

## PART II. GENERAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

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### Authority

The provisions of this Part II issued under section 506 of The Administrative Code of 1929 (71 P. S. § 186); section 35 of the Administrative Agency Law (71 P. S. § 1710.35) (Repealed); and 45 Pa.C.S. §§ 503, 701 and 723, unless otherwise noted.

### Source

The provisions of this Part II adopted by JCD Order No. 9, dated April 20, 1971, 1 Pa.B. 1179, unless otherwise noted.

### Notes of Decisions

#### *Application*

When the Department of State takes disciplinary action against a veterinarian's license by issuing an order to show cause, the procedure that it follows is governed by the Administrative Agency Law and the General Rules of Administrative Practice and Procedure. The General Rules of Administrative Practice and Procedure permit the State Board of Veterinary Medicine (Board) to preside over a disciplinary hearing or to designate a presiding officer to hold the hearing and to issue a proposed report for the Board's review. The ultimate decision on what, if any, action to take lies with the Board; the Board may hold an additional hearing, make new findings of fact, alter the sanctions recommended, reject the proposed report in its entirety or adopt the hearing examiner's proposed report and order without alteration. There is no requirement that the Board provide a licensed veterinarian with a hearing in which the licensed veterinarian may directly address the full Board prior to the imposition of sanctions. *Hammad v. Bureau of Prof'l & Occupational Affairs, State Bd. of Veterinary Med.*, 124 A.3d 374 (Pa. Cmwlth. 2015); appeal denied 131 A.3d 493 (Pa. 2016).

The rules for appeals before the Environmental Hearing Board are found in 25 Pa. Code Chapter 1021. The Board is not a Rules of Civil Procedure venue and although pleadings may be liberally amended under the Rules of Civil Procedure, that is not the case for Notices of Appeal before the Board. *United Refining Co. v. Department of Environmental Protection*, 1995 EHB 1264.

Since the Department of Public Welfare did not promulgate an express regulation either permitting or prohibiting extension of time, for good cause shown, to file a final cost report, reference to the general rules of administrative practice and procedure should have been made. *Department of Public Welfare v. Overlook Medical Clinic, Inc.*, 544 A.2d 935 (Pa. Cmwlth. 1988).

When an agency has not adopted its own regulations, its practice and procedures are governed by the General Rules of Administrative Practice and Procedure. *Celane v. Insurance Commissioner*, 415 A.2d 130 (Pa. Cmwlth. 1980).

Because the Securities Commission had not adopted its own regulations, its practice and procedure was governed by the General Rules. *Pioneer Finance Co. v. Securities Commission*, 332 A.2d 565 (Pa. Cmwlth. 1975).

#### *Construction; Overlapping Agencies*

In a proceeding involving a subject over which two licensing boards have overlapping jurisdiction, even though one board interprets the other's act in a manner inconsistent with other board, the interpretation will be given deference so long as it is consistent with the legislative intent of the General Assembly. *Younkin v. State Real Estate Commission*, 774 A.2d 1281 (Pa. Cmwlth. 2001).

#### *Hearings*

The insurance broker was not entitled to a hearing, before the Insurance Commission denied its licenses to represent new insurance carriers for lack of worthiness. The same broker was not entitled to a hearing before the Insurance Department placed a "hold" on the licensee's application, as there was no property right in the licenses and such "hold" was determined not to be a final order or determination, however, once the Department's investigation into the licensee application was completed,

it would have a nondiscretionary duty to issue a decision. *Stone and Edwards Ins. Agency, Inc. v. Insurance Department*, 636 A.2d 293 (Pa. Cmwlth. 1994).

It is too plain for argument that due process requires an express and unequivocal notice in order for a hearing to be meaningful. *R.P. v. Department of Public Welfare*, 820 A.2d 882, 888 (Pa. Cmwlth. 2003).

#### *Parties*

Class actions are unnecessary in the administrative setting and unauthorized by the applicable law, since the General Rules of Practice and Procedure deal with the problem of similarly situated parties and no evidence indicates that the mechanisms provided therein are inadequate. *Sullivan v. Insurance Department*, 408 A.2d 1174 (Pa. Cmwlth. 1979).

Neither party status nor traditional aggrievement is necessary to challenge actions of an administrative agency; standing to appeal administrative decisions extends to persons, including nonparties, who have a direct interest in the subject matter, as distinguished from a direct, immediate, and substantial interest. *Gambling Subsidies v. Gaming Control Board*, 916 A.2d 624, 628 (Pa. 2007).

#### *Prosecution*

The agency's "walls of division" were adequately separated to avoid the commingling of any prosecutorial and adjudicatory functions in that the Insurance Commission delegated all prosecutorial functions to the Deputy Commissioner-Enforcement who, in implementing the Uniform Insurance Practice Act, had no interaction with the office of the Commission nor the office of the Administrative Hearings. *Stone and Edwards Ins. Agency, Inc. v. Insurance Department*, 636 A.2d 293 (Pa. Cmwlth. 1994).

#### *Substantial Evidence*

In a proceeding before a licensing board, "substantial evidence" is defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Younkin v. State Real Estate Commission*, 774 A.2d 1281 (Pa. Cmwlth. 2001).

#### **Cross References**

This part cited in 1 Pa. Code § 13.38 (relating to special rules of administrative practice and procedure); 4 Pa. Code § 39.12 (relating to criminal cases); 4 Pa. Code § 39.13 (relating to civil cases); 4 Pa. Code § 113.5 (relating to final application procedure); 4 Pa. Code § 153.1 (relating to applicability of general rules); 4 Pa. Code § 163.1 (relating to applicability of general rules); 4 Pa. Code § 175.1 (relating to applicability of general rules); 4 Pa. Code § 250.1 (relating to applicability of general rules); 4 Pa. Code § 250.14 (relating to notice); 6 Pa. Code § 3.1 (relating to purpose, scope and authority); 6 Pa. Code § 3.7 (relating to appointment of a hearing examiner); 6 Pa. Code § 11.292 (relating to written request for appeal); 6 Pa. Code § 15.82 (relating to rights of alleged abusers); 6 Pa. Code § 22.95 (relating to formal appeals and hearings); 6 Pa. Code § 22.104 (relating to the handling of appeals); 7 Pa. Code § 138e.42 (relating to review, certification and approval of a county program); 7 Pa. Code § 138e.92 (relating to review and decision); 10 Pa. Code § 42.5 (relating to disapproval of registration); 10 Pa. Code § 61.2 (relating to license applications, public notice, hearings and capital requirements); 10 Pa. Code § 604.011 (relating to filings of copies—by facsimile or otherwise—of submittals, pleadings and other nonoriginal documents—statement of policy); 10 Pa. Code § 901.011 (relating to applicability of general rules); 12 Pa. Code § 1.2 (relating to applicability of general rules); 12 Pa. Code § 11.1 (relating to purpose, scope and authority); 12 Pa. Code § 115.10 (relating to public hearings conducted by the Department); 12 Pa. Code § 143.14 (relating to hearings); 16 Pa. Code § 42.3 (relating to definitions); 16 Pa. Code § 44.3 (relating to enforcement); 16 Pa. Code § 45.3 (relating to enforcement); 16 Pa. Code § 91.1 (relating to applicability of general rules); 16 Pa. Code § 209.1 (relating to procedures on petition for appeal); 17 Pa. Code § 51.35 (relating to sanctions for violation by dealers); 19 Pa. Code § 13.1 (relating to applicability of general rules); 22 Pa. Code § 1.5 (relating to applicability of general rules before the Board); 22 Pa. Code § 1.6 (relating to applicability of general rules before the Department); 22 Pa. Code § 14.104 (relating to special education plans); 22 Pa. Code § 21.83 (relating to appeal); 22 Pa. Code § 40.57 (relating to appeals, hearings and notice); 22 Pa. Code § 73.188 (relating to hearings); 22 Pa. Code § 121.9 (relating to administrative loan collection review procedures); 22 Pa. Code § 121.10 (relating to administrative wage garnishment procedures for Federal loans); 22 Pa. Code § 201.1 (relating to applicability of general rules); 22 Pa. Code § 201.2a (relating to definitions); 22 Pa. Code § 233.109 (relating to methods of operation for Commission and committee meetings); 22 Pa. Code § 233.115 (relating to notice and hearings); 22 Pa. Code § 233.117 (relating to hearing procedures); 22 Pa. Code § 233.123 (relating to reinstatements); 22 Pa. Code § 251.19 (relating to hear-

ings and requests for presentations); 22 Pa. Code § 351.1 (relating to purpose and scope); 25 Pa. Code § 1.5 (relating to procedures); 25 Pa. Code § 72.58 (relating to Certification Board hearings and procedures); 25 Pa. Code § 965.7 (relating to second opinion project review); 25 Pa. Code § 977.61 (relating to dispute procedures); 25 Pa. Code § 1021.1 (relating to scope of chapter); 28 Pa. Code § 8.1 (relating to applicability of general rules); 28 Pa. Code § 101.122 (relating to conduct of proceedings); 28 Pa. Code § 205.4 (relating to building plans); 28 Pa. Code § 709.18 (relating to hearings); 28 Pa. Code § 711.18 (relating to hearings); 28 Pa. Code § 903.13 (relating to formal appeal); 28 Pa. Code § 1031.1 (relating to administrative and appellate procedure); 28 Pa. Code § 1109.1 (relating to applicability of general rules); 28 Pa. Code § 1109.2 (relating to scope and purpose); 31 Pa. Code § 37.47 (relating to revocation, suspension, nonrenewal of certificates and licenses); 31 Pa. Code § 56.1 (relating to applicability of general rules); 31 Pa. Code § 56.2 (relating to adjudication procedure); 31 Pa. Code § 59.7 (relating to appeal procedure); 31 Pa. Code § 61.6 (relating to appeal procedures); 31 Pa. Code § 67.6 (relating to appeals); 31 Pa. Code § 161.5 (relating to determination of reinsurer qualifications); 31 Pa. Code § 242.20 (relating to formal and informal complaints; procedure); 34 Pa. Code § 1.11 (relating to applicability of general rules); 34 Pa. Code § 3a.9 (relating to suspension or revocation of Pennsylvania inspector commission); 34 Pa. Code § 13.53 (relating to notice and hearing); 34 Pa. Code § 31.52 (relating to administration—general); 34 Pa. Code § 49.10 (relating to applicability of general rules); 34 Pa. Code § 60.9 (relating to applicability of general rules); 34 Pa. Code § 71.21 (relating to applicability of general rules); 34 Pa. Code § 111.2 (relating to applicability of general rules); 34 Pa. Code § 121.27 (relating to orders to show cause); 34 Pa. Code § 121.34 (relating to objections to assessments); 34 Pa. Code § 125.6 (relating to decision on application); 34 Pa. Code § 131.4 (relating to applicability of General Rules of Administrative Practice and Procedure); 34 Pa. Code § 201.1 (relating to applicability of general rules); 34 Pa. Code § 203.5 (relating to denial, suspension or revocation of certification or accreditation); 34 Pa. Code § 211.1 (relating to applicability of general rules); 34 Pa. Code § 213.1 (relating to applicability of general rules); 34 Pa. Code § 213.2 (relating to definitions); 34 Pa. Code § 221.1 (relating to applicability of general rules); 34 Pa. Code § 225.7 (relating to hearing); 34 Pa. Code § 317.2 (relating to trade secret claims); 34 Pa. Code § 321.5 (relating to hearings); 34 Pa. Code § 401.14 (relating to decertification or refusal to certify); 37 Pa. Code § 79.81 (relating to general rules of Administrative Practice and Procedure); 37 Pa. Code § 79.83 (relating to appointment of hearing examiner); 37 Pa. Code § 171.11 (relating to applicability of laws and rules); 37 Pa. Code § 197.2 (relating to applicability of general rules of practice and procedure); 37 Pa. Code § 197.11a (relating to motions and petitions); 37 Pa. Code § 203.101 (relating to scope); 37 Pa. Code § 407.31 (relating to applicability of general rules); 37 Pa. Code § 421.22 (relating to hearing procedure); 40 Pa. Code § 15.1 (relating to scope of chapter); 40 Pa. Code § 17.1 (relating to purpose); 43 Pa. Code § 5.34 (relating to appeals); 43 Pa. Code § 5.46 (relating to appeals); 43 Pa. Code § 7.10 (relating to appeals); 43 Pa. Code § 7.12 (relating to discipline and discharge); 49 Pa. Code § 1.1 (relating to applicability of general rules); 49 Pa. Code § 3.4 (relating to applicability of general rules); 49 Pa. Code § 5.2 (relating to applicability of general rules); 49 Pa. Code § 6.3 (relating to applicability of general rules); 49 Pa. Code § 6.51 (relating to certifying organizations); 49 Pa. Code § 6.56 (relating to petition to terminate approval as a certifying organization); 49 Pa. Code § 9.184 (relating to applicability of general rules); 49 Pa. Code § 9.204 (relating to applicability of general rules); 49 Pa. Code § 11.3 (relating to applicability of general rules); 49 Pa. Code § 15.2 (relating to Board proceedings and meetings); 49 Pa. Code § 16.2 (relating to rules governing Board activities and proceedings); 49 Pa. Code § 16.53 (relating to powers and duties of hearing examiners); 49 Pa. Code § 18.853 (relating to unprofessional and immoral conduct); 49 Pa. Code § 19.3 (relating to applicability of general rules); 49 Pa. Code § 20.2 (relating to applicability of general rules); 49 Pa. Code § 21.4 (relating to applicability of general rules); 49 Pa. Code § 21.146 (relating to applicability of general rules); 49 Pa. Code § 21.334 (relating to sources of continuing education); 49 Pa. Code § 23.2 (relating to applicability of general rules); 49 Pa. Code § 23.86 (relating to sources of continuing education hours); 49 Pa. Code § 25.3 (relating to applicability of general rules); 49 Pa. Code § 27.81 (relating to applicability of general rules); 49 Pa. Code § 29.3 (relating to applicability of general rules); 49 Pa. Code § 31.2 (relating to applicability of general rules); 49 Pa. Code § 33.2 (relating to applicability of general rules); 49 Pa. Code § 36.302 (relating to applicability of general rules); 49 Pa. Code § 36.303 (relating to application procedures); 49 Pa. Code § 37.2 (relating to rules governing board activities and proceedings); 49 Pa. Code § 39.21 (relating to applicability of general rules); 49 Pa. Code § 40.41 (relating to hearings relating to revocation or suspension of license); 49 Pa. Code § 41.2 (relating to applicability of general rules); 49 Pa. Code § 42.2 (relating to applicability of general rules); 49 Pa. Code § 47.2 (relating to applicability of general rules); 49 Pa. Code § 47.36 (relating to preapproved providers of continuing education courses and programs

for social workers and clinical social workers); 49 Pa. Code § 48.34 (relating to registration of continuing education providers who offer one course or program); 49 Pa. Code § 48.36 (relating to pre-approved providers of continuing education courses and programs for marriage and family therapists); 49 Pa. Code § 49.34 (relating to registration of continuing education providers who offer one course or program); 49 Pa. Code § 49.36 (relating to preapproved providers of continuing education courses and programs for professional counselors); 52 Pa. Code § 1.1 (relating to scope of subpart); 52 Pa. Code § 1001.2 (relating to scope of subpart and severability); 55 Pa. Code § 20.82 (relating to written request for appeal); 55 Pa. Code § 41.2 (relating to construction and application); 55 Pa. Code § 41.3 (relating to definitions); 55 Pa. Code § 1181.504 (relating to background); 55 Pa. Code § 1181.561 (relating to process to appeal adverse determinations in the preadmission screening program); 55 Pa. Code § 2380.12 (relating to appeals); 55 Pa. Code § 2390.12 (relating to appeals); 55 Pa. Code § 2600.12 (relating to appeals); 55 Pa. Code § 2800.12 (relating to appeals); 55 Pa. Code § 3130.82 (relating to appeals); 55 Pa. Code § 3270.12 (relating to appeals); 55 Pa. Code § 3280.12 (relating to appeals); 55 Pa. Code § 3290.13 (relating to appeals); 55 Pa. Code § 3490.106 (relating to hearings and appeals proceedings for reports received by ChildLine prior to July 1, 1995); 55 Pa. Code § 3490.106a (relating to hearings and appeals proceedings for indicated reports received by ChildLine after June 30, 1995); 55 Pa. Code § 3490.192 (relating to request for a hearing from a school employe for indicated reports of student abuse); 55 Pa. Code § 3680.14 (relating to appeals); 55 Pa. Code § 3700.72 (relating to foster family approval appeals); 55 Pa. Code § 3800.12 (relating to appeals); 55 Pa. Code § 4230.17 (relating to right of appeal); 55 Pa. Code § 5230.12 (relating to inspections and licenses); 55 Pa. Code § 6400.12 (relating to appeals); 55 Pa. Code § 6500.13 (relating to appeals); 58 Pa. Code § 1.3 (relating to applicability of general rules); 58 Pa. Code § 15.8 (relating to procedural rules; Commission review); 58 Pa. Code § 51.21 (relating to scope); 58 Pa. Code § 51.45 (relating to procedures); 58 Pa. Code § 71.7 (relating to triploid grass carp); 58 Pa. Code § 75.5 (relating to qualified surveyors for endangered and threatened species and their habitat); 58 Pa. Code § 93.13 (relating to issuing agents); 58 Pa. Code § 145.1 (relating to purpose and scope); 58 Pa. Code § 401a.3 (relating to definitions); 58 Pa. Code § 441a.7 (relating to licensing hearings for slot machine licenses); 58 Pa. Code § 491a.1 (relating to generally); 58 Pa. Code § 491a.8 (relating to hearings generally); 61 Pa. Code § 601.3 (relating to applicability of general provisions); 61 Pa. Code § 702.1 (relating to scope); 67 Pa. Code § 233.16 (relating to appeal); 67 Pa. Code § 425.15 (relating to appeals); 67 Pa. Code § 471.9 (relating to appeal); 67 Pa. Code § 473.16 (relating to appeal); 67 Pa. Code § 476.52 (relating to appeal); 67 Pa. Code § 491.2 (relating to definitions); 67 Pa. Code § 491.3 (relating to request for hearing); and 101 Pa. Code § 31.23 (relating to parties).

**CHAPTER 31. PRELIMINARY PROVISIONS**

| <b>Subchap.</b>                              | <b>Sec.</b>  |
|--|--------------|
| <b>A. GENERAL PROVISIONS .....</b>           | <b>31.1</b>  |
| <b>B. TIME .....</b>                         | <b>31.11</b> |
| <b>C. REPRESENTATION BEFORE AGENCY .....</b> | <b>31.21</b> |

**Subchapter A. GENERAL PROVISIONS**

| <b>Sec.</b> |                                       |
|-------------|---------------------------------------|
| 31.1.       | Scope of part.                        |
| 31.2.       | Liberal construction.                 |
| 31.3.       | Definitions.                          |
| 31.4.       | Information and special instructions. |
| 31.5.       | Communications and filings generally. |
| 31.6.       | Amendments to rules.                  |

**§ 31.1. Scope of part.**

(a) This part governs the practice and procedure before agencies of the Commonwealth except as otherwise provided in this section.

(b) This part is not applicable to a proceeding before an agency to the extent that the applicable statute governing or authorizing the proceeding sets forth inconsistent rules on the same subject.

(c) This part is not applicable to a proceeding before an agency to the extent that the agency has promulgated inconsistent regulations on the same subject.

**Source**

The provisions of this § 31.1 amended April 9, 1982, effective April 10, 1982, 12 Pa.B. 1173. Immediately preceding text appears at serial page (66685).

**Notes of Decisions***Applicability*

The Board's regulation at 37 Pa. Code § 73.1(a)(4) concerns second or subsequent appeals, and, therefore, is not inconsistent with the General Rules of Administrative Practice and Procedure at 1 Pa. Code § 35.241, which governs requests for reconsideration. Petitioner's request for reconsideration was under § 35.241 and was not barred. *Shaw v. Board of Probation and Parole*, 812 A.2d 769 (Pa. Cmwlth. 2002).

*Prosecution*

Since the State Board of Nursing initiated prosecution against the licensed practical nurse by having authorized its prosecutors to take formal action against the nurse, the Board appropriately delegated the hearing of the matter to a hearing examiner. *Stephens v. State Board of Nursing*, 657 A.2d 71 (Pa. Cmwlth. 1995), appeal denied, 664 A.2d 978 (Pa. 1995).

**Cross References**

This section cited in 4 Pa. Code § 153.1 (relating to applicability of general rules); 4 Pa. Code § 163.1 (relating to applicability of general rules); 4 Pa. Code § 175.1 (relating to applicability of general rules); 4 Pa. Code § 250.1 (relating to applicability of general rules); 10 Pa. Code § 901.011 (relating to applicability of general rules); 12 Pa. Code § 1.2 (relating to applicability of general rules); 16 Pa. Code § 42.1 (relating to applicability of general rules); 16 Pa. Code § 91.1 (relating to applicability of general rules); 16 Pa. Code § 209.1 (relating to procedures on petition for appeal); 19 Pa. Code § 13.1 (relating to applicability of general rules); 22 Pa. Code § 1.5 (relating to applicability of general rules before the Board); 22 Pa. Code § 1.6 (relating to applicability of general rules before the Department); 22 Pa. Code § 201.1 (relating to applicability of general rules); 25 Pa. Code § 1021.1 (relating to scope of chapter); 28 Pa. Code § 8.1 (relating to applicability of general rules); 28 Pa. Code § 903.13 (relating to formal appeal); 31 Pa. Code § 56.1 (relating to applicability of general rules); 31 Pa. Code § 242.20 (relating to formal and informal complaints; procedure); 34 Pa. Code § 1.11 (relating to applicability of general rules); 34 Pa. Code § 49.10 (relating to applicability of general rules); 34 Pa. Code § 60.9 (relating to applicability of general rules); 34 Pa. Code § 111.1 (relating to scope); 34 Pa. Code § 131.2 (relating to scope); 34 Pa. Code § 201.1 (relating to applicability of general rules); 34 Pa. Code § 211.1 (relating to applicability of general rules); 34 Pa. Code § 213.1 (relating to applicability of general rules); 34 Pa. Code § 221.1 (relating to applicability of general rules); 37 Pa. Code § 171.11 (relating to applicability of laws and rules); 37 Pa. Code § 197.2 (relating to applicability of general rules of practice and procedure); 37 Pa. Code § 203.101 (relating to scope); 49 Pa. Code § 1.1 (relating to applicability of general rules); 49

Pa. Code § 3.4 (relating to applicability of general rules); 49 Pa. Code § 5.2 (relating to applicability of general rules); 49 Pa. Code § 6.3 (relating to applicability of general rules); 49 Pa. Code § 11.3 (relating to applicability of general rules); 49 Pa. Code § 15.2 (relating to Board proceedings and meetings); 49 Pa. Code § 16.2 (relating to rules governing Board activities and proceedings); 49 Pa. Code § 19.3 (relating to applicability of general rules); 49 Pa. Code § 20.2 (relating to applicability of general rules); 49 Pa. Code § 21.4 (relating to applicability of general rules); 49 Pa. Code § 21.146 (relating to applicability of general rules); 49 Pa. Code § 23.2 (relating to applicability of general rules); 49 Pa. Code § 25.3 (relating to applicability of general rules); 49 Pa. Code § 27.81 (relating to applicability of general rules); 49 Pa. Code § 29.3 (relating to applicability of general rules); 49 Pa. Code § 31.2 (relating to applicability of general rules); 49 Pa. Code § 33.2 (relating to applicability of general rules); 49 Pa. Code § 36.302 (relating to applicability of general rules); 49 Pa. Code § 37.2 (relating to rules governing Board activities and proceedings); 49 Pa. Code § 39.21 (relating to applicability of general rules); 49 Pa. Code § 40.41 (relating to hearings relating to revocation or suspension of license); 49 Pa. Code § 41.2 (relating to applicability of general rules); 49 Pa. Code § 42.2 (relating to applicability of general rules); 49 Pa. Code § 47.2 (relating to applicability of general rules); 52 Pa. Code § 1001.2 (relating to scope of subpart and severability); 58 Pa. Code § 1.3 (relating to applicability of general rules); 58 Pa. Code § 15.8 (relating to procedural rules; Commission review); 58 Pa. Code § 51.21 (relating to scope); 61 Pa. Code § 601.3 (relating to applicability of general provisions); and 61 Pa. Code § 702.1 (relating to scope).

### § 31.2. Liberal construction.

This part shall be liberally construed to secure just, speedy and inexpensive determination of the issues presented.

#### Notes of Decisions

Regardless of the provision for liberality of construction of the rules of practice and procedure and provisions regarding inconsistency, the provisions of 1 Pa. Code § 31.11 explicitly provide that the date of filing is the date of receipt of the documents and not the mailing date. *Skyvue Terrace, Inc. v. Department of Public Welfare*, 482 A.2d 58 (Pa. Cmwlth. 1984).

#### Cross References

This section cited in 16 Pa. Code § 42.2 (relating to construction); 40 Pa. Code § 15.2 (relating to liberal construction); 34 Pa. Code § 131.1 (relating to purpose); 40 Pa. Code § 17.2 (relating to liberal construction); 52 Pa. Code § 1.2 (relating to liberal construction); 52 Pa. Code § 1001.3 (relating to liberal construction); 58 Pa. Code § 401a.2 (relating to construction); and 61 Pa. Code § 702.2 (relating to liberal construction).

### § 31.3. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

*Adjudication*—An order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of the parties to the proceeding in which the adjudication is made.

*Agency*—A department, departmental administration board or commission, officer, independent board or commission, authority or other agency of the Commonwealth now in existence or hereafter created, including—to the extent that it is an administrative agency within the meaning of PA. CONT. art. V,

§ 9—the Governor’s Office, but not including the Senate or House of Representatives of this Commonwealth or a court, political subdivision, municipal or other local authority, or an officer or agency of a court, political subdivision or local authority.

*Agency head*—The secretary of a department, a quorum of an authority or departmental administrative board or commission or independent board or commission, or another officer or group of officers whose action with respect to a matter pending before the agency exhausts opportunity for administrative review within the agency and constitutes the action of the administrative agency for the purposes of PA. CONT. art. V, § 9.

*Applicants*—In proceedings involving applications for permission or authorization which the agency may give under statutory or other authority delegated to it, the parties on whose behalf the applications are made.

*Complainants*—Persons who complain to the agency of an agency regulation or general order or anything done or omitted to be done in violation of the provisions of a statute or other delegated authority administered by the agency, or any orders, rules or regulations issued thereunder, or another alleged wrong over which the agency may have jurisdiction.

*Formal record*—The filings and submittals in a matter or proceeding, a notice or agency order initiating the matter or proceeding, and if a hearing is held, the following: the designation of the presiding officer, transcript of hearing, exhibits received in evidence, exhibits offered but not received in evidence, offers of proof, motions, stipulations, subpoenas, proofs of service, references to the agency head and determinations made by the agency head thereon, certifications to the agency head and anything else upon which action of the presiding officer or the agency head may be based; but not including a proposed testimony or exhibits not offered or received in evidence.

*Interveners*—Persons intervening or petitioning to intervene as provided by §§ 35.27—35.31, when admitted as a participant to a proceeding. Admission as an intervener may not be construed as recognition by the agency that the intervener has a direct interest in the proceeding or might be aggrieved by an order of the agency in the proceeding.

*Issue*—Includes to prescribe or promulgate.

*Matter or proceeding*—The elucidation of the relevant facts and applicable law, consideration thereof and action thereupon by the agency with respect to a particular subject within the jurisdiction of the agency, initiated by a filing or submittal or an agency notice or order.

*Notarial officer*—An officer authorized under § 35.148 (relating to officer before whom deposition is taken) to take depositions for use before an agency.

*Office of the agency*—The office of the secretary of the agency if the agency is a board, commission or authority; otherwise the office of the agency head.

*Participant*—A party, another person admitted by the agency to limited participation in a proceeding and staff counsel.

*Petitioners*—Persons seeking relief, not otherwise designated in this section.

*Pleading*—An application, complaint, petition, answer, protest, reply or other similar document filed in an adjudicatory proceeding.

*Presiding officer*—A member of the agency, or one or more trial examiners appointed according to law and designated, to preside at hearings or conferences, or other officers specially provided for and designated under statute to conduct specified classes of proceedings, but not including the agency head when sitting as such.

*Proof of service*—A certificate of service complying with § 33.36 (relating to form of certificate of service).

*Proposed report*—The written statement of the issues, the facts and the findings that a subordinate officer proposes the agency should make, with the reasons therefor, whether or not including a recommended order.

*Protestants*—Persons objecting on the ground of private or public interest to the approval of an application, petition, motion or other matter which the agency may have under consideration. Protestants desiring to become interveners in a proceeding before the agency shall file a petition for intervention as provided by §§ 35.27—35.31.

*Regulation*—Any provision of the *Pennsylvania Code*.

*Respondents*—Persons subject to a statute or other delegated authority administered by the agency, to whom an order or notice is issued by the agency instituting a proceeding or investigation on its own initiative or otherwise.

*Rules*—The provisions of this part.

*Staff counsel*—The counsel of the agency participating in a proceeding before the agency.

*Submittal*—An application, amendment, exhibit or other similar document filed in an ex parte or other nonadversary proceeding.

*Subordinate officer*—A presiding officer or other officer or employe of the agency, but not including the agency head.

#### Notes of Decisions

##### *Pleading*

Although petitioners who sought a declaratory judgment of a resolution of the CAT Fund Board were not required to exhaust remedies before the Insurance Commissioner under the Financial Responsibility Law, 75 Pa.C.S. §§ 1761—1769, they were required to follow the General Rules of Administrative Practice Procedures since the CAT Fund is a Commonwealth Agency. *Harleysville Mutual Insurance Co. v. Catastrophic Loss Trust Fund*, 515 A.2d 1039 (Pa. Cmwlth. 1986).

#### Cross References

This section cited in 6 Pa. Code § 3.2 (relating to definitions); 16 Pa. Code § 42.3 (relating to definitions); 25 Pa. Code § 1021.2 (relating to definitions); 28 Pa. Code § 1009.2 (relating to recognition process); 28 Pa. Code § 1011.4 (relating to denial, restriction or withdrawal of accreditation); 34 Pa. Code § 111.3 (relating to definitions); 34 Pa. Code § 131.5 (relating to definitions); 34 Pa. Code § 131.201 (relating to petitions); 37 Pa. Code § 197.1 (relating to definitions); 37 Pa. Code § 197.81 (relating to definitions); 40 Pa. Code § 15.3 (relating to definitions); 52 Pa. Code § 1.8



(relating to definitions); 52 Pa. Code § 1001.10 (relating to definitions); 55 Pa. Code § 41.3 (relating to definitions); 58 Pa. Code § 145.2 (relating to definitions); 58 Pa. Code § 491a.2 (relating to definitions); and 61 Pa. Code § 702.3 (relating to definitions).

#### **§ 31.4. Information and special instructions.**

Information as to procedure under this part, and instructions supplementing this part in special instances, will be furnished upon application to the agency at the office of the agency.

##### **Cross References**

This section cited in 19 Pa. Code § 13.2 (relating to information and special instructions); 34 Pa. Code § 111.2 (relating to applicability of General Rules of Administrative Practice and Procedure); 34 Pa. Code § 131.4 (relating to applicability of General Rules of Administrative Practice and Procedure); 52 Pa. Code § 1.3 (relating to information and special instructions); 52 Pa. Code § 1001.4 (relating to information and special instructions); and 61 Pa. Code § 702.4 (relating to filing generally).

#### **§ 31.5. Communications and filings generally.**

(a) Communications, submittals and pleadings should be addressed to the agency at the office of the agency unless otherwise specifically directed. Communication and filings should clearly designate the file number, docket number or similar identifying symbols, if any, employed by the agency, and should set forth a short title. The person communicating shall state his address, the party he represents and how response should be sent to him if not by first class mail.

(b) Submittals and pleadings, including documents filed under Chapter 35 (relating to formal proceedings) shall comply with Chapter 33 (relating to documentary filings) and the applicable provisions of this chapter.

(c) In a proceeding when upon inspection the agency is of the opinion that a submittal or pleading tendered for filing does not comply with this part and any applicable regulations of the agency or, if it is an application or similar document, does not sufficiently set forth required material or is otherwise insufficient, the agency may decline to accept the document for filing and may return it unfiled, or the agency may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(d) The agency may order any redundant, immaterial, impertinent or scandalous matter stricken from a document filed with it.

##### **Cross References**

This section cited in 1 Pa. Code § 33.61 (relating to applications for waiver of formal requirements); 16 Pa. Code § 42.12 (relating to caption); 19 Pa. Code § 13.3 (relating to communications and filings generally); 34 Pa. Code § 111.11 (relating to content and form); 34 Pa. Code § 111.32 (relating to form/content); 34 Pa. Code § 131.11 (relating to filing, service and proof of service); 34 Pa. Code § 131.21 (relating to identifying number); 34 Pa. Code § 131.36 (relating to joinder); 37 Pa. Code § 171.4 (relating to filing papers); 37 Pa. Code § 407.3 (relating to rejected applications review procedure); 37 Pa. Code § 407.12 (relating to reconsideration procedure); 37 Pa. Code § 421.21 (relating to reconsideration of adverse determination and request for hearing); 40 Pa. Code

§ 15.21 (relating to information and special instructions); 52 Pa. Code § 1.4 (relating to filing generally); 52 Pa. Code § 1001.6 (relating to filing generally); 58 Pa. Code § 495a.1 (relating to form of documentary filings generally); and 61 Pa. Code § 702.4 (relating to filing generally).

### § 31.6. Amendments to rules.

(a) The Joint Committee on Documents hereby retains continuing jurisdiction under 45 Pa.C.S. § 723(b) (relating to processing of deposited documents) to adopt the amendments and additions to this part as may be appropriate.

(b) An agency or other person may make application under § 35.18 (relating to petitions for issuance, amendment, waiver or repeal of regulations) for a general and permanent change in this part.

#### Cross References

This section cited in 25 Pa. Code § 1021.3 (relating to amendments to rules); 34 Pa. Code § 131.12 (relating to modification of time); 52 Pa. Code § 1.5 (relating to amendment to rules); 52 Pa. Code § 1001.7 (relating to amendment to rules); 55 Pa. Code § 41.4 (relating to amendments to regulation); and 61 Pa. Code § 702.1 (relating to scope).

### Subchapter B. TIME

Sec.

- 31.11. Timely filing required.
- 31.12. Computation of time.
- 31.13. Issuance of agency orders.
- 31.14. Effective dates of agency orders.
- 31.15. Extensions of time.

### § 31.11. Timely filing required.

Pleadings, submittals or other documents required or permitted to be filed under this part, the regulations of the agency or any other provision of law shall be received for filing at the office of the agency within the time limits, if any, for the filing. The date of receipt at the office of the agency and not the date of deposit in the mails is determinative.

#### Notes of Decisions

##### *Computation of Appeal*

Petition for reconsideration of an O.H.A. order revoking the petitioner's personal care home license, which was received 2 days subsequent to date of the 15 day appeal period, was untimely as the date upon which the Department of Public Welfare received the petition and not the post-marked date was the controlling date for the appeal time computation. *Colonial Manor Personal Care Boarding Home v. Department of Public Welfare*, 551 A.2d 347 (Pa. Cmwlth. 1988); appeal denied 574 A.2d 72 (Pa. 1990).

##### *Untimely Filing*

An automobile dealer's protest to a decision of the manufacturer to locate a competitor within the dealer's market area which was received by the agency beyond the 20 day appeal period was untimely, notwithstanding the fact it was mailed on the 20th day, because a document is deemed filed when it is received by the agency. *Bianchi Subaru v. State Board of Vehicle Manufacturers, Dealers and Salespersons*, 548 A.2d 708 (Pa. Cmwlth. 1988).

*Timeliness*

Teacher was ineligible for enhanced benefits in the Public School Employee's Retirement System because he failed to make required election by deadline; this section requires that the time of filing any document is the date it was received by the Board, not the date it was mailed. *Harasty v. Public Sch. Employees' Ret. Bd.*, 945 A.2d 783, 787, 788 (Pa. Cmwlth. 2008).

Because the case is otherwise easily disposed of on the merits, the court declined to consider application of the "prisoner mailbox rule" where the appeal was received 33 days after the date of mailing of the order from which the appeal was taken. *Price v. Board of Probation and Parole*, 781 A.2d 212 (Pa. Cmwlth. 2001).

**Cross References**

This section cited in 7 Pa. Code § 131.11 (relating to time); 12 Pa. Code § 11.3 (relating to timely filing); 16 Pa. Code § 42.14 (relating to time of filing); 34 Pa. Code § 111.3 (relating to definitions); 34 Pa. Code § 131.11 (relating to filing, service and proof of service); 34 Pa. Code § 131.12 (relating to modification of time); 37 Pa. Code § 197.4 (relating to filings); 52 Pa. Code § 1.11 (relating to date of filing); 52 Pa. Code § 1001.11 (relating to date of filing); 55 Pa. Code § 41.6 (relating to timely filing required); 58 Pa. Code § 145.4 (relating to time of filing); 58 Pa. Code § 497a.1 (relating to date of filing); 61 Pa. Code § 702.11 (relating to filing); and 61 Pa. Code § 703.2 (relating to petition content).

**§ 31.12. Computation of time.**

Except as otherwise provided by law, in computing a period of time prescribed or allowed by this part or by the regulations of the agency or another provision of law, the day of the act, event or default after 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 neither a Saturday, Sunday nor a holiday. A part-day holiday shall be considered as other days and not as a holiday. Intermediate Saturdays, Sundays and holidays shall be included in the computation.

**Notes of Decisions***Computation of Appeal*

When the last day of an appeal period is a Saturday, the period is extended to the next Monday. *Pioneer Finance Co. v. Securities Commission*, 332 A.2d 565 (Pa. Cmwlth. 1975).

*Holidays*

Where July 3, 1983 fell on a Sunday and the following day was a legal holiday, the time period for the filing of a request for a hearing was extended to July 5, 1983. *Getz v. Game Commission*, 475 A.2d 1369 (Pa. Cmwlth. 1984).

**Cross References**

This section cited in 10 Pa. Code § 3.16 (relating to computation of time); 34 Pa. Code § 131.15 (relating to computation of time); 37 Pa. Code § 171.5 (relating to computation of time); 37 Pa. Code § 197.7 (relating to computation of time); 52 Pa. Code § 1.12 (relating to computation of time); 52 Pa. Code § 1001.12 (relating to computation of time); 58 Pa. Code § 497a.2 (relating to computation of time); 61 Pa. Code § 702.12 (relating to computation of time); and 61 Pa. Code § 703.2 (relating to petition content).

**§ 31.13. Issuance of agency orders.**

(a) In computing a period of time involving the date of the issuance of an order by an agency, the day of issuance of an order shall be the day the office of the agency mails or delivers copies of the order to the parties, or if the delivery is not otherwise required by law, the day the agency makes the copies public.

Orders will not be made public prior to the mailing or delivery to the parties, except where, in the judgment of the agency, the public interest requires. The day of issuance of an order may or may not be the day of its adoption by the agency. In any event, the office of the agency shall clearly indicate on each order the date of its issuance.

(b) At the time a proposed report becomes effective as an adjudication of the agency in the absence of agency review as provided for by § 35.226(a)(3) (relating to final orders), the office of the agency will issue and serve upon the parties of record an appropriate notice of the date the adjudication became effective as an agency adjudication or order.

(c) The date of entry of an order which is subject to review by the Commonwealth Court is governed by 210 Pa. Code Rule 108 (relating to date of entry of orders). The date of issuance of any other order shall be deemed to be the date of entry thereof for the purposes of computing the time for appeal under an applicable statute relating to judicial review of agency action.

#### Source

The provisions of this § 31.13 amended through May 20, 1977, 7 Pa.B. 1308. Immediately preceding text appears at serial page (19280).

#### Notes of Decisions

##### *Computation of Appeal Period*

Commission's statutory 15-day period within which to request review of Administrative Law Judge's decision is computed from date decision is mailed or delivered, not from date of decision. *Metro Transportation Company v. Pennsylvania Public Utility Commission*, 525 A.2d 24 (Pa. Cmwlth. 1987).

In computing any period of time involving the date of the issuance of an order by an agency, the day of issuance shall be the day the office mails or delivers copies of the order to the parties. *Getz v. Game Commission*, 475 A.2d 1369 (Pa. Cmwlth. 1984).

##### *Date of Issuance*

The date of issuance of a ruling is the date it is mailed to the party so long as such is clearly indicated on the ruling itself. *Carol Lines, Inc. v. Pennsylvania Public Utility Commission*, 481 A.2d 990 (Pa. Cmwlth. 1984).

For the purpose of appeal from an order, the date of issuance, and therefore date of entry, is the day of mailing. *Pioneer Finance Co. v. Securities Commission*, 332 A.2d 565 (Pa. Cmwlth. 1975).

#### Cross References

This section cited in 12 Pa. Code § 11.4 (relating to entry of orders); 34 Pa. Code § 111.18 (relating to decisions of the Board); 34 Pa. Code § 131.11 (relating to filing, service and proof of service); 34 Pa. Code § 131.112 (relating to correction or amendment of decision); 52 Pa. Code § 1.13 (relating to issuance of Commission orders); 52 Pa. Code § 1001.13 (relating to issuance of Authority orders); 58 Pa. Code § 497a.3 (relating to issuance of Board orders); 61 Pa. Code § 703.2 (relating to petition content); and 61 Pa. Code § 703.31 (relating to disposition of petitions).

**§ 31.14. Effective dates of agency orders.**

(a) Orders of an agency promulgating regulations shall be effective upon publication in the *Pennsylvania Bulletin* unless otherwise specially provided in the order.

(b) All other orders of an agency shall be effective as of the dates of issuance thereof unless otherwise specially provided in the orders.

**Cross References**

This section cited in 12 Pa. Code § 11.4 (relating to entry of orders); 25 Pa. Code § 1021.11 (relating to effective dates of Board adjudications and preliminary orders); 34 Pa. Code § 111.18 (relating to decisions of the Board); 34 Pa. Code § 131.11 (relating to filing, service and proof of service); 34 Pa. Code § 131.112 (relating to correction or amendment of decision); 37 Pa. Code § 407.21 (relating to effect of application rejection); 52 Pa. Code § 1.14 (relating to effective dates of Commission orders); 52 Pa. Code § 1001.14 (relating to effective dates of Authority orders); 58 Pa. Code § 497a.4 (relating to effective dates of Board orders); 61 Pa. Code § 703.2 (relating to petition content); and 61 Pa. Code § 703.45 (relating to appeal rights).

**§ 31.15. Extensions of time.**

(a) Extensions of time shall be governed by the following:

(1) Except as otherwise provided by law, whenever by these rules or by a regulation or order of an agency, or a notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the agency head or the presiding officer, 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 be permitted to be done where reasonable grounds are shown for the failure to act.

(2) Requests for the extension of time in which to file briefs shall be filed at least 5 days before the time fixed for filing such briefs.

(b) Except as otherwise provided by law, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by these rules or a regulation or order of an agency, shall be by motion in writing, timely filed with the agency, stating the facts on which the application rests, except that during the course of a hearing in a proceeding, the requests may be made by oral motion in the hearing before the agency head or the presiding officer.

**Notes of Decisions**

Failure of hospital to recognize the date of a final appeal of an audit disallowance, based upon two letters and failure to call a given number should any questions arise, as well as, the failure to show fraud or a breakdown in the administrative process, precluded the hospital from receiving an extension for an appeal. *Friends Hospital v. Department of Public Welfare*, 551 A.2d 640 (Pa. Cmwlth. 1988).

Since the Department of Public Welfare did not promulgate an express regulation either permitting or prohibiting extension of time, for good cause shown, to file a final cost report, reference to this section should have been made. *Department of Public Welfare v. Overlook Medical Clinic, Inc.*, 544 A.2d 935 (Pa. Cmwlth. 1988).

Since the regulations of the *Pennsylvania Code* specifically provide for the discretionary granting of extensions and variances, the officials in whom the discretion rests are quasi-judicial or quasi-prosecutorial officers, and in absence of allegations of bad faith or corruption the officials are immune from criminal prosecution in granting extensions and variances, even though they were granted ex parte. *In re Dwyer*, 406 A.2d 1355 (Pa. 1979).

#### Cross References

This section cited in 1 Pa. Code § 35.49 (relating to amendments to conform to the evidence); 6 Pa. Code § 22.95 (relating to formal appeals and hearings); 22 Pa. Code § 121.10 (relating to administrative garnishment procedures for Federal loans); 25 Pa. Code § 1.5 (relating to procedures); 25 Pa. Code § 1021.12 (relating to extensions of time); 25 Pa. Code § 1021.113 (relating to continuance of hearings); 34 Pa. Code § 111.16 (relating to briefs: content and form and time for filing); 34 Pa. Code § 131.12 (relating to modification of time); 34 Pa. Code § 131.13 (relating to continuances or postponements of hearings); 37 Pa. Code § 79.85 (relating to continuances); 37 Pa. Code § 171.123 (relating to mandatory filing of certificates of readiness); 37 Pa. Code § 197.8 (relating to extension of time); 40 Pa. Code § 17.8 (relating to continuances); 52 Pa. Code § 1.15 (relating to extensions of time and continuances); 52 Pa. Code § 1001.15 (relating to extensions of time and continuances); 55 Pa. Code § 41.7 (relating to extensions of time); 55 Pa. Code § 1181.1 (relating to policy); 55 Pa. Code § 1187.1 (relating to policy); 55 Pa. Code § 1189.1 (relating to policy); 55 Pa. Code § 6210.14 (relating to time extensions); 58 Pa. Code § 145.7 (relating to continuances); 58 Pa. Code § 497a.5 (relating to extensions of time and continuances); 61 Pa. Code § 703.2 (relating to petition content); and 61 Pa. Code § 703.31 (relating to disposition of petitions).

### Subchapter C. REPRESENTATION BEFORE AGENCY

- Sec.
- 31.21. Appearance in person.
  - 31.22. Appearance by attorney.
  - 31.23. Other representation prohibited at hearings.
  - 31.24. Notice of appearance.
  - 31.25. Form of notice of appearance.
  - 31.26. Service on attorneys.
  - 31.27. Contemptuous conduct.
  - 31.28. Suspension and disbarment.

#### Cross References

This subchapter cited in 40 Pa. Code § 15.22 (relating to representation before the OALJ).

#### § 31.21. Appearance in person.

An individual may appear 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 or association, and an officer or employe of another agency or of a political subdivision may represent the agency or political subdivision in presenting any submittal to an agency subject to these rules. Parties, except individuals appearing in their own behalf, shall be represented in adversary proceedings only under § 31.22 (relating to appearance by attorney).

#### Cross References

This section cited in 1 Pa. Code § 31.23 (relating to other representation prohibited at hearings); 4 Pa. Code § 89.26 (relating to representation); 7 Pa. Code § 131.12 (relating to appearances); 12 Pa. Code § 11.5 (relating to appearance before the Department); 25 Pa. Code § 1021.21 (relating to

representation); 28 Pa. Code § 1111.8 (relating to rights of the appellant); 28 Pa. Code § 1113.2 (relating to administrative appeal procedures); 34 Pa. Code § 131.54 (relating to manner and conduct of hearings); 34 Pa. Code § 131.58 (relating to informal conferences); 34 Pa. Code § 131.59 (relating to mediation); 34 Pa. Code § 131.59a (relating to voluntary mediation); 34 Pa. Code § 131.59b (relating to mandatory mediation); 34 Pa. Code § 131.60 (relating to resolution hearings); 37 Pa. Code § 197.9 (relating to appearances); 52 Pa. Code § 1.21 (relating to appearance); 52 Pa. Code § 1001.21 (relating to appearance); 58 Pa. Code § 499a.1 (relating to appearance in person); and 61 Pa. Code § 702.21 (relating to representation).

### § 31.22. Appearance by attorney.

A person may be represented in a proceeding by an attorney at law admitted to practice before the Supreme Court of Pennsylvania, or, if a similar agency of another jurisdiction accords like privileges to members of the bar of this Commonwealth, the highest court of such other jurisdiction.

#### Cross References

This section cited in 1 Pa. Code § 31.21 (relating to appearance in person); 1 Pa. Code § 31.23 (relating to other representation prohibited at hearings); 4 Pa. Code § 89.26 (relating to representation); 7 Pa. Code § 131.12 (relating to appearances); 12 Pa. Code § 11.5 (relating to appearance before the Department); 25 Pa. Code § 1021.21 (relating to representation); 25 Pa. Code § 1021.22 (relating to notice of appearance); 28 Pa. Code § 1111.8 (relating to rights of the appellant); 28 Pa. Code § 1113.2 (relating to administrative appeal procedures); 34 Pa. Code § 131.54 (relating to manner and conduct of hearings); 34 Pa. Code § 131.58 (relating to informal conferences); 34 Pa. Code § 131.59 (relating to mediation); 34 Pa. Code § 131.59a (relating to voluntary mediation); 34 Pa. Code § 131.59b (relating to mandatory mediation); 34 Pa. Code § 131.60 (relating to resolution hearings); 37 Pa. Code § 171.3 (relating to practice before the arbitration panels); 37 Pa. Code § 197.9 (relating to appearances); 52 Pa. Code § 1.22 (relating to appearance by attorney or certified legal intern); 52 Pa. Code § 1001.22 (relating to appearance by attorney or certified legal intern); 58 Pa. Code § 499a.2 (relating to appearance by attorney); and 61 Pa. Code § 702.21 (relating to representation).

### § 31.23. Other representation prohibited at hearings.

A person shall not be represented at a hearing before an agency head or a presiding officer except:

- (1) As stated in § 31.21 or § 31.22 (relating to appearance in person; and appearance by attorney).
- (2) As otherwise permitted by the agency in a specific case.

#### Cross References

This section cited in 4 Pa. Code § 89.26 (relating to representation); 25 Pa. Code § 1021.21 (relating to representation); 28 Pa. Code § 1111.8 (relating to right of the appellant); 28 Pa. Code § 1113.2 (relating to administrative appeal procedures); 34 Pa. Code § 131.54 (relating to manner and conduct of hearings); 34 Pa. Code § 131.58 (relating to informal conferences); 34 Pa. Code § 131.59 (relating to mediation); 34 Pa. Code § 131.59a (relating to voluntary mediation); 34 Pa. Code § 131.59b (relating to mandatory mediation); 34 Pa. Code § 131.60 (relating to resolution hearings); 37 Pa. Code § 171.3 (relating to practice before the arbitration panels); 52 Pa. Code § 1.23 (relating to other representation prohibited at hearings); 52 Pa. Code § 1001.23 (relating to other representation prohibited at hearings); 58 Pa. Code § 499a.3 (relating to other representation prohibited at hearings); and 61 Pa. Code § 702.21 (relating to representation).

### § 31.24. Notice of appearance.

(a) If an individual appears in his own behalf before an agency head or a presiding officer in a particular proceeding which involves a hearing or an oppor-

tunity for hearing, he shall file with the office of the agency or otherwise state on the record an address at which a notice or other written communication required to be served upon him or furnished to him may be sent.

(b) If an attorney appears before an agency head or a presiding officer in a representative capacity in a particular proceeding which involves a hearing or an opportunity for hearing, he shall file with the office of the agency a written notice of the appearance, which shall state his name, address and telephone number and the name and address of the person or persons on whose behalf he appears. Additional notice or other written communication required to be served on or furnished to a person may be sent to the attorney of record for the person at the stated address of the attorney.

(c) A person appearing or practicing before an agency in a representative capacity may be required to file a power of attorney with the agency showing his authority to act in such capacity.

#### Cross References

This section cited in 1 Pa. Code § 31.26 (relating to service on attorneys); 1 Pa. Code § 33.33 (relating to effect of service upon an attorney); 1 Pa. Code § 35.207 (relating to service of proposed reports); 4 Pa. Code § 89.26 (relating to representation); 4 Pa. Code § 110.1 (relating to praecipe of appearance); 16 Pa. Code § 42.107 (relating to supervision of designated agent of complainant; form); 34 Pa. Code § 111.15 (relating to no other pleadings allowed); 34 Pa. Code § 121.34 (relating to objections to assessments); 34 Pa. Code § 131.34 (relating to other filings); 37 Pa. Code § 171.26 (relating to notice of appearance); 37 Pa. Code § 197.9 (relating to appearances); 40 Pa. Code § 17.4 (relating to legal representation); 52 Pa. Code § 1.24 (relating to notice of appearance or withdrawal); 52 Pa. Code § 1001.24 (relating to notice of appearance or withdrawal); 58 Pa. Code § 499a.4 (relating to notice of appearance or withdrawal); and 61 Pa. Code § 702.21 (relating to representation).

### § 31.25. Form of notice of appearance.

#### COMMONWEALTH OF PENNSYLVANIA

[NAME OF AGENCY]

In the Matter of:  
[File, Docket  
or other  
identifying No.:]

#### NOTICE OF APPEARANCE

Please enter my appearance in the above-designated matter on behalf of  
I am authorized to accept service on behalf of said participant in this matter.

[CHECK ONE]

On the basis of this notice, I request a copy of each document hereafter issued by the [Name of Agency] in this matter.

I am already receiving or have access to a copy of each document issued by the [Name of Agency] in this matter (alone, or in a consolidated proceeding) and do not on the basis of this notice require an additional copy.



|  |
|--|
| Signature                              |
| Name (Printed)                         |
| P. O. address                          |
| City, state and zip code               |
| Telephone number (including area code) |

**Cross References**

This section cited in 16 Pa. Code § 42.107 (relating to supervision of designated agent of complainant; form); 25 Pa. Code § 1021.22 (relating to notice of appearance); 34 Pa. Code § 111.15 (relating to no other pleadings allowed); 34 Pa. Code § 131.34 (relating to other filings); 37 Pa. Code § 197.10 (relating to form of notice of appearance); 52 Pa. Code § 1.25 (relating to form of notice of appearance); 52 Pa. Code § 1001.25 (relating to form of notice of appearance); 58 Pa. Code § 499a.5 (relating to form of notice of appearance); and 61 Pa. Code § 702.21 (relating to representation).

**§ 31.26. Service on attorneys.**

In a proceeding where an attorney has filed a submittal on behalf of a client or has filed an appearance under § 31.24(b) (relating to notice of appearance), a notice or other written communication required to be served upon or furnished to the client shall also be served upon or furnished to the attorney (or one of the attorneys if the client is represented by more than one attorney) in the same manner as prescribed for his client, notwithstanding the fact that the communication may be furnished directly to the client.

**Notes of Decisions***Notice To Attorneys*

This section requires that notice must be given to the attorney where the attorney has entered an appearance for the client, even though the specific statutory provision provides only for service on the parties in interest; overruling *Crown, Cork and Seal Corp. v. Workmen's Compensation Appeal Board*, 543 A.2d 603 (Pa. Cmwlth. 1988). *Philadelphia v. Workers' Compensation Appeal Board*, 706 A.2d 1292 (Pa. Cmwlth. 1998).

Failure to mail a denial of a termination decision to the employer's counsel, when proper copies were mailed to the employer and its insurance carrier, was not a sufficient reason to permit the employer to file its appeal late, since the statutory provision required only notice to all parties in interest. *Crown, Cork and Seal Corp. v. Workmen's Compensation Appeal Board*, 543 A.2d 603 (Pa. Cmwlth. 1988); overruled *Philadelphia v. Workmen's Compensation Appeal Board (Operacz)*, 706 A.2d 1292 (Pa. Cmwlth. 1998).

**Cross References**

This section cited in 1 Pa. Code § 33.33 (relating to effect of service upon an attorney); 7 Pa. Code § 131.13 (relating to service); 22 Pa. Code § 121.9 (relating to administrative loan collection review procedures); 34 Pa. Code § 111.12 (relating to filing, service and proof of service); 34 Pa. Code § 111.14 (relating to motions to quash); 34 Pa. Code § 131.11 (relating to filing, service and proof

of service); 34 Pa. Code § 131.32 (relating to petitions except petitions for joinder and challenge proceedings); 37 Pa. Code § 171.27 (relating to service on attorneys); 40 Pa. Code § 17.4 (relating to legal representation); 52 Pa. Code § 1.55 (relating to service on attorneys); 52 Pa. Code § 1001.53 (relating to service on attorneys); and 61 Pa. Code § 702.21 (relating to representation).

### § 31.27. Contemptuous conduct.

Contemptuous conduct at a hearing before an agency head or a presiding officer shall be ground for exclusion from the hearing and for summary suspension without a hearing for the duration of the hearing.

#### Cross References

This section cited in 34 Pa. Code § 95.92 (relating to contemptuous conduct); 34 Pa. Code § 131.54 (relating to manner and conduct of hearings); 52 Pa. Code § 1.26 (relating to contemptuous conduct); 52 Pa. Code § 1001.26 (relating to contemptuous conduct); 58 Pa. Code § 499a.6 (relating to contemptuous conduct); and 61 Pa. Code § 702.22 (relating to limited practice before the Board).

### § 31.28. Suspension and disbarment.

(a) An agency may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to a person who is found by the agency after notice and opportunity for hearing in the matter:

- (1) Not to possess the requisite qualifications to represent others.
- (2) Not to possess the requisite technical education, training or experience for a particular project or type of project submitted for agency approval.
- (3) To have engaged in unethical or improper conduct before the agency.

(b) For the purposes of subsection (a), practicing before an agency shall include, but shall not be limited to:

- (1) Transacting business with the agency.
- (2) The preparation of a statement, opinion or other paper by an attorney, accountant, engineer or other expert, filed with the agency in a pleading, submittal or other document with the consent of the attorney, accountant, engineer or other expert.

#### Cross References

This section cited in 10 Pa. Code § 401.020 (relating to professional responsibility); 34 Pa. Code § 95.92 (relating to contemptuous conduct); 34 Pa. Code § 131.54 (relating to manner and conduct of hearings); 52 Pa. Code § 1.27 (relating to suspension and disbarment); 52 Pa. Code § 1001.27 (relating to suspension and disbarment); 58 Pa. Code § 499a.7 (relating to suspension and disbarment); and 61 Pa. Code § 702.22 (relating to limited practice before the Board).

[Next page is 33-1.]