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Rules of Practice

Part 1

General Provisions

Sec. 17-210a-1. Application

These regulations define the rules of practice before the department of mental health and set forth the nature and requirements of all formal and informal procedures available under the applicable laws of the state of Connecticut.

(Effective April 13, 1978)

Sec. 17-210a-2. Definitions

As used in these regulations:

(a) "Application" means a formal, written request for a license from the department, filed in accordance with § 17-227 of the general statutes and regulations adopted under said section;

(b) "Commissioner" means the commissioner of mental health or his or her designee;

(c) "Contested case" means a proceeding in which the legal rights, duties or privileges of a party are required by statute to be determined by the department after an opportunity for a hearing or in which a hearing is in fact held;

(d) "Department" means the department of mental health;

(e) "Hearing" means a formal procedure wherein a presentation of evidence and argument occurs, which is preceded by due notice and which includes both an opportunity to present to the department such evidence and argument as the presiding officer deems appropriate and an opportunity to examine and cross-examine any witness giving testimony therein;

(f) "License" means any permit, approval, registration or similar form of permission which the department is authorized by statute to issue;

(g) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party to a contested case;

(h) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character;

(i) "Petition" means a formal, written request for the department to adopt regulations or for a declaratory ruling;

(j) "Presiding officer" means the commissioner or any hearing examiner duly designated by the commissioner who presides at any hearing conducted by the department.

(Effective April 13, 1978)

Sec. 17-210a-3. Waiver of rules

Where good cause appears, the commissioner and any presiding officer may permit deviation from these rules, except where precluded by statute.

(Effective April 13, 1978)

Sec. 17-210a-4. Communications; identification

Communications with the department should be in writing, should concern mainly one matter, should contain the name and address of the communicator and an appropriate identification of the subject matter of the communication.

(Effective April 13, 1978)

Sec. 17-210a-5. Filing

All orders, decisions, findings of fact, correspondence, motions, petitions, applications, and any other documents shall be deemed to have been filed or received on the date on which they are issued or stamped received by the department at its principle office.

(Effective April 13, 1978)

Sec. 17-210a-6. Effect of filing; public records

(a) The filing with the department of any complaint, application, petition or other request of any nature whatsoever shall not relieve any person of the obligation to comply with any statute of the state of Connecticut or any regulation or order of the department.

(b) Any complaint, application, petition or other request of any nature whatsoever filed with the department shall be considered public records of the department.

(Effective April 13, 1978)

Sec. 17-210a-7. Office

The principle office of the department of mental health is located on the second floor of 90 Washington Street in Hartford, Connecticut. The office is open from 8:30 A.M. to 4:30 p.m. each day, excluding Saturdays, Sundays and legal holidays.

(Effective April 13, 1978)

Sec. 17-210a-8. Rules of conduct

Where applicable, the canons of professional ethics and the canons of judicial ethics adopted and approved by the judges of the superior court govern the conduct of the commissioner, any employees of the department, and all attorneys, agents, representatives and any other persons who shall appear before the department in any proceeding.

(Effective April 13, 1978)

Part 2

Regulations

Sec. 17-210a-9. General rules

These rules set forth the procedure to be followed by the department in the adoption, amendment or repeal of departmental regulations.

(Effective April 13, 1978)

Sec. 17-210a-10. Petitions

Any interested persons may at any time petition the department to adopt, amend or repeal any regulation. The petition shall clearly and concisely set forth the text of the proposed regulation, amendment or repeal. Such petition shall also state the facts and arguments that favor the action it proposes by including such data, facts and arguments either in the petition or in a brief accompanying such petition. The petition shall be addressed to the commissioner and sent to him by mail or delivered during normal business hours. The petition shall be signed by the petitioner and shall include his or her address and the name and address of any agent or counsel, if applicable.

(Effective April 13, 1978)

Sec. 17-210a-11. Procedure after filing

Within thirty days following the receipt of the petition, the commissioner shall determine whether to deny the petition or to initiate regulation making proceedings in accordance with the petition. If the petition is denied, the petitioner shall be notified in writing of the reasons for said denial.

(Effective April 13, 1978)

Sec. 17-210a-12. Notice of intent to adopt regulations

(a) **General.** Notice of the intended action to adopt, amend or repeal regulations shall be given by the commissioner at least twenty (20) days prior to its proposed action, unless some other time is specified by any applicable law. The commissioner shall cause the notice to be published in the Connecticut Law Journal and in such other publications as the commissioner may determine. The commissioner shall likewise notify in writing any person specified by any law and any person who has filed a request for notice pursuant to Section 17-210a-15 of these regulations.

(b) **Form.** The notice shall contain the following: (1) the commissioner's statutory authority to adopt the proposed regulation; (2) the procedure for submitting data, views or arguments including the time and place of a public hearing, if any; (3) the terms of the proposed regulations or the substance of the subjects and issues involved and the intended action; and (4) any additional matter required by any law.

The above notwithstanding, the commissioner shall also comply with any applicable statute which contains provisions for notice which differ from those contained herein.

(c) **Procedure.** Within such period as may be stated in the notice, but not less than fifteen (15) days, any interested person may submit a signed letter, brief or other memorandum stating his views or arguments concerning the proposed action. The letter, brief or memorandum shall be addressed to the commissioner and sent to the department by mail or delivered in person during normal business hours. The commissioner may hold a hearing for the purpose of receiving oral submissions, and shall hold a hearing, in the case of a proposal to adopt, amend, or repeal substantive regulations if requested by twenty-five (25) or more persons or by an association having not less than twenty-five members. The hearing shall be public. Upon completion of the hearing, the commissioner may permit additional written material to be filed during such period as he may determine.

(d) **Withdrawal of proposed regulations.** The commissioner may withdraw any proposed regulation or rulemaking action by notice as provided in Subsection (a) hereof, and upon such notice such proposed regulation or action shall be of no further force or effect.

(Effective April 13, 1978)

Sec. 17-210a-13. Effective date of regulation

All regulations adopted, amended or repealed by the department, except emergency regulations, shall not be effective until approved by the Attorney General and the Legislative Regulation Review Committee, as provided by the general statutes, and filed with the Secretary of the State. The regulation shall take effect upon such filing unless a later date is specified in the regulation or required by statute.

(Effective April 13, 1978)

Sec. 17-210a-14. Request for notice of hearings

Any person may file with the commissioner a request in writing to receive notice of proposed regulation making actions. Any such request shall contain the name

and the address of the person, and shall be effective until the end of the calendar year in which it was filed.

(Effective April 13, 1978)

Part 3

Declaratory Rulings

Sec. 17-210a-15. General rules

These rules set forth the procedure to be followed by the commissioner in the disposition of requests for declaratory rulings as to the applicability of any statutory provision or of any regulation or order of the commissioner. Such a ruling of the commissioner disposing of a petition for a declaratory ruling shall have the same status as any decision or order of the commissioner in a contested case.

(Effective April 13, 1978)

Sec. 17-210a-16. Petitions for declaratory rulings

Any interested person may at any time request a declaratory ruling from the commissioner with respect to the applicability to such person of any statute, regulation or order enforced, administered, or promulgated by the commissioner. Such request shall be addressed to the commissioner and filed at the principal office of the commissioner. It shall give the address of the person inquiring and the name and address of such person's attorney, if any. The request shall state clearly and concisely the substance and nature of the request; it shall identify the statute, regulation or order concerning which the inquiry is made and shall identify the particular aspect thereof to which the inquiry is directed. The request for an advisory ruling shall be accompanied by a statement of any supporting data, facts and arguments that support the position of the person making the inquiry.

(Effective April 13, 1978)

Sec. 17-210a-17. Procedure after filing of petition

(a) **Notice to other persons.** The commissioner may give notice to any person that such a declaratory ruling has been requested and may receive and consider data, facts, arguments and opinions from persons other than the person requesting the ruling.

(b) **Provision for hearing.** If the commissioner deems a hearing necessary or helpful in determining any issue concerning the request for a declaratory ruling, the commissioner shall schedule such hearing and give such notice thereof as shall be appropriate.

(c) **Decision on petition, ruling denied.** If the commissioner determines that a declaratory ruling will not be rendered, the commissioner shall within ten (10) days thereafter notify the person so inquiring that the request has been denied and furnish a statement of the reasons on which the commissioner relied in so deciding.

(d) **Decision on petition, ruling granted.** If the commissioner rendered a declaratory ruling, a copy of the ruling shall be sent to the person requesting it and to that person's attorney, if any, and to any other person who has filed a written request for a copy with the commissioner.

(Effective April 13, 1978)

Part 4

Contested Cases

Sec. 17-210a-18. Designation of parties

In issuing the notice of hearing, the commissioner will designate as parties any persons known to the commissioner whose legal rights, duties or privileges are being determined in the contested case and any person whose participation as a party is then deemed by the commissioner to be necessary to the proper disposition of such proceeding. Subsequent to the issuance of such notice no other person shall have standing as a party except upon the express order of the presiding officer.

(Effective April 13, 1978)

Sec. 17-210a-19. Pre-hearing conferences

(a) **Informal dispositions.** The commissioner may call and hold conferences to consider simplifying, clarifying or joining issues, and disposing of any action by consent order or license, unless prohibited by statute. Within a reasonable time prior to any such conference, the commissioner shall notify the parties of it. If the parties who attend the conference agree to a disposition of the action, the commissioner shall issue a consent order or license which shall embody the terms of such disposition, and which shall be a final decision of the department.

(b) **Pre-hearing conferences.** The commissioner may direct the parties to appear at specified times and places for conferences to consider (1) simplification and clarification of issues for hearing; (2) consolidation or joinder of parties; (3) stipulations and admissions of fact and of documents; (4) limitation of expert witnesses, exchange of lists of witnesses and summaries of testimony, and other steps to expedite the presentation of evidence; and (5) such other matters as may aid in the orderly disposition of the hearing. The commissioner shall notify the parties of the date, time, and place of the conference. Following any conference, the commissioner may enter an order which (1) recites the action taken at the conference, and any agreements made by the parties as to any of the matters considered; (2) states the issues for the hearing; (3) consolidates parties at hearing; or (4) otherwise aids in the orderly disposition of the hearing. Any such order shall control the subsequent course of the action unless modified by the commissioner for good cause.

(Effective April 13, 1978)

Sec. 17-210a-20. Hearings; procedure

(a) The purpose of any hearing the department conducts under Chapter 54 of the general statutes shall be to provide to all parties an opportunity to present evidence and argument on all issues to be considered by the department.

(b) In hearings on complaints, applications and petitions, the party that shall open and close the presentation of any part of the matter shall be the complainant, applicant or petitioner.

(c) To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue in the course of any hearing.

(d) The commissioner may by order of the presiding officer permit any party to offer testimony in written form. Such written testimony shall be received in evidence with the same force and effect as through it were stated orally by the witness who has given the evidence, provided that each such witness shall be present at the hearing at which testimony is offered, shall adopt the written testimony under oath,

and shall be made available for cross examination as directed by the presiding officer. Prior to its admission such written testimony shall be subject to objections by parties.

(Effective April 13, 1978)

Sec. 17-210a-21. Notice of hearings

(a) Except when the commissioner shall otherwise direct, the commissioner shall give written notice of a hearing in any pending matter to all parties, to all persons who have been permitted to participate as intervenors, to all persons otherwise required by statute to be notified, and to such other persons as have filed with the commissioner their written request for notice of hearing in a particular matter. Written notice shall be given to such additional persons as the commissioner shall direct. The commissioner may give such public notice of the hearing as the commissioner shall deem appropriate.

(b) Notice of a hearing shall include but shall not be limited to the following: (1) a statement of the time, place and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held and the particular sections of the statutes and regulations involved; (3) a short and plain statement of fact describing the purpose of the hearing and the principal facts to be asserted therein.

(Effective April 13, 1978)

Sec. 17-210a-22. Place of hearings

Unless by statute or by direction of the commissioner a different place is designated, all hearings of the department shall be held at the principle office of the department at 90 Washington Street, in Hartford, Connecticut.

(Effective April 13, 1978)

Sec. 17-210a-23. Representation

Each person authorized to participate in a contested case as a party or as an intervenor shall file a written notice of appearance with the commissioner. Such appearance may be filed in behalf of parties and intervenors by an attorney, an agent, or other duly authorized representative subject to the rules hereinabove stated. The filing of a written appearance may be excused by the presiding officer.

(Effective April 13, 1978)

Sec. 17-210a-24. Participation by other persons

(a) **Permission to participate.** At any time prior to the commencement of oral testimony in any hearing on a contested case any person may request that the presiding officer permit that person to participate in the hearing. Any person not a party who is so permitted to participate in the hearing will be identified an intervenor in these regulations and will participate in those portions of the contested case that the presiding officer shall expressly allow.

(b) **Status of a non-party that has been admitted to participate.** No grant of leave to participate in the hearing as an intervenor or in any other manner shall be deemed to be an admission by the commissioner that the person he has permitted to participate is a party in interest that may be aggrieved by any final decision, order or ruling of the commissioner unless such grant of leave to participate expressly so states.

(Effective April 13, 1978)

Sec. 17-210a-25. Service

(a) Service of all documents and other papers filed in all proceedings, including but not limited to motions, petitions, applications, notices, briefs and exhibits shall be by delivery in person or by first class mail, except as otherwise provided by statute.

(b) All such documents and other papers shall be served by the person filing the same on all parties to the proceeding and all such additional persons as the commissioner may require.

(c) A copy of any document or other papers served by the department, showing the addresses where such document or other paper was mailed shall be placed in the commissioner's files and shall be prima facie evidence of such service and the date thereof.

(Effective April 13, 1978)

Sec. 17-210a-26. Rules of evidence

The following rules of evidence shall be followed in the admission of testimony and exhibits in all hearings held under Chapter 54 of the general statutes.

(a) **General.** Any oral or documentary evidence may be received; but the presiding officer shall, as a matter of policy, exclude irrelevant, immaterial or unduly repetitious evidence. The commissioner or presiding officer shall give effect to the rules of privilege recognized by law in Connecticut where appropriate to the conduct of the hearing. Subject to these requirements and subject to the right of any party to cross examine, any testimony may be received in written form as herein provided.

(b) **Documentary evidence, copies.** Documentary evidence may be received at the discretion of the commissioner or presiding officer in the form of copies or excerpts, if the original is not found readily available. Upon request by any party an opportunity shall be granted to compare the copy with the original, which shall be subject to production by the person offering such copies, within the provisions of Section 52-180 of the general statutes.

(c) **Cross examination.** Such cross examination may be conducted as the presiding officer shall find to be required for a full and true disclosure of the facts.

(d) **Facts noticed.** The commissioner may take administrative notice of judicially cognizable facts, including the records and the prior decisions and orders of the department. Any exhibit admitted as evidence by the commissioner in a prior hearing may be offered as evidence in a subsequent hearing and admitted as an exhibit therein; but the commissioner shall not deem such exhibit to be cognizable in whole or in part for this purpose and shall not consider any facts set forth therein unless such exhibit is duly admitted as evidence in the matter then being heard.

(e) **Facts noticed, scope and procedure.** The commissioner may take administrative notice of generally recognized technical or scientific facts within the commissioner's specialized knowledge. Parties shall be afforded an opportunity to contest the material so noticed by being notified before or during the hearing, or by an appropriate reference in preliminary reports or otherwise of the material noticed. The commissioner shall nevertheless employ the experience, technical competence, and specialized knowledge in evaluating the evidence presented at the hearing for the purpose of making a finding of facts and arriving at a final decision.

(Effective April 13, 1978)

Sec. 17-210a-27. Decision in contested case

(a) The commissioner will proceed in the following manner in contested cases where the commissioner has not heard the case or read the record. If the decision is to be adverse to a complainant, applicant, petitioner, or any other party, the

decision shall not be adopted by the commissioner until a proposal for decision is served upon all of the parties, and until an opportunity has been afforded to each party adversely affected by the proposed decision to file exceptions, to present briefs, and to make oral argument before the commissioner.

(b) In the proposal for decision to be served upon the parties, the commissioner will set forth a summary of each issue of fact or law that he finds necessary to reach the conclusion contained in the proposed decision.

(c) Compliance with the above-stated requirement concerning the proposal for decision may be waived by a written stipulation of the parties.

(Effective April 13, 1978)

Sec. 17-210a-28. Final decisions

All decisions and orders of the commissioner concluding a contested case shall be in writing. The commissioner will serve a copy of his decision on each party in the manner required by these rules and Chapter 54 of the general statutes.

(Effective April 13, 1978)

Sec. 17-210a-29. Uncontested disposition

Unless precluded by law, any complaint, application or petition may be resolved by stipulation, agreed settlement, consent order or default, subject to the order of the commissioner. Upon such disposition a copy of the order of the commissioner shall be served on each party.

(Effective April 13, 1978)

Sec. 17-210a-30. Record

The record in a contested case shall include: (1) all motions, applications, petitions, complaints, responding pleadings, bills of particulars, notices of hearing, and intermediate rulings; (2) the evidence received and considered by the commissioner; (3) questions and offers of proof, objections, and the presiding officer's rulings thereof during the hearing; (4) the decision, opinion or report by the presiding officer to the commissioner.

(Effective April 13, 1978)

Sec. 17-210a-31. Ex parte communications

Unless required for the disposition of matters authorized by statute, neither the commissioner nor any presiding officer shall communicate directly or indirectly with any party concerning any issue of fact or law involved in any contested case that has been commenced under these rules, except upon notice and opportunity for all parties to participate. Any presiding officer and the commissioner may communicate with each other ex parte and may have the aid and advice of such members of the department staff as are assigned to assist them in such contested case.

(Effective April 13, 1978)

Part 5

Miscellaneous Provisions

Sec. 17-210a-32. Investigative hearings

The commissioner may hold investigative hearings for the purpose of (1) ascertaining compliance with any statute or regulation within the department's jurisdiction to administer or enforce; or (2) receiving information concerning any matter which reasonably may be the subject of regulation by the department. The commissioner

shall provide reasonable notice of any such hearing to all interested persons and the general public.

(Effective April 13, 1978)

Secs. 17-210a-33—17-210a-49. Reserved

**Transportation of Mentally Ill Alcoholic or
Drug-Dependent Persons**

Secs. 17-210a-50—17-210a-52.

Repealed, June 25, 1979.