

## **REGULATION 4**

### **DISCIPLINARY AND OTHER PROCEEDINGS BEFORE THE BOARD**

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**4.010 Applicability.** NCCR 4 shall apply to disciplinary proceedings governed by NRS 678A.500 to 678A.640. Unless otherwise ordered by the Chair, this regulation shall apply to all such proceedings that are pending on the effective date of this regulation.

**4.020 Grounds for disciplinary action.**

1. A violation of any of the provisions of Title 56 of NRS or NCCR is grounds for disciplinary action by the Board, including, without limitation, immediate revocation of a license for a cannabis establishment pursuant to NRS 678A.450 and NRS 678.650.
2. A violation of any of the provisions of Title 56 of NRS or NCCR is grounds for disciplinary action by the Board, including, without limitation, immediate revocation of a cannabis establishment agent registration card.

**4.030 Imposition of civil penalty; revocation or suspension of license or cannabis establishment agent registration card; corrective action.**

1. The Board may:
  - (a) Subject to the provisions of NCCR 4, impose a civil penalty of not more than \$90,000 per violation on any person who fails to comply with or violates any provision of the NCCR and Title 56 of NRS. Such a civil penalty must be paid to the State of Nevada for deposit in the State General Fund;
  - (b) Except as otherwise provided in paragraph (c), suspend or revoke a license or cannabis establishment agent registration card. If the Board orders the suspension of a license or cannabis establishment agent registration card, the Board shall prescribe the time period of the suspension in the written decision. If the Board orders the revocation of a license or cannabis establishment agent registration card, the Board shall prescribe a period of not less than 1 year and not more than 10 years during which the person may not apply for reinstatement of the license or cannabis establishment agent registration card; and
  - (c) If corrective action approved by the Board will cure the noncompliance or violation but will not be completed within 30 days after issuance of the order, suspend for more than 30 days the license of a cannabis establishment or the cannabis establishment agent registration card of a person who fails to comply with or violates the provisions of the NCCR and Title 56 of NRS.
2. To determine the amount of a civil penalty assessed pursuant to this section, the Board will consider the gravity of the violation, the economic benefit or savings, if any, resulting from the violation, the size of the business of the violator, the history of compliance with the NCCR and Title 56 of NRS by the violator, action taken to remedy the violation, the effect of the penalty on the ability of the violator to continue in business and any other matter as justice may require.

**4.035 Category I Violations.**

1. The Board will determine a category I violation of the NCCR and Title 56 of NRS as follows:
  - (a) Category I violations are of a severity that make a person ineligible to receive, renew, or maintain a license, including, without limitation:
    - (1) Conviction of an excluded felony offense;
    - (2) Operating without all required permits, certificates, registrations and/or licenses;
    - (3) Making an intentionally false statement to the Board or Board Agents;
    - (4) Intentionally destroying or concealing evidence;
    - (5) Intentionally failing to pay taxes to the Department of Taxation;
    - (6) Allowing noisy, disorderly or unlawful activity that results in death or serious physical injury, that involves the unlawful use or attempted use of a deadly weapon against another person or that results in a sexual offense which is a category A felony;
    - (7) Operating a cannabis establishment while the license for the cannabis establishment is suspended or revoked;

- (8) Transporting cannabis outside of the boundaries of this State, except where authorized by an agreement between the Governor of this State and a participating tribal government;
- (9) Making verbal or physical threats to a Board Agent or Board member;
- (10) Failing to immediately admit regulatory or law enforcement personnel into the premises of a cannabis establishment;
- (11) Refusing to allow an inspection or obstructing regulatory personnel or law enforcement officer from performing his or her official duties;
- (12) Purchasing or selling cannabis that has not passed the analysis required by a cannabis independent testing laboratory without written approval from the Board;
- (13) Purchasing or selling cannabis not found in the seed-to-sale tracking system;
- (14) Failure to properly collect taxes; or
- (15) Transporting or storing cannabis from an unlicensed source, other than patient or consumer samples stored at a cannabis independent testing laboratory, or diversion of cannabis or cannabis products.

2. Before consideration of the factors described in subsection 1(a), the Board will presume that the following are appropriate penalties for violations of the NCCR and Title 56 of NRS:

- (a) For a category I violation which is the:
  - (1) First violation in the immediately preceding 3 years, a civil penalty of not more than \$90,000 and a suspension for not more than 30 days or revocation of a license or cannabis establishment agent registration card.
  - (2) Second or subsequent violation in the immediately preceding 3 years, revocation of a license or cannabis establishment agent registration card.
- (b) Notwithstanding the foregoing, a single violation of NCCR 4.035(1)(a)(15) for diversion of cannabis or cannabis products requires revocation of a license, certificate, and/or cannabis establishment agent registration card.

(Amended: 8/2021)

#### **4.040 Category II Violations.**

1. The Board will determine a category II violation of the NCCR and Title 56 of NRS as follows:

- (a) Category II violations are violations of a severity that create a present threat to public health or safety, including, without limitation:
  - (1) Making an unintentional false statement or representation of fact to the Board or Board Agents;
  - (2) Unintentionally destroying or concealing evidence;
  - (3) Failing to verify the age of, or selling or otherwise providing cannabis or cannabis paraphernalia to, a person who is less than 21 years of age;
  - (4) Allowing a person who is less than 21 years of age to enter or remain in a cannabis establishment or transport vehicle unless the person holds a registry identification card or letter of approval;
  - (5) Permitting sales by a person without a cannabis establishment agent registration card unless that person is deemed to be temporarily registered;
  - (6) Effecting a change in ownership and/or ownership interest without complying with all the requirements of NCCR 5.110 and/or any additional Board guidance and orders regarding transfers of interest.;
  - (7) Allowing noisy, disorderly or unlawful activity that involves use of a dangerous weapon against another person with intent to cause death or serious physical injury;
  - (8) Allowing a person who is less than 21 years of age to work or volunteer at the cannabis establishment;
  - (9) Failing to cease operation and notify the Board or Board Agents during an imminent health hazard;

- (10) Purchasing, cultivate, produce or otherwise use cannabis from an unapproved source;
- (11) Not properly segregating medical patient retail sales from adult use retail sales;
- (12) Operating an unapproved extraction unit;
- (13) Selling an amount of cannabis in excess of transaction limits;
- (14) Failing to maintain required security alarm and surveillance systems;
- (15) Any intentional variance from approved procedures in a laboratory;
- (16) Failing to notify the Board or Board Agents of a loss of possession or control of a cannabis facility within 24 hours;
- (17) Transferring, moving, or disturbing cannabis or cannabis product which has been quarantined by the Board without Board approval;
- (18) Failing to renew the cannabis establishment license on time; or
- (19) Any violation of NCCR 11.070.

2. Before consideration of the factors described in subsection 1(a), the Board will presume that the following are appropriate penalties for violations of the NCCR and Title 56 of NRS:

(a) For a category II violation which is the:

(1) First violation in the immediately preceding 3 years, a civil penalty of not more than \$25,000 and a suspension for not more than 20 days of a license or cannabis establishment agent registration card.

(2) Second violation in the immediately preceding 3 years, a civil penalty of not more than \$75,000 and a suspension for not more than 30 days of a license or cannabis establishment agent registration card.

(3) Third or subsequent violation in the immediately preceding 3 years, revocation of a license or cannabis establishment agent registration card.

(Amended: 8/2021)

#### **4.050 Category III Violations.**

1. The Board will determine a category III violation of the NCCR and Title 56 of NRS as follows:

(a) Category III violations are violations of a severity that create a potential threat to public health or safety, including, without limitation:

(1) Transporting cannabis in an unauthorized vehicle;

(2) Allowing consumption by any person of alcohol, cannabis or other intoxicants on the premises of the cannabis establishment or in areas adjacent to the premises of the cannabis establishment which are under the licensee's control, including, without limitation, a parking lot;

(3) Failing to keep any required records, including seed-to-sale tracking requirements;

(4) Failing to tag plants as required;

(5) Failing to follow an approved security plan;

(6) Allowing disorderly activity;

(7) Allowing any activity which violates the laws of this State;

(8) Failing to notify the Board or Board Agents within 24 hours after discovery of a serious incident or criminal activity on the premises of the cannabis establishment;

(9) Unintentionally failing to pay taxes to the Department of Taxation;

(10) Selling unauthorized products or using unauthorized ingredients;

(11) Failing to notify the Board or Board Agents of a modification or expansion of the facilities of the cannabis establishment or a change in equipment or menu of the cannabis establishment;

(12) Violating packaging or labeling requirements including seed-to-sale tracking system requirements;

(13) Storing or delivering an unapproved cannabis product or a cannabis product outside the seed-to-sale tracking system;

(14) Failing to meet requirements for the disposal of cannabis waste;

- (15) Using unauthorized pesticides, soil amendments, fertilizers or other crop production aids;
  - (16) Exceeding the maximum serving requirements for cannabis products;
  - (17) Exceeding a reasonable time frame for delivery without approval from the Board or Board Agents;
  - (18) Picking up, unloading or delivering cannabis at an unauthorized location;
  - (19) Failing to comply with requirements for hand washing and employee hygiene, including, without limitation, using a bare hand on a cannabis product;
  - (20) Failing to maintain proper temperature of potentially hazardous food or cannabis products;
  - (21) Selling or failing to dispose of cannabis, cannabis products or food items that are spoiled or contaminated;
  - (22) Failing to tag cannabis or a cannabis product as required;
  - (23) Failing to follow seed-to-sale tracking system requirements while transporting or delivering cannabis or cannabis products
  - (24) Failing to properly update the licensee's point of contact with the Board;
  - (25) Failure to maintain quality assurance/quality control program in a laboratory; or
  - (26) Failure to maintain updated standard operating procedures.
2. Before consideration of the factors described in subsection 1(a), the Board will presume that the following are appropriate penalties for violations of the NCCR and Title 56 of NRS:
- (a) For a category III violation which is the:
    - (1) First violation in the immediately preceding 3 years, a civil penalty of not more than \$10,000.
    - (2) Second violation in the immediately preceding 3 years, a civil penalty of not more than \$30,000 and/or a suspension for not more than 10 days of a license or cannabis establishment agent registration card.
    - (3) Third violation in the immediately preceding 3 years, a civil penalty of not more than \$90,000 and/or a suspension for not more than 20 days of a license or cannabis establishment agent registration card.
    - (4) Fourth violation in the immediately preceding 3 years, a civil penalty of not more than \$90,000 and a suspension for not more than 60 days of a license or cannabis establishment agent registration card.
    - (5) Fifth or subsequent violation in the immediately preceding 3 years, revocation of a license or cannabis establishment agent registration card.

(Amended: 8/2021)

#### **4.055 Category IV Violations.**

1. The Board will determine a category IV violation of the NCCR and Title 56 of NRS as follows:
  - (a) Category IV violations create a climate which is conducive to abuses associated with the sale or production of cannabis or cannabis products, including, without limitation:
    - (1) Failing to display or have in the immediate possession of each cannabis establishment agent a cannabis establishment agent registration card or proof of temporary registration;
    - (2) Removing, altering or covering a notice of suspension of a license or any other required notice or sign;
    - (3) Violating advertising requirements;
    - (4) Displaying products in a manner visible to the general public from a public right of way;
    - (5) Failing to respond to an administrative notice of a violation or failing to pay fines;
    - (6) Violating restrictions on sampling;
    - (7) Failing to maintain a standardized scale as required;
    - (8) Improper storing of cannabis, cannabis products or other foods;
    - (9) Failing to properly wash, rinse and sanitize product contact surfaces as required;

- (10) Failing to maintain hand-washing facilities that are stocked, accessible and limited to hand washing only;
- (11) Infestation by pests that are not multigenerational or on contact surfaces;
- (12) Failing to properly use sanitizer as required;
- (13) Violating any transportation or delivery requirements not described in another category of violations;
- (14) Failing to properly respond to a Board or Board Agent's request for documentation, information, video, or other records; or
- (15) Any violation of NCCR 11.015(2).

2. Before consideration of the factors described in subsection 1(a), the Board will presume that the following are appropriate penalties for violations of the NCCR and Title 56 of NRS:

(a) For a category IV violation which is the:

- (1) First violation in the immediately preceding 3 years, a civil penalty of not more than \$5,000.
- (2) Second violation in the immediately preceding 3 years, a civil penalty of not more than \$10,000 and/or a suspension for not more than 7 days of a license or cannabis establishment agent registration card.
- (3) Third violation in the immediately preceding 3 years, a civil penalty of not more than \$20,000 and/or a suspension for not more than 10 days of a license or cannabis establishment agent registration card.
- (4) Fourth violation in the immediately preceding 3 years, a civil penalty of not more than \$40,000 and/or a suspension for not more than 20 days of a license or cannabis establishment agent registration card.
- (5) Fifth violation in the immediately preceding 3 years, a civil penalty of not more than \$80,000 and a suspension for not more than 30 days of a license or cannabis establishment agent registration card.
- (6) Sixth or subsequent violation in the immediately preceding 3 years, revocation of a license or cannabis establishment agent registration card.

(Amended: 8/2021)

#### **4.060 Category V Violations.**

1. The Board will determine a category V violation of the NCCR and Title 56 of NRS as follows:

(a) Category V violations are inconsistent with the orderly regulation of the sale or production of cannabis or cannabis products, including, without limitation:

- (1) Failing to submit monthly tax or sales reports or payments;
- (2) Failing to notify the Board or Board Agents of a temporary closure of the cannabis establishment within 24 hours of the closure;
- (3) Failing to post any required signs;
- (4) Failing to notify the Board of a change in the name of the cannabis establishment;
- (5) Making a payment with a check returned for insufficient funds;
- (6) Failing to comply with any other requirements not described in another category of violations;
- (7) Failing to properly submit quarterly inventory reports, monthly sales reports, or other reports required by the Board; or
- (8) Failure to pay for all costs involved in screening or testing related to quality assurance compliance checks within 30 days.

2. Before consideration of the factors described in subsection 1(a), the Board will presume that the following are appropriate penalties for violations of the NCCR and Title 56 of NRS:

(a) For a category V violation which is the:

- (1) First violation in the immediately preceding 3 years, a warning.
- (2) Second violation in the immediately preceding 3 years, a civil penalty of not more than \$2,500.

(3) Third violation in the immediately preceding 3 years, a civil penalty of not more than \$5,000 and/or a suspension for not more than 3 days of a license or cannabis establishment agent registration card.

(4) Fourth violation in the immediately preceding 3 years, a civil penalty of not more than \$10,000 and/or a suspension for not more than 7 days of a license or cannabis establishment agent registration card.

(5) Fifth violation in the immediately preceding 3 years, a civil penalty of not more than \$20,000 and/or a suspension for not more than 10 days of a license or cannabis establishment agent registration card.

(6) Sixth or subsequent violations in the immediately preceding 3 years, a civil penalty of not more than \$40,000 and/or a suspension for not more than 20 days of a license or cannabis establishment agent registration card.

**4.065 Imminent health hazard.**

1. The Board, through its Board Agents, will determine whether an event is an imminent health hazard that requires immediate correction or cessation of operations to prevent injury or serious illness based on the nature, severity and duration of any anticipated injury, illness or disease and the number of injuries or illnesses to members of the public which may occur. Events that are presumed to be imminent health hazards include, without limitation:

- (a) Interruption of electrical service;
- (b) Lack of potable water or hot water;
- (c) Grossly unsanitary occurrences or conditions including, without limitation, pest infestation or sewage or liquid waste not being disposed of in an approved manner;
- (d) Lack of adequate refrigeration;
- (e) Lack of adequate toilet and hand-washing facilities for employees;
- (f) Misuse of poisonous or toxic materials;
- (g) A suspected outbreak of foodborne illness;
- (h) A fire or flood;
- (i) Governor's emergency directives; or
- (j) Any other condition or circumstance which endangers public health.

2. If a cannabis facility becomes aware of any such condition listed above, independently and not through the Board's Agent, it must report said hazard to the Board or Board Agents within two hours of the hazard's discovery.

**4.070 Complaint.** The complaint must contain the following information:

1. The date of the violation or, if the date of the violation is unknown, the date that the violation was identified;
2. The address or description of the location where the violation occurred;
3. The section of the NCCR and Title 56 of NRS that was violated and a description of the violation;
4. The amount of the civil penalty that the Board may impose or a description of the action the Board may take for the violation;
5. A description of the payment process, including a description of the time within which and the place to which any civil penalty must be paid if the respondent does not wish to dispute the complaint;
6. An order prohibiting the continuation or repeated occurrence of the violation described in the complaint;
7. A description of the complaint process, including, without limitation, the time within which respondent must serve an answer to the complaint and the place to which the answer must be served; and
8. The name of the Board Agent who performed the investigation.

**4.075 Service of complaint.** The Board shall serve the complaint in the manner prescribed by NRS 678A.520(1). The Board may serve the complaint by registered or certified mail, or may utilize the services of the Board by referring the complaint to a Board Agent for personal service. Proof of service

may be provided by a certificate or affidavit of service, which shall be signed by the person effecting service and which shall specify the date and manner of service.

**4.080 Prohibition of ex parte communications.**

1. Unless required for the disposition of ex parte matters authorized by law:
  - (a) A party or the party's representative shall not communicate, directly or indirectly, in connection with any issue of fact or law related to a proceeding under this regulation, with any member of the Board, except upon notice and opportunity to all parties to participate; and
  - (b) A member of the Board shall not communicate, directly or indirectly, in connection with any issue of fact or law related to a proceeding under this regulation, with any party or any party's representative, except upon notice and opportunity to all parties to participate.
2. This section shall not preclude:
  - (a) Any member of the Board from consulting with Board counsel or supervisory counsel concerning any matter before the Board; or
  - (b) A party or a party's representative from conferring with the Chair or Board counsel concerning procedural matters that do not involve issues of fact or law related to the proceeding.
3. A party or a party's representative may discuss, with counsel only, issues of fact or law in conjunction with potential case settlement.

**4.085 Delegation to Chair.**

1. Pursuant to NCCR 2.020, the Chair may issue rulings on discovery matters, scheduling matters, protective orders, the admissibility of evidence, and other procedural or prehearing matters that are not dispositive of the case or any portion thereof. The Chair's rulings are subject to consideration by the entire Board upon the request of any Board member, or upon motion of a party or person affected by the ruling, as provided in NCCR 2.020. The failure of such party or person to move for such consideration, shall not be deemed to be consent to the ruling, nor waiver of any objections previously made regarding the ruling, for the purpose of judicial review.
2. The Chair may alter any of the time periods provided by this regulation, upon the Chair's own initiative or upon motion by a party or other person affected, for good cause shown.

**4.090 Appearance through counsel.**

1. Parties to proceedings governed by this regulation may appear personally or through an attorney, except that the parties must personally attend any hearing on the merits unless such attendance has been waived pursuant to NCCR 2.
2. When a party has appeared through an attorney, service of all notices, motions, orders, decisions, and other papers shall thereafter be made upon the attorney.
3. When a party is represented by an attorney, the attorney shall sign all motions, oppositions, notices, requests, and other papers on behalf of the party, including requests for subpoenas.
4. An attorney may withdraw from representing a person upon notice to the person or licensee, and the Board. The notice must include the reason for the requested withdrawal. The attorney must notify the person or licensee of an opportunity to object to the withdrawal. If the party or licensee objects to the withdrawal, the person or licensee must so notify the Board. The Board may deny the request if there may be an unreasonable delay in the case or the substantial rights of the person or licensee may be prejudiced.
5. If the Board finds that an attorney has violated any provision of this section, the Board may bar the attorney from participating in the case or may impose such other sanctions as the Board deems appropriate.
6. A person or licensee subject to a hearing pursuant to this chapter is responsible for all costs related to the presentation of the defense.



#### **4.095 Early case conference and hearing.**

1. Within 10 days after the respondent answers the complaint pursuant to NRS 678A.520 and demands a hearing or if the Board orders a hearing even if the respondent waives his or her right to a hearing, the parties shall hold an early case conference at which the parties and a hearing officer employed by the Board, or as permitted by NAC 616C.2753, or a delegated member of the Board, a panel of the Board, or the Board must preside. At the early case conference, the parties shall in good faith:
  - (a) Set the earliest possible hearing date agreeable to the parties and the hearing officer, a delegated member of the Board, panel of the Board, or the Board, including the estimated duration of the hearing no later than 45 days after receiving the respondent's answer unless an expedited hearing is determined to be appropriate;
  - (b) Set dates:
    - (1) By which all documents must be exchanged;
    - (2) By which witness lists must be exchanged;
    - (3) By which all prehearing motions and responses thereto must be filed; and
    - (4) For any other foreseeable actions that may be required for the matter;
  - (c) Discuss or attempt to resolve all or any portion of the evidentiary or legal issues in the matter;
  - (d) Discuss the potential for settlement of the matter on terms agreeable to the parties; and
  - (e) Discuss and deliberate any other issues that may facilitate the timely and fair conduct of the matter.
2. A formal hearing must be held at the time and date set at the early case conference by:
  - (a) The Board;
  - (b) A hearing officer; or
  - (c) A panel of three members of the Board.
3. The hearing will be conducted as set forth in NRS 678A.540. If the hearing is held before a hearing officer or panel of the Board, the hearing officer or panel shall issue, within 30 days of the last date of the hearing, findings of fact and conclusions of law for the Board's review pursuant to NCCR 4.135(1).
4. For purposes of NRS 678A.550 and the regulations regarding conduct of a hearing, a Board member shall be deemed present at a hearing when said Board member has reviewed the full written or audio transcript of the hearing and all evidence submitted at the hearing.

#### **4.100 Reinstatement of license or cannabis establishment agent registration card: Application; conditions, limitations or restrictions upon reinstatement; denial.**

1. If a person applies for reinstatement of a license or cannabis establishment agent registration card that has been revoked pursuant to this chapter, the person shall:
  - (a) Submit an application on a form supplied by the Board.
  - (b) Satisfy all the current requirements for the issuance of an initial license or cannabis establishment agent registration card.
  - (c) Attest that, in this State or any other jurisdiction:
    - (1) The person has not, during the period of revocation, violated any state or federal law relating to cannabis, and no criminal or civil action involving such a violation is pending against the person; and
    - (2) No other regulatory body has, during the period of revocation, taken disciplinary action against the person, and no such disciplinary action is pending against the person.
  - (d) Satisfy any additional requirements for reinstatement of the license or cannabis establishment agent registration card prescribed by the Board.
2. The Board will consider each application for reinstatement of a license or cannabis establishment agent registration card submitted pursuant to this section. In determining whether to reinstate the license or cannabis establishment agent registration card, the Board will consider the following criteria:

- (a) The severity of the act resulting in the revocation of the license or cannabis establishment agent registration card.
  - (b) The conduct of the person after the revocation of the license or cannabis establishment agent registration card.
  - (c) The amount of time elapsed since the revocation of the license or cannabis establishment agent registration card.
  - (d) The veracity of the attestations made by the person pursuant to subsection 1.
  - (e) The degree of compliance by the person with any additional requirements for reinstatement of the license or cannabis establishment agent registration card prescribed by the Board.
  - (f) The degree of rehabilitation demonstrated by the person.
3. If the Board reinstates the license or cannabis establishment agent registration card, the Board may place any conditions, limitations or restrictions on the license or cannabis establishment agent registration card as it deems necessary.
  4. The Board may deny reinstatement of the license or cannabis establishment agent registration card if the person fails to comply with any provisions of this section.
  5. This section shall not be interpreted to give any party or other person a right to reinstatement of the license or cannabis establishment agent registration card.

**4.105 Grounds for summary suspension; notice; request for hearing.**

1. If, due to the actions of a cannabis establishment, there could be an impairment of the health and safety of the public, the Executive Director, or the Deputy Director in his absence, will convene an emergency Board meeting telephonically.
2. Pursuant to subsection 3 of NRS 233B.127, if the Board finds that the public health, safety or welfare imperatively requires emergency action, the Board may issue an order of summary suspension of the license of a cannabis establishment or a cannabis establishment agent registration card pending proceedings for revocation or other action. An order of summary suspension issued by the Board must contain findings of the exigent circumstances which warrant the issuance of the order of summary suspension, and a suspension under such an order is effective immediately.
3. The Board will give notice to a licensee or person that is subject to an order of summary suspension of the facts or conduct that warrant the order and the deficiencies that must be corrected to lift the order. A cannabis establishment whose license has been suspended pursuant to section 2 shall develop a plan of correction for each deficiency and submit the plan to the Board for approval within 10 business days after receipt of the order of summary suspension. The plan of correction must include specific requirements for corrective action, which must include times within which the deficiencies are to be corrected. A licensee or person that is subject to an order of summary suspension shall not operate until the Board or its designee has confirmed that the deficiencies identified in the order have been corrected.
4. If the plan submitted pursuant to section 3 is not acceptable to the Board or its designee, the Board may direct the cannabis establishment to resubmit a plan of correction or the Board may develop a directed plan of correction with which the cannabis establishment must comply. The Board's acceptance of a plan of correction does not preclude the Board from assessing fines and/or pursuing disciplinary action against the licensee for any violations connected with the suspension.
5. A licensee or person that is subject to an order of summary suspension may request a hearing regarding the order within 10 business days after the order is issued. A hearing on the summary suspension must be held within 30 days after that request for hearing.

#### 4.110 Discovery: mandatory exchanges.

1. Within 20 calendar days after the service of the answer by the first answering respondent, and thereafter as each respondent answers the complaint, the parties shall confer for the purpose of complying with subsection 3 of this section.
2. Within 5 calendar days after a request for hearing regarding an order of summary suspension, the parties shall confer for the purpose of complying with subsection 3 of this section.
3. At each conference the parties shall:
  - (a) Exchange copies of all documents and other evidence then reasonably available to a party which are then intended to be offered as evidence in support of the party's case in chief; and
  - (b) Exchange written lists of persons each party then intends to call as a material witness in support of that party's case in chief. Each witness shall be identified by name, if known, position, business address, and a brief description of the purpose for which the witness will be called. If no business address is available, the party shall provide a home address for the witness, or shall make the witness available for service of process. For the purpose of this paragraph, a "material witness" is a person whose testimony relates to a genuine issue in dispute which might affect the outcome of the proceeding.
4. The investigative file for a case is not discoverable unless Board counsel intends to present materials from the investigative file as evidence in support of the case. The investigative file for the case includes all communications, records, affidavits or reports acquired or created as part of the investigation of the case, whether or not acquired through a subpoena related to the investigation of the person. Discovery of the investigative file is limited to solely to those documents the Board Counsel intends to use as evidence in support of its case, as disclosed prior to the hearing.
5. A party may not serve any written discovery on another party, inclusive of interrogatories, requests for production, requests for admissions and/or depositions by written questions.
6. Pursuant to NRS 678A.530(2), a party may take the deposition of a material witness.
  - (a) A party who wishes to take a deposition of a material witness must request such a deposition at any early case conference held in the matter or submit a written application at least 30 days before the hearing. The application must:
    - (1) Set forth the reason why the deposition is necessary; and
    - (2) Be accompanied by the appropriate orders for deposition.
  - (b) A material witness is a witness who has percipient knowledge of the alleged misconduct of the licensee. If there is any dispute as to whether a particular witness is material, such dispute shall be submitted to the Chair or hearing officer and they shall rule on whether such witness is material.
  - (c) The Chair or the hearing officer shall approve or deny the application within 5 days after the receipt of the application.
  - (d) If a material witness deposition is allowed it shall be conducted in accordance with the Nevada rules of civil procedure and not last more than one day/seven hours unless good cause is shown.
  - (e) Depositions of non-material witnesses may be permitted in two very limited circumstances:
    - (1) If the potential witnesses resides outside of Nevada; or
    - (2) If the witness is not available to testify during the hearing.
  - (f) If the parties cannot agree on whether a non-material witness can be deposed, such dispute shall be submitted to the Chair or the hearing officer and they shall rule on this issue, taking into account whether the burden and expense of the proposed deposition outweighs its likely benefit.
7. It shall be a continuing obligation of the parties to produce documents, witness lists, and other matters governed by this section as such become identified by and available to the parties. A party may amend its responses to the requirements of this section by informing the

adverse party that documents previously produced or witnesses previously listed, will not be introduced in that party's case in chief.

**4.115 Continuances and recesses.** The Board may, for good cause shown, either before or during a hearing, grant continuances or recesses and may consider a stipulation by the parties to a continuance of the hearing.

**4.120 Burden and standard of proof.** The Board has the burden of proof, and the standard of proof is a preponderance of the evidence as defined in NRS 233B.0375. If a licensee fails to create and/or maintain any documents, records, surveillance video, and/or any other items required pursuant to these regulations and Title 56 of NRS, that failure shall create a rebuttal presumption that such items would be harmful to that licensee's case at any disciplinary proceeding against the licensee.

**4.125 Motions.**

1. All motions shall be in writing, unless made during a hearing.
2. A motion shall state with particularity the grounds therefore, shall be supported by a memorandum of points and authorities, and shall set forth the relief or order sought.
3. Every written motion shall be filed with the Board and served by the moving party upon the adverse party or as the Chair directs.
4. An opposing party shall have 10 calendar days after service of the motion within which to file and serve a memorandum of points and authorities in opposition to the motion.
5. The moving party shall have 5 calendar days after service of the opposing memorandum to serve and file a reply memorandum of points and authorities if the moving party so desires.
6. If a motion or opposition is served by mail, 3 calendar days shall be added to the time periods specified herein for response.
7. The failure of a moving party to file a memorandum of points and authorities in support of a motion shall constitute consent to the denial of the motion. The failure of an opposing party to file a memorandum of points and authorities in opposition to any motion shall constitute consent to the granting of the motion.

**4.130 Subpoenas.**

1. The executive assistant shall issue subpoenas, including subpoenas duces tecum, upon the request of a party, in accordance with this section.
2. Subpoenas may be issued only for the following purposes:
  - (a) To compel a nonparty witness to appear and give oral testimony at a deposition as provided by NRS 678A.530(2); and
  - (b) To compel any person to appear at the hearing on the merits of the case, to give oral testimony alone, or to produce documents or other tangible things.
3. Subpoenas shall be submitted to the executive assistant for issuance on a form approved by the Chair. Concurrently with the submission of the subpoena to the executive assistant, the requesting party shall serve a copy on all other parties to the proceeding, and shall file proof of such service with the Board.
4. Subpoenas will not be issued in blank. A subpoena submitted for issuance must contain the title and number of the case, the name of the person to whom it will be directed, the date, time, and place of the hearing or deposition, and the name and signature of the requesting party or the requesting party's attorney. A subpoena duces tecum must in addition contain a complete description of specific documents or other tangible things that the witness will be required to produce at the hearing.
5. Unless the witness agrees otherwise, a subpoena issued for the purpose provided by subsection 2(b) must be served by the requesting party at least 10 calendar days prior to the hearing or deposition. A subpoena will be issued during the hearing or upon less than 10 days' notice only upon order of the Board for reasonable cause shown by the requesting party.

**4.135 Disposition of charges: Adjudication by Board.**

1. Prior to the adjudication, at least three members of the Board shall review a full transcript of the hearing or the phonographic recording of the hearing to ensure they have heard all the evidence presented and shall review the findings of fact and conclusions of law submitted after the hearing.
2. At the adjudication, the Board shall consider any findings of fact and conclusions of law submitted after the hearing and shall allow:
  - (a) Board agent or counsel for the Board to present a disciplinary recommendation and argument;
  - (b) The respondent or counsel of the respondent to present an argument, if they wish to, in opposition to or support of the disciplinary recommendation; and
  - (c) The Board may limit the time within which the parties and the complainant may make their arguments and statements.
3. At the conclusion of the presentations of the parties, the Board shall deliberate and may by a majority vote impose discipline based upon the evidence, findings of fact and conclusions of law and the presentations of the parties.
4. If the Board finds that a violation has occurred, it shall by order any and all discipline authorized by this Chapter and Title 56 of the NRS.
5. Within 30 days after the conclusion of the adjudication by the Board, the Board shall issue a final order, that imposes discipline and incorporates the findings of fact and conclusions of law obtained from the hearing. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.  
(Amended: 8/2021)

**4.140 Declaratory orders and advisory opinions.**

1. Any applicant for licensure, licensed cannabis establishment, or holder of registry identification card may obtain a determination or advisory opinion from the Board as to the applicability of any provision of chapters 678A through 678D of NRS or any regulation adopted pursuant thereto by bringing a petition for a declaratory ruling before the Board. No other persons or entities may petition the Board for a declaratory ruling.
2. A declaratory ruling is an extraordinary remedy that will be considered by the Board only when the objective of the petitioner cannot reasonably be achieved by other means and when the ruling would be significant to the regulation of cannabis. The Board will construe any statute or regulation reviewed pursuant to this section in a manner consistent with the declared policy of the State of Nevada.
3. A petition for a declaratory ruling shall be filed with the Executive Director, together with a nonrefundable filing fee in the amount of \$500.00.
4. The petition for a declaratory ruling must contain:
  - (a) The name, business address and telephone number of the petitioner;
  - (b) A statement of the nature of the interest of the petitioner in obtaining the declaratory ruling;
  - (c) A statement identifying the specific statute or regulation in question;
  - (d) A clear and concise statement of the interpretation or position of the petitioner relative to the statute or regulation order in question;
  - (e) A description of any contrary interpretation, position or practice that gives rise to the petition;
  - (f) A statement of the facts and law that support the interpretation of the petitioner, along with a table of legal authorities;
  - (g) A statement showing why the subject matter is appropriate for Board action in the form of a declaratory ruling and why the objective of the petitioner cannot reasonably be achieved by other administrative remedy;
  - (h) A statement identifying all persons or groups who the petitioner believes will be affected by the declaratory ruling, including the cannabis industry as a whole, and the manner in which the petitioner believes each person will be affected; and

- (i) The signature of the petitioner or the petitioner's legal representative.
- 5. A petitioner may not file a petition for declaratory ruling involving questions or matters that are issues in a disciplinary action or civil penalty action with the Board in which the petitioner is a party or has a financial and/or ownership interest in a party
- 6. The Board will consider a petition for declaratory ruling at the next scheduled Board meeting, provided that the petition is filed with the Executive Director 15 calendar days prior to that scheduled Board meeting. If the petition is not filed with the Executive Director 15 calendar days prior to next scheduled Board meeting, the petition will be considered at the following scheduled Board meeting.
- 7. In considering a petition for a declaratory ruling at the Board's meeting, the Board, by majority vote of the members, may take any of the following actions:
  - (a) Dismiss the petition and close the case;
  - (b) Order a hearing with oral argument on the petition and set a date for said hearing, which may be at a subsequently scheduled Board meeting;
  - (c) Issue an order permitting any other licensee or applicant to file a brief supporting or opposing the petition. If the Board chooses this option, supporting or opposing briefs shall be due 10 calendar days after the Board meeting during which the petition is considered and any reply briefs shall be due 5 calendar days thereafter. All such briefs must be timely filed and served on the Executive Director and the other parties involved, or will not be considered. Each such brief must be accompanied by a non-refundable filing fee of \$250;
  - (d) After hearing the petition and reviewing any additional briefing (if applicable), issue an order granting, denying, or granting in part and denying in part, the petition.
- 8. The petitioner may not obtain judicial review of any Board order entered pursuant to this regulation.
- 9. The petitioner, or any other party filing a brief under subsection 7(c), may request a waiver of the filing fee pursuant to a showing of financial hardship.

#### **4.145 Adoption, amendment or repeal of a regulation.**

- 1. Any interested party may petition the Board to request the adoption, amendment or repeal of a regulation under NCCR pursuant to NRS 678A.460(1)(d).
- 2. The Board will construe any such petition pursuant to this section in a manner consistent with the declared policy of the State of Nevada.
- 3. A petition to the Board to request the adoption, amendment or repeal of a regulation shall be filed with the Executive Director, together with a nonrefundable filing fee in the amount of \$500.00.
- 4. The petition to request the adoption, amendment or repeal of a regulation must contain:
  - (a) The name, business address and telephone number of the petitioner;
  - (b) A statement of the substance or nature of the regulation, amendment or repeal requested;
  - (c) A statement identifying the specific regulation in question;
  - (d) A clearly drafted proposed new regulation to be adopted, a clearly drafted amendment to a specific regulation or a detailed statement of what regulation is to be repealed and why, depending on the specific request;
  - (e) A statement identifying all persons or groups who the petitioner believes will be affected by the adoption, amendment or repeal of a regulation, including the cannabis industry as a whole, and the manner in which the petitioner believes each person will be affected; and
  - (f) The signature of the petitioner or the petitioner's legal representative.
- 5. A petitioner may not file a petition for adoption, amendment or repeal of a regulation that involves regulations that are issues in a disciplinary action or civil penalty action with the Board in which the petitioner is a party or has a financial and/or ownership interest in a party.
- 6. The Board will consider a petition for adoption, amendment or repeal of a regulation at the next scheduled Board meeting, provided that the petition is filed with the Executive Director

15 calendar days prior to that scheduled Board meeting. If the petition is not filed with the Executive Director 15 calendar days prior to next scheduled Board meeting, the petition will be considered at the following scheduled Board meeting.

7. In considering a petition for adoption, amendment or repeal of a regulation at the Board's meeting, the Board, by majority vote of the members, may take any of the following actions:

(a) Dismiss the petition with no action taken;

(b) Refer the petition to the Cannabis Advisory Commission for consideration and recommendations;

(c) Order a hearing with oral argument on the petition and set a date for said hearing, which may be at a subsequently scheduled Board meeting;

(d) Issue an order permitting any other licensee or applicant to file a brief supporting or opposing the petition. If the Board chooses this option, supporting or opposing briefs shall be due 10 calendar days after the Board meeting during which the petition is considered and any reply briefs shall be due 5 calendar days thereafter. All such briefs must be timely filed and served on the Executive Director and the other parties involved, or will not be considered. Each such brief must be accompanied by a non-refundable filing fee of \$250;

(e) After hearing the petition and reviewing any additional briefing (if applicable), issue an order granting, denying, or granting in part and denying in part, the petition.

8. The petitioner may not obtain judicial review of any Board order entered pursuant to this regulation.

9. The petitioner, or any other party filing a brief under subsection 7(d), may request a waiver of the filing fee pursuant to a showing of financial hardship.