

**PROPOSED REGULATION OF THE
NEVADA HEALTH AUTHORITY**

LCB FILE NO. R164-26I

**The following document is the initial draft regulation proposed
by the agency submitted on 06/30/2026**

**PROPOSED AMENDMENTS TO NAC CHAPTER 439
RELATED TO APPEALS; USE OF HEARING OFFICERS**

These proposed changes recognize the transfer of certain regulatory functions from the Division of Public and Behavioral Health in the Department of Human Services to the Health Care Purchasing and Compliance Division of the Nevada Health Authority. The changes add authority for hearings to be conducted by the Nevada Health Authority.

New language proposed below is identified in blue bold and italicized text. Language to be stricken is in red strikethrough.

NAC 439.300 Definitions. (NRS 439.200) As used in NAC 439.300 to 439.395, inclusive, unless the context otherwise requires, the words and terms defined in NAC 439.301 to 439.307, inclusive, have the meanings ascribed to them in those sections.
[Bd. of Health, License Hearings Rule 3, eff. 6-24-80]—(NAC A by R037-97, 10-30-97)

NAC 439.301 “Appellant” defined. (NRS 439.200) “Appellant” means a person who appeals proposed disciplinary action against him or her by the Division ***or the Health Care Purchasing and Compliance Division.***
(Added to NAC by Bd. of Health by R037-97, eff. 10-30-97)

NAC 439.302 “Board” defined. (NRS 439.200) “Board” means the State Board of Health.
(Added to NAC by Bd. of Health by R037-97, eff. 10-30-97)

NAC 439.304 “Disciplinary action” defined. (NRS 439.200) “Disciplinary action” includes, without limitation:

1. Administrative sanctions; and
2. The denial, suspension or revocation of a license, permit, certificate, endorsement, approval, registration, charter, designation or other similar grant of permission to operate that is issued to a person, facility or governmental entity by the Division ***or the Health Care Purchasing and Compliance Division.***

(Added to NAC by Bd. of Health by R037-97, eff. 10-30-97)

NAC 439.305 “Division” defined. (NRS 439.200) “Division” means the Division of Public and Behavioral Health of the Department of Health and Human Services.
(Added to NAC by Bd. of Health by R037-97, eff. 10-30-97)

Add New Sections as follows:

NAC XXX.XXX “Authority” means the Nevada Health Authority.

NAC XXX.XXX “Health Care Purchasing and Compliance Division” means the Health Care Purchasing and Compliance Division of the Authority.

NAC 439.307 “Hearing officer” defined. (NRS 439.200) “Hearing officer” means a person appointed by the Administrator of the Division or the **Authority** to preside at a hearing conducted pursuant to NAC 439.300 to 439.395, inclusive.

(Added to NAC by Bd. of Health by R037-97, eff. 10-30-97)

NAC 439.310 Scope; deviation from provisions. (NRS 439.200)

1. All hearings concerning appeals of proposed disciplinary actions by the **Division or the Health Care Purchasing and Compliance Division** are governed by the provisions of NAC 439.300 to 439.395, inclusive, unless the applicable practice or procedure is specifically provided by law or another regulation of the Board.

2. In special cases, where good cause appears, the hearing officer may allow deviation from these provisions if he or she finds compliance with the provisions to be impractical or unnecessary.

[Bd. of Health, License Hearings Rule 1, §§ 1.1 & 1.3, eff. 6-24-80]—(NAC A by R037-97, 10-30-97)

NAC 439.320 Construction. (NRS 439.200) The provisions of NAC 439.300 to 439.395, inclusive, will be liberally construed to secure just, speedy and economical determination of all issues presented to the hearing officer.

[Bd. of Health, License Hearings Rule 1, § 1.2, eff. 6-24-80]—(NAC A by R037-97, 10-30-97)

NAC 439.330 Severability. (NRS 439.200) The provisions of NAC 439.300 to 439.395, inclusive, are severable. If any provision of these regulations or any application to any person, thing or circumstance is held invalid, the Board intends that such invalidity not affect the remaining provisions or applications to the extent that they can be given effect.

[Bd. of Health, License Hearings Rule 1, § 1.4, eff. 6-24-80]—(NAC A by R037-97, 10-30-97)

NAC 439.340 Office of Board. (NRS 439.200) The principal office of the Board is the office of the Administrator of the Division. The office of the Administrator is open during regular business hours.

[Bd. of Health, License Hearings Rule 2, eff. 6-24-80]—(NAC A by R037-97, 10-30-97)

NAC 439.341 Hearing officers: Appointment; term; assignments; duties. (NRS 439.200)

1. *Except as otherwise provided [in the new sections],* the Administrator shall appoint three permanent employees of the Division to act as hearing officers. The hearing officers shall perform their duties in addition to their regularly assigned duties.
 2. An employee appointed as a hearing officer must be appointed for a term of 2 years.
 3. The Administrator of the Division shall rotate the assignment of appeals among the hearing officers. Upon receipt of a request for an appeal to be heard by a hearing officer, the Administrator shall assign the appeal to the next hearing officer in the rotation unless that hearing officer has a conflict of interest or is otherwise disqualified from hearing the appeal.
 4. A hearing officer shall not hear requests for variances from the requirements of a regulation.
 5. The Administrator may revoke the appointment or change the assignment of a hearing officer for good cause.
- (Added to NAC by Bd. of Health by R037-97, eff. 10-30-97)

Add a New Section

NAC XXX.XXX Hearing officers: Appointment; term; assignments; duties.

1. *The Authority shall appoint one permanent employee of the Authority to act as a hearing officer. The hearing officer shall perform these duties in addition to their regularly assigned duties.*
2. *If the hearing officer has a conflict of interest or is otherwise disqualified from hearing the appeal, the Authority shall appoint an employee of the Authority to serve as the alternative hearing officer for the appeal.*
3. *A hearing officer shall not hear requests for variances from the requirements of a regulation.*
4. *The Authority may revoke the appointment or change the assignment of a hearing officer for good cause and shall appoint a different permanent employee to serve in the capacity of the hearing officer.*

NAC 439.345 Notice of proposed disciplinary action: Duties of Division; contents and service of notice. (NRS 439.200)

1. Except as otherwise provided by specific statute or regulation or in the case of an emergency or a summary suspension, if the Division *or the Health Care Purchasing and Compliance Division* intends to take disciplinary action, the Division *or the Health Care Purchasing and Compliance Division* shall notify the applicant for or holder of a license, permit, certificate, endorsement, approval, registration, charter, designation or other similar grant of permission to operate or other affected person of the proposed disciplinary action, in writing, at least 11 business days before the effective date of the disciplinary action. The notice must include, without limitation:
 - (a) A citation of the statutory and regulatory authority for the disciplinary action;
 - (b) The facts on which the disciplinary action is based;

- (c) A description of any circumstances that the Division **or the Health Care Purchasing and Compliance Division** considered in taking the disciplinary action;
 - (d) Instructions for responding to the notice, including, without limitation, a statement of the right to any internal informal procedures for appeal, the right to a hearing, the period during which a hearing must be requested and the consequences of waiving a hearing; and
 - (e) The effective date of the disciplinary action.
2. The **Division or the Health Care Purchasing and Compliance Division** shall serve the notice by personal delivery to the applicant, holder or other affected person or by mailing the notice by registered or certified mail to his or her last known residential or business address.

(Added to NAC by Bd. of Health by R037-97, eff. 10-30-97)

NAC 439.346 Appeal of proposed disciplinary action: Exhaustion of informal procedures required; filing request for appeal; contents of request. (NRS 439.200)

1. A person who wishes to file an appeal with a hearing officer contesting proposed disciplinary action by the Division **or the Health Care Purchasing and Compliance Division** must first exhaust all internal informal procedures for appeals.

2. A request for an appeal must be addressed to the Administrator of the Division **or the Health Care Purchasing and Compliance Division** and must be received by ~~the~~ **such** Administrator not later than 10 business days after the date on which the appellant received notice of the proposed disciplinary action pursuant to NAC 439.345. The request must specify:

- (a) The disciplinary action to be contested;
- (b) The name of the officer or employee of the Division **or the Health Care Purchasing and Compliance Division** who proposed the disciplinary action; and
- (c) The reasons that the appellant believes the disciplinary action is incorrect.

(Added to NAC by Bd. of Health by R037-97, eff. 10-30-97)

NAC 439.347 Notice of hearing of appeal: Duties of hearing officer; contents of notice. (NRS 439.200) Upon receipt of an appeal, the hearing officer assigned to hear the appeal must provide notice of the hearing to the appellant. The notice must include:

- 1. The date, time, place and subject matter of the hearing;
- 2. A citation of the statutory and regulatory authority and jurisdiction pursuant to which the hearing is to be held; and
- 3. A brief and concise statement of the matters asserted.

(Added to NAC by Bd. of Health by R037-97, eff. 10-30-97)

NAC 439.348 Stay of proposed disciplinary action pending appeal; exceptions. (NRS 439.200) Except as otherwise provided in NAC 449.99908 or in the case of an emergency or a summary suspension, the effective date of the disciplinary action is stayed upon receipt of an appeal until the hearing officer renders a decision regarding the appeal.

(Added to NAC by Bd. of Health by R037-97, eff. 10-30-97)

NAC 439.350 Representation by attorney: Entry of appearance; service on attorney; withdrawal by attorney. (NRS 439.200)

1. A party is entitled to be represented by counsel. Counsel for a party must enter an appearance by submitting written notice of the representation to the Administrator of the Division *or the Administrator of the Health Care Purchasing and Compliance Division*.

2. Following the entry of an appearance by an attorney for a party, all notices, pleadings and orders to be served thereafter upon the party must be served upon his or her attorney, and such service is for all purposes considered valid service upon the party represented.

3. Any attorney of record wishing to withdraw from a proceeding before a hearing officer shall, in writing, immediately notify the hearing officer, the party whom he or she represented and any other parties to the proceeding.

[Bd. of Health, License Hearings Rule 4, eff. 6-24-80]—(NAC A by R037-97, 10-30-97)

NAC 439.360 Pleadings. (NRS 439.200)

1. A pleading before the hearing officer must be styled a “petition” or “response.”

2. The hearing officer may, when the substantial rights of the parties are not involved, allow a pleading to be amended or corrected or any omission in it to be supplied.

3. All pleadings will be liberally construed to effect justice between the parties, and the hearing officer may, at every stage of any proceeding, disregard errors or defects in the pleadings or proceedings which do not affect the substantial rights of the parties.

[Bd. of Health, License Hearings Rule 5, eff. 6-24-80]—(NAC A by R037-97, 10-30-97)

NAC 439.370 Motions. (NRS 439.200)

1. All motions, unless made during a hearing, must be in writing.

2. Each written motion must set forth the nature of the relief sought, the grounds for the relief and citations of applicable authority.

3. A party desiring to oppose a motion may serve and file a written response to the motion within 10 days after receiving the motion.

4. The moving party may serve and file a written reply within 5 days after a written response to the motion has been served and filed.

5. A decision on a motion will be rendered without oral argument unless the hearing officer requires an oral argument, and in that event the hearing officer shall set a date and time for hearing the argument.

[Bd. of Health, License Hearings Rule 6, eff. 6-24-80]—(NAC A by R037-97, 10-30-97)

NAC 439.375 Hearings: Preliminary procedure; order of proceedings. (NRS 439.200)

1. The hearing officer shall call the hearing to order, state the appearances of the parties and their respective counsel and act upon any pending motions, stipulations and preliminary matters.

2. All testimony must be under oath administered by the hearing officer. Unless otherwise indicated by the hearing officer, the hearing must proceed in the following manner:

- (a) Opening statement for Division *or the Health Care Purchasing and Compliance Division*;
- (b) Opening statement for appellant;
- (c) Presentation of *the* Division's *or the Health Care Purchasing and Compliance Division* case, followed by cross-examination;
- (d) Responsible presentation by appellant, followed by cross-examination;
- (e) Rebuttal testimony for *the* Division *or the Health Care Purchasing and Compliance Division*;
- (f) Rebuttal testimony for appellant;
- (g) Surrebuttal testimony for *the* Division *or the Health Care Purchasing and Compliance Division*;
- (h) Closing argument for *the* Division *or the Health Care Purchasing and Compliance Division*;
- (i) Closing argument for appellant;
- (j) Rebuttal closing argument for Division *or the Health Care Purchasing and Compliance Division*; and
- (k) Submission of case to the hearing officer.

3. At the conclusion of the hearing, the hearing officer shall take the case under submission and shall notify the parties in writing of his or her findings of fact, conclusions of law and decision in the matter.

[Bd. of Health, Appellate Practice Rule § 3, eff. 4-1-74]—(NAC A by R037-97, 10-30-97)—(Substituted in revision for NAC 439.440)

NAC 439.378 Hearings: Subpoena and examination of witnesses; admission of evidence; continuances; decision of hearing officer; record of proceedings. (NRS 439.200)

1. All requests for an appeal must be addressed to the Administrator of the Division *or the Administrator of the Health Care Purchasing and Compliance Division*.

2. Except as otherwise provided in this subsection, hearings on appeals must be open to the public. Upon the motion of a party, the hearing officer, in his or her discretion, may exclude from the hearing room any witnesses in the matter not at the time under examination except a party or parties to the proceeding or his or her counsel.

3. The hearing officer shall determine the evidence upon the charges and specifications as set forth by the Division *or the Health Care Purchasing and Compliance Division* in its letter of notice of violation describing the nature of the violation and the action taken or to be taken, or as contained in other appropriate

documents, and must not consider any additional evidence beyond the scope of the charges.

4. The technical rules of evidence do not apply. All testimony and exhibits offered must be relevant and bear upon the matter in contention. Any testimony or exhibits considered by the hearing officer as not meeting this criterion may properly be excluded. The hearing officer shall also consider the objection of either side to the introduction of evidence, whether oral testimony or exhibit. Competence and relevance are the primary test in ruling on such objections.

5. The hearing officer shall base his or her decision on the weight of the evidence presented at the hearing. Findings of fact, conclusions of law and decisions must be based on substantial evidence.

6. At the beginning of his or her testimony, each witness who has not previously testified in the hearing shall be required to state his or her name and business, employment or position.

7. Any letter, paper or object offered in evidence must be properly authenticated and, if received, must be marked by the hearing reporter with a distinguishing number or letter, such as "Division's Exhibit 1" or "Licensee's Exhibit A."

8. Testimony may be presented in statement or question and answer form.

9. Good cause appearing, hearings may be continued beyond the period originally scheduled or recessed until a future date agreeable to the hearing officer and the parties.

10. Witnesses may be subpoenaed by either party to the hearing and shall receive the fees and mileage allowed a witness in a civil case.

11. A record of the proceedings must be kept but need not be transcribed unless the decision is appealed or a transcript is requested by an interested party, who shall bear the cost of transcription.

[Bd. of Health, Appellate Practice Rule § 2, eff. 4-1-74]—(NAC A by R037-97, 10-30-97)—(Substituted in revision for NAC 439.430)

NAC 439.380 Hearings: Failure of party to appear; stipulations; continuances; official notice. (NRS 439.200)

1. If a party fails to appear at a hearing scheduled by the hearing officer and no continuance has been granted, the hearing officer may hear the evidence and proceed to consider the matter and dispose of it on the basis of the evidence before the hearing officer. If the subject matter of the hearing is proposed disciplinary action and the appellant fails to appear at the hearing and fails to reply to the notice, the charges specified in the proposed finding are presumed to be true.

2. With the approval of the hearing officer, the parties may stipulate as to any fact at issue, either by a written stipulation introduced in evidence as an exhibit or by oral statements shown upon the record. Any such stipulation is binding upon all parties so stipulating and may be regarded by the hearing officer as evidence at the hearing.

3. The hearing officer may, before or during a hearing, upon a proper showing, grant a continuance for submission of additional proof or other reasonable purpose.

4. In addition to the facts mentioned in subsection 5 of NRS 233B.123, the hearing officer may take official notice of:

(a) Regulations, official reports and decisions and orders of the Board or any other regulatory agency of the State of Nevada.

(b) Contents of certificates and permits issued by the Division *or the Health Care Purchasing and Compliance Division*.

(c) Any provision of the Nevada Revised Statutes.

[Bd. of Health, License Hearings Rule 7, eff. 6-24-80]—(NAC A by R037-97, 10-30-97)

NAC 439.390 Decision by hearing officer. (NRS 439.200)

1. An order or decision with separately stated findings of fact and conclusions of law will be rendered by the hearing officer after the completion of the hearing.

2. A proceeding stands submitted for decision by the hearing officer after the taking of evidence, the filing of briefs or the presentation of such oral or written arguments as may have been allowed by the hearing officer.

[Bd. of Health, License Hearings Rule 8, eff. 6-24-80]—(NAC A by R037-97, 10-30-97)

NAC 439.395 Judicial review of decision made by hearing officer. (NRS 439.200) The decision of a hearing officer made pursuant to the procedures set forth in NAC 439.300 to 439.395, inclusive, is a final decision in a contested case. Any person aggrieved by such a decision is entitled to judicial review of the decision pursuant to NRS 233B.130.

(Added to NAC by Bd. of Health by R037-97, eff. 10-30-97)