

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY NRS 233B.066

LCB FILE R108-23

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 637B.

1. A clear and concise explanation of the need for the adopted regulation.

The need and purpose of the proposed regulation is to protect the public health, safety and welfare by ensuring that only qualified and competent speech-language pathologists, audiologists and hearing aid specialists are licensed in the state. The proposed regulation will provide clarity for the public, individuals and licensees through regulation regarding requirements for the following:

- **Section 1** does the following :

- Establishes a fee of \$50 for the renewal of an inactive license.

Explanation of Need: A licensee wishing to convert from active to inactive may only do so at the time of renewal and currently pays \$75 for the inactive license renewal (vs. \$100 for an active license). The license may be converted back to active status at any time with payment of the \$50 conversion fee. However, the licensee will have then paid a total of \$125.00, while keeping the license active would have only cost \$100. This change ensures that \$100 is the maximum fee a licensee will pay for either 1) renewal of an active license or 2) renewal of an inactive license and subsequent conversion back to active status.

- Increases the fee charged for the practical examination for fitting and dispensing hearing aids from \$200 to \$250.

Explanation of Need: This fee increase will support Board functions by offsetting an expected increase in the cost to the Board to administer these examinations. The Board's NRS 637B.175 sets a fee cap of \$300 for the examination, and the actual fee charged is \$200 as established in NAC 673B.030. Notably, this is the only fee that is not already at the maximum cap limit. The International Hearing Society (IHS) is the national subject-matter expert organization in this field and the practical exam developed and owned by IHS is used in all states that require the exam but have not created their own version. IHS has just released a long-awaited revision to the exam which includes an increase in the cost of the exam materials. Our Board has historically benefited from a negotiated rate of \$50 per exam (vs. \$100 paid by other entities). IHS has offered the Board an incremental rate increase, starting on 7/1/2024 at \$100 per exam, then \$150 on 7/1/2025 and \$200 on 7/1/2026). The increase to \$100 will result in the current \$200 fee charged covering only the cost of the exam (\$100) and exam proctor reimbursement (\$100). An assessment of fees charged by similar Boards in Nevada, and practical examination fees in other states indicates that the \$200 currently charged by this Board is lower than both averages. Notably, Nevada is the only state that offers these examinations on an individual basis with a Board Proctor, at a date/time convenient to the applicant, and in multiple locations (Reno, Carson City, & Las Vegas). Most states offer the exam on set dates between 1-4 times per year, in a group setting, and in one location (i.e. the state capitol).

- **Section 2** removes the requirement for a reinstatement application to include proof of current certification from the American Board of Audiology (AAA), American Speech-Language-Hearing Association (ASHA), or National Board for Certification in Hearing Instrument Sciences (NBC-HIS).
Explanation of Need: Requiring these certifications for Reinstatement may pose a barrier or delay to licensure as applicants may have allowed these certifications to lapse while not licensed. This revision will lessen this burden and expedite the reinstatement process to result in more qualified, licensed practitioners available to serve the public. Notably, ABA certification is not required for initial licensure as an Audiologist or Dispensing Audiologist, and ASHA CCC-SLP and NBC-HIS certifications are not required for renewal of an SLP or HAS license respectively. The Board also plans to pursue a revision to NRS 637B to no longer require NBC-HIS certification for issuance of a standard HAS license.
- **Section 3** authorizes the Board, under certain circumstances, to approve and accept a passing score on the required written exam for fitting and dispensing hearing aids taken within the immediately preceding 24 months (extended from 12 months).
Explanation of Need: This revision will reduce barriers to licensing while still maintaining high licensing standards, and applicants must still pass the fitting and dispensing practical examination.
- **Section 4** provides that the Board will provide by mail or electronic mail any notice to a licensee that is required by law or regulation (revised from current requirement for notice by mail).
Explanation of Need: The revision allows the Board to provide notices required by law to the last known electronic mail address of a licensee without requiring prior written consent. As licensees are required to keep all information up to date with the Board, electronic email addresses are presumed to be as reliable as residential addresses and this is more cost-effective and timely method of contact, eliminating excessive postage and supply costs.
- **Section 5** removes the requirement that the Board maintain a list of approved programs of academic training for Hearing Aid Specialist Apprentices.
Explanation of Need: This is a time-consuming activity, and this information is available alternatively through external subject-matter sources such as the International Hearing Society and the National Board for Certification in Hearing Instrument Sciences. Removing this requirement frees up Board resources that may be more effectively directed to other tasks.
- **Section 6** makes conforming changes to refer to an unlicensed assistant rather than an office assistant, aide or technician.
Explanation of Need: Please refer to Section 7.
- **Section 7** revises the requirements for a hearing aid specialist, audiologist or dispensing audiologist to delegate certain duties to an unlicensed assistant as follows:

 - Authorizes a hearing aid specialist, audiologist or dispensing audiologist to instead delegate certain duties to an unlicensed assistant;
 - Provides that a hearing aid specialist, audiologist or dispensing audiologist may only

delegate duties to an unlicensed assistant that are within the scope of the license or endorsement they hold;

- Provides that a hearing aid specialist, audiologist or dispensing audiologist is responsible and civilly liable for any negligence or incompetence of an unlicensed assistant in performing a delegated duty; and
- Prohibits a hearing aid specialist, audiologist or dispensing audiologist from delegating certain duties to an unlicensed assistant that require professional or advanced training for the practice of audiology or fitting and dispensing hearing aids.

Explanation of Need: This revision seeks to expand the limited duties that may be delegated to an unlicensed assistant by an audiologist, dispensing audiologist, or hearing aid specialist. This is a common practice in many states and leaves the training, supervision, and liability for the assistant up to the licensed supervisor. An emerging trend nationally has been the licensing/regulation of audiology assistants who may perform delegated tasks that are prescribed, directed, and supervised by a certified and/or licensed Audiologist. While not recognized or regulated in all states, the American Speech-Hearing Association (ASHA) has also begun offering a formal Audiology Assistant certification program. The revision is intended to provide a positive benefit to individuals wishing to work in an assistant role but currently unable to do so outside of a handful of approved activities allowed in the current regulation. The revision also benefits licensees by allowing delegation of non-billable/low-value activities which free up time for the licensed practitioner to focus on patient care. This results in a positive impact for patients who will benefit from increased access to services. Revising this regulation to expand allowable duties to delegate is a much simpler, accessible, and efficient alternative to requiring formal licensure of these personnel by the Board. Rather than the Board certifying an assistant's education and skills, this revision places that responsibility with the licensed supervisor who must train, supervise, and delegate tasks to the assistant that are commensurate with their skills and abilities.

- **Section 8** removes obsolete references to federal regulations that required a medical evaluation or patient waiver to obtain hearing aids and were repealed by the FDA Final Rule on Over-the-Counter Hearing Aids,

Explanation of Need: The revision removes the reference to 21 C.F.R. § 801.421 as it was repealed by the [FDA Final Rule on OTC Hearing Aids](#), however [NRS 637B.242](#) still requires this waiver for sales of hearing aids by catalog, mail, or Internet. This revision clarifies requirements for licensees by ensuring Board regulations are accurate and reflective of changes to federal law.

- **Section 9** does the following:

- Removes obsolete references to repealed federal regulations as described in Section 8

Explanation of Need: Please refer to Section 8.

- Removes the requirement that all formal written communications and documents be addressed to the Board and not to individual members of the Board or its staff.

Explanation of Need: The Board and its staff cannot control how communications are addressed and this revision releases the Board of responsibility for communications received from others.

2. **A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.**

A Public Workshop was held to solicit comments on the proposed regulations on **January 24, 2024**. Public comment was solicited through the dissemination of a *Notice of Public Workshop* that was sent/posted on January 8, 2024 as follows:

- **Emailed to:** All licensed speech-language pathologists, audiologists, hearing aid specialists, and all persons on the Board’s mailing list for administrative regulations.
- **Deposited with** the State Library, Archives And Public Records Administrator.
- **Posted at the following physical locations:** State Of Nevada, Speech-Language Pathology, Audiology & Hearing Aid Specialists Board Office, 6170 Mae Anne Avenue, Suite 1, Reno, Nevada 89523.
- **Posted online at the following websites:**
 - Nevada Speech-Language Pathology, Audiology And Hearing Aid Dispensing Board <https://www.nvspeechhearing.org/about/minutes.asp>
 - State of Nevada Public Notices: www.notice.nv.gov
 - Nevada Legislature Administrative Regulation Notices, Meetings And Workshops: <https://www.leg.state.nv.us/app/notice/a/>

There were 14 individuals representing small business and the public in attendance at the workshop. One (1) oral comment was offered that did not indicate support or opposition, but suggested edits to Section 8 in the original draft that would amend/expand the duties that may be delegated by a hearing aid specialist, audiologist, or dispensing audiologist to an unlicensed assistant in NAC 637B.0442. The comment suggested a conflict in “Duties that may not be delegated pursuant to this section include, without limitation: Conducting any activity involving direct physical contact with a client and a hearing-related procedure or instrument”, as the prior section included a number of new duties that could be delegated but would require physical contact with a client or hearing related procedure or instrument. The Board discussed and agreed on edits to this section and the regulations were sent back to LCB for revision.

A copy of this summary of the public response to the adopted regulation may be obtained from the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Board at: 6170 Mae Anne Avenue, Suite 1, Reno, Nevada 89523. Phone: (775) 787-3421. Email: board@nvspeechhearing.org Website: <https://www.nvspeechhearing.org/about/Minutes.asp>

A Public Hearing was held to solicit comments on the proposed regulations on **April 24, 2024**. Public comment was solicited through the dissemination of a *Notice of Intent to Act Upon a Regulation* that was sent/posted on March 19, 2024 as follows:

- **Emailed to:** All licensed speech-language pathologists, audiologists, hearing aid specialists, and all persons on the Board’s mailing list for administrative regulations.
- **Deposited with** the State Library, Archives And Public Records Administrator.
- **Posted at the following physical locations:** State Of Nevada, Speech-Language Pathology, Audiology & Hearing Aid Specialists Board Office, 6170 Mae Anne Avenue, Suite 1, Reno,

Nevada 89523.

• **Posted online at the following websites:**

- Nevada Speech-Language Pathology, Audiology And Hearing Aid Dispensing Board
<https://www.nvspeechhearing.org/about/minutes.asp>
- State of Nevada Public Notices: www.notice.nv.gov
- Nevada Legislature Administrative Regulation Notices, Meetings And Workshops:
<https://www.leg.state.nv.us/app/notice/a/>

There were ten (10) individuals representing small business and the public in attendance at the public hearing. No oral public comment was offered. One (1) written comment was received that did not indicate either support or opposition but requested guidance on whether Section 7 of the regulation would align or conflict with other chapters of NRS. (Please refer to #6 below).

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3. The number of persons who:

a) Attended each workshop:	14	January 24, 2024	Reno/Teleconference
b) Attended public hearing:	8	April 24, 2024	Reno/Teleconference
c) Testified at hearing:	1	April 24, 2024	Reno/Teleconference
d) Submitted written comments:	1		

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:

Name: Renee Erno
Telephone Number: 702-497-2326
Business Address: 580 Howard Ave, Somerset, NJ
Business Telephone Number: Not provided
Electronic Mail Address: reneeerno@gmail.com
Name of Entity or Organization Represented: Self - Board Licensee

Name: Laura "Wednesday" Fussell
Telephone Number: Not provided
Business Address: Las Vegas, NV
Business Telephone Number: (702) 486-5609
Electronic Mail Address: lefink@detr.nv.gov
Name of Entity or Organization Represented: Nevada DETR

Name: Karen Klopfer
Telephone Number: Not provided
Business Address: Not provided
Business Telephone Number: Not provided
Electronic Mail Address: Not provided

Name of Entity or Organization Represented: Self - Board Licensee

Name: Nancy Kuhles

Telephone Number: (775) 772-4831

Business Address: Not provided

Business Telephone Number: Not provided

Electronic Mail Address: Nkuhles119@gmail.com

Name of Entity or Organization Represented: NSHA/NV Coalition, Self - Board Licensee

Name: Elise Monroy

Telephone Number: Not provided

Business Address: Not provided

Business Telephone Number: Not provided

Electronic Mail Address: Not provided

Name of Entity or Organization Represented: Belz & Case

Name: Katrina Nicholas

Telephone Number: Not provided

Business Address: Not provided

Business Telephone Number: Not provided

Electronic Mail Address: Not provided

Name of Entity or Organization Represented: Self - Board Licensee

Name: Kim Reddig

Telephone Number: Not provided

Business Address: Not provided

Business Telephone Number: Not provided

Electronic Mail Address: Not provided

Name of Entity or Organization Represented: Self - Board Licensee

Name: Shawna Ross

Telephone Number: Not provided

Business Address: Not provided

Business Telephone Number: Not provided

Electronic Mail Address: Not provided

Name of Entity or Organization Represented: Self - Board Licensee

Name: Tenaya Watson

Telephone Number: 702-408-7123

Business Address: Not provided

Business Telephone Number: Not provided

Electronic Mail Address: info@nvsha.org

Name of Entity or Organization Represented: Nevada Speech-Hearing Association, Self - Board Licensee

- 5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public. No comments were received from businesses.

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6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The Speech-Language Pathology, Audiology and Hearing Aid Dispensing Board adopted the regulation on April 21, 2024. Included in the regulation were edits suggested in an oral public comment received at the Public Workshop regarding Section 7, to clarify certain duties involving direct physical contact with a client and a hearing-related procedure or instrument that may be delegated by a hearing aid specialist, audiologist, or dispensing audiologist to an unlicensed assistant in NAC 637B.0442.

One written comment was offered at the Public Hearing on April 24, 2024 requesting clarification regarding Section 7, allowing a hearing aid specialist, audiologist, or dispensing audiologist to delegate a “pure-tone hearing screening and universal newborn hearing screening test” to an unlicensed assistant. The comment suggested that the revision would conflict with NRS 442.530 and Nevada EDHI Guidelines. It was determined there was no conflict and no revision was made.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects; and

There is no expected adverse economic effect of these adopted regulations on small businesses. The Board regulates individuals in the practice of speech-language pathology, audiology and the fitting and dispensing of hearing aids. The following sections will directly benefit small businesses and the speech-language pathology, audiology and hearing aid dispensing practitioners as follows:

- Section 2 removes the requirement for licensees to maintain sometimes costly professional certifications currently required for reinstatement of a license;
- Section 3 extends the length of time within which the Board may accept a passing score on a written examination, increasing the number of applicants who may obtain a license more quickly without having to retake an exam;
- Sections 4 and 5 allow the Board to send notices via electronic mail and not maintain academic training program lists, reducing administrative costs to the Board and the demand on the fee revenue received from licensees; and
- Section 7 allows for more permissive delegation of duties by Audiologists, Dispensing Audiologists, and Hearing Aid Specialists to unlicensed assistants, freeing the practitioner to engage in more complex, specialized, and higher revenue activities.

(b) Both immediate and long-term effects.

Both immediate and long-term effects will include improving and clarifying existing law and regulatory requirements. Small businesses may also experience the effect of more permissive regulations.

8. The estimated cost to the agency for enforcement of the adopted regulations.

There are no additional costs involved in the enforcement of these adopted regulations.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The Board is not aware of any similar federal, state, or local standards regulating speech-language pathology, audiology and hearing aid dispensing professions. The adopted regulations do not duplicate any federal, state or local standards.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The Board is not aware of any similar federal regulations of the same activity in which the adopted regulations are more stringent.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The regulation includes an increase from \$200 to \$250 in the fee charged by the Board for the practical examination for fitting and dispensing hearing aids required for dispensing audiologists and hearing aid specialists. The Board budgets to administer approximately 24 examinations each year, and examination materials are purchased from the International Hearing Society. The cost to the Board for these exams will increase from \$50 to \$100 each on 7/1/2024 (increasing to \$150 on 7/1/2025 and \$200 on 7/1/2025). The \$100 paid by the Board will result in the current \$200 fee charged covering only the cost of the exam (\$100) and reimbursement to the exam proctor (\$100). Thus, the fee increase will net the Board \$50 per exam in FY25 (\$1,200 total) to cover the time and resources needed to facilitate these exams, which is commensurate with what the Board nets at the current rate. In FY26 and FY27, the new fee will not adequately cover the Board's costs.