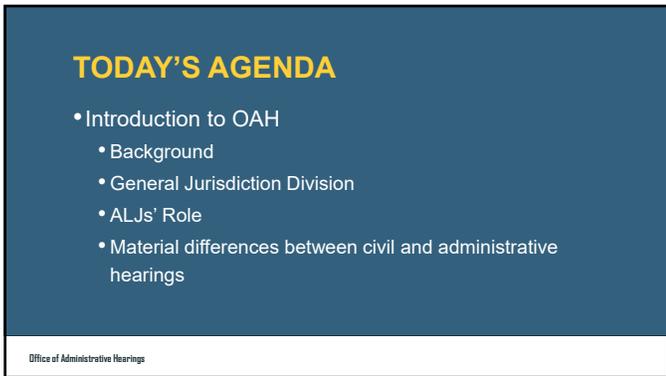
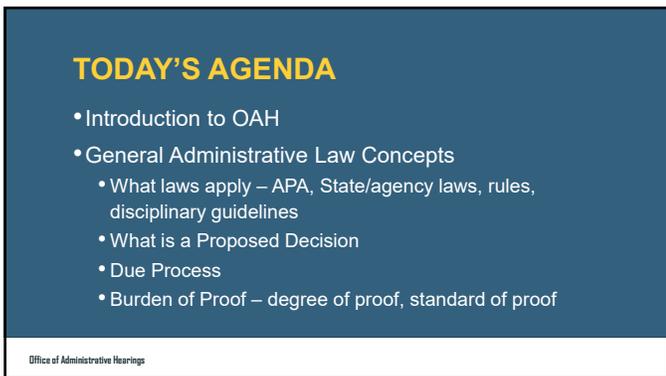




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OAHP BACKGROUND

- Central Administrative Hearing Panel of California
- Established in 1945 as the first central panel administrative hearing agency in the U.S.
- Two divisions
 - Special Education Division
 - General Jurisdiction Division

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GENERAL JURISDICTION DIVISION

- Approximately 6,000 General Jurisdiction cases filed per year
- Four regional offices: Sacramento, Los Angeles, Oakland, and San Diego
- Over 50 Administrative Law Judges and ALJ Pro Tems



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GENERAL JURISDICTION DIVISION

- Sacramento hearings are held at: 2349 Gateway Oaks Drive, Suite 200, Sacramento 95833; or
- Offsite and/or out of Sacramento but within the region; or
- On Zoom/teleconference



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GENERAL JURISDICTION DIVISION (CONTINUED)

- ALJs conduct hearings, settlement conferences, mediations, and arbitrations
- State Agencies Required to Use the APA
 - Administrative Procedure Act (APA) (Gov. Code, § 11400 et seq.), and particularly the formal hearing process (Gov. Code, § 11500 et seq.)
 - Other statutory and regulatory processes
- Local Agencies
 - Local government code enforcement, personnel actions, retirement disputes, ethics commissions, etc.
- Other Agencies
 - Department of Developmental Services (Welfare and Institutions Code)

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PARTIAL LIST: GJ AGENCIES SERVED

Alcoholic Beverage Control	Cannabis Control	Dept Developmental Services	Emergency Medical Services Authority (State and Local)	Bureau of Security and Investigative Services	Physician Assistant Board	Secretary of State - Notary Public
Board of Accountancy	Child Support Services	Dental Board	Office of Energy Infrastructure Safety	Medical Board of California	Physical Therapy Board	Bureau of Automotive Repair - Seneg Check
Acupuncture Board	Corrections and Rehabilitation	Dental Hygiene Board	Fair Political Practices Commission	New Motor Vehicle Board	Board of Podiatric Medicine	Dept of Social Services
Bureau of Security and Investigative Services	Resources, Recycling and Recovery	Dept Financial Protection and Innovation	Fish & Game Commission	Board of Occupational Therapy	Bureau for Private Postsecondary Education	Structural Pest Control Board
Architects Board	Dept of Education	State Hospitals	Dept of Fish and Wildlife	Board of Optometry	Professional Educators Bureau	Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
Bureau of Automotive Repair	Cemetery and Funeral Bureau	DGS Bid Pretests	Dept of Food and Agriculture	Osteopathic Medical Board of California	Board of Vocational Nursing and Psychiatric Technicians	Teacher Dismissals
Board of Barbering and Cosmetology	Board of Chiropractic Examiners	DGS Disabled Veterans Business Enterprises	Board of Forestry and Fire Protection	Other - Sacramento	Board of Psychology	State Teachers' Retirement System
Board of Behavioral Sciences	Community College Employees - discipline	Dept of Managed Health Care	Hearing Aid Dispensers Bureau	Public Employees' Retirement System	Real Estate	Commission on Teacher Credentialing
Board for Professional Engineers, Land Surveyors & Geologists	Court Reporters Board	Dept Motor Vehicles	Dept Health Care Services	Dept of Pesticide Regulation	Respiratory Care Board	Veterinary Medical Board
Forestry and Fire Protection	Contractors State License Board	DOJ Bureau of Firearms; Fingerprint Roller, Records, Gambling Control	Insurance	Board of Pharmacy	Board of Registered Nursing	Board of Vocational Nursing and Psychiatric Technicians

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GENERAL JURISDICTION DIVISION (CONTINUED)

- OAH's job is to be neutral and to determine whether there is a basis for the administrative action being taken
 - Conduct a **fair, neutral hearing** protecting due process rights of all parties
 - Create an **administrative record** for later review
 - Issue a **decision or proposed decision** that considers all the relevant evidence and explains the basis for the findings and conclusions
 - Act as **adjudicative body of limited jurisdiction**, granted by statute

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MATERIAL DIFFERENCES BETWEEN ADMINISTRATIVE AND CIVIL HEARINGS

- The principal difference involves the taking of evidence
 - Goal is efficiency and to avoid burdensome technical rules
 - Government Code section 11513(c): "Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs..."
 - Despite this flexibility, ALJs rely on the California Evidence Code to ensure the quality of evidence in the record and to provide a uniform standard

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MATERIAL DIFFERENCES BETWEEN ADMINISTRATIVE AND CIVIL HEARINGS (CONTINUED)

- Primary differences are:
 - Hearsay evidence is admissible, but generally only for explaining or supplementing other evidence in the record
 - Cross-examination is not limited by the scope of direct examination, provided the topic is limited
 - A respondent who does not testify on their own behalf may be called as a witness by the complainant and examined as if under cross-examination
 - Evidence may be taken by affidavit and, unless timely objection is made, the right to demand the appearance of the declarant for the purpose of cross-examination is waived

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GENERAL ADMINISTRATIVE LAW CONCEPTS

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GENERAL ADMINISTRATIVE LAW CONCEPTS

- What laws apply – APA, State/agency laws, rules, disciplinary guidelines
- What is a Proposed Decision
- Due Process
- Burden of Proof – degree of proof, standard of proof

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HEARINGS BEFORE OAH

- Hearings conducted under the APA, unless another statute or regulation governs (Gov. Code, § 11500 et seq.; Cal. Code Regs., tit. 1, § 1000 et seq.)
- When a regulating board or agency:
 - Refuses to issue a license, disciplines a license, or takes other actions relating to a license
 - Refuses to grant or seeks to alter disability, retirement, or other benefits
 - Initiates other proceedings

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OAH WEBSITE: www.dgs.ca.gov/oah

- Links to statutes and regulations, including an online version of the APA and regulations
- Calendar information
- Case lookup
- Forms, including continuance requests, requests for protective orders, and subpoenas
- Practice guides for self-represented parties
- ALJ biographical information

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AGENCIES MAY ADOPT PRECEDENTIAL DECISIONS (GOV. CODE, § 11425.60)

- Decisions not precedential unless agency adopts
- Agency required to keep an index
- Check agency website for precedential decisions

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TYPES OF OAH DECISIONS

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TYPES OF OAH DECISIONS

- Proposed Decision (Gov. Code, § 11517, subd. (c))
 - Prepare within 30 days after case is submitted
 - Submitted to agency decision maker for adoption
 - If agency rejects PD, may remand back to ALJ, or decide the case upon the record

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TYPES OF OAH DECISIONS

- Proposed Decision (Gov. Code, § 11517, subd. (c))
- Final Decision (DDS, Dept. of Fish and Wildlife, appeals of grants/funding by CDE, teacher dismissal cases, etc.)
- Board decisions in petition hearings (OAH ALJ may draft for agency decision maker)

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OTHER ORDERS/DECISIONS

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OTHER ORDERS/DECISIONS

- Interim Suspension Order (ISO)
 - Medical Board (Gov. Code, § 11529)
 - Other Licensing Agencies (Bus. & Prof. Code, § 494)
 - OAH procedures for ex-parte petitions "specifically authorized by statute or regulation" (Cal. Code Regs., tit. 1, § 1012)
- Reinstatement or Reduction of Penalty
 - ALJ presides at Board/Agency petition hearing
 - ALJ prepares decision for the agency

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BURDEN VS. STANDARD OF PROOF

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BURDEN VS. STANDARD OF PROOF

- Burden of Proof:
 - **Who** must establish certain facts
 - On agency when taking action:* Discipline of license, citation, or interim suspension
 - On citizen when seeking action:* Issuance of license, reinstatement of license, termination or modification of probation, government benefits
- Standard of Proof:
 - **How much** evidence is necessary to establish those facts
 - Clear and convincing evidence or preponderance of evidence

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STANDARD OF PROOF

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STANDARD OF PROOF

- Clear and Convincing
 - Accusation involving a professional license (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853)
- Preponderance of the Evidence
 - Accusations not involving professional license
 - Statement of Issues
 - Citations
 - Petitions for Interim Suspension
 - Petition to Revoke Probation (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434)

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CLEAR AND CONVINCING VS. PREPONDERANCE

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CLEAR AND CONVINCING VS. PREPONDERANCE

- Clear and convincing:
 - A "high probability" that a fact is true
 - "Leaves no substantial doubt"
 - "Commands the unhesitating assent of every reasonable mind"
- Preponderance:
 - Evidence, when weighed with that opposed to it, has more convincing force, results in a greater probability of truth.

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**NEXT SESSION: FEBRUARY 23, 2024
1:30 P.M.**

- Preparing for an Administrative Hearing
- Settlement Conferences
- Prehearing Conferences
- Prehearing Dos and Don'ts

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QUESTIONS?

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THANK YOU!

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