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AGENCY FILES REQUEST TO SET WITH PLEADINGS

- OAH's form to establish new case - available on OAH website
- Parties should CONFER prior to filing regarding:
 - Dates, location, in-person, or remote
 - How many days of hearing needed
 - Provide statutory date by which matter should be heard – you might need a time waiver
- Present available and unavailable dates for hearing to occur **within six months** of filing
- OAH's calendar of availability is on the OAH website; call with questions

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AGENCY FILES REQUEST TO SET WITH PLEADINGS

- Court reporter or electronic recording (Gov. Code, § 11512, subd. (d).) Recording must have agreement.
- Security requests; interpreter requests.
- Request for prehearing conference and/or settlement conference [OAH schedules if hearing is four days or more]

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FILINGS WITH OAH: OAH'S SECURE FILE TRANSFER (SFT) SYSTEM

- Counsel and government agencies are required to file all hearing requests, pleadings, and motions and receive electronic service of documents, through OAH's Secure File Transfer system [www.applications.dgs.ca.gov/oah/oahsftweb]
- Account is password protected and secure
- OAH is paperless including exhibits offered at hearing

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NOTICE OF HEARING

- OAH sets hearing, and in some cases, prehearing conference and settlement conference
- OAH issues the Notice of Assigned Hearing Dates [or contacts parties if information is missing]
- Agency counsel issues and serves the Formal Notice of Hearing (Gov. Code 11509.)

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CONTINUANCE

- **Good cause requirement**
- Must be timely – within 10 working days of when party knew or should have known of cause
- Forms available on OAH website
- Meet and confer with other party
- Provide available and unavailable new dates
- Gov. Code, § 11524; Cal. Code Regs., tit. 1, § 1020

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CHANGE OF VENUE

- Hearing location selected by the agency (Gov. Code, § 11508, subd. (a))
 - Ljsjwfg fyymj TFM tkkhj hqxjxyt | mjw wjxutsijsy wjxriyx twyfsxfhyrt s thhzwj i
- R tyts kwHmfslj tk [jszj -Lt{3Hti j1< 66:5=1xzgi3-h..
 - Wjvzwnji yt gj kqji | nms 65 if-x tkxjw{h j tkymj Styhj tk Mjfwsl

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HEARING IN PERSON OR VIRTUAL

- TFM Xfhwfr jsyt xjxr fyjw fhhtwrl yt ymj qhfxts rs Wjvzjxyt Xjy3
- F uwthjjiisl r f-gj htsizhyji g- jgjhwtsh r jfsxikst ufwr- tgqhyx Lt{3Hti1j1< 669953B5.
- Nkf ufwr- tgqhyxITFM r f- htsxrijwymj tgqhytsx fsi xwzhyzwj ymj mjfwsl yt fiiwxx ymj tgqhytsx3

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DISCOVERY REQUESTS

- Gov. Code, § 11507.6
- Must be submitted in writing prior to the hearing
 - Within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading
- No depositions, except ordered by OAH (Gov. Code, § 11511)
 - Witness unavailable or can't be compelled to testify
- Entitled to:
 - Names and addresses of witnesses including, but not limited to, those intended to be called to testify

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DISCOVERY REQUESTS (CONTINUED)

- Also entitled to inspect and make a copy of these if under the control of the other party:
 - A statement by someone, other than the respondent, named in the administrative hearing, when it is claimed that the act/omission of the respondent as to this person is the basis for the administrative proceeding
 - A statement pertaining to the subject matter of the proceeding made by any party to another party/person

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DISCOVERY REQUESTS (CONTINUED)

- Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions, or events which are the basis for the proceeding
- All writings, including, but not limited to, reports of mental, physical, or blood examinations and things which the party then proposes to offer in evidence
- Any other writing or thing which is relevant and which would be admissible in evidence
- Investigate reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding

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EXPERT DISCOVERY

- Medical Board cases have specific timing and disclosure requirements (Bus. & Prof. Code, § 2334)
 - *Not* the same as disclosure of experts in civil cases; no depositions
 - Failure to disclose timely or inadequate disclosure can lead to exclusion of expert
- No specific rule re: disclosure of experts in other cases
- Gov. Code sec. 11507.6 requires disclosure of name and address of witness intended to be called to testify

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MOTION TO COMPEL

- Gov. Code, § 11507.7
- Motion shall:
 - State facts showing the responding party failed or refused to comply with Section 11507.6
 - Describe the matters sought to be discovered
 - Offer reason(s) the matter is discoverable under that section
 - State that a reasonable and good faith attempt to contact the responding party for an informal resolution of the issue has been made
 - Give ground(s) of responding party's refusal if known to the moving party

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MOTION TO COMPEL (CONTINUED)

- Shall be served on responding party and filed within 15 days after that party's first evidenced failure or refusal to comply with section 11507.6 or within 30 days after the request was made and the party has failed to reply to the request
- Hearing on the motion to compel discovery shall be held within 15 days after the motion is made or a later time that the ALJ may for good cause determine

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DISCOVERY DEADLINES

- Gov. Code, § 11507.6, which governs the request for discovery, does not specify the time that a party must *produce* requested discovery material
- Should evaluate above statute with Gov. Code, § 11507.7 regarding the timing of motions to compel discovery
- Also consider discovery response timing issues with a due process lens – that requested discovery must be produced sufficiently in advance of the hearing that the requesting party can examine the materials and make use of them at the hearing (*Petrus v. State of Calif. Dept. of Motor Vehicles* (2011) 194 Cal.App.4th 1240.)

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PRE-HEARING MOTIONS

- Cal. Code Regs., tit. 1, § 1022
- All motions made prior to the hearing shall be directed to the presiding judge; following this, motions shall be directed to the ALJ assigned to the hearing
- A motion shall be made with written notice to all parties, unless the motion is made during a hearing while on the record
- A hearing on a motion may be scheduled for the same date and time as the PHC or independently

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PRE-HEARING MOTIONS (CONTINUED)

- Motions shall state in plain language the relief sought and the facts, circumstances, and legal authority that support the motion
- A motion shall be filed and served at least 15 days before the first day of hearing; any response to the motion shall be filed and served no later than 3 days before the date the motion is scheduled to be heard
- A motion shall be decided without oral argument; a party may request oral argument at the time of filing the motion or response

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PRE-HEARING MOTIONS (CONTINUED)

- The ALJ may rule from the bench or take the matter under submission
- For all pre-hearing motions, the ALJ must issue a written order
- The ALJ may request the prevailing party to prepare a proposed order

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MOTIONS IN LIMINE

- Two weeks before the hearing, parties should file and serve any motions in limine [unless told otherwise]
 - Including the subject of the motion and citation to applicable authority
- Opposition to any motion in limine should be filed and served by one week before hearing
- ALJs commonly hear motions in limine on the first day of the hearing

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STIPULATIONS

- Stipulations may be included as a matter at a prehearing conference (Gov. Code, § 11511.5)
- After the PHC, the ALJ issues a prehearing conference order that incorporates the matters determined at the conference; agreements on stipulations may be entered on the record or may be made the subject of a written order by the ALJ

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OTHER MOTIONS (CAL. CODE REGS., TIT. 1, § 1022)

- Motions filed 15 days before the hearing
- Decided without oral argument, unless ordered or scheduled
- Responses due 3 days before motion is scheduled to be heard
- If a PHC has been scheduled, motions filed 15 days before PHC; responses filed 3 business days before PHC; and motions heard at PHC (Cal. Code Regs., tit. 1, § 1026, subd. (b))

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SETTLEMENT CONFERENCE

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SETTLEMENT CONFERENCES

- Cases 4+ days – automatic
- 4 weeks in advance of hearing
- Different ALJ
- Settlement Authority



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SETTLEMENT CONFERENCES (CONTINUED)

- Authorized under Gov. Code, § 11511.7; Cal. Code Regs., tit. 1, § 1028
- Usually set with PHC - may be set separately
 - Parties may mutually request settlement conference
- Settlement ALJ will not conduct the hearing
- Settlement conference statements/briefs not required but welcome
- Attendance at and participation in the settlement conference by parties and their representatives is mandatory
- All communications made in settlement negotiations are protected

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EFFECTIVE SETTLEMENT PROCEDURES

- Speak with opposing party *early* about settlement; try to determine the areas of contention
- Realistically assess the outcome of the hearing
 - If some discipline is likely, what conditions are necessary to protect the public?
 - If benefits are being requested, what is reasonably required by the statutory scheme? Were procedural requirements met?
- Does the agency require a written settlement proposal?
- Does the agency require or want submission of an expert report or other documentation to support a settlement proposal?

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PEREMPTORY CHALLENGE OF ALJ

- Peremptory challenges (Gov. Code, § 11425.40, subd. (d); Cal. Code Regs., tit. 1, § 1034)
 - One peremptory challenge per side
 - Must be made within time limits
 - Before commencement of PHC
 - 2 business days before hearing if at OAH office
 - Noon on Friday before, if at another site

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DISQUALIFICATION OF ALJ

- Judicial ethics rules for disqualification, recusal, and disclosure apply to OAH Administrative Law Judges
- Disqualification for cause (Gov. Code, §§ 11425.40; 11512, subd. (c))
 - Bias, prejudice, or interest
 - The assigned ALJ makes determines whether disqualification is required.
- Recusal
 - Parties may waive the disqualification in writing.
- Disclosure
 - ALJ may disclose knowledge (e.g. familiarity with a party)

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PREHEARING CONFERENCE

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PREHEARING CONFERENCE (PHC)

- Clarification of Issues
- Preparation of Stipulations
- Witness identity/limitation
- Evidentiary Matters – motions in limine
- Subpoenas and Protective Orders
- Discovery Deadlines

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PREHEARING CONFERENCE (CONTINUED)

- Authorized by Gov. Code, § 11511.5; Cal. Code Regs., tit. 1, § 1026
- Scheduled in cases set for 4 or more hearing days, or on request.
 - Request should demonstrate how PHC will streamline proceeding or address legal issues or motions
- Scheduled at least one month prior to the hearing date
- PHC Statements and Motions filed prior to PHC

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PREHEARING CONFERENCE (CONTINUED)

- Motions to be heard at the PHC must be filed with OAH no later than 15 days before the PHC and "shall otherwise comply with Cal. Code Regs., tit. 1, § 1022"
 - Responses to the motions must be filed with OAH no later than three business days before the conference
- A PHC statement must be filed by each party and served on all other parties at least three business days before the PHC
- The PHC may address, among other things, exploration of settlement possibilities, preparation of stipulations, and clarification of issues

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OFFICIAL NOTICE (GOV. CODE, § 11515)

- ALJ may take official notice, "either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State."
- Parties are to be given reasonable opportunity to address matter, on request
- NOTE: ALJ's experience, technical competence, and specialized knowledge may be used in evaluating evidence. (Gov. Code, § 11425.50, subd. (c).)

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EX PARTE COMMUNICATIONS

While a case is pending, there shall be no communication, direct or indirect, regarding any issue in the case, to the ALJ or agency decision maker from any party or interested person, without notice and an opportunity for the other parties to participate. (Gov. Code, < 11430.10, et seq.)

- Limited exceptions
- Disclosure requirements
- Ex parte made part of the record, with opportunity to comment



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INTERPRETERS AND ACCOMMODATIONS

- Interpreters generally ordered by the agency bringing the case (Gov. Code, § 11435.05 et seq.)
 - Make request early
- ADA accommodations requested through OAH website
 - ADA coordinator – interactive process
 - Provide documentation to support requested accommodation

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PREPARATION OF STIPULATIONS

- Parties are typically directed to confer three weeks before the hearing date to discuss any stipulations as to the facts and/or admissibility of the evidence
- A joint statement containing such stipulations should be filed no later than three days after that conference

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WITNESS CONSIDERATIONS

- Where witnesses are minors or patients, counsel and parties should be vigilant to protect personal, sensitive, or confidential information
- This may include:
 - Seeking an order to seal
 - Redacting
 - Using the person's initials along with a confidential names list

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SUBPOENAS

- Before hearing, attorneys may issue subpoenas for documents and/or testimony at hearing
- Also may be issued by OAH for a self-represented party (Gov. Code, § 11450.20, subd. (a))
 - Forms available on OAH website
- Motion to quash (Gov. Code, § 11450.30)

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PROTECTING PRIVATE INFORMATION

- All documents submitted to OAH are potential public records
- A party or attorney submitting a document is responsible for redacting confidential private information, or requesting that the document be sealed
- Applies to pleadings and hearing exhibits
- Form for requesting a sealing order on OAH Website
- OAH must balance public right to know vs. individual privacy interests
 - *Nativi v. Deutsche Bank National Trust Co.* (2014) 223 Cal.App.4th 261

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PREHEARING DOs AND DON'Ts

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PREHEARING DOs AND DON'Ts

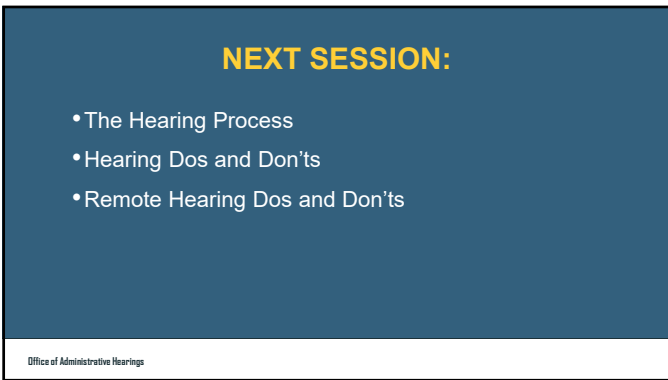
- Charging document/Accusation
 - In a complex case, do judges prefer that agencies amend their Accusation before the hearing to cull out causes of discipline that are duplicative or no longer needed?
- Motions – what judges want, need, and don't want to see
- How to use prehearing conferences wisely
- Importance of stipulation

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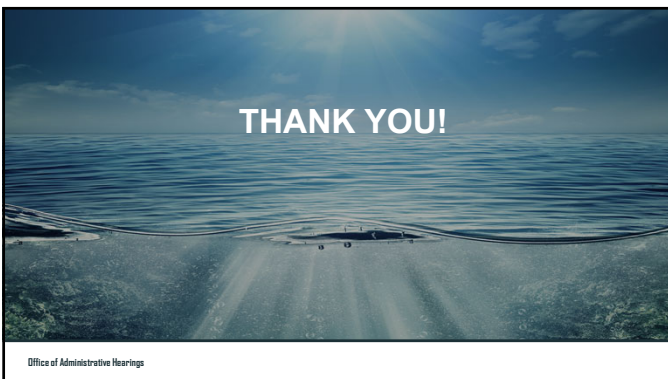
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