

3701-9-09 Denying, suspending and revoking approvals.

- (A) The board of health may deny, suspend, or revoke approval of a business offering body art services if the business made any material misrepresentation to the board, does not meet or no longer meets, or has a history of non-compliance with the requirements of sections 3730.01 to 3730.11 of the Revised Code and this chapter of the Administrative Code.
- (B) In the case of a proposal to deny, suspend, or revoke approval of a business offering body art services, the board of health shall provide the business with written notice of the proposed action and the cause for the action. The notice shall describe the procedure for appealing the proposed denial, suspension, or revocation.
 - (1) The written notice shall be provided by certified mail, return receipt requested, or by hand delivery. If the notice is returned because of failure of delivery, the board of health shall either send the notice by regular mail to the business location listed on the application, or conspicuously post the notice at an entrance of the business. In either case, the notice shall be deemed to have been received on the date it was mailed or posted.
 - (2) The notice shall state that the business may obtain a hearing under this rule if a written request for a hearing is mailed or hand-delivered to the board of health's address specified in the notice, within fifteen days after the affected business receives or is deemed to have received the notice.
 - (3) Upon receiving a timely hearing request, the board of health shall schedule a hearing before the board or a hearing officer designated by the board of health. If the board of health provides a hearing officer, he or she shall be licensed to practice law in Ohio and shall not have participated in any manner in the decision to take the action against the operator.
 - (4) The board of health shall mail or hand-deliver notice of the date, time, and place of the hearing to the operator no less than ten days before the scheduled date. The board of health may additionally post the notice of hearing at the entrance of the business.
 - (5) The business and the board of health each shall have one opportunity to reschedule the hearing date upon specific request to the hearing officer, or if a hearing officer has not been designated, to the other party. Any other postponements of the hearing shall be by agreement of the board of health, the business, and the hearing officer, if one is designated.
 - (6) At the hearing, the business shall have the opportunity to present its case orally or in writing and to confront and cross-examine adverse witnesses. The business may be represented by its counsel, if desired, and may review the case record before the hearing. If the board of health has designated a hearing officer, a member of that board does not have to be present at the hearing.
 - (7) If the hearing is before a hearing officer, he or she shall prepare a written recommendation as to the validity of the board of health's action, which shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the board of health's action. The hearing officer

shall describe the basis for his or her recommendation, but need not prepare a full opinion or formal findings of fact and conclusions of law. The hearing officer shall mail by certified mail, return receipt requested, or hand-deliver the recommendation to the board of health and the operator. Either party may file objections to the recommendation provided that the objections are received by the board of health within five days of receiving a copy of the recommendation from the hearing officer.

- (8) After reviewing any timely objections, the board of health may by motion take additional evidence or approve, modify, or disapprove the hearing officer's recommendation and shall enter an order in the record of its proceedings.
- (9) If the board of health does not receive a timely request for hearing, the board may immediately enter an order as proposed in the notice.
- (C) In the case of a suspension of approval for a violation presenting an immediate danger to the public health, the board of health shall provide the business with written notice of the action, the cause of the action, and the effective date of the action. The written notice shall specify the procedure for appealing the suspension and shall list the address to which a hearing request shall be sent or delivered. The business may appeal the suspension by mailing or hand-delivering a written request for hearing to the address specified in the notice. If a hearing is requested, it shall be heard not later than two business days after the request is received by the board of health. At the hearing, the business shall have the opportunity to present its case orally or in writing and to confront and cross-examine adverse witnesses. The business may be represented by its counsel, if desired, and may review the case record before the hearing. At the hearing, the board of health shall determine whether the immediate danger to the public health continues to exist.
- (D) Any determination made or order entered by the board of health pursuant to this rule shall be made by a majority vote of the members of the board present at a meeting at which there is a quorum. If the board of health conducts the hearing, the board may immediately render a decision denying, suspending, or revoking approval, or render a decision removing or continuing an approval suspension. The determination or order may be considered and made at a meeting without publication or advertisement, and may become effective without such publication or advertisement, recording or certifying. An order is not effective until it is recorded in the board of health's record of its proceedings.

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CERTIFIED ELECTRONICALLY

Certification

03/14/2008

Date

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