

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

**Background:** SOAH Rule 155.501(d) and Tex. Gov't Code §2001.058(d-1) permit an ALJ to dismiss a case from SOAH's docket and remand the case to an agency following a finding of default. Currently, default dismissals are considered by the Board at its regularly scheduled quarterly meetings.

Additionally, the Board currently permits licensees and applicants to appear at the Board's regularly scheduled quarterly meetings to address the Board prior to its deliberation and vote on a proposal for decision and/or default dismissal. In order to do so, however, the Board's current rules require individuals to submit written information to the Board within certain prescribed timeframes.

The proposed amendments clarify that default dismissals may be heard and considered at *either* a quarterly Board meeting or an Eligibility and Disciplinary Committee Meeting. The amendments are intended to increase the efficiency in which the Board resolves contested cases by resolving default dismissals on a monthly basis, instead of a quarterly basis.

Further, the proposed amendments modify the amount of time in which an individual must submit written information to the Board so that Staff is able to reasonably prepare the Board's agenda and meeting schedule.

**Board Action:** Move to approve the proposed amendments to 22 Tex. Admin. Code §213.23, pertaining to *Decision of the Board*, as set out in Attachment "A", 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. Admin. Code §213.23, pertaining to *Decision of the Board*, as proposed.

Attachment "A"

§213.23

(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 Tex. Gov't Code §2001.058(d-1).

(b) - (d) (No change.)

(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 [~~concerning a proposal for decision~~]. An opportunity shall be given to file a 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.

~~[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 these requirements.]~~

(f) - (l) (No change.)