

1. Definitions. For purposes of this chapter, the following terms shall have the following meanings:
 - A. Board. "Board" means the Board of Directors of the Dirigo Health Agency.
 - B. Agency. "Agency" means the Dirigo Health Agency.
 - C. Person. "Person" means any individual, partnership, corporation, governmental entity, association, or public or private organization of any character.
 - D. Party. "Party" means:
 - 1) The specific person or persons whose legal rights, duties or privileges are being determined in the proceeding; and
 - 2) Any person participating in the adjudicatory proceeding as an intervenor in accordance with these rules and applicable statute.
 - E. Intervenor. "Intervenor" means a person permitted to intervene in a proceeding as provided by these rules pursuant to 5 MRSA section 9054 and 24-A MRSA section 6913(1) "Proposed intervenor" means a person who has moved to intervene and whose motion is currently pending but has not been ruled on.
 - F. Staff. "Staff" means the employees of the Agency and any consultants or other contractors retained for the purpose of assisting the Board and/or Agency employees in carrying out their duties and responsibilities.
2. Scope and construction of rules.
 - A. Scope. These rules will govern all adjudicatory proceedings before the Board under applicable laws of the State of Maine, except as otherwise provided by statute or rule. When the circumstances of a particular proceeding require more detailed procedures than those established by this rule, additional procedures may be specified by order of the Board, applicable to that particular proceeding.

- B. Construction. These rules will be liberally construed to secure just, speedy and economic determination of all matters pending before the Board or the staff.
3. Deviation from rules.
- A. Variation from this rule. In special cases, where good cause appears, the Board may permit deviation from these rules or may deviate from them upon its own motion, insofar as the Board may find compliance therewith to be impracticable, inexpedient or unnecessary.
 - B. Limitation. Nothing in this section shall permit the Board to modify or deviate from any procedural requirement or deadline that is expressly set forth in a statute without provision for waiver.
 - C. Request. Except under extraordinary circumstances, all requests for deviation from procedural rules must be made in writing. The Board reserves the right to summarily reject oral requests made under this section.
4. Communications.
- A. Filings. In filing papers with the Board as required or permitted by applicable statute, these rules, or an order of the Board, such papers will be deemed to be officially filed or received only when received at the Agency during the hours that it is open. All written communications or documents related to a proceeding pending before the Board shall be addressed to the Board, except where submitted in response to a request from a member of the staff or as otherwise requested by the Board. The acceptance of any document for filing does not constitute a determination that the contents of the document are sufficient for the purpose for which it is filed.
 - B. Service. Unless otherwise ordered, whenever a document is filed with the Board, it shall at the same time be served on all parties and proposed intervenors in the matter, except that a petition to intervene need be served only on the parties. Unless otherwise ordered by the Board or required herein, electronic filing in lieu of paper filing shall be permitted.
5. Time.
- A. Time Calculations. In computing any period of time prescribed or allowed by these rules or by order of the Board, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period

runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Where the time period within which an action must be taken is specified by statute, the terms of the statute will control and the provisions of this paragraph will not apply.

- B. Enlargement of Time. When by these rules or by a notice or order issued by the Board, an act is required or allowed to be done at, before, or within a specified time, the Board for good cause shown may, at any time, at its discretion, with or without request, motion or notice, order the period enlarged before the expiration of the period originally prescribed or extended by previous order, provided that time limits or periods that apply to other persons affected by the resulting change or delay are also adjusted appropriately. Requests for enlargement of time which are filed after expiration of the period originally prescribed or as extended by previous order will be granted only in exceptional circumstances.

6. Defective Filings.

- A. Inspection and Filing Date. Upon receipt of any filing subject to this rule, the document and any material accompanying it will be inspected by the Board. If the document is found by the Board to be defective or insufficient, the Board shall, within 10 days from its receipt of the filing, inform the person filing it of the defect or omission, and the defective or insufficient document will not be deemed to be filed. The defective or insufficient document will be retained by the Board, marked to indicate that it is not deemed filed. Within 10 days of the submission of additional material by the filing party in response to the notice of defects, the Board shall determine whether the defects or omissions have been corrected and will notify the filing party of its determination. The filing date for such a document will be deemed to be the date on which the last document that removed any defect or made the filing complete was received by the Board, except that the Board may treat the date that the insufficient document was filed as the filing date, if the deficiencies are found to be immaterial or not to have delayed, impeded, or interfered with the ability of the Agency or any party to respond to, investigate, or process the filing. For the purposes of this subsection, an application or form is defective or insufficient if it fails to include all the information required by statute or by applicable rule.
- B. Effect of Failure to Note Defects. The absence of action by the Board noting defects or insufficiencies and adjusting the filing date accordingly shall not constitute a substantive finding that the information contained in the document is sufficient to establish that any relief or action requested in the document should be granted or that any facts asserted in the document have been proven, nor shall it be construed to limit in any way

the Board's authority to request further data or information from the filing party during the course of a proceeding.

7. Motions and Requests.

- A. General requirements. Every motion or request for an order or ruling of any kind by the Board must be made in writing, unless made on the record during a hearing to which the request or motion is related. Every request or motion should include or be accompanied by a clear and detailed statement of the facts that support the order or other action sought. The statement supporting the request or motion should also include any arguments with respect to policy or law that have a bearing on the request.
- B. Form. Requests or motions and their supporting papers must be clearly labeled on the first page with a title that includes "motion" or "request," a short description of the action or order requested, and a caption sufficient to identify the matter to which the request or motion relates. If legal arguments are advanced, the supporting statement accompanying the motion must include citations to all supporting authorities relied upon by the moving party.
- C. Statements in opposition. Any party opposing a motion shall file a statement in opposition to the motion or request within seven (7) days after service of the motion, unless some other period is established by the Board.

8. Notice.

- A. Notice of hearing. The provisions of 5 MRSA section 9052 shall govern the content and manner of notice of any adjudicatory hearing scheduled to be held by the Board.
- B. Preliminary notice of filing. The Board may, at its discretion, give notice of the filing in cases where: (1) no hearing is required; (2) a decision as to whether to hold a hearing has not yet been made; or (3) a hearing has not yet been scheduled. This notice may be given for purposes of advising persons of their rights to intervene in a pending matter, scheduling a prehearing conference or for any other purpose the Board deems appropriate, and may contain such information as the Board deems relevant to its purpose. In cases where a preliminary notice is issued and a hearing is subsequently scheduled, a formal notice of hearing will also be issued in accordance with paragraph A of this section.

9. Public Participation.

A. Intervenor. The provisions of 5 MRSA section 9054 shall govern the admission and participation of intervenors in any adjudicatory proceeding before the Board.

1. Form of application. An application for intervenor status must be made to the Board in writing. An application for intervention as of right pursuant to 5 MRSA section 9054(1) shall contain a statement explaining how the applicant is or may be, or is a member of a class which is or may be, substantially and directly affected by the proceeding, or identifying the applicant's status as an agency of federal, state or local government. An application for permissive intervention pursuant to 5 MRSA section 9054(2) shall contain a statement explaining the applicant's interest in the proceeding.

2. Time for filing. An application for intervenor status may be filed at any time after the proceeding to which it relates is initiated, whether the proceeding is initiated by filing of an application with the Board, by issuance of a notice of hearing or otherwise, but shall be filed within the time permitted for intervenor applications by an order of the Board which is publicly noticed. Any person who applies for intervenor status after the deadline established by the Board, shall be permitted to intervene only upon a compelling demonstration of good cause.

B. Public participation at hearings. In addition to the participation of persons granted intervenor status, the Board may provide a reasonable period of time for public comment during the course of a hearing which it deems to involve the determination of issues of substantial public interest. Persons making statements during the public comment portion of such a hearing, who have not applied for and been granted intervenor status, shall not have rights as a party to the proceeding and as such the Board may place reasonable constraints upon the manner of presentation of public comments. The Board may determine whether such persons may make an unsworn statement or testify under oath. Persons who present testimony under oath are subject to reasonable cross-examination by the parties. Only evidence presented during sworn testimony may be relied upon by the Board.

10. Discovery.

- A. Board and staff. The Board and Agency staff shall have all authority granted to them by statute to obtain information in any proceeding, and the provisions of this section shall not be construed to limit that authority in any way.
- B. Informational requests. All parties shall have the right to serve informational requests upon any party, subject to the following terms and procedures:
 - 1. Form. Informational requests must be made in writing, unless made on the record in a hearing, and must be specifically directed to a particular party or parties. A copy of each request shall be provided to the Board and each party in a manner which the Board directs.
 - 2. Scope. Information requests shall be relevant to the issues involved in the pending proceeding and shall not be unduly burdensome or repetitious.
 - 3. Objections. Objections to an informational request shall be filed with the Board no later than five (5) days after it is received, unless a different period is prescribed by order.
 - 4. Response to information requests. Each informational request shall be answered within fourteen (14) days after its receipt or such other period as may be ordered by the Board, except as to any part of a request to which specific and timely objection is made. In cases where timely objection has been made and the objection is subsequently overruled, the requested information shall be provided within fourteen (14) days of receipt of the Board's ruling on the objection or such other period as may be provided in that ruling. A copy of the responsive material shall be provided to the Board and to each party. Responsive material does not become part of the record of hearing unless offered and admitted.

11. Prehearing Conferences.

- A. General. The Board may on its own motion or upon the motion of any party hold a prehearing conference for any purpose that may expedite the orderly conduct and disposition of a proceeding, including but not limited to formulating or simplifying the issues, considering motions, establishing discovery schedules and limitations upon discovery, resolving discovery disputes, arranging for exchange of proposed exhibits or pre-filed testimony, identifying witnesses or providing for procedures to be followed at the hearing. In cases where the Board deems it advisable, the Board may hold more than one prehearing conference with respect to a proceeding.

- B. Notice. Notice of a prehearing conference may be provided in the notice of hearing, at other relevant times or pursuant to section 8(B) of these rules.
- C. Prehearing memoranda. The Board may require the filing of prehearing memoranda before or after a prehearing conference, or both, as it deems appropriate. The contents and order of filing of these memoranda shall be specified in an order issued by the Board.
- D. Prehearing order. The Board may issue an order based upon a prehearing conference or prehearing memoranda which will control the course of subsequent proceedings. Modification of such an order may be allowed at the hearing by the Board, but only for good cause shown or to prevent manifest injustice.

12. Subpoenas.

- A. Authority. Pursuant to 5 MRSA section 9060, in any adjudicatory proceeding, any party upon application, shall be entitled as of right to the issuance of subpoenas in the name of the Board to require the attendance and testimony of witnesses and the production of evidence relating to any issue of fact in the proceeding, subject to the provisions of 5 MRSA section 9060(1)
- B. Form. Each request for issuance of a subpoena shall be accompanied by a proposed subpoena which shall, to the extent practicable, adhere to the form used in civil actions.
- C. Service. The party requesting the subpoena shall be responsible for service. A subpoena may be served by the sheriff, his deputy, a constable or any other person who is not a party and not less than eighteen (18) years of age, by delivering a copy of the subpoena to the person named in it. The party requesting the subpoena shall also be responsible for the tender of witness fees; witnesses shall be entitled to the same fees and allowance as witnesses in Superior Court. No person shall be excused from attending and testifying in obedience to a subpoena on the ground that the proper witness fee was not tendered or paid, unless the witness shall have demanded such payment as a condition precedent to attending the hearing, examination or investigation and unless such demand shall not have been complied with.
- D. Timing of requests for subpoenas. Requests for subpoenas will be processed as expeditiously as is reasonably possible, but the requesting party should not anticipate immediate issuance of a subpoena upon filing of the request. Requests for subpoenas requiring attendance or production of documents at a scheduled hearing should be filed no later

than ten (10) days prior to the hearing date, unless some other deadline is provided by order of the Board, in order to provide the witness subpoenaed a reasonable opportunity to exercise his or her rights under 5 MRSA section 9060(1)(C) to petition the Board to vacate or modify the subpoena. Requests for subpoenas filed less than the prescribed number of working days before a scheduled hearing will be granted only upon a showing of good cause.

13. Hearings, general provisions.

- A. Hearings held when required. Hearings will be held whenever required by statute, and otherwise as the Board may determine in specific cases.
- B. Fairness. Hearings shall be conducted in an impartial manner.
- C. Rights of the parties. Unless limited by stipulation or order in accordance with these rules, or unless limited by the Board to prevent repetition or unreasonable delay in proceedings, every party shall have the right to present evidence and argument on all relevant issues, and at any hearing to call and examine witnesses and to make oral cross-examination of any person present and testifying.
- D. Agency participation. Hearings will be held before the Board or such presiding officer as the Board may designate. The Agency may appear at any hearing and shall have the same rights, obligations and duties as any other party to the proceeding.
- E. Sworn testimony. All witnesses shall swear that their testimony is wholly truthful or shall make a solemn affirmation to that effect in lieu thereof.
- F. Presiding officer.
 - 1. Authority. Pursuant to 5 MRSA section 9062, the Board may designate a presiding officer for any hearing. A presiding officer shall have all powers enumerated in 5 MRSA section 9062(3) and in these rules and, in addition, may exercise such powers of the Board under these rules as the Board may designate.
 - 2. Reports.
 - a. Any proposed findings of fact or any proposed decision prepared by the presiding officer shall be made only in the form of a written report. A copy of the report shall be provided to each party and an opportunity shall be provided for responses or exceptions to be filed by each party. The

presiding officer shall establish the time within which responses or exceptions may be filed.

- b. The presiding officer may orally recount the evidence and may orally provide the Board with advice in the course of its deliberations, whether or not a report has been prepared. When a report has been prepared and the time for filing has elapsed, the presiding officer may, upon request of the Board, comment upon the proceeding, the report and the exceptions thereto.

- G. Continuances. Changes in the time and place of the first session of a hearing may be requested in writing, reasonably in advance of the time scheduled. The Board or presiding officer with the concurrence of the Board may grant or deny the request. Changes in the schedule of subsequent sessions of a hearing may be announced to the parties on the record during the hearing. It shall be the responsibility of any party not in attendance to inquire whether any such changes have been announced. Motions for continuances shall be made no less than four (4) days before the date set for the beginning of a hearing.

14. Exhibits.

- A. Technical matter. When evidence to be presented consists of technical matter or figures so numerous to make oral presentation likely difficult to follow, the Board may require that such evidence be presented in exhibit form, supplemented and explained by oral testimony.
- B. Withdrawal of exhibits. No exhibit received in evidence may be withdrawn except with the approval of the hearing's presiding officer.
- C. Late-filed exhibits.
 - 1. The presiding officer may, at his discretion, allow documentary evidence to be marked as a late-filed exhibit and offered as evidence after the close of a hearing if (a) the evidence proposed to be submitted is described at the hearing with sufficient detail to apprise all parties of its content and purpose; and (b) the parties agree that the evidence may be offered as a late-filed exhibit, or the presiding officer so orders.
 - 2. Unless another date or dates are specified by the presiding officer, late-filed exhibits may be offered no later than ten (10) days after the last day upon which a hearing is held or five (5) days before the first date on which briefs must be submitted, whichever is earlier. A copy of each late-filed exhibit must be provided to each party at the

same time that it is offered. The agreement of the parties or the order of the presiding officer to allow the offering of such an exhibit shall not constitute admission of that document into evidence. Any party may within five (5) days after an offer of any late filed exhibit, object to its admission and or request an opportunity to conduct cross examination or to present rebuttal evidence in connection with the exhibit, unless that party has plainly and specifically waived its right to do so on the record of the hearing at which leave to offer the exhibit was granted.

15. Pre-filed testimony and exhibits. The pre-filing of all or a portion of each party's direct case, including testimony and exhibits, shall be required in any proceeding in which the Board, at its discretion, may deem such a requirement to be appropriate. Pre-filing shall be subject to a schedule established by the Board by order issued following a prehearing conference or otherwise, and shall also be subject to the provisions described below.
 - A. Number of copies. Parties to the case shall file with the Board such number of copies as the Board may order, of all testimony and exhibits of each witness whom they propose to present in support of their direct cases. Two (2) copies of such testimony and exhibits shall be served on each party at the time that such testimony and exhibits are filed with the Board. If the pre-filed direct testimony described in this paragraph is filed prior to the decision by the Board regarding petitions to intervene, additional copies of such testimony and exhibits shall be served on each proposed intervenor within two (2) days of the date that the party filing the testimony and exhibits receives notice of the petition to intervene.
 - B. Submissions to be in writing. Pre-filed testimony shall be in writing and shall be presented double-spaced print or typescript in the form of questions and answers that would render similar oral testimony admissible. Pre-filed exhibits may be attached to the testimony, provided that they are referred to, identified, and introduced in the pre-filed testimony. Pre-filed written testimony shall have numbered pages and include line numbers on each page, in the left-hand margin, except as otherwise permitted by the Board. Each party may file with its pre-filed testimony and exhibits, an opening statement containing a narrative summary of the testimony and exhibits and the fact or facts they are trying to establish.
 - C. Supplementation of pre-filed testimony. A witness, while under oath, may supplement and explain his or her pre-filed testimony and exhibits by filing written amendments thereto, or by oral testimony. Such supplementation and explanation shall not substantially alter the subject matter of the testimony, except to the extent that information which was not available and which could not have been obtained through the exercise of due

diligence at the time of preparation of the testimony may affect the nature of the presentation.

- D. Entry into the record. Pre-filed testimony shall be introduced into the record by the oral testimony of the witness under oath, after which it may be offered as an exhibit, with the same effect as if the testimony had been given orally in its entirety. Each witness sponsoring pre-filed direct testimony shall be subject to oral cross-examination. Re-direct examination will be conducted orally and will be limited to matters raised during cross-examination. Objection to pre-filed testimony or exhibits may be made at the time that testimony or exhibits are offered at the oral hearing.
- 16. Bifurcated Hearing. In any proceeding the Board may order that any hearing be held in stages. In such cases, the Board may schedule a hearing recess of such duration and in such form as it deems reasonable.
 - 17. Arguments. The Board may, at its discretion, order or permit the filing of briefs and/or the presentation of oral arguments prior to the Board's rendering of a decision in a case.
 - 18. Two-part Decision. In extraordinary circumstances, including those in which a time constraint imposed by rule or statute requires the issuance of a decision by a specific date, the Board may issue its decision in two (2) parts. The first part shall plainly state the result of the decision, specify the orders made by the Board and summarize the factual conclusions reached. The second part shall contain the full statement of findings of fact required by this section and made by the Board as a basis for its decision. The second part shall be issued as soon after the issuance of the first part as possible, but in no case more than seven (7) days after such issuance. The time for taking an appeal from a decision issued in two (2) parts begins to run from the date of receipt.
 - 19. Rehearing and reopening. Motions for rehearing or reopening to change, modify, rescind or vacate a decision or order of the Board must be filed in writing with the Board within ten (10) days after service of the determination or order to which the request relates. Such motion or request shall conform to section (7) of these rules.
 - A. Effect of rehearing or reopening. Unless otherwise specified by the Board, a decision to grant a motion to rehear or reopen a case does not act to stay the effect of the Board's order to which the rehearing or reopening applies. A timely motion under this subsection terminates the running of time for an appeal, which then begins to run after the motion is acted upon, or deemed denied under paragraph (B) of this section.
 - B. Any motion for rehearing or reopening that is not granted within fourteen (14) days from the date of filing shall be deemed to be denied.

The Board may, on its own motion and after notice to all parties, rehear or reopen any matter at any time, to the extent permitted by law.

HISTORY: Statutory Authority. 5 M. R. S. A. § 9051, et seq; 24-A M. R. S. A. § 6908.

EFFECTIVE DATE: