

28.04.01.00¹

Title 28 OFFICE OF ADMINISTRATIVE HEARINGS

Subtitle 04 REVIEW OF DECISIONS AND ACTIONS OF HEALTH OCCUPATIONS BOARDS AND COMMISSIONS

Chapter 01 Referrals

Authority: Health Occupations Article, §1-203(c), Annotated Code of Maryland

28.04.01.01

.01 Purpose.

This chapter sets out the procedures for the supervision of a health occupation board or commission that is composed, in whole or in part, of individuals participating in the occupation or profession regulated by the board or commission. The supervision outlined in these procedures is intended to prevent unreasonable anticompetitive actions by the boards or commissions and to determine whether the actions of the boards or commissions further a clearly articulated State policy to displace competition in the regulated market.

¹ General key:

Proposed deleted items appear in brackets ([]).

Proposed amendments/additions appear in *italics*.

28.04.01.02

.02 Scope.

A. Applicability. This chapter applies to any referrals made by a health occupations board or health occupations commission in accordance with Health Occupations Article, §1-203(c), Annotated Code of Maryland.

B. This chapter shall be construed to ensure the fair and expeditious review of each referral.

C. The review conducted pursuant to this chapter is not subject to the contested case hearing provisions of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

28.04.01.03

.03 Definitions.

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

B. Terms Defined.

(1) “ALJ” means an individual:

(a) Appointed as an Administrative Law Judge pursuant to the requirements established under State Government Article, §9-1604(a)(2), Annotated Code of Maryland; or

(b) Designated pursuant to State Government Article, §9-1607, Annotated Code of Maryland.

(2) “Chief ALJ” means the individual appointed as head of the Office pursuant to State Government Article, §9-1603, Annotated Code of Maryland.

[(1) “Administrative law judge” means an individual:

(a) Appointed by the Chief Administrative Law Judge under State Government Article, §9-1604, Annotated Code of Maryland; or

(b) Designated by the Chief Administrative Law Judge under State Government Article, §9-1607, Annotated Code of Maryland.]

[(2)3] “Board” means a health occupations board established and defined by Health Occupations Article, §1-601, Annotated Code of Maryland.

[(3) “Chief Judge” means the Chief Administrative Law Judge of the Office.]

(4) “Commission” means a health occupations commission established by Health-General Article, Annotated Code of Maryland.

(5) “Decision” means a document issued by an administrative law judge in accordance with Health Occupations Article, §1-203(c), Annotated Code of Maryland.

(6) “Expedited review” means that a decision will be issued as soon as practical upon receipt of a complete record.

(7) “Filed” means *that a document is postmarked, faxed, or otherwise received in accordance with Regulation .04D of this chapter* [when a document is received at the Office].

(8) “Office” means the Office of Administrative Hearings.

(9) “Record” means all documents or other materials relied upon by a board or commission to reach a decision or initiate an action that is the subject of a referral and any materials produced pursuant to an order to supplement a record.

(10) “Referral” means an action of a board or commission transmitted for review by the Office in accordance with Health Occupations Article, §1-203(c), Annotated Code of Maryland.

28.04.01.04

.04 Referral of Decision or Action for Review.

A. A board or commission shall refer a decision or action to the Office as required by Health Occupations Article, §1-203, Annotated Code of Maryland, and this chapter.

B. Boards and commissions may not refer decisions or actions that consist of the following:

- (1) Ministerial acts;
- (2) The internal operations of a board or commission;
- (3) Investigations;
- (4) Disciplinary charges that have not led to proposed disciplinary action; and
- (5) As it relates to an individual regulated by a board or commission:
 - (a) Consent orders; and
 - (b) Letters of surrender.

C. A board or commission may initiate a referral to the Office by transmitting a form substantially similar to that in Appendix A of this chapter.

D. A board or commission may request expedited review by the Office by including the phrase “EXPEDITED REVIEW REQUESTED” on the transmittal form.

E. A request for expedited review by the Office shall be granted if:

- (1) The board or commission establishes that immediate action is necessary to protect public health and safety;
- (2) The decision or action involves a cease and desist order; or
- (3) The decision or action of the board or commission involves the summary suspension of a license.

F. The board or commission may withdraw the referral to the Office at any time before the decision is issued.

G. Computation of time is governed by COMAR 28.02.01.04C.

[Click here to view Appendix A.](#)

28.04.01.05

.05 Record.

A. A board or commission shall transmit to the Office the materials necessary for a complete and substantive review of the decision or action that is the subject of the referral.

B. The record shall include a:

- (1) Summary of the rationale of the board or commission for the decision or action that is the subject of the referral;
- (2) Citation to the relevant statutes or other legal authority supporting the decision or action;
- (3) Summary of the facts supporting the decision or action;
- (4) Statement of the basis for the referral; and
- (5) Description of the clearly articulated State policy to displace competition in the regulated market relied upon by the board or commission in making the decision or taking the action.

C. The record shall include all materials reviewed by the board or commission related to the decision or action that is the subject of the referral and an index.

D. The board or commission shall indicate if any of the materials are confidential or privileged.

E. The Office shall initiate review of the decision or action when the referral and record are filed.

F. Within 30 days of the filing of the referral and record, an administrative law judge shall determine whether the record transmitted is sufficient for review of the decision or action.

G. Supplementing the Record.

(1) Upon determining that the record is insufficient for review of the decision or action, the Administrative Law Judge shall issue an order, requiring the board or commission to supplement the record.

(2) An order to supplement the record shall set forth a timeline for transmittal of additional materials and for filing an objection to the order.

(3) Upon receipt of the order to supplement the record, the board or commission shall:

(a) Submit the additional materials to the Office in accordance with the timeline set forth in the order:

(b) File an objection to the order with the Office in accordance with the timeline set forth in the order; or

(c) Rescind the referral to the Office in writing on a document that includes the statement that the board or commission may not implement the decision or take the action that had been referred to the Office.

28.04.01.06

.06 Qualifications and Training for Administrative Law Judges.

A. The Office, with the assistance of the Antitrust Division of the Office of the Attorney General and other antitrust experts, shall provide training for all administrative law judges in accordance with Health Occupations Article, §1-203(c), Annotated Code of Maryland.

B. The Office may not assign an administrative law judge to conduct the review required under this chapter until the administrative law judge has completed the training.

C. An administrative law judge assigned to conduct the review required under this chapter shall possess knowledge of the provisions of:

- (1) 15 [U.S.C.] *United States Code* §1, et seq.;
- (2) Health Occupations Article, Annotated Code of Maryland;
- (3) Health-General Article, Annotated Code of Maryland;
- (4) This chapter; and
- (5) The legal interpretations of these provisions by federal and State courts.

28.04.01.07

.07 Management of Conflicts with Contested Case Hearings.

A. The review required under this chapter is independent of the Office's contested case hearing process.

B. The administrative law judge assigned to conduct the review required under this chapter, may not be:

(1) The administrative law judge who participates in a contested case hearing involving the same facts as the decision or action that is the subject of the referral;
or

(2) Appointed by, under the oversight of, or a member of a board or commission whose decision or action is the subject of review.

C. The Office shall assign a separate case number and case code in its case management system to create an information barrier between a referral submitted under this chapter and a contested case hearing involving a decision or action of the board or commission.

D. The Office shall create an information barrier between the administrative law judge who reviews the referral submitted under this chapter and the administrative law judge who conducts a contested case hearing involving a decision or action of the board or commission that includes all records, decisions, discussions, and reviews.

28.04.01.08

.08 Standards and Guidelines for Review.

A. A board or commission may not issue a final decision or take an action on a matter referred under this chapter until the Office has completed the review required by Health Occupations Article, §1-203, Annotated Code of Maryland.

B. The Office shall conduct a de novo review of the record and issue a written decision on [the decision or action that is] the subject *matter* of the referral within 30 days of the filing of the record or the filing of any required supplemental materials as required by an order of the administrative law judge, whichever is later.

C. The written decision shall contain:

- (1) A summary of the materials considered;
- (2) A summary of the facts relevant to the decision;
- (3) A review of the substance of the decision or action;
- (4) An analysis of whether the decision or action is unreasonably anticompetitive;
- (5) An analysis of whether the decision or action furthers a clearly articulated State policy; and
- (6) An order approving, modifying or disapproving the decision or action.

D. Implementation of the final decision or action of the board or commission shall comply with the written decision of the Office.

28.04.01.9999

Administrative History

Effective date: April 9, 2018 (45:7 Md. R. 347)