

CHAPTER 3

**RULES OF PRACTICE AND PROCEDURE
ON CONDUCT OF HEARINGS**

Authority

Unless otherwise expressly noted, all provisions of this Chapter 3 were adopted by the Department of Health pursuant to authority delegated at N.J.S.A. 26:1A-13 et seq., and were filed and became effective November 8, 1971, as R.1971 d.197. See: 3 N.J.R. 201(b), 3 N.J.R. 255(d).

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SUBCHAPTER 1. GENERAL PROVISIONS

8:3-1.1 Scope of rules

Unless otherwise provided by rule or statute, the following shall constitute the rules of practice and procedure and shall govern the conduct of all hearings in the Department of Health.

8:3-1.2 Construction

(a) These rules shall be liberally construed to permit the Department and its various agencies to discharge its statutory functions.

(b) The Commissioner or any agency chief may, upon notice to all parties, in the interest of justice, relax the application of these rules.

8:3-1.3 Practice where rules do not govern

(a) The Commissioner may rescind, amend or expand these rules from time to time, and such new rules shall be filed with the Secretary of State as provided by law.

(b) In any matter that arises not governed by these rules, the Commissioner or any agency chief shall exercise his discretion.

8:3-1.4 Definitions

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Agency” means any division, bureau or office within the Department.

“Agency chief” means any director, bureau chief or other head of an agency within the Department.

“Attorney for the Department” means an attorney appointed or assigned by the Attorney General of New Jersey to represent the Department or any agency therein.

“Commissioner” means the Commissioner of the Department.

“Department” means the New Jersey Department of Health.

“Hearing Examiner” means any person designated by the Commissioner to hold any hearing.

“Respondent” means any party who is charged with a violation of any statute or Department rule, or who has requested a hearing to contest any Department action.

SUBCHAPTER 2. ADMINISTRATIVE ORDERS

8:3-2.1 Administrative orders

(a) All administrative orders shall state clearly the rule or statute violated or the specific activity to be halted, and the time within which compliance with the orders is to be achieved.

(b) Such orders may require the performance of interim measures directed towards final compliance with the orders.

(c) All such orders shall contain notice that if the recipient wishes a hearing he must request one within a period specified by the Department in the order of not more than 30 days, or within such period as may be prescribed by a pertinent statute.

8:3-2.2 Stay of order

The Commissioner or any agency chief may, upon written application by the respondent and for good cause, stay the operation of any administrative order pending a hearing.

8:3-2.3 Service of orders

All administrative orders shall be served upon the respondent by certified mail, return receipt requested, and in all other respects in accordance with R.4:4-4 of the Rules Governing the Courts of the State of New Jersey.

SUBCHAPTER 3. CONDUCT OF HEARINGS**8:3-3.1 Hearings to conform to law**

The conduct of all hearings shall conform to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B et seq.

8:3-3.2 Conduct of hearings

(a) All hearings shall be conducted before a hearing examiner.

(b) The hearing examiner shall have authority and discretion to control the order of proceedings, to swear witnesses, to rule on any procedural motion or evidential questions and to make such other rulings as may be necessary to conduct a fair and orderly hearing. The hearing examiner may, in his discretion, examine witnesses.

8:3-3.3 Time and place of hearing

Hearings shall be held at a time and place designated by the Commissioner or any agency chief.

8:3-3.4 Appearances and attorneys

(a) The attorney for the Department shall present the evidence on behalf of the Department.

(b) The respondent may present evidence either through his attorney or pro se.

8:3-3.5 Failure to appear

If any party fails to appear on the date set for a hearing, the hearing examiner shall hear the evidence presented by the Department and render his decision or report his findings to the Commissioner, whichever procedure is appropriate.

8:3-3.6 Transcripts

The proceedings before the hearing examiner shall be recorded either stenographically or on electronic tape.

SUBCHAPTER 4. ISSUANCE OF FINAL DECISION**8:3-4.1 Hearing examiner's report**

(a) The hearing examiner shall render his report and decision not later than 30 days after the final date of hearings, or if a transcript is ordered, 30 days after receipt of the transcript.

(b) Where the hearing examiner is not empowered to render a final decision, his report, including recommended findings of fact and conclusions of law, shall be filed with the Commissioner or agency chief and delivered or mailed to the parties of record, and an opportunity shall be afforded each party of record to file exceptions and objections thereto within ten days after receipt of the hearing examiner's report.

8:3-4.2 Final argument

Where the hearing examiner is not empowered to render a final decision, the parties of record shall be afforded the opportunity to present argument in writing within ten days following receipt of the hearing examiner's report to the Commissioner or agency chief empowered to render the final decision.

8:3-4.3 Final decision

(a) The final decision shall be in writing except that where the hearing examiner is empowered to render the final decision he may render said decision orally on the record.

(b) A final decision shall include findings of fact and conclusions of law, separately stated.

(c) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(d) Where the decision is rendered by one other than the hearing examiner, the hearing examiner's report may be adopted and incorporated by reference in the final decision.

(e) Parties shall be notified either personally or by mail of any decision or order.

(f) Upon request, a copy of the decision or order shall be delivered or mailed forthwith by registered or certified mail to each party and to his attorney of record.