

TRI-TOWN EMS

ADMINISTRATIVE HEARINGS PROCEDURES

Presiding Officer.

(a) Hearings on the merits shall be before a quorum of the board, the Chairman shall serve as the presiding officer unless designates another person to serve as the presiding officer.

(b) The presiding officer shall, as necessary:

- (1) Regulate and control the course of the hearing;
- (2) Administer oaths and affirmations;
- (3) Receive relevant evidence and exclude irrelevant, immaterial, unduly repetitious or otherwise inadmissible evidence;
- (4) Issue the board's rulings on procedural matters;
- (5) Question anyone who testifies or presents argument to the extent required to make a full and fair record;
- (6) Arrange for recording the hearing.
- (8) Arrange for the scheduling and structuring of such conferences and hearings as may be necessary to advance the proceeding or resolve matters or issues related to the proceeding;
- (9) Take official notice of facts that are common knowledge; and

(10) Take any other action consistent with applicable statutes, rules and case law that is necessary to conduct the hearing, advance the proceeding, resolve matters or issues related to the proceeding and complete the record in a fair and timely manner.

Disqualification of Board Members

Disqualification of members of the Board of Directors shall conform to the provisions of RSA 43:5, 43:6, 43:7 and 43:8 generally. If a member or members are disqualified they will be replaced a member of the Board of Selectmen from the jurisdiction of the person disqualified is appointed from.

Communication with the Board. Except at proceedings convened by the board, no party, party's representative, intervenor or intervenor's representative shall communicate with any member of the board, either directly or indirectly, on any issue that is or will likely be before the board.

(a) Except as otherwise provided by this chapter, filing with the board may be accomplished either by personal service to the chairman of the board or by any of the following methods addressed to the chairman of the board:

(1) First class mail, certified mail, registered mail, express mail or other form of specialized priority postal delivery;

(2) Messenger mail; or

(3) Facsimile or electronic submission (email).

(b) Filings with the board shall not be deemed timely unless:

(1) In the case of a filing made solely by way of first class mail, certified mail, registered mail, express mail or other form of specialized priority postal delivery, all material is received by the chairman of the board within the time fixed by rule or law; or

(2) In the case of an electronic or facsimile submission, the chairman of the board receives the electronic or facsimile version of all materials within the time fixed by rule or law.

(c) If a filing is made by means of facsimile or electronic submission, the person making the filing shall, at or before the time that the facsimile or electronic submission is made to the chairman of the board, and within the time fixed by rule or law:

(1) Forward all materials so submitted to all other parties in the matter or their representatives by electronic or facsimile transmission, whichever method was used, if the e-mail address or facsimile number of the party or representative is known; and

(2) Forward the required number of hard copies (7) to the board and to the other parties in the matter or their representatives.

(d) In the case of parties or representatives who do not have the capability to receive an electronic or facsimile submission, or for whom no e-mail address or fax number is known, electronic or facsimile submissions made to the board shall be forwarded to the party or representative by one of the methods specified in (a) (1) through (3) above, at or before the time of filing with the board and within the time fixed by rule or law.

(e) Parties and other persons making a filing with the board shall file an original and 6 additional hard copies of any motion, pleading or document associated with an appeal or other request directed to the board, regardless of whether an electronic or facsimile version of the motion, pleading or document is also submitted.

(f) At or before the time of filing, one copy of all papers filed by any party to an appeal shall be served by the party or that party's representative on all other parties to the appeal. Service on a party represented by another shall be made on such representative.

(g) Except as otherwise provided in this chapter, service on a party may be personal, or by any form of service allowed under (a) (1) through (3) above. For the purposes of this rule:

(1) Personal service on a party shall include delivery of the copy to the secretary or other responsible person at the office of an entity's representative;

(2) Service on a party by first class mail, registered mail, certified mail, express mail, other form of specialized priority postal delivery or messenger mail shall be deemed complete on mailing as demonstrated by postmark or certificate of service;

(3) Service on a party by way of electronic or facsimile submission shall be deemed complete upon receipt of the electronic or facsimile version of all materials at a party's e-mail address or fax number, whichever is used;

(4) Service on a representative of a party shall be deemed service on the individual or entity represented.

(h) In the case of electronic or facsimile service on another party or its representative, the person making the service shall, at or before the time that the electronic or facsimile service is made and prior to any time fixed by rule or law:

(1) Electronically forward, or forward by facsimile transmission, whichever method was used, all materials so served to all other parties in the matter or their representatives; and

(2) Forward a hard copy of all materials to all other parties to the matter or their representatives.

(i) In the case of parties or representatives who do not have the capability of receiving an electronic or facsimile submission, or for whom no e-mail address or fax number is known, service shall be by one of the methods specified in (a) (1) through (3) above, within the time fixed by rule or law.

(j) Delivery of all documents relating to a proceeding shall be made to the last address given by that party or intervenor to the board.

Right to a Public Hearing. Parties to an appeal shall have the right to be heard publicly in accordance with these rules and the procedures provided for in RSA 91-A.

Presumption. All tapes, transcripts, exhibits, decisions, motions and other portions of the record of any appeal shall be available for examination by the public unless the board determines that some or all of that material is exempt from disclosure under RSA 91-A: 5, other applicable federal or state law, or applicable case law.

Appearances, Representation and Conduct Before Board.

(a) Any party to an appeal may appear with or without legal counsel or union representative (when applicable).

(b) At least 5 working days before the date of any hearing or pre-hearing conference, a party or the party's representative shall file with the board and with the other party(s) to, or intervenor(s) in, the appeal, or with the party(s) or intervenor(s) representative(s), an appearance that includes the following information:

(1) A brief identification of the matter;

(2) A statement as to whether or not the representative is an attorney and if so, whether the attorney is licensed to practice in New Hampshire;

(3) The party or intervenor's daytime address, telephone number, fax number and e-mail address, if any; and

(4) The daytime address, telephone number, fax number and e-mail address, if any, of the representative of the party or intervenor's representative, if any.

(c) The board shall exclude a representative who refuses to file an appearance or whose behavior impedes the progress of the hearing.

(d) Parties, intervenors and representatives of parties or intervenors shall treat the process and all other participants, including members of the board, witnesses, parties, intervenors and representatives, with respect and fairness.

(e) Parties, intervenors and representatives shall not:

(1) Personally, or through another person, knowingly make a false or misleading statement of material fact or law;

(2) Personally, or through another, knowingly conceal, destroy or preclude or delay access to evidence which is relevant to the proceeding;

(3) Knowingly attempt to introduce evidence which is not relevant to, or admissible in, the proceeding;

(4) Attempt to influence the board or its members on an ex parte basis;

(5) Engage in disruptive behavior during the course of a proceeding, including but not limited to:

a. Making frivolous claims or motions;

b. Using tactics that have no purpose other than to embarrass, burden or offend any participant;

c. Speaking or acting in a manner that is abusive to other persons or disruptive to the proceeding; or

d. Attempting to delay the proceedings solely for the sake of delay.

Exchange of Information Generally.

(a) To the extent possible, parties shall make complete and timely responses to the other party's request for information pertinent to the appeal.

(b) Where a dispute between the parties exists with respect to production of facts or documents pertinent to the appeal, either party may file with the board a motion for discovery.

Attendance by Parties at Hearings.

(a) Absent a showing of good cause as set forth below, failure of an appellant to appear personally for any scheduled hearing on the merits shall result in dismissal of the appeal.

(b) Absent a showing of good cause as set forth below, failure of an appellee to appear for any scheduled hearing on the merits shall result in a decision on the appeal based on the pleadings submitted and the evidence admitted as of the time of the hearing.

(c) Good cause shall include circumstances which are beyond the control of the party and prevent that party's appearance as scheduled, such as accident or illness.

Evidence.

(a) Receipt of evidence shall be governed by the provisions of RSA 541-A: 33.

541-A:33 Evidence; Official Notice in Contested Cases. –

I. All testimony of parties and witnesses shall be made under oath or affirmation administered by the presiding officer.

II. The rules of evidence shall not apply in adjudicative proceedings. Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidence offered may be made and shall be noted in the record. Subject to the foregoing requirements, any part of the evidence may be received in written form if the interests of the parties will not thereby be prejudiced substantially.

III. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

IV. A party may conduct cross-examinations required for a full and true disclosure of the facts.

V. Official notice may be taken of any one or more of the following:

(a) Any fact which could be judicially noticed in the courts of this state.

(b) The record of other proceedings before the agency.

(c) Generally recognized technical or scientific facts within the agency's specialized knowledge.

(d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

VI. Parties shall be notified either before or during the hearing or by reference in preliminary

reports or otherwise of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of

(b) The board shall give effect to the rules of privilege recognized by the laws of the state of New Hampshire, such as the lawyer-client privilege, husband-wife privilege, or doctor-patient privilege. However, a party who voluntarily discloses otherwise privileged information, or who has otherwise disclosed that information, shall be deemed to have waived that privilege.

(c) The board shall exclude any evidence that is irrelevant, immaterial, or unduly repetitious.

(d) When parties are permitted to present live witness testimony, the board shall permit such direct and cross-examination as the board concludes is necessary for a full and fair disclosure of the facts.

(e) The parties may produce and submit agreed upon statements of fact at any time prior to the close of the record of a hearing.

(f) The board shall admit into the record all exhibits jointly filed, or offered without objection, where no disagreement exists between the parties with respect to the admissibility or authenticity of the exhibits being offered. Such exhibits shall be pre-marked and submitted in an original and 6 additional hard copies to the board's chairman prior to the hearing for inclusion in the record.

(g) A party who wishes to introduce document(s) into evidence shall present that evidence to the board in an original and 6 additional hard copies.

Oaths or Affirmations.

(a) The presiding officer shall administer an oath or affirmation to a witness prior to receiving testimony.

(b) The presiding officer shall administer an oath or affirmation to any interpreters to accurately and completely translate all questions put and answers given, to the best of their ability.

(c) Once an oath or affirmation has been administered, it shall not be necessary to readminister the oath or affirmation for subsequent testimony on the same day in the same case.

Limiting Witnesses.

(a) The board shall limit the number of witnesses, or the time for testimony upon a particular issue in the course of any hearing, when required to avoid irrelevant, immaterial or unduly repetitious evidence.

(b) When parties or intervenors are permitted to offer live witness testimony, the testimony of such witnesses shall be scheduled in such a manner so as not to interfere with Service operations.

Sequestering of Witnesses. Either party may move to have the witnesses sequestered. However, the appointing authority, the appointing authority's designee, and the employee and the director, if a party to the appeal, shall not be sequestered even if they are expected to testify.

Additional Evidence. If at any time before the close of the record the board determines that it has insufficient evidence to fairly decide the appeal, the board, upon its own motion or if the board agrees with the motion of a party or intervenor, shall vote to compel the production of additional evidence including the testimony of witnesses or additional witnesses.

Opening and Closing Statements.

(a) If the board concludes that opening statements would be beneficial to its understanding of the case, the board shall permit each party to make a brief opening statement before presenting the evidence in its case in chief.

(b) If the board concludes that closing statements would be beneficial to its understanding of the case, the board shall permit each party to make a brief closing statement at the conclusion of the hearing.

(c) In disciplinary appeals, the appellant shall make its closing statement, if any, last.

(d) Neither party shall be required to present an opening statement or a closing statement unless the board requests that the party do so for the reasons set forth in (a) or (b) above.

Order of Presentation and Review of Cases.

In disciplinary appeals, appeals of non-selection to a vacancy, and conflict of interest appeals the Director shall present his/her evidence first. At the conclusion of the Director's case in chief, the appellant shall present its evidence.

In disciplinary appeals, including termination, disciplinary demotion, suspension without pay, withholding of an employee's annual increment or issuance of a written warning, the board shall determine if the appellant proves by a preponderance of the evidence that:

- (1) The disciplinary action was unlawful;
- (2) The director or appointing authority violated the rules of the Service by imposing the disciplinary action under appeal;
- (3) The disciplinary action was unwarranted by the alleged conduct or failure to meet the work standard in light of the facts in evidence; or
- (4) The disciplinary action was unjust in light of the facts in evidence.

Decisions.

- (a) The board shall issue final decisions on all appeals within 45 days of the close of evidence.
- (b) If the board determines that it requires additional time for the proper consideration or determination of the facts or issues involved, it shall notify the parties to the appeal of the reasons for the delay and shall provide an estimate to the parties of the additional time required.
- (c) In accordance with RSA 43:4, final decisions of the board shall be in writing or stated on the record.

Notice of Hearing

Hearings shall be noticed in accordance with the provisions of RSA 43:2 and posted in accordance with the provisions of RSA 43:3.