

**PROPOSED REGULATION OF THE
STATE BOARD OF COSMETOLOGY**

LCB File No. R106-12

September 26, 2012

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

AUTHORITY: §§1, 3-10, 14, 16 and 20, NRS 644.110; §2, NRS 644.110 and 644.2175; §§11-13, NRS 233B.120 and 644.110; §15, NRS 233B.100 and 644.110; §§17-19, NRS 644.110 and 644.430.

A REGULATION relating to cosmetology; prohibiting a licensed cosmetologist who supervises and trains a cosmetologist's apprentice or a licensed electrologist who supervises and trains an electrologist's apprentice from receiving compensation for the apprenticeship; revising provisions governing practice before the State Board of Cosmetology; revising provisions governing the submission of complaints to the Board and determination by the Executive Director of the Board whether a complaint warrants an investigation; revising the procedure for petitioning the Board for a declaratory order or an advisory opinion; requiring a petitioner to comply with the provisions of a declaratory order or advisory opinion issued by the Board; revising provisions governing the procedure for a petition for the adoption, filing, amendment or repeal of a regulation; revising certain provisions concerning mobile cosmetological establishments; prescribing fines for certain violations; prescribing conduct which constitutes gross malpractice; prescribing certain conduct for which a licensee is subject to disciplinary action; repealing certain provisions governing practice before the Board; and providing other matters properly relating thereto.

Section 1. Chapter 644 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. 1. *A licensed cosmetologist who has been authorized by the Board to supervise and train a cosmetologist's apprentice and who is supervising and training a cosmetologist's apprentice shall not accept compensation for the apprenticeship either directly or indirectly.*

2. *The provisions of subsection 1 are not intended to prohibit a cosmetologist's apprentice or the licensed cosmetologist who is supervising and training the cosmetologist's apprentice*

from receiving compensation from patrons who receive services from the cosmetologist's apprentice.

Sec. 3. 1. *A licensed electrologist who has been authorized by the Board to supervise and train an electrologist's apprentice and who is supervising and training an electrologist's apprentice shall not accept compensation for the apprenticeship either directly or indirectly.*

2. *The provisions of subsection 1 are not intended to prohibit an electrologist's apprentice or the licensed electrologist who is supervising and training the electrologist's apprentice from receiving compensation from patrons who receive services from the electrologist's apprentice.*

Sec. 4. NAC 644.388 is hereby amended to read as follows:

644.388 The provisions of NAC 644.388 to 644.580, inclusive, *and, in a contested case, the provisions of chapter 622A of NRS,* govern practice before the Board.

Sec. 5. NAC 644.445 is hereby amended to read as follows:

644.445 ~~{An}~~ *The* original ~~{and two legible copies}~~ of each pleading, motion, or other paper must be filed with the Board. The Board may direct that a copy of each pleading and motion be made available by the party filing it to any other person whom the Board determines may be affected by the proceeding ~~{and}~~ *or* who desires a copy.

Sec. 6. NAC 644.450 is hereby amended to read as follows:

644.450 1. ~~{Every}~~ *Except as otherwise provided in subsection 3, every* notice, *decision,* advisory opinion, declaratory order or other document to be served by the Board will be served by mail or delivery in person ~~{.}~~ *at the last known address of the person on record with the Board.* Service thereof by mail shall be deemed complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail.

2. Every document required to be served by a party must be served by mail or delivery in person. Service thereof by mail shall be deemed complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail.

3. Following the entry of an appearance by an attorney for a party, all notices, pleadings and orders to be served thereafter upon the party must be served upon his or her attorney and such service is, for all purposes, valid service upon the party represented.

Sec. 7. NAC 644.455 is hereby amended to read as follows:

644.455 The Board will include with all documents which it serves ~~[, other than its decisions and orders,]~~ an acknowledgment of service or the following certificate:

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

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

.....

Signature

Sec. 8. NAC 644.460 is hereby amended to read as follows:

644.460 1. ~~[A complaint may be filed against any person licensed under this chapter and must allege one or more of the causes of action set forth in NRS 644.430.]~~ A complaint may be filed by *any person, including, without limitation, another licensee*, the Executive Director, the Board or any of the Board's members , *staff* or investigators ~~[.]~~ *and must allege one or more of the grounds for disciplinary action set forth in NRS 644.430.*

2. *Except as otherwise provided in subsection 5:*

(a) Each complaint must contain a statement of facts showing that a provision of this chapter or chapter 644 of NRS has been violated ~~[The]~~;

(b) *Each* complaint must be sufficiently detailed to enable the respondent to prepare a defense ~~[H]~~; *and*

(c) All applicable statutes and regulations or orders of the Board must be cited in the complaint, together with the date on which the act or omission is alleged to have occurred.

3. If more than one cause of action is alleged, each cause of action must be stated and numbered separately. Two or more complainants may join in one complaint if their respective causes of action are against the same person and deal substantially with the same violation of law, or of a regulation or order of the Board.

4. A complaint must be ~~[in writing and]~~ *filed with the Board, at the office of the Board, on a form prescribed by the Board and, except as otherwise provided in subsection 5, must* be signed and verified by the complainant.

5. ~~[A complaint must be filed with the Executive Director.]~~ *The Board may accept written anonymous complaints. If the Executive Director or his or her designee determines that an anonymous complaint filed with the Board contains sufficient information that indicates a violation of this chapter or chapter 644 of NRS has likely occurred, the complaint will be investigated pursuant to subsection 2 of NAC 644.470.*

Sec. 9. NAC 644.470 is hereby amended to read as follows:

644.470 ~~[The following provisions govern review of a complaint filed by a person who is not the Executive Director or one of the Board's members or investigators:]~~

1. Upon the receipt of a complaint ~~filed by a person other than the Executive Director or a member or investigator of the Board,~~ *submitted pursuant to subsection 4 of NAC 644.460*, the Executive Director *or his or her designee* shall review the ~~document~~ *complaint* to determine whether the matter is proper for administrative review and whether the complaint ~~has been properly verified,~~ *alleges sufficient information to warrant an investigation.*

2. ~~Thereafter,~~ *If* the Executive Director *or his or her designee determines pursuant to subsection 1 of this section or subsection 5 of NAC 644.460 that a complaint should be investigated, the Executive Director or his or her designee* shall assign the complaint to a staff investigator for a report on the allegations of the complaint. *The Executive Director or his or her designee shall provide written notice of the complaint to the licensee identified in the complaint unless the Executive Director or his or her designee determines that such notice will impede or otherwise interfere with the investigation.* The investigator shall investigate the complaint and report his or her findings *, including, without limitation, whether the investigator recommends that the Board commence an administrative hearing on the complaint,* to the Executive Director *or his or her designee* as quickly as feasible but not later than 90 days after receipt of the complaint.

3. After receiving the investigator's report, the Executive Director *or his or her designee* shall ~~transmit the complaint and report to the President of the Board or to another member appointed to review complaints, to~~ determine whether there are sufficient facts to warrant an administrative hearing.

4. If the ~~President or other member~~ *Executive Director or his or her designee* determines that there are sufficient facts to warrant an administrative hearing, he or she shall notify the ~~Executive Director~~ *Board* to set the matter for ~~mediation or~~ *an administrative* hearing.

5. If the ~~[President or other member]~~ *Executive Director or his or her designee* determines that there are not sufficient facts to warrant an administrative hearing, ~~[the facts alleged in the complaint must be submitted to the Board for the Board's review at the next scheduled meeting to determine whether the Board wishes to conduct a hearing on the matter or whether the facts, if assumed to be true, do not constitute a ground for disciplinary action. If the assumed facts do not constitute a ground for disciplinary action,]~~ the complaint will be dismissed ~~[-If the Board determines that the assumed facts warrant administrative action, the Executive Director shall set the matter for mediation or hearing.]~~ *without further action.*

6. *The Executive Director or his or her designee shall notify the licensee identified in the complaint of the decision whether the Board has set the matter for an administrative hearing or whether the complaint is dismissed.*

Sec. 10. NAC 644.485 is hereby amended to read as follows:

644.485 A person may petition to appear and be heard on any matter ~~[before]~~ *within the jurisdiction of* the Board, as follows:

1. The petitioner ~~[may use Form No. 3 or a similar form, which may be obtained from]~~ *must submit the petition to the Board in writing on a form prescribed by* the Board. The petition must contain a brief summary of the subject matter and contain the reasons for bringing the matter before the Board.

2. The petition must be received by the Board at least 30 business days before the meeting at which the petitioner wishes to be heard, but the Executive Director may waive this time requirement.

3. Upon receipt of the petition, the Executive Director *or his or her designee* or any member of the Board may make an initial evaluation to determine whether the subject of the

petition is ~~[a proper item for mediation or for the agenda of a formal or informal hearing and, if so, whether a special meeting]~~ *within the jurisdiction* of the Board . ~~[must be called for the hearing.]~~

4. If the Executive Director , *his or her designee* or a member ~~[evaluates]~~ *of the Board determines that* the petition ~~[as presenting a ground]~~ *submitted pursuant to subsection 1 presents grounds* for a disciplinary action involving a fine, the revocation or suspension of a license, or the probation of a licensee, the *Executive Director will deny the petition and instruct the* petitioner ~~[must]~~ *to* file a formal complaint . ~~[, and the]~~ *The* Executive Director shall notify the petitioner of the requirements for making the complaint.

5. If the ~~[evaluation results in a determination]~~ *Executive Director, his or her designee or a member of the Board determines* that there is no possibility for a fine, the revocation or suspension of a license, or the probation of a licensee, and if the item is a subject within the jurisdiction of the Board, the matter stated in the petition will be placed on the agenda as an item of new business for discussion and action.

Sec. 11. NAC 644.555 is hereby amended to read as follows:

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

2. A petition for a declaratory order or an advisory opinion must be in writing ~~[and be prepared substantially in accordance with Form No. 1.*~~

~~—*See adopting agency for form.]~~ *on a form prescribed by the Board.*

Sec. 12. NAC 644.560 is hereby amended to read as follows:

644.560 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]~~ *At a meeting at which a petition has been placed on the agenda for discussion, the Board will ~~[then review the matter and either]~~ consider any information relevant to the petition, including, without limitation:*

(a) Oral or written testimony; and

(b) Any other evidence.

4. *After consideration of the information relevant to the petition, the Board will* grant or deny the petition.

~~[4.]~~ 5. If the Board denies the petition, no further action will be taken.

~~[5.—If the Board grants the petition, the Board will issue its declaratory order or advisory opinion within 60 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. The Board may schedule a hearing on any issue raised in the petition before issuing its decision.]~~

Sec. 13. NAC 644.565 is hereby amended to read as follows:

644.565 ~~[After]~~

1. *If the Board ~~[determines that the]~~ grants a petition pursuant to subsection 4 of NAC 644.560, the Board will* issue ~~[should be addressed, the]~~ *a declaratory order or advisory opinion. The* President or other presiding officer shall assign one member of the Board to write the *declaratory* order or *advisory* opinion. The member so assigned has 30 days within which to

submit to the Board the final draft, after reviewing comments by all members of the Board on the issue, researching the issue and seeking the assistance of the Attorney General, if necessary. Upon completing his or her draft of the *declaratory* order or *advisory* opinion, the assigned member shall submit it to the Board for final approval ~~[]~~ *at the next regularly scheduled meeting of the Board. The declaratory order or advisory opinion must be approved by a majority of the members of the Board who are present at the meeting.*

2. After the Board renders its declaratory order or advisory opinion, the Board will give notice of it to the petitioner.

Sec. 14. NAC 644.575 is hereby amended to read as follows:

644.575 ~~[After the Board renders such an]~~ *A petitioner shall comply with the provisions of a declaratory order or advisory opinion ~~[, any violation of it is cause for a disciplinary hearing.]~~ issued by the Board.*

Sec. 15. NAC 644.580 is hereby amended to read as follows:

644.580 1. *Pursuant to NRS 233B.100, any interested person may petition the Board for the adoption, filing, amendment or repeal of any regulation.*

2. A petition for the adoption, filing, amendment or repeal of a regulation must be in writing ~~[and be prepared substantially in accordance with Form No. 2.~~*

~~—2.— The following procedure applies to such a petition:~~

~~—(a) If the petition is received within 30 days before the next regular meeting, the petition will be placed on the agenda for discussion to determine whether the petition should be denied or regulation-making procedures commenced.~~

~~—(b) If the petition is received by the Board during any period in which a regular meeting is not scheduled within 30 days, the Executive Director shall begin the procedures necessary for~~

~~adoption of the regulations. The Board may call a special meeting to deny the petition, thus terminating those procedures.~~

~~—*See adopting agency for form.}] on a form prescribed by the Board and must include:~~

(a) The name and address of the petitioner;

(b) The reason for petitioning for the adoption, filing, amendment or repeal of the regulation;

(c) The proposed language of the regulation to be adopted, filed, amended or repealed;

(d) The statutory authority for the adoption, filing, amendment or repeal of the regulation;

and

(e) Any relevant data, views and arguments that support the petition for the adoption, filing, amendment or repeal of the regulation.

3. The Board may refuse to act upon a petition for the adoption, filing, amendment or repeal of a regulation if the petition does not include the information required by subsection 2.

4. The Board will notify the petitioner in writing of the Board's decision regarding the petition within 30 days after the date on which the petitioner filed the petition. If the Board approves the petition for the adoption, filing, amendment or repeal of a regulation, the Board will initiate regulation-making proceedings concerning that regulation within 30 days after the date on which the petitioner filed the petition.

Sec. 16. NAC 644.645 is hereby amended to read as follows:

644.645 1. Each *mobile* cosmetological establishment must have :

(a) A holding tank which holds at least 100 gallons of self-contained fresh water ~~in gray and black~~ and which is permanently and distinctly labeled for such use;

(b) A holding tank which holds at least 100 gallons of self-contained gray water and which is permanently and distinctly labeled for such use; and

(c) Holding tanks which provide hot water continually and on demand with a combined capacity of at least 6 gallons.

2. The holding tanks ~~[with]~~ described in paragraphs (a) and (b) of subsection 1 must contain gauges ~~[indicating]~~ that indicate the levels in the tanks and reserve capabilities. If an establishment's portable water supply is depleted, operation must cease until the supply is replenished.

~~[2.—An establishment must have tanks which provide hot water continually and on demand with a combined capacity of at least 6 gallons.]~~

Sec. 17. NAC 644.700 is hereby amended to read as follows:

644.700 1. The Board adopts the following schedule of fines for any violation of the provisions listed:

Violation	First Offense	Second Offense	Third Offense
COSMETOLOGICAL ESTABLISHMENT			
Operating an establishment without a license.....	\$1,000	\$1,500	\$2,000
Operating an establishment with an expired license.....	200	500	
Allowing a licensee to work with an expired license (per person)	200	500	
Failure to display license in place of business	200	500	

Violation	First Offense	Second Offense	Third Offense
Allowing an unlicensed person to work in an establishment.....	1,000	1,500	2,000
Operating an establishment without supervision by a licensed person	200	500	
Operating an establishment with an animal on the premises	200	500	
COSMETOLOGIST OR OTHER LICENSED NATURAL PERSON			
Practicing with an expired license	200	500	
Failure to display license at a work station	200	500	
Failure to practice in a cosmetological establishment	500	1,000	2,000
<i>Failure to comply with NAC 644.368.....</i>	<i>200</i>	<i>500</i>	
<i>Using advertisements which contain knowingly false or deceptive statements or otherwise engaging in acts described in subsection 2 of NAC 644.711</i>	<i>100</i>	<i>200</i>	
COSMETOLOGIST'S APPRENTICE			
Failure to display a certificate of registration in plain view	100	500	
Failure to wear a badge while working	100	500	
Working on the public without a supervising cosmetologist present	500	1,000	

Violation	First Offense	Second Offense	Third Offense
SUPERVISOR OF A COSMETOLOGIST’S APPRENTICE			
Allowing an apprentice to work if his or her certificate of registration is not displayed in plain view.....	100	500	
Allowing an apprentice to work if the apprentice is not wearing his or her badge	100	500	
<i>Failure to comply with section 2 of this regulation</i>	<i>500</i>	<i>1,000</i>	
 <i>SUPERVISOR OF AN ELECTROLOGIST’S APPRENTICE</i>			
<i>Failure to comply with section 3 of this regulation</i>	<i>500</i>	<i>1,000</i>	
 <i>SCHOOL OF COSMETOLOGY</i>			
<i>Failure to comply with NRS 644.395, subsection 1 of NRS 644.400, paragraph (b) of subsection 2 of NRS 644.400 or NAC 644.085</i>			
	<i>200</i>	<i>500</i>	
 ANY PERSON			
Practicing without a license or certificate.....	1,000	1,500	2,000
Copying or altering a license or certificate.....	200	500	
Using a copied or altered license or certificate for purposes of fraud, deception, misrepresentation or other illegal purpose	1,000		

	First	Second	Third
Violation	Offense	Offense	Offense

2. A licensee who violates a provision of NAC 644.307 to 644.355, inclusive, will be fined not more than \$100 for the first violation.

3. A person who violates a provision of this chapter or chapter 644 of NRS for which this section does not provide a specific fine, including, without limitation, a second or subsequent violation, may be:

- (a) Ordered to appear at a disciplinary hearing before the Board; and
- (b) Punished by the Board as set forth in NRS 644.430.

Sec. 18. NAC 644.705 is hereby amended to read as follows:

644.705 For the purposes of NRS 644.430 ~~[, a]~~:

1. A violation of any provision of NRS 644.470 or NAC 644.340, 644.350, 644.360 to 644.368, inclusive, or 644.372; or

2. Malpractice where the failure to exercise the requisite degree of care, skill or knowledge amounts to:

(a) A conscious indifference to the consequences which may result from the malpractice; and

(b) A disregard for and indifference to the safety and welfare of the client,

↪ constitutes gross malpractice.

Sec. 19. NAC 644.711 is hereby amended to read as follows:

644.711 ~~For the purposes of paragraph (k) of subsection 1 of NRS 644.430, the following practices are grounds for disciplinary action by the Board:~~ *A licensee is subject to disciplinary action if the licensee:*

1. Engages in unfair or unjust practices, methods or dealings, including, without limitation:

~~{1.}~~ *(a) Copying or altering a license in violation of NRS 644.476.*

~~{2.}~~ *(b) Using a license that has been copied or altered for the purposes of fraud, deception, misrepresentation or other illegal purpose.*

~~{3.—Using}~~

(c) Misrepresenting his or her qualifications to the public.

(d) Performing or offering to perform the functions of a licensee under a false or assumed name or social security number.

(e) Selling or offering to sell his or her license.

(f) Failing to cooperate with an investigation conducted by the Board.

(g) Failing to respond to communications from the Board.

(h) Providing false information to the Board.

*2. Uses advertisements which contain knowingly false or deceptive statements, including, without limitation, using the terms “expert,” “advanced” or “medical” in connection with any description of a ~~{person’s}~~ licensee’s practice in any branch of cosmetology or otherwise holding the ~~{person}~~ licensee out to the public as an *expert*, advanced or medical practitioner of any branch of cosmetology.*

Sec. 20. NAC 644.390, 644.395, 644.400, 644.405, 644.410, 644.415, 644.425, 644.430, 644.435, 644.440, 644.465, 644.475, 644.480, 644.482, 644.484, 644.490, 644.495, 644.500, 644.510, 644.515, 644.535, 644.540, 644.545, 644.547 and 644.570 are hereby repealed.

TEXT OF REPEALED SECTIONS

644.390 Classification of parties. (NRS 644.110)

1. A person who applies for any privilege, license or authority from the Board must be styled the “applicant.”
2. A person who complains to the Board of any act or of another person must be styled the “complainant.” In any proceeding which the Board initiates, the Board must be styled the “complainant.”
3. Except for a complainant, a person who petitions for any affirmative relief (including a person who requests an advisory opinion or a declaratory order or requests the adoption, amendment or repeal of a regulation) must be styled the “petitioner.”
4. A person against whom any complaint is filed or investigation initiated must be styled the “respondent.”
5. Any person who was not an original party to a proceeding but who may be directly and substantially affected by it must, upon securing an order from the Board or presiding officer granting him or her leave to intervene, be styled an “intervener.”

6. Any person who enters a proceeding to protest against an application or petition must be styled a “protestant.”

7. A person who has not been admitted to a proceeding as an intervener or a protestant and is not an original party to the proceeding is not a party to the proceeding.

644.395 Staff of Board may be party to proceeding. (NRS 644.110) The Board’s staff may appear at any proceeding and participate as a party.

644.400 Appearances. (NRS 644.110) A party may enter his or her appearance at the beginning of a hearing or at any time designated by the presiding officer, by giving the party’s name and address and stating his or her position or interest to the presiding officer. The information must be entered in the record of the hearing.

644.405 Representation of parties; qualifications of attorneys. (NRS 644.110)

1. In lieu of counsel, a party may be represented by a person of his or her own choosing.
2. An attorney appearing as counsel in any proceeding must be an attorney at law, admitted to practice and in good standing before the highest court of any state. If the attorney is not admitted and entitled to practice before the Supreme Court of Nevada, the attorney must be associated with an attorney so admitted and entitled to practice.

644.410 Service of process on attorney. (NRS 644.110) Following the entry of an appearance by an attorney for a party, all notices, pleadings and orders to be served thereafter upon the party must be served upon his or her attorney and such service is, for all purposes, valid service upon the party represented.

644.415 Withdrawal of attorney. (NRS 644.110) Any attorney of record wishing to withdraw from a proceeding before the Board shall, in writing, immediately notify the Board or

its presiding officer, the party whom he or she represented, and any other parties to the proceeding.

644.425 Applications. (NRS 644.110)

1. Each pleading which requests a privilege, license or authority from the Board must be styled an “application.”

2. The application must:

(a) Contain the applicant’s full name and address and such facts and exhibits as may be required by statute or this chapter.

(b) Be signed by the applicant.

644.430 Petitions. (NRS 644.110)

1. Each pleading which prays for affirmative relief, excluding an application, complaint, or answer but including a request for a declaratory order or an advisory opinion or for the adoption, amendment or repeal of any regulation, must be styled a “petition.”

2. A petition must contain the petitioner’s full name and mailing address and be signed by the petitioner.

644.435 Verification. (NRS 644.110) All pleadings except petitions must be verified. The following form may be used in making a verification:

State of Nevada }

}ss.

County of }

....., being first duly sworn, deposes and says:

That he or she has filed this (complaint, answer or application); that he or she has read the foregoing and knows the contents thereof; that the same are true of his or her own knowledge, except for those matters therein stated upon information and belief, and as to those matters, he or she believes them to be true.

.....
(Signature of person filing the complaint,
answer or application.)

Subscribed and sworn to before me this
..... day of the month of of the year
.....

Notary Public in and for said County and State

644.440 Motions. (NRS 644.110)

1. A motion must be in writing unless it is made during a hearing.
2. Each written motion must set forth the nature of the relief sought and the grounds for the motion.
3. A party desiring to oppose a motion may serve and file a written response to the motion.
4. The moving party may serve and file a written reply if a response to the motion has been served and filed.
5. A decision on a motion will be made without oral argument unless the Board requires an oral argument, and if the Board requires an oral argument, it will set a date and time for hearing the argument.

644.465 Complaint filed by Executive Director or investigator or member of Board.

(NRS 644.110) The following provisions govern review of a complaint filed by the Executive Director or one of the Board's members or investigators:

1. The Executive Director shall assign the report for investigation by a staff investigator, who shall prepare an investigative report.
2. If a member of the Board filed the complaint, the Executive Director shall, after receiving the investigative report, send the investigative report to a member other than the member who filed the complaint for a determination of whether there are sufficient facts to warrant an administrative action.
3. If the member determines that there are such facts, the member shall notify the Executive Director to set the matter for mediation or hearing.
4. A staff investigator may file a complaint only if an investigative report has been prepared. The investigative report must be submitted with the complaint. The Executive Director shall submit the complaint to the President of the Board or other presiding officer for a determination of whether there are sufficient facts to warrant an administrative action.
5. If the President of the Board or other presiding officer determines that there are sufficient facts to warrant an administrative action, he or she shall notify the Executive Director to set the matter for mediation or hearing.

644.475 Disqualification of member of Board from adjudication of matter. (NRS

644.110) Any member of the Board who files a complaint, causes an investigation of or acts as a prosecutor in a matter, or brings a matter to the attention of an inspector, is disqualified from taking part in the adjudication of the matter. Such a member is not disqualified from acting as a witness at the hearing of the matter.

644.480 Service of complaint; answer. (NRS 644.110) A person on whom a complaint is served may respond to the complaint by filing an answer within 20 days after the date on which the complaint is served. A complaint shall be deemed to have been served when a true copy of the complaint, addressed to the person's address of record and with postage prepaid, is deposited with the United States Postal Service. If the person fails to answer within the time prescribed, the person shall be deemed to have admitted the allegations of the complaint.

644.482 Mediator. (NRS 644.110) If the complainant and respondent submit their dispute for mediation, the Executive Director or other staff person, or the President of the Board or other member appointed to review complaints, or both of them together, may act as a mediator.

644.484 Duties of Executive Director. (NRS 644.110)

1. If a matter is set for mediation and the mediation is not successful, the Executive Director shall set the matter for hearing.

2. If a matter is set for hearing, the Executive Director shall determine whether the hearing should be formal or informal and:

(a) Prepare a complaint and notice of hearing and serve it on each person against whom the complaint is made; or

(b) Refer the case to the Attorney General for preparation of a complaint and notice of hearing and for service on each person against whom the complaint is made.

3. In cases in which the Executive Director has prepared a complaint and notice of hearing and has served it on each person against whom the complaint is made, the Executive Director shall organize and facilitate the presentation of witnesses and other evidence to the Board and be an active participant in the hearings.

644.490 Notice. (NRS 644.110) Notice of a hearing must be served at least 20 business days before the time set for the hearing. A hearing which has previously been continued may be reset on notice of not less than 20 business days. A notice shall be deemed to have been served when a true copy of the notice, addressed to the person's address of record and with postage prepaid, is deposited with the United States Postal Service.

644.495 Failure of party to appear. (NRS 644.110)

1. If a party fails to appear at a hearing scheduled by the Board and no continuance has been requested or granted, the Board may hear testimony of witnesses who have appeared and proceed to consider the matter and dispose of it on the basis of the evidence before it.

2. Where, because of accident, sickness or other reasonable cause, a person fails to appear for a hearing or request a continuance thereof, the person may within a reasonable time, but not more than 15 days, apply to the Executive Director to reopen the proceedings. The Executive Director shall include the request on the agenda for the next scheduled meeting of the Board. Upon finding the cause sufficient and reasonable, the Board will set a new time and place for hearing and give the person notice thereof. Witnesses who have previously testified will not be required to appear at the second hearing unless so directed by the Board.

644.500 Preliminary procedure. (NRS 644.110) The presiding member of the Board shall call the proceeding to order, proceed to take the appearances, and act upon any pending motions or petitions. The parties may then make opening statements.

644.510 Presentation of evidence. (NRS 644.110)

1. Each applicant, petitioner or complainant may present his or her evidence, and then such parties as may be opposing the application, petition or complaint may submit their proof.

2. The presiding member of the Board shall determine the order in which any intervener may introduce his or her evidence.

3. Evidence will ordinarily be received from the parties in the following order:

(a) Upon an application or petition:

- (1) Applicant or petitioner.
- (2) Board's staff.
- (3) Protestant.
- (4) Rebuttal by applicant or petitioner.

(b) Upon a complaint other than by a member of the Board or its staff:

- (1) Complainant.
- (2) Board's staff.
- (3) Respondent.
- (4) Rebuttal by complainant.
- (5) Rebuttal by respondent.

(c) Upon a complaint by a member of the Board or its staff:

- (1) Board's member or staff.
- (2) Respondent.
- (3) Rebuttal by Board's staff.
- (4) Rebuttal by respondent.

4. The order may be modified by the Board or its presiding member.

5. Closing statements by the parties may be allowed by the Board or its presiding member.

644.515 Consolidation. (NRS 644.110) The presiding member of the Board may consolidate two or more proceedings for one hearing whenever it appears that the issues are substantially the same and the interests of the parties will not be prejudiced by a consolidation.

644.535 Informal hearings; agreement of licensee to formal hearing if mediation is not successful. (NRS 644.110)

1. The Board may hold an informal hearing to:
 - (a) Mediate a problem;
 - (b) Discuss a factual or legal question concerning the propriety of certain conduct;
 - (c) Warn a licensee that certain conduct would be in violation of the law or regulations of the Board; or
 - (d) Determine the appropriateness of holding a formal hearing on any matter.
2. The Board will not engage in mediation in any matter unless the licensee agrees in advance that, if the mediation is not successful, the Board may hold a formal hearing on the matter and may decide the case. By agreeing to mediation, the licensee waives any right to object to the future participation of any Board member in the matter based on the Board member's prior knowledge of the matter gained through the mediation or the Board member's statements or actions in the mediation.

644.540 Decision by Board. (NRS 644.110)

1. A proceeding stands submitted for decision by the Board after the taking of evidence, the filing of briefs, or the representation of such oral arguments as may have been permitted by the Board, whichever occurs last.
2. An order or decision will be rendered within 90 days after the completion of the hearing.

644.545 Rehearings. (NRS 644.110)

1. Within 15 days after the Board has made a decision or issued an order, the aggrieved party may apply for a rehearing by filing a written petition setting forth the grounds for the rehearing.

2. The Board will act upon such a petition within 30 days after receiving it. If no action is taken by the Board within the 30-day period, the petition shall be deemed denied.

3. The Board on its own motion may order a rehearing of its decision if mistake, fraud or misconception of facts existed in the forming of its original decision.

4. The filing of a petition for a rehearing does not excuse compliance with the order or decision nor suspend its effectiveness unless the Board, by order, allows the excuse or declares the suspension.

644.547 Appeals. (NRS 644.110) If a decision rendered by a hearing officer is appealed, it must be appealed in writing to the Board within 90 days after the hearing officer enters the order.

644.570 Notice. (NRS 233B.120, 644.110) After the Board renders its declaratory order or advisory opinion, the Executive Director shall give notice of it to the petitioner.