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to emergency measures necessary to relieve pain.

(Sec. 610(b), 58 Stat. 714, as amended; 33 U.S.C. 763c)

PART 34—MEDICAL EXAMINATION OF ALIENS

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§ 34.1 Applicability.

The provisions of this part shall apply to the medical examination of:

(a) Aliens applying for a visa at an embassy or consulate of the United States;

(b) Aliens arriving in the United States;

(c) Aliens required by DHS to have a medical examination in connection with the determination of their admissibility into the United States; and

(d) Aliens applying for adjustment of status.

§ 34.2 Definitions.

As used in this part, terms shall have the following meanings:

(a) *CDC*. Centers for Disease Control and Prevention, Department of Health and Human Services, or an authorized representative acting on its behalf.

(b) *Communicable disease of public health significance*. Any of the following diseases:

(1) Communicable diseases as listed in a Presidential Executive Order, as provided under Section 361(b) of the Public Health Service Act. The current revised list of quarantinable communicable diseases is available at *http://www.cdc.gov* and *http://www.archives.gov/federal-register*.

(2) Communicable diseases that may pose a public health emergency of international concern if it meets one or more of the factors listed in §34.3(d) and for which the Director has determined a threat exists for importation into the United States, and such disease may potentially affect the health of the American public. The determination will be made consistent with criteria established in Annex 2 of the International Health Regulations (*http://www.who.int/csr/ihr/en/*), as adopted by the Fifty-Eighth World Health Assembly in 2005, and as entered into effect in the United States in July 2007, subject to the U.S. Government's reservation and understandings:

(i) Any of the communicable diseases for which a single case requires notification to the World Health Organization (WHO) as an event that may constitute a public health emergency of international concern, or

(ii) Any other communicable disease the occurrence of which requires notification to the WHO as an event that may constitute a public health emergency of international concern. HHS/CDC's determinations will be announced by notice in the FEDERAL REGISTER.

(3) Gonorrhea.

(4) Hansen's disease, infectious.

(5) Syphilis, infectious.

(6) Tuberculosis, active.

(c) *Civil surgeon*. A physician designated by DHS to conduct medical examinations of aliens in the United States who are applying for adjustment of status to permanent residence or who are required by DHS to have a medical examination.

(d) *Class A medical notification*. Medical notification of:

(1) A communicable disease of public health significance;

(2) A failure to present documentation of having received vaccination against ''vaccine-preventable diseases'' for an alien who seeks admission as an immigrant, or who seeks adjustment of status to one lawfully admitted for permanent residence, which shall include at least the following diseases: Mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenza* type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee for Immunization Practices (ACIP) for

which HHS/CDC determines, by applying criteria published in the FEDERAL REGISTER, there is a public health need at the time of immigration or adjustment of status. Provided, however, that in no case shall a Class A medical notification be issued for an adopted child who is 10 years of age or younger if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the vaccination requirement and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in the requirement.

(3)(i) A current physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others;

(ii) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior; or

(4) Drug abuse or addiction.

(e) *Class B medical notification.* Medical notification of a physical or mental health condition, disease, or disability serious in degree or permanent in nature.

(f) *DHS.* U.S. Department of Homeland Security.

(g) *Director.* The Director of the Centers for Disease Control and Prevention or a designee as approved by the Director or Secretary of Health and Human Services.

(h) *Drug abuse.* ''Current substance use disorder or substance-induced disorder, mild'' as defined in the most recent edition of the Diagnostic and Statistical Manual for Mental Disorders (DSM) as published by the American Psychiatric Association, or by another authoritative source as determined by the Director, of a substance listed in Section 202 of the Controlled Substances Act, as amended (21 U.S.C. 802).

(i) *Drug addiction.* ''Current substance use disorder or substance-induced disorder, moderate or severe'' as defined in the most recent edition of the Diagnostic and Statistical Manual for Mental Disorders (DSM), as published by the American Psychiatric Association, or by another authoritative source as determined by the Director, of a substance listed in Section 202 of the Controlled Substances Act, as amended (21 U.S.C. 802).

(j) *Medical examiner.* A panel physician, civil surgeon, or other physician designated by the Director to perform medical examinations of aliens.

(k) *Medical hold document.* A document issued to DHS by a quarantine officer of HHS at a port of entry which defers the inspection for admission until the cause of the medical hold is resolved.

(l) *Medical notification.* A medical examination document issued to a U.S. consular authority or DHS by a medical examiner, certifying the presence or absence of:

(1) A communicable disease of public health significance;

(2) Documentation of having received vaccination against ''vaccine-preventable diseases'' for an alien who seeks admission as an immigrant, or who seeks adjustment of status to one lawfully admitted for permanent residence, which shall include at least the following diseases: Mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenza* type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee for Immunization Practices (ACIP) for which HHS/CDC determines, based upon criteria published in the FEDERAL REGISTER, there is a public health need at the time of immigration or adjustment of status. Provided, however, that in no case shall a Class A medical notification be issued for an adopted child who is 10 years of age or younger if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the vaccination requirement and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will

receive the vaccinations identified in the requirement;

(3)(i) A current physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others;

(ii) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior;

(4) Drug abuse or addiction; or

(5) Any other physical or mental condition, disease, or disability serious in degree or permanent in nature.

(m) *Medical officer.* A physician or other medical professional assigned by the Director to conduct physical and mental examinations of aliens on behalf of HHS/CDC.

(n) *Mental disorder.* A currently accepted psychiatric diagnosis, as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or by another authoritative source as determined by the Director.

(o) *Panel physician.* A physician selected by a United States embassy or consulate to conduct medical examinations of aliens applying for visas.

(p) *Physical disorder.* A currently accepted medical diagnosis, as defined by the current edition of the Manual of the International Classification of Diseases, Injuries, and Causes of Death published by the World Health Organization or by another authoritative source as determined by the Director.

§ 34.3 Scope of examinations.

(a) *General.* In performing examinations, medical examiners shall consider those matters that relate to the following:

(1) Communicable disease of public health significance;

(2) Documentation of having received vaccination against ''vaccine-preventable diseases'' for an alien who seeks admission as an immigrant, or who seeks adjustment of status to one lawfully admitted for permanent residence, which shall include at least the following diseases: Mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenza* type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee for Immunization Practices (ACIP) for which HHS/CDC determines there is a public health need at the time of immigration or adjustment of status.

Provided, however, that in no case shall a Class A medical notification be issued for an adopted child who is 10 years of age or younger if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the vaccination requirement and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in the requirement;

(3)(i) A current physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others;

(ii) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior;

(4) Drug abuse or drug addiction; and

(5) Any other physical or mental health condition, disease, or disability serious in degree or permanent in nature.

(b) *Scope of all medical examinations.* (1) All medical examinations will include the following:

(i) A general physical examination and medical history, evaluation for tuberculosis, and serologic testing for syphilis.

(ii) A physical examination and medical history for diseases specified in §§ 34.2(b)(1), and 34.2(b)(4) through 34.2(b)(10).

(2) For the examining physician to reach a determination and conclusion about the presence or absence of a physical or mental abnormality, disease, or disability, the scope of the examination shall include any laboratory

or additional studies that are deemed necessary, either as a result of the physical examination or pertinent information elicited from the alien's medical history or other relevant records.

(c) Additional medical screening and testing for examinations performed outside the United States.

(1) HHS/CDC may require additional medical screening and testing for medical examinations performed outside the United States for diseases specified in §§ 34.2(b)(2) and 34.2(b)(3) by applying the risk-based medical and epidemiologic factors in paragraph (d)(2) of this section.

(2) Such examinations shall be conducted in a defined population in a geographic region or area outside the United States as determined by HHS/CDC.

(3) Additional medical screening and testing shall include a medical interview, physical examination, laboratory testing, radiologic exam, or other diagnostic procedure, as determined by HHS/CDC.

(4) Additional medical screening and testing will continue until HHS/CDC determines such screening and testing is no longer warranted based on factors such as the following: Results of disease outbreak investigations and response efforts; effectiveness of containment and control measures; and the status of an applicable determination of public health emergency of international concern declared by the Director General of the WHO.

(5) HHS/CDC will directly provide medical examiners information pertaining to all applicable additional requirements for medical screening and testing, and will post these at the following Internet addresses: *http://www.cdc.gov/ncidod/dq/technica.htm* and *http://www.globalhealth.gov*.

(d) *Risk-based approach.* (1) HHS/CDC will use the medical and epidemiological factors listed in paragraph (d)(2) of this section to determine the following:

(i) Whether a disease as specified in § 34.2(b)(3)(ii) is a communicable disease of public health significance;

(ii) Which diseases in § 34.2(b)(2) and (3) merit additional screening and testing, and the geographic area in which HHS/CDC will require this screening.

(2) Medical and epidemiological factors include the following: (i) The seriousness of the disease's public health impact;

(ii) Whether the emergence of the disease was unusual or unexpected;

(iii) The risk of the spread of the disease in the United States;

(iv) The transmissibility and virulence of the disease;

(v) The impact of the disease at the geographic location of medical screening; and

(vi) Other specific pathogenic factors that would bear on a disease's ability to threaten the health security of the United States.

(e) *Persons subject to requirement for chest radiograph examination and serologic testing.* (1) As provided in paragraph (e)(2) of this section, a chest radiograph examination and serologic testing for syphilis shall be required as part of the examination of the following:

(i) Applicants for immigrant visas;

(ii) Students, exchange visitors, and other applicants for non-immigrant visas required by a U.S. consular authority to have a medical examination;

(iii) Applicants outside the United States who apply for refugee status;

(iv) Applicants in the United States who apply for adjustment of their status under the immigration statute and regulations.

(v) Applicants required by DHS to have a medical examination in connection with determination of their admissibility into the United States.

(2) *Chest radiograph examination and serologic testing.* Except as provided in paragraph (e)(2)(iv) of this section, applicants described in paragraph (e)(1) of this section shall be required to have the following:

(i) For applicants 15 years of age and older, a chest radiograph examination;

(ii) For applicants under 15 years of age, a chest radiograph examination if the applicant has symptoms of tuberculosis, a history of tuberculosis, or evidence of possible exposure to a transmissible tuberculosis case in a household or other enclosed environment for a prolonged period;

(iii) For applicants 15 years of age and older, serologic testing for syphilis

and other *communicable diseases of public health significance* as determined by the Director through technical instructions.

(iv) *Exceptions.* Serologic testing for syphilis shall not be required if the alien is under the age of 15, unless there is reason to suspect infection with syphilis. An alien, regardless of age, in the United States, who applies for adjustment of status to lawful permanent resident, shall not be required to have a chest radiograph examination unless their tuberculin skin test, or an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens, is positive. HHS/CDC may authorize exceptions to the requirement for a tuberculin skin test, an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens, or chest radiograph examination for good cause, upon application approved by the Director.

(3) *Immune response to Mycobacterium tuberculosis antigens.* (i) All aliens 2 years of age or older in the United States who apply for adjustment of status to permanent residents, under the immigration laws and regulations, or other aliens in the United States who are required by DHS to have a medical examination in connection with a determination of their admissibility, shall be required to have a tuberculin skin test or an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens. Exceptions to this requirement may be authorized for good cause upon application approved by the Director. In the event of a positive test of immune response, a chest radiograph examination shall be required. If the chest radiograph is consistent with tuberculosis, the alien shall be referred to the local health authority for evaluation. Evidence of this evaluation shall be provided to the civil surgeon before a medical notification may be issued.

(ii) Aliens in the United States less than 2 years of age shall be required to have a tuberculin skin test, or an equivalent, appropriate test to show an immune response to *Mycobacterium tuberculosis* antigens, if there is evidence of contact with a person known to have tuberculosis or other reason to suspect tuberculosis. In the event of a positive test of immune response, a chest radiograph examination shall be required. If the chest radiograph is consistent with tuberculosis, the alien shall be referred to the local health authority for evaluation. Evidence of this evaluation shall be provided to the civil surgeon before a medical notification may be issued.

(iii) Aliens outside the United States required to have a medical examination shall be required to have a tuberculin skin test, or an equivalent, appropriate test to show an immune response to Mycobacterium tuberculosis antigens, and, if indicated, a chest radiograph.

(iv) Aliens outside the United States required to have a medical examination shall be required to have a tuberculin skin test, or an equivalent, appropriate test to show an immune response to *Mycobacterium tuberculosis* antigens, and a chest radiograph, regardless of age, if he/she has symptoms of tuberculosis, a history of tuberculosis, or evidence of possible exposure to a transmissible tuberculosis case in a household or other enclosed environment for a prolonged period, as determined by the Director.

(4) *Additional testing requirements.* All applicants may be required to undergo additional testing for tuberculosis based on the medical evaluation.

(5) *How and where performed.* All chest radiograph images used in medical examinations performed under the regulations to this part shall be large enough to encompass the entire chest.

(6) *Chest x-ray, laboratory, and treatment reports.* The chest radiograph reading and serologic test results for syphilis shall be included in the medical notification. When the medical examiner's conclusions are based on a study of more than one chest x-ray image, the medical notification shall include at least a summary statement of findings of the earlier images, followed by a complete reading of the last image, and dates and details of any laboratory tests and treatment for tuberculosis.

(f) *Procedure for transmitting records.* For aliens issued immigrant visas, the medical notification and chest radiograph images, if any, shall be placed in a separate envelope, which

shall be sealed. When more than one chest radiograph image is used as a basis for the examiner's conclusions, all images shall be included. Records may be transmitted by other means, as approved by the Director.

(g) *Failure to present records.* When a determination of admissibility is to be made at the U.S. port of entry, a medical hold document shall be issued pending completion of any necessary examination procedures. A medical hold document may be issued for aliens who:

(1) Are not in possession of a valid medical notification, if required;

(2) Have a medical notification which is incomplete;

(3) Have a medical notification which is not written in English;

(4) Are suspected to have an inadmissible medical condition.

(h) The Secretary of Homeland Security, after consultation with the Secretary of State and the Secretary of Health and Human Services, may in emergency circumstances permit the medical examination of refugees to be completed in the United States.

(i) All medical examinations shall be carried out in accordance with such technical instructions for physicians conducting the medical examination of aliens as may be issued by the Director. Copies of such technical instructions are available upon request to the Director, Division of Global Migration and Quarantine, Mailstop E03, HHS/CDC, Atlanta GA 30333.

§ 34.4 Medical notifications.

(a) Medical examiners shall issue medical notifications of their findings of the presence or absence of Class A or Class B medical conditions. The presence of such condition must have been clearly established.

(b) *Class A medical notifications.* (1) The medical examiner shall report his/her findings to the consular officer or DHS by Class A medical notification which lists the specific condition for which the alien may be inadmissible, if an alien is found to have:

(i) A communicable disease of public health significance;

(ii) A lack of documentation, or no waiver, for an alien who seeks admission as an immigrant, or who seeks adjustment of status to one lawfully admitted for permanent residence, of having received vaccination against vaccine-preventable diseases which shall include at least the following diseases: Mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenza* type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee for Immunization Practices (ACIP) for which HHS/CDC determines, by applying criteria published in the FEDERAL REGISTER, there is a public health need at the time of immigration or adjustment of status. *Provided however,* that a Class A medical notification shall in no case be issued for an adopted child who is 10 years of age or younger if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the vaccination requirement and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in the requirement;

(iii)(A) A current physical or mental disorder, and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; or

(B) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior;

(iv) Drug abuse or drug addiction. *Provided, however,* that a Class A medical notification of a physical or mental disorder, and behavior associated with that disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, shall in no case be issued with respect to an alien having only mental shortcomings due to ignorance, or suffering only from a condition attributable to remediable physical causes or of a temporary nature, caused by a toxin, medically prescribed drug, or disease.

(2) The medical notification shall state the nature and extent of the abnormality; the degree to which the alien is incapable of normal physical activity; and the extent to which the condition is remediable. The medical examiner shall indicate the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization.

(c) *Class B medical notifications.* (1) If an alien is found to have a physical or mental abnormality, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal well-being, the medical examiner shall report his/her findings to the consular or DHS officer by Class B medical notification which lists the specific conditions found by the medical examiner. Provided, however, that a Class B medical notification shall in no case be issued with respect to an alien having only mental shortcomings due to ignorance, or suffering only from a condition attributable to remediable physical causes or of a temporary nature, caused by a toxin, medically prescribed drug, or disease.

(2) The medical notification shall state the nature and extent of the abnormality, the degree to which the alien is incapable of normal physical activity, and the extent to which the condition is remediable. The medical examiner shall indicate the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization.

(d) *Other medical notifications.* If as a result of the medical examination, the medical examiner does not find a Class A or Class B condition in an alien, the medical examiner shall so indicate on the medical notification form and shall report his findings to the consular or DHS officer.

§ 34.5 Postponement of medical examination.

Whenever, upon an examination, the medical examiner is unable to determine the physical or mental condition of an alien, completion of the medical examination shall be postponed for such observation and further examination of the alien as may be reasonably necessary to determine his/her physical or mental condition. The examination shall be postponed for aliens who have an acute infectious disease until the condition is resolved. The alien shall be referred for medical care as necessary.

§ 34.6 Applicability of foreign quarantine regulations.

Aliens arriving at a port of the United States shall be subject to the applicable provisions of 42 CFR part 71, Foreign Quarantine, with respect to examination and quarantine measures.

§ 34.7 Medical and other care; death.

(a) An alien detained by or in the custody of DHS may be provided medical, surgical, psychiatric, or dental care by HHS through interagency agreements under which DHS shall reimburse HHS. Aliens found to be in need of emergency care in the course of medical examination shall be treated to the extent deemed practical by the attending physician and if considered to be in need of further care, may be referred to DHS along with the physician's recommendations concerning such further care.

(b) In case of the death of an alien, the body shall be delivered to the consular or immigration authority concerned. If such death occurs in the United States, or in a territory or possession thereof, public burial shall be provided upon request of DHS and subject to its agreement to pay the burial expenses. Autopsies shall not be performed unless approved by DHS.

§ 34.8 Reexamination; convening of review boards; expert witnesses; reports.

(a) The Director shall convene a board of medical officers to reexamine an alien:

(1) Upon the request of DHS for a reexamination by such a board; or

(2) Upon an appeal to DHS by an alien who, having received a medical examination in connection with the determination of admissibility to the United States (including examination on arrival and adjustment of status as provided in the immigration laws and regulations) has been certified for a Class A condition.

(b) The board shall reexamine an alien certified as:

(1) Having a communicable disease of public health significance;

(2) Lacking documentation of having received vaccination against ''vaccine-preventable diseases'' for an alien who seeks admission as an immigrant, or who seeks adjustment of status to one lawfully admitted for permanent residence, which shall include at least the following diseases: Mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenza* type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee for Immunization Practices (ACIP) for which HHS/CDC determines, by applying criteria published in the FEDERAL REGISTER, there is a public health need at the time of immigration or adjustment of status. *Provided, however,* that in no case shall a Class A medical notification be issued for an adopted child who is 10 years of age or younger if, prior to the admission of the child, an adoptive or prospective adoptive parent, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the vaccination requirement and will ensure that the child will be vaccinated within 30 days of the child's admission, or at the earliest time that is medically appropriate.

(3)(i) Having a current physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; or

(ii) Having a history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior; or

(iii) Having drug abuse or drug addiction;

(c) The board shall consist of the following:

(1) In circumstances covered by paragraph (b)(1) of this section, the board shall consist of at least one medical officer who is experienced in the diagnosis and treatment of the communicable disease for which the medical notification has been made;

(2) In circumstances covered by paragraph (b)(2) of this section, the board shall consist of at least one medical officer who is experienced in the diagnosis and treatment of the vaccine-preventable disease for which the medical notification has been made;

(3) In circumstances covered by paragraph (b)(3) of this section, the board shall consist of at least one medical officer who is experienced in the diagnosis and treatment of the physical or mental disorder, or substance-related disorder for which medical notification has been made.

(d) The decision of the majority of the board shall prevail, provided that at least two medical officers concur in the judgment of the board.

(e) Reexamination shall include:

(1) Review of all records submitted by the alien, other witnesses, or the board;

(2) Use of any laboratory or additional studies which are deemed clinically necessary as a result of the physical examination or pertinent information elicited from the alien's medical history;

(3) Consideration of statements regarding the alien's physical or mental condition made by a physician after his/her examination of the alien; and

(4) A physical or psychiatric examination of the alien performed by the board, at the board's discretion;

(f) An alien who is to be reexamined shall be notified of the reexamination not less than 5 days prior thereto.

(g) The alien, at his/her own cost and expense, may introduce as witnesses before the board such physicians or medical experts as the board may in its discretion permit; provided that the alien shall be permitted to introduce at least one expert medical witness. If any witnesses offered are not permitted by the board to testify (either orally or through written testimony), the record of the proceedings shall show the reason for the denial of permission.

(h) Witnesses before the board shall be given a reasonable opportunity to review the medical notification and other records involved in the reexamination and to present all relevant and material evidence orally or in writing

until such time as the reexamination is declared by the board to be closed. During the course of the reexamination the alien's attorney or representative shall be permitted to question the alien and he/she, or the alien, shall be permitted to question any witnesses offered in the alien's behalf or any witnesses called by the board. If the alien does not have an attorney or representative, the board shall assist the alien in the presentation of his/her case to the end that all of the material and relevant facts may be considered.

(i) Any proceedings under this section may, at the board's discretion, be conducted based on the written record, including through written questions and testimony.

(j) The findings and conclusions of the board shall be based on its medical examination of the alien, if any, and on the evidence presented and made a part of the record of its proceedings.

(k) The board shall report its findings and conclusions to DHS, and shall also give prompt notice thereof to the alien if his/her reexamination has been based on his/her appeal. The board's report to DHS shall specifically affirm, modify, or reject the findings and conclusions of prior examining medical officers.

(l) The board shall issue its medical notification in accordance with the applicable provisions of this part if it finds that an alien it has reexamined has a Class A or Class B condition.

(m) If the board finds that an alien it has reexamined does not have a Class A or Class B condition, it shall issue its medical notification in accordance with the applicable provisions of this part.

(n) After submission of its report, the board shall not be reconvened, nor shall a new board be convened, in connection with the same application for admission or for adjustment of status, except upon the express authorization of the Director.

PART 35—HOSPITAL AND STATION MANAGEMENT

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