

Assembly Bill No. 53—Committee
on Government Affairs

CHAPTER.....

AN ACT relating to administrative procedure; revising provisions governing the standard of proof in administrative hearings; making various other changes to the Nevada Administrative Procedure Act; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Nevada Administrative Procedure Act sets forth the minimum procedural requirements for the adjudication procedure of agencies of the Executive Department of the State Government that are subject to the Act. (NRS 233B.020)

Section 5 of this bill provides that the voluntary surrender of a license in a contested case will constitute disciplinary action against the licensee. **Section 5** also requires a party who requests the transcription of oral proceedings to pay for the costs of the transcription.

Under the Act, applications for the grant, denial or renewal of a license are a contested case for purposes of the application of the procedural requirements of the Act only if notice and opportunity for hearing are required to be provided to the applicant before the grant, denial or renewal of the license. (NRS 233B.127) **Section 8** of this bill clarifies that, to be a contested case, the provision of notice and opportunity for hearing must be required by statute or regulation.

Section 9 of this bill specifies the manner in which a petition for judicial review is required to be served. **Section 10** of this bill extends from 30 days to 45 days the period after the service of a petition for judicial review in which certain records are required to be transmitted to the reviewing court and also imposes a duty on the party who filed the petition to transmit to the reviewing court an original or certified copy of the transcript of the evidence. **Section 13** of this bill makes it discretionary instead of mandatory for a regulatory body that initiates disciplinary proceedings against a licensee to require the licensee to submit his or her fingerprints.

The Nevada Supreme Court recently clarified that the standard of proof that is required to be used by administrative agencies in administrative hearings is a preponderance of the evidence. (*Nassiri v. Chiropractic Physicians' Board of Nevada*, 130 Nev. Adv. Op. No. 27, 327 P.3d 487 (2014)) **Sections 2, 5, 7 and 14-27** of this bill revise the standard of proof for administrative hearings in existing law to conform to the preponderance-of-the-evidence standard in the *Nassiri* opinion. **Section 11** of this bill codifies into statute the definition of "substantial evidence" in case law for purposes of the standard for judicial review. (See, e.g., *State Empl't Sec. Dept. v. Hilton Hotels Corp.*, 102 Nev. 606 (1986))



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 233B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. ***“Preponderance of the evidence” means evidence that enables a trier of fact to determine that the existence of the contested fact is more probable than the nonexistence of the contested fact.***

Sec. 3. (Deleted by amendment.)

Sec. 4. NRS 233B.030 is hereby amended to read as follows:

233B.030 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 233B.031 to 233B.0385, inclusive, ***and section 2 of this act***, have the meanings ascribed to them in those sections.

Sec. 5. NRS 233B.121 is hereby amended to read as follows:

233B.121 1. In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice.

2. The notice must include:

(a) A statement of the time, place and nature of the hearing.
(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and regulations involved.

(d) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

3. Any party is entitled to be represented by counsel.

4. Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved. An agency may by regulation authorize the payment of fees and reimbursement for mileage to witnesses in the same amounts and under the same conditions as for witnesses in the courts of this state.

5. Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. If an informal disposition is made, the parties may waive the requirement for findings of fact and conclusions of law.



6. *The voluntary surrender of a license in a contested case shall be deemed to constitute disciplinary action against the licensee.*

7. The record in a contested case must include:

- (a) All pleadings, motions and intermediate rulings.
- (b) Evidence received or considered.
- (c) A statement of matters officially noticed.
- (d) Questions and offers of proof and objections, and rulings thereon.
- (e) Proposed findings and exceptions.
- (f) Any decision, opinion or report by the hearing officer presiding at the hearing.

~~7-1~~ 8. Oral proceedings, or any part thereof, must be transcribed on request of any party. *The party making the request shall pay all the costs for the transcription.*

~~8-1~~ 9. Findings of fact must be based exclusively on ~~substantial~~ *a preponderance of the* evidence and on matters officially noticed.

Sec. 6. NRS 233B.123 is hereby amended to read as follows:
233B.123 In contested cases:

1. Irrelevant, immaterial or unduly repetitious evidence must be excluded. Evidence may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and must be noted in the record. Subject to the requirements of this subsection, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

2. Documentary evidence may be received in the form of authenticated copies or excerpts . ~~if the original is not readily available.~~ Upon request, parties must be given an opportunity to compare the copy with the original.

3. Every witness shall declare, by oath or affirmation, that he or she will testify truthfully.

4. Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination, impeach any witness, regardless of which party first called the witness to testify, and rebut the evidence against him or her.



5. Notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the specialized knowledge of the agency. Parties must be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they must be afforded an opportunity to contest the material so noticed. The experience, technical competence and specialized knowledge of the agency may be utilized in the evaluation of the evidence.

Sec. 7. NRS 233B.125 is hereby amended to read as follows:

233B.125 A decision or order adverse to a party in a contested case must be in writing or stated in the record. Except as provided in subsection 5 of NRS 233B.121, a final decision must include findings of fact and conclusions of law, separately stated. Findings of fact and decisions must be based upon ~~substantial~~ *a preponderance of the* evidence. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency regulations, a party submitted proposed findings of fact ~~it~~ *before the commencement of the hearing*, the decision must include a ruling upon each proposed finding. Parties must be notified either personally or by certified mail of any decision or order. Upon request a copy of the decision or order must be delivered or mailed forthwith to each party and to the party's attorney of record.

Sec. 8. NRS 233B.127 is hereby amended to read as follows:

233B.127 1. ~~When~~ *The provisions of NRS 233B.121 to 233B.150, inclusive, and section 3 of this act do not apply to* the grant, denial or renewal of a license ~~is required to be preceded by~~ *unless* notice and opportunity for hearing ~~the provisions of this chapter concerning contested cases apply.~~ *are required by law to be provided to the applicant before the grant, denial or renewal of the license.*

2. When a licensee has made timely and sufficient application for the renewal of a license or for a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

3. No revocation, suspension, annulment or withdrawal of any license is lawful unless, before the institution of agency proceedings, the agency gave notice by certified mail to the licensee



of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. An agency's order of summary suspension may be issued by the agency or by the Chair of the governing body of the agency. If the order of summary suspension is issued by the Chair of the governing body of the agency, the Chair shall not participate in any further proceedings of the agency relating to that order. Proceedings relating to the order of summary suspension must be instituted and determined within 45 days after the date of the order unless the agency and the licensee mutually agree in writing to a longer period.

Sec. 9. NRS 233B.130 is hereby amended to read as follows:

233B.130 1. Any party who is:

(a) Identified as a party of record by an agency in an administrative proceeding; and

(b) Aggrieved by a final decision in a contested case,

→ is entitled to judicial review of the decision. Where appeal is provided within an agency, only the decision at the highest level is reviewable unless a decision made at a lower level in the agency is made final by statute. Any preliminary, procedural or intermediate act or ruling by an agency in a contested case is reviewable if review of the final decision of the agency would not provide an adequate remedy.

2. Petitions for judicial review must:

(a) Name as respondents the agency and all parties of record to the administrative proceeding;

(b) Be instituted by filing a petition in the district court in and for Carson City, in and for the county in which the aggrieved party resides or in and for the county where the agency proceeding occurred; ~~and~~

(c) *Be served upon:*

(1) The Attorney General, or a person designated by the Attorney General, at the Office of the Attorney General in Carson City; and

(2) The person serving in the office of administrative head of the named agency; and

(d) Be filed within 30 days after service of the final decision of the agency.



↪ Cross-petitions for judicial review must be filed within 10 days after service of a petition for judicial review.

3. The agency and any party desiring to participate in the judicial review must file a statement of intent to participate in the petition for judicial review and serve the statement upon the agency and every party within 20 days after service of the petition.

4. A petition for rehearing or reconsideration must be filed within 15 days after the date of service of the final decision. An order granting or denying the petition must be served on all parties at least 5 days before the expiration of the time for filing the petition for judicial review. If the petition is granted, the subsequent order shall be deemed the final order for the purpose of judicial review.

5. The petition for judicial review and any cross-petitions for judicial review must be served upon the agency and every party within 45 days after the filing of the petition, unless, upon a showing of good cause, the district court extends the time for such service. If the proceeding involves a petition for judicial review or cross-petition for judicial review of a final decision of the State Contractors' Board, the district court may, on its own motion or the motion of a party, dismiss from the proceeding any agency or person who:

(a) Is named as a party in the petition for judicial review or cross-petition for judicial review; and

(b) Was not a party to the administrative proceeding for which the petition for judicial review or cross-petition for judicial review was filed.

6. The provisions of this chapter are the exclusive means of judicial review of, or judicial action concerning, a final decision in a contested case involving an agency to which this chapter applies.

Sec. 10. NRS 233B.131 is hereby amended to read as follows:

233B.131 1. Within ~~30~~ 45 days after the service of the petition for judicial review or such time as is allowed by the court ~~to~~ **the** :

(a) The party who filed the petition for judicial review shall transmit to the reviewing court an original or certified copy of the transcript of the evidence resulting in the final decision of the agency.

(b) The agency that rendered the decision which is the subject of the petition shall transmit to the reviewing court the original or a certified copy of the ~~entire~~ remainder of the record of the proceeding under review . ~~including a transcript of the evidence resulting in the final decision of the agency.~~



➡ The record may be shortened by stipulation of the parties to the proceedings. A party unreasonably refusing to stipulate to limit the record, as determined by the court, may be assessed by the court any additional costs. The court may require or permit subsequent corrections or additions to the record.

2. If, before submission to the court, an application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence and any rebuttal evidence be taken before the agency upon such conditions as the court determines.

3. After receipt of any additional evidence, the agency:

- (a) May modify its findings and decision; and
- (b) Shall file the evidence and any modifications, new findings or decisions with the reviewing court.

Sec. 11. NRS 233B.135 is hereby amended to read as follows:

233B.135 1. Judicial review of a final decision of an agency must be:

- (a) Conducted by the court without a jury; and
- (b) Confined to the record.

➡ In cases concerning alleged irregularities in procedure before an agency that are not shown in the record, the court may receive evidence concerning the irregularities.

2. The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3.

3. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the agency;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion.



4. As used in this section, “substantial evidence” means evidence which a reasonable mind might accept as adequate to support a conclusion.

Sec. 12. (Deleted by amendment.)

Sec. 13. NRS 622.360 is hereby amended to read as follows:

622.360 1. If a regulatory body initiates disciplinary proceedings against a licensee pursuant to this title, the *regulatory body may require the* licensee ~~[shall, within 30 days after the licensee receives notification of the initiation of the disciplinary proceedings.]~~ *to* submit to the regulatory body a complete set of his or her fingerprints and written permission authorizing the regulatory body to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

2. The willful failure of the licensee to comply with the requirements of subsection 1 constitutes an additional ground for the regulatory body to take disciplinary action against the licensee, including, without limitation, suspending or revoking the license of the licensee.

3. A regulatory body has an additional ground for taking disciplinary action against the licensee if:

(a) The report from the Federal Bureau of Investigation indicates that the licensee has been convicted of an unlawful act that is a ground for taking disciplinary action against the licensee pursuant to this title; and

(b) The regulatory body has not taken any prior disciplinary action against the licensee based on that unlawful act.

4. To the extent possible, the provisions of this section are intended to supplement other statutory provisions governing disciplinary proceedings. If there is a conflict between such other provisions and the provisions of this section, the other provisions control to the extent that the other provisions provide more specific requirements regarding the discipline of a licensee.

Sec. 14. NRS 622A.370 is hereby amended to read as follows:

622A.370 1. The prosecutor has the burden of proof in any hearing pursuant to this chapter. The standard of proof in such a hearing is ~~[substantial]~~ *a preponderance of the* evidence.

2. Except as otherwise provided in this chapter, the regulatory body or hearing panel or officer is not bound by strict rules of procedure or rules of evidence when conducting the hearing, except that evidence must be taken and considered in the hearing pursuant to NRS 233B.123.



3. In any hearing pursuant to this chapter, the acts which constitute grounds for initiating disciplinary action against a licensee and the administrative penalties that may be imposed against a licensee are set forth in the occupational licensing chapter governing the licensee.

4. If requested by any party, the hearing or any portion of the hearing must be transcribed. The party making the request shall pay all costs for the transcription.

5. As used in this section, "preponderance of the evidence" has the meaning ascribed to it in section 2 of this act.

Sec. 15. Chapter 631 of NRS is hereby amended by adding thereto a new section to read as follows:

"Preponderance of the evidence" has the meaning ascribed to it in section 2 of this act.

Sec. 16. NRS 631.005 is hereby amended to read as follows:

631.005 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 631.015 to 631.105, inclusive, ***and section 15 of this act***, have the meanings ascribed to them in those sections.

Sec. 17. NRS 631.255 is hereby amended to read as follows:

631.255 1. The Board may, without a clinical examination required by NRS 631.240, issue a specialist's license to a person who:

(a) Presents a current certification as a diplomate from a certifying board approved by the Commission on Dental Accreditation of the American Dental Association; or

(b) Has completed the educational requirements specified for certification in a specialty area by a certifying board approved by the Commission on Dental Accreditation of the American Dental Association and is recognized by the certifying board as being eligible for that certification. A person who is licensed as a specialist pursuant to the provisions of this paragraph:

(1) Shall submit to the Board his or her certificate as a diplomate from the certifying board within 6 years after licensure as a specialist; and

(2) Must maintain certification as a diplomate of the certifying board during the period in which the person is licensed as a specialist pursuant to this paragraph.

2. In addition to the requirements set forth in subsection 1, a person applying for a specialist's license:

(a) Must hold an active license to practice dentistry pursuant to the laws of another state or territory of the United States, or the District of Columbia, or pursuant to the laws of this State, another



state or territory of the United States, or the District of Columbia, if the person is applying pursuant to paragraph (b) of subsection 1;

(b) Must be a specialist as identified by the Board;

(c) Shall pay the application, examination and renewal fees in the same manner as a person licensed pursuant to NRS 631.240;

(d) Must submit all information required to complete an application for a license; and

(e) Must satisfy the requirements of NRS 631.230.

3. The Board shall not issue a specialist's license to a person:

(a) Whose license to practice dentistry has been revoked or suspended;

(b) Who has been refused a license to practice dentistry; or

(c) Who is involved in or has pending a disciplinary action concerning a license to practice dentistry,

→ in this State, another state or territory of the United States, or the District of Columbia.

4. The Board shall examine each applicant in writing on the contents and interpretation of this chapter and the regulations of the Board.

5. A person to whom a specialist's license is issued pursuant to this section shall limit his or her practice to the specialty.

6. The Board may revoke a specialist's license at any time ~~upon submission of substantial evidence to~~ if the Board *finds, by a preponderance of the evidence*, that the holder of the license violated any provision of this chapter or the regulations of the Board.

Sec. 18. NRS 631.271 is hereby amended to read as follows:

631.271 1. The Board shall, without a clinical examination required by NRS 631.240 or 631.300, issue a limited license to practice dentistry or dental hygiene to a person who:

(a) Is qualified for a license to practice dentistry or dental hygiene in this State;

(b) Pays the required application fee;

(c) Has entered into a contract with:

(1) The Nevada System of Higher Education to provide services as a dental intern, dental resident or instructor of dentistry or dental hygiene at an educational or outpatient clinic, hospital or other facility of the Nevada System of Higher Education; or

(2) An accredited program of dentistry or dental hygiene of an institution which is accredited by a regional educational accrediting organization that is recognized by the United States Department of Education to provide services as a dental intern, dental resident or instructor of dentistry or dental hygiene at an



educational or outpatient clinic, hospital or other facility of the institution and accredited by the Commission on Dental Accreditation of the American Dental Association or its successor specialty accrediting organization;

(d) Satisfies the requirements of NRS 631.230 or 631.290, as appropriate; and

(e) Satisfies at least one of the following requirements:

(1) Has a license to practice dentistry or dental hygiene issued pursuant to the laws of another state or territory of the United States, or the District of Columbia;

(2) Presents to the Board a certificate granted by the Western Regional Examining Board which contains a notation that the person has passed, within the 5 years immediately preceding the date of the application, a clinical examination administered by the Western Regional Examining Board;

(3) Successfully passes a clinical examination approved by the Board and the American Board of Dental Examiners; or

(4) Has the educational or outpatient clinic, hospital or other facility where the person will provide services as a dental intern or dental resident in an internship or residency program submit to the Board written confirmation that the person has been appointed to a position in the program and is a citizen of the United States or is lawfully entitled to remain and work in the United States. If a person qualifies for a limited license pursuant to this subparagraph, the limited license remains valid only while the person is actively providing services as a dental intern or dental resident in the internship or residency program, is lawfully entitled to remain and work in the United States and is in compliance with all other requirements for the limited license.

2. The Board shall not issue a limited license to a person:

(a) Who has been issued a license to practice dentistry or dental hygiene if:

(1) The person is involved in a disciplinary action concerning the license; or

(2) The license has been revoked or suspended; or

(b) Who has been refused a license to practice dentistry or dental hygiene,

↳ in this State, another state or territory of the United States, or the District of Columbia.

3. Except as otherwise provided in subsection 4, a person to whom a limited license is issued pursuant to subsection 1:

(a) May practice dentistry or dental hygiene in this State only:



(1) At the educational or outpatient clinic, hospital or other facility where the person is employed; and

(2) In accordance with the contract required by paragraph (c) of subsection 1.

(b) Shall not, for the duration of the limited license, engage in the private practice of dentistry or dental hygiene in this State or accept compensation for the practice of dentistry or dental hygiene except such compensation as may be paid to the person by the Nevada System of Higher Education or an accredited program of dentistry or dental hygiene for services provided as a dental intern, dental resident or instructor of dentistry or dental hygiene pursuant to paragraph (c) of subsection 1.

4. The Board may issue a permit authorizing a person who holds a limited license to engage in the practice of dentistry or dental hygiene in this State and to accept compensation for such practice as may be paid to the person by entities other than the Nevada System of Higher Education or an accredited program of dentistry or dental hygiene with whom the person is under contract pursuant to paragraph (c) of subsection 1. The Board shall, by regulation, prescribe the standards, conditions and other requirements for the issuance of a permit.

5. A limited license expires 1 year after its date of issuance and may be renewed on or before the date of its expiration, unless the holder no longer satisfies the requirements for the limited license. The holder of a limited license may, upon compliance with the applicable requirements set forth in NRS 631.330 and the completion of a review conducted at the discretion of the Board, be granted a renewal certificate that authorizes the continuation of practice pursuant to the limited license for 1 year.

6. A permit issued pursuant to subsection 4 expires on the date that the holder's limited license expires and may be renewed when the limited license is renewed, unless the holder no longer satisfies the requirements for the permit.

7. Within 7 days after the termination of a contract required by paragraph (c) of subsection 1, the holder of a limited license shall notify the Board of the termination, in writing, and surrender the limited license and a permit issued pursuant to this section, if any, to the Board.

8. The Board may revoke a limited license and a permit issued pursuant to this section, if any, at any time ~~upon submission of substantial evidence to~~ *if the Board finds, by a preponderance of the evidence*, that the holder of the license violated any provision of this chapter or the regulations of the Board.



Sec. 19. NRS 631.272 is hereby amended to read as follows:

631.272 1. Except as otherwise provided in this section, the Board shall, without a clinical examination required by NRS 631.240, issue a temporary license to practice dentistry to a person who:

(a) Has a license to practice dentistry issued pursuant to the laws of another state or territory of the United States, or the District of Columbia;

(b) Has practiced dentistry pursuant to the laws of another state or territory of the United States, or the District of Columbia, for a minimum of 5 years;

(c) Has not had a license to practice dentistry revoked or suspended in this State, another state or territory of the United States, or the District of Columbia;

(d) Has not been refused a license to practice dentistry in this State, another state or territory of the United States, or the District of Columbia;

(e) Is not involved in or does not have pending a disciplinary action concerning a license to practice dentistry in this State, another state or territory of the United States, or the District of Columbia;

(f) Pays the application, examination and renewal fees in the same manner as a person licensed pursuant to NRS 631.240;

(g) Submits all information required to complete an application for a license; and

(h) Satisfies the requirements of NRS 631.230.

2. A person to whom a temporary license is issued pursuant to subsection 1 may:

(a) Practice dentistry for the duration of the temporary license; and

(b) Apply for a permanent license to practice dentistry without a clinical examination required by NRS 631.240 if the person has held a temporary license to practice dentistry pursuant to subsection 1 for a minimum of 2 years.

3. The Board shall examine each applicant in writing on the contents and interpretation of this chapter and the regulations of the Board.

4. The Board shall not, on or after July 1, 2006, issue any additional temporary licenses to practice dentistry pursuant to this section.

5. Any person who, on July 1, 2006, holds a temporary license to practice dentistry issued pursuant to this section may, subject to the regulatory and disciplinary authority of the Board, practice dentistry under the temporary license until December 31, 2008, or



until the person is qualified to apply for and is issued or denied a permanent license to practice dentistry in accordance with this section, whichever period is shorter.

6. The Board may revoke a temporary license at any time ~~upon submission of substantial evidence to~~ if the Board *finds, by a preponderance of the evidence*, that the holder of the license violated any provision of this chapter or the regulations of the Board.

Sec. 20. NRS 631.273 is hereby amended to read as follows:

631.273 1. Except as otherwise provided in this section, the Board shall, without a clinical examination required by NRS 631.300, issue a temporary license to practice dental hygiene to a person who:

(a) Has a license to practice dental hygiene issued pursuant to the laws of another state or territory of the United States, or the District of Columbia;

(b) Satisfies the requirements of NRS 631.290;

(c) Has practiced dental hygiene pursuant to the laws of another state or territory of the United States, or the District of Columbia, for at least 5 years immediately preceding the date that the person applies for a temporary license;

(d) Has not had a license to practice dental hygiene revoked or suspended in this State, another state or territory of the United States, or the District of Columbia;

(e) Has not been denied a license to practice dental hygiene in this State, another state or territory of the United States, or the District of Columbia;

(f) Is not involved in or does not have pending a disciplinary action concerning a license to practice dental hygiene in this State, another state or territory of the United States, or the District of Columbia;

(g) Pays the application, examination and renewal fees in the same manner as a person licensed pursuant to NRS 631.300; and

(h) Submits all information required to complete an application for a license.

2. A person to whom a temporary license is issued pursuant to this section may:

(a) Practice dental hygiene for the duration of the temporary license; and

(b) Apply for a permanent license to practice dental hygiene without a clinical examination required by NRS 631.300 if the person has held a temporary license to practice dental hygiene issued pursuant to this section for at least 2 years.



3. The Board shall examine each applicant in writing concerning the contents and interpretation of this chapter and the regulations of the Board.

4. The Board shall not, on or after July 1, 2006, issue any additional temporary licenses to practice dental hygiene pursuant to this section.

5. Any person who, on July 1, 2006, holds a temporary license to practice dental hygiene issued pursuant to this section may, subject to the regulatory and disciplinary authority of the Board, practice dental hygiene under the temporary license until December 31, 2008, or until the person is qualified to apply for and is issued or denied a permanent license to practice dental hygiene in accordance with this section, whichever period is shorter.

6. The Board may revoke a temporary license at any time ~~upon submission of substantial evidence to~~ if the Board *finds, by a preponderance of the evidence*, that the holder of the license violated any provision of this chapter or the regulations of the Board.

Sec. 21. NRS 631.274 is hereby amended to read as follows:

631.274 1. The Board shall, without a clinical examination required by NRS 631.240 or 631.300, issue a restricted geographical license to practice dentistry or dental hygiene to a person if the person meets the requirements of subsection 2 and:

(a) A board of county commissioners submits a request that the Board of Dental Examiners of Nevada waive the requirements of NRS 631.240 or 631.300 for any applicant intending to practice dentistry or dental hygiene in a rural area of a county in which dental or dental hygiene needs are underserved as that term is defined by the officer of rural health of the University of Nevada School of Medicine;

(b) Two or more boards of county commissioners submit a joint request that the Board of Dental Examiners of Nevada waive the requirements of NRS 631.240 or 631.300 for any applicant intending to practice dentistry or dental hygiene in one or more rural areas within those counties in which dental or dental hygiene needs are underserved as that term is defined by the officer of rural health of the University of Nevada School of Medicine; or

(c) The director of a federally qualified health center or a nonprofit clinic submits a request that the Board waive the requirements of NRS 631.240 or 631.300 for any applicant who has entered into a contract with a federally qualified health center or nonprofit clinic which treats underserved populations in Washoe County or Clark County.



2. A person may apply for a restricted geographical license if the person:

(a) Has a license to practice dentistry or dental hygiene issued pursuant to the laws of another state or territory of the United States, or the District of Columbia;

(b) Is otherwise qualified for a license to practice dentistry or dental hygiene in this State;

(c) Pays the application, examination and renewal fees in the same manner as a person licensed pursuant to NRS 631.240 or 631.300;

(d) Submits all information required to complete an application for a license; and

(e) Satisfies the requirements of NRS 631.230 or 631.290, as appropriate.

3. The Board shall not issue a restricted geographical license to a person:

(a) Whose license to practice dentistry or dental hygiene has been revoked or suspended;

(b) Who has been refused a license to practice dentistry or dental hygiene; or

(c) Who is involved in or has pending a disciplinary action concerning a license to practice dentistry or dental hygiene, in this State, another state or territory of the United States, or the District of Columbia.

4. The Board shall examine each applicant in writing on the contents and interpretation of this chapter and the regulations of the Board.

5. A person to whom a restricted geographical license is issued pursuant to this section:

(a) May practice dentistry or dental hygiene only in the county or counties which requested the restricted geographical licensure pursuant to paragraph (a) or (b) of subsection 1.

(b) Shall not, for the duration of the restricted geographical license, engage in the private practice of dentistry or dental hygiene in this State or accept compensation for the practice of dentistry or dental hygiene except such compensation as may be paid to the person by a federally qualified health center or nonprofit clinic pursuant to paragraph (c) of subsection 1.

6. Within 7 days after the termination of a contract pursuant to paragraph (c) of subsection 1, the holder of a restricted geographical license shall notify the Board of the termination, in writing, and surrender the restricted geographical license.



7. A person to whom a restricted geographical license was issued pursuant to this section may petition the Board for an unrestricted license without a clinical examination required by NRS 631.240 or 631.300 if the person:

(a) Has not had a license to practice dentistry or dental hygiene revoked or suspended in this State, another state or territory of the United States, or the District of Columbia;

(b) Has not been refused a license to practice dentistry or dental hygiene in this State, another state or territory of the United States, or the District of Columbia;

(c) Is not involved in or does not have pending a disciplinary action concerning a license to practice dentistry or dental hygiene in this State, another state or territory of the United States, or the District of Columbia; and

(d) Has:

(1) Actively practiced dentistry or dental hygiene for 3 years at a minimum of 30 hours per week in the county or counties which requested the restricted geographical licensure pursuant to paragraph (a) or (b) of subsection 1; or

(2) Been under contract with a federally qualified health center or nonprofit clinic for a minimum of 3 years.

8. The Board may revoke a restricted geographical license at any time ~~upon submission of substantial evidence to~~ *if the Board finds, by a preponderance of the evidence,* that the holder of the license violated any provision of this chapter or the regulations of the Board.

Sec. 22. NRS 631.275 is hereby amended to read as follows:

631.275 1. Except as otherwise provided in subsection 2, the Board shall, without examination, issue a restricted license to practice dentistry to a person who:

(a) Has a valid license to practice dentistry issued pursuant to the laws of another state or the District of Columbia;

(b) Has received a degree from a dental school or college accredited by the Commission on Dental Accreditation of the American Dental Association or its successor organization;

(c) Has entered into a contract with a facility approved by the Division of Public and Behavioral Health of the Department of Health and Human Services to provide publicly funded dental services exclusively to persons of low income for the duration of the restricted license; and

(d) Satisfies the requirements of NRS 631.230.

2. The Board shall not issue a restricted license to a person:

(a) Who has failed to pass the examination of the Board;



(b) Who has been refused a license in this State, another state or territory of the United States, or the District of Columbia; or

(c) Whose license to practice dentistry has been revoked in this State, another state or territory of the United States, or the District of Columbia.

3. A person to whom a restricted license is issued pursuant to subsection 1:

(a) May perform dental services only:

(1) Under the general supervision of the State Dental Health Officer or the supervision of a dentist who is licensed to practice dentistry in this State and appointed by the Division of Public and Behavioral Health of the Department of Health and Human Services to supervise dental care that is provided in a facility which has entered into a contract with the person to whom a restricted license is issued and which is approved by the Division; and

(2) In accordance with the contract required pursuant to paragraph (c) of that subsection.

(b) Shall not, for the duration of the restricted license, engage in the private practice of dentistry, which includes, without limitation, providing dental services to a person who pays for the services.

4. A restricted license expires 1 year after its date of issuance and may be renewed on or before the date of its expiration, unless the holder no longer satisfies the requirements for the restricted license. The holder of a restricted license may, upon compliance with the applicable requirements set forth in NRS 631.330 and the completion of a review conducted at the discretion of the Board, be granted a renewal certificate that authorizes the continuation of practice pursuant to the restricted license for 1 year.

5. A person who receives a restricted license must pass the examination of the Board within 3 years after receiving the restricted license. If the person fails to pass that examination, the Board shall revoke the restricted license.

6. The Board may revoke a restricted license at any time ~~upon submission of substantial evidence to~~ *if the Board finds, by a preponderance of the evidence,* that the holder of the license violated any provision of this chapter or the regulations of the Board.

Sec. 23. NRS 631.350 is hereby amended to read as follows:

631.350 1. Except as otherwise provided in NRS 631.271, 631.2715 and 631.347, the Board may:

(a) Refuse to issue a license to any person;

(b) Revoke or suspend the license or renewal certificate issued by it to any person;



- (c) Fine a person it has licensed;
- (d) Place a person on probation for a specified period on any conditions the Board may order;
- (e) Issue a public reprimand to a person;
- (f) Limit a person's practice to certain branches of dentistry;
- (g) Require a person to participate in a program to correct alcohol or drug abuse or any other impairment;
- (h) Require that a person's practice be supervised;
- (i) Require a person to perform community service without compensation;
- (j) Require a person to take a physical or mental examination or an examination of his or her competence;
- (k) Require a person to fulfill certain training or educational requirements;
- (l) Require a person to reimburse a patient; or
- (m) Any combination thereof;

↳ ~~upon submission of substantial evidence to~~ if the Board *finds, by a preponderance of the evidence*, that the person has engaged in any of the activities listed in subsection 2.

2. The following activities may be punished as provided in subsection 1:

- (a) Engaging in the illegal practice of dentistry or dental hygiene;
- (b) Engaging in unprofessional conduct; or
- (c) Violating any regulations adopted by the Board or the provisions of this chapter.

3. The Board may delegate to a hearing officer or panel its authority to take any disciplinary action pursuant to this chapter, impose and collect fines therefor and deposit the money therefrom in banks, credit unions or savings and loan associations in this State.

4. If a hearing officer or panel is not authorized to take disciplinary action pursuant to subsection 3 and the Board deposits the money collected from the imposition of fines with the State Treasurer for credit to the State General Fund, it may present a claim to the State Board of Examiners for recommendation to the Interim Finance Committee if money is needed to pay attorney's fees or the costs of an investigation, or both.

5. The Board shall not administer a private reprimand.

6. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.



Sec. 24. NRS 637.150 is hereby amended to read as follows:

637.150 1. ~~{Upon proof}~~ *If the Board finds*, by ~~{substantial}~~ *a preponderance of the* evidence, that an applicant or holder of a license:

(a) Has been adjudicated insane;
(b) Habitually uses any controlled substance or intoxicant;
(c) Has been convicted of a crime involving moral turpitude;
(d) Has been convicted of violating any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive;

(e) Has advertised in any manner which would tend to deceive, defraud or mislead the public;

(f) Has presented to the Board any diploma, license or certificate that has been signed or issued unlawfully or under fraudulent representations, or obtains or has obtained a license to practice in this State through fraud of any kind;

(g) Has been convicted of a violation of any federal or state law relating to a controlled substance;

(h) Has, without proper verification, dispensed a lens, frame, specially fabricated optical device or other ophthalmic device that does not satisfy the minimum standards established by the Board pursuant to NRS 637.073;

(i) Has violated any regulation of the Board;

(j) Has violated any provision of this chapter;

(k) Is incompetent;

(l) Is guilty of unethical or unprofessional conduct as determined by the Board;

(m) Is guilty of repeated malpractice, which may be evidenced by claims of malpractice settled against a practitioner;

(n) Is guilty of a fraudulent or deceptive practice as determined by the Board; or

(o) Has operated a medical facility, as defined in NRS 449.0151, at any time during which:

(1) The license of the facility was suspended or revoked; or

(2) An act or omission occurred which resulted in the suspension or revocation of the license pursuant to NRS 449.160,

↳ the Board may, in the case of an applicant, refuse to grant the applicant a license, or may, in the case of a holder of a license, place the holder on probation, reprimand the holder publicly, require the holder to pay an administrative fine of not more than \$10,000, suspend or revoke the holder's license, or take any combination of these disciplinary actions.



2. The Board shall not privately reprimand a holder of a license.

3. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

4. The provisions of paragraph (o) of subsection 1 apply to an owner or other principal responsible for the operation of the medical facility.

5. As used in this section, "preponderance of the evidence" has the meaning ascribed to it in section 2 of this act.

Sec. 25. NRS 638.145 is hereby amended to read as follows:

638.145 **1.** The Board shall not refuse to issue a license to an applicant or take any disciplinary action against a licensee unless the Board finds, by ~~substantial~~ ***a preponderance of the*** evidence, that the applicant or licensee has engaged in one or more of the practices prohibited by the provisions of this chapter.

2. As used in this section, "preponderance of the evidence" has the meaning ascribed to it in section 2 of this act.

Sec. 26. NRS 641.230 is hereby amended to read as follows:

641.230 **1.** The Board may suspend or revoke a person's license as a psychologist, behavior analyst or assistant behavior analyst or certificate as an autism behavior interventionist, place the person on probation, require remediation for the person or take any other action specified by regulation if the Board finds by ~~substantial~~ ***a preponderance of the*** evidence that the person has:

~~1-1~~ ***(a)*** Been convicted of a felony relating to the practice of psychology or the practice of applied behavior analysis.

~~1-2~~ ***(b)*** Been convicted of any crime or offense that reflects the inability of the person to practice psychology or applied behavior analysis with due regard for the health and safety of others.

~~1-3~~ ***(c)*** Been convicted of violating any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive.

~~1-4~~ ***(d)*** Engaged in gross malpractice or repeated malpractice or gross negligence in the practice of psychology or the practice of applied behavior analysis.

~~1-5~~ ***(e)*** Aided or abetted the practice of psychology by a person not licensed by the Board.

~~1-6~~ ***(f)*** Made any fraudulent or untrue statement to the Board.

~~1-7~~ ***(g)*** Violated a regulation adopted by the Board.

~~1-8~~ ***(h)*** Had a license to practice psychology or a license or certificate to practice applied behavior analysis suspended or revoked or has had any other disciplinary action taken against the person by another state or territory of the United States, the District



of Columbia or a foreign country, if at least one of the grounds for discipline is the same or substantially equivalent to any ground contained in this chapter.

~~19-1~~ (i) Failed to report to the Board within 30 days the revocation, suspension or surrender of, or any other disciplinary action taken against, a license or certificate to practice psychology or applied behavior analysis issued to the person by another state or territory of the United States, the District of Columbia or a foreign country.

~~110-1~~ (j) Violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of or conspired to violate a provision of this chapter.

~~111-1~~ (k) Performed or attempted to perform any professional service while impaired by alcohol, drugs or by a mental or physical illness, disorder or disease.

~~112-1~~ (l) Engaged in sexual activity with a patient or client.

~~113-1~~ (m) Been convicted of abuse or fraud in connection with any state or federal program which provides medical assistance.

~~114-1~~ (n) Been convicted of submitting a false claim for payment to the insurer of a patient or client.

~~115-1~~ (o) Operated a medical facility, as defined in NRS 449.0151, at any time during which:

~~11(a)-1~~ (1) The license of the facility was suspended or revoked; or

~~11(b)-1~~ (2) An act or omission occurred which resulted in the suspension or revocation of the license pursuant to NRS 449.160.

↪ This ~~subsection~~ *paragraph* applies to an owner or other principal responsible for the operation of the facility.

2. *As used in this section, “preponderance of the evidence” has the meaning ascribed to it in section 2 of this act.*

Sec. 27. NRS 683C.130 is hereby amended to read as follows:

683C.130 1. Upon suspension, limitation or revocation of the license of an insurance consultant, the Commissioner shall immediately notify the licensee in person or by mail addressed to the licensee at his or her most recent address of record with the Division. Notice by mail is effective when mailed.

2. The Commissioner shall not again issue a license under this chapter to any natural person whose license has been revoked until at least 1 year after the revocation has become final, and thereafter not until the person again qualifies for it under this chapter. A person whose license has been revoked twice is not eligible for any license under this title.

3. If the license of a business organization is suspended, limited or revoked, no member, officer or director of the organization may be



licensed, or designated in a license to exercise its powers, during the period of suspension or revocation, unless the Commissioner determines ~~upon substantial~~, *by a preponderance of the* evidence, that the member, officer or director was not personally at fault and did not knowingly aid, abet, assist or acquiesce in the matter for which the license was suspended or revoked.

4. As used in this section, “preponderance of the evidence” has the meaning ascribed to it in section 2 of this act.

Sec. 28. This act becomes effective on July 1, 2015.

