

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

LCB File No. R062-24

April 22, 2024

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

AUTHORITY: § 1, NRS 633.291, 633.417, 633.418, 633.434, 633.524, 633.651 and 633.660.

A REGULATION relating to osteopathic medicine; revising the conditions under which the holder of certain licenses to practice osteopathic medicine in certain authorized facilities may employ a physician assistant; revising the procedure for the renewal of such a license; repealing certain provisions governing certain reports, summary suspension of a license and practice before the State Board of Osteopathic Medicine that duplicate or conflict with existing law; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Board of Osteopathic Medicine to issue an authorized facility license to certain persons who are intending to practice osteopathic medicine in this State as: (1) psychiatrists in a mental health center of the Division of Public and Behavioral Health of the Department of Health and Human Services; or (2) osteopathic physicians in an institution of the Department of Corrections. (NRS 633.417, 633.418) Existing regulations: (1) authorize an osteopathic physician who holds such an authorized facility license to employ a physician assistant under certain circumstances; and (2) set forth certain requirements for the renewal of such licenses. (NAC 633.273, 633.274) This regulation repeals those regulatory provisions, thereby authorizing the holder of an authorized facility license to employ a physician assistant and renew his or her license under the same conditions as other osteopathic physicians.

Existing law requires the Board to require licensees to submit an annual report to the Board concerning: (1) the number and type of surgeries performed by the licensee at his or her office or certain other facilities which require conscious sedation, deep sedation or general anesthesia; and (2) any sentinel event arising from such a surgery. (NRS 633.524) Existing regulations require a licensee to submit such a report on or before January 31 of each year, which conflicts with existing law requiring the submission of such a report when the osteopathic physician renews his or her license on or before January 1 of each year. (NRS 633.471, 633.524; NAC 633.380) This regulation repeals this conflicting provision from the Nevada Administrative Code.

Existing law: (1) authorizes the Board to appoint a hearing officer or panel to hear a contested case; and (2) provides that a hearing officer or panel appointed by the Board has all the powers that are necessary to conduct a hearing concerning the discipline of a licensee. (NRS

622A.300, 633.660, 633.665) Existing law: (1) authorizes a licensee to appear on his or her own behalf or be represented by an attorney in a contested case; and (2) imposes certain requirements governing the qualifications and conduct of such an attorney. (NRS 622A.310) Existing law establishes the procedure for filing and ruling on preliminary motions in a contested case before a regulatory body, including the Board. (NRS 622A.360) Existing law requires a regulatory body to consider any preliminary stipulations. At the conclusion of a hearing and if allowed by the regulatory body or hearing panel or officer, existing law authorizes either party to recommend specific disciplinary action to the regulatory body or hearing panel or officer. (NRS 622A.380) Existing law authorizes the Board to summarily suspend the license of an osteopathic physician, physician assistant or anesthesiologist assistant pending a hearing if the Board determines that the health, safety or welfare of the public or any patient is at risk of imminent or continued harm. (NRS 633.581, as amended by section 78 of Assembly Bill No. 270, chapter 247, Statutes of Nevada 2023, at page 1581) This regulation repeals certain provisions of the Nevada Administrative Code governing practice before the Board that are largely duplicative of existing law. (NAC 633.410, 633.420, 633.440, 633.450, 633.454, 633.457, 633.466)

Section 1. NAC 633.273, 633.274, 633.380, 633.410, 633.420, 633.440, 633.450, 633.454, 633.457 and 633.466 are hereby repealed.

TEXT OF REPEALED SECTIONS

633.273 Authorized facility license to practice osteopathic medicine as psychiatrist in certain mental health centers. (NRS 633.291, 633.417, 633.434)

1. A person who holds an authorized facility license issued pursuant to NRS 633.417 may employ a physician assistant if the holder of the authorized facility license and the physician assistant otherwise satisfy the requirements of this chapter and chapter 633 of NRS concerning physician assistants and supervising osteopathic physicians.

2. A person who holds an authorized facility license described in subsection 1 must, if the person wishes to renew the authorized facility license, annually submit proof of employment as a psychiatrist only in a mental health center of the Division.

3. As used in this section:

(a) “Division” means the Division of Public and Behavioral Health of the Department of Health and Human Services.

(b) “Mental health center” has the meaning ascribed to it in NRS 433.144.

633.274 Authorized facility license to practice as osteopathic physician in institution of Department of Corrections. (NRS 633.291, 633.418, 633.434)

1. A person who holds an authorized facility license issued pursuant to NRS 633.418 may employ a physician assistant if the holder of the authorized facility license and the physician assistant otherwise satisfy the requirements of this chapter and chapter 633 of NRS concerning physician assistants and supervising osteopathic physicians.

2. A person who holds an authorized facility license described in subsection 1 must, if the person wishes to renew the authorized facility license, annually submit proof of employment as an osteopathic physician only in an institution of the Department of Corrections.

633.380 Reports of certain information concerning surgeries: Submission; failure to comply with requirements. (NRS 633.291, 633.524)

1. An osteopathic physician 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 NRS 633.524.

2. Failure to comply with the requirements of this section or NRS 633.524 may subject the osteopathic physician to disciplinary action as provided by law.

633.410 Rulings on preliminary matters. (NRS 633.291)

1. The Board, the President or the member of the Board, the hearing officer or the 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.

633.420 Appearance and representation of parties. (NRS 633.291)

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

2. If the hearing concerns a contested case other than a disciplinary proceeding governed by chapter 622A of NRS, a party shall attend 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 or her attendance pursuant to subsection 2, the Board may:

(a) Determine that the 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 or her before the Board, the attorney shall so notify the Board not later than 10 days after being 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 or she 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 NRS 622A.310.

633.440 Proposed findings of fact and conclusions of law. (NRS 633.291)

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.

633.450 Summary suspension of license by Board. (NRS 633.291, 633.651)

1. If a complaint has been filed against an osteopathic physician pursuant to NRS 633.531 or against a physician assistant pursuant to NAC 633.287, the Board may order the summary suspension of the license of the osteopathic physician or physician assistant pending disciplinary proceedings.

2. The Board will issue such an order if it determines that:

(a) The osteopathic physician or physician assistant has violated a provision of this chapter or chapter 633 of NRS;

(b) The summary suspension of the license is necessary to prevent a further violation of this chapter or chapter 633 of NRS; and

(c) The public health, safety or general welfare imperatively requires the summary suspension of the license.

3. An order summarily suspending a license:

(a) Must:

(1) Comply with the applicable provisions of NRS 233B.127; and

(2) Set forth the grounds upon which the order is issued, including a statement of facts;

(b) Is effective upon service on the osteopathic physician or physician assistant of the order and complaint; and

(c) Remains in effect until the Board:

(1) Modifies or rescinds the order; or

(2) Issues its final order or decision on the underlying complaint.

4. A hearing on the complaint must be held within 45 days after the effective date of the suspension.

633.454 Hearing officer or panel: Authority of Board; duties; findings and recommendations. (NRS 633.291, 633.660)

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 chapter 622A of NRS.

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 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 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.

633.457 Hearing officer or panel: Rulings regarding admissibility of evidence; referral of matter to Board. (NRS 633.291)

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.

633.466 Stipulations regarding facts in issue. (NRS 633.291)

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.