

Consideration of New Policy Authorizing the Executive Director to Consider and Decide
Motions to Rehear Default Orders Made Pursuant to 22 Tex. Admin. Code § 213.16

Rule 213.16 provides for that a default order may be entered when a Respondent does not answer pending formal charges and provides in pertinent part:

(a) The respondent in a disciplinary matter shall file an answer to the formal charges and to every amendment thereof.

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(c) If the Respondent fails to file a response to the Formal charges, the matter will be considered as a default case

(d) In a case of default, the Respondent will be deemed to have

- (1) admitted all the factual allegations in the Formal charges;
- (2) waived the opportunity to show compliance with the law;
- (3) waived the opportunity for a hearing on the Formal charges; and
- (4) waived objection to the recommended sanction in the Formal charges.

(e) The Executive Director may recommend that the Board enter a default order, based upon the allegations set out in the Formal charges, that adopts the sanction that was recommended in the Formal charges.

(f) Upon consideration of the case, the Board may:

- (1) enter a default order under §2001.056 of the APA; or
- (2) order the matter to be set for a hearing at SOAH.

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(i) Any default judgment granted under this section will be entered on the basis of the factual allegations in the formal charges contained in the notice, and upon proof of proper notice to the Respondent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Texas Government Code §2001.054 and §213.10 of this title (relating to Notice and Service). Such notice shall also include the following language in capital letters in 12 point boldface type: **FAILURE TO FILE A WRITTEN ANSWER TO THE FORMAL CHARGES, EITHER PERSONALLY OR BY LEGAL REPRESENTATIVE, WILL RESULT IN THE ALLEGATIONS CONTAINED IN THE FORMAL CHARGES BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF SHALL BE GRANTED BY DEFAULT.**

(j) A motion for rehearing which requests that the Board vacate its default order under this section shall be granted if movant proves by the preponderance of the evidence that the failure to answer the formal charges was not intentional or the result of conscious indifference, but due to accident or mistake--provided that movant has a meritorious defense to the factual allegations contained in the formal charges and the granting thereof will occasion no delay or otherwise work an injury to the Board proceedings

Pursuant to Section 213.16(j), it is the Board's practice to review all motion for rehearings at the next practicable E & D Committee. Statistically, many of the timely motions for rehearing are granted when the movant complies with the requirements of 213.16(j). Many movants wish to expeditiously settle the disciplinary matter but are delayed until the Board has acted to grant or deny their motion for rehearing. The Executive Director requests the authority to grant any motion for rehearing if she is of the opinion that the motion has merit based on the criteria of 213.16(j). Otherwise, any motion considered untimely or without merit under the criteria of 213.16(j) would be schedule without prejudice before the next practicable Board Committee meeting for review and determination.

Staff request the Board move to authorize the Executive Director to Consider Motions to Rehear Default Orders Made Pursuant to 22 Tex. Admin. Code § 213.16(j) and authorize her to grant those motions she deems have merit based on the criteria of 213.16(j), but otherwise have those motions considered outside the criteria of 213.16(j) be scheduled without prejudice before the next practicable Board Committee meeting for review and determination.