

BOARD OF PODIATRIC MEDICINE

PROPOSED LANGUAGE

Adopt section 1399.730 Division 13.9 of Title 16 of the California Code of Regulations to read as follows:

Article 13. Oral Arguments; Amicus Briefs

§ 1399.730 Procedures for the Conduct of Oral Arguments.

- (a) A party who wishes to present oral argument to the board after an order of nonadoption or reconsideration shall make a written request for oral argument to the board not later than twenty (20) calendar days after the date of the notice of nonadoption or the order granting reconsideration.
- (b) An administrative law judge will preside at oral argument. The administrative law judge may sit with and assist the board with its closed session deliberations.
- (c) The arguments shall be based only on the existing record and shall not exceed the scope of the record of duly admitted evidence. No new evidence will be heard. The board members may ask questions of the parties to clarify the arguments, but may not ask questions that would elicit new evidence. The administrative law judge and any board member may ask a party to support the party's oral argument on a matter with a specific citation to the record.
- (d) The administrative law judge shall stop an attorney, a party, or a board member if the line of questioning or argument is beyond the records or is otherwise out of order.
- (e) The administrative law judge shall offer the respondent doctor of podiatric medicine an opportunity to address the board regarding the penalty. If the respondent elects to address the board, the administrative law judge shall place the respondent under oath.
- (f) The sequence of, and the time limitations on, oral argument are as follows:
 - (1) First – the respondent party and/or respondent's legal counsel, who shall be limited to fifteen minutes.
 - (2) Second – the deputy attorney general, who shall be limited to fifteen minutes.
 - (3) Third – the respondent party's rebuttal or that of respondent's legal counsel, which shall be limited to five minutes
 - (4) Fourth – the deputy attorney general who shall be limited to five minutes.

Note Authority cited: Section 2470 and 2336, Business and Professions Code. Reference: Section 2336, Business and Professions Code and section 11517, Government Code.

§ 1399.731 Amicus Briefs.

- (a) A non-party with an interest in the outcome of an administrative proceeding may be permitted to file an amicus curiae brief when the board has nonadopted a proposed decision or has granted a petition for reconsideration of a decision. The filing of an amicus curiae brief regarding whether the board should nonadopt a proposed decision is not permitted.
- (b) A person who wishes to file an amicus curiae brief shall file with the executive officer of the board a signed request, not to exceed one page, specifying the points to be argued in the brief and indicating why additional arguments on those points is necessary or would be helpful to the board. The request shall be accompanied by the original and seven copies of the brief. The petitioner shall include a proof of service of the request and brief on the deputy attorney general assigned to the case. The brief shall be limited to matters contained in the records of the proceeding and shall not include or incorporate any attachments. No delay in the proceedings will be granted in order to allow an amicus curiae brief to be filed.
- (c) The executive officer shall immediately transmit the request to the president of the board. The decision whether to grant the request shall be made by the president and one member designated by the president. In the event the vote is not unanimous, the request shall be deemed denied. The request may be granted in whole or in part or may be denied without explanation. In determining whether to grant a request to file an amicus curiae brief, the following factors, among other factors, shall be considered:
 - (1) whether the matters in the brief will be helpful to the board;
 - (2) the interest of the public and public policy, including the effect of the decision on non-parties; and
 - (3) the costs to the parties to reply to the amicus curiae brief.
- (d) If the request is granted, the executive director shall then transmit a copy of the brief to each board member.
- (e) Where a decision has been nonadopted or a petition for reconsideration has been granted, a request to file an amicus curiae brief will be considered only if it is received no later than 45 days prior to the date on which oral argument is scheduled or the matter is to be considered by the board if no oral argument has been requested.

Note Authority cited: Section 2470, Business and Professions Code.

Reference: Sections 11440.50, Government Code.

§ 1399.732 Written Argument Submitted in Response to an Order of Nonadoption or Reconsideration.

Written argument submitted in response to an order of nonadoption or reconsideration shall:

- (a) State each point under a separate heading or subheading summarizing the point and support each point by argument, and citation of authority if applicable; and
- (b) Support any reference to a matter in the records by a citation to the volume and page number of the record or exhibit number where the matter appears.

Note Authority cited: Section 2470, Business and Professions Code, and section 11517, Government Code. Reference Section 11517, Government Code.