

PROPOSED REGULATION OF THE STATE
BOARD OF OSTEOPATHIC MEDICINE

LCB File No. R057-02

May 17, 2002

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

AUTHORITY: §§1-6 and 9-25, NRS 633.291; §§7 and 8, NRS 633.131 and 633.291.

Section 1. Chapter 633 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 633.020 and sections 3 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Applicant” means a person who applies for a license to practice osteopathic medicine pursuant to chapter 633 of NRS.*

Sec. 4. *“Contested case” has the meaning ascribed to it in NRS 233B.032.*

Sec. 5. *“Licensee” means a person licensed to practice osteopathic medicine pursuant to chapter 633 of NRS.*

Sec. 6. *“Party” has the meaning ascribed to it in NRS 233B.035.*

Sec. 7. *For the purposes of this chapter and chapter 633 of NRS, a licensee engages in unethical conduct if he:*

- 1. Engages in sexual misconduct or sexual contact with a patient;*
- 2. Abandons a patient;*
- 3. Willfully makes and files false reports, records or claims in the licensee’s practice;*

4. Willfully fails to file or record a medical report required by law, willfully impedes or obstructs the filing or recording of such a report, or willfully induces another person to fail to file or record such a report;

5. Fails to maintain medical records relating to the diagnosis, treatment and care of a patient;

6. Prescribes a controlled substance in a manner or an amount that the board determines is excessive;

7. Fails to comply with the terms of an agreement with a diversion program approved by the board;

8. Fails to comply with an order of the board; or

9. Engages in any other conduct that the board determines constitutes unfitness to practice osteopathic medicine.

Sec. 8. 1. *A licensee shall not advertise the practice of osteopathic medicine in a manner that is:*

(a) False; or

(b) Intended or has a tendency to:

(1) Deceive or mislead the public; or

(2) Create unrealistic expectations in any particular case.

2. Proof of actual injury is not necessary to establish a violation of subsection 1.

Sec. 9. *For the purposes of this chapter and chapter 633 of NRS, if a mental or physical examination or a medical competency examination determines that a licensee is not competent to practice osteopathic medicine with reasonable skill and safety to patients, the board will*

consider that determination to constitute a rebuttable presumption of professional incompetence with regard to the licensee.

Sec. 10. *A license that the board has suspended will be revoked pursuant to NRS 633.481 if:*

- 1. The license expires during the period of suspension; and*
- 2. The licensee fails to renew the license as set forth in NRS 633.471.*

Sec. 11. *1. The president or the officer designated to preside over a hearing may issue rulings on all preliminary matters, including, without limitation, scheduling matters, protective orders, the admissibility of evidence, and other procedural or prehearing matters.*

2. A ruling on a preliminary matter is subject to reconsideration by the entire board upon the request of a board member or the motion of a party.

3. The failure of a party who is affected by a ruling on a preliminary matter to move for reconsideration of the ruling does not constitute:

- (a) Consent to the ruling; or*
- (b) Waiver of any objection previously made to the ruling.*

4. For the purposes of this section, a matter is preliminary if it is not dispositive of a contested case or a substantive issue therein.

Sec. 12. *1. Except as otherwise provided in subsection 2, a party may appear at a hearing in person or by an attorney.*

2. A party shall attend a hearing on the merits in person unless the president or presiding officer waives the requirement of the attendance of the party.

3. If a party who is required to attend a hearing in person fails to do so without having obtained a waiver of the requirement of his attendance pursuant to subsection 2, the board may:

(a) Determine that his failure to attend the hearing in person shall be deemed:

(1) An admission of all matters and facts contained in the record with respect to the party; and

(2) A waiver of the right to an evidentiary hearing; and

(b) Take action based upon such admission or upon any other evidence, including affidavits, without any further notice or a hearing.

4. If a party retains an attorney to represent him before the board, the attorney shall so notify the board not later than 10 days after he is retained. Thereafter:

(a) The attorney shall sign all motions, oppositions, notices, requests, and other papers, including requests for subpoenas; and

(b) The board will serve all notices, motions, orders, decisions, and any other papers or pleadings upon the attorney.

5. An attorney who is not a member of the State Bar of Nevada may represent a party before the board if the attorney is otherwise authorized to practice law in this state pursuant to the rules of the supreme court.

Sec. 13. 1. *The parties to a disciplinary proceeding shall meet, not later than 10 days before the hearing, and:*

(a) Exchange copies of all documents that each party intends to offer as evidence in support of its case.

(b) Identify, describe or produce all tangible things, other than documents, that each party intends to offer as evidence in support of its case and, if requested, arrange for the opposing party to inspect, copy, test or sample such evidence under reasonable supervision.

(c) Exchange written lists of persons that each party intends to call as witnesses in support of its case. The list must identify each witness by name and position and, if known, business address. If no business address is available, the party intending to call the witness shall disclose the home address of the witness or make the witness available for service of process. The list must also include, for each witness, a summary of the proposed testimony and the purpose for which the witness will be called.

2. As used in this section, “parties to a disciplinary proceeding” includes:

(a) A licensee who has been served with a formal complaint alleging a disciplinary violation pursuant to NRS 633.541;

(b) The attorney, if any, representing the licensee; and

(c) The legal counsel for the board.

Sec. 14. 1. *The president or presiding officer will call the hearing to order and proceed to take the appearances on behalf of the board, the applicant or licensee.*

2. The notice of hearing, any petition, answer, response or written stipulation, and, if the hearing concerns a disciplinary proceeding, the complaint or any other responsive pleading, becomes a part of the record without being read into the record, unless a party requests that the document be read into the record.

3. The legal counsel for the board will present the evidence for the board first and, if the board allows closing arguments, will present the closing arguments for the board last.

4. A member of the board may, at any time:

(a) Question a witness; and

(b) Request or allow additional evidence, including additional rebuttal or documentary evidence.

5. If the board allows closing briefs to be submitted, the board will establish a time for the submission of the closing briefs.

Sec. 15. *If the board, after a hearing on the merits in a disciplinary proceeding, finds that the licensee is:*

1. Not guilty as charged in the formal complaint, the board will issue a final order dismissing the charges and notify the licensee that the charges have been dismissed.

2. Guilty as charged in the formal complaint, the board will:

(a) Before agreeing on a punishment, consider all relevant factors, including, without limitation:

(1) The danger to the health or safety of the public from the violation;

(2) The economic benefit received by the licensee from the violation;

(3) Any mitigation or aggravation by the licensee of the effects of the violation;

(4) The extent to which the licensee demonstrates his good faith;

(5) Any previous history of violations by the licensee;

(6) Whether the licensee knew or, as a competent osteopathic physician, should have known that the action complained of violated a law, a regulation or a condition on his license;

(7) Whether the licensee has initiated remedial measures to prevent similar violations;

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

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

(10) If the licensee offered evidence of mitigating factors, all such evidence.

(b) Agree on punishment that may, in addition to any sanction authorized pursuant to subsection 2 of NRS 633.651, require the licensee to:

(1) Participate in a program, approved by the board, to correct alcohol or drug dependence or any other impairment;

(2) Practice only under supervision approved by the board and paid for by the licensee;

(3) Perform public service approved by the board without compensation;

(4) Submit to a physical or mental examination or a medical competency examination for the purposes of determining his fitness to practice osteopathic medicine with reasonable skill and safety to patients;

(5) Fulfill certain training or educational requirements approved by the board; and

(6) Pay all costs incurred by the board relating to his disciplinary proceedings.

(c) Issue and serve on the licensee its final order.

Sec. 16. 1. *A decision or order in a disciplinary proceeding adverse to a licensee must:*

(a) Be in writing;

(b) Except as otherwise provided in subsection 5 of NRS 233B.121, include findings of fact and conclusions of law; and

(c) Specifically set forth the punishment imposed on the licensee.

2. *Except as otherwise provided in NRS 633.671, an order of the board is effective upon being served on the licensee.*

Sec. 17. 1. *If a person whose practice of osteopathic medicine has been limited, or whose license to practice osteopathic medicine has been suspended or revoked, applies to the board pursuant to NRS 633.681 for the removal of the limitation or for the restoration of his*

license, the board may require the person to submit to an examination testing his competence to practice osteopathic medicine.

2. The board will not remove a limitation or restore a license unless:

(a) The applicant proves by clear and convincing evidence that the requirements for the removal of the limitation or for the restoration of the license have been met; and

(b) The applicant proves by evidence satisfactory to the board that he:

(1) Has complied with all the terms and conditions set forth in the final order of the board limiting his practice or suspending or revoking his license; and

(2) Is capable of practicing osteopathic medicine in a safe manner.

Sec. 18. *1. If a complaint has been filed against a licensee pursuant to NRS 633.531, any person may request the board to order the summary suspension of the license of the licensee pending disciplinary proceedings.*

2. The board will issue such an order if it determines that:

(a) The licensee has violated a provision of this chapter or chapter 633 of NRS;

(b) The summary suspension of the license is necessary to prevent a further violation of this chapter or chapter 633 of NRS; and

(c) The public health, safety or general welfare imperatively requires the summary suspension of the license.

3. An order summarily suspending a license:

(a) Must:

(1) Comply with the applicable provisions of NRS 233B.127; and

(2) Set forth the grounds upon which the order is issued, including a statement of facts;

(b) Is effective upon service on the licensee of the order and complaint; and

(c) Remains in effect until the board:

(1) Modifies or rescinds the order; or

(2) Issues its final order or decision on the underlying complaint.

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

Sec. 19. NAC 633.020 is hereby amended to read as follows:

633.020 ~~{For the purpose of this chapter, “board”}~~ **“Board”** means the state board of osteopathic medicine.

Sec. 20. NAC 633.160 is hereby amended to read as follows:

633.160 1. Each applicant for a license to practice osteopathic medicine must apply ~~{for examination}~~ on forms prepared and furnished by the board.

2. Each application must be accompanied by an affidavit affirming that:

(a) The applicant is the person named in the application and accompanying material; and

(b) To the best knowledge or belief of the applicant, the application and all accompanying material is complete, correct and consistent, and was obtained without fraud, misrepresentation or mistake.

3. No application will be accepted unless it is accompanied by the appropriate fee prescribed in NRS 633.501. All fees are nonrefundable.

Sec. 21. NAC 633.220 is hereby amended to read as follows:

633.220 1. The board may issue a special license to any person designated in subsection 1 of NRS 633.401 and in subsection 1 of NRS 633.411 who applies for a special license and includes with his application a letter from the regulatory authority of the jurisdiction where he is licensed to practice osteopathic medicine which verifies that the applicant holds a current license.

2. In addition to the letter required by subsection 1, an applicant under NRS 633.411 must submit a letter from any one of the following persons requesting that he be given a special license:

(a) The chief of staff or the medical director of the hospital or institution where the applicant proposes to practice osteopathic medicine. The letter must also specify the members of the medical staff under whose supervision the applicant will practice. Any special license issued to the applicant will limit his practice to that hospital or institution.

(b) The chief of the medical agency proposing to employ the applicant to practice osteopathic medicine. The letter must also describe the scope of the services proposed to be performed by the applicant and the medical licensees under whose supervision the applicant will be employed. Any special license issued will limit the scope of applicant's practice to those described in the letter and indicate the person under whose medical supervision the applicant will be employed.

(c) The osteopathic physician with whom the applicant proposes to associate. The letter must also state the specific period, ~~(H)~~ not to exceed 1 year, ~~(H)~~ and the specific purpose for which he proposes to associate the applicant, and must verify that the osteopathic physician will retain primary responsibility for the care of all patients seen by applicant. Any special license issued to the applicant will specify the period of association, the services to be performed by the applicant and the osteopathic physician with whom the applicant is associated.

3. No special license issued by the board is valid for a period longer than 1 year following the date of issuance.

4. A special license may be renewed from year to year by the board upon receipt of an application which meets the requirements of ~~[subsections 1 and 2 of]~~ NAC 633.250, is

accompanied by the appropriate fee prescribed by NRS 633.501 and is received no later than 90 days before the expiration of the then current special license.

Sec. 22. NAC 633.250 is hereby amended to read as follows:

633.250 1. Each licensee applying for renewal of his ~~[certificate]~~ *license* 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, *at least 10 hours of which are category IA courses*, or ~~[its equivalent].~~

~~—2. For the purposes of this section, “equivalent” means:~~

~~}] the equivalent of such continuing education courses or programs, including, without limitation:~~

(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.

2. As used in this section, “category IA course” means a course of continuing medical education that is offered by a sponsor accredited by the American Osteopathic Association to offer such a course.

Sec. 23. NAC 633.270 is hereby amended to read as follows:

633.270 1. ~~[If the board determines that it is appropriate to deny an applicant a license, it will send]~~ *The executive director of the board or his designee:*

(a) *Shall review the application and accompanying materials submitted by an applicant to determine if there may be grounds for rejecting the application or grounds for denying the issuance of a license to the applicant; and*

(b) *May request the applicant to submit such additional evidence of the mental, physical, medical or other qualifications of the applicant as the executive director or his designee believes the board may require.*

2. *Upon the completion of the review of an application by the executive director or his designee, the executive director shall:*

(a) *Schedule a hearing on the application at a meeting of the board.*

(b) *Send* written notice *of the hearing* to the applicant at least ~~[20]~~ 21 days before the meeting . ~~[or hearing at which the formal order of denial is proposed to be considered.]~~ The notice ~~[will]~~ *must conform to subsection 2 of NRS 233B.121*, be given by certified ~~[or registered]~~ mail, postage prepaid , and ~~[will]~~ be addressed to the last address furnished by the applicant.

~~[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]~~ *If the executive director has reason to believe that*

there are grounds for denying the issuance of a license to the applicant, the notice must include a short and plain statement that specifies each such ground.

(c) Provide a copy of the notice to each member of the board.

3. The board will deny the issuance of a license only after:

*(a) Notice to the applicant specifying the precise grounds upon which **the** denial is proposed;*
and

*(b) A hearing before the board ~~[]~~ **at which the applicant is given an opportunity to respond to each ground specified in the notice.***

4. An applicant bears the burden of proving to the board that issuing a license to him is in the best interest of the public health and safety and the general welfare of the people of this state.

5. As used in this section, “grounds for denying the issuance of a license” includes, without limitation:

(a) Any grounds authorized by a specific statute;

(b) Failure to fulfill any applicable statutory requirement;

(c) Submitting an application or accompanying material which is incomplete, incorrect or inconsistent, or which has been obtained by fraud, misrepresentation or mistake; and

(d) Engaging in any conduct that would, if committed by a licensee, be grounds for initiating disciplinary action pursuant to NRS 633.511.

Sec. 24. NAC 633.280 is hereby amended to read as follows:

633.280 1. ~~[All contested hearings]~~ *Each hearing of a contested case* 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.~~

~~—3.]~~ *The hearing will be conducted in accordance with the provisions of this chapter and chapter 233B of NRS and, if the hearing is a disciplinary action, NRS 633.511 to 633.681, inclusive.*

3. *The president, or a member of the board designated by him, will preside over the hearing.*

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.]~~

Sec. 25. NAC 633.010 and 633.150 are hereby repealed.

TEXT OF REPEALED SECTIONS

633.010 Tenses, gender and number. For the purpose of NAC 633.010 to 633.340, inclusive, where the context so indicates, the present tense includes the past and future tenses, and the future, the present; the masculine gender includes the feminine, and the feminine, the masculine; and the singular number includes the plural, and the plural, the singular.

633.150 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.