

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

**CONTESTED CASES GENERALLY  
AND DISCIPLINARY ACTIONS**

*NAC 633.\_\_\_\_Appointment; reassignment of matter; revocation of appointment; proposed orders; appeal and review of decisions.*

*1. The Board's President may appoint a hearing officer or panel to preside over and conduct hearings or other proceedings, or any portion thereof, in any matter pending before the Board in which hearing officers are authorized to act pursuant to NRS 633.\_\_\_\_. The President, in his discretion, may reassign a matter from one hearing officer to another hearing officer if circumstances require.*

*2. If the President appoints a hearing officer or panel, the President retains the right, at any time, to revoke the appointment and to assume responsibility for presiding over and conducting the hearings or other proceedings or to designate another Board member or hearing officer to preside over and conduct the hearings or other proceedings.*

*3. Except as otherwise provided in subsection 4, if the President appoints a hearing officer to preside over and conduct any proceeding involving a petition or a complaint, after the close of all evidentiary hearings in the matter, the hearing officer or panel shall file with the Board a proposed order that sets forth the findings and conclusions of the hearing officer or panel and the reasons and bases for those findings and conclusions.*

*4. The decisions of a hearing officer or panel are subject to appeal and review by the entire Board.*

*5. Upon review of a decision of a hearing officer or panel, the entire Board may affirm or reverse the decision, in whole or in part, and may take any other just and reasonable action with regard to the decision, including, without limitation, declining to act on the decision.*

**NAC 633.400 Conduct and record of hearings.** (NRS 633.291, 633.321, 633.651)

~~*{1. Each hearing of a contested case will be held before three or more members of the board.}*~~

*1. 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.*

*2. The president, ~~{or a member of the board designated by him,}~~ hearing officer or panel will preside over the hearing.*

*3. An electronic or stenographic record will be made of all contested hearings before the board.*

**NAC 633.410 Rulings on preliminary matters.** (NRS 633.291, 633.321, 633.651)

*1. The president, ~~{the member of the board}~~ hearing officer or panel 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.

**NAC 633.420 Appearance and representation of parties.** (NRS 633.291, 633.321, 633.651)

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, ~~for presiding officer]~~ *hearing officer or panel* 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 appearing as counsel in any proceeding must be an attorney at law, admitted to practice and in good standing before the highest court of any state. If the attorney is not admitted and entitled to practice before the supreme court of Nevada, he must be associated with an attorney so admitted and entitled to practice.

**NAC 633.\_\_\_\_\_ Prehearing conference with Hearing Officer or Panel.**

*1. The Board hearing officer or panel may, upon its or his own motion or at a motion made by a party of record, hold a prehearing conference not later than 10 days before a hearing to accomplish one or more of the following purposes:*

*(a) Formulate or simplify the issues involved in the proceeding.*

*(b) Obtain admissions of fact or any stipulation of the parties.*

*(c) Arrange for the exchange of any prefiled direct testimony of witnesses ordered by the hearing officer or panel.*

*(d) Identify the witnesses and the subject matter of their expected testimony and limit the number of witnesses, if necessary.*

*(e) Rule on any pending procedural motions, motions for discovery or motions for protective orders.*

*(f) Establish any other procedure which may expedite the orderly conduct and disposition of the proceedings.*

*2. Notice of any prehearing conference will be provided to all parties of record. Unless otherwise ordered for good cause shown, the failure of a party to attend a prehearing conference constitutes a waiver of any objection to the agreements reached or rulings made at the conference.*

*3. The action taken and the agreements made at a prehearing conference:*

*(a) Must be made a part of the record.*

*(b) Control the course of subsequent proceedings unless modified at the hearing by the presiding officer.*

*(c) Are binding upon all parties and persons who subsequently become parties to the proceeding.*

AS IT CURENTLY EXISTS NOW:

**NAC 633.460 *Meet & Confer Meeting Between Parties.*** (NRS 633.291, 633.651)

1. The parties to a disciplinary proceeding shall meet or confer, not later than ~~10~~ 20 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.

**NAC 633.430 *Procedure at hearings.*** (NRS 633.291, 633.321, 633.651)

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 first.

4. A ~~member of the board~~ *president, hearing officer or panel* may, at any time:

(a) Question a witness; and

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

*(c) Make proposed opinions, findings and conclusions of law.*

*(d) Issue appropriate interim orders.*

*(e) Recess the hearing as required.*

*(f) Set reasonable limits of time for the presentation of oral testimony.*

5. If ~~[the board allows]~~ closing briefs *are allowed* ~~[to be submitted, the board]~~ *a time frame* will be established ~~[a time]~~ for the submission of the closing briefs.

*NAC \_\_\_\_\_. Rulings by presiding officer.*

*1. All rulings made by the presiding officer regarding the admissibility of evidence are subject to review by the Board.*

*2. In extraordinary circumstances, when a prompt decision by the Board is necessary to promote substantial justice, the presiding officer shall refer the matter to the Board for determination and may recess the hearing pending its determination.*

*NAC \_\_\_\_\_. Stipulations regarding facts in issue.*

*1. With the approval of the presiding officer, the parties may stipulate as to any fact in issue, either by written stipulation introduced in evidence as an exhibit or by an oral statement made upon the record. This stipulation is binding only upon the parties so stipulating and is not binding upon the hearing officer or Board.*

*2. The stipulation may be considered by the hearing officer or panel as evidence at the hearing. The presiding officer may require proof of the facts stipulated to by independent evidence, notwithstanding the stipulation of the parties. A stipulation without additional proof is not binding on the Board in its ultimate determination of the matter.*

*NAC \_\_\_\_\_. Proposed findings of fact and conclusions of law.*

*1. The presiding officer may require any party of record to file proposed findings of fact and conclusions of law at the close of the proceeding. The presiding officer will fix the period within which these proposed findings and conclusions must be filed.*

*2. Each proposed finding of fact and conclusion of law must be clearly and concisely stated and numbered. Each proposed finding of fact must specifically show by appropriate references to the transcript, the testimony which supports the statement.*

*3. The original proposed findings of fact and conclusions of law, accompanied by a certificate of service, must be filed by each party with the hearing officer, and one copy must be served upon each party of record.*

**NAC 633.470 Action by board after hearing.** (NRS 633.291, 633.651) If the board, *hearing officer, or panel*, 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 *will be issued* dismissing the charges and notify the licensee that the charges have been dismissed.

2. Guilty as charged in the formal complaint, the board, *hearing officer or panel* may:

(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.

**NAC 633.480 Decision or order by board.** (NRS 633.291, 633.651)

- 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.

**Disciplinary Action**

**NAC 633.450 Summary suspension of license.** (NRS 633.291, 633.651)

- 1. If a complaint has been filed against a licensee pursuant to NRS 633.531, the board may 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.

NAC 633.\_\_\_\_\_ hereby reads as follows:

*In accordance with statutory requirement, all physician licensees of this Board will report any in-office surgical procedures conducted by such licensees which use any form of anesthesia to the Board on an annual basis, and not later than January 31, for each preceding year, on the form provided by the Board. Failure to comply with this requirement may subject the licensee to discipline as provided by statute.*