

Appeal Procedures for Local Boards of Health

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Procedures for Local

Boards of Health—G. S. 130A-34(b)-(d)*

(b) **Appeals** concerning the enforcement of rules adopted by the local board of health and concerning the imposition of administrative penalties by a local health director **shall be conducted in accordance with this subsection and subsections (c) and (d) of this section.** The aggrieved person shall give **written notice of appeal** to the local health director **within 30 days** of the challenged action. The notice shall contain the name and address of the aggrieved person, a description of the challenged action and a statement of the reasons why the challenged action is incorrect. **Upon filing of the notice,**

*Local procedures under G.S. 130A-34 are similar to those for state agencies under that statute and under the Administrative Procedure Act, G.S. Chapter 150B.

Procedures for Local Boards of Health (continued)

the local health director shall, within five working days, transmit to the local board of health the notice of appeal and the papers and materials upon which the challenged action was taken.

(c) **The local board of health shall hold a hearing within 15 days** of the receipt of the notice of appeal. **The board shall give the person not less than 10 days' notice** of the date, time and place of the hearing. On appeal, the board shall have authority to affirm, modify or reverse the challenged action. **The local board of health shall issue a written decision based on the evidence presented** at the hearing. The decision shall contain **a concise statement of the reasons** for the decision.

(d) **A person who wishes to contest a decision** of the local board of health under subsection (b) of this section **shall have a right of appeal to the district court** having jurisdiction **within 30 days after the date of the decision** by the board. The scope of review in district court shall be the same as in G.S. 150B-51.

Steps in the Appeals Process: Board of Health Level

1. **Decision is made** to enforce a rule or impose an administrative penalty
2. **Within 30 days of the challenged action**, the “aggrieved person” gives **written notice of appeal** to the local health director
3. **Notice contains:**
 - a. **Name and address** of aggrieved person
 - b. **Description** of the challenged action
 - c. **Statement of the reasons** why the challenged action is incorrect

Steps in the Appeals Process (continued)

4. After notice is filed, **health director must, within five working days**, transmit to the local board of health:
 - a. **The notice of appeal**
 - b. **The papers and materials** “upon which the challenged action was taken”
5. **Board of health must hold a hearing within 15 days** “of receipt of the notice of appeal.”
6. **Board must give** the [aggrieved] person **not less than 10 days’ notice** of the date, time, and place of the hearing

Steps in the Appeals Process: Board of Health Level (continued)

7. **Local board** of health issues **a written decision based on the evidence presented** at the hearing.
8. The decision must contain **“a concise statement of the reasons** for the decision.”

Some Pointers about the Board of Health's Hearing Procedures

1. The Hearing is *Quasi-Judicial* (Court –like)
2. That is, in order to meet the requirements of **procedural due process**, the board of health must observe **court-like procedures**:
 - a. **No *ex parte* contact** with parties or between board members
 - b. Board **members with any bias must not participate**
 - c. Board must allow the aggrieved person's attorney to attend and advise her client

Some Pointers about the Board of Health's Hearing Procedures (continued)

- d. Board must take **sworn and relevant testimony**
 - e. Board must provide for **cross-examination of witnesses**
 - f. Board must keep **detailed or verbatim minutes**
3. Board must issue a **written decision based on the evidence** presented at the hearing
 4. Board's decision must include **"a concise statement of the reasons for the decision"**
 5. ***The board should consult its own attorney throughout the hearing process!***

Some Questions

1. Who is an **“aggrieved person”**?
2. The statute states that the hearing must be held **“within 15 days of receipt”** of the notice of appeal. Is this phrase referring to *receipt by the health director* or *by the board of health*? Note also that the aggrieved person must receive **ten days’ notice** of the hearing.
3. **What procedures** should be followed **to notify aggrieved persons** of the hearing? Should the notice mention anything other than the date, time, and place of the hearing?

More Questions

4. When a board of health conducts a hearing under G.S. 130A-34(b)-(d), is it conducting an **“official meeting”** that is subject to the notice and other requirements of the **Open Meetings Law**?
5. **Does a quorum** of the board of health **need to be present** to conduct a hearing under G.S. 130A-34(b)-(d)? What should the board do if a quorum does not appear?
6. Do you have any suggestions about **scheduling the hearing** that might help to avoid the quorum problem?

More Questions

7. **To what extent may the board of health consider the information in the notice of appeal from the aggrieved person or the “papers and materials upon which the challenged action was taken,” both of which it received prior to and outside of the hearing?**
8. Does the board of health’s written decision **need to be issued during the meeting** at which the hearing is held?
9. G.S. 130A-34(d) states that “a person” who wishes to contest the board’s decision has a right to appeal to the appropriate district court. **Who is “a person” for appeal purposes?**

Steps in the Appeals Process: District Court

9. If “a person” wishes to contest the decision, he or she has **a right of appeal to the district court** having jurisdiction.
10. Appeal must be made **within 30 days** “after the date of the decision by the board.”
11. The “scope of review” in district court is the same as in G.S. 150B-51.

Steps in the Appeals Process: District Court (continued)

12. Under G.S. 150B-51, the court may **affirm** the decision or **remand** the case to the board for further proceedings.
13. The court may also **reverse** or **modify** the board's decision if the "**substantial rights**" of the petitioners **may have been prejudiced** because the board's findings, inferences, conclusions, or decisions are:

Steps in the Appeals Process: District Court (continued)

- a. “In violation of constitutional provisions.”
- b. “In excess of the statutory authority or jurisdiction of the [board].”
- c. “Made upon unlawful procedure.”
- d. “Affected by other error of law.”
- e. “Unsupported by substantial evidence admissible under [the Administrative Procedure Act] in view of the entire record as submitted.”
- f. “Arbitrary, capricious, or an abuse of discretion.”

Other Questions or Comments?

Thank you very much!