

**RULES  
OF  
STATE HEALTH PLANNING REVIEW BOARD**

**CHAPTER 274-1  
ADMINISTRATION**

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**274-1-.01 Administration.**

(1) These Rules shall apply to and govern appeals under O.C.G.A. § 31-6-44. The purpose of the Board shall be to review decisions made by hearing officers as provided in these Rules. At least a quorum of the Board shall meet at least once every month to review hearing officer decisions unless there are not any decisions for it to review. For purposes of these Rules, a quorum shall consist of five members of the Board, including either the Chairperson or the Vice Chairperson. The Board shall formulate and approve a list of at least five and not more than ten attorneys who shall serve as hearing officers for appeals that are assigned to them by the Chairperson of the Board. Each such attorney approved to be included on the list of hearing officers shall be an active member of the State Bar of Georgia in good standing, and each such attorney must have maintained such active status for the five years immediately preceding such person's respective approval.

(2) The members of the Board shall receive no salary but shall be reimbursed for their expenses in attending meetings and for transportation costs as authorized by O.C.G.A. § 45-7-21, and the Chairperson and Vice Chairperson shall also be compensated for their services rendered to the Board outside of attendance at a Board meeting, the amount of which compensation shall be determined according to regulations of the Department of Administrative Services. Hearing officers to whom a case has been assigned shall receive compensation determined to be appropriate and reasonable by the Board. The Department of Administrative Services shall make such compensation to the members of the Board and to hearing officers.

(3) To the extent not inconsistent with these Rules, the Rules of the Department of Community Health relating to certificate of need and health planning (including review considerations and standards), as amended from time to time, shall apply to and govern the decisions of the hearing officers and the Board.

(4) A copy of any document filed with either the Board or a hearing officer to whom a case has been assigned by any person (including any correspondence, motion, request for discovery, brief or other document) shall be sent to the Office of General Counsel, Department of Community Health and to each attorney of record (or directly to any party not represented by an attorney). All such submissions shall be on letter-sized paper.

Authority O.C.G.A. § 31-6-44. **Filed: 12/16/2004; Effective 1/5/2005**

### **274-1-.02 Definitions.**

(1) "Appellant" means the person who files an appeal with the Board.

(2) "Applicant" means the person who files an application for review of a project with the Department.

(3) "Board" means the Health Planning Review Board created by O.C.G.A. § 31-6-44.

(4) "Chairperson" means the Chairperson of the Board appointed by the Governor or the Vice Chairperson acting as Chairperson at the direction of either the appointed Chairperson or the Governor.

(5) "Department" means the Department of Community Health established under O.C.G.A. § 31-5A-4.

(6) "Hearing Officer" means the attorney from the list approved by the Board to whom a case has been assigned by the Chairperson.

Authority O.C.G.A. § 31-6-44. **Filed: 12/16/2004; Effective 1/5/2005**

### **274-1-.03 Request for Initial Administrative Appeal Hearing or Intervention.**

(1) Any Applicant for a project, or any competing Applicant, or any competing health care facility that has timely notified the Department, as required by 111-2-2-.07(1)(f) or 111-2-2-.08(1)(g), as applicable, in writing that such facility is opposed to the application before the Department, or any county or municipal government in whose boundaries the proposed project will be located, who is aggrieved by a decision of the Department shall have the right to an initial administrative appeal hearing before a hearing officer or to intervene in such hearing.

(2) A request for an initial administrative appeal hearing before a hearing officer or to intervene in such a hearing shall be made within 30 days after the date on the notification

letter of the Department, if a decision is issued by the Department, and within 30 days after the date that the application is deemed to have been approved, if no decision is issued. Without exception to the status of the party, the request shall state with specificity which Certificate of Need applications are being appealed. Unless agreed otherwise by all of the parties or determined otherwise by the hearing officer to whom the case is assigned, an appeal of one application which was joined with one or more other applications by the Department pursuant to subsection (d) of O.C.G.A. § 31-6-43 shall serve as an appeal of all of the joined applications.

(3) A request for an initial administrative appeal hearing before a hearing officer or to intervene in such a hearing shall be in writing and must be received by the Board at the Office of General Counsel, Department of Community Health, 2 Peachtree Street, N.W., 40<sup>th</sup> Floor, Atlanta, Georgia 30303-3142, within the applicable 30 day period. If the 30th day falls on a weekend or a federal or state holiday, the time for requesting an appeal or intervention shall be extended to the next business day.

(a) The date of receipt shall be the official postmark date if mailed by registered or certified mail;

(b) The date of receipt shall be the date the Department actually received the request as documented by Department date stamp if mailed by regular first class mail or if hand delivered, except that any such request received after 5:00 pm shall be deemed in receipt the following business day; and

(c) The only acceptable methods of delivery of any appeal request shall be certified mail, registered mail, regular first class mail, and hand delivery.

Authority O.C.G.A. § 31-6-44. **Filed: 12/16/2004; Effective 1/5/2005**

#### **274-1-.04 Assignment of Hearings; Review of Initial Administrative Appeal and Intervention Requests.**

(1) In the event that a request for an initial administrative hearing is made, the Chairperson of the Board shall appoint a hearing officer for each such hearing within 50 days after the date of the Department's decision. The Chairperson shall immediately deliver the appeal request and any other related documents to the assigned hearing officer.

(2) The hearing officer shall review the request to determine whether it was timely filed and whether Appellant has standing. If the request is timely and the Appellant has standing, an initial administrative appeal hearing shall be granted; provided, however; the hearing officer shall be entitled to consider all pre-hearing motions and arguments and may dispose of the case before conducting a hearing. If the request is not timely or the Appellant lacks standing, the hearing officer shall deny the request.

Authority O.C.G.A. § 31-6-44. **Filed: 12/16/2004; Effective 1/5/2005**

#### **274-1-.05 Scheduling and Notice of Initial Administrative Appeal Hearing.**

(1) Within 14 days after the appointment of the hearing officer, the hearing officer shall set the date or dates for the hearing and shall provide the parties with written notice mailed at least 14 days before the date of commencement of the hearing. Notification shall include, at a minimum, the information required in the "Georgia Administrative Procedure Act," O.C.G.A. § 50-13-13.

(2) The hearing officer shall make all arrangements for scheduling the hearing, providing for the making of a record, the transcription thereof, and any other arrangements necessary to convene the hearing. However, the hearing officer shall be authorized to request the assistance of the Department as necessary in the discharge of these duties.

Authority O.C.G.A. § 31-6-44. **Filed: 12/16/2004; Effective 1/5/2005**

#### **274-1-.06 Time of Initial Administrative Appeal Hearing.**

(1) The hearing shall be commenced within 120 days of the filing of the request for a hearing, unless the Applicant consents, or in the case of competing Applicants, all applicants consent to an extension of this time period to a specified date.

(2) The hearing officer shall have the authority to dispose of all motions made by any party before the issuance of the hearing officer's decision and the hearing officer shall make such rulings as may be required for the conduct of the hearing.

Authority O.C.G.A. § 31-6-44. **Filed: 12/16/2004; Effective 1/5/2005**

**274-1-.07 Place of Initial Administrative Appeal Hearing.** The initial administrative appeal hearing shall be held at the offices of the Department (2 Peachtree Street, NW, Atlanta, Georgia 30303) or, if those offices are insufficient to accommodate the hearing for any reason, at such other place as the hearing officer designates with the approval of the General Counsel of the Department of Community Health.

Authority O.C.G.A. § 31-6-44. **Filed: 12/16/2004; Effective 1/5/2005**

#### **274-1-.08 Scope of Initial Administrative Appeal Hearing.**

(1) The issues for decision by the hearing officer shall be limited to:

(a) whether (and the hearing officer shall order issuance of a Certificate of Need if) in the hearing officer's judgment the application is consistent with the considerations set forth in O.C.G.A. § 31-6-42 and the Department's Rules, as the hearing officer deems such considerations and Rules applicable to the review of the project;

(b) whether the Department committed prejudicial procedural error in its consideration of the Certificate of Need application; and

(c) whether the appeal lacks substantial justification and whether such appeal was undertaken solely for the purpose of delay or harassment.

(2) The following issues shall not be considered at an initial administrative appeal hearing and are immaterial to the hearing:

(a) the correctness, adequacy, or appropriateness of the considerations, rules, or standards by which the proposed project was reviewed by the Department; and

(b) the determination of whether a proposed project is subject to review under O.C.G.A. § 31-6-1 *et seq.* and the Department's Rules.

(3) In considering the issues presented by an appellant, the hearing officer shall afford great deference to the Department's interpretation of the governing statutes and to the Department's application of its rules and regulations.

Authority O.C.G.A. § 31-6-44. **Filed: October 14, 2005; Effective November 3, 2005**

#### **274-1-.09 Conduct of Initial Administrative Appeal Hearing.**

(1) The initial administrative hearing shall be conducted as a full evidentiary hearing in accordance with O.C.G.A. § 50-13, the "Georgia Administrative Procedure Act," relating to contested cases, except as otherwise specified in O.C.G.A. § 31-6-44 or these Rules.

(2) Subject to the prior approval of the hearing officer; all files, working papers, studies, notes and other writings or information used by the Department in making its decision shall be public records and available to the parties, and the hearing officer may permit each party to exercise such reasonable rights of pre-hearing discovery of such information used by the parties as will expedite the hearing. Answers to such a request for discovery shall be served by mail within ten business days of the date that the request was mailed. A request for discovery of information not included in items (a) through (f) below shall be made to the hearing officer. Any party may, upon written request to another party, discover the following items as a matter of right:

(a) a list of considerations and standards that are deemed applicable and as to which evidence will be presented;

(b) the names and addresses of all witnesses who will be present for the hearing;

(c) the names and addresses of all witnesses who may be present for the hearing;

(d) the resume of any expert witness who will or may be present for the hearing;

(e) a list of each documentary or demonstrative item to be used at the hearing and known at the time the request for discovery is answered; and

(f) any updates of studies or data previously submitted to the Department.

(3) At least four (4) business days prior to commencement of the initial administrative hearing, each party shall mail to the hearing officer and to each attorney of record or party not represented by an attorney a brief summary of the facts and legal contentions on which the party's case is based. The summary shall not exceed eight double-spaced pages in length.

(4) Appellants or Applicants shall proceed first before the hearing officer in the order determined by the hearing officer; and the Department, if a party, shall proceed last. Any intervenors shall proceed in an order determined by the hearing officer.

(5) The burden of proof shall be on the Appellant.

(6) All evidence shall be presented at the initial administrative hearing conducted by the appointed hearing officer.

(7) As provided at O.C.G.A. § 31-6-44(f), a party or intervenor may present any relevant evidence on all issues raised by the hearing officer or any party to the hearing or revealed during discovery, except that, unless in response to an issue raised by an opponent or the hearing officer or revealed during discovery, a party or intervenor may not present a new need study or analysis that is substantially different from any such study or analysis submitted to the Department prior to the approved date of the project in the application, supplementary information, or letters of opposition, as timely filed, and that could reasonably have been available for submission to the Department prior to the approved date of the project. Except for such limitation on new studies or analyses, the hearing officer may consider the latest data available, including updates of studies previously submitted, in deciding whether an application is consistent with the applicable considerations or Rules.

(8) Initial administrative appeal hearings shall be conducted in such a manner as to conclude in a reasonable period of time and any continuance or delays should be as brief as possible and shall only be granted for good cause shown. The hearing officer shall be vested with the authority to set reasonable time limits in advance of or during the hearing for the presentation of each party's case, subject to extension for good cause shown.

(9) The hearing officer shall make such rulings as may be required for the conduct of the hearing and shall have the authority to do the following in addition to any other rights granted by O.C.G.A. § 50-13, the "Georgia Administrative Procedure Act," which are not otherwise inconsistent with these Rules: administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof; regulate the course of the hearing; set the time and place for continued hearings; fix the time for filing motions and briefs; dispose of motions to dismiss for lack of jurisdiction over the subject matter or parties or for any other grounds; dispose of motions to amend or to intervene; provide for the taking of testimony by deposition or interrogatory; and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the hearing officer. The hearing officer may order such conferences with counsel for the parties, or the parties themselves if they are not represented by counsel, either prior to or during the hearing, as may facilitate determination of questions of evidence and other questions of law and expedite the hearing.

Authority O.C.G.A. § 31-6-44. **Filed: 12/16/2004; Effective 1/5/2005**

#### **274-1-.10 Decision of Hearing Officer.**

(1) Within 30 days after the conclusion of the hearing, the hearing officer shall make written findings of fact and conclusions of law as to each consideration as set forth in O.C.G.A. § 31-6-42 and the Department's Rules, including a detailed statement of the reasons for the decision of the hearing officer; provided, however, the hearing officer may, by order, extend the period in which the decision must be made upon a determination that the complexity of the issues and/or the length of a record requires such extension of the period, but in no event may such extension exceed an additional 15 days.

(2) If any party has alleged that an appeal lacks substantial justification and was undertaken solely for the purpose of delay or harassment, the decision of the hearing officer shall make findings of fact addressing the merits of the allegation pursuant to O.C.G.A. § 31-6-44(l).

(3) The conclusion of the hearing is deemed to be the last date for submission of written evidence, proposed findings and conclusions, written arguments, or other materials, as fixed by the hearing officer.

(4) In the event of a consolidated hearing on applications which were joined pursuant to subsection (d) of O.C.G.A. § 31-6-43, the hearing officer shall have the same powers specified for the Department in subsection (d) of O.C.G.A. § 31-6-43 to issue no Certificate of Need or one or more Certificates of Need.

(5) Notice of the decision is deemed to be issued on the day that it is signed by the hearing officer.

(6) Immediately upon rendering a decision, the hearing officer shall file such decision with the Board, serve such decision upon all parties by regular mail, and transmit the administrative record to the Chairperson of the Board. The hearing officer shall file the decision with the Board at the Office of General Counsel, Department of Community Health, 2 Peachtree Street, N.W., 40<sup>th</sup> Floor, Atlanta, Georgia 30303 and shall also mail copies of the decision to the Chairperson and Vice Chairperson at their respective addresses. The Board shall have been deemed in receipt of the hearing officer's decision on the date that the decision actually arrives at the required address.

(7) The hearing officer may remand the matter to the Department for further review and consideration prior to the decision of the hearing officer, and the Department shall complete the action required on remand by such date as the hearing officer may specify. The hearing officer may hold the record open as necessary to permit the hearing officer to consider the action taken by the Department.

(8) Notice of the decision shall include, in addition to findings of fact and conclusions of law, instructions to the Department as to granting or denying a Certificate of Need.

Authority O.C.G.A. § 31-6-44. **Filed 12/16/2004; Effective 01/05/2005**

#### **274-1-.11 Finality of Hearing Officer's Decision; Optional Review of Hearing Officer's Decision by Board.**

(1) The decision of the hearing officer shall become the final decision of the Department upon the sixty-first day following the receipt of the hearing officer's decision by the Board unless an objection thereto is filed within the time limit established in subsection 2 of this Rule and within 60 days of the receipt of the hearing officer's decision by the Board:

(a) at least a quorum of the Board meets to review such decision and, by a majority vote of those members present at the meeting, the Board decides to affirm, reverse, or modify the hearing officer's decision or to remand the case to the hearing officer for further consideration; or

(b) at the request of any party which participated in the initial administrative appeal hearing before the hearing officer, or upon its own initiative, the Chairperson or the Vice Chairperson extends the time period for review of such decision. However, the Board may not extend the time period for review of the hearing officer's decision for longer than 45 days.

(2) Any party, including the Department, which disputes any finding of fact or conclusion of law rendered by the hearing officer in such hearing officer's decision and which wishes to appeal that decision to the Board shall file such party's specific objections thereto with the Board within 30 days of such party's receipt of the hearing officer's decision. Any party that submits such party's specific objections to the Board shall be entitled to present oral argument to the Board so long as that party notifies the Board of such intent in its submission of specific objections.

(3) Any objections filed with the Board shall specify in detail the errors allegedly committed by the hearing officer in the hearing officer's decision. Failure to specify such alleged errors in detail shall constitute a waiver of all available objections. Further, the party submitting such objections must specify the date upon which it received the hearing officer's decision.

(4) All objections shall be in writing and an original copy must be received by the Board at the Office of General Counsel, Department of Community Health, 2 Peachtree Street, N.W., 40<sup>th</sup> Floor, Atlanta, Georgia 30303, within the applicable 30-day period. If the 30<sup>th</sup> day falls on a weekend or a federal or state holiday, the time for submitting such objections shall be extended to the next business day.

(a) The date of receipt shall be the official postmark date if mailed by registered or certified mail;

(b) The date of receipt shall be the date the Department actually receives the request as documented by Department date stamp if mailed by regular first class mail or if hand delivered, except that any such request received after 5:00 pm shall be deemed in receipt the following business day; and

(c) The only acceptable methods of delivery of any such objections shall be certified mail, registered mail, regular first class mail, and hand delivery.

Further, additional copies of such objections shall be mailed to all members of the Board at their respective addresses and to the Department, each attorney of record, or directly to any party not represented by an attorney.

(5) On behalf of the Board, the Chairperson or the Vice Chairperson shall determine whether a party complied with the provisions of this Rule. In the event that the Chairperson or the Vice Chairperson determines that the party failed to comply with the provisions of this Rule, such

person shall have the authority to render written decisions on behalf of the Board in respect to such determinations. A decision adverse to a party shall specify in detail the extent to which a party failed to comply.

Authority O.C.G.A. § 31-6-44. **Filed: October 14, 2005; Effective: November 3, 2005**

#### **274-1-.12 Scheduling and Notice of Review Board Meetings.**

(1) At least a quorum of the Board shall meet at least once every month to review hearing officer decisions unless there are not any decisions for the Board to review. The Chairperson or Vice Chairperson shall set the date for the Board meeting and provide the parties with written notice mailed at least 14 days prior to such meeting. The notice shall include the date and time upon which the Board intends to commence its meeting, the location of the meeting, and shall specify the cases which the Board intends to consider on that date.

(2) No party to an initial administrative appeal hearing nor any person on behalf of such party shall contact, outside of a duly constituted Board meeting, any member of the Board to discuss any aspect of a project or an appeal.

(3) The Chairperson or the Vice Chairperson shall make all arrangements for scheduling the meeting, providing for the making of a record, the transcription thereof, and any other arrangements necessary to convene the meeting. Further, the Chairperson or Vice Chairperson shall be responsible for securing the attendance of Board members for the Board's regularly scheduled meetings. However, the Chairperson or the Vice Chairperson shall be authorized to request the assistance of the Department as necessary in the discharge of these duties.

(4) All meetings of the Board shall be open to the public. As provided by law, due notice including the time, place, and nature of business to be conducted shall be provided. The Chairperson or Vice Chairperson shall be authorized to request the assistance of the Department as necessary in the discharge of these duties.

Authority O.C.G.A. § 31-6-44. **Filed 12/16/2004; Effective 01/05/2005**

**274-1-.13 Place of Board Meeting.** All Board meetings shall be held at the offices of the Department (2 Peachtree Street, N.W., Atlanta, Georgia 30303) or, if those offices are insufficient to accommodate the meeting for any reason, at such other place as the Chairperson or Vice Chairperson designates, with the approval of the General Counsel of the Department of Community Health.

Authority O.C.G.A. § 31-6-44. **Filed 12/16/2004; Effective 01/05/2005**

#### **274-1-.14 Scope of Board Meeting.**

(1) The issues for decision by the Board shall be limited to:

(a) generally, whether the Board should affirm, reverse, or modify the hearing officer's decision or to remand the case to the hearing officer for further consideration;

(b) whether, in the Board's judgment, the hearing officer's decision correctly ruled that the application was or was not consistent with the considerations set forth in O.C.G.A. § 31-6-42 and the Department's Rules, as the hearing officer deemed such considerations and Rules applicable to the review of the project. In all circumstances, the Board's decision shall be based upon considerations as set forth in O.C.G.A. § 31-6-42 and the Department's Rules;

(c) whether, in the Board's judgment, the hearing officer's decision correctly ruled that the Department did or did not commit prejudicial procedural error in its consideration of the Certificate of Need application;

(d) whether, in the Board's judgment, the hearing officer's findings of fact were supported by substantial evidence, which shall mean that the record contains such relevant evidence as a reasonable mind might accept as adequate to support such findings, inferences, conclusions, or decisions, which such evidentiary standard shall be in excess of the "any evidence" standard contained in other statutory provisions;

(e) whether, if based upon the findings of the hearing officer, the appeal filed by any party of a decision of the Department lacks substantial justification and was undertaken solely for the purpose of delay or harassment.

(2) The following issues shall not be considered by the Board at their meeting and are immaterial to the meeting:

(a) the correctness, adequacy, or appropriateness of the considerations, rules, or standards by which the proposed project was reviewed by the Department; and

(b) the determination of whether a proposed project is subject to review under O.C.G.A. § 31-6-1 *et seq.* and the Department's Rules.

(3) In considering the issues presented by an appellant, the Board shall afford great deference to the Department's interpretation of the governing statutes and to the Department's application of its rules and regulations.

Authority O.C.G.A. § 31-6-44. **Filed: October 14, 2005; Effective: November 3, 2005**

#### **274-1-.15 Presentation of Additional Evidence.**

(1) If, before the date set for the Board's meeting, application is made to the Chairperson for leave to present additional evidence and it is shown to the satisfaction of the Chairperson that the additional evidence is material and there was good reasons for failure to present it in the proceedings before the hearing officer, the Chairperson may order that the additional evidence be taken before the same hearing officer who rendered the initial decision upon conditions determined by the Chairperson. The Chairperson may solicit comments as to the matter from the non-moving parties.

(2) The hearing officer may modify the initial decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decision with the Board.

(3) Unless leave for the presentation of additional evidence is given by the Chairperson, the Board may not consider new evidence under any circumstances.

Authority O.C.G.A. § 31-6-44. **Filed 12/16/2004; Effective 01/05/2005**

#### **274-1-.16 Conduct of Board Meeting.**

(1) Except as otherwise specifically provided in these Rules or by law, no official business shall be considered by the Board at any meeting at which a quorum, as defined in these Rules, is not present, and the only motion which the Chairperson or Vice Chairperson shall entertain is a motion to adjourn. Such adjournment may be for a time and date certain or until the time fixed for the next regular meeting of the Board.

(2) As provided by these Rules, the Chairperson or Vice Chairperson shall preside at all meetings of the Board and shall assume all authority and responsibility normally associated with those positions.

(3) Parliamentary procedure for the conduct of the business of the Board shall be in accordance with the most recent edition of Robert's Rules of Order.

(4) Each member of the Board shall have one vote. Each act or decision made by a simple majority of the members present and voting at a meeting duly held at which a quorum is present is the act of the Board unless these Rules require a greater number. The use of proxies or alternates is prohibited.

(5) Every member of the Board shall, in all cases, reserve their opinion and in no way prejudice any matter pending before the Board until the facts and evidence are all submitted and the Board considers the same in its regularly scheduled meeting.

(6) If a party filed a specific objection concerning any finding of fact or conclusion of law rendered by the hearing officer, the burden of proof shall be on such party as to such specific objection.

(7) Each party may present as much as, but no more than, twenty-five (25) minutes of oral argument to the Board concerning a case which the Board is about to consider if that particular party participated in the initial administrative appeal hearing and that party also notified the Board of its intent to present oral argument. Each party may reserve up to, but no more than, five (5) minutes of its time for oral argument for rebuttal. A party who wishes to reserve time for rebuttal must make such desire known to the Board prior to beginning its oral argument. However, the oral presentation of new evidence is strictly prohibited and no party shall address an objection in their oral argument if such objection was not otherwise addressed in their written objections to the Board. Parties may not divide or share their allotted time.

(8) The oral arguments by the parties shall be recorded and transcribed, and the cost for preparing this record shall be shared equally by the parties.

Authority O.C.G.A. § 31-6-44. **Filed 12/16/2004; Effective 01/05/2005**

## **274-1-.17 Decision of Board.**

(1) Within 30 days after meeting to review a hearing officer's decision, either the Chairperson or the Vice Chairperson of the Board shall, on behalf of the Board members present at such meeting, issue a written order that memorializes the decision of the Board reached by such majority vote. The order shall make written findings of fact and conclusions of law as to each applicable consideration or rule of the Department, including a detailed statement of reasons for the decision of the Board. However, the Board shall be entitled to adopt any and all findings of fact or conclusions of law contained in the decision rendered by the hearing officer. Further, if the Board affirms the decision of the hearing officer, the Board shall be entitled to adopt the decision of the hearing officer as its own.

(2) In the event the Board reverses or modifies the hearing officer's decision, the Board shall issue a written order, which explains why such changes were made. However, the Board shall not reverse findings of fact made by the hearing officer unless the Board specifically finds that the hearing officer's findings of fact are not supported by substantial evidence, which shall mean that the record does not contain such relevant evidence as a reasonable mind might accept as adequate to support such findings, inferences, conclusions, or decisions, which such evidentiary standard shall be in excess of the "any evidence" standard contained in other statutory provisions.

(3) In the event the Board remands the case, the Chairperson or Vice Chairperson shall enter a written order directing the case back to the hearing officer who rendered the initial decision. The order shall contain such directions and conditions as may facilitate the resolution of the matters at issue. However, the hearing officer also shall be entitled to remand the matter to the Department if the hearing officer deems such a remand appropriate.

(4) If, based upon the findings of the hearing officer, the Board determines that the appeal filed by any party of a decision of the Department lacks substantial justification and was undertaken solely for the purpose of delay or harassment, the Board may enter an award in its written order against such party and in favor of the successful party or parties, including the Department, of all or any part of their respective reasonable and necessary attorney's fees and expenses of litigation, as the Board deems just. Such award may be enforced by any court undertaking judicial review of the final decision. In the absence of any petition for judicial review, then such award shall be enforced, upon due application, by any court having personal jurisdiction over the party against whom such an award is made.

(5) Any Board member who so desires may draft a dissenting opinion that will accompany the Board's final decision on the appeal, so long as that Board member was present at the meeting during which the vote was taken on that particular appeal.

(6) Subject to the foregoing provisions of this Rule, in the event of a consolidated hearing on applications which were joined pursuant to subsection (d) of O.C.G.A. § 31-6-43, the Board shall have the same powers specified for the Department in subsection (d) of O.C.G.A. § 31-6-43 to issue no Certificate of Need or one or more Certificates of Need.

(7) Notice of the decision is deemed to be issued on the day that it is signed by the Chairperson or Vice Chairperson on behalf of the Board. Notice of the decision shall be sent simultaneously to the Appellant, the Department, the Applicant, and other parties, if any.

(8) The Board's order shall include, in addition to findings of fact and conclusions of law, instructions to the Department as to granting or denying a Certificate of Need.

Authority O.C.G.A. § 31-6-44. **Filed 12/16/2004; Effective 01/05/2005**

**274-1-.18 Prohibition Against Ex Parte Contact.** After the issuance of a decision by the Department pursuant to O.C.G.A. § 31-6-43, no party to an appeal hearing, nor any person on behalf of such party, shall make any *ex parte* contact with the hearing officer appointed to conduct the appeal hearing or any member of the Board in regard to a project under appeal. This prohibition shall not be considered to prohibit Department staff from rendering technical and administrative assistance to the Board if requested to do so.

Authority O.C.G.A. § 31-6-44. **Filed 12/16/2004; Effective 01/05/2005**

**274-1-.19 Record of Proceedings.** The record of proceedings shall be maintained at Office of General Counsel, Department of Community Health, 2 Peachtree Street, NW, Atlanta, Georgia 30303, and copies of such records as well as copies of all documents received in evidence shall be available to the public for inspection and copying. All parties to an initial administrative hearing shall share equally in the costs of preparing the record for both the initial administrative hearing and any subsequent Board meetings involving the case, including the cost of any transcript. An initial party to a contested case before the Board who withdraws as a party, prior to the administrative hearing before the hearing officer but after the Master File(s) of the project(s) at issued have been delivered for copying by the Department, shall share in the pro-rata costs of such copying.

Authority O.C.G.A. § 31-6-44. **Filed 12/16/2004; Effective 01/05/2005**

**274-1-.20 Final Decision; Judicial Review.** Unless the hearing officer's decision becomes the Department's decision by operation of law as provided in Rule 274-1-.11, the final decision of the Board shall become the Department's decision by operation of law. Such final decision shall be the final agency decision for purposes of O.C.G.A. § 50-13, the "Georgia Administrative Procedure Act." Judicial Review may be sought in accordance with the "Georgia Administrative Procedure Act" and O.C.G.A. § 31-6-44(m).

Authority O.C.G.A. § 31-6-44. **Filed 12/16/2004; Effective 01/05/2005**