Rhode Island Department of Health

NOTICE OF PUBLIC HEARING

The Director of the Rhode Island Department of Health has under consideration proposed amendments to the *Rules and Regulations Pertaining to Practices and Procedures Before the Rhode Island Department of Health* [*R42-35-PP*] pursuant to the authority conferred under Chapters 23-1-17 and 42-35 of the Rhode Island General Laws, as amended. The purpose of the proposed amendments is to clarify the procedures used by the Department of Health for rulemaking and establish procedures to be used for hearings conducted as part of license renewal for hospitals (RIGL Chapter 23-1-17).

Notice is hereby given in accordance with the provisions of Chapter 42-35 of the Rhode Island General Laws, as amended, that the Director will hold a public hearing on the above mentioned matters, in the **AUDITORIUM** of the Rhode Island Department of Health (on the lower level of the Cannon Building), Three Capitol Hill, Providence, Rhode Island on **TUESDAY, 9 SEPTEMBER 2014 AT 1:00 PM** at which time and place all persons interested therein will be heard. The seating capacity of the room will be enforced and therefore the number of persons participating in the hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

In the development of the rules and regulations, consideration was given to the following: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions and (3) financial impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

For the sake of accuracy, it is requested that statements to be made relative to any aspect of the regulations, including alternative approaches or overlap, be submitted in writing at the time of the hearing or in electronic format prior to the hearing date to: Edward D'Arezzo, Interim Associate Director of Health at edward.d'arezzo@health.ri.gov or by calling (401) 222-1006.

Copies of the regulations are available for public inspection in the Cannon Building, Room #201, Rhode Island Department of Health, 3 Capitol Hill, Providence, Rhode Island, on the Secretary of State's website: http://www.sos.ri.gov/ProposedRules/, by calling 401-222-7767 or by e-mail to Bill.Dundulis@health.ri.gov.

The Department of Health is accessible to the handicapped. If communication assistance (readers/ interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-222-7767 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

Signed this 21st day of July 2014

Original signed by Michael Fine, MD

Michael Fine, M.D., Director of Health

RULES AND REGULATIONS PERTAINING TO PRACTICES AND PROCEDURES BEFORE THE RHODE ISLAND DEPARTMENT OF HEALTH

[R42-35-PP]

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF HEALTH

May 1980

AS AMENDED

November 1981

May 1997

October 2000

January 2002 (re-filing in accordance with the provisions of §42-35-4.1 of the Rhode Island General Laws, as amended)

March 2003

April 2004

January 2007 (re-filing in accordance with the provisions of §42-35-4.1 of the Rhode Island General Laws, as amended)

January 2012 (re-filing in accordance with the provisions of §42-35-4.1 of the Rhode Island General Laws, as amended)

July 2013

August 2014 (Proposed)

COMPILER'S NOTES:
Proposed Additions: Double-Underlined
Proposed Deletions: ~~Strikeouts~~

PUBLIC HEARING DRAFT –REVISED 20 JULY 2014

INTRODUCTION

These amended *Rules and Regulations Pertaining to Practices and Procedures Before the Rhode Island Department of Health* (*R42-35-PP*) are promulgated[1] pursuant to the authority conferred under RIGL Chapter 42-35 for the purpose of establishing uniform procedures and practices governing administrative proceedings before the Department of Health and all boards, councils, and commissions therein. These specific amendments clarify the procedures used by the Department of Health for rulemaking and establish procedures to be used for hearings conducted as part of license renewal for hospitals. ~~deleting *Section 19.0 - Access to Public Records*. The requirements previously contained in *Section 19.0* will be issued as a separate set of regulations, concurrent with the promulgation of these amended Regulations~~.

These Regulations shall be liberally construed to further the fair, prompt, impartial and orderly administration and determination of contested cases in conformity with the Rhode Island Administrative Procedures Act [RIGL Chapter 42-35]. To the extent that any part of these Regulations are inconsistent with the applicable law, the applicable law shall govern.

These amended Regulations shall supersede all previous *Rules and Regulations Pertaining to Practices and Procedures Before the Rhode Island Department of Health* ~~*Rules and Regulations of the Rhode Island Department of Health Regarding Practice and Procedures Before the Department of Health and Access to Public Records of the Department of Health*~~ previously promulgated by the Rhode Island Department of Health and filed with the Secretary of State.

NOTICE REGARDING ENFORCEMENT OF CHILD SUPPORT UNDER CHAPTER 11, TITLE 15 OF THE GENERAL LAWS OF RHODE ISLAND

All licenses granted under the auspices of the Department of Health are subject to the provisions of Rhode Island General Laws § 15-11.1 *et seq*, which mandates suspension of licenses by the issuing board upon receipt of certification of court ordered child support.

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[1] ~~Prior to July 2013, §19.0 of the *Rules and Regulations of the Rhode Island Department of Health Pertaining to Practice and Procedures Before the Department of Health and Access to Public Records of the Department of Health* [*R42-35-PP*] contained the requirements for access to public records of the Department of Health.. Beginning with the July 2013 edition, the material previously contained in §19.0 of these Regulations is being promulgated in a stand-alone format as the *Rules and Regulations Pertaining to Access to Public Records of the Rhode Island Department of Health* [*R38-2-APRA*]. The title was also changed to *Rules and Regulations Pertaining to Practices and Procedures Before the Rhode Island Department of Health* [*R42-35-PP*] to reflect changes in the scope of these Regulations.~~

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SECTION 1.0 DEFINITIONS

When used in these rules, the following words and or terms, except as otherwise required by the context, shall have the following meaning:

1.1 ***"Act"*** means RIGL Chapter 42-35.

1.2 ***"AHO"*** means the Administrative Hearing Officer authorized by law or duly designated by the Director and/or Board, to hear and decide, or to make a recommended order and/or decision to the Director or Board.

1.3 ***"Authorized representative"*** means an attorney, legal guardian or, in the case of fair hearings for the WIC and Children With Special Needs Programs, another person authorized by a party to represent her/him in an Administrative Proceeding.

1.4 ***"Board"*** means any of the various boards, committees, councils, and commissions within the Department which offer parties hearings regarding legal rights, duties and/or privileges of those parties.

1.5 ***"Contested case(s)"*** means a proceeding, including but not restricted to ratemaking, price fixing, licensing and benefits, in which the legal rights, duties, or privileges of a specific party are required by law to be determined by the Department after an opportunity for hearing. If the parties agree, proceedings not required by law may also be conducted under these Regulations.

1.6 ***"Department"*** means the Rhode Island Department of Health and any Board, Commission, Council or other entity within the Department.

1.7 ***"Director"*** means the Director of the Department of Health or her/his designee.

1.8 ***"Division"*** means a subsection of the Department with authority to carry out statutorily designated departmental functions.

1.9 "***Ex Parte"*** communications means a discussion, correspondence or contact regarding a contested case between the AHO and a party to a contested case, or a non-party who has an interest in the outcome of the case, without all parties being present to such communication. Communications for the purpose of scheduling and other administrative functions shall not be considered ex parte.

1.10 ***"License"*** means the whole or part of any Department license, permit, certificate, approval, registration, charter or similar form of permission required by law.

1.11 ***"Licensing"*** includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

1.12 ***"Party"*** or "***parties"*** means the specifically named person(s) whose legal rights, duties or privileges are being determined in an adjudicatory proceeding, or who are admitted as a party, or properly seeking and entitled as of right to be admitted as a party in a contested case, or intervenors which may be otherwise admitted.

1.13 ***"Person"*** means any individual, partnership, corporation, limited liability company, association, governmental subdivision, public or private organization of any character, or their designee(s), but does not include the Department.

1.14 ***"Petitioner"*** means an individual or legal entity(ies) who initiates a petition which results in an administrative proceeding.

1.15 ***"Regular business hours"*** means between the hours of 8:30 AM to 4:30 PM, Monday through Friday, excluding state holidays. Filing by telecopier or facsimile is prohibited unless specifically allowed prior to such filing.

1.16 ***"Respondent"*** means a party who is the subject of a complaint and/or department investigation or any others not bearing the burden of proof.

1.17 ***"RIGL"*** means the Rhode Island General Laws, as amended.

1.18 ***"Rule(s)"*** and or ***"regulation(s)"***means each Department statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of the Department. The term includes the amendment or repeal of a prior rule, but does not include (1) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, or (2) declaratory rulings issued pursuant to §42-35-8 of the Act, (3) intra-Department memoranda, or (4) an order.

1.19 ***"Rule making proceeding"*** means a proceeding before the Department for purposes of adopting, amending or repealing any rule or regulation of the Department.

1.20 ***"Sua sponte"*** means of their own will or motion, without prompting or suggestion.

1.21 ***"Subpoena"*** means a process whereby a witness is commanded to appear and give testimony.

1.22 ***"Subpoena duces tecum***" means a process whereby a witness is commanded to produce documents and/or papers.

1.23 ***"These Regulations"*** mean all parts of the Rhode Island *Rules and Regulations Pertaining to Practices and Procedures Before the Rhode Island Department of Health* [*R42-35-PP*)]

SECTION 2.0 SCOPE

2.1 These Regulations delineate the procedures and practices which will be utilized by the Department and all Boards and commissions established therein. All hearings and reviews required by law or regulations shall be conducted in accordance with these Regulations and with applicable provisions of RIGL Chapter 42-35 entitled "Administrative Procedures." [“the Act”]

SECTION 3.0 REPRESENTATION

Appearance

3.1 The Department shall inform a party of her/his right to be represented by legal counsel in a contested proceeding.

3.2 Except as may be otherwise provided by law, or in the sole discretion of the AHO, no person may appear in a representative capacity other than:

(i) Members in good standing of the Bar of Rhode Island;

(ii) A bona fide officer, partner, director, member or full time employee of an individual firm, association, partnership, limited liability company or corporation on behalf of that entity;

(iii) A person who is a party to an administrative proceeding or his/her professional engineer, architect, or land surveyor or other designee, as specifically authorized in writing and notarized if the party is not present. In Fair Hearings, involving the WIC or Children With

Special Needs programs, a person other than an attorney may represent a party.

3.3 All persons shall conform to the standards of ethical conduct required of practitioners before the courts of Rhode Island. If any such person does not conform to such standards, the AHO may decline to permit such person to appear in a representative capacity in any proceeding before the AHO.

Representative/Attorney Unavailability

3.4 Absent agreement by the parties, the AHO at his/her sole discretion, for good cause shown, may grant a continuance of an administrative proceeding. For good cause shown, the parties may agree to up to two (2) continuances. Thereafter, any continuance requested may be granted only by the AHO in his or her sole discretion for good cause shown. All requests for continuances pursuant to this section shall be made in writing.

3.5 Organizations who are parties to an administrative proceeding, and who are not represented by legal counsel, shall designate a spokesperson to participate on their behalf at the proceeding. Should the designated spokesperson be unavailable on a scheduled hearing date, they shall notify the AHO of the specific reason for their unavailability.

3.6 Spokesperson for parties not represented by counsel, who have a conflict with hearing dates, shall be required to inform the AHO of the specific nature of the conflict and the reason for his/her unavailability.

3.7 Should the AHO grant a continuance, it shall be the responsibility of the party requesting the continuance to notify immediately all other parties of record and their representatives. The Department shall insure that at the site of the hearing a cancellation notice is posted at the entrance to the facility, said notice to include the date and time of the next scheduled hearing, if known, or the name and telephone number of the person who will be able to provide that information.

3.8 It shall be the further responsibility of the party requesting the continuance to notify the AHO of any anticipated scheduling conflict as soon as possible.

3.9 **Ex Parte Communications.** No person who is a party to or a participant in any proceeding before the Department, or the party's counsel, employee, agent, or any other individual, acting on the party's or their own or another's behalf, shall communicate ex parte with the AHO or the Director about or in any way related to the proceeding, and the AHO and/or Director shall not request or entertain any such ex parte communications. The prohibitions contained above do not apply to those communications which relate solely to general matters of procedure and scheduling.

By Present or Former Employees of Department

3.10 In accordance with RIGL Chapter 36-14 entitled "Code of Ethics", no person who is currently an employee of the Department may appear personally, or on behalf of, or represent any other person, or act as an expert witness before the Department except in the performance of her/his official duties.

3.11 Also in accordance with said 36-14, no person having been employed at the Department may, within one (1) year after employment has ceased, appear personally, or on behalf of any other person, or act as an expert witness before the Department, unless he/she appears on behalf of the Department.

SECTION 4.0 TIME

4.1 **Timely Filing.** Papers required or permitted to be filed under these Regulations, or any provision of the applicable law, must be filed with the Department or AHO within the time limits for such filings as are set by Department regulation or by the AHO or established by law. Papers filed in the following manner shall be deemed filed as set forth in these Regulations:

1. ***Hand-delivery:*** Papers hand delivered during regular business hours shall be deemed filed on the date of hand-delivery. Papers delivered by hand at times other than during regular business hours shall be deemed filed on the next regular business day when recorded as received by the Department.
2. ***Mailing:*** Papers deposited in the U.S. Mail shall be deemed filed on the date received by the Department. In the event that no date received appears, papers shall be deemed filed on the date so postmarked. All papers shall show the date received by the Department.
3. ***Telecopying:*** Papers transmitted by facsimile or telecopier shall not be accepted for filing unless specifically exempted from this provision by the AHO and arrangements made for an authorized person to receive the transmitted papers as they are transmitted.

4.2 **Computation of Time.** Unless otherwise specifically provided by law or these Regulations, computation of any time period referred to in these Regulations shall begin with the first day following the act which initiates the running of the time period. The last day of the time period so computed is to be included unless it is a Saturday, Sunday or legal holiday, or any other day on which the Department is closed, in which event the period shall run until the end of the regular business hours of the next following business day. When the time period is less than eleven (11) days, intervening days when the Department is closed shall be excluded in the computation.

4.3 **Extension of Time.** It shall be within the discretion of the AHO, for good cause shown, to extend any time limit contained in these Regulations, unless precluded by statute. All requests for extensions of time shall be made by written motion before the expiration of the original or previously extended time period provided, however, that the AHO may, during hearings, grant such extensions upon oral motion.

SECTION 5.0 FILINGS GENERALLY

5.1 **Title.** All pleadings and other documents filed with the Department shall, whenever possible, state the file number, if any, the title of the proceeding, and the name of the person on whose behalf the filing is made. Additionally, the name, phone number, and bar numbers, if any, of the persons filing the pleading(s) or document(s) are required on the documents being filed.

5.2 **Signatures.** Papers filed with the Department shall be signed and dated by the party on whose behalf the filing is made or by the party's authorized representative. This signature constitutes a certification that the individual has read the document, knows the content thereof, and to the best of her/his knowledge, that such statements are true, that it is not interposed for delay, and that if the document has been signed by an authorized representative she/he has full power and authority to do so. Failure to comply may be cause for sanctions.

5.3 **Designation of Division.** Any Department Division which is a party to a contested case shall be designated by its name and not by the name(s) of particular individual(s) holding office, and if while the contested hearing is pending, a change occurs in an individual(s) holding office, the proceeding shall not abate solely for this reason, and no substitution of parties shall be necessary.

5.4 **Form and Size.** All papers, except those submittals and documents which are kept in a smaller or larger format during the ordinary course of a party's business, shall be submitted on 8½ X 11 inch paper. All papers shall be hand printed or typewritten.

5.5 **Copies.** The original and one (1) copy of all pleadings, motions, briefs and memorandums shall be filed with the Department however, the AHO may deem additional copies to be provided.

Service

5.6 **Service Upon Parties.** Simultaneously with the filing of any and all papers with the Department, the party filing such papers shall send a copy thereof to all other parties, if any, or their authorized representative to the proceedings, by hand delivery, or first class US mail to her/his place of business, home address or other address as may be required by applicable law or regulations. Service by mail is complete upon mailing, even if unclaimed or returned, when sent to the last known address of the party.

5.7 **Certificate of Service.** There shall accompany and be included in the original of each pleading filed with the Department a Certificate of Service showing service on all parties.

5.8 **Date of Certificate to Govern.** In addition to the provisions in this section, the provisions of §4.0 of these Regulations also apply and the time for response to all pleadings shall commence as of the date of mailing the certificate of service.

5.9 **Construction.** All pleadings shall be liberally construed and errors or defects therein which do not misled or affect the substantial rights of the parties involved may be disregarded.

SECTION 6.0 COMMENCEMENT OF FORMAL PROCEEDINGS

6.1 **Notice.** Whenever a proceeding may be initiated as a result of an action taken or proposed to be taken by the Department, Board, or other entity of the Department, a notice shall be sent which shall comply with the requirements set forth under §12.2 of these Regulations.

6.2 **Request for Hearing.** Any person having a right to request a hearing shall follow the procedures set forth in RIGL Chapter 42-35 and other applicable statutory and regulatory requirements. All requests for a hearing/s shall be on a sheet of 8½ x 11 inch paper; shall be processed in a timely fashion and shall be forwarded to the Department legal counsel no more than ten (10) days after receipt by the Department or any of its divisions.

6.3 **Content of Hearing Request.** The request for a hearing shall state clearly and concisely the specific issues which are in dispute, and the facts in support thereof, the relief sought, if any, the license or permit sought or involved, and any additional information required by applicable statutes and regulations.

6.4 **Amendments and Withdrawal of Pleading.** The AHO, upon her/his own initiative or upon the motion of any party, may order any party to file an answer or other pleading, or to reply to any pleading and further permit either party to amend its pleading upon conditions just to all parties.

SECTION 7.0 MOTIONS/GENERAL REQUIREMENTS

7.1 **Motion Practice.** By motion, any party may request of the AHO any order or action not inconsistent with law or these Regulations. Such a request shall be called a motion. A copy of all written motions shall be served upon all parties to the case.

7.2 **Presentation/Objection to Motions.** Motions may be made in writing at any time before or during the hearing, or they may be made orally during the hearing. A written motion submitted before the commencement of a hearing shall set forth the grounds for the desired order or action and state whether oral argument is requested. Within ten (10) business days after a written motion is filed with the AHO, a party opposing said motion must file a written objection to the allowance of the motion and shall, if desired, request oral argument. All motions and objections shall be accompanied by a written memorandum, specifying the legal basis and support of the party's position. Failure to file a written objection within the prescribed time period will be deemed a waiver of the objection.

7.3 **Action on Motion.** The AHO may, if she/he determines oral argument on the motion is warranted, give at least five (5) business days notice of the time and place for such argument. The AHO may grant requests for continuances for good cause shown. The AHO may rule on a motion without a hearing if delay would seriously injure a party, or if the motion involves a matter as to which presentation of testimony or oral argument would not advance the AHO's understanding of the issues involved, or if disposition without a hearing would best serve the public interest. The AHO may act on a motion when all parties have responded thereto, or the deadline for response has passed, whichever comes first.

7.4 **Factual Basis.** The parties may offer at a hearing on the motions only such evidence as is

relevant to the particular motion in accordance with §42-35-10 of the Act.

SECTION 8.0 SPECIAL REQUESTS

8.1 **Withdrawals.** A petitioner at any time may withdraw his request for hearing, but the withdrawal must be submitted in writing to the AHO and be signed by the petitioner or his authorized representative.

8.2 **Emergency Scheduling.** Upon request of a party, the AHO may, for good cause, order an accelerated hearing. Any request for an order accelerating the scheduling of a hearing shall be addressed to the AHO in writing and shall state the grounds therefor.

8.3 **Disqualification of Administrative Hearing Officer.** Any party may make a motion to disqualify or remove the AHO from a proceeding. The motion shall be accompanied by an affidavit setting forth the reasons for the proposed disqualification.

8.4 **Other Requests.** A request may be made by a party, or his/her authorized representative, in writing at any time, or orally during a hearing, for rulings or relief, and may, after notice to the other parties, be ruled upon by the AHO without a hearing.

SECTION 9.0 EXCHANGE OF INFORMATION

9.1 **General.** The Department encourages prompt and complete disclosure and exchange of information between the parties to an Administrative Proceeding. Any party may request the names and addresses of all proposed witnesses in accordance with §11.0 of these Regulations.

9.2 **Production of Documents and Other Tangible Items.** Any party, by written request served upon all other parties, may request the other party to produce for inspection, copying or photocopying a document, object or tangible thing which is relevant to the subject matter of the hearing. Any party wishing to object to such a request shall do so in as timely a manner as is possible prior to the date of the hearing and only after discussing the matter with the opposing party in an attempt to reach an agreement. The AHO in her/his discretion may establish limits on such requests.

9.3 **From Parties** Any party to the proceeding may request an order of the AHO requiring any other party to produce and to make available for inspection, copying or photocopying, at a pre-hearing conference or other specific time and place, any designated documents and tangible items, not privileged, which constitute or contain relevant evidence. The party seeking production should serve copies of the application on the other party(ies) to the proceeding, who should be given an opportunity to notify the AHO of any objections. The AHO shall order the production of such designated documents and tangible things unless he/she finds there is not good cause for doing so.

9.4 **From Non-parties.** Any party to the proceeding may obtain a subpoena requiring a non-party to produce relevant designated documents and tangible items, not privileged, at a pre-hearing conference, at the taking of the non-parties deposition, or at any other specific time and place designated by the AHO.

9.5 **Hearing Delay** No hearing shall be continued to permit the completion of discovery unless prior due diligence is shown.

Protective Orders

9.6 The AHO may, upon motion and for good cause shown, issue an order to protect a party or person from annoyance, embarrassment, oppression, disclosure of proprietary or confidential information, or undue burden or expense.

9.7 The AHO may, upon motion of a party or another person, and for good cause shown, by order:

(i) restrict or defer disclosure by a party of the name of a witness, a narrative summary of expected testimony of a witness, or in the case of a Department witness, any prior statement of the witness, and

(ii) prescribe other appropriate measures to protect a witness.

9.8 Any party affected by such action will have an adequate opportunity, once she\he learns the name of the witness(s) and obtains the narrative summary of her/his expected testimony, or, in the case of a Department employee witness, his prior statement or statements, to prepare for cross-examination and for the presentation of their case.

SECTION 10.0 INTERVENTION AND PARTICIPATION

10.1 **Intervention.** Any person not initially a party who wishes to intervene or participate in a contested hearing shall file a written petition to intervene or participate with the AHO.

10.2 **Form and Content.** The motion shall set forth clearly and concisely the facts from which the nature of the movant's alleged right or interest can be determined, the grounds for the proposed intervention and the position of the movant in the proceeding.

10.3 **Rights of Intervenors.** Intervenors shall be persons who have demonstrated an injury in fact which will result from a challenged action or application and whose interests are not adequately represented by other parties to the hearing. Any person permitted to intervene shall be a full party. Every petition to intervene shall be treated in the alternative as a petition to participate.

10.4 **Rights to Participate.** Only those persons admitted as parties or intervenors to a proceeding shall be permitted to participate in an administrative proceeding. If the particular statute under which the hearing is held permits persons other than parties to participate, they shall be allowed to participate. Permission to participate, unless otherwise stated, shall not be deemed to constitute an expression that the person allowed to participate is a party in interest who may be aggrieved by any final decision. Participation may be limited to the filing of a brief. If the person allowed to participate is permitted to make a statement on the record, said person shall be under oath and subject to cross examination from any party. The AHO shall set such limits on public participation as she/he deems necessary to ensure that the hearing is held in an orderly and expeditious fashion without undue prejudice to a party. A person who petitioned to intervene and who was denied party status but allowed to participate, may participate without waiving his/her rights to judicial review of the denial of said petition to intervene.

10.5 **Rules of Evidence.** The Rhode Island Rules of Evidence shall apply to evidence introduced during public participation to the same extent as the rules apply to evidence admitted by other parties. Testimony and papers submitted by members of the public which do not comport with the evidentiary requirements of §42-35-10 of the Act may be accepted, made a part of the record for identification purposes and marked as a public comment; however, if any of the testimony or evidence is utilized to arrive at a decision, there shall be a statement identifying said testimony and or evidence in the decision and or order.

SECTION 11.0 PRE-HEARING CONFERENCES

Pre-Hearing Conference

11.1 In any proceeding the AHO may require the parties to appear for a pre-hearing conference prior to the scheduled commencement of the hearing to consider:

(i) The simplification or clarification of the issues;

(ii) The possibility of obtaining stipulations, admissions, agreements on documents, understanding on matters already of record, or similar agreement which will avoid unnecessary proof;

(iii) The identification and limitation of; the number of witnesses, expert witnesses and avoidance of similar cumulative evidence, if the case is to be heard;

(iv) The possibility of agreement disposing of all or any of the issues in dispute; and

(v) Consideration of outstanding motions and status of settlement negotiations, if any;

(vi) Any matters pertaining to exchange of information;

(vii) Scheduling of hearings and such other matters as may aid in the disposition of the contested hearing or the other matters under consideration.

11.2 All parties attending the pre-hearing conference shall be fully prepared to discuss all matters involved in the proceedings.

11.3 The AHO may require the parties to submit the following at the commencement of the pre-hearing conference:

(i) Any stipulations of fact which have been agreed upon in advance;

(ii) A concise summary of each party's position;

(iii) A list of exhibits and expert witnesses. Anticipated objections to various exhibits shall be submitted to the AHO no later than five (5) business days prior to the scheduled hearing. Every proposed exhibit to which objection shall be made at hearing shall be marked for identification, and a schedule of those exhibits shall be prepared, along with summary notations of anticipated objections by a party, e.g. "privilege", "authenticity", "hearsay", etc. A party shall not be permitted, except in the discretion of the AHO, to introduce into evidence in said party's direct case exhibits which are not filed in accordance with the order;

(iv) A list of pending motions which require action prior to the hearing;

(v) The names and address of witnesses each party intends to produce in its direct case.

11.4 **Submission Without a Hearing.** Any party may elect to waive a hearing and to submit its case upon the record. Submission of a case without a hearing does not relieve the parties from the necessity of providing the facts supporting their burdens, allegations or defenses.

SECTION 12.0 CONTESTED HEARINGS

12.1 **Hearings, When and Where Held.** Hearings will be held at a designated location. Any party may, by motion, request that a hearing be held at some place other than that designated, due to disability or infirmity of the party or witness, or where justice and equity would be best served. Upon motion of any party and upon good cause shown, the AHO may in her/his discretion advance or delay a case for hearing.

12.2 **Notice of Hearing.** In any contested case, the Department shall give notice of hearing which will apprise interested persons of the opportunity for hearing on the matter in controversy which shall include, at a minimum:

1. The date, time and place of the hearing and/or pre-hearing conference;
2. A statement of the petitioner's right to appear personally, to be represented by counsel or an authorized representative, as permitted by §3.0 of these Regulations present at the pre-hearing conference and/or hearing, and that she/he may respond and present evidence and witnesses and cross examine other witnesses;
3. Sufficient notice of the specific issues involved, the specific sections of statutes and/or rules and regulations involved, the specific violations alleged, and/or the specific reason(s) for denial so that the parties may have a reasonable opportunity to prepare and present evidence and argument regarding the allegations and/or denial. If the information stated in this paragraph cannot be fully stated in advance of the hearing, the information shall be fully stated as soon as practicable. In all cases of a delayed issues statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed, at the discretion of the AHO, after full statement or amendment to afford all parties reasonable opportunity to prepare and present evidence and argument respecting the issues;
4. A statement that notwithstanding failure to appear at a scheduled hearing, absent good cause, the AHO will proceed with the hearing and enter an order based upon the evidence presented;
5. The notice of hearing must set forth the requirements for intervention as outlined in §10.0 of these Regulation.

12.3 **General.** Hearings may be as informal as may be reasonable and appropriate under the circumstances, and except as otherwise provided by law, all hearings shall be open to the public.

12.4 **Decorum.** All parties, authorized representatives, witnesses and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in any statewide R.I. court. Where such decorum is not observed, the AHO may take appropriate action which includes ejectment or adjournment, if necessary.

12.5 **Duties of Administrative Hearing Officer.** The AHO shall:

1. Conduct the hearing;
2. Make all decisions regarding admission or exclusion of evidence or any other procedural matters;
3. Administer an oath or affirmation to all witnesses or ask the stenographer to do so;
4. Submit a decision and/or order after due consideration of the hearing record, and only the hearing record, and matters noted on the record;
5. Not communicate with any employee involved with the administration of a matter, or with any Board member empowered by law to adjudicate a matter, regarding any decision or order, or any proposed decision or order, excepting on the record with all parties present;
6. Participate in the proceedings to ensure that the hearing proceeds in an orderly and expeditious fashion and to ensure evidence sufficient to determine the facts are on the record;
7. Question any party or witness for the purpose of clarifying her/his statement and or the AHO's understanding or to clarify the record. This subsection is not intended to change the provisions of these Rules regarding parties not appearing, without good cause, at a scheduled hearing where evidence may be admitted with some party(ies) not present.

Order of Proceedings

12.6 **Opening.** Except as otherwise required by law, it shall be the usual practice that in proceedings initiated by an application for a license or permit, the party bearing the burden of proof shall open. The opposing party or parties may make an opening statement immediately after the opening statement by the party bearing the burden of proof.

12.7 **Discretion of AHO.** Where evidence is peculiarly within the knowledge of one party, or in cases in which contested hearings have been consolidated, or where there are multiple parties, the AHO may direct who shall open and shall designate the order of presentation.

Presentation

12.8 **Rights of Parties.** All parties shall have the right to present evidence, cross examine witnesses, make objections, bring motions and make oral arguments. Whenever appropriate, the AHO shall permit further examination as she/he deems necessary.

12.9 **Default.** If any party to a proceeding fails to answer a complaint and appear at a hearing, or otherwise fails to defend an action as provided by these rules, the AHO may hear and receive evidence and enter a judgment, or take other such action, based upon the pleadings and or evidence submitted by the non-defaulting party(ies), as the AHO deems appropriate.

Witnesses and Evidence

12.10 **Witnesses**

(i) All witness testimony shall be under oath or affirmation.

(ii) A party may conduct cross examination required for a full and true disclosure of the facts.

(iii) Witnesses may be excluded from the hearing room upon motion of any party.

(iv) Protective orders may be issued for witnesses for good cause shown.

(v) If an interpreter is used to assist a witness giving testimony, the interpreter's understanding is the final word of the witness. The interpreter shall be considered an expert for purposes of translation.

(vi) If a witness refuses to answer questions under cross-examination, the AHO may strike her/his direct testimony from the record.

12.11 **Rules of Evidence.**

(i) In contested cases the Rhode Island rules of evidence as applied in civil cases in the Superior Courts of this state shall govern. Irrelevant, immaterial or unduly repetitious evidence shall be excluded in all proceedings wherein evidence is taken.

(ii) While the Rhode Island Rules of Evidence as applied to civil cases in the Superior Courts of this state shall be followed to the extent practicable, the AHO shall not be bound by technical evidentiary rules. Evidence not otherwise admissible may be admitted, unless precluded by statute, when necessary to ascertain facts not reasonably susceptible of proof under the rules, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law shall apply.

(iii) Objections to evidentiary offers may be made and shall be noted on the record. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The AHO may, in her/his discretion, either with or without objection, exclude inadmissible or cumulative evidence.

(iv) In all cases where evidence is taken, 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.

(v) When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, together with a statement indicating the purpose for which such materials will be offered, to the AHO and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding, and where appropriate, admitted into evidence.

12.12 **Offer of Proof.** An offer of proof made in connection with an objection taken to a ruling of the AHO rejecting or excluding proffered testimony shall consist of a statement and substance of the evidence which the party contends would be adduced by such testimony, if the excluded evidence consists of evidence in documentary or written form, or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

12.13 **Written Testimony.** The AHO may order the parties to file, where practicable, prior to the commencement of any hearing, the testimony of any or all of their respective witnesses and to submit such testimony to the AHO and the opposing party or the opposing counsel by such date as the AHO shall determine. The witness shall testify under oath, and all of such testimony shall be in a question and answer format. Save for good cause shown, said testimony shall be the direct examination of said witness; provided, however, that said witness shall be available at the hearing for cross examination by the opposing party or opposing counsel.

12.14 **Documentary Evidence in Advance.** Where practicable, the AHO may require:

(i) That all documentary evidence which is to be offered during the taking of evidence be submitted to the AHO and the other Parties to the proceeding sufficiently in advance of such taking of evidence to permit study and preparation or cross examination and rebuttal evidence;

(ii) That documentary evidence not submitted in advance, as may be required by subdivision (i) above, may not be received in evidence in the absence of a clear showing that the offering party had good cause for their failure to produce the evidence sooner;

(iii) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

12.15 **Evidence Included.** All evidence, including any records, investigative reports, documents, and stipulations must be offered and made a part of the record. Documentary evidence may be received in evidence in the form of copies or excerpts.

12.16 **Administrative Notice** The AHO may take notice of any fact which may be judicially noticed by the courts of this State, or of general, technical or scientific facts within the AHO's specialized knowledge, only if the parties are notified of the material so noticed and are given an opportunity to contest the facts so noticed. Notice may also be taken of properly adopted rules and regulations adopted by the Department and other agencies of this state or federal government. The AHO's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence. The burden is on the party requesting the AHO's administrative notice to produce the documents or other matter for the AHO's review.

12.17 **Subpoenas.** Pursuant to the provisions of RIGL §§21-28-3.25, and 2-1-11, and/or under any other applicable statute, in all cases of any nature before the Department, the AHO or other official authorized by law, may issue subpoenas requiring the attendance and testimony of

witnesses and to compel the production and examination of papers, books, accounts, documents, records, certificates and other legal evidence that may be necessary or proper for the determination and decision of any question before or the discharge of any duty required by law of the said AHO.

1. ***Signature Required.*** All subpoenas and subpoena *duces tecum* shall be signed by the AHO, or other person authorized by law to sign subpoenas, and shall be served as required by law.
2. ***Motion to Vacate or Modify.*** Any person to whom a subpoena is directed may, within a five (5) working day period, file in writing a motion that the subpoena be vacated or modified. The AHO may grant such motion in whole or in part, upon a finding that the testimony, or the evidence, whose production is requested, does not relate with reasonable directness to any matter in question, or upon a finding that a subpoena for attendance of a witness or the production of documents or evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested or for other good and sufficient cause. The AHO may, *sua sponte*, or on motion of any of the parties or witnesses, issue such protective orders, grant such motions to quash, and grant such other motions as justice or fairness may require.
3. **Contumacy.** In cases of contumacy or refusal to obey the command of the subpoena so issued, the AHO or the Department may make application to the Superior Court for an order to show cause why the disobeying Person shall not be held in contempt and for such further relief as may be appropriate.

12.18 **Transcript of Proceedings.**

1. ***Recording and Transcripts*** A complete record of the testimony and argument at the hearing shall be either stenographically or electronically recorded. Transcripts of the proceedings shall be supplied to any party at her/his own expense upon request to the stenographer.
2. ***Correction of Transcript*** Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. Transcript corrections, agreed to by opposing parties, may be incorporated into the record, if and when approved by the AHO, at any time during the hearing, or after the close of evidence. The AHO may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of the proceeding.

12.19 **Close of Proceedings.** At the conclusion of the evidence, the AHO may, in her/his discretion, permit the parties to argue orally or to submit written briefs. The AHO may, within her/his discretion, direct that proposed findings of fact and conclusions of law be submitted by the parties. The record of the proceeding shall close after oral argument, or after the deadline for filing of the briefs, or upon such date as may be set by the AHO.

12.20 **Contents of Records.** The record shall, at all reasonable times, be available for inspection by the parties. Confidential, proprietary, or trade secret information including information qualifying as a non-public record under RIGL §38-2-2(4) shall, upon motion of a party and for good cause shown, be received at a closed hearing and not be released for public scrutiny. Any such evidence received on a confidential basis shall not be subject to disclosure for purposes of RIGL Chapter 38-2. The AHO may take all steps reasonably necessary to preserve any

confidential, proprietary or trade secret information and to keep the same secret and confidential from the general public. The record of every contested case shall include the hearing notice, all pleadings, motions, all rulings, exhibits, evidence considered, statements of matters officially noted, proposed findings of fact and law and exceptions claimed thereto, decision and/or order, proposed decision and /or order, or report of the AHO.

12.21 **Evidence after Completion.** No evidence shall be admitted after completion of a hearing or after a case submitted on the record, unless the AHO reopens the hearing or the parties agree to the submission, and all the parties have been notified of said reopening. No Board shall take evidence, comments, recommendations, summaries, opinions, or any information regarding the case, or participate in any *ex parte* conversations after the close of a hearing, except that proposed decisions/orders from an AHO who conducted the hearing, which the Board may discuss among themselves only.

12.22 **Weight of Evidence.** The weight to be attached to any evidence in the record will rest within the sound discretion of the AHO. The matter is closed after the final decision and order is issued.

12.23 **Exceptions.** Formal exceptions to rulings on evidence and procedure are unnecessary. It is sufficient that a party, at the time that a ruling is made or sought, makes known his/her objection to such action and his/her grounds therefore, provided that, if a party has no opportunity to object to a ruling at the time it is made, or to request a particular ruling at an appropriate time, such party within three (3) days of notification of action taken or refused, shall state his/her objection and the grounds therefor.

SECTION 13.0 DECISIONS

13.1 **Decisions and Orders.** All decisions and orders rendered by the AHO shall be in writing, or stated on the record, and shall comply with the requirements of §42-35-12 of the Act and shall be made public unless otherwise restricted by law. Every final decision and order shall contain findings of fact and conclusions of law as necessary to comply with the requirements of §42-35-12 of the Act, and shall contain a notice indicating the right to enter an appeal of the decision and order to the Superior Court pursuant to §42-35-15 of the Act.

13.2 **Withdrawal of Exhibits.** After a decision has become final and all appeal periods have lapsed, the AHO may in her/his discretion, upon motion, permit the withdrawal of original exhibits or any part thereof by the party or person entitled thereto.

13.3 **Presiding Officer Unavailable.** When an AHO becomes incapacitated or unavailable, for an unreasonable period of time, to complete a hearing and/or decision and order, the Director may appoint another AHO who shall complete the hearing after notification to the parties and an opportunity to be heard.

SECTION 14.0 CONSENT ORDER

14.1 **Negotiations.** At any time prior to the AHO rendering a final decision, parties to a hearing may attempt to dispose of a matter by entering into a consent order. A joint request for a stay of a hearing for this purpose shall be forwarded to the AHO and shall indicate the present status of

negotiations. If an agreement is not reached within the time period for which any stay is approved, the hearing process shall continue at the point from which the stay was issued.

14.2 **Contents of Agreement.** Every agreement shall contain, in addition to an appropriate order, an admission of all jurisdictional facts and express waivers of further procedural steps before the AHO and of the right to appeal and shall also state that such agreement is enforceable as an order of the Department in accordance with procedures prescribed by law. In addition, the agreement may contain a statement that the signing thereof is for settlement purposes only and does not constitute an admission by any party that the law or regulations have been violated as alleged in the hearing notice.

14.3 **Disposition of Proposed Agreement.** Upon receiving such agreement the AHO may:

1. Accept it and issue the order agreed upon;
2. Reject it and reschedule a hearing; or
3. Take such other action as the AHO deems appropriate.

The provisions of this rule shall not preclude settlement of the proceedings in any other manner.

SECTION 15.0 APPEALS TO DECISIONS/ORDERS

15.1 Any party aggrieved by a final written order of the AHO may file a complaint with the Superior Court pursuant to §42-35-15 of the Act. The filing of a complaint does not automatically stay the decision or order unless so ordered by the Superior Court. In the absence of a timely appeal, the order or decision of the AHO shall become final and no further administrative appeal may be taken.

SECTION 16.0 ~~PUBLIC HEARINGS~~ RULE MAKING

16.1 Whenever the Department ~~or any Board or Commission established therein,~~ proposes to adopt, amend or revoke rules and regulations promulgated pursuant to statute, or at the discretion of the Director, such adoption, amendment or revocation shall be conducted pursuant to §42-35-3 of the Act (*Procedures for Adoption of Rules*). ~~a public hearing shall be conducted unless emergency rules and regulations are filed in accordance with §42-35-4(b)(2) of the Act which require a public hearing at a later time.~~

~~16.2 **Procedures.** When the Department proposes to adopt, amend or revoke any rule or regulation, the following procedures shall be followed:~~

~~1. The Department will give at least thirty (30) days notice of its intended action through publication in a newspaper of general circulation in all areas to be affected;~~

~~2. The notice shall include the time when, the place where, and the manner in which interested persons may present their views, either the terms of the proposed change or the substance of the proposed change;~~

~~3. All interested persons shall be afforded the opportunity to submit their views orally, in writing, or both.~~

~~16.3 **Hearing Officer.** The hearing officer shall preside at all public hearings. She/he shall, if she/he deems it appropriate, limit the length of time that each speaker is allowed. All public hearings conducted under these provisions are open to interested members of the public, and if time or space prohibit hearing all persons present on the appointed day and place, the hearing officer may continue the hearing for the purpose of receiving additional comments from those persons who were present on that day.~~

~~16.4 **Record.** A verbatim record shall be compiled at every public hearing. Any written statements, exhibits, letters or other documentation, along with the transcript shall comprise the record of all public hearings. The transcript of the public hearing is available from the court stenographer or the Department upon request and the payment of reasonable compensation. All other documentation is available from the Department in accordance with RIGL Chapter 38-2.~~

SECTION 17.0 PETITIONS FOR RULE MAKING, AMENDMENT OR REPEAL

17.1 Any interested person may petition the Director requesting the promulgation, amendment or repeal of any rule in the form prescribed by §5.0 of these Regulations and §42-35-3 of the Act.

1. Where a petition requests the promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule together with memoranda of any applicable law. Where the petition requests the amendment or repeal of a rule presently in effect, the rule or portion of the rule in question must be set out as well as a suggested form, if any. The petition must include all reasons for the requested amendment or repeal of the rule.
2. All petitions shall be considered by the Director who may, in her/his discretion, order a hearing for further consideration and discussion of the requested promulgation, amendment, repeal or modification of any rule.
3. The Director shall notify the petitioning party, within thirty (30) days of receipt of the petition, of the disposition of the petition.
4. A hearing shall be granted if requested by twenty-five (25) persons, or by a governmental subdivision or agency, or by an association having not less than twenty-five (25) members. The Department shall consider fully all written and oral submissions respecting the proposed rule.
5. Upon adoption of a rule, the Department, if requested to do so by an interested person, either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for its action.

SECTION 18.0 DECLARATORY RULINGS

18.1 As prescribed by §42-35-8 of the Act, any interested person may petition the Director, in the form prescribed by §6.0 of these Regulations for a declaratory ruling. The Director shall consider the petition and within a reasonable time shall:

1. Issue a declaratory ruling; or
2. Notify the petitioner that no declaratory ruling is to be issued; or

3. If requested by a petitioner, or at her/his discretion, set a reasonable time and place for hearing argument upon the matter, and give reasonable notice to the parties of the time and place for such hearing. After said hearing is conducted, the Director or his/her designee shall, within a reasonable time, issue a declaratory ruling.

SECTION 19.0 [DELETED]

SECTION 20.0 EXCULPATORY MATERIAL

20.1 Any Department attorney or employee, appearing in an adjudicatory proceeding on behalf of the Department, has a duty to disclose to the other parties to the proceeding: relevant material or information which supports the position of any other party, where the value of the material or information to that party is or should have been apparent, or where disclosure of the material or information is specifically requested by a party. The duty of the attorney or employee extends to material or information within her/his personal knowledge or possession, or in the possession or control of or known by any person who assisted the Department in the investigation or preparation of the proceeding, and who either regularly reports to or with reference to the particular proceeding has reported to the attorney or employee.

SECTION 21.0 HEARINGS CONDUCTED AS PART OF LICENSE RENEWAL FOR HOSPITALS

21.1 In accordance with its inspection and investigatory responsibility and authority under RIGL Chapter 23-17 (*Licensing of Health Care Facilities*), the Department may conduct, or cause to be conducted, a public hearing as part of the hospital licensure renewal process. Such public hearing shall occur prior to the licensure renewal date and shall be conducted pursuant to RIGL Chapter 42-46 (*Open Meetings*), except that a minimum of thirty (30) days advance notice shall be provided.

21.2 In addition to information required pursuant to RIGL Chapter 42-46, the public notice for such hearings shall specify that that the Department is soliciting input from the public regarding the compliance of licensed hospitals with the following:

(a) License conditions;

(b) Hospital Conversion Act;

(c) Certificate of Need conditions;

(d) Financial disclosure;

(e) Community benefit derived from operation of the hospital;

(f) Community health assessment;

(g) Federal CLAS standards; and

(h) Other specific information the Director deems relevant to the renewal of a hospital's license.

21.3 The public notice for such hearings shall also identify the contact person in the Department to whom comments may be submitted, in electronic format, prior to the hearing.

21.4 If a hearing involves more than one hospital, testimony will be heard in alphabetical order of the hospitals involved in the hearing.

SECTION 22.0 SEVERABILITY

22.1 If any provision of these rules and regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of the rules and regulations which can be given effect, and to this end the provisions of these rules and regulations are declared to be severable.

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