

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R223-97

January 26, 1998

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

AUTHORITY: §§2-18, NRS 41A.033.

Section 1. Chapter 41A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. *1. A document may be filed with the division for a screening panel by personally delivering the document or mailing it through the United States mail.*

2. Any document filed with the division for a screening panel must be received by the division before the deadline for filing.

3. The division will not file a document for a screening panel which is transmitted by facsimile or which is received after the deadline for filing.

Sec. 3. *If a party to a case pending before the screening panel wishes to change his attorney, he must file a notice of substitution of attorney with the division. The notice of substitution of attorney must include the information in the caption required by NAC 41A.042 and must be in substantially the following form:*

NOTICE OF SUBSTITUTION OF ATTORNEY

.....(Name of attorney to be substituted) is hereby substituted as attorney
for..... (name of claimant or respondent), the.....(claimant or respondent)
in the above-entitled action, in place and instead of(name of attorney of record)

Dated this day of,

.....

Signature of Claimant or Respondent

.....

Name of Claimant or Respondent (Print or type)

I hereby consent to the above substitution.

Dated this day of,

.....

Signature of attorney of record

.....

Name of attorney of record (Print or type)

*I hereby accept the above substitution as attorney for..... (name of claimant or
respondent), the.....(claimant or respondent) in the above-entitled action.*

Dated this day of ,.....

.....

Signature of attorney to be substituted

.....

Name of attorney to be substituted (Print or type)

Sec. 4. *Except as otherwise provided by section 5 of this regulation, if a complaint, answer or response filed with the division pursuant to chapter 41A of NRS or this chapter is served by personal service, it must be accompanied by an affidavit of service that includes the information in the caption required by NAC 41A.042 and is in substantially the following form:*

AFFIDAVIT OF SERVICE

State of}

}ss.

County of}

.....(Name of affiant), being duly sworn says:

- 1. I am a citizen of the United States.*
- 2. I am over 18 years of age and not a party to nor interested in the above-entitled action.*

3. On (date of receipt of pleading), I received a copy of the
.....(complaint, answer or response) for service upon the
..... (claimant or respondent).

4. On (date of service), I served the..... (complaint,
answer or response) upon the (claimant or respondent) by leaving a
copy with (name of person with whom copy of the complaint, answer or
response was left) at (address where complaint, answer or response
was served).

FURTHER, AFFIANT SAYETH NAUGHT.

Dated this day of,

By:

Signature of affiant

.....

Name of affiant (Print or type)

State of.....

County of.....

Signed or attested before me on

..... (day) by

.....

(Name or names of persons)

(Seal, if any)

.....

Signature of notarial officer

.....

Title and rank (optional)

My commission expires (optional):

.....

Sec. 5. *If an answer or response filed with the division pursuant to chapter 41A of NRS or this chapter is served upon an attorney who represents a party in a case pending before the screening panel, it must be accompanied by a receipt of copy that includes the information in the caption required by NAC 41A.042 and is in substantially the following form:*

RECEIPT OF COPY

RECEIPT OF A COPY of the (name of document) is hereby acknowledged this day of,

.....

Signature of attorney

.....
Name of attorney (Print or type)

Sec. 6. *Personal service of a complaint, response or answer upon:*

1. A physician or dentist must be completed by:

(a) Personally delivering a copy of the complaint, response or answer to the physician or dentist;

(b) Leaving a copy of the complaint, response or answer with a person of suitable age and discretion who is present at the principal place of business of the physician or dentist;

(c) Leaving a copy of the complaint, response or answer with a person of suitable age and discretion who resides at the dwelling house or usual place of abode of the physician or dentist;

or

(d) If the physician or dentist is represented by an attorney in the proceedings before the screening panel, by delivering a copy of the complaint, response or answer to the attorney.

2. An employee of a hospital that is licensed pursuant to chapter 449 of NRS or established pursuant to chapter 450 of NRS, other than a physician employed by the hospital, must be completed by:

(a) Personally delivering a copy of the complaint, response or answer to the employee;

(b) Personally delivering a copy of the complaint, response or answer to the chief executive officer of the hospital which employs the employee;

(c) Personally delivering a copy of the complaint, response or answer to the person in charge of directing the defense of claims filed against the hospital which employs the employee;

(d) Leaving a copy of the complaint, response or answer with a person of suitable age and discretion who is present at the office of the chief executive officer of the hospital which employs the employee;

(e) Leaving a copy of the complaint, response or answer with a person of suitable age and discretion who is present at the office of the person in charge of directing the defense of claims filed against the hospital which employs the employee; or

(f) If the employee is represented by an attorney in the proceedings before the screening panel, by delivering a copy of the complaint, response or answer to the attorney.

3. A hospital that is licensed pursuant to chapter 449 of NRS or established pursuant to chapter 450 of NRS must be completed by:

(a) Personally delivering a copy of the complaint, response or answer to the chief executive officer of the hospital;

(b) Personally delivering a copy of the complaint, response or answer to the person in charge of directing the defense of claims filed against the hospital;

(c) Leaving a copy of the complaint, response or answer with a person of suitable age and discretion who is present at the office of the chief executive officer of the hospital;

(d) Leaving a copy of the complaint, response or answer with a person of suitable age and discretion who is present at the office of the person in charge of directing the defense of claims filed against the hospital; or

(e) If the hospital is represented by an attorney in the proceedings before the screening panel, by delivering a copy of the complaint, response or answer to the attorney.

Sec. 7. 1. *If an attorney who represents a party in a case pending before the screening panel wishes to withdraw as attorney of record, he must:*

(a) *File with the division a notice of withdrawal;*

(b) *Serve the notice of withdrawal upon all parties, including the party he represents; and*

(c) *Attach to the notice of withdrawal that is filed pursuant to paragraph (a), proof of service by personal service or by certified or registered mail of a copy of the notice of withdrawal.*

2. *The notice of withdrawal must include, without limitation:*

(a) *The signature of the attorney of record;*

(b) *The current or last known telephone number of the party he represents; and*

(c) *The current or last known address at which that party may be served with notice of further proceedings.*

Sec. 8. NAC 41A.040 is hereby amended to read as follows:

41A.040 1. An original complaint of medical or dental malpractice must be accompanied by : **[the following:]**

(a) Nine copies of the complaint.

(b) A list **[and eight]** *of all documentary evidence being submitted in support of the claim.*

(c) *Ten* copies of all documentary evidence being submitted in support of the claim. **[Each document]** *One of the copies of the documentary evidence being submitted in support of the claim must be attached to the original complaint. Each item of documentary evidence must be paginated and tabbed along the right-hand edge with a designating number or letter. [The claimant must indicate whether he wants the evidence returned to him at the end of the screening panel's proceedings. The request for return of evidence must specify each item of evidence to be returned.*

(c) (d) Proof of service by *personal service or by* certified or registered mail of a copy of the complaint and accompanying documents upon [the respondent.

(d) *each respondent.*

(e) An executed release, not restricted as to records, physicians [,] or dentists, to each respondent or his attorney of all pertinent health care or dental records of the claimant.

(e) (f) A list of the names and addresses of all persons providing medical or dental care to the claimant pertinent to the claim of medical or dental malpractice.

(f) (g) A statement, to the extent known, that each respondent named in the complaint is a physician licensed pursuant to chapter 630 or 633 of NRS, a dentist licensed pursuant to chapter 631 of NRS, a hospital licensed pursuant to chapter 449 of NRS or established pursuant to chapter 450 of NRS, or an employee of such a hospital.

(h) *A list of the respondents whose names and addresses are known to the claimant.*

2. An original answer to a complaint of medical or dental malpractice must be accompanied by:

(a) Seven copies of the answer.

(b) A clear and concise statement of all the facts relied upon in denying the claim of medical or dental malpractice and all the facts in support of any affirmative defense to be asserted. All references to an exhibit must indicate the designating number or letter of the document and number of the page.

(c) A list [and eight copies] of all documentary evidence upon which the respondent relies, other than documentary evidence already provided by the claimant. Each [document] *item of documentary evidence* must be tabbed along the right-hand edge with a designating number or letter and paginated. [The respondent must indicate whether he wants the evidence returned to

him at the end of the screening panel's proceedings. The request for return of evidence must specify each item of evidence to be returned.]

(d) *Eight copies of all of the documentary evidence being submitted in support of the answer. One of the copies of the documentary evidence being submitted in support of the answer must be attached to the original answer.*

(e) Proof of service by *personal service or by* certified or registered mail of a copy of the answer upon the claimant or his attorney [.] *and each other respondent or his attorney.*

3. An original response to an answer to a complaint of medical or dental malpractice must be accompanied by:

(a) Seven copies of the response.

(b) A list [**and seven copies**] of all documentary evidence submitted in support of the response. Each [**document**] *item of documentary evidence* must be tabbed along the right-hand edge with a designating number or letter and paginated.

(c) *Eight copies of all of the documentary evidence being submitted in support of the response. One of the copies of the documentary evidence being submitted in support of the response must be attached to the original response.*

(d) Proof of service [**by certified or registered mail**] of a copy of the response and accompanying documents upon [**the respondent.**] *each respondent by personal service or by certified or registered mail.*

4. *The following statement must be printed on a separate sheet of paper and affixed to the top page or cover of the original complaint and each copy of the complaint:*

NOTICE:

Medical Dental Screening Panel

Department of Business and Industry

Division of Insurance

2501 E. Sahara Ave. #302

Las Vegas, Nevada 89104

(702) 486-4390

(702) 486-4060

A complaint of malpractice naming you as a respondent is being submitted to the division of insurance of the department of business and industry. Pursuant to subsection 3 of NRS 41A.039, the person against whom a complaint is filed must, within 90 days after receipt of the complaint, file an answer with the Division of Insurance of the Department of Business and Industry, accompanied by a fee of \$350. For the answer to be filed before the filing deadline, it must be received by the division before that date. Depositing an answer in the United States mail does not constitute filing the answer.

You should immediately contact your insurer or an attorney concerning this claim. Pursuant to paragraph (b) of subsection 9 of NAC 41A.040, if an answer is not timely filed, the screening panel will proceed to make its findings based only upon the information submitted by the claimant.

The statement must be single-spaced and printed in not less than 12-point boldfaced type on a sheet of paper that measures 8 1/2 by 11 inches. The statement must be printed across the 8 1/2-inch width of the paper.

5. The following statement must be printed on a separate sheet of paper and affixed to the top page or cover of the original response and each copy of the response:

NOTICE: Pursuant to subsection [4] 5 of NRS 41A.039, the panel shall disregard any portion of the response that does not address an allegation raised in the answer or an affidavit accompanying the answer.

The statement must be [double-spaced on a 5 1/2 inch by 8 1/2-inch sheet of white paper] printed in not less than [10-point type.] 12-point boldfaced type on a sheet of paper that measures 8 1/2 by 11 inches. The statement must be printed across the 8 1/2-inch width of the paper.

[5.] 6. *The claimant or respondent may submit a request to have any documentary evidence submitted with his complaint, answer or response returned to him at the end of the proceedings of the screening panel, except for the original complaint, original answer, original response, if any, and the copies of the original complaint, original answer and original response that were reviewed by the members of the screening panel and the copies of the original complaint that were submitted pursuant to NRS 41A.049 to the board of medical examiners and the county medical society of the county in which the alleged malpractice occurred. Any such request for the return of evidence must specify each item of evidence to be returned. If such a request is submitted, the division will return the specified item of evidence at the end of the proceedings. If no such request is made with respect to any of the evidence, the division will destroy the evidence at the end of the proceedings.*

7. The division will not accept a supplement to a complaint, answer [,] or response.

[6.] 8. A general denial by the respondent must be accompanied by a clear and concise statement of the facts upon which he relies.

[7.] 9. If the respondent does not timely file his answer with the division and he has not been dismissed from the case:

(a) The respondent [shall pay the fee of \$350 required by subsection 3 of NRS 41A.039 before the conference is held pursuant to subsection 1 of NRS 41A.043, and if a respondent fails to pay the fee, the commissioner of insurance may refer the matter of the nonpayment of the fee to the attorney general for the collection of the fee and any costs involved; and] *is not entitled to participate in the conference held pursuant to subsection 1 of NRS 41A.043; and*

(b) The screening panel shall proceed to make its findings based upon the information submitted by the claimant and all the other respondents who have timely filed an answer to the complaint and have not been dismissed from the case.

[8.] 10. The complaint and answer must be verified. The complaint must be authenticated by a notary public.

[9.] *The verifications in the original complaint and the original answer must include the original signatures of the claimant or respondent.*

11. The original complaint, answer [,] and response and one copy of all accompanying material will be retained by the division for 7 years after the date on which the case is closed.

[10.] 12. Proof of service *by certified or registered mail* must include the number of the receipt for certified or registered mail and the original or a copy of the receipt issued by the United States [Post Office] *Postal Service* that includes the signature of the person who accepted service and the date the service was accepted.

[11.] 13. The original and each copy of the complaint, answer [,] or response and attached documentary evidence or other papers submitted to the division with the complaint, answer [,] or response and served upon the [opposing party] *claimant and respondent* or his attorney must be firmly bound [,] *together in a single binding*. For the purposes of this subsection, firmly bound does not include fastening by stapling only , and material which is bound only by staples will not be accepted by the division.

[12.] 14. If the original and copies of the pleadings are submitted to the division or served upon the [opposing party] *claimant and respondent* or his attorney with covers:

- (a) The color of the covers of all of the pleadings must be white; or
- (b) The color of the cover of the:
 - (1) Complaint must be blue;
 - (2) Answer must be red; and
 - (3) Response must be gray.

Sec. 9. NAC 41A.042 is hereby amended to read as follows:

41A.042 1. A complaint, answer, response, [or other] pleading *and any other document* filed with the division pursuant to chapter 41A of NRS [and] *or* this chapter must include the following information in the caption in substantially the same form:

[1.] (a) If the document is for the northern medical screening panel:

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE
NORTHERN MEDICAL SCREENING PANEL

[2.] (b) If the document is for the southern medical screening panel:

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE
SOUTHERN MEDICAL SCREENING PANEL

[3.] (c) If the document is for the northern dental screening panel:

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE
NORTHERN DENTAL SCREENING PANEL

[4.] (d) If the document is for the southern dental screening panel:

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE
SOUTHERN DENTAL SCREENING PANEL

2. In addition to the requirements set forth in subsection 1, each document filed with the division pursuant to chapter 41A of NRS or this chapter must include a caption in substantially the following form:

.....(name of claimant), CLAIMANT

.....(name of respondent), RESPONDENT

Sec. 10. NAC 41A.050 is hereby amended to read as follows:

41A.050 A party, in his complaint or answer:

1. May include any material or document he believes will assist the screening panel in its deliberations.

2. May submit an affidavit which contains a written opinion of an expert on the issue of the appropriate standard of care and any breach or adherence to this standard which should or should not be considered malpractice. In addition to the conclusion on the existence of malpractice, the affidavit must contain the rationale which is the basis for the conclusion and cite specific portions of the medical or dental record supporting the conclusion. A biographical statement, outlining the [expert's] qualifications *of the expert* must also be submitted.

[3. Must list the name of any expert witness upon whose opinion he relies and offer the services of that expert witness to the screening panel.] *The biographical statement may be included as part of the affidavit. An affidavit submitted pursuant to this section must be signed by the expert under penalty of perjury or subscribed before a notary public.*

Sec. 11. NAC 41A.060 is hereby amended to read as follows:

41A.060 1. A respondent may, at the time he files his answer, file a cross-claim against another person named in the original complaint or a person not named in the original complaint.

2. All claims or allegations of medical or dental malpractice arising out of the transaction or occurrence which is the subject of a complaint of medical or dental malpractice or any subsequent cross-claim will be consolidated and presented to the same screening panel. The

panel shall make separate findings as to each person against whom a complaint or cross-claim is filed.

3. A cross-claim must be filed in the same manner as an original complaint of medical or dental malpractice.

4. A respondent who wishes to file a cross-claim may request that a claimant submit to him an executed release of health care or dental records in the name of each cross-respondent who was not named in the original complaint.

5. A claimant shall submit to the respondent those executed releases requested pursuant to subsection 4 if the respondent provides the claimant with a list of names of the cross-respondents who were not named in the original complaint.

Sec. 12. NAC 41A.065 is hereby amended to read as follows:

41A.065 [Any]

1. An attorney who files a complaint, answer [,] or response with the division must be licensed to practice in this state. Upon application, an exception to this requirement will be made:

[1.] (a) If the attorney can demonstrate his legal representation on 10 or more medical or dental malpractice cases filed with the division; and

[2.] (b) Upon approval by the commissioner of insurance.

2. An attorney who participates in the conference held pursuant to subsection 1 of NRS 41A.043 must be licensed to practice in this state.

Sec. 13. NAC 41A.070 is hereby amended to read as follows:

41A.070 [Any] *In addition to the requirements set forth in NAC 41A.040 for proof of service of a complaint, answer or response and accompanying documents, any other* written

communication concerning a complaint of medical or dental malpractice filed pursuant to the provisions of NAC 41A.040 [,] must be served upon all parties and the division. *Such documents may be served by personal service or by regular, certified or registered mail. If the document is served by personal service, it must be completed in the manner provided in section 6 of this regulation.* Proof of service must be attached to the communication.

Sec. 14. NAC 41A.082 is hereby amended to read as follows:

41A.082 *1.* The form for the release of health care or dental records pursuant to paragraph [(d)] (e) of subsection 1 of NAC 41A.040 must be authenticated by a notary public and be in substantially the following form:

[1.] (a) For a complaint of medical malpractice:

RELEASE OF HEALTH CARE RECORDS

TO: (Custodian of health care records)

RE:

Health care records of (name of claimant)

Date of birth.....

Social security number

You are hereby authorized and directed to deliver or furnish to.....(name of respondent) or his attorney, at his expense, copies of any health care records of.....(name of claimant). This release includes, but is not limited to, written medical information, medical reports, X-rays, C-Scans, films, hospital charts, notes, orders

or other records of the hospital or physician, records of treatment, copies of prescriptions, medical or hospital bills, tests and any other records concerning the past, present or future physical condition of the claimant.

This release is made only for review of the health care records by the screening panel and is not a waiver of the claimant's privilege of confidentiality concerning the content of those records for any other purpose.

.....

(Signature of claimant)

.....

Name of claimant (Print or type)

State of.....

County of.....

Signed or attested before me on

..... (day) by

.....

(name or names of persons)

(Seal, if any)

.....

Signature of notarial officer

.....

Title and rank (optional)

My commission expires (optional):

.....

[2.] (b) For a complaint of dental malpractice:

RELEASE OF DENTAL RECORDS

TO: (Custodian of records)

RE:

Dental records of..... (name of claimant)

Date of birth.....

Social security number

You are hereby authorized and directed to deliver or furnish to.....(name of respondent) or his attorney, at his expense, copies of any health care or dental records

of.....(name of claimant). This release includes, but is not limited to, written medical information; medical or dental reports; X-rays; C-Scans; films; hospital charts; notes, orders or other records of the hospital, physician or dentist; records of treatment; copies of prescriptions; medical, dental or hospital bills; tests and any other records concerning the past, present or future physical condition of the claimant.

This release is made only for review of the health care and dental records by the screening panel and is not a waiver of the claimant’s privilege of confidentiality concerning the content of those records for any other purpose.

.....
(Signature of claimant)

.....
Name of claimant (Print or type)

State of.....

County of.....

Signed or attested before me on

..... (day) by

.....

(name or names of persons)

(Seal, if any)

.....

Signature of notarial officer

.....

Title and rank (optional)

My commission expires (optional):

.....

2. A copy of an executed release of health care or dental records that is filed with the division pursuant to paragraph (e) of subsection 1 of NAC 41A.040 will be given the same force and effect as an original executed release.

Sec. 15. NAC 41A.088 is hereby amended to read as follows:

41A.088 A stipulation filed with the division for an extension of time within which to file an answer or a response must state the date the document is due, *must include the signature of each party or his attorney* and must be accompanied by an order for the signature of the commissioner of insurance or his designee. *The division may accept a stipulation for an extension of time after the date on which the answer or response is due.* The order must be *on a*

separate page, must include the information in the caption required by NAC 41A.042 and must be in substantially the following form:

[Case Caption

Case No.]

APPROVAL OF STIPULATION FOR AN EXTENSION OF TIME

Pursuant to the stipulation signed by all the parties in this case,(name of the claimant or respondent) has to and including (exact due date of pleading), to file his (answer or response) with the division.

Dated this day of, [19].....

By:.....

Medical/Dental Screening Panel

Sec. 16. NAC 41A.091 is hereby amended to read as follows:

41A.091 [1. A motion for an extension of time to file an answer or response must:

- (a) Be filed on or before the date the answer or response is due;
- (b) Specify the date the party received service of the complaint or answer, and the number of days requested for the extension of time; and
- (c) Be accompanied by an affidavit setting forth good cause for the specific number of days requested.

2. **A motion]** *A request* for the continuance of a conference held pursuant to subsection 1 of NRS 41A.043 must be [:

(a) Submitted to the division in writing not less than 4 days before the date scheduled for the conference; or

(b) Arranged through a conference by telephone with the division and all other parties to the proceeding not less than 1 day before the date scheduled for the conference.] *submitted to the division, in writing or by telephone, at least 2 business days before the date scheduled for the conference. The party requesting the continuance must:*

1. *Contact each party to the conference;*
2. *Obtain the agreement of each party to a new date and time for the conference; and*
3. *Confirm in writing the new date and time scheduled for the conference with each party and the division.*

Sec. 17. NAC 41A.100 is hereby amended to read as follows:

41A.100 The division will notify each party in a claim of medical or dental malpractice of the findings of the screening panel within 10 *business* days after the panel renders its findings.

Sec. 18. NAC 41A.111 is hereby amended to read as follows:

41A.111 1. The provisions of Supreme Court Rules 43 [to 48, inclusive,], 44, 45 and 47, in effect on March 1, 1986, apply to the representation of a party before a screening panel and are hereby adopted by reference.

2. Rule 6(a) of the Nevada Rules of Civil Procedure, in effect on March 16, 1964, applies to the computation of the periods prescribed pursuant to [NRS 41A.033 and chapter 41A of NAC.] *this chapter.*

3. Rule 6(e) of the Nevada Rules of Civil Procedure, in effect on March 1, 1986, applies to the computation of additional time after service by mail and is hereby adopted by reference.

4. Copies of the rules adopted in this section may be obtained from the [Clerk of the Supreme Court, Supreme Court Building, Carson City, Nevada 89710, for the price of \$10.] *Publications Unit of the Legislative Counsel Bureau in the Legislative Building, 401 South Carson Street, Carson City, Nevada 89710, for the price of \$30.80.*