

LCB File No. T011-03

ADOPTED TEMPORARY REGULATION OF THE
COMMISSIONER OF INSURANCE

Filed with the Secretary of State on March 31, 2003

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

AUTHORITY: NRS 616B.790

Section 1. *Chapter 616B of NAC is hereby amended by adding thereto, new sections to read as follows:*

GENERAL PROVISIONS

Sec. 2. *As used in this chapter, unless the context otherwise requires:*

- 1. “Advisory Organization” means the organization designated by the commissioner pursuant to NRS 686B.1764.*
- 2. “Commissioner” means the commissioner of insurance.*
- 3. “Division” means the division of insurance of the department of business and industry.*
- 4. “Insurer” means any private carrier.*
- 5. “Intervener” means a person, other than an original party to a proceeding, whose pecuniary interests may be directly and immediately affected by the proceeding and who has secured an order from the Panel Chair granting leave to intervene.*
- 6. “Panel” means the appeals panel for industrial insurance appointed pursuant to NRS 616B.760.*
- 7. “Panel Chair” means the chairperson of the Panel as elected pursuant to NRS 616B.762, or his designee as may be determined from time to time.*
- 8. “Petitioner” means any policyholder or employer (other than a self-insured employer) who determines that the circumstances unique to his situation warrant a review of the application of the insurer or the advisory organization’s classification and/or experience rating system.*
- 9. “Respondent” means any person who is requested to respond to an appeal such as the advisory organization or the insurer.*

Sec. 3.

1. Except as otherwise provided, Section 3 to Section 19 inclusive, shall:

(a) Govern all practice and procedure before the panel under NRS 616B.760 to 616B.790, inclusive.

(b) Will be liberally construed to secure the just and speedy determination of all issues presented to the panel.

2. In special cases, where good cause appears, not contrary to statute, deviation from these rules will be permitted if stipulated to by all parties of record.

Sec. 4. *A petitioner wishing to present a grievance before the Panel must make a written request by mail or electronic mode in accordance with NRS 719.250 to the division designee at the following addresses:*

*Department of Business and Industry
Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701*

*Fax: (775) 687-3937
Telephone: (775) 687-4270
e-mail: insinfo@doi.state.nv.us*

Sec. 5. *In the request for hearing, the petitioner shall set forth the following:*

- 1. A statement that a hearing is requested;*
- 2. A clear, simple statement of the issue or question to be resolved; and*
- 3. A statement of any statutes, rules, agency decisions or other authorities that the petitioner believes may be relevant.*

Sec. 6. *The petitioner may, at any time prior to the hearing, withdraw his request for hearing by submitting a written request by mail or electronic mode to the office identified in section 4.*

Sec. 7.

1. The panel chair or his designee, upon his own motion or the motion of a party, may hold a prehearing conference for any of the following purposes:

- (a) Formulating or simplifying the issues;*
- (b) Obtaining documents that will avoid unnecessary delays;*
- (c) Arranging for the exchange of proposed exhibits or prepared expert testimony; or*
- (d) Expediting any other matters for the orderly conduct and the disposition of the*

proceedings or settlements thereof.

2. The agreements, admissions or stipulations made by the parties in a pre-hearing conference must be made a part of the record. These agreements, admissions or stipulations will be binding upon the parties during the course of subsequent proceedings, unless otherwise stipulated to by all the parties of record with the consent of the panel chair.

Sec. 8.

1. Within 30 days of the receipt of a request for hearing, the chair or his designee shall set a hearing date within 90 days of receipt of the petition.

2. Notice of a hearing served pursuant to subsection 1 must specify:

- (a) The purpose of the hearing;*
- (b) The date, time and location of the hearing; and*
- (c) Any other applicable requirements pursuant to chapter 233B of NRS.*

Sec. 9.

Appearances and representation of parties must be made as follows:

1. A party may appear in person or may be represented by an attorney or an authorized representative of the business.

2. A party, if other than a natural person, may appear:

- (a) If a partnership, by a partner.*
- (b) If a corporation, by an officer or other authorized representative or regular employee.*
- (c) If a municipal corporation, by an authorized officer, agent or employee.*
- (d) If an unincorporated association, by an authorized representative, officer or employee.*

3. If a party chooses to be represented by an attorney, the attorney must be one who is admitted to practice and in good standing before the highest court of any state of the United States.

Sec. 10.

1. A petitioner may request that the hearing be closed. If the panel agrees that the information is proprietary, the hearing will be closed. The result of the closed hearing will be made part of the public record.

2. The panel's efforts are directed toward promoting consistency and fairness in all decisions, while ensuring compliance with all rules pertaining to classifications, rating and experience modifications. The panel shall conduct its business as informally as possible under the circumstances.

3. In any hearing, the panel chair may formally order briefs or a statement of facts filed by the date set by him. The panel chair may grant an extension for the filing of the required documents if the motion or stipulation requesting the extension is filed with the panel chair before the date set for filing the required documents. The panel chair shall issue a written decision on the request for extension.

4. Briefs or statements of fact must be filed with the panel chair and be accompanied by an acknowledgment showing service on all other parties of record.

5. A person who has made the request for a hearing has the burden of proof.

6. In a hearing before the panel, the order in which argument will ordinarily be received from the parties is:

(a) The panel chair will provide a brief orientation;

(b) The petitioner will present the issues in dispute and requested action;

(c) Intervenors may make a presentation to the panel;

(d) The respondent will present information addressing actions taken; and

(e) Rebuttal by the petitioner.

7. A quorum of not fewer than four panel members must be present at a hearing to conduct any business. A simple majority of the panel members in attendance at any hearing must endorse any decision.

Sec. 11. *The panel may, in its discretion, either before or during a hearing, grant continuances or recesses.*

Sec. 12. *At the time and place set for the hearing, if the petitioner fails to appear, the panel may, in its discretion, dismiss the proceeding with or without prejudice or may recess the hearing for a period of time to be set by the panel to enable the party to attend.*

Sec. 13.

- 1. The hearing will not be conducted according to the technical rules of evidence. Any relevant evidence may be admitted, except where precluded by law, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs, even though the evidence might be subject to objection in civil actions.*
- 2. Hearsay evidence, as that term is used in civil actions, may be admitted for the purpose of supplementing or explaining other evidence.*
- 3. The rules of privilege will be applied as they are applied in civil actions.*
- 4. Irrelevant, cumulative and unduly repetitious evidence is not admissible, nor is incompetent evidence, as that term is used in civil trials, with exception of hearsay evidence as above provided.*

Sec. 14.

- 1. If a transcript of any hearing held before the panel is requested by the petitioner or the insurer, the petitioner or insurer must furnish the reporter, pay for the transcript and deliver a copy of the transcript to the division within 20 days after the hearing. If both the petitioner and insurer request a transcript of the hearing, the cost of the transcript shall be shared equally.*
- 2. All meetings shall be in compliance with chapter 241 of NRS.*
- 3. An audiotape or other recording of the hearing shall be made and retained for at least one year and is considered a public record.*

Sec. 15.

- 1. A person who wishes to intervene in a hearing must secure an order from the panel chair granting leave to intervene before he will be allowed to participate in the hearing.*
- 2. A petition for leave to intervene must be in writing and must clearly identify the proceeding in which the petitioner seeks to intervene.*
- 3. The petition must set forth the name and address of the petitioner and contain a clear and concise statement of the direct and immediate interest of the petitioner in the proceeding, state the manner in which the petitioner will be affected by the proceeding and outline the matters relied upon by the petitioner as a basis for his request to intervene.*
- 4. If affirmative relief is sought, the petition must contain a clear and concise statement of relief sought and the basis thereof, together with a statement as to the nature and quantity of evidence the petitioner will present if the petition is granted.*

Sec. 16. *A petition to intervene and proof of service of copies thereof on all other parties of record must be filed with the division not less than 2 days before commencement of the hearing. Thereafter, the petition must state a substantial reason for the delay or it will not be considered.*

Sec. 17.

- 1. If a member of the panel determines that he has a personal interest or a conflict of interest, directly or indirectly, with a party to a hearing or the subject matter of the hearing, the panel chair may appoint a substitute member for that hearing who has the same qualifications of the member with the conflict.*
- 2. A conflict of interest may be waived if, after full written disclosure of the facts raising such a conflict, all parties to the appeal agree in writing to the hearing of the appeal by the member. Such waiver must be filed with the panel chair before the hearing. If the panel chair is the member with the conflict of interest, the waiver must be filed with the commissioner.*
- 3. The member of the panel representing the advisory rating organization shall be deemed not to have a conflict of interest with respect to the advisory organization if it is a party to a hearing.*

4. The member of the panel representing the division of insurance shall be deemed not to have a conflict of interest with respect to the division of insurance if it is a party to a hearing or has been involved in the handling of the appeal.

Sec. 18.

1. The decision of the panel must:

(a) Be in writing;

(b) Include a statement of facts, analysis, opinion and appeal rights;

(c) Be issued by the panel chair within 30 days after the hearing unless the panel orders an extension of time to reconvene to consider additional information; and

(d) Be delivered to the petitioner and other interested parties in person or by first class mail.

2. Rulings of the panel may be appealed pursuant to the provisions of NRS 616B.787 and 679B.310. A party wishing to appeal a decision of the panel must direct the appeal to the commissioner. The commissioner will conduct such a hearing pursuant to the provisions of NRS 679B.310 to 679B.370 inclusive.

NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T011-03

INFORMATIONAL STATEMENT

A hearing was held on March 13, 2003, at the offices of the Department of Business and Industry, Division of Insurance (Division), 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, with a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104, regarding the adoption of the regulation concerning Workers' Compensation Appeals Panel.

Public comment was solicited by posting notice of the hearing in the following public locations: 788 Fairview Drive, Legislative Counsel Bureau, Capitol Building Lobby, Carson City Courthouse, State Library, County Libraries, Capitol Press Room and the Division's Las Vegas Office.

In addition, the Division maintains a list of interested parties, comprised mainly of insurance companies, agencies and other persons regulated by the Division. These persons were notified of the hearing and that copies of the regulation could be obtained from or examined at the offices of the Division in Carson City.

Oral testimony was received by the Division. Copies of any comments received by the Division can be obtained from the Division at 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, (775) 687-4270.

During the workshop and the hearing, discussions between members of industry and the Division centered around the provisions of chapter 233B of the Nevada Revised Statutes (NRS), which is the open meeting law. A certain member of industry requested a clarification as to the applicability of the provisions of chapter 233B. Further discussions lead to the inclusion of a new paragraph clarifying the applicability of this statute.

Considering the comments by those attending the hearing, the Commissioner has issued an order adopting the regulation as a temporary regulation of the Division.

Based upon the testimony received at the hearing, the regulation is changed from the proposed regulation as follows:

Subsection 2 of section 8 is amended to read as follows:

2. Notice of a hearing served pursuant to subsection 1 must specify:

(a) The purpose of the hearing; ~~and~~

(b) The date, time and location of the hearing~~;~~ *and*

(c) Any other applicable requirements pursuant to chapter 233B of NRS.

The economic impact of the regulation is as follows:

- (a) Regulated Industry: Minimal.
- (b) Public: None.

The regulation imposes no direct costs upon members of the public at large. The regulation has a minimal impact on the insurance industry as it provides the Rules of Practice for the Appeals Panel. The regulation imposes no direct cost upon the agency to enforce the regulation.

This regulation does not duplicate or overlap any other regulation.

**STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE**

IN THE MATTER OF THE

**CAUSE NO. 03.003
LCB FILE NO.**

**WORKERS' COMPENSATION
APPEALS PANEL RULES OF PRACTICE.**

**SUMMARY OF PROCEEDINGS
AND ORDER**

A hearing on the proposed regulation concerning the Workers' Compensation Appeals Panel was held before the Commissioner of Insurance (Commissioner) on March 13, 2003, at the offices of the Department of Business and Industry, Division of Insurance (Division), 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, with a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. Immediately prior to the hearing, the Commissioner held a workshop concerning this matter.

The Division did not receive any written comments. Approximately three individuals attended the hearing. Testimony was received at the hearing from Donald C. Smith, representing Employers Insurance Company of Nevada; Janet Hess, Deputy Attorney General; Betty Baker and Cliff King, representing the Division.

Mr. King testified that the intent of the regulation was to establish the rules of practice for the Workers' Compensation Appeals Panel as authorized by Nevada Revised Statute (NRS) 616B.790.

Mr. Smith suggested that subsection 2 of section 8 does not comply with chapter 233B of NRS. Commissioner Molasky-Arman suggested that subsection 2 of section 8 be amended to include a new paragraph: (c) any other applicable requirements pursuant to chapter 233B of NRS. This addition removed Mr. Smith's concern.

Based upon the testimony received at the hearing, the regulation is changed from the proposed regulation as follows:

Subsection 2 of section 8 is amended to read as follows:

2. Notice of a hearing served pursuant to subsection 1 must specify:

(a) The purpose of the hearing; ~~and~~

(b) The date, time and location of the hearing~~;~~; *and*

(c) Any other applicable requirements pursuant to chapter 233B of NRS.

ORDER

Based upon the information presented at the hearing, it is hereby ordered that the proposed temporary regulation relating to Workers' Compensation Appeals Panel, Cause No. 03.003, be adopted as a temporary regulation of the Division.

SO ORDERED this _____ day of March, 2003.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance