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PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 847

OREGON MEDICAL BOARD

FILED

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ARCHIVES DIVISION  
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& LEGISLATIVE COUNSEL

FILING CAPTION: Exempting license denials from timelines to issue an amended proposed order or a final order.

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AMEND: 847-001-0015

RULE TITLE: Delegation of Authority and Issuance of Final Order

NOTICE FILED DATE: 04/17/2023

RULE SUMMARY: The rule amendment adds license denials as a class of cases exempt from the requirements in OAR 137-003-0655(7), to issue an amended proposed order or a final order within 90 days of the date of the proposed order. Because of the Board's quarterly meeting schedule and the complexity of cases, 90 days is often an insufficient amount of time to allow the Board to review an Administrative Law Judge's (ALJ) proposed order and issue a final order in a contested case hearing.

RULE TEXT:

(1) The Oregon Medical Board (Board) has delegated to the Executive Director the authority to make certain procedural determinations on its behalf on matters arising under the Attorney General's Model Rules for Contested Cases in OAR 137-003-0001 to 137-003-0700. The procedural functions include, but are not limited to:

(a) For discovery requests before the Board, authorizing or denying requested discovery in a contested case, including the methods, timing and extent of discovery;

(b) Issuing a Qualified Protective Order over the materials subject to discovery, for the period prior to referring a case to the Office of Administrative Hearings;

(c) Reviewing all requests to take a deposition of a witness and to authorize or deny any request for deposition. If a request to take a deposition is authorized, the Executive Director may specify the terms on which the deposition is taken, to include, but not limited to the location, the manner of recording, the time of day, the persons permitted to be present, and the duration of the deposition;

(d) Determining whether a request for hearing filed after the prescribed time will be accepted, based upon OAR 847-001-0005. In making this determination, the Executive Director may require the request to be supported by an affidavit or other writing to explain why the request is late and may conduct such further inquiry as deemed appropriate. If the Board disputes the facts contained in the explanation as to why the request was late or the accuracy of the reason that the request was late, the requestor has a right to a hearing before an Administrative Law Judge (ALJ) on the reasons for that factual dispute;

(e) Whether to issue a subpoena for the attendance of witnesses or to produce documents at the hearing;

(f) Prior to the issuance of a proposed order issued by an ALJ, whether the Board will consider taking notice of judicially cognizable facts or of general, technical or scientific facts in writing which are within the specialized knowledge of the Board;

(g) Whether to submit to the Board prior to an ALJ's proposed final order the following issues:

(A) The Board's interpretation of its rules and applicable statutes;

(B) Which rules or statutes are applicable to a proceeding;

(C) Whether the Board will answer a question transmitted to it by the ALJ;

(h) In regard to a proposed order issued by an ALJ, whether the Board's legal representative will file exceptions and present argument to the Board; and

(i) Whether a request for delay of hearing on emergency suspension will be accepted.

(2) All actions taken under section (1) of this rule must be reported to the Board at the regularly scheduled meeting in which the Board deliberates on the proposed order in the case.

(3) The Board's disciplinary cases brought under ORS 677.205 and license denials are exempt from the requirements of OAR 137-003-0655(7), which requires an agency to give written notice to the ALJ and all parties of the date by which the agency expects to issue an amended proposed order or a final order if the agency will not issue an amended proposed order or final order within 90 days of the proposed order. Due to the complexity of Board cases and the infrequency of regularly scheduled Board meetings, 90 days is an insufficient time for the Board to issue an amended proposed order or a final order.

STATUTORY/OTHER AUTHORITY: ORS 677.265

STATUTES/OTHER IMPLEMENTED: ORS 183.335, 183.341, 677.275