CALIFORNIA

DEPARTMENT OF JUSTICE

THE DISCIPLINARY PROCESS

PRESENTED FOR THE CALIFORNIA STATE BOARD OF PHARMACY

October 28, 2026

THE OFFICE OF THE ATTORNEY GENERAL AND ITS ROLE IN THE DISCIPLINARY PROCESS FOR THE CALIFORNIA STATE BOARD OF PHARMACY

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The Office of the Attorney General:

- Represents state agencies and employees in judicial and other proceedings including administrative proceedings. (Gov. Code, § 11040)

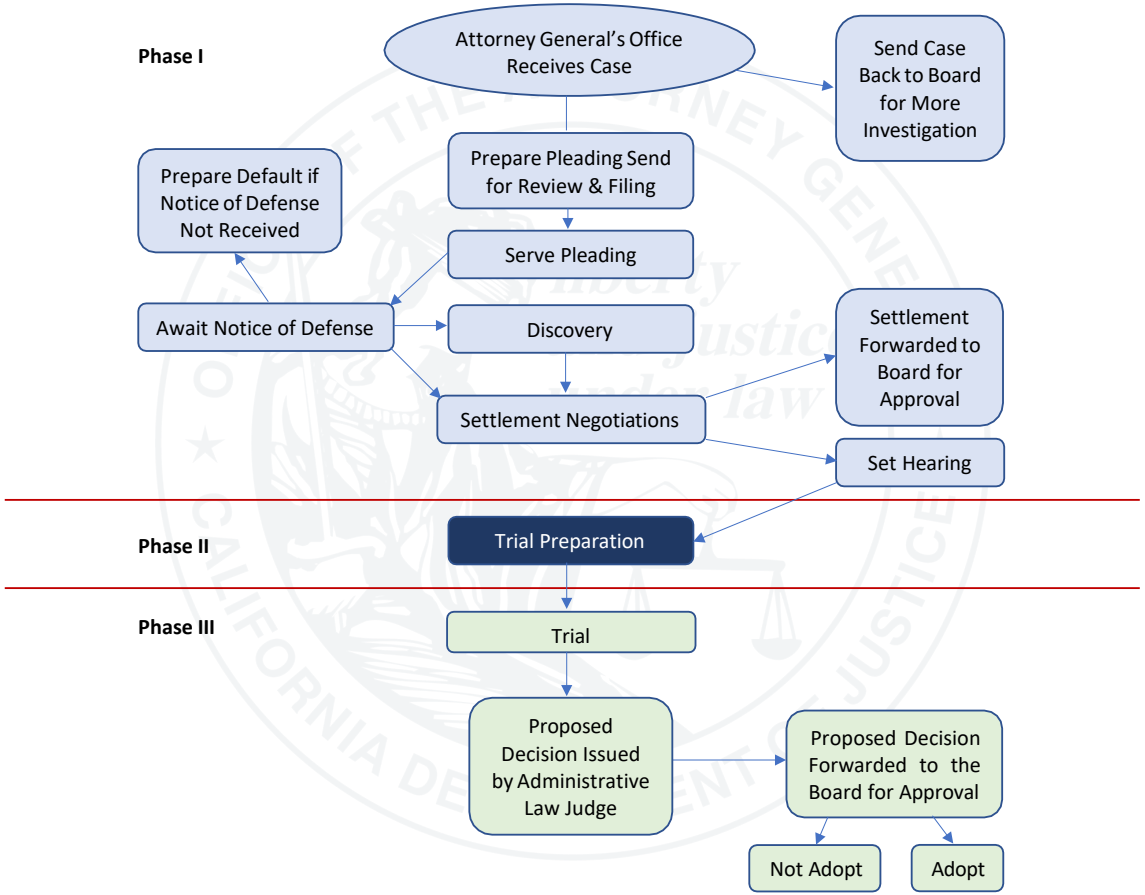
The Office of the Attorney General Mission Statement:

- It is our duty to serve our state and work honorably every day to fulfill California's promise. The Attorney General and Department of Justice employees provide leadership, information and education in partnership with state and local governments and the people of California to:
  - Enforce and apply all laws fairly and impartially.
  - Ensure justice, safety and liberty for everyone.
  - Encourage economic prosperity, equal opportunity and tolerance.
  - Safeguard California's human, natural and financial resources for this and future generations.

The Licensing Section helps achieve this mission to protect California consumers by:

- Representing client agencies in the enforcement of licensing laws, and thereby:
  - Remove or discipline licensees who do not meet minimum professional standards.
  - Deter licensees from committing misconduct.
  - Promote public confidence in licensed professionals.
  - Provide due process to accused licensees.

GENERAL CASE PROCESS



Accusations

- Jurisdiction
- License history
- Statutes and regulations
- Background Information, Definitions, Explanations
- Charging paragraphs
- Service
- The accusation is served on the respondent's address of record and sometimes on another address that is identified by the agency or the AGO.
- What's the point?

Due Process

Notice of Defense

- Respondent must file a Notice of Defense (NOD) within 15 days
  - Govt. Code section 11506

- The NOD is also the request for a hearing

- Failure to file a NOD: Default Decision (Govt. Code section 11520)
  - Relief for good cause if requested within 7 days of service of Default Decision

Request to Set for Hearing

- A request to set for hearing is submitted to the Office of Administrative Hearings (OAH)
  Parties are required to meet and confer, or must file explanation
- OAH and Administrative Law Judge (ALJ) availability
- Deputy Attorney General (DAG), Client, Respondent, and Opposing Counsel availability
- Witness availability
- Length of hearing is estimated
  May be required to attend or may request prehearing or settlement conferences.

Discovery and Settlement

- Govt. Code section 11507.6 provides the only right to, and method of, discovery
  - Parties entitled to obtain information upon written request to the other party prior to hearing
    - Within 30 days of service by the agency of the initial pleading or
    - Within 15 days after service of an additional pleading

- Settlement
  - Mitigation or Rehabilitation Information per disciplinary guidelines
  - Agency Offer of Settlement
  - Counter Offer/Negotiations

- Reasons to Settle
  - Risk Avoidance
  - Save Time/Expense
  - Stipulations are Good

Disciplinary Guidelines

- California Code of Regulations, title 16, section 1760
- Vital to the process from start to finish
- Gives direction to Board staff, DAG, and Respondent
- ALJs review and consider disciplinary guidelines when drafting proposed decisions

What is in the Disciplinary Guidelines?

- The Board's primary purpose is to protect the public (Bus. & Prof. Code § 4001.1)
- Factors to be Considered in Determining Penalties
- The Board has four categories of violations, Categories I-IV, in ascending seriousness with Category IV being the most serious
- The categories outline EXAMPLES of violations, but each case must be considered on its own merits
- Sample language for decisions and orders

Category I

- Minimum Penalty: Revocation stayed, two years probation.
  Maximum Penalty: Revocation

- These violations are less serious than Category II-IV, but are still potentially harmful.

Category II

- Minimum Penalty: Revocation stayed, three years probation.
  Maximum Penalty: Revocation

- Five years probation if self-administration or diversion of controlled substances, dangerous drugs or devices, or alcohol.

- These violations have serious potential for harm, involve disregard for public safety, reflect on ethics, competence, or diligence.

Category III

- Minimum Penalty: Revocation stayed, 90 days suspension, three to five years probation.
  Maximum Penalty: Revocation

- Five years probation if self-administration or diversion of controlled substances, dangerous drugs or devices, or alcohol.

- These violations have greater potential for harm, more imminent, or more serious harm than Category II.

Category IV

- ONLY Penalty: Revocation.

- The most serious violations of laws or regulations governing pharmacy or to the illegal dispensing or distributing of dangerous drugs/devices or controlled substances.

- Remember, the categories assume only one violation, so where there are multiple violations (almost always), the category should increase.

Probation Terms and Conditions

- The disciplinary guidelines provide model language for settlements and proposed decisions.
  - Consistency is important, but each case must be decided on its own merits.
- 16 standard terms and conditions to include in all settlements.
- 26 optional terms and conditions that should be selected specific to the violation(s).
- Remember that ALJs will generally ONLY include probation terms from the disciplinary guidelines.
  - Creativity requires settlement!

Due Process

- Due process and the protection of the public are fundamental guiding factors.

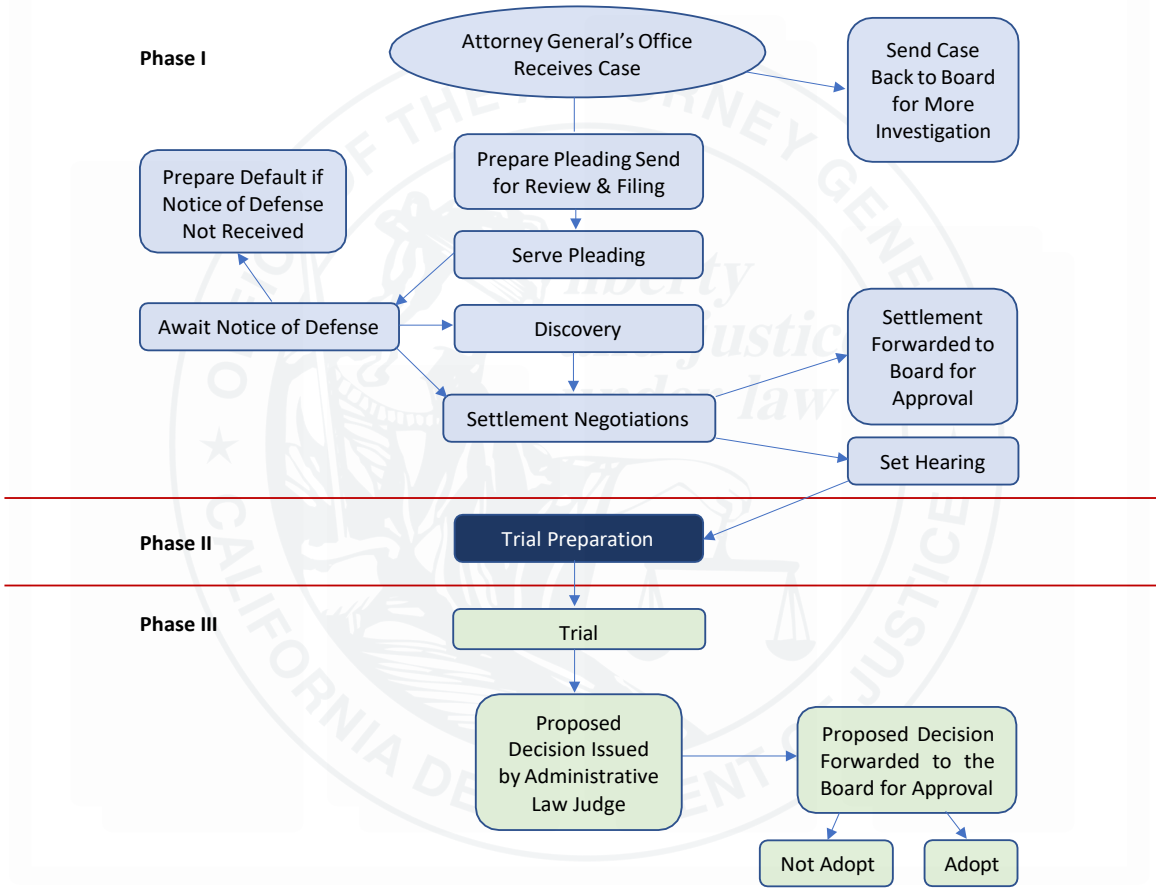
- Protection of the public is the highest priority of the Board, where other interests conflict with the protection of the public, the protection of the public must be paramount (Bus. & Prof. Code § 4001.1).

- Licensees acquire a license, permission from the state to operate, and the state has the right to ensure that licensees are competent and trustworthy.
  - *Shea v. Bd. Med. Exam*. (1978) 81 Cal.App.3d 564.

- The state may not deprive a person of life, liberty, or property without due process of law (US and California Constitutions).

- A licensee has a property interest in their license and therefore is entitled to reasonable notice of the charges, notice of the time and place of a hearing, and a fair hearing on the charges before being deprived of their license.

GENERAL CASE PROCESS



Hearing

- Held in Accordance with the Administrative Procedures Act
- Sequence of Hearing: Presentation of Testimony and Evidence
  - Government Code 11513
- Consequences for Failing to Appear

Burden of Proof – Clear and Convincing Evidence

- Clear and Convincing
  - Proof is clear, explicit, and unequivocal
  - High probability that it occurred

- Accusations against professional licenses, such as pharmacist
  - Professional license = licensee has fulfilled extensive education, training, and testing requirements
  - *Ettinger v. Board of Med. Quality Assurance* (1982) 135 Cal.App.3d 853

- Who has the burden?
  - Accusations = Burden is on Complainant
  - Petition for Reinstatement/Petition for reduction of penalty = licensee

Burden of Proof – Preponderance of Evidence

- Preponderance of Evidence
  - More likely than not that something occurred

- Accusations against occupational/non-professional licenses and premises permits:
  - Occupational license = minimal requirements, holder's investment in training, education, and other qualifications is small
  - *Imports Performance v. Dept. of Consumer Affairs, Bur. Of Automotive Repair* (2011) 201 Cal.App.4th 911
  - *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889

Post Hearing

- Proposed Decision
  - Due to agency within 30 days after submission of case
  - Becomes a public record and is served on parties 30 days after receipt
  - The Board must carefully review the proposed decision and vote to adopt or reject (non-adopt)

- Even more Due Process
  - Reconsideration – Final Order
  - Writ of Mandate – Superior Court
  - Appeal – Appellate Court

THANK YOU!