

**Salt Lake Valley Health Department**

**ADJUDICATIVE HEARING PROCEDURES**

**Adopted by the Salt Lake Valley Board of Health**

**April 5, 2007**

**Effective Date: May 15, 2007**

**Under Authority of Utah Code Ann. §§ 26A-1-109(8),  
26A-1-121(2), and 26A-1-114, Utah Code Annotated, 1953 , as Amended**

## **1.0 Purpose and Authority**

These rules describe the administrative adjudicative procedures for the Salt Lake Valley Health Department (“Department”). These rules provide an equitable and uniform method for administering and resolving disputes between the Department and parties alleged to have violated laws, ordinances, regulations and orders under the jurisdiction of the Department.

## **2.0 Definitions**

2.1 “Board” means the Salt Lake Valley Board of Health created under Utah Code Ann. § 26A-1-109 and Salt Lake County Code of Ordinances 9.04.

2.2 “Chief Hearing Officer” means an attorney, Department representative, County official, or a person with prior experience in conducting administrative hearings who is selected by the Department Director to hear departmental appeals and issue an order. A Chief Hearing Officer does not perform prosecutorial or investigative functions in connection with any hearing in which he or she serves as Chief Hearing Officer.

2.3 “Days” means calendar days. In computing any period of time prescribed or allowed by these rules, by order of a hearing officer or Chief Hearing Officer, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day.

2.4 “Department” means the Salt Lake Valley Health Department which is responsible for administering these hearing procedures.

2.5 “Immediate Compliance Order” or “IC Order” means an order requiring immediate compliance prior to any hearing, including but not limited to the following:

- 2.4.1 An order issued pursuant to Utah Code Ann. § 26-15-9 and Salt Lake Valley Health Regulations that impounds adulterated food;
- 2.4.2 An order closing a business;
- 2.4.3 An order closing a residence to occupancy or entry;
- 2.4.4 An order closing a public swimming pool;
- 2.4.5 An order suspending or revoking an existing license, permit or certificate;
- 2.4.6 An order suspending or revoking prior approval of a work plan;
- or
- 2.4.7 Any other immediately effective emergency order.

2.6 “Hearing Officer” means an attorney or Department representative who is selected by the Department Director to conduct departmental hearings. A Hearing Officer does not

perform prosecutorial or investigative functions in connection with any matter in which he or she serves as Hearing Officer.

2.7 “Notice of Violation/Departmental Determination” or “NOV/DD” means an initial departmental notice concerning legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable parties, including all determinations to grant, deny, revoke, suspend, modify, impose, annul, withdraw, or amend any requirements, permits, rights, penalties or fines subsequent to an opportunity for a hearing. An NOV/DD is issued without conducting any level of review by a Hearing Officer or Chief Hearing Officer. An NOV/DD does not include IC Orders.

2.8 “Party” means the person to whom an initial order or NOV/DD or IC Order is directed, such as a person who submitted a permit application that was approved or disapproved by the Department; the Department or Bureau; and all persons whose legal rights or interests are substantially affected by the proceeding, who have standing to participate in the proceeding, and to whom intervention rights have been granted under Section 12.11 or authorized by statute to intervene.

### **3.0 Disqualifications**

3.1 A Hearing Officer or Chief Hearing Officer may not perform functions provided for in these rules regarding any matter in which he or she:

3.1.1 has a financial interest; or

3.1.2 has any relationship with a Party or with the subject matter which would make it inappropriate for the officer to act.

3.2 Any Party may at any time by motion made to the Department request that the Hearing Officer or Chief Hearing Officer be disqualified from the review. A Hearing Officer or Chief Hearing Officer may withdraw from any review proceeding in which he or she deems himself or herself disqualified or unable to act for any reason.

### **4.0 Adjudicative Proceedings**

4.1 Three types of proceedings are available to resolve a NOV/DD: a departmental conference, a departmental hearing, and a departmental appeal. The Department should attempt to resolve disputes at the lowest level. Two types of proceedings are available to resolve a IC Order: a departmental conference or a departmental hearing.

4.2 When good cause appears, the Department may permit a deviation from these rules if it finds compliance to be impractical or unnecessary or that such deviation furthers justice or purposes of the Department.

4.3 These rules will be liberally construed to secure a just, speedy and economical determination of all issues presented to the Department.

4.4 Departmental appeals constitute formal proceedings for purposes of judicial review; departmental conferences and departmental hearings shall constitute informal proceedings.

4.5 To the extent that the Utah Administrative Procedures Act (“UAPA”) governs the proceedings by statute or other specific requirement and these provisions conflict, the UAPA prevails.

4.6 The Department’s burden of proof during the departmental hearing, or if there is no departmental hearing, during the departmental appeal, is by the preponderance of the evidence for the elements of the violation. The burden of proving affirmative defenses and other assertions is on the party asserting it by a preponderance of evidence or as otherwise provided by law.

4.7 Parties and witnesses may participate in a departmental conference, departmental hearing, and departmental appeal by telephone if the parties agree or upon an order, based on good cause, of a Hearing Officer or Chief Hearing Officer. The parties, the Hearing Officer, or Chief Hearing Officer shall provide for the orderly exchange of any documents that will or may be used during the participation by telephone.

4.8 Settlement Agreement and Order. If the parties reach an agreement at any time after the Department issues an NOV/DD or a IC Order and before any appeal to a District Court as to the issues, requirements and penalties (if any), the Department representative shall prepare, in consultation with the District Attorney’s Office, a binding settlement agreement and order and shall submit the agreement and order to the parties for approval and signature. After signing a settlement agreement and order and the Department or Board’s entry of the order, the Parties waive all rights to further department conferences, hearings or appeals.

**5.0 Filing a Request for a Department Conference, Hearing, or Appeal and Consequences of Failure to File Such a Request.**

5.1 NOV/DD:

5.1.1 A party aggrieved by an NOV/DD may request a Departmental Conference, Department Hearing, or Departmental Appeal with the Department. Such a request must be in writing and must be received by the Department within ten (10) Days after the NOV/DD is received by the party.

5.1.2 If a Party aggrieved by an NOV/DD fails to file a written request for a departmental conference, departmental hearing, or departmental appeal with the Department within ten (10) Days after the NOV/DD is received by the Party, the NOV/DD is a final

unappealable order of the Department and Board and may not be challenged in further administrative or judicial appeals. The written request for a departmental conference, departmental hearing, or departmental appeal must be received by the Department within ten (10) Days after the NOV/DD is received by the Party. If no written request for a departmental conference, departmental hearing, or departmental appeal is received within ten Days after the NOV/DD is received, the NOV/DD is a final unappealable order of the Department and Board and may not be challenged in further administrative or judicial appeals.

## 5.2 IC Order:

5.2.1 A party aggrieved by an IC Order may request a Departmental Conference or Department Hearing with the Department. Such a request must be in writing and must be received by the Department within five (5) Days after the IC Order is received by the party.

5.2.2 If a Party aggrieved by a IC Order fails to file a written request for a departmental conference or departmental hearing with the Department within five (5) Days after the IC Order is received by the Party, the IC Order is a final unappealable order of the Department and Board and may not be challenged in further administrative or judicial appeals. The written request for a departmental conference or departmental hearing must be received by the Department within five (5) Days after the IC Order is received by the Party. If no written request for a departmental conference or departmental hearing is received within five Days after the IC Order is received, the IC Order is a final unappealable order of the Department and Board and may not be challenged in further administrative or judicial appeals. In addition, the Department may then proceed as permitted by Utah Code Ann. §26-15-9 to condemn and destroy the adulterated food products if it is deemed necessary for the protection of the public health.

## 6.0 **Departmental Conference**

6.1 Purpose: The purpose of a departmental conference is to resolve matters raised quickly and inexpensively through informal discussions in which the parties are allowed to review and evaluate evidence presented.

### 6.2 Commencement.

6.2.1 If a Party is aggrieved by a NOV/DD, the party may file with the Department a written request for a departmental conference. The written request for a departmental conference must be received by the Department within ten (10) Days after the NOV/DD is received by the Party. The Department must notify the parties of the date of the departmental conference within twenty (20) Days of receipt of the request for a departmental conference. The scheduled date shall be within sixty (60) Days from the date of the request for a departmental conference unless the parties agree otherwise.

6.2.2 If a Party is aggrieved by a IC Order, the party may file with the Department a written request for a departmental conference. The written request for a

departmental conference must be received by the Department within five (5) Days after the IC Order is received by the Party. The Department must notify the parties of the date of the departmental conference within five (5) Days of receipt of the request for a departmental conference. The scheduled date shall be within ten (10) Days from the date of the request for a departmental conference unless the parties agree otherwise.

6.3 Evidence. In a departmental conference, the parties shall be permitted to present witnesses and evidence and comment on the issues. Discovery is prohibited. A Party aggrieved by an NOV/DD or IC Order will not have access to the Department's investigatory information. Intervention by a third party is prohibited. No recording will be made of the conference. The conference will not be open to the public.

#### 6.4 Failure to Reach A Settlement Or Request A Hearing.

6.4.1 NOV/DD If the parties fail to reach an agreement during the departmental conference, the Party aggrieved by the NOV/DD must request a departmental hearing or departmental appeal within ten (10) Days after the date of the departmental conference. The written request for a departmental hearing or departmental appeal must be received by the Department within ten (10) Days after the date of the departmental conference. If a Party aggrieved by an NOV/DD fails to file a written request for a departmental hearing or departmental appeal with the Department within ten (10) Days after date of the departmental conference, the NOV/DD is a final unappealable order of the Department and Board and may not be challenged in further administrative or judicial appeals.

6.4.2 IC Order: If the parties fail to reach an agreement during the departmental conference, the Party aggrieved by the IC Order must request a departmental hearing or departmental appeal within five (5) Days after the date of the departmental conference. The written request for a departmental hearing must be received by the Department within five (5) Days after the date of the departmental conference. If a Party aggrieved by an IC Order fails to file a written request for a departmental hearing or departmental appeal with the Department within five (5) Days after date of the departmental conference, the IC Order is a final unappealable order of the Department and Board and may not be challenged in further administrative or judicial appeals. The Department may then proceed as permitted by law.

### **7.0 Default in Departmental Conference**

7.1 The Department may enter an Order of Default against a Party if the Party fails to appear and participate in the departmental conference. The Order of Default shall include a statement of the grounds for default and shall be mailed to the parties. An Order of Default may find that the NOV/DD or IC Order are final and unappealable or dismiss the NOV/DD or IC Order with or without prejudice.

7.2 A defaulting Party may seek to have the Department set aside the default order and subsequent proceedings on the grounds set out in the Utah Rules of Civil Procedure for relief

from a judgment or order. A written request to set aside a default order must be filed and received by the Department within ten (10) Days of the receipt of the Order of Default. The Department shall issue a decision on the request within twenty (20) Days from the receipt of the request.

7.3 After issuing the Order of Default, the Hearing Officer may conduct any further proceedings necessary to complete the hearing without the participation of the Party in default and may determine all issues, including those affecting the defaulting party. Alternatively, the Order of Default may dismiss the request for a departmental conference if the Party aggrieved by the NOV/DD or IC Order fails to appear. The Order of Default may dismiss the NOV/DD or IC Order if representatives of the Department fail to appear. An Order of Default may find that the NOV/DD or IC Order are final and unappealable or may dismiss the NOV/DD or IC Order with or without prejudice.

7.4 If a Party aggrieved by the Department's Order of Default or Order fails to file a written request to the Department to set aside the order with the Department within ten (10) Days after receipt of the order as set out above, the Department's Order of Default is a final unappealable order of the Department and Board and may not be challenged on the basis of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence which by due diligence could not have been discovered in time to move for the default to be set aside, or fraud, misrepresentation, or misconduct of an adverse party. However, the ten (10) day time limit does not apply to motions to set aside the Order of Default on the grounds that the order is void, the judgement has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application, or any other reason justifying relief from the operation of the order not listed above.

## **8.0 Departmental Hearing**

8.1 Purpose. The purpose of a departmental hearing is to have a hearing officer resolve matters in dispute quickly and inexpensively through informal proceedings in which the parties are allowed to present witnesses and evidence informally.

### **8.2 Commencement.**

8.2.1 If a Party is aggrieved by a NOV/DD, the Party may file with the Department a written request for a departmental hearing within ten (10) Days of receiving the NOV/DD or within ten (10) Days after the date of the departmental conference. The written request for a departmental hearing must be received by the Department within ten (10) Days after the NOV/DD is received by the Party or within ten (10) Days of the date of the departmental conference. The Department may, but is not required to, file an answer or other responsive pleading.

8.2.2 If a Party is aggrieved by a IC Order, the Party may file with the Department a written request for a departmental hearing within five (5) Days of receiving the IC Order or within five (5) Days after the date of the departmental conference. The written request for a departmental hearing must be received by the Department within five (5) Days after the IC Order is received by the Party or within five (5) Days of the date of the departmental conference. The Department may, but is not required to, file an answer or other responsive pleading.

8.3 Request for Departmental Hearing. The Party's request for departmental hearing shall be in writing, signed by the Party, and include:

- 8.3.1 the names and addresses of all parties to whom a copy of the request for departmental hearing is being sent;
- 8.3.2 a space for the Department's file number or other reference number;
- 8.3.3 a statement of the disputed facts and reasons forming the basis for relief or action; and
- 8.3.4 a statement of the relief or action sought from the Department.

8.4 Notice of Hearing:

8.4.1 NOV/DD. In the case of a request for a departmental hearing on a NOV/DD, the Department shall notify the parties of the date of the departmental conference by issuing a Notice of Hearing within twenty (20) Days of receipt of the request for a departmental hearing. The scheduled date shall be within sixty (60) Days from the date of the request for a departmental hearing unless the parties agree otherwise.

8.4.2. IC Order: In the case of a request for a departmental hearing on a IC Order, the Department shall notify the parties of the date of the departmental conference by issuing a Notice of Hearing within five (5) Days of receipt of the request for a departmental hearing. The scheduled date shall be within ten (10) Days from the date of the request for a departmental hearing unless the parties agree otherwise.

8.4.3. All Notices of Hearing shall include:

- 8.4.3.1 the Department's file number or other reference number;
- 8.4.3.2 a statement of the time and place of the hearing;
- 8.4.3.3 a statement that a Party failing to attend may be held in default; and
- 8.4.3.4 the names and addresses of all interested parties to whom a Notice of Hearing is being sent.

## **9.0 Procedures for Departmental Hearing**

9.1 Evidence. The parties named in the Notice of Hearing shall be permitted to testify, present evidence, call witnesses, and comment on the issues. Witnesses shall be placed under oath by the Hearing Officer. The Hearing Officer is not bound by the rules of evidence but shall decide the facts based on the testimony and the evidence submitted from the Department's files and facts presented in evidence in any hearing.

9.2 Discovery. Discovery is prohibited, but the Department may issue subpoenas or other orders as authorized by state law to compel production of necessary evidence.

9.3 Access to Information. To the extent permitted by law, the Party aggrieved by the NOV/DD or IC Order shall have access to information contained in the Department's files and to all materials and information gathered by investigation.

9.4 Intervention. Intervention by a third party is prohibited, except where required by state or federal law.

9.5 Recording. The Hearing Officer shall record the hearing. Any Party, at his or her own expense, may have a transcript prepared from the Department's record of the hearing subject to any restrictions that the Department is permitted by statute to impose to protect confidential information.

9.6 Full Disclosure. All hearings shall be open to the public but the Hearing Officer may take appropriate measures to preserve the integrity of the hearing, exclude witnesses if requested by a Party, and protect non-public records or other information protected by law.

9.7 Costs. All parties to the departmental hearing are responsible for assuring the appearance of witnesses, costs of the appearance of witnesses, and all other incidental costs.

9.8 Counsel and Notice of Counsel. Any Party may, at its own expense, be represented by counsel in a departmental hearing. The Department will not provide counsel to Parties aggrieved by an NOV/DD or IC Order. If a Party will be represented by Counsel, it must give written notice to the other Party no later than twenty (20) Days after receipt of the Notice of Hearing on NOV/DD's and no later than three (3) Days after the receipt of the Notice of Hearing on a IC Order. When both parties are represented by counsel, the Hearing Officer may convert the hearing to a departmental appeal upon the request of either party except that a departmental appeal is not available to resolve IC Orders.

9.9 Burden of Proof: The burden of proof in a departmental hearing shall be on the Department by a preponderance of the evidence for the elements of the violation. The burden of proving affirmative defenses and other assertions is on the party asserting it by a preponderance of evidence or as otherwise provided by law.

9.10 Settlement: All parties may stipulate to a continuance of the departmental hearing for the purposes of settlement discussions.

9.11 Order. Within a reasonable time after the close of the proceeding, the Hearing Officer shall issue a written, signed order stating the following:

9.11.1 the decision;

9.11.2 the reasons for the decision;

9.11.3 a notice of the right to appeal; and

9.11.4 the time limits and right to appeal:

9.11.4.1 Request for Department Appeal on NOV/DD: A Party aggrieved by the Hearing Officer's order on a NOV/DD may file a written appeal with the Department within thirty (30) Days after receipt of the Hearing Officer's order. The written request for a departmental appeal must be received by the Department within thirty (30) Days after the Hearing Officer's Order is received by the Party. If a timely Request for Department Appeal is filed by any party, any other party may file an Additional or Cross-Request for Department Appeal within fourteen (14) Days after the first Request for Department Appeal was filed.

9.11.4.2 Request for Board Review of an IC Order: A Party aggrieved by the Hearing Officer's order may file a written request for Board review with the Department within ten (10) Days after receipt of the Hearing Officer's order. The written request for Board Review must be received by the Department within ten (10) Days after the Hearing Officer's Order is received by the Party. If a timely Request for Board Review of an IC Order is filed by any party, any other party may file an Additional or Cross-Request for Board Review of an IC Order within five (5) Days after the first Request for Board Review of an IC Order was filed.

9.12 The Hearing Officer shall, upon issuance, serve a copy of the final order on the parties by mail, by personal delivery, or through other reasonable notice if mail or personal delivery is not possible.

9.13 Failure to File a Timely Appeal.

9.13.1 NOV/DD: If a Party aggrieved by a Hearing Officer's order fails to file a written request for a departmental appeal with the Department within thirty (30) Days after receipt of the order as set out above, the Hearing Officer's order is a final unappealable order of the Department and Board and may not be challenged in further administrative or judicial appeals.

9.13.2 IC Order: If a Party aggrieved by a Hearing Officer's order fails to file a written request for Board review with the Department within ten (10) Days after receipt of the

order as set out above, the Hearing Officer's order is a final unappealable order of the Department and Board and may not be challenged in further administrative or judicial appeals.

## **10.0 Default in Departmental Hearing**

10.1 The Hearing Officer may enter an Order of Default against a Party if the Party fails to appear and participate in the hearing. The Order of Default shall include a statement of the grounds for default and shall be mailed to all parties. An Order of Default may find that the NOV/DD or IC Order is final and unappealable or dismiss the NOV/DD or IC Order with or without prejudice.

10.2 A defaulting Party may seek to have the Hearing Officer set aside the default order and subsequent proceedings on the grounds set out in the Utah Rules of Civil Procedure for relief from a judgment or order. A written request to set aside a default order must be filed and received by the Department within ten (10) Days of the receipt of the Order of Default. The Hearing Officer shall issue a decision on the request within twenty (20) Days from the receipt of the request.

10.3 After issuing the Order of Default, the Hearing Officer may conduct any further proceedings necessary to complete the hearing without the participation of the Party in default and may determine all issues, including those affecting the defaulting party. Alternatively, the Order of Default may dismiss the request for a departmental hearing if the Party aggrieved by the NOV/DD or IC Order fails to appear. The Order of Default may dismiss the NOV/DD or IC Order if representatives of the Department fail to appear. An Order of Default may find that the NOV/DD or IC Order are final and unappealable or may dismiss the NOV/DD or IC Order with or without prejudice.

10.4 If a Party aggrieved by a Hearing Officer's Order of Default fails to file a written request to the Hearing Officer to set aside the order with the Department within ten (10) Days after receipt of the order as set out above, the Hearing Officer's Order of Default is a final unappealable order of the Department and Board and may not be challenged on the basis of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence which by due diligence could not have been discovered in time to move for the default to be set aside, or fraud, misrepresentation, or other misconduct of an adverse party. However, the ten (10) day time limit does not apply to motions to set aside the Order of Default on the grounds that the order is void, the judgement has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application, or any other reason justifying relief from the operation of the order not listed above.

## **11.0 Departmental Appeal**

11.1 Commencement. A Party may file with the Department a Request for Departmental Appeal within ten (10) Days from receipt of an NOV/DD or the date of the

departmental conference or within thirty (30) Days of receipt of a Departmental Hearing Order. The written request for a departmental appeal must be received by the Department within ten (10) Days after the NOV/DD is received by the Party, within ten (10) Days of the date of the departmental conference, or within thirty (30) Days after receipt of the Departmental Hearing Order. No Departmental Appeal is available on IC Orders. The appeal of IC Orders after a Departmental Hearing is to the Board.

11.2 Request for Departmental Appeal. The Request for Departmental Appeal shall include:

11.2.1 the names and addresses of all Parties to whom a copy of the request for a department appeal is being sent;

11.2.2 a statement of the disputed facts and reasons forming the basis for relief or action; and

11.2.3 a statement of the relief or action sought from the Department;

11.2.4 a copy of the Departmental Hearing Order if a departmental hearing was conducted.

11.3 Notice of Hearing. Within thirty (30) Days of receipt of the Request for Departmental Appeal, the Department or the Chief Hearing Officer shall mail a Notice of Hearing to the parties setting forth the date scheduled for hearing the appeal. The Notice of Hearing may be combined with the Department's response, and shall include:

11.3.1 the Department's file number or other reference number;

11.3.2 a statement of the time and place of the hearing;

11.3.3 a statement that a Party failing to attend may be held in default; and

11.3.4 the names and addresses of all Parties to whom a Notice of Hearing is being sent.

11.4 Department Response. Within thirty (30) Days of receipt of the Request for Departmental Appeal, the Department shall file and mail to the aggrieved party and the Chief Hearing Officer a response signed by the Department. The response shall include:

11.4.1 the Department's file number or other reference number;

11.4.2 a statement of the legal authority and jurisdiction under which the Department's action was taken;

11.4.3 a statement of the facts and reasons forming the basis for relief or action;  
and

11.4.4 a statement of the relief or action sought by the Department.

## **12.0 Procedures for Departmental Appeal Hearing**

12.1 Review of the Record. If a departmental hearing has been conducted, the appeal hearing shall be a review of the hearing record. Otherwise an evidentiary hearing will be conducted on appeal.

12.1.1 In a review of the record, the Chief Hearing Officer and, upon request, the parties shall be provided with an audio copy or, at the discretion of the Department, a transcript if one is made, of the departmental hearing.

12.1.2 The Chief Hearing Officer may provide the parties with the opportunity to make oral argument before making a decision. Additional witnesses or evidence not presented at the departmental hearing may be allowed at the discretion of the Chief Hearing Officer.

12.2 Evidentiary Hearing. The burden of proof in an evidentiary hearing shall be on the Department by a preponderance of the evidence for the elements of the violation. The burden of proving affirmative defenses and other assertions is on the party asserting it by a preponderance of evidence or as otherwise provided by law. If a departmental hearing has been conducted, the appeal hearing shall be a review of the record. The Chief Hearing Officer shall determine if the factual findings are supported by substantial evidence. The Chief Hearing Officer shall review legal conclusions de novo and mixed questions of law and fact will be reviewed for reasonableness and rationality.

12.2.1 Discovery may be conducted according to the Utah Rules of Civil Procedure.

12.2.2 Except as provided in 11.2.1, above, the Chief Hearing Officer is not bound by the Utah Rules of Civil Procedure but may use them as a guide so long as such rules are not inconsistent with these rules.

12.2.3 As authorized under the Local Health Department Act, subpoenas and other orders to secure the attendance of a witness or the production of evidence for formal hearing may be issued by: (a) the Department; (b) the Chief Hearing Officer when requested by any Party; or (c) may be issued by the Chief Hearing Officer on his own motion.

12.3 Public Hearing. All hearings before the Chief Hearing Officer will be open to the public, unless otherwise ordered by the Chief Hearing Officer for good cause shown.

12.4 Full Disclosure. The Chief Hearing Officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable

opportunity to present their positions and protect the confidentiality of records or other information protected by law.

12.5 Evidence. The Chief Hearing Officer is not bound by rules of evidence but shall use them as appropriate guides although not in a manner inconsistent with these rules. The Chief Hearing Officer, on his or her own motion or upon objection or request, may:

12.5.1 exclude evidence that is irrelevant, immaterial, or unduly repetitious;

12.5.2 receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

12.5.3 exclude evidence privileged in the courts of Utah;

12.5.4 take official notice of: (a) any facts that could be judicially noticed under the Utah Rules of Evidence; (b) the record or other proceedings before the Chief Hearing Officer; and (c) technical or scientific facts within the Chief Hearing Officer's specialized knowledge;

12.5.5 not exclude evidence solely because it is hearsay; and

12.5.6 allow all parties an opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

12.6 Testimony. Testimony presented to the Chief Hearing Officer will be sworn testimony under oath or affirmation.

12.7 Recording. The Chief Hearing Officer shall record the appeal at the expense of the Department. Recordings and exhibits shall be retained by the Department. Any party, at his or her own expense, may prepare a transcript from a copy of the appeal recording subject to any restrictions that the Department is permitted by law to impose to protect confidential information.

12.8 Access to Information. Upon written request, all parties shall have access to information contained in the Department's files and to all materials and information gathered by investigation, to the extent permitted by law.

12.9 Counsel. Any party has the right to be represented by counsel. The Department will not provide counsel for other parties and all costs for counsel will be the sole responsibility of the Party.

12.10 Witnesses. All parties to the appeal are responsible to assure the appearance of their witnesses.

12.11 Intervention. Any person not a Party may file with the Department a signed written petition to intervene in a formal appeal.

12.11.1 Any person who wishes to intervene shall mail a copy of the petition to each Party. The petition shall include:

- 12.11.1.1 the Department's file number or other reference number;
- 12.11.1.2 the name of the proceeding;
- 12.11.1.3 a statement of the facts demonstrating that the Petitioner's legal rights or interests are substantially affected by the appeal; or, that the Petitioner qualifies as an intervener under another provision of law; and
- 12.11.1.4 a statement of the relief Petitioner seeks from the Department.

12.11.2 The Chief Hearing Officer shall grant a Petition for Intervention if the Chief Hearing Officer determines that the Petitioner's legal interests may be substantially affected by the adjudicative proceedings and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

12.11.3 Any order granting or denying intervention may impose conditions on the intervener's participation in the appeal that are necessary for a just, orderly, and prompt resolution of the proceedings. Such conditions may be imposed at any time after the intervention.

12.12 Settlement: All parties may stipulate to a continuance of the departmental appeal for the purposes of settlement discussions.

### **13.0 Default in Departmental Appeal**

13.1 The Chief Hearing Officer may enter an Order of Default against a Party if the Party fails to appear and participate in the hearing, fails to respond to discovery, or comply with the Chief Hearing Officer's orders. The Order of Default shall include a statement of the grounds for default and shall be mailed to all parties. An Order of Default may find that the NOV/DD is final and unappealable or dismiss the NOV/DD with or without prejudice.

13.2 A defaulting Party may seek to have the Chief Hearing Officer set aside the default order and subsequent proceedings on the grounds set out in the Utah Rules of Civil Procedure for relief from a judgment or order. A written request to set aside a default order must be filed and received by the Department within ten (10) Days of the receipt of the Order of Default. The hearing Officer shall issue a decision on the request within twenty (20) Days from the receipt of the request.

13.3 After issuing the Order of Default, the Chief Hearing Officer may conduct any further proceedings necessary to complete the hearing without the participation of the Party in default and may determine all issues, including those affecting the defaulting party. Alternatively, the Order of Default may dismiss the request for a departmental appeal if the Party aggrieved by the NOV/DD fails to appear. The Order of Default may dismiss the NOV/DD if representatives of the Department fail to appear. An Order of Default may find that the NOV/DD is final and unappealable or may dismiss the NOV/DD with or without prejudice.

13.4 If a Party aggrieved by a Chief Hearing Officer's Order of Default fails to file a written request to the Chief Hearing Officer to set aside the order with the Department within ten (10) Days after receipt of the order as set out above, the Chief Hearing Officer's Order of Default is a final unappealable order of the Department and Board and may not be challenged on the basis of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence which by due diligence could not have been discovered in time to move for the default to be set aside, or fraud, misrepresentation, or other misconduct of an adverse party. However, the ten (10) day time limit does not apply to motions to set aside the Order of Default on the grounds that the order is void, the judgement has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application, or any other reason justifying relief from the operation of the order not listed above.

#### **14.0 Final Order of Chief Hearing Officer**

14.1 Within a reasonable time after the close of the departmental appeal hearing, the Chief Hearing Officer shall issue a written, signed final order which shall include the following:

14.1.1 a statement of the Chief Hearing Officer's findings of fact, conclusions of law and order;

14.1.1.1 The Chief Hearing Officer may adopt a Hearing Officer's findings of fact, if any, if such findings are supported by substantial evidence or make other findings of fact if necessary and supported by substantial evidence in the record; and

14.1.1.2 The Chief Hearing Officer may adopt the Hearing Officer's conclusions concerning mixed questions of law and fact if reasonable and rational or make other conclusions if reasonable and rational; and

14.1.1.3 The Chief Hearing Officer may adopt the Hearing Officer's conclusions of law or make his own;

14.1.2 the order and reasons for the order; and

14.1.3 a notice of the right to appeal; and

14.1.4 the time limits for filing a written request for review by the Board as provided in Utah Code Ann. § 26A-1-121(2). A Party aggrieved by the Chief Hearing Officer's order may file a written appeal with the Department for consideration by the Board within thirty (30) Days after receipt of the Chief Hearing Officer's order. The written request for Board review must be received by the Department within thirty (30) Days after the Chief Hearing Officer's Order is received by the Party. If a timely written request for Board review is filed by any party, any other party may file an additional or cross-request for Board review within fourteen (14) Days after the first written request for Board review was filed.

14.2 The Chief Hearing Officer may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

14.3 The Chief Hearing Officer's authority is limited to the specific subject matter presented. The Chief Hearing Officer may submit separate policy recommendations to the Board of Health but may not legislate policy.

14.4 No finding of fact that was contested may be based solely on hearsay evidence if the evidence was admitted as part of an evidentiary hearing in a departmental appeal.

14.5 This section does not preclude the Chief Hearing Officer from issuing interim orders to:

14.5.1 notify the parties of further hearings;

14.5.2 notify the parties of provisional rulings on a portion of the issues presented; or

14.5.3 otherwise provide for the fair and efficient conduct of the adjudicative hearing.

14.6 If no material facts are in dispute or are agreed to by stipulation between the parties, the Chief Hearing Officer, upon receiving written or oral argument, may summarily decide the case by issuing a final order, accompanied by written findings and conclusions.

14.7 The Chief Hearing Officer shall, upon issuance, serve a copy of the final order on the parties by mail, by personal delivery, or through other reasonable notice if mail or personal delivery is not possible.

14.8 A Party cannot request a departmental conference or informal hearing during or subsequent to a departmental appeal.

14.9 If a Party aggrieved by a Chief Hearing Officer's order fails to file a written request for review by the Board with the Department within thirty (30) Days after receipt of the order as set out above, the Chief Hearing Officer's order is a final unappealable order of the Department and Board and may not be challenged in further administrative or judicial appeals.

## **15.0 Board Review**

Pursuant to a timely request as set forth in section 9.10.4.2 and 14.0 above, a party may request that the Board review a Hearing Officer or Chief Hearing Officer's final order pursuant to Utah Code Ann. § 26A-1-121(2).

15.1 A party's request for review shall include the following:

15.1.1 the names and addresses of the Parties and the Department's file number;

15.1.2 a statement of the relief or action sought from the Board;

15.1.3 a statement of the disputed facts and reasons forming the basis for relief or action; and

15.1.4 a copy of the Hearing Officer or Chief Hearing Officer's Order.

15.2 The review for matters subject to these rules shall be a review of the record of any departmental hearing and/or departmental appeal. The Board shall determine if the factual findings are supported by substantial evidence. The Board shall review legal conclusions de novo and mixed questions of law and fact will be reviewed for reasonableness and rationality.

15.3 The Board may designate one or more members to coordinate the parties' submission of materials and to prepare a recommended order for the Board's review.

15.4 The Board or its designee[s] may set a schedule for the orderly submission of memoranda concerning the appeal by the Parties, normally to include an initial memorandum from the party seeking the review, a response memorandum from the party opposing the appeal and setting forth any matters for cross-appeal, and a reply memorandum from the party seeking review.

15.5 Within a reasonable time after the request for review and the parties submission of materials for the review, the Board shall issue a written final order signed by the Board Chair and approved by a majority vote of the Board which shall include the following:

15.5.1 a statement of the Board's findings of fact, conclusions of law and order;

15.5.1.1 The Board may adopt a Hearing Officer or Chief Hearing Officer's findings of fact if such findings are supported by

substantial evidence or make other findings of fact if necessary and supported by substantial evidence in the record; and

15.5.1.2 The Board may adopt a Hearing Officer or Chief Hearing Officer's conclusions concerning mixed questions of law and fact if reasonable and rational or make other conclusions if reasonable and rational; and

15.5.1.3 The Board may adopt a Hearing Officer or Chief Hearing Officer's conclusions of law or make its own;

15.5.2 a notice of the right to appeal; and

15.5.3 the time limits for filing a written request for judicial review as provided in Utah Code Ann. § 26A-1-121(2)(c). A Party aggrieved by the Board's order may file a written petition with the district court within thirty (30) Days after receipt of notice of the Board's final determination. The petition must be received by the district court within thirty (30) Days after the Chief Hearing Officer's Order is received by the Party. If a timely written request for judicial review is filed by any party, any other party may file an additional or cross-request for judicial review with its answer.

15.6 The Board shall, upon issuance, serve a copy of the final order on the parties by mail, by personal delivery, or through other reasonable notice if mail or personal delivery is not possible.

15.7 Failure to File a Timely Appeal. If a Party aggrieved by the Board's order fails to file a written petition for review in the district court within thirty (30) Days after receipt of the order as set out above, the Board's order is a final unappealable order of the Department and Board and may not be challenged in further administrative or judicial appeals.

## **16.0 Default**

16.1 The Board may enter an Order of Default against a Party if the Party fails to participate in the Board review or comply with the Board's orders. The Order of Default shall include a statement of the grounds for default and shall be mailed to all parties. An Order of Default may find that the NOV/DD, IC Order, or Hearing Officer or Chief Hearing Officer's Order is final and unappealable or dismiss the NOV/DD, IC Order, Hearing Officer or Chief Hearing Officer's Order with or without prejudice.

16.2 A defaulting Party may seek to have the Board set aside the default order and subsequent proceedings on the grounds set out in the Utah Rules of Civil Procedure for relief from a judgment or order. A written request to set aside a default order must be filed and received within ten (10) Days of the receipt of the Order of Default.

16.3 After issuing the Order of Default, the Board may conduct any further proceedings necessary to complete the review without the participation of the Party in default and may determine all issues, including those affecting the defaulting party. Alternatively, the Order of Default may dismiss the request for review if the Party aggrieved by the NOV/DD, IC Order, or Hearing Officer's or Chief Hearing Officer's Order fails to appear or dismiss the NOV/DD, IC Order, or Hearing Officer's or Chief Hearing Officer's Order if representatives of the Department fail to appear. An Order of Default may find that the NOV/DD, IC Order, or Hearing Officer or Chief Hearing Officer's Order is final and unappealable or may dismiss the NOV/DD, IC Order, or Hearing Officer's or Chief Hearing Officer's Order with or without prejudice.

16.4 If a Party aggrieved by the Board's Order of Default fails to file a written request for the Board to set aside the order with the Department within ten (10) Days after receipt of the order as set out above, the Board's Order of Default is a final unappealable order of the Board and may not be challenged on the basis of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence which by due diligence could not have been discovered in time to move for the default to be set aside, or fraud, misrepresentation, or other misconduct of an adverse party. However, the ten (10) day time limit does not apply to motions to set aside the Order of Default on the grounds that the order is void, the judgement has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application, or any other reason justifying relief from the operation of the order not listed above.

### **17.0 Judicial Review**

Judicial review of a final determination by the Board on review is governed by Utah Code Ann. 26A-1-121(2).

### **18.0 Effective Date:**

These procedures shall become effective on May 15, 2007.

**APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

SALT LAKE VALLEY BOARD OF HEALTH

By: \_\_\_\_\_  
JOANN B. SEGHINI, Ph.D.  
Chairperson

ATTEST:

By: \_\_\_\_\_  
GARY L. EDWARDS, M.S.  
Executive Director  
Salt Lake Valley Health Department