

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R173-01

Effective May 23, 2002

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

AUTHORITY: §§1-26, NRS 41A.033.

Section 1. NAC 41A.018 is hereby amended to read as follows:

41A.018 As used in NRS 41A.049, the commissioner of insurance will interpret the term “complaint” to include only a complaint that is submitted to the division. The term does not include any ~~documentary~~ evidence that is submitted to the division with the complaint.

Sec. 2. NAC 41A.020 is hereby amended to read as follows:

41A.020 In any proceeding before a screening panel, ~~the parties~~ *each party* must be denominated as ~~the claimant and~~ *a claimant or as a* respondent.

Sec. 3. NAC 41A.031 is hereby amended to read as follows:

41A.031 If a claimant dies or becomes incompetent or incapacitated after filing a complaint with the division, the division will authorize the substitution of the proper claimant. The successor or representative of the claimant must file a request for substitution with the division within 60 days after the claimant dies or becomes incompetent or incapacitated. The request must be authenticated by a notary public *or by a declaration in the form required pursuant to NRS 53.045* and *must* include:

1. An affidavit *or declaration* of the successor or representative of the claimant which sets forth the reason for the substitution of the claimant; and

2. A copy of:

- (a) The death certificate of the claimant;
- (b) The court order declaring the claimant incompetent; or
- (c) The statement of the claimant's physician that the claimant is incapacitated.

Sec. 4. NAC 41A.040 is hereby amended to read as follows:

41A.040 1. ~~Am~~ *The original and each of the nine copies of the* complaint of medical or dental malpractice must ~~be accompanied by:~~

~~(a) Nine copies of the complaint.~~

~~(b)~~ *include:*

(a) A list of all documentary evidence being submitted in support of the claim.

~~(c) Ten copies of all~~

(b) *All* documentary evidence being submitted in support of the claim. One of the copies of the *pertinent* documentary evidence being submitted in support of the claim must be attached to the original complaint. Each item of documentary evidence must be paginated and tabbed along the right-hand edge with a designating number or letter.

~~(d)~~ (c) Proof of service , by personal service or by certified or registered mail , of a copy of the complaint and accompanying documents upon each respondent.

~~(e)~~ (d) An executed *medical* release, not restricted as to records, physicians or dentists, to each respondent or his attorney of all pertinent health care or dental records of the claimant.

~~(f)~~ (e) A list of the names and addresses of all persons providing medical or dental care to the claimant pertinent to the claim of medical or dental malpractice ~~f~~

~~(g)~~ *, including, within 1 year before the alleged malpractice:*

(1) *All named respondents;*

(2) All providers of medical services for a claim of medical malpractice; and

(3) All providers of dental services for a claim of dental malpractice.

(f) A statement ~~[(f)]~~ *of jurisdiction*, to the extent known, that each respondent named in the complaint is a physician licensed pursuant to chapter 630 or 633 of NRS, a dentist licensed pursuant to chapter 631 of NRS, a hospital licensed pursuant to chapter 449 of NRS or established pursuant to chapter 450 of NRS, or an employee of such a hospital.

~~[(h)]~~ (g) A list of the current address, to the extent known to the claimant, of each respondent named in the complaint.

2. ~~[(An)]~~ *The original and each of the seven copies of the* answer to a complaint of medical or dental malpractice must ~~be accompanied by:~~

~~—(a) Seven copies of the answer.~~

~~—(b)]~~ *include:*

(a) A clear and concise statement of all the facts relied upon in denying the claim of medical or dental malpractice and all the facts in support of any affirmative defense to be asserted. All references to an exhibit must indicate the designating number or letter of the document and number of the page.

~~[(e)]~~ (b) A list of all documentary evidence upon which the respondent relies, other than documentary evidence already provided by the claimant. Each item of documentary evidence must be tabbed along the right-hand edge with a designating number or letter and paginated.

~~[(d) Eight copies of all of the]~~

(c) *All* documentary evidence being submitted in support of the answer. One of the copies of the *pertinent* documentary evidence being submitted in support of the answer must be attached to the original answer.

~~[(e)]~~ (d) Proof of service by personal service or by certified or registered mail , of a copy of the answer upon ~~[the claimant or his attorney and each other respondent or his attorney.~~
~~—3.—An]~~ *all other parties to the case.*

3. *The* original *and each of the seven copies of the* response to an answer to a complaint of medical or dental malpractice must ~~[be accompanied by:~~

~~—(a) Seven copies of the response.~~

~~—(b)]~~ *include:*

(a) A list of all documentary evidence submitted in support of the response. Each item of documentary evidence must be tabbed along the right-hand edge with a designating number or letter and paginated.

~~[(e) Eight copies of all of the]~~

(b) *All* documentary evidence being submitted in support of the response. One of the copies of the *pertinent* documentary evidence being submitted in support of the response must be attached to the original response.

~~[(d)]~~ (c) Proof of service of a copy of the response and accompanying documents upon each respondent by personal service or by certified or registered mail.

4. The following statement must be printed on the top page or cover of the original complaint and each copy of the complaint:

NOTICE:

Medical Dental Screening Panel
Department of Business and Industry
Division of Insurance

2501 E. Sahara Ave., #302

Las Vegas, Nevada 89104

(702) 486-4390

(702) 486-4060

~~[1665 Hot Springs Road, #152]~~

or

788 Fairview Drive, #300

Carson City, Nevada ~~[89706]~~

~~(775) 687-7672] 89701~~

(775) 687-4270

A complaint of malpractice naming you as a respondent is being submitted to the Division of Insurance of the Department of Business and Industry. Pursuant to subsection 3 of NRS 41A.039, the person against whom a complaint is filed must, within 90 days after receipt of the complaint, file an answer with the Division of Insurance of the Department of Business and Industry, accompanied by a fee of \$350. For the answer to be *timely* filed before the filing deadline, it must be received by the division at its office in Las Vegas or Carson City *on or* before ~~[that date.]~~ *the filing deadline*. Depositing an answer in the mail does not constitute *a timely* filing. ~~[the answer.]~~

You should immediately contact your insurer or an attorney concerning this claim. Pursuant to paragraph (b) of subsection 9 of NAC 41A.040, if an answer is not timely filed, the screening panel will proceed to make its findings based only upon the information submitted by the claimant.

5. The following statement must be printed *in not less than 12-point bold type* on ~~fa separate sheet of paper and affixed to~~ the top page or cover of the original response and each copy of the response:

NOTICE: Pursuant to subsection 5 of NRS 41A.039, the panel shall disregard any portion of the response that does not address an allegation raised in the answer or an affidavit accompanying the answer.

~~[The statement must be printed in not less than 12-point boldfaced type on a sheet of paper that measures 8 1/2 by 11 inches. The statement must be printed across the 8 1/2-inch width of the paper.]~~

6. The claimant or respondent may submit a request to have ~~any documentary~~ *certain demonstrative* evidence *that was* submitted with his complaint, answer or response returned to him at the end of the proceedings of the screening panel ~~[, except for the original complaint, original answer, original response, if any, and the copies of the original complaint, original answer and original response that were reviewed by the members of the screening panel and the copies of the original complaint that were submitted pursuant to NRS 41A.049 to the board of medical examiners and the county medical society of the county in which the alleged malpractice occurred.]~~, *including, without limitation, X-rays, slides and video tapes, but not including the original pleading or any copies thereof.* Any such request for the return of evidence must specify each item of evidence to be returned. If such a request is submitted, the division will return the specified item of evidence at the end of the proceedings. If no such request is made

with respect to any of the evidence, the division will destroy the evidence at the end of the proceedings.

7. The division will not accept a supplement to a complaint, answer or response.

8. A general denial by the respondent must be accompanied by a clear and concise statement of the facts upon which he relies.

9. If the respondent does not timely file his answer with the division and he has not been dismissed from the case:

(a) The respondent is not entitled to participate in the conference *call* held pursuant to subsection 1 of NRS 41A.043; and

(b) The screening panel shall proceed to make its findings based upon the information submitted by the claimant and all the other respondents who have timely filed an answer to the complaint and have not been dismissed from the case.

10. The complaint and answer must be verified. The complaint must be authenticated by a notary public **H** *or by a declaration in the form required pursuant to NRS 53.045*. The verifications in the original complaint and the original answer must include the original signatures of the claimant or respondent.

11. The original complaint, answer and response and one copy of all accompanying material will be retained by the division for 7 years after the date on which the case is closed.

12. Proof of service by certified or registered mail must include the number of the receipt for certified or registered mail and the original or a copy of the receipt issued by the United States Postal Service that includes the signature of the person who accepted service and the date the service was accepted.

13. The original and each copy of the complaint, answer or response and attached ~~documentary~~ evidence or other papers submitted to the division with the complaint, answer or response and served upon the claimant and respondent or his attorney must, if practicable, be firmly bound together in a single binding. For the purposes of this subsection, “firmly bound” does not include fastening by stapling only, and material which is bound only by staples will not be accepted by the division.

14. If the original and copies of the pleadings are submitted to the division or served upon the claimant and respondent or his attorney with covers:

- (a) The color of the covers of all of the pleadings must be white; or
- (b) The color of the cover of the:
 - (1) Complaint must be blue;
 - (2) Answer must be red; and
 - (3) Response must be gray.

15. The parties shall not duplicate or submit repeated copies of documentary or other items of evidence that have been previously filed. Reference to documentary or other items of evidence must be made by reference to the page or item number set forth in the pleading that was filed the earliest.

Sec. 5. NAC 41A.042 is hereby amended to read as follows:

41A.042 1. *A complaint, answer, response, pleading and any other document filed with the division pursuant to chapter 41A of NRS or this chapter must include the following information starting on the upper left of line one of the first or caption page in substantially the following form:*

Name of attorney or person appearing in proper person

State Bar of Nevada identification number (if applicable)

Address

Telephone number

Electronic mail address (if available)

2. A complaint, answer, response, pleading and any other document filed with the division pursuant to chapter 41A of NRS or this chapter must include the following information in the caption in substantially the ~~same~~ *following* form:

(a) If the document is for the northern medical screening panel:

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE
NORTHERN MEDICAL SCREENING PANEL

(b) If the document is for the southern medical screening panel:

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE
SOUTHERN MEDICAL SCREENING PANEL

(c) If the document is for the northern dental screening panel:

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

NORTHERN DENTAL SCREENING PANEL

(d) If the document is for the southern dental screening panel:

DEPARTMENT OF BUSINESS AND INDUSTRY

DIVISION OF INSURANCE

SOUTHERN DENTAL SCREENING PANEL

~~2.~~ 3. In addition to the requirements set forth in subsection 1, each document filed with the division pursuant to chapter 41A of NRS or this chapter must include ~~a~~ *the following information in the* caption in substantially the following form:

.....(name of claimant), CLAIMANT

V.

CASE NO.

.....(name of respondent), RESPONDENT

Sec. 6. NAC 41A.043 is hereby amended to read as follows:

41A.043 Personal service of a complaint, response or answer upon:

1. A physician or dentist must be completed by:

(a) Personally delivering a copy of the complaint, response or answer to the physician or dentist;

(b) Leaving a copy of the complaint, response or answer with a person of suitable age and discretion who is present at the principal place of business of the physician or dentist;

(c) Leaving a copy of the complaint, response or answer with a person of suitable age and discretion who resides at the dwelling house or usual place of abode of the physician or dentist;
or

(d) If the physician or dentist is represented by an attorney in the proceedings before the screening panel, by delivering a copy of the complaint, response or answer to the attorney.

2. An employee of a hospital that is licensed pursuant to chapter 449 of NRS or established pursuant to chapter 450 of NRS, other than a physician employed by the hospital, must be completed by:

(a) Personally delivering a copy of the complaint, response or answer to the employee;

(b) Personally delivering a copy of the complaint, response or answer to the ~~chief executive officer~~ *administrator* of the hospital which employs the employee;

(c) Personally delivering a copy of the complaint, response or answer to the person in charge of directing the defense of claims filed against the hospital which employs the employee;

(d) Leaving a copy of the complaint, response or answer with a person of suitable age and discretion who is present at the office of the ~~chief executive officer~~ *administrator* of the hospital which employs the employee;

(e) Leaving a copy of the complaint, response or answer with a person of suitable age and discretion who is present at the office of the person in charge of directing the defense of claims filed against the hospital which employs the employee; or

(f) If the employee is represented by an attorney in the proceedings before the screening panel, by delivering a copy of the complaint, response or answer to the attorney.

3. A hospital that is licensed pursuant to chapter 449 of NRS or established pursuant to chapter 450 of NRS must be completed by:

(a) Personally delivering a copy of the complaint, response or answer to the ~~chief executive officer~~ *administrator* of the hospital;

(b) Personally delivering a copy of the complaint, response or answer to the person in charge of directing the defense of claims filed against the hospital;

(c) Leaving a copy of the complaint, response or answer with a person of suitable age and discretion who is present at the office of the ~~chief executive officer~~ *administrator* of the hospital;

(d) Leaving a copy of the complaint, response or answer with a person of suitable age and discretion who is present at the office of the person in charge of directing the defense of claims filed against the hospital; or

(e) If the hospital is represented by an attorney in the proceedings before the screening panel, by delivering a copy of the complaint, response or answer to the attorney.

Sec. 7. NAC 41A.0435 is hereby amended to read as follows:

41A.0435 Except as otherwise provided by NAC 41A.044, if a complaint, answer or response filed with the division pursuant to chapter 41A of NRS or this chapter is served by personal service, it must be accompanied by an affidavit of service *or a declaration in the form required pursuant to NRS 53.045* that includes the information in the caption required by NAC 41A.042 and is in substantially the following form:

AFFIDAVIT OF SERVICE

State of}

}ss.

County of}

(Name of affiant), being duly sworn says:

1. I am a citizen of the United States.

2. I am over 18 years of age and not a party to nor interested in the above-entitled action.

3. On (date of receipt of pleading), I received a copy of the
 (complaint, answer or response) for service upon the
 (claimant or respondent).

4. On (date of service), I served the..... (complaint, answer
 or response) upon the (claimant or respondent) by leaving a copy with
 (name of person with whom copy of the complaint, answer or response
 was left) at (address where complaint, answer or response was served).

FURTHER, AFFIANT SAYETH NAUGHT.

Dated this day of,

By:

Signature of affiant

.....

Name of affiant (Print or type)

State of

County of

Signed or attested before me on

..... (day) by

.....

(Name or names of persons)

(Seal, if any)

.....

Signature of notarial officer

.....

Title and rank (optional)

My commission expires (optional):

.....

Sec. 8. NAC 41A.044 is hereby amended to read as follows:

41A.044 If an answer or response filed with the division pursuant to chapter 41A of NRS or this chapter is served upon an attorney who represents a party in a case pending before the

screening panel, it must be accompanied by a receipt of copy that includes the information in the caption required by NAC 41A.042 and is in substantially the following form:

RECEIPT OF COPY

RECEIPT OF A COPY of the (name of document) is hereby
acknowledged this day of,

.....

Signature of attorney

.....

Name of attorney (Print or type)

.....

Address

.....

State Bar of Nevada identification number

.....

Telephone number

.....
Electronic mail address

Sec. 9. NAC 41A.045 is hereby amended to read as follows:

41A.045 If a claimant is deceased, the person verifying the complaint and signing the release of health care or dental records must provide proof of his authority to sign the documents. The evidence of authority to sign must be included with the complaint at the time it is filed. *A death certificate is not sufficient to establish proof of authority to sign the documents.*

Sec. 10. NAC 41A.050 is hereby amended to read as follows:

41A.050 A party, in his complaint or answer:

1. May include any material or document he believes will assist the screening panel in its deliberations.
2. May submit an affidavit which contains a written opinion of an expert on the issue of the appropriate standard of care and any breach or adherence to this standard which should or should not be considered malpractice. In addition to the conclusion on the existence of malpractice, the affidavit must contain the rationale which is the basis for the conclusion and cite specific portions of the medical or dental record supporting the conclusion. A biographical statement ~~is~~ outlining the qualifications of the expert must also be submitted. The biographical statement ~~may~~ *must not* be included as part of the affidavit. An affidavit submitted pursuant to this section must be signed by the expert under penalty of perjury or subscribed before a notary public.

Sec. 11. NAC 41A.055 is hereby amended to read as follows:

41A.055 1. A document may be filed with the division for review by a screening panel by personally delivering the document, mailing it through the United States mail , or delivering it by private courier or express delivery service.

2. Except as otherwise provided in NAC 41A.088, any document filed with the division for review by a screening panel must be received by the division *on or* before the deadline for filing.

Sec. 12. NAC 41A.060 is hereby amended to read as follows:

41A.060 1. A respondent may, at the time he files his answer, file a cross-claim against another person named in the original complaint or a person not named in the original complaint.

2. All claims or allegations of medical or dental malpractice arising out of the transaction or occurrence which is the subject of a complaint of medical or dental malpractice or any subsequent cross-claim ~~[with]~~ *must* be consolidated and presented to the same screening panel. The panel shall make separate findings as to each person against whom a complaint or cross-claim is filed.

3. A cross-claim must be filed in the same manner as an original complaint of medical or dental malpractice.

4. A respondent who wishes to file a cross-claim may request that a claimant submit to him an executed release of health care or dental records in the name of each cross-respondent who was not named in the original complaint.

5. A claimant shall submit to the respondent those executed releases requested pursuant to subsection 4 if the respondent provides the claimant with a list of names of the cross-respondents who were not named in the original complaint.

Sec. 13. NAC 41A.065 is hereby amended to read as follows:

41A.065 1. An attorney who files a complaint, answer or response with the division must be licensed to practice in this state. Upon application, an exception to this requirement will be made:

(a) If the attorney can demonstrate his legal representation on 10 or more medical or dental malpractice cases filed with the division; and

(b) Upon approval by the commissioner of insurance.

2. An attorney who participates in a conference *call* held pursuant to subsection 1 of NRS 41A.043 must be licensed to practice in this state.

Sec. 14. NAC 41A.067 is hereby amended to read as follows:

41A.067 If a party to a case pending before the screening panel wishes to change his attorney, he must file a notice of substitution of attorney with the division. The notice of substitution of attorney must include the information in the caption required by NAC 41A.042 and must be in substantially the following form:

NOTICE OF SUBSTITUTION OF ATTORNEY

.....(Name of attorney to be substituted) is hereby substituted as attorney for..... (name of claimant or respondent), the.....(claimant or respondent) in the above-entitled action, in place and instead of(name , *State Bar of Nevada identification number, address, telephone number and, if available, electronic mail address* of attorney of record)

Dated this day of,

.....
Signature of Claimant or Respondent

.....
Name of Claimant or Respondent (Print or type)

I hereby consent to the above substitution.

Dated this day of,

.....
Signature of attorney of record

.....
Name of attorney of record (Print or type)

I hereby accept the above substitution as attorney for..... (name of claimant or respondent), the.....(claimant or respondent) in the above-entitled action.

Dated this day of,

.....
Signature of attorney to be substituted

.....
Name of attorney to be substituted (Print or type)

Sec. 15. NAC 41A.069 is hereby amended to read as follows:

41A.069 1. If an attorney who represents a party in a case pending before the screening panel wishes to withdraw as attorney of record, he must:

- (a) File with the division a notice of withdrawal;
- (b) Serve the notice of withdrawal upon all parties, including the party he represents; and
- (c) Attach to the notice of withdrawal that is filed pursuant to paragraph (a), proof of service by personal service or by certified or registered mail of a copy of the notice of withdrawal.

2. The notice of withdrawal must include, without limitation:

- (a) The *name, State Bar of Nevada identification number, address, telephone number, electronic mail address, if available, and* signature of the attorney of record;
- (b) The current or last known telephone number of the party he represents; and
- (c) The current or last known address at which that party may be served with notice of further proceedings.

Sec. 16. NAC 41A.070 is hereby amended to read as follows:

41A.070 In addition to the requirements set forth in NAC 41A.040 for proof of service of a complaint, answer or response and accompanying documents, any other written communication concerning a ~~complaint of medical or dental malpractice~~ *matter* filed pursuant to the provisions of NAC 41A.040 must be served upon all parties and the division. Such documents may be served by personal service, ~~or~~ by regular ~~certified or registered~~ mail, or by private courier or express delivery service. If the document is served by personal service, it must be completed

in the manner provided in NAC 41A.043. Proof of service must be attached to the communication.

Sec. 17. NAC 41A.075 is hereby amended to read as follows:

41A.075 After the original complaint has been filed, ~~all~~ *any other* documents filed with the division must include the case number assigned by the division.

Sec. 18. NAC 41A.080 is hereby amended to read as follows:

41A.080 All fees ~~must~~ *may* be paid by check, made payable to the division. The fees will not be refunded.

Sec. 19. NAC 41A.082 is hereby amended to read as follows:

41A.082 1. The form for the release of health care or dental records pursuant to paragraph ~~(e)~~ *(d)* of subsection 1 of NAC 41A.040 must be authenticated by a notary public *or by a declaration in the form required pursuant to NRS 53.045* and be in substantially the following form:

(a) For a complaint of medical malpractice:

RELEASE OF HEALTH CARE RECORDS

TO: (Custodian of health care records)

RE:

Health care records of..... (name of claimant)

Date of birth.....

Social security number

You are hereby authorized and directed to deliver or furnish to(name of respondent) or his attorney, at his expense, copies of any health care records of.....(name of claimant). This release includes, but is not limited to, written medical information, medical reports, X-rays, C-Scans, films, hospital charts, notes, orders or other records of the hospital or physician, records of treatment, copies of prescriptions, medical or hospital bills, tests and any other records concerning the past, present or future physical condition of the claimant.

This authorization does not permit the custodian of the health care records to discuss the health care records, reports or X-rays with any treating or examining physician of the claimant or any hospital personnel named in any hospital record of the claimant. This release is made only for review of the health care records by the screening panel and is not a waiver of the claimant's privilege of confidentiality concerning the content of those records for any other purpose.

.....

(Signature of claimant)

.....

Name of claimant (Print or type)

State of

County of

Signed or attested before me on

..... (day) by

.....

(name or names of persons)

(Seal, if any)

.....

Signature of notarial officer

.....

Title and rank (optional)

My commission expires (optional):

.....

(b) For a complaint of dental malpractice:

RELEASE OF DENTAL RECORDS

TO: (Custodian of records)

RE:

Dental records of (name of claimant)

Date of birth.....

Social security number

You are hereby authorized and directed to deliver or furnish to.....(name of respondent) or his attorney, at his expense, copies of any health care or dental records of.....(name of claimant). This release includes, but is not limited to, written medical information; medical or dental reports; X-rays; C-Scans; films; hospital charts; notes, orders or other records of the hospital, physician or dentist; records of treatment; copies of prescriptions; medical, dental or hospital bills; tests and any other records concerning the past, present or future physical condition of the claimant.

This authorization does not permit the custodian of the dental records to discuss the dental records, reports or X-rays with any treating or examining physician or dentist of the claimant or any hospital personnel named in any hospital record of the claimant. This release is made only for review of the health care and dental records by the screening panel and is not a waiver of the claimant’s privilege of confidentiality concerning the content of those records for any other purpose.

.....

(Signature of claimant)

.....

Name of claimant (Print or type)

State of

County of

Signed or attested before me on

..... (day) by

.....

(name or names of persons)

(Seal, if any)

Signature of notarial officer

.....

Title and rank (optional)

My commission expires (optional):

.....

2. A copy of an executed release of health care or dental records that is filed with the division pursuant to paragraph ~~[(e)]~~ (d) of subsection 1 of NAC 41A.040 shall be deemed to have the same force and effect as an original executed release.

Sec. 20. NAC 41A.085 is hereby amended to read as follows:

41A.085 1. A person who requests that the division, pursuant to NRS 41A.033, obtain health care or dental records, statements of policy and procedure, or other materials concerning a claim of medical or dental malpractice must submit to the division a written request for the issuance of a subpoena. The request must be:

(a) Signed by that person's attorney or contain a statement that the person is not represented by an attorney;

(b) Accompanied by an original and two copies of the proposed subpoena for the material requested which must:

(1) ~~[(Be prepared in the form approved by the division;~~
~~—(2)]~~ Have a space to be filled in by the division for the date of compliance with the subpoena;

~~[(3)]~~ (2) Clearly identify the material sought; ~~and~~
~~—(4)]~~ (3) Contain the name and current address of the person to whom the subpoena is to be directed; and

(4) Pursuant to NRS 41A.046, be delivered to the division; and

(c) Accompanied by an affidavit *or declaration* which explains the relevance of the materials requested in the subpoena to the claim for medical or dental malpractice.

2. If the person who submits a request for the issuance of a subpoena has a claim of medical or dental malpractice, his request must also be accompanied by a current ~~§~~ notarized *or authenticated* document authorizing the release of all his pertinent health care or dental records to the division, the screening panel, and the respondent or his attorney.

3. A person who submits a request for the issuance of a subpoena:

(a) Is responsible for paying any costs related to the production of the subpoenaed material;

(b) Shall include in the subpoena a statement that advises the entity being subpoenaed of the name and address of the person or attorney responsible for payment of the costs related to the production of the subpoenaed material; and

(c) Shall, if the person wants a separate copy of the subpoenaed material, expressly indicate such a request in the subpoena.

Sec. 21. NAC 41A.088 is hereby amended to read as follows:

41A.088 A stipulation filed with the division for an extension of time within which to file an answer or a response must state the date the document is due, must include the signature of each party or his attorney , and must be accompanied by an order for the signature of the commissioner of insurance or his designee. This division may accept a stipulation for an extension of time after the date on which the answer or response is due. The order ~~[must]~~ *may* be on a separate page, ~~[must include the information in the caption required by NAC 41A.042]~~ and must be in substantially the following form:

APPROVAL OF STIPULATION FOR AN EXTENSION OF TIME

Pursuant to the stipulation signed by all the parties in this case,(name of the claimant or respondent) has to and including (exact due date of pleading), to file his (answer or response) with the division.

Dated this day of,

By:.....

Medical/Dental Screening Panel

Sec. 22. NAC 41A.091 is hereby amended to read as follows:

41A.091 A request for the continuance of a conference *call* held pursuant to subsection 1 of NRS 41A.043 must be submitted to the division, in writing or by telephone, at least 2 business days before the date scheduled for the conference ~~call~~ *call*. The party requesting the continuance must:

1. Contact each party to the conference ~~call~~ *call*;
2. Obtain the agreement of each party to a new date and time for the conference ~~call~~ *call*; and
3. Confirm in writing the new date and time scheduled for the conference *call* with each party and the division.

Sec. 23. NAC 41A.095 is hereby amended to read as follows:

41A.095 1. A motion requesting the consolidation of cases pending before the screening panel may be filed with the division when the cases to be consolidated share a common question of fact and it is appropriate for the same screening panel to evaluate the cases. A motion to consolidate cases must:

(a) Be filed as soon as it is known that a case should be consolidated with another case, but not later than 10 days after the date on which the party filing the motion received the answers of all respondents;

(b) Specify the date on which the party filing the motion received the answers of all respondents;

(c) Identify the cases pending before the screening panel which the motion seeks to consolidate; and

(d) Be accompanied by an affidavit stating good cause why the cases should be consolidated.

2. A motion for consolidation must be served:

(a) Upon all the parties to the cases sought to be consolidated; *and*

(b) ~~On the same day it is filed with the division; and~~

~~(e)~~ By certified mail or personal service with proof of service provided to the division.

3. Any objections to the motion for consolidation must be filed not later than 10 days after the date on which the motion for consolidation is filed with the division.

Sec. 24. NAC 41A.100 is hereby amended to read as follows:

41A.100 The division will , *in writing*, notify each party in a claim of medical or dental malpractice of the findings of the screening panel within 10 business days after the panel renders its findings.

Sec. 25. NAC 41A.111 is hereby amended to read as follows:

41A.111 1. ~~The provisions of~~ *Nevada* Supreme Court Rules 43, 44, 45 and 47 ~~, in effect on March 1, 1986, apply to the~~ *concerning* representation of a party ~~before a screening panel and~~ are hereby adopted by reference.

2. ~~[Rule 6(a) of the Nevada Rules of Civil Procedure, in effect on March 16, 1964, applies to the computation of the periods prescribed pursuant to this chapter.~~

~~—3.— Rule 6(e) of the Nevada Rules of Civil Procedure, in effect on March 1, 1986, applies to the computation of additional time after service by mail and is hereby adopted by reference.~~

~~—4.]~~ *To the extent not otherwise specifically provided for in this chapter or chapter 41A of NRS, the following provisions of the Nevada Rules of Civil Procedure, including any amendments or additions as may be adopted, are hereby adopted by reference:*

(a) Subsections (c), (d), (e), (f) and (g) of Rule 4;

(b) Subsections (a) and (b) of Rule 5;

(c) Subsection (a) of Rule 6;

(d) Rule 8;

(e) Rule 10; and

(f) Rule 17.

3. Copies of the rules adopted in this section may be obtained from the Publications Unit of the Legislative Counsel Bureau in the Legislative Building, 401 South Carson Street, Carson City, Nevada ~~[89710,]~~ *89701*, for the price of \$30.80 ~~[,]~~, *and are available, free of charge, on the Internet at <<http://www.leg.state.nv.us>>. A copy of chapter 41A of NAC may be obtained on the Internet at <<http://www.leg.state.nv.us/NAC/NAC-041A.html>>.*

Sec. 26. NAC 41A.121 is hereby amended to read as follows:

41A.121 A claim of medical or dental malpractice, ~~[and]~~ *including* all related pleadings, documents ~~[,]~~ and records ~~[,]~~ filed with the division for the screening panel, is confidential and must not be disclosed to the public.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R173-01

The Commissioner of Insurance adopted regulations assigned LCB File No. R173-01 which pertain to a medical/dental screening panel (chapter 41A of the Nevada Administrative Code) on April 6, 2002.

Notice date: 11/14/2001
Hearing date: 12/13/2001

Date of adoption by agency: 4/6/2002
Filing date: 5/23/2002

INFORMATIONAL STATEMENT

A hearing was held on December 13, 2001, at the offices of the Department of Business and Industry, Division of Insurance (Division), 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, with a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104, regarding the adoption of the regulation concerning the Medical Dental Screening Panel, chapter 41A of the Nevada Administrative Code.

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

In addition, the 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.

Written and oral testimony was received by the Division. Copies of any comments received by the Division can be obtained from the Division at 788 Fairview Drive, Suite 300, Carson City, Nevada 89701-5491, (775) 687-4270.

The Division received one written comment from Matthew L. Sharp, Esq., on behalf of the Nevada Trial Lawyers Association. The following two people testified at the workshop that was attended by 32 people: Larry Matheis, for the Nevada State Medical Association, and Don Aimar, Insurance Counsel for the Division. Only Don Aimar testified for the Division at the hearing.

Larry Matheis testified that the proposed regulation helps clear up some logistical problems and that members of his organization have often complained about the duplication of records that was being addressed by the changes proposed in subsection 15 of section 4. The Commissioner requested that subsection 2 of section 25 be amended to adopt only specific

sections of the Nevada Rules of Civil Procedure (NRCP). Mr. Matheis concurred in this suggestion.

Based upon the Commissioner's request, subsection 2 of section 25 is amended to adopt only the following specific sections of the NRCP that are titled in the rules as follows: NRCP Rule 4 "Process", specifically (c) "By Whom Served", (d) "Summons: Personal Service", (e) "Same: Other Service", including publication, personal service outside of this state and statutory service, (f) "Territorial Limits of Effective Service" and (g) "Return"; NRCP Rule 5 "Service and Filing of Pleadings and Other Papers", specifically 5(a) "Service: When Required" and (b) "Same: How Made"; NRCP Rule 6 "Time", specifically 6(a) "Computation"; NRCP Rule 8 "Pleading Specific Matters"; NRCP Rule 10 "Form of Pleadings"; and NRCP Rule 17 "Parties: Plaintiff and Defendant; Capacity."

Matthew L. Sharp's written comments were accepted in part and rejected in part. He stated in his letter that he did not believe disclosure of dentists in a medical case, nor disclosure of physicians in a dental case, should be required. This change was made. He further wrote that he thought there was some confusion between paragraph (b) of subsection 1 of section 4 and subsection 6 of section 4. However, the two sections differentiate between documentary and demonstrative evidence, such as x-rays or slides. Therefore, no change was made to the regulation. Additionally, his request was accepted that the forms of medical releases, for both medical and dental cases, be amended to add the following language:

"This authorization does not permit such representative to discuss the records, reports or x-rays with any treating or examining physician of such patient or any hospital personnel named in any hospital record of the undersigned."

Considering the testimony by those attending the hearing or by those who submitted written comments, the Commissioner has issued an order adopting the regulation as a permanent regulation of the Division.

Based upon the comments received at the hearing or submitted in writing, the regulation was changed from the proposed regulation as follows:

Paragraph (e) of subsection 1 of section 4 is changed to read as follows: ". . . including all named respondents and all providers of medical services in a medical malpractice case and all providers of dental services in a dental malpractice case within 1 year before the alleged malpractice."

Paragraphs (a) and (b) of subsection 1 of section 19 are amended by adding to the beginning of the second paragraph of the "Release of Health Care Records" form, the following:

"This authorization does not permit such representative to discuss the records, reports or x-rays with any treating or examining physician of such patient or any hospital personnel named in any hospital record of the undersigned."

Subsection 2 of section 25 is amended to read:

“To the extent not otherwise specifically provided for in chapter 41A of NRS or of this chapter, the following provisions of the Nevada Rules of Civil Procedure, NRCP Rule 4(c), (d), (e), (f) and (g), NRCP Rule 5(a) and (b), NRCP Rule 6(a), NRCP Rule 8, NRCP Rule 10, NRCP Rule 17, including any amendments or additions as may be adopted, are hereby adopted by reference.”

Despite the comments received at the hearing or submitted in writing, the regulation was not changed as proposed, in the following area:

Paragraph (b) of subsection 1 of section 4 refers to documentary evidence, not x-rays or medical devices, since section 6 clearly differentiates between demonstrative and documentary evidence. X-rays, slides or medical devices may be returned to the party at the conclusion of the matter before the panel.

The economic impact of the regulation is as follows:

(a) Regulated Industry: None

(b) Public: None

The regulation imposes no direct costs upon members of the public at large. The regulation imposes no direct cost upon the agency to enforce the regulation.

This regulation does not duplicate or overlap any other regulation.