

NEVADA STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

NOTICE OF PUBLIC HEARING
INTENT TO ACT UPON REGULATIONS

November 18, 2021

Date: November 18, 2021

Time: 9:15 AM

Video Conference Meeting: Join from PC, Mac, Linux, iOS or Android:
<https://zoom.us/j/8286438008>
Or iPhone one-tap: +16699006833,,8286438008#
Or Telephone: +1 669 900 6833, Meeting ID: 8286438008

AGENDA

Please note: The Nevada State Board of Professional Engineers and Land Surveyors may 1) take agenda items out of order, 2) combine two or more items for consideration, 3) remove an item from the agenda or delay discussion related to an item at any time.

Members of the public may provide public comment by logging into the ZOOM meeting by accessing the following link: <https://zoom.us/j/8286438008>. This option will require a computer with audio and video capabilities or can dial into the Zoom meeting, +1 669 900 6833, Meeting ID: 8286438008, and provide comments by telephone. Additionally, public comment can be submitted prior to, during, and up to 10 minutes after the meeting is adjourned via email to board@boe.state.nv.us. Public comment received by email prior to and during the meeting will be read into the record. Public comment received by email within 10 minutes of meeting adjournment will be added to the record.

1. Meeting conducted by Chair Michael Kidd, call to order and roll call of board members to determine presence of quorum—board members Karen Purcell, Thomas Matter, Angelo Spata, Brent Wright, Matt Gingerich, Robert Fyda, Lynnette Russell, Greg DeSart.
2. Pledge of Allegiance
3. Public comment. (**Discussion only**) Action may not be taken on any item brought up under public comment until scheduled on an agenda for action at a later meeting. The chair of the board may impose a time limit of three minutes.
4. Open hearing for LCB file number R141-20RP1 by Chair Michael Kidd. Presentation, discussion, and adoption of proposed changes to Nevada Administrative Code 625 as drafted by the Nevada Legislative Council Bureau, LCB file number R141-20RP1. (**For possible action**)

Notice of Public Hearing
November 18, 2021
Video Conference Meeting

5. Public comment. (**Discussion only**)
6. Close hearing for LCB file number R141-20RP1.
7. Adjournment

Supporting material for this meeting may be requested from Patty Mamola, PE, Executive Director at (775) 688-1231 (board@boe.state.nv.us) and is available at 1755 East Plumb Lane, Suite 258, Reno, NV 89502.

AFFIDAVIT OF POSTING

The undersigned affirms that in accordance with NRS 241.020, this public notice and agenda was posted on or before 9:00 AM on October 15, 2020, on the Nevada State Board of Professional Engineers and Land Surveyors website, <http://www.nvbpels.org/>, and the State of Nevada's Public Notice website, <http://notice.nv.gov>.

SIGNATURE

Name: Patty Mamola

Title: Executive Director

Date and Time of Posting: _____

In addition to posting this agenda and notice of hearing on the Board's website, <https://nvbpels.org/board/meetings>, it has also been posted at <https://notice.nv.gov/>, and at the following locations:

City of Reno, Engineering Division
1 E First Street, 2nd Floor
Reno, NV 89501

City of Sparks, Building & Safety
City Hall, 431 Prater Way
Sparks, NV 89431

Clark County Depart of Building & Fire Prevention
4701 W Russell Road
Las Vegas, NV 89118

Elko County Recorder
571 Idaho Street
Elko, NV 89801

City of Las Vegas, Development Services Center
333 N Rancho Drive
Las Vegas, NV 89106

NOTICE OF INTENT TO ACT UPON REGULATIONS

Notice of Hearing for the Adoption of Regulations of the Nevada State Board of Engineers and Professional Engineers

LCB File Number

R141-20RP1, Complaint Procedures, Complaint Investigations, and Disciplinary Actions

The Nevada State Board of Professional Engineers and Land Surveyors will conduct a virtual public hearing at 9:15 am, Thursday November 18, 2021, <https://zoom.us/j/8286438008>. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulations that pertain to Chapter 625 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.060:

Information Regarding Adoption

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

1. Need and Purpose of the Proposed Regulations

Complaint Procedures and Disciplinary Actions

The proposed amendments codify the board's Rules of Practice relating to procedures for handling complaints against licensees. To protect a person's due process rights, the board uses a Board member designated by the Board Chairperson, a "Board Liaison", to review the initial investigative information in conjunction with the Executive Director and Board legal counsel and make a determination on the complaint. The "Board Liaison" is recused from ruling on accepting a stipulated agreement or adjudicating the case at a formal hearing due to their expanded knowledge of investigative materials related to the complaint. Additional proposed amendments extend the timeframe for notification to the board of disciplinary action against a licensee by another jurisdiction. A revision is being proposed to limit the board to probationary conditions to address legislator concerns of over-broad impositions on licensees.

New section

→ Added to define "Board Liaison" as referenced in amendments to the regulations.

NAC 625.640

→ Proposed language amends the regulation, in alignment with the board's Rules of Practice, relating to the role of a "Board Liaison" in complaint procedures.

NAC 625.642

→ Extends the number of days (from 30 to 60) required for a licensee to notify the board of any disciplinary action taken by another entity.

NAC 625.645

→ Text added to limit "other conditions" to the facilitation of probation.

Complaint Investigations

The proposed changes are to move the Advisory Committee conference from the public process to the complaint investigation process. An Advisory Committee is beneficial in the investigative process, particularly with complaints relating to standards of practice or those of a unique technical nature. As the regulations are now, an Advisory Committee conference is held in a public setting. The complaint, at this stage, is still in the investigative discovery phase – which by regulation is confidential. As currently written as a public process, it is subject to Nevada Open Meeting Law, and the Advisory Committee conference is a public record, and board members who would ultimately rule on the disposition of a complaint would have access to the public information prior to adjudicating the matter via the administrative law process. Board members could either be exposed to information beyond that outlined in the final findings of facts presented to the Board in proposed stipulated agreements or be privy to evidence agreed to as inadmissible in possible Formal Hearings. These actions would be a violation of a respondent's due process rights.

NAC 625.646

→ Proposed edits to regulation are to codify the revised Rules of Practice approved by the board November 2019 (attached) and to enable the use of advisory committees during the investigation process.

NAC 625.6465

→ Amendments related to the revised Rules of Practice approved by the board November 2019 and to enable the use of advisory committees during the investigation process. Please note in section "1. (d)" the regulation amendment would be adopted without the text following the period - "[; and 6. Inform the Board of the recommended disposition of the complaint]" – the text following the period would be deleted, as it was inadvertently left in when it was revised by the Legislative Council Bureau, it is a remnant of the original section text that needs to be deleted.

NAC 625.647

→ Amendments related to the revised Rules of Practice approved by the board November 2019 and to enable the use of advisory committees during the investigation process.

NAC 625.6475

→ Edits to regulation are to codify the revised Rules of Practice approved by the board November 2019 and to enable the use of advisory committees during the investigation process. Please note in section “2.” regulation amendment would be adopted with the word “*participant*” corrected to read “*participate*”.

NAC 625.648

→ It is proposed that this regulation be repealed as the language is included in other regulations related to complaints and advisory committees, and it is no longer necessary as a standalone regulation.

2. The Proposed Regulation is NOT a Temporary Regulation

The regulatory changes are proposed as permanent regulations.

3. The Regulation is Proposed as a Permanent Regulation

The revised text of the proposed regulatory changes, as prepared by the Legislative Counsel Bureau, are attached.

4. Estimated Economic Effect

a. Adverse effects:

There are no adverse economic effects, immediate or long term, on businesses or the public, from the proposed amendments to regulations related to complaint procedures, complaint investigations, and disciplinary actions.

b. Beneficial effects:

There are no economic effects, immediate or long term, on businesses or the public, from the proposed amendments to regulations related to complaint procedures, complaint investigations, and disciplinary actions.

5. Description of How Comment was Solicited from Affected Businesses and Response Summary

Referencing the requirements of NRS 233B.0608, the Nevada Board of Professional Engineers and Land Surveyors requested input from owners and officers of professional engineering and land surveying small businesses via an e-mailed survey link that was sent to 15,732 interested parties.

The survey asked for input regarding both direct and indirect adverse and beneficial economic effects on small businesses, with space to elaborate on responses. A summary of the survey results is available for viewing on the Nevada Board of Professional Engineers and Land Surveyors website <https://nvbpels.org/wp-content/uploads/2020/12/Category-5-Survey-Results.pdf>

6. Estimated Cost to the Agency of Enforcement

It is estimated that there would be no additional cost to the agency.

7. Duplication with other State or Local Government Agencies

There is no duplication with other agencies.

8. Federal Law

The proposed amendments are not federal requirements.

9. Federal Regulation

There are no federal regulations associated with professional engineers and land surveyors. However, every state and US territory regulates the professions of engineering and land surveying.

Comments and Written Submissions

Persons wishing to comment on the proposed action of the Nevada State Board of Engineers and Professional Engineers may participate in the scheduled public hearing or may address their comments, data, views, or arguments in written form to:

Nevada State Board of Professional Engineers and Land Surveyors
1755 E Plumb Lane, Suite 258
Reno, NV 89502
board@boe.state.nv.us

Written submissions must be received by the Board no later than **10:00am, Wednesday, November 17, 2021**. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board may proceed immediately to act upon any written submissions.

Copies of Proposed Regulations

A copy of this notice and the proposed regulations will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulations are available on the Board's website at <https://nvbpels.org/board/meetings/> and at the Board's office:

Nevada State Board of Professional Engineers and Land Surveyors
1755 E Plumb Lane, Suite 258
Reno, NV 89502
board@boe.state.nv.us

The text of each regulation will include the entire text of any section of the Nevada Revised Statutes, which is proposed for amendment or repeal. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at:

<https://www.leg.state.nv.us/Register/2020Register/R141-20RP1.pdf>

Copies will be mailed or emailed to members of the public upon request. A reasonable fee may be charged for mailed copies if a mailed copy is deemed necessary.

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 reason for overruling the consideration urged against its adoption.

In addition to posting this notice of hearing on the Board's website, <https://nvbpels.org/board/meetings/>, it has also been posted at <https://notice.nv.gov/> and at the following locations:

City of Reno, Engineering Division
1 E First Street, 2nd Floor
Reno, NV 89501

City of Sparks, Building & Safety
City Hall, 431 Prater Way
Sparks, NV 89431

Clark County Depart of Building & Fire Prevention
4701 W Russell Road
Las Vegas, NV 89118

Elko County Recorder
571 Idaho Street
Elko, NV 89801

City of Las Vegas, Development Services Center
333 N Rancho Drive
Las Vegas, NV 89106

Copies of this notice of hearing, hearing agenda, and proposed regulations may also be obtained from any of the public libraries listed below:

Churchill County Library, 553 South Main Street, Fallon, NV
Douglas County Library, 1625 Library Lane, Minden, NV
Elko County Library, 720 Court Street, Elko, NV
Esmeralda County Library, Corner of Crook and Fourth Street, Goldfield, NV
Humboldt County Library, 85 East Fifth Street, Winnemucca, NV
Lander County Library, 625 South Broad Street, Battle Mountain, NV
Lincoln County Library, 63 Main Street, Pioche, NV
Lyon County Library, 20 Nevin Way, Yerington, NV
Mineral County Public Library, 110 First Street, Hawthorne, NV
Pershing County Library, 1125 Central Avenue, Lovelock, NV
Tonopah Public Library, 167 Central Street, Tonopah, NV
Washoe County Library, 301 South Central Street, Reno, NV
White Pine County Library, 950 Campton Street, Ely, NV

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

LCB File No. R141-20

July 28, 2021

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

AUTHORITY: §§ 1-4 and 6-10, NRS 625.140; § 5, NRS 625.140 and 625.460.

A REGULATION relating to professions; authorizing the State Board of Professional Engineers and Land Surveyors to designate a Board Liaison to work in conjunction with the Executive Director of the Board; requiring certain notices to be submitted to the Board within 60 days, instead of 30 days, after certain disciplinary actions are taken; revising the conditions of probation that the Board may require; revising provisions relating to the establishment of advisory committees; revising provisions relating to the duties of the Executive Director of the Board that relate to advisory committees; revising provisions relating to the evaluation and investigation of a complaint by an advisory committee; providing that such evaluations and investigations are not subject to the Open Meeting Law under certain circumstances; revising provisions relating to conferences held with an advisory committee; repealing certain provisions relating to advisory committees; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Board of Professional Engineers and Land Surveyors to adopt all regulations, not inconsistent with the constitution and laws of this State, which are necessary for the proper performance of the duties of the Board, the regulation of the proceedings before it and the maintenance of a high standard of integrity and dignity in the profession. (NRS 625.140)

Existing law authorizes any person to file with the Board a charge concerning a violation of any provision governing professional engineers and land surveyors. Existing law authorizes the Board to dismiss charges that are unfounded or trivial. (NRS 625.420) Otherwise, existing law provides that the Board will hold a hearing on the charges at a time and place fixed by the Board. (NRS 625.430) Existing regulations require: (1) a written report to be prepared by the staff of the Board after investigating the charge; and (2) the Executive Director of the Board to provide a recommendation to the Board of possible action to be taken after the Executive Director has reviewed the written report. (NAC 625.640) **Sections 1 and 3** of this regulation require the Executive Director, in consultation with a member of the Board designated as the Board Liaison, to, upon completion of reviewing the written report: (1) on behalf of the Board, dismiss the complaint; or (2) negotiate a settlement with the respondent, subject to the approval

of the Board. If the Executive Director attempts to negotiate a settlement with the respondent and a settlement cannot be reached, **section 3** requires the Executive Director, in conjunction with the Board Liaison, to determine whether to recommend that the Board schedule the matter for a disciplinary hearing.

Existing law authorizes the Board to take disciplinary action against a professional engineer or land surveyor and certain other persons for certain disciplinary actions taken by another state or territory, the District of Columbia, a foreign country, the Federal Government or any other governmental entity. (NRS 625.410) Existing regulations require a professional engineer or land surveyor who has been disciplined by another jurisdiction or governmental entity to notify the Board in writing of such disciplinary action within 30 days after the date on which the disciplinary action is imposed and state whether the disciplinary action is final or on appeal. (NAC 625.642) **Section 4** of this regulation provides that such notice must be submitted to the Board within 60 days after the date on which the disciplinary action is imposed.

Existing law authorizes the Board, if the Board finds that a person who is charged with violating any provision governing professional engineers and land surveyors is guilty of the charge, to take certain actions, including placing the professional engineer or land surveyor, or an applicant for licensure as a professional engineer or land surveyor, on probation for such periods as the Board deems necessary. (NRS 625.460) Existing regulations authorize the Board, if it places such persons on probation, to require certain conditions of the probation, including any condition deemed appropriate by the Board. (NAC 625.645) **Section 5** of this regulation authorizes the Board to require any condition deemed appropriate by the Board to facilitate the probation.

Existing regulations authorize the Board to establish an advisory committee composed of professional engineers, land surveyors or other persons. (NAC 625.646) **Section 6** of this regulation authorizes the Executive Director to establish such an advisory committee in conjunction with the Board Liaison. Existing regulations authorize an advisory committee to: (1) provide technical assistance in the evaluation and disposition of certain complaints; (2) participate in the evaluation of candidates for licensure by comity; or (3) provide assistance in any area that the Board deems necessary. (NAC 625.646) **Section 6** instead authorizes an advisory committee to: (1) provide technical assistance in the evaluation and investigation of certain complaints; (2) participate in the evaluation of candidates for licensure by endorsement; and (3) provide assistance in any area that the Executive Director or Board Liaison deems necessary. Existing regulations provide that members of an advisory committee: (1) serve at the pleasure of the Board; (2) are prohibited from participating in proceedings in which a member of the Board similarly situated would be required to abstain; and (3) are entitled to travel expenses and subsistence allowances, but are not entitled to compensation for services rendered to the Board. (NAC 625.646) **Section 6** instead provides that members of an advisory committee: (1) are selected by and serve at the pleasure of the Executive Director, in conjunction with the Board Liaison; (2) are prohibited from participating in proceedings in which a public officer or employee would be precluded from participating pursuant to existing law; and (3) are entitled to travel expenses and subsistence allowances, but are not entitled to compensation for services rendered to the Executive Director or Board Liaison. (NRS 281A.420) Existing regulations provide that each member of the Board is a nonvoting, ex officio member of any advisory committee and may attend any meeting of an advisory committee and that the Board is not bound

by any recommendation made by an advisory committee. (NAC 625.646) **Section 6** removes these provisions.

Sections 7, 8 and 9 of this regulation make conforming changes in accordance with **section 6** and also make changes relating to the evaluation and investigation of complaints against respondents. Specifically, **section 7** requires the Executive Director to set the time and place of a conference between an advisory committee and the respondent and provide written notice of the conference to the respondent. **Section 7** additionally authorizes such a conference to be held in person, via videoconference or over the telephone. Existing law provides that the provisions relating to the Open Meeting Law do not apply to proceedings relating to an investigation conducted to determine whether to proceed with disciplinary action against a licensee, unless the licensee requests that the proceedings be conducted pursuant to the Open Meeting Law. (NRS 622.320) **Section 7** clarifies that a conference held for the evaluation and investigation of a complaint is not subject to the provisions of the Open Meeting Law under certain circumstances. **Section 8** requires an advisory committee to submit to the Executive Director a report containing written findings as to the standard of care that applies to the respondent and whether the respondent violated certain provisions of existing law. (NRS 625.410) **Section 8** requires the Executive Director to provide a copy of the report to the Board Liaison and provides that the Executive Director and the Board Liaison are not bound by the report. **Section 9** provides that the refusal of a respondent to participate in a conference with the advisory committee is considered information relevant in a subsequent disciplinary hearing of the complaint before the Board.

Existing regulations set forth certain actions the Board may take as a result of the respondent: (1) declining to participate in a review of the complaint; (2) accepting or rejecting an advisory committee's recommendations; or (3) failing to notify the Board that he or she accepts the advisory committee's recommendation. (NAC 625.648) **Section 10** of this regulation repeals these provisions.

Section 1. Chapter 625 of NAC is hereby amended by adding thereto a new section to read as follows:

“Board Liaison” means a member of the Board who is designated by the Board to work in conjunction with the Executive Director.

Sec. 2. NAC 625.010 is hereby amended to read as follows:

625.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 625.011 to 625.019, inclusive, ***and section 1 of this regulation*** have the meanings ascribed to them in those sections.

Sec. 3. NAC 625.640 is hereby amended to read as follows:

625.640 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 the 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}~~ *On behalf of the* Board , dismiss the complaint; *or*

(2) ~~{The Executive Director negotiate}~~ *Negotiate* a settlement with the respondent, subject to the approval of the Board; *and*

~~{(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 the Executive Director, in conjunction with the Board Liaison, attempts to negotiate a settlement with the respondent pursuant to paragraph (b) and a settlement cannot be reached, determine whether to recommend to the Board that the Board schedule the matter for a disciplinary hearing.

Sec. 4. NAC 625.642 is hereby amended to read as follows:

625.642 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.

Sec. 5. NAC 625.645 is hereby amended to read as follows:

625.645 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~~ *to facilitate the 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.

Sec. 6. NAC 625.646 is hereby amended to read as follows:

625.646 1. The ~~[Board]~~ *Executive Director, in conjunction with the 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 or the Board Liaison* deems necessary.

2. Members of an advisory committee:

- (a) ~~[Serve]~~ *Are selected by and serve* at the pleasure of the ~~[Board]~~ *Executive Director, in conjunction with the Board Liaison*.
- (b) Are prohibited from participating in any proceeding in which a ~~[member of the Board similarly situated]~~ *public officer or employee* would be ~~[required to abstain.]~~ *precluded from participating pursuant to 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 or 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.]~~

Sec. 7. NAC 625.6465 is hereby amended to read as follows:

625.6465 If the ~~[Board]~~ *Executive Director, in consultation with the Board Liaison*, establishes an advisory committee for the evaluation and ~~[disposition]~~ *investigation* of a complaint ~~[, the]~~ :

1. *The* Executive Director shall:

~~1.1~~ (a) Select *one to* five persons to serve as the members of the advisory committee from a list *compiled by the Executive Director* of volunteers ~~[approved by the Board, three]~~ *that are deemed qualified by the Executive Director, a majority* of whom, if practicable, must be from the same discipline as the respondent . ~~1.2~~

~~2.1~~ (b) Designate one member to act as the chair . ~~1.2~~

~~3.1~~ (c) Schedule ~~[an informal]~~ *a* conference between the advisory committee and the respondent . ~~1.2~~

~~4.1~~ ~~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;~~

~~5.1~~ *The Executive Director shall set the time and place of the conference, give the respondent reasonable written notice of the conference, as required by NRS 233B.121, and give the respondent an opportunity to call witnesses. Such conferences are not contested cases, as defined in NRS 233B.032.*

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

6. Inform the Board of the recommended disposition of the complaint.

2. A conference between the advisory committee and the respondent may be held in person, via videoconference or over the telephone.

3. Pursuant to subsection 1 of NRS 622.320, the provisions of NRS 241.020 do not apply to a conference between the advisory committee and the respondent that is held for the

evaluation and investigation of a complaint unless the respondent requests that those provisions apply.

Sec. 8. NAC 625.647 is hereby amended to read as follows:

625.647 1. If the ~~[Board]~~ *Executive Director, in conjunction with the 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 that applies to the respondent and examine* whether there is probable cause to believe that the respondent violated NRS 625.410;

(b) Hold ~~[an informal]~~ *a* 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 that applies to the respondent and whether the respondent violated NRS 625.410.*

2. ~~[In addition to]~~ *The Executive Director shall provide a copy of* 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.]~~ *Liaison.*

3. The *Executive Director and the Board* ~~is~~ *Liaison are* not bound by ~~any recommendation made by an~~ *the report submitted by the* advisory committee ~~regarding the disposition of the complaint.~~ *pursuant to paragraph (d) of subsection 1.*

4. ~~The recommendation of an advisory committee pursuant to 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.~~ *Upon receiving the report required by paragraph (d) of subsection 1, the Executive Director, in conjunction with the Board Liaison, shall continue with the review of the written report submitted pursuant to subsection 2 of NAC 625.640.*

Sec. 9. NAC 625.6475 is hereby amended to read as follows:

625.6475 1. At ~~an informal~~ *a* 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) All evidence considered by the advisory committee in its review of a complaint is admissible in a disciplinary action]~~

2. The refusal of a respondent to participant in a conference is information relevant in a subsequent disciplinary hearing of the complaint before the Board.

~~[2.]~~ 3. If the Board schedules the matter for a disciplinary hearing, 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 to the review of the evidence.*

~~[3.]~~ 4. An advisory committee may continue ~~[an informal]~~ a conference for good cause shown.

5. If a respondent refuses to participate in a review of the complaint by an advisory committee, the Executive Director, in consultation with the Board Liaison, shall proceed with the review pursuant to NAC 625.640.

Sec. 10. NAC 625.648 is hereby repealed.

TEXT OF REPEALED SECTION

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.

**NEVADA STATE BOARD OF
PROFESSIONAL ENGINEERS
AND
LAND SURVEYORS**

RULES OF PRACTICE

RULES OF PRACTICE

In accordance with NRS 233B.050, the Nevada State Board of Professional Engineers and Land Surveyors (the "Board") adopts the following rules of practice.

PROCEDURES FOR HANDLING COMPLAINTS AGAINST LICENSEES

I. Initial Complaint:

a. Upon the receipt of a complaint against a licensee, applicant or third party, a determination shall be made by a Board compliance officer ("Compliance Officer") following consultation with the Board's executive director ("Executive Director"), if necessary, as to whether the complaint sets forth adequate grounds for the imposition of discipline by the Board (See NRS 625.410).

b. In conjunction with the review of the complaint, Compliance Officer may return the Board's complaint form to the person filing the complaint ("Complainant") and request Complainant to more fully set forth the nature of the complaint, the identity of Complainant and/or the identity of the person against whom the complaint is made ("Respondent"). A copy of the complaint form currently used by the Board is attached as Exhibit "1" to these Rules of Practice and Procedure.

c. When the Board receives the completed complaint form, Compliance Officer shall forward a copy of the complaint to Respondent and request a detailed written response to the complaint. Respondent is required to respond to Compliance Officer's request within thirty (30) days (See NRS 625.410(9)).

d. Upon receipt of the Respondent's response to the complaint, Compliance Officer, with the assistance of Executive Director (and/or the Board's legal counsel if necessary), shall make an initial determination as to whether it is probable that a

violation of the statutes, regulations or rules governing the practice of professional engineering or land surveying in the State of Nevada has occurred.

e. Compliance Officer shall make a recommendation to Executive Director concerning the manner in which the complaint should be handled (dismissal, stipulated agreement, referral to an advisory committee or a formal disciplinary hearing). (See NAC 625.640).

f. Upon notification from Executive Director, the Board Chairperson shall appoint a Board member ("Board Liaison") to review the matter with Executive Director, consider the recommendation made by the compliance officer and, if necessary, discuss the matter with the Board's legal counsel.

g. Executive Director and Board Liaison will decide whether to: dismiss the action; offer a Stipulated Agreement; refer the matter to an advisory committee; go forward with a formal disciplinary complaint; or request that additional information be provided (See NRS 2338 and NAC 625.640).

(1) If the matter is dismissed, Complainant and Respondent shall be advised in writing that the complaint has been dismissed, and Executive Director shall report the dismissal at the next regularly scheduled meeting of the Board.

(2) If Executive Director believes that the matter may be best resolved by a stipulated agreement, Executive Director and Board Liaison shall propose terms for a stipulation, which the Board legal counsel shall incorporate into a stipulated agreement and forward to Respondent for consideration. If Respondent accepts the proposed stipulated agreement, it shall be submitted to the Board for consideration at its next meeting, or at such Board meeting thereafter as time permits. The stipulated agreement shall not be effective unless and until approved by the Board, and should Respondent decline to accept the proposed

stipulated agreement, Executive Director shall have the discretion to submit the matter to the Board for formal hearing at the next Board meeting, where time permits. A form stipulated agreement is attached as Exhibit "2".

(3) If Executive Director and Board Liaison decide to have the matter heard by an advisory committee, Compliance Officer shall follow the procedures necessary to establish an advisory committee and shall set a time and place for the committee to review the matter (See NAC 625.646).

(4) If Executive Director and Board Liaison decide to go forward with a formal disciplinary complaint, Executive Director shall set a hearing date and direct the Board's legal counsel to prepare a formal disciplinary complaint.

h. The Board, acting through its Chairperson or Executive Director, may issue subpoenas requiring the attendance of an individual or the production of requested documents (See NRS 625.440).

II. Formal Disciplinary Complaint:

a. The Board's legal counsel shall prepare a formal disciplinary complaint setting forth the specifics of the complaint and the rules, statutes or regulations which the Respondent has allegedly violated. A form disciplinary complaint is attached as Exhibit "3". The Board's legal counsel shall prepare the notice of the hearing on the formal disciplinary complaint. A form notice of hearing is attached as Exhibit "4".

The Board's legal counsel shall forward by certified mail, return receipt requested, the formal complaint and notice of the hearing to Respondent, together with a letter advising the Respondent of his rights and obligations, as well as the requirement for Respondent to

provide a list of witnesses and exhibits to Board's legal counsel at least ten (10) calendar days before the hearing. A form letter to Respondent is attached as Exhibit "5".

b. Respondent may request a continuance of the scheduled hearing.

Generally, Executive Director will grant one continuance of a scheduled disciplinary hearing. All other requests for continuances will be denied unless Respondent can demonstrate clear and convincing grounds for the granting of a second continuance.

c. Prior to the hearing, Executive Director shall discuss with Board Liaison and the Board's legal counsel the parameters within which the disciplinary complaint may be settled. The Board's legal counsel shall discuss possible settlement of the disciplinary action with Respondent. If it appears that the complaint can be resolved by stipulated agreement, the Board's legal counsel shall draft a proposed Stipulation and Decision to resolve the formal disciplinary complaint. A form Stipulation and Decision of the Board is attached as Exhibit "6".

d. The proposed Stipulation and Decision shall be submitted to the Board at its next meeting. The Stipulation and Decision is not effective unless and until the Stipulation and Decision is approved by the Board at a public meeting.

e. Prior to the hearing, if a Stipulation and Decision is not entered, the Board's legal counsel shall attempt to enter into a stipulation of proposed list of exhibits with Respondent/ to be admitted at the hearing.

III. Procedures Governing a Formal Disciplinary Hearing:

a. Respondent is entitled to be represented by an attorney licensed in the State of Nevada. (See NAC 625.635).

b. The Chairperson of the disciplinary hearing shall request all Board members to advise whether they have a conflict which requires them to recuse themselves from participating in the hearing.

c. Board Liaison in a matter shall recuse him or herself from participating in the hearing.

d. The Board's legal counsel shall mark and place into evidence all exhibits which support the allegations contained in the complaint. Respondent may state his/her objections, if any, to the exhibits and may submit additional exhibits which are relevant to the charges set forth in the complaint or to the defenses raised in Respondent's answer to the complaint.

e. The Board's legal counsel and Respondent may make a short opening statement. Thereafter, the Board's legal counsel shall call witnesses to testify concerning the allegations contained in the complaint. Respondent may cross-examine the witnesses and may call witnesses to testify on his or her behalf.

f. The Board Chairperson, or a Board member designated by the Board Chairperson, shall chair the disciplinary hearing. The Chairperson of the disciplinary hearing shall make all rulings concerning the admission of evidence. The Chairperson of the disciplinary hearing may accept into evidence those exhibits that have been marked and offered by either the Board's legal counsel or Respondent.

g. Formal rules of evidence do not apply. (See NRS 2338.123).

h. After the evidence, exhibits and testimony have been submitted, Respondent may make a closing argument. The Board's legal counsel does not make a closing argument and does not make any recommendation to the Board concerning the

manner in which the disciplinary complaint should be resolved, but it may clarify to the Board the various counts asserted against Respondent.

i. After the evidence has been submitted and Respondent has finished his or her closing statement, the Chairperson of the disciplinary hearing shall summarize the issues to be decided by the Board. The alleged violations must be proved by substantial evidence.

j. Any Board member may make a motion concerning the decision to be made by the Board. The motion must be seconded and adopted by a majority vote of the Board members participating in the hearing to be effective.

k. After the Board has orally advised Respondent of its decision, the Board's legal counsel shall draft a formal Decision and Order and submit the draft to the Executive Director. A form Decision and Order is attached as Exhibit "7". The Executive Director may make appropriate revisions and forward the revised Decision and Order to the Chairperson of the disciplinary hearing for signature.

l. The signed Decision and Order shall be served by certified mail on Respondent, return receipt requested.

m. Respondent has 30 days following receipt of the written decision to seek judicial review. (See NRS 2338. 130).