

**PROPOSED REGULATION OF
THE BOARD OF PSYCHOLOGICAL EXAMINERS**

LCB File No. R170-18

August 3, 2018

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

AUTHORITY: §§1, 2, 9 and 10, NRS 641.100; §3, NRS 641.100 and 641.232; §4, NRS 622A.360 and 641.100; §5, NRS 622A.390 and 641.100; §6, NRS 233B.121 and 641.100; §7, NRS 641.100, 641.110 and 641.180; §8, NRS 641.100, 641.110 and 641.170.

A REGULATION relating to the Board of Psychological Examiners; establishing requirements for service of process in relation to matters governed by the Board; requiring a licensee or applicant of the Board to report certain events within 30 days; requiring the Executive Director of the Board or his or her designee to review and investigate such reports; revising provisions relating to practice before the Board; revising provisions relating to the state examination required for licensure as a psychologist; revising provisions relating to applications for licensure as a behavior analyst or assistant behavior analyst; establishing additional professional standards of conduct for psychologists; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes requirements for service of process by the Board of Psychological Examiners in situations where service is required to be made to a licensee. (NRS 641.243) **Section 2** of this regulation requires service to be made upon the attorney for a party after entry of an appearance by the attorney and establishes requirements for service of process by the Board or a party where existing law governing service of process does not apply. Specifically, **section 2** requires service to be made in person or by regular mail to the person to be served or, following the entry of an appearance by an attorney for a party, to that party's attorney. **Section 2** also provides that service by mail is complete upon the document, properly addressed and stamped, being deposited in the United States mail.

Existing law authorizes the Board to issue a citation, an order to cease and desist or both a citation and an order to cease and desist to a person who represents himself or herself as a psychologist or engages in the practice of psychology without a license. (NRS 641.2705) **Section 2** requires a citation and an order to cease and desist to be served by regular and certified mail at the person's last known address.

Existing law authorizes the Board to adopt regulations governing the practice of certain professions regulated by the Board. (NRS 641.100) **Section 3** of this regulation requires a

licensee or an applicant for a license with the Board to report to the Board, within 30 days, if the licensee or applicant is subject to a criminal action other than for a minor traffic violation, a disciplinary proceeding or action, a civil action related to his or her practice or an order for protection against domestic violence. **Section 3** also requires the Executive Director of the Board to review and, if necessary, investigate any such report made by a licensee or applicant and authorizes the initiation of proceedings to impose disciplinary action or the denial of licensure if the investigation establishes grounds for disciplinary action or denial of licensure. Under **Section 9** of this regulation, a licensee or applicant is subject to disciplinary action or a denial of licensure if he or she fails to report certain events to the Board as required by **Section 3**.

Existing law allows the Board to authorize the President of the Board to rule on certain motions relating to a hearing before the Board. (NRS 622A.360, 622A.390) **Section 4** of this regulation authorizes the President of the Board to rule on a prehearing motion before the date of the disciplinary hearing for which the motion was filed. **Section 5** of this regulation authorizes the President of the Board to rule on certain posthearing motions filed after a disciplinary hearing.

Existing law authorizes an agency to require the payment of a fee and mileage reimbursement to a witness required to testify before the agency. (NRS 233B.121) **Section 6** of this regulation requires a party who subpoenas a witness to testify before the Board to pay the witness a fee and mileage reimbursement as is required to testify in a court in this State.

Existing law authorizes the Board to administer a state examination to an applicant for a license as a psychologist. (NRS 641.180) Existing regulations allow an applicant for licensure as a psychologist to review his or her state examination if he or she failed the examination. (NAC 641.112) **Section 7** of this regulation eliminates such right of review by the applicant.

Existing law authorizes the Board to license behavior analysts and assistant behavior analysts until January 1, 2019. (NRS 641.110, 641.170). Existing regulations deem an application for licensure as a behavior analyst or an assistant behavior analyst withdrawn if the application is not completed within 2 years after its submission. (NAC 641.1503) **Section 8** of this regulation removes the requirement for such an applicant to complete his or her application within 2 years, thereby leaving no restriction on the amount of time such an application can remain incomplete.

Section 10 of this regulation establishes that a psychologist who fails to communicate with patients in a professional manner or subjects a patient to conduct that constitutes sexual harassment is subject to disciplinary action by the Board.

Section 1. Chapter 641 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. 1. *Except as otherwise provided in subsection 2, NRS 641.243 and chapter 622A of NRS, every document required to be served by:*

(a) The Board under this chapter or chapter 622A or 641 of NRS will be served personally or by regular mail to the last known address of the person to be served.

(b) A party under this chapter or chapter 622A or 641 of NRS must be served by delivery in person or by regular mail.

2. If the Board issues an order to cease and desist or a citation pursuant to subsection 2 of NRS 641.2705, the Board will serve the order or citation on the person subject to the order or citation by regular and certified mail at his or her last known address.

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

4. Service by regular or certified mail pursuant to this section shall be deemed complete when the document, properly addressed and stamped, is deposited in the United States mail.

Sec. 3. 1. *Not later than 30 days after receiving notice of an event listed in this subsection, a licensee or applicant for a license shall report to the Board in writing:*

(a) Any criminal action taken or conviction obtained against the licensee or applicant, other than a minor traffic violation, in this State, the District of Columbia or any state or territory of the United States or by the Federal Government, a branch of the Armed Forces of the United States or any local or federal jurisdiction of a foreign country.

(b) Any disciplinary action taken or disciplinary proceeding initiated against a professional license issued to the licensee or applicant by this State, the District of Columbia or any state or territory of the United States, the Federal Government or a foreign country, including, without limitation, the revocation, suspension or surrender of a professional license in this or any other jurisdiction.

(c) Any civil action filed against the licensee or applicant in a state or federal court in relation to his or her practice as a licensee.

(d) Any order for protection against domestic violence issued against the licensee or applicant in this State, the District of Columbia or any state or territory of the United States or by the Federal Government, a branch of the Armed Forces of the United States or any local or federal jurisdiction of a foreign country.

2. If a report is submitted to the Board pursuant to subsection 1, the Executive Director of the Board or his or her designee shall review the report and, if necessary, conduct an investigation of the facts underlying the report. The Executive Director or his or her designee may request from a licensee or applicant additional information regarding any matter set forth in the report. If the Executive Director or his or her designee determines that any one or combination of the grounds for initiating disciplinary action or denying licensure may exist as to the licensee or applicant, the Executive Director or his or her designee may cause proceedings for imposing disciplinary action against the licensee to be initiated or recommend that the Board deny the application for licensure.

Sec. 4. Pursuant to subsection 4 of NRS 622A.360, the President of the Board may:

1. Rule on a prehearing motion filed pursuant to subsection 2 of NRS 622A.360 or NAC 641.174 or 641.177 before the date of the hearing; or

2. At his or her discretion, decline to rule on the motion. If the President of the Board declines to rule on the motion, the Board will rule on the motion at a meeting of the Board held before the date of the hearing or on the date of the hearing.

Sec. 5. Pursuant to subsection 4 of NRS 622A.390, the President of the Board may:

1. Rule on a motion filed pursuant to subsection 1 of NRS 622A.390; or

2. At his or her discretion, decline to rule on the motion. If the President of the Board declines to rule on the motion, the Board will rule on the motion in accordance with NRS 622A.390.

Sec. 6. A witness who appears before the Board, in obedience to a subpoena, is entitled to be paid the fee and a mileage reimbursement provided to witnesses in civil cases pursuant to NRS 50.225. The party who subpoenaed the witness shall pay any fee and mileage reimbursement to which the witness is entitled pursuant to this section.

Sec. 7. NAC 641.112 is hereby amended to read as follows:

641.112 1. The Board will administer a state examination to each applicant for a license as a psychologist.

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

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

~~4.~~ An applicant who fails the state examination:

(a) Once or twice may retake the state examination.

(b) Three times may not retake the state examination unless the applicant requests permission and obtains approval from the Board to retake the state examination for a fourth time. The applicant must submit to the Board a written request to retake the state examination and a written

plan explaining the steps the applicant will take to pass the state examination. The Board will approve the request to retake the state examination if the Board determines that the written plan submitted by the applicant is likely to result in the applicant passing the state examination.

(c) Four or more times may not retake the state examination except as otherwise provided in this paragraph, and his or her application for licensure pursuant to NRS 641.160 is deemed denied. A person whose application is deemed denied pursuant to this paragraph may, not earlier than 18 months after the date on which he or she is notified by the Board that he or she failed that state examination for the immediately preceding time, request permission in writing from the Board to reapply for licensure and retake the state examination. The Board will, if good cause is shown, approve the request.

~~15.1~~ 4. The fee for the state examination must be paid before the state examination is administered. A fee must be paid each time the applicant takes the state examination.

~~16.1~~ 5. An applicant shall not:

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

Sec. 8. NAC 641.1503 is hereby amended to read as follows:

641.1503 1. An application for licensure as a psychologist shall be deemed withdrawn and all fees for the application are forfeited if:

- (a) The application is not completed as described in NRS 641.170 within 2 years after the date on which the Board first received the application materials; or

(b) The applicant has not taken the national examination required pursuant to NRS 641.180 within 2 years after the date on which the Board first received the application materials.

2. ~~†An application for licensure as a licensed behavior analyst or a licensed assistant behavior analyst shall be deemed withdrawn and all fees for the application are forfeited if the application is not completed as described in NRS 641.170 within 2 years after the date on which the Board first received the application.~~

~~—3.†~~ An application for registration as a psychological assistant shall be deemed withdrawn if the application is not completed within 2 years after the date on which the Board first received the application materials.

~~†4.†~~ 3. If an application is deemed withdrawn pursuant to this section, the applicant may reapply for such licensure or registration and must pay any application fees in effect at the time of the reapplication.

Sec. 9. NAC 641.200 is hereby amended to read as follows:

641.200 1. The provisions of NAC 641.200 to 641.255, inclusive ~~††~~, *and section 3 of this regulation:*

(a) Apply to the conduct of any licensee or any applicant for licensure pursuant to this chapter and chapter 641 of NRS, including conduct during any period of education, training or employment required for licensure.

(b) Constitute the standards of conduct which a psychologist, licensed behavior analyst or licensed assistant behavior analyst shall follow in the provision of services.

2. A violation of the provisions of NAC 641.200 to 641.255, inclusive, *and section 3 of this regulation* constitutes unprofessional conduct and is a ground for disciplinary action or the denial of an application for an initial license or the renewal of a license.

Sec. 10. NAC 641.215 is hereby amended to read as follows:

641.215 A psychologist:

1. Shall, in an appropriate manner, explain a patient's condition clearly and truthfully to the patient or the person responsible for the care of the patient.
2. Shall keep each patient fully informed of the purpose and nature of any evaluation, treatment or other procedure and the patient's right to choose the services provided.
3. Shall not perform any professional service that has not been authorized by the patient or his or her legal representative.
4. Shall explain clearly to a patient:
 - (a) The basis and extent of all contemplated services, fees and charges;
 - (b) The extent of the patient's personal responsibility for those fees; and
 - (c) The prospective benefits to be derived from and the known risks of such services.
5. Shall, upon termination of services to a patient, offer to make reasonable arrangements for the continuation of care, if such care is necessary.
6. Shall, if it is reasonably clear that a patient is not benefiting from the professional services provided by the psychologist, terminate the professional relationship with the patient after adequately preparing the patient for the termination.
7. Shall, during foreseeable periods of absence, make arrangements for another competent professional to provide emergency care for the patients under the care of the psychologist.
8. Shall not abandon or neglect a patient under and in need of immediate professional care without making reasonable arrangements for the continuation of care.
9. Shall not abandon a professional employment by a group practice, hospital, clinic or other health care facility without reasonable notice.

10. Shall not impose on a patient any stereotypes of behavior, values or roles related to age, gender, religion, race, disability, nationality or sexual preference which would interfere with the objective provision of psychological services to the patient.

11. Shall not willfully harass, abuse or intimidate any patient or other person to whom he or she has a professional responsibility. The use of any lawful procedure or process for the collection of an unpaid fee is not a violation of this subsection.

12. Shall not exercise undue influence upon any patient or promote the sale to a patient of any service, good, appliance or drug in such a way as to exploit the patient for the financial gain of the psychologist or another person.

13. Shall, in the conduct of psychological research:

(a) Respect the dignity and protect the welfare of his or her research subjects;

(b) Comply with all relevant laws and regulations concerning the treatment of research subjects;

(c) Fully inform each person who is a prospective subject of research, or his or her authorized representative, of any danger of serious aftereffects before the person is used as a subject; and

(d) Use reasonable efforts to remove any possible harmful aftereffects of emotional stress as soon as the design of the research permits.

14. Shall communicate with his or her patient in a professional manner.

15. Shall not subject a patient to conduct that constitutes sexual harassment. For the purposes of this subsection, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other speech or physical conduct of a sexual nature which has the purpose or effect of unreasonably interfering with the psychologist-patient relationship or creating an intimidating, hostile or offensive environment for the patient.