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**District of  
Columbia**

**Department of  
Consumer and  
Regulatory  
Affairs**

**OCCUPATIONAL &  
PROFESSIONAL  
LICENSING  
ADMINISTRATION**

# **MUNICIPAL FUNERAL DIRECTORS REGULATIONS**

## CHAPTER 30 FUNERAL DIRECTORS

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### 3000 APPLICABILITY

- 3000.1 This chapter shall apply to applicants for and holders of a license to practice as a funeral director or apprentice funeral director.
- 3000.2 Chapters 31 (Funeral Services Establishments: Preneed Contracts) and 33 (General Rules: Funeral Directors, Veterinarians, and Interior Designers) of this title shall supplement this chapter.
- 3000.3 The provisions of this chapter prevail in the event of a direct and irreconcilable conflict between this chapter and chapter 33 of this title.

**AUTHORITY:** Unless otherwise noted, the authority for this chapter is §4(i) of the D.C. Funeral Services Regulatory Act of 1984, D.C. Law 5-84, D.C. Code §2-2803(i) (1987 Supp.), and Mayor's Order 87-186, Issued August 3, 1987, 34 DCR 5480 (August 21, 1987).

**SOURCE:** Final Rulemaking published at 35 DCR 2904 (April 22, 1988).

### 3001 GENERAL REQUIREMENTS FOR APPLICANTS

- 3000.1 An applicant for a license under this chapter, in addition to complying with chapter 33 of this title, shall prove to the satisfaction of the Board that the applicant is at least eighteen (18) years of age.

**SOURCE:** Final Rulemaking published at 35 DCR 2904 (April 22, 1988).

**3002 LICENSURE AS A FUNERAL DIRECTOR BY EXAMINATION**

3002.1 An applicant for a license under this section shall furnish proof to the Board that the applicant meets the following requirements:

- (a) Is a graduate of a high school, by arranging for a certified transcript to be sent directly to the Director from the applicant's high school;
- (b) Is a graduate of an accredited school or college of mortuary science whose course of instruction is not less than twelve (12) months in duration or is composed of not less than eight hundred and forty (840) hours of study, or has successfully completed a two (2) year course of study leading to an associate degree in mortuary science, by arranging for a complete, certified transcript to be sent directly to the Director from the applicant's school or college of mortuary science; and
- (c) Has had the following practical experience:
  - (1) If a graduate of a school or college of mortuary science, at least two (2) years of practical experience as an apprentice funeral director; or
  - (2) If possessing an associate degree in mortuary science, experience of having actually performed the following at a satisfactory level:
    - (A) Embalmed at least twenty-five (25) human remains; and
    - (B) Conducted or directed at least twenty-five (25) funerals; and
- (d) Has achieved a passing grade on all three (3) parts of the examination specified in §3002.4.

3002.2 An applicant for a license who meets the requirements of §3002.1(c)(2) shall submit with the application a signed statement from each funeral director under whose immediate supervision the apprentice funeral director's duties were performed which shall contain the following information:

- (a) The number of human remains embalmed by the applicant;
- (b) The number of funerals conducted or directed during the period of apprenticeship served under the supervision of the funeral director;
- (c) A professional evaluation of the applicant's performance.

3002.3 The practical experience required by §3002.1(c) shall include full-time supervised training in all aspects of the business and practice of funeral directing, including the following:

- (a) The care, disposal, and preservation, by embalming or otherwise, of human remains;
- (b) The sale of funeral goods and services; and

- (c) Business management.
- 3002.4 The examination required by §3002.1(d) shall consist of the following three (3) parts:
- (a) The national examination approved by the Conference of Funeral Service Examining Boards;
  - (b) An oral examination developed by the Board; and
  - (c) A practical demonstration developed by the Board.
- 3002.5 An applicant shall demonstrate receipt of a passing score (as determined by the Conference of Funeral Service Examining Boards) on the national examination part of the examination by arranging with the National Testing Service to forward a copy of the applicant's results directly to the Director.
- 3002.6 The oral examination part of the examination shall include specific questions on District and federal laws and regulations concerning the practice of funeral directing, including, but not limited to, the following:
- (a) The Anatomical Board, human tissue banks, and anatomical gifts;
  - (b) Vital statistics and containers for cremated human remains;
  - (c) Trafficking in dead bodies;
  - (d) Cemeteries and crematories;
  - (e) Licensing of funeral directors, apprentice funeral directors, and funeral services establishments; and
  - (f) Penalty provisions.
- 3002.7 The practical demonstration part of the examination may include specific oral questions on manual procedures, anatomical considerations and pathological conditions which are relevant to the proper care, preparation and preservation of human remains.
- 3002.8 The Board shall conduct the oral examination and practical demonstration parts of the examination at least two (2) times a year at a date, time, and location determined by the Board.
- 3002.9 An applicant who fails to pass a part of the examination, in order to be eligible for a license, shall file a new application with the Director and pay the required fee. An applicant shall not submit a new application within six (6) months of the date of the examination part failed.

**SOURCE:** Final Rulemaking published at 35 DCR 2904 (April 22, 1988).



**3003 LICENSURE AS A FUNERAL DIRECTOR OF CERTAIN PERSONS LICENSED OR PRACTICING ON MAY 22, 1984**

3003.1 The following persons shall be eligible for licensure as funeral directors under this section:

- (a) A funeral director licensed by the District as an undertaker on May 22, 1984;
- (b) An apprentice funeral director licensed by the District on May 22, 1984, and actively engaged in discharging the duties of a funeral director from January 1, 1973, through January 1, 1983; and
- (c) A person who on August 1, 1947, would have qualified for licensure under D.C. Code §47-2843(c) (1981), who has discharged the duties of a funeral director from January 1, 1973, through January 1, 1983, and who continues to discharge those duties.

3003.2 An applicant described in §3003.1(a) shall be required to achieve a passing grade, as determined by the Board, on the oral part of the examination administered by the Board pursuant to §3002.

3003.3 An applicant described in §3003.1(b) shall be required to do the following:

- (a) Submit an application for licensure within two (2) years of the effective date of this chapter;
- (b) Submit with the application, as proof that the applicant was discharging the duties of a funeral director during the specified period, the following:
  - (1) Signed statements from each of the funeral directors under whose immediate supervision the applicant's duties were performed during period of January 1, 1973, to January 1, 1983, setting out in detail the nature of the applicant's duties and the period of time over which the applicant performed them for the supervisors; or
  - (2) If permitted by the Board, one (1) or more of the following:
    - (A) Case records, histories, business records, payroll records, or other documents which evidence the applicant's association as an apprentice funeral director with a funeral services establishment;
    - (B) The applicant's income tax returns; or
    - (C) The applicant's military service records;
- (c) Submit a professional evaluation of the applicant's performance from each supervisor on a form to be prescribed by the Director; and
- (d) Achieve a passing grade, as determined by the Board, on the oral and practical demonstration parts of the examination administered by the Board pursuant to §3002.

3003.4 An applicant described in §3003.1(c) shall do the following:

- (a) Submit an application for licensure within two (2) years of the effective date of the chapter;
- (b) Submit with the application, as proof that the applicant would have qualified for licensure under D.C. Code §47-2843(c) (1981):
  - (1) A verification from the District of Columbia Department of Human Services that the applicant was registered as an undertaker with the District of Columbia Health Department on August 1, 1947; and
  - (2) Signed statements from two (2) persons who were actually engaged, at any time during the five (5) year period immediately preceding August 1, 1947, in discharging the duties of an undertaker, and who were personally aware of the applicant's professional activities during this period of time, verifying that the applicant was also so engaged at some point during this same five (5) year time period, and describing the extent to which the applicant was so engaged;
- (c) Submit with the application, as proof that the applicant was discharging the duties of a funeral director during the specified period:
  - (1) Signed statements from each of the funeral directors under whose immediate supervision the applicant's duties were performed during the period of January 1, 1973, to January 1, 1983, setting out in detail the nature of the applicant's duties and the period of time over which the applicant performed them for the supervisor; or
  - (2) If permitted by the Board, one (1) of the following:
    - (A) Case records, histories, business records, payroll records, or other documents which evidence the applicant's association as an apprentice funeral director with a funeral services establishment;
    - (B) The applicant's income tax returns; or
    - (C) The applicant's military service records;
- (d) Submit a professional evaluation of the applicant's performance from each supervisor on a form to be prescribed by the Director; and
- (e) Do one (1) of the following:
  - (1) Arrange for a complete certified transcript or copy of a diploma to be submitted to the Board to verify graduation prior to August 1, 1947, from a school or college of embalming whose course of instruction was not less than nine (9) months and which comprised not less than eight-hundred and forty (840) hours of study; or
  - (2) Submit satisfactory evidence, as determined by the Board, of equivalent experience prior to August 1, 1947; and



- (f) Achieve a passing grade, as determined by the Board, on the oral part of the examination administered by the Board pursuant to §3002.

3003.5 Applicants described in §§3003.1(b) and (c) shall apply and demonstrate qualifications under the Act and this chapter within two (2) years of the effective date of this chapter.

3003.6 The Director shall provide that a license issued for each one of the three (3) categories described in §3003.1 be color-coded or otherwise distinctively identified to distinguish it from licenses issued for the other two (2) categories of licenses described therein and from other licenses issued pursuant to this chapter.

**SOURCE:** Final Rulemaking published at 35 DCR 2904, 2906 (April 22, 1988).

#### **3004 LICENSURE AS A FUNERAL DIRECTOR BY RECIPROCITY**

3004.1 An applicant for a license under this section shall furnish proof to the Board that the applicant meets the following requirements:

- (a) Is a graduate of a high school, by arranging for a certified transcript to be sent directly to the Director from the applicant's high school; and
- (b) Is currently licensed and in good standing as a funeral director in a state or territory of the United States wherein the requirements for licensure are substantially equal to or exceed those in effect in the District, and which state or territory admits funeral directors licensed by the District in a like manner, by submitting from the state or territory a current certificate of licensure in good standing and a certificate which verifies that the state or territory admits funeral directors licensed in the District in a like manner.

3004.2 To be licensed under this section, an applicant shall be required to achieve a passing grade, as determined by the Board, on the oral part of an examination administered by the Board pursuant to §3002.

**SOURCE:** Final Rulemaking published at 35 DCR 2910 (April 22, 1988).

#### **3005 LICENSURE AS AN APPRENTICE FUNERAL DIRECTOR**

3005.1 An applicant for a license under this section shall furnish proof to the Board that the applicant meets the following requirements:

- (a) Is a graduate of a high school, by arranging for a certified transcript to be sent directly to the Director from the applicant's high school; and
- (b) Is a graduate of or is enrolled in an accredited school or college of mortuary science whose course of instruction is not less than twelve (12) months in duration or is composed of not less than eight hundred and forty (840) hours of study, or has successfully completed or is enrolled in a two (2) year course of study leading to an associate degree in mortuary science, by arranging for a complete, certified transcript, or certificate of enrollment, to be sent directly to the Board from the applicant's school or college or mortuary science.

- 3005.2 To be licensed under this section, an applicant shall achieve a passing grade, as determined by the Board, on the oral part of the examination administered by the Board pursuant to §3002.

**SOURCE:** Final Rulemaking published at 35 DCR 2904, 2910 (April 22, 1988).

**3006 PERMISSIBLE ACTIVITIES OF FUNERAL DIRECTORS LICENSED IN MARYLAND AND VIRGINIA: COURTESY CARD**

- 3006.1 A person licensed as a funeral director in the state of Maryland or Virginia who is not licensed as a funeral director in the District may, in compliance with the requirements of this section, be issued a courtesy card by the Board, which authorizes that person to do the following:

- (a) File in the District a death certificate of a person deceased in the District; and
- (b) Transport human remains to the state where the funeral director is licensed to perform funeral services.

- 3006.2 A funeral director authorized to transport human remains from the District under this section shall notify the Board in writing within five (5) days of the date the remains were transported. The notice shall state the following:

- (a) The name of the decedent;
- (b) The date of death;
- (c) The date the remains were transported;
- (d) The address in the District, and name of the hospital or funeral services establishment, if any, from which the remains were transported; and
- (e) The address in Maryland or Virginia to which the remains were transported.

**SOURCE:** Final Rulemaking published at 35 DCR 2904, 2911 (April 22, 1988).

**3007 DISPLAY OF LICENSES**

- 3007.1 A license as a funeral director or apprentice funeral director shall be conspicuously displayed in the funeral services establishment at which the licensee is employed.

**SOURCE:** Final Rulemaking published at 35 DCR 2904, 2911 (April 22, 1988).

**3008 TERM AND RENEWAL OF LICENSES**

- 3008.1 A license issued or renewed pursuant to this chapter expires at midnight on December 31 of each odd-numbered year unless the Director changes the renewal system pursuant to §3306 of chapter 33 of this title.

- 3008.2 A person who fails to file an application for renewal prior to the expiration date of the license may file a late application within thirty (30) days of the expiration of the



license upon payment of the required renewal and late fees, but is not authorized to practice until the license is renewed.

3008.3 A license that is not renewed within thirty (30) days of its expiration lapses.

3008.4 A license as an apprentice funeral director may not be renewed beyond four (4) years after the date of issuance of the initial license. If the normal terms of such a license would extend beyond the expiration of this period, the terms of the license shall be shortened so that the four (4) year limitation is not exceeded.

**SOURCE:** Final Rulemaking published at 35 DCR 2904, 2911 (April 22, 1988).

**3009 - 3010 [RESERVED]**

**3011 NOTIFICATION OF CHANGE IN ADDRESS OR EMPLOYMENT STATUS**

3011.1 A person licensed as an apprentice funeral director under this chapter shall, within five (5) days of the termination of the person's employment with a funeral director or funeral services establishment, notify the Director in writing that the person is no longer employed by that funeral director or funeral services establishment. The notification shall include the date on which the employment ceased.

3011.2 A funeral director who employs an apprentice funeral director shall notify the Board in writing of the employment or termination of the apprentice funeral director within thirty (30) days of the employment or termination of the apprentice funeral director. The notification shall include the name, street address, and license number of the apprentice funeral director and the date on which the apprentice funeral director was employed or terminated.

3011.3 An apprentice funeral director licensed under this chapter whose employment by a funeral director or funeral services establishment is terminated shall, within thirty (30) days of being employed by another funeral director or funeral services establishment, notify the Board in writing of the change in employment. The notification shall include the name, street address, and license number of the funeral director or funeral services establishment under which he or she is continuing the apprenticeship.

**SOURCE:** Final Rulemaking published at 35 DCR 2904, 2911 (April 22, 1988).

**3012 DISPUTES OVER THE POSSESSION OF HUMAN REMAINS**

3012.1 Whenever funeral directors or funeral services establishments have a difference of opinion concerning their legal right to take possession of human remains, they shall refer the matter to the chairperson of the Board for a decision.

3012.2 The funeral director or funeral services establishment retained by the individual standing highest in the following order of priority shall be entitled to take possession of the human remains in disputes:

- (a) Spouse;
- (b) Adult child;
- (c) Parent;
- (d) Adult sibling;
- (e) Adult grandchild;
- (f) Adult nephew or niece;
- (g) Grandparent;
- (h) Adult uncle or aunt;
- (i) Adult child of an uncle or aunt;
- (j) Great-grandparent;
- (k) Sibling of a grandparent;
- (l) Relative of the spouse of the deceased, in accordance with the preceding order of priority; or
- (m) Adult friend or volunteer.

3012.3 The oldest member of a class has a prior claim over other members of the same class.

3012.4 For the purposes of this section, the term "adult" means a person who is eighteen (18) years of age or older.

**SOURCE:** Final Rulemaking published at 35 DCR 2904, 2913 (April 22, 1988).

### **3013 GROUND FOR DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE**

3013.1 Upon a finding that an applicant or licensee is engaged in conduct described in §3013.2, the Board, after providing notice and an opportunity for a hearing pursuant to chapter 33 of this title, may take one (1) or more of the following actions:

- (a) Deny admission to an examination;
- (b) Deny the issuance of a license;
- (c) Suspend or revoke a license;
- (d) Refuse to renew a license;
- (e) Refuse to reinstate a license; or
- (f) Impose a civil penalty.



3013.2 The Board may take one (1) or more of the actions described in §3013.1 if it finds that an applicant or licensee has engaged in any of the following actions:

- (a) In any fraud, deceit, or misrepresentation of any material fact in procuring or attempting to procure a license under this chapter or chapter 31 of this title;
- (b) In any unfair, deceptive, or misleading act or practice, or unfair method of competition in the funeral profession, including illegally fixing or maintaining prices or illegally restraining trade;
- (c) Violated or permitted an employee or agent to violate any provision of the Act, this chapter, chapter 31 of this title, or federal laws, or regulations pertaining to the practice of funeral directing or funeral services establishments;
- (d) Conspired with, or aided or abetted any person or entity in the violation or circumvention of any provision of the Act, this chapter, chapter 31 of this title, or federal laws or regulations pertaining to the practice of funeral directing or funeral services establishments;
- (e) Performed funeral directing services while under the influence of intoxicating liquors or drugs;
- (f) Engaged in any type of solicitation;
- (g) Engaged in misrepresentation or fraud in the conduct of the business of a funeral services establishment, as a funeral director, or as an apprentice funeral director;
- (h) Performed embalming services without specific written authorization by the next of kin, except in the case of a demonstrated emergency where the public health, welfare, or safety would be endangered;
- (i) Charged in excess of actual out-of-pocket expenditures paid by the funeral services establishment for cash advances and other expenditures, excluding a reasonable charge not exceeding the District's legal interest rate per annum on the unpaid balance not repaid within thirty (30) days;
- (j) Committed gross negligence in the practice of funeral directing;
- (k) Been disciplined by a licensing or disciplinary authority or convicted, disciplined, or found civilly liable by a court of any jurisdiction for conduct which would be grounds for denial or disciplinary action under the Act or this chapter, or which bears a substantial relationship to the fitness of the applicant or licensee to be licensed; or
- (l) Acted in a manner inconsistent with the health, welfare, or safety of the public, including, but not limited to, the following:
  - (1) Permitting anyone other than a licensed funeral director to make arrangements, other than the receipt of preliminary information by telephone, on his or her behalf, or on behalf of any other funeral director or funeral



services establishment, with a customer or customer's designee, which arrangements involve the performance of the practice of funeral directing, the sale or rental of funeral goods or services, or the offer, sale, or negotiation of a preneed contract;

- (2) Exercising undue influence on a customer or misleading a customer;
- (3) Failing to provide the Board, the Director, or any person or entity with accurate and true notification or documentation as required by law, the Board, or the Director;
- (4) Soliciting, accepting, or paying any consideration for recommending or causing funeral goods or services, or the services of a crematory, mausoleum or cemetery, to be provided specific persons or entities, except pursuant to a preneed contract;
- (5) Causing or being knowingly involved in a solicitation which constituted an uninvited invasion of personal privacy, or in a solicitation by phone or at the personal residence of a person;
- (6) Participating in the provision of or providing funeral goods or services pursuant to a preneed contract if the contract was offered, sold or negotiated by a person other than a funeral director licensed in the District and employed by a funeral services establishment which is licensed and endorsed in the District and a party to that contract;
- (7) Offering, selling, negotiating, or participating in the provision of, or providing funeral goods or services pursuant to, a preneed contract which did not fulfill the requirements of chapter 31 of this title;
- (8) Charging in excess of the amount advanced, paid, or owed to third parties on behalf of the customer, or failing to passing along to the customer any discount, rebate, or other benefit received from third parties for any items of service or merchandise described as cash advances, including, but not limited to, the following:
  - (A) Cemetery or crematory charges;
  - (B) Clergy honoraria;
  - (C) Death certificate transcripts;
  - (D) Escorts;
  - (E) Chevra Kadisha (Tahara);
  - (F) Public transportation;
  - (G) Gratuities;
  - (H) Telephone and telegraph charges; and

- (I) Flowers;
- (9) Suggesting or implying, in manner, that the customer's expressed concern about prices, inexpensive services or merchandise, or desire to save money, is improper or inappropriate;
- (10) Disparaging before a customer the quality or appearance of merchandise or services advertised or offered for sale;
- (11) Failing to display less expensive merchandise advertised or offered for sale in the same manner and condition as more expensive merchandise;
- (12) Making false, misleading, or unsubstantiated claims directly, or by implication, as to the benefits or quality of funeral merchandise or services;
- (13) Obtaining custody of human remains without explicit prior customer authorization;
- (14) Failing to release promptly human remains and give information about the care, release or whereabouts of human remains upon customer request;
- (15) Failing to post conspicuously and legibly the actual retail price on each item of funeral merchandise displayed for sale;
- (16) Failing to post conspicuously and legibly the actual retail price of funeral merchandise on pictures of the merchandise, when pictures are used for the presentation of merchandise for sale;
- (17) Inducing a customer to consent to change the desired day or time of funeral, burial, or cremation by misstating facts or circumstances related thereto, if such misstatements resulting in the following:
  - (A) Increased charges for the funeral; or
  - (B) Denial of a customer's desire to have the funeral, burial, or cremation at a particular time, when that particular time was expressed by a customer as an element of the agreement;
- (18) Making a representation, or permitting a presentation to be made, that a funeral services establishment was a society, fund, trust or other nonprofit entity, unless the establishment was nonprofit or unless the representation included a conspicuous statement that the establishment was for-profit;
- (19) Revealing personally identifiable facts or information about a decedent or customer which were obtained in the business or practice of funeral directing without the prior consent of the customer, except as authorized or required by law or by the contract between the customer and the funeral director of funeral services establishment;
- (20) Delegating funeral directing responsibilities to a person when the applicant or licensee knew or should have known that the person was not qualified or authorized to perform them;



- (21) Abandoning, neglecting abusing, or failing to treat human remains with dignity and respect;
- (22) Charging for funeral goods or services that were not specified in the contract and which are not required by law;
- (23) Charging for funeral goods or services that were not provided;
- (24) Failing to provide funeral goods or services specified in the contract; or
- (25) Failing to comply with an order issued by the Board or the Director, or with a negotiated settlement entered into the Board or the Director.

3013.3 As used in this section, "solicit" means to engage in any annoying or unseemly conduct by an applicant, licensee, or employee or agent or an applicant or licensee including, but not limited to, the following:

- (a) Loitering in or about a hospital, sanitarium, personal care home, or other place for the purpose of soliciting the employment of the licensee's services;
- (b) Offering, giving, or promising any gratuity or payment, either in money or property, to any person for information concerning human remains;
- (c) Requesting or recommending that a consumer change from another funeral services establishment;
- (d) Engaging in a dispute with another licensee for the possession of human remains; or
- (e) Initiating contract with the next of kin, relations, friends, or associates of the deceased in order to provide funeral service or disposition of the deceased without being contacted by the next of kin or his or her representative, excluding general advertising, the sale of burial insurance, or responses to request for information by consumers.

**SOURCE:** Final Rulemaking published at 35 DCR 2904, 2913 (April 22, 1988).

## 3099 DEFINITIONS

3099.1 As used in this chapter, the following words and phrases have the meaning ascribed:

**Act** - the District of Columbia Funeral Services Regulatory Act of 1984, D.C. Law 5-84, D.C. Code §§2-2801 to 2-2819 (1987 Supp.).

**Board** - Board of Funeral Directors for the District of Columbia, established by the Act.

**Funeral goods** - personal property typically sold or provided in connection with the practice of funeral directing, including caskets, cremation or transportation containers, vaults, grave liners, funeral clothing or accessories, monuments and grave markers.



**Funeral services** - services rendered in connection with the practice of funeral directing.

**Funeral services establishment** - a location at which the practice of funeral directing is performed, or when the context requires, the persons or entity which owns the funeral business at that location.

**Next of kin** - the relative and priority of relatives as set forth in §3012.2.

**Practice of funeral directing** - the care, preservation, disposal, or preparation of human remains for funeral services, burial, cremation, or transportation, including the provision of these services pursuant to a preneed contract.

**Preneed contact** - an agreement under which consideration is to be paid prior to the death of the beneficiary for funeral goods or services to be provided after the beneficiary's death.

**Purchaser** - a person responsible for paying consideration for funeral goods and services pursuant to a preneed contract.

**Service fee** - the amount charged for accounting, record keeping and other administrative costs relating to a preneed contract.

3099.2        The definition in §3399 of chapter 33 of this title are incorporated by reference and apply to this chapter.

**SOURCE:** Final Rulemaking published at 35 DCR 2904, 2919 (April 22, 1988).

## **3100        APPLICABILITY**

3100.1        This chapter applies to applicants for licenses and licensees of funeral services establishments.

3100.2        Chapter 30 (Funeral Directors) of this title supplements this chapter.

3100.3        Each funeral services establishment in the District shall meet the requirements set forth in the Act and this chapter within six (6) months of the effective date of this chapter.

Source: Final Rulemaking published at 39 DCR 7853 (October 23, 1992).

## **3102 APPLICATION FOR LICENSE**

3102.1 An applicant for a license under this chapter shall do the following:

- (a) Submit to the Director, on a form prescribed by the Director, a completed application signed by the applicant, if the applicant is an individual, or by an owner who is licensed as a funeral director, if the applicant is a business entity;
- (b) Demonstrate one of the following:
  - (1) That the applicant is an individual who is licensed and in good standing as a funeral director in the District of Columbia; or
  - (2) That the applicant is a business entity which meets the following requirements:
    - (A) One of the applicant's owners is a funeral director who is licensed and in good standing in the District of Columbia; and
    - (B) The applicant has designated a principal funeral director who is licensed and in good standing in the District of Columbia to be responsible for the daily operation of the funeral services establishment;
- (c) Have the application sworn to before a notary public;
- (d) Submit with the application two (2) recent passport-size photographs measuring two inches by two inches (2" x 2") of the individual who signed the application, and a copy of the certificate of occupancy for the funeral services establishment;
- (e) Pay the application fee; and
- (f) Pass an inspection conducted under section 3103.

3102.2 The owner of a funeral services establishment in operation on the effective date of this chapter shall apply for a license within thirty (30) days of the effective date of this chapter.

3102.3 The owner of a funeral services establishment not in operation on the effective date of this chapter shall apply for a license at least sixty (60) days prior to the intended date of operation.



- 3102.4 The surviving spouse or representative of the estate of a deceased funeral director licensed to operate a funeral services establishment who intends to continue to operate the funeral services establishment shall submit an application for a license to operate the funeral services establishment pursuant to this section within thirty (30) days of the death of the funeral director.
- 3102.5 An application by a corporation for a license under this section shall state the names and street addresses of each of the directors and principal officers of the corporation and include a copy of the certificate of incorporation.
- 3102.6 An application by a partnership for a license under this section shall state the names and street addresses of each of the general partners.
- 3102.7 Upon the death of a funeral director licensed to operate a funeral services establishment, a surviving spouse or the estate of the funeral director may apply for a license to continue operating the funeral services establishment for the remainder of the licensure period.
- 3102.8 The surviving spouse or estate shall notify the Director within ten (10) days of the death of the funeral director of the intent to continue operating the funeral services establishment and shall apply a license within thirty (30) days of the death of the funeral director.
- 3102.9 A license may only be issued to a surviving spouse or the estate of the funeral director if the requirements of D.C. Code section 2-2805(f) are met.
- 3102.10 A surviving spouse who is licensed pursuant to section 3102.9 may apply for licensure renewal as long as the spouse remains unmarried and complies with all other requirements of this chapter.
- 3102.11 The estate of a funeral director which receives a license pursuant to section 3102.9 shall comply with all other requirements of this chapter and may apply for renewal of the license at the end of the licensure period, but the total period of licensure may not exceed three (3) years.
- 3102.12 If upon renewal of the license of the estate of a funeral director the licensure period prescribed in section 3105 exceeds the three (3) year statutory limit, the licensure term shall be adjusted to comply with the limit and the licensure fee prorated accordingly.

Source: Final Rulemaking published at 39 DCR 7853 (October 23, 1992).

### **3103        PRE-LICENSURE INSPECTION**

- 3103.1        Before the Director issues a license, the District of Columbia Fire Department shall inspect the funeral services establishment to determine compliance with fire safety requirements and shall submit the findings to the Director.
- 3103.2        Before issuing a license, the Director shall conduct an on-site certificate of occupancy inspection to determine compliance with the act and this chapter.
- 3103.3        The Director shall send a written report of the findings of the inspection to the applicant no later than thirty (30) days after the conclusion of the inspection.
- 3103.4        If the report states that there are deficiencies, the applicant shall correct them within the time period required by the Director, not to exceed thirty (30) days.
- 3103.5        The Director may deny the application if the deficiencies have not been corrected within the time period required by the Director pursuant to sect. 3103.4. A funeral services establishment whose application is denied may reply for a license after deficiencies are corrected by submitting a new application and fee in accordance with this chapter.

Source: Final Rulemaking published at 39 DCR 7853, 7855 (October 23, 1992).

## **3104 ISSUANCE AND DISPLAY OF LICENSE**

- 3104.1 The Director shall issue a license to a funeral services establishment if the Director determines that it is in compliance with the act and this chapter.
- 3104.2 A licensee shall display the license and certificate of occupancy in a conspicuous place on the premises.
- 3104.3 The Director shall issue a license only for the premises and person or persons named as applicants in the application. The license is not valid for use by any person or at any place other than that designated in the license. Any transfer as to ownership or location without the approval of the director shall cause the immediate forfeiture of the license.
- 3104.4 A license is the property of the District Government and shall be returned to the Director immediately upon any of the following events:
- (a) Suspension or revocation of the license;
  - (b) Denial of renewal of the license;
  - (c) Unauthorized transfer under section 3104.3; or
  - (d) Discontinuance of operation by licensee.

Source: Final Rulemaking published at 39 DCR 7853, 7856 (October 23, 1992).



## **3105            TERM OF LICENSE**

- 3105.1            A license issued under this chapter shall expire on September 30 of each odd-numbered year.
- 3105.2            A license issued under this chapter shall be effective until September 30 of the first odd-numbered year following issuance of the license or for two (2) years, whichever is less.

Source: Final Rulemaking published at 39 DCR 7853, 7856 (October 23, 1992).

## **3106 RENEWAL OF LICENSE**

- 3106.1 The Director may send a renewal notice to a licensee by first class mail to the licensee's address on file with the Director at least forty-five (45) days prior to the expiration of the license.
- 3106.2 The failure of a licensee to receive the notice does not relieve the licensee of the responsibility of renewing the license in a timely manner.
- 3106.3 A licensee who fails to file an application for renewal prior to the expiration date of the license may file a late application within thirty (30) days of the expiration of the license upon payment of the required renewal and late fees, but shall not operate the funeral services establishment until the license renewal is issued.
- 3106.4 A license that is not renewed within thirty (30) days of its expiration lapses.
- 3106.5 A license to operate a funeral services establishment granted to the estate of a deceased funeral director may not be renewed beyond three (3) years after the death of the funeral director. If the normal term of the license as specified by section 3105 would extend beyond the expiration of this period, the term of the license shall be shortened and the prescribed fee prorated so that the three (3) limitation is not exceeded.
- 3106.6 The Director may conduct announced or unannounced onsite inspection of a funeral services establishment to determine compliance with the act and this chapter.
- 3106.7 The Director shall send a written report of the findings of the inspection to the licensee not later than fifteen (15) days after the conclusion of the inspection.
- 3106.8 The Director shall not renew the license of a funeral services establishment with deficiencies which pose a serious threat to the public health, safety, or welfare.
- 3106.9 The Director may require an applicant for renewal to submit a written, signed, and dated plan of correction to abate the deficiencies cited no later than then (10) days following the receipt of the written report of the findings.
- 3106.10 The Director may renew the license of a funeral services establishment with minor deficiencies that, in the opinion of the Director, can be corrected within thirty (30) days.

Source: Final Rulemaking published at 39 DCR 7853, 7857 (October 23, 1992).

## **3107 REINSTATEMENT OF LICENSE**

- 3107.1 An applicant for the reinstatement of a lapsed or revoked license under this section shall file an application pursuant to section 3102.
- 3107.2 An individual or business entity whose license has been revoked, or whose application for reinstatement has been denied, is ineligible to apply for reinstatement for a period of one (1) year from the date of the revocation or denial, unless otherwise provided in the order of revocation or denial.
- 3107.3 In addition to the requirements of section 3107.1, an applicant for the reinstatement of a revoked license shall demonstrate fitness to resume operation of a funeral services establishment by submitting evidence satisfactory to the Director that the applicant has the moral qualifications, competency, and knowledge of operation, and that the applicant's resumption of operation will not be detrimental to the public interest or the integrity of the funeral services industry.
- 3107.4 In making a determination pursuant to section 3107.3, the Director shall consider, among other factors, the following:
- (a) The nature and circumstances of the violation, or the mental or physical condition, for which the applicant's license was revoked;
  - (b) The applicant's recognition and appreciation of the seriousness of the violation;
  - (c) The applicant's conduct, or mental or physical condition since the revocation, including steps taken by the applicant to remedy the prior violation and prevent future violations or to remedy the mental or physical condition; and
  - (d) The applicant's present character.

Source: Final Rulemaking published at 39 DCR 7853, 7858 (October 23, 1992).

## **3108 REQUIRED NOTIFICATIONS**

3108.1 A licensee shall inform the Director if the business relationship between the licensee and a funeral director who is an owner of or who is responsible for the daily operation of funeral services establishment terminates, within ten (10) days of the termination.

3108.2 The notice under section 3108.1 shall:

- (a) Be signed by the licensee or the funeral director responsible for the daily operation of the funeral services establishment;
- (b) State the date of and reasons for the change; and
- (c) State whether the licensee intends to continue to operate the funeral services establishment, and, if so, include the name, license number, street address, and ownership interest, if any, of the replacement funeral director.

3108.3 A licensee desiring to change the location of a funeral services establishment within the District shall apply for a new license for the funeral services establishment in accordance with this chapter.

3108.4 A licensee shall notify the Director in writing within ten (10) days of disciplinary action proposed or taken in any jurisdiction against the funeral director or apprentice funeral director license of an owner, officer, employee, or agent of the funeral services establishment the notice shall:

- (a) Be signed by the licensee or the funeral director responsible for the daily operation of the funeral services establishment;
- (b) State the date, basis of, and status of the disciplinary action; and
- (c) If the disciplinary action involves the revocation or suspension of the funeral director license of the owner of the funeral services establishment or of the person responsible for the daily operation of the funeral services establishment, state whether the licensee intends to continue to operate the funeral services establishment, and, if so, include the name, license number, street address and ownership interest, if any, of the replacement director.

3108.6 A licensee shall submit a written notification to the Director within ten (10) days of hiring or terminating a funeral director or apprentice funeral director and shall state the name, street address, and license number of the funeral director of



apprentice funeral director and the date on which he or she was employed or terminated, and the basis for termination.

Source: Final Rulemaking published at 39 DCR 7853, 7859 (October 23, 1992).

## **3109        FEES**

### **3109.1        Licensure of Funeral Services Establishments:**

License	\$175.00 (for two years)
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Renewal Fee	\$175.00 (for two years)
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Late Fee	\$ 20.00
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Reinstatement Fee	\$20.00
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Source: Final Rulemaking published at 39 DCR 7853, 7860 (October 23, 1992); as amended by Final Rulemaking published at 41DCR 1427 (March 18, 1994).

## **3111 VARIANCES**

- 3111.1 The Director may excuse the inability of a licensee to conform to requirements of section 3116 of this chapter and grant a variance to the licensee if the Director determines the following:
- (a) To deny the variances would result in undue hardship to the licensee;
  - (b) Compensating factors are present which give adequate protection to the health, safety, and welfare of the public; and
  - (c) The variance can be granted without impairing the purposes of this chapter or the act.
- 3111.2 To apply for a variance a licensee shall state on a DCRA form the reasons a variance should be granted based upon factors listed in section 3111.1.
- 3113.3 A licensee shall submit a request for a variance within the period specified in the notice of noncompliance, but in no more than twenty (20) days after the date the notice is mailed to the licensee.
- 3113.4 The Director shall maintain a written record of each variance granted or denied and shall make the record available for public inspection.
- 3113.5 The Director's decision on a variance is final and is not subject to administrative review.

Source: Final Rulemaking published at 39 DCR 7853, 7860 (October 23, 1992).

## **3116 MINIMUM STANDARDS FOR FUNERAL SERVICES ESTABLISHMENTS**

- 3116.1 The business or practice of funeral directing shall be conducted only from a funeral services establishment that is located at a licensed fixed address registered with the Director.
- 3116.2 A funeral services establishment shall include:
- (a) A chapel or repose room, containing at least three hundred (300) square feet of floor space, used exclusively for funeral services;
  - (b) An arrangement office, to be used exclusively for making funeral arrangements and for related business matters; and
  - (c) A preparation room, to be used exclusively for the preparation, preservation (including embalming), or other care of human remains.
- 3116.3 Separate buildings, or portions thereof, that are connected by a private passageway, walk, or driveway, may constitute a single funeral services establishment.
- 3116.4 A preparation room shall:
- (a) Be clean and sanitary at all times;
  - (b) Contain at least one-hundred and twenty (120) square feet of floor space;
  - (c) Be lighted at a minimum of thirty-five (35) foot candles of light on each preparation table, and twenty-five (25) foot candles of light on all other working surfaces;
  - (d) Be ventilated at a rate of twelve (12) air changes per hour, and be otherwise in compliance with the BOCA Mechanical Code, section M-1600 *et seq.* (1990) and 20 DCMR Chapter 9; and
  - (e) Be equipped with:
    - (1) Floor, wall, ceiling, and working surfaces made of tile or other hard, smooth, durable, nonporous, washable, and light-colored material;
    - (2) Hot and cold running water, a utility sink, and cabinets, closets, or shelves for instruments and supplies;



- (3) Adequate sewage disposal, waste disposal, and drainage equipment and facilities which meet the requirements of the District of Columbia Hazardous Waste Management Act of 1977, D.C. Law 2-64, D.C. Code, section 6-701, *et seq.*, and implementing rules;
- (4) Doors and windows, if any, that are rigid and right-closing and that do not permit any view into the room;
- (5) A non-porous table for preparing or preserving human remains; and
- (6) Disinfectants for the proper sterilization of the preparation room, equipment, and instruments.

- 3116.5 Temporary storage of uncasketed human remains awaiting burial or other final disposition shall take place only in a preparation room or in a storage room. Unembalmed human remains that are stored for over twenty-four (24) hours shall be stored in a refrigerated storage room.
- 3116.6 A funeral services establishment shall have a business telephone in working order at its registered address, the number of which shall be listed in the name of the business. Any other telephone number also listed for the funeral services establishment shall be specifically designated as a “residence telephone number”, a “number to call if no answer”, or otherwise identified.
- 3116.7 A funeral services establishment shall display a sign that states the name of the establishment as registered with the Director. The sign shall be conspicuously located at or near the main entrance and shall be visible from the exterior of the establishment. The lettering on the sign shall be legible and have a minimum height of one and one-half (1-1/2) inches.
- 3116.8 A funeral services establishment shall conspicuously display its current license in the establishment.
- 3116.9 A funeral services establishment shall use only its name as registered with the Director in telephone listings, publications, advertisements, or otherwise conducting business.
- 3116.10 Use of space, facilities, equipment, or supplies for, or the preparation, sale, service, or distribution of food or beverages in any part of a funeral services establishment to or by clientele is prohibited, except beverage vending machines are permitted.

3661.11        A funeral services establishment shall provide telephone information, a casket price list, an outside receptacle price list, and a general price list as required by the Funeral Industry Practices Rules of the Federal Trade Commission (16 Code of Federal Regulations, section 453.2). Copies of these rules may be obtained from the Director upon payment of the prescribed fee.

Source: Final Rulemaking published at 39 DCR 7853, 7861 (October 23, 1992).

## **3120            GROUNDS FOR DENIAL, REVOCATION, OR OTHER DISCIPLINARY ACTION**

- 3120.1            Upon finding that an applicant for or a holder of a license engaged in conduct described in section 3120.2, the Director may, after providing notice and an opportunity for a hearing pursuant to this chapter, take one or more of the following actions:
- (a)            Deny a license;
  - (b)            Suspend or revoke a license;
  - (c)            Refuse to renew or reinstate a license;
  - (d)            Impose a civil fine pursuant to procedures established by the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Code, section 6-2701 *et seq.*; or
  - (e)            Impose restrictions on the license to operate a funeral services establishment.
- 3120.2            The Director may take one (1) or more of the actions listed in section 3120.1 if the Director finds that an applicant for a license or a licensee commits one of the following acts:
- (a)            Engages in any conduct prohibited by D.C. Code, section 2-208;
  - (b)            Violates any provision of the act, this chapter, Chapter 30 of this title, or other District or federal law pertaining to the practice of funeral directing or funeral service establishment;
  - (c)            Denies access by the Director to a funeral services establishment or its records;
  - (d)            Fails to comply with an order of or agreement with the Director; or
  - (e)            Fails to pay a civil fine imposed pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Law 6-42, D.C. Code, section 6-2701 *et seq.*

Source: Final Rulemaking published at 39 DCR 7853, 7863 (October 23, 1992).

## **3122 COMPLAINTS; INVESTIGATIONS**

- 3122.1 The Director, on the Director's initiative or on receipt of a complaint, shall investigate a funeral services establishment if the facts alleged would constitute grounds for disciplinary action under this chapter.
- 3122.2 A person may file a complaint in writing against a funeral services establishment.
- 3122.3 The Director may request a funeral services establishment under investigation to respond in writing to any allegations. If the Director requests such a response, the Director shall inform the funeral services establishment:
- (a) That the funeral services establishment is not required to respond to the request;
  - (b) That a copy of any response may be sent to the complainant, if any;
  - (c) That the failure to respond will not be held against the funeral services establishment in any subsequent action based on the investigation; and
  - (d) That any response may be used against the funeral services establishment in a subsequent action.
- 3122.4 The Director may send a copy of the funeral services establishment response, if any, to the complainant and request a written reply within a time period determined by the Director.
- 3122.5 After considering the facts of a particular case, the complaint, if any, and any response, the Director shall take one of the following actions:
- (a) Initiate an investigation;
  - (b) Issue a notice of intended disciplinary action pursuant to section 3125;
  - (c) Notify the licensee or applicant that particular deficiencies are required to be corrected within the period stated in the notice;
  - (d) Refer the case to the Office of the Corporation Counsel for prosecution pursuant to section 19 of the act, D.C. Code, section 2-2818; or
  - (e) Dismiss the case
- 3122.6 If the Director undertakes an investigation, the Director shall, within sixty (60) days of the completion of the investigation, take one of the actions listed in section 3122.5(b)-(e).



Source: Final Rulemaking published at 39 DCR 7853, 7864 (October 23, 1992).

## **3123            RIGHT OF ENTRY AND INSPECTION**

3123.1            The Director has the right, after presenting credentials, to enter a funeral services establishment.

3123.2            A licensee or applicant shall give the Director access to records, policies and procedures, contracts, and any other information that the Director deems necessary to determine the funeral services establishment's compliance with the act or this chapter.

Source: Final Rulemaking published at 39 DCR 7853, 7865 (October 23, 1992).

## **3125 NOTICE OF INTENDED ACTION AND OPPORTUNITY FOR A HEARING**

3125.1 The Director shall give a licensee a notice of and opportunity for a hearing before the Director if the Director proposes to:

- (a) Revoke a license;
- (b) Suspend a license;
- (c) Deny renewal of a license for a cause other than failure to pay the prescribed fee;
- (d) Impose a civil fine pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Law 6-42, D.C. code, section 6-2701 *et seq.* In such a case, the hearing will be conducted pursuant to the hearing procedures contained in D.C. Law 6-42.

3125.2 If the Director proposes taking an action listed in section 3125.1, the Director shall give the respondent written notice containing the following:

- (a) A statement setting forth the nature of the evidence and that it is sufficient to justify the Director's proposed action;
- (b) One of the following statements:
  - (1) That the proposed action will take effect unless the respondent makes a written request to the Director for a hearing by certified mail or delivered in person, within twenty (20) days after mailing of the notice of the proposed action, and that the Director may take the proposed action if the respondent fails to appear at the hearing; or
  - (2) That the Director has scheduled a hearing on the proposed action, setting forth the date, time, and place of the hearing, and that the Director may take the proposed action if the respondent fails to appear at the hearing; and
- (c) A statement of the rights of the respondent at a hearing as specified in section 3133.2.

3125.3 The Director shall give an applicant for a license notice of and opportunity for a hearing if the Director proposes to deny a license for a cause other than failure to pay the prescribed fee.

- 3125.4 If the Director proposes an action listed in section 3125.3, the Director shall give written notice to the respondent containing the following:
- (a) A statement that the respondent does not meet the qualifications for licensure and why;
  - (b) One of the following statements:
    - (1) That the proposed action will become effective unless the respondent requests a hearing by a letter to the Director, sent by certified mail or delivered in person, within twenty (20) days after mailing the notice of the proposed action, and that the Director may take the proposed action if the respondent fails to appear at a hearing; or
    - (2) That the Director has scheduled a hearing on the proposed action, setting forth the date, time, and place of the hearing, and that the proposed action will become effective if the respondent fails to appear at the hearing; and
  - (c) A statement of the respondent's rights at a hearing as stated in section 3133.2.
- 3125.5 If a respondent does not respond to the notice within the time specified, the Director may, with or without a hearing, take the action proposed in the notice. The Director shall inform the respondent in writing of the action taken.
- 3125.6 If a respondent submits a documentary evidence in response to a notice but does not request a hearing, the Director shall review the evidence prior to taking action. The Director shall notify the respondent in writing of the action taken.
- 3125.7 A notice given pursuant to section 3125.1 shall be in the form of charges and specifications. A notice given pursuant to section 3125.3 shall be in the form of a notice of intent to deny in letter format.

Source: Final Rulemaking published at 39 DCR 7853, 7865 (October 23, 1992).



**3126            FAILURE TO REQUEST A HEARING OR FAILURE TO  
                  APPEAR**

3126.1            If a respondent who was sent a notice of a proposed action pursuant to section 3125 does not mail or deliver a request for a hearing within the time and in the manner required under that section, the Director may, without a hearing, take the action proposed in the notice.

3126.2            If a respondent scheduled for a hearing does not appear for the hearing and no continuance has been granted, the Director may conduct a hearing in the respondent's absence and render a decision on the basis of the evidence before the Director. However, the Director, prior to rendering a decision, may, upon written request of the respondent and payment of the required fee, send a copy of the transcript or summary of the hearing to the respondent and request proposed findings of fact and conclusions of law from the respondent.

3126.3            The Director shall inform the parties of an action taken under this section.

Source: Final Rulemaking published at 39 DCR 7853, 7867 (October 23, 1992).

## **3127            HEARING NOTICE PROCEDURES**

3127.1            If a respondent requests a hearing, the Director shall notify the respondent of the date, time, and place of the hearing within twenty (20) days following receipt of the request.

3127.2            The Director shall hold the hearing not less than fifteen (15) days following the date of the mailing or delivery of the notice, unless the Director and all of the parties agree to the holding of the hearing at an earlier date.

Source: Final Rulemaking published at 39 DCR 7853, 7868 (October 23, 1992).

## **3128 SERVICE**

3128.1 A notice, pleading, order, or decision required to be served on a party shall be served on the party or representative designated by the party or by law to accept service of papers. If a party has appeared through counsel, service shall be made upon the counsel of record.

3128.2 Service on a party shall be directed to the last known address of the party on file with the Director and shall be completed by one of the following methods:

- (a) By certified mail, return receipt requested;
- (b) By personal delivery;
- (c) By delivery to the address of the party, or party's counsel or agent, on file with the Department, by leaving it with a person of suitable discretion at least sixteen (16) years of age who is employed or resides at the address;  
or
- (d) As directed by order of the Director.

3128.3 Service on the Director or on the Corporation Counsel shall be by certified mail, return receipt requested, or by personal delivery.

3128.4 Proof of service, or attempted service, stating the name and address of the person on who service is made and the manner and date of service, shall be shown by one of the following:

- (a) If service is by certified mail, the return receipt;
- (b) If service is by personal delivery, the certificate of the server; or
- (c) If service is pursuant to an order of the Director, in the manner provided in that order.

Source: Final Rulemaking published at 39 DCR 7853, 786 (October 23, 1992).

## **3129 REPRESENTATION**

- 3129.1 A respondent may be represented only by an attorney who is an active member of the District of Columbia Bar, except that the Director may permit an attorney who is an active member of the bar of another jurisdiction in the United States to represent a respondent in a particular case.
- 3129.2 If it appears to the Director that the issues or facts in a matter before him are so complex that the interests of justice, saving time, or facilitating the development of an adequate record would be served by the representation of a party by an attorney, the Director may request, but not require, that the party obtain an attorney and may allow a reasonable period of time to do so.
- 3129.3 An attorney shall not represent any person in a hearing until the attorney submits a signed statement containing the attorney's name, street address, telephone number, and bar number.

Source: Final Rulemaking published at 39 DCR 7853, 7869 (October 23, 1992).

## **3131 MOTIONS AND OTHER PLEADINGS**

- 3131.1 Except by leave of the Director during a hearing, a party shall make an application for an order or other relief by filing a written motion. A motion shall state with particularity the ground on which it is based and shall clearly set forth the order or relief sought. Memoranda, affidavits, or other papers in support of the motion shall be attached to and served with the motion.
- 3131.2 A copy of each pleading filed with the Director shall be served on each party, and there shall be a certificate of service at the end of the pleading showing the date and method of service.
- 3131.3 A party may file a response or opposition to a motion within ten (10) days after service of the motion, but the Director, in the Director's discretion, may shorten or extend this time with proper notice to the parties. The response or opposition shall not include a motion for other affirmative relief against the moving party.
- 3131.4 A reply to a response or opposition may be filed within five (5) business days after service of the response or opposition, but the reply shall not reargue propositions presented in the motion nor present matters which are not strictly in reply to the response or opposition. No further pleading may be filed except by leave of the Director for extraordinary cause.
- 3131.5 A motion or other pleading shall meet the following additional requirements:
- (a) It shall be typewritten on business size eight and one-half by eleven inch (8-1/2" x 11") paper;
  - (b) It shall contain the name of the case and the number of the case, if any;
  - (c) It shall be double-spaced, except footnotes and quotations, which may be single-spaced;
  - (d) It shall be signed by the party on whose behalf it is filed or by that party's counsel; and
  - (e) It shall be accompanied by three (3) copies of the pleading or motion.

Source: Final Rulemaking published at 39 DCR 7853, 7869 (October 23, 1992).



## **3133 CONDUCT OF HEARINGS**

3133.1 A hearing under this chapter shall be open to the public.

3133.2 A respondent has the right at a hearing:

- (a) To be represented by an attorney in accordance with section 3129;
- (b) To be present all relevant evidence by means of witnesses, books, papers, and other means;
- (c) To cross-examine each witness on any relevant matter; and
- (d) To have subpoenas issued to compel the attendance of witnesses and the production of relevant documents or other evidence, upon written request to the Director.

Source: Final Rulemaking published at 39 DCR 7853, 7870 (October 23, 1992).

## **3134 EVIDENCE AT THE HEARING**

- 3134.1 Testimony at a hearing shall be under oath or affirmation.
- 3134.2 If any part of the record in any other proceeding previously held before the Director, or part of the record in any criminal civil action, including hearings before any administrative agency, is offered in evidence, a certified true copy of that part shall be presented to the Director in the form of an exhibit, unless either of the following requirements is met:
- (a) The record is described so that it may be readily identified, and the person offering the record agrees to supply copies; or
  - (b) The parties stipulate that the record may be incorporated by reference and the Director so orders.
- 3134.3 The Director shall exclude irrelevant, immaterial, and unduly repetitious evidence.
- 3134.4 The Director may take official notice, at the request of a party or on his own motion, of the following:
- (a) The statutes and rules of the District of Columbia, the United States, or any state or other jurisdiction of the United States;
  - (b) Material facts in the files of the Department or other District of Columbia or federal agency; or
  - (c) A fact which is not subject to reasonable dispute in that it is generally known within the District of Columbia, or is capable of accurate and ready determination by resort to sources the accuracy of which cannot reasonably be questioned.
- 3134.5 If the Director takes official notice of a material fact not appearing in the evidence in the record, a party shall have an opportunity to show the contrary at the hearing or on motion made within five (5) days after the hearing.
- 3134.6 The parties may, by stipulation in writing filed with the Director, agree on any facts, or any portion thereof, involved in a hearing. The parties may also stipulate the testimony that would be given by a witness if the witness were present. The Director may require additional evidence concerning any matter covered by a stipulation.
- 3134.7 The District shall have the burden of proving its proposed action by a preponderance of the evidence.

3134.8 In a hearing pursuant to section 3125.3, the applicant shall have the burden of proving, by a preponderance of the evidence, that the applicant is qualified to be licensed or certified.

Source: Final Rulemaking published at 39 DCR 7853, 7872 (October 23, 1992).

## **3136 CONDUCT OF PARTIES AND COUNSEL AT HEARINGS**

- 3136.1 Each party at a hearing shall maintain decorum and good order at all times. The Director may exclude or have removed from the hearing room any person violating an order of the Director.
- 3136.2 The Director may ban counsel from further participation in a hearing for disruptive conduct.
- 3136.3 If counsel has been banned from participating in a hearing, the Director may continue with the hearing if consistent with the due process rights of the parties. The Director may adjourn the hearing to give the party who se counsel has been banned an opportunity to immediately secure new counsel.
- 3136.4 Counsel who has been banned from participating in a hearing may seek reinstatement on terms the Director prescribes. A reinstatement application shall not delay the proceedings.

Source: Final Rulemaking published at 39 DCR 7853, 7873 (October 23, 1992).

## **3138 DECISIONS**

- 3138.1 The Director shall render a written decision no later than ninety (90) days after the hearing is completed.
- 3138.2 The Director may, with the agreement of all parties, extend the period within which he is required to render a decision pursuant to section 3138.1/
- 3138.3 All decisions issued by the Director shall contain the following:
- (a) Findings of fact;
  - (b) Conclusions of law based upon the findings of fact and application of the laws;
  - (c) An order; and
  - (d) A statement informing the respondent of the right to have the decision reviewed by the District of Columbia Court of Appeals, and the times within which judicial review is required to be sought according to the rules of the Court.
- 3138.4 Within ten (10) days after a decision is rendered, the Director shall serve a copy of the written decision upon each party.
- 3138.5 In response to a motion by a respondent, the Director may stay the imposition of an order pending appeal or reconsideration.

Source: Final Rulemaking published at 39 DCR 7853, 7873 (October 23, 1992).



## **3139 REOPENING A HEARING**

- 3139.1 If, because of accident, sickness, or other good cause, a respondent does not receive notices of a hearing or fails to appear for a hearing, the respondent may, within fifteen (15) days from the date a service of the decision, request that the Director reopen the hearing.
- 3139.2 If the Director finds good cause to reopen a hearing, the Director shall, as soon as practicable, set a time and place for a hearing and so notify each party.
- 3139.3 The Director may reopen a hearing for good cause pursuant to section 3139.1

Source: Final Rulemaking published at 39 DCR 7853, 7874 (October 23, 1992).

## **3140 RECONSIDERATION**

- 3140.1 A respondent or the Corporation Counsel may file a petition for reconsideration with the Director within ten (10) days after the date of service of the decision on that party. The petitioner shall serve a copy of the petition on each party.
- 3140.2 Neither the filing nor the granting of a petition for reconsideration shall operate as a stay of a decision unless specifically ordered by the Director. The Director may grant a stay only upon good cause involving consideration of the likelihood of decisional error, irreparable harm to the petitioning party, harm to any other party, or the public interest.
- 3140.3 A petition for reconsideration shall state briefly and specifically the following:
- (a) The matter of record or point of law alleged to have been erroneously decided or overlooked;
  - (b) The grounds relied upon; and
  - (c) The relief sought.
- 3140.4 If a petition is based in whole or in part on new matter, the matter shall be set forth in an affidavit, containing the statement that the petitioner could not, with due diligence, have known or have discovered the new matter prior to the hearing before the Director.
- 3140.5 The Director may permit or require oral argument upon a petition.
- 3140.6 The Director shall rule on a petition within forty-five (45) days after the filing of the petition. Failure by the Director to act within that period shall constitute a denial of the petition.

Source: Final Rulemaking published at 39 DCR 7853, 7874 (October 23, 1992).

## **3141 JUDICIAL REVIEW; RECORD ON APPEAL**

- 3141.1 A party aggrieved by a final decision of the Director may seek review of the decision by the District of Columbia Court of Appeals in accordance with section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209 (1968), D.C. Code, section 1-1510.
- 3141.2 The Director shall compile and index the originals or copies of all documents pertinent to the appeal, including the following:
- (a) A copy of the decision from which an appeal is taken;
  - (b) Each document relied upon by the Director, including each relevant document timely submitted to the Director by the respondent or other party to the hearing; or
  - (c) A transcript or summary of all testimony given during the course of any hearings, conferences, or investigations concerning the matter in dispute conducted by the Director prior to the filing of the notice of appeal.
- 3141.3 The documents transmitted pursuant to this section, and any supplements, shall be available for inspection by each party at a location designated by the Director.

Source: Final Rulemaking published at 39 DCR 7853, 7875 (October 23, 1992).

**3149****COMPUTATION OF TIME****3149.1**

In computing any period of time under this chapter, the day of the act, event, or default shall not be counted and the last day of the period shall be counted unless it is not a business day, in which event the time period shall continue until the next business day.

Source: Final Rulemaking published at 39 DCR 7853, 7876 (October 23, 1992).

## 3199 DEFINITIONS

3199.1 As used in this chapter, the following terms have the meanings ascribed:

**Act** – the District of Columbia Services Regulatory Act of 1984, D.C. Law 5-84, D.C. Code, section 2-2801 *et seq.*

**Board** – Board of Funeral Directors for the District of Columbia as established by the act.

**Business day** – a day other than a Saturday, Sunday, legal holiday, or other day on which the Department is officially closed.

**Department** – the Department of Consumer and Regulatory Affairs.

**Director** – the Director of the Department of Consumer and Regulatory Affairs, or the Director's designee.

**Funeral goods** – personal property typically sold or provided in connection with the practice of funeral directing, including caskets, cremation or transportation containers, vaults, grave liners, funeral clothing or accessories, monuments, and grave markers.

**Funeral services** – services rendered in connection with the practice of funeral directing.

**Funeral services establishment** – a location in the District at which the practice of funeral directing is performed or the person or entity which owns the funeral business at that location.

**Legal holiday** – a day designated as a legal holiday by the President, the Congress, or the Mayor or Council of the District of Columbia and which is observed by the government of the District of Columbia.

**License** – a license issued by the Director pursuant to the act and this chapter.

**Next of kin** – the relatives and priority of relatives as set forth in section 3012.2 of Chapter 30 of this title.

**Party** – a respondent, the Corporation Counsel, or any other person recognized by the Director as a party in proceedings under this chapter.

**Practice of funeral directing** – the care, preservation, disposal, or preparation of human remains for funeral services, burial, cremation, or transportation.

**Respondent** – a person against whom an adverse action is contemplated, proposed, or taken.

Source: Final Rulemaking published at 39 DCR 7853, 7876 (October 23, 1992).

June 2001



**District of  
Columbia**

**Department of  
Consumer and  
Regulatory  
Affairs**

**OCCUPATIONAL &  
PROFESSIONAL  
LICENSING  
ADMINISTRATION**

**GENERAL RULES:  
Funeral Directors,  
Veterinarians, and  
Interior Designers**

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## **CHAPTER 33                                      GENERAL RULES: FUNERAL DIRECTORS, VETERINARIANS, AND INTERIOR DESIGNERS**

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**3300 APPLICABILITY**

3300.1 This chapter shall apply to applicants for and holders of a license to practice a profession or occupation regulated by the following boards:

- (a) The Board of Funeral Directors for the District of Columbia, established by §4 of the District of Columbia Funeral Services Regulatory Act of 1984, D.C. Law 5-84, D.C. Code §2-2803 (1987 Supp.);
- (b) The Board of Veterinary Examiners for the District of Columbia, established by §6 of the Veterinary Practice Act of 1982, D.C. Law 4-171, D.C. Code §2-2725 (1987 Supp.); and
- (c) The Board of Interior Designers, established by §3 of the District of Columbia Interior Designer Licensure Act of 1986, D.C. Law 6-172, D.C. Code §2-3402 (1987 Supp.).

3300.2 This chapter shall be supplemented by the District of Columbia Administrative Procedure Act, D.C. Code §§1-1501 to 1-1511 (1987 Repl. Vol.), the Acts listed in §3300.1, and rules promulgated pursuant to those Acts.

3300.3 Other chapters of this title applying to individual boards promulgated pursuant to an Act listed in §3300.1 shall prevail over this chapter in the event of a direct and irreconcilable conflict with this chapter.

**AUTHORITY:** Unless otherwise noted, the authority for this chapter is §4(1) of the D.C. Funeral Services Regulatory Act of 1984, D.C. Law 5-84, D.C. Code §2-2803(i) (1987 Supp.), and Mayor's Order 87-186; §6(1) of the Veterinary Practice Act of 1982, D.C. Law 4-171, D.C. Code §2-2725(m) (1987 Supp.), and Mayor's Order 86-117; and §5(3) of the D.C. Interior Designer Licensure Act of 1986, D.C. Law 6-172, D.C. Code §2-3404(3) (1987 Supp.) and Mayor's Order 87-277.

**SOURCE:** Final Rulemaking published at 35 DCR 3488 (May 13, 1988).

**3301 APPLICATION FOR A LICENSE**

3301.1 An applicant for a license under an Act listed in §3300.1 shall do the following:

- (a) Submit a completed application on the prescribed form to the board regulating the occupation or profession;
- (b) Have the application sworn to before a notary public;
- (c) Submit with the application two (2) recent passport-type photographs of the applicant's face measuring two inches by two inches (2" x 2");
- (d) Pay the required application fee; and
- (e) Arrange for the submission directly to a board of all required supporting credentials, documents, and materials, including transcripts, references, and test scores.

3301.2 A board may not presume qualifications that are not shown on an application.

3301.3 A board may refuse to act on an application and may require the applicant to submit a new application if the application contains incomplete or evasive information.

3301.4 If a board determines that an applicant is not in compliance with §3301.1, the Director shall return the application unless the board determines that the deficiency is minor. If the application is returned, the Director may, in the Director's discretion, return the application fee to the applicant.

3301.5 If a board determines that an application is not in compliance with §3301.1, but that the deficiency is minor, the Director shall send a notice of the deficiency to the applicant. Upon receipt of the notice, the applicant shall correct the deficiency within thirty (30) days or other period specified in the notice.

3301.6 If the applicant fails to correct the deficiency within the required period, the application shall lapse and the applicant is required to submit a new application and pay the required fees to be considered for a license.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3489 (May 13, 1988).

**3302 EXAMINATION**

3302.1 An applicant desiring to take a national examination shall submit an application in compliance with §3301.1 to a board regulating the occupation or profession at least ninety (90) days prior to the date of that examination.

- 3302.2 An applicant who has previously taken that examination shall submit such an application at least sixty (60) days prior to the date of that examination.
- 3302.3 An applicant may not take the national examination unless the materials required by §3301.1(e) are received by a board at least forty-five (45) days prior to the date of that examination. The board may, in its discretion, permit an applicant to take an examination on a provisional basis although transcripts or other materials have not been received within this period.
- 3302.4 A board may, in its discretion, reduce the required periods in §§3302.1 and 3302.2.
- 3302.5 The Director shall notify each applicant of the date, time, and place of the examination and of any examination procedures at least ten (10) business days prior to the date of the examination.
- 3302.6 The Director shall arrange for suitable space for an examination, designate persons to proctor the examination, and provide for adequate security to ensure the integrity of the examination process.
- 3302.7 The Director shall notify each applicant whether the applicant passed the examination as soon as practicable after the Director receives the examination results unless the applicant is notified directly by a testing service.
- 3302.8 An applicant who fails an examination may not challenge the results of the examination before a board or the Director.
- 3302.9 If a testing service informs a board in writing that it erroneously determined that an applicant failed an examination and certifies that the applicant passed the examination, the board shall grant a license to the applicant if the applicant has met all other qualifications for a license and has paid all required fees.
- 3302.10 If an applicant does not take an examination, the Director shall not refund the application fee or credit it to another examination unless a board determines that the applicant was unable to take the examination for good cause. For purposes of this subsection, “good cause” includes the following:
- (a) Illness or injury; or
  - (b) Death or serious illness of or injury to a member of the applicant’s immediate family.
- 3302.11 A board, in making a determination under §3302.10, may require a doctor’s certificate or other satisfactory evidence of illness or injury.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3490 (May 13, 1988).

### **3303 CHEATING ON AN EXAMINATION**

- 3303.1 No person shall cheat or assist another in cheating on an examination required by an Act listed in §3300.1 or rules promulgated pursuant thereto.
- 3303.2 As used in this section, “cheating” includes, but is not limited to, the following:
- (a) Communication relating to the examination between applicants inside or outside of an examination room or copying another applicant’s answers while an examination is in progress;
  - (b) Communication relating to an examination with others outside of an examination room while the examination is in progress;
  - (c) Substitution by an applicant of another person to sit in an examination room in the applicant’s place; and
  - (d) Use of crib sheets, text books, or other materials not authorized by a board inside or outside an examination room while an examination is in progress.
- 3303.3 If a person designated to proctor an examination suspects that an applicant is cheating or has cheated on the examination, the person shall do the following:
- (a) If necessary, seat the applicant in a segregated location for the remainder of the examination;
  - (b) Keep a record of the applicant’s seat location and identification number, and the names and identification numbers of the applicants on either side of the applicant;
  - (c) Confiscate any materials or devices that are suspected of being used by the applicant to cheat on the examination;
  - (d) Permit the applicant to complete the examination; and

- (e) Notify the testing service, the board, and the Director that the applicant is suspected of cheating and provide a board with a copy of the examination booklet and any evidence obtained by the person proctoring the examination.

3303.4 If a board has cause to believe that an applicant has cheated or has failed to comply with an instruction of a proctor given pursuant to §3303.3, it may propose to deny a license, impose a civil fine, or take other actions under this chapter.

3303.5 If a board determines that an applicant cheated on an examination, in addition to any other consequences, the applicant shall not be eligible to take another examination for a period of one (1) year from the date of the decision of a board, or other period established by a board in its order.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3491 (May 13, 1988).

### **3304 ISSUANCE OF A LICENSE**

3304.1 After a determination by a board that an applicant meets all of the requirements for a license, including the payment of all required fees, the Director shall issue the license to the applicant.

3304.2 The Director shall indicate on the face of a license any restriction thereon required by a board.

3304.3 An applicant for a license who is notified that the application is approved shall pay the required license fee within one hundred and eighty (180) days of the date of the initial notice.

3304.4 The Director shall send the notice by first class mail to the applicant at the applicant's address on file with the Director. If the applicant fails to pay the required fee within this period, the application shall lapse and the applicant shall be required to submit a new application and pay the required application fees to be eligible for a license.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3492 (May 13, 1988).

### **3305 RENEWAL OF A LICENSE**

3305.1 The Director shall send a renewal application to a practitioner by first class mail to the practitioner's address on file with the Director at least sixty (60) days prior to the expiration of the license.

3305.2 The practitioner shall meet all of the requirements for renewal prior to the issuance of the renewal.

3305.3 A practitioner shall notify the Department in writing of any change of home or business address within thirty (30) days of the change of address.

3305.4 The failure of a practitioner to receive the notice required by §3305.1 does not relieve the holder of the responsibility of renewing the license.

3305.5 A practitioner who fails to renew prior to the expiration date may renew the license within sixty (60) days after expiration upon paying the required late fee. Upon renewal, the practitioner shall be deemed to have possessed a valid license during the period between expiration of the license and the renewal thereof.

3305.6 If a practitioner fails to renew the license within sixty (60) days after its expiration, the license shall be deemed to have lapsed on the date of expiration, and the practitioner shall be required to apply for reinstatement and pay the required reinstatement fee.

3305.7 The Director may require an applicant for renewal to provide information on the application for statistical purposes.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3492 (May 13, 1988).

### **3306 TERM OF A LICENSE**

3306.1 The term of a license issued or renewed pursuant to an act listed in §3300.1 is two (2) years and shall expire on the date established by the chapter of this title relating to the particular occupation or profession unless the Director changes the renewal system pursuant to §3306.2.

3306.2 The Director may change the renewal system to a system whereby a license expires on the last day of the month of the birthdate of the applicant for or holder of the license, or another system, for the administrative convenience of the Director.

3306.3 If the Director changes the renewal system under §3306.2, in order to permit an orderly transition, the term of a license that is in effect on the date of the Director's determination may be extended up to three (3) years.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3493 (May 13, 1988).

### **3307 REGULATION OF APPLICANTS FOR ANY HOLDERS OF CERTIFICATES OR REGISTRATIONS**

3307.1 A board or the Director may take any action against an applicant for or holder of a certificate or registration that a board is authorized to take against an applicant for or holder of a license pursuant to an Act listed in §3300.1.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3493 (May 13, 1988).

### **3308 REINSTATEMENT OF AN EXPIRED LICENSE**

3308.1 This section applies to applicants for reinstatement of an expired license issued under the following:

- (a) An act listed on §3300.1; or
- (b) A law repealed or amended by an act listed in §3300.1.

3308.2 An applicant for reinstatement under this section shall file an application with a board on the prescribed form and shall pay the required reinstatement fee.

3308.3 An applicant for reinstatements under this section shall demonstrate fitness to resume practice by submitting evidence satisfactory to a board that the applicant has the competency and knowledge of District and federal laws necessary to resume practice and that the applicant's resumption of practice will not be detrimental to the public interest or the integrity of the occupation or profession.

3308.4 In making a determination pursuant to §3308, a board shall consider the following:

- (a) The length of time the applicant had practiced in the District or another jurisdiction;
- (b) The length of time after expiration of the applicant's license that the applicant was not practicing either in the District or another jurisdiction;
- (c) The applicant's violations of any laws;
- (d) The applicant's present character; and
- (e) The applicant's present qualifications and competency to practice.

3308.5 A board may require an applicant to complete certain educational or training requirements, in addition to any continuing education requirements, prior to or after reinstatement, to ensure that the applicant is competent to practice.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3493 (May 13, 1988).

### **3309 REINSTATEMENT AFTER REVOCATION**

3309.1 A person whose license to practice an occupation or professional has been revoked, or whose application for reinstatement has been denied, shall be ineligible to apply for reinstatement for a period of one (1) year from the date of the revocation or denial unless otherwise provided in the order of revocation or denial.

3309.2 An applicant for reinstatement under this section shall file an application with a board on the prescribed form and shall pay the required reinstatement fee.

3309.3 In addition to the requirements of §3309.2, an applicant for reinstatement shall demonstrate fitness to resume practice by submitting evidence satisfactory to a board that the applicant has the integrity, competency, and knowledge of District and federal laws necessary to resume practice, and that the applicant's resumption of practice will not be detrimental to the public interest or the integrity of the applicant's occupation or profession.

3309.4 In making a determination pursuant to §3309.3, a board may consider, among other factors, the following:

- (a) The nature and circumstances of the conduct, or the mental or physical condition, for which the applicant's license was revoked;
- (b) The applicant's recognition and appreciation of the seriousness of any misconduct;

- (c) The applicant's conduct, or mental or physical condition, since the revocation, including steps taken by the applicant to remedy prior misconduct and prevent future misconduct, or to remedy the mental or physical condition;
- (d) The length of time that the applicant had practiced in the District or another jurisdiction;
- (e) The length of time after expiration of the applicant's license that the applicant was not practicing either in the District or another jurisdiction;
- (f) The applicant's present character; and
- (g) The applicant's present qualification and competency to practice the occupation or profession.

3309.5 A board may require an applicant to complete specified educational or training requirements, in addition to any continuing education requirements, prior to or after reinstatement, to ensure that the applicant is competent to practice.

**SOURCE:** Final Rulemaking published by 35 DCR 3488, 3495 (May 13, 1988).

### **3310 FALSE OR MISLEADING COMMUNICATIONS AND ADVERTISING**

3310.1 A practitioner shall not make or cause to be made a false or misleading communication about the practitioner's occupation or profession, or services.

3310.2 A practitioner shall not falsely represent that the practitioner is certified by, a member of, or otherwise endorsed by, a professional society, association, or other organization.

3310.3 A practitioner shall not communicate that the practitioner specializes in a particular field of the practitioner's occupation or profession unless the practitioner is in fact a specialist in the particular field or possesses a certificate required by the occupation or profession to be a specialist in the field.

3310.4 Subject to this section, a practitioner may advertise services through media such as a telephone directory, legal director, newspaper or other periodical, radio or television, or written communication not involving personal contact.

3310.5 As used in this section, a communication is "false" or "misleading" if it:

- (a) Contains a material misrepresentation or omits to make a misrepresentation necessary to make the statement considered as a whole not misleading; or
- (b) Contains an assertion about the practitioner or the practitioner's occupation or profession, or services, which cannot be substantiated.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3496 (May 13, 1988).

### **3311 REFERRAL FOR PROSECUTION OF PERSONS COMMITTING CERTAIN OFFENSES**

3311.1 A District employee or member of a board shall inform the Director and a board if the employee or board member has good cause to believe that a person has committed one of the following offenses in connection with an application for a license or in any proceeding before a board:

- (a) Wilfully making a false statement of a material fact under oath at a hearing or other proceeding which the person does not believe is true and in fact is not true in violation of D.C. Code §22-2511 (1987 Supp.) (perjury);
- (b) Wilfully procuring another to commit perjury in violation of D.C. Code §22-2512 (1987 Supp.) (subornation of perjury);
- (c) Wilfully making a false statement of a material fact on an application or other official document that was sworn to before a notary public in violation of D.C. Code §22-2513 (1987 Supp.) (false swearing); or
- (d) Wilfully making a false statement in writing of a material fact which statement could reasonably be expected to be relied upon as true in violation of D.C. Code §22-2514 (1987 Supp.) (false statements).

3311.2 If a board or the Director determines that there is good cause to believe that a person committed one of the offenses listed in §3311.1, the board or Director may refer the matter to the appropriate official for prosecution.

3311.3 All application forms for a license under this title shall contain a notice stating in substance the following:

**The making of a false statement on this application or on documents  
required by this application is punishable by criminal penalties.**

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3496 (May 13, 1988).

3312-3313 [RESERVED]

**3314 COMPLAINTS: INVESTIGATIONS**

3314.1 A board, on its own motion or on the receipt of a complaint submitted in accordance with §3314.2, shall request the Director to investigate a practitioner if the facts alleged in the complaint, if proven, would constitute sufficient grounds for disciplinary action.

3314.2 The Director, upon receipt of a request from a board of a complaint meeting the foregoing requirements, shall investigate the complaint.

3314.3 A person who desires to file a complaint against a practitioner shall do the following:

- (a) Submit the complaint in writing;
- (b) State the facts or circumstances that form the basis of the complaint;
- (c) Sign the complaint and state the complainant's name and address; and
- (d) Mail or deliver the complaint to a board.

3314.4 Nothing in §3314.3 precludes a board, on its own motion, from requesting the Director to investigate a practitioner based on information obtained from an individual who does not file a complaint in accordance with that subsection.

3314.5 A board may request a practitioner under investigation to respond in writing to any allegations. If the board requests such a response, the board shall inform the practitioner of the following:

- (a) That the practitioner is not required to respond to the request;
- (b) That a copy of any response may be sent to the complainant, if any;
- (c) That the failure to respond will not be held against the practitioner in any subsequent action based on the investigation; and
- (d) That any response may be used against the practitioner in a subsequent action.

3314.6 If a board receives a written response from a practitioner requested pursuant to §3313.5, it may, in its discretion, send a copy of the response to the complainant and request a written reply within a time period determined by the board.

3314.7 After considering the facts of a particular case, the complaint, if any, and any response thereof, a board shall take one of the following actions:

- (a) Refer the complaint to the Director for investigation;
- (b) Issue a notice of intended action in accordance with §3315;
- (c) Request that the practitioner attend a settlement conference in accordance with §3322; or
- (d) Dismiss the complaint.

3314.8 If a board dismisses a complaint, it shall give the complainant notice in writing, sent by first class mail, of the dismissal of the complaint within ten (10) days of the action.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3497 (May 13, 1988).

**3315 NOTICE OF INTENDED ACTION AND OPPORTUNITY FOR A HEARING**

3315.1 A board shall give the holder of, or applicant for, a license (except a temporary license) or a person possessing a privilege to practice in the District, notice of and an opportunity for a hearing before the board if the effect of the action would be one of the following:

- (a) To revoke a license, certificate, registration, or privilege;
- (b) To suspend a license, certificate, registration, or privilege;
- (c) To reprimand the holder of a license, certificate, registration, or privilege;
- (d) To impose a civil fine;
- (e) To require a course of remediation;
- (f) To require a period of probation; or



- (g) To refuse to renew a license, certificate, or registration for any cause other than failure to pay the required renewal fee.

3315.2 If a board proposes to take an action of the type set forth in §3315.1, it shall give written notice to the respondent containing the following:

- (a) A statement that a board has sufficient evidence, setting forth the nature of the evidence, which, if not explained, justifies taking the proposed action;
- (b) One of the following statements:
  - (1) That the board may take the proposed action, unless the respondent requests a hearing before the board by a letter addressed to the board, sent by certified mail or delivered in person, within twenty (20) days after service of the notice, and that the board may take the proposed action if the respondent fails to appear at the scheduled hearing; or
  - (2) That the board has scheduled a hearing on the proposed action, setting forth the date, time, and place of the hearing, and that the board may take the proposed action if the respondent fails to appear at the hearing;
- (c) A description of the rights of the respondent at a hearing as specified in §3323.3.

3315.3 Subject to §3315.4, a board shall give an applicant for a license (other than a temporary license) notice of and an opportunity for a hearing before the board if the effect of the action would be one of the following:

- (a) To deny permission to take an examination; or
- (b) To deny a license.

3315.4 An applicant shall not be entitled to notice of or an opportunity for a hearing before a board if the denial of a license or permission to take an examination is based solely on the applicant's failure to meet a qualification over which a board has no discretion, including the following:

- (a) Failure to meet a minimum age requirement;
- (b) Failure to meet an educational or experience requirement where the acceptability of the educational program or quality of the experience is not an issue; or
- (c) Failure to pass an examination.

3315.5 If a board proposes to take an action of the type specified in §3315.3, it shall give written notice to the respondent containing the following:

- (a) A statement that the respondent has failed to satisfy a board as to the respondent's qualifications to take the examination or to be approved for licensure;
- (b) A statement that specifies in what respect the respondent has failed to satisfy a board;
- (c) One of the following statements:
  - (1) That the board may take the proposed action, unless the respondent requests a hearing before the board by a letter addressed to the board, sent by certified mail or delivered in person, within twenty (20) days after service of the notice, and that the board may take the proposed action if the respondent fails to appear at a scheduled hearing; or
  - (2) That the board has scheduled a hearing on the proposed action, setting forth the date, time, and place of the hearing, and that the board may take the proposed action if the respondent fails to appear at the hearing; and
- (d) A description of the rights of the respondent at a hearing as specified in §3323.2.

3315.6 A notice given pursuant to §3315.2 shall be in the form of charges and specifications. A notice given pursuant to §3315.5 shall be in the form of a notice of intent to deny in letter format.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3499 (May 13, 1988).

**3316 FAILURE TO REQUEST A HEARING OR FAILURE TO APPEAR**

- 3316.1 If a respondent who was sent a notice of a proposed action pursuant to §3315 does not mail or deliver a request for a hearing within the time and in the manner required under that section, a board may, without a hearing, take the action contemplated in the notice.
- 3316.2 If a respondent scheduled for a hearing does not appear for the hearing, and no continuance has been granted, a board may receive evidence and hear testimony and may render a decision on the basis of evidence before it.
- 3316.3 The board may, prior to rendering a decision, upon written request of the respondent and payment of the required fee, send a copy of the transcript or summary of the hearing to the respondent and request proposed findings of fact and conclusions of law from the respondent.
- 3316.4 The board shall inform the parties of an action taken under this section.
- 3316.5 A decision of a board shall be supported by substantial, reliable, and probative evidence pursuant to D.C. Code §1-1509(c) (1981).

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3501 (May 13, 1988).

**3317 HEARING NOTICE PROCEDURES**

- 3317.1 If a respondent requests a hearing, a board shall, within twenty (20) days following receipt of the request, notify the respondent of the date, time, and place of the hearing.
- 3317.2 The board shall hold the hearing not less than twenty (20) days following the date of service of the notice unless the board and all of the parties agree to the holding of the hearing at an earlier date.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3501 (May 13, 1988).

**3318 SERVICE**

- 3318.1 A notice, pleading, order, or decision required by this chapter to be served on a respondent shall be served on the respondent or representative designated by the respondent or by law to receive service of papers. If a respondent has appeared through counsel, service shall be made upon the counsel of record.
- 3318.2 Service on a respondent shall be directed to the last known address of the respondent on file with the Director and shall be completed by one of the following;
- (a) By certified mail, return receipt requested;
  - (b) By personal delivery;
  - (c) By delivery to the address of respondent, or respondent's counsel or agent, on file with the Department, by leaving it at that address with a person of suitable discretion at least sixteen (16) years of age who is employed or resides at that address; or
  - (d) In conformity with an order of a board.
- 3318.3 Service on the board, the Director, or the Corporation Counsel shall be directed to the appropriate office and shall be completed by one of the following methods:
- (a) By certified mail, return receipt requested; or
  - (b) By personal delivery.
- 3318.4 Proof of service, stating the name and address of the person on whom service is made and the manner and date of service, shall be shown by one of the following methods:
- (a) If service was effected by certified mail, the return receipt indicating that the document was accepted, refused, or returned unclaimed;
  - (b) If service was effected by personal delivery, the certificate of the server indicating that the document was accepted or refused; or
  - (c) If service was effected pursuant to an order of the board, in the manner provided in that order.

3318.5 The date and time of service shall be established as follows:

- (a) If service is effected by certified mail, it shall be deemed to have been served on the date and at the time shown on the return receipt indicating that the document was accepted, refused, or returned unclaimed;
- (b) If service was effected by personal delivery, it shall be deemed to have been served on the date and at the time on the certificate of service indicating that the document was accepted or refused; or
- (c) If service was effected pursuant to an order of a board, it shall be deemed to have been served on a date and at a time as provided in that order.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3502 (May 13, 1988).

## **3319 REPRESENTATION**

3319.1 A respondent may be represented only by an attorney who is an active member of the District of Columbia Bar, except that a board may permit an attorney who is an active member of the bar of another jurisdiction in the United States to represent a respondent in a particular case.

3319.2 If it appears to a board or an Administrative Law Judge (ALJ) that the issues or facts in a matter before it are so complex that the interests of justice, saving time or facilitating the preparation of an adequate record would be served by the representation of a party by an attorney, the board may urge, but not require, that the party obtain the services of an attorney and may allow that party a reasonable period of time within which to do so.

3319.3 An attorney shall not participate in a representative capacity in any hearing conducted by a board or ALJ until the attorney submits to a board or ALJ a signed statement containing the attorney's name, street address, telephone number, and bar number.

3319.4 An attorney authorized to appear pursuant to this section may sign any paper required or permitted to be filed by this chapter.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3503 (May 13, 1988).

## **3320 SUBPOENAS**

3320.1 The board may issue subpoenas to compel witnesses to appear and testify or to produce books, records, papers, or documents on its own motion or upon the request of a party.

3320.2 The board may require a party requesting a subpoena to demonstrate the relevancy of and need for the subpoena.

3320.3 The board shall issue subpoenas in the name of the Mayor of the District of Columbia. A subpoenaed witness, other than one employed by the District Government, shall be entitled to a reasonable fee established by the Director, but the fee may not be paid in advance.

3320.4 In case of contumacy by or refusal to obey a subpoena issued by a board to any person, a board may refer the matter to the Superior Court of the District of Columbia and request an order by that court to require the person to appear and give testimony or produce books, papers, or other evidence bearing on the hearing.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3504 (May 13, 1988).

## **3321 MOTIONS AND OTHER PLEADINGS**

3321.1 Except by leave of a board during a hearing, a party shall make an application for an order or other relief by filing a written motion. A motion shall state with particularity the grounds on which it is based and clearly set forth the order or relief sought. If a motion is supported by memoranda, affidavits, or other papers, the movant shall attach them to and serve them with the motion.

3321.2 A copy of each motion, response, opposition, reply, or other pleading filed with a board shall be served on each party, and a certificate of service shall appear at the end of the pleading showing the date and method of service.

3321.3 A party may file a response or opposition to a motion within ten (10) days after service of the motion, but a board, in its discretion, may shorten or extend this time, with proper notice to parties. The response or opposition may not include a motion for other affirmative relief against the moving party.

3321.4 A reply to a response or opposition may be filed within three (3) business days after service of the response or opposition, but the reply may not reargue propositions presented in the motion or present matters that are not strictly in reply to the response or opposition. No further pleading may be filed except by leave of a board for extraordinary cause.

3321.5 A motion or other pleading shall meet the following additional requirements:

- (a) It shall be typewritten on business size eight and one-half by eleven inch (8<sup>1</sup>/<sub>2</sub>" x 11") paper;
- (b) It shall contain the name of the case and number of the case, if any;
- (c) It shall be double-spaced, except footnotes and quotations, which may be single-spaced;
- (d) It shall be signed by the party on whose behalf it is filed or by that party's counsel; and
- (e) Subject to §3321.6, it shall be accompanied by a number of copies that corresponds to the number of members of a board established by an Act listed in §3301.1, plus one (1), unless a board permits the parties to file a lesser number of copies.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3504 (May 13, 1988).

## **3322 SETTLEMENT CONFERENCES**

3322.1 A board may, in its discretion, request a respondent against whom an action is proposed to attend a settlement conference.

3322.2 The parties may agree to hold a settlement conference.

3322.3 If a respondent agrees to attend a settlement conference, a board shall notify the parties of the date, time, and place of the settlement conference.

3322.4 A board may designate a member of a board, its counsel, or an employee of the Department to participate in a settlement conference on behalf of the board.

3322.5 The parties at a settlement conference may enter into a negotiated settlement or consent decree that is binding on all parties; Provided, that the settlement or consent decree is approved by the board.

3322.6 If a board accepts part, but not all, of the proposed negotiated settlement or consent decree, it may request the respondent to attend another settlement conference.

3322.7 A respondent who agrees to a negotiated settlement or consent decree that is approved by a board shall waive all of the respondent's rights of appeal or reconsideration under an Act listed in §3300.1 or rules promulgated pursuant thereto.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3305 (May 13, 1988).

## **3323 CONDUCT OF HEARINGS**

3323.1 All hearings before a board shall be open to the public.

3323.2 At a hearing before a board, at least a majority of the members of a board shall be required to be present to hear the evidence and render a decision.

3323.3 A respondent entitled to a hearing has the following rights:

- (a) To be represented by an attorney in accordance with §3319;
- (b) To present all relevant evidence by means of witnesses and books, papers, and other means;
- (c) To examine all opposing witnesses on any matter relevant to the issues; and
- (d) To have subpoenas issued to compel the attendance of witnesses and the production of relevant books, papers, and other evidence, upon making a written request to a board.

3323.4 A board may, grant or deny a motion for a continuance, and shall deny a motion for a continuance unless the motion:

- (a) In the opinion of the board, set forth good cause for a continuance; and
- (b) Is filed at least two (2) business days before the date on which the hearing is to be held, except for extraordinary and unforeseen reasons such as the sudden illness of a party or a party's counsel.

3323.4 Conflicting engagements of counsel, absence of counsel, or the employment of new counsel may be considered to constitute good cause for a continuance of a hearing only if set forth in a motion filed promptly after notice of the hearing has been given.

3323.6 After a hearing, and within time limits established by a board, the parties may submit proposed findings of fact, conclusions of law, and order, and may also submit memoranda of law on issues of law arising during the hearing.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3506 (May 13, 1988).

#### **3324 EVIDENCE AT THE HEARING**

3324.1 All testimony at a hearing before a board shall be under oath or affirmation.

3324.2 If any part of the record in any other proceeding previously held before a board, or part of the record in any criminal or civil action, including hearings before any administrative agency, is offered in evidence, a certified true copy of that part shall be presented to the board in the form of an exhibit, unless either of the following requirements is satisfied:

- (a) The record is specified in such manner as to be readily identified, and the person offering the record agrees to supply copies later or when required by a board; or
- (b) There is a stipulation that the record may be incorporated by reference and a board orders that incorporation.

3324.3 A board shall exclude irrelevant, immaterial, and unduly repetitious evidence.

3324.4 A board may take official notice, at the request of a party or on its own motion, of the following:

- (a) The law and rules of the District of Columbia, the United States, or any state or other jurisdiction of the United States; or
- (b) Material facts in the official files of a board, the Department, or other District of Columbia or federal agency; or
- (c) A fact that is not subject to reasonable dispute in that it is generally known within the District of Columbia or is capable of accurate and ready determination by resort to resources the accuracy of which cannot reasonably be requested.

3324.5 If a board takes official notice of a material fact not appearing in the evidence in the record, it shall give a party the opportunity to show the contrary at the hearing or on motion made within five (5) days after the hearing.

3324.6 The parties may, by stipulation in writing filed with a board, agree on the facts or any portion thereof involved in a hearing. The parties may also stipulate the testimony that would be given by a witness if the witness were present.

3324.7 The board may require additional evidence concerning any matter covered by a stipulation.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3507 (May 13, 1988).

#### **3325 BURDEN OF PROOF**

3325.1 In a hearing resulting from a proposed action under §3315.1, the District shall have the burden of proving, by a preponderance of the evidence, that the action should be taken.

3325.2 In a hearing resulting from a proposed action under §3315.3, the applicant shall have the burden of proving, by a preponderance of the evidence, that the applicant is qualified to be licensed or certified.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3508 (May 13, 1988).

#### **3326 CONDUCT OF PARTIES AND COUNSEL AT THE HEARING**

3326.1 The parties at a hearing shall maintain decorum and good order at all time. A board may exclude or have removed from the hearing room any person violating an order of the chairperson of the board or the presiding official.

3326.2 A board may bar counsel from further participation in a hearing for disruptive conduct.

3326.3 If counsel has been barred from participating in a hearing, a board may proceed with the hearing if consistent with the due process rights of the parties. Otherwise, the board shall adjourn the hearing to give the party whose counsel has been barred an opportunity to secure new representation expeditiously.

- 3326.4 A counsel who has been barred from participating in a hearing may seek, and a board may grant, reinstatement to participate in the hearing on such terms as the board prescribes. The board shall not permit a reinstatement application to delay the proceedings.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3508 (May 13, 1988).

### **3327 HEARINGS BY PANELS OF A BOARD**

- 3327.1 A board may authorize a panel of no less than three (3) members of a board to conduct a hearing in any matter that the board is authorized to conduct a hearing.
- 3327.2 The panel of the board shall have the powers and duties given to the board by this chapter and the applicable Act listed in §3300.1, except the power to render a final decision.
- 3327.3 After hearing the evidence, the panel shall submit a recommended decision to the board. At the same time, the board shall serve the respondent with a copy of the decision in accordance with §3318 and send a copy of the decision to the Corporation Counsel.
- 3327.4 A recommended decision of a panel adverse to a respondent shall contain the following:
- (a) Findings of fact;
  - (b) Conclusions of law based on the findings of fact and application of the laws; and
  - (c) A recommended order.
- 3327.5 A board may accept or reject the recommended decision of the panel in whole or in part.
- 3327.6 If the decision of a board is adverse to the respondent, and the panel that heard the case did not constitute a majority of the members of a board, the board, prior to issuing a final decision, shall serve the respondent with a copy of a proposed decision and give a respondent an opportunity to file exceptions, and written argument in support thereof, with the board within ten (10) days of the date of service.
- 3327.7 A board shall consider any exceptions and argument filed by a respondent pursuant to §3327.7 in issuing a final decision. If the respondent does not file exceptions within the required period, the proposed decision of the board shall become the final decision of a board.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3508 (May 13, 1988).

### **3328 HEARINGS BY ADMINISTRATIVE LAW JUDGES**

- 3328.1 A board may delegate its authority to conduct a hearing to an ALJ pursuant to §103(c) of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Law 6-42, Code §2703(c) (1987 Supp.), by notifying the Director in writing of the name of the case and the decision of the board to delegate its authority to conduct the hearing.
- 3328.2 The ALJ conducting a hearing has all of the powers and duties of a board, except the power to render a final decision.
- 3328.3 After hearing the evidence, an ALJ shall, within forty-five (45) days, or one-half of the maximum period specified in an Act listed under §3300.1, of the hearing, whichever is shorter, submit a recommended decision to a board. At the same time, the ALJ shall serve the respondent with a copy of the decision and send a copy of the decision to the Corporation Counsel.
- 3328.4 A recommended decision of an ALJ adverse to a respondent shall contain the following:
- (a) Findings of fact;
  - (b) Conclusions of law based on the findings of fact and application of the laws; and
  - (c) A recommended order.
- 3328.5 A board may accept or reject the recommended decision of an ALJ in whole or in part.
- 3328.6 Except as provided in §3328.7, a board, within thirty (30) days of the recommended decision of the ALJ, shall render a decision and notify the Director, the respondent, and the Corporation Counsel of the action.

3328.7 If the decision of a board is adverse to the respondent, the board, prior to issuing a final decision, shall serve the respondent with a copy of a proposed decision and give the respondent an opportunity to file exceptions, and written argument in support thereof, with the board within ten (10) days of the date of service.

3328.8 The board shall consider any exceptions and argument filed by a respondent pursuant to §3327.7 in issuing a final decision. If the respondent does not file exceptions within the required period, the proposed decision of the board shall become the final decision of the board.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3509 (May 13, 1988).

### **3329 RECORD OF A HEARING**

3329.1 In a hearing conducted pursuant to this chapter, a board shall make a complete record of all evidence presented during the course of a hearing.

3329.2 A board shall make a transcript of a hearing on a proposed action specified in §3315.1, unless the parties and the board agree not to have a transcript made.

3329.3 A board may make a transcript of a hearing on a proposed action specified in §3315.3, and shall make a transcript upon written request of a party or made at least five (5) days prior to the hearing.

3329.4 If a board does not make a transcript of the hearing, it shall make an electronic recording of the hearing.

3329.5 A board shall provide a copy of an approved transcript or recording of a hearing to any person requesting it, upon payment of the required fee.

3329.6 A party may move to correct a transcript by filing a motion with a board within ten (10) days of receipt of the transcript. If no opposition to the motion is filed, the transcript may, upon approval by the board, be changed to reflect the corrections.

3329.7 In the event of disputes with respect to the record, the board shall settle the record and rule on all contested motions to correct the record.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3510 (May 13, 1988).

### **3330 DECISIONS OF A BOARD**

3330.1 A board shall render a decision, in writing, no later than ninety (90) days after the date the hearing is completed, unless the Act listed in §3300.1 provides for another period.

3330.2 A board may, with the agreement of all parties, extend the period in which it is required to render a decision.

3330.3 A decision of a board adverse to a respondent shall contain the following:

- (a) Findings of fact;
- (b) Conclusions of law based upon the findings of fact and application of the laws;
- (c) An order; and
- (d) A statement informing the respondent of the right to have the decision reviewed by the District of Columbia Court of Appeals, and the time within which judicial review is required to be sought according to the rules of that Court.

3330.4 A board, in addition to taking other disciplinary action, may revoke an expired license if the decision is based on conduct that occurred while the license was in effect.

3330.5 The chairperson of a board may sign an order, decision, or other document of the board on behalf of the board.

3330.6 Within ten (10) days after a decision is rendered, a board shall serve a copy of the written decision upon the respondent, or the respondent's counsel of record.

3330.7 A board shall issue its findings of fact, conclusions of law, and order in writing except when it determines that the interest of the health, safety, or welfare of the public require that the findings of fact, conclusions of law, or order of the board be issued orally.



3330.8 Oral findings of fact, conclusions of law, and an order issued in accordance in §3330.7 are final and shall be recorded as final at the time they are communicated to the parties. Promptly thereafter, a board shall state its oral findings of fact, conclusions of law, and order in writing, and the chairperson shall sign the written decision and serve a copy on all parties or their attorneys of record.

3330.9 A board may, on motion by a respondent, stay the imposition of an order pending appeal or reconsideration.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3511 (May 13, 3334 1988).

**3331-3333 [RESERVED]**

### **3334 RECONSIDERATION**

3334.1 A respondent may file with a board a petition for reconsideration or reopening a hearing within fifteen (15) days after the date of the service of the decision on that party. The petitioner shall serve a copy of the petition on each party.

3334.2 Neither the filing nor the granting of a petition shall operate as a stay of a decision unless specifically ordered by a board. A board may grant a stay only upon good cause involving consideration of the likelihood of decisional error, irreparable harm to the petitioning party, the harm to other parties, and the public interest.

3334.3 A petition shall state briefly and specifically the following:

- (a) In the case of a motion for a reconsideration, the matters of record or points of law alleged to have been erroneously decided or overlooked;
- (b) In the case of a motion to reopen a hearing, the reasons that respondent failed to appear at a hearing;
- (c) The grounds relied upon; and
- (d) The relief sought.

3334.4 If a petition is based in whole or in part on new matter, the matter shall be set forth in an affidavit, containing a statement that the petitioner could not with due diligence have known or have discovered the new matter prior to the hearing before a board.

3334.5 A board may, in its discretion, permit or require oral argument upon a petition before the board.

3334.6 A board shall grant or deny a petition within forty-five (45) days after the filing of the petition. The failure by the board to act within that period shall constitute a denial of the petition.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3512 (May 13, 1988).

### **3335 JUDICIAL REVIEW: RECORD ON APPEAL**

3335.1 A party aggrieved by a final decision of a board may seek review of the decision by the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act, D.C. Code §§1-1501 to 1-1511 (1987 Repl. Vol.).

3335.2 Upon receipt by a board of a notice of appeal, the chairperson of the board shall promptly acknowledge receipt. The chairperson shall advise the Director of that receipt.

3335.3 The Director shall compile, index, and transmit to the board, if any, the originals or copies of all documents pertinent to the appeal, including the following:

- (a) A copy of the decision from which an appeal is taken;
- (b) A copy of any recommended or proposed decision and any exceptions thereto;
- (c) All documents relied on by the board, including any relevant documents timely submitted to the board by the respondent or by other parties to the hearing; and
- (d) A transcript or summary (in accordance with §3336.3) of all testimony given or statements made during the course of any hearings, conferences, or investigations concerning the matter in dispute conducted by a board prior to the filing of the notice of appeal.

3335.4 The Director shall provide to all parties to the appeal a copy of the Director's index of the record on appeal.

3335.5 The record may be shortened or summarized if, with permission of the court, all parties to the review proceedings so agree.

3335.6 The documents transmitted pursuant to this section, and any supplements thereto, shall be available for inspection by the parties at a location designated by the Director.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3513 (May 13, 1988).

### **3336 ADMINISTRATIVE APPEALS TO A BOARD OF A DECISION OF AN ADMINISTRATIVE LAW JUDGE**

3336.1 This section shall apply to appeals to a board from decisions by ALJ's by persons found to have committed an infraction involving a violation of an Act listed in §3300.1, rules promulgated pursuant thereto, or any other act regulating the person's occupation or profession, which decisions were made pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Law 6-42, D.C. Code §§6-2701 to 6-2723 (1987 Supp.).

3336.2 A notice of appeal from a decision issued by an ALJ shall be sent to the address stated in the decision and shall be delivered or postmarked within fifteen (15) days from the date of service of the final decision.

3336.3 A notice of appeal of a decision shall include the following information:

- (a) That an appeal has been taken;
- (b) A copy or identification of the final decision from which the appeal has been taken;
- (c) A concise statement indicating why the respondent believes the final decision is in error;
- (d) The full name, street address, and the telephone number of the respondent and the respondent's counsel, if any; and
- (e) The signature of the respondent of the respondent's counsel.

3336.4 Upon receipt of a notice of appeal, the Director shall promptly acknowledge receipt and compile and index documents pertinent to the appeal, including the following:

- (a) A copy of the decision from which the appeal is taken;
- (b) All documents relied on by an ALJ, including any relevant documents timely submitted to the ALJ by a respondent or by other parties to the proceedings; and
- (c) A transcript or summary of all testimony given or statements made during the course of any proceedings, conferences, or investigations concerning the matter in dispute, conducted by the ALJ prior to the filing of the notice of appeal.

3336.5 The Director shall transmit the notice of appeal and the documents described in §§3336.4(a) and (b) to the board within ten (10) days of the Director's receipt of the notice of appeal. The Director shall transmit the transcript or summary described in §3338.4(c) as soon as practicable after the transcript or summary is completed.

3336.6 The Director shall send the parties a copy of the Director's index of the record on appeal.

3336.7 The documents transmitted pursuant to this section, and any supplements thereto, shall be available for inspection by the parties at a location designated by the Director.

3336.8 The record may be shortened or summarized if, with permission of the board, all parties to the review proceedings so agree.

3336.9 The Director, on motion of a party, or on the Director's own motion, may require or permit a party to supplement the documents transmitted pursuant to this section.

3336.10 A board may, in its discretion, permit the parties to appear before it and present oral argument before the board in accordance with such limitations as to time of argument or other restrictions as a board may prescribe.

3336.11 The board acting pursuant to this section may affirm, modify, vacate, set aside, or reverse any order or decision of an ALJ.

3336.12 A board may hold unlawful and set aside any order or decision of law of an ALJ that it finds to be:

- (a) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (b) In excess of statutory authority or authority under this chapter;
- (c) Without observance of procedures provided by statute or this chapter; or

(d) Unsupported by a preponderance of the evidence in the record of the hearing.

3336.13 A party may petition a board to reconsider its decision in accordance with §3333.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3514 (May 13, 1988).

### 3337 COMPUTATION OF TIME

3337.1 In computing any period of time specified in this chapter, the day of the act, event, or default shall not be counted, and the last day of the period shall be counted unless it is not a business day, in which event the time period shall continue until the next business day.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3516 (May 13, 1988).

### 3399 DEFINITIONS

3399.1 As used in this chapter, the following terms and phrases have the meanings ascribed:

**Administrative Law Judge (ALJ)** - a hearing examiner authorized to hear cases pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Law 6-42, D.C. Code §§6-2701 to 6-2723 (1987 Supp.), or designated by the Director to hear a case.

**Applicant** - an applicant for a license under an Act listed in §3300.1 or rules promulgated pursuant thereto.

**Board** - a board or commission listed in §3300.1.

**Business day** - a day other than a Saturday, Sunday, legal holiday, or day on which the Department is officially closed.

**Certificate** - a certificate issued by a board pursuant to an Act listed in §3300.1.

**Chairperson** - the chairperson of a board or commission listed in §3300.1 or a person designated by a board to preside at a hearing or act in place of the chairperson.

**Day** - a calendar day.

**Department** - the Department of Consumer and Regulatory Affairs.

**Director** - the Director of the Department of Consumer and Regulatory Affairs, or the Director's designee.

**Legal holiday** - one of the following holidays:

- (a) New Year's Day;
- (b) Martin Luther King, Jr.'s, Birthday;
- (c) Washington's Birthday;
- (d) Memorial Day;
- (e) Independence Day;
- (f) Labor Day;
- (g) Columbus Day;
- (h) Veterans Day;
- (i) Thanksgiving Day;
- (j) Christmas Day; or
- (k) Any other day designated as a legal holiday by the President, the Congress, or the Mayor or the Council of the District of Columbia, on the actual day the legal holiday is celebrated by the government of the District of Columbia.

**License** - a license issued by a board pursuant to an Act listed in §3300.1.

**Party** - a respondent, the Corporation Counsel, the Director, or any other person recognized by a board as a party in a particular proceeding.

**Practitioner** - a person who holds a license issued by a board or commission listed in §3300.1.

**Registration** - a registration issued by a board pursuant to an Act listed in §3300.1.

**Respondent** - a person against whom an adverse action is contemplated, proposed, or taken.

**SOURCE:** Final Rulemaking published at 35 DCR 3488, 3516 (May 13, 1988).