DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Practice and Procedure in Administrative Hearings

2) Code Citation: 77 Ill. Adm. Code 100

3)

Section Numbers:	Adopted Action:
100.2	Amendment
100.3	Amendment
100.4	Amendment
100.6	Amendment
100.7	Amendment
100.8	Amendment
100.10	Amendment
100.11	Amendment
100.12	Amendment
100.13	Amendment
100.14	Amendment
100.50	Amendment
100.55	Amendment

4) Statutory Authority: Section 5-10(a)(i) of the Illinois Administrative procedure Act [5 ILCS 100/5-10(a)(i)] and Sections 55 through 55.63 of the Civil Administrative Code of Illinois [20 ILCS 2310/55 through 55.63].

5) Effective Date of Amendments:

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rulemaking contain incorporations by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposed Amendments Published in Illinois Register: October 4, 2013; 37 Ill. Reg. 15608

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Difference(s) between proposal and final version:

The following changes were made in response to comments received during the first notice or public comment period:

1. In Section100.2, the definition of "Speaking Objections" was deleted.

2. In Section 100.2, a new subsections (b)(12) and (13) were added: "12) Illinois Supreme Court Rule 213: 'Written Interrogatories to Parties" (paragraph 213(i))'" and "13) Illinois Supreme Court Rule 214: 'Discovery of Documents, Objects, and Tangible Things'".

3. In Section 100.4(c), "This subsection shall not apply to attorneys representing the Department." was deleted.

4. In Section 100.7, subsection (a0(4) ("allegation of noncompliance") was reinstated.

5. In Section 100.7(A)(5), "sent" was stricken.

6. In Section100.7(e), "pleadings concerning all" and shall be freely allowed up until the Final Order is entered" were deleted. "Allegations of Noncompliance" was stricken; "Amendments to" was deleted; "A pleading may be freely amended at any time prior to the conclusion of a hearing." was added.

7. In Section100.8(i), "(2)" was deleted in the last sentence.

8. In Section 100.12(a), "of all" was reinstated.

9. In Section100.12(a), "or the Notice of Opportunity for an Administrative Hearing" was added after "Noncompliance".

10. In Section 100.12(f), ", in accordance with Illinois Supreme Court Rules 213 and 214," was added after "duty".

11. Section 100.(j), was rewritten as follows: "The Department shall not release or produce copies of any record containing the personal health information of any individual unless the requesting party possesses legal authority under a written power of attorney, certified copy of a court order, or other written HIPAA compliant authorization."

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12. In Section 100.12(k), "45 CFR 2" was deleted and "Section 1864 of the Social Security Act" was added.

13. In Section 100.13(f), "as against" was deleted and "binding" was added.

14. In Section 100.13(j)(2), "These shall include, but not be limited to, federal form 2567 and the notice of pre-hearing." was deleted.

15. In Section 100.13(k) "The documents may be used to prove the truth of the matters asserted in the documents." was deleted.

16. In Section 100.13(r), "During testimony or argument, speaking objections shall not be permitted, unless expressly invited by the administrative law judge." was deleted; all text after "objection" (beginning with ", such as") was deleted and a period was added after "objection".

17. In Section 100.14(a) "subpoenas shall be issue to any" was deleted and "shall be subject to a subpoena" was added after "employee".

18. In Section 100.14(f), "formal action" was deleted and "contested case" was added in the first sentence; "formal action against the party to whom the information pertains" was deleted in the second sentence and "a contested case" was added.

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The following changes were made in response to comments and suggestions of JCAR:

1. In Section100.2, the references to Supreme Court rules 213 and 214 and the incorporation of 45 CFR 2 were deleted; subsection (d) was deleted.

2. In Section 100.4(b), "or attend" was deleted.

3. In Section 100.6, a new subsection (d) was added and subsequent subsections were re-labeled.

4. Section 100.12(f) was reinstated and new language was deleted.

5. Section 100.12(g) was reinstated and new language was deleted.

6. Section 100.12(j) was amended as follows: "Copies of any record containing the personal health information of any individual shall not be shared with a third party, as

referenced in Section 100.3(b), unless that third party possesses legal authority to access personal health information under a written power of attorney, certified copy of a court order, or other written HIPAA compliant authorization."

7. Section 100.12(k) was deleted.

8. In Section 100.13(j)(2), "and" and "including the Department" were deleted.

9. Subsection 100.13(n) was reinstated.

10. Subsection 100.14(f) was deleted.

In addition, various typographical, grammatical, and form changes were made in response to the comments from JCAR.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

13) Will this rulemaking replace an emergency rule currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rulemaking: This rulemaking updates and clarifies the Department's Practice and Procedure in Administrative Hearings. Updates include aligning appearance, discovery, and subpoena provisions with Illinois Supreme Court Rules, the Illinois Code of Civil Procedure, and federal regulations. The rulemaking clarifies rules concerning stipulations, objections, filing answers and requesting a hearing; streamlines use of official documents and records; and allocates costs for hearing transcripts. Procedures under the Smoke Free Illinois Act are also updated.

16) Information and questions regarding these adopted amendments shall be directed to:

Susan Meister
Division of Legal Services
Department of Public Health
535 West Jefferson, 5th Floor
Springfield, Illinois 62761

(217)782-2043

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

e-mail: dph.rules@illinois.gov

The full text of the adopted amendments begins on the next page:

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER a: GENERAL RULES

PART 100
PRACTICE AND PROCEDURE IN ADMINISTRATIVE HEARINGS

SUBPART A: APPLICABILITY AND DEFINITIONS

Section
100.1 Authority and Applicability
100.2 Definitions and Incorporated and Referenced Materials

SUBPART B: GENERAL HEARINGS

Section
100.3 Parties to Hearings
100.4 Appearance – Right to Counsel
100.5 Emergency Action
100.6 Hearings Requested by Complainants Pursuant to Section 3-702 of the Nursing Home Care Act or the ID/DD Community Care Act
100.7 Initiation of a Contested Case
100.8 Motions
100.9 Form of Papers
100.10 Service
100.11 Prehearing Conferences
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100.13 Hearings
100.14 Subpoenas
100.15 Administrative Law Judge's Report and Recommendations
100.16 Proposal for Decision (Repealed)
100.17 Final Orders
100.18 Records of Proceedings
100.19 Miscellaneous

SUBPART C: ADMINISTRATIVE HEARINGS UNDER THE SMOKE FREE ILLINOIS ACT

Section
100.25 Initiation of a Hearing

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

AUTHORITY: Implementing and authorized by Section 5-10(a)(i) of the Illinois Administrative Procedure Act [5 ILCS 100/5-10(a)(i)] and Sections 55 through 55.63 of the Civil Administrative Code of Illinois [20 ILCS 2310/55 through 55.63].

SOURCE: Adopted at 2 Ill. Reg. 38, p. 91, effective September 23, 1978; amended and codified at 4 Ill. Reg. 43, p. 127, effective October 14, 1980; amended at 5 Ill. Reg. 14167, effective December 9, 1981; amended at 6 Ill. Reg. 2235, effective February 2, 1982; amended at 11 Ill. Reg. 1937, effective January 9, 1987; amended at 18 Ill. Reg. 5980, effective April 1, 1994; amended at 21 Ill. Reg. 3208, effective March 3, 1997; amended at 34 Ill. Reg. 11768, effective July 30, 2010; amended at 35 Ill. Reg. 7701, effective April 29, 2011; amended at 38 Ill. Reg. _____, effective _____.

SUBPART A: APPLICABILITY AND DEFINITIONS

Section 100.2 Definitions and Incorporated and Referenced Materials

a) Definitions

"Administrative law judge" or "hearing officer" shall mean any attorney licensed to practice law in Illinois, appointed by the Director to preside at an administrative hearing. For the purpose of hearings conducted pursuant to Sections 2-110(d) and 3-410 of the Nursing Home Care Act (NHCA), or the ID/DD Community Care Act (ID/DD Act), the Department's Regional Health Officer in the region in which the facility is located may act as administrative law judge.

"Alleged violator" shall mean a person or entity issued a citation under the Smoke Free Illinois Act.

"Citation" shall mean a document alleging a violation of the Smoke Free Illinois

Act.

"Contested case" shall have the meaning ascribed to it in Section 1-30 of the IAPA and shall include hearings pursuant to the Smoke Free Illinois Act (SFIA).

"Default" or "default judgment" shall mean a written order entered after due process requirements of adequate notice and opportunity for hearing have been provided and the respondent fails to appear, defend, or answer; or a written order entered as an ultimate sanction for improper conduct. This order is considered a final order.

"Department" shall mean the Illinois Department of Public Health.

"Director" shall mean the Director or the designee of the Director of the Department of Public Health.

"Enforcing agency" shall be as described in Section 40 of the Smoke Free Illinois Act.

"Final order" or "final decision" shall mean a written order that disposes of a case or action, either with or without the imposition of a penalty, sanction, or other action.

"License" shall have the meaning ascribed to it in Section 1-35 of the IAPA.

"Licensing" shall have the meaning ascribed to it in Section 1-40 of the IAPA.

~~"NHCA" shall mean the Nursing Home Care Act [210 ILCS 45].~~

"Person" shall have the meaning ascribed to it in Section 1-60 of the IAPA.

b) Referenced Materials
The following federal laws, State laws and rules, and Illinois Supreme Court Rules are referenced in this Part:

1) Social Security Act (42 USC 1395 and 1396)

2) Health Insurance Portability and Accountability Act of 1996 (HIPAA) (110 USC 1936)

3~~2~~) Illinois Administrative Procedure Act ~~(IAPA)~~ [5 ILCS 100]

4~~3~~) Nursing Home Care Act [210 ILCS 45]

5) ID/DD Community Care Act [210 ILCS 47]

6~~4~~) Smoke Free Illinois Act (SFIA) [410 ILCS 82]

7~~5~~) Code of Civil Procedure [735 ILCS 5]

8~~6~~) Administrative Review Law [735 ILCS 5/Art. III]

9~~7~~) Health Facilities and Services Review Board: Health Facilities Planning Procedural Rules (77 Ill. Adm. Code 1130)

10~~8~~) Illinois Supreme Court Rule 216: Admission of Fact or of Genuineness of Documents

11) Illinois Supreme Court Rule 13: Appearances – Time to Plead – Withdrawal

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART B: GENERAL HEARINGS

Section 100.3 Parties to Hearings

a) Except for hearings conducted pursuant to the NHCA or the ID/DD Act, the parties to an administrative hearing before the Department are the Department (as Complainant) and the Respondent.

b) For hearings conducted pursuant to the NHCA or the ID/DD Act:

1) In a Complainant's hearing (Section 3-702(g) of the NHCA or the ID/DD Act), the parties are the Department and the Complainant. The facility that was investigated may participate as a third party (see Section 100.6 of this Part).

2) In a denial of access hearing (Section 2-110(d) of the NHCA or the ID/DD Act), the parties are the person who requested a hearing based on denial of

access to a facility and the facility.

3) In an involuntary transfer/discharge hearing, the parties are the resident who is to be transferred/discharged and the facility.

4) In all other NHCA or ID/DD Act hearings, the parties are the Department (as Complainant) and facility (as Respondent). If the action resulted from a complaint filed with the Department, the person who filed the complaint may participate as a third party.

5) A third party shall file an appearance with the administrative law judge on or before the date of the prehearing conference, if one is scheduled, or prior to the hearing date if no prehearing conference was scheduled.

c) A Respondent or alleged violator is a person or entity against whom a complaint or petition is filed or to whom a citation or notice of an opportunity for hearing is directed.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 100.4 Appearance – Right to Counsel

a) Any party to a proceeding may appear and be represented by a private attorney authorized to practice law in the State of Illinois at his or her own cost. Any individual party may waive this right and represent himself or herself. For hearings conducted pursuant to Sections 2-100(d) and 3-410 of the NHCA and the ID/DD Act, a visitor or resident shall have the option of being represented by a non-attorney of his or her choosing. A corporation, a limited liability company, partnership, association or certified local health department shall appear and be represented only by an attorney authorized to practice law in the State of Illinois. A shareholder, corporate officer, employee, or member of the board of directors may not appear or represent a corporation or association unless that individual is authorized to practice law in the State of Illinois.

b) All persons appearing in proceedings before the Department, including a visitor's or resident's non-attorney representative, shall conform to the standards of ethical conduct required of attorneys before the courts of Illinois. If any person or attorney does not conform to those standards, the administrative law judge may decline to permit that person to appear in any proceeding.

c) Any attorney or other person appearing before the Department as a representative of a visitor or resident shall file an Appearance form containing: the name of the party represented; the name, address and telephone number of the attorney or representative; an affirmative statement that the attorney is or is not duly licensed in the State of Illinois; and the written signature of the attorney or representative.

d) Special appearances are not recognized. The initial appearance, regardless of form, is deemed a general appearance.

e) An attorney may withdraw his or her appearance and/or representation only upon motion and appropriate ruling by the administrative law judge in accordance with Illinois Supreme Court Rule 13. However, attorneys may be substituted without motion upon notice to all parties and the administrative law judge if the substitution will not delay the proceedings, a statement to that effect is contained in the notice, and a substitute Appearance form is filed concurrently with the notice.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 100.6 Hearings Requested by Complainants Pursuant to Section 3-702 of the Nursing Home Care Act or the ID/DD Community Care Act

Pursuant to Section 3-702(g) of the NHCA and the ID/DD Act, *a complainant who is dissatisfied with the determination or investigation* of his or her complaint *by the Department may request a hearing*. (Section 3-702(g) of the NHCA and the ID/DD Act) Any complainant requesting a hearing shall be deemed to have consented in writing to disclosure of his or her name.

a) The parties to administrative hearing pursuant to this Section are the Department and the Complainant. *The facility shall be given notice of any such hearing and may participate in the hearing as a* third *party* (Section 3-702(g) of the NHCA and the ID/DD Act). A request to participate as a third party must be filed in accordance with Section 100.3(b)(5) of this Part.

b) For the purposes of this Section, a Complainant is an individual who has filed a complaint pursuant to the NHCA or the ID/DD Act. If the individual filing the complaint indicates that she or he is acting as the agent of an organization or another individual, and so requests, the organization or other individual will be the Complainant for the purposes of this Section. In that case, the individual who acted as agent for the organization or other individual will be a "referring agent". Unless objected to by the Complainant, the referring agent shall be entitled to

receive Notice of Complaint Determination and any request for hearing made pursuant to this Part.

c) In accordance with Sections 3-703 through 3-712 of the NHCA and the ID/DD Act, the Director shall designate an administrative law judge to conduct hearings requested by dissatisfied Complainants. All hearings shall be conducted pursuant to the provisions of this Part.

d) The Department shall not release or produce copies of any record containing the personal health information of any individual to a Complainant, as defined in this Section, unless the Complainant possesses legal authority under a written power of attorney, certified copy of a court order, or other written HIPAA compliant authorization.

e~~d~~) Dissatisfied Complainants pursuant to this Section shall have the opportunity to contest the adequacy of the Department's investigation and its determination as to whether the complaint was valid, invalid or undetermined and also the Department's determination as to whether to issue any violation as a result of the determination. Whenever "determination" is used in this Section, it shall include any investigation resulting in the determination.

f~~e~~) Dissatisfied Complainants pursuant to this Section do not have the opportunity to contest any other determinations or decisions of the Department.

g~~f~~) Nothing contained in this Section shall be deemed to entitle a dissatisfied Complainant to additional hearings or to a rehearing of a case that has already been the subject of a formal administrative hearing or a Final Order.

h~~g~~) Complainants pursuant to this Section shall carry the burden to prove, by a preponderance of the evidence, that the aforesaid determinations of the Department were improper.

i~~h~~) At the conclusion of the hearing, the administrative law judge shall prepare a report in accordance with Section 100.15, and make a recommendation to the Director specifying whether the complaint should be reinvestigated and/or any invalid or undetermined finding should be changed to a valid finding or the Department should reconsider the failure to cite a facility with any violation.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 100.7 Initiation of a Contested Case

a) In contested cases, except those held pursuant to Section 100.6, the Department shall serve on the Respondent a Notice of Opportunity for an Administrative Hearing, which shall contain:

1) *a statement of the time, place and nature of the* action;

2) *a statement of the legal authority and jurisdiction under which the hearing is to be held*;

3) *a reference to the particular Sections of the* applicable *substantive and procedural statutes and rules;*

4) allegations of noncompliance;

5) a statement of the procedure for requesting an administrative hearing (see Section 10-25 of the IAPA), including a date by which the request must be received by the Department, which must be ~~sent~~ at least 10 days after the Notice is mailed or personally served;

6) unless the case is brought pursuant to Title XVIII (health insurance for the aged and disabled) or XIX (medical assistance) of the Social Security Act, or the NHCA or the ID/DD Act, a statement setting forth the requirement of an Answer, pursuant to subsection (d) of this Section; and

7) *except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted, the consequences of a failure to respond, and the official file or reference number.* (Section 10-25 of the IAPA)

b) A person who receives a Notice of an Opportunity for an Administrative Hearing must submit a written request for a hearing to the Department. The request is to be sent to the Department at the address stated in the Notice and must be received by the date set forth in the Notice. Failure to comply with this Section shall constitute a waiver of the person's right to an administrative hearing.

c) Upon receipt of a timely written request for hearing, the Department shall issue a Notice of Hearing or Prehearing Conference. *The Notice of Hearing or Prehearing Conference shall contain:*

1) *a statement of the time, place, and nature of the hearing;*

2) *a statement of the legal authority and jurisdiction under which the hearing is to be held;* and

3) *the names and mailing addresses of the administrative law judge, all parties, and all other persons to whom the agency gives notice of the hearing, unless otherwise confidential by law.* (Section 10-25 of the IAPA)

d) Unless the case is brought pursuant to Title XVIII or XIX of the Social Security Act, ~~or~~ the NHCA~~,~~ or the ID/DD Act, a written Answer to the Allegations of Noncompliance shall be filed by a Respondent. The Answer must be served on all parties within 20 days after receipt of the notice alleging noncompliance. However, if the Respondent fails to submit a timely written request for hearing, the Respondent waives its right to Answer. If a Respondent fails to file a timely~~an~~ Answer, each alleged violation of a statute or Department rule by the Respondent shall be deemed to have been judicially admitted and, therefore, no longer subject to dispute by the Respondent. If the Respondent has insufficient knowledge of the facts to form a belief as to the truth of the allegation, the Respondent may so state with an affidavit of insufficient knowledge. If the Respondent wishes to raise defenses that are affirmative in nature or would be likely to take the Department by surprise, the Respondent must do so in the Answer. If Affirmative Defenses are filed within an Answer, the Department shall reply to the Affirmative Defenses within 20 days after receipt of the Answer.

e) A pleading may be freely amended at any time prior to the conclusion of a hearing. Amendments to ~~the Allegations of Noncompliance and~~ Answers may be allowed upon proper motion at any time during the pendency of the proceedings on ~~such~~ terms that are~~as shall be~~ just and reasonable. However, a prior Answer shall be admissible and may be used to cross-examine the person preparing or verifying the prior Answer.

f) All written documents provided for under this Section shall be liberally construed with a view toward doing substantial justice between the parties.

g) Venue shall be the location designated in the Notice of Administrative Hearing. Venue may be moved to another location upon stipulation by all parties or upon a

showing to and a finding by the administrative law judge that exceptional circumstances ~~exist, including, but not limited to, age, infirmity or inability to travel, that~~ make it desirable, in the interest of justice, to allow a change of venue. Exceptional circumstances include, but are not limited to, age, infirmity or inability to travel due to ill health. However, mere inconvenience shall not constitute grounds for a change in venue.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 100.8 Motions

a) Motions, unless made during a hearing, shall be made in writing and shall set forth the relief or order sought and the legal authority for the action requested. Except as otherwise provided in this Part or by a specific statute, motions may seek any relief or order recognized in the Code of Civil Procedure and Rules of the Illinois Supreme Court, and shall include a reference to the applicable Section of the Code or Rules. Motions based on a matter that does not appear of record shall be supported by affidavit.

b) Written motions shall be titled as to the party making the motion and the nature of the relief sought. The title shall be in capital letters and shall be placed either below the caption or to the right of the caption beneath the docket number. No motion shall be identically titled with any other motion. Examples of properly-titled motions: Respondent's Motion to Dismiss, Respondent's Second Motion to Dismiss.

c) Motions directed at~~to~~ the pleadings, if not raised at the earliest opportunity, shall be deemed waived. ~~Motions to the pleadings shall not be granted if the pleadings do not conform to Section 100.7.~~

d) The administrative law judge shall not have the authority to dismiss, postpone, vacate, or overturn an Order or Notice issued by the Director, but may make a recommendation to the Director at any time that circumstances merit such a recommendation.

e) Motions to continue a hearing~~for a continuance~~ shall be granted only for good cause shown. Motions for a continuance shall be in writing and filed at least five working days prior to the hearing. Motions for a continuance shall be made immediately when the party learns that a continuance is needed. Statements as to when the party learned that a continuance was needed, steps that were taken to

avoid the continuance, and the current reasons the continuance is needed shall be contained in the motion. After one continuance has been granted to a party, additional continuances may be granted to that party only if:

1) a hearing on the issue of whether to grant the continuance has been held and the administrative law judge finds that the moving party has presented sufficient evidence showing entitlement to another continuance; or

2) there is an emergency; or

3) all parties so stipulate.

f) Whenever possible, as much of the hearing as possible shall be completed, and only those matters that must be continued shall be continued.

g) If there is an unforeseen emergency, motions to continue a hearing~~for a continuance~~ may be made by telephone rather than in writing. Motions by telephone shall be made through a conference call involving the administrative law judge and all parties and shall be confirmed within three business days by the filing of a written motion.

h) Responses shall be in writing unless made at a prehearing conference or a hearing.

i) On a motion to disqualify an administrative law judge made by any party, the administrative law judge who is the subject of the motion shall determine whether he or she should be disqualified on the basis of *bias or conflict of interest*, and shall remove himself or herself if a determination is made that bias or a conflict of interest exists. If the motion is granted, the Director shall appoint a new administrative law judge. A motion for the disqualification of an administrative law judge shall be based upon the alleged bias or conflict of interest of the administrative law judge. *An adverse ruling, in and of itself, shall not constitute bias or conflict of interest.* (Section 10-30 of the IAPA) Motions for substitution of an administrative law judge pursuant to Section 2-1001(a) of the Code of Civil Procedure shall not be permitted.

j) The following shall constitute bias or conflict of interest for the purpose of disqualification under subsection (i):

1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning

the proceeding;

2) The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during that association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

3) The judge was, within the preceding three years, associated in the private practice of law with any law firm or lawyer currently representing any party in the controversy (provided that referral of cases when no monetary interest was retained shall not be deemed an association within the meaning of this subsection (j)) or, for a period of seven years following the last date on which the judge represented any party to the controversy while the judge was an attorney engaged in the private practice of law;

4) The judge knows that any of the following persons has an economic interest in the subject matter in controversy or in a party to the proceeding, or has any other more than minimal interest that could be substantially affected by the proceeding:

A) the judge individually;

B) a fiduciary;

C) the judge's spouse, parent or child, wherever residing; or

D) any other member of the judge's family residing in the judge's household.

k) Demands for a Bill of Particulars shall not be allowed.

l) Requests for an extension of time other than to continue a hearing shall be in writing and may be granted for good cause shown.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 100.10 Service

a) Notices under Section 100.7(a) shall be served either personally or by certified mail upon all parties (including complainants under the NHCA, when applicable)

or their agents appointed to receive service of process unless the applicable licensing statute requires a different form of service, in which case service shall conform to the statute.

b) Service to the last official address of a party or agent provided to the Department by a party shall be considered in compliance with this Section. Notices and citations sent by certified mail that have been returned to the Department as unclaimed or refused by the addressee shall be considered served. For purposes of this Section, the "last official address" shall be: the address listed on the most recent application submitted to the Department, unless the Department has been subsequently notified in writing of a change of address. For certified nursing assistants and habilitation aides, the "most recent application" shall be the information submitted by the training program or testing entity that qualified the individual to be entered on the registry.

c) Service of pleadings or motions under this Section, unless otherwise provided for in this Section, shall be made by delivering in person or by depositing in the United States Mail, properly addressed with postage prepaid, one copy to each party to the proceedings. When any party or parties have appeared by attorney, service upon the attorney shall be deemed service upon the party or parties. All pleading or motions under this Section shall also be served upon the administrative law judge.

d) Proof of service under subsection (b) ~~of this Section~~ shall be by either:

1) certificate of attorney; or~~,~~

2) affidavit or verification by certification~~acknowledgment~~.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 100.11 Prehearing Conferences

a) A telephonic prehearing conference may be scheduled by the administrative law judge or Department or as a result of a request pursuant to subsection (b) ~~of this Section~~. This conference shall be held prior to the date of hearing and shall be for the purpose of considering:

1) the simplification of the issues;

2) amendments to the pleadings;

3) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;

4) the limitation of the number of expert witnesses; and

5) any other matters that may aid in the disposition of the hearing.

b) In any proceedings under this Section in which the Department has not scheduled a prehearing conference, any party to the proceedings may request the scheduling of a prehearing conference. The request shall be made in writing and received by the administrative law judge at least five days prior to the scheduled date of hearing. The requesting party shall serve all other parties to the proceedings with a copy of the request.

c) Upon the receipt of a request for a prehearing conference in accordance with subsection (b) ~~of this Section~~, the administrative law judge shall schedule the prehearing conference and notify all parties of the date, time and place of the conference.

d) After a prehearing conference, the administrative law judge shall make a written report that recites any action taken by the administrative law judge and any agreements made by the parties as to any of the matters considered.

e) Any party may request additional prehearing conferences. The administrative law judge may deny or grant such a request, based on the nature of the motion.

f) A certified stenographic reporter (court reporter) will not be present at a prehearing conference unless one of the parties to the proceeding requests the Department to make arrangements for a court reporter to be present. The request shall be received by the Department at least two working days in advance of the scheduled prehearing conference. The party requesting the presence of the court report shall be billed directly for the attendance fee of the reporter.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 100.12 Discovery

a) Prior to or at the prehearing conference, the Department shall provide all parties

with a copy of all of the Department's inspection or investigative reports resulting in~~relating to~~ the Allegations of Noncompliance or the Notice of Opportunity for an Administrative Hearing. If no pre-hearing conference is held, the Department shall provide copies of the investigative reports prior to the hearing.

b) At least 21 days prior to the commencement of the hearing, each party shall provide all other parties with a copy of any document that it may offer into evidence. This subsection shall not require any party to again provide copies of those documents already provided by the Department under subsection (a).

c) At least 21 days prior to the commencement of the hearing, each party shall provide all other parties with a list containing the name and address of any witness who may be called to testify.

d) All parties shall be entitled to any exculpatory evidence in the Department's possession that tends to support the Respondent's position or that would impeach the credibility of a Department witness.

e) The ~~Upon a written request by the Department, at any time after a notice or hearing request is filed, or at any stage of the hearing, the~~ Respondent shall ~~be required to~~ produce ~~within seven days~~ documents, books, records or other evidence that relates directly to conduct of the business entity or other subject of the administrative hearing within seven days upon a written request by the Department.

f) All parties shall be under a continuing obligation to promptly update requested discovery until the hearing is concluded without the necessity for further or additional requests.

g) There shall be no depositions for discovery purposes or interrogatories allowed in any proceedings brought pursuant to this Part, except as agreed to by the parties.

h) Requests to Admit Facts and Genuineness of Documents shall be allowed in accordance with Supreme Court Rule 216.

i) Nothing contained in this Section shall preclude the parties from agreeing to the voluntary exchange of more information than is required.

j) Copies of any record containing the personal health information of any individual shall not be shared with a third party (see Section 100.3(b)), unless that third party

possesses legal authority to access personal health information under a written power of attorney, certified copy of a court order or other written HIPAA compliant authorization.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 100.13 Hearings

a) All hearings conducted in any proceedings shall be open to the public.

b) Hearings will be conducted by the Director or by an administrative law judge appointed by the Director. If the Director conducts the hearings, any reference in this Section to the administrative law judge shall be read to refer to the Director.

c) The administrative law judge shall have the authority to conduct a hearing, take all necessary actions to avoid delay, maintain order, ensure the development of a clear and complete record and set reasonable limits on the scope of testimony or argument. He or she shall also have the authority to:~~conduct hearings;~~ administer oaths and ensure that all witnesses are duly sworn; issue subpoenas; hold informal conferences for the settlement, simplification~~,~~ or definition of issues; dispose of procedural requests, motions and similar matters; continue the hearing from time to time when necessary; examine witnesses; and rule upon the admissibility of evidence.

d) The administrative law judge shall direct all parties to enter their appearances on the record.

e) Written opening arguments and written closing arguments shall not be permitted unless all parties so stipulate.

f) Parties may by stipulation agree upon any facts involved in the proceeding. The facts stipulated shall be considered as evidence in the proceeding. The administrative law judge shall accept all stipulations as conclusive fact binding the stipulating parties, unless he or she makes a finding on the record that the stipulation is made in bad faith, together with the basis of the bad faith determination. Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order, default or motion.

g) At any stage of the hearing or after all parties have completed the presentation of their evidence, the administrative law judge may call for further testimony,

subject to cross-examination by the parties.

h) *The rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. Evidence not admissible under* those *rules of evidence may be admitted, however, (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent* persons *in the conduct of their affairs.* Immaterial, irrelevant or unduly repetitious material shall be excluded. A copy of the whole or any part of an admissible book, record, paper or memorandum of the Department that is made by photostatic or other method of accurate and permanent reproduction shall be admitted in evidence at the hearing without further proof of the accuracy of the copy. *Objections to evidentiary offers may be made and shall be noted in the record.* (Section 10-40(a) of the IAPA)

i) Official *notice may be taken of matters of which the circuit courts of this State may take judicial notice. In addition,* official *notice may be taken of generally recognized technical or scientific facts within the* Department's *specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The* Department's *experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence.* (Section 10-40(c) of the IAPA)

j) A party may offer into evidence any of the following documents without foundation or other proof, provided that a copy of the document has been timely provided to all other parties in accordance with Section 100.12(b):

1) records and reports of health care facilities, doctors, nurses, physical therapists or other health care providers; however, these records and reports shall not include affidavits or other documents specifically prepared for litigation;

2) investigation reports from governmental law enforcement agencies;

3) the enforcing agency's inspection or investigative reports produced pursuant to Section 100.12(a).

k) For good cause shown, including, but not limited to, age, infirmity or inability to travel due to ill health, evidentiary depositions shall be allowed.

l) Absent a showing of good cause, no document shall be offered into evidence that was not disclosed in accordance with the requirements of Section 100.12(b), and no witness shall testify whose name was not provided pursuant to Section 100.12(c). For purposes of this subsection, a showing of good cause shall mean that a party, through no fault of its own, did not have knowledge of a document to be offered into evidence or the name of a witness within the timeframe necessary for compliance with Section 100.12(b) and (c).

m) The Department will arrange for a certified stenographic reporter (court reporter) to make a stenographic record of the hearing in all administrative hearings under this Part. Any person may make arrangements to obtain a copy of the stenographic record from the reporter. The Department reserves the right to employ a certified stenographic reporter. ~~A copy of any stenographic record made by a Department employee may be purchased from the Department at a cost of half the actual cost to the Department.~~ There shall be no audio or video taping apart from any made by the certified stenographic reporter employed for those purposes by the Department without the express consent of the administrative law judge and all parties to the hearing. Unless an applicable statute expressly provides otherwise, the actual costs of the stenographic reporter's attendance and the transcript or transcripts shall be shared equally among the parties whenever a Respondent requests review of a Department decision by the circuit court. The Respondent shall provide payment prior to the Department's transmission of the transcript to the Circuit Court

n) Corrections to the transcript of the record may be made by the Director or administrative law judge.

o) If a party, or any person at the instance of or in collusion with a party, violates any ruling of the administrative law judge, the administrative law judge, on motion, may enter such orders as are just, including, among others, the following:

1) that further proceedings be stayed until the order or rule is complied with;

2) that the offending party be barred from filing any other pleadings relating to any issue to which the refusal or failure relates;

3) that the offending party be barred from maintaining any particular claim or defense relating to that issue;

4) that a witness be barred from testifying concerning that issue;

5) that, as to claims or defenses asserted in any pleading to which that issue is material, an order of default be entered against the offending party or that his or her pleading be dismissed without prejudice; or

6) that any portion of the offending party's pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to the issue.

p) At any time, the administrative law judge may order the removal of any person from the hearing room who is creating a disturbance, whether by physical actions, profanity or otherwise engaging in conduct that disrupts the hearing.

q) At the request of any party, the administrative law judge may exclude all witnesses from the hearing room, except that each party or a representative of a party, in addition to legal counsel, shall be allowed to remain.

r) All objections shall be raised using a short and concise statement of the basis for the objection.

s) The administrative law judge shall have the authority to conduct hearings on motions and other matters by telephonic or other electronic means, so long as all parties of record are afforded the option to attend using a similar electronic method. If the administrative law judge permits the use of electronic means, the administrative law judge and all parties may choose to participate from any location. However, if a controlling statute mandates the location of a hearing, all parties shall be afforded the option to attend from a statutorily mandated location.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 100.14 Subpoenas

a) Subpoenas requiring the attendance and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of books, papers, records or memoranda, may be issued by the Director or the administrative law judge upon his or her own motion or upon the written request of any party upon a showing of the relevancy of the request to the issues in the hearing. For good cause shown, the Director or the administrative law judge may deny or modify the request for subpoenas. Alternatively, an attorney of record may issue subpoenas pursuant to Section 2-1101 of the Code of Civil Procedure. Copies of the subpoenas and any

documents obtained by subpoenas duces tecum shall be promptly served on all other parties. No Department employee shall be subject to a subpoena without prior express authorization of the administrative law judge.

b) Subpoenas issued by the Director or the administrative law judge upon the request of a party to the proceeding shall be delivered to the requesting party, who shall be responsible for serving the subpoenas. Subpoenas shall be served personally or by certified mail at least seven days before the date on which appearance or production is required. Copies of the subpoenas and any documents obtained by subpoenas duces tecum shall be promptly served on all other parties.

c) The witness fee for attendance and travel shall be the same as the fee of witnesses before the circuit courts of this State. When a witness is subpoenaed by the Director, or by the administrative law judge upon his or her own motion or upon the request of the Department, the witness fee shall be paid in the same manner as other expenses of the agency.

d) The appearance at the hearing of a party, or a person who at the time of the hearing is an officer, director or employee of a party, may be required by serving the party with a notice designating the person who is required to appear at least seven days before the date on which appearance is required.

e) Subpoenas shall be enforced in the same manner as subpoenas issued by the circuit courts of this State.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART C: ADMINISTRATIVE HEARINGS UNDER THE SMOKE FREE ILLINOIS ACT

Section 100.50 Motions

a) Motions, unless made during a hearing, shall be made in writing and shall set forth the relief or order sought and the legal authority for the action requested. Except as otherwise provided in this Part or by specific statute, motions may seek any relief or order recognized in the Code of Civil Procedure and Rules of the Illinois Supreme Court, and shall include a reference to the applicable Section of the Code or Rules. Motions based on a matter that does not appear of record shall be supported by affidavit.

b~~a~~) All motions in cases brought under the SFIA, except those based on unforeseen or emergency circumstances, shall be made in writing. An opposing party shall have 28 days after any motion is served in which to serve a written response. The administrative law judge shall then rule on the motion. Oral arguments on motions will not be permitted unless all parties stipulate, in which situation the administrative law judge shall have the discretion to hear oral arguments.

c~~b~~) Motions shall be served by delivery in person or by deposit in the United States Mail, properly addressed with postage prepaid, one copy to each party. Service upon the party's attorney shall be deemed service upon the party. Motions shall also be served upon the administrative law judge.

d~~c~~) The title of the written motion shall include the name of the party making the motion and the action. The title shall be in capital letters and shall be placed either below the caption or to the right of the caption beneath the docket number. No motion shall be identically titled with any other motion. Examples of properly-titled motions: Respondent's Motion to Dismiss, Respondent's Second Motion to Dismiss.

e~~d~~) Motions or objections attacking the pleadings, jurisdiction or constitutionality, if not raised before the first pre-hearing conference, or if no pre-hearing conference is scheduled, no later than 10 days before the beginning of the hearing, shall be deemed waived. Motions to the pleadings shall not be granted unless the motion conforms to Section 100.8~~100.7 of this Part~~.

f~~e~~) Motions for a continuance shall be made immediately when the party learns that a continuance is needed. Motions for a continuance shall be in writing, be filed more than five business days before the pre-hearing or hearing, and shall be granted only for good cause shown. Statements as to when the party learned that a continuance was needed, steps that were taken to avoid the continuance, and the current reasons the continuance is needed shall be contained in the motion. After one continuance has been granted to a party, additional continuances may be granted to that party only if:

1) The administrative law judge finds that the moving party has presented sufficient evidence showing entitlement to another continuance; or

2) There is an emergency; or

3) All parties agree.

gf) If there is an unforeseen emergency, motions for a continuance may be made by telephone rather than in writing. Motions by telephone shall be made through a conference call involving the administrative law judge and all parties and shall be confirmed within three business days by filing a written motion.

hg) Whenever possible, as much of the hearing as possible shall be completed, and only those matters that must be continued shall be continued.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 100.55 Discovery

a) General discovery (depositions, interrogatories, or requests to produce) shall not be permitted in SFIA cases.

b) Disclosure of the following shall be required:

1) At least 21 days prior to the commencement of the hearing, each party shall provide all other parties with a copy of any document that it may offer into evidence. This subsection (b)(1) shall not require any party to again provide copies of documents already provided.

2) At least 21 days prior to the commencement of the hearing, each party shall provide all other parties with a list containing the name and address of any witness who may be called to testify.

3) The alleged violator shall be entitled to any exculpatory evidence in the enforcing agency's possession that tends to support the alleged violator's position or that might impeach the credibility of an enforcing agency witness.

c) All parties shall be under a continuing obligation to promptly update requested discovery until the hearing is concluded without the necessity for further or additional requests.

(Source: Amended at 38 Ill. Reg. _____, effective _____)