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SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

43 TAC §215.22 and §215.55

TEXT

Prohibited Communications

43 TAC §215.22

§215.22. Prohibited Communications.

(a) No party, attorney of record, or authorized representative in any contested case shall engage in, ~~make,~~ directly or indirectly, any ex parte communication, in violation of Government Code, §2001.061, concerning the ~~merits of the~~ contested case with ~~to~~ the board or hearing officer assigned to render a decision or make findings of fact and conclusions of law in a contested case.

(b) Violations of this section shall be promptly reported to the hearing officer, as applicable, and the general counsel of the department. The general counsel shall ensure that a copy or summary of the ex parte communication is included with the record of the contested case and that a copy is forwarded to all parties or their authorized representatives. The general counsel may take any other appropriate action otherwise provided by law.

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SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

43 TAC §215.59 - §215.62

TEXT

Role of Department Staff in Managing Board’s Review of Contested Cases

43 TAC §215.59

§215.59 Role of Department Staff in Managing Board’s Review of Contested Cases.

(a) At least two weeks prior to a board meeting during which the board will review a contested case, department staff will notify the parties regarding the opportunity to attend and provide oral argument.

(b) Except as prohibited by Government Code §2001.061, and §215.22 of this title (relating to Prohibited Communications), department staff may advise the board regarding the contested case review. However, staff shall not recommend a final decision unless the department is a party to the contested case.

SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

Limiting Arguments and Discussion to Evidence in the Administrative Record

43 TAC §215.60

§215.60 Limiting Arguments and Discussion to Evidence in the Administrative Record.

1 (a) The parties to a contested case under review by the board must limit their arguments and
2 discussion to evidence in the SOAH administrative record.

3 (b) Each party is responsible for objecting when another party attempts to make arguments or
4 discuss evidence that is not contained in the SOAH administrative record.

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6 **SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE**

7 **Order of Presentation to the Board for Review of a Contested Case**

8 **43 TAC §215.61**

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10 **§215.61 Order of Presentations to the Board for Review of a Contested Case.**

11 (a) The department’s staff will present the procedural history and summary of the contested case.

12 (b) The party that is adversely affected has the opportunity to present its case first.

13 (c) The other party or parties then have an opportunity to respond. If there are more than one
14 other party, each party will have an opportunity to respond in alphabetical order based on the name of
15 the party in the pleadings in the SOAH administrative record.

16 (d) Each party then has an opportunity to provide a rebuttal.

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18 **SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE**

19 **Board Conduct and Discussion When Reviewing a Contested Case**

20 **43 TAC §215.62**

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22 **§215.62 Board Conduct and Discussion When Reviewing a Contested Case.**

1 (a) The board will conduct its review of a contested case in compliance with Government Code
2 Chapter 2001, including the limitations on changing a finding of fact or conclusion of law, and the
3 prohibition on considering evidence outside of the SOAH administrative record.

4 (b) Board members may question any party on any matter that is relevant to the proposal for
5 decision and evidence contained in the SOAH administrative record.

6 (c) Board members may use their industry expertise to help them understand the case and make
7 effective decisions. However, board members are not advocates for a particular industry. Board members
8 are public servants who take an oath to preserve, protect, and defend the Constitution and laws of the
9 United States and Texas.