

**PROPOSED REGULATION OF THE NEVADA
STATE BOARD OF ACCOUNTANCY**

LCB File No. R149-04

September 28, 2004

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

AUTHORITY: §§1-28, NRS 628.120 and 628.386; §29, NRS 628.120 and 628.160.

A REGULATION relating to accountants; revising the requirements for continuing education; revising the provisions relating to a program to review the quality of financial reports; requiring a practitioner to report certain convictions, judgments or results of administrative proceedings; revising the rules of professional conduct; and providing other matters properly relating thereto.

Section 1. Chapter 628 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

Sec. 2. *“Board” has the meaning ascribed to it in NRS 628.009.*

Sec. 3. *“Engagement” means work done by a practitioner while engaged in the practice of public accounting.*

Sec. 4. *“Financial statement audit” means an engagement that is issued in conformity with:*

1. The Statements on Auditing Standards published by the American Institute of Certified Public Accountants;

2. The “Reporting Standards for Financial Audits” published by the United States Government Accountability Office in Government Auditing Standards; or

3. Except as otherwise provided in this subsection, the Statements on Standards for Attestation Engagements published by the American Institute of Certified Public Accountants.

The term does not include an agreed-upon procedure engagement that is issued in conformity with the Statements on Standards for Attestation Engagements adopted by the American Institute of Certified Public Accountants.

Sec. 5. “Level I result” means a result which indicates no deficiencies or minor deficiencies and is classified as acceptable.

Sec. 6. “Level II result” means a result which indicates deficiencies, such as departures from technical reporting or accounting standards, and is classified as marginal.

Sec. 7. “Level III result” means a result which indicates:

- 1. The violation of one or more significant reporting standards;*
- 2. The serious departure from generally accepted accounting principles; or*
- 3. The failure to include material disclosures necessary for a fair presentation,*

↪ and is classified as substandard.

Sec. 8. “Practice of public accounting” has the meaning ascribed to it in NRS 628.023.

Sec. 9. “Practitioner” means:

1. A certified public accountant or a public accountant licensed by the Board to engage in the practice of public accounting; or

2. A certified public accountant or firm of certified public accountants which does not hold a live permit and does not have a registered office or residence in this State but has been issued, or has applied for, a temporary permit pursuant to NRS 628.440.

Sec. 10. “Result” means the determination concerning a practitioner and any supporting documentation produced pursuant to a practice-monitoring program.

Sec. 11. 1. *If a practitioner issues financial statement audits, the practitioner shall engage in a practice-monitoring program, which is approved by the Board, to ensure that he is maintaining the standards of the profession.*

2. If a practitioner does not issue financial statement audits, the practitioner may engage in a practice-monitoring program, which is approved by the Board, to ensure that he is maintaining the standards of the profession.

3. If a practitioner engages in a practice-monitoring program, the practitioner shall submit to the Board the result of the practice-monitoring program.

4. If a practitioner engages in a practice monitoring program pursuant to the provisions of this section, the practitioner is exempt from the requirements of NAC 628.320.

Sec. 12. 1. *A practitioner licensed by the Board for the first time is not required to file reports pursuant to the provisions of NAC 628.320 or results pursuant to the provisions of section 11 of this regulation until his annual permit is filed for the next fiscal year.*

2. A practitioner who does not issue reports and does not engage in a practice-monitoring program pursuant to the provisions of section 11 of this regulation 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 628.261 to 628.420, inclusive, and sections 4 to 7, inclusive, 10, 11 and 12 of this regulation, only for that period during which reports are not being issued and the practitioner does not engage in a practice-monitoring program.

Sec. 13. *A practitioner shall report to the Board, on a form prescribed by the Board, not more than 30 days after:*

1. The practitioner receives an adverse peer review or inspection report.

2. *The practitioner receives the second of two consecutive modified peer reviews or inspection reports.*

3. *The imposition against the practitioner 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, certificate, permit or right to practice by:*

(a) The Securities and Exchange Commission;

(b) The Internal Revenue Service;

(c) 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; or

(d) Any other federal or state agency for conduct of the practitioner relating to the provision of professional services.

4. *The practitioner receives notice of the filing of disciplinary charges against the practitioner by:*

(a) The Securities and Exchange Commission;

(b) The Internal Revenue Service;

(c) Any agency of another state, territory or foreign country authorized to regulate the practice of accountancy; or

(d) Any agency of this State, another state or territory, or the Federal Government authorized to regulate taxes, insurance or securities.

5. *Except as otherwise provided in this subsection, any settlement, award or judgment of \$150,000 or more against the practitioner 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 only notify the Board, pursuant to this subsection, of a settlement, award or judgment involving the practice of public accounting in this State.*

6. *The practitioner 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 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, under the laws of any state or of the United States.

Sec. 14. NAC 628.010 is hereby amended to read as follows:

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

~~1. "Board" means the Nevada State Board of Accountancy.~~

~~2. "Practitioner" means:~~

~~(a) A certified public accountant or a public accountant licensed by the Board to engage in the practice of public accounting; or~~

~~(b) A certified public accountant or firm of certified public accountants which does not hold a live permit and does not have a registered office or residence in this State, but has been issued, or~~

~~has applied for, a temporary permit pursuant to NRS 628.440.], the words and terms defined in sections 2, 3, 8 and 9 of this regulation have the meanings ascribed to them in those sections.~~

Sec. 15. NAC 628.210 is hereby amended to read as follows:

628.210 1. Except as otherwise provided in NAC 628.110, an applicant for the renewal of a permit to engage in the practice of public accounting must ~~[show that he has completed]~~ *complete* at least 80 hours of continuing education during the 2 years immediately preceding the date for renewal of the permit, of which at least ~~[20 hours were]~~ :

(a) *Twenty hours must be* completed in each year ~~[~~

~~—2.— Except as otherwise provided in NAC 628.110, an applicant who has previously held a permit, but whose permit has, at the time of application, lapsed, must adhere to the educational requirements in subsection 1 during the 2 years immediately preceding the date he applies for the permit.~~

~~—3.] ; and~~

(b) *Four hours must be in professional ethics.*

2. 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.]~~ 3. 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. 16. NAC 628.250 is hereby amended to read as follows:

628.250 1. ~~[Applicants]~~ *An applicant* for *the* renewal of ~~[permits]~~ *a permit* to practice issued pursuant to NRS 628.380 must ~~[file with their applications a signed statement listing the programs of]~~ *list on the application the number of hours of* continuing education ~~[for which they claim credit. The statement must include:]~~ *completed by the applicant during the previous calendar year. The applicant shall maintain a record of the classes of continuing education completed by the applicant, including, without limitation:*

- (a) The name of the sponsoring organization;
- (b) The location of the program;
- (c) The title of the program or a description of its content;
- (d) The dates attended; and
- (e) The number of hours of credit claimed.

2. The applicant is responsible for documenting the acceptability of the program and the validity of the credits. The documentation must be retained for 4 years after the applicant files ~~[the signed statement pursuant to subsection 1 in which he claims credit for the program.]~~ *an application for the renewal of a permit to practice issued pursuant to NRS 628.380.* The documentation must consist of one of the following:

- (a) A certificate of completion.
- (b) A copy of the outline of the course prepared by the sponsor of the course along with the information required by subsection 1.
- (c) For courses taken for academic credit at accredited universities and colleges, evidence of the satisfactory completion of the course . ~~[is required.]~~ For noncredit courses, a statement of the hours of attendance signed by the instructor is required.
- (d) For formal programs for independent study or self-study, written evidence of completion . ~~[is required.]~~
- (e) Any other documentation acceptable to the Board.

3. The Board will verify information submitted by an applicant for a permit on the basis of a test. If the Board determines that the requirement for continuing education has not been met, the Board may grant additional time for the deficiencies to be corrected.

Sec. 17. NAC 628.261 is hereby amended to read as follows:

628.261 As used in NAC 628.261 to 628.420, inclusive, *and sections 4 to 7, inclusive, 10, 11 and 12 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 628.271 to 628.301, inclusive, *and sections 4 to 7, inclusive, and 10 of this regulation* have the meanings ascribed to them in those sections.

Sec. 18. NAC 628.310 is hereby amended to read as follows:

628.310 1. The Board will adopt a 3-year cycle to review the reports submitted by practitioners pursuant to NAC 628.320 *and results submitted by practitioners pursuant to section 11 of this regulation* to determine whether the practitioners have complied with applicable standards of reporting and will assign one-third of the practitioners in this State to each year of the cycle.

2. The 3-year cycle established pursuant to this section does not affect the requirements for the annual renewal of office registrations or permits contained in NRS 628.370 and 628.380.

Sec. 19. NAC 628.320 is hereby amended to read as follows:

628.320 1. Except as otherwise provided in ~~[this section,]~~ *section 11 or 12 of this regulation*, a practitioner shall submit to the Board a copy of a report, consisting of one copy of an audit, a review and a compilation, which he issued to a client in the previous 12 months, including full disclosure compilations, if issued. The reports must be submitted on or before May 1 of the year in which the practitioner is required to submit his reports.

2. ~~[A practitioner licensed by the Board for the first time is not required to file reports until his annual permit is filed for the next fiscal year.~~

~~—3.—A practitioner who does not issue reports shall report that fact 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 628.261 to 628.420, inclusive, only for that period during which reports are not being issued.~~

~~4.]~~ Reports submitted to the Board must:

(a) Be selected by the practitioner.

(b) Be annual reports, if issued. If annual reports are not issued, other periodic reports must be submitted.

(c) Not indicate the identity of the client.

~~5. The Board may exempt a practitioner from the requirements of NAC 628.261 to 628.420, inclusive, if the practitioner engages in a practice monitoring program, which is approved by the Board, to ensure that he is maintaining the standards of the profession.]~~

Sec. 20. NAC 628.340 is hereby amended to read as follows:

628.340 The Board will send notice to each practitioner that he must comply with the requirements of NAC 628.320 *or section 11 of this regulation* at the time he is notified that his permit to engage in the practice of public accounting in this State must be renewed.

Sec. 21. NAC 628.350 is hereby amended to read as follows:

628.350 1. Upon receipt of a report ~~from~~ *submitted pursuant to the provisions of NAC 628.320 or a result submitted pursuant to the provisions of section 11 of this regulation* by a practitioner, the Board will assign a number to it and, to maintain confidentiality, delete the identity of the practitioner for the purposes of review.

2. The Board will designate a coordinator who is a certified public accountant proficient in accounting and auditing procedures to review initially the reports *and results* received.

3. If the coordinator determines that a practitioner complied with applicable standards of reporting, ~~he shall~~ *the Board will* so notify the practitioner. The coordinator may assign reports ~~from~~ *or results submitted by* a practitioner to a reviewer for further review.

Sec. 22. NAC 628.360 is hereby amended to read as follows:

628.360 1. A reviewer must:

- (a) Be proficient in accounting and auditing procedures; and
- (b) Have successfully completed a program of training approved by the Board.

2. A reviewer shall maintain the confidentiality of all reports *and results* reviewed.

3. A reviewer shall submit his comments to the coordinator for consideration after he has completed a detailed review of a report ~~+~~ *or a result*.

Sec. 23. NAC 628.370 is hereby amended to read as follows:

628.370 1. The coordinator shall give written notice to a practitioner who submitted a level I report *or a level I result* that ~~+~~ *the report or the result* has been classified as a level I report *or a level I result* and may include in his notice suggestions for corrective action.

2. The coordinator shall give written notice to a practitioner who submitted a level II report *or a level II result* that the report or *the result* has been classified as a level II report *or a level II result* and include in his notice recommendations for improving the quality of the reporting. The coordinator may require the practitioner to respond to the notice.

3. The coordinator shall give written notice to a practitioner who submitted a level III report *or a level III result* that the report *or the result* has been classified as a level III report *or a level III result* and include in his notice a summary of the deficiencies noted. The coordinator shall require the practitioner to respond to the notice.

Sec. 24. NAC 628.380 is hereby amended to read as follows:

628.380 1. Upon receipt of a response from a practitioner who submitted a level III report ~~or~~ *or a level III result*, the coordinator shall review the comments received.

2. A letter of constructive comments must be mailed to the practitioner regarding his departures from applicable standards of reporting. The letter must include authoritative citations to support the coordinator's conclusions.

3. The coordinator shall encourage practitioners to submit any arguments concerning the findings of the coordinator.

4. The coordinator shall prepare a final report for presentation to the Board, including any comments submitted by the practitioner, and recommend whether a review conducted at the office of the practitioner is necessary.

Sec. 25. NAC 628.390 is hereby amended to read as follows:

628.390 1. Upon receipt of the coordinator's final report, the Board will determine whether a review must be conducted at the office of the practitioner.

2. If such a review must be conducted, the Board will schedule a date with the practitioner for the review of his reports, *results* and related work papers.

3. The review must be conducted in compliance with standards established by the Board.

4. A final report of the review must be submitted to the coordinator and practitioner.

Sec. 26. NAC 628.400 is hereby amended to read as follows:

628.400 1. A practitioner whose report is classified as a level III report *or whose result is classified as a level III result* and who agrees with that classification may be:

(a) Required to complete successfully specific courses of continuing education;

(b) Required to submit future reports for review for a specified period before they are issued to clients; or

(c) Subject to such other disciplinary action as the Board may take.

2. If a practitioner does not agree with the classification or the recommendations of the Board, the Board may issue a formal complaint and conduct a hearing pursuant to NRS 628.390 and 628.410.

Sec. 27. NAC 628.410 is hereby amended to read as follows:

628.410 1. A practitioner whose reports are classified as level I *reports* or level II *reports* *or whose results are classified as level I results or level II results* is not required to submit reports *or results* for review for 3 years.

2. A practitioner whose reports are classified as level III reports shall comply with the requirements of NAC 628.320 for the following year. If the reports submitted for the following year are classified as level I *reports* or level II ~~III~~ *reports*, the practitioner must then again be placed in the 3-year cycle established by the Board.

3. A practitioner whose results are classified as level III results shall comply with the requirements of section 11 of this regulation for the following year. If the results submitted for the following year are classified as level I results or level II results, the practitioner must then again be placed in the 3-year cycle established by the Board.

Sec. 28. NAC 628.420 is hereby amended to read as follows:

628.420 1. The classification of any report and any documentation submitted to the Board pursuant to NAC 628.320 is confidential. All documentation submitted to the Board pursuant to NAC 628.320 ~~[, except the transmittal form and affirmation required pursuant to subsection 3 of NAC 628.320,]~~ must be destroyed when the process of review is complete. The process of review is considered complete under the following circumstances:

~~{1.}~~ (a) If the report of a practitioner submitted pursuant to NAC 628.320 is classified as *a* level I ~~{1.}~~ *report*, the process of review is considered complete when the practitioner receives written notice of the classification from the coordinator.

~~{2.}~~ (b) If the report of a practitioner submitted pursuant to NAC 628.320 is classified as *a* level II ~~{1.}~~ *report*, the process of review is considered complete when the practitioner receives written notice of the classification from the coordinator, unless the practitioner is required to respond to the notice. If a practitioner is required to respond to the notice that his report is classified as *a* level II ~~{1.}~~ *report*, the process of review is considered complete when the coordinator receives the practitioner's response.

~~{3.}~~ (c) If the report of a practitioner submitted pursuant to NAC 628.320 is classified as *a* level III ~~{1.}~~ *report* and the practitioner agrees with the classification, the process of review is considered complete when:

~~{(a)}~~ (1) The Board determines what disciplinary action, if any, will be taken against the practitioner and the practitioner complies with the order of the Board concerning the disciplinary action, unless the practitioner seeks administrative review of the Board's determination; or

~~{(b)}~~ (2) The practitioner has exhausted all administrative and judicial remedies.

~~{4.}~~ (d) If the report of a practitioner submitted pursuant to NAC 628.320 is classified as *a* level III ~~{1.}~~ *report* and the practitioner does not agree with the classification, the process of review is considered complete when:

~~{(a)}~~ (1) The charges against the practitioner are not sustained by the Board; or

~~{(b)}~~ (2) The practitioner has exhausted all administrative and judicial remedies.

2. The classification of any result and any documentation submitted to the Board pursuant to section 11 of this regulation is confidential. All documentation submitted to the

Board pursuant to section 11 of this regulation must be destroyed when the process of review is complete. The process of review is considered complete under the following circumstances:

(a) If the result of a practitioner submitted pursuant to section 11 of this regulation is classified as a level I result, the process of review is considered complete when the practitioner receives written notice of the classification from the coordinator.

(b) If the result of a practitioner submitted pursuant to section 11 of this regulation is classified as a level II result, the process of review is considered complete when the practitioner receives written notice of the classification from the coordinator, unless the practitioner is required to respond to the notice. If a practitioner is required to respond to the notice that his result is classified as a level II result, the process of review is considered complete when the coordinator receives the practitioner's response.

(c) If the result of a practitioner submitted pursuant to section 11 of this regulation is classified as a level III result and the practitioner agrees with the classification, the process of review is considered complete when:

(1) The Board determines what disciplinary action, if any, will be taken against the practitioner and the practitioner complies with the order of the Board concerning the disciplinary action, unless the practitioner seeks administrative review of the Board's determination; or

(2) The practitioner has exhausted all administrative and judicial remedies.

(d) If the result of a practitioner submitted pursuant to section 11 of this regulation is classified as a level III result and the practitioner does not agree with the classification, the process of review is considered complete when:

(1) The charges against the practitioner are not sustained by the Board; or

(2) The practitioner has exhausted all administrative and judicial remedies.

Sec. 29. NAC 628.500 is hereby amended to read as follows:

628.500 1. The Board hereby adopts by reference the ~~Rules~~ Code of Professional Conduct adopted by the American Institute of Certified Public Accountants, as those rules existed on June 1, ~~2000,~~ 2003, with the following exceptions:

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

(b) The definition of “financial statements” in ET Section 92 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 “practice of public accounting” in ET Section 92 is amended to have the meaning ascribed to it in NRS 628.023.

(d) The disclosure required pursuant to Section B of Rule 503 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 section ET Appendixes of the Code of Professional Conduct.

2. A copy of the ~~[Rules]~~ Code of Professional Conduct may be obtained:

(a) By mail from the American Institute of Certified Public Accountants, ~~[P.O. Box 2209,]~~
Attn: Order Department, Harborside Financial Center, 201 Plaza Three, Jersey City, New Jersey ~~[07303-2209,]~~ *07311*, at a cost of ~~[\$13.50]~~ *\$13.75* for a printed copy ; ~~[or \$10 for a copy on CD-ROM;]~~ or

(b) On-line from the American Institute of Certified Public Accountants at its website at ~~[<http://www.aicpa.org/>,]~~ *<http://www.aicpa.org/about/code/index.htm>*, free of charge.