

**CHAPTER 494a. HEARING PROCEDURE**

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**Authority**

The provisions of this Chapter 494a issued under 4 Pa.C.S. §§ 1202(b)(30) and 1205, unless otherwise noted.

**Source**

The provisions of this Chapter 494a adopted October 26, 2007, effective October 27, 2007, 37 Pa.B. 5774, unless otherwise noted.

**§ 494a.1. Generally.**

(a) A hearing calendar of all matters set for hearing will be maintained by the Clerk and will be in order of assignment as far as practicable. All matters will be conducted from Harrisburg, in person, by means of video conference or by telephone, unless a different site is designated by the Board, Executive Director or the presiding officer. The Board, Executive Director or the presiding officer, in its discretion with or without motion, may at any time with due notice to the parties advance or postpone any proceeding on the hearing calendar.

(b) Hearings will be held before the Board or presiding officer, and all appearances, including staff counsel participating, will be entered upon the record, with a notation on whose behalf each appearance is made. A notation will be made in the record of the names of the members of the staff of the Board participating, including accountants, and other experts who are assisting in the investigation of the matter. This section supersedes 1 Pa. Code §§ 35.123 and 35.124 (relating to conduct of hearings; and appearances).

(c) In hearings, neither the Board nor the presiding officer will be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received. Reasonable examination and cross-examination will be permitted at all oral hearings. If a party does not testify on his own behalf, the party may be called and examined as if under cross-examination.

(d) Subsection (a) supersedes 1 Pa. Code § 35.102 (relating to hearing calendar).

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**Authority**

The provisions of this § 494a.1 amended under 4 Pa.C.S. §§ 1202(b)(30) and 1207(2) and (9).

**Source**

The provisions of this § 494a.1 amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial pages (344559) to (344560).

**Cross References**

This section cited in 58 Pa. Code § 491a.7 (relating to presiding officers).

**§ 494a.2. Oral hearings.**

Oral hearings will be conducted in accordance with 1 Pa. Code §§ 35.121—35.126 and Subchapter C (relating to evidence and witnesses).

**§ 494a.3. [Reserved].****Authority**

The provisions of this § 494a.3 reserved under 4 Pa.C.S. §§ 1202(b)(30) and 1207(2) and (9).

**Source**

The provisions of this § 494a.3 reserved February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial page (344560).

**§ 494a.4. Report or report and recommendation of the presiding officer.**

(a) Following a hearing, a report or report and recommendation of the presiding officer may be required by the Board, except that recommendations will not be made in proceedings involving the issuance, approval, renewal, revocation, suspension or conditioning of a license.

(b) The presiding officer will, through the Clerk, certify to the Board a verbatim record of any oral hearing, all documents submitted for consideration, and a report or report and recommendation, when required, as soon as practicable after the conclusion of the hearing and expiration of the time for filing of briefs.

(c) The presiding officer's report or report and recommendation will include a statement of:

(1) Findings and conclusions, as well as the reasons or basis therefore, for all the material issues of fact, law or discretion presented on the record.

(2) The appropriate statutory provision, regulation, order, sanction, relief or denial thereof.

(3) Facts officially noticed under 1 Pa. Code § 35.173 (relating to official notice of facts), relied upon in the decision.

(d) The report or report and recommendation will be in writing, provided to all parties, and will be part of the public record, except for matters and materials designated as confidential. Service will be in accordance with § 491a.5(d) (relating to service).

(e) This section supersedes 1 Pa. Code §§ 35.201—35.206 (relating to proposed reports generally).

**Authority**

The provisions of this § 494a.4 amended under 4 Pa.C.S. §§ 1202(b)(30), 1205 and 1207(2) and (9).

**Source**

The provisions of this § 494a.4 amended July 10, 2009, effective July 11, 2009, 39 Pa.B. 3446; amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial pages (344560) to (344561).

**Cross References**

This section cited in 58 Pa. Code § 511a.6 (relating to demand for hearing on the placement of a person on the exclusion list).

**§ 494a.5. Review.**

(a) The Clerk will transmit the record of the hearing to the Board and will make it available to all parties.

(b) The Board will review the record of the hearing and the report or report and recommendation of the presiding officer. The Board may adopt some or all of the recommendations, conduct a full or partial de novo hearing, or remand all or part of the matter to a presiding officer for the taking of additional evidence or clarification of issues, or make an adjudication based on the record.

**Source**

The provisions of this § 494a.5 amended July 10, 2009, effective July 11, 2009, 39 Pa.B. 3446. Immediately preceding text appears at serial page (331257).

**§ 494a.6. Reopening of record.**

(a) After the conclusion of the hearing, a party in a proceeding may file with the Clerk, prior to the issuance of an order of the Board or a report or report and recommendation, a motion to reopen the record for the purpose of taking additional evidence. The motion must set forth clearly the facts claimed to constitute grounds requiring reopening of the record, including material changes of fact or law alleged to have occurred since the record was concluded.

(b) After the issuance of a report or report and recommendation by a presiding officer and before the Board issues its final order, a party in a proceeding may file with the Clerk, a motion to reopen the record for the purpose of taking additional evidence. The motion must set forth clearly the facts claimed to constitute grounds requiring reopening of the record, including material changes of fact or law alleged to have occurred since the issuance of a report or report and recommendation.

(c) Answers may be filed within 10 days of service of the motion. If no answers are filed, objections to the granting of the motion are waived.

(d) After the filing of the motion and answer, the Board or presiding officer will grant or deny the motion.

(e) Prior to filing a report or report and recommendation, the presiding officer, after notice to the parties, may reopen the record for the receipt of further evidence on his own motion, if the presiding officer has reason to believe that the facts or law have changed as to require, or that the public interest requires, the reopening of the record.

(f) Prior to the issuance of a final order, the Board, after notice to the parties, may reopen the record for the receipt of further evidence, if the Board has reason to believe that the facts or law have changed as to require, or that the public interest requires, the reopening of the record.

(g) This section supersedes 1 Pa. Code §§ 35.231—35.233 (relating to reopening of record).

#### **Authority**

The provisions of this § 494a.6 amended under 4 Pa.C.S. §§ 1202(b)(30), 1205 and 1207(2) and (9).

#### **Source**

The provisions of this § 494a.6 amended July 10, 2009, effective July 11, 2009, 39 Pa.B. 3446; amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial pages (344561) to (344562).

### **§ 494a.7. Exceptions.**

(a) A party may file exceptions to the report or report and recommendation of the presiding officer within 15 days of the date of the report or report and recommendation, unless the time is extended upon good cause shown.

(b) Exceptions must be in writing, filed with the Clerk, and state with particularity the matter objected to, including the portion of the record where the basis of the objection may be found, and any supporting legal argument.

(c) A response to exceptions shall be filed within 15 days of the date of service of the exceptions.

(d) The record, including exceptions and responses thereto, will be forwarded to the Board for its consideration.

(e) This section supersedes 1 Pa. Code §§ 35.211—35.214 (relating to exceptions to proposed reports).

#### **Authority**

The provisions of this § 494a.7 amended under 4 Pa.C.S. §§ 1202(b)(30), 1205 and 1207(2) and (9).

#### **Source**

The provisions of this § 494a.7 amended July 10, 2009, effective July 11, 2009, 39 Pa.B. 3446; amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial pages (344562) to (344563).

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**§ 494a.8. Rehearing or reconsideration.**

(a) A party to a proceeding may file an application for rehearing or reconsideration by filing a motion within 15 days after the final order of the Board.

(b) Filing a motion for rehearing or reconsideration does not toll or stay the 30-day appeal period.

(c) The motion must state concisely the alleged errors in the adjudication or other order of the Board. If a final order or other order of the Board is sought to be vacated, reversed or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from compliance therewith, the matters relied upon by the petitioner must be set forth in the motion.

(d) Answers to motions for rehearing or reconsideration will not be entertained by the Board. If the Board grants the rehearing or reconsideration, an answer may be filed by a participant within 15 days after the issuance of the order granting rehearing or reconsideration. The response will be confined to the issues upon which rehearing or reconsideration has been granted.

(e) If the Board does not act upon the motion for rehearing or reconsideration within 30 days after it is filed, the motion will be deemed to have been denied.

(f) This section does not apply to proceedings resulting in any final order, determination or decision of the Board involving the approval, issuance, denial or conditioning of licensed entity applications which are subject to the appellate requirements of 4 Pa.C.S. § 1204 (relating to licensed gaming entity application appeals from board).

(g) This section supersedes 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

**Authority**

The provisions of this § 494a.8 amended under 4 Pa.C.S. §§ 1202(b)(30), 1205 and 1207(2) and (9).

**Source**

The provisions of this § 494a.8 amended July 10, 2009, effective July 11, 2009, 39 Pa.B. 3446; amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial page (344563).

**§ 494a.9. Briefs and oral argument.**

(a) All parties shall be afforded an opportunity to submit briefs prior to the issuance of a report or report and recommendation in accordance with a briefing schedule established by the OHA. Briefs shall be filed with the Clerk and served on the parties.

(b) Oral argument may be heard at the discretion of the Board or presiding officer.

**Authority**

The provisions of this § 494a.9 amended under 4 Pa.C.S. §§ 1202(b)(30) and 1207(2) and (9).

**Source**

The provisions of this § 494a.9 amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial pages (344563) to (344564).

**§ 494a.10. [Reserved].****Authority**

The provisions of this § 494a.10 reserved under 4 Pa.C.S. §§ 1202(b)(30) and 1207(2) and (9).

**Source**

The provisions of this § 494a.10 reserved February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial page (344564).

**§ 494a.11. Appeals.**

(a) A party may appeal final orders of the Board in accordance with the act, in the form prescribed in the Pennsylvania Rules of Appellate Procedure (See 210 Pa. Code).

(b) The filing of an appeal will not stay enforcement of the decision or final order of the Board unless a stay is obtained from the court upon application in accordance with the Rules of Appellate Procedure, or the Board grants a stay prior to the filing of the appeal.

**Cross References**

This section cited in 58 Pa. Code § 403a.7 (relating to temporary emergency orders).

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