

**PROPOSED REGULATION OF THE  
STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND  
SURVEYORS**

**LCB FILE NO. R141-20I**

**The following document is the initial draft regulation proposed  
by the agency submitted on 07/13/2020**

**NAC 625.640 Procedure for complaints concerning professional misconduct or incompetence.**  
(NRS 625.140)

1. Any person who is aggrieved by the alleged professional misconduct or incompetence of a person subject to the jurisdiction of the Board may file a complaint with it pursuant to NRS 625.420, ~~and the Board may attempt to reach a settlement before holding a disciplinary hearing.~~
2. Upon receipt of a complaint, a member of the Board's staff shall initiate an investigation. Upon completion of the investigation, the member of the Board's staff shall submit a written report containing the results of the investigation to the Executive Director.
3. The Executive Director shall ~~;~~ **in conjunction with one designated member of the Board ("Board Liaison"):**
  - (a) Review the written report submitted pursuant to subsection 2; and
  - (b) Upon completion of the review, ~~recommend to the Board that:~~
    - (1) ~~The Board d~~Dismiss the complaint; or
    - (2) ~~The Executive Director n~~Negotiate a settlement with the respondent, subject to the approval of the Board.;
    - ~~—(3) The Board schedule the matter for a disciplinary hearing; or~~
    - ~~—(4) The Board refer the matter to an advisory committee for further review.~~
  - (c) **If a settlement cannot be reached, the Executive Director and Board Liaison shall determine whether to dismiss the action or set the matter for disciplining action before the Board.**

Edits to regulation are to codify the revised Rules of Practice approved by the board 11.21.2019.

**NAC 625.642 Licensee to provide written notice of disciplinary action taken by another entity.**  
(NRS 625.140)

1. A licensee who has been disciplined by another state or territory, the District of Columbia, a foreign country, the Federal Government or any other governmental agency shall notify the Board in writing of such disciplinary action.
2. The written notice must set forth the grounds, terms and effective date of the disciplinary action.
3. The licensee shall submit the written notice to the Board within ~~30~~ 60 days after the date on which the disciplinary action is imposed and state whether the disciplinary action is final or on appeal.
4. Failure to provide the written notice required pursuant to this section is an aggravating factor in any disciplinary action taken by the Board against the licensee.

Edit proposed to section because 30 days is often insufficient time for disciplined licensees to get signed disciplinary action from another state to the board.

**NAC 625.645 Conditions of probation.** (NRS 625.140, 625.460)

1. If the Board determines that probation is an appropriate disciplinary sanction pursuant to NRS 625.460, it may require as conditions of probation:
  - (a) That the licensee notify the Board concerning each project on which the licensee is working;
  - (b) The supervision of the licensee by an independent professional selected by the Board;
  - (c) The payment of all costs of the Board, not to exceed \$5,000 per violation; and
  - (d) Any other conditions deemed appropriate by the Board to facilitate probation.
2. Any notification required pursuant to subsection 1 must include:
  - (a) The name of the client;
  - (b) The name of the project;
  - (c) The location of the project;
  - (d) The type and scope of work involved;
  - (e) The size of the project; and
  - (f) The amount of the fee to be paid to the licensee.

Revision to limit board to probationary conditions, as legislators have had concerns of over-broad impositions on licensees.

**NAC 625.646 Establishment of advisory committee; members; recommendations.** (NRS 625.140)

1. The ~~Board~~ Executive Director and Board Liaison may establish an advisory committee composed of professional engineers, land surveyors or other persons, to:
  - (a) Provide technical assistance in the evaluation and disposition investigation of a complaint regarding the action or inaction of a licensee;
  - (b) Participate in the evaluation of candidates for licensure by comity endorsement; or
  - (c) Provide any assistance in any area that the ~~Board~~ Executive Director and Board Liaison deems necessary.
2. Members of an advisory committee:
  - (a) Are selected by and serve at the pleasure of the ~~Board~~ Executive Director and Board Liaison.
  - (b) Are prohibited from participating in any proceeding in which ~~a member of the Board similarly situated would be required to abstain~~ a public officer would be precluded from participating under NRS 281A.420.
  - (c) Are entitled to travel expenses and subsistence allowances, but are not entitled to compensation for services rendered to the ~~Board~~ Executive Director and Board Liaison.

~~—3.— Each member of the Board is a nonvoting, ex officio member of any such advisory committee and may attend any meeting of such an advisory committee.~~

~~—4.— The Board is not bound by any recommendation made by an advisory committee.~~

Edits to regulation are to codify the revised Rules of Practice approved by the board 11.21.2019 and to enable the use of advisory committees during the investigation process.

**NAC 625.647 Evaluation and disposition investigation of complaint: Duties of advisory committee; review by Board of recommendation.** (NRS 625.140)

1. If the Board Executive Director and Board Liaison establishes an advisory committee for the evaluation and disposition investigation of a complaint, the advisory committee shall:

(a) Review the complaint and the written report submitted pursuant to subsection 2 of NAC 625.640 to determine the standard of care for the respondent and evaluate whether there is probable cause to believe that the respondent violated NRS 625.410;

(b) Hold an informal conference with the respondent and any other person who may assist in resolving the complaint;

(c) Attempt to arrive at a terms for the resolution of the complaint with the respondent; and

(d) Within 15 days after the conclusion of the informal conference, submit to the Executive Director a report containing written recommendations regarding the disposition of the complaint findings as to the standard of care of the respondent and whether the respondent violated NRS 625.410.

2. The Executive Director shall share the report from the advisory committee with the Board Liaison on the matter. ~~In addition to the report required by paragraph (d) of subsection 1, within 15 days after the conclusion of the informal conference, the chair of the advisory committee shall submit to the Board a report which contains a summary of the informal conference and recommendations regarding the disposition of the complaint.~~

3. The Board Executive Director and Board Liaison ~~is are not bound by any recommendation made by an~~ the advisory committee's ~~regarding the disposition of the complaint recommendation.~~

4. ~~Upon receipt of the report from the~~ The recommendation of an advisory committee, the Executive Director and Board Liaison shall continue with the disposition of the complaint pursuant to NAC 625.640 ~~this section must be entered into evidence at any disciplinary action subsequently held before the Board concerning the complaint reviewed by the advisory committee.~~

5. ~~The Board may give the weight deemed appropriate by the Board to the recommendation of an advisory committee pursuant to this section.~~

~~6. The Board may accept or reject, in whole or in part, the recommendation of an advisory committee pursuant to this section.~~

Edits to regulation are to codify the revised Rules of Practice approved by the board 11.21.2019 and to enable the use of advisory committees during the investigation process.

~~NAC 625.648—Evaluation and disposition of complaint: Actions of respondent. (NRS 625.140)~~

~~1. If a respondent declines to participate in a review of the complaint by an advisory committee, the Executive Director shall refer the complaint to the Board for any further action that it deems appropriate.~~

~~2. If the respondent accepts the recommendations of the advisory committee which reviewed the complaint, the respondent must enter into an agreement with the Board regarding the resolution of the complaint within 15 days after he or she is served with the recommendations by the Executive Director. Such an agreement is not effective until the respondent has signed the agreement and the Board has approved it.~~

~~—3.— If the respondent rejects the recommendation of the advisory committee, the Board will take any further action that it deems appropriate.~~

~~—4.— If the respondent fails to notify the Board that he or she accepts the recommendation of the advisory committee, the Board will take any further action that it deems appropriate.~~

Regulation is not necessary, language is included in other regulations related to complaints and advisory committees.

**NAC 625.6465 Evaluation and ~~disposition~~ investigation of complaint: Duties of Executive Director.**  
(NRS 625.140)

If the ~~Board~~ Executive Director and Board Liaison establishes an advisory committee for the evaluation and ~~disposition~~ investigation of a complaint;

1. ~~†~~The Executive Director shall:

~~1-~~ (a) Select ~~one to~~ five persons to serve as the members of the advisory committee from a list of ~~volunteers approved by the Board~~ qualified volunteers compiled by the Executive Director, ~~three~~ a majority of whom, if practicable, must be from the same discipline as the respondent;

~~2-~~ (b) Designate one member to act as the chair;

~~3-~~ (c) Schedule an ~~informal~~ conference between the advisory committee and the respondent, giving the respondent reasonable written notice, as required by NRS 233B.121(2), setting for the time and place, as well as the opportunity for the respondent to call witnesses. Such conference will not be deemed to qualify as a contested case under NRS 233B.032

~~4.— Provide written notice of the time and place of the informal conference to each member of the advisory committee, the respondent and any witnesses requested by the respondent or the staff of the Board to appear at the informal conference;~~

~~5-~~ (d) Serve the decision and recommendation of the advisory committee on the respondent within a reasonable period.;~~and~~

~~6-2. Inform the Board of the recommended disposition of the complaint.~~ A conference between the advisory committee and the respondent, held pursuant to subsection 1 hereof, is exempted from Nevada Open Meeting Law pursuant to NRS 622.320(1), and may be held in person, via videoconference, or telephonically.

Edits to regulation are to codify the revised Rules of Practice approved by the board 11.21.2019 and to enable the use of advisory committees during the investigation process.

**NAC 625.6475 Evaluation and ~~disposition~~ investigation of complaint: ~~Informal e~~Conference; hearing de novo.** (NRS 625.140)

1. At an ~~informal~~ conference held pursuant to NAC 625.647:

(a) The chair of the advisory committee shall:

(1) Rule on the admissibility of all evidence.

(2) Accept all evidence which is relevant to the complaint.

(b) The advisory committee is not bound by the formal rules of evidence.

(c) The findings of the advisory committee must be supported by substantial evidence.

(d) A respondent's refusal to participate in a conference for an advisory committee shall be considered information relevant in a subsequent disciplinary hearing of the complaint. ~~All evidence considered by the advisory committee in its review of a complaint is admissible in a disciplinary action~~ before the Board.

2. If the ~~Board~~ Executive Director and Board Liaison schedules the matter for a disciplinary hearing ~~before the Board~~, the Board will conduct a hearing de novo of the charges contained in the complaint. During the hearing de novo, the Board may review the evidence considered by the advisory committee concerning the complaint, ~~unless a valid objection is made thereto~~.

3. An advisory committee may continue ~~an informal~~ conference ~~described in this section~~ for good cause shown.

4. If a respondent declines to participate in a review of the complaint by an advisory committee, the Executive Director and Board Liaison shall proceed with the matter pursuant to NAC 625.640.

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