

**LCB File No. R026-00**

**PROPOSED REGULATION OF THE COMMISSION ON  
POSTSECONDARY EDUCATION**

**NOTICE OF INTENT TO ACT UPON REGULATIONS**

**Notice of Hearing for the Adoption of Regulation of the  
Nevada Commission on Postsecondary Education**

The Nevada Commission on Postsecondary Education will hold a public hearing on March 22, 2000, at the Enterprise Library, 25 Shelborne Avenue, (8500 Las Vegas Boulevard South and Shelborne) as follows:

**10:30a.m. Public hearing and possible adoption of proposed revisions to regulation language, NAC 394.**

The purpose of the hearing will be to receive comments from all interested persons regarding regulations that pertain the Chapter 394 of the Nevada Administrative Code.

The purpose of the proposed regulation language is to:

Make certain improvements to regulations by clarifying meanings .....	394.345,394.37
5, 394.385 394.400	
Strengthen standards pertaining to staff and instructors .....	394.480,
394.485, 394.490	
Standardize deadlines for submitting documents .....	394.358,
394.365, 394.435	
Require CPA-prepared financials statements .....	394.405
Prohibit certain types of advertising .....	394.590,
394.595	
Allow massage schools to operate at the same location as massage establishments	394.6
Establish standards for distance education .....	New

The anticipated economic effect of the proposed change to NAC 394.405 regulations on the business that the agency regulates will be the increase of obtaining a CPA-prepared financial statement biannually for license renewal. The cost of a CPA-prepared financial statement will also impact applicants for initial licensure. Adversely, it increases the cost of doing business. The beneficial, immediate and long term effects will be that information pertinent to license renewal is provided for review. There is no anticipated economic effect on the public. There is no increased cost for enforcement to the regulating agency.

There is no anticipated economic effect for the remaining regulations (394.345, 394.358, 394.365, 394.375, 394.385 394.400, 394.435, 394.480, 384.485, 394,490, 394.590, 394.595, 394.670) on the business that the agency regulates. The beneficial effects, immediate and long

term, will be to bring clarity and consistency to existing regulations, helping all institutions with compliance issues.

There is no anticipated economic effect on the public for any of the proposals. There is no additional cost to the regulating agency for enforcement of the proposals. There is no duplication or overlap of federal, state or local government agencies. The proposed regulations do not establish any new fees or increase existing fees.

Persons wishing to comment upon the proposed action of the COMMISSION ON POSTSECONDARY EDUCATION may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Commission on Postsecondary Education, 1820 East Sahara Avenue, Suite 111, Las Vegas, Nevada, 89104, on or before March 14, 2000. You may also send same via facsimile to (702) 486-7340 or via Email to djperlma@nsn.k12.nv.us. As it pertains to the hearing noticed above, if no person who will be directly affected by the proposed agency actions appears to request time to make an oral presentation, the Commission on Postsecondary Education may proceed immediately to act upon any written submissions.

A copy of the proposed regulations to be adopted and/or amended will be on file at the State Library, 401 N. Carson Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the regulations to be amended will be available at the Commission on Postsecondary Education for inspection and copying by members of the public during business hours. Copies will also be mailed to members of the public upon request.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reasons for overruling the consideration urged against its adoption.

*Persons attending the hearing who are disabled and require special accommodations or assistance at the meeting are requested to notify Kathryn Winkle, in writing, at 1820 East Sahara Avenue, Suite 111, Las Vegas, Nevada, 89104 or by calling (702) 486-7330 no later than five (5) working days prior to the meeting.*

This notice has been posted at office of the Nevada Department of Education in Carson City and Las Vegas, the Commission on Postsecondary Education, the Nevada State Library and Archives, State of Nevada Bradley Building, Enterprise Library and each county main public library.

394.345 "Supervised training" defined. "Supervised training" means training which is received at an employment setting other than the institution, *and* specified and included in the hours required for graduation in the enrollment contract or agreement with the institution ~~[and under the direct supervision and liability of the institution]~~. Supervised training is generally for less than usual employment shifts or periods and taken concurrently with classroom instruction. For the purpose of measuring an educational program, supervised training has one-third the numerical value of instruction in a classroom.

394.358 Submission of materials for consideration by the commission.

- ~~[1. — [Except as otherwise provided in NAC 394.300 to 394.685, inclusive,] A[a] All materials pertaining to any matter to be considered for action by the commission at a regularly scheduled meeting must be delivered to the commission 60 days before the meeting. The materials must be delivered to the office of the commission or mailed to the office and postmarked on or before that date.~~
- ~~[2. The chairman of the commission or the administrator may accept materials relating to an application for a license which are delivered after that date but not later than 45 days before the meeting, if:~~
- ~~(a) A licensed institution demonstrates that damage would result from a delay;~~
  - ~~(b) The commission on economic development certifies that a delay in handling the application may adversely affect the economic development of an area; or~~
  - ~~(c) A delay would affect an action required by another association or agency which would cause the institution to delay its opening for an unreasonable time.~~
- ~~3. The chairman of the commission will not and the administrator shall not accept an application for consideration at the regularly scheduled meeting if it is submitted later than 45 days before that meeting of the commission.]~~

394.365 Determination that a person is required to be licensed.

1. If the administrator determines that a person is required to be licensed, he shall notify the person, by certified mail, of every reason that a license is required. If the person required to be licensed believes that the findings of the administrator are in error, he may appeal the decision to the commission for a hearing at its next meeting. The request for such an appeal must be sent by certified mail and received by the administrator at least ~~[20]~~ 60 days before the next meeting of the commission.
2. If the commission determines that the person is required to be licensed:
  - (a) The administrator shall notify the person by certified mail, of the reasons for the determination; and
  - (b) The person must submit an application for a license and receive approval from the commission before enrolling any new student.

394.375 Applicability of regulations to institutions approved for the training of veterans. Any institution licensed by or under the jurisdiction of an agency of government which seeks approval to offer training to veterans or which has been approved for the training of veterans is subject to the regulations of the commission, if the agency of government has no criteria, or where the criteria are less stringent than that of the commission. The regulations of the commission apply to contested cases concerning approval of programs for the training of veterans. Regulations of the United States *Department of* Veterans~~[-Administration]~~ *Affairs*

may supersede the commission's regulations and policies when applied to institutions approved for the training of veterans.

394.385 Contents of description of course of study. Any description of a course of study submitted to the administrator must be on forms provided by the commission, and specify:

1. The overall organization of the instructional program;
2. The ~~{goal}~~ **objective** the program is intended to meet;
3. Each educational unit, including its measurable learning objectives, the hours of instruction, ~~{or}~~ credits and the procedure for evaluating attainment of the objectives;
4. The basic textbooks and instructional equipment to be used in the program; and,
5. A brief description of the qualifications of the instructor.

394.400 Approval of facilities or plans before issuance of provisional license; inspection of facilities.

1. **Before a license to operate is issued, [A] a facility ~~{or plans}~~ must be inspected and approved by the commission or its administrator for conformity with acceptable educational standards and specifications and for compliance with all regulatory requirements as specified in NRS 394.450~~[, before issuance of a provisional license to operate a private postsecondary educational institution.~~**
- ~~2. The commission will inspect a facility:~~
  - ~~(a) Before issuance of a license, other than a provisional license.~~
  - ~~(b) Each time a facility is added by an institution.~~

394.405 Submission of evidence of financial stability.

1. Each applicant for a license~~[, renewal of a license]~~ or change of ownership must submit a certified financial statement which contains the information set forth in subsection 2 as evidence of his financial stability. The financial statement must be prepared within 12 months before the date of application and must be~~:~~
  - ~~(a) On a form provided by the commission;[~~
  - ~~(b)] [A] a financial statement audited **or reviewed** by a certified public accountant~~;~~~~
  - ~~(c) A balance sheet prepared according to generally accepted procedures of accounting; or~~
  - ~~(d) A copy of the appropriate federal income tax form.~~
2. The financial statement must contain:
  - (a) A statement of the source of all investment capital received;
  - (b) A statement of the disposition of this investment capital identified by the recipient and amount received, purpose of expenditure or use, balance, if any, and place of deposit;
  - (c) A current inventory of the assets received, identified by recipient and amount received, purpose of expenditure or use;
  - (d) A statement of liabilities as of the date of the application including accounts payable, loans and notes payable, and any other financial obligations of the school; and
  - (e) A statement of obligations attendant to land purchase agreements, land sales contracts, lease agreements on land, and similar contracts involving acquisition of books, equipment, buildings and furnishings for buildings.
3. Applicants for renewal of an institutional license must submit **a certified financial statement containing** the items set forth in ~~[paragraphs (c) and (d) of]~~ subsection 2, **prepared according to generally accepted accounting principles.**

394.435 Procedure for review of license applications.

1. All applications must be typed and submitted to the administrator on forms provided by the commission.
2. Once the application has been reviewed and all necessary revisions have been made, and the administrator finds it to be complete, he shall advise the applicant of the number of copies of each document required for review by the commission at their next regularly scheduled meeting *and the deadline by which the copies must be submitted.* ~~[The applicant shall supply sufficient copies of the completed application to the commission. The copies must be submitted to the administrator at least 20 days before the date of the next meeting of the commission.]~~
3. An agenda will be sent to the applicant by certified mail at least 10 days before the meeting of the commission indicating the time and place of the meeting with a copy of the administrator's report on the application including his recommendation for action by the commission. The applicant or his representative must attend the meeting of the commission to respond to inquiries of the commissioners relative to the application.

*394.xxx Director defined. A director is the person who is responsible for the day to day operation of a licensed postsecondary educational institution.*

*394.xxx Academic director defined. An academic director is an individual who is responsible for the development, accuracy, and applicability of a program, and one who is qualified pursuant to NAC 394.485 to instruct the program.*

394.480 Administrative personnel.

1. ~~[The president, chancellor, director or academic vice president of a degree granting institution which has been authorized to use the term "university" must have and submit to the commission evidence of:
  - (a) An earned degree at the doctoral level from an accredited university or college or equivalent qualifications as determined by the commission; and
  - (b) At least 2 years of experience in an administrative position in an accredited institution of higher education.]~~

*Each institution must employ full time:*

- (a) *A director who resides in Nevada, is knowledgeable of NRS and NAC Chapter 394 and:
  - (1) For degree-granting institutions, must have at least 2 years of experience in an administrative position at an accredited institution of higher education; or,
  - (2) For non-degree granting institutions must have at least two years of managerial experience or combination of training and experience.*
- (b) *For each authorized program, an academic director.*
2. ~~[The president, chancellor, director or academic vice president of a degree granting institution which has been granted the use of the term "college" must have and submit to the commission evidence of:
  - (a) An earned degree at the master's level from an accredited university or college or equivalent qualifications as determined by the commission; and~~

~~(b) At least 2 years of experience in an administrative position in an accredited postsecondary educational institution.]~~

*Each institution must submit to the commission the name of all individuals employed pursuant to paragraph 1 and evidence of their qualifications.*

~~3. The director of instruction of an institution which does not grant degrees must have and submit to the commission evidence of:~~

~~(a) A bachelor's degree from an accredited university or college or equivalent qualifications as determined by the commission; or~~

~~(b) His qualifications to instruct courses given in that institution.~~

~~4. Unless otherwise approved by the commission, the person responsible for the institution's operations in Nevada must reside in Nevada.]~~

394.485 Instructors.

In a degree-granting institution:

(a) ~~[At least 60 percent of e]~~ Each undergraduate course must be taught by an instructor who possesses~~[-~~:

~~(1) —A] a~~ *bachelor's degree in a field related to the subject the instructor is assigned to teach* from an accredited university or college ~~[-or~~

~~[(2)The skill and expertise which is equivalent to that of a person who holds a bachelor's degree].~~

(b) ~~[At least 60 percent of e]~~ Each ~~[graduate]~~ *master's level* course must be taught by an instructor who possesses~~[-~~:

~~(1) —A] a~~ *master's degree in a field related to the subject the instructor is assigned to teach* from an accredited university or college ~~[-or~~

~~(2) The skill and expertise which is equivalent to that of a person who holds a master's degree].~~

*(c) Each doctorate level course must be taught by an instructor who possesses a doctorate degree in a field related to the subject the instructor is assigned to teach from an accredited university or college.*

2. In an institution that does not grant a degree or that offers technical courses at the associate level, ~~[60 percent of]~~ each course must be taught by an instructor who:

(a) Holds a valid and appropriate teaching license issued by the department of education;

(b) Teaches in that field in the University and Community College System of Nevada or another degree-granting institution; or

(c) Has a high school diploma or the equivalent and 2 years of verified work or teaching experience in the subject to be taught.

~~[To determine whether an instructor has the skill and expertise which is equivalent to that of a person who has a bachelor's or master's degree:~~

~~(a) Two hundred fifty hours of training;~~

~~(b) Two thousand hours of part-time employment; or~~

~~(c) One year of full-time employment, in a related field, shall be deemed equivalent to 16 semester hours of credit earned from an accredited university or college.~~

~~4.]~~ Each institution shall maintain at least one of the following records to verify that each instructor is qualified to teach the course assigned to him:

(a) Transcripts used by the instructor to establish his qualifications.

- (b) ~~[A description, signed by each previous employer, of all previous employment and its duration.]~~ *Descriptions of previous employment, indicating actual duties performed and length of employment, signed by the employers.*
- (c) An affidavit in which the employee swears that an employer is not able to be contacted and that the description of the employment and its duration are true.
- (d) A copy of a teaching license issued by the department of education.
- (e) Tax records or an affidavit clearly showing self-employment in the field and education necessary to instruct that portion of the course to which he is assigned.

394.490 Substitute instructors.

- ~~[1.]~~ A substitute instructor is one who teaches *any* part of a course *in the absence of the regular instructor and must possess the same qualifications pursuant to NRS 394.485. Such an instructor must be provided if the regular instructor is unable to complete the scheduled training.* ~~[but is not responsible for the teaching of the course or the grading of the students. He is not required to hold a degree, certificate or endorsement. He must possess the skill, expertise and education necessary to instruct that portion of the course to which he is assigned.]~~
- ~~2.—Such instructor may not instruct more than 40 percent of a course or be responsible for giving the final grade or certifying completion.]~~

~~[394.505—Alternate instructors.—An institution shall provide a qualified alternate instructor to replace the regular instructor if the regular instructor is not able to fulfill his commitment.]~~

394.655 Massage schools: Specific requirements, prohibitions.

1. A massage school shall not operate in the same facility or on the same premises as an establishment that offers massage to members of the public for a fee,~~[.]~~ *unless*
  - (2) All student areas, including but not limited to lecture rooms, break rooms, rest rooms, and hands-on training areas are completely partitioned and isolated from the massage establishment;
  - (3) There is a separate entrance;
  - (4) The training facility is clearly and conspicuously marked as a school of massage; and,
  - (5) No other business is conducted within the school of massage that is not directly related to the educational process.
2. *A school of [M] massage* ~~[performed on members of the public at a massage school must be included as part of the curriculum at the school. A student]~~ *may operate a clinic in which students* perform massage on members of the general public if:
  - (a) The school maintains adequate liability insurance for the term of its license;
  - (b) Before a massage is performed, the school obtains from the person who will receive the massage a written statement signed by the person that he knows that the massage will be performed by a student;
  - (c) The student has successfully completed instruction in
    - (1) Anatomy and physiology;
    - (2) Massage theory;
    - (3) Hygiene and first aid;
    - (4) Law and ethics; and,

- (5) At least 25 hours of hands-on massage training on other students or members of the school's staff;
  - (d) The student is readily identifiable as a student to a person who will receive the massage; and
  - (e) Each massage is performed under the direct supervision of an instructor, on the approved premises of the school, at a public event, or in a licensed medical facility.
3. The school must have a licensed physician who practices in the immediate vicinity as a consultant to the school staff.
  4. A massage school shall not:
    - (a) Enroll a student who is less than 18 years of age;
    - (b) Issue educational credentials to any person who is less than 18 years of age; or
    - (c) Allow a student to perform massage in a hotel or motel room or in a private residence.

394.590 Promotional materials: Prohibitions.

1. The promotional materials of an institution must not:
  - (a) Use any name, label or insigne which is likely to be misleading or deceptive with respect to the true nature and operation of the institution.
  - (b) Use a name or other description to indicate falsely that it is a part of a state or the Federal Government.
  - (c) Represent that it is an employment agency or authorized training facility for another industry so as to conceal the fact that it is an institution.
  - (d) Falsely represent that any of its programs are accredited.
  - (e) Represent that students completing a course or program of instruction may transfer credit to an accredited institution of higher education unless the institution can document that the credit is transferable.
  - (f) Misrepresent the size, reputation, location, facilities, or equipment of the institution through the use of photographs, illustrations, written or oral descriptions or any other depictions.
  - (g) Use quantitative superlatives, such as biggest, largest or highest placement rate, in its advertising unless the terms are qualified in the advertisement itself and the institution has, in its possession, evidence to support its claim.
  - (h) Misrepresent the nature or effectiveness of any course, equipment or methods of training.
  - (i) Misrepresent the qualifications, training or experience of its faculty or personnel.
  - (j) Falsely represent that it will provide or arrange for full- or part-time employment while the student is undergoing instruction.
  - (k) Falsely represent that only those who make an acceptable grade or complete successfully a certain test will be admitted.
  - (l) Falsely represent that applications for enrollment will be considered for only a limited period of time or that they must be submitted by a certain date.
  - (m) Solicit students by means of listings under captions, such as "wanted to train for ....," "help wanted," "employment," "business opportunities," or by words or terms of similar import, which represent directly or by implication that employment is being offered.
  - (n) Fail to include the full name and address of the institution and disclose the fact that it is an institution if it is not apparent from its name.

- (o) Falsely represent that a course or courses may be taken for a specified price, or at a saving, or at a reduced price, or otherwise deceive students or prospective students with respect to the cost of a course or any equipment, books or supplies associated with the course.
  - (p) Falsely represent that it owns, operates, supervises or has access to a dormitory, eating or other living accommodations.
  - (q) *Use salary expectations.*
  - (r) *Fail to include a clear and conspicuous disclosure in immediate conjunction with its trade or business name that it is a correspondence, distance education or home study school, if the instruction offered is wholly by correspondence, distance education, or home study.*
2. For the purposes of this section, the term "promotional materials" includes documents for advertising, soliciting or public information, such as:
- (a) Advertisements for newspaper, radio and television;
  - (b) Broadcasting or public address announcements;
  - (c) Brochures, catalogs, mailings or flyers;
  - (d) Announcements on bulletin boards and variety advertisers; ~~[and]~~
  - (e) Telephone directories~~[,]~~; *and*
  - (f) *Internet, web pages, and electronic bulletin boards.*

~~[394.595 Correspondence and home study schools: Disclosure. If a postsecondary educational institution conducts its instruction wholly by correspondence or home study, a clear and conspicuous disclosure must be made in immediate conjunction with its trade or business name that it is a correspondence or home study school.]~~

*394.xxx Distance education defined. Distance education means education, training, courses or programs which are delivered to a student who is geographically separated from the instructor.*

*394.xxx Unit of instruction defined. Unit of instruction means a component of a training program such as a course, subject, topic, module or block.*

*394.xxx Distance education requirements. Each unit of instruction utilizing distance education must:*

1. *Include a description of how the process to be followed to deliver the education.*
2. *Consist of subjects that are appropriate to be adequately delivered via distance education.*
3. *Include a verifiable process in which the instructor monitors student attainment of the objective throughout the period of instruction.*
4. *Include adequate safeguards for testing that ensure the integrity of the tests and assessments. Such safeguards must address:*
  - a. *A positive means of student identification*
  - b. *A controlled process by which test proctors are selected, trained and monitored*
  - c. *A verifiable process that ensures test materials are not compromised.*
  - d. *A review process which periodically evaluates all testing processes for integrity and adherence to policies.*
5. *Utilize equipment and technology adequate for delivering the distance education.*

6. *Provide instructors who are qualified in using the equipment and technology required by the delivery of the distance education.*