

ALABAMA STATE COMMITTEE OF PUBLIC HEALTH
 ALABAMA DEPARTMENT OF PUBLIC HEALTH
 OFFICE OF GENERAL COUNSEL
 ADMINISTRATIVE CODE

CHAPTER 420-1-3
 HEARING OF CONTESTED CASES

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420-1-3-.01 General Provisions.

(1) These rules apply to the initiation, hearing and resolution of contested cases of the State Board of Health (hereinafter also referred to as "the Board") under the Alabama Administrative Procedure Act. These rules do not apply to actions governed under other specific rules of the State Board of Health.

(2) Statutory Authority. These rules are promulgated and adopted pursuant to the authority of the Alabama Administrative Procedure Act, Code of Ala. 1975, §§41-22-1, et seq., and other specific enabling statutes.

(3) Administration. The Office of General Counsel of the Department of Public Health (hereinafter also referred to as "the Department") will coordinate the hearing of contested cases within the purview of the Alabama Administrative Procedure Act, Code of Ala. 1975, §§41-22-1, et seq.

(4) Correspondence. Correspondence and filing or service shall be made at the following address:

Alabama Department of Public Health
 Office of General Counsel

201 Monroe Street, The RSA Tower, Suite 1540
Montgomery, Alabama 36104

Author: Brian Hale

Statutory Authority: Code of Ala. 1975, §44-22-4.

History: Filed July 20, 1990. **Repealed and New Rule:** Filed March 20, 2008; effective April 24, 2008.

420-1-3-.02 Service On Licensee Or Other Party.

(1) Service of any document required to be served on a licensee or other party pursuant to the provisions of the Administrative Procedure Act in contested cases, Code of Ala. 1975, §§41-22-1, et seq., may be made by any of the following methods unless a specific method is required by law:

(a) by certified mail, return receipt requested; or

(b) by any sheriff or another person authorized to make service of process in civil proceedings; or

(c) by any representative of the Department of Public Health;
or

(d) by any other method allowable under the Alabama Rules of Civil Procedure as such may be amended.

(2) If service of process is refused or unclaimed, and the certified mail receipt or the return of the person serving process so indicates, the Board may serve the document by first-class mail addressed to the licensee or other person at his or her last known address as shown in the Department's records. Service shall be deemed complete three (3) days after the depositing of same in the United States mail.

(3) Where the rule does not require "service," documents may be mailed by first-class mail or hand-delivered.

Author: Brian Hale

Statutory Authority: Code of Ala. 1975, §41-22-4.

History: Filed July 20, 1990. **Repealed and New Rule:** Filed March 20, 2008; effective April 24, 2008.

420-1-3-.03 Time.

Time within which an act must be done under the provisions of these rules shall be computed in the manner prescribed by Code of Ala. 1975, §1-1-4.

Author: Brian Hale

Statutory Authority: Code of Ala. 1975, §41-22-4.

History: Filed July 20, 1990. **Repealed and New Rule:** Filed March 20, 2008; effective April 24, 2008.

420-1-3-.04 **Contested Cases.**

(1) A contested case is a proceeding in which the legal rights, duties or privileges of a party are required by law to be determined by the Board after an opportunity for hearing. Such actions include the granting or denial of licenses or permits, a change in status of a license or permit, or a revocation, suspension, or modification of a license or permit.

(2) An action to revoke, suspend, or modify a license or permit by the Board shall be initiated by the service of a notice of intent to revoke, or modify, or suspend the license or permit or to take other adverse action on the licensee or permittee.

(3) Contested cases initiated by the licensee or permittee, or prospective licensee or permittee shall be initiated by the filing of a notice of appeal with the Department's Office of General Counsel and by filing a copy upon the Board, Bureau or Division affected. The notice of appeal must be received by the Office of General Counsel within 15 days of the determination by the Department, unless a different time period is set by other specific rule or statute. Failure to timely file a notice of appeal with the Office of General Counsel waives the right of appeal and the determination becomes final.

(4) Contested cases initiated by a party other than the licensee, prospective licensee, or permittee or prospective permittee, or the Board shall be so initiated by the filing of a notice of appeal on the Office of General Counsel within 15 days of the determination by the Department, unless a different time period is set by other specific rule or statute. Copies of such notice of appeal shall be served on the licensee or prospective licensee and any other affected parties. Failure to timely file a notice of appeal waives such person's right of appeal.

(5) The Office of General Counsel shall set a hearing for not less than 15 days nor more than 60 days from the filing of the notice of a contested case unless a different time is required by statute or unless the parties agree to a time. Requests for continuances must be filed with the hearing officer and may be granted, within the hearing officer's discretion, for good cause.

(6) Upon setting the hearing, the Office of General Counsel shall send written notice to all parties. The notice shall include at a minimum, the following:

- (a) a statement of the time, place and nature of the hearing;

(b) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) a reference to the particular sections of the statutes and rules involved; and

(d) a plain statement of the factual matters asserted.

Author: Brian Hale

Statutory Authority: Code of Ala. 1975, §41-22-12.

History: Filed July 20, 1990. **Repealed and New Rule:** Filed March 20, 2008; effective April 24, 2008.

420-1-3-.05 Discovery.

(1) In a contested case, on motion of a party, the hearing officer conducting the hearing may issue subpoenas, discovery orders relating to relevant matters, and protective orders in accordance with the Alabama Rules of Civil Procedure. The cost of copies shall be a \$5.00 retrieval fee plus \$1.00 per page for the first 25 pages and \$0.50 for every page thereafter unless otherwise provided by law or rule.

(2) Process issued pursuant to this rule shall be enforced by a court in the same manner as process issued by the court.

Author: Brian Hale

Statutory Authority: Code of Ala. 1975, §41-22-12.

History: Filed July 20, 1990. **New Rule:** Filed March 20, 2008; effective April 24, 2008.

420-1-3-.06 Evidence In Contested Cases.

(1) The only evidence that the hearing officer shall consider in making a finding of fact shall be sworn testimony and exhibits accepted in the hearing or as otherwise agreed upon among the parties.

(2) Hearsay Evidence. Hearsay testimony shall be allowed in any hearing so long as it has probative value as justice requires in the opinion of the hearing officer.

(3) Affidavits and other Written Evidence.

(a) Affidavits shall be admissible in any hearing so long as they have probative value and the affiant, for reasons of impossibility or impracticality, cannot be present for testimony at the hearing. The burden of impossibility or impracticality shall be upon the party offering the affidavit.

(b) Signed letters from physicians on the physician's letterhead shall be considered as an affidavit.

(4) Official Notice. All statutes of the United States and of the State of Alabama and all published rules and regulations of federal agencies, the State Board of Health or of other Alabama administrative agencies shall be deemed admissible by mere identification of the statute or published rules or regulations.

(5) Admissibility. To be admissible, all evidence, whether documentary or ore tenus, shall be germane, material and relevant to the issues brought out by the complaint, answer or notice of hearing. Evidence that might otherwise be germane, material or relevant, if found to be repetitious, may, at the discretion of the hearing officer, be disallowed.

(6) Documentary Evidence. The hearing officer may, in his or her discretion, issue subpoenas to compel the production of documents in the same manner as in the civil courts. Any document or a legible copy of said document shall be admissible if the document or copy shall be proven to be a part of the business or personal records of any party, person, company or other legal entity.

(7) Witnesses. The hearing officer may, in his or her discretion, issue subpoenas to compel any person to testify under oath at any hearing in the same manner as in the civil courts. Employees of the Department shall be made available for testimony upon the timely and reasonable request of a party.

Author: Brian Hale

Statutory Authority: Code of Ala. 1975, §41-22-12.

History: Filed July 20, 1990. **Amended:** Filed July 21, 1995; effective August 25, 1995. **Repealed and New Rule:** Filed March 20, 2008; effective April 24, 2008.

Ed. Note: Rule 420-1-3-.05 was renumbered .06 as per certification filed March 20, 2008.

420-1-3-.07 Intervention.

(1) Upon timely application filed with the Office of General Counsel, an affected person shall be permitted to intervene in any hearing to contest an administrative action of the Board when a statute confers an unconditional right to intervene, or when the applicant has a direct, substantial and legally protectable interest in the outcome of the proceeding and the representation of the interest of the applicant by those already parties is inadequate to protect that interest. An application to intervene filed less than 10 days prior to a scheduled contested case hearing shall be deemed untimely filed and shall be denied.

(2) An application to intervene shall contain:

(a) the name, mailing address, and telephone number of the applicant;

(b) a short and plain statement identifying the administrative action of the Department being contested and, if possible, the name of the person who filed the request for a hearing to contest such action;

(c) a short and plain statement of the grounds for the application, including reference to the statute which confers an unconditional right to intervene or a statement of the direct, substantial and legally protectable interest of the applicant in the outcome of the proceeding, and a statement as to why that interest cannot be adequately represented by those already parties; and

(d) the name, mailing address, and telephone number of the applicant's attorney, if represented by an attorney.

(3) Within five days after the filing of an application to intervene in any hearing to contest an administrative action of the Department, the Office of General Counsel shall mail a copy of such application to each of the parties.

Author: Brian Hale

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 41-22-12, 41-22-14.

History: Filed July 20, 1990. **Repealed and New Rule:** Filed March 20, 2008; effective April 24, 2008.

Ed. Note: Rule 420-1-3-.06 was renumbered .07 as per certification filed March 20, 2008.

420-1-3-.08 Consolidation And Severance.

The State Health Officer may order consolidation, in whole or in part, of two or more hearings to contest an administrative action of the Department whenever it appears that such consolidation would expedite or simplify consideration of the issues and no party would be prejudiced thereby.

Author: Brian Hale

Statutory Authority: Code of Ala. 1975, §41-22-12.

History: Filed July 20, 1990. **Repealed and New Rule:** Filed March 20, 2008; effective April 24, 2008.

Ed. Note: Rule 420-1-3-.07 was renumbered .08 as per certification filed March 20, 2008.

420-1-3-.09 Informal Settlement Conferences.

Informal settlement conferences before the county health officer or program director of the affected county or state program or his or her designee may be held in an attempt to resolve contested cases. Such informal settlement conferences shall not be of record as required by Rule 408 of the Alabama Rules of Evidence and shall not be adversarial in nature but shall be utilized to resolve the contested case prior to formal hearings for the record.

Author: Brian Hale

Statutory Authority: Code of Ala. 1975, §41-22-12.

History: Filed July 20, 1990. **Repealed and New Rule:** Filed March 20, 2008; effective April 24, 2008.

Ed. Note: Rule 420-1-3-.08 was renumbered .09 as per certification filed March 20, 2008.

420-1-3-.10 Hearing Procedures.

(1) A hearing officer appointed by the State Health Officer shall preside at contested case hearings. The hearing officer shall serve as trier of fact.

(2) All parties will be afforded an opportunity to respond and present witnesses and evidence and argument on all material issues involved and to be represented by counsel at their own expense. The Department will be represented by the Office of General Counsel.

(3) If a party fails to appear in a contested case proceeding after proof of proper service of notice, the hearing officer may proceed with the hearing and make a decision in the absence of the party. In those contested case proceedings in which the denial of a license or permit is at issue, where the burden of proof lies with the aggrieved party, the hearing officer shall enter an order of dismissal with prejudice if the aggrieved party fails to appear after proof of proper service of notice.

(4) The hearing officer shall conduct the evidentiary hearing substantially as follows:

- (a) open the record and receive appearances;
- (b) direct the giving of oaths;
- (c) receive testimony and exhibits presented by the parties;
- (d) interrogate witnesses, if deemed necessary;

- (e) rule on motions and objections;
- (f) require oral arguments and submission of briefs and other authority when necessary;
- (g) close the proceedings; and
- (h) prepare written findings of fact and conclusions of law and present them, with a recommendation and proposed order, together with the complete record, to the State Health Officer.

(5) The burden of going forward with the evidence and the burden of proof shall be upon the party initiating the contested case proceedings who may open and close the evidentiary portion of the proceedings.

(6) The proceedings of the evidentiary hearing shall be recorded and transcribed by a certified court reporter. Such record shall be submitted by the hearing officer to the State Health Officer as a part of the record of the hearing.

Author: Brian Hale

Statutory Authority: Code of Ala. 1975, §41-22-12.

History: Filed July 20, 1990. **Repealed and New Rule:** Filed March 20, 2008; effective April 24, 2008.

Ed. Note: Rule 420-1-3-.09, Variances, was repealed as per certification filed March 20, 2008.

420-1-3-.11 Resolution Of Contested Cases.

(1) On presentation of the hearing officer's findings of fact and conclusions of law, recommendation and proposed order, the Office of General Counsel shall mail copies to each party.

(2) The parties shall have 15 days from the date of decision in which to present written objections to the proposed order, alternative language or briefs to the State Health Officer. The State Health Officer, in his or her discretion, may permit oral argument.

(3) Upon receiving the hearing officer's findings of fact and conclusions of law, recommendation, proposed order and the complete hearing record, and the parties' objections, alternative language, briefs and oral argument, if allowed, the State Health Officer shall enter an order which may accept, reject, or modify the proposed order of the hearing officer.

Author: Brian Hale

Statutory Authority: Code of Ala. 1975, §41-22-12.

History: Filed July 20, 1990. **Amended:** Filed January 21, 2004; effective February 25, 2004. **Repealed and New Rule:** Filed March 20, 2008; effective April 24, 2008.

420-1-3-.12 **Proceedings For Adverse Licensure Actions.**

(1) The Board shall utilize the contested case procedure in this chapter to take any adverse action on any existing license of a hospital or other health care facility under the jurisdiction of the Board except when required to be modified by Code of Ala. 1975, §§22-21-25, 22-21-26.

(2) Such adverse licensure actions shall be initiated by notices served on the affected licensee as provided in Rule 420-1-3-.04 except that revocation and suspension actions shall be served only by registered or certified mail, return receipt requested. Service may also be achieved by regular mail as provided by Rule 420-1-3-.02(2). Such notice shall include the charges and specifications including a description of the grounds for the proposed action and the date, place and time of the meeting at which such proposed adverse action shall be heard. Notices shall be served at least 30 days prior to the date of the hearing.

(3) Licensees shall be provided an opportunity to respond in writing and/or orally on the date of the hearing. Licensees may be represented by legal counsel and may present evidence in their defense. The Department and the licensee may present and cross-examine witnesses and the hearing officer may examine and cross-examine witnesses.

(4) The burden of proof rests with the Department in any contested case proceeding taking adverse action against an existing license.

(5) Revocation and suspension proceedings shall be recorded by a certified court reporter.

(6) The hearing officer shall, upon completion of such hearing, make findings of fact on all adverse action and shall make recommendations to the State Health Officer who shall consider such recommendations and shall reverse, affirm, or modify the recommendations of the hearing officer.

Author: Brian Hale

Statutory Authority: Code of Ala. 1975, §§22-21-25, 22-21-26, 41-22-12, 41-22-17, 41-22-20.

History: Filed July 20, 1990. **Repealed and New Rule:** Filed March 20, 2008; effective April 24, 2008.

420-1-3-.13 Application For Rehearing.

(1) Any party aggrieved by an order of the State Health Officer who desires to have the same modified or set aside may, within 15 days after the entry of the order, file an application for rehearing, which shall specify in detail the grounds for the relief sought therein and the authorities in support thereof.

(2) The filing of such an application for rehearing shall not extend, modify, suspend or delay the effective date of the order, and said order shall take effect on the date fixed by the State Health Officer and shall continue in effect unless and until said application shall be granted or until said order shall be superseded, modified, or set aside in a manner provided by law.

(3) Such application for rehearing may be filed only if the final order is alleged to be:

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the State Board of Health;

(c) In violation of a rule of the State Board of Health;

(d) Made upon unlawful procedure;

(e) Affected by other error of law;

(f) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(g) Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

(4) Copies of such application for rehearing shall be served on all parties of record, who may file replies thereto.

(5) Within 30 days from the filing of an application, the State Health Officer may in his or her discretion issue an order:

(a) Setting a hearing on the application for a rehearing which shall be heard as soon as practicable; or

(b) Granting or denying the application.

(6) If the State Health Officer enters no order whatsoever regarding the application within the 30-day period, the

application shall be deemed to have been denied as of the expiration of the 30-day period.

(7) In no event shall a party be required to file an application for rehearing as a condition of applying for judicial review.

Author: Brian Hale

Statutory Authority: Code of Ala. 1975, §41-22-17.

History: New Rule: Filed March 20, 2008; effective April 24, 2008.