

CHAPTER 5215
DEPARTMENT OF LABOR AND INDUSTRY
PROCEDURES FOR PRACTICE BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH REVIEW
BOARD

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5215.0100 SCOPE.

This chapter shall govern all proceedings before the commission and its hearing examiners. In the absence of a specific provision, procedures shall be in accordance with the Minnesota Administrative Procedure Act.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.0200 DEFINITIONS.

Subpart 1. **Act.** "Act" means the Minnesota Occupational Safety and Health Act of 1973, Laws of Minnesota 1973, chapter 732.

Subp. 2. **Affected employee.** "Affected employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of his assigned duties.

Subp. 3. **Authorized employee representative.** "Authorized employee representative" means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.

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Subp. 4. **Chairman.** "Chairman" means the chairman of the board as designated by the governor.

Subp. 5. **Citation.** "Citation" means a written communication issued by the commissioner to an employer pursuant to section 11 of the act.

Subp. 6. **Commissioner, board, person, employer, employee.** "Commissioner," "board," "person," "employer," and "employee," have the meanings set forth in section 2 of the act.

Subp. 7. **Day.** "Day" means a calendar day.

Subp. 8. **Hearing examiner.** "Hearing examiner" means a hearing examiner appointed by the chairman of the board pursuant to section 15, subdivision 3 of the act.

Subp. 9. **Notification of proposed penalty.** "Notification of proposed penalty" means a written communication issued by the commissioner to an employer pursuant to section 12, subdivision 1 or 2 of the act.

Subp. 10. **Proceeding.** "Proceeding" means any proceeding before the board or before a hearing examiner.

Subp. 11. **Representative.** "Representative" means any person, including an authorized employee representative, authorized by a party or intervenor to represent him in a proceeding.

Subp. 12. **Working day.** "Working day" means all days except Saturdays, Sundays, or holidays as defined in Minnesota Statutes, section 645.44.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.0300 CONSTRUCTION OF TERMS.

Particular words and phrases shall be construed according to the provisions of Minnesota Statutes, chapter 645.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.0400 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed in this chapter, the provisions of Minnesota Statutes, chapter 645, shall be complied with.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.0500 EXTENSIONS OF TIME.

Requests for extensions of time for the filing of any pleading or document must be received in advance of the date on which the pleading or document is due to be filed.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.0600 RECORD ADDRESS.

The initial pleading filed by any person shall contain his name, address, and telephone number. Any change in such information must be communicated promptly in writing to the hearing examiner or the board, as the case may be, and to all other parties and intervenors. A party or intervenor who fails to furnish such information shall be deemed to have waived his right to notice and service under this chapter.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.0700 SERVICE AND PARTIES.

Subpart 1. **Parties and intervenors.** At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

Subp. 2. **Representatives.** Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

Subp. 3. **Authorized employee representative.** An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

The authorized employee representative, if any, shall be served with the notice set forth in part 5215.0720, subpart 5, and with a copy of the notice of contest.

A copy of the notice of the hearing to be held before the hearing examiner shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in part 5215.0710, subpart 1, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date such notice is received by the employer.

Subp. 4. **Unrepresented employees.** Where a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with part 5215.2200, serve a copy thereof on such authorized employee representative in the manner prescribed in part 5215.0710, subpart 1, and shall file proof of such service.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.0710 MANNER AND PROOF OF SERVICE.

Subpart 1. **By mail or personal service.** Unless otherwise ordered, service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

Subp. 2. **On employee representatives.** Service and notice of employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in subpart 1.

Subp. 3. **Written proof of service.** Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.0720 SERVICE BY POSTING.

Subpart 1. **Requirement.** A copy of the notice of the hearing to be held before the hearing examiner shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

Subp. 2. **Proof of posting.** Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

Subp. 3. **Copy to employer for posting.** Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in part 5215.0700.

Subp. 4. **Length of posting.** Where posting is required by parts 5215.0700 to 5215.0720, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

Subp. 5. **Posting for unrepresented employees.** In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of the notice of contest or petition for modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing such affected employees of their right to party status and of the

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availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this paragraph:

(Name of Employer)

Your employer has been cited by the commissioner of labor for violation of the Minnesota Occupational Safety and Health Act of 1973. The citation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Board. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Occupational Safety and Health Review Board in its rules of procedure. Notice of intent to participate should be sent to: Occupational Safety and Health Review Commission, 444 Lafayette Road, Saint Paul, Minnesota 55101.

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the commissioner of labor for abatement of the violation has been contested and will be subject of a hearing before the Occupational Safety and Health Review Board.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.0800 FILING.

Prior to the assignment of a case to a hearing examiner all papers shall be filed with the chairman of the board at 444 Lafayette Road, Saint Paul, Minnesota 55101.

Subsequent to the assignment of the case to a hearing examiner and before the issuance of his decision all papers shall be filed with the hearing examiner at the address given in the notice in forming such assignment. Subsequent to the issuance of the decision to a hearing examiner all papers shall be filed with the chairman of the board.

Unless otherwise ordered, all filing may be accomplished by first class mail.

Filing is deemed effected at the time of mailing.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.0900 CONSOLIDATION OF CASES.

Cases may be consolidated on the motion of any party, on the hearing examiner's own motion, or on the board's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the act require.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.1000 SEVERANCE OF ISSUES OR PARTIES.

Upon its own motion, or upon motion of any party or intervenor, the board or the hearing examiner may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.1100 PROTECTION OF TRADE SECRETS AND OTHER CONFIDENTIAL INFORMATION.

Upon application by any person in a proceeding where trade secrets or other matters may be divulged, the presiding officer shall issue such orders as may be appropriate to protect the confidentiality of such matters.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.1200 PARTY STATUS.

Affected employees may elect to participate as parties at any time before the commencement of the hearing before the hearing examiner, unless, for good cause shown, the board or the hearing examiner allows such election at a later time. See also part 5215.1300.

Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status at any time before the commencement of the hearing before the hearing examiner. See also part 5215.1300.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.1300 INTERVENTION; APPEARANCE BY NONPARTIES.

A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing before the hearing examiner. The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding.

The board or the hearing examiner may grant a petition for intervention to such an extent and upon such terms as the board or the hearing examiner shall determine.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.1400 REPRESENTATIVES OF PARTIES AND INTERVENORS.

Any party or intervenor may appear in person or through a representative. A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.

Nothing contained herein shall be construed to require any representative to be an attorney at law.

Withdrawal of appearance of any representative may be effected by filing a written notice of withdrawal and by serving a copy thereof on all parties and intervenors.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.1500 FORM OF PLEADINGS.

Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with part 5215.1800, which shall include the board's docket number, if any, and a clear and plain statement of the relief that is sought, together with the ground therefor.

Pleadings and other documents, other than exhibits, shall be typewritten, double spaced, on letter size opaque paper, approximately 8-1/2 inches by 11 inches. The left margin shall be 1-1/2 inches and the right margin one inch. Pleadings and other documents shall be fastened at the upper left corner.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.1600 SIGNATURE ON PLEADINGS.

Pleadings shall be signed by the party filing or by his representative. Such signing constitutes a representation by the signer that he has read the document or pleading that to the best of his knowledge, information, and belief the statements made therein are true; and that it is not interposed for delay.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

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5215.1700 REFUSAL OF THE FILING.

The board may refuse for filing any pleading or document which does not comply with the requirements of parts 5215.1500 to 5215.1700.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.1800 CAPTIONS; TITLES OF CASES.

Subpart 1. **Notice of contest.** Cases initiated by a notice of contest shall be titled:

Commissioner of Labor,	Complainant
v.	
(Name of Contestant),	Respondent

Subp. 2. **Petition for modification of abatement period.** Cases initiated by a petition for modification of the abatement period shall be titled:

(Name of employer),	Petitioner
v.	
Commissioner of Labor,	Respondent

Subp. 3. **Placement of titles.** The titles listed in subparts 1 and 2 shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the commissioner.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.1900 NOTICES OF CONTEST.

The commissioner shall, within 30 days of receipt of a notice of contest, transmit the original to the board, together with copies of all relevant documents.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.2000 EMPLOYER CONTESTS.

Subpart 1. **Complaint.** The commissioner shall file a complaint with the board no later than 40 days after his receipt of the notice of contest.

The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:

A. the basis for jurisdiction;

B. the time, location, place, and circumstances of each such alleged violation; and

C. the considerations upon which the period for abatement and the proposed penalty on each such alleged violation is based.

Where the commissioner seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.

Subp. 2. **Answer.** Within 15 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the board. The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied shall be deemed admitted.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.2100 PETITIONS FOR MODIFICATION OF ABATEMENT PERIOD.

An employer may file with the commissioner a petition for modification of an abatement period no later than the close of the next working day following the date on which abatement is required. The commissioner shall transmit such petition to the board within three days after its receipt. The commissioner shall file a response within ten days of receipt of the petition. The burden of proving

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the need for modification of the abatement period shall rest with the petitioner.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.2200 EMPLOYEE CONTESTS.

Where an affected employee or authorized employee representative files a notice of contest with respect to the abatement period, the commissioner shall, within ten days from his receipt of the notice of contest, file a clear and concise statement of the reasons the abatement period prescribed by him is not unreasonable.

No later than ten days after receipt of the statement referred to above, the contestant shall file a response.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.2300 STATEMENT OF POSITION.

At any time prior to the commencement of the hearing before the hearing examiner, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file statement of position with respect to any or all issues to be heard.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.2400 RESPONSE TO MOTIONS.

Any party or intervenor upon whom a motion is served shall have ten days from service of the motion to file a response.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.2500 FAILURE TO FILE.

Failure to file any pleading pursuant to this chapter when due, may, in the discretion of the board or the hearing examiner, constitute a waiver of the right to further participation in the proceedings.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.2600 WITHDRAWAL OF NOTICE OF CONTEST.

At any stage of a proceeding, a party may withdraw his notice of contest.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.2700 PREHEARING CONFERENCE.

At any time before a hearing, the board or the hearing examiner, on their own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.

The board or the hearing examiner may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be a part of the record.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.2800 REQUESTS FOR ADMISSIONS.

At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within 15 days after service of the request, or within such shorter or longer time as the board or the hearing examiner may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.

Copies of all requests and responses shall be served on all parties in accordance with the provisions of part 5215.0700 and filed with the board within

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the time allotted and shall be a part of the record.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.2900 DISCOVERY DEPOSITIONS AND INTERROGATORIES.

Except by special order of the board or the hearing examiner, discovery depositions of parties, intervenors, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed. In the event the board or the hearing examiner grants an application for the conduct of such discovery proceedings, the order granting the same shall set forth appropriate time limits governing the discovery.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.3000 FAILURE TO COMPLY WITH ORDERS FOR DISCOVERY.

If any party or intervenor fails to comply with an order of the board or the hearing examiner to permit discovery in accordance with the provisions of this chapter, the board or the hearing examiner may issue appropriate orders.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.3100 ISSUANCE OF SUBPOENAS.

Subpart 1. Issuance. Any member of the board shall, on the application of any party directed to the board, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in his possession or under his control. Applications for subpoenas, if filed subsequent to the assignment of the case to a hearing examiner, shall be filed with the hearing examiner. A hearing examiner shall grant the application on behalf of any member of the board. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

Subp. 2. Petition to revoke or modify subpoena. Any person served with a subpoena, whether ad testificandum or duces tecum, shall, within five days after the date of service of the subpoena upon him, move in writing to revoke or modify the subpoena if he does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The hearing examiner or the board, as the case may be, shall revoke or modify the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The hearing examiner or the board, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.

Subp. 3. Enforcement. Upon the failure of any person to comply with a subpoena issued upon the request of a party, the board through the office of the commissioner may have proceedings initiated in the appropriate district court for the enforcement thereof, if in its judgment the enforcement of such subpoena would be consistent with the law and with policies of the act. Neither the board nor the office of the commissioner shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

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5215.3200 COPIES OF DATA OR EVIDENCE.

Persons compelled to submit data or evidence at a public proceeding are entitled to retain, or on payment of lawfully prescribed costs, to procure copies of transcripts of the data or evidence submitted by them.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.3300 NOTICE OF HEARING.

Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least ten days in advance of such hearing, except as otherwise provided in part 5215.5400.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.3400 POSTPONEMENT OF HEARING.

Postponement of a hearing ordinarily will not be allowed. Except in the case of an extreme emergency or in unusual circumstances, no such request will be considered unless received in writing at least three days in advance of the time set for the hearing. No postponement in excess of 30 days shall be allowed without board approval.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.3500 FAILURE TO APPEAR AT HEARING.

Subpart 1. **Waiver.** Subject to the provisions of subpart 3, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the hearing examiner and to request board review pursuant to part 5215.5000.

Subp. 2. **Reinstatement.** Requests for reinstatement must be made, in the absence of extraordinary circumstances, within five days after the scheduled hearing date.

Subp. 3. **Excuse.** The board or the hearing examiner, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be scheduled.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.3600 PAYMENT OF FEES AND MILEAGE.

Subpart 1. **Witnesses.** Witnesses summoned before the board or the hearing examiner shall be paid for the same fees and the mileage that are paid witnesses in the state courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the state courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

Subp. 2. **Reporter's fees.** Reporter's fees shall be provided for according to the provisions of Minnesota Statutes, sections 14.57 to 14.59.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.3700 TRANSCRIPT OF TESTIMONY.

Hearings shall be transcribed verbatim. Transcripts shall be provided according to the provisions of Minnesota Statutes, sections 14.57 to 14.59.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.3800 DUTIES AND POWERS OF HEARING EXAMINERS.

It shall be the duty of the hearing examiner to conduct a fair and impartial hearing, to assure that the facts are fully elicited to adjudicate all issues and avoid delay. The hearing examiner shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to the rules of the board, to:

- A. administer oaths and affirmations;
- B. issue authorized subpoenas;
- C. rule upon petitions to revoke subpoenas;
- D. rule upon offers of proof and receive relevant evidence;
- E. take or cause depositions to be taken whenever the needs of justice would be served;
- F. regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
- G. hold conferences for the settlement or simplification of the issues;
- H. dispose of procedural requests or similar matters, including motions referred to the hearing examiner by the commission and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of his decision;
- I. call and examine witnesses and to introduce into the record documentary or other evidence;
- J. request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;
- K. adjourn the hearing as the needs of justice and good administration require; and
- L. take any other action necessary under the foregoing and authorized by the published rules of the commission.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.3900 DISQUALIFICATION OF HEARING EXAMINER.

Subpart 1. Withdrawal. A hearing examiner may withdraw from a proceeding whenever he deems himself disqualified.

Subp. 2. Request by party that examiner withdraw. Any party may request the hearing examiner, at any time following his designation and before the filing of his decision, to withdraw on ground of personal bias or disqualification, by filing with him promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

Subp. 3. Action by hearing examiner. If, in the opinion of the hearing examiner, the affidavit referred to in subpart 2 is filed with due diligence and is sufficient on its face, the hearing examiner shall forthwith disqualify himself and withdraw from the proceeding.

Subp. 4. Refusal to withdraw. If the hearing examiner does not disqualify himself and withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling and shall proceed with the hearing, or, if the hearing has closed, he shall proceed with the issuance of his decision, and the provisions of part 5215.4900 shall thereupon apply.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.4000 EXAMINATION OF WITNESSES.

Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.4100 AFFIDAVITS.

An affidavit may be admitted as evidence in lieu of oral testimony if the matters therein contained are otherwise admissible and the parties agree to its admission.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.4200 DEPOSITIONS.

Subpart 1. Application. An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth the reasons such deposition should be taken, the name and address of the witness, the matters concerning which it is expected he will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken for purposes of this part, hereinafter referred to as "the officer". Such application shall be filed with the board or the hearing examiner, as the case may be, and shall be served on all other parties and intervenors not less than seven days prior to the time when it is desired that the deposition be taken. Where good cause has been shown, the board or the hearing examiner shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. Such officer may or may not be the officer specified in the application.

Subp. 2. Procedures. Such deposition may be taken before any officer authorized to administer oaths.

At the time and place specified in the order, the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony of the witness shall be reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objection, but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that the officer is not of counsel or attorney to any of the parties not interested in the proceeding. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be included in the certificate of the officer and the deposition may be used as fully as though signed. The officer shall immediately deliver an original and two copies of the transcript, together with his certificate, in person or by registered mail to the chairman at 444 Lafayette Road, St. Paul, Minnesota 55101.

Subp. 3. Ruling. The hearing examiner shall rule upon the admissibility of the deposition or any part thereof.

Subp. 4. Motion to suppress. All errors or irregularities in compliance with the provision of this part shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, discovered.

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Subp. 5. **Party stipulations.** If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.4300 EXHIBITS.

Subpart 1. **Numbering.** All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

Subp. 2. **Admission into evidence.** In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the hearing examiner pursuant to section 72.

Subp. 3. **Copies.** Unless the hearing examiner finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.

Subp. 4. **Rejected exhibits.** All exhibits offered, but denied admission into evidence, shall be identified as in subpart 1 and shall be placed in a separate file designated for rejected exhibits.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.4400 RULES OF EVIDENCE.

Hearings before the board and its hearing examiners shall be in accordance with Minnesota Administrative Procedure Act.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.4500 BURDENS OF PROOF.

In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the commissioner.

In proceedings commenced by a petition for modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.4600 OBJECTIONS.

Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the hearing examiner, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.4700 APPEALS.

Subpart 1. **Directly to board.** Unless expressly authorized by this chapter, rulings by the hearing examiner may not be appealed directly to the board except by its special permission. Unless otherwise provided by this chapter, all such rulings shall become part of the record.

Subp. 2. **Requests for permission to appeal.** Request to the board for special permission to appeal from such ruling shall be filed in writing within five days following receipt of the ruling and shall state briefly the grounds relied on.

Subp. 3. **Grounds for granting appeal.** Interlocutory appeal from a ruling of the hearing examiner shall be allowed as of right where the hearing examiner certifies that the ruling involves an important question of law concerning which

there is substantial ground for difference of opinion and an immediate appeal from the ruling will materially expedite the proceedings. Such appeal shall also be allowed in the circumstances set forth in part 5215.1100.

Subp. 4. **Stay of proceedings.** Neither the filing of a petition for interlocutory appeal, nor the granting thereof as provided in subparts 2 and 3, shall stay the proceedings before the hearing examiner unless such stay is specifically ordered by the board.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.4800 BRIEFS AND ORAL ARGUMENTS AT THE HEARING.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the hearing examiner. The hearing examiner may fix a reasonable period of time for such filing, but such initial period may not exceed 20 days from the receipt by the party of the transcript of the hearing.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.4900 DECISIONS.

The decision of the hearing examiner shall include findings of fact, conclusions of law, and an order. The hearing examiner shall sign and date the decision. Upon issuance of the decision, jurisdiction shall rest solely in the board, and all motions, petitions, and other pleadings filed subsequent to such issuance shall be addressed to the board.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.5000 PETITION FOR DISCRETIONARY REVIEW.

A party aggrieved by the decision of a hearing examiner may submit a petition for discretionary review. The petition must be received by the board at its offices in Saint Paul, Minnesota on or before the 25th day following receipt by the board of the hearing examiner's decision. A petition should contain a concise statement of each portion of the decision and order to which exception is taken and may be accompanied by a brief of points and authorities relied upon. The original and three copies shall be filed with the board. Failure to act on such petition within the review period shall be deemed a denial thereof.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.5100 STAY OF FINAL ORDER.

Any party aggrieved by a final order of the board may, while the matter is within the jurisdiction of the board, file a motion for a stay. Such motion shall set forth the reasons a stay is sought and the length of the stay requested. The board may order such stay for the period requested or for such longer or shorter period as it deems appropriate.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.5200 ORAL ARGUMENT BEFORE THE BOARD.

Oral argument before the board ordinarily will not be allowed. In the event the board desires to hear oral argument with respect to any matter it will advise all parties to the proceeding of the date, hour, place, time allotted, and scope of such argument at least ten days prior to the date set.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.5300 SETTLEMENTS.

Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the act. Settlement agreements submitted by the parties shall be accompanied by an appropriate proposed order. Where parties to settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees in the manner set forth in part 5215.0700. Proof of such service shall accompany the proposed settlement when submitted to the board or the hearing examiner.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.5400 EXPEDITED PROCEEDING.

Upon application of any party or intervenor, or upon his own motion, any commissioner may order an expedited proceeding. When such proceeding is ordered, the executive commissioner shall notify all parties and intervenors. The hearing examiner assigned in an expedited proceeding shall make necessary rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, shall order daily transcripts of the hearing, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.5500 STANDARDS OF CONDUCT.

All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the state of Minnesota.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.5600 EX PARTE COMMUNICATIONS.

There shall be no ex parte communication with respect to the merits of any case not concluded between the board, including any member, officer, employee, or agent of the board who is employed in the decisional process, and any of the parties of the intervenors.

In the event such ex parte communication occurs, the board or the hearing examiner may make such orders to take such action as fairness requires. Upon notice and hearing, the board may take such disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.5700 RESTRICTIONS UPON THE COMMISSIONER.

In any proceeding noticed pursuant to the rules in this chapter, the commissioner shall not participate or advise with respect to the report of the hearing examiner or the board decision.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.5800 INSPECTION AND REPRODUCTION OF DOCUMENTS.

Subject to the provisions of law restricting public disclosure of information, any person may, at the offices of the board, inspect and copy any document filed in any proceeding. Costs shall be borne by such person.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.5900 RESTRICTIONS ON FORMER EMPLOYEES.

No former employee of the board or the hearing examiner, including a member of the board or the hearing examiner, shall appear before the board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which he participated personally and substantially during the period of his employment.

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No former employee of the board or the hearing examiner, including a member of the board or the hearing examiner, shall appear before the board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, for which he was personally responsible during the period of his employment, unless one year has elapsed since the termination of such employment.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.6000 WAIVER.

In special circumstances not contemplated by the provisions of this chapter, or for good cause shown, the board may, upon application by any party or intervenor, or on its own motion, after three days' notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the act requires.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*

5215.6100 PENALTIES.

All penalties assessed by the board are civil.

The board has no jurisdiction under the act and will conduct no proceeding thereunder.

Statutory Authority: *MS s 182.662 subd 3; 182.664 subd 3*