

**Effective October 30, 2019 14 NYCRR Part 831 is amended to read as follows:**

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

**§831.1 Applicability.**

If the Commissioner gives notice of any action pursuant to provisions of this Chapter 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 thirty (30) days of the date of mailing of the notice.
- (b) The Commissioner shall acknowledge receipt of a request for a hearing, in writing to the requesting party, within twenty (20) days of receipt of such request. Without undue delay thereafter, the Commissioner shall provide notice to the requesting party of the date and location of the hearing.
- (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 themselves from the proceeding when the party believes that the Hearing Officer has a conflict of interest which would render them unable to provide a fair and impartial recommendation to the Commissioner. The Hearing Officer's recusal determination shall be final. If a Hearing Officer recuses themselves, 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 case first and shall also have the right to rebuttal, at the conclusion of the other party's case, in the course of 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 closed to the public due to the protection of patients' rights unless otherwise ordered by the Commissioner or Hearing Officer 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 relating to the merits of a pending adjudicatory proceeding in which they are the Hearing Officer 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 prosecutorial 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 from the date the hearing transcript becomes available, 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 record of the hearing shall be made by whatever means the Office deems appropriate.
- (b) A transcription of the hearing shall be made available to any party requesting it upon payment of the cost of transcription by the requesting party. If more than one party requests the transcript, the cost will be allocated among the parties.

(c) The Office may waive the transcript cost upon a showing of hardship by the requesting party. 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 consist of the notice of proposed action, the request for the hearing, the notice of hearing, motions submitted and rulings thereon, the transcription 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 Chapter, the provisions of this section shall apply.

(b) All requests for administrative appeals shall be in writing and delivered by certified mail, return receipt requested, to the Commissioner within thirty (30) 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 statutes or regulations.

(e) A conference including all relevant parties may be held at the sole discretion of the Commissioner.

(f) Within thirty (30) business days of receipt of the request for administrative appeal, or within fifteen (15) 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. The Office may issue a declaratory ruling with respect to:

(1) the applicability to any person, property or state of facts of any regulation or statute enforceable by the Office, or;

(2) whether any action by the Office should be taken pursuant to a rule.

(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 to 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.