

**PROPOSED REGULATION OF THE ADMINISTRATOR OF THE
DIVISION OF INDUSTRIAL RELATIONS OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R092-98

June 29, 1998

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

AUTHORITY: §§2-22, NRS 616A.400 and 616D.050.

Section 1. Chapter 616D of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this regulation.

Sec. 2. A party who requires assistance in interpreting the English language during a proceeding before the administrator must notify the administrator in writing at least 10 days before the hearing at which such assistance is required. The administrator will appoint an interpreter and arrange for the interpreter to attend the hearing at no cost to the party who requires such assistance.

Sec. 3. If a party or his counsel fails or refuses to comply with NAC 616D.009 to 616D.060, inclusive, and sections 2 to 15, inclusive, of this regulation, the administrator may make such orders as are necessary to direct the course of the hearing, including, without limitation:

- 1. Continuing the hearing until the party or his counsel complies with the requirements.*
- 2. Restricting or prohibiting the introduction of evidence.*
- 3. Dismissing the matter.*

Sec. 4. *A prehearing 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.*

Sec. 5. *The administrator may schedule a prehearing conference in any case to discuss settlement, discovery, scheduling or other matters pertinent to the case and may enter any order relating to those matters.*

Sec. 6. 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 prehearing conference held in the matter;*
- (b) *At least 10 days before 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 will:*

(a) Approve the request for a subpoena if the administrator determines 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. A subpoena for the production of a book, account, paper, record or other document must include, without limitation, a notice that indicates the manner in which the requested document may be provided without requiring the appearance of a person at the hearing.

Sec. 7. 1. A party aggrieved by the failure or refusal of a person 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 such an application, the administrator will 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 will issue an order certifying disobedience or refusal to comply to the party who applied for the order.

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

Sec. 8. 1. All motions, except those made during the hearing, must be filed with the administrator and a copy thereof served by the moving party upon all other parties.

2. A party desiring to oppose a motion may serve and file a written opposition to the motion within 10 days after service of the motion.

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 may be filed with the motion.*
 5. *All motions must be submitted for decision:*

 - (a) *Within 10 days after the filing of the motion if a written opposition is not filed;*
 - (b) *Within 5 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 times prescribed in this section; or*
 - (b) *Order a hearing on the motion.*
 7. *All motions requesting the entry of an order must be accompanied by alternate proposed orders approving and denying the motion.*
- Sec. 9.** 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 scheduled hearing. The moving party must serve a copy of the motion on all other parties.*
2. *A motion for a change of venue must be administered pursuant to section 7 of this regulation.*
- Sec. 10.** 1. *Papers and documents filed pursuant to NAC 616D.009 to 616D.060, inclusive, and sections 2 to 15, inclusive, of this regulation, 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 for 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 shown, must not be marked with highlighting, underlining, an annotation or any 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 submitted papers and documents, including, without limitation, the name, address and social security number of the injured employee.

Sec. 11. 1. A party who wishes 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 the issues to be raised at the hearing at least 14 days before the hearing or as otherwise allowed by the administrator.

2. The administrator will 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 any 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.

Sec. 12. 1. Testimony may be taken by the administrator by use of the telephone. If a party requests that testimony be taken by the administrator by use of the telephone, the party

must provide, before the hearing, written notification of the request to all of the other parties to the hearing and the administrator. The administrator will determine any issues relating to the credibility of such testimony in the same manner as he determines the credibility of any other testimony.

2. The party requesting the taking of testimony by use of the telephone is responsible for the charges for the call, unless the person providing testimony by telephone pays the costs of the telephone call or otherwise accepts the charges for the call when he presents his testimony at the hearing.

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.

Sec. 13. *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.*

Sec. 14. *1. A written petition for a reconsideration or rehearing based on good cause or newly discovered evidence may be filed with the administrator within 15 days after the service of a notice of the final decision. A copy of the petition must be served upon the other parties within the same time.*

2. The administrator may grant or deny the petition for reconsideration or rehearing within 5 days after the receipt of the petition. If the petition is:

- (a) Granted, the rehearing or reconsideration must be held within 30 days after the petition is granted.*

(b) 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 a petition for reconsideration or rehearing.

3. Only one petition for reconsideration or rehearing will be considered for each party in a specific case.

Sec. 15. 1. A hearing before the administrator must be transcribed by a court reporter or recorded electronically.

2. A party to the hearing may order a transcript of the record of the hearing within 15 days after the hearing. If the record is:

(a) A stenographic record, the party must:

- (1) Contact the certified court reporter who prepared the record; and
- (2) Pay for the record.

(b) An electronically recorded record, the party must:

- (1) Contact the administrator, who will have the record transcribed; and
- (2) Pay for the costs of transcription.

3. The electronic recording of the hearing will be maintained by the administrator for not less than 6 months after the administrator makes his ruling in the case.

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

Sec. 16. NAC 616D.009 is hereby amended to read as follows:

616D.009 As used in NAC 616D.009 to 616D.060, inclusive, *and sections 2 to 15, inclusive, of this regulation*, unless the context otherwise requires, “administrator” means the administrator or a person designated by him to conduct a hearing.

Sec. 17. NAC 616D.020 is hereby amended to read as follows:

616D.020 1. An insurer or employer may be represented in any proceeding before the administrator by a corporate officer, employee or other authorized representative.

2. Any attorney appearing on behalf of a party in a proceeding before the administrator must be licensed to practice law before all the courts of this state.

3. *The 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 substitution of counsel is filed with the administrator.*

4. *Counsel for an injured employee who filed a complaint with the division pursuant to NRS 616D.130 shall be deemed to be the counsel of record for the injured employee in all proceedings before the administrator arising from the complaint, until written notice of the withdrawal and substitution of counsel is filed with the administrator.*

Sec. 18. NAC 616D.050 is hereby amended to read as follows:

616D.050 1. At a hearing before the administrator, any relevant testimony or other evidence may be admitted, except where precluded by law, if it is reasonably reliable.

2. *The rules of evidence applicable to contested cases pursuant to chapter 233B of NRS apply to a hearing before the administrator.*

Sec. 19. NAC 616D.320 is hereby amended to read as follows:

616D.320 If the [chief] *administrator* 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.

Sec. 20. NAC 616D.333 is hereby amended to read as follows:

616D.333 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 by a peace officer who is authorized to serve judicial process and is designated by the administrator to serve the order.

Sec. 21. NAC 616D.335 is hereby amended to read as follows:

616D.335 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] representative *of the administrator* observes that the terms of the order are not carried out immediately, the representative [shall] *must* 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.

Sec. 22. NAC 616D.320 and 616D.330 are hereby repealed.

TEXT OF REPEALED SECTIONS

616D.320 Notice of certain violations. 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.

616D.330 “Delivery of 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.