

211 CMR: DIVISION OF INSURANCE

211 CMR 88.00: PROCEDURES FOR THE APPEAL OF INSURER AT-FAULT ACCIDENT DETERMINATIONS AND THE CONDUCT OF HEARINGS ON INSURER AT-FAULT ACCIDENT DETERMINATIONS

Section

- 88.01: Purpose and Scope
- 88.02: Definitions
- 88.03: General Provisions
- 88.04: Effect of Appeal on Insurer's At-fault Accident Determination
- 88.05: Incomplete Appeal Filings
- 88.06: Administrative Resolution of Appeals Prior to an Appeal Hearing
- 88.07: Notice of Appeal Hearing
- 88.08: Appeal Hearing Procedures
- 88.09: Findings and Orders of the Board
- 88.10: Judicial Appeal Procedure
- 88.11: Retention of Sound Recordings
- 88.12: Severability

88.01: Purpose and Scope

211 CMR 88.00 governs the filing and review, and the conduct of hearings, on an Appeal of an Insurer's determination that an Operator is at fault in an Accident in accordance with the Insurer's Merit Rating Plan in a Competitive Market or with the Safe Driver Insurance Plan (SDIP) in a Fixed-and-established Market.

88.02: Definitions

As used in 211 CMR 88.00, the following words and phrases shall mean:

Accident. An unexpected, unintended event arising out of the ownership, maintenance or use of a private passenger motor vehicle, that causes damage to the Operator's vehicle, another vehicle, or other property.

Administrative Review. A review process pursuant to which the Board may resolve the merits of an Appeal without holding an Appeal Hearing.

Appeal. A procedure by which an Involved Operator may obtain review of the Insurer's determination that he or she was more than 50% at fault for an Accident.

Appeal Form. The form approved by the Board that an Insurer must send to an Operator with a Notice of At-fault Accident Determination that the Operator must complete and file with the Board to initiate an Appeal in accordance with 211 CMR 88.00.

Appeal Hearing. A hearing conducted by the Board.

Appeal Record. The Insurer's Claim Record, Appeal Form, audio recordings of the Appeal Hearing, records, accident reports, citations, photographs or other documents submitted to the Board by either Party, motions, and rulings made in an Appeal.

Appellant. An Involved Operator who files an Appeal in accordance with 211 CMR 88.00.

At-fault Accident. An Accident involving a Private Passenger Motor Vehicle in which its Operator is found to be more than 50% at fault.

At-fault Accident Determination. An Insurer's determination pursuant to the Standards of Fault set forth in 211 CMR 74.00: *Standards of Fault to Be Used by the Board of Appeal on Motor Vehicle Liability Policies and Bonds and Insurers in Presuming Fault When Making at Fault Determinations* that an Involved Operator was more than 50% at fault for an Accident.

Authorized Representative. An individual authorized in writing by a Party to represent that Party in an Appeal.

88.02: continued

Board. The Board of Appeal on Motor Vehicle Liability Policies and Bonds established pursuant to M.G.L. c. 26, § 8A.

Commissioner. The Commissioner of Insurance appointed pursuant to M.G.L. c. 26, § 6.

Competitive Market. A market in which Private Passenger Motor Vehicle insurance rates are not fixed and established pursuant to M.G.L. c. 175, § 113B but rather are determined pursuant to M.G.L. c. 175A and M.G.L. c. 175E.

Findings and Order. The Board's written decision that vacates or upholds the Insurer's At-fault Accident Determination. The Findings and Order shall state the Board's reasons for its decision.

Fixed-and-established Market. A market in which premiums for Private Passenger Motor Vehicle insurance are based on rates fixed-and-established by the Commissioner pursuant to M.G.L. c. 175, § 113B.

Hearing Officer. The Board's designee to review Appeals, conduct Appeal Hearings, and render Findings and Orders.

Insurer. Any corporation, association, partnership, group or individual authorized to write motor vehicle insurance in the Commonwealth of Massachusetts.

Insurer's Claim Record. Any and all documents including, but not limited to, accident reports, police reports, citations, photographs, witness statements or other materials upon which the Insurer based its At-fault Accident Determination.

Involved Operator. The Operator of a Private Passenger Motor Vehicle who receives an Insurer's Notice of At-fault Accident Determination.

Merit Rating Board. The Motor Vehicle Insurance Merit Rating Board established pursuant to M.G.L. c. 6C, § 57A.

Merit Rating Plan. A rating procedure Insurers use in a Competitive Market to adjust a prospective Private Passenger Motor Vehicle insurance premium based on the Operator's past motor vehicle insurance claims and traffic law violation experience.

Notice of At-fault Accident Determination. A notice issued by an Insurer to an Involved Operator.

Operator. A person who operates a private passenger motor vehicle in the Commonwealth.

Party. The Insurer and the Appellant whose legal rights, duties or privileges are being determined in an Appeal.

Special Hazardous Driving Condition. A general driving condition, including but not limited to a condition such as an ice storm, that the Board, in light of all the relevant facts, determines renders an Involved Operator less than 50% at fault for an Accident.

Standards of Fault. The standards referred to in M.G.L. c. 175E, § 7A and M.G.L. c. 175, § 113P; which are contained in 211 CMR 74.04: *Standards of Fault: Circumstances in Which an Operator's Fault Is Presumed to Be More than 50%*.

Statement in Lieu of a Personal Appearance. A written statement submitted by an Appellant who chooses to waive appearing in person at an Appeal Hearing.

Surcharge. An amount added to the Involved Operator's premium.

88.03: General Provisions

- (1) Right of Appeal. An Involved Operator who disagrees with an Insurer's At-fault Accident Determination may appeal such determination to the Board.
- (2) Insurer's Obligation to Provide Appeal Forms. An Insurer must enclose an Appeal Form with every Notice of At-fault Accident Determination it sends to an Operator.
- (3) Notice of At-fault Accident Determination. An Insurer must file the forms for its Notice of At-fault Determination as part of its Merit Rating Plan. An Insurer may not use its Notice of At-fault Accident Determination prior to its approval by the Commissioner.
- (4) Initiation of Appeal. An Appellant initiates an Appeal by timely filing with the Board an Appeal Form and the requisite filing fee. An Appellant who elects to waive his or her right to an in-person Appeal Hearing and requests the Board to decide the Appeal solely upon a document review shall submit any documents upon which the Appellant relies to support the contention that the Insurer's At-fault Accident Determination is incorrect. The Appellant shall include the Appellant's name, address and operator license number on all documents submitted to the Board.
- (5) Appeal Docket. The Board shall open and maintain a separate docket for each Appeal. The docket includes the Appeal Record and shall include all other submissions by either Party and all documents relating to the Appeal. No materials filed with the Board will be returned.
- (6) Right to Withdraw Appeal. An Appellant may withdraw his or her Appeal at any time. The withdrawal must be in writing and signed by the Appellant, or his or her Authorized Representative. Filing fees will not be refunded.
- (7) Right to Withdraw At-fault Accident Determination. An Insurer may withdraw its At-fault Accident Determination at any time. The Insurer shall notify within ten days the Merit Rating Board of its decision to withdraw its At-fault Accident Determination. The Insurer also shall promptly notify the Appellant, and any other data collection agency to which the Insurer reported the At-fault Accident Determination, that the Insurer has withdrawn its At-fault Accident Determination.
- (8) Burden of Proof. The Standards of Fault set forth in 211 CMR 74.04: *Standards of Fault: Circumstances in Which an Operator's Fault Is Presumed to Be More than 50%* presumptively shall be determinative on the question of fault unless the Appellant rebuts the Standards of Fault presumption by persuasive evidence.
- (9) Time and Method of Filing. The Appellant shall file the Appeal Form and filing fee with the Board within 30 days of the date on the Insurer's Notice of At-fault Accident Determination. Filings may be made by first-class United States mail, postage prepaid, addressed to the Board at the address shown on the Appeal Form, or by delivery in hand to the Board at the business location shown on the Appeal Form. The timeliness of a filing shall be determined as follows:
 - (a) Hand delivery during regular business hours. Hand delivery to the Board during regular business hours, 8:45 A.M. to 5:00 P.M., shall be treated as filed on the delivery date.
 - (b) Hand delivery during non-business hours. Hand delivery to the Board during non-business hours shall be treated as filed on the next regular business day, excluding Saturdays, Sundays and legal holidays.
 - (c) Mailing. An Appeal initiated by United States mail shall be determined to be filed on the date postmarked.
- (10) Computation of Time. The calculation of any time period referred to in 211 CMR 88.00 shall begin with the first day following the act which starts the running of the time period and shall include all subsequent days, until the last day of the time period. The last day of the time period is to be included in the calculation, unless it is a Saturday, Sunday or legal holiday, in which case the last day of the time period shall be deemed to be the next following business day.

88.03: continued

(11) Extensions of Time. A Party seeking an extension of a time period set by the Board or by 211 CMR 88.00 must submit a written request to extend that period before the end of the original or previously extended time period. The Board, for good cause shown, may extend a filing time limit set or allowed by 211 CMR 88.00. The filing of such a request shall stop the running of the time period requested to be extended until the Board informs the Party of its decision on the request.

88.04: Effect of Appeal on Insurer's At-fault Accident Determination

An Appeal and any subsequent court proceedings shall not stay the Insurer's imposition of a Surcharge as a result of an At-fault Accident Determination. The Insurer may assess or collect any additional Private Passenger Motor Vehicle insurance premiums that result from its At-fault Accident Determination under the Insurer's Merit Rating Plan or the Safe Driver Insurance Plan unless and until the Board or a court of competent jurisdiction makes a final decision to vacate the Insurer's determination.

88.05: Incomplete Appeal Filings

- (1) Upon receipt of an Appeal, the Board shall make an initial review to determine whether it is complete. An Appeal shall be deemed incomplete if:
 - (a) The filing fee is in an incorrect amount or has not been received by the Board.
 - (b) The Appeal Form has not been received by the Board.
 - (c) The Appeal Form is not completed by the Appellant.
 - (d) The Appeal is in such a condition (*i.e.*, illegible, damaged) that it cannot be processed.
- (2) Upon determining that an Appeal is incomplete, the Board shall return the incomplete Appeal to the Appellant together with a written notice that includes the date of the Board's determination that the Form is incomplete and the manner in which it is deemed to be incomplete.
- (3) The Appellant may complete and resubmit the Appeal to the Board within 30 days of the Board's determination.

88.06: Administrative Resolution of Appeals Prior to an Appeal Hearing

- (1) Administrative Review. The Board at its discretion may conduct an administrative review to determine whether the information on an Appeal Form and any documents submitted with it provide persuasive evidence that the At-fault Accident Determination should be vacated, and, based upon such a review, the Board may vacate an At-fault Accident Determination when an Accident results from a Special Hazardous Driving Condition. Appeals of At-fault Accident Determinations that are not vacated based on an Administrative Review will be scheduled for an Appeal Hearing.
- (2) Documentary Review. The Board at its discretion may conduct an administrative review to resolve those Appeals of At-fault Accident Determinations that can be vacated based upon document submissions. The Board will notify Insurers of the Appeals pending for their companies and will request copies of the documents or other information that resulted in their At-fault Accident Determinations. The insurer may choose not to submit the documents and request a hearing be scheduled. The Board will review these Appeals based upon the documents submitted by an Insurer, the Appeal Form, and information filed by the Appellant. The Board will vacate the At-fault Accident Determination if the record provides sufficient information to determine that the Appellant is not more than 50% at fault for the Accident at issue. Appeals of At-fault Accident Determinations that are not vacated will be scheduled for an Appeal Hearing.
- (3) Findings and Order. The Board shall notify the Merit Rating Board of its decision to vacate an At-fault Accident Determination based on an Administrative Review or Documentary Review, and shall provide a copy of its Findings and Order to the Parties.

88.06: continued

(4) Insurer Obligations. If the Board vacates an At-fault Accident Determination based on an Administrative Review or Documentary Review, the Board shall notify the Merit Rating Board, and the Insurer promptly shall notify any other data collection agency to which the Insurer reported the At-fault Accident Determination. If the Insurer, based on the claim underlying the Appeal, has imposed a Surcharge for an At-fault Accident on the policy insuring the Involved Operator, it shall promptly rescind the Surcharge and return any premium paid as a result of the Surcharge. No Insurer shall thereafter include such Accident for the purpose of calculating a Surcharge for a Private Passenger Motor Vehicle insurance policy covering the Involved Operator unless the Board's Findings and Order are reversed by a court of competent jurisdiction.

88.07: Notice of Appeal Hearing

(1) Notice of Hearing. The Board shall issue written notice of the Appeal Hearing to the Parties, or to their Authorized Representatives, at least 14 days prior to the Appeal Hearing date.

(2) Continuance of Hearing. The Board may grant a continuance of an Appeal Hearing at the written request of a Party in advance of the Appeal Hearing for good cause shown. Notice will be issued to both Parties notifying them as to the time, date and location of the rescheduled Appeal Hearing.

(3) Emergency Scheduling. The Board may, at its own discretion or at the request of a Party for good cause shown, schedule an Appeal Hearing on an accelerated basis.

88.08: Appeal Hearing Procedures

(1) Conduct of Persons Present. All parties, Authorized Representatives, counsel, witnesses and other persons present at an Appeal Hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the courts of the Commonwealth. Where such standards are not observed, the Hearing Officer may take action as he or she deems appropriate to maintain order at the hearing, including the exclusion of any person from the hearing. If the person so excluded is a Party or his or her counsel or Authorized Representative, the Hearing Officer may decide the Appeal against such Party with prejudice.

(2) Appellant's Statement in Lieu of Personal Appearance. After an Appellant receives a notice of an Appeal Hearing, he or she may elect to waive an Appeal Hearing and to submit to the Board a written Statement in *Lieu* of Personal Appearance. The Appellant must sign the Statement under the pains and penalties of perjury. The Appellant must submit with such Statement copies of all documents supporting the Appellant's allegations or defenses, except for those that have already been supplied to the Board. The Statement must be submitted to the Board's Boston office at least five business days prior to the Appeal Hearing date.

(3) Rights and Duties of the Parties.

(a) Appellant's Rights. The Appellant may present his or her own case at the Appeal Hearing, or may be assisted by an Authorized Representative. The Appellant is responsible for paying the cost of representation, if any. The Appellant, or his or her Authorized Representative, shall have the following rights at the Appeal Hearing:

1. to examine the Insurer's Claim Record at the Appeal Hearing;
2. to present and establish all relevant facts and circumstances by oral testimony, documentary evidence or other evidence;
3. to testify and to present witnesses;
4. to introduce exhibits;
5. to advance pertinent arguments without undue interference;
6. to challenge any testimony and cross-examine the witnesses of the Insurer; and
7. to submit rebuttal evidence.

(b) Insurer's Rights. The Insurer shall have the following rights at the Appeal Hearing:

1. to present and establish all relevant facts and circumstances by oral testimony, documentary evidence or other evidence;
2. to testify and to present witnesses;
3. to introduce the Insurer's Claim Record;

88.08: continued

4. to advance pertinent arguments without undue interference;
 5. to challenge any evidence;
 6. to submit rebuttal evidence; and
 7. if an Insurer has four or fewer Appeal Hearings scheduled on a given date, the Board in its discretion may authorize an Insurer to submit documents or other evidence in *lieu* of an appearance by that Insurer at the Appeal Hearing if the Insurer complies with the following procedures:
 - a. At least seven days prior to the Appeal Hearings, the Insurer shall request authorization for the Insurer's Claim Records to be submitted in *lieu* of appearance at the Appeal Hearings.
 - b. If authorization is granted by the Board at least five days prior to the Appeal Hearings, the Insurer may submit the Insurer's Claim Records to the Board and to each of the Appellants together with copies of all accident and police reports, photographs and witness statements.
 - c. Submitting the Insurer's Claim Records in *lieu* of a personal appearance does not relieve the Insurer from supplying any and all documents supporting its At-fault Accident Determination.
- (c) Insurer's Duties. The Insurer shall ensure that the Insurer's Claim Record is available for the Appellant's inspection at the in-person Appeal Hearing and that the Appellant has adequate opportunity to examine it at the Appeal Hearing.
- (4) Hearing Officer's Duties and Powers at Appeal Hearings. The Hearing Officer shall conduct a fair Appeal Hearing to protect the rights of the Parties and to ensure that the Parties have a full opportunity to present their cases. The Hearing Officer shall make a fair, independent and impartial decision based upon the issues and evidence presented at the Appeal Hearing according to the law. The Hearing Officer need not observe the rules of evidence observed by the courts of the United States or the Commonwealth, but shall observe the rules of privilege recognized by Massachusetts law. Evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. All records, investigative reports, and other documents on which the Hearing Officer relies in making a decision shall be made a part of the record of the Appeal Hearing. Documentary materials may be tendered and entered into evidence in the form of originals, copies, or excerpts, or by incorporation by reference. The Hearing Officer also shall have the following duties and powers, including, but not limited to:
- (a) administering the oath or affirmation to those testifying at the Appeal Hearing;
 - (b) regulating the presentation of evidence and the participation of the Parties at the Appeal Hearing including, but not limited to, requiring that all testimony and questions be directed to the Hearing Officer, in order to maintain a non-adversarial atmosphere, and to ensure an adequate and comprehensive record of the Appeal Hearing;
 - (c) receiving and ruling on evidence, including the exclusion or limitation of cumulative or unduly repetitious evidence or testimony;
 - (d) examining witnesses;
 - (e) utilizing his or her experience, technical competence, and specialized knowledge to evaluate and weigh the evidence presented;
 - (f) taking administrative notice of any fact which may be judicially noticed by the courts of the Commonwealth, and taking administrative notice of general, technical or scientific facts within his or her specialized knowledge; provided the Hearing Officer shall notify the Parties of the material so noticed and afford the Parties an opportunity to contest the facts so noticed;
 - (g) requiring that a Party submit further evidence on an issue and setting a specific time period for submitting the additional evidence, at the Hearing Officer's discretion;
 - (h) keeping the Appeal Hearing open to permit either Party to produce additional evidence, witnesses, or other materials, at the Hearing Officer's discretion;
 - (i) ruling on, or taking under advisement, any requests or motions that may be made; and
 - (j) granting or issuing on his or her own initiative a continuance of the Appeal Hearing.
- (5) Conflicts of Interest. No Hearing Officer who has a direct or indirect interest, personal involvement, or bias, in an Appeal Hearing, shall participate in the decision-making process or conduct the Appeal Hearing. In the event of a conflict, the Hearing Officer shall recuse himself or herself and the Appeal Hearing will be reassigned to another Hearing Officer or will be rescheduled to another date to be conducted by another Hearing Officer.

88.08: continued

(6) Oral Testimony. Oral testimony shall be given under oath or affirmation.

(7) Ex Parte Communications.

(a) No Party or other person directly or indirectly involved in an Appeal shall submit to the Hearing Officer or any Board employee involved in the decision-making process, any evidence, argument, analysis or advice, whether written or oral, regarding any matter at issue in an Appeal, unless such submission is part of the Appeal Record or made in the presence of all Parties to the Appeal. 211 CMR 88.08(7) does not apply to consultation among Board members concerning the Board's internal administrative functions or procedures. If any *ex parte* communication is directed to any person in violation of 211 CMR 88.08(7), that person shall immediately inform the Board of the substance and circumstances of the communication. If the Board determines that a Party or his or her Authorized Representative has violated 211 CMR 88.08(7), the Board may exclude such Party from the Appeal Hearing or decide against that Party with prejudice. If the Board determines that a person not a Party has violated 211 CMR 88.08(7), the Board may exclude that person from the Appeal Hearing.

(b) An Appellant's presentation of the facts to a Hearing Officer in the absence of the Insurer or its Authorized Representative, as permitted pursuant to 211 CMR 88.08(2), will not be considered an *ex parte* communication.

(8) Objections and Exceptions to Rulings. A Party need not make formal exceptions to rulings on evidence and procedure but must, at the time of a ruling, make known to the Hearing Officer his or her objections to such ruling, the grounds for the objections, and the different action which he or she desires be taken.

(9) Offers of Proof. Any offer of proof made in connection with an objection to a ruling by the Hearing Officer that rejects or excludes the proffered oral or written testimony shall consist of a statement of the substance of the evidence which the Party making such offer contends would be adduced by the testimony. If the rejected or excluded evidence consists of documents or records, or of references to documents or records, the objecting Party must submit to the Hearing Officer a copy of such documents, records, or references, which shall be marked for identification and shall constitute the offer of proof.

(10) Motions. The Hearing Officer may make rulings regarding the admissibility of evidence or any other matter which may arise during the Appeal Hearing. Any Party requesting a ruling from the Hearing Officer shall do so by motion that states the grounds for the motion and the nature of the ruling that is sought. The Hearing Officer may require that a motion be in writing. The Hearing Officer may, in his or her discretion, hear oral argument on a motion prior to making a ruling.

(11) Non-English Speaking Parties. All Appeal Hearings are conducted in English. If a Party cannot communicate effectively in English, the Hearing Officer shall continue the Appeal Hearing until the Party, at his or her own expense, can provide someone who can communicate effectively at the Appeal Hearing in both English and the language of the Party. The Hearing Officer has the discretion to impose a time limitation on the continuance of the Appeal Hearing.

(12) Default by Appellant.

(a) The Board shall enter a default against an Appellant who fails to appear at a scheduled Appeal Hearing.

(b) The Board shall enter a default against an Appellant who fails to file a timely Statement in *Lieu* of Personal Appearance and thereafter fails to appear at the scheduled Appeal Hearing.

(c) The Board may enter a default against an Appellant if he or she fails to respond to notices, or otherwise appears to not intend to pursue an Appeal.

(d) The Appellant may file with the Board within ten days of the Board's notice of default a written request to set aside the default and to reschedule an Appeal Hearing. The Board may, for exceptional circumstances, set aside the entry of default and reschedule the Appeal Hearing.

88.08: continued

(13) Vacating At-fault Accident Determination for Failure of Insurer to Defend Appeal. The Board shall vacate an Insurer's At-fault Determination if an Insurer fails to defend the Appeal. Failure to defend an Appeal includes the failure of the Insurer to file papers required under 211 CMR 88.00, to appear at a scheduled Appeal Hearing, to respond to notices, or any other activity that supports a conclusion that the Insurer does not intend to defend its At-fault Accident Determination.

(14) Audio Recording. The Board shall electronically record all oral testimony at an Appeal Hearing. The Board's audio recording shall be included in the Appeal Record. The Board need not transcribe such audio recordings.

88.09: Findings and Orders of the Board

(1) General. The Board shall issue its Findings and Order as promptly as administratively feasible after the completion of the Appeal Hearing.

(2) Findings and Order. The Findings and Order issued following an Appeal Hearing either shall vacate or uphold the Insurer's At-fault Accident Determination.

(a) Vacate At-fault Accident Determination. If the Board finds that the Insurer's At-fault Accident Determination was not in accordance with the Standards of Fault promulgated under 211 CMR 74.00: *Standards of Fault to Be Used by the Board of Appeal on Motor Vehicle Liability Policies and Bonds and Insurers in Presuming Fault When Making at Fault Determinations*, it shall vacate the Insurer's At-fault Accident Determination. The Board shall notify the Appellant, the Insurer, and the Merit Rating Board of its decision. The Insurer promptly shall notify any other data collection agency to which the Insurer reported the At-fault Accident Determination that the Board has vacated the determination. If the Insurer, based on the claim underlying the Appeal, has imposed a Surcharge for At-fault Accidents on the policy insuring the Involved Operator, it shall promptly rescind the Surcharge and return any premium paid as a result of the Surcharge. No Insurer shall thereafter include such accident for the purpose of calculating a premium for a Private Passenger Motor Vehicle insurance policy covering the Involved Operator unless the Board's Findings and Order are reversed by a court of competent jurisdiction.

(b) Uphold At-fault Accident Determination. If the Board finds that the Insurer correctly determined the Appellant's fault in accordance with the Standards of Fault promulgated under 211 CMR 74.00: *Standards of Fault to Be Used by the Board of Appeal on Motor Vehicle Liability Policies and Bonds and Insurers in Presuming Fault When Making at Fault Determinations*, it shall uphold the Insurer's At-fault Accident Determination. The Board shall notify the Appellant and the Insurer of its decision.

(3) Form of Findings and Order. The Findings and Order shall be in the form of a written document filed in the docket as part of the Appeal Record and shall be accompanied by a statement of the reasons for the decision, including a determination of each issue of fact or law necessary to render such decision.

(4) Notice of Decision and Right to Appeal. The Board shall send a notice and a copy of the Findings and Order to the Parties that:

(a) advises the Parties of their rights to appeal the Board's Findings and Order to the Superior Court where the Appellant resides or has a principal place of business within the Commonwealth, or in the Superior Court for Suffolk County, in accordance with M.G.L. c. 175E, § 7A, and M.G.L. c. 30A, § 14.

(b) advises the Parties that such an appeal must be filed within 30 days of the Board's Findings and Order.

(c) advises the Parties of the procedures for filing an appeal under M.G.L. c. 175E, § 7A.

88.10: Judicial Appeal Procedure

The Party appealing the Board's Findings and Order must:

(1) obtain from the Board certified copies of the Appeal Form and of the Board's Findings and Order;

211 CMR: DIVISION OF INSURANCE

88.10: continued

(2) file with the appropriate court a Petition for Judicial Review (forms may be obtained in the Clerks' Offices of the respective court), certified copies of the original Appeal Form and the Board's Findings and Order and the filing fee required by the court; and

(3) serve a copy of the Petition for Judicial Review filed with the court upon the Board and the Office of the Attorney General.

88.11: Retention of Sound Recordings

The Board will retain the sound recording of the Appeal Hearing for a minimum of four months from the date of the Board's Findings and Order on the Appeal. If a Party appeals the Board's Findings and Order to a court of competent jurisdiction, and properly notifies the Board of such appeal, the sound recording of the Appeal Hearing will be retained for a minimum of four months from the date of judicial disposition of the judicial appeal.

88.12: Severability

If any section or portion of a section of 211 CMR 88.00 or the applicability thereof to any person, entity, or circumstance is held invalid by a court of competent jurisdiction, the remainder of 211 CMR 88.00 or the applicability of such provision to other persons, entities or circumstances, shall not be affected thereby.

REGULATORY AUTHORITY

211 CMR 88.00: M.G.L. c. 26, § 8A; c. 175E, §§ 7A and 10; c. 175, § 113P.