CHAPTER 41 HEALTH OCCUPATIONS: ADMINISTRATIVE PROCEDURES

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4100 APPLICABILITY

4100.1 This chapter shall apply to holders of and applicants for a license, certificate, or registration.

4100.2 The District of Columbia Administrative Procedure Act, D.C. Code §§1-1501 to 1-1511 (1981 and 1987 Supp.), shall supplement this chapter, except to the extent that it conflicts with the Act.

AUTHORITY: Unless otherwise noted, the authority for this chapter is §302(14) of the District of Columbia Health Occupations Revision Act of 1985, D.C. Law 6-99, D.C. Code §2-3303.2(14) (1988 Repl. Vol.), 33 DCR 729, 732 (February 7, 1986), and Mayor's Order 86-110, 33 DCR 5220 (August 22, 1986).

SOURCE: Final Rulemaking published at 34 DCR 5872 (September 11, 1987).

4101 COMPLAINTS

4101.1 A board, on its own motion or on the receipt of a complaint submitted in accordance with §4101.2, shall request the Director to investigate a health professional if the facts alleged in the complaint, if proven, would constitute sufficient grounds for disciplinary action under §514(a) of the Act, D.C. Code §2-3305.14(a) (1987 Supp.), other provisions of the Act, or this subtitle.

4101.2 A person who desires to file a complaint against a health professional shall do the following:

(a) Submit the complaint in writing;

(b) State the fats or circumstances that form the basis of the complaint;

(c) Sign the complaint and state the complainant's name and address; and

(d) Mail or deliver the complaint to the board.

4101.3 Nothing in §4101.2 shall preclude a board, on its own motion, from requesting the Director to investigate a health professional based on information obtained from an individual who does not file a complaint in accordance with that subsection.

4101.4 Upon receiving a complaint, a board may, in its discretion, request that the health professional against whom the complaint is made respond in writing to the allegations contained in the complaint. If the board requests such a response, it shall inform the health professional of the following:

(a) That the health professional is not required to respond to the complaint;

(b) That the board may send a copy of the health professional's response to the complainant; and

(c) That the failure to respond shall not be held against the health professional in any subsequent action based on the complaint.

4101.5 If a board receives a written response from a health professional requested pursuant to §4101.4, it may, in its discretion, send a copy of the response to the complainant and request a written reply within a time period determined by the board.

4101.6 After considering a complaint against a health professional, and any response to the complaint, a board may take one (1) of the following actions:

(a) Refer the complaint to the Director for investigation;

(b) Set the matter for a hearing in accordance with §4102;

(c) Request that the respondent attend a settlement conference in accordance with §4108; or

(d) Dismiss the complaint.

4101.7 If a board dismisses a complaint, it shall give the complainant notice in writing, sent by first class mail, of the dismissal of the complaint within ten (10) days of the action.

SOURCE: Final Rulemaking published at 34 DCR 5872 (September 11, 1987).

4102 NOTICE OF INTENDED ACTION AND OPPORTUNITY FOR A HEARING

4102.1 A holder of a license (except a temporary license), certificate, or registration, or a person possessing a privilege to practice in the District under the Act, shall be given notice of, and an opportunity for, a hearing before the board regulating the health profession if the effect of the action would be one of the following:

(a) To revoke a license, certificate, registration, or privilege;

(b) To suspend a license, certificate, registration, or privilege;

(c) To reprimand the holder of a license, certificate, registration, or privilege;

(d) To impose a civil fine;

(e) To require a course of remediation;

(f) To require a period of probation; or

(g) To refuse to renew the license, certificate, or registration for any cause other than failure to pay the required renewal fee.

4102.2 If a board proposes to take an action of the type set forth in §4102.1, it shall give written notice to the respondent in accordance in §4105. The notice shall contain the following:

(a) A statement that the board has sufficient evidence, which, if proven to be true, justifies taking the proposed action, and setting forth the nature of the evidence;

(b) One of the following statements:

(1) That the board may take the proposed action, unless the applicant requests a hearing before the board by a letter addressed to the board, sent by certified mail or delivered in person, within twenty (20) days after service of the notice, and that the board may take the proposed action if the respondent fails to appear at a scheduled hearing; or

(2) That the board has schedule a hearing on the proposed action, setting forth the date, time, and place of the hearing, and that the board may take the proposed action if the respondent fails to appear at the hearing; and

(c) A description of the rights of respondent at a hearing as specified in §4109.3.

4102.3 An applicant for a license (other than a temporary license), certificate, or registration shall be given notice of and an opportunity for a hearing before the board regulating

the health profession or the Director if the effect of the action would be one of the following:

(a) To deny permission to take an examination for any cause, except when the denial is based on the failure to meet a qualification over which the board has no discretion, including, but not limited to, the following:

(1) Failure to meet the minimum age requirement of eighteen (18) years; or

(2) Failure to meet educational or experience requirements where the acceptability of the educational program or quality of the experience is not an issue;

(b) To deny a license, certificate, or registration for any cause, except when the denial is based on the failure to meet a qualification over which the board has no discretion including, but not limited to, the following:

(1) Failure to pass an examination;

(2) Failure to meet the minimum age requirement of eighteen (18) years; or

(3) Failure to meet educational or experience requirements where the acceptability of the educational program or quality of the experience is not an issue;

(c) To deny a license or certificate by reciprocity or endorsement; or

(d) To impose a civil fine.

4102.4 If a board proposes to take an action of the type specified in §4102.3, it shall give written notice to the applicant in accordance with §4105. The notice shall contain the following:

(a) A statement that the applicant has failed to satisfy the board as to the applicant's qualifications to take the examination or to be approved for licensure;

(b) A statement that specifies in what respect the applicant has failed to satisfy the board; and

(c) One of the following statements:

(1) That the board may take the proposed action, unless the applicant requests a hearing before the board by a letter addressed to the board, sent by certified mail or delivered in person, within twenty (20) days after service of the notice, and that the board may take the proposed action if the respondent fails to appear at a scheduled hearing; or

(2) That the board has scheduled a hearing on the proposed action, setting forth the date, time, and place of the hearing, and that the board may take the proposed action if the respondent fails to appear at the hearing; and

(d) A description of the rights of respondent at a hearing as specified in §4109.3.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5874 (September 11, 1987).

4103 FAILURE TO REQUEST A HEARING OR FAILURE TO APPEAR

4103.1 If a person who was sent a notice of a proposed action pursuant to §4102 does not mail or deliver a request for a hearing within the time and in the manner required under that section, a board may, without a hearing, take the action contemplated in the notice.

4103.2 If a person scheduled for a hearing does not appear for the hearing, and no continuance is granted, a board may receive evidence and hear testimony and may render a decision on the basis of evidence before it. However, the board, prior to rendering a decision, may, upon written request of the respondent and payment of the required fee, send a copy of the transcript or summary of the hearing to the respondent and request proposed findings of fact and conclusions of law from the respondent.

4103.3 A board shall inform the respondent, the Corporation Counsel, and the Director of an action taken under this section.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5876 (September 11, 1987).

4104 HEARING NOTICE PROCEDURES

4104.1 If a respondent requests a hearing, a board shall, within twenty (20) days following receipt of the request, notify the respondent of the date, time, and place of the hearing.

4104.2 A board shall hold the hearing not less than fifteen (15) days following the date of service of the notice, unless the board, the respondent, and the Corporation Counsel agree to the holding of the hearing at an earlier date.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5877 (September 11, 1987).

4105 SERVICE

4105.1 A notice, order, decision, or pleading required by this chapter to be served upon a party shall be served upon the party or upon the representative designated by the party or by law to receive service of papers. If a party has appeared through counsel, service may be made upon the counsel of record.

4105.2 Service on a respondent shall be directed to the last known address of the respondent on file with the Director and shall be completed by one of the following methods:

(a) By personal delivery;

(b) By leaving it at the party's office with a person in charge or an employee or, if the office is closed or the party to be served has no office, by leaving it at the party's usual place of residence with a person of suitable discretion sixteen (16) years of age or older residing there;

(c) By certified mail, return receipt requested; or

(d) In conformity with an order of a board made in any hearing.

4105.3 Proof of service, stating the name and address of the person on whom service is made and the manner and date of service, may be shown by one of the following methods:

(a) Written acknowledgment by the party or other person served in accordance with §4105.2(b) or by the party's counsel;

(b) The certificate of the serving party or that party's counsel; or

(c) A return receipt if service is made by certified mail.

4105.4 If service is by personal delivery, it shall be deemed to have been served at the time when delivery is made to the party or other person served in accordance with §4105.2(b).

4105.5 If service is by certified mail, it shall be deemed to have been made on the date shown on the return receipt showing delivery of the notice to the party or refusal of the party to accept delivery.

4105.6 If the party is no longer at the last known address as shown by the records of the Director, and no forwarding address is available, service shall be deemed to have been made on the date the return receipt bearing that notification is received by the Director.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5877 (September 11, 1987).

4106 REPRESENTATION

4106.1 A respondent appearing before a board at a hearing, or appealing a decision of an Administrative Law Judge (ALJ) before a board pursuant to §4123, shall have the right to be represented by an attorney who is an active member of the District of Columbia Bar. The chairperson of the board shall give notice of that appearance to the Director and the Corporation Counsel.

4106.2 If it appears to a board that the issues or facts in a matter before it are so complex that the interests of justice, saving time or facilitating the preparation of an adequate record would be served by the representation of a party by an attorney, the board may urge, but not require, that the party obtain the services of an attorney and may allow that party a reasonable period of time within which to do so.

4106.3 No person may participate in a representative capacity in any hearing conducted by a board until the person delivers to the board a signed statement containing the person's name, street address, telephone number, and District of Columbia Bar number. The written statement of counsel shall be made a part of the record.

4106.4 Any person authorized to appear pursuant to this section may sign any paper required or permitted either by this subtitle or the Act to be filed with a board.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5878 (September 11, 1987).

4107 MOTIONS AND OTHER PLEADINGS

4107.1 Except by leave of a board during a hearing, a party shall make an application for an order or other relief by filing a written motion. A motion shall state with particularity the grounds on which it is based and shall clearly set forth the order or relief sought. If a motion is supported by memoranda, affidavits, or other papers, they shall be attached and served with the motion.

4107.2 A copy of each motion, response, opposition, reply, or other pleading filed with a board shall be served on each party separately represented, and a certificate of service shall appear at the end of the pleading showing the date and method of service.

4107.3 A party may file a response or opposition to a motion within ten (10) days after service of the motion, but a board, in its discretion, may shorten or extend this time, with proper notice to parties. The response or opposition shall not include a motion for other affirmative relieve against the moving party.

4107.4 A reply to a response or opposition may be filed within three (3) days (excluding Saturdays, Sundays, legal holidays, or days on which the Department is officially closed) after service of the response or opposition, but the reply shall not reargue propositions presented in the motion nor present matters which are not strictly in reply to the response or opposition. No further pleading may be filed except by leave of a board for extraordinary cause.

4107.5 A motion or other pleading shall meet the following additional requirements:

(a) It shall be typewritten on business size (8 1/2 x 11) paper;

(b) It shall contain the name of the case and number of the case, if any;

(c) It shall be double-spaced, except footnotes and quotations, which may be singled-spaced;

(d) It shall be signed by the party on whose behalf it is filed or by that party's counsel; and

(e) Subject to §4107.6, it shall be accompanied with a number of copies that corresponds to the number of members of the board authorized by the Act, plus one, as follows:

(1) In cases before the Board of Dentistry, eight (8) copies;

(2) In cases before the Board of Dietetics and Nutrition, four (4) copies;

(3) In cases before the Board of Medicine, twelve (12) copies;

(4) In cases before the Board of Nursing, twelve (12) copies;

(5) In cases before the Board of Nursing Home Administration, six (6) copies;

(6) In cases before the Board of Occupational Therapy, six (6) copies;

(7) In cases before the Board of Optometry, six (6) copies;

(8) In cases before the Board of Pharmacy, eight (8) copies;

(9) In cases before the Board of Physical Therapy, six (6) copies;

(10) In cases before the Board of Podiatry, six (6) copies;

(11) In cases before the Board of Psychology, six (6) copies;

(12) In cases before the Board of Social Work, six (6) copies;

4107.6 A board may permit respondents to file a lesser number of copies of motions or other pleadings than the number required by §4107.5.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5878 (September 11, 1987).

4108 SETTLEMENT CONFERENCES

4108.1 A board, in its discretion, may request a respondent against whom an action is proposed to attend a settlement conference.

4108.2 A board shall serve a request to attend a settlement conference in accordance with §4105. The request shall state as follows:

(a) That, if the respondent desires to participate in a settlement conference, the respondent is required to notify the board within ten (10) days or such other reasonable period specified in the notice;

(b) That the respondent is entitled to be represented by an attorney;

(c) That the respondent is not required to attend the settlement conference; and

(d) That the respondent's failure to agree to attend a settlement conference will not be held against the respondent at a hearing based on the complaint.

4108.3 If a respondent agrees to attend a settlement conference, the board shall notify the respondent, the Director, and the Corporation Counsel, of the date, time, and place of the settlement conference.

4108.4 A board may designate a member of the Board, its counsel, or an employee of the Department to participate in a settlement conference on behalf of the board.

4108.5 The parties at a settlement conference may enter into a negotiated settlement or consent decree that is binding on all parties; Provided, that the settlement or consent decree is approved by the board.

4108.6 If the board accepts part, but not all, of the proposed negotiated settlement or consent decree, it may request the respondent to attend another settlement conference.

4108.7 A respondent who agrees to a negotiated settlement or consent decree that is approved by the board shall waive all of the respondent's rights of appeal or reconsideration under this subtitle or the Act.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5880 (September 11, 1987).

4109 CONDUCT OF HEARINGS

4109.1 All hearings before a board shall be opened to the public.

4109.2 At a hearing before a board, at least a majority of the members of the board shall be present to hear the evidence and render a decision.

4109.3 A respondent entitled to a hearing shall have the following rights:

(a) The right to be represented by an attorney in accordance with §4106;

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

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

(d) The right to have subpoenas issued to compel the attendance of witnesses and the production of relevant books, papers, and other documents upon making written request for subpoenas to the board.

4109.4 A board may, in its discretion, deny any motion for a continuance, and shall deny a motion for a continuance unless the motion meets the following requirements:

(a) In the opinion of the board, sets forth good cause for a continuance; and

(b) Is filed at least two (2) days (excluding Saturdays, Sundays, legal holidays, and days on which the Department is officially closed) before the date on which the hearing is to be held, except for extraordinary and unforeseen reasons, such as the sudden illness of a party or a party's counsel.

4109.5 Conflicting engagements of counsel, absence of counsel, or the employment of new counsel do not constitute good cause for a continuance of a hearing unless set forth in a motion filed promptly after notice of the hearing has been given.

4109.6 After a hearing, and within time limits established by a board, the parties may submit proposed findings of fact, conclusions of law, and order, and may also submit memoranda of law on issues of law arising during the hearing.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5881 (September 11, 1987).

4110 EVIDENCE AT THE HEARING

4110.1 All testimony at a hearing before a board shall be under oath or affirmation.

4110.2 If any part of the record in any other proceeding previously held before a board, or part of the record in any criminal or civil action (including hearings before an administrative agency) is offered in evidence, a certified true copy of that part shall be presented to the board in the form of an exhibit, unless either of the following requirements is satisfied:

(a) The record is specified in such manner as to be readily identified, and the person offering the record agrees to supply copies later or when required by the board; or

(b) There is a stipulation that the record may be incorporated by reference and the board directs that incorporation.

4110.3 A board shall exclude irrelevant, immaterial, and unduly repetitious evidence.

4110.4 A board may take official notice, at the request of a party or on its own motion, of the following:

(a) The law and rules of the District of Columbia, the United States, and any state of the United States;

(b) Material facts in the official files of a board or the Department or other District agency; or

(c) A fact which is not subject to reasonable dispute in that it is generally known within the District of Columbia or is capable of accurate and ready determination by resort to sources the accuracy of which cannot reasonably be questioned.

4110.5 If a board takes official notice of a material fact not appearing in the evidence in the record, a party shall be given an opportunity to show the contrary at the hearing or on motion made within five (5) days after the hearing.

4110.6 The parties may, by stipulation in writing filed with a board, agree on the facts or any portion thereof involved in a hearing. The parties may also stipulate the testimony that would be given by a witness if the witness were present. A board, in its discretion, may require additional evidence regarding any matter covered by a stipulation.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5882 (September 11, 1987).

4111 CONDUCT OF PARTIES AND COUNSEL AT THE HEARING

4111.1 All parties at a hearing shall maintain decorum and good order at all times, and a board may exclude or have removed from the hearing room any person violating any reasonable order of the chairperson of the board.

4111.2 A board may bar counsel from further participation in a hearing for disruptive conduct.

4111.3 If counsel has been barred from participating in a hearing, a board may proceed with the hearing if consistent with the due process rights of the parties. Otherwise, the

board shall adjourn the hearing to give the party whose counsel has been barred an opportunity to secure new representation expeditiously.

4111.4 Counsel who has been barred from participating in a hearing may seek, and a board may grant, reinstatement to participate in the hearing on such terms as the board prescribes. The board shall not permit a reinstatement application to delay the proceedings.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5883 (September 11, 1987).

4112 SUBPOENAS

4112.1 A board shall issue subpoenas to compel witnesses to appear and testify or to produce books, records, papers, or documents on its own motion or upon the request of a party.

4112.2 A board shall issue subpoenas in the name of the Mayor of the District of Columbia. A subpoenaed witness, other than one employed by the District of Columbia Government, shall be entitled to a reasonable fee established by the Director, but the fee shall not be required to be paid in advance.

4112.3 Subpoenas issued by a board shall be enforceable in the manner prescribed in §519(f)(3) of the Act, D.C. Code §2-3305.19(f)(3) (1987 Supp.).

SOURCE: Final Rulemaking published at 34 DCR 5872, 5884 (September 11, 1987).

4113 HEARINGS BY PANELS OF A BOARD

4113.1 A board may authorize a panel of no less than three (3) members of the board to conduct a hearing in any matter that the board is authorized to conduct a hearing under this chapter.

4113.2 The panel of the board shall have the powers and duties given to the board by this chapter and the Act, except the power to render a final decision.

4113.3 After hearing the evidence, the panel shall submit a recommended decision to the board. At the same time, the board shall serve the respondent with a copy of the decision and send a copy of the decision to the Corporation Counsel.

4113.4 A recommended decision of a panel shall contain the following:

(a) Findings of fact;

(b) Conclusions of law based on the findings of fact and application of the laws; and

(c) A recommended order.

4113.5 A board may accept or reject the recommended decision of the panel in whole or in part.

4113.6 Except as provided in §4113.7, a board, within sixty (60) days of the hearing, shall render a decision and notify the Director, the respondent and the Corporation Counsel of the action.

4113.7 If the decision of the board is adverse to the respondent and the panel that heard the case did not constitute a majority of the members of the board, the board, prior to issuing a final decision, shall serve the respondent with a copy of the decision and give the respondent an opportunity to file exceptions, and written argument in support thereof, with the board within ten (10) days of the date of service.

4113.8 A board shall consider any exceptions and argument filed by a respondent pursuant to §4113.7 in issuing a final decision. If the respondent does not file exceptions within the required period, the proposed decision of the board shall become the final decision of the board.

4113.9 A board may, with the agreement of all parties, extend the sixty (60) day period in which it is required to render a decision pursuant to §519(h) of Act, D.C. Code §2-3305.19(h) (1987 Supp.).

SOURCE: Final Rulemaking published at 34 DCR 5872, 5884 (September 11, 1987).

4114 HEARINGS BY ADMINISTRATIVE LAW JUDGES

4114.1 A board may delegate its authority to conduct a hearing to an ALJ pursuant to §103(c) of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Code §6-2703(c) (1987 Supp.), by notifying the Director in writing of the name of the case and the decision of the board to delegate its authority to conduct the hearing.

4114.2 The ALJ conducting a hearing has the powers and duties given to the board by this chapter and the Act, except the power to render a final decision.

4114.3 After hearing the evidence, an ALJ shall, within thirty (30) days of the hearing, submit a recommended decision to the board. At the same time, the ALJ shall serve the respondent with a copy of the decision and send a copy of the decision to the Corporation Counsel.

4114.4 A recommended decision of an ALJ shall contain the following:

(a) Findings of fact;

(b) Conclusions of law based on the findings of fact and application of the laws; and

(c) A recommended order.

4114.5 A board may accept or reject the recommend decision of an ALJ in whole or in part.

4114.6 Except as provided in §4114.7, a board, within thirty (30) days of the recommended decision of the ALJ, shall render a decision and notify the Director, the respondent, the ALJ, and the Corporation Counsel of the action.

4114.7 If the decision of the board is adverse to the respondent, the board, prior to issuing a final decision, shall serve the respondent with a copy of the decision and give the respondent an opportunity to file exceptions, and written argument in support thereof, with the board within ten (10) days of the date of service.

4114.8 A board shall consider any exceptions and argument filed by a respondent pursuant to §4114.7 in issuing a final decision. If the respondent does not file exceptions within the required period, the proposed decision of the board shall become the final decision of the board.

4114.9 A board may, with the agreement of all parties, extend the sixty (60) day period in which it is required to render a decision pursuant to §519(h) of Act, D.C. Code §2-3305.19(h) (1987 Supp.).

SOURCE: Final Rulemaking published at 34 DCR 5872, 5885 (September 11, 1987).

4115 BURDEN OF PROOF

4115.1 In a hearing resulting from a proposed disciplinary action under §4102.1, the District shall have the burden of proving by a preponderance of the evidence that the action should be taken.

4115.2 In a hearing resulting from a proposed action to deny a license, certificate, or registration under §4102.3, the applicant shall have the burden of satisfying the board of the applicant's qualifications by a preponderance of the evidence.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5886 (September 11, 1987).

4116 RECORD OF A HEARING

4116.1 In all hearings conducted under this chapter, a board shall make a complete record of all evidence presented during the course of a hearing.

4116.2 A board shall make a transcript of a hearing on a proposed action specified in §4102.1, unless the parties and the board agree not to have a transcript made.

4116.3 A board may make a transcript of a hearing on a proposed action specified in §4102.3, and shall make a transcript upon written request of a party or made at least five (5) days prior to the hearing.

4116.4 If a board does not make a transcript of the hearing, it shall make an electronic recording of the hearing.

4116.5 A board shall provide a copy of an approved transcript or recording of a hearing to any person requesting it, upon payment of the required fee.

4116.6 A party may move to correct a transcript by filing a motion with a board within ten (10) days of receipt of the transcript. If no opposition to the motion is filed, the transcript may, upon approval by the board, be changed to reflect the corrections.

4116.7 In the event of disputes with respect to the record, a board shall settle the record and rule on all contested motions to correct the record.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5886 (September 11, 1987).

4117 DECISIONS OF A BOARD

4117.1 A board shall render a decision, in writing, no later than sixty (60) days after the day the hearing is completed.

4117.2 A decision of a board shall contain the following:

(a) Findings of fact;

(b) Conclusions of law based upon the findings of fact and application of the laws;

(c) An order; and

(d) A statement informing the respondent of the right to have the decision reviewed by the District of Columbia Court of Appeals, and the time within which judicial review must be sought according to the rules of that Court.

4117.3 A board, in addition to taking other disciplinary action, may revoke the license of a health professional whose license has expired if the decision was based on conduct that occurred while the health professional was licensed.

4117.4 The chairperson of a board may sign an order, decision, or other document of the board on behalf of the board.

4117.5 Within five (5) days after the decision is rendered, a board shall serve a copy of the written decision upon the respondent, or the respondent's counsel of record, in accordance with §4105.

4117.6 A board shall issue its findings of fact, conclusions of law, and order in writing except when it determines that the interests of the health, safety, or welfare of the public require that the findings of fact, conclusions of law, or order of the board be issued orally without delay.

4117.7 Oral findings of fact, conclusions of law, and an order issued in accordance with §4117.6 shall be final and shall be recorded as final at the time they are communicated to the parties. Promptly thereafter, a board shall state its oral findings of fact, conclusions of law, and order in writing, and the chairperson shall sign the written decision and serve a copy on all parties or their attorneys of record.

4117.8 A board, on motion by a respondent, may, in its discretion, stay the imposition of an order pending appeal or reconsideration.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5887 (September 11, 1987).

4118 SUMMARY ACTION

4118.1 The Director shall serve a written notice of a summary suspension or restriction of a license of a health professional under §515 of the Act, D.C. Code §2-3305.15 (1987 Supp.), in accordance with §4105.

4118.2 A notice issued under this section shall state the following:

(a) The action taken;

(b) The reasons for which the action was taken;

(c) That the action is effective upon service of the notice or at a time and date specified in the notice;

(d) That the respondent has a right to make a written request for a hearing before the Director within seventy-two (72) hours of the service of the notice, or such longer period stated in the notice;

(e) That the respondent's request for a hearing will not stay the action;

(f) That the respondent has a right to a hearing within seventy-two (72) hours of the Director's receipt of the respondent's request for a hearing;

(g) A description of a respondent's rights at a hearing as specified in §4109.3; and

(h) The address to which the respondent's request for a hearing must be delivered or mailed.

4118.3 An action under this section shall take effect immediately upon service, unless the notice states that it takes effect at a later time, and remains in effect until superseded by a decision of the Director.

4118.4 A respondent who requests a hearing within seventy-two (72) hours of service of a notice of summary action, or such longer period stated in the notice, shall have a right to a hearing under this section.

4118.5 The Director shall hold a hearing on a summary action within seventy-two (72) hours of the Director's receipt of the respondent's request, unless the respondent agrees to a later hearing time.

4118.6 In conducting a hearing under this section, the Director shall have all of the powers and duties of a board under this chapter.

4118.7 In a hearing under this section, the District has the burden of proving by substantial evidence that the action was necessary to prevent imminent danger to the health or safety of the citizens of the District.

4118.8 The Director shall issue a decision within seventy-two (72) hours of a hearing under this section and shall serve the respondent or the respondent's counsel with the decision as soon thereafter as practicable.

4118.9 A decision of the Director under this section shall contain the following:

(a) Findings of fact;

(b) Conclusions of law based upon the findings of fact and application of the laws;

(c) An order; and

(d) A statement informing the respondent of the right to have the decision reviewed by the District of Columbia Court of Appeals, and the time within which judicial review must be sought according to the rules of that Court.

4118.10 The Director shall notify the board that regulates the health profession of the respondent of the Director's decision at the same time that it notifies the respondent.

4118.11 An order of the Director under this section shall remain in effect until one (1) of the following occurs:

(a) The order expires under its own terms;

(b) The order is superseded by an order of a board under this section; or

(c) The order is reversed by the District of Columbia Court of Appeals.

4118.12 Within sixty (60) days after the Director notifies the board of a summary action, the board shall determine whether there is sufficient cause to propose a disciplinary action under §4102.

4118.13 If a board determines that there is sufficient cause to propose a disciplinary action, the board shall take one (1) of the following actions:

(a) Set the matter for a hearing in accordance with §4102; or

(b) Request that the respondent attend a settlement conference in accordance with §4108.

4118.14 If a board determines that there is not sufficient cause to propose a disciplinary action, the board shall take one (1) of the following actions:

(a) Enter an order restoring the respondent's license or removing the restriction from the respondent's license which was imposed by the summary action; or

(b) Request that the Director undertake further investigation of the matter.

4118.15 An order of a board entered after its determination pursuant to §§4118.13 or 4118.14 supersedes an order of the Director to the extent that the order of the Director is inconsistent with the order of the board.

4118.16 If a board requests the Director to undertake further investigation pursuant ot §4118.14(b), the Director shall complete the investigation and report to the Board within sixty (60) days of the date of the request.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5888 (September 11, 1987).

4119 CEASE AND DESIST ORDERS

4119.1 A board or the Director shall serve a cease and desist order on a health professional issued under §516 of the Act, D.C. Code §2-3305.16 (1987 Supp.), in accordance

with §4105. The order shall take effect immediately upon service, unless the order states that it takes effect at a later time.

4119.2 An order issued under this section shall state the following:

(a) The action taken;

(b) The reasons for which the action was taken;

(c) That the action is effective upon service of the order or at a time and date specified in the order;

(d) That the respondent has a right to a hearing if the respondent requests a hearing in writing within fifteen (15) days of the service of the order;

(e) That the respondent has a right to an expedited hearing if the respondent requests an expedited hearing within ten (10) days of the service, and that such a request constitutes a waiver by the respondent of the right to fifteen (15) days notice under the Act;

(f) That the respondent's request for a hearing shall not stay the action;

(g) A description of a respondent's rights at a hearing as specified in §4109.3; and

(h) The address to which the respondent's request must be delivered or mailed.

4119.3 If a respondent requests a hearing pursuant to §516(b)(1) of the Act, D.C. Code §2-3305.16(b)(1) (1987 Supp.), the board or, in the case of an order issued by the Director, an ALJ, shall hold a hearing no earlier than fifteen (15) days and no later than forty-five (45) days after the board or Director receives the request.

4119.4 If a respondent requests an expedited hearing pursuant to §516(c)(1) of the Act, D.C. Code §2-3305.16(c)(1) (1987 Supp.), the board or, in case of an order issued by the Director, an ALJ, shall hold a hearing no earlier than five (5) days and no later than ten (10) days after the board or Director receives the request. In this case the notice of the hearing shall be served on the respondent in accordance with §4105 at least five (5) days prior to the hearing.

4119.5 A respondent may waive the respondent's right to a hearing within the time periods required by §§4119.3 and 4119.4.

4119.6 If a board renders a decision under this section, the decision shall contain the following:

(a) Findings of fact;

(b) Conclusions of law based upon the findings of fact and application of the laws;

(c) An order; and

(d) A statement informing the respondent of the right to have the decision reviewed by the District of Columbia Court of Appeals, and the time within which judicial review must be sought according to the rules of that Court.

4119.7 If an ALJ conducts a hearing under this section, the ALJ shall have all the powers and duties of a board under this chapter.

4119.8 If an ALJ renders a decision under this section, the decision shall contain the following:

(a) Findings of fact;

(b) Conclusions of law based upon the findings of fact and application of the laws;

(c) An order; and

(d) A statement informing the respondent of the right to have the decision reviewed by the board regulating the health occupation and the time within which this review must be sought as specified in §4123.

4119.9 A board or an ALJ rendering a decision under this section shall serve the respondent or the respondent's counsel with a copy of the decision as soon as practicable. If an ALJ renders a decision, the ALJ shall notify the board regulating the health occupation of the decision at the same time the ALJ notifies the respondent.

4119.10 A respondent who is aggrieved by a decision of an ALJ under this section may appeal the decision to the board regulating the health occupation in accordance with §4123.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5890 (September 11, 1987).

4120 PETITIONS FOR RECONSIDERATION

4120.1 A respondent or the Corporation Counsel may file a petition for reconsideration, rehearing, or reargument within ten (10) days after the date of the service of the decision on that party. The party filing a petition shall serve a copy of the petition on each party separately represented.

4120.2 Neither the filing nor the granting of a petition shall operate as a stay of a decision unless specifically ordered by a board. A stay shall be granted only upon good cause, which shall involve a consideration of the likelihood of board error, irreparable harm to the petitioning party, the harm to other parties, and the public interest.

4120.3 A petition shall state briefly and specifically the following:

(a) The matters of record or points of law alleged to have been erroneously decided or overlooked;

(b) The grounds relied upon; and

(c) The relief sought.

4120.4 If a petition is based in whole or in part on new matter, the matter shall be set forth in an affidavit, containing a statement that the petitioner could not with due diligence have known or have discovered the new matter prior to the hearing before the board.

4120.5 A board, in its discretion, may permit or require oral argument upon a petition before the board.

4120.6 A board shall grant or deny a petition within forty-five (45) days after the filing of the petition, but the failure by the board to act within that period shall be deemed a denial of the petition.

4120.7 A decision shall be in writing, and shall be signed by the chairperson. The chairperson shall serve copies of the decision on all parties or their counsels of record.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5893 (September 11, 1987).

4121 REOPENING A HEARING

4121.1 If, because of accident, sickness, or other good cause, a respondent fails to receive a notice of a hearing or fails to appear for a hearing, the respondent may, within fifteen (15) days from the date of service of the decision, apply to the board to reopen the hearing.

4121.2 If a board finds good cause to reopen a hearing, the board shall, as soon as practicable, fix a time and place for a hearing and give the respondent and the Corporation Counsel notice of the hearing.

4121.3 A board may also reopen a hearing for any other cause sufficient to it; Provided, that no appeal is pending before a court or has been decided by a court.

4121.4 A decision of a board to reopen a hearing shall be entirely within the discretion of the board and shall not be subject to review.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5893 (September 11, 1987).

4122 JUDICIAL REVIEW: RECORD ON APPEAL

4122.1 A party aggrieved by a decision of a board issued after a hearing may seek review of the decision by the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act, D.C. Code §§1-1501 to 1-1511 (1981 and 1987 Supp.).

4122.2 Upon receipt by a board of a notice of appeal, the chairperson shall promptly acknowledge receipt, advise the Director of that receipt, and request the Director to compile, index, and transmit to the board the originals or copies of all documents pertinent to the appeal, including the following:

(a) A copy of the decision or order from which an appeal is taken, together with any findings of fact and conclusions of law on which the decision or order is based;

(b) All documents relied on by the board, including any relevant documents timely submitted to the board by the respondent or by other parties to the hearing; and

(c) A transcript or summary of all testimony given or statements made during the course of any hearings, conferences, or investigations concerning the matter in dispute, conducted by the board prior to the filing of the notice of appeal.

4122.3 The Director shall provide to all parties to the appeal a copy of the Director's index of the record on appeal.

4122.4 The record may be shortened if, with permission of the court, all parties to the review proceedings so stipulate.

4122.5 The documents transmitted pursuant to this section, and any supplements to the documents, shall be available for inspection by the parties at a location designated by the Director.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5894 (September 11, 1987).

4123 ADMINISTRATIVE APPEALS TO A BOARD OF A DECISION OF AN ADMINISTRATIVE LAW JUDGE

4123.1 This section shall apply to appeals from decisions of ALJ's under this chapter by the following persons:

(a) Persons found by an ALJ to have committed an infraction involving a violation of this subtitle, the Act, or any other act regulating health professionals pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Law 6-42, D.C. Code §6-2701 *et seq.* (1987 Supp.); and

(b) Persons against whom a cease and desist order has been entered pursuant to §516 of the Act, D.C. Code §2-3305.16 (1987 Supp.).

4123.2 A notice of appeal from a decision issued by an ALJ shall be sent to the address stated in the decision and shall be delivered or postmarked within fifteen (15) days from the date of service of the final decision.

4123.3 A notice of appeal of a decision shall include the following information:

(a) That an appeal is taken;

(b) A copy or identification of the final decision from which the appeal is taken;

(c) A concise statement indicating why the respondent believes the final decision is in error;

(d) The full name, street address, and telephone number of the respondent and the respondent's counsel, if any; and

(e) The signature of the respondent or the respondent's counsel.

4123.4 Upon receipt of a notice of appeal, the Director shall promptly acknowledge receipt and compile and index documents pertinent to the appeal, including the following:

(a) A copy of the decision or order from which the appeal is taken, together with any findings of fact and conclusions of law on which the decision or order is based;

(b) All documents relied on by an ALJ, including any relevant documents timely submitted to the ALJ by a respondent or by other parties to the proceedings; and

(c) A transcript or summary of all testimony given or statements made during the course of any proceedings, conferences, or investigations concerning the matter in dispute, conducted by the ALJ prior to the filing of the notice of appeal.

4123.5 The Director shall transmit the notice of appeal and the documents described in §§4123.4(a) and (b) to the board within ten (10) days of the Director's receipt of the notice of appeal. The Director shall transmit the transcript or summary described in §4123.4(c) as soon as practicable after the transcript or summary is completed.

4123.6 The Director shall send the respondent and the Corporation Counsel a copy of the Director's index of the record on appeal.

4123.7 The documents transmitted pursuant to this section, and any supplements to the documents, shall be available for inspection by the parties at a location designated by the Director.

4123.8 The record may be shortened if, with permission of the board, all parties to the review proceedings so stipulate.

4123.9 The Director, on motion of a party, or on the Director's own motion, may require or permit a party to supplement the documents transmitted pursuant to this section.

4123.10 A board, in its discretion, may permit the parties to appear before it and present oral argument before the board in accordance with such limitations as to time of argument or other restrictions as the board may prescribe.

4123.11 The board acting pursuant to this section may affirm, modify, vacate, set aside, or reverse any order or decision of an ALJ.

4123.12 A board may hold unlawful and set aside any order or decision or findings and conclusions of law of an ALJ that it finds to be as follows:

(a) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(b) In excess of statutory authority or authority under this chapter;

(c) Without observance of procedures provided by statute or this chapter; or

(d) Unsupported by a preponderance of the evidence in the record of the hearing.

4123.13 A party may petition a board to reconsider its decision in accordance with §4120.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5895 (September 11, 1987).

4124 COMPUTATION OF TIME

4124.1 In computing any period of time specified in this chapter, the day of the act, event, or default shall not be counted, and the last day of the period shall be counted unless it is a Saturday, Sunday, legal holiday, or day on which the Department is officially closed, in which event the time period shall continue until the next day that is not a Saturday, Sunday, legal holiday, or day on which the Department is officially closed.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5897 (September 11, 1987).

4199 DEFINITIONS

4199.1 As used in this chapter, the following terms and phrases shall have the meanings ascribed:

Act - the District of Columbia Health Occupations Revisions Act of 1985, D.C. Law 6-99, D.C. Code §§2-3301.1 to 2-3312.1 (1987 Supp.).

Administrative Law Judge (ALJ) - a hearing examiner authorized to hear cases pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Code §§6-2701 to 6-2723 (1987 Supp.).

Board - the Board of Dentistry, Board of Dietetics and Nutrition, Board of Medicine, Board of Nursing, Board of Nursing Home Administration, Board of Occupational Therapy, Board of Optometry, Board of Pharmacy, Board of Physical Therapy, Board of Psychology, Board of Podiatry, or Board of Social Work established by the Act, as the context requires.

Certificate - a certificate to practice a specialty of a health occupation issued by a board pursuant to this subtitle or the Act.

Chairperson - the chairperson of a health occupation board designated by the Mayor pursuant ot §405(c) of the Act, D.C. Code §2-3304.5(c) (1987 Supp.), or a person designated by the board to preside at a hearing or act in place of the chairperson.

Day - a calendar day.

Department - the Department of Consumer and Regulatory Affairs.

Director - the Director of the Department of Consumer and Regulatory Affairs, or the Director's designee.

Health professional - a person who holds a license, certificate, or registration issued under the authority of this subtitle or the Act.

Legal holiday - one of the following holidays:

(a) New Years's Day:

(b) Martin Luther King, Jr.'s Birthday;

(c) Washington's Birthday;

(d) Memorial Day;

(e) Independence Day;

(f) Labor Day;

(g) Columbus Day;

(h) Veterans Day;

(i) Thanksgiving Day;

(j) Christmas Day; or

(k) Any other day designated as a legal holiday by the President, the Congress, the Mayor or the Council of the District of Columbia, on the actual day the legal holiday is celebrated by the government of the District of Columbia.

License - a license to practice a health occupation issued pursuant to this subtitle or the Act.

Registration - a registration required to practice a health occupation issued pursuant to this subtitle or the Act.

Respondent - a person againt whom an adverse action is contemplated, proposed, or taken.

SOURCE: Final Rulemaking published at 34 DCR 5872, 5897 (September 11, 1987).