

**PROPOSED REGULATION OF THE  
BOARD OF MEDICAL EXAMINERS**

**LCB FILE NO. R087-191**

**The following document is the initial draft regulation proposed  
by the agency submitted on 10/15/2019**

## PETITIONS, ORDERS, OPINIONS AND RULES OF PRACTICE

### **NAC 630.420 Petition for amendment or repeal of regulation.**

NAC 630.420 Petition for amendment or repeal of regulation. (NRS 630.130) A petition requesting the adoption, filing, amendment or repeal of any regulation must be accompanied by a draft of the proposed regulation in a form suitable for filing with the Secretary of State.

[Bd. of Medical Exam'rs, § 630.420, eff. 12-20-79]

### **NAC 630.430 Filing of petition; copies.**

**NAC 630.430 Filing of petition; copies. (NRS 630.130)** A petition described in NAC 630.420 must be filed with the Board. The original and 12 copies of the petition must be filed, together with the original and 12 copies of the proposed regulation.

[Bd. of Medical Exam'rs, § 630.430, eff. 12-20-79]—(NAC A 6-23-86; R149-97, 3-30-98; R002-14, 6-26-2015)

### **NAC 630.440 Submission, consideration and disposition of petitions.**

#### **NAC 630.440 Submission, consideration and disposition of petitions. (NRS 630.130)**

1. Any petition described in NAC 630.420 filed more than 30 days before the next regularly scheduled meeting of the Board will be considered by the Board at that meeting. Any petition filed 30 days or less before the next regularly scheduled meeting of the Board will be considered at the first regular meeting scheduled more than 30 days after the petition is filed.

2. The Board will, within 30 days after consideration of a petition, deny the petition in writing stating the reasons for the denial or initiate proceedings under NRS 233B.060 for adoption of the proposed regulation.

[Bd. of Medical Exam'rs, § 630.440, eff. 12-20-79]—(NAC A by R002-14, 6-26-2015)

### **NAC 630.450 Declaratory orders and advisory opinions.**

#### **NAC 630.450 Declaratory orders and advisory opinions. (NRS 630.130)**

1. A petition for a declaratory order or advisory opinion may be filed only by a holder of or applicant for a license.

2. The original and 12 copies of the petition must be filed with the Board not less than 31 days before its next regularly scheduled meeting. The petition must be submitted to the Board at that meeting. Within 30 days thereafter, the Board will issue its declaratory order or advisory opinion.

[Bd. of Medical Exam'rs, § 630.450, eff. 12-20-79]—(NAC A 6-23-86; R149-97, 3-30-98; R002-14, 6-26-2015)

**NAC 630.455 Time limit for request to Board for consideration or action upon matter at meeting.**

**NAC 630.455 Time limit for request to Board for consideration or action upon matter at meeting. (NRS 630.130)** A request for the Board to consider or take action upon a matter at a meeting other than a petition described in NAC 630.420 or 630.450 must be received by the Board at least 31 days before the date of the meeting.

(Added to NAC by Bd. of Medical Exam'rs by R007-99, eff. 9-27-99; A by R002-14, 6-26-2015)

**NAC 630.460 Hearings: Appearance; pleadings; motions; documents.**

**NAC 630.460 Hearings: Appearance; pleadings; motions; documents. (NRS 630.130)**

1. Each party shall enter his or her appearance at the beginning of a hearing or at a time designated by the presiding officer by giving the party's name and address and stating his or her position or interest to the presiding officer. The information will be entered in the record of the hearing.

2. Following the entry of an appearance by an attorney for a party, all notices, pleadings and orders to be served on that party must be served upon the attorney, and that service is valid for all purposes upon the party represented.

3. All complaints must be verified.

4. A party may respond to a complaint by filing an answer within 20 working days after receiving the complaint. If a party fails to file an answer within the time prescribed, he or she shall be deemed to have denied generally the allegations of the complaint.

5. All motions, unless they are made during a hearing, must be in writing and filed with the Board, panel or hearing officer. A party may file only the following prehearing motions:

(a) A motion requesting a continuance or extension of time;

(c) A motion requesting the separation of consolidated cases;

(d) A motion requesting a more definite statement regarding the allegations in the charging document on the ground that there is not enough information in the charging document to formulate a defense;

(e) A motion requesting dismissal of the charging document for failure to state facts which, if true, would form a sufficient basis for discipline;

(f) With leave of the regulatory body or hearing panel or officer, any other motion requesting appropriate action or relief before the date of the hearing.

All written motions must set forth the nature of relief sought, the grounds therefor and the points and authorities relied upon in support of the motion. A party desiring to oppose a motion may serve and file a written response to the motion within 7 business days after service of the motion. If sufficient time allows for a reply before the date of the hearing, the Board, panel or hearing officer may allow the moving party to serve and file a written reply within 3 business days after service of the opposition to the motion. All motions made during a hearing must be based upon matters arising during the hearing. A decision on the motion will be rendered without oral argument unless oral argument is ordered by the Board, a panel of members of the Board or the hearing officer in which event the Board, panel or hearing officer will set a date and time for hearing.

6. The original pleading, motion or other paper must be filed with the Board. A copy of each pleading or motion must be made available by the party filing it to any other person whom the Board determines may be affected by the proceeding and who desires the copy.

7. Any document required to be served by a party, other than a notice of hearing, complaint, adverse decision, or order of the Board, may be served by mail, and the service shall be deemed complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail.

8. There must appear on, or be attached to, each document required to be served:

- (a) Proof of service by a certificate of an attorney or his or her employee;
- (b) Proof of personal service;
- (c) A written admission of service; or
- (d) An affidavit of mailing.

[Bd. of Medical Exam'rs, § 630.460, eff. 12-20-79]—(NAC A 6-23-86; 1-13-94; R149-97, 3-30-98)

**NAC 630.465 Hearings: Prehearing conference.**

**NAC 630.465 Hearings: Prehearing conference. (NRS 630.130, 630.275)**

1. At least 30 days before a hearing but not earlier than 30 days after the date of service upon the physician or physician assistant of a formal complaint that has been filed with the Board pursuant to NRS 630.311, unless a different time is agreed to by the parties, the presiding member of the Board or panel of members of the Board or the hearing officer shall conduct a prehearing conference with the parties and their attorneys.

2. At the prehearing conference, each party shall provide to every other party a copy of the list of proposed witnesses and their qualifications and a summary of the testimony of each proposed witness. A witness whose name does not appear on the list of proposed witnesses may not testify at the hearing unless good cause is shown.

3. At the prehearing conference, each party shall provide to every other party a copy of all documents and proposed evidence that may be used at the hearing. All documents and proposed evidence presented at the prehearing conference are not evidence, are not part of the record and may not be filed with the Board. All documents and proposed evidence, except rebuttal evidence, which are not provided to each party at the prehearing conference may not be introduced or admitted at the hearing unless good cause is shown.

4. Each party shall submit to the presiding member of the Board or panel or to the hearing officer conducting the conference each issue which has been resolved by negotiation or stipulation and an estimate, to the nearest hour, of the time required for presentation of its case.

(Added to NAC by Bd. of Medical Exam'rs, eff. 1-13-94; A by R149-97, 3-30-98; R167-99, 1-19-2000; R108-01, 11-29-2001)

**NAC 630.470 Hearings: Procedure.**

**NAC 630.470 Hearings: Procedure. (NRS 630.130, 630.275)**

1. The President of the Board shall determine whether a hearing will be held before the Board, a hearing officer or a panel of members of the Board. Any hearing before the Board must be held before a majority of the members of the Board.

2. If a licensee fails to appear at a scheduled hearing and no continuance has been requested and granted, the evidence may be heard and the matter may be considered and disposed of on the basis of the evidence before the Board, panel or hearing officer in the manner required by this section.

3. In any hearing pursuant to this chapter and NRS Chapter 622A, the hearing must proceed as follows:

(a) The presiding member of the Board or panel, or the hearing officer shall call the hearing to order.

(b) The parties and their representatives and the members of the Board, the members of the hearing panel or the hearing officer must be introduced.

(c) The Board or hearing panel or hearing officer shall consider any preliminary motions, stipulations or orders and shall address any administrative details regarding the hearing.

(d) The Board or hearing panel or hearing officer:

(1) Shall ask the parties if they want any witness excluded from the hearing;

(2) Shall instruct any witness who is excluded from the hearing not to discuss the case during the course of the hearing;

(3) Shall allow the licensee to remain in the hearing;

(4) Shall allow any person who acts as both a representative of the prosecutor and a witness in the hearing to remain in the hearing; and

(5) May, on its own motion, exclude any witness from the hearing.

(e) The prosecutor may make an opening statement. After the prosecutor has had the opportunity to make an opening statement, the licensee may make an opening statement. The Board or hearing panel or hearing officer may limit equally the time of the opening statement of each party.

(f) The prosecutor may present his or her case by presenting evidence and calling witnesses in the following manner:

(1) The witness must be sworn in.

(2) The prosecutor may directly examine the witness.

(3) The licensee may cross-examine the witness.

(4) If requested, the prosecutor may question the witness on redirect examination.

(5) If requested, the licensee may question the witness on recross-examination.

(g) After the prosecutor has had the opportunity to present his or her case, the licensee may present his or her case by presenting evidence and calling witnesses in the following manner:

(1) The witness must be sworn in.

(2) The licensee may directly examine the witness.

(3) The prosecutor may cross-examine the witness.

(4) If requested, the licensee may question the witness on redirect examination.

(5) If requested, the prosecutor may question the witness on recross-examination.

(h) A member of the Board, a member of the hearing panel or the hearing officer may question a witness at any time during the hearing. If a witness is questioned by a member of the Board, a member of the hearing panel or the hearing officer, the party who called the witness may request permission to ask further questions, limited to the area addressed by the member or hearing officer. When that party has asked those questions, the other party may request permission to ask further questions, limited to the area addressed by the member or hearing officer.

(i) After the prosecutor and licensee have presented their cases, the Board or hearing panel or hearing officer may allow the parties to call rebuttal witnesses. If the prosecutor or licensee, or both, call one or more rebuttal witnesses, each rebuttal witness must be sworn in and questioned in the same manner as provided in paragraph (f) or (g), as appropriate.

(j) The prosecutor may make a closing argument. After the prosecutor has had the opportunity to make a closing argument, the licensee may make a closing argument. The Board or hearing panel or hearing officer may limit equally the time of the closing argument of each party. If the licensee makes a closing argument, the prosecutor may make a final closing argument. The Board or hearing panel or hearing officer may limit the time of the final closing argument.

(k) If allowed by the Board or hearing panel or hearing officer, either party may recommend specific disciplinary action to the regulatory body or hearing panel or officer at the appropriate time.

(l) After the close of the hearing, the Board or hearing panel or hearing officer shall deliberate and reach a decision. Not later than 60 days after the close of the hearing:

(1) If the hearing was conducted by the hearing panel or hearing officer, the hearing panel or hearing officer shall prepare written findings and recommendations and serve the findings and recommendations on the parties and the Board for its review.

(2) If the hearing was conducted by the Board, the Board shall prepare a final decision in the manner provided in NRS 233B.125.

4. The Board or hearing panel or hearing officer may deviate from the order of the hearing set forth in subsection 3 if the Board or hearing panel or hearing officer:

(a) Upon a showing of good cause, deems it appropriate; or

(b) Deems it necessary to expedite or ensure the fairness of the hearing.

5. The notice of hearing, complaint, petition, answer, response or written stipulation becomes a part of the record without being read unless a party requests that the document be read verbatim into the record.

6. Prehearing depositions of witnesses and parties may not be taken and no formal discovery of evidence, except as otherwise provided in NAC 630.465, will be allowed.

7. The Board, panel or hearing officer will hear the evidence presented, make appropriate rulings on the admissibility of evidence, and maintain procedure and order during the hearing. The panel or hearing officer may not dismiss the complaint.

8. Briefs must be filed upon the order of the Board, panel or hearing officer. The time for filing briefs will be set by the Board, panel or hearing officer.

9. The hearing officer or panel of members of the Board conducting a hearing shall, no later than 60 days after the close of the hearing, prepare written findings and recommendations and serve

the findings and recommendations on the parties and the Board for its review. The findings and recommendations must include:

- (a) A synopsis of the testimony taken at the hearing; and
- (b) Findings and Recommendations to the Board for the disposition of the case.

10. A case shall be deemed submitted for decision by the Board after the taking of evidence, the filing of briefs or the presentation of such oral arguments as may have been permitted, the filing of the transcript of the hearing and the filing of the synopsis of the testimony taken at the hearing. The Board will issue its order or render its decision within 90 days after the hearing or the submission of the case, whichever is later.

11. The findings and recommendations of the hearing panel or officer do not become final unless they are approved by the Board after review. In reviewing the findings and recommendations of the hearing panel or officer, the Board may:

- (a) Approve the findings and recommendations, with or without modification;
- (b) Reject the findings and recommendations and remand the case to the hearing panel or officer;
- (c) Reject the findings and recommendations and order a hearing de novo before the Board, panel or hearing officer; or
- (d) Take any other action that the Board deems appropriate to resolve the case.

(Added to NAC by Bd. of Medical Exam'rs, eff. 6-23-86; A 1-13-94; R149-97, 3-30-98; R108-01, 11-29-2001)

#### **NAC 630.475 Subpoenas.**

##### **NAC 630.475 Subpoenas. (NRS 630.130, 630.140)**

1. A subpoena issued pursuant to NRS 630.140 must specify the name of the witness and specifically identify the books, X-rays, medical records or other papers which are required to be produced.

2. The Board or a person acting on its behalf will not issue a subpoena to compel the attendance of a member of the Board or a licensee at a hearing or require a member of the Board or a licensee to produce books, X-rays, medical records or any other papers during a hearing.

3. The Board or a person acting on its behalf will not petition the district court for an order compelling compliance with a subpoena unless:

- (a) At the time the subpoena is served, the witness is tendered:



(1) A fee of \$25 for the first day of attendance at the hearing;

(2) An allowance for travel which is equal to the allowance for travel by private conveyance provided for state officers and employees generally; and

(3) A per diem allowance equal to the per diem allowance provided for state officers and employees generally.

(b) It is served upon the witness at least 120 hours before he or she is required to appear at the hearing.

(Added to NAC by Bd. of Medical Exam'rs, eff. 1-13-94; A by R149-97, 3-30-98)