

**Subpart L. STATE HEALTH FACILITY HEARING BOARD**

<b>Chap.</b>		<b>Sec.</b>
<b>197.</b>	<b>PRACTICE AND PROCEDURE .....</b>	<b>197.1</b>

**Authority**

The provisions of this Subpart L issued under the Health Care Facilities Act (35 P. S. §§ 448.101—448.904), unless otherwise noted.

**Source**

The provisions of this Subpart L adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455, unless otherwise noted.

*(Editor's Note: This chapter is repealed by operation of section 9 of the act of February 23, 1996 (P. L. 27, No. 10). Section 3 of Act 10 granted jurisdiction to the Health Care Policy Board.)*

**CHAPTER 197. PRACTICE AND PROCEDURE**

**GENERAL PROVISIONS**

- Sec.
- 197.1. Definitions.
- 197.2. Applicability of general rules of practice and procedure.
- 197.3. Powers and duties of Hearing Board.
- 197.4. Filings.
- 197.5. Service on other parties.
- 197.6. Form of certificate of service.
- 197.7. Computation of time.
- 197.8. Extension of time.
- 197.9. Appearances.
- 197.10. Form of notice of appearance.
- 197.11. Size and form of documents.
- 197.11a. Motions and petitions.
- 197.12. Verification.
- 197.13. Prehearing discovery.
- 197.13a. Subpoenas.
- 197.14. Requests for rescheduling of a hearing.
- 197.15. Recording of proceedings.
- 197.16. Discontinuances.
- 197.16a. Inactive appeals.
- 197.17. Ex parte communications.
- 197.18. Attorney discipline.
- 197.19. Executive Director's authority.
- 197.20. Public access to records and hearings.

**APPEALS FROM DECISIONS PERTAINING TO  
CERTIFICATES OF NEED**

- 197.31. [Reserved].
- 197.32. Appealable decisions.
- 197.33. Standing to file an appeal.
- 197.34. Notice of appeal.
- 197.35. Form of notice of appeal.
- 197.36. Certification of the record below.
- 197.37. Objections to the record.
- 197.38. Form of objection to record.
- 197.39. Consolidation of appeals.
- 197.40. Preliminary motions.
- 197.40a. Petition to intervene.
- 197.41. Commencement of appeal.
- 197.42. Appeal briefs.
- 197.43. Reply briefs.
- 197.43a. Amicus curiae briefs.
- 197.44. Limitation of issues and evidence.
- 197.45. Scope of review.
- 197.46. Prehearing conference.
- 197.46a. Decision without hearing.
- 197.47. Scheduling and announcement of hearings.
- 197.48. Procedure at hearing.
- 197.49. Correction of transcript.
- 197.50. Posthearing filings.
- 197.51. Decision of the Hearing Board.
- 197.52. Distribution of decision.

**PETITIONS PERTAINING TO OBJECTIONS TO PUBLISHED  
REGULATIONS, CRITERIA OR STANDARDS OF THE  
DEPARTMENT OR HEALTH SYSTEMS AGENCY**

- 197.61. Persons who may file.
- 197.62. Reviewable regulations, criteria or standards.
- 197.62a. Prerequisite to filing.
- 197.63. Consolidation of petitions.
- 197.64. Contents of petition.
- 197.65. Form of petition.
- 197.66. Service of petition.
- 197.67. Failure to conform to rules.
- 197.68. Reply to petition.
- 197.69. Consideration of petition.
- 197.70. Hearings.
- 197.71. Decision of the Hearing Board.
- 197.72. Distribution of decision.

**APPEALS FROM DECISIONS PERTAINING TO LICENSURE**

- 197.81. Definitions.
- 197.82. Appealable decisions.
- 197.83. Standing to appeal.
- 197.84. Notice of appeal and answer.
- 197.85. Form of notice of appeal.
- 197.86. Certification of rule or order.
- 197.87. Supersedeas.
- 197.88. Prehearing conference.
- 197.89. Scheduling and announcement of hearings.
- 197.90. Procedure at hearing.
- 197.91. Correction of transcript.
- 197.92. Posthearing filings.
- 197.93. Decision of the Hearing Board.
- 197.94. Distribution of decision.

**Cross References**

This chapter cited in 28 Pa. Code § 401.5 (relating to certificate of need); and 28 Pa. Code § 551.111 (relating to hearings relating to licensure); and 28 Pa. Code § 601.14 (relating to reasons for revocation or nonrenewal of license).

**GENERAL PROVISIONS****§ 197.1. Definitions.**

(a) Subject to additional definitions contained in subsequent sections of this chapter, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Health Care Facilities Act (35 P. S. §§ 448.101—448.904).

*Appellant*—A person filing an appeal with the Hearing Board.

*Applicant*—A person filing an application for a certificate of need.

*Department*—The Department of Health of the Commonwealth.

*Documents*—Notices, petitions, briefs, reply briefs, rules, motions, *praecipes* and other papers.

*Health service area*—The area served by a health systems agency as designated in accordance with Title XV of the Public Health Service Act (42 U.S.C.A. §§ 300k-1—300n-6) (Repealed).

*Health systems agency*—An entity which has been conditionally or fully designated under Title XV of the Public Health Service Act (42 U.S.C.A. §§ 300k-1—300n-6) (Repealed).

*Hearing Board*—The State Health Facility Hearing Board created under the act.

*Party*—The appellant, the Department, a certificate of need applicant and a person who has been granted party status by order of the Hearing Board. The term is not synonymous with the term “parties to the proceeding” as used in section 703(a) of the act (35 P. S. § 448.703(a)).

*Person*—A natural person; corporation including associations, joint stock companies and insurance companies; partnership; trust; estate; association; the Commonwealth and a local governmental unit, authority and agency thereof. The term includes entities owning or operating a health care facility or health maintenance organization.

*Petitioner*—A person filing a petition with the Hearing Board.

*Project*—A proposal by a person to offer, develop, construct or otherwise establish or undertake to establish a new institutional health service.

*Specification of objections*—The appellant's reasons for appealing the decision of the Department as set forth in the notice of appeal and the appeal brief.

(b) Subsection (a) supplements 1 Pa. Code § 31.3 (relating to definitions).

#### Authority

The provisions of this § 197.1 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

#### Source

The provisions of this § 197.1 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3609. Immediately preceding text appears at serial page (113596).

### § 197.2. Applicability of general rules of practice and procedure.

(a) Part II of 1 Pa. Code (relating to general rules of administrative practice and procedure) applies to practice and procedure before the Hearing Board insofar as it is not inconsistent with this chapter.

(b) Subsection (a) supplements 1 Pa. Code § 31.1 (relating to scope of part).

#### Source

The provisions of this § 197.2 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

### § 197.3. Powers and duties of Hearing Board.

The Hearing Board has the power and the duty to do the following:

(1) Hear appeals from decisions of the Department on applications for certificate of need or amendments thereto.

(2) Hear appeals from decisions of the Department which require a person to obtain a certificate of need for major medical equipment or the acquisition of an existing health care facility.

(3) Hear upon petition objections to published regulations, criteria or standards of health systems agencies or the Department as to the policies therein set forth and where appropriate to request the promulgating agency to reconsider the policies.

(4) Hear appeals from decisions of the Department pertaining to licensure.

**Source**

The provisions of this § 197.3 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**§ 197.4. Filings.**

(a) Unless otherwise directed, all documents shall be filed with the Hearing Board. Papers may be filed by any of the following methods:

- (1) By personal filing.
- (2) By first class mail to:  
State Health Facility Hearing Board  
Room 1739, Harristown II  
333 King Boulevard  
Post Office Box 11563  
Harrisburg, Pennsylvania 17108
- (3) By a recognized commercial courier service.

(b) Unless otherwise directed, the original and four copies of every document shall be filed with the Hearing Board. A party requesting the return of a date-stamped copy of a document shall include an extra copy thereof accompanied by a self-addressed, stamped envelope. This subsection supersedes 1 Pa. Code § 33.15 (relating to number of copies).

(c) When a document is filed by mail, the date of mailing as evidenced by the postmark on the envelope shall be considered the date of filing. If the postmark is illegible, the burden of proof is on the person mailing the document to establish the date of mailing.

(d) When a document is filed by delivery to a recognized courier service, the date of delivery to the courier shall be considered the date of filing.

(e) This section supplements in part and supersedes in part 1 Pa. Code § 31.11 (relating to timely filing required).

**Authority**

The provisions of this § 197.4 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.4 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended May 21, 1982, effective May 22, 1982, 12 Pa.B. 1642; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3611. Immediately preceding text appears at serial pages (95153) to (95154).

**§ 197.5. Service on other parties.**

(a) Except as otherwise provided in this chapter, copies of all documents filed with the Hearing Board shall be served upon a party who has entered an appearance in the appeal or petition proceeding. The copies shall be served by the filing party, on or before the date of filing with the Hearing Board.



*CERTIFICATE OF SERVICE*

I hereby certify that on or before the date of filing the following document(s):

I have served a copy thereof on each of the following persons in the manner indicated below:

*Service by first class mail addressed as follows:*

\_\_\_\_\_  
(Name and Address)

Service in person:

\_\_\_\_\_  
(Name and Address)

*Acceptance of service endorsed by the following:*

\_\_\_\_\_  
(Name and Address)

\_\_\_\_\_  
(Signature of Person Filing)

\_\_\_\_\_  
(Name and Address of Person Filing)

\_\_\_\_\_  
(Date)

(b) Subsection (a) supersedes 1 Pa. Code § 33.36 (relating to form of certificate of service).

**Authority**

The provisions of this § 197.6 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.6 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551. Immediately preceding text appears at serial pages (70902) and (61876).

**Cross References**

This section cited in 37 Pa. Code § 197.5 (relating to service on other parties); 37 Pa. Code § 197.34 (relating to notice of appeal); 37 Pa. Code § 197.64 (relating to contents of petition); and 37 Pa. Code § 197.84 (relating to notice of appeal and answer).

**§ 197.7. Computation of time.**

(a) Except as otherwise provided by law, in computing a period of time prescribed or allowed by the act or by this chapter; the day of the act, event or default from which the designated period of time begins to run may not be included. The last day of the period so computed shall be included unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the

period shall run until the end of the next day which is not a Saturday, Sunday nor a holiday. Intermediate Saturdays, Sundays and holidays shall be included in the computation.

(b) Subsection (a) of this section supplements 1 Pa. Code § 31.12 (relating to computation of time).

#### Authority

The provisions of this § 197.7 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

#### Source

The provisions of this § 197.7 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3609. Immediately preceding text appears at serial pages (83471) to (83472).

### § 197.8. Extension of time.

(a) Except for the filing of a notice of appeal under §§ 197.34 or 197.84 (relating to notice of appeal; or notice of appeal and answer), where an act is required or allowed to be done at or within a specified period of time; the time fixed or the period of time prescribed may for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended; and, upon motion made after the expiration of the specified period, the act may for good cause be permitted to be done where reasonable grounds are shown for the failure to file the motion for extension of time within the prescribed time period.

(b) Requests for continuance or rescheduling of hearings or for the extension of time in which to perform an act required or allowed to be done at or within a specified time by this chapter or by order of the Board, shall be by motion in writing, shall be timely filed with the Board, and shall state the facts on which the application rests; except that during the course of a hearing, the requests may be made by oral motion in the hearing before the presiding member of the Hearing Board.

(c) Extensions of time may be granted by a member of the Hearing Board, or by the Executive Director of the Hearing Board.

(d) Subsections (a)—(c) supplement 1 Pa. Code § 31.15 (relating to extensions of time).

#### Source

The provisions of this § 197.8 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

### § 197.9. Appearances.

(a) An individual may appear in a proceeding before the Hearing Board in his own behalf. A member of a partnership may represent the partnership; a *bona fide* officer of a corporation, trust or association may represent the corporation, trust



---

 (City, State, Zip Code)
 

---



---

 (Area Code/Telephone No.)
 

---

(Date)

(b) Subsection (a) supersedes 1 Pa. Code § 31.25 (relating to form of notice of appearance).

**Authority**

The provisions of this § 197.10 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. 102(a).

**Source**

The provisions of this § 197.10 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551. Immediately preceding text appears at serial pages (61877) and (61878).

**Cross References**

This section cited in 37 Pa. Code § 197.9 (relating to appearances); and 37 Pa. Code § 197.68 (relating to reply to petition).

**§ 197.11. Size and form of documents.**

(a) All documents filed with the Hearing Board shall be on paper 8 to 8 1/2 inches wide by 10 1/2 to 11 inches long.

(b) Mimeographed copies are acceptable, if copies are clearly legible. With exception of the certified record, documents may not be backed or bound. Pages shall be fastened by staples.

(c) Subsections (a) and (b) supplement 1 Pa. Code § 33.2 (relating to form).

**Authority**

The provisions of this § 197.11 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.11 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3609. Immediately preceding text appears at serial page (83474).

**§ 197.11a. Motions and petitions.**

(a) Oral motions and petitions are not permitted unless the Hearing Board finds the submission of the motion or petition in writing to be impracticable under the circumstances.

(b) A motion or petition shall identify the specific statutory provision, section or subsection of this chapter or 1 Pa. Code Part II (relating to general rules of

administrative practice and procedure) which authorizes the filing of the motion or petition. Failure to do so may result in a summary denial of the motion or petition.

(c) Upon the filing of a motion or petition, a party to the proceeding may file an answer within 10 days of the filing thereof. The failure to file an answer within the time shall be deemed to be a waiver of objection to the motion or petition.

(d) Rejoinders to answers to motions or petitions are not permitted, except by written order of the Hearing Board.

(e) A motion or petition, and an answer thereto, may be accompanied by a memorandum of law. Failure to submit a memorandum of law at the time of filing the motion or petition or response thereto shall be deemed a waiver of the right to do so.

(f) Subsection (a) supersedes 1 Pa. Code § 35.17 (relating to petitions generally) and supplements § 35.178 (relating to presentation of motions). Subsection (c) supplements 1 Pa. Code § 35.35 (relating to answers to complaints and petitions) and supplements § 35.179 (relating to objections to motions).

#### Authority

The provisions of this § 197.11a issued under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)).

#### Source

The provisions of this § 197.11a adopted September 4, 1987, effective September 5, 1987, 17 Pa.B. 3609.

### § 197.12. Verification.

(a) Except as otherwise required by statute, rule of court or this chapter, it is not necessary to verify under oath a document filed with the Hearing Board.

(b) This section supersedes 1 Pa. Code § 33.12 (relating to verification).

#### Source

The provisions of this § 197.12 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

### § 197.13. Prehearing discovery.

(a) No prehearing discovery may be permitted in a proceeding before the Hearing Board, except by written permission of the Hearing Board. Permission shall be granted only where the Hearing Board is convinced that the prehearing discovery is essential to a fair disposition of the case.

(b) A party wishing to conduct prehearing discovery shall file with the Hearing Board a motion to permit prehearing discovery. The motion shall include the nature of the proposed discovery—that is, depositions or interrogatories, the time and place of the proposed discovery, the persons to be deposed or interrogated, the subject matter and the reasons for requesting permission to conduct prehearing discovery.

(c) A party may file, within 10 days of the filing of a motion to permit prehearing discovery, objections to the motion to permit prehearing discovery, setting forth the reasons why the discovery should not be permitted.

(d) The filing of a motion to permit prehearing discovery or objections thereto will not stay the proceedings.

**Source**

The provisions of this § 197.13 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**§ 197.13a. Subpoenas.**

(a) A party may apply in writing to the Hearing Board for subpoenas for the attendance of witnesses or for the production of documents. The application shall identify the names and addresses of the persons to be subpoenaed.

(b) Except by special permission of the Hearing Board, subpoenas may not be issued for the attendance of witnesses or the production of documents which have not been listed in the prehearing memorandum required by § 197.46(b) (relating to prehearing conference).

(c) Service of subpoenas shall be by personal service, unless the person to be subpoenaed agrees to accept service by mail. In making service, a copy of the subpoena shall be left with the person to be served. The original subpoena, accompanied by an affidavit describing the manner in which service was made, shall be filed with the Hearing Board. Where service of the subpoena is by mail, the document evidencing agreement to accept service by mail shall be filed with the Hearing Board.

(d) A motion to quash a subpoena may be filed only by the person subpoenaed. The motion shall specify the reasons why the person subpoenaed should not be compelled to appear and testify. Answers or other responses to motions to quash by other parties to the proceeding will not be entertained.

(e) Persons who are subpoenaed shall be paid the same fees and mileage as are paid for like services in the court of common pleas of the county in which the hearing is held, and the appropriate fee shall be tendered at the time of service of the subpoena.

(f) This section supplements 1 Pa. Code § 35.142 (relating to subpoenas).

**Authority**

The provisions of this § 197.13a issued under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)).

**Source**

The provisions of this § 197.13a adopted September 4, 1987, effective September 5, 1987, 17 Pa.B. 3609.

**§ 197.14. Requests for rescheduling of a hearing.**

Except in the case of unforeseeable circumstances, such as sudden illness or death in family a request for rescheduling of a hearing shall be in writing and filed with the Hearing Board no later than 7 days before the scheduled hearing date. The Board member who will hear the case or the Executive Director of the Hearing Board may grant the request upon good cause shown.

**Authority**

The provisions of this § 197.14 issued under the Health Care Facilities Act (35 P. S. §§ 448.101—448.904).

**Source**

The provisions of this § 197.14 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**§ 197.15. Recording of proceedings.**

(a) In the case of appeals filed under §§ 197.32—197.52 (relating to appeals from decisions pertaining to certificates of need) or appeals filed under §§ 197.81—197.94 (relating to appeals from decisions pertaining to licensure); a stenographic record shall be taken; and, at the discretion of the hearing board member who presides at the hearing, the record shall be transcribed and a copy thereof shall be provided at cost to a party requesting the record. This subsection supplements 1 Pa. Code § 35.131 (relating to recording of proceedings).

(b) In the case of petitions filed under §§ 197.61—197.72 (relating to petitions pertaining to objections to published regulations, criteria or standards of the Department or health systems agency), a stenographic record shall be taken only if requested by at least one of the participants at the hearing. Where a stenographic record is requested, the person making the request shall pay the cost thereof. This subsection supplements in part and supersedes in part 1 Pa. Code § 35.131.

**Source**

The provisions of this § 197.15 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**§ 197.16. Discontinuances.**

(a) The Hearing Board may, at its sole discretion, discontinue a proceeding without prejudice as to a party upon the filing of a motion to discontinue without prejudice. The motion shall set forth the specific reasons for requesting the discontinuance and shall certify that all parties to the proceeding have been consulted and have no objections to the discontinuance.

(b) A proceeding before the Hearing Board may be discontinued with prejudice as to a party at any time upon filing by the party of a *praecipe* for discontinuance.

**Source**

The provisions of this § 197.16 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**§ 197.16a. Inactive appeals.**

In the case of an appeal which has been inactive for a period of at least 1 year, the Executive Director shall cause to be issued a rule directing the appellant to show cause why the appeal should not be discontinued for want of prosecution. If no answer to the rule to show cause is filed by the appellant, or if appellant fails to show good cause for continuing the appeal, an order shall be issued discontinuing the appeal with prejudice.

**Authority**

The provisions of this § 197.16a issued under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)).

**Source**

The provisions of this § 197.16a adopted September 4, 1987, effective September 5, 1987, 17 Pa.B. 3609.

**§ 197.17. Ex parte communications.**

No ex parte communications shall occur between a party or a person acting on behalf of a party and a board member or employe of the Hearing Board after the filing of a Notice of Appeal under §§ 197.34 or 197.84 (relating to notice of appeal; or notice of appeal and answer).

**Source**

The provisions of this § 197.17 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**§ 197.18. Attorney discipline.**

The Hearing Board may, upon hearing and good cause shown, exclude an attorney from practice before the Hearing Board, subject to the same right of appeal as from other decisions of the Hearing Board. Good cause for exclusion includes, but is not limited to:

- (1) Intentional disruption or delay of proceedings.
- (2) Contemptuous conduct at hearings.
- (3) Willful failure to comply with a lawful order of the Hearing Board.
- (4) Conduct constituting an affront to the dignity and authority of the Hearing Board.

**Source**

The provisions of this § 197.18 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**§ 197.19. Executive Director's authority.**

In the interest of an economical and judicious use of the Hearing Board's time and to expedite the response to routine motions, petitions, notices and requests; the Executive Director of the Hearing Board, upon consultation with at least one member of the Board, is authorized to rule upon and execute orders and notices on behalf of the Hearing Board in all matters which do not affect the substantive rights of the parties.

**Source**

The provisions of this § 197.19 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**§ 197.20. Public access to records and hearings.**

(a) All records of the Hearing Board, except personnel files, will be made accessible to the public upon written request. The records will be made available for inspection during regular business hours, and copies may be obtained at 25¢ a page.

(b) All hearings will be open to the public.

**Authority**

The provisions of this § 197.20 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)).

**Source**

The provisions of this § 197.20 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended May 21, 1982, effective May 22, 1982, 12 Pa.B. 1642. Immediately preceding text appears at serial page (61881).

**APPEALS FROM DECISIONS PERTAINING TO  
CERTIFICATES OF NEED****§ 197.31. [Reserved].****Source**

The provisions of this § 197.31 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended May 21, 1982, effective May 22, 1982, 12 Pa.B. 1642; reserved August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551. Immediately preceding text appears at serial pages (70904) to (70907).

**§ 197.32. Appealable decisions.**

(a) The following decisions of the Department may be appealed:

- (1) The granting or refusal of a certificate of need or amendment thereto.
  - (2) The decision to require a person to obtain a certificate of need for major medical equipment or the acquisition of an existing health care facility.
  - (3) The denial of a request for reconsideration of the decision of the Department to grant or refuse a certificate of need.
  - (4) The decision that a project is reviewable.
- (b) Subsection (a) supersedes 1 Pa. Code § 35.226 (relating to final orders).

**Authority**

The provisions of this § 197.32 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.32 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551. Immediately preceding text appears at serial page (70907).

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); 37 Pa. Code § 197.33 (relating to standing to file an appeal); 37 Pa. Code § 197.36 (relating to certification of the record below); and 37 Pa. Code § 197.45 (relating to scope of review).

**§ 197.33. Standing to file an appeal.**

The following persons have standing to appeal a decision of the Department which is appealable under § 197.32(a)(1)—(3) (relating to appealable decisions):

(1) The applicant.

(2) The health systems agency for the health service area in which the proposed new institutional health service is to be offered or developed.

(3) A person who was a party before the health systems agency under section 703(a) of the act (35 P. S. § 448.701).

(b) The following persons shall have standing to appeal a decision of the Department which is appealable under § 197.32(a)(4):

(1) The person whose project has been determined to be reviewable.

(2) The health systems agency for the health service area in which the proposed new institutional health service is to be offered or developed.

(c) Where an appeal is filed by a person other than the applicant, the applicant shall become a party automatically.

**Authority**

The provisions of this § 197.33 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.33 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551. Immediately preceding text appears at serial page (70908).

**Notes of Decisions***Standing*

A health system agency has standing to appeal a Department of Health adjudication of nonreviewability to the Commonwealth Court. *Southern Chester County Medical Center v. Department of Health*, 494 A.2d 885 (Pa. Cmwlth. 1985).

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.34. Notice of appeal.**

(a) The appellant shall file a notice of appeal, in the form set forth in § 197.35 (relating to form of notice of appeal) within 30 days of the decision or the date of mailing of the decision which is being appealed, whichever is later. The filing of a petition for reconsideration with the Department does not toll the running of the 30-day period.

(b) The notice of appeal shall set forth in general terms the specification of objections. Specific arguments shall be reserved for the appeal brief. Except for issues which are based on facts and evidence not known to appellant in advance of the hearing, issues not raised and argued in the appeal brief shall be deemed to be waived.

(c) A copy of the notice of appeal shall be sent to the Department, to the health systems agency in the area in which the health care facility is located, to the applicant and to each person who has filed an objection to the application for the certificate of need in the proceedings before the health systems agency or the Department unless the objection was withdrawn prior to the filing of the notice of appeal. A certificate of service in the form set forth in § 197.6 (relating to form of certificate of service) shall be attached to the notice of appeal.

(d) Service of a copy of the notice of appeal on the persons to be served by subsection (c) will not be deemed a waiver of appellant's right to object to the person's right to become a party to the appeal.

(e) The failure to serve a copy of the notice of appeal upon all parties required to be served under subsection (c) will not stay the proceedings; however, upon the omission, the Board will issue an order directing the appellant to serve all parties, and the failure to do so within the time specified in the order may result in the dismissal of the appeal.

(f) This subsection supplements 1 Pa. Code § 33.32 (relating to service by a participant) and supersedes 1 Pa. Code § 33.35 (relating to proof of service).

**Authority**

The provisions of this § 197.34 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.34 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3609. Immediately preceding text appears at serial page (103554).

Notes of Decisions

Specification of Objections

The hospital's notices of appeal set forth only the very general statement that the Department of Health's approval of the CONs was not supported by substantial evidence. In those notices of appeal, the specific issues raised all related to whether a proper comparative review was performed and whether the determination of the number of CONs needed was proper. The hospital was required to preserve the specific issues in the pleadings and briefs before the State Health Facility Board and it did not do so, therefore, the specific issues were waived. North Hills Passavant Hospital v. Department of Health, 674 A.2d 742 (Pa. Cmwlth. 1996).

Time Limits

If an individual seeking an appeal can establish that the copy of the decision providing the individual with notice did not contain the mailing date on its face, the appeal period does not run against that individual. Stewart v. State Health Facility Hearing Board, 543 A.2d 1290 (Pa. Cmwlth. 1988); appeal denied 604 A.2d 1032 (Pa. 1992).

Cross References

This section cited in 37 Pa. Code § 197.8 (relating to extension of time); 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.17 (relating to ex parte communications).

§ 197.35. Form of notice of appeal.

The following is the form of notice of appeal:

COMMONWEALTH OF PENNSYLVANIA
STATE HEALTH FACILITY HEARING BOARD

IN RE: \_\_\_\_\_ : DOCKET NO. C.N. \_\_\_\_\_
(Name of Appellant) : HEALTH SERVICE AREA NO. \_\_\_\_\_
\_\_\_\_\_ :
(Project Number)

NOTICE OF APPEAL—CERTIFICATE OF NEED

- 1. Appellant is \_\_\_\_\_ (Name, address and telephone number)
2. Appellant appeals the following decision of the Department of Health: \_\_\_\_\_ (identify the

decision, e.g., refusal to grant certificate of need; denial of request for reconsideration, etc.)

- 3. The date of mailing of the decision of the Department of Health is \_\_\_\_\_

- 4. Appellant appeals the decision of the Department of Health for the following reason(s):

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

(Signature of appellant or representative of appellant)

---

(Name and address of appellant or  
representative of appellant)

---

(Date)

(Attach Certificate of Service)

**Authority**

The provisions of this § 197.35 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.35 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended May 21, 1982, effective May 22, 1982, 12 Pa.B. 1642; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551. Immediately preceding text appears at serial pages (70909) and (70910).

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.34 (relating to notice of appeal).

**§ 197.36. Certification of the record below.**

(a) The Department will file with the Hearing Board a certified copy of the record below within 20 days of the filing of a notice of appeal.

(b) In the case of appeals filed under § 197.32(a)(4) (relating to appealable decisions), the record will consist of the Department's letter of determination that the project is reviewable, together with other documents, telephone logs, memoranda and exchange of correspondence between the Department, the appellant and the health systems agency relating to the determination of reviewability.

(c) The record below shall include the following certification:

(1) The attached documents are a true and complete copy of the official project file of the certificate of need application for Project No. \_\_\_\_ .

(2) The official project file of Project No. \_\_\_\_ constitutes the documentary record upon which the Department based its decision on the project.

(3) All documents which were reviewed by the Department during its review of the certificate of need application for Project No. \_\_\_\_ are contained in or are identified in the official project file.

(4) The official project file includes all existing internal notes, work papers and memoranda prepared by, sent to or received by personnel in the Department regarding the certificate of need review of the project. Material within the scope of the attorney-client privilege is excluded.

- (5) All communication regarding the certificate of need review of the project between the Department and a person or health systems agency, other than status reports as defined in State and Federal statutes and regulations, are contained in the official project file.
- (6) All existing handwritten notes of meetings or communications prepared by Department personnel concerning the certificate of need review of the project are contained in the official project file.
- (7) All telephone conversation memoranda and meeting minutes are based upon notes made contemporaneously with the events described therein, even if typed and edited at a later time.
- (8) The written policies, practices and procedures of the local health systems agencies are public documents, and, as such, are not included in each individual project file.
- (9) Relevant portions of the applicable health systems plan and the State Health Plan are public documents, and, as such, are not included in each individual project file.
- (d) Subject to § 197.37 (relating to objections to the record), certification by the Department will serve to close the record below.

#### Authority

The provisions of this § 197.36 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

#### Source

The provisions of this § 197.36 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended May 21, 1982, effective May 22, 1982, 12 Pa.B. 1642; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3609. Immediately preceding text appears at serial page (103556).

#### Cross References

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

### § 197.37. Objections to the record.

- (a) A party may file objections to the record, in the form set forth in § 197.38 (relating to form of objection to the record), within 15 days of the filing of the record.
- (b) Either the Executive Director upon consultation with at least one member of the Board or a board member will consider the objection to the record and issue a ruling thereon. This subsection supplements 1 Pa. Code § 35.187(4) (relating to authority delegated to presiding officers).

#### Authority

The provisions of this § 197.37 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.37 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3609. Immediately preceding text appears at serial pages (103556) and (83481).

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.36 (relating to certification of the record below).

**§ 197.38. Form of objection to record.**

The following is the form of objection to the record:

COMMONWEALTH OF PENNSYLVANIA  
STATE HEALTH FACILITY HEARING BOARD

IN RE: \_\_\_\_\_  
: \_\_\_\_\_  
: DOCKET NO. \_\_\_\_\_  
: \_\_\_\_\_

*OBJECTION TO RECORDS*

1. \_\_\_\_\_  
(Name and address of objecting party)  
hereby objects to the Record filed in the above-captioned proceeding.
2. The specific ground(s) for objection is(are):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature of objecting party  
or representative)  
\_\_\_\_\_  
(Name and address of objecting party  
or representative)  
\_\_\_\_\_  
(Date)

(Attach Certificate of Service)

**Authority**

The provisions of this § 197.38 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.38 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551. Immediately preceding text appears at serial pages (70911) and (70212).

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.37 (relating to objections to the record).

**§ 197.39. Consolidation of appeals.**

(a) The Hearing Board may, upon its own motion or upon motion of a party, consolidate two or more appeals when:

- (1) The appeals relate to the same decision of the Department.
- (2) The appeals involve common questions of law or fact.

(b) Subsection (a) supplements 1 Pa. Code § 35.45 (relating to consolidation).

**Authority**

The provisions of this § 197.39 amended under section 805 of the Health Care Facilities Act (35 P. S. § 448.805); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.39 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended May 21, 1982, effective May 22, 1982, 12 Pa.B. 1642. Immediately preceding text appears at serial page (61888).

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.40. Preliminary motions.**

(a) A party may file a motion to strike the appeal on the grounds that appellant lacks standing to file the appeal, or a motion to quash the appeal on the grounds that it does not conform to the act or this chapter. A motion shall be filed within 10 days of the last date for filing of the notice of appeal. This subsection supplements 1 Pa. Code § 35.54 (relating to motions as to complaint).

(b) Upon receipt of a motion to strike or motion to quash, the Hearing Board may issue a rule to show cause why the appeal should not be stricken or quashed.

(c) The Hearing Board may, on its own motion at any time, issue a rule to show cause why an appeal should not be stricken for lack of standing or quashed for failure to conform to the act or this chapter.

(d) Where the preliminary motion, or an answer thereto, contains allegations of fact which do not appear of record, the allegations shall be verified under oath.

(e) Where a rule to show cause is issued under subsections (b) or (c) all proceedings shall be stayed pending disposition of the matter by the Hearing Board unless the rule to show cause specifically states otherwise.

**Authority**

The provisions of this § 197.40 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.40 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended May 21, 1982, effective May 22, 1982, 12 Pa.B. 1642; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551. Immediately preceding text appears at serial pages (70912) and (70913).

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.40a. Petition to intervene.**

(a) A petition to intervene may be filed by a person claiming a right to intervene or an interest of the nature that intervention in the proceeding is appropriate. The right or interest includes, but is not limited to, the following:

(1) A right conferred by the laws of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing parties. The following may have an interest:

(i) Competitors of the certificate of need applicant.

(ii) Consumers, affected persons and directly affected persons, as defined in the act.

(b) Petitions to intervene shall be filed within 30 days prior to the date of the hearing.

(c) Petitions to intervene shall set out clearly and concisely the facts from which the nature of the alleged right or interest of the petitioner can be determined. The petition shall specifically state whether petitioner wishes to acquire party status as an appellant or an appellee, and shall specifically set forth the reasons why petitioner's interests cannot be adequately represented by the existing party to the proceeding.

(d) If the petition to intervene is granted, the intervenor shall have, in the proceedings before the Hearing Board, all of the rights and duties of the other parties to the proceedings, except that the Hearing Board may refuse to permit the intervenor to file a prehearing brief if it believes that the filing of the brief will delay the proceedings.

(e) If the petition to intervene is granted, the Department will, within 20 days of the date of the order granting intervention, serve a copy of the certified record upon the intervenor.

(f) Subsection (a) supplements 1 Pa. Code § 35.28 (relating to eligibility to intervene). Subsection (b) supplements 1 Pa. Code § 35.30 (relating to filing of petitions to intervene). Subsection (c) supplements 1 Pa. Code § 35.29 (relating to form and contents of petitions to intervene).

**Authority**

The provisions of this § 197.40a issued under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)).

**Source**

The provisions of this § 197.40a adopted September 4, 1987, effective September 5, 1987, 17 Pa.B. 3609.

**§ 197.41. Commencement of appeal.**

Upon receipt of a notice of appeal, the Board will assign the appeal a docket number, and will send a letter of acknowledgement and a prehearing briefing schedule to the parties. The appeal will be deemed to commence with the mailing of the letter of acknowledgement and prehearing briefing schedule.

**Authority**

The provisions of this § 197.41 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.41 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3609. Immediately preceding text appears at serial pages (83483) to (83484).

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.42. Appeal briefs.**

(a) The appellant shall file an appeal brief with the Hearing Board within 20 days of the certification of the record below.

(b) The appeal brief shall contain:

- (1) A summary of the facts.
- (2) A statement of the legal issues involved in the appeal.
- (3) A statement of the legal arguments upon which the appeal is based.

(c) The appeal brief shall be limited to those issues which may be raised under § 197.44 (relating to limitation of issues and evidence).

(d) No further prehearing briefs may be filed by the appellant except by permission of the Hearing Board.

(e) The failure of appellant to file an appeal brief within the time prescribed by subsection (a) or an extension thereof granted by the Hearing Board may result in the Hearing Board's quashing the appeal.

**Authority**

The provisions of this § 197.42 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.42 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended May 21, 1982, effective May 22, 1982, 12 Pa.B. 1642; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3609. Immediately preceding text appears at serial page (83484).

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.43. Reply briefs.**

(a) A party of record may file a brief in reply to the appeal brief. The filing of a reply brief is mandatory for a party intending to participate in the hearing. The brief shall be filed within 30 days of the filing of the appeal brief with the Hearing Board.

(b) A reply brief shall contain the following:

- (1) A summary of the facts.
- (2) A statement of the legal issues involved in the appeal.
- (3) A statement of the legal arguments upon which the replying party relies.

(c) No further prehearing briefs may be filed, except by permission of the Hearing Board.

(d) The Hearing Board is not required to accept for filing a reply brief filed beyond the time prescribed by subsection (a) or an extension thereof granted by the Hearing Board.

**Authority**

The provisions of this § 197.43 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.43 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended May 21, 1982, effective May 22, 1982, 12 Pa.B. 1642; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3609. Immediately preceding text appears at serial pages (83484) and (95155).

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.43a. Amicus curiae briefs.**

(a) A person interested in the questions involved in a matter pending before the Hearing Board may request leave to file a brief amicus curiae in regard to those questions.

(b) The request shall be in the form of a motion for leave to file a brief amicus curiae. The motion shall set forth:

- (1) The name and address of the person filing the motion.

- (2) If the person filing the motion represents other persons, the identity of the persons.
- (3) The nature of the interest of the person filing the motion.
- (c) A motion for leave to file a brief amicus curiae shall be filed with the Hearing Board not later than 15 days prior to the date fixed for the hearing of the appeal.
- (d) Within 10 days of the filing of a motion for leave to file a brief amicus curiae, a party of record may file objections to the motion, setting forth specific reasons for the objections.
- (e) On or before the date fixed for the hearing of the appeal, the Hearing Board will issue an order either denying or granting the motion. If the motion is granted, the order will include the time for filing the brief and other instructions as the Hearing Board considers appropriate.

**Authority**

The provisions of this § 197.43a issued under section 805 of the Health Care Facilities Act (35 P. S. § 448.805); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.43a adopted May 21, 1982, effective May 22, 1982, 12 Pa.B. 1642.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.44. Limitation of issues and evidence.**

- (a) The appeal shall be limited to those issues raised by the appellant in the specification of objections to the decision of the Department. No issues may be raised which were not raised in the proceedings before the health systems agency or the Department.
- (b) The Board will entertain no evidence that the Board is satisfied that the appellant was able, by exercise of reasonable diligence, to have submitted before the health systems agency and the Department. This subsection supersedes in part 1 Pa. Code § 35.161 (relating to form and admissibility of evidence).

**Source**

The provisions of this § 197.44 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.42 (relating to appeal briefs).

**§ 197.45. Scope of review.**

- (a) In the case of appeals filed under § 197.32(1), (2) and (4) (relating to appealable decisions) the Hearing Board will limit its review to the following issues:

- (1) Whether the decision of the Department is supported by substantial evidence.
  - (2) Whether there was a violation of constitutional or statutory law or the regulations of the Department.
  - (3) Whether there was any prejudicial procedural error committed during the review.
- (b) In the case of appeals filed under § 197.32(3) the Hearing Board will limit its review to the question of whether the Department abused its discretion in denying the request for reconsideration.

#### Source

The provisions of this § 197.45 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

#### Notes of Decisions

Under this section, the Board's scope of review is limited to three areas: 1) whether the decision of the Department is supported by substantial evidence; 2) whether there was any violation of constitutional or statutory law or the regulations of the Department; 3) whether there was any prejudicial procedural error committed during the review; and the Board exceeded its scope of review by substituting its own evaluation for that of the Department. *Rehab Hospital Services Corp. v. Health Systems Agency of Southwestern Pennsylvania*, 475 A.2d 883 (Pa. Cmwlth. 1984).

Where the Department of Health's decision to grant a certificate of need was supported by substantial evidence in the record, the Board exceeded its scope of review, which is limited to those areas specified in this section, by substituting its own evaluation of the evidence for that of the Department. *Rehab Hospital Services Corp. v. Health Systems Agency of Southwestern Pennsylvania*, 475 A.2d 883 (Pa. Cmwlth. 1984).

#### Cross References

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

### § 197.46. Prehearing conference.

- (a) The Hearing Board will schedule a prehearing conference at a time and place to be determined by the Hearing Board. Notice of the prehearing conference shall be sent by first class mail to the parties at least 15 days before the date of the prehearing conference.
- (b) Each party shall submit, on the date specified in the order scheduling the prehearing conference, a prehearing memorandum, which shall contain the following information:
  - (1) A list of exhibits proposed to be offered in evidence.
  - (2) A list of the witnesses who will testify at the hearing and a brief synopsis of the testimony each witness will offer.
  - (3) An estimate of the length of time required for the presentation of the party's case.
- (c) In the event that a party wishes to submit into evidence the professional qualifications or curriculum vitae of a witness, the qualifications shall be set forth in writing and exchanged among counsel at the prehearing conference.

(d) The prehearing conference may be waived, at the discretion of the Hearing Board.

(e) Subsections (a)—(d) supplement 1 Pa. Code §§ 35.111—35.116 (relating to prehearing conferences).

#### Authority

The provisions of this § 197.46 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

#### Source

The provisions of this § 197.46 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended May 21, 1982, effective May 22, 1982, 12 Pa.B. 1642; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3609. Immediately preceding text appears at serial page (83487).

#### Cross References

This section cited in 37 Pa. Code § 197.13a (relating to subpoenas); and 37 Pa. Code § 197.15 (relating to recording of proceedings).

### § 197.46a. Decision without hearing.

(a) At any time following the filing of reply briefs, but not later than 30 days prior to the commencement of the hearing, a party may file a motion for decision without hearing. The motion may include a request for oral argument. The motion shall set forth with specificity the reasons why a hearing is believed to be unnecessary.

(b) Within 10 days of the filing of a motion for decision on the pleadings, a party may file an answer in opposition.

(c) If the motion for decision without hearing is granted, the Hearing Board may require the parties to file a stipulation of facts to supplement the certified record.

#### Authority

The provisions of this § 197.46a issued and amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

#### Source

The provisions of this § 197.46a adopted August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551; corrected August 26, 1983, 13 Pa.B. 2626; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3609. Immediately preceding text appears at serial page (83487).

#### Cross References

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

### § 197.47. Scheduling and announcement of hearings.

(a) Wherever possible, the Hearing Board will schedule a hearing to be held within 30 days of the last date for filing reply briefs or, when a prehearing con-

ference is held, within 30 days of the conference unless this time is extended by mutual agreement of the parties and the Hearing Board.

(b) The Hearing Board will determine the location of the hearing. The hearing will be in the county where the health care facility in question is situated, if possible; otherwise, the hearing will be held in the health service area in which the certificate of need application arises.

(c) The time, date and place of the hearing will be announced by the Hearing Board in the following manner:

(1) By written notice to parties of record no later than 21 days before the hearing date.

(2) By publication in a newspaper of general circulation in the area where the certificate of need application arises. The publication will occur at least 14 days before the date of the hearing.

(3) By publication in the *Pennsylvania Bulletin* at least 14 days before the date of the hearing.

(d) The notices required by subsections (c)(2) and (3) shall include the time within which petitions to intervene shall be filed with the Hearing Board.

#### Source

The provisions of this § 197.47 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

#### Cross References

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

### § 197.48. Procedure at hearing.

(a) The party filing the appeal shall have the burden of proof.

(b) The party filing the appeal shall open and close, unless otherwise directed by the hearing board member conducting the hearing. This subsection supplements 1 Pa. Code § 35.125(a) (relating to order of procedure).

(c) Parties to the proceeding shall have the right of presentation of evidence, cross examination, objection, motion and argument. This subsection supplements 1 Pa. Code § 35.126 (relating to presentation by the parties).

(d) In the case of appeals involving more than two parties, the Hearing Board member conducting the prehearing conference will establish the order in which the parties shall examine witnesses, conduct cross examination and present opening and closing statements. None of the parties at the prehearing conference shall be required to address substantive matters, including matters of evidence, until the order has been established.

(e) The Hearing Board member conducting the hearing may limit the number of witnesses who may be heard upon an issue. This subsection supplements 1 Pa. Code § 35.127 (relating to limiting number of witnesses).

(f) A witness shall be sworn or shall affirm before giving testimony. This subsection supplements 1 Pa. Code § 35.137 (relating to oral examination).

(g) Where documents are offered in evidence, they shall be verified by a witness before being admitted unless the parties agree to their admission without verification.

**Authority**

The provisions of this § 197.48 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.48 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551. Immediately preceding text appears at serial pages (70918) and (70919).

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.49. Correction of transcript.**

(a) Upon the conclusion of the hearing, copies of the transcript shall be provided to those parties requesting them, at cost, as soon as practicable. Within 10 days of the mailing of the transcript, a party may file a motion to correct the transcript, for the purpose of correcting typographical errors and unintelligible phrases and making the transcript conform to the evidence.

(b) Subsection (a) supersedes 1 Pa. Code § 35.132 (relating to transcript corrections) and supplements 1 Pa. Code § 35.133 (relating to copies of transcripts).

**Source**

The provisions of this § 197.49 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.50. Posthearing filings.**

At the conclusion of the hearing, the hearing board member conducting the hearing shall establish a schedule for the filing of posthearing briefs and requests for findings of fact and conclusions of law.

**Source**

The provisions of this § 197.50 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.51. Decision of the Hearing Board.**

(a) Upon the expiration of the time period for filing posthearing briefs and requests for findings of fact and conclusions of law, if any, the hearing board

member who presided at the hearing shall prepare a proposed adjudication and order for consideration by the full Hearing Board. This subsection supersedes 1 Pa. Code § 35.202 (relating to proceedings in which proposed reports are prepared).

(b) The Hearing Board may:

- (1) Affirm the decision of the Department.
- (2) Reverse the decision of the Department.
- (3) Remand the matter to the Department for further action consistent with order of the Hearing Board.

(c) In the event of a tie vote by the Hearing Board members participating in the adjudication, the decision of the Department will be deemed to be affirmed.

#### Authority

The provisions of this § 197.51 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

#### Source

The provisions of this § 197.51 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551. Immediately preceding text appears at serial pages (70919) and (70920).

#### Cross References

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

### § 197.52. Distribution of decision.

A copy of the decision of the Hearing Board will be sent by first class mail to:

- (1) The applicant.
- (2) The Department.
- (3) The appropriate health systems agency.
- (4) Other parties to the proceeding.
- (5) A person who has made a written request for a copy.
- (6) A newspaper of general circulation in the area where the certificate of need application arises.

#### Source

The provisions of this § 197.52 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

#### Cross References

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**PETITIONS PERTAINING TO OBJECTIONS TO PUBLISHED  
REGULATIONS, CRITERIA OR STANDARDS OF THE  
DEPARTMENT OR HEALTH SYSTEMS AGENCY**

**§ 197.61. Persons who may file.**

A person may file a petition requesting the Hearing Board to review regulations, criteria or standards issued or promulgated by the Department or by a health systems agency.

**Source**

The provisions of this § 197.61 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.62. Reviewable regulations, criteria or standards.**

(a) Petitions may be filed only as to regulations, criteria and standards which have been officially adopted or approved by the Department or by a health systems agency. Objections to proposed regulations, criteria or standards shall not be considered.

(b) Objections to proposed regulations, criteria or standards shall be sent to the Department or the appropriate health systems agency during the official comment period.

**Source**

The provisions of this § 197.62 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.62a. Prerequisite to filing.**

No petition will be considered by the Hearing Board until the petitioner has advised the Department or health systems agency, in writing, of its objections to the regulations, criteria or standards and has received a negative reply from the Department or health systems agency. The failure of the Department or health systems agency to respond to the petitioner's objection within 30 days of receipt thereof will be deemed a negative reply.

**Authority**

The provisions of this § 197.62a issued under section 805 of the Health Care Facilities Act (35 P. S. §§ 448.805); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.62a adopted May 21, 1982, effective May 22, 1982, 12 Pa.B. 1642.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.63. Consolidation of petitions.**

(a) In the event that more than one petition is filed relating to the same regulations, criteria or standards, the Hearing Board may, upon its own motion, consolidate the petitions. One docket number shall be assigned to the consolidated proceeding.

(b) Subsection (a) supplements 1 Pa. Code § 35.45 (relating to consolidation).

**Source**

The provisions of this § 197.63 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.64. Contents of petition.**

(a) The petition requesting Hearing Board review of regulations, criteria or standards shall be in the form set forth in § 197.65 (relating to form of petition) and include the following:

- (1) The regulation, criterion or standard to which petitioner objects.
- (2) The date of adoption or approval of the regulation, criterion or standard.
- (3) The entity adopting or approving the regulation, criterion or standard.
- (4) The date of written notification to the Department or health systems agency of petitioner's objections to the regulation, criterion or standard. A copy of the notification shall be attached to the petition.
- (5) The date of the negative reply, if any, from the Department or health systems agency. A copy of the reply shall be attached to the petition.
- (6) Specific objection of the petitioner to the regulation, criterion or standard.
- (7) The reasons for objection of the petitioner.
- (8) The consequences which petitioner alleges will result from the continued application or enforcement of such regulation, criterion, or standard.
- (9) Whether a hearing on the petition and a stenographic record are requested.

(b) The petition shall also include as an attachment a copy of the regulation, criterion or standard to which the petition applies.

(c) In addition to the petition containing the information set forth in subsection (a), petitioner shall have the option of filing a memorandum of law in support of the petition. The memorandum shall be filed at the time of filing the petition. An original and three copies shall be filed.

(d) A certificate of service in the form set forth in § 197.6 (relating to form of certificate of service) shall be attached to the petition.

**Authority**

The provisions of this § 197.64 amended under section 805 of the Health Care Facilities Act (35 P. S. § 448.805); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.64 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended May 21, 1982, effective May 22, 1982, 12 Pa.B. 1642. Immediately preceding text appears at serial page (61896).

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.65. Form of petition.**

The following is the form for a petition requesting Hearing Board review of regulations, criteria or standards:

COMMONWEALTH OF PENNSYLVANIA  
STATE HEALTH FACILITY HEARING BOARD

In Re: OBJECTION OF \_\_\_\_\_ :  
\_\_\_\_\_  
(Name of objecting party) : DOCKET No. P- \_\_\_\_\_  
TO REGULATION, CRITERION  
OR STANDARD OF \_\_\_\_\_ :  
\_\_\_\_\_  
(Department of Health/health  
systems agency) :

*PETITION*

1. Petitioner is \_\_\_\_\_ .  
(Name address and telephone number)
2. Petitioner objects to the adoption or approval of the regulations, criterion or standard of the \_\_\_\_\_ .  
(Department of Health/health systems agency)  
which was adopted or approved on \_\_\_\_\_ .  
(Date)
3. The subject matter of the regulation, criterion or standard to which this petition applies is \_\_\_\_\_ .
4. Objections to the regulation, criterion or standard were sent to the \_\_\_\_\_ .  
(Department of Health/health systems agency)  
by letter dated \_\_\_\_\_ .  
(Date)
5. A negative reply was received from the \_\_\_\_\_ .  
(Department of

\_\_\_\_\_ by letter dated \_\_\_\_\_  
Health/health systems agency) (Date)

-OR-

5. No reply was received from the \_\_\_\_\_  
(Department of Health/health systems agency)  
within 30 days of petitioner's objections.

6. The specific objections(s) to the regulation, criterion or standard is (are): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. The specific reasons for petitioner's objection are:  
\_\_\_\_\_  
\_\_\_\_\_

8. A hearing on the petition \_\_\_\_\_ requested.  
(is) (is not)

9. A stenographic record of the hearing \_\_\_\_\_ requested.  
(is) (is not)

10. A copy of the regulation, criterion or standard is attached hereto as Exhibit "A".

11. A copy of petitioner's objection to the \_\_\_\_\_  
(Department of Health's/health systems agency's)  
is attached hereto as Exhibit "B".

12. A copy of the \_\_\_\_\_  
(Department of Health's/health systems agency's)  
negative reply to petitioner's objections is attached hereto as Exhibit "C".

\_\_\_\_\_  
(Signature of petitioner or  
representative of petitioner)

\_\_\_\_\_  
(Name and address of petitioner  
or representative of petitioner)

\_\_\_\_\_  
(Date)

(Attach certificate of service)

**Authority**

The provisions of this § 197.65 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.65 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended May 21, 1982, effective May 22, 1982, 12 Pa.B. 1642; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551. Immediately preceding text appears at serial pages (70923) and (70924).

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.64 (relating to contents of petition).

**§ 197.66. Service of petition.**

On or before the date of filing with the Hearing Board, petitioner shall serve a copy of the petition and memorandum of law, if any, upon the Department and the health systems agency—when the objection is to a regulation, criterion or standard of the health systems agency—in the manner set forth in § 197.5 (relating to service on other parties).

**Source**

The provisions of this § 197.66 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.67. Failure to conform to rules.**

(a) The Department or appropriate health systems agency may, within 10 days of the filing of a petition, file a motion to dismiss the petition for failure to conform to this chapter.

(b) Upon receipt of a motion to dismiss the petition, the Hearing Board will forthwith issue a rule to show cause why the petition should not be dismissed.

(c) The Hearing Board may, on its own motion at any time, issue a rule to show cause why the petition should not be dismissed for the reasons set forth in subsection (a).

(d) Where a rule to show cause is issued under subsections (b) or (c), proceedings shall be stayed pending disposition of the matter by the Hearing Board.

**Source**

The provisions of this § 197.67 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.68. Reply to petition.**

(a) The Department or the health systems agency, whichever is appropriate, may file a reply to the petition within 30 days of the filing of the petition with the Hearing Board. Such reply, if any, may be in the form of a memorandum of law; and shall be accompanied by a Certificate of Service under § 197.5 (relating to service on other parties).

(b) If a hearing is granted to petitioner by the Hearing Board, the Department or health systems agency, whichever is appropriate, may participate. If participation is planned, the Department or health systems agency shall file a reply as

described in subsection (a) and a notice of appearance. The notice of appearance shall be in the form set forth in § 197.10 (relating to form of notice of appearance) but shall include, in addition, a request for a stenographic record, if one is desired.

**Authority**

The provisions of this § 197.68 amended under section 805 of the Health Care Facilities Act (35 P. S. § 448.805); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.68 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended May 21, 1982, effective May 22, 1982, 12 Pa.B. 1642. Immediately preceding text appears at serial page (61898).

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.69. Consideration of petition.**

Upon the conclusion of the time period for filing a reply to the petition, the Hearing Board will consider the petition and any reply thereto and may:

- (1) Deny the petition as being without merit.
- (2) Grant a hearing, if one has been requested and the Hearing Board determines that one is warranted, to be held in accordance with § 197.70 (relating to hearing).
- (3) Grant the relief, without hearing, and request the Department or health systems agency to reconsider the regulations, criteria or standards.

**Source**

The provisions of this § 197.69 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.70. Hearings.**

(a) Hearings for review of regulations, criteria or standards will be held in Harrisburg, unless the Hearing Board for good cause determines that another location would be more suitable.

(b) The time, date and place of the hearing will be announced by the Hearing Board by written notice to the petitioner and to the Department or health systems agency no later than 21 days before the hearing date.

(c) Hearings shall be confined to oral argument only. This subsection supersedes 1 Pa. Code § 35.126 (relating to presentation by the parties).

(d) The petitioner shall open, and after the presentation of other arguments, if any, may conclude by way of rebuttal. This subsection supplements 1 Pa. Code § 35.125 (relating to order of procedure).

(e) The time for argument shall be limited to not more than 30 minutes for each side, unless the time is extended by the board member presiding at the hearing. Where more than one petitioner is participating in a consolidated proceeding, the maximum time shall be divided among the petitioners as they may decide. Notwithstanding these time limits, each petitioner shall be allowed at least 5 minutes to present his case.

(f) At the discretion of the board member presiding at the hearing, an argument may be terminated notwithstanding the fact that the maximum time for argument has not been exhausted.

**Source**

The provisions of this § 197.70 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.69 (relating to consideration of petition).

**§ 197.71. Decision of the Hearing Board.**

(a) Upon the conclusion of the hearing, if any, the hearing board member who presided shall prepare a report and recommendation for consideration by the full Hearing Board. This subsection supersedes 1 Pa. Code § 35.202 (relating to proceedings in which proposed reports are prepared).

(b) At least two of the three members will vote in favor of requesting reconsideration; otherwise, the Hearing Board will not request reconsideration of the regulations, criteria or standards.

(c) If the Hearing Board, with or without a hearing, determines that petitioner's objections to the regulations, criteria or standards are valid, it will request the Department or health systems agency to reconsider its regulation, criterion or standard. The request shall set forth with specificity the reasons for suggesting the reconsideration.

**Source**

The provisions of this § 197.71 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**§ 197.72. Distribution of decision.**

A copy of the decision of the Hearing Board will be sent by first class mail to:

- (1) The petitioner.
- (2) The Department or the health systems agency which adopted or approved the regulation, criterion or standard in question.
- (3) The Office of General Counsel.
- (4) The Office of Attorney General.

- (5) A person who has made a written request for a copy.

**Source**

The provisions of this § 197.72 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

**APPEALS FROM DECISIONS PERTAINING TO LICENSURE**

**§ 197.81. Definitions.**

(a) For purposes of appeals relating to licensure filed under Chapter 8 of the act (35 P. S. §§ 448.801a—448.820) this section, and §§ 197.82—197.94 (relating to appeals from decisions pertaining to licensure), the following terms, have the following meanings, unless the context clearly indicates otherwise:

*Applicant*—A person filing an application with the Department to maintain and operate a health care facility.

*Decision*—The term includes order, decree, rule or determination.

*Health care facility*—A general, tuberculosis, chronic disease or other type of hospital; a skilled nursing facility; a home health care agency; an intermediate care facility; an ambulatory surgical facility; and a birth center regardless of whether the facility is operated for profit or by an agency of the Commonwealth or local government. The term does not include an office used primarily for the private practice of medicine, osteopathy, optometry, chiropractic, podiatry or dentistry; a program which renders treatment or care for drug or alcohol abuse or dependence unless located within a health facility; or a facility providing treatment solely on the basis of prayer or spiritual means. A mental retardation facility is not a health care facility except to the extent that it provides skilled nursing care. The term health care facility does not apply to a facility which is conducted by a religious organization for the purpose of providing health care services exclusively to clergymen or other persons in a religious profession who are members of a religious denomination.

*Home health care agency*—An organization or part thereof staffed and equipped to provide nursing and at least one therapeutic service to disabled, aged, injured or sick persons in their place of residence. The agency may also provide other health-related services to protect and maintain persons in their own home.

*Hospital*—An institution having an organized medical staff which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services, and rehabilitation services for injured, disabled, pregnant, diseased or sick, or mentally ill persons. The term

includes facilities for the diagnosis and treatment of disorders within the scope of specific medical specialties but not facilities caring exclusively for the mentally ill.

*Intermediate care facility*—An institution which provides on a regular basis health-related care and services to resident individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide but who because of their mental or physical condition require health-related care and services above the level of room and board. Intermediate care facilities exclusively for the mentally retarded commonly called ICF/MR are not considered intermediate care facilities for the purpose of the act.

*Licensee*—A person who has been issued a license, including a provisional license, to maintain and operate a health care facility.

*Skilled nursing facility*—A facility or part of a facility in which professionally supervised nursing care and related medical and other health services are provided for a period exceeding 24 hours for two or more individuals who are not in need of hospitalization and are not relatives of the nursing home administrator but who—because of age, illness, disease, injury, convalescence or physical or mental infirmity—need the care.

(b) Subsection (a) supplements 1 Pa. Code § 31.3 (relating to definitions).

#### Source

The provisions of this § 197.81 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

#### Cross References

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings).

### § 197.82. Appealable decisions.

The following decisions of the Department relating to licensure may be appealed:

- (1) Those relating to an application to secure a license to maintain and operate a health care facility.
- (2) Those relating to the renewal, suspension or revocation of a license to maintain and operate a health care facility.
- (3) Those relating to the issuance of a provisional license to maintain and operate a health care facility.
- (4) Those relating to the suspension of admissions for any of the reasons set forth in section 811 of the act (35 P. S. § 448.811).

#### Source

The provisions of this § 197.82 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); 37 Pa. Code § 197.81 (relating to definitions); and 37 Pa. Code § 197.83 (relating to standing to appeal).

**§ 197.83. Standing to appeal.**

The following persons will be considered parties and will have standing to appeal a decision of the Department relating to licensure which is appealable under § 197.82 (relating to appealable decisions).

- (1) An applicant who is denied a license to maintain and operate a health care facility or who is issued a provisional license rather than a regular license.
- (2) A licensee whose license to maintain and operate a health care facility, a portion of a health care facility or a particular service offered by a health care facility is not renewed or is suspended or revoked by the Department.
- (3) A licensee who is adversely affected by a decision which suspends admissions for any of the reasons set forth in section 811 of the act (35 P. S. § 448.811).

**Source**

The provisions of this § 197.83 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.81 (relating to definitions).

**§ 197.84. Notice of appeal and answer.**

(a) The appellant shall file a notice of appeal, in the form set forth in § 197.85 (relating to form of notice of appeal), within 30 days of the date of mailing of the decision by the Department.

(b) Where the decision of the Department is in the form of a rule or order to show cause, the appellant shall, at the time of filing the notice of appeal, file an answer to the rule or order, which answer shall be drawn so as specifically to admit or deny the allegations or charges which may be made in the rule or order. Failure to file the answer shall be deemed an admission by the appellant that the factual allegations or charges contained in the rule or order are true.

(c) On or before the date of filing with the Hearing Board, a copy of the notice of appeal and answer, if any, shall be served on the Department and a certificate of service in the form set forth in § 197.6 (relating to form of certificate of service) be attached thereto.

**Source**

The provisions of this § 197.84 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.8 (relating to extension of time); 37 Pa. Code § 197.15 (relating to recording of proceedings); 37 Pa. Code § 197.17 (relating to *ex parte* communications); 37 Pa. Code § 197.81 (relating to definitions); and 37 Pa. Code § 197.86 (relating to certification of rule or order).

**§ 197.85. Form of notice of appeal.**

The following is the form of notice of appeal:

COMMONWEALTH OF PENNSYLVANIA  
STATE HEALTH FACILITY HEARING BOARD

IN RE: \_\_\_\_\_  
: \_\_\_\_\_  
: DOCKET NO. L- \_\_\_\_\_  
: \_\_\_\_\_

*NOTICE OF APPEAL—LICENSURE*

1. Appellant is \_\_\_\_\_ .  
(name, address and telephone number)
2. Appellant appeals the following decision of the Department of Health:  
\_\_\_\_\_  
(identify the decision, e.g. denial of application for license to operate and maintain a skilled nursing facility, etc.)
3. The docket number or identifying number in the proceedings before the Department of Health, if any is: \_\_\_\_\_ .
4. The date of mailing of the decision of the Department of Health is \_\_\_\_\_ .
5. Appellant lists the following specifications of objections to the decision of the Department as the basis for its appeal:  
\_\_\_\_\_  
(e.g., decision not supported by substantial evidence, etc.)  
\_\_\_\_\_  
\_\_\_\_\_ .

\_\_\_\_\_  
(Signature of appellant or representative of appellant)

\_\_\_\_\_  
(Name and address of appellant or representative of appellant)

\_\_\_\_\_  
(Date)

(Attach Certificate of Service)

**Authority**

The provisions of this § 197.85 amended under section 805(b) of the Health Care Facilities Act (35 P. S. § 448.805(b)); and 2 Pa.C.S. § 102(a).

**Source**

The provisions of this § 197.85 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2551. Immediately preceding text appears at serial pages (61905) and (61906).

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); 37 Pa. Code § 197.81 (relating to definitions); and 37 Pa. Code § 197.84 (relating to notice of appeal and answer).

**§ 197.86. Certification of rule or order.**

The Department will file with the Hearing Board, within 15 days of the Department's receipt of a notice of appeal filed under § 197.84 (relating to notice of appeal and answer), a certified copy of the rule or order upon which the action is based, including any allegations or charges which may be made in the rule or order.

**Source**

The provisions of this § 197.86 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.81 (relating to definitions).

**§ 197.87. Supersedeas.**

(a) An appeal to the Hearing Board from a decision of the Department relating to licensure may not act as an automatic supersedeas of the decision of the Department; but, upon cause shown, the Board may grant a supersedeas.

(b) No application for supersedeas will be considered by the Hearing Board until the application has been presented to the Department and a decision thereon has been rendered by the Department.

(c) An application for supersedeas filed with the Hearing Board shall show that application has been made to the Department and denied, with the reasons given by it for the denial. The application shall also show the reasons for the relief requested and the facts relied upon; and, if the facts are subject to dispute, the application shall be supported by sworn or verified statements or copies thereof. With the application shall be filed parts, if any, of the record as are relevant to the relief sought.

(d) Upon receipt of an application for supersedeas, a member of the Hearing Board may issue an order denying or granting the relief sought.

**Source**

The provisions of this § 197.87 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.81 (relating to definitions).

**§ 197.88. Prehearing conference.**

(a) The hearing board member who will preside at the hearing shall schedule a prehearing conference, at a time and place to be determined by the member. Notice of the prehearing conference shall be sent by first class mail to the parties at least 15 days before the date of the prehearing conference.

(b) Each party shall submit, at least 5 days prior to the prehearing conference, a prehearing memorandum, which shall contain the following information:

- (1) A short summary of the factual issues involved.
- (2) A statement of the legal issues.
- (3) Stipulations of fact, if any.
- (4) A list of exhibits proposed to be offered in evidence.
- (5) A list of the witnesses who will testify at the hearing, and a brief synopsis of the testimony each witness will offer.
- (6) An estimate of the length of time required for the presentation of the case of the party.

(c) The prehearing conference may be waived, at the discretion of the hearing board member who will preside at the hearing.

(d) Subsections (a)—(c) supplement 1 Pa. Code §§ 35.111—35.116 (relating to prehearing conferences).

**Source**

The provisions of this § 197.87 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.81 (relating to definitions).

**§ 197.89. Scheduling and announcement of hearings.**

(a) Hearings when feasible shall be held in the locality where the health care facility is based.

(b) Wherever possible, the Hearing Board will schedule a hearing to be held within 30 days of the prehearing conference unless the time is extended by mutual agreement of the parties and the Hearing Board.

(c) The time, date and place of the hearing will be announced by the Hearing Board at least 10 days before the hearing date in the following manner:

- (1) By written notice to the parties of record.
- (2) By publication in a newspaper of general circulation in the area in which the hearing will be held.
- (3) By publication in the *Pennsylvania Bulletin*.

(d) Subsection (c) supersedes 1 Pa. Code § 35.105 (relating to notice of non-rulemaking proceedings).

**Source**

The provisions of this § 197.89 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.81 (relating to definitions).

**§ 197.90. Procedure at hearing.**

(a) The Department will have the burden of proof.

(b) The Department will open and close, unless otherwise directed by the hearing board member conducting the hearing. This subsection supersedes 1 Pa. Code § 35.125(a) and supplements 1 Pa. Code § 35.125(b)—(d) (relating to order of procedure).

(c) Parties to the proceeding shall have the right of presentation of evidence, cross-examination, objection, motion and argument. This subsection supplements 1 Pa. Code § 35.126 (relating to presentation by the parties).

(d) The hearing board member conducting the hearing may limit the number of witnesses who may be heard upon any issue. This subsection supplements 1 Pa. Code § 35.127 (relating to limiting number of witnesses).

(e) Each witness shall be sworn or affirm before giving testimony. This subsection supplements 1 Pa. Code § 35.137 (relating to oral examination).

(f) Where documents are offered in evidence, they shall be verified by a witness before being admitted unless the parties agree to their admission without verification. This subsection supersedes 1 Pa. Code § 33.12 (relating to verification).

**Source**

The provisions of this § 197.90 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.81 (relating to definitions).

**§ 197.91. Correction of transcript.**

(a) Upon the conclusion of the hearing, copies of the transcript shall be provided to those parties requesting them at cost, as soon as practicable. Within 10 days of the mailing of the transcript, a party may file a motion to correct the

transcript, for the purpose of correcting typographical errors and unintelligible phrases and making the transcript conform to the evidence.

(b) Subsection (a) supersedes 1 Pa. Code § 35.132 (relating to transcript corrections) and supplements 1 Pa. Code § 35.133 (relating to copies of transcripts).

**Source**

The provisions of this § 197.91 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.81 (relating to definitions).

**§ 197.92. Posthearing filings.**

At the conclusion of the hearing, the Hearing Board member conducting the hearing shall establish a schedule for the filing of posthearing briefs and requests for findings of fact and conclusions of law.

**Source**

The provisions of this § 197.92 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.81 (relating to definitions).

**§ 197.93. Decision of the Hearing Board.**

(a) Upon the expiration of the time period for filing posthearing briefs and requests for findings of fact and conclusion of law, if any, the hearing board member who presided at the hearing shall prepare a proposed adjudication and order for consideration by the full Hearing Board. This subsection supersedes 1 Pa. Code § 35.202 (relating to proceedings in which proposed reports are prepared).

(b) The Hearing Board may:

- (1) Affirm the decision of the Department.
- (2) Reverse the decision of the Department.
- (3) Remand the matter to the Department for further hearing, review or reconsideration.

(c) In the event of a tie vote by the hearing board members participating in the adjudication, the decision of the Department will be deemed to be affirmed.

**Source**

The provisions of this § 197.93 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.81 (relating to definitions).

**§ 197.94. Distribution of decision.**

A copy of the decision of the Hearing Board shall be sent by first class mail to:

- (1) The appellant.
- (2) The Department.
- (3) Other parties to the proceeding, if any.
- (4) A person who has made a written request for a copy.
- (5) A newspaper of general circulation in the area in which the appeal arises.

**Source**

The provisions of this § 197.94 adopted May 1, 1981, effective May 2, 1981, 11 Pa.B. 1455.

**Cross References**

This section cited in 37 Pa. Code § 197.15 (relating to recording of proceedings); and 37 Pa. Code § 197.81 (relating to definitions).

[Next page is 199-1.]

197-48

(279642) No. 321 Aug. 01

*Copyright © 2001 Commonwealth of Pennsylvania*