**18 DEPARTMENT OF FINANCE AND ADMINSTRATION**

**185 STATE CLAIMS BOARD**

**Chapter 120: RULES OF PRACTICE GOVERNING THE CONDUCT OF ADJUDICATORY PROCEEDINGS FOR STATE CLAIMS**

**Summary**: These rules of practice prescribe the manner in which claims are to be submitted before the State Claims Board.

**1. Scope and Applicability of Rules**

 These Rules shall govern the submission of claims before the State Claims Board and which claims shall include, but shall not be limited to, claims for damage or injury caused by patients, inmates, prisoners in the care or custody of the Department of Mental Health and Corrections or of an institution administered by a department, by children in the custody of the Department of Human Services and for damage to sheep done by dogs or wild animals.

**2. Jurisdiction of Claims**

 A claim may be submitted to the State Claims Board and heard and decided by it if:

 A. The claim was submitted under the pursuant to Title 5 M.R.S.A., Section 1510-A, subsection 1 to a state agency which refused to hear it;

 B. The claim cannot be submitted under a specific statutory provision other than Title 5 M.R.S.A., Section 1510-A, subsection 1 because the claimant, as a result of an action or omission of a state agency or state agent, has not complied with time limits contained in that specific statutory provisions.

**3. Appeal from Departmental Decisions**

 A. Any claim disapproved in whole or part by a state agency hearing that claim under Title 5 M.R.S.A., Section 1510-A, subsection 1 may be appealed to the state Claims Board within thirty (30) days from disapproval or partial disapproval. The State Claims Board shall hear *de novo* any claim so appealed.

 B. Any payment resulting from a decision of the State Claims Board on claim submitted to it under Title 5 M.R.S.A., Section 1510-A, subsection 3 shall be paid by the state agency or agencies found responsible by the State Claims Board or, if there is no clearly identifiable responsible state agency, the payment shall be paid from the state contingent fund.

**4. Appeal form State Claims Board Decision**

 Any party aggrieved by an award of the State Claims Board may appeal therefrom to the Superior Court within 30 days after the date of the receipt of the notice of the award. The appeal shall be taken by filing a complaint setting forth, as in other civil matter, substantially the facts upon which the case shall be tried. Service shall be made on the opposing party and the State Claims Board by sending a true copy of the complaint by registered or certified mail within the time limit set out in this subsection. The complaint shall be filed in the Superior Court for the county where on or more of the parties resides or have their principal place of business or where the activity or property which is the subject of the proceeding is located. The court’s determination shall be de novo and without a jury or, if all parties agree, by a referee or referees. (See Chap. 553, Sec. 2, P.L., 1983).

**5. Jurisdiction Over Claims Prior to January 4, 1977**

 The jurisdiction of the State Claims Board over claims subject to Title 5 M.R.S.A., Section 1510-A includes those claims which have arisen prior to Jan. 4, 1977, unless they have been ruled upon by the Governor and Executive Council or by the Legislature prior to Jan. 4, 1977.

**6. Different Procedures**

 A claim submitted pursuant to Title 5 M.R.S.A., Section 1510-A shall not be disapproved solely because a claim based on the same facts was submitted under a different statutory procedure and was disallowed.

**7. Hearings**

 Hearings on claims submitted pursuant to Title 5 M.R.S.A., Section 1510-A, subsection 2 or appeals made pursuant to subsection 3 shall be held at a time and place which the Board shall determine. The Chairman shall assign one or 3 members to hear and determine each claim.

**8. Practice Before the State Claims Board**

 a. Any person may appear before the Board in his own behalf, or by attorney authorized to practice in this State. Non-attorney representation may be permitted at the discretion of the Board, providing that the rules and regulations and legal procedures are otherwise complied with. In unusual or extraordinary circumstances, and at the discretion of the Board, a person may appear by a representative thereunto authorized in writing. Nothing in this Rule shall be interpreted in such a way as to permit the unauthorized practice of law; nor shall this Rule in any way be construed to restrict or limit the right of any person to conduct his own business with or before the Board.

 B. Every party, in a sequence designated by the presiding officer, shall have the right to present evidence and argument on all issues and to call and examine witnesses and make oral cross-examination of any person present and testifying. However, the presiding officer may limit testimony to avoid repetition.

**9. Procedures for Submission of Claims**

 A. Name, address and telephone number of claimant.

 B. Name, address and telephone number of any representative of claimant.

 C. State department or agency against which claim is asserted.

 D. Date, time and place of incident giving rise to the claim.

 E. The name and address of each State employee who was involved in or who witnessed the incident which gave rise to the claim.

 F. The name and address of any other State Employee who the claimant or claimant’s representative has contacted or who the claimant is aware has been contacted regarding the claim.

 G. The name and address of any other person who witnessed the incident or whom the claimant intends to present in support of his claim.

 H. The name and agency of any law enforcement personnel who investigated the claim.

 I. A concise statement of the basis of the claim.

 J. Estimated dollar value of the claim with receipts or estimates by parties having no relation to the claimant which objectively indicate the cost of repairing or replacing any property and who are qualified to make such estimates with their address and telephone number.

**10. Notice of Hearing**

 Notice of hearing shall be provided to the claimant and to other parties deemed by the Board to have an interest by regular or certified mail.

**11. Opportunity to be Heard**

 The opportunity for any hearing on any claim shall be afforded without undue delay and every party shall have the right to present evidence and arguments on any claim, and at any hearing to call and examine witnesses and to make oral cross-examination of any person present and testifying.

**12. Evidence**

 The State Claims Board need not observe the rules of evidence observed by Courts, but shall observe rules or privilege recognized by law. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Board may exclude irrelevant or unduly repetitious evidence

**13. Witnesses**

 Witnesses shall be sworn and every such witness shall be subject to oral cross-examination. No sworn written evidence shall be admitted unless the author is available for cross-examination or subject to subpoena, except or good cause shown.

**14. Official Notice**

 The Board may take official notice of any facts of which judicial notice could be taken, and in addition, may take official notice of general, technical or scientific matters within their specialized knowledge and of statutes, regulations and nonconfidential agency records. Parties shall be notified of the material so noticed, and shall be afforded an opportunity to contest the substance or materiality of the facts noticed.

**15. Evaluation of Evidence**

 The Board may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented to them.

**16. Record**

 The Board shall record all hearings in a form susceptible to transcription. The Board shall make a copy of the record or any portion thereof shall be available to any person at actual cost.

**17. Documentary Evidence**

 Documentary evidence may be incorporated in the record by reference when the materials so incorporated are made available for examination by the party before being received in evidence.

**18. Subpoenas and Discovery**

 A. Any party shall be entitled to the issuance of process in the name of the Board (to the extent permitted by law) to require the attendance and testimony of witnesses and the production of any evidence relation to any issue of fact in the proceeding to the extent not privileged or protected by stature, rule or constitution.

 B. The Board may prescribe the form of subpoena, but it shall adhere insofar as practical to the form used in civil cases before the Courts. Witnesses shall be subpoenaed only within the territorial limits and in the same manner as witnesses in civil cases before the Courts, unless another territory or manner is provided by law. Witnesses subpoenaed shall be paid the same fee for attendance and travel as in civil cases before the Courts. Such fees shall be paid by the party requesting the subpoena.

 C. Any subpoena issued shall show on its face the name and address of the party at whose request it was issued.

 D. Any witness subpoenaed may petition the Board to vacate or modify a subpoena issued in its name. The Board shall give prompt notice to the party who requested issuance of the subpoena. After such investigation as the Board considers appropriate, it may grant the petition in whole or in part upon a finding that the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive or has not been issued a reasonable period in advance of the time when the evidence is requested.

 E. Failure to comply with a subpoena lawfully issued in the name of the Board and not revoked or modified by the Board as provided in this section shall be punishable as for contempt for Court.

**19. Decisions**

 The Decision of the Board shall be made in writing and shall include reasons for the basis for the decision. A copy of the Decision shall be delivered or promptly mailed to each party or his/her representative or record by regular or certified mail. Written notice of the party’s rights to appeal the Decision, if applicable, will be given to each party with the Decision.

**20. Presiding Officer; Duties**

 The Chairperson of the Board shall assign either one or 3 members to hear and determine each claim and if the composition of the Board is 3, than the presiding officer shall be either the Chairperson or other attorney member and if one member, than in that event, the presiding officer can be either the Chairperson, the other attorney member or other member of the Board.

 The presiding officer may:

 A. Administer oaths and affirmations;

 B. Rule on the admissibility of evidence;

 C. Regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing of evidence, briefs and other written submissions; and

 D. Take action authorized by stature or Board rules.

STATUTORY AUTHORITIY: Title 5 M.R.S.A., Section 1510-A (8)

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