

Agenda Item: 7.7  
April 19-20, 2012  
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**Consideration of Proposed Amendments to 22 Tex. Admin. Code §213.23,  
Pertaining to *Decision of the Board***

Attached hereto as Attachment "A" are proposed rule amendments for your consideration. The proposed amendments are designed to: (i) increase the quality of information that is provided in proposals for decision in an effort to facilitate fully informed Board deliberation and decisions; (ii) prohibit administrative law judges from including recommendations for sanction in proposals for decision, as is provided for by law; and (iii) clarify the requirements for individuals seeking to submit written materials and/or make oral presentations to the Board regarding proposals for decision.

**Board Action:** Move to approve the proposed amendments to §213.23, pertaining to *Decision of the Board*, 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 §213.23, pertaining 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, 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.

(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) A proposal for decision shall include proposed findings of fact and conclusions of law, but shall not include a judge's recommendation for sanction.

~~(d)(b)~~ 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 and replies to exceptions to the proposal for decision in accordance with 1 Tex. Admin. Code §155.507 ~~[a brief to the proposal for decision within 15 days after the date of service of the proposal for decision. A reply to the exceptions may be filed by the other party within 15 days of the filing of the exceptions. Exceptions and replies shall be filed with the judge with copies served on the opposing party].~~ The proposal for decision may be amended by the judge in accordance with §155.507 ~~[pursuant to the exceptions, replies, or briefs submitted by the parties]~~ without again being served on the parties.

~~(e)(e)~~ 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.

(f) Following the issuance of a proposal for decision, parties shall have an opportunity to file written exceptions and/or briefs with the Board concerning a proposal for decision. An opportunity shall be given to file a response to written exceptions and/or briefs. The following requirements govern the submission of written exceptions and/or briefs to the Board:

(1) Individuals wishing to file written exceptions and/or briefs with the Board, but not wishing to make an oral presentation to the Board concerning a proposal for decision. A Respondent wishing to file written exceptions and/or briefs with the Board concerning a proposal for decision must do so no later than 10 days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the proposal for decision. The Board will not consider any written exceptions and/or briefs submitted in

violation of this requirement.

(2) Individuals wishing to make an oral presentation to the Board concerning a proposal for decision. An individual wishing to make an oral presentation to the Board must file written exceptions and/or briefs with the Board. If no modification is proposed to the proposal for decision, an individual must file written exceptions and/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. If a modification is proposed to the proposal for decision, an individual must file a written response to the proposed modification, written exceptions, and/or briefs 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. An individual will not be permitted to make an oral presentation to the Board if the individual does not comply with this requirement.

~~[(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.]~~

~~(g)[(e)]~~ 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.~~

~~(h)[(f)]~~ 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 ~~(g)[(e)]~~ of this section.

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

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

(k)~~(f)~~ 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.

(l)~~(f)~~ 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 (k)~~(f)~~ of this section.

(m)~~(k)~~ Motions for rehearing under this section are controlled by Texas Government Code §2001.145.