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O S H REVIEW BOARD
BY *Kennedy*

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5 **NEVADA OCCUPATIONAL SAFETY AND HEALTH**
6 **REVIEW BOARD**

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8 **IN THE MATTER OF THE NEVADA**
9 **OCCUPATIONAL SAFETY AND**
10 **HEALTH REVIEW BOARD**

11 **AMENDED ADMINISTRATIVE EMERGENCY GENERAL PROCEDURAL ORDER**
12 **FOR CONTESTED HEARINGS BEFORE THE BOARD OF REVIEW**

13 This is an amendment to the original General Procedural Order previously issued by
14 Board of Review Chairman Steve Ingersoll. The revisions are set out in bold.

15 Therefore, in accordance with the explicit and inherent authority of the Board of Review
16 contained in NAC 618.767 (pre-hearing conferences may be ordered by the Board to facilitate
17 hearings), NAC 618.752 (simplification of issues) and NAC 618.680(2), incorporating, unless in
18 conflict with Nevada Administrative Code (NAC) Chapter 618, the Nevada Rules of Civil
19 Procedure into proceedings before the Review Board, the following order is issued to address the
20 emergency conditions created by the pandemic COVID - 19 virus which have foreclosed, for the
21 time-being, contested hearings conducted in person before the Board. Meanwhile, complaints
22 involving worker's safety continue to be filed requiring hearings to resolve whether employee
23 safety is at risk. At present, the Board of Review is left with little choice but to attempt to
24 conduct hearings in a virtual setting by video conferencing (Webex, at least temporarily). These
25 virtual hearings create logistical problems, themselves, which the Board intends to anticipate and
26 eliminate to enable the parties to experience a fair and equitable opportunity to be heard
27 consistent with the rules of evidence and due process, including the right to confront and cross
28 examine witnesses and to submit documentary evidence before and during the course of the

1 virtual contested hearings. These procedural rules are inapplicable to the administrative hearings
2 of the Board of Review.

3 The Board has currently scheduled hearings well into the second half of 2021. There are
4 also multiple new complaints that have been filed with the Board which have yet to be set for
5 hearing. Doubtless, additional complaints before the Board will continue to be filed. Allowing
6 these cases to languish and be repeatedly rescheduled presents a procedural nightmare. These
7 circumstances, the Board finds, present a growing emergency requiring Board action to move
8 cases along as justice interminably delayed is surely justice denied. In light of the emergency
9 created by the pandemic, the premises herein, and other good cause appearing, *sua sponte*, the
10 Board of Review HEREBY ORDERS for all contested matters before it to be heard on a virtual
11 basis, the following:

12 1. For all docketed cases, no later than 20 days prior to date of the contested, virtual
13 hearing, the parties shall exchange a list of all witnesses each party, respectively, intends to call
14 to testify during the course of the contested hearing.

15 2. For all docketed cases, no later than 20 days prior to the date of the contested
16 hearing, the parties shall also exchange all of the documentary evidence (exhibits) they intend to
17 submit for admission into evidence during the contested hearing.

18 3. In addition to the requirements of NAC 618.806:

- 19 a. For each party, the pages of the Exhibits are to be independently Bate-stamped
20 (numbered), in advance, starting at one and proceeding thereafter consecutively;
21 b. The State's Exhibits are to be numbered, and the respondent's Exhibits are to be
22 designated by capital letters, starting with A and proceeding consecutively. In the
23 event the Exhibits exceed the number 26, the next in order will be AA and then,
24 designations will proceed next in order from there.

25 4. For only those cases that are first and second settings on the contested docket of
26 the Agenda before the Board and parties, all of the procedures, below and herein, shall be
27 followed. For those contested matters a third setting or below, in the event the hearings for cases
28 listed as a first set or second set or both are vacated, the setting on the cases set below will be

1 moved upwards in order to fill the settings that have been vacated in advance of the hearing date.
2 The procedures below will then apply to the cases that have been elevated to a first or second
3 setting, unless the new settings result because a hearing has been vacated less than 20 days from
4 the date of the hearing. In that event, a truncated scheduling order will issue. In all cases, the
5 matters on the contested docket will be notified as cases settle and the rank order of the case
6 settings are changed. Accordingly, with these qualifications, no later than 14 days before the
7 hearing, the parties with a first or second setting shall stipulate, if possible, to the admissibility of
8 the exhibits they intend to offer into evidence. For those Exhibits for which there is agreement
9 regarding admissibility, one copy of each is to be e-mailed by the proffering party to Board legal
10 counsel at karen@crzehlaw.com on or before the 14th day prior to the hearing date. A failure to
11 timely e-mail a party's Exhibits may result in an order limiting admissibility or some other form
12 of sanction. Board legal counsel will promptly distribute these Exhibits to each Board member.

13 5. For those Exhibits for which there is a dispute over admissibility, they shall be
14 bundled up and promptly e-mailed to Board legal counsel, **on or before the 14th day prior to the**
15 **hearing**, accompanied by a one page memo addressed to the Board Chairman from each Party,
16 stating the respective party's view on admissibility of each exhibit for which there is no
17 agreement on admissibility.

18 6. In consultation with Board Counsel, the Board Chairman will rule on the
19 admissibility of the Exhibits where admissibility is challenged.

20 7. As soon thereafter as a decision is reached, an order will follow advising the
21 parties and the Board of the Chairman's ruling on admissibility. For those Exhibits determined
22 admissible, Board legal counsel will distribute them to the Board members for their review and
23 use during the course of the hearing.

24 8. For those exhibits determined to be inadmissible, they will remain a part of the
25 hearing record but will not be distributed to the Board.

26 9. In the event that a party offers a new Exhibit for admission into evidence during
27 the course of the hearing, the new Exhibit will be e-mailed to Board legal counsel, the Board of
28 Review Chairman and opposing counsel. If the non-offering party objects to the Exhibit's

1 admissibility, the parties will then state their respective positions on admissibility. Board
2 counsel and the Board Chairman may then confer in private, after which the Chairman will rule
3 on admissibility. If the Chairman rules that the Exhibit is admissible, Board legal counsel will e-
4 mail it to the remaining Board members for their consideration. For those Exhibits deemed
5 inadmissible during the course of the hearing, they will remain a part of the hearing record but
6 will not be distributed to the Board while the matter remains pending.

7 10. If a member of the Board of Review cannot be reached by e-mail or to otherwise
8 timely receive and have in possession, all of the documentary evidence in the possession of the
9 remaining Board members, the Board member in possession of an incomplete record will be
10 obliged to refrain from voting on the case and will cease participation in the virtual hearing on
11 the matter.

12 11. For the list of witnesses being called to testify:

- 13 a. the proffering party shall provide a way for the witness to testify by video. Video
14 testimony, only, will be permitted. If the testimony of the witness is critical to a
15 claim or defense but cannot be had by video at the time, the Board may continue
16 the matter to allow the offering party the time to secure the means by which the
17 witness may testify by video;
- 18 b. to the extent it is reasonably possible to anticipate, the proffering party shall
19 provide to the witness in advance of the witness's testimony, any documents and
20 records that the witness might be asked to consider when testifying as well as to
21 make sure the document or record is in the possession of the members of the
22 Board of Review and Board counsel;
- 23 c. each party is responsible for providing an interpreter, if the witnesses require one;
- 24 d. if NV OSHA has scheduled an interpreter for its witnesses, that interpreter may be
25 used for all witnesses;
- 26 e. if NV OSHA has not arranged for an interpreter, but the opposing party's
27 witnesses require one, opposing counsel is responsible for making those
28 arrangements;

- 1 f. the parties are expected to cooperate in the deployment of an interpreter; and
- 2 g. witnesses shall be available at least one hour before they are expected to testify.
- 3 12. Copies of this Order will be disseminated to the Parties appearing in contested
- 4 matters before the Board of Review in time for the Parties to be able to comply with its
- 5 provisions. A copy will also be posted on the State's public notice web site. This Order will
- 6 remain in effect until further order of the Board of Review amending or discontinuing its
- 7 application to the contested hearings before the Board.

8 Dated this 14th day of October, 2020.

NEVADA OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD

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By: /s/Steve Ingersoll
Steve Ingersoll, Chairman

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