§ 228. Administrative review. 1. Appeals board. The commissioner shall appoint three or more appeals officers, to serve at his pleasure, and shall select a chairman for each appeals board from the members so appointed. Appeals officers who are not full time employees of the department shall be attorneys admitted to practice in New York state. The commissioner shall assign at least three appeals officers to serve on each appeals board established to hear appeals pursuant to this section. Any appeals officer who is not a full time employee of the department shall receive a per diem at a rate to be fixed by the commissioner, with the approval of the director of the budget, for each day he serves on an appeals board, in addition to all necessary expenses. The commissioner shall also designate such other members of the department as may be necessary to assist an appeals board in carrying out its assigned functions.

2. Right of appeal. (a) Any person who is aggrieved by a determination of a hearing officer may appeal such determination pursuant to the provisions of this article.

(b) Except as otherwise provided in this subdivision, a transcript of the hearing resulting in the determination appealed from must be submitted on any such appeal.

(c) If the only issue raised on appeal is the appropriateness of the penalty imposed, the appellant, in his discretion, may submit such appeal without a transcript of the hearing. In such event, the decision of the appeals board may be based solely on the appeal papers and the records of the department, and such decision shall not be subject to judicial review.

(d) Where a transcript of the hearing is submitted at the time an appeal is filed, the determination of the appeals board will be subject to judicial review as prescribed in subdivision nine of this section.

3. Appeals boards. Each appeal filed pursuant to this section shall be reviewed by an appeals board, which shall make a determination of such appeal, and shall cause an appropriate order to be entered in the records of the department.

4. Time limitations. No appeal shall be reviewed if it is filed more

than thirty days after notice was given of the determination appealed from.

5. Appeal procedures. Any person desiring to file an appeal from an adverse determination pursuant to this section, shall do so in a form and manner provided by the commissioner. The transcript of any hearing which formed the basis for such determination will be reviewed only if it is submitted by the appellant. An appeal shall not be deemed to be finally submitted until the appellant has submitted all forms or documents required to be submitted by the commissioner or this section.

6. Transcript of hearings. Transcripts of the record of any hearing may be obtained at the cost to the department, if prepared by the department, or at the rate specified in the contract between the department and the contractor, if prepared by a private contractor. The amount paid at such cost or rate by a person convicted who submits, upon an appeal from the determination of guilt, or upon such appeal and upon a review pursuant to the provisions of article seventy-eight of the civil practice law and rules, a transcript of the hearing or hearings which resulted in such determination, shall be refunded by the department upon a final determination by the appeals board, dismissing the charges, or if the charges were sustained by the appeals board, upon a final determination by the court, dismissing the charges.

7. Fees. The fee for filing an appeal shall be ten dollars. No appeal shall be accepted unless the required fee has been paid. Such fees shall be paid by the appeals board to the department of audit and control to the credit of the justice court fund. After such audit as shall be required by the comptroller, such fees shall be credited to the general fund of the state.

8. Stays pending appeal. Whenever a determination has not been made within thirty days after an appeal has been finally submitted, a stay of execution will be deemed granted by operation of law, and the license, certificate, permit or privilege affected will be automatically restored pending final determination.

9. Judicial review. (a) No determination of a hearing officer which is appealable under the provisions of this section shall be reviewed in any court unless an appeal has been filed and determined in accordance with this section.

(b) A determination of the appeals board in any case where a transcript of the hearing has been submitted shall be subject to review pursuant to the provisions of article seventy-eight of the civil practice law and rules. Provided, however, a statement by the hearing officer at the conclusion of the hearing indicating that the charges have been sustained and announcing the penalty imposed, together with a summary of the reasons the appeal was denied by the appeals board, shall constitute sufficient findings for the purpose of such review.