

452 CMR 9.00: OTHER AGENCY ADMINISTRATIVE PROCEEDINGS

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9.01: SCOPE AND AUTHORITY

452 CMR 9.00 IS PROMULGATED PURSUANT TO M.G.L. C. 152, § 5 FOR THE PURPOSE OF CARRYING OUT A PORTION OF THE ADJUDICATORY RESPONSIBILITIES MANDATED UNDER M.G.L. C. 152. THE RULES AND PROCEDURES CONTAINED IN 452 CMR 9.00 SET FORTH UNIFORM PROCEDURES FOR ALL ADMINISTRATIVE PROCEEDINGS BEFORE THE DEPARTMENT OTHER THAN THOSE HEARD BY THE BOARD OF DISPUTE RESOLUTION AND CONDUCTED UNDER THE ADJUDICATORY RULES SET FORTH IN 452 CMR 1.00: *Adjudicatory Rules of the Industrial Accident Board*.

9.02: EMPLOYERS REPORT OF INJURY

(1) AN EMPLOYER WHO IS AGGRIEVED BY AN ASSESSMENT OF A FINE IMPOSED FOR A VIOLATION OF THE PROVISIONS OF M.G.L. C. 152, § 6, MAY REQUEST AN ADMINISTRATIVE REVIEW BY THE DEPARTMENT DIRECTOR OF ADMINISTRATION OR HIS OR HER DESIGNEE BY GIVING WRITTEN NOTICE OF SUCH REQUEST TO THE DIRECTOR WITHIN 30 DAYS OF THE ISSUANCE OF THE FINE AND SHALL INCLUDE ANY RELEVANT INFORMATION WITH SUCH REQUEST. SAID DIRECTOR SHALL MAKE A FINDING WITHIN 30 DAYS OF RECEIPT OF THE REQUEST FOR REVIEW.

(2) AN EMPLOYER WHO IS AGGRIEVED BY THE FINDING OF SAID DIRECTOR SHALL HAVE THE RIGHT TO REQUEST RECEIPT OF SAID FINDING TO REQUEST A HEARING BEFORE THE DIRECTOR OF THE DEPARTMENT OR HIS OR HER DESIGNEE, WHO SHALL SCHEDULE SUCH HEARING IN BOSTON WITHIN 30 DAYS OF RECEIPT OF THE REQUEST. AT THE HEARING THE EMPLOYER SHALL HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL AND TO QUESTION THE DIRECTOR OF ADMINISTRATION OR HIS OR HER DESIGNEE. THE HEARING SHALL BE CONDUCTED IN CONFORMANCE WITH M.G.L. C. 30A AND 89A CMR: *Adjudicatory Rules of Practice and Procedure*.

(3) NO EMPLOYER SHALL BE GRANTED MORE THAN ONE ADMINISTRATIVE REVIEW FOR A VIOLATION OF WORK-RELATED INJURY.

9.03: MEDICAL REPORTS AND RECORDS

(1) WITHIN 14 CALENDAR DAYS OF THE COMPLETION OF AN INITIAL MEDICAL EXAMINATION BY A PHYSICIAN OF AN EMPLOYEE, OR ANY SUBSEQUENT EXAMINATION BY SUCH PHYSICIAN INDICATING THAT THE EMPLOYEE IS IN THE CAPACITY OF AN EMPLOYEE TO WORK, THE PHYSICIAN SHALL SUBMIT TO THE DEPARTMENT ON BEHALF OF THE PARTY A MEDICAL REPORT. NO MEDICAL EXAMINATION SHALL BE DEEMED TO HAVE BEEN COMPLETED UNTIL ALL TESTS ORDERED HAVE BEEN RECEIVED BY THE PHYSICIAN. ON THE WRITTEN REQUEST OF THE DEPARTMENT SHALL SEND A NOTICE TO THE PHYSICIAN TO MAKE IMMEDIATE SUBMISSION OF A MEDICAL REPORT. EACH FAILURE TO SUBMIT A REPORT WITHIN 14 DAYS OF RECEIPT OF A DEPARTMENTAL NOTICE TO SUBMIT SHALL BE A SEPARATE VIOLATION AND SHALL BE PUNISHED BY A FINE OF \$25.00 PER VIOLATION.

(A) NO FINE SHALL BE LEVIED AGAINST PHYSICIANS EMPLOYED BY THE UNITED STATES DEPARTMENT OF LABOR ADMINISTRATION TO THE EXTENT THAT SUCH FINE WOULD CONFLICT WITH FEDERAL LAWS.

(B) NO FINE SHALL BE LEVIED WHEN COMPENSATION HAS BEEN AGREED TO, THE MEDICAL REPORT IS REASONABLE AND NECESSARY, BUT PAYMENTS FOR THE PHYSICIAN'S SERVICES AT RATES REASONABLE IN ACCORDANCE WITH M.G.L. C. 152, § 13, HAVE NOT BEEN MADE WITHIN 45 CALENDAR DAYS OF THE SUBMISSION OF A BILL.

(2) ANY PHYSICIAN AGGRIEVED BY THE ASSESSMENT OF A PENALTY PURSUANT TO M.G.L. C. 152, § 6, MAY SEEK AN ADMINISTRATIVE REVIEW BY THE DIRECTOR OF ADMINISTRATION OR HIS OR HER DESIGNEE BY GIVING WRITTEN NOTICE OF SAID REQUEST WITHIN 30 DAYS OF THE ISSUANCE OF THE FINE AND SHALL INCLUDE ANY RELEVANT DOCUMENTATION WITH SUCH REQUEST. SAID DIRECTOR SHALL MAKE A FINDING WITHIN 30 DAYS OF RECEIPT OF A DOCUMENTED REQUEST FOR REVIEW.

9.03: CONTINUED

(3) A PHYSICIAN WHO IS AGGRIEVED BY THE FINDING OF SAID DIRECTOR SHALL HAVE 14 DAYS OF SAID FINDING TO REQUEST A HEARING BEFORE THE DIRECTOR OF THE DEPARTMENT OR SHALL SCHEDULE SUCH HEARING IN BOSTON WITHIN 30 DAYS OF RECEIPT OF SUCH REQUEST. SAID PHYSICIAN SHALL HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL, TO CALL WITNESSES, AND TO EXAMINE AND CROSS EXAMINE WITNESSES. THE HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH M.G.L. C. 30A AND 801 CMR 1.00 *Standard Adjudicatory Rules of Practice and Procedure*.

9.04: ADJUDICATORY PROCEDURES FOR DEPARTMENTAL ADMINISTRATIVE HEARINGS

(1) OTHER THAN PROCEEDINGS COVERED BY 452 CMR 1.00 *Rules of the Industrial Accident Board*, ADMINISTRATIVE HEARINGS CONVENED BY THE DEPARTMENT OF INDUSTRIAL ACCIDENTS SHALL BE CONDUCTED PURSUANT TO M.G.L. C. 30A AND 801 CMR 1.00 *Standard Adjudicatory Rules of Practice and Procedure*, AND M.G.L. C. 152 § 25A WHERE APPLICABLE.

(2) HEARINGS CONDUCTED PURSUANT TO M.G.L. C. 152 § 30H (OEVR DETERMINATIONS OF SUBSTANTIAL INJURY), C. 152 § 25A(C)(3) (REFUSALS TO GRANT LICENSE, OR REVOKING OR REFUSING TO RENEW LICENSE), C. 152 § 25C (APPEALS OF STOP WORKORDERS), C. 152 § 6 (TIMELY FILING OF NOTICE OF INJURY), C. 152 § 65B (CANCELLATION OF INSURANCE), C. 152 § 7C (DENIAL OR SUSPENSION OF LICENSE BEFORE THE BOARD) AND ANY OTHER ADMINISTRATIVE HEARINGS REQUIRED BY M.G.L. C. 152 § 25A(1) SHALL BE GOVERNED BY 452 CMR 1.00 *Standard Adjudicatory Rules of the Industrial Accident Board*.

REGULATORY AUTHORITY

452 CMR 9.00: M.G.L. C. 152, § 5.