

REGULATION NO. 82-1 (REVISED)

**DEPARTMENT OF BANKING, INSURANCE, SECURITIES
AND HEALTH CARE ADMINISTRATION
HEARING PROCEDURES**

SECTION 1	Definitions
SECTION 2	Initiation of Proceedings in a Contested Case
SECTION 3	Appearances in Contested Cases
SECTION 4	Filing and Service of Documents in Contested Cases
SECTION 5	Answer to Contested Matters
SECTION 6	Intervention
SECTION 7	Proceedings Before a Hearing Officer
SECTION 8	Pre-hearing Conference
SECTION 9	Motions
SECTION 10	Evidence
SECTION 11	General Procedures for Hearings
SECTION 12	Default
SECTION 13	Ex Parte Orders
SECTION 14	Petitions for Rule-making
SECTION 15	Petitions for Declaratory Rulings
SECTION 16	Petition to Describe an Existing Practice
SECTION 17	Enlargement of Rules
SECTION 18	Conflict
SECTION 19	Severability
SECTION 20	Effective Date

Section 1. DEFINITIONS

(a) For the purposes of these rules:

1. "Department" means the Department of Banking, Insurance, Securities and Health Care Administration.
2. "Commissioner" means the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration or the Commissioner's designee.
3. "Formal rule making proceedings" are those proceedings required under 3 V.S.A. §§ 836-845 for the adoption of a rule or regulation by the Department.

4. "Licensee" means any person who is required to have a license or registration issued by the Commissioner.

5. The statutory definitions of "contested case", "license", "party", "person", "practice", "procedure" and "rule" set forth in 3 V.S.A. § 801 are hereby adopted and made a part of these rules.

(b) Words importing the singular number may extend to and be applied to more than one person or thing and words importing the plural number may be applied as if singular.

Section 2. INITIATION OF PROCEEDINGS IN A CONTESTED CASE

(a) The petition or other pleading initiating a contested case shall be signed by the Petitioner, his or her attorney or authorized agent and shall be filed with the Commissioner. All pleadings shall be drawn so as to fully and completely advise the Commissioner or Respondent(s) as to the order or relief sought, and shall include a statement of reasons and the legal authority on which the petition, charge or notice is based. Except when otherwise specifically required by statute or regulation, pleadings need not be verified or accompanied by an affidavit. The pleading shall contain an attorney's certificate, or an affidavit of a party or authorized agent, stating upon whom and the means by which the pleading has been served in accordance with Section 4(b) of this regulation.

(b) Where a statute provides an opportunity for a hearing if a hearing is requested by a licensee, the licensee's request for a hearing shall be considered the pleading which initiates the contested case.

(c) In the Commissioner's discretion, any written communication concerning a matter within the Commissioner's jurisdiction, may be treated as a pleading initiating a contested case.

(d) The contested case will be assigned a docket number by the Docket Clerk for the Department which shall appear on the first page of all pleadings and papers filed in the proceeding.

Section 3. APPEARANCES IN CONTESTED CASES

(a) Upon the filing of a pleading initiating a contested case, the name and address of the attorney or person who has signed the

pleading will be entered on the docket of the department.

(b) Any party to a contested case may appear for himself or herself or may be represented by an attorney admitted to practice in the State of Vermont. An attorney not admitted to practice in the State of Vermont may appear for a party with permission of the Commissioner. A party may also be represented by an authorized agent with permission of the Commissioner.

(c) All parties shall file a notice of appearance, in writing, indicating whether the party will be represented by an attorney(s), authorized agent(s), or whether the party will be appearing pro se. Said notices shall be filed with the Commissioner and served under Section 4 of this regulation at least 10 days prior to the hearing. When an authorized agent or attorney has entered an appearance for a party in a contested case, he or she shall remain as representative or counsel for the party until granted leave to withdraw by the Commissioner.

Section 4. FILING AND SERVICE OF DOCUMENTS IN CONTESTED CASES

(a) Filing of pleadings, documents and papers in contested cases shall be deemed to occur when the pleading, document or paper is received by the Commissioner.

(b) Service of the initial pleading, charge, or notice upon each party entitled to be served shall be accomplished by delivery in person as set forth in subparagraph(d) below or by certified mail, return receipt requested, to the party's last known address except in cases where a different manner of service is required by law.

(c) All motions, pleadings and correspondence filed by a party subsequent to the initial pleading in a contested case shall be served upon all other parties in the case. Service made to or by an attorney or authorized agent shall be considered, in all respects, notice to or from the party represented by the attorney or authorized agent.

(d) Service of all motions, pleadings and correspondence upon an attorney, authorized agent, or party shall be made by delivering a copy to him or her, by mailing it to his or her last known address, or service by facsimile transmission. Delivery of a copy means handing it to the attorney, authorized agent, or party, or leaving it at his or her office with the person in charge thereof or leaving it at his or her dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Service by mail shall mean first-class mail or an equivalent

service through a mailing company, in a sealed and properly addressed and stamped envelope with the return address of the sender listed thereon. Service by mail is deemed complete upon placing the mail in a proper United States post office receptacle, a mailing company receptacle, or with a postal or mailing company agent.

Section 5. ANSWER TO CONTESTED MATTERS

(a) The Respondent shall file an answer to the petition or pleading which initiated the contested case. The Department need not file an answer where a contested case is initiated by a licensee's request for a hearing as provided in Section 2(b) of this regulation. The answer shall be filed within the time frame established by law or within 30 days of the date on which the charges were served in accordance with Section 4(b) of this regulation, whichever is shorter, and shall include the following.

(1) A response concerning the substance of each of the allegations in the pleading that initiated the contested case which are disputed by the Respondent. When the Respondent intends in good faith to deny only part of an allegation, he or she must specify the part of the allegation that is contested. Any allegation that is not contested may be deemed admitted.

(2) A brief statement of the legal and factual basis of any defense the Respondent intends to offer at the hearing.

(3) Whether the Respondent waives an oral hearing.

(b) If a Respondent does not file an answer within the time frame allowed under this regulation, the allegations contained in the pleading which initiated the contested case will be treated as proven and a default judgment may be entered in the case as provided in Section 12 of this regulation.

Section 6. INTERVENTION

(a) A petition for leave to intervene as a party shall be made by motion in accordance with Section 9 of this regulation. The motion must set forth the grounds of the proposed intervention, the position and interest of the Petitioner affected in the proceeding, and whether the Petitioner's position is in support of or opposition to the order or relief sought.

(b) The motion shall be filed and service made on all other parties in accordance with the requirements of Section 4 of this regulation.

(c) Where a motion for intervention as a party is granted by the Commissioner, the Commissioner may limit that party's participation in the proceedings to only those issues in which the party has demonstrated a direct and substantial interest, may require such party to join with other parties with respect to appearance by counsel, presentation of evidence or other matters, or may otherwise limit such party's participation, all as the interests of justice and economy of adjudication require.

Section 7. PROCEEDINGS BEFORE HEARING OFFICER

(a) Where the Commissioner designates a hearing officer to preside at an oral hearing or other proceeding, the hearing officer shall be authorized to administer oaths and do all other things necessary for the proper conduct of such hearing or proceedings.

(b) In proceedings before a hearing officer, after the time for filing requests for findings of fact and conclusions of law provided under Section 11(f) of this regulation has expired, or the opportunity to file has been waived by all parties, the hearing officer shall serve on all parties a written proposal for decision.

(c) Any party adversely affected by the proposal of decision of the hearing officer shall have 10 days from the date of service to file written exceptions, legal briefs and request oral argument before the Commissioner.

(d) The parties, by written stipulation, may waive the opportunity to file exceptions, legal briefs or request oral argument before the Commissioner.

Section 8. PRE-HEARING CONFERENCE

(a) The Commissioner or hearing officer may direct the parties to appear before him or her for one or more pre-hearing conferences to consider the following matters:

(1) simplification of the issues;

(2) the necessity or desirability of amendments or supplements to any filing;

(3) the possibility of obtaining stipulations of fact, documents and/or exhibits which will avoid unnecessary proof;

(4) to hear any motions that should appropriately be heard and ruled upon prior to the hearing;

(5) to establish a limitation on the number of expert or cumulative witnesses;

(6) any other matters that may aid in the disposition of the case.

(b) The Commissioner or hearing officer shall issue a written order which recites the action taken at the pre-hearing conference, including any agreements made by the parties. When entered, such order controls the subsequent course of the proceedings unless later modified in writing.

Section 9. MOTIONS

Parties may file written pre-hearing motions. Unless different dates are established by the pre-hearing order, all such motions shall be filed at least 15 days prior to the hearing and any opposition to a motion must be in writing and filed no later than 10 days after the motion is served.

Section 10. EVIDENCE

(a) The Commissioner or hearing officer may order any party intending to submit documentary exhibits and/or written testimony at a hearing to provide the opposing party with a copy of those document(s) and file the original(s) with the Commissioner within a specified time prior to the hearing. The Commissioner or hearing officer may also order a party to provide a summary of expected testimony prior to the hearing. The filing of documentary exhibits and/or written testimony shall not constitute admission of that evidence into the record of the contested case. The opposing party may object to the admission of the documentary exhibits and/or written testimony at the hearing. Documentary exhibits and written testimony which have not been pre-filed as required herein shall not be admitted into evidence except upon good cause shown. Impeachment exhibits need not be pre-filed.

(b) Parties have the obligation to make good faith efforts among themselves to stipulate to uncontested facts, to resolve or reduce all differences related to evidentiary and procedural matters, and to avoid the filing of unnecessary motions and other pleadings.

(c) The Commissioner or hearing officer may order the parties to exchange witness lists within a certain time period prior to the hearing.

(d) The admissibility of evidence in hearings conducted

pursuant to this regulation shall be determined in accordance with the criteria specified in 3 V.S.A. § 810(1)-(4).

Section 11. GENERAL PROCEDURES FOR HEARINGS

(a) When required by law, an oral hearing shall be held in a contested case and the Commissioner or hearing officer shall cause a time and place to be assigned for the hearing. Written notice of the hearing shall be served on each party.

(b) A hearing may be waived in the discretion of the Commissioner: (1) in a formal rule-making proceeding, if no request to be heard is made at least five days prior to the hearing date in accordance with 3 V.S.A. §840(a) and the Petitioner, if any, waives the hearing; and (2) in any other proceeding if all the parties to that proceeding file written waivers of the opportunity for a hearing.

(c) Attorneys and authorized agents representing parties in a contested case shall be afforded the ability to participate fully, within the limits of their profession, in any hearing before the Commissioner. Every party shall have the right to participate fully in a hearing.

(d) A witness shall be administered an oath or a affirmation before testifying. The testimony of a witness on direct examination may be offered in written form, either by having it read into the record or by offering it for incorporation in the record without reading, provided all parties stipulate to its admission.

(e) A hearing, or any part thereof, shall be transcribed at the request of a party and upon payment by the requesting party of the reasonable costs thereof.

(f) Legal briefs and requests for findings of fact and conclusions of law, if any, shall be filed within 20 days after the hearing. If a hearing has been waived in accordance with paragraph (b) of this section, legal briefs and requests for findings of fact and conclusions of law, if any, shall be filed within 20 days after the date originally set for the hearing. The parties may also waive, in writing or on the record, the opportunity to file legal briefs and requests for findings of fact and conclusions of law.

Section 12. DEFAULT

Where a Respondent, against whom a pleading initiating a contested case has been properly filed and served, fails to answer within the time period specified in Section 5(a), fails to appear at a scheduled hearing or otherwise fails to defend the charge, the Petitioner may move for a decision by default. The Commissioner or hearing officer may render a decision by default at any time after passage of ten days from the filing and service of the motion for default, whereupon the Commissioner may issue any applicable order.

Section 13. EX PARTE ORDERS

(a) Where the Commissioner is authorized by law to issue a cease and desist or other injunctive order, including an order suspending a license, he or she may do so without written or oral notice to the Respondent. A request for an ex parte order shall be in the form of a written pleading. Unless a different standard is provided by law, the Commissioner may only issue an ex parte order effecting the revocation, suspension, annulment, or withdrawal of a license if he or she finds that the public health, safety or welfare imperatively requires emergency action before a hearing can be held upon proper notice.

(b) Where a cease and desist or other injunctive order is issued without notice, the Respondent shall be notified of the right to a hearing at the time such cease and desist or other injunctive order is issued. Unless otherwise specified by law, such hearing shall be held within thirty days of receipt by the Department of the Respondent's request for hearing and a decision shall rendered within sixty days after the conclusion of the hearing. The Commissioner may enlarge the time to hold the hearing or render a decision upon a showing of good cause.

Section 14. PETITIONS FOR RULE-MAKING

(a) Petitions for the adoption, amendment, or repeal of any rule or regulation will be entertained by the Commissioner in accordance with 3 V.S.A. §806. Any such petition shall be filed with the Commissioner in accordance with the requirements of Section 2(a) of this regulation. The petition will be considered informally and, within 30 days after the filing of the petition, the Commissioner shall either deny the petition stating the reasons for the denial in writing or shall initiate formal rulemaking proceedings.

(b) When requested by twenty-five (25) or more persons or by the legislative committee on administrative rules, the Commissioner shall initiate formal rulemaking proceedings to adopt an existing

practice or procedure as a rule or regulation.

Section 15. PETITIONS FOR DECLARATORY RULINGS

Pursuant to 3 V.S.A. § 808, an interested person may petition the Commissioner for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the Commissioner. Any such petition shall be filed with the Commissioner in accordance with the requirements of Section 2(a) of this regulation. The petition shall identify the statute, rule or order involved, shall state specific facts to which the statute, rule or order is sought to be applied and shall be accompanied by a legal brief addressing any issue of law which the Petitioner desires the Commissioner to consider. Petitions for declaratory rulings under this section will be considered informally.

Section 16. PETITION TO DESCRIBE AN EXISTING PRACTICE

Pursuant to 3 V.S.A. §831(b), an interested person may petition the Commissioner to provide a description of an existing practice of the Department. Any such petition shall be filed with the Commissioner in accordance with the requirements of Section 2(a) of this regulation. The petition shall be considered informally by the Commissioner.

Section 17. ENLARGEMENT OF RULES

The Commissioner may take a case out of these rules when, in his or her opinion, the interest of justice requires, except where precluded by statute.

Section 18. CONFLICT

In the event that this regulation or any section herein conflicts with Vermont statute, Vermont statute shall govern.

Section 19. SEVERABILITY

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provisions to other persons or circumstances shall not be affected thereby.

Section 20. EFFECTIVE DATE

This regulation shall be effective May 1, 2000.