

LCB File No. R057-02

**PROPOSED REGULATION OF THE
STATE BOARD OF OSTEOPATHIC MEDICINE**

PROPOSED AMENDMENTS TO NAC 633

Section 1. NAC 633.150 is hereby repealed. ~~[Mailing address. The mailing address of the state board of osteopathic medicine is the professional office of the executive director of the board as listed in the current directory of the American Osteopathic Association.]~~

Sec. 2. NAC 633.160 is hereby amended to read as follows:

NAC 633.160 1. Each applicant for a license to practice osteopathic medicine must apply for examination on forms prepared and furnished by the board, *accompanied by an affidavit stating that:*

(a) The applicant is the person named in the proof of graduation and that it was obtained without fraud or misrepresentation or any mistake of which the applicant is aware; and

(b) The information contained in the application and any accompanying material is complete and correct.

2. Any grounds for disciplinary action are grounds for denial of licensure. The board may require such further evidence of the mental, physical, medical or other qualifications of the applicant, as it considers necessary.

3. The applicant bears the burden of proving and documenting his qualifications for licensure.

4. ~~[2.]~~ No application will be accepted unless it is accompanied by the appropriate fee prescribed in NRS 633.501. All fees are nonrefundable.

Sec. 3. NAC 633.250 is hereby amended to read as follows:

1. Each licensee applying for renewal of his certificate shall furnish the board proof that he has attended during the preceding year at least 35 hours of continuing education courses or programs approved by the board, or its equivalent, *10 hours of which must be Category IA courses as that term is defined by the American Osteopathic Association.*

2. For the purposes of this section, "equivalent" means:

(a) Attendance at any annual educational program sponsored and conducted by any other state association of osteopathic physicians;

(b) Attendance at any annual educational program conducted by the American Osteopathic Association; or

(c) Enrollment and attendance at any postgraduate course approved and recognized by the American Osteopathic Association or its affiliates.

Sec. 4. NAC 633.270 is hereby amended to read as follows:

633.270 1. If ~~[the board determines it is appropriate to deny an applicant a license, it]~~ *there are any deficiencies, contradictions or discrepancies in the application or information disclosed in the application which would be grounds for disciplinary action, the board* will send written notice to the applicant at least ~~[20]~~ *21* days before the meeting or hearing at which the ~~[formal order of denial is proposed to]~~ *application will* be considered *by the board*. The

notice will be given by certified or registered mail, postage prepaid and will be addressed to the last address furnished by the applicant. *The board will identify the deficiency, discrepancy or other information that would be grounds for disciplinary action in the notice. At the hearing, the applicant shall be given an opportunity to respond thereto.*

2. If the basis for a proposed denial is the failure of an applicant to pass an examination, the board will consider only the applicant's performance on the examination.

3. If the basis for a proposed denial is the failure of an applicant to fulfill any of the requirements of NAC 633.160 to 633.210, inclusive, the only proper matter to be considered by the board at the time the formal order of denial is made is whether the applicant has failed to fulfill the requirements.

4. If the basis for a proposed denial is any of the grounds for disciplinary action set forth in NRS 633.511, an application may be denied only after:

- (a) Notice to the applicant specifying the precise grounds upon which denial is proposed; and
- (b) A hearing before the board.

Sec. 5. NAC 633.280 is hereby amended to read as follows:

633.280 1. All contested hearings will be held before three or more members of the board.

~~[2. In contested hearings to deny, limit, suspend or revoke a license on an alleged ground set forth in NRS 633.511, the board's counsel shall present the evidence in support of the allegation.]~~

2. The president, or his designee, shall preside over the hearing.

3. The investigating board member may not participate with the board in rendering a decision in the contested case

~~[3.]~~ 4. An electronic or stenographic record will be made of all contested hearings before the board. Any party in interest may make a stenographic record at his own expense.

~~[4. Formal orders of the board will be made in writing and filed with the secretary/treasurer within a reasonable time after every contested hearing. A copy of each order will be mailed by certified or registered mail to every party in interest present at the hearing at the address to which the notice of the hearing was sent.]~~

Chapter 633 of NAC is hereby amended by adding thereto provisions set forth as sections 5 to 13 to read as follows:

Sec. 6 *Hearings; Conduct of hearing.*

The president, or presiding officer, may issue rulings on all preliminary matters, scheduling matters, protective orders, the admissibility of evidence, and other procedural or prehearing matters that are not dispositive of the case or any portion thereof. The president's rulings are subject to consideration by the entire board upon the request of any board member, or upon motion of a party or person affected by the ruling. The failure of such party or person to move for such consideration shall not be deemed to be consent to the ruling, nor waiver of any objections previously made regarding the ruling, for the purpose of judicial review.

Sec. 7 *Hearings; Order of Proceeding.*

1. Any member of the board may ask questions of witnesses, and may request or allow additional evidence at any time, including additional rebuttal evidence or documentary evidence.

2. The president or presiding member of the board will call the hearing to order and proceed to take the appearances on behalf of the board, the licensee, any other party and their counsel.

3. The notice of hearing, complaint, petition, answer, response or written stipulation becomes a part of the record without being read unless a party requests such reading.

4. The board's counsel will present its evidence first, and then the licensee will submit his evidence. The board may allow closing arguments.

5. The board may request closing briefs to be submitted by the time set by the board.

Sec. 8 Hearings; Representation.

1. Parties to disciplinary proceedings may appear personally or through an attorney, except that the parties must personally attend any hearing on the merits unless the President, or presiding officer has waived such attendance.

2. When a party has appeared through an attorney, service of all notices, motions, orders, decisions, and other papers shall thereafter be made upon the attorney. When a party is represented by an attorney, the attorney shall sign all motions, oppositions, notices, requests, and other papers on behalf of the party, including requests for subpoenas.

3. Out of state attorneys in good standing in the jurisdiction where they are licensed, who have not been disciplined in Nevada, may represent a respondent if the attorney declares in writing under penalty of perjury that such facts are true and correct.

Sec. 9 Hearings; Procedure

Parties shall, no later than 10 days prior to the hearing, meet and:

(a) exchange copies of all documents then reasonably available to a party which are then intended to be offered as evidence in support of the party's case in chief; (b) identify, describe, or produce all tangible things, other than documents, then reasonably available to a party which are then intended to be offered as evidence in support of the party's case in chief, and upon request, arrange for the opposing parties to inspect, copy, test, or sample the same under the supervision of the parties; and

(c) exchange written lists of persons each party then intends to call as a witness in support of that party's case in chief. Each witness shall be identified by name, if known, position, business address, and a summary of the proposed testimony and the purpose for which the witness will be called. If no business address is available, the party shall provide a home address for the witness, or shall make the witness available for service of process.

Sec. 10 Hearings; Failure of Party to Appear.

Failure of a respondent to appear personally at a hearing on the merits without having obtained a waiver of appearance from the President or designated presiding officer, shall constitute an admission of all matters and facts contained in the complaint filed with respect to such respondent, and shall be deemed a waiver of the right to an evidentiary hearing. In such cases the board may take action based upon such admission or upon any other evidence, including affidavits, and without any further notices whatever to respondent.

Sec. 11 Hearings; Decision of Board

1. A decision or order adverse to a party must be in writing and include findings of fact and conclusions of law. The decision must be supported by substantial evidence presented at the hearing.

2. Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion. Substantial evidence need not be voluminous.

3. Without in any manner limiting the authority granted to impose the type of discipline it may deem appropriate, the board finds that the following factors, may be taken into consideration when determining the action to be taken pursuant to NRS 633.651:

(a) Any danger to the health or safety of the public resulting from the violation(s);

(b) Any economic benefit received by the respondent as a result of the violation(s);

(c) Any mitigation or aggravation by the respondent of the effects of the violation(s);

(d) The extent to which the respondent demonstrates his good faith;

(e) Any previous history of violations by the respondent;

(f) Whether the respondent knew or reasonably should have known as a competent osteopathic physician that the action complained of was a violation of any law, regulation, or condition on the respondent's license;

(g) Whether the respondent has initiated remedial measures to prevent similar violations;

(h) The magnitude of penalties imposed on other licensees for similar violations;

(i) The proportionality of the penalty in relation to the misconduct;

(j) Any mitigating factors offered by the respondent;

(k) Any other factors the board in its sole and absolute discretion may deem relevant.

4. If the board, after a formal hearing, determines that substantial evidence supports a violation of the provisions of this chapter or of the regulations of the board has occurred, it shall issue and serve on the physician its written order containing its findings and any sanctions.

5. If the board determines that no violation has occurred, it shall dismiss the charges, in writing, and notify the physician that the charges have been dismissed.

6. Except as otherwise provided in subsection 4, if the board finds that a violation has occurred, it may by order:

(a) Place the person on probation for a specified period on any of the conditions specified in the order;

(b) Administer to him a public reprimand;

(c) Limit his practice or exclude one or more specified branches of medicine from his practice;

(d) Suspend his license for a specified period or until further order of the board;

(e) Revoke his license to practice medicine;

(f) Require him to participate in a program to correct alcohol or drug dependence or any other impairment as approved by the board;

(g) Require supervision of his practice at his expense as approved by the board;

(h) Require him to perform public service without compensation as approved by the board;

(i) Require him to take a physical or mental examination or an examination testing his competence as approved by the board;

(j) Require him to fulfill certain training or educational requirements as approved by the board; and

(k) Require him to pay all costs incurred by the board relating to his disciplinary proceedings.

8. Any person aggrieved by a final order of the board is entitled to judicial review of the board's order.

9. Every order of the board, which limits the practice of medicine or suspends or revokes a license, is effective from the date the executive director serves the order upon respondent until the date the order is modified or reversed by a final judgment of the court.

Sec. 12 Unprofessional Conduct:

For the purposes of NRS 633.131, unprofessional conduct also includes the following:

(a) advertising of the practice of osteopathic medicine in a manner which is false or intended or has a tendency to deceive or mislead the public or create unrealistic expectations in particular cases even though no member of the public is actually harmed thereby;

(b) engaging in sexual misconduct or sexual contact with a patient;

(c) abandonment of a patient;

(d) willfully making and filing false reports, records or claims in the licensee's practice;

(e) willfully omitting to file or record or willfully impeding or obstructing a filing or recording, or inducing another person to omit to file or record medical reports required by law;

(f) failure to maintain medical records relating to diagnosis, treatment and care of patient;

(g) Excessive prescription of controlled substances;

(h) failure to comply with an agreement with a diversion program approved by the board;

(i) conduct which evidences unfitness to practice osteopathic medicine;

(j) failure to comply with an order of the board.

Sec. 13 Professional incompetence:

For the purposes of NRS 633.151, professional incompetence includes the failure to be found competent to practice medicine as a result of an examination to determine medical or mental or physical competency.

Sec. 14 Removal of limitation on license:

1. Any person whose practice of medicine has been limited or whose license to practice medicine has been suspended until further order of the board may apply to the board for removal of the limitation.

2. In hearing the application, the board:

(a) May require the person to submit to a mental or physical examination or an examination testing his competence to practice medicine by physicians or other examinations it designates and submit such other evidence of changed conditions and of fitness as it deems proper;

(b) Shall determine whether under all the circumstances the time of the application is reasonable; and

(c) May deny the application or modify or rescind its order as it deems the evidence and the public safety warrants.

3. The licensee has the burden of proving by clear and convincing evidence that the requirements for removal of the limitation have been met.

4. The board shall not remove a limitation on a license unless it is satisfied that the person has complied with all of the terms and conditions set forth in the final order of the board and that the person is capable of practicing medicine in a safe manner.

Sec. 15 Application for licensure by revoked licensee:

1. Any person whose license to practice medicine has been revoked by an order of the board may apply to the board for licensure.

2. The applicant must apply for a license as though he had never been licensed under this chapter.

3. In hearing the application, the board:

(a) May require the person to submit to a mental or physical examination or an examination testing his competence to practice medicine by physicians or other examinations it designates and submit such other evidence of changed conditions and of fitness as it deems proper;

(b) Shall determine whether under all the circumstances the time of the application is reasonable; and

(c) May deny the application or modify or rescind its order as it deems the evidence and the public safety warrants.

4. The applicant has the burden of proving by clear and convincing evidence that the requirements for licensure have been met.

5. The board shall not grant a license unless it is satisfied that the person has complied with all of the terms and conditions set forth in the final order of the board and that the person is capable of practicing medicine in a safe manner.

Sec. 16 Summary Suspension:

1. The board may issue an emergency order of suspension of a license or physician assistant's certificate only when it reasonably believes that:

(a) There has been a violation of a provision of NRS chapter 633 or NAC 633;

(b) Such action is necessary to prevent a further violation of NRS chapter 633 or NAC 633; and

(c) Such action is necessary for the immediate protection of the public health, safety or general welfare.

2. A complaint must be filed with the request for an emergency order of suspension.

3. The emergency order must set forth the grounds upon which it is issued, including a statement of facts constituting the alleged emergency necessitating such action.

4. The emergency order is effective immediately upon issuance and service upon the licensee or physician assistant with the complaint.

5. The emergency order of suspension remains effective until further order of the board or final disposition of the complaint.

6. A hearing on the complaint must be held within 60 days from the effective date of the suspension.

Sec. 17. Renewal of suspended license:

1. If a licensee's license is suspended by action of the board, the licensee must keep current the suspended license by properly renewing the license when necessary and paying all necessary fees and complying with all continuing medical education requirements. Failure to

properly renew a suspended license will result in the automatic revocation of the license upon the expiration of period of suspension pursuant to NRS633.481.