

**DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH**

**NOTICE OF ADOPTION OF A RESOLUTION TO REPEAL AND REENACT
ARTICLE 7 OF THE NEW YORK CITY HEALTH CODE**

In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, a Notice of Intention of the proposed repeal and reenactment of Article 7 of the New York City Health Code (the “Health Code”) was published in the City Record on March 13, 2008, and a public hearing was held on April 16, 2008. Six people testified at the public hearing and no written comments were received. A number of changes were made to the resolution in response to the comments received. At its meeting on June 18, 2008, the Board of Health adopted the following resolution.

Statutory Authority

These amendments to the New York City Health Code (“Health Code”) are promulgated pursuant to §§556, 558 and 1043 of the New York City Charter (the “Charter”). Section 556 of the Charter provides the Department of Health and Mental Hygiene (“DOHMH”) with jurisdiction to regulate all matters affecting the health in the city of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the “Board”) to amend the Health Code and to include in the Health Code all matters to which the DOHMH’s authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

INTRODUCTION

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public’s health, the Article 7 of the Health Code has been updated so that it can provide the adequate legal tools to effectively address the City’s current and future public health needs relative to the Department’s Administrative Tribunal. Several of the provisions are without substantive change but have been reorganized such that the Article and its provisions flow in a more coherent and streamlined manner. The revisions reflect modern thinking about public health, public health law and due process. The revisions also reflect the current practices of the DOHMH and the Administrative Tribunal, including enforcement needs within the DOHMH and the need to conform the Article to the City Administrative Procedure Act as provided for in the New York City Charter. To that end, the Board has repealed and reenacted Article 7 as provided below. Changes made in response to public comments are indicated as well.

Section 7.01

This section officially establishes the Administrative Tribunal pursuant to §558 of the Charter.

Section 7.03

This section establishes the jurisdiction, power and duties of the Administrative Tribunal and its hearing examiners. The Tribunal’s practices must be consistent with §1046 of the City Charter, thus ensuring compliance with the City Administrative Procedure Act. In addition to the

powers provided for in current Article 7, certain powers have been added that are inherent to the orderly conduct of hearings, such as the issuance of subpoenas for testimony or other evidence that is under the control of DOHMH and the authority to bar from continued participation in a hearing any person, including a party, authorized representative or attorney, witness or observer, who engages in disorderly, disruptive or obstructionist conduct, in order to maintain order and decorum and allow for efficient and expedient hearings.

Section 7.05

§7.05 provides for the organization of the Administrative Tribunal. The head of Adjudications at the Administrative Tribunal will be the Director who is responsible for the conduct of hearings and for all adjudicative matters of law, except that he or she will not be vested with the powers and duties of the Review Board. The Director appoints hearing examiners to exercise the powers and duties and discharge the responsibilities of the Administrative Tribunal with regard to adjudications. In this connection, the Director is able to assign hearing examiners to conduct hearings, and also delegate any or all of the powers vested in him or her, but is not be able to delegate the powers and duties of the Review Board. Finally, §7.05 provides that the hearing examiners will be subject to the applicable rules of conduct promulgated pursuant to the New York City Charter.

Section 7.07

This section is substantively derived from the prior section in Article 7 describing procedures concerning a “finding” of violation. The actual document informing the respondent of the violation is entitled the “notice of violation.” Referencing to the “notice of violation” rather than the “finding” of violation reflects DOHMH practice and the proper title. Changes to the procedures include a presumption that when a notice of violation includes the report by the person who made the inspection resulting in the notice of violation, such report is prima facie evidence of the facts contained therein. In addition, this section now clarifies that an amendment may not be made to the notice of violation if the amendment alleges new violations that have occurred since the original notice of violation or if the proposed amendment is not within the scope of the original notice of violation. Such subsequent or extraneous actions should afford the respondent the benefits, rights and duties associated with the receipt of a new notice of violation.

Section 7.09

This section changes the method by which a respondent must respond to a notice of violation by eliminating the concept of requiring a written answer. To reflect programmatic practice, conserve resources of the DOHMH and to provide additional convenience for the DOHMH and respondents, the changes facilitate adjudicatory efforts by allowing for and encouraging adjudications by mail in addition to the option of appearing in person or by an authorized representative at the scheduled hearing. Subdivision (a) specifies who, in addition to the respondent, may appear as an authorized representative on behalf of the respondent. In connection with mail adjudications, this section also provides additional guidance on mail adjudication procedures, including allowing the hearing examiner to request more evidence from the respondent in addition to the evidence submitted and allowing the hearing examiner to deny a mail adjudication request and adjourn the matter for a hearing. With the mail adjudications, the new provision indicates that when a notice of violation or related notice sets forth a penalty that may be paid in full satisfaction of the violations, the respondent may admit to the violations charged and pay the penalty by mail in the manner and time provided for in the notice. This type of payment shall constitute an admission of liability and will waive the respondent’s rights to a hearing and appeal. This allows a respondent who simply wants to pay the penalty to do so without having to appear at a hearing. In response to public comment, paragraph (2) of subdivision (a) has been amended to delete any requirement that an affidavit to be submitted by

registered representatives. In addition, subdivision (c) has been clarified to provide that after a hearing has begun, adjournment requests must be addressed to the hearing examiner, regardless of prior administrative adjournments.

Subdivision (d) sets forth the rules for issuing default decisions where there is an unexplained failure to appear. Such default orders may be issued only by a hearing examiner. A default decision may be reconsidered in appropriate circumstances. In such cases a hearing could be rescheduled so as to avoid prejudice to the respondent. In response to public comment, subdivision (d) has been clarified to change the term “received” to “postmarked” in providing for reopening or reconsideration of a default decision. Subdivision (e) explains the procedures for admitting the violations charged and paying a penalty by mail.

Section 7.11

§7.11 is derived largely from, and retains many of the provisions of prior §7.09. It addresses procedures for and guidance on hearings, including but not limited to provisions specifying that hearings are open to the public, that a respondent may present evidence, examine and cross examine witnesses, request the presence of the issuing inspector, that a record of the proceedings must be made and maintained, and requirements for the writing and service of hearing examiner decisions. This section also eliminates references to written answers. In response to a public comment, paragraph (2) of subdivision (f) has been amended to limit the number of times the hearing examiner may adjourn a hearing when a Department inspector has not appeared.

Section 7.13

The new §7.13 provides for the issuance of subpoenas related to a hearing in compliance with the Charter in order to allow for gathering appropriate and relevant evidence in a timely and orderly manner necessary for an expedient hearing.

With respect to a subpoena request subsequent to the commencement of a hearing, a hearing examiner may issue subpoenas to compel the production of any DOHMH record or document for examination or to compel the appearance of persons currently employed by DOHMH to give testimony if such production or testimony is reasonably related, relevant and necessary to the adjudication at issue.

Section 7.21

New §7.21 requires that “professional” representatives, those that represent two or more respondents in a calendar year, register with the Tribunal. The section also specifies the rules of conduct for authorized representatives to follow and allows for registered representatives to be barred from representing respondents at the Tribunal as a consequence of violating those rules or engaging in other specified behavior, including the submission of false or forged evidence. Prior §7.21, regarding the computation of time, has been renumbered as §7.23.

The following sections largely remain the same as their predecessor sections: §7.15 Disqualification of hearing examiners; §7.17 Review Board; §7.19 Disqualification of member of Review Board and §7.21, now proposed §7.23, Computation of time. An error of omission in §7.17 (c) has been corrected to provide that a notice of appeal must be filed by a respondent within 30 days of the Tribunal giving or mailing a decision to the respondent.

The Resolution is as follows:

RESOLVED, that Article 7 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed and reenacted, to be printed together with explanatory notes, to read as follows:

Article 7

Administrative Tribunal

§7.01 Administrative Tribunal

§7.03 Jurisdiction, powers and duties of the Administrative Tribunal

§7.05 Organization of the Administrative Tribunal

§7.07 Proceedings before the Administrative Tribunal

§7.09 Appearances

§7.11 Hearings and mail adjudications

§7.13 Subpoenas

§7.15 Disqualification of hearing examiners

§7.17 Review Board

§7.19 Disqualification of member of Review Board

§7.21 Registration and disqualification of certain authorized representatives

§7.23 Computation of time

Introductory Notes:

As part of a comprehensive review of the Health Code to assess the efficacy of these articles in protecting public health, Article 7, Administrative Tribunal, was repealed and reenacted by resolution of the Board of Health adopted on June 18, 2008 to provide adequate legal tools to effectively address the City's public health needs and respondents' due process rights. The revisions reflect modern thinking about public health and public health law and also better reflect current practices of the Department and issues addressed by the Department, and the need to be consistent with the City Administrative Procedure Act (Charter §1046) as well as shaping the article to support the enforcement and operational needs and practices of the Department.

§7.01 Administrative Tribunal. The Administrative Tribunal (the "Tribunal") established by the Board of Health pursuant to §558 of the Charter is hereby continued.

§7.03 Jurisdiction, powers and duties of the Administrative Tribunal.

(a) Jurisdiction. The Administrative Tribunal shall have jurisdiction to hear and determine, in accordance with §1046 of the New York City Charter, notices of violation alleging non-compliance with the provisions of this Code, the New York State Sanitary Code, those sections of the New York City Administrative Code relating to or affecting health within the City, and any other laws and regulations that the Department has the duty or authority to enforce.

(b) General powers. The Administrative Tribunal or the hearing examiners assigned thereto shall have the following powers:

(1) To impose fines and pecuniary penalties in accordance with Article 3 of this Code or other applicable law;

(2) To compile and maintain complete and accurate records relating to its proceedings, including copies of all notices of violation served, responses, notices of appeal and briefs filed and decisions rendered by the hearing examiners and the Review Board;

(3) To adopt, through the Department's rulemaking process, such other rules and regulations as may be necessary or appropriate to effectuate the purposes and provisions of this Article;

(c) Hearing Examiners. Hearing examiners may:

(1) Hold conferences for the settlement or simplification of the issues,

(2) Administer oaths and affirmations, examine witnesses, rule upon offers of proof or other motions and requests, admit or exclude evidence, grant adjournments and continuances, and oversee and regulate other matters relating to the conduct of a hearing,

(3) Upon the request of any party, or upon the hearing examiner's own volition, and when the hearing examiner determines that necessary and material evidence will result, issue subpoenas or adjourn a hearing for the appearance of individuals, or the production of documents or other types of information, that are in the possession or control of the Department and in accordance with §7.13 of this article.

(4) Bar from participation in a hearing any person including a party, representative or attorney, witness or observer who engages in disorderly, disruptive or obstructionist conduct that disrupts or interrupts the proceedings of the Tribunal; and

(5) take any other action authorized by applicable law, rule or regulation, or that is delegated by the Director.

§7.05 Organization of the Administrative Tribunal; Director.

(a) The head of Adjudications at the Administrative Tribunal shall be its Director, who shall be appointed by the Board and who, in addition to having all of the powers of a hearing examiner, shall be responsible for the conduct of hearings and for all administrative matters of law and

professional practice related to adjudications, including the management and supervision of hearing examiners; provided that the Director shall neither hold nor delegate any of the powers and duties of the Review Board under §7.17. The Director shall be subject to re-appointment by the Board every three years, but if the Director is not re-appointed he or she may continue to serve until a successor is appointed and ready to assume the powers of office. The Board may at any time remove the Director for cause following an opportunity to be heard. The Director shall devote full time to the Administrative Tribunal and shall not perform any other services for the Department.

(b) The Director shall appoint a sufficient number of hearing examiners to carry out the adjudicatory powers, duties and responsibilities of the Administrative Tribunal. Hearing examiners shall exercise such powers, duties and responsibilities as the Director may assign. The Director may delegate any or all of the powers and duties vested in him or her. The hearing examiners, who shall be attorneys admitted to practice in the State of New York, may be appointed by the Director to serve on a full time, part time or per diem basis, but no hearing examiner shall perform any other services for the Department. Hearing examiners shall be subject to the provisions of the rules of conduct promulgated pursuant to §1049(2)(b) of the New York City Charter.

§7.07 Proceedings before the Administrative Tribunal.

(a) *Notice of Violation.* All proceedings before the Administrative Tribunal shall be commenced by the issuance and service of a notice of violation (“NOV”) upon the respondent and by the transmittal thereof to the Administrative Tribunal. Each NOV shall be prima facie evidence of the facts alleged therein. The notice of violation may include the report of the public health sanitarian, inspector or other person who conducted the inspection or investigation that culminated in the notice of violation. When such report is served in accordance with this section, such report shall also be prima facie evidence of the factual allegations contained therein.

(b) *Service of the Notice of Violation.* The notice of violation may be served in person upon the person alleged to have committed the violation, the permittee or registrant, upon the person who was required to hold the permit or to register, upon a member of the partnership or other group concerned, upon an officer of the corporation, upon a member of a limited liability company, upon a management or general agent or upon any other person of suitable age and discretion as may be appropriate, depending on the organization or character of the person, business, or institution charged. Service may also be made by certified or registered mail through the U.S. Postal Service, or by any type of mail utilizing any other mailing service that provides proof of

mailing and receipt, to any such person at the address of the premises that is the subject of the NOV or, as may be appropriate, at the residence or business address of (1) the alleged violator, (2) the individual who is listed as the permittee or applicant in the permit issued by the Board or the Commissioner or in the application for a permit, or (3) the registrant listed in the registration form. In the case of service by mail, documentation of delivery or receipt provided by the delivery or mailing service shall be proof of service of the notice of violation.

(c) Contents of notice of violation. The notice of violation shall contain:

(1) A clear and concise statement sufficient to inform the respondent with reasonable definiteness and clarity of the essential facts alleged to constitute the violation or the violations charged, including the date, time where applicable and place when and where such facts were observed;

(2) Information adequate to provide specific notification of the section or sections of the Code or other law, rule, or regulation alleged to have been violated;

(3) Information adequate for the respondent to calculate the maximum penalty authorized to be imposed if the facts constituting the violation are found to be as alleged;

(4) Notification of the date and place when and where a hearing will be held by the Department, such date to be at least fifteen calendar days after receipt of the notice of violation, unless another date is required by applicable law;

(5) Notification that failure to appear on the date and at the place designated for the hearing shall be deemed a waiver of the right to a hearing, thereby authorizing the rendering of a default decision; and

(6) Information adequate to inform the respondent of his or her rights under §7.09 of this Article.

(d) Amendment. The hearing examiner may allow an amendment to a notice of violation at any time if the subject of the amendment is reasonably within the scope of the original notice of violation; provided, however, that such amendment does not allege any violation not specified in the original notice, alleged to have occurred subsequent to the service of such notice, and does not prejudice the rights of the respondent to adequate notice of the allegations made against the respondent.

Notes:

This section comports with the requirements of Charter § 1046, which prescribes the minimum standards for City agency adjudications.

§7.09 Appearances.

(a) A respondent may appear by

(1) appearing in person on the date and at the place scheduled for the hearing,

(2) sending an authorized representative specified herein to appear on behalf of such person on the date and at the place scheduled for the hearing:

(i) an attorney admitted to practice law in New York State,

(ii) a representative registered to appear before the Tribunal pursuant to §7.21, or

(iii) any other person, subject to the provisions of §7.21; or

(3) making a written request before the scheduled hearing for an adjudication by mail.

(b) If the respondent chooses to appear by mail, the written request for mail adjudication may contain denials, admissions and explanations pertaining to the individual violations charged, and documents, exhibits or statements to be considered as evidence in support of respondent's defense, or in the determination of penalties. If, after a review of the record, the hearing examiner is of the opinion that it is necessary for the respondent to submit additional evidence, the hearing examiner may require the submission of additional documentary evidence or deny a request for adjudication by mail and adjourn the matter for a hearing. Violations that are not denied or explained shall be deemed to have been admitted; defenses not specifically raised shall be deemed to have been waived.

(c) A respondent or authorized representative may request that a scheduled hearing be adjourned to a later date. Such a request may be made in writing to the Tribunal, provided that it is received by the Tribunal no later than three business days prior to the date of the scheduled hearing, or the request may be made in person on the date of the scheduled hearing at any time prior to the hearing. A maximum of three requests for adjournments by the respondent, and a maximum of three requests for adjournments by the petitioner or by the Tribunal, shall be granted administratively as of right. Thereafter, all requests for adjournments must be made in person to a hearing examiner or the Director of the Tribunal at the time of the scheduled hearing, and may be granted only upon a showing of good cause as determined by the hearing examiner or the Director in his or her discretion. A denial of an adjournment request shall not be subject to separate or interlocutory review by the Review Board.

(d) Failure by the respondent to appear in person, by sending an attorney or other authorized representative, or by mail shall constitute a waiver of the right to a hearing and shall authorize the hearing examiner, without further notice to the respondent, to find that the respondent is in default and that the facts are as alleged in the notice of violation, and to render a default decision sustaining the allegations and imposing a penalty pursuant to

Article 3 of this Code or as authorized by other applicable law. If, before issuing a default decision, the Tribunal finds that the failure of the party to appear was caused by circumstances beyond the party's reasonable control, the Tribunal may choose to not issue a default decision and instead adjourn the matter for a new hearing date. A decision that is adverse to a respondent by reason of the respondent's default shall be issued only after the hearing examiner has determined that the notice of violation was served as required by applicable law, and that the notice of violation alleges sufficient facts to support the violations charged. The Tribunal shall notify a defaulting respondent of the issuance of a default decision by mailing a copy of the decision by certified mail. A respondent may request in writing that a default decision be reconsidered, if the request to reconsider is postmarked or received by the Tribunal within thirty days of the mailing of the default decision to the respondent. One such request shall be granted administratively as of right provided that the Tribunal's records show that there have been no other failures to appear in relation to the particular notice of violation. In all other cases a request to reconsider a default decision shall be accompanied by a statement setting forth good cause for the respondent's failure to appear and either a meritorious defense to any violation found in the decision or a jurisdictional defect in the notice of violation. Such statement, and any supporting documentary evidence deemed necessary by a hearing examiner, shall be reviewed by a hearing examiner who shall determine if it establishes a reasonable excuse for the default and a legally sufficient basis to reconsider a default decision. However, under no circumstances shall more than two requests to reconsider default decisions be entertained in relation to a particular notice of violation. Denial of a request to vacate a default decision shall not be subject to review by the Review Board.

(e) Where the notice of violation or an accompanying document, or a related document served on the respondent by certified mail, sets forth a monetary amount that may be paid in full satisfaction of the notice of violation, a respondent may, in lieu of attending a scheduled hearing, pay said amount by mail in the manner and time provided for in such notice. Such payment shall constitute an admission of liability for the violations charged and no further hearing or appeal shall be allowed.

§7.11 Hearings and mail adjudications.

- (a) A notice of violation may be adjudicated at a hearing or by mail.
- (b) The hearings shall be open to the public, shall be presided over by a hearing examiner, shall proceed with reasonable expedition and order, and, insofar as practicable, shall not be postponed or adjourned.
- (c) Each party to a proceeding shall have the right to be represented by counsel or other authorized representative as set forth in §7.09(a) hereof, to present evidence, to examine and cross-examine witnesses and to have other rights essential for due process and a fair and impartial hearing.
- (d) The Department shall have the burden of proving the factual allegations contained in the notice of violation by a preponderance of the evidence. A respondent shall have the burden of proving an affirmative defense, if any, by a preponderance of the evidence.
- (e) In addition to evidence submitted, the hearing examiner may request further evidence to be submitted by the respondent or may adjudicate the matter based on the record before him or her.
- (f) (1) A respondent may request the presence at the hearing of the public health sanitarian, inspector or other person who issued the NOV (the “inspector”), provided that the request is made in writing and is received by the Tribunal no later than seven business days prior to the scheduled hearing. In such event, the hearing shall be rescheduled, and the respondent need not appear at the originally scheduled hearing. A respondent may also, at the time of the hearing, request the presence of the inspector; in which case the hearing shall be adjourned. In addition, if a respondent denies the factual allegations contained in the NOV, the hearing examiner may require the presence of the inspector and adjourn the hearing.
- (2) In the event that the inspector does not appear, the hearing examiner may adjourn the hearing, or may take testimony, and sustain or dismiss all or part of the notice of violation, as the hearing examiner may deem appropriate. In determining the appropriate action, the hearing examiner may consider any relevant facts, including the availability of the inspector, the reason for the failure to appear, the need for and relevance of the requested testimony, and the potential prejudice to either party if the hearing is adjourned or proceeds without the inspector. In no event shall a hearing be adjourned on more than three occasions by the hearing examiner because of the unavailability of an inspector. If the respondent requests that the hearing proceed in the absence of the inspector, the respondent shall be deemed to have waived the appearance of such inspector.
- (g) A record shall be made of all notices of violation filed, proceedings held, written evidence admitted and decisions rendered, and such record shall be kept in the regular course of business for a reasonable period of time in accordance with applicable law. Hearings shall be mechanically, electronically or otherwise recorded by the Administrative Tribunal under the

supervision of the hearing examiner, and the original recording shall be part of the record and shall constitute the sole official record of the hearing. A copy of a tape recording of a hearing shall be made available within five business days of receiving a request, upon payment of a reasonable fee in accordance with applicable law, to any respondent requesting a copy, to enable such respondent to appeal a notice of decision to the Review Board or for other legal proceedings.

(h) A written decision sustaining or dismissing each charge in the notice of violation shall be promptly rendered by the hearing examiner who presided over the hearing, or who conducted the adjudication by mail, or who rendered a default decision. Each decision, other than a default decision, shall contain findings of fact and conclusions of law and, where a violation is sustained, shall impose a penalty. A copy of the decision, other than a default decision mailed in accordance with §7.09(d) hereof, shall be served forthwith on the respondent or on the respondent's counsel, registered representative or other authorized representative, either personally or by certified mail. Any fines imposed shall be paid within thirty days of service of the decision. If full payment of fines is not made within thirty days, an additional penalty may be imposed per NOV in an amount of fifty dollars, if paid between thirty one and sixty days after service of the decision, and one hundred dollars if paid more than sixty days after service of the decision.

§7.13 Subpoenas.

(a) At any time after a hearing has commenced a subpoena may be issued by the hearing examiner to compel the timely production of any record or document for examination or introduction into evidence, or to compel the appearance of persons to give testimony, when the hearing examiner finds that such record, document or testimony is reasonably related, relevant and necessary to the adjudication. Such subpoenas shall be issued only for production of records maintained within the Department, or the appearance of a person who is employed by the Department at the time such appearance is demanded. Upon the issuance of a subpoena the hearing examiner may proceed with the hearing and adjourn such hearing until the subpoenaed documents or witnesses are produced, or immediately adjourn the hearing until such time

(b) Subpoenaed documents shall be produced and made returnable on a date certain prior to the adjourned date for the continued hearing. Witnesses subpoenaed to testify shall appear on the adjourned date.

(c) A hearing examiner who has issued a subpoena, upon receipt of a motion timely made by the Department before the return date of the subpoena, or on the hearing examiner's own motion, may deny, quash or modify a subpoena if it is unreasonable, insufficiently relevant to the adjudication or has been shown to be wrongfully issued.

(d) If the hearing examiner determines that a subpoena has not been complied with, and that there is no good cause for such failure to comply, the hearing examiner may proceed with the hearing upon finding that the record, document or testimony subpoenaed is not necessary to the proof or defense of a violation or a fair adjudication of the merits, or the hearing examiner may preclude evidence offered by the non-complying party that is related to the subpoena, or may dismiss the particular violation the proof of which appears to the hearing examiner to be reasonably dependent on the material or person subpoenaed, but not produced.

§7.15 Disqualification of hearing examiners.

(a) Grounds for disqualification. A hearing examiner shall not preside over a hearing in accordance with the provisions of subdivisions (D) and (E) of §103 of Appendix A of Title 48 of the Rules of the City of New York. A hearing examiner who determines his or her disqualification shall withdraw from the proceeding by notice on the record and shall notify the Director of such withdrawal.

(b) Motion to disqualify. Whenever a party asserts for any reason that a hearing examiner must be disqualified from presiding over a particular proceeding, such party may file with the Director a motion to disqualify and remove the hearing examiner. Such a motion must be supported by affidavits setting forth the alleged grounds for disqualification. The Director shall furnish a copy of the motion to the hearing examiner whose removal is sought, and the hearing examiner shall have seven days to reply. Unless the hearing examiner disqualifies himself or herself within seven days of the receipt of the motion, the Director shall promptly determine the validity of the alleged grounds, either directly or on the report of another hearing examiner appointed to conduct a hearing for that purpose.

§7.17 Review Board.

(a) There shall be a Review Board within the Department which shall consist of three persons, namely a person appointed by the Board who is an attorney in the Office of the General Counsel of the Department and who has been admitted to practice law in the State of New York for a period of at least five years; another person appointed by the Board who is an attorney admitted to practice in the State of New York for a period of at least five years; and a person appointed by the Board who has at least five years experience in public health activities who may, but need not be, an employee of the Department. The attorneys appointed to the Review Board shall be in good standing at the time of appointment and continuously during their term of service, and shall meet any additional requirements of experience and knowledge of administrative law as the

Board may impose. Hearing examiners are not qualified to be members of the Review Board. The Board of Health may at any time remove a member of the Review Board for cause following an opportunity to be heard.

(b) The Review Board shall have jurisdiction to review all final decisions, other than default decisions, of the hearing examiners to determine whether the facts found therein are supported by substantial evidence in the record, and whether the findings and determinations of the hearing examiner, as well as the penalty imposed, are supported by law. The Review Board shall not consider any evidence that was not presented to the hearing examiner. Decisions of the Review Board shall be made by a majority of its members. The Review Board shall have the power to reverse, to remand or to modify the decision appealed from or to reduce the amount of the penalty imposed within the minimums established by this Code or other applicable law.

(c) A respondent may seek to review, in whole or in part, any final decision of a hearing examiner, other than a decision rendered on default by the respondent. However, neither a denial to reconsider a default decision nor a plea admitting the violations charged shall be subject to review by the Review Board. Within thirty days of the Tribunal delivering or mailing the decision to the respondent or authorized representative, such respondent may file a notice of appeal on a form prescribed by the Department, accompanied by a brief statement setting forth the specific reasons why the decision should be reversed, remanded or modified. Filing a notice of appeal shall not stay the collection of any fine or of the penalty imposed by the decision. No appeal shall be permitted unless the fine or penalty imposed has been paid prior to or at the time of the filing of the notice of appeal, or the respondent may post a cash or recognized surety company bond in the full amount imposed by the decision and order appealed from. Appeals decisions shall be made upon the entire record of the hearing and the evidence before the hearing examiner. Appeals may be decided without the appearance of the respondent, but the respondent may make a request to appear before the Review Board at the time of filing the notice of appeal

(d) The Review Board shall promptly issue a written decision affirming, reversing, remanding or modifying the decision appealed from, a copy of which shall be served on the respondent by certified or registered mail, stating the grounds upon which the decision is based. Where appropriate, the decision shall order the repayment to the respondent of any penalty that has been paid. If the Review Board does not act on an appeal within one hundred eighty days after the notice of appeal is filed, or within such an extended time as may be agreed upon by the parties, the appeal shall be deemed to be granted. The decision of the Review Board shall be the final determination of the Department as to the imposition of any fine, penalty and forfeiture.

(e) The Review Board shall have no jurisdiction to entertain appeals by the Department of any decision of a hearing examiner.

(f) The Commissioner may appoint a person of suitable experience and similar qualifications to serve on the Review Board temporarily whenever there is a vacancy on the Review Board or a member is absent and unable to serve, pending the appointment of a person by the Board to fill the vacancy.

§7.19 Disqualification of member of Review Board.

(a) Grounds for disqualification. A member of the Review Board shall not review a final decision of a hearing examiner in accordance with the provisions of subdivisions (D) and (E) of §103 of Appendix A of Title 48 of the Rules of the City of New York. A member who determines his or her disqualification shall withdraw from the review by notice on the record and shall notify the Board of such withdrawal.

(b) Whenever a party asserts for any reason that a member of the Review Board must be disqualified from presiding over a particular proceeding, such party may file with the Board a motion to disqualify and remove such member. Such a motion must be supported by affidavits setting forth the alleged grounds for disqualification. The Board shall furnish a copy of the motion to the member whose removal is sought, and, thereafter, the member shall have seven days to reply. Unless the member disqualifies himself or herself within seven days of the receipt of the motion, the Board shall promptly determine the validity of the alleged grounds, either directly or on the report of another hearing examiner appointed to conduct a hearing for that purpose.

(c) Whenever a member of the Review Board is disqualified, the Board shall appoint a person of suitable experience to serve on the Review Board to determine the appeal in question.

§7.21 Registration and disqualification of certain authorized representatives. (a) Any person who represents two or more respondents before the Tribunal within a calendar year shall, as a condition precedent to such representation, register with the Tribunal as a representative. Any person who appears on behalf of a respondent before the Tribunal shall be prohibited from appearing before the Tribunal on behalf of any other respondent within the same calendar year without having completed such registration. A representative shall register by completing and submitting a form provided by the Department, and such form shall be accompanied by proof acceptable to the Department identifying the representative, and shall include such other information as the Department may require. Registered representatives shall notify the Tribunal

within ten business days of any change in the information required to be stated on the registration form. The Department may charge a reasonable fee in accordance with applicable law to cover the cost of processing and maintaining registrations and may issue each representative a registration card and identification number. Attorneys admitted to practice in New York State shall not be required to so register.

(b) Attorneys, registered representatives or other authorized representatives may be permanently or temporarily barred by the Commissioner from representing any respondents before the Tribunal, and in the case of registered representatives their registration revoked or suspended, upon a finding by the Office of Administrative Trials and Hearings, or successor agency, issued after an opportunity to be heard has been afforded, that they have engaged in improper conduct, including but not limited to one or more of the following:

(1) Disorderly, disruptive or obstructive conduct, as set forth in §7.03(c)(4) of this Article, on more than one occasion, regardless of whether the representative was barred from participating in a specific hearing by a hearing examiner in accordance with said §7.03 (c)(4);

(2) Submitting any false or forged document either as evidence in a matter being adjudicated at the Tribunal, or as proof of representation of a respondent;

(3) Any violation of §§3.15 or 3.19 of this Code; or

(4) Any criminal conviction of a type that does not fall within the protections afforded under Article 23A of the New York State Correction Law.

§7.23 Computation of time. In computing any period of time prescribed or allowed by this Article, the day of the act or default from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which case the period shall be extended to the next day which is not a Saturday, Sunday or legal holiday. Whenever a party has the right or is required to do some act within a prescribed period of time after the service of a document and the document is served by mail, five days shall be added to the prescribed period of time.