

**ADOPTED REGULATION OF THE
STATE BOARD OF PODIATRY**

LCB File No. R193-24

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: § 1, NRS 635.030 and 635.130.

A REGULATION relating to podiatry; eliminating various provisions relating to proceedings before the State Board of Podiatry; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes procedure for contested cases before regulatory bodies that issue occupational licenses, including the State Board of Podiatry. (NRS 233B.121-233B.150, 622A.300-622A.410, 635.159) Such procedure includes requirements governing: (1) the initiation of a contested case; (2) the consolidation of cases; (3) motions; (4) notice of hearings; (5) the effect of failure to appear at a hearing; (6) the order of a hearing; and (7) rehearing and reconsideration of the findings and recommendations or the final decision of the regulatory body. (NRS 233B.121, 622A.300, 622A.350, 622A.360, 622A.380, 622A.390, 635.159) This regulation eliminates duplicative provisions of the Nevada Administrative Code concerning procedure before the Board. This regulation also eliminates authorization for any person to petition the Board to appear at a hearing and be heard on any matter within the jurisdiction of the Board.

Section 1. NAC 635.100, 635.110, 635.120, 635.130, 635.150, 635.160, 635.170, 635.180, 635.190, 635.200, 635.210, 635.220, 635.230, 635.240, 635.250, 635.260, 635.270, 635.280, 635.290 and 635.330 are hereby repealed.

TEXT OF REPEALED SECTIONS

635.100 Appearance by members of Board's staff. (NRS 635.030) The members of the Board's staff may appear at any proceeding and participate as a party.

635.110 Appearance by party to proceeding. (NRS 635.030) A party who has not previously entered an appearance may do so at the beginning of a hearing, or at any time designated by the presiding officer, by giving his or her name and address and stating his or her position or interest to the presiding officer. The information must be entered in the record of the hearing.

635.120 Service of documents; withdrawal of attorney. (NRS 635.030)

1. If a party is represented by an attorney, any document, other than a complaint or a notice of hearing which is required to be served upon any party, must be served upon his or her attorney. Service on the attorney is service upon the party.

2. If a party is not represented by an attorney, service by mail must be made to the last known address of the party.

3. An attorney of record wishing to withdraw from a proceeding before the Board shall, in writing, immediately notify the Board and all parties to the proceeding of his or her withdrawal.

635.130 Error or defect in pleadings or proceedings. (NRS 635.030) The presiding officer shall, at every stage of any proceeding, disregard an error or defect in the pleading or proceeding which does not affect the substantial rights of the parties.

635.150 Complaints: Citations; joinder. (NRS 635.030, 635.130, 635.158)

1. Any statute, regulation or order referred to in a complaint must be accompanied by a complete citation to that statute, regulation or order.
2. Two or more persons filing a complaint with the Board may join in one complaint if their complaints are against the same person and deal substantially with the same violation of chapter 635 of NRS or of a regulation of the Board.

635.160 Decision to proceed with hearing; response to complaint. (NRS 635.030, 635.130, 635.158) If the Board, after reviewing a complaint, decides to proceed with a hearing, it will send a copy of the complaint to each person against whom the complaint is made. A response to the complaint must be filed within 20 days after receipt of the complaint.

635.170 Motions; oral argument. (NRS 635.030)

1. Unless it is made during a hearing, a motion must be made in writing. Each written motion must state the relief sought and the grounds for the motion.
2. A party opposing a motion may file with the Board a written response to it and serve a copy of the response on the party making the motion. The party who made the motion may file with the Board a written reply to the response and serve a copy of the reply on the party making the response.
3. If the Board requires oral argument it will set a date and time for hearing the argument.

635.180 Copies of pleadings, motions or other documents. (NRS 635.030, 635.158)

Except for a complaint, an original and seven legible copies of each pleading, motion or other document related to the proceeding must be filed with the Board. The person filing any pleading or motion with the Board shall make a copy of it available to any other person who the Board determines is affected by the proceeding and who desires a copy.

635.190 Service of documents. (NRS 635.030, 635.158) Except for a complaint and the notice of a hearing, every document required to be served by or upon the Board or other party must be served personally or by mail. Service by mail shall be deemed complete when the document, properly addressed and stamped, is deposited in the United States mail.

635.200 Notice of hearing. (NRS 233B.121, 635.030) Except for the notice of hearing on a complaint, the Board will serve notice of a hearing at least 20 days before the day of the hearing. Any hearing which has been continued may be reconvened after a notice of at least 3 days.

635.210 Failure to appear at hearing. (NRS 635.030)

1. If a party fails to appear at a hearing scheduled by the Board and no continuance has been required or granted, the Board will hear the testimony of the witnesses who have appeared and proceed to consider the matter and dispose of it on the basis of the evidence before it.

2. If a person fails to appear at a hearing or to request a continuance of the hearing, he or she may, within 15 days after the date originally set for the hearing, apply to the Board to reopen the proceedings. If the Board finds sufficient cause, it will set a new time and place for the hearing. Any witness who has previously testified may be required by the Board to appear at the second hearing.

635.220 Commencement of proceedings. (NRS 635.030) The presiding officer shall call the proceeding to order, take the appearances and act upon any pending motions or petitions. The parties may then make opening statements.

635.230 Conduct of parties, counsel and spectators at hearing. (NRS 635.030) At a hearing before the Board, all parties, their counsel and any spectators shall conduct themselves in a respectful manner.

635.240 Order of hearing evidence. (NRS 635.030)

1. In a hearing before the Board, evidence will be heard in the following order:

(a) For an application or petition:

- (1) From the applicant or petitioner.
- (2) From a member of the Board's staff.
- (3) From a party protesting the application or petition.
- (4) Rebuttal by applicant or petitioner.

(b) For a complaint:

- (1) From the complainant.
- (2) From the respondent.
- (3) Rebuttal by complainant.
- (4) Rebuttal by respondent.

2. The presiding officer may:

- (a) Modify the order of presentation for good cause; and
- (b) Allow the parties to make closing statements.

635.250 Consolidation of proceedings. (NRS 635.030) The presiding officer may consolidate two or more proceedings if it appears that the issues are substantially the same and the interests of the parties will not be prejudiced by the consolidation.

635.260 Stipulation. (NRS 635.030) With the approval of the presiding officer, the parties may stipulate to any fact at issue, either by a written stipulation introduced in evidence as an exhibit or by an oral statement shown upon the record. The presiding officer may require proof of the facts to which the parties stipulated.

635.270 Briefs: Time for filing; service upon parties. (NRS 635.030) The Board may request that briefs be filed within a specified time. A brief must be served upon all parties to the proceeding.

635.280 Informal hearing. (NRS 635.030) The Board may hold an informal hearing to mediate a controversy between two licensees or a licensee and a member of the Board's staff.

635.290 Rehearings. (NRS 635.030)

1. Within 15 days after the Board has made a decision or issued an order, a party aggrieved by the decision may apply for a rehearing by filing a written petition setting forth the grounds for the rehearing. The Board will consider this petition within 30 days after receiving it. If no action is taken by the Board within the 30-day period, the petition shall be deemed denied.

2. The Board, on its own motion, may order a rehearing of its decision if its original decision was based on mistake or fraud.

3. The filing of a petition for a rehearing does not relieve the parties from complying with the original decision, unless the Board expressly so provides.

635.330 Petition to appear before the Board. (NRS 635.030, 635.130)

1. Any person may petition the Board to appear and be heard on any matter within the jurisdiction of the Board. The petition must contain a brief summary of the subject matter and the reason for bringing the matter before the Board.

2. Upon receipt of the petition, a member of the Board, as designated by the presiding officer, shall evaluate the petition to determine whether it requires a formal hearing and if a special meeting of the Board must be called for such a hearing.

3. If the petition states a:

(a) Ground for the revocation or suspension of a license or the probation of a licensee, the Board will inform the petitioner of the requirements for filing a formal complaint.

(b) Matter which is not a ground for the revocation or suspension of a license or the probation of a licensee, the matter will be placed on the agenda of the next regularly scheduled meeting.