

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

October 17, 2019
10:00 a.m. Central Time
Gold's Building, Room 534
1033 O Street, Lincoln, Nebraska

The purpose of this hearing is to receive comments on proposed changes to Title 172, Chapter 3 of the Nebraska Administrative Code (NAC) – *Regulations Establishing Definitions of Conflict of Interest for Members of the Boards of Examiners in the Health Professions*. The chapter outlines definitions of conflicts of interest for board members and procedures to remove such conflicts of interest. The proposed changes update language and terminology to reflect current practice and current statutory scheme; remove duplicative statutory language from the regulation; and update formatting.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Interested persons may attend the hearing and provide verbal or written comments or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 172	Prepared by: Becky Wisell
Chapter: 3	Date prepared: 6-28-19
Subject: Conflicts of Interest for Board Members	Telephone: 402-471-0179

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact: None

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 3 CONFLICTS OF INTEREST FOR BOARD MEMBERS

001. SCOPE AND AUTHORITY. These regulations govern conflicts of interest relating to board members under the Uniform Credentialing Act.

002. DEFINITIONS. Definitions set out in the Uniform Credentialing Act and the following apply to this chapter.

002.01 BOARD MEMBER. A member of one of the boards set forth in Nebraska Revised Statute (Neb. Rev. Stat.) § 38-167.

003. CONFLICTS OF INTEREST. Each of the situations described in this section must be considered a conflict of interest on the part of a board member.

003.01 SOLICITATION OF ITEMS OF VALUE. No board member may solicit or accept anything of value, including a gift, loan, contribution, reward, or promise of future employment, for the board member, or for a member of the board member's immediate family or for a business with which any such individual is associated, based on an agreement that the vote, official action, or judgment of the board member would be influenced thereby.

003.02 CONFIDENTIAL INFORMATION. No board member may use their position or any confidential information received through the holding of the position of board member to obtain financial gain, other than compensation provided by law, for the board member, a member of the board member's immediate family, or a business with which any such individual is associated.

003.03 USE OF RESOURCES. No board member may use personnel, resources, property, or funds under that board member's official care and control, other than in accordance with prescribed constitutional, statutory, and regulatory procedures, or use such items, other than compensation provided by law, for personal financial gain or for the financial gain of a member of the board member's immediate family or a business with which any such individual is associated.

003.04 CONTRACTS. Except as otherwise provided by law, no board member, a member of that board member's immediate family, or a business with which any such individual is associated may enter into a contract valued at \$2,000.00 or more, in any one year, with the Department unless the contract is awarded through an open and public process which includes prior public notice and subsequent availability for public inspection during the regular

office hours of the Department of the proposals considered and the contract awarded. No contract may be divided for the purposes of evading the requirements of this subsection. This subsection is intended to prevent a board member from engaging in certain activities under circumstances creating a substantial conflict of interest and is not intended to penalize innocent persons and a contract must not be absolutely void by reason of this subsection.

004. RESOLUTION OF CONFLICT OF INTEREST. A board member who, in the discharge of the board member's official duties, would be required to take any action or make any decision that may cause financial benefit or detriment to the board member, a member of the board member's immediate family, or a business with which the board member is associated, which is distinguishable from the effects of such action on the public generally, or a broad segment of the public, must take the following actions as soon as the board member is aware of such potential conflict of interest, or should reasonably be aware of such potential conflict, whichever is sooner:

- (A) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict;
- (B) Deliver a copy of the statement to the Nebraska Accountability and Disclosure Commission; and
- (C) Deliver a copy of the statement to the Director.

004.01 REMOVAL OF INFLUENCE. The board member must also exercise one or more of the following steps to remove the board member from influence over actions and decisions on the matter:

- (A) Refrain from discussion with other board members of those matters on which a conflict exists, or
- (B) Abstain from voting on the matter on which the potential conflict exists whether by voice vote, secret ballot, or any other method.

004.02 PARTICIPATION. This restriction does not prevent a board member from making or participating in the making of a board decision to the extent that the board member's participation is legally required for the action or decision to be made, and no action could be taken by the board otherwise due to lack of a quorum or other reason. However, in such event the board member must report the occurrence to the Director and to the Nebraska Accountability and Disclosure Commission.

005. DISCIPLINARY MEASURES. A violation of the provisions of this chapter by a board member constitutes malfeasance in office and due cause for action of removal of the board member from the board pursuant to Neb. Rev. Stat. § 38-160, other appropriate statute, or Article IV, Section 10 of the Constitution of the State of Nebraska, as applicable.

~~TITLE 172 -- NEBRASKA ADMINISTRATIVE CODE -- CHAPTER 3 -- REGULATIONS
ESTABLISHING DEFINITIONS OF CONFLICTS OF INTEREST FOR MEMBERS OF THE
BOARDS OF EXAMINERS IN THE HEALTH PROFESSIONS~~

~~001 Scope Of Definition~~

~~002 Resolution Of Conflict Of Interest~~

~~003 Disciplinary Measures~~

TITLE 172
NEBRASKA ADMINISTRATIVE CODE

Chapter 3
REGULATIONS ESTABLISHING DEFINITIONS OF CONFLICTS OF INTEREST
FOR MEMBERS OF THE BOARDS OF EXAMINERS IN THE HEALTH PROFESSIONS

~~001 SCOPE OF DEFINITION. As used in these regulations, the term "member of a board of examiners in the health professions" shall mean a member of one of the following: the boards of examiners set forth in the Uniform Licensing Law, Neb. Rev. Stat. 71-112, Board of Nursing, Board of Hearing Aid Instrument Dispensers and Fitters, Board of Registration for Sanitarians, Board of Advanced Emergency Medical Care, Board of Occupational Therapy Practice, Board of Examiners in Massage, and Board of Cosmetology Examiners. Each of the situations described in this section shall be considered a conflict of interest on the part of a member of a board of examiners in the health professions.~~

~~001.01 No member of a board of examiners in the health professions shall solicit or accept anything of value, including a gift, loan, contribution, reward, or promise of future employment, for himself or herself, or for a member of his or her immediate family or for a business with which any such individual is associated, based on an agreement that the vote, official action, or judgment of the member of a board of examiners in the health professions would be influenced thereby.~~

~~001.02 No member of a board of examiners in the health professions shall use that public office or any confidential information received through the holding of the position of board member to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which any such individual is associated.~~

~~001.03 No member of a board of examiners in the health professions shall use personnel, resources, property, or funds under that board member's official care and control, other than in accordance with prescribed constitutional, statutory, and regulatory procedures, or use such items, other than compensation provided by law, for personal financial gain or for the financial gain of a member of his or her immediate family or a business with which any such individual is associated.~~

~~001.04 Except as otherwise provided by law, no member of a board of examiners in the health professions, a member of that board member's immediate family, or a business with which any such individual is associated shall enter into a contract valued at two thousand dollars or more, in any one year, with the Department of Health unless the contract is awarded through an open and public process which includes prior public notice and subsequent availability for public inspection during the regular office hours of the Department of Health of the proposals considered and the contract awarded. No contract may be divided for the purposes of evading the requirements of this subsection. This subsection is intended to prevent a member of a board of examiners in the health professions from engaging in certain activities under circumstances creating a substantial conflict of interest and is not intended to penalize innocent persons and a contract shall not be absolutely void by reason of this subsection.~~

TITLE 172
CHAPTER 3

~~002 RESOLUTION OF CONFLICT OF INTEREST. A member of a board of examiners in the health professions who, in the discharge of his or her official duties, would be required to take any action or make any decision that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally, or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict of interest, or should reasonably be aware of such potential conflict, whichever is sooner:~~

~~002.01 Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict;~~

~~002.02 Deliver a copy of the statement to the Nebraska Accountability and Disclosure Commission; and~~

~~002.03 Deliver a copy of the statement to the Director of Health.~~

~~002.04 The member of a board of examiners in the health professions shall also exercise one or more of the following steps to remove himself or herself from influence over actions and decisions on the matter:~~

~~002.04A Refrain from discussion with other board members of those matters on which a conflict exists, or~~

~~002.04B Abstain from voting on the matter on which the potential conflict exists whether by voice vote, secret ballot, or any other method.~~

~~002.05 This restriction shall not prevent a member of a board of examiners in the health professions from making or participating in the making of a board decision to the extent that the board member's participation is legally required for the action or decision to be made, and no action could be taken by the board of examiners otherwise due to lack of a quorum or other reason. However, in such event the member of a board of examiners in the health professions shall report the occurrence to the Director of Health and to the Nebraska Accountability and Disclosure Commission.~~

~~003 DISCIPLINARY MEASURES. Any member of a board of examiners in the health professions violating the provisions of subsections 001.01, 001.02 or 001.03 shall be guilty of a Class III misdemeanor pursuant to Neb. Rev. Stat. §49-14,101, which upon conviction can result in a maximum penalty of three months imprisonment or five hundred dollars fine, or both, with no minimum penalty, pursuant to Neb. Rev. Stat. §28-106. A contract involving a prohibited conflict of interest under subsection 001.04 shall be voidable pursuant to Neb. Rev. Stat. §49-14,103. Violation of any of the provisions of section 001 or failure to take any of the steps outlined in section 002 shall constitute malfeasance in office and due cause for action of removal of a member from the board of examiners pursuant to Neb. Rev. Stat. §71-118, other appropriate statute, or Article IV, Section 10 of the Constitution of the State of Nebraska, as applicable.~~

~~SOURCE: Nebraska Revised Statutes Sections 71-115.01, 71-379, 49-1493(7), 49-1499, 49-14,101, 49-14,102, 49-14,103 (Reissue 1986); 71-1,132.07(4), 71-4715.01, 71-3706, 71-5507.01, 71-6115(2), 71-2704.01 (Supp. 1987)~~

Approved By Attorney General: May 5, 1988

TITLE 172
CHAPTER 3

~~Approved By Governor: July 6, 1988~~
~~Filed By Secretary Of State: July 12, 1988~~
~~Effective Date: July 17, 1988~~