

**City of New York
OATH Health Tribunal**

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Health Tribunal at OATH proposes to modify the provisions in Chapter 6 in Title 48 of the Rules of the City of New York. The changes modify various procedures relating to pre-hearing rescheduling, adjournments, notifications, defaults, appeals, conduct of participants, and other matters related to the Health Tribunal at OATH. This will simplify, clarify and expedite the adjudications process. Where appropriate, the changes make the procedural rules at the Health Tribunal at OATH consistent with those of other tribunals at OATH.

When and where is the Hearing? The Health Tribunal at OATH will hold a public hearing on the proposed rule. The public hearing will take place at 2:00 p.m. on October 15, 2014. The hearing will be at OATH in Courtroom G located at 100 Church Street, 12th Floor, NY, NY 10007.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Health Tribunal at OATH through the NYC rules Web site at: <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to: rules_oath@oath.nyc.gov.
- **Mail.** You can mail written comments to: OATH, Attention: Maria Marchiano, Assistant Commissioner and Senior Counsel, 100 Church Street, 12th Floor, New York, N.Y. 10007.
- **Fax.** You can fax written comments to OATH at: 212-933-3079.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Stacey Turner at 212-933-3007. You can also sign up in the hearing room before the hearing begins on October 15, 2014. You can speak for up to three minutes.

Is there a deadline to submit written comments? You may submit written comments up to October 15, 2014.

Do you need assistance to participate in the Hearing? You must tell OATH staff if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-933-3007. You must tell us by October 8, 2014.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at 100 Church Street, 12th Floor, New York, NY 10007.

What authorizes the Health Tribunal at OATH to adopt this rule? Section 1049 and 1043 of the New York City Charter authorize the Health Tribunal at OATH to adopt this proposed rule. OATH's regulatory agenda for this Fiscal Year anticipated rulemaking as may be found necessary to amend the existing Rules of Practice of the Health Tribunal at OATH in light of its experience.

Where can I find the Health Tribunal at OATH's rules? The Health Tribunal at OATH's rules are in Title 48 of the Rules of the City of New York.

What laws govern the rulemaking process? The Health Tribunal at OATH must meet the requirements of Section 1043(b) of the Charter when creating or changing rules. This notice is made according to the requirements of Sections 1043(b) and section 1049 of the Charter.

Statement of Basis and Purpose

The Office of Administrative Trials and Hearings ("OATH") is modifying the provisions in Chapter 6 in Title 48 of the Rules of the City of New York related to the Health Tribunal at OATH. The changes modify various procedures relating to pre-hearing rescheduling, adjournments, notifications, defaults, appeals, conduct of participants, and other matters in order to simplify, clarify and expedite the adjudications process. Where appropriate, the changes make the procedural rules at the Health Tribunal at OATH consistent with those of other tribunals at OATH.

Specific Amendments to be Enacted

In Section 6-01 "Definitions Specific to this Chapter," the term "Hearing Examiner" is changed to "Hearing Officer".

Section 6-02 "Jurisdiction, Powers and Duties of the Health Tribunal at OATH" is changed to permit the Tribunal to adjudicate Notices of Violation issued by any agency consistent with applicable law. It also reflects that settlement conferences are not being held at the Tribunal.

Section 6-03 "Proceedings before the Health Tribunal at OATH" simplifies the requirements of service by no longer requiring certified or registered mailing.

Section 6-04 "Appearances" is reordered, with some changes. An appearance must be at the time, as well as on the date, of the scheduled hearing. This section sets forth what happens when either the petitioner or the respondent fails to appear at the scheduled time. In addition:

- The provisions in subdivision (b) detailing requirements for appearances by mail are moved to Section 6-05 "Adjudications by Mail and Online."
- The provisions in subdivision (c) for pre-hearing adjournments are moved to Section 6-06 "Pre-Hearing Requests to Reschedule."

- The provisions in subdivision (d) for requests for adjournments made at the hearing are moved to Section 6-07 “Requests for Adjournments.”
- The provisions in subdivision (e) detailing the procedures for defaults upon a failure to appear by respondent are moved to Section 6-08 “Default” and Section 6-09 “Request for a New Hearing after a Failure to Appear.”
- New subdivision (c) and (d) detail procedures for appearances by the petitioner and what happens when a petitioner fails to appear at the scheduled time.

Section 6-05 “Adjudications by Mail and Online” is renamed from the previous title “Hearings and adjudications in person, by mail, or by telephone.” References in subdivisions (a), (b), (c), (d), (e), (g), (h), (i) and (j) of this section to hearings in person or by telephone are moved to new Section 6-10 “Hearing Procedures.” Subdivision (f) of this section, about the appearance of inspectors is moved to section 6-11 “Appearance of Inspectors”.

Section 6-06 “Subpoenas” is deleted in its entirety. The Hearing Officer’s ability to issue subpoenas remains in Section 6-02(c) (3).

New Section 6-06 is titled “Pre-Hearing Requests to Reschedule”.

- It sets forth the procedures by which respondents may make a request for a hearing to be rescheduled and reduces the number of requests to one per party for each violation.
- It extends the time, up until the time of the scheduled hearing, in which a respondent may request to reschedule a hearing.
- It requires that the petitioner notify the respondent three days before the hearing if the petitioner requests to reschedule the hearing.

Section 6-07 “Requests for Adjournments” contains provisions regarding requests for adjournments made at a hearing, previously contained in Section 6-04(d). It lists factors that will be considered in deciding whether there is good cause.

Section 6-08 “Defaults” contains provisions previously contained in Section 6-04(e) regarding the consequences of a failure to appear at a hearing. Default decisions no longer need to be rendered by a hearing officer.

Section 6-09 “Request for a New Hearing after a Failure to Appear (Motion to Vacate a Default)” contains provisions previously contained in Section 6-04(e) regarding procedures for motions to vacate a default.

- Subdivision (c) lists circumstances to be considered in determining “reasonable excuse” for a respondent’s failure to appear at the hearing.

- Subdivision (e) provides that if a motion to vacate a default has been previously granted and a new default decision has been issued for the same Notice of Violation, the second default decision will not be opened except in exceptional circumstances and in order to avoid injustice.
- Subdivision (f) provides that a motion to open a default received more than one year after the default decision will not be granted except in exceptional circumstances and in order to avoid injustice.

Section 6-10 “Hearing Procedures” is a new section that incorporates with some modifications, provisions contained in subdivisions (a), (b), (c), (d), (e), (g), (h), (i) and (j) of former Section 6-05 “Hearings and adjudications in person, by mail, or by telephone.”

- The provision in subdivision (b), “The hearings shall be open to the public,” is removed to accommodate the conduct of hearings by mail, telephone and online.
- Subdivision (d) requires that counsel or authorized representatives who appear on behalf of respondents have sufficient staffing to complete their scheduled hearings. It also gives the Tribunal discretion to determine the order in which the Notices of Violations are heard.

Section 6-11 “Appearance of Inspectors” is a new section that incorporates with some modifications, the provisions that were previously contained in Section 6-05(f).

- Subdivision (a)(1) permits a respondent to make a pre-hearing request for the inspector up to three, rather than seven, business days prior to the hearing. Such request is considered as a request to reschedule the hearing and follows the rules outlined in Section 6-06.
- Subdivision (b) permits a hearing to be adjourned no more than two, rather than three, times for the presence of the officer.

Section 6-12 “Payment of Penalties” is a new section that incorporates with some modifications the provisions formerly found in Section 6-05(i) regarding the imposition of late payment penalties if the fine is not paid on time.

Section 6-13 “Disqualification of Hearing Officers” contains provisions formerly found in Section 6-07. There are no major substantive rule changes in the section.

Section 6-14 “Appeals” incorporates with some modifications the provisions formerly found in Section 6-08.

- Subdivision (c) describes the record to be considered on appeal and limits the evidence to that which was presented at the hearing.

Section 6-15 “Registered Representatives” incorporates with some modifications the provisions formerly found in Section 6-09 “Registration and disqualification of certain authorized representatives”. Family members of respondents are exempt from the registration requirement. The Tribunal will not charge a fee to register representatives or issue a registration card and identification number. The new rule is consistent with procedures currently in place at the Environmental Control Board.

Section 6-16 “Misconduct” is a new section that enumerates prohibited conduct by a party, witness, representative or attorney, including prohibited communications. It also provides penalties for misconduct and procedures for imposing discipline on attorneys or representatives.

Section 6-17 “Computation of time” continues, with one minor modification, former Section 6-10 “Computation of time”. Subdivision (b) of this section is modified to provide that if a Tribunal decision is mailed to a party, five, rather than seven, days will be added to the period of time within which the party has the right or requirement to act.

The Health Tribunal at OATH’s authority for these rules is also found in section 1049 of the New York City Charter.

New text is underlined.

“Shall,” “will” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Chapter 6 of Title 48 of the Rules of the City of New York, is REPEALED, and a new Chapter 6 is added to read as follows:

Health Tribunal at OATH - Rules of Practice

§6-01 Definitions Specific to this Chapter

As used in this chapter:

“Appearance” means a communication with the Tribunal that is made by a party or the representative of a party in connection with a Notice of Violation that is or was pending before the Tribunal. An appearance may be made in person, online or by other remote methods approved by the Tribunal.

“Board of Health” means the board established by section 553 of the New York City Charter, authorized to add, amend or repeal provisions of the Health Code.

“Charter” means the New York City Charter.

“Chief Administrative Law Judge” means the agency head of OATH appointed by the Mayor pursuant to New York City Charter section 1048.

“Department” means the New York City Department of Health and Mental Hygiene (“DOHMH”).

“Health Code” means the New York City Health Code, codified within Title 24 of the Rules of the City of New York.

“Hearing Officer” means a person designated by the Chief Administrative Law Judge of OATH, or his or her designee, to carry out the adjudicatory powers, duties and responsibilities of the Tribunal.

“Notice of Violation” or “NOV” means the document issued by the Petitioner to a Respondent which specifies the charges forming the basis of an adjudicatory proceeding before the Tribunal.

“Party” means the Petitioner or the person named as Respondent in a proceeding before the Tribunal.

“Person” means any individual, partnership, unincorporated association, corporation or governmental agency.

“Petitioner” means the New York City Department of Health and Mental Hygiene (“DOHMH”) and any other City agency authorized to issue Notices of Violations returnable to the Tribunal.

“Respondent” means the person against whom the charges alleged in a Notice of Violation have been filed.

“Tribunal” means the Health Tribunal at OATH.

§6-02 Jurisdiction, Powers and Duties of the Health Tribunal at OATH

(a) Jurisdiction. In accordance with Mayoral Executive Order No. 148, dated June 8, 2011, and pursuant to Charter section 1048 and consistent with the delegations of the Commissioner of the Department of Health and Mental Hygiene and the Board of Health, the Tribunal has jurisdiction to hear and determine Notices of Violation alleging non-compliance with the provisions of the Health Code, the New York State Sanitary Code, those sections of the New York City Administrative Code relating to or affecting health within the City, and any other laws or regulations that the Department has the duty or authority to enforce. The Tribunal also has jurisdiction to hear and determine Notices of Violation issued by any other City agency, consistent with applicable laws, rules and regulations.

(b) General Powers. The Tribunal or the Hearing Officers have the following powers:

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

(2) To compile and maintain complete and accurate records relating to its proceedings, including copies of all Notices of Violation served, responses, appeals and briefs filed and decisions rendered by the Hearing Officers.

(c) Hearing Officers. Hearing Officers may:

(1) Carry out adjudicatory powers of the hearing examiner set forth in Title 17 of the

New York City Administrative Code, associated rules and regulations and the New York City Health Code.

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

(3) Issue subpoenas or adjourn a hearing for the appearance of individuals, or the production of documents or other types of information, when the Hearing Officer determines that necessary and material evidence will result;

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

(5) Take any other action authorized by applicable law, rule or regulation, or that is delegated by the Chief Administrative Law Judge.

§6-03 Proceedings before the Health Tribunal at OATH

(a) Notice of Violation.

(1) All proceedings are commenced by the issuance of a Notice of Violation (“NOV”) and filing of the NOV with the Tribunal.

(2) The original or a copy of the NOV must be filed with the Tribunal prior to the first scheduled hearing date.

(3) If the NOV is sworn to under oath or affirmed under penalty of perjury, the NOV will be admitted into evidence and will be prima facie evidence of the facts stated in the NOV. The NOV may include the report of the public health sanitarian, inspector or other person who conducted the inspection or investigation that resulted in the NOV. When such report is served in accordance with this section, such report will also be prima facie evidence of the factual allegations contained in the NOV.

(b) Service of the Notice of Violation. There must be service of a Notice of Violation. Service of a Notice of Violation in the following manner will be considered sufficient:

(1) The NOV may be served in person upon:

(i) the person alleged to have committed the violation,

(ii) the permittee, licensee or registrant,

(iii) the person who was required to hold the permit, license or to register,

(iv) a member of the partnership or other group concerned,

(v) an officer of the corporation,

(vi) a member of a limited liability company,

(vii) a management or general agent, or

(viii) any other person of suitable age and discretion as may be appropriate, depending on the organization or character of the person, business, or institution charged.

(2) Alternatively, the NOV may be served by mail deposited with the U.S. Postal Service, or other mailing service, to any such person at the address of the premises that is the subject of the NOV or, as may be appropriate, at the residence or business address of:

(i) the alleged violator,

(ii) the individual who is listed as the permittee, licensee, or applicant in the permit or license issued by the Board of Health or the Commissioner of the Department or in the application for a permit or license,

(iii) the registrant listed in the registration form, or

(iv) the person filing a notification of an entity's existence with the Department where no permit, license, or registration is required.

(3) In the case where the NOV is served by mail, documentation of mailing will be accepted as proof of service of the NOV.

(c) Contents of Notice of Violation. The NOV must contain:

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

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

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

(4) Notification of the date, time and place when and where a hearing will be held by the Tribunal. Such date must be at least fifteen calendar days after the NOV was served, unless another date is required by applicable law;

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

(6) Information adequate to inform the Respondent of his or her rights under §6-04 of this chapter.

(d) Amendment. The Hearing Officer may allow an amendment to an NOV at any time if:

(1) the subject of the amendment is reasonably within the scope of the original NOV;

(2) such amendment does not allege any additional violations based on an act not specified in the original notice;

(3) such amendment does not allege an act that occurred after the original NOV was served; and

(4) such amendment must not affect the respondent's right to have adequate notice of the allegations made against him or her.

§6-04 Appearances

(a) A Respondent may appear for a hearing by:

(1) Appearing in person at the place, date and time scheduled for the hearing; or,

(2) Sending an authorized representative to appear on behalf of such person at the place, date and time scheduled for the hearing who is:

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

(ii) a representative registered to appear before the Tribunal pursuant to §6-15 of this chapter, or

(iii) any other person, subject to the provisions of §6-15 of this chapter; or

(3) Making a written submission for an adjudication by mail, using the U.S. Postal Service or other mailing service pursuant to §6-05; or

(4) Making a written submission for an adjudication online pursuant to §6-05; or

(5) Appearing by telephone or by other remote methods when the opportunity to do so is offered by the Tribunal.

(b) Failure to appear by Respondent. A Respondent's failure to appear at the scheduled time or to make a timely request to reschedule pursuant to § 6-06 of this chapter, constitutes a default to the charges, and subjects the Respondent to penalties in accordance with §6-08 of this chapter.

(c) A Petitioner may appear through an authorized representative at the place, date and time scheduled for the hearing or by other remote methods when the opportunity to do so is offered by the Tribunal.

(d) Failure to appear by Petitioner. If a Petitioner fails to appear at the scheduled time, the hearing will proceed without the Petitioner.

§6-05 Adjudication by Mail and Online

(a) Submissions for an adjudication by mail must be received by the Tribunal before the scheduled hearing date or bear a postmark or other proof of mailing indicating that it was mailed to the Tribunal before the scheduled hearing date. If a request bearing such a postmark or proof of mailing is received by the Tribunal after a default decision has been issued on that Notice of Violation, such default will be vacated.

(b) Submissions for an adjudication online must be received by the Tribunal before or on the scheduled hearing date.

(c) If the Respondent chooses to appear by mail or online, the submission must contain any

denials, admissions and explanations pertaining to the individual violations charged, and documents, exhibits or witness statements if any, to be considered as evidence in support of Respondent's defense. Violations that are not denied or explained will be deemed to have been admitted; defenses not specifically raised will be deemed to have been waived.

(d) After a review of the submission for adjudication by mail or online, the Tribunal will:

- (1) issue a written decision and send the decision to the parties;
- (2) require the submission of additional documentary evidence; or
- (3) require an in-person hearing.

(e) If an in-person hearing is required, the parties will be notified of the hearing date and time.

§6-06 Pre-Hearing Requests to Reschedule

The Petitioner or Respondent may request that a hearing be rescheduled to a later date. A request by a Respondent to reschedule must be received by the Tribunal prior to the date and time of the scheduled hearing. If Petitioner requests to reschedule, Petitioner must notify Respondent at least three days prior to the originally scheduled hearing date and file proof of that notification with the Tribunal. If Petitioner fails to provide such proof of notification, the request will be denied and the hearing will proceed as originally scheduled. Good cause is not necessary for a request to reschedule. No more than one request to reschedule will be granted for each party for each NOV. A request by a Respondent for the appearance of an inspector made in the manner described in §6-11(a) will constitute a request to reschedule under this section.

§6-07 Requests for Adjournment

(a) At the time of the scheduled hearing, a Hearing Officer may grant a request to adjourn the hearing to a later date only after a showing of good cause as determined by the Hearing Officer in his or her discretion.

(b) Good cause. In deciding whether there is good cause for an adjournment, the Hearing Officer will consider:

- (1) Whether granting the adjournment is necessary for the party requesting the adjournment to effectively present the case;
- (2) Whether granting the adjournment is unfair to the other party;
- (3) Whether granting the adjournment will cause inconvenience to any witness;

(4) The age of the case and the number of adjournments previously granted;

(5) Whether the party requesting the adjournment had the opportunity to prepare for the scheduled hearing;

(6) Whether the need for the adjournment is due to facts that are beyond the requesting party's control;

(7) The balance of the need for efficient and expeditious adjudication of the case and the need for full and fair consideration of the issues relevant to the case; and

(8) Any other fact that the Hearing Officer considers to be relevant to the request for an adjournment.

(c) A denial of an adjournment request is not subject to separate or interim review or appeal.

§6-08 Defaults

(a) A Respondent who fails to appear or to make a request to reschedule as required by these rules will be deemed to have defaulted.

(b) Upon such default, without further notice to the Respondent and without a hearing being held, all facts alleged in the NOV will be deemed admitted, the Respondent will be found in violation, and the penalties authorized by applicable laws, rules and regulations will be applied.

(c) Decisions rendered because of a default will take effect immediately.

(d) The Tribunal will notify the Respondent of the issuance of a default decision by mailing a copy of the decision or by providing a copy to the Respondent or Respondent's representative who appears personally at the Tribunal and requests a copy.

(e) The Respondent may make a motion in writing requesting that a default be vacated pursuant to §6-09 of this chapter.

§6-09 Request for a New Hearing after a Failure to Appear (Motion to Vacate a Default)

(a) A request by a Respondent for a new hearing after a failure to appear (also known as a "motion to vacate a default") that is submitted within sixty days of the date of the default decision will be granted administratively as of right, provided that the Tribunal's records show that there have been no other failures to appear in relation to the same Notice of Violation. A motion to vacate a default that is submitted by mail must be postmarked within sixty days of the default decision.

(b) A motion to vacate a default that is submitted after sixty days of the date of the default must

be filed within one year of the date of the default decision and be accompanied by a statement setting forth a reasonable excuse for the Respondent's failure to appear and any documents to support the motion to vacate the default. The Hearing Officer will determine whether a new hearing will be granted.

(c) Reasons for Failing to Appear. In determining whether a Respondent has shown a reasonable excuse for failing to appear at a hearing, the Hearing Officer will consider:

(1) Whether circumstances that could not be reasonably foreseen prevented the Respondent from attending the hearing;

(2) Whether the Respondent had an emergency or condition requiring immediate medical attention;

(3) Whether the matter had been previously adjourned by the Respondent;

(4) Whether the Respondent attempted to attend the hearing with reasonable diligence;

(5) Whether the Respondent's inability to attend the hearing was due to facts that were beyond the Respondent's control;

(6) Whether the Respondent's failure to appear at the hearing can be attributed to the Respondent's failure to maintain current contact information on file with the applicable licensing agency;

(7) Whether the Respondent has previously failed to appear in relation to the same NOV; and

(8) Any other fact that the Tribunal considers to be relevant to the motion to vacate.

(d) A denial of a motion to vacate a default is not subject to review or appeal at the Tribunal.

(e) If motion to vacate a default decision has been previously granted, and a new default decision has been issued, a motion to vacate the second default decision in relation to the same NOV will not be granted except that in exceptional circumstances and in order to avoid injustice, the Chief Administrative Law Judge or his or her designee will have the discretion to grant a request for a new hearing.

(f) In exceptional circumstances and in order to avoid injustice, the Chief Administrative Law Judge or his or her designee will have the discretion to consider a request for a new hearing filed more than one year from the date of the default decision.

§6-10 Hearing Procedures

(a) A Notice of Violation may be adjudicated at a hearing in-person, by mail, online, or by telephone or other remote methods approved by the Tribunal. An adjudication by mail or online

will be conducted as set forth in §6-05 of this chapter.

(b) A hearing will be presided over by a Hearing Officer, proceed with reasonable expedition and order, and, insofar as practicable, not be postponed or adjourned.

(c) Each party has the right to present evidence, to examine and cross-examine witnesses and to have other rights essential for due process and a fair and impartial hearing.

(d) Each party has the right to be represented by counsel or other authorized representative as set forth in §§6-04(a) and 6-15 of this chapter.

(1) A representative or attorney appearing at the Tribunal must provide sufficient staffing to ensure completion of his or her hearings. Factors in determining whether sufficient staffing has been provided may include:

(i) the number of cases the representative or attorney had scheduled on the hearing date;

(ii) the number of representatives or attorneys sent to handle the cases;

(iii) the timeliness of the arrival of the representatives or attorneys;

(iv) the timeliness of the arrival of any witnesses, and;

(v) any unforeseeable or extraordinary circumstances.

The failure of a representative or attorney to provide sufficient staffing, as described above, may be considered misconduct under §6-16 of this chapter.

(2) When a representative or attorney appears on more than one NOV on a single hearing day, the Tribunal has the discretion to determine the order in which the NOVs will be heard.

(e) The Petitioner has the burden of proving the factual allegations contained in the NOV by a preponderance of the evidence. The Respondent has the burden of proving an affirmative defense, if any, by a preponderance of the evidence.

(f) In addition to evidence submitted, the Hearing Officer may request further evidence to be submitted by the Petitioner or Respondent or may adjudicate the matter based on the record before him or her.

(g) A record will be made of all NOVs filed, proceedings held, written evidence admitted and rulings rendered, and such record will be kept in the regular course of business for a reasonable period of time in accordance with applicable law. Hearings will be mechanically, electronically

or otherwise recorded by the Tribunal under the supervision of the Hearing Officer, and the original recording will be part of the record and will constitute the sole official record of the hearing. A copy of the recording will be provided upon request and payment of a reasonable fee in accordance with applicable law.

(h) After a hearing, a written decision sustaining or dismissing each charge in the NOV will be promptly rendered by the Hearing Officer who presided over the hearing. Each decision will contain findings of fact and conclusions of law. Where a violation is sustained, the Hearing Officer will impose the applicable penalty.

(i) Language Assistance Services.

(1) Appropriate language assistance services will be afforded to Respondents whose primary language is not English to assist such Respondents in communicating meaningfully at the hearing. Such language assistance services will include interpretation of hearings conducted by Hearing Officers, where interpretation is necessary to assist the Respondent in communicating meaningfully with the Hearing Officer and others at the hearing.

(2) At the beginning of any hearing, the Hearing Officer will advise the Respondent of the availability of interpretation. In determining whether interpretation is necessary to assist the Respondent in communicating meaningfully with the Hearing Officer and others at the hearing, the Hearing Officer will consider all relevant factors, including but not limited to the following:

(i) information from Tribunal administrative personnel identifying a Respondent as requiring language assistance services to communicate meaningfully with a Hearing Officer;

(ii) a request by the Respondent for interpretation;

(iii) even if interpretation was not requested by the Respondent, the Hearing Officer's own assessment whether interpretation is necessary to enable meaningful communication with the Respondent. If the Respondent requests an interpreter and the Hearing Officer determines that an interpreter is not needed, that determination and the basis for the determination will be made on the record.

(3) When required by paragraph (1) of this subdivision, interpretation services will be provided at hearings by a professional interpretation service that is made available by the Tribunal, unless the Respondent requests the use of another interpreter, in which case the Hearing Officer in his/her discretion may use the Respondent's requested interpreter. In exercising that discretion, the Hearing Officer will take into account all relevant factors, including but not limited to the following:

(i) the Respondent's preference, if any, for his or her own interpreter;

(ii) the apparent skills of the Respondent's requested interpreter;

(iii) whether the Respondent's requested interpreter is a child under the age of eighteen;

(iv) minimization of delay in the hearing process;

(v) maintenance of a clear and usable hearing record;

(vi) whether the Respondent's requested interpreter is a potential witness who may testify at the hearing. The Hearing Officer's determination and the basis for this determination will be made on the record.

§6-11 Appearances of Inspectors

(a) A public health sanitarian, inspector or other person who issued an NOV (the "inspector") may be required to appear at a hearing under the following circumstances:

(1) Prior to a hearing, a Respondent may request the presence of the inspector at the hearing, provided that the request is made in writing and is received by the Tribunal no later than three business days prior to the scheduled hearing. Such request will constitute a request to reschedule by the Respondent under §6-06 of this chapter. Upon such request, the hearing will be rescheduled to allow for the appearance of the inspector, and the Respondent does not need to appear at the originally scheduled hearing.

(2) Alternatively, at the time of the hearing, a Respondent may request the presence of the inspector. The Hearing Officer will determine whether the presence of the inspector will afford the Respondent a reasonable opportunity to present relevant, non-cumulative testimony or evidence that would contribute to a full and fair hearing of each party's side of the dispute. Upon such finding, the Hearing Officer will order the appearance of the inspector, or if the inspector is unavailable at the time of the hearing, the Hearing Officer will adjourn the hearing for the appearance of the inspector on a later date.

(3) If at a hearing a Respondent denies the factual allegations contained in the NOV, the Hearing Officer may require the presence of the inspector without a request by the Respondent, and, if needed, adjourn the hearing for the inspector to be present.

(b) In the event that the inspector does not appear, the Hearing Officer may adjourn the hearing pursuant to §6-07 of this chapter, or may proceed with the hearing without the inspector, and sustain or dismiss all or part of the NOV, as the Hearing Officer may deem appropriate. In no event will a hearing be adjourned on more than two occasions by the Hearing Officer because of the unavailability of an inspector.

§6-12 Payment of Penalty

(a) A copy of the decision, other than a default decision mailed or otherwise provided in accordance with §6-08 of this chapter, will be served immediately on the Respondent or on the Respondent's authorized representative, either personally or by mail. Any fines imposed must be paid within thirty days of the date of the decision.

(b) If full payment of the penalty is not made within thirty days, an additional late payment penalty in the amount of fifty dollars will be imposed per NOV if paid between thirty-one and sixty days after the date of the decision. The late payment penalty is one hundred dollars if paid more than sixty days after the date of the decision.

§6-13 Disqualification of Hearing Officers

(a) **Grounds for Disqualification.** A Hearing Officer will not preside over a hearing under the circumstances set forth in subdivisions (D) and (E) of §103 of Appendix A of this title. When a Hearing Officer deems himself or herself disqualified to preside in a particular proceeding, the Hearing Officer will withdraw from the proceeding by notice on the record and will notify the Chief Administrative Law Judge or his or her designee of such withdrawal.

(b) Motion to Disqualify

(1) A party may, for good cause shown, request that the Hearing Officer disqualify himself or herself. The Hearing Officer in the proceeding will rule on such motion.

(2) If the Hearing Officer denies the motion, the party may obtain a brief adjournment in order to promptly apply for review by the Chief Administrative Law Judge or his or her designee.

(3) If the Chief Administrative Law Judge or his or her designee determines that the Hearing Officer should be disqualified, the Chief Administrative Law Judge or his or her designee will appoint another Hearing Officer to continue the case. If a Hearing Officer's denial of the motion to disqualify is upheld by the Chief Administrative Law Judge or his or her designee, the party may raise the issue again on appeal.

§6-14 Appeals

(a) When an appeal is filed, the Appeals Unit within the Tribunal will determine whether the facts contained in the findings of the Hearing Officer are supported by substantial evidence in the record, and whether the determinations of the Hearing Officer as well as the penalties imposed are supported by law. The Appeals Unit has the power to affirm, reverse, remand or modify the decision appealed from.

(b) A party may appeal, in whole or in part, a decision of a Hearing Officer, except that a party may not appeal a decision rendered on default, a denial of a motion to vacate a default decision, or a plea admitting the violations charged.

(c) Appeals decisions are made upon the record of the hearing. The record of the hearing includes all items enumerated in §6-10 as well as the Hearing Officer's written decision. The Appeals Unit will not consider any evidence that was not presented to the Hearing Officer. The absence of a recording of the hearing does not prevent determination of the appeal.

(d) Appeals Procedure

(1) Within thirty days of the date of the Hearing Officer's decision, or thirty-five days if the decision is mailed, a party seeking review of the decision must file an Appeal Application on a form prescribed by the Tribunal and serve a copy of it on the non-appealing party. An appeal will be accepted by the Tribunal only if:

(i) the appealing party files an Appeal Application; and,

(ii) the appealing party files proof that a copy of the Appeal Application has been served on the non-appealing party; and,

(iii) As set forth in this subdivision, a Respondent pays the Tribunal in full any fines or penalties imposed by the decision, or unless the Respondent has been granted a waiver of such prior payment by the Tribunal.

(2) Within thirty days of being served with the Appeal Application, or thirty-five days if service is made by mail, the non-appealing party may file a Response to Appeal. The Response to Appeal must be on a form prescribed by the Tribunal. The Response to Appeal will be accepted only if the non-appealing party serves a copy of the Response to Appeal on the other party and files proof of that service with the Tribunal.

(3) Further filings with the Tribunal by either party are not permitted.

(e) Filing an Appeal Application will not delay the collection of any fine or other penalty imposed by the decision. An appeal by or on behalf of a Respondent will not be permitted unless the fines or penalties imposed have been paid in full prior to or at the time of the filing of the Appeal Application, or a waiver of such prior payment is granted. An application for a waiver of prior payment must be made before or at the time of the filing of the Appeal Application and must be supported by evidence of financial hardship. The Chief Administrative Law Judge or his or her designee has the sole discretion to grant or deny a waiver. An application for a waiver will not stop the late payment penalties from being added under §6-12(b).

(f) Appeals Decision

(1) The Appeals Unit will promptly issue a written decision affirming, reversing, remanding or modifying the decision appealed from. A copy of the decision will be delivered to the Petitioner and served on the Respondent by mail, stating the grounds upon which the decision is based. Where appropriate, the decision will order the repayment to the Respondent of any penalty that has been paid.

(2) The decision of the Appeals Unit is the final determination of the Tribunal, except in the case of a violation arising under Article 13-E of the New York State Public Health Law, entitled “Regulation of Smoking in Certain Public Areas,” in accordance with §3.12 of the Health Code.

§6-15 Registered Representatives

(a) Requirements. A representative, other than a family member or an attorney admitted to practice in New York State, who represents two or more Respondents before the Tribunal within a calendar year must:

(1) Be at least eighteen (18) years of age;

(2) Register with the Tribunal by completing and submitting a form provided by the Tribunal. The form must include proof acceptable to the Tribunal that identifies the representative, and must also include any other information that the Tribunal may require. Registration must be renewed annually;

(3) Notify the Tribunal within ten (10) business days of any change in the information required on the registration form;

(4) Not misrepresent his or her qualifications or service so as to mislead people into believing the representative is an attorney at law if the representative is not. A representative who is not an attorney admitted to practice must refer to him or herself as “representative” when appearing before the Tribunal;

(5) Exercise due diligence in learning and observing Tribunal rules and preparing paperwork and;

(6) Be subject to discipline, including but not limited to suspension or revocation of the representative’s right to appear before the Tribunal, for failing to follow the provisions of this subdivision and any other rules in this chapter.

§6-16 Misconduct

(a) Prohibited Conduct. A party, witness, representative or attorney must not:

(1) Engage in abusive, disorderly or delaying behavior, a breach of the peace or any other disturbance which directly or indirectly tends to disrupt, obstruct or interrupt the proceedings at the Tribunal;

(2) Engage in any disruptive verbal conduct or action or gesture which a reasonable person would believe shows contempt or disrespect for the proceedings or which a reasonable person would believe to be intimidating;

(3) Willfully disregard the authority of the Hearing Officer or other Tribunal employee. This may include refusing to comply with the Hearing Officer's directions or behaving in a disorderly, delaying or obstructionist manner;

(4) Leave a hearing in progress without the permission of the Hearing Officer;

(5) Attempt to influence or offer or agree to attempt to influence any Hearing Officer or employee of the Tribunal by the use of threats, accusations, duress or coercion, a promise of advantage, or the bestowing or offer of any gift, favor or thing of value;

(6) Enter any area other than a public waiting area unless accompanied or authorized by a Tribunal employee. Upon conclusion of a hearing, a party, witness, representative or attorney must promptly exit non-public areas;

(7) Request any Tribunal clerical staff to perform tasks that are illegal, unreasonable or outside the scope of the employee's job duties;

(8) Operate any Tribunal computer terminal or other equipment at any time unless given express authorization or the equipment has been designated for use by the public;

(9) Submit a document, or present testimony or other evidence in a proceeding before a Hearing Officer which he or she knows, or reasonably should have known, to be false, fraudulent or misleading;

(10) Induce or encourage anyone in a proceeding before a Hearing Officer to make a false statement;

(11) Solicit clients, or cause the solicitation of client by another person on Tribunal premises;

(12) Make or cause to be made a stenographic, electronic, audio, audio-visual or other verbatim or photographic reproduction of any hearing or other proceeding, whether such hearing or other proceeding is conducted in person, by telephone, or other remote methods, except upon application to the Hearing Officer. This does not include copies of documents submitted to the Tribunal during a hearing including written or electronic statements and exhibits. Except as otherwise provided by law, such application must be addressed to the discretion of the Hearing Officer, who may deny the application or grant it in full, in part, or upon such conditions as the Hearing Officer deems necessary to preserve the decorum of the proceedings and to protect the interests of the parties, witnesses and any other concerned persons.

(b) Prohibited Communication

(1) All parties must be present when communications with Tribunal personnel, including

a Hearing Officer, occur, except as necessary for case processing and unless otherwise permitted by these rules, on consent or in an emergency.

(2) All persons are prohibited from initiating communication with a Hearing Officer or other employee before or after a hearing or before or after a decision on motion, in order to attempt to influence the outcome of a hearing or decision on motion.

(c) Penalties for Misconduct

(1) Failure to abide by these rules constitutes misconduct. The Chief Administrative Law Judge or his or her designee may, for good cause, suspend or bar from appearing before the Tribunal an attorney or representative who fails to abide by these rules. The suspension may be either for a specified period of time or indefinitely until the attorney or representative demonstrates to the satisfaction of the Chief Administrative Law Judge or his/her designee that the basis for the suspension no longer exists.

(2) However, the Chief Administrative Law Judge or his or her designee may not act until after the attorney or representative is given notice and a reasonable opportunity to appear before the Chief Administrative Law Judge or his or her designee to rebut the claims against him or her. The Chief Administrative Law Judge or his or her designee, depending upon the nature of the conduct, will determine whether said appearance will be in person or by a remote method.

This section in no way limits the power of a Hearing Officer as set out in §6-02 of this chapter.

(d) Discipline on Other Grounds

(1) The Chief Administrative Law Judge may, in addition to the provisions of subdivision (c) of this section, suspend or bar a representative upon a determination that the representative lacks honesty and integrity and that the lack of honesty and integrity will adversely affect his or her practice before the Tribunal.

(2) Any action pursuant to this subdivision will be on notice to the representative and the representative will be given an opportunity to be heard in a proceeding prescribed by the Chief Administrative Law Judge or his or her designee. Factors to be considered in determining whether a representative lacks honesty and integrity include, but need not be limited to, considering whether the representative has made false, misleading or inappropriate statements to parties or Tribunal staff.

(e) Judicial Review. The decision of the Chief Administrative Law Judge or his or her designee under subdivision (c) or (d) of this section constitutes a final agency action. Judicial review of the decision may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules.

§6-17 Computation of time

(a) In computing any period of time prescribed or allowed by this chapter, the day of the act or default from which the designated period of time begins to run will not be included, but the last day of the period will be included unless it is a Saturday, Sunday or legal holiday, in which case the period will be extended to the next day which is not a Saturday, Sunday or legal holiday.

(b) Whenever a party has the right or is required to do some act within a prescribed period of time after the date of a Tribunal decision, five days will be added to such prescribed period of time if the decision is mailed to the party.

**NEW YORK CITY LAW DEPARTMENT
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NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of OATH Health Tribunal Rules

REFERENCE NUMBER: 2014 RG 045

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: August 22, 2014

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of OATH Health Tribunal Rules

REFERENCE NUMBER: OATH-ECB-46

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Sabrina Fong
Mayor's Office of Operations

8/25/2014
Date