



Nevada State Contractors Board

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Nevada State Contractors Board Issues Advisory Opinion
On Swimming Pool/Spa Regulations and Laws
Passed by Nevada Legislature

The Nevada State Contractors Board issued a written opinion at its March 23, 2006 meeting in response to a Petition for Determination of (1) proper application of statutes and regulations; and (2) validity of staff's subpoenas submitted by Renaissance Pools and Spas Inc. of Las Vegas. The pool company had asked for clarification on the following 13 questions:

- **QUESTION: Whether a complaint that is filed or brought against a licensee must be in writing and identify in detail the specific acts or omissions that may constitute cause for disciplinary action?**

ANSWER: The Board may receive and act upon oral complaints, anonymous complaints and complaints which do not identify the specific acts or omission that may constitute cause for disciplinary action to be taken by the Board against a licensee. The Board may itself initiate an investigation into possible violations of NRS 624.

- **Q: Whether a complaint that is not opened by the Board’s Staff (the “Staff”) is deemed denied for all purposes and may not be subsequently opened by the Staff?**

A: The Board has the power to open, reopen, investigate and act upon a complaint that was not opened by the Staff.

- **Q: Whether, with regard to a complaint opened by the Staff, a copy of the complaint and the documents and other information filed with the complaint must be served on the licensee within 10 days after the Staff receives the complaint?**

A: The Board should promptly notify a licensee of a complaint received against that licensee and provide copies of the documents received in support of the complaint, unless it is clear that the licensee already has copies of those documents. The Board is not required to notify a licensee of an investigation initiated by the Board.

- **Q: Whether the Staff is required to give the licensee 14 days (from the Staff’s receipt of a complaint) to resolve the issues set forth in a complaint (the “Allegation Period”), irrespective of the number of open complaints pending?**

A: Licensees should generally be given the opportunity to resolve potential or actual disputes with a homeowner or other complainant before a formal disciplinary complaint or administrative citation is issued concerning workmanship complaints. However, the Allegation Period does not apply in cases involving aggravated circumstances, repeat offenders or licensees which have

multiple complaints pending. A regulation is not needed. The Board's policy simply restates the provisions of NRS 624.335.

- **Q: Whether the Staff may investigate only those items set forth in a complaint, if the complaint is not resolved within the Allegation Period?**

A: The Board must investigate all alleged violations of Nevada law. The Board is not limited to only investigating matters that (a) are set forth in a written complaint and (b) are not resolved within 14 days. The manner in which the investigation is to be conducted is within the sound discretion of the Board.

- **Q: Whether, upon completion of an investigation, the Staff is required to give the licensee written notice of a complaint's disposition?**

A: The Board should give written notice to the licensee of the disposition of a complaint received against the licensee (NRS 624.335). The Board should similarly notify a licensee of any action taken upon completion of an investigation. That notification may take the form of a letter, administrative citation, formal disciplinary complaint or formal decision and order.

- **Q: Whether a complaint, which as been denied, withdrawn, closed, settled or otherwise resolved, may no longer be acted upon or reopened by the Staff, and is closed for all purposes?**

A: The Board may review and take action upon a complaint that was improperly denied or closed by Staff. The Board cannot take action upon a complaint which is outside the applicable statute of limitations (NRS 624.331), or which was resolved by an administrative citation accepted by the licensee or by a formal decision and order by the Board or its designated hearing officer, unless evidence

is presented establishing additional violations which occurred within the applicable statute of limitations.

- **Q: Whether a swimming pool licensee is entitled to collect 100 percent of the contracted amount for a given stage of construction of a pool or spa upon completion of the stage, including the cost of materials and equipment incurred, but not yet installed and a proportionate share of the expected profit, overhead, sales commission, administrative costs, and insurance included in the total amount of the contract?**

A: A contractor may not request payment for materials and equipment not installed or for work that has not been performed on the project. The contractor may take profit, overhead, administrative costs and cost of insurance into consideration in determining the value of the work performed on the project. However, any attempt to receive a disproportionate amount of such costs prior to satisfactory completion of the project violates Nevada law.

- **Q: Whether a swimming pool licensee is entitled to collect payment of the contract price in the manner contracted for, if a payment and performance bond is provided or the contract provides for payment of the contract price upon completion of the project?**

A: A contractor may collect payment of the contract price as set forth in the contract, if the contractor has furnished a bond for payment and performance covering full performance and completion of the project. The contractor may also receive payment of the contract price after the contractor has satisfactorily completed the project.

- **Q: Whether a swimming licensee must start work on the project within 30 days of the date all permits are issued, even if the licensee does not receive an initial payment of \$1,000 or 10 percent of the contract price, or the consumer agrees in writing to a delayed start, or a payment and performance bond is provided, or the contract provides for payment of the contract price upon completion of the project?**

A: A contractor must commence work on a project within 30 days, if it received an initial payment of \$1,000 or 10 percent of the contract price, whichever is less. The contractor does not have to start work on the project within 30 days, if the contractor did not receive an initial payment of \$1,000 or 10 percent of the contract price, or if the homeowner agrees in writing to a delayed start. The contractor's obligation to commence work on the project is not affected by the posting of a payment and performance bond, or by providing for payment upon completion of the project.

- **Q: Whether a swimming pool licensee is required to complete a given stage of construction within 30 days if a payment and performance bond is provided, or the contract provides for payment of the contract price after completion of the project, or the consumer agrees in writing to a longer period, or the work is delayed by an Act of God?**

A: A contractor is required to complete the work diligently. The progress payment schedule must not set a timetable for the completion of any stage or phase of the project that exceeds 30 days, unless completion of the stage or phase is delayed

by an Act of God, or the owner agrees in writing to a longer period. NAC 624.6964(2)

- **Q: Whether a contract between a swimming pool licensee and a consumer may include, in addition to the items required by NAC 624.6958, any provisions agreed to by the parties?**

A: Subject to certain specific statutory and regulatory exceptions as set forth in NRS 597.719(5) and NAC 624.6962 and 624.697, a contract for the construction of a residential pool or spa may contain such other conditions or stipulations or provision as agreed to by the parties. NAC 624.696; NRS 597.719(2)(1)

- **Q: Whether the Board, the Executive Officer, any member of the Board, or Staff may issue subpoenas to licensees?**

A: Subpoenas should be issued by the Board, any member of the Board, or the Executive Officer. NRS 624.170. Subpoenas can be issued to licensees, employees of licensees, representatives of licensees, or any third party.

The Board believes this advisory opinion answers each of the 13 questions posed in the petition. However, if Renaissance Pools believes that any of the opinions need clarification, it may request an additional advisory opinion by following the provisions of NRS 624.160.

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