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1 ADOPTION OF

## **SUBCHAPTER E. ADMINISTRATIVE PROCEDURES**

43 TAC §221.96 INTRODUCTION. The Texas Department of Motor Vehicles adopts new 43 TAC §221.96 concerning cease and desist orders. The adopted new section implements Senate Bill (SB) 604, 86th Legislature, Regular Session (2019), which amended Occupations Code Chapter 2302 by adding Occupations Code §2302.355 authorizing the department's board (board) to issue cease and desist orders under the chapter. The department adopts the §221.96 with changes to the proposed text as published in the August 21, 2020 issue of the *Texas Register* (45 TexReg 5902). The rule will be republished. **REASONED JUSTIFICATION.** New §221.96 permits the board to issue cease and desist orders if it appears that a violation of Occupations Code Chapter 2302, the department's rules, or an order from the department under Occupations Code Chapter 2302 is occurring. New §221.96(a) clarifies that a cease and desist order may only be issued if the board reasonably believes a person who is not licensed under Occupations Code Chapter 2302 is violating that chapter or a rule or order adopted under that chapter. New §221.96(a) is necessary to clarify that license holders under Occupations Code Chapter 2302 cannot be issued a cease and desist order and corresponds to the language in Occupations Code §2302.355. License holders under Occupations Code Chapter 2302 include a general distinguishing number holder acting under Occupations Code §2302.009. New §221.96(b) permits the board to require a person to cease and desist from committing a violation. The department considers it necessary to amend the proposed language of §221.96(b). The proposed language differentiated between "committing a violation" and "engaging in any practice

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regulated by the board as necessary to prevent the violation." However, the department does not intend

to prohibit legal behavior via a cease and desist order. To clarify department intent, §221.96(b) has been

- 1 changed to delete the phrase "or from engaging in any practice regulated by the board as necessary to
- 2 prevent the violation." The change does not affect persons not on notice of the proposal or add additional

3 costs.

- 4 New §221.96(c) permits a person to whom a cease and desist order is issued to file a written
- 5 request for a hearing before the board not later than the 10th day after the date of receipt of the order.
- 6 The written request for a hearing may be filed with the department electronically, through the mail, or in
- 7 person. The request may be in any written form, but should state that a hearing is requested. New
- 8 §221.96(c) clarifies that the order is final unless a request for hearing is timely filed. New §221.96(c) is
- 9 necessary to provide an opportunity for hearing while balancing the need for quick resolution of the
- 10 hearing and the finality of the order. The 10-day deadline for request for hearing balances those needs
- providing time to respond while providing a timeline for efficient and timely resolution.
- 12 **SUMMARY OF COMMENTS.** The department received no comments on the proposal.
- 13 **STATUTORY AUTHORITY.** The amendment is adopted under Transportation Code §1002.001 which
- provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are
- 15 necessary and appropriate to implement the powers and the duties of the department; and more
- specifically, Occupations Code §2302.355 which provides the board authority to issue a cease and desist
- order prohibiting a person not licensed under Occupations Code Chapter 2302 from violating that chapter,
- an administrative rule, or an order adopted under that chapter.
- 19 CROSS REFERENCE TO STATUTE. Occupations Code §2302.355 and Transportation Code §1002.001.
- 20 **TEXT.**

21

## SUBCHAPTER E. ADMINISTRATIVE PROCEDURES

- 22 **43 TAC §221.96**
- 23 §221.96. Cease and Desist Order.

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1	(a) The board may issue a cease and desist order if the board reasonably believes a person who
2	is not licensed under Occupations Code Chapter 2302 is violating that chapter or a rule or order adopted
3	under that chapter.
4	(b) A cease and desist order may require a person to cease and desist from committing a violation.
5	The order must contain a notice that a request for hearing may be filed under this section.
6	(c) A person to whom a cease and desist order is issued may file a written request for a hearing
7	before the board. The order is final unless a request for hearing is timely filed. The person must file the
8	hearing request not later than the 10th day after the date of receipt of the order.
9	
10	<b>CERTIFICATION.</b> The department certifies that legal counsel has reviewed the adoption and found it to
11	be a valid exercise of the agency's legal authority.
12	Issued at Austin, Texas, on <u>December 10, 2020</u> .
13 14	/s/ Tracey Beaver Tracey Beaver, General Counsel

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