

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R006-03

Effective December 16, 2003

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

AUTHORITY: §§1-22, NRS 616B.790.

Section 1. Chapter 616B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 22, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 22, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Chairman” means the Chairman of the Appeals Panel elected pursuant to NRS 616B.762.*

Sec. 4. *“Division of Insurance” means the Division of Insurance of the Department of Business and Industry.*

Sec. 5. *“Intervener” means a person who has been granted leave to intervene in a hearing pursuant to section 10 of this regulation.*

Sec. 6. *“Petitioner” means any policyholder or employer, other than a self-insured employer, who files a grievance pursuant to NRS 616B.772.*

Sec. 7. *“Respondent” means any person who is asked to respond to an appeal, including, without limitation, a private carrier or the advisory organization.*

Sec. 8. 1. *Except as otherwise provided in this section, the provisions of sections 2 to 22, inclusive, of this regulation:*

(a) Govern all practices and procedures for a hearing held pursuant to NRS 616B.760 to 616B.790, inclusive; and

(b) Must be liberally construed to secure the just and speedy determination of all issues presented to the Appeals Panel.

2. *Except as otherwise provided by specific statute, for good cause shown, the Appeals Panel may authorize deviation from the provisions of sections 2 to 22, inclusive, of this regulation if all parties to the appeal agree to the deviation.*

Sec. 9. 1. *To file a grievance with the Appeals Panel pursuant to NRS 616B.772, the petitioner must submit a written request for a hearing by United States mail or by electronic means in the manner set forth in NRS 719.250 to the Division of Insurance at one of the following addresses:*

Division of Insurance

Department of Business and Industry

788 Fairview Drive, Suite 300

Carson City, NV 89701

Electronic mail address: insinfo@doi.state.nv.us

Facsimile copy: 775.687.3937

Telephone: 775.687.4270

2. *The request for a hearing must include, without limitation:*

(a) A statement which requests a hearing;

(b) A clear, simple statement which describes the issues in dispute and the relief requested;

and

(c) A description of any statutes, rules, agency decisions or other authorities that the petitioner believes may be relevant to the issues in dispute or the relief requested.

3. The petitioner may withdraw his request for a hearing at any time before the date set for the hearing by sending written notice of the withdrawal in the same manner as set forth in subsection 1 for submitting a request for a hearing.

Sec. 10. 1. *A person, other than an original party to a hearing, who believes that he may be directly and immediately affected by the hearing and who wishes to participate in the hearing as an intervener, must secure an order from the Chairman granting the person leave to intervene.*

2. To seek an order for leave to intervene, the person must file with the Division of Insurance, not later than 2 days before commencement of the hearing, a petition for leave to intervene and proof of service of copies of the petition on each party to the hearing. If the petition and proof of service are filed later than 2 days before commencement of the hearing, the petition must state a substantial reason for the delay. If such a substantial reason for the delay is not stated in the petition, the Appeals Panel shall not consider the petition.

3. A petition for leave to intervene:

(a) Must be in writing;

(b) Must clearly identify the hearing in which the person seeks leave to intervene;

(c) Must set forth the name and address of the person seeking leave to intervene;

(d) Must contain a clear and concise statement which sets forth:

(1) The direct and immediate interest of the person in the hearing; and

(2) The manner in which the person may be affected if he is not granted leave to intervene;

(e) Must outline the information the person relied upon as the basis for seeking leave to intervene; and

(f) If affirmative relief is sought, must contain a clear and concise statement regarding the relief sought, the basis for seeking such relief, and the nature and quantity of evidence the person may present at the hearing if granted leave to intervene.

Sec. 11. *A member of the Appeals Panel who represents the Division of Insurance shall be deemed not to have a conflict of interest pursuant to NRS 616B.782 with respect to the Division of Insurance if the Division of Insurance is a party to the hearing or has been involved in the handling of the appeal.*

Sec. 12. *1. Not later than 30 days after the receipt of a request for a hearing, the Chairman shall set a date for the hearing. The hearing must be conducted not later than 90 days after the receipt of the request for a hearing, at such time and place as the Chairman prescribes.*

2. The Appeals Panel shall provide to the parties written notice of the hearing pursuant to NRS 616B.777. The notice must specify:

(a) The purpose of the hearing;

(b) The date, time and location of the hearing; and

(c) Any other information required pursuant to the provisions of NRS 233B.121.

Sec. 13. *1. Upon the motion of the Chairman or a party, the Chairman may hold a prehearing conference:*

- (a) To formulate or simplify the issues;*
- (b) To obtain documents that will avoid unnecessary delays;*
- (c) To arrange for the exchange of proposed exhibits or prepared expert testimony; or*
- (d) To expedite any other matters for the orderly conduct and disposition of the hearing or any settlements thereof.*

2. The agreements, admissions or stipulations made by the parties in a prehearing conference:

- (a) Must be made a part of the record; and*
- (b) Unless otherwise stipulated to by all of the parties and consented to by the Chairman, are binding upon the parties during the course of subsequent hearings.*

Sec. 14. 1. A party to a hearing may appear at the hearing:

- (a) In person;*
- (b) By an attorney or other authorized representative; or*
- (c) As provided in subsection 2.*

2. If a party is not a natural person, the party may appear at the hearing:

- (a) If a partnership, by a partner.*
- (b) If a corporation, by an officer, authorized representative or regular employee.*
- (c) If a municipal corporation, by an authorized officer, agent or employee.*
- (d) If an unincorporated association, by an authorized officer, representative or employee.*

3. If a party is represented by an attorney, the attorney must be admitted to practice before the highest court of any state of the United States and be in good standing.

Sec. 15. 1. *If a petitioner believes the Appeals Panel will be considering proprietary information, the petitioner may request that the hearing be closed to the public pursuant to NRS 616B.780.*

2. If the Appeals Panel determines that it will be considering proprietary information, the hearing must be closed to the public.

3. The decision of the Appeals Panel in a hearing that is closed to the public must be made part of the public record.

4. As used in this section, “proprietary information” has the meaning ascribed to it in NRS 616B.780.

Sec. 16. 1. *The Appeals Panel shall conduct hearings as informally as possible under the circumstances.*

2. The Appeals Panel shall direct their efforts toward promoting consistency and fairness in all decisions while ensuring compliance with all rules pertaining to classifications, rating and experience modifications.

Sec. 17. 1. *During any hearing, the Chairman may formally order any party to the hearing to file a brief or a statement of facts with the Chairman by a date set by the Chairman.*

2. The party shall file with the Chairman the brief or statement of facts and proof of service of copies of the brief or statement of facts on all other parties to the hearing.

3. The Chairman may extend the time for filing the brief or statement of facts if a party requests such an extension before the date set for filing. The Chairman shall issue his decision to grant or deny the extension in writing.

Sec. 18. 1. *The petitioner has the burden of proof in a hearing.*

2. During each hearing, unless otherwise ordered by the Chairman in a specific case, the Chairman and parties will ordinarily present the following information in the following order:

(a) A brief orientation by the Chairman.

(b) Testimony and other evidence that addresses the issues in dispute and the relief requested by the petitioner.

(c) Testimony and other evidence by any interveners.

(d) Testimony and other evidence by the respondent.

(e) Rebuttal testimony and other evidence by the petitioner.

3. The Appeals Panel may grant continuances or recesses before or during a hearing.

4. If a petitioner fails to appear before the Appeals Panel at the time and place set for the hearing, the Appeals Panel may:

(a) Dismiss the hearing with or without prejudice; or

(b) Recess the hearing for a period set by the Appeals Panel to enable the petitioner to attend.

Sec. 19. *1. Hearings will not be conducted according to the technical rules of evidence. Any relevant evidence may be admitted, except where precluded by law, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs, even though the evidence might be subject to objection in civil actions.*

2. "Hearsay evidence," as that term is used in civil actions, may be admitted to supplement or explain other evidence.

3. "Incompetent evidence," as that term is used in civil actions, is not admissible, with the exception of hearsay evidence as provided in subsection 2.

4. Irrelevant, cumulative and unduly repetitious evidence is not admissible.

5. The rules of privilege must be applied as they are applied in civil actions.

Sec. 20. *1. If a party wishes to obtain a transcript of a hearing, that party must:*

(a) Furnish a reporter;

(b) Pay for the transcript; and

(c) Deliver a copy of the transcript to the Division of Insurance not later than 20 days after the completion of the hearing.

2. If more than one party wishes to obtain a copy of the transcript of the hearing, the costs of obtaining the transcript must be divided equally among those parties.

3. An audiotape or other recording of the hearing must be made and retained for at least 1 year and is considered a public record.

Sec. 21. *1. The decision of the Appeals Panel:*

(a) Must be in writing;

(b) Must include a statement of facts, an analysis and an opinion;

(c) Must include a statement regarding the right of the parties to appeal;

(d) Must be issued by the Chairman not later than 30 days after the completion of the hearing unless the Appeals Panel orders an extension of time to reconvene to consider additional information; and

(e) Must be delivered, in person or by first-class mail, to the petitioner and each respondent and intervener in the hearing.

2. Decisions of the Appeals Panel may be appealed pursuant to the provisions of NRS 616B.787 and 679B.310.

3. A party wishing to appeal the decision of the Appeals Panel must direct the appeal to the Commissioner. The Commissioner will conduct the hearing for such an appeal pursuant to the provisions of NRS 679B.310 to 679B.370, inclusive.

Sec. 22. All meetings of the Appeals Panel must be conducted in compliance with the provisions of chapter 241 of NRS.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R006-03

The Commissioner of Insurance adopted regulations assigned LCB File No. R006-03 which pertain to chapter 616B of the Nevada Administrative Code on December 3, 2003.

Notice date: 10/10/2003
Hearing date: 11/13/2003

Date of adoption by agency: 12/3/2003
Filing date: 12/16/2003

INFORMATIONAL STATEMENT

A hearing was held on November 13, 2003, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, regarding the adoption of the regulation concerning the Workers' Compensation Appeals Panel.

Public comment was solicited by posting notice of the hearing in the following public locations: 788 Fairview Drive, Legislative Counsel Bureau, Capitol Building Lobby, Blasdel Building, Carson City Courthouse, State Library, Clark County Library, Capitol Press Room and the Division's Las Vegas Office.

In addition, the Department of Business and Industry, Division of Insurance (Division), maintains a list of interested parties, comprised mainly of insurance companies, agencies and other persons regulated by the Division. These persons were notified of the hearing and that copies of the regulation could be obtained from or examined at the offices of the Division in Carson City.

The hearing was attended by 14 people. No oral or written comments were received.

There were no revisions recommended or made to the Proposed Regulation, LCB File No. R006-03. The Commissioner has issued an order adopting the regulation as a permanent regulation of the Division.

The economic impact of the regulation is as follows:

- (a) On the business it is to regulate: The expenses of the panel are paid by the National Council on Compensation Insurance, Inc. (NCCI), the Commissioner's advisory organization. NCCI is reimbursed through the assessments of their member companies providing workers' compensation insurance in Nevada.
- (b) On the public: The regulation provides an administrative process to those employers with a grievance regarding their classification assignment or the application of the experience rating plan. There is no charge to the aggrieved employer for this process.

The Division anticipates a nominal expense to enforce the proposed regulation.

The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF THE

CAUSE NO. **03.003**
LCB File No. **R006-03**

**REGULATION FOR THE WORKERS’
COMPENSATION INSURANCE
APPEALS PANEL.**

**SUMMARY OF PROCEEDINGS
AND ORDER**

SUMMARY OF PROCEEDINGS

A public workshop, as required by NRS 233B.061, on the proposed regulation relating to the Workers’ Compensation Appeals Panel was held before Alice A. Molasky-Arman, Commissioner of Insurance, on November 13, 2003, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. A public hearing on the proposed regulation was also held before Commissioner Molasky-Arman on November 13, 2003, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. The regulation is proposed under the authority of NRS 679B.130 and 616B.790.

The Department of Business and Industry, Division of Insurance (Division) did not receive any oral or written comments. The hearing was attended by 14 individuals. The following person provided testimony before the Hearing Officer: Cliff King, representing the Division.

Cliff King testified that the intent of the regulation was to establish the rules of practice and procedures for the Panel which was authorized by Senate Bill 417 of the 1999 Legislature and codified in NRS 616B.760 through 616B.790, inclusive.

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ORDER OF THE COMMISSIONER

Having reviewed the record in this matter, it is hereby ordered that the proposed regulation concerning the Workers' Compensation Appeals Panel, LCB File No. R006-03, be adopted as a permanent regulation of the Division.

SO ORDERED this ____ day of _____, 2003.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance