

DEPARTMENT OF HEALTH
PUERTO RICO MEDICAL SERVICES ADMINISTRATION

5707
REGULATIONS THAT WILL GOVERN PROCEDURES
BEFORE THE BOARD OF APPEALS

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DEPARTMENT OF HEALTH
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LEGAL BASIS

These regulations are promulgated pursuant to the provisions of Act No. 66 of June 26, 1978, as amended, that creates the Puerto Rico Medical Services Administration; Act No. 170 of August 12, 1968, as amended, and Section 12.4 Personnel Regulations of the Career and Trust Service of the Puerto Rico Medical Services Administration (ASEM for its Spanish Acronym).

SECTION I – DEFINITIONS

1. **Executive Director** – Executive Director of the Puerto Rico Medical Services Administration.
2. **Regulations** – The Regulations that will govern the procedures before the Board of Appeals.
3. **Chairperson** – Chairperson of the Board of Appeals.
4. **Complainant** – A regular managerial employee who files a complaint or claim that includes any violation related to an essential area of the merit principle or alleges that an act or decision that affects him or she violates any right granted to him or her by virtue of the Personnel Regulations or any other related to marginal benefits or perquisites that are a complimentary part of the work

conditions of non-union managerial employees and/or related to a disciplinary measure.

5. **Administration or MSA (ASEM)** – Puerto Rico Medical Services Administration.
6. **Work Days** – The five days of the week will be understood to be work days, except Saturday, Sunday and Holidays.
7. **Personnel Regulations** – Personnel Regulations for the Career and Trust Service.
8. **Board** – The Board of Appeals of the Puerto Rico Medical Services Administration.

SECTION II – SCOPE

These regulations shall govern the procedures in all administrative hearings that might be held before the Board of Appeals, pursuant to the provisions of Section 12.4 of MSA (ASEM) Personnel Regulations for the Career and Trust Service. It shall be interpreted in such a manner that it guarantees the constitutional and statutory rights of employees and the fair, quick and economic solution of any procedure.

SECTION III – COMPOSITION OF THE BOARD

The Board of Appeals shall consist of three members, to wit:

- a. One regular member representing MSA (ASEM). There shall also be another member representing ASEM to substitute the regular member with full power to function during his/her absence. The Board must be properly notified of said substitution by an authorized MSA (ASEM) official, preferably the Industrial Relation Director or his/her authorized representative.
- b. One regular member representing managerial employees. There will also an alternate member representing managerial employees who will substitute the regular member with full power to function during his/her absence. The Board must be properly notified of said substitution.
- c. A chairperson, preferably an attorney, who shall be a knowledgeable person with a recognized interest in the area of personnel administration and the application of the merit principle. The Executive Director of the MSA (ASEM) shall appoint this person (ASEM).

SECTION IV – QUORUM

The decisions of the Board shall be taken by the rest of the majority of its members. The alternate members shall be fully empowered to vote and contribute to the decisional process of the Board in the measure that they possess the authorized representation of the regular members as established above. The attendance of all of its members shall be a requirement in order for the Board to take decisions.

SECTION V – APPLICABILITY

These Regulations shall apply to all processes held before the Board of Appeals pursuant to that which is provided in the Personnel Regulations for the Career and Trust Service of the MSA (ASEM).

SECTION VI – JURISDICTION OF THE BOARD

- A. The Board of Appeals shall have the power to intervene in any recourse of appeal presented by complainants pursuant to the procedure established in the Personnel Regulations for the Career and Trust Service.

- B. The Board of Appeals shall have the power to order the presentation of documents or files, including the production of documents, materials or other objects; to subpoena the parties and their witnesses; to receive oral as well as documentary evidence, hold administrative hearings and carry out all of the necessary and pertinent steps to efficiently resolve the controversy before its consideration. It may also file a petition for assistance in its jurisdiction before the Court of First Instance, Superior Division, with jurisdiction and obtain a judicial compliance order, under warning of contempt, for any subpoena, order or requirement that it might issue.

SECTION VII – APPEAL PROCEDURE

The appeal procedure before the Board shall be the one established in Section 12.4.8 of the Personnel Regulations.

The Chairperson of the Board of Appeals shall send a communication to the parties, through the Secretary of the Committee, notifying them of the holding of the hearing within a period of time not greater than 20 work days after the complaint has been received. The notice to the parties of the scheduling of a hearing shall be issued via fax or certified mail with acknowledgment of receipt, or through personal service, at least 15 days before the date of the hearing.

The notice that is sent shall include the following information:

- a) Date, time and place in which the hearing will be held.
- b) A warning that the parties may appear accompanied by an attorney but are not under an obligation to be represented.
- c) A quote of the legal or regulatory provision that authorizes the holding of a hearing.
- d) A warning of the measures that the Board of Appeals may take if a party does not appear at the hearing.
- e) A warning that the hearing may not be postponed except just cause.

VIII – EVIDENCE DISCOVERY MECHANISMS

The Rules of Civil Procedure relative to the discovery of evidence shall not be applicable to the procedures held before the Board of Appeals.

Any discovery of evidence in procedures subject to the application of these Regulations must conclude no later than twenty (20) work days after the appeal has been filed and will consist of a previous petition to that effect that may include:

1. Request and receive a list of witnesses that will be used during the hearing process.
2. Have available for examination and copying, at the expense of the petitioner, all material evidence that will be used during the administrative hearing, including sworn statements, video tapes, recording tapes, photographs or any other material evidence in possession of the parties.
3. Any sworn statement that is in possession of the parties and that is related to the facts in controversy and that is not going to be used during the administrative hearing.

IX – PRE HEARING CONFERENCE

The Chairperson of the Board of Appeals may discretionarily order the parties to meet within a period of time not greater than fifteen (15) days to identify and simplify the controversies to be adjudicated and to list and stipulate the facts that are not in controversy, as well as to dispose of the identification and admissibility of the pertinent documentary

evidence. At the meeting, the parties must indicate the witnesses that they intend to use in the hearing with a brief statement about the purpose, relevance and scope of his/her testimony. Once the meeting has been held, the parties shall jointly notify the Chairperson of the Board of Appeals of the agreements or results that were obtained within a term of ten days and prior to the hearing. An unjustified failure to comply with this order may give way to the dismissal of the claim or it being upheld.

X – SUMMONING OF WITNESSES

The Chairperson of the Board, or the Board itself, shall have the power to order the summoning of witnesses whenever the parties so require it. The summoning shall be through certified mail or personally with at least ten (10) days before of the holding of the hearing.

XI – POSTPONEMENT OF THE HEARING

The Chair of the Board may not postpone the previously scheduled hearing except when it requested in writing with a statement of the causes that justify said postponement request.

The postponement request must be submitted at least five days before the date set for the hearing. The party who requests the postponement must notify its request to all parties in the proceedings within the same five day term and in addition, it must offer another two alternate dates for holding the next hearing.

Once the postponement request, or a timely objection to it, have been filed on time and in a correct form, the Chairperson of the Board shall give it priority and shall dispose of the same before the scheduled hearing date which shall be notified to the parties immediately via the telephone, besides attesting to it in the corresponding order. Within the next five (5) days the Chairperson of the Board must reschedule the hearing that was postponed for the next date allowed by the calendar and that coincides with one of the dates presented by the parties; the hearing scheduled must be held within a period not greater than thirty (30) days.

If the request for postponement is not received on time or if it is not expressly held to be in order, the hearing will be held and the evidence present in the room will be received in keeping with the rules established by the Regulations.

If a duly summoned party does not appear at the Pre-Hearing Conference, or during any phase summoned by the Chairperson of the Board during the adjudicative period, the Chairperson of the Board may find that party in contempt and continue the procedure without its participation but he or she shall notify said party of his/her decision in writing, as well as of the foundations for the same and the review recourse that is available.

XII – PROCEDURE TO BE FOLLOWED DURING THE HEARING

- A. The hearing before the Board of Appeals will be a private one except an agreement to the contrary by the parties and the consent of the Chairperson.
- B. The parties may appear at the hearing by themselves or accompanied by an attorney or representative. Only one attorney per party will be allowed to

examine or cross examine a witness except that the Chairperson of the Board, at his or her discretion, provides to the contrary.

- C. The hearing before the Board of Appeals shall be recorded or typed.
- D. During the hearing before the Board of Appeals the presence of the witness will be allowed on those occasions in which they are contributing evidence and also that of any assistant appointed by the Chairperson of the Board to record the proceedings or the reporter.
- E. The Board of appeals will grant the parties the whatever time is necessary for a full disclosure of all the facts that are pertinent to the mater in controversy.
- F. The Rules of Evidence will not apply to the proceedings held before the Board of Appeals but the fundamental principles of evidence may be used whenever it is necessary to obtain a quick, economic and orderly solution of the proceeding.
- G. The parties will be given the right to examine and cross examine witnesses under oath, present evidence and argue the evidence that has been submitted.
- H. The Chairperson of the Board may exclude that evidence that is not pertinent, repetitive or inadmissible, pursuant to constitutional or legal foundations based on evidentiary privileges recognized by the Courts of Puerto Rico.

- I. The Board of Appeals may take official notice of all that could be the object of judicial notice by the Courts of justice.
- J. Once the hearing has ended, the Board may grant the parties a reasonable period of time in accordance with the complexity of the case so they present to it a legal writ, as well as proposals as to determinations of facts and/or conclusions as to the law.

XIII – PROCEDURES AFTER THE HEARING

- A. After the conclusion of the hearing, the Board of Appeals shall issue a resolution in which it will dictate the pertinent remedial orders. The resolution shall specify the proven facts and it will consider the legal conclusions separately.

The determinations as to the facts have to be substantiated by the evidence.

- B. As a norm with directive character, every case submitted before the Board of Appeals must be resolved within the following six (6) starting on the date the appeal was filed before the Board.
- C. The final order or resolution in the case submitted before the Board must be issued in writing. The Secretary of the Board shall notify its decision to the parties immediately.

- D. The parties will be advised of their right to request a reconsideration of the decision taken by the Board within the next twenty (20) days counted from the date that the notice of the resolution or order was filed in the record. In addition, they will be advised that the reconsideration motion is a jurisdictional character for purposes of petitioning a judicial review.
- E. If the parties present a motion for reconsideration, it must be considered within fifteen (15) days after it was presented.
- F. If the motion for reconsideration were to be denied immediately or no action is taken within the term of 15 days after it was presented, the term to petition a judicial review shall start to run again as of the notice of said denial or the beginning on the expiration of the 15 days, as the case might be.
- G. Whenever some determination is considered, the counting of the term for petitioning judicial review shall commence from the date in which a copy of the notice of the definitive resolution of the motion is filed in the record. Said resolution must be issued and filed in the record within 90 days after the filing of the motion.
- H. When no action is taken about the motion for reconsideration within 90 days after the filing of the motion accepted for resolution, the Board will loose jurisdiction over the same. In such cases, the term for petitioning a judicial review shall be counted commencing on the expiration of the 90 day period.

- I. In all cases, the final order or resolution shall be notified to the parties via certified mail with acknowledgment of receipt.
- J. Any party affected by the final determination of the Board may petition judicial review within a period of thirty (30) days as of the date in which a copy of the notice of the order or final decision of the Board is filed in the record.

XIV – GENERAL PROVISIONS

1. Starting on the date of effectiveness of these Regulations, and in order to consider any case to which it applies, any practice, use or custom that is incompatible with what is provided herein is hereby declared to be null and without any effect or validity at all.
2. These Regulations may be amended from time to time by the Board of Appeals pursuant to the applicable laws and established procedures.
3. The provisions of these Regulations are separable between themselves and the nullity of one or more of its provisions shall not affect the others that might be applicable independent from those that are declared null.
4. No provision of these Regulations shall be interpreted in a sense that limits, restricts or modifies in any way the power of the Board to adopt internal procedures to the effect of governing the manner, form and frequency with which its executives sessions will be conducted.

5. The Board shall have power to adjudicate, through the mechanism about orders to show cause and without a need to hold evidentiary hearings, those controversies susceptible to being resolved in that manner.
6. At his or her discretion, the Chairperson of the Board may consolidate the appeal resources in which there are intervening common matters as to the facts and the law. The consolidation will be done for the purpose of elucidating the appeals in a fair, quick and economic manner.
7. The Chairperson of the Board may decree the dismissal of the appeal recourse once ninety days have elapsed without the complainant taking any step at all with relation to the complaint. He or she may also decree the dismissal of the appeal recourse due to a lack of jurisdiction when the complainant has not complied with the terms for the processing of complaints in Section 12.4.8 of the Managerial Personnel Regulations; or when the required party has not expressed any allegation that amounts to a violation of the law or regulations in the appeal recourse that justifies the action object of the controversy.
8. Any writ shall be understood to be filed on time when the same is received in the office of the corresponding official on or before 4:30 P.M. of the last day of the computed period of time.

9. The Secretaryship of the Board of Appeals shall keep an official file for each adjudicative procedure that will include but will not be limited to:
- 1) the notifications of all the procedures;
 - 2) any order or interlocutory resolution dictated before the hearing;
 - 3) any motion, allegation, petition or requirement;
 - 4) evidence received or considered;
 - 5) a list of all subject matter of which official knowledge was taken
 - 6) proffer of proof, objections and resolutions related to them;
 - 7) proposed determinations of facts and conclusions as to the law;
 - 8) any order or resolution that is final, preliminary or being considered;
 - 9) a transcript of the proceedings that were held.

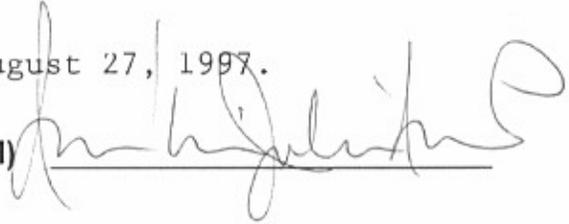
The file of the Board of Appeals shall constitute the exclusive basis for the determination that is taken during the adjudicative procedure under these Regulations and for an ulterior judicial review.

XV -- EFFECTIVENESS

These Regulations shall take effect thirty (30) days after it is filed in the Department of State in accordance with the provisions of Act Number 170 of August 12, 1988, as amended.

Approved in San Juan, Puerto Rico on August 27, 1997.

Presented by the Board of Appeals of MSA (ASEM)



Recommended by the Executive Director of MSA (ASEM)



Authorized by the Secretary of Health of Puerto Rico



Filed in the State Department on

October 31, 1997.