

LCB File No. R223-97

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulations of the
Department of Business and Industry, Division of Insurance

The department of Business and Industry, Division of Insurance (Division) will hold a public hearing at 10:00 a.m., on January 27, 1998 at the offices of the Division, 1665 Hot Springs Road, Suite 152, Carson City, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations pertaining to chapter 41A of the Nevada Administrative Code.

REGULATION FOR THE MEDICAL DENTAL SCREENING PANEL

The following information is provided pursuant to the requirements of NRS 233B.060:

1. The proposed regulation is needed to establish standards for actions authorized by the legislature and to improve the efficiency of the operations of the panel.
2. The amendments include standards for the substitution of attorneys, affidavits for personal service, text for the cover page, return of evidence and various other matters.
3. Estimated economic effect of the regulation:

On the business which it is to regulate:

(a) The amendments should have a beneficial impact on all parties involved by improving the efficiency of the operations of the panel.

(b) The amendments may have a short-term adverse impact on the parties as they must amend the forms used when dealing with the panel.

On the public:

The amended regulation should have no economic impact on the public.

4. The Division does not anticipate any additional costs will be incurred with the adoption of the proposed regulation.
5. The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.
6. The proposed regulation does not establish a new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the Division may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Division, 1665 Hot Springs Road, Suite 152, Carson City, Nevada 89706. Written submissions must be received by the Division on or before January 20, 1998. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

Elko County Library
720 Court Street
Elko, NV 89801

Goldfield Public Library
Fourth & Cook Street
P.O. Box 430
Goldfield, NV 89013

Eureka Branch Library
10190 Monroe Street
P.O. Box 293
Eureka, NV 89316

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445

Battle Mountain Branch Library
P.O. Box 141
Battle Mountain, NV 89820

Lincoln County Library
93 Main Street
P.O. Box 330
Pioche, NV 89043

Lyon County Library
20 Nevin Way
Yerington, NV 89447

mineral County Library
First & A Street
P.O. Box 1390
Hawthorne, NV 89415

Tonopah Public Library
171 Central Street
P.O. Box 449
Tonopah, NV 89049

Pershing County Library
1125 Central Avenue
P.O. Box 781
Lovelock, NV 89419

Storey County Library
95 South R Street
P.O. Box 449
Tonopah, NV 89049

Washoe County Library
1125 Central Avenue
P.O. Box 781
Lovelock, NV 89419

White Pine County Library
950 Campton Street
Ely, NV 89301

Clark County Library
1401 East Flamingo Road
Las Vegas, NV 89119

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Commissioner's secretary in writing at 1665 Hot Springs Road, Suite 152, Carson City, Nevada 89706, or by calling no later than 5 working days prior to the hearing. (702) 687-4270.

DATED this 26th day of December, 1997.

James Jeppson /s/
ALICE A. MOLASKY-ARMAN
Commissioner of Insurance

R223-97

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

REGULATION FOR MEDICAL DENTAL SCREENING PANEL

Authority: NRS 41A.033

Section 1. Chapter 41A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 through 8, inclusive, of this regulation.

Sec. 2. *The division will not accept filings of any kind for the screening panel by facsimile transmission.*

Sec. 3. *If parties to a pending action before the screening panel desire to substitute new counsel in the place of their present counsel, a substitution of attorneys must be filed with the division. Such substitution of attorneys must include the full caption required pursuant to NAC 41A.042 and be in substantially the following form:*

SUBSTITUTION OF ATTORNEYS

/// hereby substitutes /// as his/her attorney(s) in the above-entitled action, in the place and stead of ///.

DATED this day of ///, ////.

{signature of party}

The undersigned hereby agrees to be substituted as attorney(s) for /// in the above-entitled action in the place and stead of ///.

{name of new counsel}

By
{signature of new counsel}

The undersigned hereby agrees to the substitution of /// as attorneys for /// in the above-entitled action in its place and stead.

DATED this _____ day of ///, ////./.

{name of new counsel}

By
{signature of prior counsel}

Sec. 4. If a complaint of medical or dental malpractice is served by personal service, such complaint must be accompanied by an affidavit of personal service which must include the full caption required pursuant to NAC 41A.042 and must be in substantially the following form:

AFFIDAVIT OF SERVICE

STATE OF _____)

) ss.

COUNTY OF _____)

{name of person completing service}, being duly sworn, says:

1. At all times herein I was and am a citizen of the United States. I am over the age of 18 years and not a party to or interested in the above-captioned proceeding.

2. On ///, ////, I received a copy of {the complaint for medical or dental malpractice} for service upon {respondent} herein.

3. On ///, ////, I did serve the aforementioned document on {respondent} at: {address of person's served}

FURTHER, AFFIANT SAYETH NAUGHT.

DATED this _____ day of ///, ////.

{signature of person completing service}

Sworn to and subscribed before me
this _____ day of ///, ////.

NOTARY PUBLIC

Sec. 5. If an answer or response is served by personal service, such answer or response must be accompanied by an affidavit of personal service or, if the party to be served is represented by an attorney, a receipt of copy signed by the attorney for the party to be served. The affidavit of personal service or receipt of copy must include the full caption required pursuant to NAC 41A.0442 and must be in substantially the following forms:

AFFIDAVIT OF PERSONAL SERVICE:

AFFIDAVIT OF SERVICE

STATE OF

)

) ss.

COUNTY OF

)

{name of person completing service}, being duly sworn, says:

1. At all times herein I was and am a citizen of the United States. I am over the age of 18 years and not a party to or interested in the above-captioned proceeding.

2. On ///, ////, I received a copy of {the complaint for medical or dental malpractice} for service upon {respondent} herein.

3. On ///, ////, I did serve the aforementioned document on {respondent} at: {address of person's served}

FURTHER, AFFIANT SAYETH NAUGHT.

DATED this day of ///, ////.

{signature of person completing service}

Sworn to and subscribed before me
this day of ///, ////.

NOTARY PUBLIC

RECEIPT OF COPY:

RECEIPT OF COPY

RECEIPT OF A COPY of the {name of document} is hereby acknowledged this day of
///,////.

By
{signature of attorney}

Sec. 6. If a complaint is served by personal service, such service must be made in the following manner:

1. If the respondent is a physician, dentist, or employee of a licensed hospital, service must be made by delivering a copy of the complaint to such respondent personally, or by leaving copies thereof at this principal place of business, living house or usual place of abode, with some person of suitable age and discretion then residing therein.

2. If the respondent is an employee of a hospital other than a physician, service must be made by delivering a copy of the complaint to such respondent personally, or by delivering a copy thereof to the chief executive officer or other head of the hospital or to the risk manager or other person having responsibility for directing the defense of claims filed against such hospital, or to some person of suitable age and discretion then present at the principal place of business of such chief executive officer or other head of such hospital or risk manager or other person having responsibility for directing the defense of claims.

3. If the respondent is a hospital, including a publicly owned hospital, service must be made by delivering a copy of the complaint to the chief executive officer or other head of the hospital or to the risk manager or other person having responsibility for directing the defense of claims filed against such hospital, or to some person of suitable age and discretion then present at the principal place of business of such chief executive officer or other head of such hospital or risk manager or other person having responsibility for directing the defense of claims.

Sec. 7. If an answer or response is served by personal service, such service must be made in the following manner:

1. If the party to be served is a natural person, service must be made by delivering a copy of the answer or response to such party personally, or by leaving copies thereof at this principal place of business, living house or usual; place of abode, with some person of suitable age and discretion then residing therein or, if the party is represented in the proceedings by counsel, by delivering a copy to his attorney.

2. If the party to be served is an employee of a hospital other than a physician, service must be made by delivering a copy of the answer or response to such respondent personally, or by delivering a copy thereof to the chief executive officer or other head of the hospital or to the risk manager or other person having responsibility for directing the defense of claims filed against such hospital, or to some person of suitable age and discretion then present at the principal place of business of such chief executive officer or other head of such hospital or risk manager or other person having responsibility for directing the defense of claims or, if the hospital employee is represented in the proceedings by counsel, by delivering a copy to his attorney.

3. If the party to be served is a hospital, including a publicly owned hospital, service must be made by delivering a copy of the answer or response to the chief executive officer or other head of the hospital or to the risk manager or other person having responsibility for directing the defense of claims filed against such hospital, or to some person of suitable age and discretion then present at the principal place of business of such chief executive officer or other head of such hospital or risk manager or other person having responsibility for directing the defense of claims, or, if the hospital is represented in the proceedings by counsel, by delivering a copy to the attorney for such hospital.

Sec. 8. If an attorney who represents a party in a pending screening panel action wishes to withdraw from such representation, he must file with the division a written notice of withdrawal which must be signed by the attorney and include the current or last known address of the client at which the client may be served with notice of further proceedings as well as the current or last known telephone number of the client. Such notice of withdrawal must be served on the client and all other parties to the pending screening panel action by certified or registered mail, with proof of service provided to the division, or by personal service as provided in sections 4, 5, 6 and 7 of this regulation.

Sec. 9. NAC 41A.040 is hereby amended to read as follows:

1. An original complaint of medical or dental malpractice must be accompanied by the following:

(a) Nine copies of the complaint[.

(b) **A list and eight copies**] and all documentary evidence being submitted in support of the claim. Each **[document]** item of documentary evidence must be paginated and tabbed along the right-hand edge with a designating number or letter. The claimant **[must]** may indicate whether he wants the evidence returned to him at the end of the screening panel's proceedings. The request for return of evidence must specify each item of evidence to be returned. If the claimant does not request return of evidence, the division will destroy all evidence submitted at the end of the screening panel's proceedings except for the original of the complaint and response, if any. If the claimant requests return of evidence, the division will return all evidence submitted by the claimant except for the original s and all copies of the complaint and response, if any, which were reviewed by members of the screening panel and the two (2) copies of the complaint which

were reviewed by members of the screening panel and the two (2) copies of the complaint which must be submitted to the Nevada State Board of Medical Examiners and the county medical society in the county in which the alleged malpractice occurred pursuant to NRS 41A.049.

(b) One Additional copy of all documentary evidence being submitted in support of the claim which must be attached to the original of the complaint. Each item of documentary evidence attached to the original complaint must also be paginated and tabbed along the right-hand edge with a designating number or letter.

(c) A list of all documentary evidence being submitted in support of the claim.

[(c)](d) Proof of service by personal service or by certified or registered mail of a copy of the complaint and accompanying documents upon [the] each respondent.

[(d)](e) An executed release, not restricted as to records, physicians, or dentists, to each respondent or his attorney of all pertinent health care or dental records of the claimant.

[(e)](f) A list of the names and addresses of all persons providing medical or dental care to the claimant pertinent to the claim of medical or dental malpractice.

[(f)](g) A statement, to the extent known, that each respondent named in the complaint is a physician licensed pursuant to chapter 630 or 633 of NRS, a dentist licensed pursuant to chapter 631 of NRS, a hospital licensed pursuant to chapter 449 of NRS or established pursuant to chapter 450 of NRS, or an employee of such a hospital.

(h) The following text, in substantially the following form, set forth on the first page of the complaint, or the cover, if any, in not less than 12 point boldface, single-spaced type:

IMPORTANT NOTICE

MEDICAL DENTAL SCREENING PANEL

NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

DIVISION OF INSURANCE

2501 E. SAHARA AVE., #302

LAS VEGAS, NV 89104

(702) 486-4390

(702) 486-4060

A complaint of malpractice naming you as a respondent is being submitted to the Division of Insurance. The person against whom a complaint is made must, within 90 days after receipt of the complaint, file an answer with the Division of Insurance, accompanied by a fee of \$350. NRS 41A.039(3).

You should immediately contact your insurer or an attorney concerning this claim. If an answer is not timely filed, the screening panel will proceed to make its findings based only upon the information submitted by the claimant. See NAC 41A.040(7).

You must submit an answer before the deadline to file an answer. The deadline is the date the answer must be received by the Division of Insurance. The act of mailing the answer is not a filing.

9I) A list of the names and current addresses, insofar as they are known to the claimant of each respondent named in the complaint.

2. An original answer to a complaint of medical or dental malpractice must be accompanied by:

(a) Seven copies of the answer[.] and all documentary evidence upon which the respondent relies, other than documentary evidence already provided by the claimant. each item of documentary evidence must be tabbed along the right-hand edge with a designating number or letter and paginated. The respondent may indicate whether he wants the evidence returned to

him at the end of the screening panel's proceedings. The request for return of evidence must specify each item of evidence to be returned. If the respondent does not request return of evidence, the division will destroy all evidence submitted at the end of the screening panel's proceedings except for the original of the answer. If the respondent requests return of evidence, the division will return all evidence submitted by the respondent except for the original and all copies of the answer which were reviewed by members of the screening panel.

(b) One additional copy of all documentary evidence upon which the respondent relies, which must be attached to the original of the answer. Each item of documentary evidence attached to the original answer must also be tabbed along the right-hand edge with a designating number or letter and paginated.

[(b)](c) A clear and concise statement of all the facts relied upon in denying the claim of medical or dental malpractice and all the facts in support of any affirmative defense to be asserted. All references to an exhibit must indicate the designating number or letter of the document and number of the page.

[(c)](d) A list [and eight copies of all documentary evidence upon which the respondent relies, other than documentary evidence already provided by the claimant. Each document must be tabbed along the right-hand edge with a designating number or letter and paginated. The respondent must indicate whether he wants the evidence returned to him at the end of the screening panel's proceedings. The request for return of evidence must specify each item of evidence to be returned] of all documentary evidence submitted with the answer.

[(d)](e) Proof of service by personal service or by certified or registered mail of a copy of the answer upon the claimant or his attorney and upon every other respondent or his attorney.

3. An original response to an answer to a complaint of medical or dental malpractice must be accompanied by:

(a) Seven copies of the response and all documentary evidence submitted in support of the response. each item of documentary evidence must be tabbed along the right-hand edge with a designating number or letter and paginated.

(b) A list [~~and seven copies of all documentary evidence submitted in support of the response. Each document must be tabbed along the right-hand edge with a designating number or letter and paginated~~] of each item of documentary evidence submitted with the response.

(c) One additional copy of all documentary evidence submitted in support of the response, which must be attached to the original of the response. Each item of documentary evidence attached to the original response must also be tabbed along the right-hand edge with a designating number or letter and paginated.

~~[(c)]~~(d) Proof of service by personal service or by certified or registered mail of a copy of the response and accompanying documents upon [~~the~~] each respondent.

4. The following statement must be printed on [~~a separate sheet of paper and affixed to~~] the top page or cover of the original response and each copy of the response:

NOTICE: Pursuant to subsection 4 of NRS 41A.039, the panel shall disregard any portion of the response that does not address an allegation raised in the answer or an affidavit accompanying the answer.

The statement must be [double-spaced on a 5 1/2-inch by 8 1/2-inch sheet of white paper in not less than 10-point] in boldface 12 point type. The statement must be printed across the 8 1/2-inch width of the paper.

5. The division will not accept a supplement to a complaint, answer, or response.

6. A general denial by the respondent must be accompanied by a clear and concise statement of the facts upon which he relies.

7. If the respondent does not timely file his answer with the division and he has not been dismissed from the case:

(a) The respondent shall [pay the fee of \$350 required by subsection 3 of NRS 41A.039 before the conference is held pursuant to subsection 1 of NRS 41A.043, and if a respondent fails to pay the fee, the commissioner of insurance may refer the matter of the nonpayment of the fee to the attorney general for the collection of the fee and any costs involved; and] not be entitled to participate in the conference held pursuant to NRS 41A.043(1); and

(b) The screening panel shall proceed to make its findings based upon the information submitted by the claimant and all the other respondents who have timely filed an answer to the complaint and have not been dismissed from the case.

8. The complaint and answer must be verified. The complaint must be authenticated by a notary public. The verifications contained in the originals of the complaint and answer must bear the original signatures of the claimant or respondent.

9. The original complaint, answer, and response and one copy of all accompanying material will be retained by the division for 7 years after the date on which the case is closed.

10. Proof of service by certified or registered mail must include the number of the receipt for certified or registered mail and the original or a copy of the receipt issued by the United

States Post Office that includes the signature of the person who accepted service and the date the service was accepted.

11. The original and each copy of the complaint, answer, or response and attached documentary evidence or other papers submitted to the division with the complaint, answer, or response and served upon the [opposing party] claimant and each respondent or his attorney must be firmly bound together in a single binding. For the purposes of this subsection, firmly bound does not include fastening by stapling only and material which is bound only by staples will not be accepted by the division.

12. If the original and copies of the pleadings are submitted to the division or served upon the [opposing party] claimant and each respondent or his attorney with covers:

- (a) The color of the covers of all of the pleadings must be white; or
- (b) The color of the cover of the:
 - (1) Complaint must be blue;
 - (2) Answer must be red; and
 - (3) Response must be gray.

Sec. 10. NAC 41A.042 is hereby amended to read as follows:

A complaint, answer, response, or other pleading or document of any kind filed with the division pursuant to chapter 41A of NRS and this chapter must include the following information in the caption in substantially the same form:

- 1. If the document is for the northern medical screening panel:

DEPARTMENT OF BUSINESS AND INDUSTRY

DIVISION OF INSURANCE

NORTHERN MEDICAL SCREENING PANEL

2. If the document is for the southern medical screening panel:

DEPARTMENT OF BUSINESS AND INDUSTRY

DIVISION OF INSURANCE

SOUTHERN MEDICAL SCREENING PANEL

3. If the document is for the northern dental screening panel:

DEPARTMENT OF BUSINESS AND INDUSTRY

DIVISION OF INSURANCE

NORTHERN DENTAL SCREENING PANEL

4. If the document is for the southern dental screening panel:

DEPARTMENT OF BUSINESS AND INDUSTRY

DIVISION OF INSURANCE

SOUTHERN DENTAL SCREENING PANEL

5. Each document of any kind filed with the division pursuant to chapter 41A of NRS and this chapter must also contain a caption in substantially the following form:

{CLAIMANT(S)}

{RESPONDENT(S)}

Sec. 11. NAC 41A.050 is hereby amended to read as follows:

A party, in his complaint or answer:

1. May include any material or document he believes will assist the screening panel in its deliberations.
2. May submit an affidavit which contains a written opinion of an expert on the issue of the appropriate standard of care and any breach or adherence to this standard which should or should not be considered malpractice. In addition to the conclusion on the existence of malpractice, the affidavit must contain the rationale which is the basis for the conclusion and cite specific portions of the medical or dental record supporting the conclusion. A biographical statement outlining the expert's qualifications, which may be included in the text of the affidavit, must also be submitted. Any affidavit submitted by an expert pursuant to this section must be signed by the expert under penalty of perjury or subscribed and sworn to before a notary public.

[3. Must list the name of any expert witness upon whose opinion he relies and offer the services of that expert witness to the screening panel.]

Sec. 12. NAC 41A.065 is hereby amended to read as follows:

Any attorney who files a complaint, answer, or response with the division must be licensed to practice in this state. Upon application, an exception to this requirement will be made:

1. If the attorney can demonstrate his legal representation on 10 or more medical or dental malpractice cases filed with the division; and

2. Upon approval by the commissioner of insurance.

Any attorney who participates in the conference held pursuant to NRS 41A.043(1) must be licensed to practice in this state.

Sec. 13. NAC 41A.070 is hereby amended to read as follows:

Any written communication, *other than a complaint, answer or response,* concerning a complaint of medical or dental malpractice [filed pursuant to the provisions of NAC 41A.040] *including any document of any kind filed with the division pursuant to chapter 41A of the NRS or this chapter or any other document,* must be served upon all parties and the division. *Service may be made by regular mail, certified mail, or personal service. If service is by personal service, such service must be made as provided in sections 4, 5, 6 and 7 of this regulation.* Proof of service must be attached to the communication.

Sec. 14. NAC 41A.088 is hereby amended to read as follows:

A stipulation filed with the division for an extension of time within which to file an answer or a response must state the date the document is due, *bear the signatures of all parties or their attorney(s),* and must be accompanied by an order for the signature of the commissioner of insurance or his designee. *The division may accept a stipulation for an extension of time within which to file an answer or response after the date the answer or response would have been due except for the stipulation.* The order must be in substantially the following form *and must be on a separate page containing the caption required pursuant to NAC 41A.042:*

Case Caption

Case No.....

APPROVAL OF STIPULATION FOR AN EXTENSION OF TIME

Pursuant to the stipulation signed by all the parties in this case,(name of the claimant or respondent) has to and including (exact due date of pleading), to file his (answer or response) with the division.

Dated this day of, [19].....

By:.....

Medical [/] Dental Screening Panel

Sec. 15. NAC 41A.091 is hereby amended to read as follows:

[1. A motion for an extension of time to file an answer or response must:

(a) Be filed on or before the date the answer or response is due;

(b) Specify the date the party received service of the complaint or answer, and the number of days requested for the extension of time; and

(c) Be accompanied by an affidavit setting forth good cause for the specific number of days requested.

2.] A [motion] request for the continuance of a conference held pursuant to subsection 1 of NRS 41A.043 must be[:

(a) Submitted to the division in writing not less than 4 days before the date scheduled for the conference; or

(b) Arranged through a conference by telephone with the division and all other parties to the proceeding not less than 1 day before the date scheduled for the conference] made to the division at least two business days before the date scheduled for the conference in writing or by telephone. The party seeking to continue the conference must contact all other parties and secure their agreement to a new date and time for the conference. The new date and time must then be confirmed by the rescheduling party to the division and to all other parties in writing..

Sec. 16. NAC 41A.100 is hereby amended to read as follows:

The division will notify each party in a claim of medical or dental malpractice of the findings of the screening panel within 10 business days after the panel renders its findings.