may:~~
 - ~~(a) Limit the evidence presented by that person; or~~
 - ~~(b) Exclude the person or his or her representative from the hearing.~~
- ~~5.] Any action taken by the Board pursuant to this section and the specific reasons for that action will be stated on the record.~~
- ~~[6.— The respondent shall pay the cost for representation by his or her attorney at a hearing before the Board.]~~

~~[NAC 641.176 — Withdrawal of attorney. (NRS 641.100) — An attorney may withdraw from representation of a respondent upon notice to the respondent and the Board. The notice must include the reason for the requested withdrawal. The Board may deny permission to withdraw if the withdrawal would unreasonably delay the hearing.]~~

~~[NAC 641.177 — Disciplinary hearings: Procedure; continuances. (NRS 641.100, 641.280)~~

- ~~1.— The Board will convene a disciplinary hearing at the time and place specified in the complaint and notice of hearing. The person presiding at the hearing may grant a continuance only upon:~~
 - ~~(a) A joint stipulation of the parties;~~
 - ~~(b) The existence of an emergency condition; or~~
 - ~~(c) A written request by a party filed at least 5 days before the date of the hearing and a showing by the party of good cause for the continuance. For the purpose of this paragraph, “good cause” must be narrowly construed.~~
- ~~2.— A party requesting a continuance must appear on the date of the hearing and be prepared to proceed unless the request for a continuance has been made pursuant to a joint stipulation.~~

- ~~3. The hearing must proceed in the following manner unless the Board for good cause or to prevent manifest injustice orders otherwise:~~
- ~~(a) An opening statement may be made on behalf of the Board or be waived.~~
 - ~~(b) An opening statement on behalf of the respondent may be made, reserved until the close of the Board's case or waived.~~
 - ~~(c) Presentation of the Board's case, followed by cross examination.~~
 - ~~(d) Presentation of the respondent's case, followed by cross examination.~~
 - ~~(e) Rebuttal, which must be limited to issues previously raised. No new matter may be presented upon rebuttal unless the Board for good cause so permits.~~
 - ~~(f) Argument on behalf of the Board, unless waived.~~
 - ~~(g) Argument on behalf of the respondent, unless waived.~~
 - ~~(h) Submittal of the matter for decision.~~
- ~~4. After the matter is submitted, the Board will render a decision and its order.]~~

NAC 641.180 Approval to practice. (NRS 641.100, 641.410)

1. A psychologist who is invited to practice in Nevada pursuant to NRS 641.410 shall submit to the Board:
 - (a) An application for approval to practice as a consultant in this State. The application must be submitted at least 30 days before the psychologist intends to begin practice in this State.
 - (b) A letter from the inviting psychologist stating that he or she will have primary responsibility for the professional conduct of the invited psychologist.
 - (c) A sworn statement by the invited psychologist that he or she will only practice as a consultant in this State.
2. An invited psychologist must obtain the approval of the Board before practicing as a consultant in this State.
3. *A nonresident consultant may only engage in consulting services in Nevada. Consulting services are limited to such services as providing witness testimony in a Court proceeding or providing a one-time evaluation for a specific purpose, such as a pending Court proceeding. Ongoing evaluation services, employee assistance program services, psychotherapy, and the like without limitation may not be performed by a nonresident consultant in Nevada.*
4. *A nonresident consultant must meet all of the requirements contained in NAC 641.020, NAC 641.025, NAC 641.028, NAC 641.050, NAC 641.061, and NAC 641.080, regarding the accreditation of graduate program, supervision and experience requirements.*
5. *Meeting the requirements for practice as a nonresident consultant or being approved as a nonresident consultant in Nevada does not ensure that the applicant will qualify for licensure in Nevada.*

The Board would like to add the following provisions to NAC Chapter 641 pursuant to the requirements in NRS 233B.120:

Provision #1:

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. *All petitions for declaratory orders and advisory opinions must be in writing and shall be written on the forms provided by the Board or otherwise prepared substantially in the format of the Board's forms provided for this purpose.*

Provision #2:

- 1. Except as otherwise provided in subsection 2, upon receiving a petition for a declaratory order or an advisory opinion, the Board will place the matter on the agenda for discussion at the next regularly scheduled meeting of the Board.*
- 2. If the petition is received within 30 days before the next regularly scheduled meeting, the petition may be placed on the agenda for discussion at the next meeting after that meeting.*
- 3. The Board will then hear the matter at the meeting for which it has been agendized and either grant or deny the petition.*
- 4. If the Board denies the petition, no further action will be taken.*
- 5. If the Board grants the petition, the Board will received comments on the facts and the issues involved, receive evidence including documents and testimony at that meeting, deliberate, and then issue its declaratory order or advisory opinion within 90 days after granting the petition unless good cause exists for taking additional time, and in that case, the order or opinion will be issued within 120 days.*
- 6. If the Board deems it necessary, the Board may schedule additional time at a future meeting to Comments the facts and the issues involved, receive evidence including documents and testimony, and/or deliberate about any issue raised in the petition before issuing its decision.*
- 7. Should the Board schedule the matter for further consideration at a future meeting as provided in subsection 6, the Board shall issue its declaratory order or advisory opinion within 90 days after the last meeting during which the Board considers the matter, unless good cause exists for taking additional time, and in that case, the order or opinion will be issued within 120 days.*

Provision #3:

If the Board determines that it will issue a declaratory order or advisory opinion, the President of the Board or other presiding officer shall assign one member of the Board to write the order or opinion. The member has 30 days within which to submit to the Board a draft, after reviewing comments by all other members on the issue, researching the issue and seeking the assistance of the Attorney General, if necessary. Upon completion of the draft, the assigned member shall submit it to the Board for approval at the Board's next regularly scheduled meeting. Once the draft of the order or opinion is approved by a majority of the Board it is deemed rendered.

Provision #4:

After the Board renders its order or opinion, the Board will serve notice of it to the petitioner.

Provision #5:

After the Board renders any order or opinion, any violation of the order or opinion by a licensee or certificate holder of the Board is a ground for disciplinary action against the licensee or certificate holder.

New Provisions to add to NAC 641 (relating primarily to LBAs, LABAs, and CABIs):

Service of Process for LBAs, LABAs, and CABIs

Except as otherwise provided in chapter 622A of NRS:

- 1. Service of process made under this chapter must be either upon the person or by registered or certified mail with return receipt requested, addressed to the licensed behavior analyst, licensed*

assistant behavior analyst, or certified autism behavior interventionist at his or her last known address, as indicated on the records of the Board.

2. Proof of service of process for the initiation of disciplinary proceedings made under this chapter must be filed with the Board and must be recorded in the minutes of the Board.

Subpoenas for LBAs, LABAs, and CABIs

The Board, any member thereof, a panel of its members or a hearing officer may issue subpoenas to compel the attendance of witnesses and the production of books, papers, documents, the records of patients, and any other article related to the practice of behavior analysis.

Filing of complaints concerning LBAs, LABAs, and CABIs; retention of complaints.

1. The Board or any of its members, any review panel of a hospital or an association of psychologists or behavior analysts or any other person or organization which becomes aware that any one or combination of the grounds for initiating disciplinary action may exist as to a person practicing behavior analysis in this State shall, and any other person who is so aware may, file a written complaint specifying the relevant facts with the Board.

2. The Board shall retain all complaints filed with the Board pursuant to this section for at least 10 years, including, without limitation, any complaints not acted upon.

Mental or physical examination of LBA, LABA, and CABI required by Board; consent to examination; confidentiality of reports; immediate suspension for failure to submit to examination.

1. Notwithstanding the provisions of chapter 622A of NRS, the Board may require the licensed behavior analyst, licensed assistant behavior analyst, and certified autism behavior interventionist named in a complaint to submit to a mental examination conducted by a panel of three psychologists designated by the Board or a physical examination conducted by a physician designated by the Board.

2. Every licensed behavior analyst, licensed assistant behavior analyst, and certified autism behavior interventionist licensed under this chapter who accepts the privilege of licensure or certification in this State shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the Board. The testimony or reports of the examining psychologists or physician are privileged communications, except as to proceedings conducted pursuant to this chapter.

3. Except in extraordinary circumstances, as determined by the Board, the failure of a licensed behavior analyst, licensed assistant behavior analyst, or certified autism behavior interventionist to submit to an examination as provided in this section constitutes grounds for the immediate suspension of the psychologist's license.

Examination regarding competency to practice behavior analysis.

Notwithstanding the provisions of chapter 622A of NRS, if the Board has reason to believe that the conduct of any licensed behavior analyst, licensed assistant behavior analyst, or certified autism behavior interventionist has raised a reasonable question as to competence to practice behavior analysis with reasonable skill and safety to clients, the Board may require the licensed behavior analyst, licensed assistant behavior analyst, or certified autism behavior interventionist to take a written or oral examination to determine whether the licensed behavior analyst, licensed assistant behavior analyst, or certified autism behavior interventionist is competent to practice behavior analysis. If an examination is required, the reasons therefor must be documented and made available to the licensed behavior analyst, licensed assistant behavior analyst, or certified autism behavior interventionist being examined.

Time limited after suspension of license of licensed behavior analyst, licensed assistant behavior analyst, or certificate of certified autism behavior interventionist pending disciplinary proceedings.

Notwithstanding the provisions of chapter 622A of NRS, if the Board, a panel of its members or a hearing officer issues an order suspending the license or certificate of a licensed behavior analyst,

licensed assistant behavior analyst, or certified autism behavior interventionist pending proceedings for disciplinary action and requires the licensed behavior analyst, licensed assistant behavior analyst, or certified autism behavior interventionist to submit to a mental or physical examination or an examination of his or her competency to practice behavior analysis, the examination must be conducted and the results obtained within 60 days after the Board, panel of its members or hearing officer issues the order.

Proof of actual injury; evidence of conviction or revocation of license or certificate to practice behavior analysis; plea of nolo contendere.

Notwithstanding the provisions of chapter 622A of NRS, in any disciplinary proceeding before the Board, a panel of its members or a hearing officer:

- 1. Proof of actual injury need not be established where the complaint charges deceptive or unethical professional conduct or practice of behavior analysis harmful to the public.*
- 2. A certified copy of the record of a court or a licensing agency showing a conviction or the suspension or revocation of a license or certificate to practice behavior analysis is conclusive evidence of its occurrence.*
- 3. The entering of a plea of nolo contendere in a court of competent jurisdiction shall be deemed a conviction of the offense charged.*

Immunity of certain persons from civil liability.

In addition to any other immunity provided by the provisions of chapter 622A of NRS, the Board, a review panel of a hospital, an association of psychologists or behavior analysts or any other person who or organization which initiates a complaint or assists in any lawful investigation or proceeding concerning the licensing of a licensed behavior analyst, licensed assistant behavior analyst, or certified autism behavior interventionist or the discipline of a licensed behavior analyst, licensed assistant behavior analyst, or certified autism behavior interventionist for gross malpractice, repeated malpractice, professional incompetence or unprofessional conduct is immune from any civil action for that initiation or assistance or any consequential damages, if the person or organization acted without malicious intent.

Procedure for removing limitation, terminating probation or reinstating license for LBAs, LABAs, and CABIs.

1. Any person:

- (a) Whose practice of behavior analysis has been limited;*
- (b) Whose license or certificate has been revoked; or*
- (c) Who has been placed on probation,*

by an order of the Board, a panel of its members or a hearing officer may apply to the Board after 1 year for removal of the limitation or termination of the probation or may apply to the Board pursuant to the provisions of chapter 622A of NRS for reinstatement of the revoked license or certificate.

2. In hearing the application, the Board:

- (a) May require the person to submit to a mental or physical examination conducted by psychologists or by physicians whom it designates and submit such other evidence of changed conditions and of fitness as it considers proper.*
- (b) Shall determine whether under all the circumstances the time of the application is reasonable.*
- (c) May deny the application or modify or rescind its order as it considers the evidence and the public safety warrants.*

Grounds for disciplinary action for all licensees/certificate holders.

It is unlawful for any psychologist, licensed behavior analyst, licensed assistant behavior analyst, or certified autism behavior interventionist to:

- 1. Present as his or her own the diploma, license or credentials of another;*

- 2. Gives either false or forged evidence of any kind to the Board or any member thereof, in connection with an application for a license or certificate;*
 - 3. Practices psychology or behavior analysis under a false or assumed name or falsely personates another psychologist or behavior analysis of a like or different name.*
- Such conduct is grounds for disciplinary action pursuant to NRS 641.230.*