



**NEVADA STATE  
BOARD OF PSYCHOLOGICAL EXAMINERS**

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**Complaint and Disciplinary Policy**

**Purpose**

The Nevada Legislature created the Nevada State Board of Psychological Examiners (Board) to regulate the practice of psychology because it is a learned profession, affecting public safety, health, and welfare and subject to regulation to protect the public from the practice of psychology by unqualified persons and from unprofessional conduct by persons licensed to practice psychology.<sup>1</sup> The Board is charged with enforcing Nevada Revised Statutes (NRS) Chapter 641 and Nevada Administrative Code (NAC) Chapter 641 for the protection and benefit of the public.<sup>2</sup>

The Nevada Legislature further established minimum procedural requirements for the adjudication of contested cases pending before the Board, in order to ensure that the due process rights of psychologists and other persons are protected and to establish uniformity in procedure across regulatory bodies.<sup>3</sup>

It is the intent of the Board, through this policy, to carry out the mission delegated to it by the Nevada Legislature, as described above.

**Definitions**

1. "Complainant" refers to the party making the complaint.
2. "Respondent" refers to the subject of a complaint.
3. "Investigator" refers to the investigator employed by the Nevada Board of Psychological Examiners.
4. "Executive Director" refers to the administrative staff employed by the Nevada Board of Psychological Examiners.
5. "Board" refers to the Nevada Board of Psychological Examiners.
6. "NRS" refers to Nevada Revised Statutes
7. "NAC" refers to Nevada Administrative Code

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<sup>1</sup> NRS 641.010

<sup>2</sup> NRS 622.080

<sup>3</sup> NRS 233B.020; NRS 622A.130

## Procedure

### 1. Complaint Investigation Procedure:

- a. Any person may file a written complaint regarding the practice of psychology in this State with the Board office.<sup>4</sup> The complaint may be against a psychologist, an unlicensed person, or an applicant for licensure.
  - i. Anonymous complaints will be accepted by the Board. However, depending on the information provided by the complainant, it may be difficult to fully investigate an anonymous complaint and/or an anonymous complaint may be more likely to be deemed frivolous.
  - ii. If the Board office receives a complaint against a person who is not licensed by the Board and/or is not practicing psychology, the Board office shall forward the complaint to the appropriate licensing board.<sup>5</sup>
- b. The Executive Director shall maintain oversight of the complaints process, and generally serve as liaison between the Complainant, Respondent, Board investigators and Board legal counsel, unless otherwise described within this policy.
- c. The Executive Director shall assign an investigator to review all complaints filed with the Board to see if they raise serious concerns regarding the immediate health, safety, and welfare of the public such that emergency action is required. If a complaint raises such concerns, refer to the "Special Situations" section of this policy (#3, page 8).
- d. If applicable, the complainant must sign a release of records, allowing the respondent to provide the Board office with records regarding the complainant and/or the client in response to the complaint.
  - i. If the complainant is legally authorized to sign a release of records and fails to sign a release of records, unless in the view of the assigned Board investigator extraordinary cause exists, the complaint will be deemed invalid and the complaint will be dismissed without investigation or action.
  - ii. If the complainant is not legally authorized to sign a release of records for the complainant and/or the client, the Board may

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<sup>4</sup> NRS 641.250(1). The filing of a frivolous complaint by a psychologist may be grounds for disciplinary action. NRS 641.230(1)(d); NAC 641.208(3) (A psychologist shall "not engage in conduct in the practice of psychology which evidences moral unfitness to practice the profession.").

<sup>5</sup> NRS 629.079. The Board still may investigate unlicensed activity and/or take action regarding the unlicensed practice of psychology.

subpoena those records necessary to investigate the complaint pursuant to NRS 641.245.<sup>6</sup> See Sample Subpoena (Appendix A).

- e. After receiving a complaint pursuant to NRS 641.250, the Board office will forward the complaint to a Board investigator for review.
- f. If the Board investigator reviews a complaint and determines it is not frivolous,<sup>7</sup> unless the Board investigator believes extraordinary cause exists,<sup>8</sup> the psychologist or other person named in the complaint will be notified of the complaint by letter sent to his/her/their last known address on file with the Board. See Sample Letter attached as Appendix B. If the complaint is against a psychologist, the psychologist must respond to the Board's letter within thirty (30) days.<sup>9</sup>
  - i. If the Respondent does not respond to the Board's letter within thirty (30) days, the Board's attorney will send, or direct the Executive Director to send, a letter to the psychologist at his/her/their last known address on file with the Board by regular and certified mail informing him/her/them of his/her/their duty to respond to the complaint pursuant to NAC 641.210(2) and that failure to do so may result in disciplinary action. The Board's attorney's letter will provide the psychologist with at least twenty (20) additional days to respond. See Sample Letter attached as Appendix C.
  - ii. If the Respondent does not respond, the Board office will file a complaint against the Respondent for his/her/their failure to respond and notice of this complaint will be sent to the Respondent and the matter will be assigned to a Board investigator for investigation.
    1. A psychologist's failure to update his/her/their license with the Board will only be a defense to the psychologist's failure to respond to the Board's letter and the Board's attorney's

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<sup>6</sup> A Board member must review and sign subpoenas prior to their issuance pursuant to NRS 641.245. The Board President will review and sign subpoenas issued pursuant to this provision unless the Board President has a conflict or is unavailable. In that situation, the Board Secretary-Treasurer will review and sign the subpoena. If both the Board President and the Board Secretary Treasurer have a conflict or are otherwise unavailable, any remaining member of the Board may review and sign the subpoena.

<sup>7</sup> NRS 641.270.

<sup>8</sup> An example of extraordinary cause may be a situation where the complainant could be in danger if the psychologist or other person is notified of the complaint at this stage in the investigation.

<sup>9</sup> NAC 641.210(2). Failure to respond to the Board office within thirty (30) days may be ground for disciplinary action against the psychologist.

letter if the address change was for less than thirty (30) days.<sup>10</sup>

- g. If the person named in the complaint retains an attorney to represent him/her/them during the investigative process, all future communications between the Board office or the Board investigator and the person named in the complaint will be done through the Board attorney and the attorney for the person named in the complaint. Requests for extensions of time to respond, requests for more information, responses to requests for information, or other communications made during the investigation will be made attorney to attorney and not from Board staff to the person named in the complaint, unless otherwise directed by the Board's attorney that the executive director communicate with the Respondent and/or his/her/their attorney.
- h. If the Board investigator reviews a complaint and determines it is invalid, he/she/they will draft a report regarding his/her/their review and determination. This report and the complaint will be reviewed by the Board's attorney. If the Board's attorney concurs with the Board investigator's determination, the Board investigator will recommend that the Board dismiss the complaint at its next meeting.
- i. When the psychologist or other person named in the complaint's response to the complaint is received, the Board office will forward the complaint, the response, and any relevant records or other information provided by either the complainant or the respondent to a Board investigator for investigation.
- j. The Board investigator's investigation will include a review of the complaint, the response, and other records or information received to determine if there is any violation of NRS Chapter 641, NAC Chapter 641, the American Psychological Association Code of Ethics, or NRS Chapter 629.
- k. At the Board investigator's discretion, he/she/they may interview the parties, including the complainant and the respondent, as well as any possible witnesses as part of his/her/their investigation. These interviews may be conducted by phone or other means that the Board investigator deems appropriate. If any of the parties are represented by counsel, the Board investigator will confer with the Board's attorney to determine how to proceed in order to ensure that the party's rights are protected.
- l. If the Board investigator believes that more information is necessary to adequately investigate the complaint, the Board investigator may send, or

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<sup>10</sup> See NAC 641.210(3).

request that the executive director send, a letter to the complainant or the respondent requesting such information. The Board investigator's letter shall be mailed to the complainant or the respondent by regular and certified mail. If available, the Board investigator, or executive director, may communicate with either party by e-mail. A deadline for receipt of a response to that letter which must be not less than thirty (30) days shall be provided.

- m. If the Board investigator believes that more information is necessary to adequately investigate the complaint and a written letter or interview will not allow the Board investigator to obtain that information,<sup>11</sup> the Board investigator may request a subpoena requesting that information be issued pursuant to NRS 641.245.<sup>12</sup>
- n. In conjunction with investigating some complaints, the Board's investigator may determine that it is necessary to ask a psychologist named in a complaint to complete a mental or physical examination pursuant to NRS 641.272. For more information, please review the "Special Situations" section of this policy, III (B).
- o. After gathering all necessary evidence and information, the Board investigator shall determine whether the psychologist or other person named in the complaint has violated NRS Chapter 641, NAC Chapter 641, the American Psychological Association Code of Ethics, or NRS Chapter 629.
  - i. In order to protect the public, the Board investigator's determination is not limited to the allegations alleged by the complainant in the complaint. Instead, any violations that are discovered in the investigation by the investigator should be included and addressed in the investigator's report.
- p. The Board investigator shall draft a written report containing his/her/their determination regarding the alleged violations as well as any additional violations discovered in his/her/their investigation. The report must include the following:

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<sup>11</sup> For example, depending on the allegations in the complaint, the Board investigator may want to review a pharmacy utilization report for the person named in the complaint. If this is necessary, the Board investigator should contact the Board's Executive Director and the Board's attorney so that an appropriate request may be made to the State of Nevada, Board of Pharmacy.

<sup>12</sup> A Board member must review and sign subpoenas prior to their issuance pursuant to NRS 641.245. The Board President will review and sign subpoenas issued pursuant to this provision unless the Board President has a conflict or is unavailable. In that situation, the Board Secretary-Treasurer will review and sign the subpoena. If both the Board President and the Board Secretary Treasurer have a conflict or are otherwise unavailable, any remaining member of the Board may review and sign the subpoena.

- i. A summary of the allegations against the psychologist or other person named in the complaint;
- ii. A summary of the psychologist or other person named in the complaint's response to the allegations;
- iii. A summary of any other allegations discovered in the investigation as well as the psychologist or other person named in the complaint's response to those allegations, if applicable;<sup>13</sup>
- iv. A summary of the Board investigator's case analysis which shall include:
  1. Specific reference to evidence supporting the allegations that the Board's investigator believes should be pursued in the disciplinary proceeding, copies of that evidence, as applicable; and specific reference to the violations of NRS 641, NAC 641, NAC 629 and/or the American Psychological Association Code of Ethics sections that the investigator has concluded the respondent has violated.
- v. If the complaint is against an applicant for a license, the Board's ability to sanction the person may be limited. However, the Board investigator may recommend that this complaint be considered when evaluating the person's application, pursuant to NRS 641.170. The Board investigator may recommend that licensure be denied to the applicant or granted under specified conditions. In that situation, the person must be noticed to appear at a meeting as required by the Open Meeting Law wherein the Board investigator's recommendation will be presented to the Board and allowing the person to present his/her/their own information to the Board regarding his/her/their application.
- vi. In his/her/their, the Board investigator may recommend that the psychologist be required to provide fingerprints to the Board office at the initiation of disciplinary proceedings as authorized by NRS 622.360.
- q. The Board investigator's report must be included in the Board office file regarding the complaint.
- r. The Board investigator, in consultation with the Board's attorney, shall also include in his/her/their report recommendations regarding the

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<sup>13</sup> The psychologist or other person named in the complaint will be notified of these allegations before the matter proceeds to discipline pursuant to NRS 233B.127(3) and given an opportunity to respond.

category of the violation, the seriousness of the violation, recommended sanctions regarding the violation, and any other information that he/she/they believes is relevant.

- s. If the Board investigator believes that the complaint should be dismissed, the Board investigator shall provide a summary of his/her/their investigation and the reasons supporting his/her/their recommendation that the complaint be dismissed by the Board at its next meeting. The Board may vote at that meeting to dismiss the complaint as recommended.
- t. If the Board investigator, in consultation with the Board's attorney, believes that the matter should proceed to discipline (whether a hearing, settlement agreement, or other proceeding), the Board investigator's report to the Board will include only the type of violation (statute or other category of violation) and the fact that the matter has been sent to the Board's attorney for initiation of disciplinary action. If there is a question or another opinion is necessary, another Board investigator may be asked to review the complaint, response, documents received, and recommendations from the assigned Board investigator. If necessary due to extraordinary circumstances, a member of the Board may be designated as an "investigating Board member" pursuant to NRS 233B.122 and provide this additional review.<sup>14</sup>
- u. Once a matter is assigned to the Board's attorney, the Board's attorney shall send a letter to the psychologist or person named in the complaint by regular and certified mail providing him/her/them with a summary of the allegations substantiated in the complaint and providing him/her/them with an additional opportunity to respond to the allegations prior to the initiation of disciplinary proceedings<sup>15</sup> against him/her/them.<sup>16</sup> See Sample Letter attached as Appendix D. This response will be reviewed by the Board's attorney and the Board investigator. This response may lead to additional investigation, revision of the Board investigator's report, or other action prior to the initiation of disciplinary proceedings. If this response leads to the recommendation that the matter be dismissed, the

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<sup>14</sup> In this situation, the "investigating Board member" must recuse from any decision regarding this complaint.

<sup>15</sup> The initiation of disciplinary proceedings is the sending of a complaint and notice of hearing to the respondent by the Board's attorney. See NRS 622A.300(1).

<sup>16</sup> NRS 233B.127(3). This is required for cases where there may be a suspension or revocation. Best practice is to do this for all cases. This ensures that the psychologist or other person named in the complaint is informed about any additional allegations discovered in the investigation, but not included in the complaint prior to the initiation of disciplinary action.

Board investigator's report should be updated to include reasons for this decision and the procedure outlined in step 16 should be followed.

- v. While the goal is not to have the Board's attorney investigate a complaint and risk becoming a witness in the matter should it proceed to a hearing before the Board, the Board's attorney is available and should be consulted by the Board investigator, as necessary throughout the investigation of a complaint.
  - w. The Board will follow the requirements of NRS Chapters 233B, 241, 622, 622A, 629, 641, and NAC Chapter 641 in the adjudication of complaints before the Board, including the approval of settlement agreements.
2. Reporting of Disciplinary Activity:

- a. The Board's Executive Director shall submit quarterly reports on or before the 20th day of January, April, July, and October to the Legislative Counsel Bureau as required by NRS 622.100. These reports must be submitted electronically and shall include a summary of each disciplinary action taken by the Board during the immediately preceding calendar quarter against any licensee.
- b. Within 30 days of the Board's disciplinary action, the Board's Executive Director must submit reports regarding disciplinary action to the National Practitioner Databank as required by federal law, and to the Association of State and Provincial Psychology Boards.
- c. The Board's Executive Director shall report any disciplinary action taken against a psychologist or other person that may involve insurance fraud to the Office of the Attorney General's Insurance Fraud Unit. More information about making this report is available at:  
[http://ag.nv.gov/About/Criminal\\_Justice/Insurance\\_Fraud/](http://ag.nv.gov/About/Criminal_Justice/Insurance_Fraud/).
- d. Within 30 days, the Board's Executive Director shall provide copies of all disciplinary actions to the Administrator of the Division of Public and Behavioral Health in the Department of Health and Human Services by sending a true and correct copy of the action by U.S. Mail.
- e. The Board's Executive Director shall post information regarding disciplinary action against a psychologist, psychological assistant, psychological intern, psychological trainee, or other person on the Board's website not later than 30 days after the Board's action. This report shall include the following information:
  - i. Discipline Type: Settlement or Order,
  - ii. A list of the specific statutes or regulations violated,



- iii. A summary of the penalty imposed by the Board, including, as applicable, fine amount, cost reimbursement, continuing education, probation requirements, or other sanctions imposed, and
    - iv. Current status of the person's license or registration, as applicable.
  - f. All disciplinary action taken against unlicensed individuals shall be reported to the appropriate law enforcement agency by the Board's Executive Director and/or the Board's attorney within 30 days after the Board's action. See NRS 641.2705.
- 3. Special Situations:
  - a. Summary Suspension: The Board President, acting on behalf of the Board, may issue a summary suspension of a psychologist's license without first holding a hearing, if the President determines that the psychologist's actions could impair public health, safety, or welfare to the point where emergency action is required. Such action by the Board President must be conducted in consultation with the assigned investigator, the Executive Director, and the Board's attorney. A hearing must be held on the underlying allegations within 45 days after the date of the order of summary suspension, unless the Board and the licensee mutually agree in writing to a longer period. After issuing a summary suspension order, the Board President may not participate in deciding the case at the scheduled hearing. See NRS 233B.127(3); NRS 233B.122(1).
  - b. Mental or Physical Examination: The Board may require a person named in a complaint to submit to a mental examination conducted by a panel of three psychologists designated by the board, or a physical examination conducted by a physician designated by the Board. Every psychologist licensed under NRS Chapter 641 is deemed to have given consent to submit to such a mental or physical examination when directed to do so in writing by the Board. The testimony or reports of the examining psychologist or physicians are privileged communications, except as to proceedings conducted pursuant to discipline. The failure of a psychologist to submit to an examination constitutes grounds for immediate suspension of the psychologist's license. See NRS 641.272.
    - i. The language of the statute is broad and allows this examination to be conducted for any complaint received against a psychologist, prior to the initiation of disciplinary proceedings.
    - ii. However, due process and fairness still applies and the Board's power to order this examination as part of its investigation should not be abused.

- iii. In addition, the cost for this examination is borne by the Board. The Board may later receive reimbursement for the costs of this examination from the psychologist if the psychologist is found to have engaged in conduct that violates Nevada law or enters into a settlement agreement agreeing to reimburse the Board for this cost. See NRS 622.400.

4. Communication During the Investigative Process:

- a. The Board must maintain the confidentiality of the complaint and all documents and information compiled during the investigation of the complaint during the investigative process. See NRS 641.090. The existence (or not) of a complaint cannot be acknowledged by the Board until the investigation is concluded and a complaint and notice of hearing has been drafted, filed with the Board, and served upon the Respondent by the Board's attorney or a settlement agreement is negotiated and agendaized for consideration by the Board at meeting, subject to the following exceptions:
  - i. The Board may communicate or cooperate with or provide any documents or other information to any other licensing board or any other agency that is investigating a person, including, without limitation, a law enforcement agency. See NRS 641.090(6).
  - ii. The person named in a complaint may submit a written statement to the Board requesting that such documents and information be made public records. See NRS 641.090(4).
  - iii. Discovery regarding the complaint, i.e., the exhibits the Board's attorney intends to introduce at the hearing and a list of witnesses that the Board's attorney intends to call, must be provided to the Respondent upon request after the complaint and notice of hearing has been drafted, filed with the Board, and served upon the Respondent. See NRS 622A.330.
    - 1. Note: Exhibits introduced at the hearing for review by the Board that contain protected health information do not become public documents that are subject to disclosure pursuant to NRS 622.310.
- b. Substantive communication between the Respondent and the Board office or investigator during the investigative process must occur in writing. However, this does not preclude the Board's investigator from conducting oral interviews and submitting questions to the Respondent.

- c. Communication from the Respondent may be sent to the Board office by electronic mail, facsimile, U.S. mail, or other mail carrier.
  - d. Copies of all communication regarding the complaint must be maintained in the Board's file related to the complaint.
5. Fines, Costs, and Collections:
- a. All Board orders and settlement agreements will include a final due date for payment of all fines and costs assessed by the Board.
  - b. All fines assessed by the Board and received by the Board must be submitted to the State Treasurer for deposit with the General Fund.
  - c. All cost reimbursements assessed by the Board pursuant to NRS 622.400 and received by the Board must be deposited into the Board's bank account established pursuant to NRS 641.111.
  - d. For all fines and costs assessed and not received by the Board pursuant to the terms of the Board's order and/or the approved settlement agreement, the Board will utilize the State Controller as its agent to collect fines and costs reimbursements assessed by the Board during disciplinary actions pursuant to NRS 353C.195 and follow the procedures required by the State Controller.
6. Qualifications of Board Investigators:
- a. All Board investigators shall:
    - i. Be licensed in the State of Nevada as a psychologist for at least five years,
    - ii. Be in good standing as a psychologist in the State of Nevada, as well as any other states or jurisdictions where he/she/they is licensed, and
    - iii. Be willing to complete the Council on Licensure, Enforcement, and Regulation (CLEAR) training in complaint investigation.
  - b. Experience in conducting investigations is preferred, but not required.
7. Records
- a. Complaints filed with the Board office must be kept by the Board office for ten (10) years, even if they are not acted on or investigated.<sup>17</sup>

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<sup>17</sup> NRS 641.250(2).

- b. Complaint File. The complaint file shall be maintained in the Board office and should include, at a minimum, the following:
  - i. The complaint, responses and associated documentation provided by the Complainant. This may include letters and/or emails, including documents from the complainant's attorney, if applicable.
  - ii. The response and associated documentation provided by the Respondent. This may include letters and/or emails, including documents from the respondent's attorney, if applicable.
  - iii. Documents provided by the investigator(s) including the final investigator's report.
  - iv. Documents provided by the Board's attorney including, where applicable, orders, notices, subpoenas and other legal documents.
  - v. Board meeting minutes where the complaint was discussed and/or action taken.
  - vi. Board meeting minutes where a disciplinary hearing was conducted and/or action taken.

### **Categories of Violations for Psychologists**

1. Criminal Convictions:
  - a. Felony relating to the practice of psychology. NRS 641.230(1)(a).
  - b. Any crime or offense that reflects the inability of the person to practice psychology with due regard for the health and safety of others. NRS 641.230(1)(b).
  - c. Violating any of the provisions of NRS 616D.200, 616D.220, 616D.240, or 616D.300 to 616D.440 (Relating to workers' compensation insurance and/or benefits).
  - d. Medicare or Medicaid fraud. NRS 641.230(1)(m).
  - e. Insurance fraud. NRS 641.230(1)(n).
2. Practice below the Standard of Care
  - a. Engaged in gross malpractice. NRS 641.230(1)(d).
    - i. Gross malpractice is defined in NRS 641.023. It includes the practice of psychology under the influence of an alcoholic beverage

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or any controlled substance, gross negligence, willful disregard of established method and procedures in the practice of psychology, or willful and consistent use of methods and procedures considered by psychologists in the community to be inappropriate or unnecessary in the cases where used.

- b. Engaged in repeated malpractice. NRS 641.230(1)(d).
  - i. Malpractice is defined in NRS 641.024. It means the “failure on the part of a psychologist to exercise the degree of care, diligence and skill ordinarily exercised by psychologists in good standing in the community.”
- c. Engaged in gross negligence in the practice of psychology. NRS 641.230(1)(d).
  - i. Gross negligence means “[a] lack of slight diligence or care” or “[a] conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party.” Black’s Law Dictionary 1057 (7th ed. 1999).
- d. Lack of/inadequate knowledge or training in area of practice. NAC 641.208(1).
- e. Failure to maintain competence and/or limit practice to areas of competence. NRS 641.112; NAC 641.208(4); APA Rule 2.01; 2.03.
- f. Unprofessional Conduct. (Violation of Regulation Adopted by the Board). NRS 641.230(1)(g).
  - i. Standards of Conduct. NAC 641.200–NAC 641.250.
  - ii. Failure to display license in a conspicuous place. NAC 641.213(1)(a).
  - iii. Other violations included also may fall under this category, if they involve a violation of a Board regulation.
- g. Interruption of psychological services without transition for clients. NAC 641.215(5)–(9); APA Rule 3.12.
- h. Supervision.
  - i. Failure to properly supervise psychological interns, psychological assistants, or unlicensed personnel. NAC 641.158; NAC 641.161(2); NAC 641.168.

- ii. Failure to follow requirements for supervision as outlined by the Board. NAC 641.151–NAC 641.161.

3. Dishonesty

- a. Made fraudulent or untrue statements to the Board. May also include filing a knowingly frivolous or knowingly false complaint with the Board. NRS 641.230(1)(f). See also NAC 641.245(3).
- b. Made fraudulent or untrue statements to others, including making or filing false reports. NAC 641.245; APA Rule 5.01.
- c. Engage in conduct in the practice of psychology which evidences moral unfitness to practice the profession. NAC 641.208(2).
- d. Misrepresentation of professional qualifications. NAC 641.239.
- e. Failure to complete required CEU's. NRS 641.220; NAC 641.132.
- f. Fraudulent billing or misleading information regarding billing from party responsible for payment. NAC 641.213(1)(d); NAC 641.245(2)(c).
- g. False advertising. APA Rule 5.01.
- h. Failure to correct error in fraudulent or untrue statement made by others. NAC 641.239(2); APA Rule 5.02.

4. Disciplinary Action in another State.

- a. Underlying action is also grounds for disciplinary action in Nevada. NRS 641.230(1)(h).
- b. Failed to report to the Board within 30 days disciplinary action from another state. NRS 641.230(1)(i).

5. Violation (direct or indirect) or attempted violation of a provision of NRS Chapter 641. NRS 641.230(1)(j).

- a. Assisted in or abetted a violation of or conspired to violate a provision of NRS Chapter 641. NAC 641.241.
- b. Failure of non-resident consultant to register with the Board pursuant to NAC 641.169.

6. Practice or Attempted Practice While Impaired. NRS 641.230(1)(k).

- a. Performed or attempted to perform any professional service while impaired by alcohol, drugs, or mental or physical illness, disorder or disease. NAC 641.229.

## 7. Inappropriate Relationships

- a. Sexual activity with a patient or client. NRS 641.230(1)(l); NAC 641.229(3).
- b. Dual relationship. NAC 641.229(2) or (3); APA Rule 3.05; APA Rule 3.06.
- c. Coercive or exploitative relationship. NAC 641.215(12); NAC 641.229(2) or (3); APA Rule 3.05; APA Rule 3.06; APA Rule 3.08.
- d. Discrimination. NAC 641.215(10); APA Rule 3.01.
- e. Sexual harassment. NAC 641.215(11); APA Rule 3.02.
- f. Physical harassment. APA Rule 3.02; APA Rule 3.03; APA Rule 3.04.
- g. Other harassment. NAC 641.215(11); APA Rule 3.03.
- h. Soliciting business or referrals from patients. NAC 641.215(12); APA Rule 5.06.
- i. Accepting or paying fees to third parties for referrals of clients. NAC 641.213(1)(e).

## 8. Business Practices

- a. Records APA Rules 6.01–6.07.
  - i. Failure to release records as required by law. NAC 641.219; NRS 629.061.
  - ii. Inadequate record-keeping. NAC 641.219(1).
  - iii. Breach of confidentiality of records. NAC 641.219; NAC 641.224.
  - iv. Informed consent. NAC 641.207(1)(i); NAC 641.215(2) and (4); NAC 641.224; NAC 641.241; APA Rule 3.10.
- b. Breach of confidentiality. NAC 641.224; APA Rule 4.01–4.07.
- c. Operating a medical facility when the license of the facility was suspended or revoked or when an act or omission occurred which resulted in the suspension or revocation of the license pursuant to NRS 449.160. NRS 641.230(1)(o).
- d. Practice under name that is not on license. NRS 641.225(1).
- e. Fee splitting. NAC 641.210(4).

## 9. Communications with the Board.

- a. Failure to respond to a communication from the Board within 30 days. NAC 641.213(1)(b).
- b. Failure to update address or telephone number with the Board within 30 days of the change. NAC 641.213(1)(c).

10. Practice with Expired or Inactive License.

- a. Active license required to practice psychology. NRS 641.390(1).
- b. If license is inactive, may not practice psychology. NAC 641.133(2).

**Categories of Violations – Unlicensed Activity**

- 1. Representing self as psychologist NRS 641.390; NRS 641.440.
  - a. Holding out or representing self as a psychologist.
  - b. Using title that incorporates “psychology” or “psychologist.”
- 2. Engaging in the practice of psychology as defined in NRS 641.025 without a license. NRS 641.390; NRS 641.440.
- 3. School psychologist outside the school setting. NRS 641.390(5).
  - a. Provisions governing school psychologist contained in NAC 391.315–NAC 391.319.
- 4. Failure of non-resident consultant to register with the Board pursuant to NAC 641.169.

**Disciplinary Options for Psychologists**

- 1. NRS 641.240 lists the authorized disciplinary sanctions available to the Board, if it finds a psychologist to have committed an act which constitutes grounds for disciplinary action<sup>18</sup>:
  - a. Public reprimand,
  - b. Limit the psychologist’s practice,
  - c. Suspend the person’s license for a period of not more than one year,
  - d. Revoke the person’s license [NRS 622A.410 requires that the Board’s order specify the time period during which the psychologist may not apply for reinstatement of the license. The period must be at least one year and not more than ten years],

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<sup>18</sup> Grounds for disciplinary action are contained in NRS 641.230.



- e. Impose a fine of not more than \$5,000,
  - f. Suspend the enforcement of any penalty by placing the psychologist on probation. The Board may revoke the probation if the psychologist does not follow any conditions imposed,
  - g. Supervision [psychologist to pay costs incurred],
  - h. Counseling or treatment by a person approved by the Board [psychologist to pay costs incurred],
  - i. Probation with conditions imposed for the protection of the public or the rehabilitation of the psychologist [conditions may include requiring additional continuing education units in specified area[s], additional training, successful completion of a skills or ethics examination such as the Ethics and Boundaries Assessment, a psychological evaluation, or participation in a substance dependence treatment program], and
  - j. Require payment of costs for remediation or restitution.
2. If the Board finds that a psychologist has violated any provision of NRS Chapter 641 or NAC Chapter 641 or an act that constitutes grounds for disciplinary action pursuant to NRS 641.230 or accepts a settlement agreement within which the psychologist admits to such conduct or does not contest the allegations, the Board may:
- a. Assess the Board's reasonable attorney's fees and costs incurred as part of the Board's investigation or the Board's administrative or disciplinary proceeding pursuant to NRS 622.400(1).
  - b. Costs allowed are defined in NRS 622.400(2).
  - c. Additional Options and Considerations:
    - i. To the greatest extent possible, all disciplinary action ordered by the Board or contained in a settlement agreement will be meaningfully tied to the violations substantiated in the Board's investigation in order to allow the person an opportunity for remediation of these violations. An example of considerations the Board will take into account when determining remediation plans is discussed in this article: Vacha-Haase, T., Elman, N. S., Forrest, L., Kallaugher, J., Lease, S. H., Veilleux, J. C., & Kaslow, N. J. (2018, November 29). Remediation Plans for Trainees With Problems of Professional Competence. Training and Education in Professional Psychology. Advance online publication. <http://dx.doi.org/10.1037/tep0000221>.

- ii. If the Board initiates disciplinary proceedings against a licensee, the Board requires all licensees to submit a complete set of his/her/their fingerprints to the Board and written permission authorizing the Board to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report. NRS 622.360(1). Failure to comply is ground for additional disciplinary action against the license. NRS 622.360(2). A conviction for an unlawful act that is grounds for disciplinary action against the licensee that has not been disclosed to the Board or that the Board has not already disciplined the licensee for is an additional ground for disciplinary action against the licensee. NRS 622.360(3). Notice that the licensee must provide fingerprints pursuant to NRS 622.360 will be included in the Complaint and Notice of Hearing. In addition, all settlement agreements regarding licensees, the Board will require that the licensee provide fingerprints pursuant to NRS 622.360 as part of the settlement.
- iii. The Board may order any psychologist named in a complaint<sup>19</sup> to submit to a mental examination conducted by a panel of three psychologists designated by the Board or a physical examination conducted by a physician designated by the Board. NRS 641.272(1). Failure to comply with this request is grounds for immediate suspension of the psychologist's license unless there are extraordinary circumstances, as determined by the Board. NRS 641.272(2).
- iv. Settlement agreements may contain requirements agreed to by the parties and approved by the Board that differ from those specified in NRS 641.240 or other statutory provision. o A psychologist may agree to surrender his/her/their license in lieu of other disciplinary action by a settlement agreement. This constitutes discipline pursuant to NRS 233B.121(6) and will be reported as discipline pursuant to this policy.
- v. The Board may not administer a private reprimand. NRS 641.240(2).
- vi. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records. NRS 641.240(3).

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<sup>19</sup> Disciplinary proceedings do not have to first be initiated.

- vii. A settlement agreement in a disciplinary case must be approved by the Board in a public meeting and the settlement agreement is a public record. NRS 622.330.

### **Unlicensed Activity Sanctions**

1. Order to Cease and Desist from engaging in activity prohibited by NRS 641.390. NRS 641.2705(2)(a).
2. Citation which must be in writing and describe with particularity the nature of the violation. NRS 641.2705(2)(b) and (3). a. Citation may be appealed to the Board within 30 days after the date of the citation. NRS 641.2705(5).
3. For any violation of NRS 641.390, the Board *shall* assess an administrative fine of:
  - a. \$500 (first violation),
  - b. \$1,000 (second violation), and
  - c. \$1,500 (third or subsequent violation).
4. If the Board finds that a person has violated any provision of NRS Chapter 641 or NAC Chapter 641 or the person admits to such conduct or does not contest the allegations, the Board may:
  - a. Assess the Board's reasonable attorney's fees and costs incurred as part of the Board's investigation or the Board's administrative or disciplinary proceeding pursuant to NRS 622.400(1).
  - b. Costs allowed are defined in NRS 622.400(2).
5. If a person continues to engage in unlicensed activity, the Board may file an action in civil court requesting that the court enter an injunction against the person, enjoining him/her/them from engaging in the unlicensed practice of psychology. See NRS 641.316.

### **Aggravating and Mitigating Factors**

1. The following factors may mitigate or aggravate the sanctions that may be imposed in the disciplinary process.
  - a. Factors related to conduct:
    - i. Gravity of the unprofessional conduct
    - ii. Age, capacity and/or vulnerability of the patient, client, or victim;
    - iii. Number or frequency of the acts of unprofessional conduct;

- iv. Injury caused by the unprofessional conduct;
  - v. Potential for injury to be caused by the unprofessional conduct;
  - vi. Degree of responsibility for the outcome;
  - vii. Abuse of trust;
  - viii. Intentional or inadvertent act;
  - ix. Motivation is criminal, immoral, dishonest, or for personal gain;
  - x. Length of time since the unprofessional conduct occurred.
- b. Factors related to the psychologist:
- i. Experience in practice;
  - ii. Past disciplinary record;
  - iii. Mental and/or physical health;
  - iv. Personal circumstances;
  - v. Personal problems having a nexus with the unprofessional conduct;
  - vi. Voluntary restitution or other remedial action;
  - vii. Admission of key facts.
- c. General factors
- d. License holder's knowledge, intent, and degree of responsibility;
  - e. Presence or pattern of other violations;
  - f. Present moral fitness of the license holder;
  - g. Potential for successful rehabilitation;
  - h. Present competence to practice;
  - i. Dishonest or selfish motives;
  - j. Isolated incident unlikely to reoccur.

Addendum to Complaint Policy regarding Court Ordered Evaluations.

A person filing a complaint arising out of or related to a court ordered evaluation must submit the following in addition to completing the Complaint Form:

- 1) Final order or judgment in the case
- 2) A copy of the court order appointing the licensee in the case.

A complaint subject to this rule shall be dismissed unless the complainant can show the following:

- 1) The licensee was disqualified as an expert witness by the Court.
- 2) The licensee's opinion or inferences complained of were ruled inadmissible by the Court.
- 3) A curriculum vitae and written report by an expert qualified to render an expert opinion in the relevant subject area. The report must address deficiencies in standard of care, violations of the American Psychological Association Code of Ethics, and violations of Nevada Revised Statutes or Nevada Administrative Code in the licensee's report.

A complaint subject to this rule must be filed within one year of the entering of the final order or judgment concerning the licensee's evaluation in the case.

## Addendum to Complaint Policy regarding Court Ordered Psychological Services

A person who files a complaint alleging a statutory or ethical violation arising out of or related to court ordered psychological services, including, but not limited to, psychotherapy, reunification therapy, parent coordination, and parent coaching, must, in addition to completing the complaint form, comply with the following requirements:

- 1) A complaint may not be filed while the licensee is under court appointment to provide the particular psychological service unless the person has applied to terminate services with the court.
- 2) Submit the curriculum vitae and written report of an expert qualified to render an expert opinion in the relevant subject area. The report must address deficiencies in standard of care, violations of American Psychological Association Code of Ethics, and violations of Nevada Revised Statutes/Nevada Administrative Code in the licensee's psychological services.
- 3) The complaint must be filed within one year of termination of services.