

**PROPOSED REGULATION OF THE
STATE BOARD OF OSTEOPATHIC MEDICINE**

LCB File No. R208-05

January 6, 2006

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

AUTHORITY: §§1, 7, 8 and 10, NRS 633.291; §2, NRS 633.291 and section 2 of Assembly Bill No. 203, chapter 94, Statutes of Nevada 2005, at page 259 (NRS 633.055); §3, NRS 633.291 and section 2.5 of Assembly Bill No. 203, chapter 94, Statutes of Nevada 2005, at page 259 (NRS 633.105); §4, NRS 633.291 and sections 3 and 3.5 of Assembly Bill No. 203, chapter 94, Statutes of Nevada 2005, at page 259 (NRS 633.660 and 633.665); §§5 and 6, NRS 633.291 and section 3.5 of Assembly Bill No. 203, chapter 94, Statutes of Nevada 2005, at page 259 (NRS 633.665); §9, section 9 of Assembly Bill No. 555, chapter 487, Statutes of Nevada 2005, at page 2515 (NRS 633.524); §§11-14, NRS 633.291, 633.321 and 633.651; §15, NRS 633.291 and 633.651.

A REGULATION relating to osteopathic medicine; establishing certain procedures for disciplinary hearings conducted by the State Board of Osteopathic Medicine, a hearing officer or a panel; revising provisions relating to disciplinary proceedings and other types of contested cases; requiring a holder of a license to practice osteopathic medicine to report annually to the Board certain office-based surgeries performed by him; and providing other matters properly relating thereto.

Section 1. Chapter 633 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. *“Hearing officer” has the meaning ascribed to it in section 2 of Assembly Bill No. 203, chapter 94, Statutes of Nevada 2005, at page 259 (NRS 633.055).*

Sec. 3. *“Panel” has the meaning ascribed to it in section 2.5 of Assembly Bill No. 203, chapter 94, Statutes of Nevada 2005, at page 259 (NRS 633.105).*

Sec. 4. 1. *The Board may appoint a hearing officer or panel to preside over and conduct a hearing concerning a disciplinary proceeding in the manner set forth in sections 2*

to 41, inclusive, of Senate Bill No. 276, chapter 225, Statutes of Nevada 2005, at page 743 (NRS 622A.010 to 622A.410, inclusive).

2. If the Board appoints a hearing officer or panel pursuant to subsection 1, the Board may:

(a) Revoke the appointment and assume responsibility for presiding over and conducting the hearing; or

(b) Designate another hearing officer or panel to preside over and conduct the hearing.

3. If a hearing officer or panel presides over and conducts a hearing concerning a disciplinary proceeding, the hearing officer or panel shall, after the close of all evidentiary hearings, file with the Board and serve on each party to the hearing written findings and recommendations that include, without limitation:

(a) A proposed order;

(b) The findings of fact and conclusions of law of the hearing officer or panel;

(c) The reasons and bases for its findings of fact and conclusions of law; and

(d) The recommendations of the hearing officer or panel.

4. Pursuant to section 15 of Senate Bill No. 276, chapter 225, Statutes of Nevada 2005, at page 745 (NRS 622A.300), the written findings and recommendations of a hearing officer or panel are subject to review by the entire Board.

5. Upon review of the written findings and recommendations of a hearing officer or panel, the Board may, subject to the provisions of NRS 233B.124 and subsection 5 of section 15 of Senate Bill No. 276, chapter 225, Statutes of Nevada 2005, at page 745 (NRS 622A.300), approve, reject or modify the written findings and recommendations, in whole or in part, and may take any other action that the Board deems appropriate to resolve the case.

Sec. 5. 1. In a disciplinary proceeding, the Board, hearing officer or panel may, upon its own motion or a motion by a party, hold a prehearing conference not later than 10 days before a hearing concerning a disciplinary proceeding to:

- (a) Formulate or simplify the issues involved in the proceeding;**
- (b) Obtain an admission of fact or stipulation of the parties;**
- (c) Arrange for the exchange of prefiled direct testimony of a witness ordered by the Board, hearing officer or panel;**
- (d) Limit the number of witnesses;**
- (e) Rule on any pending procedural motions, motions for discovery or motions for protective orders; or**
- (f) Establish any other procedure which may expedite the orderly conduct and disposition of the proceeding.**

2. Notice of any prehearing conference must be provided to all parties to the disciplinary proceeding. Except as otherwise ordered for good cause shown, the failure of a party to attend a prehearing conference constitutes a waiver of any objection to the agreements reached or rulings made at the prehearing conference.

- 3. The actions taken and the agreements made at a prehearing conference:**
- (a) Must be made part of the record;**
 - (b) Control the course of subsequent proceedings unless modified by the Board, hearing officer or panel; and**
 - (c) Are binding upon the parties to the disciplinary proceeding and any person who subsequently becomes a party to the disciplinary proceeding.**

Sec. 6. 1. *In a disciplinary proceeding, a ruling made by a hearing officer or panel presiding over and conducting a hearing concerning the disciplinary proceeding regarding the admissibility of evidence is subject to review by the Board.*

2. *In extraordinary circumstances, when a prompt decision by the Board is necessary to promote substantial justice, the hearing officer or panel shall refer the matter to the Board for a determination and may recess the hearing pending the determination.*

Sec. 7. 1. *With the approval of the Board, hearing officer or panel presiding over and conducting a hearing concerning a disciplinary proceeding, the parties to the disciplinary proceeding may stipulate as to any fact in issue, either by written stipulation introduced in evidence as an exhibit or by an oral statement made upon the record. The stipulation is binding only upon the parties so stipulating and is not binding upon the Board, hearing officer or panel.*

2. *A stipulation may be considered by the Board, hearing officer or panel as evidence at a hearing concerning the disciplinary proceeding. Notwithstanding the stipulation of the parties, the Board, hearing officer or panel may require proof of the facts stipulated to by independent evidence.*

Sec. 8. 1. *The Board, President, hearing officer, panel or a member of the Board designated to preside over and conduct a hearing may require a party in any disciplinary proceeding or other contested case to file proposed findings of fact and conclusions of law at the close of the proceeding. The Board, President, hearing officer, panel or member of the Board shall fix the period within which the proposed findings of fact and conclusions of law must be filed.*

2. Each proposed finding of fact and conclusion of law must be clearly and concisely stated and numbered. Each proposed finding of fact must specifically show, by appropriate reference to the transcript, the testimony that supports the finding.

3. The proposed findings of fact and conclusions of law, accompanied by a certificate of service, must be filed by each party with the Board, President, hearing officer, panel or member of the Board and one copy must be served upon each party to the proceeding.

Sec. 9. *1. A licensee shall, on or before January 31 of each year, submit to the Board, on a form to be provided by the Board, the report required pursuant to section 9 of Assembly Bill No. 555, chapter 487, Statutes of Nevada 2005, at page 2515 (NRS 633.524).*

2. Failure to comply with the requirements of this section or section 9 of Assembly Bill No. 555, chapter 487, Statutes of Nevada 2005, at page 2515 (NRS 633.524), may subject the licensee to disciplinary action as provided by law.

Sec. 10. NAC 633.005 is hereby amended to read as follows:

633.005 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 633.011 to 633.050, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 11. NAC 633.400 is hereby amended to read as follows:

633.400 1. Each hearing of a contested case ~~will be held before three or more members of the Board.~~

~~2. The hearing]~~ will be conducted in accordance with the provisions of this chapter and chapter 233B of NRS and, if the hearing ~~is]~~ *concerns* a disciplinary ~~action, NRS 633.511]~~ *proceeding, NRS 633.509* to 633.681, inclusive ~~].~~

~~3.—The]~~, and sections 2 to 41, inclusive, of Senate Bill No. 276, chapter 225, Statutes of Nevada, at page 743 (NRS 622A.010 to 622A.410, inclusive).

2. *Except as otherwise provided in subsection 3, the* President, or a member of the Board designated by him, will preside over the hearing.

3. *If the hearing concerns a disciplinary proceeding, the Board or a hearing officer or panel designated by the Board will preside over the hearing.*

4. An electronic or stenographic record will be made of all contested hearings before the Board.

Sec. 12. NAC 633.410 is hereby amended to read as follows:

633.410 1. The *Board, the* President or the member of the Board, *hearing officer or panel* designated to preside over a hearing may issue rulings on all preliminary matters, including, without limitation, scheduling matters, protective orders, the admissibility of evidence, and other procedural or prehearing matters.

2. A ruling *by the President, member of the Board, hearing officer or panel* on a preliminary matter is subject to reconsideration by the entire Board upon the request of a Board member or the motion of a party.

3. The failure of a party who is affected by a ruling on a preliminary matter to move for reconsideration of the ruling does not constitute:

- (a) Consent to the ruling; or
- (b) Waiver of any objection previously made to the ruling.

4. For the purposes of this section, a matter is preliminary if it is not dispositive of a *disciplinary proceeding or other* contested case or a substantive issue therein.

Sec. 13. NAC 633.420 is hereby amended to read as follows:

633.420 1. Except as otherwise provided in subsection 2, a party may appear at a hearing in person or by an attorney.

2. ~~1A~~ *If the hearing concerns a contested case other than a disciplinary proceeding governed by sections 2 to 41, inclusive, of Senate Bill No. 276, chapter 225, Statutes of Nevada 2005, at page 743 (NRS 622A.010 to 622A.410, inclusive), a party shall attend ~~1a~~ the hearing on the merits in person unless the President or presiding officer waives the requirement of the attendance of the party.*

3. If a party who is required *pursuant to subsection 2* to attend a hearing in person fails to do so without having obtained a waiver of the requirement of his attendance pursuant to subsection 2, the Board may:

(a) Determine that his failure to attend the hearing in person shall be deemed:

(1) An admission of all matters and facts contained in the record with respect to the party;
and

(2) A waiver of the right to an evidentiary hearing; and

(b) Take action based upon such admission or upon any other evidence, including affidavits, without any further notice or a hearing.

4. If a party retains an attorney to represent him before the Board, the attorney shall so notify the Board not later than 10 days after he is retained. Thereafter:

(a) The attorney shall sign all motions, oppositions, notices, requests and other papers, including requests for subpoenas; and

(b) The Board will serve all notices, motions, orders, decisions, and any other papers or pleadings upon the attorney.

5. An attorney appearing as counsel in any proceeding *other than a disciplinary proceeding* must be an attorney at law, admitted to practice and in good standing before the highest court of any state. If the attorney is not admitted and entitled to practice before the Supreme Court of Nevada, he must be associated with an attorney so admitted and entitled to practice.

6. An attorney appearing as counsel in a disciplinary proceeding shall comply with the provisions of section 16 of Senate Bill No. 276, chapter 225, Statutes of Nevada 2005, at page 745 (NRS 622A.310).

Sec. 14. NAC 633.430 is hereby amended to read as follows:

633.430 1. ~~[The]~~ *In a hearing other than a hearing concerning a disciplinary proceeding, the* President or presiding officer will call the hearing to order and proceed to take the appearances on behalf of the Board, the applicant or licensee. *The legal counsel for the Board will present the evidence for the Board first and, if the Board allows closing arguments, will present the closing arguments for the Board first.*

2. *In a hearing concerning a disciplinary proceeding, the Board, hearing officer or panel shall conduct the hearing in accordance with the provisions of section 23 of Senate Bill No. 276, chapter 225, Statutes of Nevada 2005, at page 748 (622A.380).*

3. The notice of hearing, any petition, answer, response or written stipulation, and, if the hearing concerns a disciplinary proceeding, the complaint or any other responsive pleading, becomes a part of the record without being read into the record, unless a party requests that the document be read into the record.

~~[3.—The legal counsel for the Board will present the evidence for the Board first and, if the Board allows closing arguments, will present the closing arguments for the Board first.~~

~~—4.—A member of the Board]~~

4. The Board, President, presiding officer, hearing officer or panel may, at any time:

(a) Question a witness; ~~and~~

(b) Request or allow additional evidence, including additional rebuttal or documentary evidence ~~;~~

~~5. If the Board allows~~;

(c) *Make proposed opinions, findings of fact and conclusions of law;*

(d) *Issue appropriate interim orders;*

(e) *Recess the hearing as required; and*

(f) *Set reasonable limits of time for the presentation of testimony.*

5. If closing briefs ~~[to be submitted, the Board will establish a time]~~ *are permitted, the Board, President, presiding officer, hearing officer or panel shall establish a time frame* for the submission of the closing briefs.

Sec. 15. NAC 633.460 is hereby amended to read as follows:

633.460 1. The parties to a disciplinary proceeding shall meet or confer, not later than ~~[10]~~ **20** days before the hearing, and:

(a) Exchange copies of all documents that each party intends to offer as evidence in support of its case.

(b) Identify, describe or produce all tangible things, other than documents, that each party intends to offer as evidence in support of its case and, if requested, arrange for the opposing party to inspect, copy, test or sample such evidence under reasonable supervision.

(c) Exchange written lists of persons that each party intends to call as witnesses in support of its case. The list must identify each witness by name and position and, if known, business address. If no business address is available, the party intending to call the witness shall disclose

the home address of the witness or make the witness available for service of process. The list must also include, for each witness, a summary of the proposed testimony and the purpose for which the witness will be called.

2. As used in this section, “parties to a disciplinary proceeding” includes:

(a) A licensee who has been served with a formal complaint alleging a disciplinary violation pursuant to NRS 633.541;

(b) The attorney, if any, representing the licensee; and

(c) The legal counsel for the Board.