

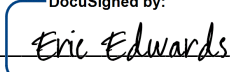
AMENDMENT TO
UTAH COUNTY HEALTH DEPARTMENT
REGULATION 17-01

Regulation for the Hearing of Administrative Actions

Adopted by the Utah County Board of Health

March 22, 2021

Under Authority of Section 26A-1-121, Utah Code Annotated, 2012, as amended; and

By: DocuSigned by:

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Eric Edwards, Director, Utah County Health Department

By: DocuSigned by:

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Jeff Acerson, Chair, Utah County Board of Health

Amendment to
Utah County Health Department

Health Regulation 17-01

Regulation for the Hearing of Administrative Actions

Effective March 22, 2021

- (1) (a) There is hereby created a Utah County Health Department Administrative Hearing Board (the “Board”) to hear and decide the validity of orders, notices, denials, or penalties made by the Utah County Health Department relative to the application and interpretation of any law or rule the Utah County Health Department has authority to enforce or enact.
(b) The members of the Board shall be appointed by the Utah County Board of Health and shall serve until replaced or a resignation is accepted by the Board of Health.
(c) Members shall be administered the oath of office after being appointed but before taking part in any deliberations of the Board.
- (2) (a) The Board shall consist of five members, comprised of individuals from the following categories:
 - (i) a medical professional;
 - (ii) an attorney;
 - (iii) a member of the Board of Health;
 - (iv) an academic professional specializing in the health or public health field; (v) no more than one member of the public at large.
(b) The Board of Health may appoint members of the professional communities regulated by the Utah County Health Department as special members of the Board.
 - (i) Special members of the Board shall have authority only to hear disputes related to the professional community they represent.
(c) The Board of Health may appoint alternate members or other members as deemed necessary.
- (3) (a) There must be a minimum of three members to form a quorum.
(b) The chair, or the acting chair, shall conduct all hearings and may administer oaths.
(c) The chair, or the acting chair, may issue subpoenas or compel the attendance of witnesses as otherwise authorized by Utah law.
 - (i) All subpoenas must be submitted to the Board or the Board’s attorney in the Utah County Attorney’s Office no later than 21 days prior to the date of the hearing.
 - (ii) After the Chair has signed the subpoena, it the burden of the issuing party to have the subpoena served.
(d) The Director of the Division under which an appeal is raised shall ensure that a representative of that Division act as secretary for all hearings. The acting secretary shall keep minutes of the proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact.
(e) The acting secretary shall also keep a record of all other official actions at the hearing or any official actions as it pertains to the case.
(d) These minutes and records, along with the appeal application, written statements, and

other facts bearing on the matter and decision of the Board, shall be filed in the office of the Utah County Health Department and shall be public record.

(e) The acting secretary shall make an electronic audio recording of the proceedings.

(f) Any party may request a copy of the electronic audio recording to create a transcript of the proceedings, but Utah County, the Utah County Board of Health, or the Utah County Health Department Administrative Hearing Board shall not be required to create a transcript for any party except as otherwise required by law.

- (4) A request for hearing on the validity of an order, notice, denial, or penalty shall be submitted in writing to the Local Health Officer within thirty (30) days of receiving an order, notice, denial, or penalty and shall consist of:

- (a) a written request to the Board to hear the matter;
- (b) a copy of the order, notice, denial, or penalty to be determined; and
- (c) a claim of error that fully sets forth the facts and nature of the error.

- (5) (a) No party may request a hearing for any matter except where a that party is ordered to act or not act; a permit or license is denied, suspended, or revoked, or is assessed a civil or administrative penalty by the Utah County Health Department.

(b) A Notice of Violation where no order is made, a permit is not denied, suspended, or revoked, and does not assess a civil or administrative penalty will not be heard by the Board.

(c) No party may request a hearing or appeal of an order, notice, denial, or penalty not issued to that party, except as required or excepted by Utah law.

- (6) (a) The party appealing the validity of an order, notice, denial, or penalty may, at the same time an appeal is submitted, request an expedited hearing in front of a hearing officer (the "Officer") appointed by the Local Health Officer in lieu of a hearing in front of the Board

(b) The Officer shall have all the same authority, rights, and responsibilities as the Board as enumerated in this Regulation.

(c) The Officer shall be an individual from a background enumerated in Section 2(a)(i)-(vi) above.

(d) A hearing in front of an Officer shall be conducted within 30 days of a request for appeal unless the parties agree, in writing, to an extension or shortening of time or for good cause.

(e) The appealing party may elect, in writing to the Local Health Officer, to have the matter heard in front of the Board anytime at least 3 days prior to the day of a scheduled meeting in front of the Officer, after which a hearing in front of the Board will be scheduled at the Board's earliest convenience.

- (7) (a) At any time prior to an Administrative Hearing before the Board or Officer, a party affected by an order, notice, denial, or penalty may submit in writing to the Local Health Officer a Request for Stay Pending Settlement Agreement or Administrative Hearing.

(b) The Local Health Officer shall balance the impact on the affected party or parties to the order, notice, denial, or penalty with the risk to public health in determining whether to temporarily stay an action of the Utah County Health Department.

- (8) (a) At any time prior to the commencement of a hearing on the validity of any order, notice, denials, or penalty, the Utah County Health Department and affected party or parties may enter into a settlement agreement.

(b) The settlement agreement shall be binding upon the parties to the agreement and shall

waive any rights to a hearing or appeal under this regulation, except as explicitly preserved in the settlement agreement.

- (9) (a) The following shall be conducted as an informal hearing as defined by the Utah Administrative Procedures Act:
 - (i) the hearing on the validity of any penalty or order to pay an amount less than \$10,000;
 - (ii) the hearing on the validity of a suspension of license for a period less than six months; or
 - (iii) the hearing on the validity of a denial of any license or permit.(b) The following shall be conducted as a formal hearing as defined by the Utah Administrative Procedures Act:
 - (i) the hearing on the validity of any penalty or order to pay an amount of \$10,000 or greater;
 - (ii) the hearing on the validity of the suspension of license for a period of six months or greater; or
 - (iii) the hearing on the validity of a revocation of a license.
- (10) (a) Any Board member or Officer present at a hearing having a professional or personal relationship with any party to the hearing that may present a conflict of interest shall disclose the nature of the relationship and potential conflict to the parties, the Board or Officer, as applicable, and the Local Health Officer.
(b) The parties shall have an opportunity to object to the participation of a Board member or Officer hearing the matter, and, upon a showing of good cause, a Board member or Officer shall be recused from hearing the matter due to conflict of interest and another member shall be appointed to replace the recused member, if necessary, to form a quorum, consistent with this Regulation.
- (11) (a) The decision of the Board or Officer shall be based upon the facts and not upon expressions of support or protest, or lack of support or protest, which may be made at the hearing.
(b) Any party may appear at the hearing in person or by attorney.
(c) All exhibits to be presented and used at any hearing must be submitted to the Board or Officer at least three days prior to the day of the hearing.
- (12) (a) The Utah County Health Department shall have the burden of proving the violation or determination that provides the basis for the order, notice, or penalty by a preponderance of the evidence for every element of the violation or determination.
(b) Any affirmative defenses or other assertions must be proved by the party asserting the defense or assertion by a preponderance of evidence or as otherwise provided by law.
- (13) The Board or Officer may grant default judgment in accordance with Utah Code 63G-4-209.
- (14) (a) The determination of the Utah County Health Department shall be upheld if a majority of the Board, or the Officer acting alone, finds by a preponderance of the evidence that every element of the violation or determination has been met.
(b) The Board or Officer's final determination shall only be applicable to the party adversely affected by the order, notice, denial, or penalty.
(d) When relief is granted, the Board or Officer shall enter into the official minutes or shall cite in a written determination the specific reasons for the Board or Officer's final determination.
(e) Relief must comply with all applicable federal, state, and local laws and Utah County

Health Department Regulations.

- (15) (a) After a decision has been made, the acting secretary shall file the written decision of the Board or Officer in the Utah County Health Department Administrative Office and mail or email a copy of the decision to the applicant at the address supplied.
(b) The decision of the Board or Officer shall be deemed final at the time it is filed in the Utah County Health Department Administrative Office.
- (16) (a) A party to the proceeding may request a temporary stay of the decision of the Board or Officer to allow the party to pursue an appeal of the decision or judicial review.
(b) The Board or Officer may grant or deny a stay of action only when proper notice has been given to all parties of the proceeding and is approved by a majority of the quorum or the Officer.
(c) The Board or Officer may grant the stay if the Board or Officer finds that staying the action is in the best interests of Utah County.
- (17) (a) Any party to a proceeding before the Board or Officer may appeal any decision or official action taken during the proceeding to the Utah County Board of Health.
 - (i) An appeal to the Utah County Board of Health must be made by filing a request for appeal with the Local Health Officer.
 - (ii) The Local Health Officer shall accept and process these requests.
(b) Any appeal of a decision must be properly filed within thirty (30) calendar days of the date of the contested decision or the appeal shall be time-barred and not heard or considered.
(c) Filing a petition for an appeal of a decision automatically stays the decision of the Board.
(d) The Utah County Board of Health shall fix a reasonable time for hearing the appeal and decide the same.
(e) The basis for appeal to the Utah County Board of Health shall be limited to the allegation that the decision of the Board or Officer's determination was arbitrary, capricious, or illegal.
(f) The party appealing the matter to the Utah County Board of Health must specify the grounds for their allegation that the Board or Officer's determination was arbitrary, capricious, or illegal, and bears the burden of proving the same.
(g) The acting secretary shall transmit to the Utah County Board of Health the complete record of its proceedings, including applications, exhibits, minutes, findings, orders, and any transcript of the audio recordings which may be on file with the Board.
(h) The Utah County Board of Health shall not accept or consider additional evidence unless it is determined that the evidence was offered during the initial hearing and improperly excluded.
(i) Any member of the Utah County Board of Health that is party to the initial action, or who participated in the initial hearing as a member of the Board or as the Officer or a witness shall be excluded from the Utah County Board of Health deliberations on the matter and shall be excluded from voting on appeal.
(j) The Utah County Board of Health shall uphold the decision of the Board or the Officer if the decision is supported by substantial evidence and the decision is not arbitrary, capricious, or illegal.
(k) The decision of the Utah County Board of Health shall be final at the time it is filed in the Health Department Administrative Office.
(l) Any party may appeal the decision of the Utah County Board of Health to a court of

competent jurisdiction pursuant to Utah Code 26A-1-121(2)(c).

(i) Unless otherwise required by law, the proper venue for judicial appeal shall be the 4th District Court in Provo, Utah.

(ii) Any party may request a copy of the electronic audio recording to create a transcript of the proceedings, but Utah County, the Utah County Board of Health, or the Utah County Health Department Administrative Hearing Board shall not be required to create a transcript for any party except as otherwise required by law.