

**Review of Board's Current Use of Robert's Rules of Order Newly Revised,
Development of Simplified Parliamentary Policy for use at Board and Committee
meetings, and Possible Related Proposed Rule Amendments to 22 Tex. Admin.
Code §211.9, relating to General Considerations**

Background: Regulatory boards are usually small, having between five and fifteen members. Individuals appointed to serve on occupational boards are private citizens, not government employees, and are selected because of their expertise in the regulated industry, their influence in public affairs, or both. While Robert's Rules of Order may serve large assemblies and professional parliamentarians well, they are comprehensive, detailed, and overly complex for the majority of situations faced by typical occupational boards.

The Simplified Parliamentary Policy contained in Attachment "A" is designed to simplify the processes used by the Board at its meetings; to allow for flexibility in handling situations that are unique to the Board; and to conform to the requirements of the Texas Open Meetings Act. The rules should be applied in a manner that encourages fair and open debate; majority rule; courtesy; good order; common sense; and efficiency.

Staff utilized as a resource *Simple Rules of Procedure for Occupational Licensing Agencies* by Thomas R. Miller* in the drafting of the Simplified Parliamentary Policy.

The proposed amendments in Attachment "B" are necessary to implement the use of the Simplified Parliamentary Policy at the Board's meetings.

Board action: Move to approve the use of the Simplified Parliamentary Policy, as set out in Attachment "A" at the Board's meetings. Further, move to approve the proposed amendments to 22 Tex. Administrative Code §211.9, relating to *General Considerations*, with authority for the General Counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the *Texas Register*. If no negative comments and no request for a public hearing are received, move to adopt the proposed amendments to 22 Tex. Administrative Code §211.9, relating to *General Considerations*, as proposed.

*Staff was granted a liberal copyright to draw from the resource by the copyright owners, ARELLO (Association of Real Estate License Law Officials).

Attachment "A"

Simplified Parliamentary Policy

Rule 1. Majority Rule. Except as otherwise provided by law, all decisions by the Board shall be made upon a vote of a majority of the members present at a meeting in which a quorum of the Board has been convened.

Comment: Texas Government Code §551.001 defines a quorum as a majority of a governmental body. The Board's rules (Rule 211.5) further define a quorum as a majority of the members of the Board, at least three of whom must be nurses. A majority constitutes more than half of the members eligible to vote on a question. A tie, therefore, favors those voting "no".

Rule 2. Duties and Powers of Presiding Officer.

(a) The chairperson of the Board shall preside at all meetings at which he/she is present. When he/she is not present, the vice-chairperson shall preside. If there is no vice-chairperson, the Board shall designate a temporary chairperson to preside in the chairperson's absence.

(b) The chairperson may initiate action and participate in debate on any matter with the same rights and privileges as any other member. The chairperson shall vote on every matter before the Board, unless he/she is first excused or disqualified as provided in these rules.

(c) The chairperson shall have the following powers, which he/she shall exercise impartially and without favor:

(1) To recognize any member or other person to address the chairperson or the Board;

(2) To preside over the meeting and reasonably regulate the course of debate consistent with these rules, including the time allotted to any speaker;

(3) To reframe or restate any motion as an aid to the moving party;

(4) To enforce these rules and to declare a motion, petition, or remarks of any person to be out of order when the same has been brought into question by any member or upon the chairperson's own motion;

(5) To deviate from the agenda or order of business when fairness or the convenience of the Board may require it;

(6) To call the members to a meeting; to call meetings to order; to call a brief recess in business; and to adjourn a meeting; and

(7) To take such action consistent with these rules which may be necessary to protect the rights of any person at the meeting and the dignity of the meeting.

(d) Appeal of any procedural ruling by the chairperson shall be made to the Board upon the motion of any member. The Board shall decide a motion to appeal in a manner consistent with these rules. A motion to appeal is always in order, and the moving party need not obtain recognition to speak. A motion to appeal shall be debated and determined immediately.

Comment: In larger deliberative bodies or bodies which are expressly partisan in their makeup, it may be customary or even required that the chairperson refrain from participating in debate or voting. In a smaller body, such as a licensing board, where members are selected based upon their knowledge and experience, it is important for all members, including the chairperson, to engage in debate, to initiate action, and to vote. However, the chairperson must exercise his/her rights and obligations with significant care. He/she must present his/her own case for or against a proposed action in such a way as not to chill the right of the other members to present opposing views. The powers specified in this rule should be interpreted expansively as a grant of authority, rather than a strict limitation on the chairperson's power. Doubts should be resolved in the chairperson's favor whenever his/her ruling is essentially consistent with the spirit of the rules. Although the rule makes clear that a chairperson cannot use his/her broad powers to frustrate appeals, a decision of the chairperson should be reversed only when it is clearly erroneous. Whenever the chairperson has acted within his/her discretion, his/her decision should be upheld, even if a majority of the members might have acted differently.

Rule 3. Board Decisions.

Except as provided in Rule 4, decisions by the Board shall be made upon the motion of a member. Any member present and not disqualified may make a motion, including the chairperson or other presiding officer. Upon a second by any member present and not disqualified, the matter may be decided after appropriate discussion or debate, if any.

Comment: The purpose of requiring a second to a motion in a deliberative body is generally to assure that a proposed question or action has achieved at least a certain minimum threshold of interest before it is allowed to consume the time of the whole body. Further, in these rules, the chairperson is not only allowed to vote on a motion, he/she may also make one.

Rule 4. Proceeding Without Objection.

On routine matters and any other matter when it appears to the chairperson that Board members are of one mind, the chairperson may state the action to be taken and call for objections from the Board members. If no member objects, the matter shall be deemed approved. Upon the objection of any member, the matter shall be decided only following a motion, a second, and appropriate debate.

Comment: This rule recognizes that a small group of people working together for a common purpose will often develop a sense of collegiality that will render strict adherence to rules of procedure unnecessary. The chairperson must take care, however, not to employ this method to rush important business or stampede members holding a minority point of view into acquiescence.

Rule 5. Course of Debate.

(a) On any matter where reports or petitions are to be considered, the reports or petitions shall be considered before a motion determinative of the matter shall be permitted.

(b) The chairperson may permit general discussion of a matter before a motion determinative of the matter is made. Otherwise, no discussion or debate of a matter shall be allowed until such a motion is made. Further, if all members have been provided written information relating to a report or petition and no further information will be provided regarding the matter, the Board may entertain a motion determinative of the matter without the necessity of debate.

(c) Debate shall be allowed following every motion for which, under the rules, debate is allowed. No member shall be unreasonably excluded from debate.

(d) Except as may be expressly permitted in these rules, no member or person in attendance at a meeting shall speak except first being recognized by the chairperson. The chairperson shall not unreasonably withhold recognition from any member desiring to speak.

(e) Except for questions of a member allowed by the chairperson, all discussion and debate will be addressed to the chairperson or to the body generally. When a question is permitted of a member recognized to speak, he/she shall not surrender the right to reasonably conclude his/her remarks following the response to the question.

(f) All remarks shall be civil in content and tone. Whenever possible, a speaker shall avoid merely repeating the remarks of a previous speaker.

Comment: For purposes of this rule, a report is oral or written information concerning a matter before the Board. Although not as common, consideration of a matter may also commence with a petition to the Board to act on a matter or to exercise its authority in some way. The Board is not required to engage in discussion or debate on every matter it considers if a need does not exist to do so or if a member does not make a request to do so. While Robert's Rules of Order devote many pages to the concept of granting, retaining, and relinquishing control of the 'floor' or right to speak, such rules are unnecessary to govern debate among the members of a smaller licensing board. In these rules, the chairperson retains the right to speak, and he/she should be fair to members making opposing arguments. Further, he/she should make sure all remarks are germane to the business, civil in content and tone, and are addressed to the Board generally.

Rule 6. Substantive or Main Motions.

When a motion dispositive of a substantive or main matter before the Board is pending, the Board shall not consider another such motion.

Comment: Once a motion has been made to resolve a main issue or item of the Board's business, no other issue or business should be considered until that issue has been resolved. For purposes of this rule, a substantive or main motion is a motion which disposes of an action item on the Board's agenda.

Rule 7. Affirmative Language.

Whenever possible, motions should be cast in affirmative language.

Comment: Confusing language in a motion that could cause a "no" vote to mean "yes" should be avoided if possible. For example, a motion requesting the Board to not grant approval to purchase a new copy machine may result in confusion regarding whether to vote "yes" or "no". Instead, the motion should be re-phrased to request the Board to grant approval for the purchase of the new copy machine. In the affirmative motion, a "yes" or a "no" vote is easily understood. The chairperson may use his/her authority under Rule 2 to reframe motions in affirmative language to avoid confusion.

Rule 8. Dilatory Motions.

Dilatory, frivolous, rude, or absurd motions, and motions which are contrary to these rules, shall not be allowed.

Comment: The purpose of this rule is to provide the chairperson and Board with a means of combating unruly conduct and insincere use of these rules.

Rule 9. Every Member Must Vote.

It is the duty of every member of the Board, including the chairperson, to vote upon every matter coming before the Board. No member may abstain from voting, and if any member shall fail to indicate his vote, it shall be recorded as an affirmative or "yes" vote. A member may be excused from voting pursuant to the Board's conflict of interest and recusal policy. Any member may make a motion to excuse him/herself or any other member pursuant to the Board's conflict of interest and recusal policy. If a member's recusal will prevent the Board from voting on a particular item, that item will be removed from the Board's agenda and placed on the next available Board agenda.

Comment: An individual appointed to a governmental body has a duty to responsibly participate in the Board's business, including having a duty to vote. A member may not abstain from voting because doing so may be awkward, embarrassing, or painful. All members should note that failure to indicate a vote for or against a motion will result in a "yes" vote; in this way, this rule is self-enforcing.

Rule 10. Disclosure of Conflicts of Interest.

A member shall make a timely disclosure of any conflict of interest pursuant to the Board's conflict of interest and recusal policy.

Comment: The purpose of this rule is to make Board members aware of the potential grounds for disqualification and to show his/her fellow members the courtesy of disclosing any potential grounds for disqualification.

Rule 11. Points of Order and Privilege.

(a) If any member believes that the Board is proceeding in a manner inconsistent with these rules or applicable law, he/she may draw it to the attention of the chairperson with a point of order. Any member may direct a question concerning procedure to the chairperson. A point of order or a question of procedure may be made at any time and shall not require the recognition of the chairperson. The chairperson shall determine all points of order and questions of procedure.

(b) If any member reasonably believes that the dignity, rights, or safety of the Board or any of its members is in immediate jeopardy, he/she may raise a point of privilege at any time but may not be permitted to unreasonably interrupt the business of the Board. The chairperson shall rule on points of privilege.

Comment: The fine distinctions separating points of order and privilege, questions, and motions contemplated in Robert's Rules of Order are here reduced to these simple rules. Generally, members of a licensing board have a shared duty to ensure that the board's business is conducted in accordance with the law and board's own rules. When any member is aware that the Board is proceeding outside the law or rules, he/she has a duty to draw attention to the problem. Members should not use the point of order to nitpick the rulings of the chairperson or the procedure of the Board. A question of order may be asked when a member is uncertain about the propriety of the Board's procedure. A member may also wish to ask the chairperson for assistance or advice on how best to proceed on some item of interest to the member. Care should be taken not to unduly interrupt the Board's business with ill-timed inquiries. Further, the simplified privilege procedure in this rule should be used sparingly. The likelihood that all members will perceive challenges to dignity and threats to safety in the same way is small. Thus, the chairperson should anticipate these and deflect them whenever possible, with observations, rulings, or soothing words. Whenever possible, a member who wishes to advance a point of privilege should wait until a convenient time to make it.

Whenever any point of procedure or privilege interrupts a member recognized to speak, the chairperson should recognize that member again as soon as consideration of the point of procedure or privilege has been concluded. To avoid unnecessary interruptions, the chairperson may delay consideration of points of procedure and privilege as long as doing so does not defeat their proper consideration.

Rule 12. Suspension of the Rules.

The Board may suspend the application of these rules of procedure to an identified item or items of business whenever it seems reasonably necessary or expedient to do so. The Board may not, however, suspend any requirement of law, including the requirement of a quorum, or Rules 1 or 2.

Comment: A motion to suspend must identify the item or items of business to which it will apply. Suspension of the rules should be reserved for those occasions when strict adherence to the rules would impose an unnecessary burden on the Board's business, create unnecessary delay, or interfere with the Board's ability to exercise its lawful authority in an emergency. The Board should not suspend the rules to oppress the rights of a member or members holding a minority point of view.

Rule 13. Amendment of the Rules.

These rules may be amended at any lawfully called meeting of the Board. An amendment to the rules must be adopted by a majority of the members at a meeting in which a quorum of the Board has been convened.

Comment: The Board may add additional rules to these rules or amend the rules according to the procedure set forth in these rules. It is a bad practice to amend the rules for an intermediate or temporary purpose. In those situations, it is preferable to suspend the rules rather than amend them.

Rule 14. Adjournment.

Upon the motion of any member, the Board may vote to adjourn a meeting finally or until a specified date and time at which the meeting will resume. A motion to adjourn is debatable, and to be in order, must be made when no other motion is pending. A motion for final adjournment is out of order while any item of business is pending.

Comment: Under Robert's Rules of Order, a motion to adjourn is one of the most highly regulated items of business a body may consider. Under these rules, however, it is simply a motion to close a meeting. It is intended that it not be employed as a procedural maneuver to avoid debate or unreasonably confound the business of the Board. An adjournment under these rules is different than a recess, which should be reserved for brief breaks during the course of business in a meeting.

Attachment "B"

§211.9. General Considerations.

(a) Parliamentary procedure. Board and committee meetings shall be conducted pursuant to the Board's adopted Simplified Parliamentary Policy [~~provisions of Robert's Rules of Order Newly Revised~~].

(b) - (e) (No change.)