

LCB File No. R092-98

**STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
INDUSTRIAL INSURANCE REGULATION SECTION**

In the matter of adoption, amendment and
repeal of Regulations pertaining to:
Hearings Before the Administrator,
Enforcement, Administrative Fines, and
other changes to Chapter 616D of the
Nevada Administrative Code.

DIR 98-17
LCB: Unassigned

HEARINGS BEFORE THE ADMINISTRATOR

NEW Assistance in interpreting English language during proceedings.
(similar to NAC 616C.2775(2))

A party who requires assistance in interpreting the English language during any hearing before the administrator must notify the administrator in writing at least 10 days before the hearing that such assistance is required. The administrator shall appoint an interpreter and arrange for such assistance, at no cost to the party who requires such assistance.

NEW Failure to comply with regulations. (similar to NAC 616C.282)

If a party, its representative or counsel fails or refuses to comply with NAC 616D.010 to 616D.NEW [last regulation number] inclusive, the administrator may make such orders as are necessary to direct the course of the hearing, including, but not limited to, the following:

- 1. Continue the hearing until the party, representative or counsel complies with the requirements.*
- 2. Restrict or prohibit the introduction of evidence.*
- 3. Dismiss the matter.*

NEW Purposes for pre-hearings. (similar to NAC 616C.277)

A pre-hearing may be held for:

- 1. Speeding up the pending case.*
- 2. Hearing motions.*
- 3. Mediating a settlement.*
- 4. Submittal of documentary evidence.*
- 5. Narrowing issues.*
- 6. Setting a convenient date for the main hearing.*
- 7. Any other purpose which would facilitate the proceedings.*

NEW Scheduling of pre-hearing conference by administrator. (similar to NAC 616C.284)

The administrator may schedule a pre-hearing conference in any appeal filed to discuss settlement, discovery, scheduling, or other matters pertinent to the appeal and may enter any order relating to those matters.

NEW Request for issuance of subpoena; approval or denial of request. (similar to NAC 616C.284)

1. A party who wishes the administrator to issue a subpoena requiring the attendance of a witness or the production of a book, account, paper, record, or other document, must submit a request for a subpoena to the administrator:

- (a) At any pre-hearing conference held in the matter;*
- (b) At least 10 days before the first scheduled date set for the hearing; or*
- (c) As otherwise allowed by the administrator.*

2. A request for a subpoena must:

- (a) Set forth the reason why the subpoena is necessary; and*
- (b) Be accompanied by a completed form for the subpoena.*

3. The administrator shall:

(a) Approve the request if it appears that the witness or document requested is relevant to the issues in the matter and the party requesting the subpoena is otherwise unable to compel the attendance of the witness or the production of the document.

(b) Approve or deny the request for a subpoena within 5 days after the receipt of the request.

4. Any subpoena for the production of a book, account, paper, record, or other document must include a notice of how the requested document can be provided without requiring the appearance of a person at the hearing.

NEW Failure to comply with order or subpoena. (similar to NAC 616C.285)

1. Any party aggrieved by a person's failure or refusal to comply with an order or subpoena may apply to the administrator for an order certifying the disobedience or refusal to comply.

2. Upon receipt of an application under subsection 1, the administrator shall notify the disobedient person to show cause why such an order should not be issued.

3. After the hearing, if the administrator determines an order is appropriate, he shall issue an order certifying disobedience or refusal to the party who applied for the order.

4. Upon receipt of such an order, the party may, on behalf of the administrator, file an application to compel obedience with the appropriate district court, pursuant to the provisions of NRS 616D.070.

NEW General requirements for motions. (similar to NAC 616C.312)

1. All motions, except those made during the hearing, must be filed with the administrator and a copy thereof served by the moving party on all other parties.

2. Within 10 days after service of a motion, an opposing party may serve and file its written opposition thereto.

3. The moving party may serve and file a reply within 5 days after service of the

opposition to the motion.

4. *Points and authorities must be filed with the motion.*
5. *All motions are submitted for decision:*
 - (a) *Ten days after the filing of the motion if a written opposition is not filed;*
 - (b) *Five days after the filing of a written opposition; or*
 - (c) *At the time designated by the administrator if a hearing on the motion has been ordered.*
6. *The administrator may, for good cause:*
 - (a) *Change any time prescribed in this section; or*
 - (b) *Order a hearing on the motion.*
7. *All motions requesting the entry of an order must include a proposed order approving the motion.*

NEW Motion for a change of venue. (similar to NAC 616C.313)

1. *A party who wishes to transfer a hearing to or from Carson City or Las Vegas must submit a written motion for a change of venue to the administrator at least 10 days before the date first scheduled for the hearing. The moving party must include an affidavit which indicates all the other parties' position regarding the motion for a change of venue and must serve a copy of the motion and affidavit on all other parties.*
2. *A motion for a change of venue must be administered pursuant to NAC 616D.NEW [preceding regulation regarding motions].*

NEW Papers and documents. (similar to NAC 616C.303)

1. *Papers and documents filed pursuant to NAC 616D.010 to 616D._____, inclusive, need not conform to any particular format.*
2. *All papers and documents and copies thereof must be legible.*
3. *A party shall furnish to the counsel of any other party, or to the party if he is not represented by counsel, copies of all papers and documents served upon any party or filed with the administrator.*
4. *Papers and documents offered as evidence, except for good cause, must not be marked with highlighting, underlining, any annotation, or other device that serves to draw attention to one part of the document over another part or one document over another document or to comment on the contents of the document.*
5. *The administrator may seal the record or require the parties to redact confidential information from the submitted papers and documents such as the name of the injured employee, address, or social security number in appropriate cases.*

NEW Evidence recorded on videotape. (similar to NAC 616C.307)

1. *A party who wished to introduce evidence that is recorded on videotape must submit to the administrator a written request therefor and a summary of the evidence so recorded in the statement of issues to be raised at the hearing at least 14 days before the hearing or as otherwise allowed by the administrator.*
2. *The administrator shall grant or deny the request within 5 days after the receipt of the request.*
3. *The party requesting the introduction of such evidence shall:*

(a) *At least 14 days before the date set for the first hearing, or as otherwise allowed by the administrator, provide an unedited copy of the evidence to the opposing party free of charge; and*

(b) *Provide all equipment necessary to display the videotape at the hearing.*

NEW Testimony by telephone. (similar to NAC 616C.309)

1. *Testimony may be taken by the administrator by use of the telephone; if a party requests testimony taken by telephone, he shall provide prior to the hearing, written notification to the parties and the administrator of this request. The administrator shall determine any issues relating to the credibility of such testimony in the same manner as he determines the credibility of any other testimony.*

2. *A person providing testimony by a long distance telephone call shall pay the costs of the telephone call, provide billing information, or otherwise accept the charges for the call when he presents his testimony at the hearing. The party requesting telephone testimony of a witness may shall be responsible for the charges for the call.*

3. *If a party requests to present testimony by telephone and is not available to do so when the administrator places the call, the party shall be deemed to have failed to appear.*

NEW Failure of party to appear. (similar to NAC 616C.279)

If a party who appeals fails to appear after due notice has been given and good cause is not shown for the failure to appear, the administrator may:

1. *Dismiss the case, with or without prejudice; or*

2. *Take testimony and evidence from the parties appearing and rule on the matter.*

NEW Rehearings. (similar to NAC 616C.327)

1. *A petition for a rehearing or reconsideration must be in accordance with the requirements set forth in NRS 233B.130. A copy of the petition must be served on all other parties at the same time.*

2. *The administrator shall grant or deny the petition for rehearing within 5 days after the receipt of the petition. If the petition is granted, the rehearing must be held within 30 days after the petition is granted.*

3. *If the petition for rehearing is denied, the time limit in which to file a petition for judicial review with the appropriate district court is not extended by the filing of the petition for reconsideration or rehearing.*

4. *Only one petition for rehearing will be considered per party per case.*

NEW Records of hearings. (similar to NRS 616C.360)

1. *A stenographic or electronic record must be kept of the hearing before the administrator and the rules of evidence applicable to contested cases under chapter 233B of NRS apply to the hearing.*

2. *Any party to the hearing may order a transcript of the hearing at any time before the fifteenth day after the hearing.*

(a) *If the record is a stenographic record, by contacting the certified court reporter*

who prepared the record and paying his fee for a copy thereof.

(b) If the record is a electronically recorded record, by contacting the administrator who shall have a transcription of the record made, an upon payment of the costs of transcription.

3. The electronic recording of a hearing shall be kept for a period of six months after the issuance of a final decision by the administrator. The administrator shall be responsible to keep such electronically recorded records in a safe and orderly place during this period of retention.

4. The ordering of a transcript does not stay the time in which a party has to file a petition for reconsideration or rehearing or a petition for judicial review.

NEW Counsel of Record. (similar to NAC 616C.321)

1. Counsel of record shall be deemed to be counsel for the party in all proceedings before the administrator until written notice of the withdrawal and the substitution of counsel is filed with the administrator.

2. Counsel for an injured worker who filed a complaint with the Division of Industrial Relations pursuant to the provisions of NRS 616D.130, shall be deemed the counsel of record for said injured worker for all proceedings before the Administrator arising out of such complaint, unless relieved of same pursuant to the provisions of subsection 1 of this regulation.

ENFORCEMENT

616D.300 Service of order for cessation of business. An order for the cessation of business will be delivered to and served upon the employer, manager or supervisor at the place of employment or jobsite, or upon an employee of suitable age and discretion if the employer, manager and supervisor are absent, by a representative of the [chief] *administrator or his designated representative* or by a peace officer who is authorized to serve judicial process and is designated by the administrator to serve the order.

616D.310 Compliance with order for cessation of business.

1. The representative of the [chief] *administrator* who delivers the order of cessation of business shall remain at the place of employment or jobsite to witness that the employer immediately orders all employees and other persons present to leave the place of employment or jobsite and that all operations are terminated.

2. If the [chief's] *administrator's* representative observes that the terms of the order are not carried out immediately, the representative shall contact the nearest law enforcement agency by the most expeditious means and request that the agency render assistance in enforcing the terms of the order.

Repeal NAC 616D.320

~~**616D.320—Administrative fines: Notice of violation.** If the chief has reason to believe that an insurer or employer has committed any of the acts enumerated in subsection 1 of NRS 616D.120, he will serve upon the person designated by the insurer or employer to accept service of process, by certified mail, a notice of violation, stating:~~

~~1. The provisions allegedly violated;~~

2. ~~The time and place for hearing; and~~
3. ~~A brief statement of the facts supporting the allegation.~~

Repeal of NAC 616D.330

~~**616D.330 Administrative fines: *Delivery of accident benefits* construed.** As used in NRS 616D.120, the term *delivery of accident benefits* includes payment by an insurer to a provider of health care.~~