

The Texas Board of Professional Geoscientists (TBPG) proposes amendments to 22 TAC §§851.29, 851.31, and 851.32, and proposes new rules §§851.35, 851.113, 851.203 and 851.204 concerning the licensure and regulation of Professional Geoscientists.

BACKGROUND AND PURPOSE

The TBPG proposes amendments to clarify the requirements regarding Endorsement and Reciprocal Licensure. Proposed amendments amend language to show that a licensing qualification can be endorsed by another licensing board for an applicant for P.G. licensure who is currently or has been licensed in the last ten years to practice a discipline of geoscience in Texas or another U.S. jurisdiction. Proposed amendments also clarify under “Licensure by similar examination” that an individual who has applied for licensure as a Professional Geoscientist in Texas may meet the licensing examination requirement by submitting proof of passage of examinations that are substantially similar to the applicable examination(s) as specified in §851.21.

TBPG proposes amendments to clarify the process of obtaining a temporary license and to be consistent with the requirements of temporary licensure authorized in Texas Occupations Code 1002.258. TBPG proposes amendments to clarify and simplify the process for obtaining a temporary P.G. license in Texas.

TBPG proposes amendments to clarify a licensee’s duty to comply with continuing education (CE) program requirements, adding a specific 30-day deadline for when a licensee must respond and produce a CE activity log and supporting records. Amendments also clarify that a licensee is subject to disciplinary action for failure to satisfy CE program requirements during the applicable period, and that it is a separate violation to falsely report CE requirements for a renewal period.

TBPG proposes a new rule to outline the process for voluntary surrender of a license, registration, or certification.

TBPG proposes a new rule to require all persons who are the subject of a Board order to abide by the terms of that order, and that failure to abide by the terms of a Board order is grounds for disciplinary action. Additionally, the proposed new rule adds that the Board may deny a person’s request for a license, registration or certification, or deny renewal of a license, registration or certification if the person has failed to timely pay an administrative penalty. This rule also allows the Board to apply money received from an individual to outstanding administrative penalties owed by that individual before applying it to any other fee or cost.

TBPG proposes a new rule to clarify that the Board may serve a notice of hearing on a respondent by sending it to his or her last known address as shown by the Board’s records. The proposed rule also outlines the procedures for default cases, and details a procedure for informal disposition of cases in accordance with section 2001.056 of the Texas Government Code. The proposed rule also addresses the process taken when an applicant with a criminal history applies for a license and does not show up at the hearing at the State Office of Administrative Hearings.

TBPG proposes a new rule to provide that the costs of an administrative hearing shall be borne by the licensee who chooses to appeal a Board Order. Specifically, the cost of transcribing the contested-case hearing and the cost of preparing the record shall be assessed to the person appealing the Board’s order. This rule also outlines how these costs may be recovered.

SECTION BY SECTION SUMMARY

Proposed amendment to §851.29 adds language in (a)(2) regarding the licensure endorsement process to show that an applicant for a P.G. license who is currently or has been licensed or registered “in the last ten years” to practice a discipline of geoscience in “Texas or” another U.S. jurisdiction or another country may be eligible to demonstrate having met all or some of the qualifications for licensure through endorsement. It adds language in (a)(4) to show that the Board staff considers evidence “supporting the endorsement of a licensing qualification” of an applicant, and adds language in (a)(4)(A) to show that verification may be provided if the license is current or “was held in the past ten years from the date of application.” In subsection (b)(2), regarding licensure by similar examination, words are added to show that an individual who is licensed or registered to practice a discipline of geoscience in another United States jurisdiction, or another country, “...who has applied for licensure as a Professional Geoscientist” under this subsection “may meet the licensing examination requirement by submitting” proof of passage of examination(s) that is/are substantially similar to the applicable examination(s) as specified in §851.21.

Proposed amendment to §851.31 removes subsections (b), (c), and (d) to clarify that “TBPG may issue a temporary license to an applicant as described in §1002.258(a) of the Act.”

Proposed amendment to §851.32 adds language in subsection (p)(2) regarding noncompliance with the continuing education program (CEP) to show that “a licensee must submit the CEP certification log and supporting records for credits claimed not later than 30 days after the Board sends by certified mail an audit notification and request for a log and supporting documentation to the licensee’s last known address as shown by the Board’s records. Failure to timely submit a CEP certification log and supporting records for credits claimed is grounds for disciplinary action.” A new subsection (p)(3) adds that “A licensee must satisfy CEP requirements. Failure to satisfy CEP requirements during the applicable period is grounds for disciplinary action.” A sentence previously located in (p)(2) is moved to new subsection (p)(4) and is reworded to state, “Falsely reporting that CEP requirements have been met for a renewal period is misconduct and will subject the licensee to disciplinary action.”

Proposed new rule §851.35, entitled, “Voluntary Surrender of a License, Registration or Certification” adds language to outline the process for voluntary surrender of a license, registration, or certification. New subsection (a) states, “A license holder who does not wish to maintain a license, registration, or certification may voluntarily surrender the license, registration, or certification by submitting a request in writing on a form prescribed by the TBPG, provided that the license holder: (1) has a current license, registration, or certification; (2) is not out of compliance with a disciplinary order; (3) does not have a complaint pending; and (4) is not under a continuing education audit.” New subsection (b) states, “The effective date of a voluntary surrender of a license shall be the date that the Board accepts the surrender and will mark the termination of the licensee’s license, registration, or certification.” New subsection (c) states, “Any fees paid on the license, registration, or certification shall not be refunded upon surrender.” New subsection (d) states, “A license, registration, or certification that has been voluntarily surrendered may not be renewed. A licensee who has voluntarily surrendered a license, registration, or certification may apply for a new license, registration, or certification.” New subsection (e) states, “The Board maintains jurisdiction over a complaint filed against a licensee alleging violation of the TBPG’s Code of Professional Conduct that occurred prior to the date of surrender of the license, registration, or certification.”

Proposed new rule §851.113, entitled “Duty to Abide by Board Order and Timely Pay Administrative Penalty” adds new subsection (a) which states, “All persons who are the subject of a Board order shall abide by the terms of that order. Failure to abide by the terms of a Board order is grounds for disciplinary action.” New subsection (b) adds, “All persons who are assessed an administrative penalty must pay the administrative penalty not later than the 30th day after the date the Board’s order becomes final or timely satisfy section 1002.454(b) of the Texas Occupations Code.” New subsection (c) states, “Failure to timely pay an administrative penalty is grounds for disciplinary action. This subsection does not apply if a person timely complies with section 1002.454(b) of the Texas Occupations Code regarding staying the enforcement of the administrative penalty at issue.” New subsection (d) adds, “The Board may deny a person’s request for a license, registration or certification, or to renew a license, registration, or certification if the person has failed to timely pay an administrative penalty.” New subsection (e) adds, “When a person pays money to the Board, the Board may first apply that money to outstanding administrative penalties owed by that person before applying it to any other fee or cost.”

Proposed new rule §851.203 entitled “Defaults” adds new subsection (a) which states, “The Board may serve the notice of hearing on the respondent by sending it to his or her last known address as shown by the Board’s records.” New subsection (b) adds, “Default. If the party who does not have the burden of proof fails to appear at a contested-case hearing at the State Office of Administrative Hearings, the administrative law judge may issue a default proposal for decision that can be adopted by the Board.” New subsection (c) adds, “Failure to issue default proposal for decision. If the administrative law judge grants a default but does not issue a default proposal for decision and instead issues an order dismissing the case and returning the file to the Board for informal disposition on a default basis in accordance with section 2001.056 of the Texas Government Code, the allegations in the notice of hearing will be deemed as true and proven and the Board will issue a final order imposing a sanction requested in the notice of hearing.” New subsection (d) adds, “Contesting a final order issued following a default. In the event that the respondent wishes to contest a final order issued following a default, the respondent must timely file a motion for rehearing as provided by Chapter 2001 of the Texas Government Code, and the motion for rehearing must show the following: (1) the default was neither intentional nor the result of conscious indifference; (2) the respondent has a meritorious defense; (3) a new hearing will not cause delay or otherwise injure the Board; and (4) the motion for rehearing must be supported by affidavits and documentary evidence of the above and show a prima facie case for meritorious defense.” New subsection (e) adds, “Failure to prosecute. If a party who does not represent TBPG Board or staff and who has the burden of proof fails to appear at a contested case hearing at the state Office of Administrative Hearings, the administrative law judge must dismiss the case for want of prosecution, any relevant application will be withdrawn, and the Board may not consider a subsequent petition from the party until the first anniversary of the date of dismissal of the case.” New subsection (f) adds, “Applicants for licensure bear the burden to prove fitness for licensure.”

Proposed new rule §851.204 outlines TBPG’s policies regarding the costs of administrative hearings. New subsection (a) adds, “If a person files a suit for judicial review of an agency decision in a contested case, the Board shall request that the contested-case hearing be transcribed.” New subsection (b) adds, “Costs. The costs of transcribing the contested-case hearing and preparing the record for appeal in a suit for judicial review shall be paid by the party who appeals to district court.” New subsection (c) adds, “Documentation of costs. Documentation supporting the costs of transcribing the testimony in a contested-case proceeding and preparing the record for appeal shall be included in the administrative record or filed with the

court.” New subsection (d) adds, “Recovery as court costs. The costs of transcribing the testimony in a contested-case proceeding and preparing the record for appeal in a suit for judicial review may be recovered as court costs.” New subsection (e) adds, “Additionally and alternatively, failure to timely pay the cost of transcribing the contested-case hearing is grounds for disciplinary action, and payment of the cost of transcribing the contested-case hearing is due no later than 60 days after the Board sends a request for payment and copy of the documentation of costs to the respondent’s last known address as shown by the Board’s records or to the respondent’s attorney if any.” New subsection (f) adds, “The Board may deny a person’s request to issue or renew a license, registration, or certification if the person has failed to pay the cost of transcribing the contested-case hearing.” New subsection (g) adds, “When a person pays money to the Board, the Board may first apply that money to outstanding transcript costs owed by that person before applying it to any other fee or cost.”

PUBLIC COMMENT

Comments on the proposed amendments and new rules may be submitted in writing to Charles Horton, Executive Director, Texas Board of Professional Geoscientists, 333 Guadalupe Street, Tower I-530, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to chorton@tbpg.state.tx.us. Please indicate “Comments on Proposed Rules” in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

The proposed amendments are authorized by the Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Occupations Code §1002.154 which provides that Board shall enforce the Act; by Occupations Code §1002.255, which defines license eligibility; by Occupations Code §1002.257, which allows for reciprocity of licensure; by Occupations Code §1002.258, which authorizes temporary licenses.

The proposed amendments implement the Texas Occupations Code, §§1002.151, 1002.154, 1002.255, 1002.257, and 1002.258.

§851.29. Endorsement and Reciprocal Licensure.

(a) Endorsement.

- (1) Endorsement is the process whereby TBPG, based on review of evidence of having completed a requirement for licensure for an equivalent license in another jurisdiction, determines that the applicant has met a requirement for licensure as a Professional Geoscientist.
- (2) An applicant for a Professional Geoscientist license who is currently or has been licensed or registered in the last ten years to practice a discipline of geoscience in Texas or another United States jurisdiction (state, commonwealth, or territory, including the District of Columbia) or another country may be eligible to demonstrate having met all or some of the qualifications for licensure through endorsement.
- (3) The Board staff will only consider documentation provided to the TBPG directly from a licensing authority that has issued a license to the applicant. It is the responsibility of the applicant to ensure that the licensing authority provides information to the TBPG and pays any associated costs.
- (4) In order for the Board staff to consider evidence supporting the endorsement of a licensing qualification, the applicant must ensure that his or her licensing authority provides:
 - (A) Verification that the license is current or was held in the past ten years from the date of application; and
 - (B) Verification of the specific requirements that were met in order to become licensed.

(5) Verification may be in the form of:

(A) A document signed by an authorized agent of the jurisdiction indicating the specific qualifications that were met in order to become licensed; and/or

(B) Copies of specific documents that were submitted to the licensing authority to document having met a specific requirement.

(6) The TBPG may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(b) Reciprocal Licensure.

(1) Licensure by reciprocity agreement.

(A) Licensure by reciprocity agreement is the process whereby an applicant for licensure as a Professional Geoscientist in Texas who is currently licensed as a Professional Geoscientist (or equivalent license) in another United States jurisdiction (state, commonwealth or territory, including the District of Columbia) or another country becomes licensed in Texas and the process whereby an applicant currently licensed as a Professional Geoscientist in Texas applying for licensure as a Professional Geoscientist (or equivalent license) in the other jurisdiction becomes licensed in the other jurisdiction under the terms of a formal reciprocity agreement between the two jurisdictions.

(B) An applicant who holds a current license in a jurisdiction with which the TBPG has a reciprocity agreement may apply for licensure under the terms of the specific reciprocity agreement between the two jurisdictions.

(C) The TBPG shall maintain a list of each jurisdiction in which the requirements and qualifications for licensure or registration are comparable to those established in this state and with which a reciprocity agreement exists.

(2) Licensure by similar examination. An individual who is licensed or registered to practice a discipline of geoscience in another United States jurisdiction (state, commonwealth, or territory, including the District of Columbia) or another country who has applied for licensure as a Professional Geoscientist ~~[applying for licensure]~~ under this subsection may meet the licensing examination requirement by submitting ~~[must submit]~~ proof of passage of examination(s) that is/are substantially similar to the applicable examination(s) as specified in §851.21 of this chapter.

(3) Licensure by recognition of licensed experience in another jurisdiction. An applicant for a Professional Geoscientist license who is currently licensed or registered to practice a discipline of geoscience in another United States jurisdiction (state, commonwealth, or territory, including the District of Columbia) or another country who was licensed without examination, i.e. "grandfathered", with regard to a licensing examination or who was licensed based on a licensing examination that is not recognized as substantially similar to the current licensing examination required for licensure under paragraph (2) of this subsection shall be deemed to have met the examination requirement upon verification of the following:

(A) Verification of a valid licensure in the other jurisdiction. The applicant requesting licensure under this subsection must be in good standing with the jurisdiction in which that individual holds their current license as a professional geologist or geoscientist;

(B) Verification of at least five (5) years of responsible professional geoscience work experience since the date of their initial licensure;

(C) Verification that licensure was maintained continuously (including sequential licensure, if a license was held in more than one jurisdiction) during the five (5) years prior to application with the TBPG; and

(D) Verification that no complaint is pending against the applicant, that no complaint against the applicant has been substantiated, and no disciplinary action has ever been taken against the applicant.

(E) The applicant seeking licensure under this subsection shall be responsible for contacting the jurisdiction(s) in which the applicant is currently licensed and all jurisdictions in which the applicant has ever been licensed and cause to have verification of information in subparagraphs (A) - (D) of this paragraph submitted to TBPG.

§851.31. Temporary License.

~~[(a)]~~ The TBPG may issue a temporary license to an applicant as described in §1002.258(a) of the Act.

~~[(b)] A temporary licensee is subject to all rules and legal requirements to which a standard license is subject. The TBPG may issue a temporary license to an applicant currently licensed in another jurisdiction who:~~

~~–(1) Has held such a license in good standing as a geoscientist for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of the TBPG and has passed a national or other examination recognized by the Appointed Board relating to the discipline of geoscience for which licensure is being sought;~~

~~–(2) Submits all required forms and fees; and~~

~~–(3) Complies with and meets the requirements set forth in §1002.258 of the Act.~~

~~(c) Pursuant to §1002.258(c) of the Act, a temporary license expires either on the 90th day after the date of issuance or on the date a reciprocal license is issued or denied, whichever event occurs first.~~

~~(d) The application fee is non-refundable.]~~

§851.32. Continuing Education Program.

(a) Each licensee shall meet the Continuing Education Program (CEP) requirements for professional development as a condition for license renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH)--A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.

(2) Continuing Education Unit (CEU)--Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour--Credit for course in a discipline of geoscience or other related technical elective of the discipline.

(4) Course/Activity--Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice.

(c) Every P.G. licensee is required to obtain 15 continuing education hours (PDH units) during a standard renewal period year (one year). The continuing education requirement for a license that is renewed for a period less than one year per § 851.28(b) of this chapter shall be prorated.

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of Professional Geoscientists, or review on-line of the Texas Geoscientist Practice Act and TBPG rules.

(e) If a licensee exceeds the annual requirement in any renewal period, a maximum of 30 PDH units may be carried forward into the subsequent renewal periods.

(f) PDH units may be earned as follows:

(1) Successful completion or auditing of college credit courses.

(2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.

(4) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(5) Teaching or instructing as listed in paragraphs (1) - (4) of this subsection.

(6) Authoring published papers, articles, books, or accepted licensing examination items.

(7) Active participation in professional or technical societies, associations, agencies, or organizations, including:

(A) Serving as an elected or appointed official;

(B) Serving on a committee of the organization; or

(C) Serving in other official positions.

(8) Patents issued.

(9) Engaging in self-directed course work.

(10) Software programs published.

(g) All activities described in subsection (f) of this section shall be relevant to the practice of a discipline of geoscience and may include technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows and subject to subsection (g) of this section:

(1) 1 College or unit semester hour--15 PDH.

(2) 1 College or unit quarter hour--10 PDH.

(3) 1 Continuing Education Unit (CEU)--10 PDH.

(4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH.

(5) 1 Hour of professional development through self-directed course study (Not to exceed 5 PDH)--1 PDH.

(6) Each published paper or article--10 PDH and book--45 PDH.

(7) Active participation, as defined in subsection (f)(7) of this section, in professional or technical society, association, agency, or organization (Not to exceed 5 PDH per year)--1 PDH.

(8) Each patent issued--15 PDH.

(9) Each software program published--15 PDH.

(10) Teaching or instructing as described in subsection (f)(5) of this section--3 times the PDH credit earned.

(i) Determination of Credit:

(1) The Appointed Board shall be the final authority with respect to whether a course or activity meets the requirements of this chapter.

(2) The Board staff shall not pre-approve or endorse any CEP activities. It is the responsibility of each licensee to use his/her best professional judgment by reading and utilizing the rules and regulations to determine whether all PDH credits claimed and activities being considered meet the continuing education requirement. However, a course provider may contact the Board staff for an opinion for whether or not a course or technical presentation would meet the CEP requirements.

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed course work will be based on one PDH unit for each hour of study and is not to exceed 5 PDH per renewal period. Credit determination for self-directed course work is the responsibility of the licensee.

(6) Credit determination for activities described in subsection (h)(6) of this section is the responsibility of the licensee.

(7) Credit for activity described in subsection (h)(7) of this section requires that a licensee serve as an officer of the organization, actively participate in a committee of the organization, or perform other activities such as making or attending a presentation at a meeting or writing a paper presented at a meeting. PDH credits are not earned until the end of each year of service is completed.

(8) Teaching credit, as defined in subsection (f)(5) of this section, is valid for teaching a course or seminar for the first time only.

(j) The licensee is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) A log, showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) Attendance verification records in the form of completion certificates, receipts, attendance roster, or other documents supporting evidence of attendance.

(k) The licensee must submit CEP certification on the log and a list of each activity, date, and hours claimed that satisfy the CEP requirement for that renewal year when audited. A percentage of the licenses will be randomly audited each year.

(l) CEP records for each licensee must be maintained for a period of three years by the licensee.

(m) CEP records for each licensee are subject to audit by the Board staff.

(1) Copies must be furnished, if requested, to the Board staff for audit verification purposes.

(2) If upon auditing a licensee, the Board staff finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of geoscience, the Board staff may require the licensee to acquire additional PDH as needed to fulfill the minimum CEP requirements.

(n) A licensee may be exempt from the professional development educational requirements for a specific renewal period or periods for one of the following reasons listed in paragraphs (1) - (4) of this subsection:

(1) New licensees that were licensed by passage of any part of the required licensing examinations shall be exempt for their first renewal period.

(2) A licensee serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) A licensee employed outside the United States, its possessions and territories, actively engaged in the practice of geoscience for a period of time exceeding three hundred (300) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year except for five (5) hours of self-directed course work.

(4) A licensee who is impacted by a long term physical disability or illness (of the licensee or a family member or other person) may be exempt.

(5) Supporting documentation must be furnished to the TBPG. The Executive Director shall review circumstances and documentation and make a decision. A licensee may appeal a decision of the Executive Director to an appropriate Committee or the full Appointed Board, as appropriate.

(o) A licensee may bring an expired license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30 units, including 2 hours of professional ethics, roles and responsibilities of Professional Geoscientists, then 30 units (including 2 hours of ethics) shall be the maximum number required.

(p) Noncompliance:

(1) If a licensee does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) A licensee must submit the CEP certification log and supporting records for credits claimed not later than 30 days after the Board sends by certified mail an audit notification and request for a log and supporting documentation to the licensee's last known address as shown by the Board's records. Failure to timely submit a CEP certification log and supporting records for credits claimed is grounds for disciplinary action.

(3) A licensee must satisfy CEP requirements. Failure to satisfy CEP requirements during the applicable period is grounds for disciplinary action.

(4) ~~Falsely reporting that CEP requirements have been met for a renewal period is [A determination by audit that CEP requirements have been falsely reported shall be considered to be]~~ misconduct and will subject the licensee to disciplinary action.

§851.35. Voluntary Surrender of a License, Registration or Certification.

(a) A license holder who does not wish to maintain a license, registration, or certification may voluntarily surrender the license, registration, or certification by submitting a request in writing on a form prescribed by the TBPB, provided that the license holder:

(1) has a current license, registration, or certification;

(2) is not out of compliance with a disciplinary order;

(3) does not have a complaint pending; and

(4) is not under a continuing education audit.

(b) The effective date of a voluntary surrender of a license shall be the date that the Board accepts the surrender and will mark the termination of the licensee's license, registration, or certification.

(c) Any fees paid on the license, registration, or certification shall not be refunded upon surrender.

(d) A license, registration, or certification that has been voluntarily surrendered may not be renewed. A licensee who has voluntarily surrendered a license, registration, or certification may apply for a new license, registration, or certification.

(e) The Board maintains jurisdiction over a complaint filed against a licensee alleging violation of the TBPB's Code of Professional Conduct that occurred prior to the date of surrender of the license, registration, or certification.

§851.113. Duty to abide by Board order and timely pay administrative penalty.

(a) All persons who are the subject of a Board order shall abide by the terms of that order. Failure to abide by the terms of a Board order is grounds for disciplinary action.

(b) All persons who are assessed an administrative penalty must pay the administrative penalty not later than the 30th day after the date the Board's order becomes final or timely satisfy section 1002.454(b) of the Texas Occupations Code.

(c) Failure to timely pay an administrative penalty is grounds for disciplinary action. This subsection does not apply if a person timely complies with section 1002.454(b) of the Texas Occupations Code regarding staying the enforcement of the administrative penalty at issue.

(d) The Board may deny a person's request for a license, registration or certification, or to renew a license, registration, or certification if the person has failed to timely pay an administrative penalty.

(e) When a person pays money to the Board, the Board may first apply that money to outstanding administrative penalties owed by that person before applying it to any other fee or cost.

§851.203. Defaults.

(a) The Board may serve the notice of hearing on the respondent by sending it to his or her last known address as shown by the Board's records.

(b) Default. If the party who does not have the burden of proof fails to appear at a contested-case hearing at the State Office of Administrative Hearings, the administrative law judge may issue a default proposal for decision that can be adopted by the Board.

(c) Failure to issue default proposal for decision. If the administrative law judge grants a default but does not issue a default proposal for decision and instead issues an order dismissing the case and returning the file to the Board for informal disposition on a default basis in accordance with section 2001.056 of the Texas Government Code, the allegations in the notice of hearing will be deemed as true and proven and the Board will issue a final order imposing a sanction requested in the notice of hearing.

(d) Contesting a final order issued following a default. In the event that the respondent wishes to contest a final order issued following a default, the respondent must timely file a motion for rehearing as provided by Chapter 2001 of the Texas Government Code, and the motion for rehearing must show the following:

- (1) the default was neither intentional nor the result of conscious indifference;
- (2) the respondent has a meritorious defense;
- (3) a new hearing will not cause delay or otherwise injure the Board; and
- (4) the motion for rehearing must be supported by affidavits and documentary evidence of the above and show a prima facie case for a meritorious defense.

(e) Failure to Prosecute. If a party who does not represent TBPG Board or staff and who has the burden of proof fails to appear at a contested case hearing at the State Office of Administrative Hearings, the administrative law judge must dismiss the case for want of prosecution, any relevant application will be withdrawn, and the Board may not consider a subsequent petition from the party until the first anniversary of the date of dismissal of the case.

(f) Applicants for licensure bear the burden to prove fitness for licensure.

§851.204. Costs of Administrative Hearings.

(a) If a person files a suit for judicial review of an agency decision in a contested case, the Board shall request that the contested-case hearing be transcribed.

(b) Costs. The costs of transcribing the contested-case hearing and preparing the record for appeal in a suit for judicial review shall be paid by the party who appeals to district court.

(c) Documentation of costs. Documentation supporting the costs of transcribing the testimony in a contested-case proceeding and preparing the record for appeal shall be included in the administrative record or filed with the court.

(d) Recovery as court costs. The costs of transcribing the testimony in a contested-case proceeding and preparing the record for appeal in a suit for judicial review may be recovered as court costs.

(e) Additionally and alternatively, failure to timely pay the cost of transcribing the contested-case hearing is grounds for disciplinary action, and payment of the cost of transcribing the contested-case hearing is due no later than 60 days after the Board sends a request for payment and copy of the documentation of costs to the respondent's last known address as shown by the Board's records or to the respondent's attorney if any.

(f) The Board may deny a person's request to issue or renew a license, registration, or certification if the person has failed to pay the cost of transcribing the contested-case hearing.

(g) When a person pays money to the Board, the Board may first apply that money to outstanding transcript costs owed by that person before applying it to any other fee or cost.