

Chapter 9 – General Department of Health Rules

Subchapter 1 –

The Board of Health Hearing Rule

1.0 Authority

This rule is adopted pursuant to 18 V.S.A. § 102 and 3 V.S.A. § 831(d).

2.0 Purpose

The State Board of Health hears appeals from final decisions of the Vermont Department of Health, or from final decisions of local boards of health and selectboards when deciding matters pursuant to Title 18. This rule establishes the procedures followed by the State Board of Health when hearing appeals in accordance with 3 V.S.A. Ch. 25 contested cases.

3.0 Definitions

3.1 “Board” means the Vermont State Board of Health as established in 18 V.S.A. Ch. 3.

3.2 “Department” means the Vermont Department of Health.

3.3 “Hearing officer” means an attorney that has been appointed by the Board to conduct hearings and provide legal advice.

3.4 “Municipality” means a local board of health or selectboard that has the authority to conduct hearings pursuant to 18 V.S.A. §§126, 127, and § 613.

4.0 Hearings Before the Board

4.1 Hearing on Appeal – As provided in 18 V.S.A. §128(a), hearings on appeal shall be conducted according to the relevant provisions of 3 V.S.A. Ch. 25 for contested cases.

4.1.1 Any person aggrieved by a final decision of the Department, or municipalities when deciding matters pursuant to 18 V.S.A. §§ 126, 127 and § 613, may file an appeal with the Board within 30 days of the final act, decision or order of the municipality or the Department.

4.1.1.1 Appellant shall file a brief statement citing the facts, law and how the Appellant has been aggrieved by a final action of the Commissioner or municipality.

4.1.1.2 Appellant shall file any amended 4.1.1.1 statement no later than 10 days prior to the hearing on the merits.

4.1.2 The notice of appeal shall be filed with the Board Secretary and Commissioner. The Board shall consider the matter de novo in accordance with 18 V.S.A. § 128.

4.2 Hearing Officer

4.2.1 Once a hearing officer has been appointed, no party shall communicate with the hearing officer on the subject matter of the appeal without notice to the other parties.

4.2.2 The Board will provide the parties with information about how to file a statement regarding the hearing officer.

5.0 Scheduling of Hearing Before the Board

5.1 Receipt of Statement

Within ten business days of receipt of the statement, the Board Secretary shall schedule and notify all parties in writing of the following:

5.1.1 The right to have an attorney present to represent each party at the party's expense;

5.1.2 A copy of the request for a hearing;

5.1.3 The legal authority under which the hearing will be held;

5.1.4 The appointed hearing officer to preside at the hearing; and

5.1.5 The time, date, location, and/or conference call information for the initial status conference with the hearing officer to be held with the parties, and/or their attorneys, no later than fifteen days from the receipt of the statement.

6.0 Hearing Procedures

Except as provided more specifically below in sections 6 through 8, hearings will be conducted according to the provisions in 3 VSA §§ 809, 810, 812 and § 813.

6.1 Right to Representation

6.1.1 The appellant may present their own case or obtain representation by legal counsel.

6.1.2 Attorneys representing appellants shall file a Notice of Appearance with the Board and all parties as soon as practicable.

6.1.3 An attorney who has entered an appearance shall remain counsel for such party until they have been granted leave to withdraw by order of the Board.

6.2 Status Conference

6.2.1 At the status conference the hearing officer shall determine:

6.2.1.1 Whether there is a need for discovery and a discovery schedule;

6.2.1.2 A deadline for parties to exchange witness lists and exhibits;

6.2.1.3 The amount of time needed for a hearing and any known scheduling conflicts;

6.2.1.4 Possible dates and locations for a hearing on the merits; and

6.2.1.5 Whether there is a need for any modifications for a party or witness with a disability.

6.2.2 Within five business days of the initial status conference the hearing officer will send out an order which sets out the issues that will be in dispute at the merits hearing and the time, date, and location for the merits hearing.

6.3 Time, Manner and Location of Hearing

6.3.1 The hearing officer shall rule on requests for changing the timing, manner, or location of the hearing. Such requests shall be made to the hearing officer within a reasonable time. The opposing party shall have the right to oppose such a request.

6.3.2 In ruling on a timing, manner, or location request, the hearing officer shall consider the sufficiency of the grounds for the request, the length of time appropriate for a continuance, and the degree of prejudice, if any, to the party opposing the request.

6.4 Motions

6.4.1 When a dispute between parties arises concerning discovery, any party may file a written motion requesting that the hearing officer order the parties to comply with information requests. Such motions must be filed with the hearing officer at least seven days prior to a merits hearing.

6.4.2 Upon motion by a party or by independent action of the hearing officer, the hearing officer may order dismissal of an appeal for failure of any party to prosecute.

6.4.3 Motions to dismiss and other preliminary motions

6.4.3.1 Motions to dismiss and other preliminary motions may be submitted for the hearing officer's consideration prior to the time the case in chief is submitted.

7.0 Hearings Before the Board

7.1 Production of documents

7.1.1 Prior to the hearing, or at any time when directed by the hearing officer, the Department or parties involved in the appeal, unless it is protected information that is confidential by state or federal law, shall make available to the appellant all documents and records relevant to its decision.

7.1.2 The hearing officer may at any time direct the parties to produce documents and records.

7.2 Subpoenas

Requests for subpoenas shall be submitted to the hearing officer, except for licensed attorneys as provided in 3 V.S.A. § 809(h).

7.3 Telephone hearings

If deemed appropriate and upon consideration of objection by either party, hearings and testimony may be held by telephone, but shall otherwise be conducted in accordance with these rules.

7.4 Evidence

7.4.1 Copies. Upon request, and subject to a ruling on any objection made by the affected party, a party shall promptly furnish an adverse party with copies of all documents and records that will be used in the appeal.

7.4.2 Relevance. Disputes on the question of relevance shall be resolved by the hearing officer, subject to the Board's review on the motion of either party.

7.4.3 Testimony. Any party or their representative shall have the opportunity to produce witnesses and cross-examine adverse witnesses; to express all pertinent facts and circumstances through evidence, oral or written; to advance any arguments without undue interference; and to question or refute any testimony or evidence.

7.4.4 Burden of proof. The burden of proving facts alleged as the basis for decisions to terminate or reduce benefits, services or assistance, or to revoke or fail to renew a license, shall be on the department or municipal office by a preponderance of evidence, unless otherwise provided by law.

In all other matters, the burden of proof by a preponderance of evidence shall be on the appellant.

7.4.5 Rules of evidence. In accordance with 3 V.S.A. § 810, the rules of evidence applied in civil cases by the courts of the State of Vermont shall be followed, except that the hearing officer may allow evidence not admissible thereunder where, in their judgment, the evidence offered is of a kind commonly relied upon by reasonably prudent persons in the conduct of their affairs.

7.4.6 Reopening evidence. If the hearing has not concluded, either party may request to reopen the evidence for good cause. The Board shall make the determination as to whether the evidence shall be reopened.

7.5 Records

7.5.1 All proceedings relating to the presentation of evidence and rulings on procedural matters shall be recorded.

7.5.2 All parties shall be given the opportunity to listen to or receive a copy of the recording or transcript of the proceeding. The requesting party shall bear the cost of the transcription.

7.6 Failure to Appear

If neither the appellant nor the appellant's representative appears at the time and place noticed for the hearing, or is not available for a duly noticed telephone status conference, the Board may dismiss the appeal.

8.0 Decisions by the Board

8.1 Quorum

8.1.1 Four or more members of the Board shall constitute a quorum.

8.1.2 Any ruling or action of the Board requires the concurrence of four or more members as provided in 1 V.S.A. § 172.

8.2 Decision and Orders

8.2.1 The Board may allow parties to file proposed findings of fact and conclusions of law.

8.2.2 Upon considering all of the facts and arguments in the case, the Board shall issue a decision within 30 days following the conclusion of the hearing.

8.2.3 The decision shall include a statement of the facts that the Board relied on, conclusions of law, and the order of the Board along with a statement of the parties' right to appeal to the Vermont Supreme Court.

8.2.4 The Chair of the Board shall sign the order on behalf of the entire Board.

8.3 Stay

An appeal filed pursuant to 18 V.S.A. § 128 of this title shall not stay the effectiveness of the order appealed from unless the Board or the Vermont Supreme Court, as appropriate, otherwise orders.

8.4 Record on Appeal

8.4.1 The Board's decision may be appealed to the Vermont Supreme Court as provided by law and as specified by the Vermont Rules of Appellate Procedure.

8.4.2 When an appeal from a decision of the Board has been taken, the Clerk of the Board, at the request of either party, shall furnish the parties with a printed transcript of the proceedings. The requesting party shall bear the cost of the transcription.