§ 398-f. Hearings; review board; appeals; judicial review. 1. Hearings. (a) Upon the denial of an application for a certificate of registration, the applicant shall, upon written request made within thirty days after the applicant is notified of such denial, be entitled to a hearing before an officer or employee of the department designated for such purpose by the commissioner.

(b) No certificate of registration shall be suspended or revoked, penalty imposed or determination of gross negligence or gross overcharging made as provided for pursuant to paragraph (h) of subdivision one of section three hundred ninety-eight-e of this article, until such registrant shall have been given the opportunity to be heard, upon written notice to the registrant, before an officer or employee of the department designated for such purpose by the commissioner, provided, however, that where a notice of hearing is mailed to a registrant at the address shown in the records of the department and such registrant fails to attend such hearing, the commissioner may suspend such registration pending the registrants attendance at such hearing. Requests for adjournment of such hearings shall be granted in accordance with regulations promulgated by the commissioner. A suspension pending attendance at a hearing shall not be appealable.

(c) The commissioner acting by such officer or employee in the department as he may designate, shall have the power to subpoena and bring before such officer or employee so designated any person in this state, or document, record or other relevant evidence, and administer an oath to and take the testimony of any such person or cause his deposition to be taken. A subpoena issued pursuant to this action shall be regulated by the civil practice law and rules.

(d) In the event a certificate of registration is revoked or an application is denied, no such certificate shall be issued to such former registrant or applicant for at least six months, nor thereafter, except in the discretion of the commissioner.

2. Review board. The commissioner shall establish a review board. Such board shall consist of persons who have been engaged in the automotive repair shop business for at least five years representing the automobile repair shop industry, persons who shall be laymen having no association with the automotive repair shop industry representing

consumers, and persons who are attorneys admitted to practice in this state and who have no interest in or represent as an attorney an automotive repair shop. Members of the review board shall be appointed insofar as is practicable to provide for representation of different geographic areas of the state, and shall serve in no other capacity in the department of motor vehicles. The number of persons appointed to such review board shall be determined by the commissioner and shall be appointed to serve at his pleasure. Three persons, one of whom shall be automotive repair shop industry representatives, one of whom shall be consumer representatives, and one of whom shall be an attorney appointed pursuant to the provisions of this subdivision, shall as a panel review each appeal from a determination of the hearing officer. Such attorney shall serve as the chairman of such panel with respect to any such review. Members of the review board shall be entitled to their actual and necessary expenses incurred in the performance of their duties thereunder, and shall be entitled to a per diem allowance as determined by the commissioner and approved by the director of the division of the budget not to exceed one hundred dollars except that those members who serve as the chairman of a panel at appeal proceedings may be entitled to a per diem allowance in an amount so determined and approved but not exceeding one hundred fifty dollars.

3. Appeals. (a) The review board will review and determine all appeals filed pursuant to this article. Such determination may be to affirm, reverse or modify the initial determination of the hearing officer, or to remand the case for a further hearing to determine additional facts. Any review by such board shall be based solely on the record upon which the initial determination is made and upon any written brief which may be submitted by or on behalf of the applicant or registrant.

(b) (1) Whenever a certificate of registration is suspended or revoked, an application for such registration denied, determination of gross negligence or gross overcharging made, the sealing of a premises ordered or penalty imposed by the commissioner pursuant to this article, except where such action is required by statute based upon a conviction, the registrant, applicant, or owner of the premises as such term is defined in paragraph (a) of subdivision five-a of section three hundred

ninety-eight-i of this article may appeal such determination pursuant to the provisions of this article and such regulations as may be promulgated by the commissioner.

(2) No appeal shall be reviewed unless it is submitted within sixty days after written notice of the determination appealed from is mailed to the registrant or applicant.

(3) Any person desiring to appeal pursuant to this article shall do so in a form and manner as provided by regulations promulgated by the commissioner. The transcript of any hearing will only be reviewed if it is submitted by the appellant who shall bear the expense of furnishing such transcript.

(4) The fee for filing an appeal shall be ten dollars. No appeal shall be deemed filed or submitted unless any required fee has been paid.

(5) The submission of a written request to file such an appeal shall stay the operation of the initial determination until after a review is had and a determination has been made; provided, however, that failure to timely submit such appeal and comply with the provisions of this subdivision shall remove the stay imposed by this paragraph. Such review shall be made and decided as expeditiously as possible; provided that an appeal of an order directing the sealing of the premises pursuant to subdivision five-a of section three hundred ninety-eight-i of this article shall, to the extent possible, be given priority over all other appeals filed pursuant to this article.

(c) Whenever the same facts give rise to a hearing involving any other license or registration issued by the commissioner, a combined hearing may be held. If the registrant appeals only from a determination made with respect to his repair shop registration, he shall be entitled to a review as provided in subdivision one of this section; however, if he appeals from any determination or determinations made with respect to any other license or registration, as well as a determination with respect to his repair shop registration, the appeals procedure established in article three-A of this chapter shall be followed in lieu of the procedure established in subdivision three of this section.

4. Judicial review. The determination of the review board shall be

subject to review by the supreme court in the manner provided in article seventy-eight of the civil practice law and rules.