

1997

STATE OF NEBRASKA

Title 184 - State Board of Health

Chapter 6 - Procedural Regulations for Removal of Appointed Board Members

NEBRASKA HEALTH AND HUMAN SERVICES SYSTEM



**DEPARTMENT OF REGULATION AND LICENSURE
CREDENTIALING DIVISION**

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TITLE 184 - STATE BOARD OF HEALTH / REGULATIONS

CHAPTER 6 - PROCEDURAL REGULATIONS FOR REMOVAL OF
APPOINTED BOARD MEMBERS

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TITLE 184 - STATE BOARD OF HEALTH / REGULATIONS
CHAPTER 6 - PROCEDURAL REGULATIONS FOR REMOVAL OF
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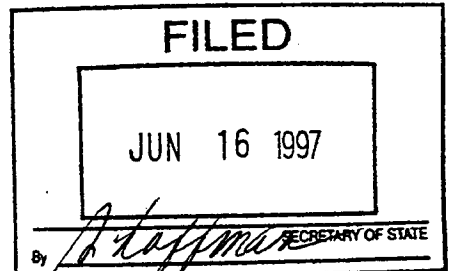
CHAPTER 6 - PROCEDURAL REGULATIONS FOR REMOVAL OF APPOINTED BOARD MEMBERS

001 SCOPE OF REGULATIONS. These regulations shall apply to the removal of any member of an appointed board by the State Board of Health as provided by NEB. REV. STAT §71-118, §71-374(4), §71-5505.01, §71-3707, §71-6115(1) and §71-1,132.07(4). These regulations shall not apply to erroneous appointments that are vacated to comply with statutory requirements.

002 DEFINITIONS

002.01 Appointed Board means:

- A) any designated examining board created by NEB. REV. STAT. §71-112 including Examiners in Medicine and Surgery, Examiners in Athletic Training, Examiners in Respiratory Care Practice, Examiners in Chiropractic, Examiners in Dentistry, Examiners in Optometry, Examiners in Massage Therapy, Examiners in Physical Therapy, Examiners in Pharmacy, Examiners in Audiology and Speech-Language Pathology, Examiners in Medical Nutrition Therapy, Examiners in Funeral Directing and Embalming, Examiners in Podiatry, Examiners of Psychologists, Examiners in Veterinary Medicine, and Examiners in Mental Health Practice;
- B) the Board of Cosmetologists Examiners as created by NEB. REV. STAT. §71-374(4);
- C) the Board of Advanced Emergency Medical Care as created by NEB. REV. STAT. §71-5505.01;
- D) the Board of Registration for Environmental Health Specialists as created by NEB. REV. STAT. §71-3707;
- E) the Board of Examiners in Nursing Home Administration as created by NEB. REV. STAT. §71-6065;
- F) the Board of Occupational Therapy Practice as created by NEB. REV. STAT. §71-6115(1);
- G) the Board of Nursing as created by NEB. REV. STAT. §71-1,132.07(4);



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ATTORNEY GENERAL
MAR 6 1997
BY *Lynn A. Melru*
Assistant Attorney General

JUN 16 1997

[Handwritten initials]

H) the Board of Hearing Aid Instrument Dispensers and Fitters as created by NEB. REV. STAT. §71-4715; and

I) the Board of Advanced Registered Nurse Practitioners as created by NEB. REV. STAT. §71-1718.01.

002.02 Board of Health means the Nebraska State Board of Health as created at NEB. REV. STAT. §71-2601. For purposes of these regulations the Board shall be divided into a Review Panel and a Hearing Panel.

002.03 Chairperson of the Hearing Panel means a member of the Board of Health designated by the chairperson of the Board of Health to serve as chairperson of the Hearing Panel. This person may include the Chairperson of the Board of Health.

002.04 Complaint means a negative report of any nature against a Member as it relates to that individual's status, ability, or capacity to serve as a board member.

002.05 Hearing Panel means those members of the Board of Health which hears and makes a final decision regarding a Member's removal. Members of the Hearing Panel shall not be on the Review Panel.

002.06 Member means any Member of an appointed board.

002.07 Prosecution means the Review Panel's presentation of complaints and investigational findings made against a Member to the Hearing Panel for final determination.

002.08 Review Panel means a standing committee of the Board of Health, comprised of three members who are appointed by the Chairperson of the Board of Health.

003 AUTHORITY OF BOARD. The Board of Health has the authority to remove any Member of an Appointed Board.

003.01 Actions committed in capacity of an Appointed Board Member. Lay or professional Members may be removed for any of the following reasons:

003.01A physical or mental incapacity to carry out the duties of a board member.

003.01B continued neglect of duties.

003.01C incompetency in carrying out the duties of a board member.

003.01D acting beyond the individual board member's scope of authority.

003.01E malfeasance in office.

003.02 Actions committed by Member as a health care professional. In addition to the reasons set out in section 003.01 above, professional Members may be removed for any of the following reasons:

003.02A any cause which a professional license, certificate, or registration in the profession involved may be suspended or revoked under NEB. REV. STAT. §71-147 or §71-148.

003.02B a lack of licensure, certification, or registration in the profession involved.

004 CONFIDENTIALITY

004.01 Complaints, Investigational Files, and Reports. Complaints, investigational records and reports are public records which may be withheld from disclosure to the public under NEB. REV. STAT. §84-712.05 (5), and all such complaints, records and reports shall be withheld except in the following instances:

004.01A Prior to the filing of a Petition under section 005.05A, the complaint, and all investigational records and reports may only be disclosed to the extent necessary to complete any investigation;

004.01B After the filing of a Petition under section 005.05A, the complaint, investigational records, and reports may be disclosed to the extent they are made part of the record of a contested case;

004.01C Notwithstanding the provision of section 004.01A, any

information forwarded to the Hearing Panel pursuant to section 005.05B shall remain confidential and shall not be disclosed to the public.

004.02 Complainant. The identity of a person making a complaint will not be disclosed without his or her consent.

004.03 Review Panel Consideration. In order to prevent needless injury to the reputation of a Member, the actions of the Review Panel in the review and consideration of complaints, investigations, and determination of reasonable cause, may be confidential.

005 SCREENING OF COMPLAINTS AGAINST MEMBERS.

005.01 Receipt of Complaints. No particular form for the complaint is required. Complaints may be reported to any member of the Board of Health or to the Department of Health.

005.01A. Any filing of any petition for disciplinary action under NEB. REV. STAT. §71-147 or §71-148, or any certification by an appointed board that a member is not qualified to practice a profession because of any of the reasons set out in NEB. REV. STAT. §71-161.13, shall constitute the filing of a complaint under these regulations.

005.01B. The Review Panel may, on its own, initiate a complaint based upon any public information.

005.01C. The receipt of a request that a board member be removed or information questioning a Member's fitness to continue serving, shall constitute the filing of a complaint under these regulations.

005.02 Examination of Complaints. The Review Panel shall review and examine all complaints at the earliest date possible provided that such review take place no later than the next regular scheduled Board of Health meeting.

005.03 Referral of Complaints. In addition to the Review Panel examining the complaints received under the provisions of these regulations, all complaints received under these regulations shall be referred as follows:

005.03A Complaints Pertaining to a Member's actions as a Health Professional. Complaints made under the provision of these regulations, which consist of allegations for which a professional license, certificate, or registration may be suspended or revoked shall be referred for investigation as provided for in NEB. REV. STAT. §71-168. Complaints which consist of allegations of physical or mental incapacity of a licensed, certified or registered member shall be referred for investigation as provided in NEB. REV. STAT. §71-161.13 et seq. The Review Panel shall suspend action on these referrals pending the receipt of notice, which is provided to complainants, from either the Department Director, the Board of Examiners, or the Attorney General, of that person's determination of a course of action concerning the complaint.

005.03B Complaints Pertaining to the Capacity of a Member to Serve on an Appointed Board. Complaints made under the provisions of these regulations which consist of reasons specified in section 003.02 of these regulations shall be referred to the Bureau of Examining Boards for investigation.

005.04 Evaluation of Investigations. The Review Panel may determine if investigation is required beyond that which is provided for in section 005.03; and shall provide for such investigation. In determining whether to conduct such an investigation the Review Panel may consider factors such as:

- A) Whether the circumstances indicate that a complaint is made in good faith and is not malicious, frivolous, or vexatious;
- B) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit; and
- C) Whether the complainant may be a necessary witness if action is taken and is unwilling to identify himself or herself and come forward to testify.

005.05 Review Panel Determination. After the review and investigation of all complaints, the Review Panel shall take the following actions:

005.05A If a majority of the Review Panel determines there is reasonable cause to believe that a Member or his or her actions fall under a category listed in section 003 of these regulations, the Review

Panel shall prepare a Petition for Removal and forward the same to the Hearing Panel in accordance with section 006. The Petition for Removal shall set out in detail the factual basis for the allegations, and shall further allege the basis for removal as set out in section 003 above.

005.05B If a majority of the Review Panel determines a Member or his or her actions do not fall under any category listed in section 003, or is not substantiated, any and all complaints against the Member shall be dismissed for purposes of removal from his or her position on an appointed board, and the Review Panel shall so notify the member and the complainant, if applicable. The dismissed complaint(s) and all related investigation material shall be forwarded to the Hearing Panel at the next scheduled meeting for informational purposes only. These materials shall be subject to the confidentiality requirements as provided for in section 004.

006 HEARING PROCESS FOR REMOVAL.

006.01 General. Upon receipt of a petition, the Chairperson of the Hearing Panel shall set a hearing date subject to section 006.05. This date shall be set no later than the first meeting of the Board of Health after the petition is filed and proper notice is given as required by section 006.04. The Hearing Panel shall not make a final determination until the Member has been afforded a complete evidentiary hearing.

006.02 Roles of the Board of Health. Those members of the Board of Health that make up the Review Panel shall serve as the prosecution and shall be responsible for presenting all the investigative findings regarding a complaint against a Member. These findings shall be presented to those members of the Board of Health that make up the Hearing Panel. The Hearing Panel shall ultimately determine if the investigative findings establish that the Member's actions fall under the criteria put forth in section 003. If such actions are found to fall under section 003, the Hearing Panel may remove the Member.

006.03 Legal Representation. The Review Panel and the Hearing Panel may request legal representation at any time.

006.04 Notice of Hearing. The Chairperson of the Hearing Panel shall prepare an official notice setting forth the time and place of the formal

hearing. Such notice shall also contain a general description of the purpose of the hearing. This notice and a copy of the petition shall be served on the Member either personally or by any method specified in NEB. REV. STAT. §25-505.01, or the Chairperson of the Board of Health may permit substitute or constructive service as provided in NEB. REV. STAT. §25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in NEB. REV. STAT. §25-505.01. Service shall be obtained at least thirty (30) days before the hearing.

006.05 Hearing Procedures. The hearing before the Hearing Panel shall be conducted in accordance with the Model Rules of Practice and Procedure as put forth at 53 Nebraska Administrative Code Chapter 4. The hearing may be conducted by the Hearing Panel, or by a designated hearing officer, but in no case shall a final decision be rendered by fewer than a majority of the Board of Health.

006.06 Burden of Proof. The Review Panel shall bear the burden of proof for all hearings before the Board of Health.

006.07 Standard of Proof. The standard of proof for all hearings before the Board of Health shall be by a preponderance of the evidence.

007 FINAL DECISION.

007.01 Determination by Hearing Panel. The Hearing Panel shall make a determination on the petition no later than the next regular meeting of the Board of Health following completion of the hearing. This decision shall constitute the final decision of the Board of Health for purposes of section 007.02.

007.02 Decision. Upon completion of the hearing a Member may be removed only by a positive vote of a majority of the total Board of Health.

007.03 Form of the Decision. The decision of the Board of Health shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact.

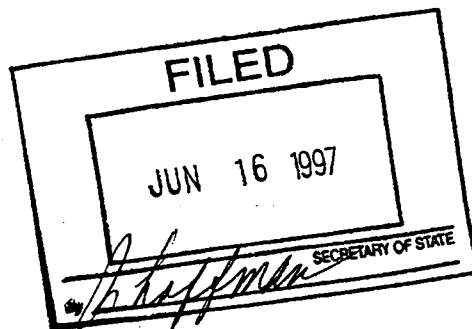
007.04 Transmission of the Decision. The final decision, including the findings and conclusions, shall be served on the Member either in person or

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by certified mail, return receipt requested. Service on the attorney for the Member shall be deemed service on the Member. A copy of the final decision shall be transmitted to all other interested parties either in person or by regular mail.

008 APPEAL OF BOARD DECISION

008.01 Appeal of Board Decision. Any decision of the Board may be appealed to the District Court in accordance with the Administrative Procedures Act as set forth at NEB. REV. STAT. §84-901 et seq.



Effective Date: June 21, 1997

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JUN 16 1997

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