

CHAPTER 33-22-02 PLEADINGS

Section

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33-22-02-01. Informal complaint.

Informal complaints may be made orally or in writing addressed to the department. Letters of complaint to the department will be considered as informal complaints. Matters thus presented will be handled by correspondence or by other informal communications, or by conference with the party or parties complained of, or by formal investigation instituted by the department upon its own motion, or in such other manner as the department shall deem to be appropriate and warranted by the facts and the nature of the complaint in an endeavor to bring about satisfaction of the complaint without formal hearing.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02

33-22-02-02. Formal complaints.

1. Complaints shall be made by the department on its own motion by complaint in writing, setting forth any act or thing done or omitted to be done in violation or claimed to be violation of any provision of law or of any order, rule, regulation, or permit of the department.
2. Each formal complaint shall show the venue, "before the North Dakota state department of health" and shall contain a heading, "in the matter of", showing the name and address of the respondent. The complaint shall be so drawn as to fully and completely advise the respondent or the department of the facts constituting the ground of the complaint; the provisions of the statutes, regulations, orders, or permit relied upon; the injury complained of; and shall contain a clear, concise statement of the relief sought.
3. The department shall serve a true copy of the complaint and notice for hearing upon the respondent personally, or by registered or certified mail, as the department may direct, in such time as provided by law before the time specified for hearing thereof unless the service of such complaint or notice of hearing is waived, in writing, by the respondent, or unless the parties agree upon a definite time and place for hearing thereof with the consent of the department. However, in case of an emergency the department shall notice a proceeding for hearing upon its merits as provided by law.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05

33-22-02-03. Order to show cause.

1. The department may, by order, compel any person who it believes is violating any law or regulation subject to enforcement by this article, or any person who has been granted a

permit, to show cause why such law or regulation should not be enforced against such person or why such permit should not be suspended, revoked, or modified, either in whole or in part.

2. An order to show cause shall specifically advise the respondent of the facts of the violation and law applicable thereto and of the time and place of the hearing to be conducted on the order.
3. If the department finds that the respondent is committing or is about to commit an alleged violation, it may order the respondent to cease and desist from the acts constituting the violation. The department may also, or in lieu thereof, enter any other just and reasonable order.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05

33-22-02-04. Petition for hearing.

Any petitioner requesting the department to review by hearing, as provided by law, any departmental action, rule, or regulation shall file with the department a petition, which may be in letter form, advising the department of the facts constituting the grounds for the petition, the injury complained of, and a clear and concise statement of the relief sought.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05

33-22-02-05. Answers.

1. Each answer filed with the department shall be designated as an "answer" and shall contain the correct title of the proceeding, a specific denial of such material allegations of the complaint as are controverted by the respondent, and a statement of any new matter which may constitute a defense. If the answering party has no information or belief upon the subject sufficient to enable the answering party to answer an allegation of the complaint, the answering party may so state in the answer and place the denial upon that ground. The filing of an answer will not be deemed an admission of the sufficiency of the complaint.
2. An answer must be signed and verified by the respondent filing the answer.
3. Two true and correct copies of the answer shall be served upon the department, personally or by registered mail, at least three days before the time specified in the complaint for hearing.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02

33-22-02-06. Response to petition for hearing.

1. Upon receiving a petition for hearing upon any matter, as provided by law, the department shall, within thirty days of such receipt, serve upon the petitioner a response to the petition. The response may be in letter form and shall state the decision of the department whether or not to hold the requested hearing. If a hearing is granted, the response shall state the date upon which the petitioning party may appear to be heard, and such other conditions of the hearing as the department may determine. If the requested hearing is denied, the reasons for such denial shall be clearly stated. This subsection shall not apply to hearings on emergency orders.
2. Upon receiving a petition for hearing pursuant to an emergency order, as provided by law, the department shall set a date for hearing to be held within ten days of receipt of such petition

and shall notify the petitioner of such date and of such other conditions of the hearing as the department shall determine.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05

33-22-02-07. Intervention.

In any formal proceeding, any person having a substantial interest in the subject matter of such proceeding may petition for leave to intervene in such proceeding and may become a party thereto upon compliance with the provisions of this section. In general, such petitions will not be granted unless it shall be found that such person has a statutory right to be made a party to such proceedings or that such person has a property, financial, or other legally-recognizable interest which may not be adequately represented by existing parties, and such intervention would not unduly broaden the issues or delay the proceeding.

1. A petition for leave to intervene shall be in writing, unless made at the commencement of a hearing, and must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and whether the petitioner's position is in support of or in opposition to the relief sought.
2. A written petition for leave to intervene in any proceeding may be filed prior to or at the commencement of the hearing, but not after commencement, except for good cause shown.
3. The petitioner shall furnish a copy of any written petition to each party to the proceeding, including the department.
4. Admission as an intervenor shall not be construed as recognition by the department that such intervenor might be aggrieved by any act of the department in such proceeding.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02

33-22-02-08. Amendments.

The department, prior to any hearing, or the hearing officer during any hearing, may, after notice to the other parties to a proceeding, allow any pleading to be amended or corrected or any omission therein to be supplied, provided that if any such amendment, when allowed, so alters or broadens the issues that it appears proper, the department may permit any party affected thereby a reasonable time to prepare to meet the changed issues.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02

33-22-02-09. Withdrawal of pleading.

A party desiring to withdraw a pleading filed with the department may file a notice of withdrawal thereof with the department. The notice shall set forth the reason for the withdrawal. A copy of the withdrawal notice must be served upon all other parties to the proceeding and a certificate of service to that effect filed with the notice of withdrawal. Withdrawal of any pleading in any proceeding in which a hearing has been held or convened shall not be allowed without express permission of the department.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02

33-22-02-10. Motions.

After a complaint or petition has been served, a request may be made by motion for any procedural or interlocutory ruling or relief proper and desired. All motions not made in the course of a hearing shall be in writing and shall be served on the other parties to the hearing by the moving party.

1. The department, prior or subsequent to any hearing, or the hearing officer during any hearing, may set any motion for oral argument.
2. The hearing officer designated to preside at a hearing is authorized to rule upon any motion not formally acted upon by the department prior to the commencement of the hearing, wherein the immediate ruling is essential in order to proceed with the hearing and upon any motion filed and made after the commencement thereof and prior to the decision in the proceedings. However, no motion made before or during a hearing, a ruling upon which would involve or constitute a final determination of the proceeding, shall be ruled upon by a hearing officer.
3. Motions not ruled upon by the hearing officer shall be ruled upon by the department.
4. Appeals from rulings of the hearing officer on any motion may be taken as provided in section 33-22-04-06.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02