

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

**Summary of Request:** Consider approval of proposed amendments to 22 Tex. Admin. Code §213.23, concerning *Decision of the Board*. The proposed amendments to §213.23 implement the Board's policy that a Respondent be required to submit written exceptions and briefs to the Board in order to be permitted to make an oral presentation to the Board regarding a proposal for decision. The proposed text of the amendments is attached hereto as "Attachment One".

**Historical Perspective:** At the April, 2009, Board meeting, the Board discussed its practice of providing Respondents the opportunity to make oral presentations to the Board regarding final proposals for decision. The Board voted to amend its policy to allow Respondents to make oral presentations to the Board prior to its deliberation and final decision on a proposal for decision **only if** the Respondent provided, in advance of the Board meeting, written argument, exceptions, and briefs for Board consideration. The Board further authorized staff to make edits to the wording of the policy as necessary to effectuate Board intent.

**Pros and Cons:**

**Pros:** Written argument and briefing allows Respondents to present their legal arguments to the Board based on the record presented to the Administrative Law Judge prior to the Board's deliberation and vote on a proposal for decision, while helping guard against potential agency error. The written submissions allow all parties to properly respond and reply as contemplated by the Administrative Procedure Act. Further, allowing Respondents to personally appear and make oral presentation to the Board after filing written briefs and exceptions with the Board provide Respondents with an additional opportunity to be heard and maintains a sense of fairness in Board decisions.

**Cons:** None anticipated.

**Staff Recommendations:**

Board Action: Move to approve the proposed amendments to 22 Tex. Admin. Code §213.23, Concerning *Decision of the Board* and authorize staff to publish the proposal in the *Texas Register* for a 30-day comment period, with authority for 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. Admin. Code §213.23, Concerning *Decision of the Board*, as proposed.

## **Attachment #1**

### **§213.23. Decision of the Board.**

(a) - (b) (No change).

(c) 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.

(d) Parties shall have an opportunity to file written exceptions and briefs with the board concerning a proposal for decision. An opportunity shall be given to file a response to written exceptions and briefs. However, a Respondent shall not be permitted to make an oral presentation to the board concerning a proposal for decision unless the Respondent has first filed written exceptions or briefs with the board at least 21 days prior to the date of the next regularly scheduled board meeting where the board will deliberate on the proposal for decision. A Respondent shall not be permitted to make an oral presentation to the board concerning a proposed modification to a proposal for decision unless the Respondent has first filed a written response to the proposed modification with the board at least 10 days prior to the date of the regularly scheduled board meeting where the board will deliberate on the proposal for decision.

(e)[(d)] 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.

(f)[(e)] If the Board modifies, amends, or changes the recommended 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 (e)[(d)] of this section.

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

(h)[(g)] A copy of the order shall be mailed to all parties and to the party's last known employer as a nurse.

(i)[(h)] 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.

(j)[(i)] 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 (i) [(h)] of this section.

(k)[(j)] Motions for rehearing are controlled by Texas Government Code §2001.145.