

**PROPOSED REGULATION OF  
THE STATE BOARD OF FIRE SERVICES**

**LCB File No. R124-13**

December 9, 2013

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

AUTHORITY: §§1-3, 23, 24, 26-29 and 32-34, NRS 477.030; §§4-22, 30 and 31, NRS 233B.050 and 477.030; §25, NRS 477.030 and 477.240.

A REGULATION relating to fire protection; establishing procedures for the conduct of administrative hearings by the State Fire Marshal Division of the Department of Public Safety and appeals therefrom; establishing procedures for the issuance of administrative citations and orders for administrative fines and corrective actions; establishing procedures for review of actions by the State Fire Marshal Division; establishing procedures for requesting declaratory orders and advisory opinions from the State Fire Marshal Division; revising provisions relating to grounds for disciplinary action by the State Fire Marshal and the State Board of Fire Services; revising procedures relating to investigations and hearings thereon conducted by the State Fire Marshal and investigators of the State Fire Marshal Division; providing for the imposition of administrative fines; and providing other matters properly relating thereto.

**Section 1.** Chapter 477 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 31, inclusive, of this regulation.

**Sec. 2.** *“Board” means the State Board of Fire Services.*

**Sec. 3.** *“Division” and the “State Fire Marshal Division” mean the State Fire Marshal Division of the Department of Public Safety.*

**Sec. 4.** *As used in NAC 477.315 and 477.320 and sections 4 to 22, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 5, 6 and 7 of this regulation have the meanings ascribed to them in those sections.*

*Sec. 5. "Hearing officer" means the State Fire Marshal or any person designated by the State Fire Marshal to conduct a hearing.*

*Sec. 6. "Party" means the petitioner or the Division.*

*Sec. 7. "Petitioner" means a person who requests a hearing.*

*Sec. 8. NAC 477.315, 477.320 and sections 4 to 22, inclusive, of this regulation provide procedures for any hearing authorized by statute to be conducted by the Division.*

*Sec. 9. 1. Appearances and representation of parties must be as follows:*

*(a) A party is entitled to appear in person or be represented by his or her attorney.*

*(b) One of the partners may appear for a partnership.*

*(c) A corporate officer or an authorized regular employee of the corporation may appear for a corporation.*

*(d) An authorized officer, agent or employee of a municipal corporation may appear for the municipal corporation.*

*(e) A bona fide officer or an authorized officer or employee of an association may appear for the association.*

*2. An attorney appearing as counsel in any proceedings 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, he or she must be associated with an attorney licensed in Nevada in a manner consistent with the procedure established for such attorneys to appear as counsel in the courts of this State.*

*Sec. 10. Unless otherwise required by NAC 477.315, 477.320 and sections 4 to 22, inclusive, of this regulation, formal written pleadings are not required, but a party may file with the hearing officer written points and authorities supporting his or her position.*

**Sec. 11. 1.** *All correspondence regarding a hearing must be addressed to the Office of the State Fire Marshal Division at 107 Jacobsen Way, Carson City, Nevada 89701.*

*2. All documents shall be deemed served on:*

*(a) The State Fire Marshal when received by the office at the address in subsection 1;*

*(b) A petitioner when they are mailed to the petitioner at the address specified in the request for a hearing or, if one is not specified, to his or her last known address as shown on the records of the Division; and*

*(c) The State Fire Marshal when received by the legal office of the Division in the matter of an appeal of a decision by a hearing officer to a district court of this State.*

*3. Fees and remittances to the Division must be by money order, bank draft or check payable to the Nevada State Fire Marshal Division.*

*4. A petitioner may inspect, before the hearing, all documents which may be considered by the hearing officer as part of the case presented by the Division. The petitioner may have a copy made of a document originating from the Division upon payment of a fee to reimburse the Division for the cost of providing the copy.*

**Sec. 12. 1.** *A party may request a change of the date for the hearing. If the hearing officer grants a postponement of the hearing, a new date will be set which is not more than 30 days after the date scheduled for the first hearing except for good cause.*

*2. Except for good cause, the request for a postponement of the hearing must:*

*(a) Be in writing;*

*(b) State the reason for the postponement; and*

*(c) Be received by the hearing officer no later than 5 days before the scheduled hearing.*

**Sec. 13. 1.** *Where the State Fire Marshal has served the petitioner with a notice of the time and place of the hearing and neither the petitioner nor the petitioner's attorney appears and that failure to attend is without good cause, the failure to attend constitutes a default.*

*2. A default taken pursuant to subsection 1 will have the effect of a finding of guilt and result in the imposition of administrative penalties as determined by the State Fire Marshal or the hearing officer.*

*3. The State Fire Marshal or the hearing officer may conduct a hearing in the absence of the petitioner at the time a default is taken to establish findings of fact or for other purposes, including, without limitation, to assess appropriate penalties, punitive action and other administrative actions.*

*4. If the failure to appear was for good cause, the party may, within a reasonable period, make a new request for a hearing. The State Fire Marshal or the hearing officer will determine whether the failure to appear was for good cause and, if so, grant a new hearing.*

**Sec. 14. 1.** *A prehearing conference may be held, upon the motion of the hearing officer or upon the motion of any party, to formulate or simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony, limit the number of witnesses, and consider any other matters which may expedite orderly conduct and disposition of the proceedings or a settlement of the matter.*

*2. Notice of the prehearing conference will be served on each party at least 7 days before the date set for the conference.*

*3. The action taken at the conference and the agreements made there by the parties will be made a part of the record and must be approved by the parties. When approved, the action*

*controls the course of subsequent proceedings, unless otherwise stipulated by each party with the consent of the hearing officer.*

*Sec. 15. Every hearing will be conducted before a hearing officer and the oral proceedings recorded by equipment for recording sound. The record will be retained for a period of 90 days after the date of the decision. A certified copy of the taped record will be made available to a party upon written request to the State Fire Marshal. The requesting party shall pay the cost of producing the copy.*

*Sec. 16. If any person behaves in such a manner as to interfere with the orderly conduct of the hearing, the hearing officer will warn the person to cease the improper behavior. The warning will be part of the record. If the improper behavior continues or resumes, the hearing officer will exclude that person from the hearing.*

*Sec. 17. Notwithstanding any specific statute to the contrary, with regard to any hearing required to be conducted by the Division pursuant to this chapter:*

*1. The testimony of any party or witness may be taken by telephone, videoconference or other electronic means; and*

*2. The hearing may be conducted at any location so long as the hearing officer allows each party and witness to testify by telephone, videoconference or other electronic means.*

*Sec. 18. 1. In all hearings, unless otherwise ordered by the hearing officer, the Division will present its evidence first and has the right of rebuttal.*

*2. When objection is made to the admissibility of evidence, the evidence will be received subject to a ruling by the hearing officer.*

*3. The affidavit of any person may be admitted into evidence. All parties have the right to present evidence to rebut the contents of any affidavit.*

4. *Witnesses may be questioned by the hearing officer. The hearing may be recessed by the hearing officer when necessary.*

5. *The hearing officer will adjourn the hearing for the submittal of further evidence or to hear further testimony when justice would not be served otherwise, and will adjourn the hearing at the request of any party for good cause shown, but for not more than 30 days after the date scheduled for the first hearing, except for cause.*

**Sec. 19.** 1. *Any witness appearing on behalf of the Division or testifying on behalf of the Division, except a party or an officer or employee of the State testifying during his or her regular hours for work, is entitled to receive the same fees and expenses as are provided for witnesses in NRS 50.225.*

2. *A party other than the Division requesting the appearance of a witness shall pay the fees and expenses of the witness as are provided for witnesses in NRS 50.225.*

**Sec. 20.** *The State Fire Marshal may consolidate two or more proceedings in one hearing when it appears that the issues are substantially the same and the rights of the parties will not be prejudiced by the consolidation.*

**Sec. 21.** 1. *Briefs which have been ordered by the hearing officer must be filed within the time allowed by the hearing officer and must be accompanied by an acknowledgment or affidavit showing service of the brief on the other parties.*

2. *Oral argument may be allowed in support of written briefs or presentation of the case.*

**Sec. 22.** 1. *If a petition for judicial review of the decision has not been filed, upon written application by a party within 20 days after service of a copy of the decision, a rehearing may be ordered upon such terms and conditions as the hearing officer considers just and proper. The application will not be granted except upon a showing that:*

*(a) A party was not properly served with a notice to appear; or*

*(b) There is additional evidence which is material and good cause existed for the failure to present that evidence at the hearing.*

*2. The application must be supported by an affidavit of the party or his or her counsel showing cause for failing to appear or failing to present the evidence at the hearing.*

**Sec. 23.** *A written administrative citation issued pursuant to NRS 477.240 may be served by personal service on the person named in the administrative citation, or a designated representative thereof, or by certified mail to the address of record of the person and must include, to the extent applicable:*

- 1. The name and last known business or residential address of the person;*
- 2. A numbered identification of the person, if applicable;*
- 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 any applicable chapter of NRS which the person is alleged to have violated and a description of the alleged violation;*
- 6. Corrective actions, if any, ordered against the person;*
- 7. Administrative fines, if any, to be assessed against the person;*
- 8. The reimbursement costs, if any, which the person is ordered to pay to cover the costs of any investigation;*
- 9. The date by which the person must complete any corrective actions ordered;*
- 10. The date by which the person must pay any administrative fines or reimbursement of investigative costs;*

*11. A description of the manner in which the person may contest the citation, including, without limitation, the period during which the person may contest the citation and the consequences of failing to contest the citation timely;*

*12. The signature of the State Fire Marshal or his or her designee or the Chair of the Board; and*

*13. Any other information required by the State Fire Marshal or the Board.*

**Sec. 24.** *A written administrative citation issued pursuant to NRS 477.240 may be withdrawn:*

*1. By the Board at any time.*

*2. By the State Fire Marshal:*

*(a) Before the citation is deemed a final order of the Board pursuant to NRS 477.245; or*

*(b) If the cited person contests the citation, before the commencement of the hearing on the contest of the citation.*

**Sec. 25.** *1. If the State Fire Marshal or his or her designee or the Board issues an administrative citation pursuant to NRS 477.240 which includes an administrative fine, each such fine assessed by the State Fire Marshal or his or her designee or the Board must:*

*(a) Specify the violation for which the person is being cited;*

*(b) Be based on the number of occurrences in which the person has been found to have committed the same violation within the most recent 24-month period preceding the last occurrence; and*

*(c) Subject to the provisions of subsection 2, be in an amount which is not less than the amount specified for a first offense or more than the amount specified for a third or subsequent offense, as follows:*



<i>Violation</i>	<i>First Offense</i>	<i>Second Offense</i>	<i>Third or Subsequent Offense</i>
<i>NRS 477.223</i>	<i>\$10,000</i>	<i>\$25,000</i>	<i>\$50,000</i>
<i>NRS 477.224</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>Any section of chapter 477 of NRS not otherwise specified</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>Subsections 1 to 7, inclusive, of NAC 477.300</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>Subsection 8 of NAC 477.300</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>Subsection 9 of NAC 477.300</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>Subsection 10 or 11 of NAC 477.300</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.313</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>Subsection 1 of NAC 477.315</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>Subsection 2 of NAC 477.315</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>Subsection 5 of NAC 477.315</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.405</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.420</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.422</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.425</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.470</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.483</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>

<i>NAC 477.606</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.620</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.622</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.624</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.626</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.631</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.633</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.646</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.651</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.710</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.720</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.730</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.770</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.780</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.810</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.850</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>Any section of chapter 477 of NAC not otherwise specified</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>

- 2. The State Fire Marshal or his or her designee or the Board will increase the number of offenses by one and assess a fine applicable to that number of offenses as listed in subsection 1 only if one or more of the following circumstances apply:*
- (a) The violation or violations have caused injury or death to other persons; or*

*(b) The violation or violations involved a construction project costing more than \$1,000,000.*

*Sec. 26. In addition to any other factors that the State Fire Marshal or the Board uses to determine whether an administrative citation issued pursuant to NRS 477.240 should include an order for corrective action, the State Fire Marshal or the Board will consider:*

- 1. The willingness of the owner of the affected property to allow such corrective action; and*
- 2. A determination by the State Fire Marshal or his or her designee that the licensee is able to perform the corrective action.*

*Sec. 27. In determining the time permitted for compliance with an order for corrective action, as required to be stated in a written citation pursuant to NRS 477.240, the State Fire Marshal or the Board will determine the time for compliance with the order by considering, without limitation:*

- 1. The accepted industry practice regarding the performance of the work necessary to comply with the order for corrective action, in the climate or weather conditions of the area in which the affected property is located.*
- 2. The number of days during which the owner of the affected property will make the property available for the licensee to comply with the order for corrective action.*
- 3. The time necessary to obtain materials required for the licensee to comply with the order for corrective action.*

*Sec. 28. 1. A licensee who is issued an administrative citation pursuant to NRS 477.240 which includes an order for corrective action may request an extension of time to comply with the order.*

*2. A request for an extension made pursuant to this section must:*

*(a) Be submitted in writing to the State Fire Marshal;*

*(b) Set forth an explanation of the efforts made by the licensee to comply with the order for corrective action; and*

*(c) Be received by the State Fire Marshal or his or her designee before the expiration of the time allowed for compliance with the order set forth in the citation.*

*3. The State Fire Marshal or his or her designee may, upon a showing of good cause, grant a request for an extension made pursuant to this section. The State Fire Marshal shall report to the Board at its next regularly scheduled meeting all requests for an extension of time that were made and granted under this section.*

*Sec. 29. If a licensee who is issued an administrative citation pursuant to NRS 477.240 which includes an order for corrective action hires and pays another licensee to perform the corrective action, the cited licensee is responsible for any failure of the hired licensee to comply with the order for corrective action included in the citation.*

*Sec. 30. Any person who has reason to believe that an action by the Division or one or more staff members has been incorrect, or based on inadequate knowledge, may seek relief by the following procedures:*

*1. First, reliance must be placed on informal discussion with the staff member and the chief of the bureau which is concerned with the program in question.*

*2. If this discussion does not resolve the problem, an informal conference may be requested by letter to the Chief of the Division. The conference must be held at a place and time mutually agreed upon. The Chief of the Division and the chief of another bureau, to be designated by the State Fire Marshal, will be present. A written summary of the conference*

*will be prepared. This summary will include a brief resume of the matters discussed, and the conclusions and recommendations which resulted from the conference.*

*3. This section does not apply if there are statutes or regulations of the State Fire Marshal providing appellate procedures for a particular issue.*

**Sec. 31.** *1. Any person with a direct and tangible interest who desires a declaratory order or advisory opinion regarding the applicability of any statutory provision or of a regulation or decision of the Division may petition by letter to the State Fire Marshal. Four copies of the petition must be submitted.*

*2. The State Fire Marshal will issue a declaratory order or an advisory opinion and mail it to the petitioner within 30 days.*

**Sec. 32.** NAC 477.010 is hereby amended to read as follows:

477.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 477.020 to 477.270, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

**Sec. 33.** NAC 477.315 is hereby amended to read as follows:

477.315 1. The State Fire Marshal *, or the Board upon appeal of a decision of the State Fire Marshal,* may refuse to issue or renew, or may suspend or revoke, any certificate of registration or license if he or she determines that an applicant, licensee or registrant has:

(a) Obtained or attempted to obtain a license or certificate of registration by fraud, misrepresentation or falsifying information required on an application form.

(b) *Engaged in any act of dishonesty in connection with any test administered by or on behalf of the State Fire Marshal or any local fire agency or department of any jurisdiction of any state.*

(c) Been found ~~guilty of~~ *by a court of law or an administrative agency of any state to have committed* malpractice or incompetence ~~†~~

~~(e)~~ *in the practice of the applicant's, licensee's or registrant's trade, craft or profession.*

(d) Failed to obtain the necessary tools or materials required by the State Fire Marshal for performing the work for which the license was issued.

~~(d)~~ (e) Failed to pay the annual fees for renewal of a license or certificate of registration.

~~(e)~~ (f) Violated any provision of this chapter three or more times within a 12-month period ~~†~~

~~(f)~~ *, except that a single violation of any provision of this chapter that is determined to constitute gross negligence or reckless disregard for public safety constitutes grounds for the refusal to issue or renew, or the suspension or revocation of, any certificate of registration or license.*

(g) Submitted payment for a license or certificate upon an account which has insufficient funds.

~~(g)~~ (h) Been convicted of a felony.

~~(h)~~ (i) Refused to cooperate with the State Fire Marshal *or the Board* in an investigation.

~~(i)~~ (j) Created an imminent hazard to life. For the purposes of this paragraph, an “imminent hazard to life” exists when:

(1) A system to detect, suppress or protect against fire is reduced to less than 80 percent of its design standard by an action, whether malicious or not, of a licensee or holder of a certificate of registration; or

(2) A fire appliance or device is made nonfunctional because more than 20 percent of the appliances or devices provided to a building or area become nonfunctional because of the improper service of a licensee or the holder of a certificate of registration.

~~(k)~~ (k) Agents or principals who have violated the provisions of this subsection.

2. The State Fire Marshal , *or the Board upon appeal of a decision of the State Fire Marshal*, may revoke or suspend any certificate of registration or license if he or she determines that:

- (a) It has been used by a person other than the person to whom it was issued.
- (b) It has been used for a location other than that for which it was issued.
- (c) It has been used for work other than that for which it was issued.
- (d) Any of the conditions or limitations set forth in the license have been violated.
- (e) The person to whom the certificate or license was issued did not have the certificate or license on-site where work was being performed under the certificate or license, or failed to present the certificate or license upon the request of an authority having jurisdiction.

3. The State Fire Marshal , *or the Board upon appeal of a decision of the State Fire Marshal*, may require any licensee or registrant who violates the provisions of this section to:

- (a) Attend additional training courses approved by the State Fire Marshal; or
- (b) Serve a period of probation.

4. All licenses and certificates of registration remain the property of the State Fire Marshal and may not be suspended or revoked by any other person.

5. For the purposes of this section:

- (a) A period of probation may not exceed 24 months.

(b) A revocation is permanent and applies to any person who is found to be an accomplice to a violation, whether directly or indirectly.

(c) A suspension may not exceed 24 months.

**Sec. 34.** NAC 477.320 is hereby amended to read as follows:

477.320 1. When the State Fire Marshal ~~receives~~, *the Division or its investigators receive* written notice alleging fraud, misrepresentation, malpractice, ~~or~~ *gross negligence, or reckless disregard of public safety* on the part of any person licensed or certified under this chapter, the State Fire Marshal *or the investigators of the Division* will conduct an investigation of the allegations. The investigation will concentrate on violations of this chapter, deceptive trade practices as set forth in chapter 598 of NRS and other pertinent criminal and civil violations set forth in NRS. The use of any unauthorized, faulty or otherwise unacceptable equipment discovered during an investigation may be prohibited pending a final determination. A license or certificate will be suspended during an investigation if the investigation reveals conditions which the State Fire Marshal considers an imminent threat to public safety.

2. *Pursuant to an investigation conducted pursuant to subsection 1, an investigator of the Division may issue a notice of alleged violations against a respondent for such issues. The notice of alleged violations must include:*

*(a) A statement of the time, place and nature of the administrative hearing to address the notice of alleged violations.*

*(b) A short and plain statement of the type of administrative action that might be taken upon an adverse finding against the respondent at the administrative hearing, including, without limitation, the refusal to issue or renew, or the suspension or revocation of, a certificate of registration or license by the State Fire Marshal.*



*(c) A short and plain statement of the legal authority and jurisdiction under which the administrative hearing is to be held.*

*(d) A reference to the particular sections of the statutes and regulations involved and upon which the notice of alleged violations is based.*

*(e) A short and plain statement of the matters asserted.*

~~3. A person [or company that has had an original or renewal license or certificate of registration denied, suspended or revoked by the State Fire Marshal may request an administrative hearing within 10 calendar days after notice of the denial, suspension or revocation. A written request must be sent to the State Fire Marshal. The written request must be received by the State Fire Marshal, or postmarked if mailed, within 10 calendar days after the date on which the notice of denial, suspension or revocation of the license or certificate of registration is received by the person or company. The State Fire Marshal, upon receipt of a request for an administrative hearing, will take necessary action to schedule an administrative hearing.~~

~~—3.]~~ *who has been issued a notice of alleged violations may appear at the administrative hearing and defend against the alleged violations, including by the presentation of evidence and argument on all issues involved.*

*4. The hearing officer shall preside over the administrative hearing, pursuant to which the hearing officer shall issue a final decision.*

*5. Decisions of the hearing officer may be appealed to the Board if written notice of such an appeal is received within 10 days of receipt of the decision.*

6. The failure on the part of an applicant to pass tests required in this chapter does not constitute grounds to request ~~{an administrative}~~ a hearing ~~{}~~ *and may not be appealed to the Board.*

~~{4.}~~ 7. If ~~{an administrative hearing officer}~~, *upon appeal, the Board* finds that the ~~{State Fire Marshal has acted correctly, he or she}~~ *hearing officer reached a correct decision, the Board* may require restitution to the ~~{State Fire Marshal}~~ *Division* for the costs of the administrative hearing ~~{}~~ *and the appeal.* If ~~{the administrative hearing officer}~~, *upon appeal, the Board* finds that the ~~{applicant, licensee or registrant}~~ *respondent* is guilty of a lesser offense, the State Fire Marshal, *the hearing officer or the Board* may require the ~~{applicant, licensee or registrant, as appropriate,}~~ *respondent* to receive further training ~~{or}~~, *to* be retested ~~{, or both,}~~ and to pay *restitution to the Division for* the costs of the administrative hearing ~~{,}~~ *—5.—An administrative} and the appeal, or any combination thereof.*

8. *The scheduling or holding of a hearing, or appeal before the Board,* does not preclude the State Fire Marshal from proceeding with a criminal investigation. Any conviction resulting from a criminal investigation may be used as prima facie evidence in ~~{an administrative}~~ *any* hearing ~~{}~~ *or appeal.*