

PROPOSED REGULATION OF THE NEVADA STATE BOARD OF ACCOUNTANCY

LCB File No. R117-15

September 11, 2015

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted; matter in green is material added or changed as a result of comments by the Board at its meeting on July 23, 2015.

AUTHORITY: NRS 628.120, NRS 628.160, NRS 628.170, and NRS 622A.120(2).

A REGULATION relating to disciplinary proceedings conducted by the Board and matters properly related thereto.

Section 1. NAC 628.010 is here by amended to read as follows:

As used in this chapter, unless the context otherwise requires:

1. “Board” means the Nevada State Board of Accountancy.
2. “Firm” means any partnership, corporation, limited-liability company or sole proprietorship.
3. “Practice privileges” means the privileges granted a natural person in accordance with the provisions of NRS 628.315.
4. “Practitioner” means:
 - (a) A certified public accountant or firm of certified public accountants licensed or registered by the Board to engage in the practice of public accounting;
 - (b) A certified public accountant who does not hold a live permit and does not have a registered office or residence in this State, but has been granted practice privileges pursuant to NRS 628.315 or 628.335; or
 - (c) A firm of certified public accountants that does not have an office in this State, but is registered with the Board pursuant to NRS 628.335.

5. *“Suspension, revocation or placing on probation of the right to practice before any state or federal agency” as used in NRS 628.390(1)(h) includes any surrender or a license while the licensee is under investigation or has been charged with any violation in a disciplinary or administrative matter.*

6. *“Conduct discreditable to the profession of public accounting” as used in NRS 628.390(1)(j) includes, but is not limited to:*

(a) Failure by a licensee to provide information or documents to the Board, its staff, or its investigators upon a reasonable request for such in the course of an investigation or prosecution of an administrative matter;

(b) Failure by a licensee to comply with a subpoena from the Board;

(c) Failure to abide by or comply with an order of the Board; or

(d) Making a false statement to the Board, its staff, or its investigators in the course of an investigation or prosecution of an administrative matter.

Section 2. NAC 628.015 is hereby amended to read as follows:

1. The Board will establish standing or temporary committees as it deems necessary. *Except as provided in section 2, ~~Written~~ written* minutes of all deliberations must be maintained.

2. *The Board shall establish a standing investigative committee to review grievances and complaints against licensees, oversee and guide the investigations of such grievances and complaints, and to determine whether a particular grievance or complaint against a licensee should proceed to disciplinary action or should be dismissed. The investigative committee shall be comprised of such members of the Board’s staff, legal counsel, investigators, and a board member as the Board or Board president appoints. Members of the committee shall serve at the pleasure of the Board and for such a period as is set by the Board. Pursuant to*

subsection (1) of NRS 622.320, the provisions of NRS 241.020 do not apply to the deliberations and proceedings of the standing investigative committee.

3. The investigative committee shall prepare and present a report to the Board at every regular meeting of the Board with all identifying information regarding the licensee and the complainant removed.

Sec. 3. NAC 628.040 is hereby amended to read as follows:

1. The passing grade for each section of the examination is 75.

2. An applicant who at one sitting receives a passing grade on any section of the examination is entitled to receive conditional credit for each section passed. Any conditional credit granted pursuant to this section expires if all unpassed sections of the examination have not been completed within 18 months after the applicant passes a section of the examination. ~~An applicant may not be reexamined on any section for which he or she did not receive a passing grade during the calendar quarter in which he or she failed to receive a passing grade for that section.~~

3. At the discretion of the Board, an extension of time to complete the examination may be granted to an applicant who has demonstrated personal hardship and is unable to complete the examination in the required time frame.

Sec. 4. NAC 628.110 is hereby amended to read as follows:

1. The certificate of a certified public accountant who holds a live permit and is in good standing may, upon application to and approval by the Board, be placed on retired or inactive status.

2. A certified public accountant whose certificate is placed on retired status pursuant to subsection 1 must, if he or she thereafter includes any reference to his or her certification on a

business card, letterhead or similar document or device, include the word “retired” immediately following each such reference.

3. Any of the following activities will be considered as active involvement in the accounting profession, and the holder of the certificate will not qualify for retired or inactive status:

(a) Any employment related to the financial functions of any business, governmental entity or nonprofit organization;

(b) Any supervision of the financial functions of any business, governmental entity or nonprofit organization;

(c) Any preparation of tax returns or schedules in support of a tax return for compensation except when prepared for family members;

(d) Any volunteer position related to the financial functions of an entity, except financial oversight required by law in a fiduciary capacity for the volunteer position; or

(e) Any work as a trustee that includes the preparation of financial information for the trust except for a family trust.

4. A former holder of a certificate may be reinstated into the practice of public accounting from retired or inactive status by submitting an application to the Board accompanied by the fee prescribed in NAC 628.016. The applicant must show that he or she has completed at least 40 hours of continuing education, including 4 hours of continuing education relating to ethics, during the 12 months immediately preceding the application.

5. A former holder of a certificate whose certificate has been voluntarily surrendered to the Board must submit:

(a) A new application for licensing accompanied by:

- (1) The application fee;
 - (2) The fee for annual renewal of the permit for any year the fee was not paid before he or she surrendered the certificate; and
 - (3) The penalty for late filing for any year fees were not paid before he or she surrendered the certificate as prescribed in paragraph (d) of subsection 3 of NAC 628.016; and
- (b) Proof that he or she has completed at least 40 hours of continuing education during the 12 months immediately preceding the application.

6. The voluntary surrender of a license in a contested case shall be deemed to constitute disciplinary action against the licensee.

~~6.1~~ 7. A former holder of a certificate whose certificate has been revoked or, in lieu of receiving disciplinary action, voluntarily surrendered to the Board, must submit:

- (a) A new application for licensing accompanied by:
 - (1) The application fee;
 - (2) The fee for annual renewal of the permit for any year that the fee was not paid before the certificate was revoked or surrendered; and
 - (3) The penalty for late filing prescribed in paragraph (d) of subsection 3 of NAC 628.016 for any year that a fee was not paid before the certificate was revoked or surrendered;
- (b) Proof that he or she has completed at least 80 hours of continuing education, including 8 hours of continuing education relating to ethics, during the 12 months immediately preceding the filing of the new application; and
- (c) Evidence that any outstanding issues that are related to disciplinary action which caused the revocation or voluntary surrender have been addressed to the satisfaction of the Board.

~~7.1~~ 8. For the purposes of this section:

(a) “Inactive status” means the voluntary termination by a holder of a certificate of all activities in the fields of public, private or governmental accounting before reaching the age of retirement.

(b) “Retired status” means the voluntary termination by a holder of a certificate of all activities in the profession of public, private or governmental accounting upon the attainment of at least 60 years of age or upon becoming permanently disabled and no longer gainfully employed.

Sec. 5. NAC 628.160 is hereby amended to read as follows:

1. The personal representative or estate of a practitioner who has died or become legally incompetent or a practitioner who is disqualified from practicing public accounting must sell his or her interest in a firm to the remaining owners or to the legal entity not later than 6 months after the death or incompetency of the practitioner or not later than 120 days after the practitioner becomes disqualified.

2. All restrictions on the ownership and transfer of the interest described in subsection 1 must be set forth in the articles of incorporation or the bylaws of the corporation or in the operating agreement or articles of organization of the limited-liability company or partnership agreement.

~~{3. Each practitioner shall designate a partner, personal representative or other responsible party to assume responsibility for client files in the case of incapacity, disappearance or death of the practitioner.~~

~~—4. In the event that a practitioner is incapacitated, disappears or dies, and no responsible party is known to exist, the Board may petition the court for an order appointing one or more practitioners to make an inventory of the files and to take actions, as appropriate, to protect the interests of the clients. The order of appointment must be public.~~

~~— 5. An appointed practitioner shall:~~

~~— (a) Take custody of the practitioner's files and trust or escrow accounts.~~

~~— (b) Notify each client of the practitioner in a pending matter and, in the discretion of the appointed practitioner, notify any other client of the practitioner, by first class mail to the address of the client that is on file with the appointed practitioner of:~~

~~— (1) Any right of the client to obtain any papers, money or other property to which the client is entitled;~~

~~— (2) The time and place at which the papers, money or other property may be obtained; and~~

~~— (3) Any deadline by which the papers, money or other property must be obtained.~~

~~— (c) Publish in a newspaper of general circulation in the county or counties in which the practitioner resided or engaged in any substantial practice of accounting, once a week for 3 successive weeks, notice of the discontinuance or interruption of the practitioner's practice. The notice must include:~~

~~— (1) The name and address of the practitioner whose practice has been discontinued or interrupted;~~

~~— (2) The time, date and location where a client may pick up his or her file; and~~

~~— (3) The name, address and telephone number of the appointed practitioner.~~

~~— (d) Release to each client the papers, money or other property to which the client is entitled.~~

~~— (e) With the consent of the client, file notices or petitions on behalf of the client in tax or probate matters where notices or petitions are required to be filed by a certain date and other representation has not yet been obtained.~~

~~—(f) Perform any other acts directed in the order of appointment issued pursuant to subsection 4.~~

~~—6. The notice required by paragraph (c) of subsection 5 must be mailed, by first class mail, to any insurer covering liability for errors or omissions or any other entity having reason to be informed of the discontinuance or interruption of the practitioner's practice.]~~

Sec. 6. NAC 628.210 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 3 and NAC 628.110, an applicant for the renewal of a permit to engage in the practice of public accounting must complete at least 80 hours of continuing education during the 2 years immediately preceding the date for renewal of the permit, of which:

(a) At least 20 hours must be completed in each year;

(b) Four hours must be in professional ethics; and

(c) Eight hours must be in courses that focus on accounting and auditing in each year in which the applicant ~~participated in~~ *performed work on* any audit, review, full disclosure compilation or attestation services

2. In addition to the requirements set forth in subsection 1, an applicant for the renewal of a permit to engage in the practice of public accounting must be in compliance with the requirements for continuing education established by applicable professional standards.

3. An applicant seeking the first annual renewal of an initial permit is exempt from the requirements of NAC 628.210 to 628.250, inclusive.

4. If an applicant for the renewal of a permit to engage in the practice of public accounting is permitted, certified or licensed to engage in the practice of public accounting in another state and resides in that state, the applicant must demonstrate compliance with the continuing education

requirements of that state by signing a statement to that effect on his or her application to the Board for the renewal of a permit to engage in the practice of public accounting. If the state in which the applicant resides does not have continuing education requirements, the applicant must comply with the requirements set forth in this section.

5. The requirements of NAC 628.210 to 628.250, inclusive, may be waived by the Board for reasons of personal hardship, including, without limitation, health problems, military service, foreign residence, retirement or other good cause.

Sec. 7. NAC 628.240 is hereby amended to read as follows:

1. For the purposes of continuing education, 50 minutes of instruction equals one credit of continuing education. Credit for continuing education may be earned in increments of less than one credit ~~if at least one credit is earned for the same subject~~.

2. Each semester hour of credit given for a college course equals 15 hours. A quarter hour of credit equals 10 hours.

3. The amount of credit allowed for correspondence programs and formal programs for independent study or self-study, including taped programs, will be that amount which is recommended by the sponsor of the program. Applicants claiming credit for correspondence programs or formal programs for independent study or self-study must obtain evidence of satisfactory completion of the course from the sponsor of the program. Credit is allowed for the period of renewal in which the course is completed.

4. The amount of credit for continuing education allowed for independent study will be the amount which is recommended by the sponsor of the program.

5. The Board may allow credit for continuing education for the publication of an article or book written by a practitioner if:

(a) A written evaluation of the article or book is prepared by a person designated by the Board and submitted to the Board for its review; and

(b) After a review of the evaluation, the Board determines that the article or book contributes to the professional knowledge and competence of the practitioner.

6. Applicants who have served as instructors, leaders of discussions or speakers at qualified programs may claim credit for continuing education for time spent on both preparation and presentation. Credit claimed for preparation may not exceed two times the number of hours of the presentation. Credit for teaching a course may not be claimed more than once in any consecutive 12 months without the prior approval of the Board. Approval will only be granted if the Board determines that the content of the course has been substantially altered during that period.

Sec. 8. NAC 628.500 is hereby amended to read as follows:

1. The Board hereby adopts by reference the *Code of Professional Conduct* adopted by the American Institute of Certified Public Accountants, as that code ~~existed on October 23, 2013~~ *exists at <http://pub.aicpa.org/codeofconduct>*, with the following exceptions:

(a) References to “member” are amended to refer to “practitioner.”

(b) The definition of “financial statements” in ~~ET Section 92~~ *paragraph .17 of the “Definitions” section of AICPA, Professional Standards, ET section 0.400* is amended to read as follows:

(1) “Financial statements” means:

(I) Any statements or footnotes related thereto that purport to demonstrate the financial condition of a person at a particular time or the change in a person’s financial condition during a particular period; or

(II) Any statements prepared using a cash or other comprehensive basis of accounting.

(2) The term includes balance sheets, statements of income, statements of retained earnings, statements of cash flows and statements of changes in equity.

(3) The term does not include incidental financial data that is included in reports concerning advisory services for management made to support recommendations to a client, tax returns or schedules in support of a tax return, or the statement, affidavit or signature of the person who prepares a tax return.

(c) The definition of “public practice” in ~~ET Section 92~~ *paragraph .42 of the “Definitions” section of AICPA, Professional Standards, ET section 0.400* is amended to have the meaning ascribed to the definition of “practice of public accounting” in NRS 628.023.

(d) The disclosure required pursuant to ~~Section B of Rule 503~~ *paragraph .03 of the Commissions and Referral Fees Rule of AICPA, Professional Standards, ET section 1.520.001* must:

(1) Include the amount of the commission expressed in dollars or the method, described in plain language, used to calculate the commission;

(2) Include the name of the person or entity paying the commission;

(3) Be written;

(4) Be made on or before the date of referral or recommendation; and

(5) Be signed and dated.

(e) The statement, affidavit or signature of the preparer of a tax return does not constitute an opinion on a financial statement, and the preparer of the tax return is not required to make a disclaimer of such an opinion.

(f) The Board does not adopt by reference pursuant to this section Appendix B ~~{of the ET~~
~~Appendixes}~~, *Council Resolution Concerning the Form of Organization and Name Rule* of
the *Code of Professional Conduct*.

2. A copy of the *Code of Professional Conduct* may be obtained ~~†~~:

~~—(a) By mail from the American Institute of Certified Public Accountants, Attn: Order
Department, Harborside Financial Center, 201 Plaza Three, Jersey City, New Jersey 07311; or~~

~~—(b) On-line†~~ *on-line* from the American Institute of Certified Public Accountants at its
Internet website, ~~{http://www.aicpa.org}~~ *http://pub.aicpa.org/codeofconduct*, free of charge.

3. The Board will periodically review the standards adopted by reference in this section and
determine within 30 days after the review whether any change made to the standards is
appropriate for application in this State. If the Board does not disapprove a change to the
standards within 30 days after the review, the change is deemed to be approved by the Board.

Sec. 9. NAC 628.520 shall be amended to read as follows:

A practitioner or firm shall report to the Board not more than 30 days after:

1. The practitioner or firm receives a peer review or inspection report with identified
deficiencies.

2. The decision against the practitioner or firm for the imposition of a disciplinary action,
including, without limitation, a censure, a reprimand, a sanction, probation, a civil penalty, a
fine, a consent decree or an order for the suspension, revocation or modification of a license, *or*
voluntary surrender while under investigation of a certificate, permit or right to practice by:

(a) ~~{The Securities and Exchange Commission;~~

~~—(b) The Internal Revenue Service;~~

~~—(e)~~ Any agency of another state authorized to regulate the practice of accountancy in that state for any cause except:

(1) The failure to pay by the date due a fee for a license, certificate, permit or right to practice; or

(2) The failure to comply with a requirement for continuing education;
~~(d)~~ (b) Any ~~tother~~ federal or state agency for conduct of the practitioner or firm relating to the provision of professional services; ~~for~~

~~(e)~~ (c) Any agency of this State, another state or territory, or any agency of the Federal Government ~~authorized to regulate taxes, insurance or securities~~ ;

(d) The American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board, or any other similar membership organization, guild, or association related to, having oversight of, or primarily composed of practitioners.

3. Except as otherwise provided in this subsection, any settlement, award or judgment of \$150,000 or more against the practitioner or firm for a claim of or action for gross negligence, violation of a specific standard of practice, fraud or misappropriation of money in the practice of accounting. If the practitioner is a firm of certified public accountants, the practitioner shall notify the Board, pursuant to this subsection, of any settlement, award or judgment involving the practice of public accounting in this State.

4. The practitioner or firm is charged with, is convicted of or pleads nolo contendere to, or has an order of deferred prosecution entered in a case involving the practitioner or firm for:

- (a) A felony under the laws of any state or of the United States; or
- (b) A crime, an element of which is dishonesty or fraud, or any crime involving moral turpitude, under the laws of any state or of the United States or any foreign country.

Sec. 9. NAC 628.580 shall be amended to read as follows:

1. Except as otherwise provided in subsection 4, a practitioner who performs audit, review, full disclosure compilation or attestation services shall engage in a practice-monitoring program, which is approved by the Board, to ensure that he or she is maintaining the standards of the profession.

2. If a practitioner engages in a practice-monitoring program, the practitioner shall submit to the Board the practice-monitoring findings of the practice-monitoring program during the year in which he or she is assigned to submit the practice-monitoring findings pursuant to NAC

628.575. The Board may extend the deadline for the submission of practice-monitoring findings to the Board by a practitioner.

3. The Board may verify the validity of the practice-monitoring findings submitted by the practitioner. *The Board may request from the practitioner any document or information necessary to further the verification of the validity of the practice-monitoring process or findings. Failure by the practitioner to provide the document or information requested may be a cause for disciplinary action.*

4. A practitioner who does not perform audit, review, full disclosure compilation or attestation services shall report these facts to the Board on a transmittal form. The form must be accompanied by an affirmation by the practitioner that the statements contained in the form are true. The practitioner is exempt from the requirements of NAC 628.550 to 628.590, inclusive, only for that period during which the practitioner does not perform audit, review, full disclosure compilation or attestation services. If a practitioner who is exempt from engaging in a practice-monitoring program pursuant to this subsection enters into an engagement to perform audit,

review, full disclosure compilation or attestation services, the practitioner must notify the Board not more than 60 days after the date of entering into such engagement and must engage in a practice-monitoring program not more than 18 months after the date upon which he or she enters into the engagement.

Sec. 11. NAC 628.590 shall be amended to read as follows:

1. Any practice-monitoring finding or other documentation submitted to the Board pursuant to NAC 628.550 to 628.590, inclusive, is confidential.

2. ~~{All documentation submitted to the Board pursuant to NAC 628.550 to 628.590, inclusive, must be destroyed when the process of review is complete.~~

~~—3.}~~ Any action taken by the Board pursuant to NAC 628.550 to 628.590, inclusive, which does not result in the Board's initiating disciplinary action against a practitioner pursuant to NRS 628.390 is confidential.

GENERAL DISCIPLINARY PROCEDURES

Sec. 12. NAC chapter 628 shall be amended to add the following new language.

As used in section 12 through section 29 of this regulation, unless the context otherwise requires:

1. *“Contested case” and “case” have the meaning ascribed to “contested case” in NRS 233B.032. A final decision of a Board approving or denying an application for issuance or renewal of a license is not a contested case for the purposes of this chapter.*

2. *“License” means any license, certificate, registration, permit or similar type of authorization issued by the Board.*

3. *“Licensee” means a person or firm who holds any license, certificate, registration, permit or similar type of authorization issued by the Board.*

4. *“Prosecutor” means any of the following:*

(a) The Attorney General or a deputy attorney general who prosecutes a contested case pursuant to this chapter;

(b) If the Attorney General and the deputies of the Attorney General are disqualified to act in such a matter, an attorney appointed by the Attorney General to prosecute a contested case pursuant to this chapter; or

(c) An attorney employed or retained by the Board to prosecute a contested case pursuant to this chapter.

5. *“Records” means any records, files, books, documents, papers, information or data in any form.*

Sec. 13. NAC chapter 628 shall be amended to add the following new language:

1. Except as otherwise provided in this chapter, the Board or hearing panel or officer is not bound by strict rules of procedure or rules of evidence when conducting the hearing, except that evidence must be taken and considered in the hearing pursuant to NRS 233B.123.

2. In all disciplinary proceedings, a party that bears the burden of proof for a particular proposition must prove that proposition by a preponderance of the evidence.

Sec. 14. NAC 628.430 is hereby amended to read as follows:

1. A complaint issued by the Board will include:

(a) A short and plain statement of the matters which are asserted or charged; ~~and~~

(b) References to any particular sections of chapter 628 of NRS, the rules of professional conduct or the regulations of the Board which are asserted to have been involved in the complaint ~~and~~; and

(c) A notice of hearing pursuant to subsection (2) of NRS 628.410.

2. A notice *of hearing* will be accompanied by:

(a) A brief statement of:

(1) The *date, time, and place of the hearing*; ~~{rights of the respondent to examine reports and evidence in advance of the hearing,}~~

(2) *The right* to appear with counsel at the hearing, to present evidence and to appeal an adverse decision; and

(3) *The right of the licensee to examine reports and evidence in advance of the hearing.*

(b) Notice that a copy of this chapter and chapter 628 of NRS may be obtained at the Internet addresses <http://www.leg.state.nv.us/nac> and <http://www.leg.state.nv.us/nrs>, respectively ~~{-}~~; *and*

(c) *Notice of whether the case will governed by the provisions of sections 25 through section 29 of this regulation.*

3. *Except for documents and information that is privileged by law, {A respondent} a* licensee has the right in advance of the hearing to examine and copy any report of an investigation and documentary or testimonial evidence and summaries of evidence in the Board's possession relating to the subject of the complaint. The right of examination may be exercised by the ~~{respondent}~~ *licensee* or his or her attorney or agent at the Board's office where the records are kept, during regular business hours, if written notice is given 3 days in advance. Copies of any documents designated for copying will be promptly furnished. The Board may charge a fee for the copying.

4. *The complaint and the notice of hearing shall be served personally or by registered or certified mail upon the licensee at his, her, or its last known address contained in the Board's records. If service is by registered or certified mail, the complaint and the notice of hearing*

shall be deemed to have been served on the date that they are mailed regardless of when or whether the licensee accepts the registered or certified mail.

Sec. 15. NAC chapter 628 shall be amended to add the following new language:

1. In any contested case against a licensee pursuant to this chapter, the licensee may appear on his or her own behalf or the licensee may be represented by:

(a) An attorney licensed to practice law in this State; or

(b) An attorney licensed to practice law in another state who is properly associated with an attorney licensed to practice law in this State and who provides a certificate of good standing from the licensing authority of the other state.

2. An attorney representing a licensee shall:

(a) Ensure that his or her conduct complies with the Nevada Rules of Professional Conduct; and

(b) Conform to all standards of ethical and courteous behavior required in the courts of this State.

3. An attorney may withdraw from representing a licensee upon notice to the licensee and the Board or hearing panel or officer. The notice must include the reason for the requested withdrawal. The Board or hearing panel or officer may deny the request if there may be an unreasonable delay in the case or the substantial rights of the licensee may be prejudiced.

4. If the Board or hearing panel or officer finds that an attorney has violated any provision of this section, the Board or hearing panel or officer may bar the attorney from participating in the case or may impose such other sanctions as the Board or hearing panel or officer deems appropriate.

5. *A licensee is responsible for all costs related to the presentation of his or her defense.*

Sec. 16. NAC chapter 628 shall be amended to add the following new language:

1. *As part of the notice of hearing that must accompany the complaint pursuant to the provisions of NAC 628.430, the prosecutor shall notify the licensee whether he or she intends the prosecution of the case to be governed by section 25 through section 29 of this regulation. If the prosecutor does not notify the licensee that the prosecution will be governed by section 25 through section 29 of this regulation, the licensee may indicate that he, she, or it desires that the prosecution of the case will be governed by section 25 through section 29 of this regulation by filing a written notice with the Board within 20 days of the date of service of the complaint.*

2. *If a case is tried to a hearing panel or officer, the findings and recommendations of the hearing panel or officer do not become final unless they are approved by Board after review. In reviewing the findings and recommendations of the hearing panel or officer, the Board may:*

(a) Approve the findings and recommendations, with or without modification;

(b) Reject the findings and recommendations and remand the case to the hearing panel or officer;

(c) Reject the findings and recommendations and order a hearing de novo before the Board; or

(d) Take any other action that the Board deems appropriate to resolve the case.

3. *The Board or the hearing panel or officer, with the approval of the Board, may consolidate two or more cases if it appears that the cases involve common issues of law or fact and the interests of the parties will not be prejudiced by the consolidation.*

Sec. 17. NAC chapter 628 shall be amended to add the following new language:

A party shall not communicate either directly or indirectly with any member of the Board, any member of the hearing panel or the hearing officer about any issue of fact or law related to the case unless the communication:

- 1. Is part of a pleading, motion or other document that is properly filed and served on all parties; or*
- 2. Occurs while all parties are present or occurs during a meeting or hearing for which all parties have been given proper notice, whether or not all parties are present at that meeting or hearing.*

Sec. 18. NAC chapter 628 shall be amended to add the following new language:

1. If a party fails to appear at a scheduled hearing and a continuance has not been scheduled or granted, any party who is present at the hearing may make an offer of proof that the absent party was given sufficient legal notice. Upon a determination by the Board or hearing panel or officer that the absent party was given sufficient legal notice, the Board or hearing panel or officer may proceed to consider and dispose of the case without the participation of the absent party.

2. If the licensee fails to appear at a hearing, the Board or hearing panel or officer may accept the allegations against the licensee in the complaint as true.

Sec. 19. NAC chapter 628 shall be amended to add the following new language:

1. Except as otherwise provided in the Constitution of this State, a party may not seek any type of judicial intervention or review of a contested case until after the contested case results in a final decision of the Board.

2. Except as otherwise provided in this section, a party may seek judicial review of a final decision of the Board in accordance with the provisions of chapter 233B of NRS that apply to a contested case.

3. Notwithstanding the provisions of subsection 1 of NRS 233B.131 regarding transmittal of the record of the proceeding under judicial review:

(a) The party filing the petition for judicial review shall provide an original or certified copy of the transcript of the hearing to the reviewing court; and

(b) The Board shall provide an original or certified copy of the remainder of the record of the proceeding under review to the reviewing court.

Sec. 20. NAC chapter 628 shall be amended to add the following new language:

1. If the Board revokes the license of a person in a contested case pursuant to this chapter, the Board shall, in the final decision of the Board ordering the revocation, prescribe a period during which the person may not apply for reinstatement of the license. The period must not be more than 5 years.

2. In addition to any other requirements set forth in chapter 628 of NRS, if a person applies for reinstatement of a license that has been revoked in a contested case pursuant to this chapter, the person shall:

(a) Submit an application on a form supplied by the Board.

(b) Satisfy all the current requirements for the issuance of an initial license.

(c) Attest that, in this State or any other jurisdiction:

(1) The person has not, during the period of revocation, violated any state or federal law governing the practice of the licensed occupation or profession or any related occupation

or profession, and no criminal or civil action involving such a violation is pending against the person; and

(2) No other Board having jurisdiction over the practice of the licensed occupation or profession or any related occupation or profession has, during the period of revocation, taken disciplinary action against the person, and no such disciplinary action is pending against the person.

(d) Satisfy any additional requirements for reinstatement of the license prescribed by the Board, including but not limited to, the requirements contained in NRS 628.110 where applicable.

3. The Board shall consider each application for reinstatement of a license submitted pursuant to this section. In determining whether to reinstate the license, the Board shall consider the following criteria:

- (a) The severity of the act resulting in the revocation of the license.*
- (b) The conduct of the person after the revocation of the license.*
- (c) The amount of time elapsed since the revocation of the license.*
- (d) The veracity of the attestations made by the person pursuant to subsection 2.*
- (e) The degree of compliance by the person with any additional requirements for reinstatement of the license prescribed by the Board.*
- (f) The degree of rehabilitation demonstrated by the person.*
- (g) Any other information the Board deems relevant.*

4. If the Board reinstates the license, the Board may place any conditions, limitations or restrictions on the license as it deems necessary.

5. *The Board may deny reinstatement of the license if the person fails to comply with any provisions of this section.*

6. *The Board's denial of reinstatement of the license is not a contested case for the purposes of judicial review.*

Sec. 21. NAC chapter 628 shall be amended to add the following new language:

1. *With the approval of the presiding officer of the Board or the hearing officer presiding over and conducting a hearing concerning a disciplinary proceeding, the parties to the disciplinary proceeding may stipulate as to any fact in issue, either by written stipulation introduced in evidence as an exhibit or by an oral statement made upon the record. The stipulation is binding only upon the parties so stipulating and is not binding upon the Board, hearing officer, or panel.*

2. *A stipulation may be considered by the Board, hearing officer, or panel as evidence at a hearing concerning the disciplinary proceeding. Notwithstanding the stipulation of the parties, the Board, hearing officer, or panel may require proof of the facts stipulated to by independent evidence.*

Sec. 22. NAC chapter 628 shall be amended to add the following new language:

1. *A person who provides the Board, a Board member, any member of the Board's staff, or any investigator of the Board with any information relating to a contested case is immune from any civil liability for providing that information if the person acted in good faith and without malicious intent.*

2. *The Board, a Board member, any member of the Board's staff, or any investigator of the Board is immune from any civil liability for:*

(a) Any decision or action taken in good faith and without malicious intent in carrying out the provisions of this chapter or any law or regulation governing the Board; or

(b) Communicating or cooperating with or providing any documents or other information to any other governmental entity, officer or employee conducting an investigation, disciplinary proceeding or civil or criminal prosecution.

Sec. 23. NAC 628.450 is hereby amended to read as follows:

Decisions of the Board ~~{following hearings}~~ *resulting from contested cases* will ~~{, if they sustain any charge,}~~ be made public. Decisions ~~{that do not sustain a charge}~~ *to dismiss a matter prior to the filing of a complaint pursuant to NAC 628.430* will not be made public, unless the licensee requests that this be done ~~{or the Board determines that the pendency of the charges was the subject of substantial publicity}~~ .

Sec. 24. NAC chapter 628 shall be amended to add the following new language:

1. After being served with the complaint, the licensee may, but is not required to, file an answer to the complaint. The licensee may file such an answer not later than 20 days after the date of service of the complaint.

2. The prosecutor may amend the complaint at any time before the hearing. If the prosecutor amends the complaint before the hearing, the prosecutor shall:

(a) File the amended complaint with the Board or hearing panel or officer; and

(b) Serve the licensee with the amended complaint.

3. After being served with an amended complaint, the licensee may do any or all of the following:

(a) File an answer to the amended complaint. The licensee may file such an answer not later than 20 days after the date of service of the amended complaint or not later than the date of the hearing, whichever date is sooner.

(b) Move for a continuance of the hearing. The Board or hearing panel or officer shall grant the continuance if the licensee demonstrates that:

(1) The amendment materially alters the allegations in the complaint; and

(2) The licensee does not have a reasonable opportunity to prepare a defense against the amended complaint before the date of the hearing.

4. The prosecutor may amend the complaint at the time of the hearing if the amendment is not considered material and the substantial rights of the licensee would not be prejudiced by the amendment.

5. The complaint, any amended complaint and any answer filed by the licensee must be made part of the record at the hearing.

6. A party may not serve any interrogatories on another party or take any depositions relating to the case.

DISCIPLINARY PROCEDURES FOR CASES THAT MIGHT GO TO HEARING

Sec. 25. NAC chapter 628 shall be amended to add the following new language:

1. At any time after being served with the complaint and no later than 20 days before the scheduled date for the hearing of the matter, the licensee may file with the Board or hearing panel or officer a written discovery request for a copy of all documents and other evidence intended to be presented by the prosecutor in support of the case and a list of proposed witnesses.

2. The investigative file for the case is not discoverable unless the prosecutor intends to present materials from the investigative file as evidence in support of the case. The investigative file for the case includes all communications, records, affidavits or reports acquired or created as part of the investigation of the case, whether or not acquired through a subpoena related to the investigation of the licensee. The prosecutor is not required to produce or provide any document that is privileged by law.

3. A party may not serve any interrogatories on another party or take any depositions relating to the case.

Sec. 26. NAC chapter 628 shall be amended to add the following new language:

1. Except as otherwise provided in this chapter or as permitted by the Board or hearing panel or officer, to request a ruling from the Board or hearing panel or officer on any issue of law or procedure in a case, a party must file a written motion with the Board or hearing panel or officer.

2. A party may file only the following prehearing motions:

(a) A motion requesting a continuance or an extension of time.

(b) A motion requesting, for good cause, the recusal of the hearing officer, a member of the panel or a member of the Board from participation in the case.

(c) A motion requesting the separation of consolidated cases.

(d) A motion requesting a more definite statement regarding the allegations in the complaint on the ground that there is not enough information in the complaint to formulate a defense.

(e) A motion requesting dismissal of the complaint because the complaint failed to state facts which, if true, would be a sufficient basis for discipline.

(f) With prior leave of the presiding officer of the Board or hearing officer, any other motion requesting appropriate action or relief before the date of the hearing.

3. A prehearing motion must be filed with the Board or hearing officer at least 20 days before the date of the hearing. A party who opposes the motion may file a response to the prehearing motion not later than 7 days after the date of service of the motion. No reply may be filed by the moving party. Upon a showing of good cause, the presiding officer for the Board or hearing officer may allow a party to file such a motion or response within such other times as the presiding officer of the Board or hearing officer deems appropriate.

4. The presiding officer of the Board or hearing officer shall rule on any prehearing motion before or on the date of the hearing. A hearing panel may authorize the presiding officer of the hearing panel to rule on any prehearing motion before the date of the hearing.

5. A party may file only the following motions after the commencement of the hearing:
(a) After the prosecutor has concluded the presentation of his or her case in chief, a motion requesting dismissal of the complaint for failure of the prosecutor to meet the burden of proof.

(b) With leave of the Board, hearing officer, or panel, any other motion requesting appropriate action or relief during the hearing.

6. A party may file only the motions set forth in section 19 after the close of the hearing.

Sec. 27. NAC chapter 628 shall be amended to add the following new language:

1. After the close of the hearing, a party may file only the following motions:
(a) A motion requesting a rehearing.
(b) A motion requesting reconsideration of the findings and recommendations of the hearing panel or officer or the final decision of the Board.

(c) A motion requesting that the final decision of the Board be vacated or modified.

(d) With leave of the Board or hearing panel or officer, any other motion requesting appropriate action or relief after the close of the hearing.

2. A motion requesting a rehearing or reconsideration must be filed with:

(a) The hearing panel or officer not later than 15 days after the date of service of the findings and recommendations of the hearing panel or officer.

(b) The Board not later than 15 days after the date of service of the final decision of the Board.

3. A party who opposes the motion may file a response to the motion not later than 7 days after the date of service of the motion.

4. The Board may authorize the president or presiding officer of the Board to rule on the motion. The hearing panel may authorize the chair or presiding officer of the hearing panel to rule on the motion.

5. A motion requesting a rehearing or reconsideration may be based only on one of the following grounds:

(a) Newly discovered or available evidence that could not have been presented at the hearing.

(b) Error in the hearing or in the findings and recommendations or the decision that would be grounds for reversal of the findings and recommendations or the decision.

(c) The need in the public interest for further consideration of the issues or evidence, or both.

6. The Board or hearing panel or officer shall enter an order ruling on the motion requesting a rehearing or reconsideration not later than 25 days after the date on which the

motion is filed. A copy of the order must be served on each party. The Board or hearing panel or officer may:

- (a) Deny the motion;*
- (b) Order a rehearing or partial rehearing;*
- (c) Order reconsideration of the findings and recommendations or the decision; or*
- (d) Direct other proceedings as the Board or hearing panel or officer deems appropriate.*

7. If the Board or hearing panel or officer orders a rehearing, the rehearing must be confined to the issues upon which the rehearing was ordered.

Sec. 28. NAC chapter 628 shall be amended to add the following new language:

The parties to a disciplinary proceeding shall meet or confer, not later than 20 days before the hearing, and:

- 1. Exchange copies of all documents that each party intends to offer as evidence in support of its case.*
- 2. Identify, describe or produce all tangible things, other than documents, that each party intends to offer as evidence in support of its case and, if requested, arrange for the opposing party to inspect, copy, test or sample such evidence under reasonable supervision.*
- 3. Exchange written lists of persons that each party intends to call as witnesses in support of its case. The list must identify each witness by name and position and, if known, business address. If no business address is available, the party intending to call the witness shall disclose the home address of the witness or make the witness available for service of process. The list must also include, for each witness, a summary of the proposed testimony and the purpose for which the witness will be called.*

Sec. 29. NAC chapter 628 shall be amended to add the following new language:

1. The president or presiding officer for the Board or the hearing officer may, upon its own motion or a motion by a party, hold a prehearing conference not later than 10 days before a hearing concerning a disciplinary proceeding to:

- (a) Formulate or simplify the issues involved in the proceeding;*
- (b) Obtain an admission of fact or stipulation of the parties;*
- (c) Arrange for the exchange of prefiled direct testimony of a witness ordered by the Board, hearing officer or panel;*
- (d) Limit the number of witnesses;*
- (e) Rule on any pending procedural motions, motions for discovery or motions for protective orders; or*
- (f) Establish any other procedure which may expedite the orderly conduct and disposition of the proceeding.*

2. Notice of any prehearing conference must be provided to all parties to the disciplinary proceeding. Except as otherwise ordered for good cause shown, the failure of a party to attend a prehearing conference constitutes a waiver of any objection to the agreements reached or rulings made at the prehearing conference.

3. The actions taken and the agreements made at a prehearing conference:

- (a) Must be made part of the record;*
- (b) Control the course of subsequent proceedings unless modified by the Board, hearing officer, or panel; and*
- (c) Are binding upon the parties to the disciplinary proceeding and any person who subsequently becomes a party to the disciplinary proceeding.*