

**Consideration of Proposed Amendments to 22 Tex. Admin. Code §213.23, relating to Decision of the Board**

**Background:** House Bill (HB) 2950 was enacted by the 85<sup>th</sup> Texas Legislature and became effective September 1, 2017. The proposed amendments are necessary for consistency with the statutory changes enacted by the Legislature. The proposed amendments also eliminate redundant provisions from the rules and provisions that are addressed more specifically elsewhere (e.g., the Administrative Procedure Act, the rules of the State Office of Administrative Hearings) in order to avoid inconsistency.

**Staff Recommendation:** Move to approve the proposed amendments to 22 Texas Administrative Code §213.23, relating to *Decision of the Board*, 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 Texas Administrative Code §213.23, relating to *Decision of the Board*, as proposed.

## Attachment "A"

### §213.23. Decision of the Board

(a) Except as to those matters expressly delegated to the executive director for ratification, either the Board or the Eligibility and Disciplinary Committee of the Board, may make final decisions in all matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties. This includes the consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Texas Government [~~Tex. Gov't~~] Code §2001.058(d-1).

~~[(b) Prior to the issuance of a proposal for decision, a party may submit proposed findings of fact and conclusions of law to the judge. The judge shall issue a ruling on each proposed finding of fact and conclusion of law and shall set forth the specific reason for not adopting a particular proposed finding of fact or conclusion of law.]~~

~~[(c) Any party of record who is adversely affected by the proposal for decision of the judge shall have the opportunity to file with the judge exceptions to the proposal for decision and replies to exceptions to the proposal for decision in accordance with 1 TAC §155.507. The proposal for decision may be amended by the judge in accordance with 1 TAC §155.507 without again being served on the parties].~~

~~(b)~~[(d)] A [The] proposal for decision may be acted on by the Board or the Eligibility and Disciplinary Committee, in accordance with this section, after the expiration of 10 days after the filing of replies to exceptions to the proposal for decision or upon the day following the day exceptions or replies to exceptions are due if no such exceptions or replies are filed.

~~(c)(e)~~ Following the issuance of a proposal for decision or default dismissal, parties shall have an opportunity to file written exceptions and/or briefs with the Board. An opportunity shall be given to file a written response to written exceptions and/or briefs. An individual wishing to file written exceptions and/or a brief for the Board's consideration must do so no later than 15 calendar days prior to the date of the next regularly scheduled meeting where the Board or the Eligibility and Disciplinary Committee will deliberate on the proposal for decision or default dismissal. ~~[An individual wishing to make an oral presentation regarding a proposal for decision or default dismissal must request to do so, and file written exceptions and/or a brief, no later than 15 calendar days prior to the date of the next regularly scheduled meeting where the Board or the Eligibility and Disciplinary Committee will deliberate on the proposal for decision or default dismissal.]~~ The Board will not consider ~~[any requests for an oral presentation and/or]~~ any written exceptions and/or briefs submitted in violation of these requirements.

(d) A proposal for decision will be considered by the Board in accordance with Texas Occupations Code §301.459 and Texas Government Code Chapter 2001. Further, the Board may obtain judicial review of any finding of fact or conclusion of law issued by the administrative law judge, as provided by Texas Government Code §2001.058(f)(5).

~~[(f) It is the policy of the Board to change a finding of fact or conclusion of law in a proposal for decision or to vacate or modify the proposed order of a judge when, the Board determines:]~~

~~[(1) that the judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions;]~~

~~[(2) that a prior administrative decision on which the judge relied is incorrect]~~

~~or should be changed; or]~~

~~[(3) that a technical error in a finding of fact should be changed.]~~

~~[(g) If the Board modifies, amends, or changes the recommended proposal for decision or order of the judge, an order shall be prepared reflecting the Board's changes as stated in the record of the meeting and stating the specific reason and legal basis for the changes made according to subsection (f) of this section.]~~

~~(e)[(h)] An order of the Board shall be in writing and may be signed by the executive director on behalf of the Board.~~

~~(f)[(i)] A copy of the order shall be mailed to all parties and to the party's last known employer as a nurse in accordance with Texas Occupations Code §301.469.~~

~~(g)[(j)] The decision of the Board is immediate, final, and appealable upon the signing of the written order by the executive director on behalf of the Board where:~~

~~(1) the Board finds and states in the order that an imminent peril to the public health, safety, and welfare requires immediate effect of the order; and~~

~~(2) the order states it is final and effective on the date rendered.~~

~~[(k) A motion for rehearing shall not be a prerequisite for appeal of the decision where the order of the Board contains the finding set forth in subsection (j) of this section.]~~

~~(h)[(t)] Motions for rehearing under this section are controlled by Texas Government Code Chapter 2001 [~~§2001.145~~].~~