

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

LCB File No. R128-14

March 18, 2016

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

AUTHORITY: §§1-9, 16, 18, 21, 22 and 24, NRS 641.100; §§10-15 and 17, NRS 641.100 and 641.232; §19, NRS 641.100, 641.110 and 641.180; §20, NRS 641.100 and 641.170; §23, NRS 641.100 and 641.410.

A REGULATION relating to the Board of Psychological Examiners; providing procedures for the handling of petitions to the Board seeking declaratory orders, advisory opinions or the adoption, filing, amendment or repeal of certain regulations; revising provisions relating to disciplinary hearings conducted by the Board; setting forth provisions for the handling of complaints filed with the Board against certain behavior analysis professionals; providing procedures for limiting, revoking and reinstating the license of certain behavior analysis professionals; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, certain agencies of the State are required to provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability of any statutory provision, agency regulation or decision of the agency. (NRS 233B.120) **Sections 2-6** of this regulation provide procedures for how such petitions are to be considered by the Board of Psychological Examiners.

Existing law prescribes administrative procedure before certain regulatory bodies, including the Board. (Chapter 622A of NRS) **Section 7** of this regulation provides that the Board may hold hearings and conduct investigations relating to its duties in a manner that is consistent with existing law, and **section 24** of this regulation repeals two existing sections of NAC which contain various administrative procedures that are superseded by provisions of existing law.

Sections 8-14 and 16 of this regulation make certain provisions of existing law relating to the investigation and discipline of psychologists applicable to licensed behavior analysts and licensed assistant behavior analysts. **Section 15** of this regulation provides for immunity from civil liability for a person who initiates or assists in any proceeding involving a complaint against a licensed behavior analyst or licensed assistant behavior analyst.

Existing law requires the Board to adopt regulations that establish the grounds for disciplinary action for a licensed behavior analyst or licensed assistant behavior analyst. (NRS 641.232)

Section 17 of this regulation provides that it is grounds for disciplinary action for a licensed behavior analyst or licensed assistant behavior analyst to: (1) practice applied behavior analysis under a false or assumed name; (2) falsely personate another licensed behavior analyst or licensed assistant behavior analyst; (3) present as his or her own the diploma, license or credentials of another; or (4) give false or forged evidence to the Board in connection with an application for licensure or renewal of a license.

Existing law also requires certain agencies to prescribe by regulation procedures whereby any interested person may petition the agency requesting the adoption, filing, amendment or repeal of any regulation. (NRS 233B.100) Existing regulations allow for the filing of such a petition to the Board, and **section 21** of this regulation provides more specifics about the requirements for such a petition and the procedures to be followed by the Board upon receipt of such a petition. (NAC 641.170)

Existing law authorizes a psychologist who is not a resident of Nevada and not licensed in Nevada but is certified or licensed in another state with licensure requirements that are equivalent to those of this State to practice in this State without licensure provided that the psychologist: (1) does not practice in this State over 30 days in any 1 calendar year; and (2) is invited as a consultant by a psychologist licensed in this State. (NRS 641.410) Existing regulations require such a nonresident consultant to apply to the Board for approval to practice in this State, to include with the application a letter from the inviting psychologist and to swear that he or she will only practice as a consultant in this State. (NAC 641.180) **Section 23** of this regulation requires the Board to approve of such a nonresident consultant if the psychologist provides: (1) proof that he or she is in good standing in the jurisdiction in which her or she practices; (2) proof that there are no disciplinary proceedings pending against him or her in that jurisdiction; and (3) any other information the Board requires.

Finally, **section 24** repeals several sections of NAC that are duplicative of sections in NRS.

Section 1. Chapter 641 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this regulation.

Sec. 2. 1. *The Board will consider petitions for declaratory orders or advisory opinions as to the applicability of any statutory provision or any regulation or decision of the Board.*

2. A petition for a declaratory order or an advisory opinion must be in writing on a form prescribed by the Board.

Sec. 3. 1. *Except as otherwise provided in subsection 2, upon receiving a petition for a declaratory order or an advisory opinion, the Board will place the matter on the agenda for discussion at the next regularly scheduled meeting of the Board.*

2. If the petition is received within 30 days before the next regularly scheduled meeting, the petition may be placed on the agenda for discussion at the next meeting after that meeting.

3. At the meeting described in subsection 1 or 2, the Board will consider any information relevant to the petition, including, without limitation:

(a) Taking testimony on the petition; and

(b) Receiving evidence.

4. At the same meeting, the Board will then grant or deny the petition.

5. If the Board denies the petition, no further action will be taken.

Sec. 4. If the Board grants a petition pursuant to section 3 of this regulation, the Board will issue a declaratory order or advisory opinion. The President of the Board or other presiding officer shall assign one member of the Board to write the declaratory order or advisory opinion. The member so assigned has 30 days within which to submit to the Board the final draft, after reviewing comments by all members of the Board on the issue, researching the issue and seeking the assistance of the Attorney General, if necessary. Upon completing his or her draft of the declaratory order or advisory opinion, the assigned member shall submit it to the Board for final approval at the next regularly scheduled meeting of the Board. To be issued as a final declaratory order or advisory opinion of the Board, the draft of the declaratory order or advisory opinion must be approved by a majority of the members of the Board who are present at the meeting.

Sec. 5. After the Board renders its declaratory order or advisory opinion, the Board will give notice of it to the petitioner.

Sec. 6. A petitioner must comply with the provisions of a declaratory order or advisory opinion rendered by the Board.

Sec. 7. *In a manner consistent with the provisions of chapter 622A of NRS, the Board may hold hearings and conduct investigations relating to its duties under this chapter and chapter 641 of NRS and take evidence on any matter under inquiry before the Board.*

Sec. 8. *Except as otherwise provided in chapter 622A of NRS:*

1. Service of process made under this chapter must be either upon the person or by certified mail with return receipt requested, addressed to the licensed behavior analyst or licensed assistant behavior analyst at his or her last known address, as indicated on the records of the Board.

2. Proof of service of process made under this chapter must be filed with the Board and must be recorded in the minutes of the meetings of the Board.

Sec. 9. *The Board, any member thereof, a panel of its members or a hearing officer may issue subpoenas to compel the attendance of witnesses and the production of books, papers, documents, the records of patients and any other article related to the practice of applied behavior analysis.*

Sec. 10. *1. The Board will, any of the Board's members, any review panel of a hospital or an association of psychologists or behavior analysts which becomes aware that any one or any combination of the grounds for initiating disciplinary action may exist as to a person engaged in the practice of applied behavior analysis in this State shall, and any other person who is so aware may, file a written complaint specifying the relevant facts with the Board.*

2. The Board will retain all complaints filed with the Board pursuant to this section for at least 10 years, including, without limitation, any complaints not acted upon.

Sec. 11. 1. *The Board may require the person named in a complaint to submit to a mental examination conducted by a panel of three psychologists designated by the Board or a physical examination conducted by a physician designated by the Board.*

2. Every licensed behavior analyst or licensed assistant behavior analyst licensed under this chapter and chapter 641 of NRS who accepts the privilege of licensure in this State shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the Board. The testimony or reports of the examining psychologists or physician are privileged communications, except as to proceedings conducted pursuant to this chapter and chapter 641 of NRS.

3. Except in extraordinary circumstances, as determined by the Board, the failure of a licensed behavior analyst or licensed assistant behavior analyst to submit to an examination as provided in this section constitutes grounds for the immediate suspension of the license of the licensed behavior analyst or licensed assistant behavior analyst.

Sec. 12. *If the Board has reason to believe that the conduct of any licensed behavior analyst or licensed assistant behavior analyst has raised a question as to his or her competence to engage in the practice of applied behavior analysis with reasonable skill and safety to clients, the Board may require the licensed behavior analyst or licensed assistant behavior analyst to take a written or oral examination to determine whether the licensed behavior analyst or licensed assistant behavior analyst is competent to engage in the practice of applied behavior analysis. If an examination is required, the reasons therefor must be documented and made available to the licensed behavior analyst or licensed assistant behavior analyst being examined.*

Sec. 13. If the Board, a panel of its members or a hearing officer issues an order suspending the license of a licensed behavior analyst or licensed assistant behavior analyst pending proceedings for disciplinary action and requires the licensed behavior analyst or licensed assistant behavior analyst to submit to a mental or physical examination or an examination of his or her competency to engage in the practice of applied behavior analysis, the examination must be conducted and the results obtained within 60 days after the Board, panel of its members or hearing officer issues the order.

Sec. 14. In any disciplinary proceeding before the Board, a panel of its members or a hearing officer:

1. Proof of actual injury need not be established where the complaint charges deceptive or unethical professional conduct or practice of applied behavior analysis harmful to the public.

2. A certified copy of the record of a court or a licensing agency showing a conviction or the suspension or revocation of a license to engage in the practice of applied behavior analysis is conclusive evidence of its occurrence.

3. The entering of a plea of nolo contendere in a court of competent jurisdiction shall be deemed a conviction of the offense charged.

Sec. 15. In addition to any other immunity provided by the provisions of chapter 622A of NRS, the Board, a review panel of a hospital, an association of psychologists or behavior analysts or any other person who or organization which initiates a complaint or assists in any lawful investigation or proceeding concerning the licensing of a licensed behavior analyst or a licensed assistant behavior analyst or the discipline of a licensed behavior analyst or licensed assistant behavior analyst for gross malpractice, repeated malpractice, professional incompetence or unprofessional conduct is immune from any civil action for that initiation or

assistance or any consequential damages if the person or organization acted without malicious intent.

Sec. 16. 1. Any person:

(a) Whose practice of applied behavior analysis has been limited;

(b) Whose license has been suspended or revoked; or

(c) Who has been placed on probation,

↳ by an order of the Board, a panel of its members or a hearing officer may apply to the Board after 1 year for removal of the limitation, suspension, revocation or termination of the probation or may apply to the Board pursuant to the provisions of chapter 622A of NRS for reinstatement of the revoked license.

2. In hearing the application, the Board:

(a) May require the person to submit to a mental or physical examination conducted by psychologists or by physicians whom it designates and submit such other evidence of changed conditions and of fitness as it considers proper.

(b) Will determine whether under all the circumstances the time of the application is reasonable.

(c) May deny the application or modify or rescind its order as it considers the evidence and the public safety warrants.

Sec. 17. It is grounds for disciplinary action pursuant to NRS 641.230 for a licensed behavior analyst or licensed assistant behavior analyst to:

1. Engage in the practice of applied behavior analysis under a false or assumed name or falsely personate another licensed behavior analyst or licensed assistant behavior analyst of a like or different name;

2. *Present as his or her own the diploma, license or credentials of another; and*
3. *Give false or forged evidence of any kind to the Board or any member thereof, in connection with an application for a license or renewal thereof.*

Sec. 18. NAC 641.001 is hereby amended to read as follows:

641.001 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 641.003 to ~~641.015,~~ **641.011**, inclusive, have the meanings ascribed to them in those sections.

Sec. 19. 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 may submit a written request to the Board for one reevaluation of his or her state examination within 10 days after receiving written notice of the failure. The Board or its designee may grant or deny an applicant's request for reevaluation. The Board or its designee will give written notice of its decision within 20 days after receiving the written request for reevaluation. If the request for reevaluation is granted, the~~

~~Board or its designee will issue a final evaluation of the applicant's state examination within 60 days after notifying the applicant of its decision to undertake the reevaluation.~~

~~5.]~~ 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.

~~6.]~~ 4. 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. 20. NAC 641.152 is hereby amended to read as follows:

641.152 1. A psychological assistant or psychological intern may work only under the supervision and control of a psychologist who satisfies the requirements of NAC 641.1563.

2. The supervisor of a psychological assistant or psychological intern is responsible for the adequate supervision of the psychological assistant or psychological intern.

3. For specific skill training, the supervisor may assign a psychological assistant or psychological intern to a specialist, including, without limitation, a person who is licensed in this State as a psychiatrist, *licensed behavior analyst*, social worker or marriage and family therapist or a person who is licensed or certified in this State as an alcohol and drug abuse counselor. The specialist must have clearly established practice and teaching skills that are demonstrable to the satisfaction of the Board. Not more than one-quarter of the number of supervised hours needed to fulfill the required year of postdoctoral experience may be accrued under the direction of specialists.

4. A psychological assistant or psychological intern must be:

- (a) An employee of the supervisor; or
- (b) Subject to the control and direction of a supervisor who is affiliated with the same agency or institution at which the psychological assistant or psychological intern, as applicable, works.

Sec. 21. NAC 641.170 is hereby amended to read as follows:

641.170 ~~{Any}~~

1. Pursuant to NRS 233B.100, any interested person or agency may ~~{request that}~~ petition the Board to adopt, file, amend or repeal any ~~{of these regulations by letter addressed to the President or Secretary-Treasurer of the Board.}~~ regulation.

2. A petition for the adoption, filing, amendment or repeal of a regulation must be in writing on a form prescribed by the Board and include:

- (a) The name and address of the petitioner;*
 - (b) The reason for petitioning for the adoption, filing, amendment or repeal of the regulation;*
 - (c) The proposed language of the regulation to be adopted, filed, amended or repealed;*
 - (d) The statutory authority for the adoption, filing, amendment or repeal of the regulation;*
- and*
- (e) Any relevant data, views and arguments that support the petition for the adoption, filing, amendment or repeal of a regulation.*

3. The Board may refuse to act upon a petition for the adoption, filing, amendment or repeal of a regulation if the petition does not include the information required by subsection 2.

4. The Board will notify the petitioner in writing of the Board's decision regarding the petition within 30 days after the date on which the petitioner filed the petition. If the Board approves the petition for the adoption, filing, amendment or repeal of a regulation, the Board

will initiate regulation-making proceedings concerning that regulation within 30 days after the date on which the petitioner filed the petition.

Sec. 22. NAC 641.175 is hereby amended to read as follows:

641.175 1. ~~{A respondent may be represented by an attorney licensed to practice law in this State. If the attorney is not licensed to practice law in this State, he or she must be associated with an attorney who is so licensed. The respondent may appear on his or her own behalf.~~

~~—2.— An attorney appearing in a hearing before the Board shall ensure that his or her conduct complies with the Nevada Rules of Professional Conduct.~~

~~—3.†~~ All persons appearing in a hearing before the Board *in any capacity* shall conform to the standards of ethical and courteous conduct required in the courts of this State.

~~{4.†~~ If a person fails to conform his or her conduct to the standards required by this section, the Board may:

- (a) Limit the evidence presented by that person; or
- (b) Exclude the person ~~{or his or her representative}~~ from the hearing.

~~{5.†~~ 2. Any action taken by the Board pursuant to this section and the specific reasons for that action will be stated on the record.

~~{6.— The respondent shall pay the cost for representation by his or her attorney at a hearing before the Board.†}~~

Sec. 23. NAC 641.180 is hereby amended to read as follows:

641.180 1. A psychologist who is invited to practice in Nevada pursuant to NRS 641.410 shall submit to the Board:

- (a) An application for approval to practice as a consultant in this State. The application must be submitted at least 30 days before the psychologist intends to begin practice in this State.

(b) A letter from the inviting psychologist stating that he or she will have primary responsibility for the professional conduct of the invited psychologist.

(c) A sworn statement by the invited psychologist that he or she will only practice as a consultant in this State.

2. An invited psychologist must obtain the approval of the Board before practicing as a consultant in this State.

3. The Board will approve the application by a psychologist seeking to practice as a consultant in this State pursuant to subsection 1 if the psychologist submits to the Board:

(a) Proof that he or she is in good standing in the jurisdiction in which he or she is licensed or credentialed and that there are no disciplinary proceedings pending against him or her in that jurisdiction; and

(b) Any other information the Board may require to determine the qualifications and competency of the psychologist to practice as a consultant in this State.

4. A psychologist approved as a consultant pursuant to this section may only engage in this State in services of limited duration and responsibility which are provided in consultation with an inviting psychologist and include, without limitation, testifying as an expert witness in a court proceeding or conducting a one-time evaluation for a specific purpose, including, without limitation, a court proceeding or the preparation of a presentence report. The consultant may not engage in ongoing evaluation, diagnosis or treatment services, employee assistance program services or psychotherapy.

5. Approval from the Board to practice as a consultant in this State does not ensure that an applicant will qualify for licensure in this State.

Sec. 24. NAC 641.005, 641.009, 641.015, 641.120, 641.172, 641.174, 641.176 and 641.177 are hereby repealed.

TEXT OF REPEALED SECTIONS

641.005 “Board” defined. (NRS 641.100) “Board” means the Board of Psychological Examiners.

641.009 “National examination” defined. (NRS 641.100) “National examination” has the meaning ascribed to it in NRS 641.0243.

641.015 “Psychologist” defined. (NRS 641.100) “Psychologist” has the meaning ascribed to it in NRS 641.027.

641.120 National examination. (NRS 641.100, 641.180)

1. The national examination constitutes one portion of the examination for licensure as a psychologist.

2. An applicant for a license may take the national examination after the applicant has graduated with a doctoral degree from:

(a) A training program which is accredited by the American Psychological Association or a program which meets the requirements of NAC 641.061; or

(b) An institution which meets the requirements of subsection 3 of NAC 641.050.

641.172 Informal disposition of complaints. (NRS 641.100) If, after investigating a complaint, the Attorney General determines that the complaint does not justify or require formal disciplinary proceedings, the President or a person designated by the President may consider and resolve the complaint through informal conferences, meetings, agreements or other informal action as may be appropriate under the circumstances. Such informal action is held without prejudice to the Board, and formal proceedings may be instituted subsequently by the Board, the President or a person designated by the President for the same or related matters. If new evidence is discovered, the matter may, at any time, be reopened and investigated further if the circumstances so warrant.

641.174 Answer to formal complaint; motions. (NRS 641.100)

1. An answer to a formal complaint reported to the Board by the Attorney General must be filed with the Board and service thereof made on parties of record within 15 days after service of the complaint, unless the Board for good cause extends the time by which the answer must be filed. Any matter that is alleged as an affirmative defense must be separately stated and numbered.

2. A respondent who fails to answer a complaint in a timely manner pursuant to subsection 1 shall be deemed to have denied the allegations set forth in the complaint generally and, unless otherwise allowed by the Board, is precluded from establishing any affirmative defense at the hearing. The Board will proceed with the matter based solely upon the issues set forth in the complaint unless the matter is continued by the Board.

3. Any motion upon the complaint must be filed before the answer is due. If it is not so filed, the objection must be raised in the answer.

4. If a motion is directed toward an answer, the motion must be filed within 5 days after service of the answer.

5. All other motions must be timely filed.

641.176 Withdrawal of attorney. (NRS 641.100) An attorney may withdraw from representation of a respondent upon notice to the respondent and the Board. The notice must include the reason for the requested withdrawal. The Board may deny permission to withdraw if the withdrawal would unreasonably delay the hearing.

641.177 Disciplinary hearings: Procedure; continuances. (NRS 641.100, 641.280)

1. The Board will convene a disciplinary hearing at the time and place specified in the complaint and notice of hearing. The person presiding at the hearing may grant a continuance only upon:

(a) A joint stipulation of the parties;

(b) The existence of an emergency condition; or

(c) A written request by a party filed at least 5 days before the date of the hearing and a showing by the party of good cause for the continuance. For the purpose of this paragraph, “good cause” must be narrowly construed.

2. A party requesting a continuance must appear on the date of the hearing and be prepared to proceed unless the request for a continuance has been made pursuant to a joint stipulation.

3. The hearing must proceed in the following manner unless the Board for good cause or to prevent manifest injustice orders otherwise:

(a) An opening statement may be made on behalf of the Board or be waived.

(b) An opening statement on behalf of the respondent may be made, reserved until the close of the Board’s case or waived.

- (c) Presentation of the Board's case, followed by cross-examination.
 - (d) Presentation of the respondent's case, followed by cross-examination.
 - (e) Rebuttal, which must be limited to issues previously raised. No new matter may be presented upon rebuttal unless the Board for good cause so permits.
 - (f) Argument on behalf of the Board, unless waived.
 - (g) Argument on behalf of the respondent, unless waived.
 - (h) Submittal of the matter for decision.
4. After the matter is submitted, the Board will render a decision and its order.