

Title 31 MARYLAND INSURANCE ADMINISTRATION

Subtitle 02 POWERS AND DUTIES—HEARINGS

Chapter 01 Hearings

Authority: Insurance Article, §§2-109 and 2-205—2-215; State Government Article, §10-206; Annotated Code of Maryland

.01 Scope.

A. In General. This chapter applies to all contested case hearings:

(1) Heard by the Administration; or

(2) Delegated by the Administration to the Office of Administrative Hearings under State Government Article, §10-205, Annotated Code of Maryland.

B. Except as provided in this chapter, COMAR 28.02.01 governs the conduct of a hearing before the Office of Administrative Hearings.

C. Exclusions. This chapter does not apply to the consideration of rates or contracts, the adoption of regulations, or other quasi-legislative hearings.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administration" means the Maryland Insurance Administration.

(2) "Administrative complaint" means a document that:

(a) Is received by the Commissioner from any person; and

(b) Alleges a violation of:

(i) A law or regulation enforced by the Commissioner; or

(ii) An order issued by the Commissioner.

(3) Contested Case.

(a) "Contested case" has the meaning stated in State Government Article, §10-202(d), Annotated Code of Maryland.

(b) "Contested case" includes a proceeding:

(i) Arising out of a determination made by the Commissioner;

(ii) Arising out of a charging document, order, or notice issued by the Commissioner;

(iii) Regarding a license, certificate, registration, or special permit;

(iv) On a proposed examination report; or

(v) Arising out of any other act of, threatened act of, or failure to act by the Commissioner that aggrieves a person.

(c) "Contested case" does not include:

(i) A hearing on the approval or disapproval of a rate filing or a form filing; or

(ii) Any other quasi-legislative hearing.

(4) Determination.

(a) "Determination" means a decision by the Commissioner that requires the Commissioner to provide the opportunity for a hearing to a person aggrieved by the decision under Insurance Article, §2-210, Annotated Code of Maryland.

(b) "Determination" includes:

(i) A decision as to whether a person against whom an administrative complaint has been received violated a law, regulation, or order; and

(ii) An order issued under Insurance Article, §2-204, Annotated Code of Maryland.

(5) Examination Report.

(a) "Examination report" means a report of the examination of:

(i) An authorized insurer, management company of an authorized insurer, subsidiary owned or controlled by an authorized insurer, rating organization, or authorized health maintenance organization that is subject to examination under Insurance Article, §2-205, Annotated Code of Maryland;

(ii) An insurance producer, surplus lines broker, general agent, adjuster, public adjuster, adviser, or other person that is subject to examination under Insurance Article, §2-206, Annotated Code of Maryland;

(iii) An accepted reinsurer that is subject to examination under Insurance Article, Title 5, Subtitle 9, Annotated Code of Maryland;

(iv) A third party administrator that is subject to examination under Insurance Article, §8-319, Annotated Code of Maryland;

(v) A fraternal benefit society that is subject to examination under Insurance Article §8-461 or 8-462, Annotated Code of Maryland;

(vi) An accepted fronting reinsurer that is subject to examination under Insurance Article, §13-116, Annotated Code of Maryland;

(vii) A nonprofit health service plan that is subject to examination under Insurance Article, §14-125, Annotated Code of Maryland;

(viii) A dental plan organization that is subject to examination under Insurance Article, §14-411, Annotated Code of Maryland;

(ix) A private review agent that is subject to examination under Insurance Article, §15-10B-19, Annotated Code of Maryland;

(x) A premium finance company that is subject to examination under Insurance Article, §23-103, Annotated Code of Maryland;

(xi) A managed care organization that is subject to examination under Health-General Article, §15-102.3, Annotated Code of Maryland;

(xii) A provider-sponsored organization that is subject to examination under Health-General Article, Title 19, Subtitle 7A, Annotated Code of Maryland;

(xiii) The Injured Workers' Insurance Fund, which is subject to examination under Labor and Employment Article, §10-125, Annotated Code of Maryland; or

(xiv) Any other person that is subject to examination by the Commissioner under any other provision of law.

(b) "Examination report" includes:

(i) A financial examination report; and

(ii) A market conduct examination report.

(6) "Hearing officer" means:

(a) The Maryland Insurance Commissioner or the Commissioner's authorized designee under Insurance Article, §2-210(d), Annotated Code of Maryland; or

(b) An administrative law judge.

(7) "Licensee" means a person holding a certificate of authority, license, registration, or special permit issued by the Administration or who has other similar authority to operate under the regulatory authority of the Administration.

(8) "Office" means the Office of Administrative Hearings.

(9) "Proposed examination report" means an examination report that:

(a) The Commissioner mails to the person examined:

(i) At the conclusion of an examination; and

(ii) Before filing the examination report; and

(b) Informs the person being examined of the person's right to request a hearing pursuant to Regulation .04C of this chapter.

.03 Request for a Hearing—In General.

A. Scope. This regulation applies to all requests for a hearing except a request for a hearing on a proposed examination report.

B. A person may request a hearing under Insurance Article, §2-210(a)(2), Annotated Code of Maryland, by submitting a written statement to the Commissioner, signed by the requesting person.

C. Request to be Received Within 30 Days.

(1) The request shall be received by the Commissioner within 30 days of the date of the letter notifying the party of the Commissioner's action, intention to act, or failure to act.

(2) In calculating the 30-day period, the date of the letter notifying the party of the Commissioner's action, intention to act, or failure to act is not included.

(3) The end of a day is considered to be 11:59 p.m. Eastern Time.

(4) The last day of the 30-day period is included unless it is a Saturday, Sunday, legal holiday, or a day that the Administration is closed for a part of the day.

(5) If the last day of the 30-day period is a Saturday, Sunday, legal holiday, or a day that the Administration is closed for a part of the day, the 30-day period runs until the end of the next day which is not a Saturday, Sunday, legal holiday, or a day that the Administration is closed for a part of the day.

(6) Intermediate Saturdays, Sundays, legal holidays, and days that the Administration is closed for a part of the day shall be counted toward the 30-day period.

D. The request shall include the following information:

(1) The action or non-action of the Commissioner causing the person requesting the hearing to be aggrieved;

(2) The facts related to the incident or incidents about which the person requests the Commissioner to act or not to act; and

(3) The ultimate relief requested.

E. Upon receipt of a proper request, the Commissioner shall grant a hearing unless:

(1) In viewing the facts set forth by the person making the request, in the light most favorable to that person, the Commissioner has no authority to take action;

(2) The Commissioner determines that the request is frivolous or made in bad faith;

(3) The request does not contain the information required by these regulations;

(4) The request is untimely; or

(5) At the end of the Commissioner's review, the request is moot.

.04 Request for a Hearing—Proposed Examination Reports.

A. Scope. This regulation applies to a request for a hearing on a proposed examination report.

B. Proposed Examination Report.

(1) At least 30 days before filing a proposed examination report, the Commissioner shall mail a copy of the proposed examination report to the person that was examined.

(2) If the Commissioner intends to impose a fine or other penalty or require restitution or other remedy as a result of the findings of the proposed examination report, the Commissioner may include with the proposed examination report:

(a) The amount of the fine;

- (b) The amount or nature of the restitution; and
- (c) The nature of any other penalty or remedy.

C. Request for Hearing. The person being examined may request a hearing on a proposed examination report by submitting a written request to the Commissioner within 30 days after the proposed examination report is received by the person.

D. Contents of Hearing Request. The hearing request shall include exceptions to the proposed examination report that:

(1) Specifically identify:

(a) The factual assertions in the proposed examination report that the person is challenging; and

(b) Any errors of law that the person contends are contained in the proposed examination report;

(2) State the nature of the relief that the person is demanding; and

(3) State the grounds for relief that the person is demanding.

E. Procedure Following Hearing Request. If the Commissioner receives a request for a hearing on a proposed examination report within the 30-day period, the Commissioner:

(1) Shall grant a hearing on the exceptions to the proposed examination report; and

(2) May not file the proposed examination report until after:

(a) The hearing is held; and

(b) The Commissioner makes any modifications to the proposed examination report that the Commissioner considers proper.

.04-1 Delegation of Authority.

A. The Commissioner may, on a case-by-case basis, delegate to the Office the authority to:

(1) Conduct a contested case hearing; and

(2) Issue:

(a) Proposed or final findings of fact;

(b) Proposed or final conclusions of law;

(c) Proposed or final findings of fact and conclusions of law; or

(d) A proposed or final order.

B. The Commissioner may revoke all or part of a delegation of authority to the Office to preside over a hearing if:

(1) The case:

(a) Involves novel or unanticipated factual or legal issues;

(b) Has significant social, fiscal, or legal issues;

(c) Involves policy issues of general applicability; or

(d) Requires further investigation; or

(2) The Commissioner determines that revocation of all or part of the delegation of authority is otherwise in the public interest.

C. Procedure for Revocation.

(1) The Commissioner shall provide written notice of a revocation of hearing authority to all parties and the Office.

(2) The written notice shall contain a brief statement of the reason for the revocation.

(3) Delegation of authority to hear a contested case may be revoked at any time before the earlier of the:

(a) Issuance of a ruling by the administrative law judge on a substantive issue; or

(b) Taking of oral testimony from the first witness.

(4) The Commissioner shall specify whether all or part of the delegation to hear a contested case has been revoked.

(5) If only part of the delegation has been revoked, the Commissioner shall specify in the written notice of revocation the portions of the contested case for which the delegation has been revoked.

(6) On revocation of the delegation, the Commissioner shall:

(a) Refer the contested case for further investigation;

(b) Set the contested case for a hearing with the Commissioner or the Commissioner's designee acting as the hearing officer; or

(c) Dismiss the contested case.

.05 Service of Notices, Decisions, Orders, and Other Documents.

A. The Administration or the Office shall provide notice of a hearing pursuant to State Government Article, §10-209, Annotated Code of Maryland.

B. Notices, decisions, orders, and other documents issued by the Administration or the Office may be served on a person by:

(1) Personal delivery to the person;

(2) Mailing a copy of the document, first class, postage prepaid, to the person's address of record on file with the Administration;

(3) Mailing a copy of the document, first class, postage prepaid, to the person's last known address if different from the person's address of record on file with the Administration;

(4) Mailing a copy of the document by certified mail to the person's address of record on file with the Administration or last known address; or

(5) Delivering or mailing a copy of the document, first class, postage prepaid, to the person's attorney, if the person is represented by counsel.

C. Notice of a hearing is sufficient:

(1) If the initial notice of a hearing is sent by regular mail to a party at the party's business and resident addresses on file with the Commissioner in accordance with Insurance Article, §§10-111(a)(4) and 10-117, Annotated Code of Maryland; and

(2) Upon a satisfactory showing that the notice was sent not less than 30 calendar days before the hearing, unless a different time period is required by law.

D. A record shall be maintained stating:

(1) To whom the initial notice was sent;

(2) The address to which the initial notice was sent;

(3) The date the initial notice was sent;

(4) The manner of service; and

(5) The name of the person who sent the initial notice.

.05-1 Discovery.

A. By written request served on other parties and filed with the hearing officer not later than 20 days before the scheduled hearing, a party may require any other party to produce, within 15 days, for inspection or copying, any file, memorandum, correspondence, document, object, or tangible thing:

(1) Relevant to the subject matter of the case; and

(2) Not privileged.

B. Unless provided by agreement of the parties, no other discovery procedure is allowed.

C. Copies.

(1) Copies of requested documents and records shall be made at the expense of the party making the request.

(2) The charge for copies of requested documents and records may be waived by the custodian of the documents in accordance with State Government Article, §10-621(e), Annotated Code of Maryland, or other applicable law.

D. Objection to Production.

(1) A party may object to the production of a file, memorandum, correspondence, document, object, or tangible thing by filing a motion to quash discovery or for other relief.

(2) The hearing officer, for cause shown, may issue any order that justice requires to protect the party from annoyance, embarrassment, oppression, or undue burden or expense.

E. A party who has responded to a request for production and who obtains or discovers, before the hearing, additional files, memoranda, correspondence, documents, objects, or tangible things that are relevant to the request for production shall supplement the response to the request promptly.

F. As sanction against a party that fails to comply with a request for production, the hearing officer, either on the hearing officer's own motion or by motion of the party requesting the production, may issue an order:

(1) Refusing to allow the party to support or oppose designated claims or defenses;

(2) Prohibiting the party from introducing designated matters into evidence;

(3) Striking any allegations or charges made by the party failing to produce;

(4) Staying further proceedings until the discovery is provided; or

(5) Dismissing the action or any part of it.

.06 Subpoenas.

A. On request of a party, the Administration may issue subpoenas requiring the attendance and testimony of witnesses and the production, at the hearing, of any tangible items in the possession or under the control of a witness.

B. Subpoena Requests.

(1) A request for a subpoena shall:

(a) Be made, in writing, to the Administration; and

(b) Specify the:

(i) Name and full address of the person to be subpoenaed, and

(ii) Name, full address, and telephone number of the party requesting the subpoena.

(2) A subpoena that requests the production of tangible items, books, papers, or other documents shall describe those items with particularity.

(3) A subpoena request need not be served on all parties.

C. Service of Subpoenas.

(1) Except as provided in §C(2) of this regulation, subpoenas shall be served by hand delivery by an individual 18 years old or older who is not a party to the proceeding. For subpoenas requested 15 calendar days or fewer before the scheduled hearing, the requester shall provide service.

(2) In a case where the licensee to be served resides out of Maryland, the subpoena may be served by certified mail.

D. Return of service shall be made by:

(1) Affidavit, if hand delivered; or

(2) Return receipt, if mailed.

E. A person may object to a subpoena by filing a motion to quash or for other relief.

F. If a request for a subpoena was filed less than 15 days before the hearing date, the hearing officer may refuse to postpone the hearing based on the party's inability to serve the subpoena.

.07 Conduct of Hearing—In General.

A. Scope. This regulation applies to all hearings except a hearing on a proposed examination report.

B. A hearing conducted under this chapter shall be open to the public.

C. Parties to Contested Case Proceeding.

(1) The necessary parties to a contested case proceeding are:

(a) The Administration;

(b) A person against whom the Commissioner has:

(i) Received an administrative complaint; or

(ii) Issued a charging document, order, or notice; and

(c) A person who requests a hearing due to being aggrieved by:

(i) A determination made by the Commissioner; or

(ii) Any other act of, threatened act of, or failure to act by the Commissioner.

(2) A person who is not a necessary party under §C(1) of this regulation, including a person who submitted an administrative complaint to the Commissioner, may become a party by intervention in accordance with Insurance Article, §2-213(c), Annotated Code of Maryland.

(3) Election by Administration Not to Participate.

(a) The Administration may elect not to participate in all or part of a contested case proceeding by filing a notice with the hearing officer or final decision maker at any time.

(b) The Administration may revoke an election not to participate in all or part of a contested case proceeding by filing a notice with the hearing officer or final decision maker at any time.

D. The hearing officer shall conduct the hearing and may allow the case to proceed in a manner necessary to ensure the fair resolution of the issues including, but not limited to, placing reasonable limitations on the number of witnesses a party may call and the exclusion of evidence which is repetitive, irrelevant, immaterial, or otherwise not probative. The Maryland Rules of

Civil Procedure may be used as a guide for resolving procedural issues regarding the conduct of the hearing.

E. The hearing officer shall rule on all procedural matters, including motions, objections, and offers of proof.

F. The Commissioner may designate an attorney to represent the Administration. Once the hearing is closed by the hearing officer, the individual presenting the case on behalf of the Administration may not have a further role in the decision process of the Administration.

G. Motion for Summary Decision.

(1) A party may move for summary decision on any appropriate issue in the case.

(2) A hearing officer may grant a proposed or final summary decision if the hearing officer finds that:

(a) There is no genuine issue of material fact; and

(b) A party is entitled to prevail as a matter of law.

.08 Conduct of Hearing—Proposed Examination Reports.

A. Scope. This regulation applies to a hearing on a proposed examination report.

B. Burden of Proof. At a hearing under this regulation:

(1) The proposed examination report is part of the record; and

(2) The party that requested the hearing on the proposed examination report has the burden of going forward and the burden of proving its exceptions to the proposed examination report.

C. Rights of Parties.

(1) Subject to §C(2) of this regulation, the hearing officer shall allow a party to a hearing under this regulation to:

(a) Appear in person and be represented by counsel;

(b) Be present while evidence is given;

(c) Have reasonable opportunity to:

(i) Inspect all documentary evidence that is offered for introduction into the record;

and

- (ii) Examine witnesses during the course of the hearing; and
- (d) Present evidence.
- (2) The hearing officer may:
 - (a) Place reasonable limitations on the number of witnesses a party may call; and
 - (b) Exclude evidence that is repetitive, irrelevant, immaterial, or otherwise not probative.

D. Rules of Pleading or Evidence.

- (1) Formal rules of pleading or evidence need not be observed at a hearing under this regulation.
- (2) The Maryland Rules of Civil Procedure may be used as a guide for resolving procedural issues regarding the conduct of the hearing.

E. Representation of the Administration.

- (1) The Commissioner may designate an attorney to represent the Administration.
- (2) Once the record is closed by the hearing officer, the attorney who represented the Administration may not have a further role in the decision process of the Administration.

F. Motion for Summary Decision.

- (1) A party may move for summary decision on any appropriate issue in the case.
- (2) A hearing officer may grant a proposed or final summary decision if the hearing officer finds that:
 - (a) There is no genuine issue of material fact; and
 - (b) A party is entitled to prevail as a matter of law.

.09 Postponements.

A. At the discretion of the hearing officer, a hearing may be postponed if a written request for postponement is filed with the Administration or the Office not later than 15 days before the date of the hearing.

B. A hearing may not be postponed, except for good cause, when the request for postponement is filed within 15 days of the date of the hearing.

.09-1 Decision by an Administrative Law Judge.

A. Scope. This regulation applies to a contested case where the Office has been delegated authority to conduct a contested case hearing under Regulation .04-1A of this chapter.

B. Contents. The administrative law judge who hears a case shall submit to the Commissioner a decision that contains whichever of the following were authorized in the Commissioner's delegation of authority to the Office for the case:

- (1) Proposed or final findings of fact;
- (2) Proposed or final conclusions of law;
- (3) Proposed or final findings of fact and conclusions of law; or
- (4) A proposed or final order.

C. Effect of Regulations, Bulletins, Final Orders, and Preexisting Policies. Except as provided in Regulation .10-2H of this chapter, in making a decision, the administrative law judge is bound by any regulation, bulletin, final order, or settled and preexisting policy of the Commissioner to the same extent that the Commissioner is or would have been bound if the Commissioner were hearing the case.

D. Distribution of Decision. The Office shall send the administrative law judge's decision directly to the parties and the Commissioner.

.10 Default Orders.

A. This regulation does not apply to unauthorized insurers.

B. A hearing officer may issue a default order against a party other than the Administration that, after receiving proper notice, fails to appear at a hearing if:

(1) In a hearing arising out of a charging document, order, or notice issued by the Commissioner, the party failing to appear is the person against whom the charging document, order, or notice was issued;

(2) In a hearing arising out of a determination involving an administrative complaint, the party failing to appear is a necessary party under Regulation .07C of this chapter; or

(3) In any other contested case hearing, the party failing to appear is the person that requested the hearing.

C. In a hearing arising out of a charging document, order, or notice issued by the Administration, the default order shall:

(1) State the facts supporting the finding of proper notice to the person against whom the charging document, order, or notice was issued;

(2) Adopt the facts and violations of law as alleged by the Administration in its charging document, order, or notice as if by admission of the person against whom the charging document, order or notice was issued; and

(3) Adopt the sanction requested by the Administration at the hearing.

D. In a hearing arising out of a determination, including a determination involving an administrative complaint, the hearing officer shall:

(1) If the nondefaulting party is requesting that the determination be upheld, issue a default order that:

(a) States the facts supporting the finding of proper notice to the party failing to appear; and

(b) Upholds the determination; or

(2) If the nondefaulting party is requesting that the determination be reversed or modified:

(a) Allow the party to present its case as to why the determination should be reversed or modified; and

(b) Issue a default order that:

(i) States the facts supporting the finding of proper notice to the party failing to appear;

(ii) Makes any appropriate findings of fact or law; and

(iii) Orders relief as appropriate under the relevant provisions of the Health-General Article or Insurance Article, Annotated Code of Maryland.

E. In a hearing on a proposed examination report, the default order shall:

(1) State the facts supporting the finding of proper notice to the person that was examined;

(2) Adopt the facts and violations of law as alleged by the Administration in the proposed examination report as if by admission of the person that was examined; and

(3) Adopt the sanctions included with the proposed examination report.

F. The hearing officer shall serve the default order directly on the parties by certified mail.

G. Within 15 days after service of a default order, the party in default may submit to the hearing officer a written motion:

(1) Requesting that the default order be vacated or modified; and

(2) Stating the grounds for the request.

H. If the hearing officer finds that there is:

(1) Good cause to excuse the default, the hearing officer may:

(a) Vacate or modify the default order, and

(b) Schedule the case for further appropriate proceedings; or

(2) Not good cause to excuse the default, the Commissioner shall:

(a) Deny the motion, and

(b) Affirm the default order as the final order.

.10-1 Exceptions.

A. Scope. This regulation applies to a contested case where the Office has been delegated authority to issue proposed findings of fact, proposed conclusions of law, or a proposed order.

B. On receipt of a decision that contains proposed findings of fact, proposed conclusions of law, or a proposed order, the parties affected have:

(1) 20 days after receipt to file exceptions to the proposed findings of fact, proposed conclusions of law, or proposed order with the Commissioner; or

(2) 10 days to:

(a) File a written request for a transcript with the Commissioner in order to file exceptions; or

(b) File with the Commissioner a copy of that party's written request to its private stenographer for the party's preparation of a transcript based on its own record of the testimony in order to file exceptions.

C. Receipt under §B of this regulation is presumed to occur 3 days after the mailing of the proposed findings of fact, proposed conclusions of law, or a proposed order.

D. Filing Exceptions After Receipt of Transcript.

(1) If a party requests a transcript under §B(2) of this regulation, the party shall have 30 days after the filing of the transcript to file exceptions with the Commissioner.

(2) Unless extended by order of the Commissioner, the party requesting the transcript shall file the transcript with the Commissioner within 60 days after the date on which the transcript was requested.

E. Exceptions shall be in writing unless specified otherwise by the final decision maker.

F. If a party elects not to file exceptions, another party may not raise the defense of failure to exhaust this administrative remedy on appeal to circuit court.

G. The record before the Commissioner for the exceptions shall consist of:

(1) The administrative law judge's findings and conclusions, including the findings of fact, conclusions of law, and proposed order;

(2) Any exceptions filed by a party;

(3) Any response to exceptions filed by a party;

(4) Any evidence submitted by a party;

(5) Notice to the parties of the hearing;

(6) Any documentary evidence admitted into evidence by the administrative law judge;
and

(7) The transcript of the hearing before the administrative law judge, if requested and filed by one of the parties or the Commissioner.

H. Transcripts.

(1) A party who desires to have the transcript made part of the record shall, at the party's own expense, file three copies of the transcript, or its relevant portions, with the Commissioner on receipt of the transcript.

(2) If a transcript has already been prepared, the Commissioner shall make the transcript part of the record in the contested case.

(3) If a transcript is prepared based on the Office's record of the testimony and a transcript is prepared based on a party's own record of the testimony, the transcript based on the Office's record of the testimony is:

(a) The official transcript; and

(b) Controlling in the event of any conflict between the two transcripts.

(4) If the transcript is not filed or otherwise made part of the record in the contested case, parties may not refer in their exceptions to any testimony before the administrative law judge not incorporated into the administrative law judge's findings and conclusions.

(5) If all parties agree that the questions presented for review to the final decision maker can be determined without an examination of the entire transcript, the parties may file a statement showing how the questions arose and setting forth the facts or allegations that are essential to a determination of those issues.

.10-2 Final Order following Proposed Decision.

A. Scope. This regulation applies to a contested case where the Office has been delegated authority to issue proposed findings of fact, proposed conclusions of law, or a proposed order.

B. Issuance. After consideration of the administrative law judge's proposed findings of fact, proposed conclusions of law, or proposed order, and any exceptions filed by the parties, the Commissioner shall issue a final order or a remand order.

C. Effect of Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order. In reviewing the administrative law judge's proposed findings of fact, proposed conclusions of law, or proposed order, the Commissioner is:

(1) Bound by the findings of fact that are supported by competent, material, and substantial evidence; and

(2) Not bound by any legal analysis, proposed conclusions of law, or proposed order.

D. Types of Action by the Commissioner. The Commissioner may affirm, reverse, or modify the proposed findings of fact, proposed conclusions of law, or proposed order, or remand the case to the Office for further proceedings by setting forth, with particularity, the basis for the Commissioner's reversal, modification, or remand.

E. Procedure When Case Remanded. If the Commissioner remands the case for further proceedings, the Commissioner may:

(1) Refer the case back to the Office; or

(2) Retain the case to be heard by the Commissioner.

F. Rehearing. The Commissioner may, on the Commissioner's own motion, hold a rehearing.

G. Service of Order. The Commissioner shall serve a copy of the final order or remand order on the parties, the parties' attorneys of record, and the Office by first-class mail.

H. Effect of Summary Affirmance.

(1) If the Commissioner issues a final order that summarily affirms the proposed order of an administrative law judge without discussing the facts and legal issues and without expressly adopting the administrative law judge's legal analysis and proposed conclusions of law, neither the final order nor the proposed order is precedent within the rule of stare decisis.

(2) Notwithstanding §H(1) of this regulation, a final order of the Commissioner that summarily affirms the proposed order of an administrative law judge without discussing the facts and legal issues and without expressly adopting the administrative law judge's legal analysis and proposed conclusions of law may be cited and relied on in a proceeding before the Commissioner, the Office, or a court:

(a) When relevant under the doctrine of the law of the case, res judicata, or collateral estoppel; or

(b) In any subsequent disciplinary proceeding involving a party to the final order.

(3) Subject to Insurance Article, §2-215(g), Annotated Code of Maryland, if a party appeals from a final order of the Commissioner that summarily affirms the proposed order of an administrative law judge, in addition to filing the final order of the Commissioner with the court in which the appeal is pending, the Commissioner also shall file a copy of the proposed order of the administrative law judge.

.11 Relief Granted in the Final Order.

A. A licensee may not be subject to an administrative penalty or to the suspension or revocation of any certificate, license, registration, or special permit held by the licensee unless a notice of agency action under State Government Article, §10-207, Annotated Code of Maryland, is issued by the Administration to the licensee.

B. In the final order issued pursuant to a hearing arising out of a determination involving an administrative complaint, the hearing officer may order relief as appropriate under the relevant provisions of Health-General Article or Insurance Article, Annotated Code of Maryland.

C. A final order from a hearing arising out of a determination involving an administrative complaint that results in a finding against a licensee does not bar the Commissioner from subsequently issuing a notice of agency action against the licensee for the purpose of imposing an administrative penalty or suspending or revoking any certificate, license, registration, or special permit held by the licensee.

.12 Decisions.

The hearing officer shall sign the final order following a hearing. The final order is effective when issued, unless a different date is specified in the decision. A copy of the final order shall be filed with the Administration and served on all parties to the hearing.

.13 Rehearings.

A. A request for a rehearing shall be made in writing to:

- (1) The Commissioner in a contested case heard by the Administration;
- (2) The Commissioner in a contested case where the Office has been delegated authority to hear the contested case but the Commissioner has retained authority to issue the final order; or
- (3) The administrative law judge in a contested case where the Office has been delegated authority to issue a final order.

B. If the request is made:

- (1) Within 10 days after the issuance of the final order, the request may be granted by the Commissioner or administrative law judge for any reason;
- (2) More than 10 days after the issuance of the final order, the request may be granted only on a determination by the Commissioner or administrative law judge that the final order was a result of fraud, mistake, or inadvertence; or
- (3) More than 30 days after the issuance of the final order, the request may not be granted.

.14 Mistake or Error in the Final Order.

The Administration or the Office may correct an order if, upon review, the final order was issued as a result of fraud, mistake, or inadvertence or contains a clerical error.

Administrative History

Effective date: June 2, 1997 (24:11 Md. R. 793)

Regulation .03 amended as an emergency provision effective July 1, 1997 (24:17 Md. R. 1213); amended permanently effective November 17, 1997 (24:23 Md. R. 1610)

Regulation .08 amended as an emergency provision effective April 13, 1998 (25:10 Md. R. 742); emergency status expired October 10, 1998

Chapter recodified from COMAR 09.31.18 to COMAR 31.02.01, July 1998

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Regulation .05D amended effective October 10, 2005 (32:20 Md. R. 1657)

Regulation .05-1 adopted effective October 10, 2005 (32:20 Md. R. 1657)

Chapter revised effective May 8, 2006 (33:9 Md. R. 797)

Regulation .03C amended effective October 9, 2006 (33:20 Md. R. 1618)

Regulation .05 amended effective January 29, 2007 (34:2 Md. R. 139)