

TITLE 22. PUBLIC HEALTH AND MEDICINE

CHAPTER 11. HEARINGS

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§ 22-1100. HEARING OFFICER

1100.1 Any hearing required by the Act or this chapter to be held by the Director may be conducted by the Director or a qualified hearing officer appointed by the Director.

1100.2 A hearing officer appointed by the Director shall have full authority to do the following:

(a) Conduct the hearings:

(b) Rule on all notices and other matters occurring during the hearing; and

(c) When authorized by the Director, to render a final decision in the matter.

§ 22-1101. HEARINGS AND NOTICES

1101.1 Except for an emergency suspension undertaken pursuant to § 305(b)(1) of the Act, § 33-435(b)(1), D.C. Code, 1981 ed5., the Director shall give an applicant or registrant written notice and an opportunity to be heard prior to taking any

final action which would do any of the following;

5 Section 33-435(b)(1) no longer appears in the Code, See, D.C. Official Code § 48-903.05(b)(1).

- (a) Deny an application for registration;
- (b) Deny a renewal of registration;
- (c) Suspend registration; or
- (d) Revoke registration.

1101.2 The notice shall contain the following:

- (a) A statement of the proposed action;
- (b) A statement setting forth the reasons for the proposed action, including a specification of any specific act complained of;
- (c) Reference to any particular section of the Act or rules allegedly violated;
- (d) A statement that the applicant or registrant may secure a hearing before the Director or a hearing officer to contest the proposed action by depositing in the mail, within thirty (30) days of service of the notice, a certified letter addressed to the Director containing a request for a hearing or hand delivery same to the Office of the Director (receipt required for proof of delivery); and
- (e) A statement that if the applicant or registrant does not request a hearing within thirty (30) days after service of the notice of the proposed action, the applicant or registrant shall be deemed to have conceded the validity of the reason or reasons stated in the notice, and the denial, suspension or revocation shall be final without a hearing.

1101.3 Notice in connection with hearings under this chapter shall be given and service effected in accordance with § 305 of the Act, D.C. Law 4-29, effective August 5, 1981, § 33-435, D.C. Code, 1981 ed.6

1101.4 If the respondent does not mail a request for a hearing within the time and in the manner specified in § 1101.2, the Director may, without a hearing, take the action contemplated in the notice.

1101.5 The Director shall notify the respondent in writing of action taken under paragraph 1101.2(e).

6 Section 33-435(b)(1) no longer appears in the Code, See, D.C. Official Code §§ 48-903.04 and 48-903.05.

1101.6 If a hearing is timely requested pursuant to § 1101.2, the Director shall notify the person of the date, time and location of the hearing and the name of the hearing officer. The hearing shall be convened within thirty (30) days of the filing of the respondent's response to the Director's proposed action.

1101.7 Unless otherwise authorized by the Director, any notice from and to the Director shall be sent by certified mail, return receipt requested, as provided in § 305 of the Act.

1101.8 If an attorney enters his or her appearance for the respondent, any notice shall thereafter be served on the attorney, unless otherwise ordered by the Director or hearing officer.

1101.9 If the respondent is no longer at the last known address as shown on the records of the Department and no forwarding address is available, the notice shall be deemed to have been served on the date the return receipt bearing that notification is received by the Director.

1101.10 If the respondent shall believe the hearing officer selected to conduct the hearing is prejudiced against the respondent or his or her attorney, the respondent shall make a request in writing to the Director, at least ten (10) days prior to the date set for the hearing, to substitute another hearing officer. The request shall be accompanied by an affidavit signed by the respondent setting forth the facts upon which the claim of prejudice is predicated. Upon receipt of the request, the Director shall make a determination based upon sufficient evidence whether prejudice to the rights of the respondent exists and, if necessary, the Director may appoint a substitute hearing officer.

§ 22-1102. SUMMARY SUSPENSION AND DENIAL OR RENEWAL

1102.1 A hearing shall be convened within five (5) days of the institution of proceedings in the following cases:

- (a) Summary suspension; and

(b) Denial or renewal.

1102.2 A registrant who has been summarily suspended or denied renewal under § 305 of the Act, § 33-435, D.C. Code, 1981 ed.7, shall be entitled upon written request to a postponement, for a reasonable period of time only, of the hearing scheduled pursuant to § 1102.1 of these rules.

7 Section 33-435(b)(1) no longer appears in the Code, See, D.C. Official Code §§ 48-903.04 and 48-903.05.

1102.3 Notice of hearing in summary suspension and non-renewal shall be made in accordance with § 305 of the Act (§ 33-435, D.C. Code, 1981 ed.)8.

1102.4 Except as otherwise noted in this chapter, all procedures relating to hearings as set forth in this chapter shall apply to hearings in summary suspensions and denials of renewal.

§ 22-1103. HEARING PROCEDURES

1103.1 Each hearing shall be open to the public.

1103.2 At each hearing, the hearing officer shall be present to hear the evidence.

1103.3 A person entitled to a hearing shall have the following rights:

(a) The right to be represented by counsel;

(b) The right to present all relevant evidence by means of witnesses books, papers, and other documents;

(c) The right to examine all opposing witnesses on any matter relevant to the issues; an

(d) The right to have subpoenas, pursuant to § 507 of the Act, § 33-457, D.C. Code, 1981 ed.9, issued to compel the attendance of witnesses and the production of relevant books, papers and other documents, upon written request for subpoenas to the hearing officer.

1103.4 The Hearing Officer shall have the following powers:

(a) To administer oaths or affirmations, either personally or through a designated agent, to witnesses called to testify;

(b) To subpoena respondents and other witnesses and relevant books, papers, and documents pursuant to § 507 of the Act, § 33-457, D.C. Code, 1981 ed.10;

(c) To take testimony to examine witnesses; and

(d) To direct continuance of any case for good cause shown.

8 Section 33-435(b)(1) no longer appears in the Code, See, D.C. Official Code §§ 48-903.04 and 48-903.05.

9 Section 33-457 no longer appears in the Code, See, D.C. Official Code §§ 48-905.07.

10 Section 33-457 no longer appears in the Code, See, D.C. Official Code §§ 48-905.07.

1103.5 If any person refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness, refuses to be examined, or refuses to obey any lawful order of the hearing officer, the hearing officer may apply to the proper court for an order requiring compliance.

1103.6 The hearing officer shall follow the general rules of evidence applicable to administrative hearings under the District of Columbia Administrative Procedure Act, P.L. 90-614, (D.C. Code, §§ 1-1501 et seq., 1981 ed.)11.

1103.7 The hearing officer shall exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence or testimony.

1103.8 The hearing officer shall maintain order and shall not permit undue abuse or harassment of witnesses.

1103.9 The hearing officer may exclude testimony under the rules of privilege recognized by decisions of the courts of the District of Columbia or as provided by law, including, but not limited, to the following:

(a) Communication between attorney and client;

(b) Communication between physician and patient;

(c) Records and files of any official or agency of government which, by statute or otherwise, are recognized as confidential; and

(d) Privileged matter enumerated in § 501(c) of the Act, (D.C. Official Code § 33-431(c), 1981 ed.)12

1103.10 All testimony shall be taken under oath.

§ 22-1104. EXHIBITS AND OTHER DOCUMENTARY EVIDENCE

1104.1 When a written exhibit is offered in evidence, one (1) copy shall be furnished to each of the parties at the hearing unless the parties have been furnished previously with copies or the hearing officer directs otherwise.

1104.2 If the hearing officer has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practical time, preferably before the hearing or, at the latest, at the commencement of the hearing.

1104.3 The hearing officer may permit a party to withdraw original documents offered in evidence and substitute true copies.

*11 The District of Columbia Administrative Procedure Act is now cited as D.C. Official Code 2-501 et. seq. (2001).
12 Section 33-431(c) no longer appears in the Code.*

1104.4 Documentary evidence may be received in the form of copies or excerpts if the original is not available.

1104.5 Upon request, parties shall be given an opportunity to compare the copy with the original when available.

1104.6 When relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. The immaterial and irrelevant parts shall be excluded and shall be segregated insofar as is practicable.

1104.7 If the hearing officer so directs, the relevant or material matter may be read into the record, or, if the hearing officer so directs, a true copy of the matter, in proper form, shall be received as an exhibit, and like copies shall be delivered by the party offering the same to opposing parties or to their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the book, paper, or document, and to offer in evidence in like manner other portions thereof.

1104.8 If any portion of the record in any other proceeding, including a court

proceeding, is offered in evidence, a true copy of that portion shall be presented for the record in the form of an exhibit unless one (1) of the following occurs:

- (a) The party offering the same agrees unconditionally to supply the copies at a later time designated by the hearing officer; or
- (b) The parties represented at the hearing stipulate upon the record that the relevant matter may be incorporated by reference; or
- (c) The hearing officer directs the incorporation by reference or waives the requirement of presentation of documentary evidence with the consent of the parties.

1104.9 No document or other writing shall be accepted for the record after the close of the hearing, except in accordance with an order issued by the hearing officer.

§ 22-1105. OFFICIAL NOTICE

1105.1 Without limiting the discretionary powers of the hearing officer to notice other matters or documents which are properly the subject of official notice, the following matters may be officially noticed in all proceedings under the provisions of this chapter:

- (a) Matters which are subject to judicial notice in the courts of the District of Columbia;
- (b) Matters of generally recognized technical or specialized facts within the knowledge and experience of the hearing officer; and
- (c) Facts contained in the applicant's or registrant's official file.

§ 22-1106. DISPOSITION OF CASES

1106.1 If a respondent fails to appear at any scheduled hearing after proper service of notice, the hearing officer in the absence of a continuance or good cause being shown, may proceed with the hearing and make a decision in the absence of respondent.

1106.2 Unless otherwise provided by the Director, any contested case may be disposed of by stipulation, agreed settlement, consent order, or default

as provided by § 1106.1. Any disposition, other than a default, shall be signed by the Director or the Director's designated agent.

§ 22-1107. TRANSCRIPTS

- 1107.1 Hearings shall be recorded either stenographically or electronically and shall be available for transcribing upon the request of any party.
- 1107.2 The costs of transcripts of the record shall be borne by the parties requesting the transcripts.
- 1107.3 Changes in the official transcript shall be made only when they involve errors affecting substance.
- 1107.4 A motion to correct a transcript shall be filed within ten (10) days of receipt of the transcript.
- 1107.5 If no objection to the motion is filed within ten (10) days, the transcript shall, upon the approval of the hearing officer, be changed.
- 1107.6 If an objection is received, the motion and objection shall be submitted to the person who transcribed the record together with a request for a comparison of the transcript with the record.
- 1107.7 After receipt of the report of the person who made the transcription, an order shall be entered by the hearing officer settling the record and ruling on the motion.

§ 22-1108. BURDEN OF PROOF

- 1108.1 In any proceeding resulting from proposed action to deny an applicant registration, the burden of proof shall be upon the applicant to demonstrate his or her qualifications.
- 1108.2 In any proceeding resulting from a proposed action to deny renewal or to suspend or revoke registration, the burden shall be on the Department to show that the proposed action should be taken.
- 1108.3 Notwithstanding the ultimate burden of proof regarding registration, in any proceeding the burden of proof of any exemption or exception under the Act or any affirmative defense is upon the person claiming it.

§ 22-1109. DECISIONS

- 1109.1 Within ten (10) days of the close of the hearing or as soon thereafter as it is practicable, the hearing officer shall notify the applicant or registrant of the proposed decision in the case. A copy of the notice shall be sent to the Director if the Director did not personally hear the case.
- 1109.2 The notice of the proposed decision shall contain the following:
- (a) A statement of proposed findings of fact and conclusions of law;
 - (b) A statement that these findings and conclusions shall become final unless a motion for rehearing or reconsideration is received within ten (10) days of the service of the proposed decision; and
 - (c) A statement as to respondent's appeal rights.
- 1109.3 The findings shall include specific findings on each relevant contested issue of fact. Proposed findings of fact shall, if set forth in statutory language, include a concise and explicit statement of the underlying fact supporting them.
- 1109.4 Findings of fact and conclusions of law shall be supported by and shall be in accordance with reliable, probative, and substantial evidence.
- 1109.5 Decisions made by a hearing examiner shall be made in consideration of the entire record of the proceeding, or upon such portion of the record of the proceeding as may be agreed upon by all the parties to the proceeding, and no evidence, information, or other knowledge, except that of which official notice is taken shall be considered.
- 1109.6 A proposed decision shall become final unless a motion for a rehearing or reconsideration is received from respondent within ten (10) days of service of the proposed decision on respondent or unless otherwise directed by the Director.
- 1109.7 At the expiration of the period for filing a motion for rehearing or reconsideration the Director may, on the Director's own motion or order, do any of the following:
- (a) Issue a final decision and order; or
 - (b) Remand the matter for further proceedings.

1109.8 A final decision of the Director shall include findings of fact and conclusions of law in conformity with the District of Columbia Administrative Procedure Act, P.L. 90-614, § 1-1501 et seq., D.C. Code, 1981 ed13., and these rules.

1109.9 A copy of the decision or order shall be delivered or mailed by certified mail, return receipt requested, to each party and their attorney of record. Notice shall be effective as provided in § 1101.7 and § 1101.8.

1109.10 The final decision shall contain a statement of respondent's appeal rights.

§ 22-1110. MOTION FOR REHEARING OR RECONSIDERATION

1110.1 Motions for rehearing or reconsideration may be filed by respondent within ten (10) days of service of the proposed decision issued pursuant to § 1109.1 of these rules.

1110.2 Motions for rehearing or reconsideration shall be in writing and shall state with specificity the grounds upon which they are based.

1110.3 The hearing officer, if he or she was not the Director or authorized to make a final decision, shall forward a copy of respondent's motion for rehearing or reconsideration to the Director or person authorized to make a final decision, together with the hearing officer's recommendation.

1110.4 If the person who is to render a final decision in the matter did not personally hear the evidence, that person shall provide the respondent with an opportunity to present oral argument with respect to his or her motion and personally consider the portions of the record as may be designated by the party, before rendering a final decision adverse to respondent.

13 The District of Columbia Administrative Procedure Act is now cited as D.C. Official Code 2-501 et. seq. (2001).

1110.5 A timely motion for rehearing or reconsideration is a prerequisite to an appeal under § 1111 unless otherwise authorized by the Director.

§ 22-1111. JUDICIAL REVIEW

1111.1 A person aggrieved by an adverse decision by the Director under this chapter may seek review in the District of Columbia Court of Appeals within fifteen (15) days of service of the decision or such other time as the court may prescribe for review of contested cases under § 11 of the District of Columbia Administrative Procedure Act, P.L. 90-614, (D.C. Code, § 1-1510, 1981 ed.)¹⁴.

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Title 22

District of Columbia Municipal Regulations

§ 22-1199. DEFINITIONS

1199.1 The provisions of § 1099 of chapter 10 of this title and the definitions set forth in that section shall apply to this chapter.

14 The District of Columbia Administrative Procedure Act is now cited as D.C. Official Code 2-501 et. seq. (2001).