

**REPEAL 14 NYCRR PART 368; AMEND 14 NYCRR PART 831 by adding a new section  
831.10 regarding Declaratory Rulings**

APPEALS, HEARINGS, and RULINGS

(Statutory authority: Mental Hygiene Law, §19.09, §31.04(c)(7), State Administrative Procedure  
Law, §204)

Section

- 831.1 Applicability
- 831.2 Request for hearing, scheduling and notice
- 831.3 Rights of parties
- 831.4 Conduct of hearing
- 831.5 Powers of hearing officers
- 831.6 Post-hearing procedure
- 831.7 Verbatim record
- 831.8 Hearing record
- 831.9 Administrative appeals
- 831.10 Declaratory rulings

Section 831.1 Applicability.

If the Commissioner gives notice of any action pursuant to provisions of this Title for which an opportunity to be heard is provided, the provisions of this Part shall apply. Notice shall include the time within which a hearing must be requested.

831.2 Request for hearing, scheduling and notice. (a) If the party provided notice as described in section 831.1 of this Part desires a hearing, such party shall submit a written request for a hearing to the Commissioner within 10 business days of receipt of the notice.

(b) Within 20 days of receipt of a request for hearing, the Commissioner shall provide notice to the requesting party of the date and location of the hearing, to be held without undue delay.

(c) Notice of the hearing shall be served on the party, either by hand delivery, certified mail or other verifiable written communication, at least 10 days before the scheduled hearing date and shall specify the time and place of the hearing, the names of the person who will conduct the hearing, and include a basis for action taken. If required by law or by consent or permission, a written answer shall be provided at least three days before the scheduled hearing date.

831.3 Rights of parties. (a) Each party shall have the right to be represented by counsel.

(b) Upon request of any party, the Hearing Officer may permit discovery which shall be limited to the production of documents and other tangible things.

(c) Any party may request that the Hearing Officer recuse him/herself from the proceeding when the party believes that the Hearing Officer has a conflict of interest which would render him/her unable to provide a fair and impartial recommendation to the Commissioner. The Hearing Officer's refusal determination shall be final. If a Hearing Officer recuses him/herself, the Commissioner shall appoint a new Hearing Officer and promptly reschedule the hearing.

(d) Each party shall have the right to present evidence and cross-examine witnesses.

831.4 Conduct of hearing. (a) Presentation of case.

(1) The Office shall have the right to present its prima facie case first and shall also have the right to rebuttal, at the conclusion of the other party's case, at which any and all witnesses and/or other evidence pertinent to the case may be additionally presented.

(2) The party requesting the hearing shall present its case at the conclusion of the case presented by the office.

(b) Burden of Proof. The burden of proof shall be on the party requesting the hearing to show by a preponderance of the evidence that the Commissioner's decision is not in conformity with the standards and criteria set forth in the applicable laws and provisions of this Title.

(c) Hearings shall be open to the public unless otherwise ordered by the Commissioner or Hearing Officer due to the protection of patient's rights or upon a showing of other compelling reasons.

(d) The Hearing Officer shall not communicate ex parte, either directly or indirectly, in connection with any issue that relates to the merits of a pending adjudicatory proceeding

unless all parties have first been given notice of the intended communication and an opportunity to participate.

831.5 Powers of hearing officers. (a) The Hearing Officer shall have the power to administer oaths and affirmations, issue subpoenas and otherwise control the conduct of the hearing.

(b) The Hearing Officer shall not be bound by the rules of evidence observed by courts, except that the rules of privilege recognized by law shall be respected.

(c) The Hearing Officer, with the consent of all parties, may waive any time requirement provided for in this Part.

(d) The Hearing Officer may consult on questions of law with the office's counsel or another designated Office attorney, provided that said attorney has not been engaged in investigative or prosecuting functions in connection with the proceeding under consideration or a factually related adjudicatory proceeding.

831.6 Post-hearing Procedure. (a) The Hearing Officer shall fix the time, not to exceed 15 days from the date of the hearing transcript, within which the parties may provide the Hearing Officer with written memoranda in support of their positions.

(b) Within 20 days of the date fixed for submission of written memoranda, the Hearing Officer shall submit a final report of findings and recommendations to the Commissioner with the entire record of the hearing.

(c) The Commissioner shall render a final decision in writing within 10 days of receipt of the Hearing Officer's report. In the event that the Commissioner renders a final decision that conflicts with the Hearing Officer's recommendations, the Commissioner shall set forth the reasons for the decision.

831.7 Verbatim record. (a) A verbatim recording of the proceedings shall be made by whatever means the Office deems appropriate.

(b) A transcription of the recording shall be made available to any party requesting it upon payment of the party of the cost of transcription. If more than one party requests the transcript, the cost will be allocated among the parties.

(c) The office may waive the transcript cost on a showing of hardship. Requests for transcripts and for waiver of transcript costs must be made in writing to the Commissioner and must be submitted no later than the first day of the hearing.

831.8 Hearing record. The hearing record shall include: the notice of proposed action, the request for the hearing, the notice of hearing including the report of finds, motions submitted and rulings thereon, the recording of transcript of the testimony taken at the hearing, exhibits, stipulations and memoranda of law filed in connection with the hearing, the Hearing Officer's report of findings and recommendations to the Commissioner, and the Commissioner's final ruling.

831.9 Administrative appeals. (a) Where an opportunity for an administrative appeal is afforded pursuant to the provisions of this Title, the provisions of this Section shall apply.

(b) All requests for administrative appeals shall be in writing and delivered by registered mail to the Commissioner within thirty business days of receipt of the applicable agency decision.

(c) A request for an administrative appeal shall include a written detailed statement of the factual issues in dispute.

(d) Administrative appeals shall be based upon the written submissions of the party requesting the appeal and any relevant agency documentation. The burden of proof on appeal shall be on the party requesting the appeal to demonstrate that the agency's action is not in conformance with the applicable regulatory standards.

(e) The Commissioner may, in his or her sole discretion, hold a conference including all relevant parties.

(f) Within thirty business days of receipt of the request for administrative appeal, or within fifteen days after the conference as set forth in subdivision (e) of this Section, the Commissioner will issue a final determination in writing. Formal notification of the determination shall be sent to the party requesting the appeal by certified mail, return receipt requested.

(g) The determination after administrative review of the appeal shall be final and is not subject to further administrative review.

831.10 Declaratory Rulings. (a) Pursuant to section 204 of the administrative procedure law, persons may petition the Office for a declaratory ruling on the applicability of any regulation or statute enforceable by the Office.

(b) Procedure. Petitions must be in writing and addressed to Counsel, New York State Office of Alcoholism and Substance Abuse, 1450 Western Ave., Albany, NY 12203, by certified mail, return receipt requested. Petitions must contain the following:

- (1) name and address of petitioner;
- (2) a statement requesting a declaratory ruling, specifying the rule or statutory provision for which the declaratory ruling is requested;
- (3) a statement of relevant facts and circumstances, and full disclosure of petitioner's interest; and
- (4) verification under oath by petitioner of all facts and assertions therein.

(c) Ruling. Counsel shall issue and mail to petitioner, certified mail, return receipt requested, a declaratory ruling within 60 days of the receipt of a completed petition, or a statement declining to issue a declaratory ruling. Rulings shall be available for public inspection at the Office.

(d) Conditions. No correspondence or opinion issued by the Office shall be construed as a declaratory ruling unless it is identified as a declaratory ruling and is issued in response to a petition pursuant with this section.

(e) Nothing in this section shall be construed to prohibit the determination of the validity or applicability of the regulation in any other action or proceeding in which its invalidity or inapplicability is asserted, and nothing in this section shall be construed to limit any rights which may exist under article seventy-eight of the civil practice law and rules.