

### **216B.120 Judicial appeals -- Bonds -- Costs.**

- (1) Each party to the proceedings may participate as a party in the proceedings in the Circuit Court on an appeal.
- (2) In case of an appeal, no new or additional evidence may be introduced in the Circuit Court except as to fraud or misconduct of some person engaged in the administration of this chapter and affecting the decision or order; the court shall hear the case upon the certified record or abstract thereof, and shall dispose of the case in a summary manner, its review being limited to determining whether the cabinet acted within its jurisdiction, whether the decision or order was procured by fraud, and whether the findings of fact in issue are supported by substantial evidence and are not clearly erroneous based upon a review of the record as a whole.
- (3) The court shall enter judgment affirming, modifying, reversing, or setting aside the decision or, in its discretion, remanding the case to the cabinet for proceedings in conformity with the directions of the court. If the court affirms the issuance of the certificate of need, the holder of the certificate shall be entitled to recover its costs of defense of the appeal, including its attorney's fees. The decision of the Circuit Court shall be final and nonappealable.
- (4) In any case in which the granting of a license or certificate of need is appealed by a competing health care provider, the court shall require the appellant to post a bond, with good and sufficient surety, in the sum the court deems proper, for the payment of the costs and damages as may be incurred or suffered by the certificate of need or license applicant as a result of the filing and pendency of the appeal. Failure to post the bond as required by the court shall result in the dismissal of the appeal. If the decision of the cabinet granting the certificate of need or license is sustained, the court shall order the appellant health care provider to pay the applicant its costs incurred and damages suffered as a result of the filing and pendency of the appeal, which shall not be limited to the amount of the bond. The court shall not withhold the finality of its decision on the merits of the appeal pending the determination as to the costs and damages. As used in this section, "competing health care provider" means any health facility or health maintenance organization which competes with the applicant for patients, customers, the services of health care personnel, or policyholders.

**Effective:** July 15, 1996

**History:** Amended 1996 Ky. Acts ch. 371, sec. 56, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 512, Part 7, sec. 42, effective July 15, 1994. -- Amended 1990 Ky. Acts ch. 499, sec. 12, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 210, sec. 26, effective July 15, 1988. -- Amended 1982 Ky. Acts ch. 347, sec. 22, effective July 15, 1982. -- Created 1980 Ky. Acts ch. 135, sec. 23, effective July 15, 1980.