



**California State Board of Pharmacy**

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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

DEPARTMENT OF CONSUMER AFFAIRS

GOVERNOR EDMUND G. BROWN JR.

**To: Board Members**

**Subject: Agenda Item VI. Presentation of the Administrative Case Process and Case Resolution Times for Matters Referred to the Office of the Attorney General**

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Committee Discussion

During the committee meeting, members received a presentation by Supervising Deputy Attorney General (SDAG) Joshua Room on the disciplinary process. As part of the presentation SDAG Room provided insight into some of the challenges that may impede more swift resolution of disciplinary matters and provided a brief overview of data prepared by the Attorney General regarding workload.

Provided below is a draft of the excerpt from the meeting containing the questions asked and answers.

Q: Are assessments of each case's ability to meet the burden of proof conducted at your office or at the county?

A: The office of the AG is divided into the various cities: Oakland, San Francisco, Sacramento, Los Angeles, San Diego and Fresno. Cases are assigned by geographic proximity. Ultimately, the assigned DAG, in consultation with his or her supervisor, decides if a case can be filed.

Q: Do DAGs maintain specialty areas of law?

A: There is some specialization, but all DAGs should be capable of handling pharmacy cases.

Q: Does the Board of Pharmacy have a statute of limitations?

A: The Board of Pharmacy does not.

Q: How does a criminal conviction impact the AG's case?

A: It depends on how much evidence already exists. If it is in relation to the board's case, then the AG's case is much stronger. If we have enough evidence, I will often advise that we plead the case and file it now. Each case has to be handled on a case-by-case basis. Criminal cases could lead to a significant delay.

Q: If there is a criminal case pending, do you wait for its outcome before pursuing?

A: Sometimes we do, because if we go through with our case and we lose, it could prevent the criminal case from going forward. It would depend on the seriousness and proximity. Individual determinations need to be made. Typically, we place the case on hold.

Q: Where does the pleading originate?

A: The pleading comes directly from the AG's Office.

Q: If the composition of the board changes and has a different operating philosophy, how do you reconsider that offer, keeping in mind the new philosophy, when the offer is returned?

A: A returned settlement offer is returned to the same assigned DAG for the prosecution, and the DAG is aware of the background that was used in determining the offer. Usually, decisions are made based on disciplinary guidelines. Individual board members' perspectives cannot be used to determine how to respond; rather, board staff must rely on common actions of the board. The board staff that the DAG consults with have to use its historical knowledge of "common actions" when making amendments to settlement offers.

Q: How many cases are settled?

A: We have to settle at least 80 percent of our cases. Fifteen to Twenty percent of our cases go to hearing, across all matter types.

Q: When is the standard of proof "clear and convincing" and when is it "preponderance of evidence"?

A: For any professional license, such as a pharmacist, the standard of proof is "clear and convincing". For vocational licenses, such as a pharmacy technician, the standard of proof is "preponderance of evidence".

Q: What is burden of proof for sites?

A: The board has determined that sites are nonprofessional licenses and therefore the standard of proof is "preponderance of evidence." The only licenses deemed "professional" are those commensurate with a professional degree.

Q: When there is a case where a pharmacy and a pharmacist are both involved, is the pharmacist license held to a higher standard or burden of proof?

A: There should be a different burden of proof for each respondent in that case.

Q: How do you reconcile taking action against a licensee when four or five years have passed since the violations occurred, as people change?

A: Typically, a delay in resolution of a matter is a benefit to the respondent in the matter because the delay has afforded the respondent time to show himself or herself as rehabilitated. The passage of time itself should not deter the board from giving a person the disciplinary penalty that is appropriate for his or her conduct under the board's disciplinary guidelines.

Q: How long do ISOs take to issue?

A: Ideally, the goal is to issue an ISO within 30 days.

Q: Are rehabilitation efforts considered when determining a settlement agreement?

A: Yes.

Q: How are cite and fines considered in an accusation.

A: Cite and fines are not disciplinary, but they are administrative sanctions so they are included for disciplinary consideration. They have a small marginal effect.

Following this memo is a copy of the presentation that will be provided during the board meeting as well as portions of a report prepared by the Attorney General.

# ADMINISTRATIVE CASE PROCESS: THE ROLE OF THE ATTORNEY GENERAL IN THE DISCIPLINARY PROCESS

The Office of the Attorney General represents state agencies and employees in judicial and other proceedings.

(Gov. Code, § 11040)

# MISSION STATEMENT OF THE ATTORNEY GENERAL'S OFFICE

- ▣ 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 of our 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.

# LICENSING SECTION MISSION

**“To Protect Integrity in Business and Professions”**

- ▣ **Enforcement of licensing laws**
  - **Removes the bad apple**
  - **Deters others from similar bad conduct**
  - **Promotes public confidence in licensed professionals**

*One bad apple can spoil the whole barrel*



# LICENSING SECTION CLIENTS

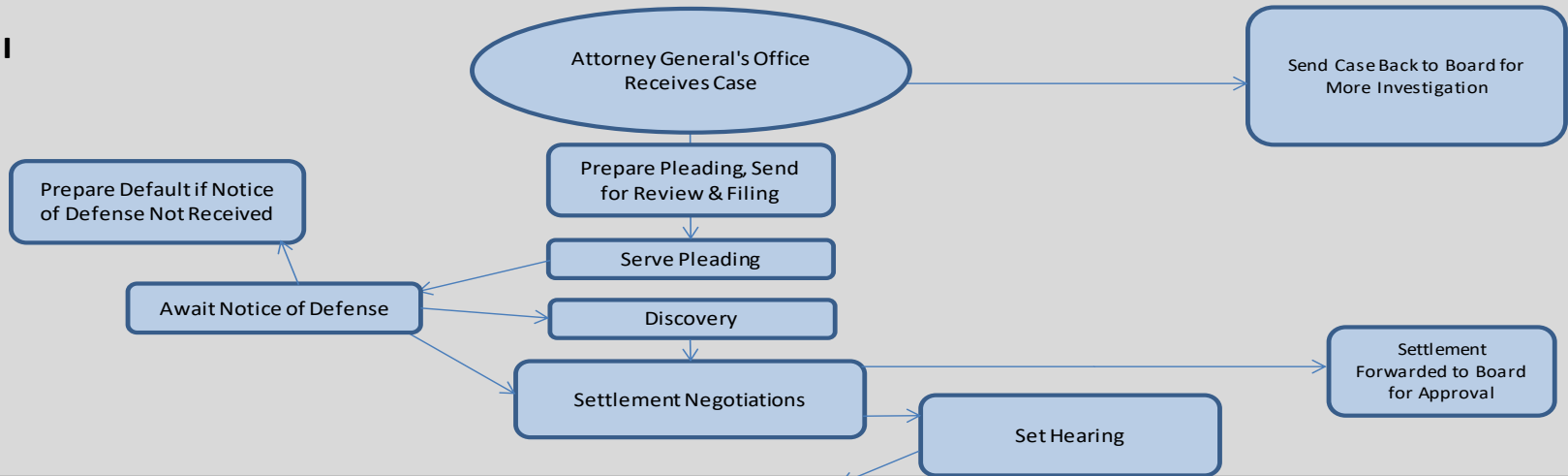
## Mostly Department of Consumer Affairs Agencies

- Health Care – About 60 %
  - E.g., pharmacies, pharmacists, and other members of the drug supply chain, dentists, chiropractors, nurses, marriage & family therapists, social workers, optometrists, psychiatric technicians, veterinarians
- Non-Health Care – About 40 %
  - E.g., accountants, architects, athletic commission, auto repair shops, contractors, cosmetologists, teachers, bureau of private postsecondary education

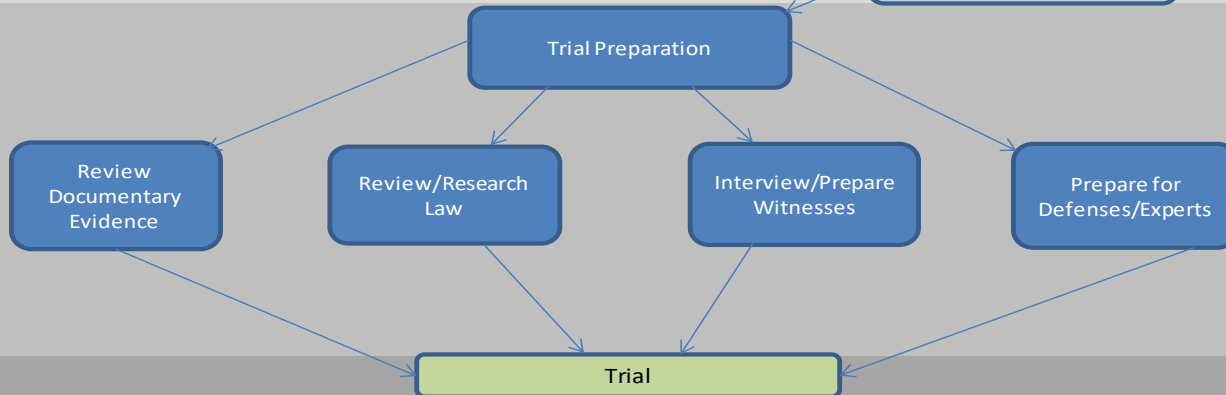


# GENERAL CASE PROCESS

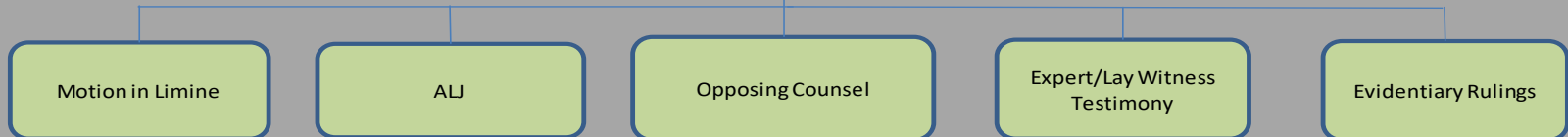
## PHASE I



## PHASE II



## PHASE III





# RECEIPT OF FILE FROM AGENCY

Case received and initially reviewed by SDAG:

- Appropriate geographical assignment?
- Expedited file?
  - ISO, PC 23, SOL, other basis for expedite?
  - To expedite, email request for representation (copy all SDAGs in the AGO location handling matter)
- Statute of Limitations?
- Matter Type - ACC, SOI, PTR, ISO, PC 23, 820, etc.
- Case assigned to DAG (and/or SDAG/paralegal)
- Matter opened and acknowledgment sent

# INITIAL ANALYSIS

## by Assigned DAG

- **Agency Cover Letter**
  - Possible violations, documents enclosed
- **Statute of Limitations**
  - Applicable?
  - Include in Agency Transmittal Letter
- **Jurisdictional Issues?**
  - Unlicensed
- **Review License Information**
  - Certified License History
  - Prior Discipline?
- **Identify any associated respondents, cases, licenses**
  - Consolidate?



# REVIEW OF INVESTIGATIVE FILE/EVIDENCE BY DAG

- Investigative Report
  - Documentary Evidence List
    - Provided as identified?
  - Witness List
    - Complete?
    - Declarations?
- Witness Statements
  - Respondent Interview - Admissions
- Certified records
- Critical documents/information missing?



# EXPERT WITNESS

## EXPERT

- Person with special knowledge, skill, experience, training or education sufficient to qualify as an expert on the subject to which testimony relates

## EXPERT NECESSARY?

- Where case requires opinion or information on an issue that is sufficiently beyond common experience such that the opinion or information will assist the trier of fact (the ALJ)

IN MOST CASES, INSPECTOR IS EXPERT, BUT SOME CASES REQUIRE ADDITIONAL EXPERT

# OPTIONS AFTER FILE REVIEW

- ◆ Return file for further investigation or expert review
- ◆ Decline to prosecute, return to agency with analysis
- ◆ If able to Identify pertinent statutory/regulatory violations supported by evidence provided. . .



**Proceed... to pleading preparation**

# PLEADING PREPARATION

## Standardized Accusations/PTRs/SOIs

- ▣ License history/Application history
- ▣ Jurisdictional paragraph
- ▣ Relevant statutes and regulations
- ▣ Charging paragraphs
  - Causes for Discipline/Denial
  - Avoid unnecessary detail (it was a dark and stormy night!)
  - Variation between offices/DAGs – striving for uniformity
  - Notice pleading vs. pleading the evidence

# PLEADING REVIEW / AMENDMENT

- Variations between Investigation and Accusation
  - DAG considers violations cited by agency, but independently determines what violations are appropriate and supported by the evidence
  - DAG may identify violations not listed and may find that some listed are not viable
- Revisions to pleading prior to filing
- Amendments to pleading after filing



# SERVICE AND RESPONSE TO ACCUSATION/SOI/OTHER PLEADING

The accusation or other pleading is served on the respondent's address of record and possibly on any other address that is identified by the agency or the AG's office





# NOTICE OF DEFENSE

- ▣ Respondent must file a Notice of Defense (NOD) within 15 days after service of the Accusation or PTR (Govt. Code section 11506)
  - Request for a hearing, not rejection of possible settlement
    - ▣ Statement of Issues – applicant already requested a hearing
      - May withdraw Request for Hearing
- ▣ Failure to file a NOD: Default Decision
  - ▣ If no NOD filed, agency may proceed by default
  - ▣ Default may be set aside for good cause (7 day limit)
  - Receipt of NOD
    - ▣ Check for notification of representation by counsel on form
    - ▣ Case is now “at issue” and ready for settlement or hearing

# DISCOVERY

- ▣ Govt. Code section 11507.6 provides the exclusive right to and method of discovery in administrative proceedings (Govt. Code section 11507.5)
  - Parties entitled to obtain information upon written request made to the other party prior to the hearing
    - ▣ Within 30 days of service by the agency of the initial pleading or
    - ▣ Within 15 days of service of additional pleading

# Settlement Negotiations



- ❑ Mitigation
- ❑ Strength of Evidence
- ❑ Diversion
- ❑ Surrender
- ❑ Probation
- ❑ Cost Recovery
  - ❑ Bus. & Prof. Code section 125.3 applies to licensees only
- ❑ Consistency with Other Decisions
- ❑ Board Perspective

# SETTLEMENT

- ▣ TIMING
- ▣ AGENCY OFFER OF SETTLEMENT
  - Sometimes contingent on additional information
  - Evidence of rehabilitation/ mitigation
- ▣ OTHER FACTORS
  - Strength of case
  - Time since underlying events
  - Costs
- ▣ PROPOSED STIPULATION TO BOARD
  - Can be rejected, with or without instruction

# REQUEST TO SET FOR HEARING

- A request to set for hearing is submitted to OAH
  - Parties are required to meet and confer
    - Dates coordinated with respondent or counsel
  - Factors
    - OAH calendar
    - Open dates for DAG and respondent/opposing counsel
    - Key witness availability
- Trial setting conference
- Length of hearing is estimated
  - Depends on number of witnesses, estimate to put on case in chief, estimate for defense
- Venue (location of hearing)

# HEARING DATE RECEIVED FROM OAH

Notice of Hearing served



- Prehearing and Settlement Conference

# Trial Preparation



- Gather and Organize Evidence
  - Relevant and Reliable Evidence
    - Documentary Evidence
    - Witness Statements
- Review/Research Law
- Prepare Witnesses
- Prepare for Defenses

# SUBPOENAS

- To compel production of documents at reasonable time and place or at a hearing (*subpoena duces tecum*)
- To compel attendance at a hearing
- Written notice to witness to attend (Govt. Code section 11450.50)
- Person served may object to subpoena/SDT
  - Motion to Quash
  - Motion for Protective Order



# HEARING

- ▣ Respondent's Failure to Appear
  - Default decision
- ▣ Administrative Law Judge
- ▣ Documents and Testimony at Hearing
  - Relevant, necessary
- ▣ Record of Hearing
  - Electronic reporting
  - Court reporter

# STANDARD OF PROOF

## ▣ Accusations

- Burden on Complainant, generally Clear and Convincing
  - ▣ Professional versus vocational license
    - *Professional (RPH) is clear and convincing*
    - *Vocational (TCH) can be preponderance of the evidence*

## ▣ Statement of Issues

- Burden on Applicant, Preponderance of the Evidence

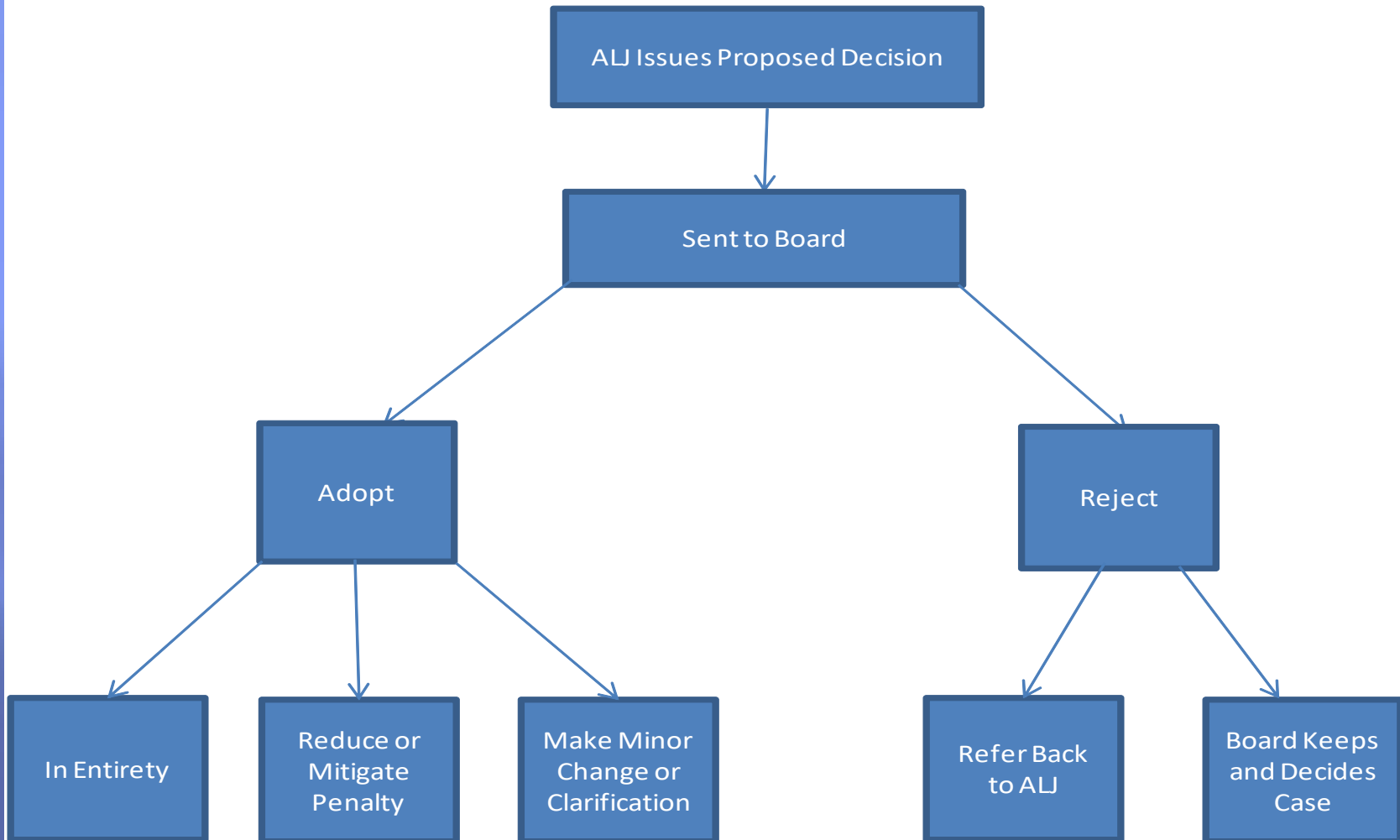
## ▣ Other

- Citation; Petition to Revoke; ISO
- All Preponderance of the Evidence

# HEARING ISSUES

- ▣ Motions in Limine
  - Limit evidence/testimony, focus case
- ▣ Stipulations to Facts or Evidence
- ▣ Discovery and Evidentiary Rulings
- ▣ Impeachment and Bias
- ▣ Insufficient Documentary Foundation
- ▣ Relevance
- ▣ Reliability
- ▣ Hearsay

# PHASE IV – POST-HEARING



# POST-HEARING

## Proposed Decision

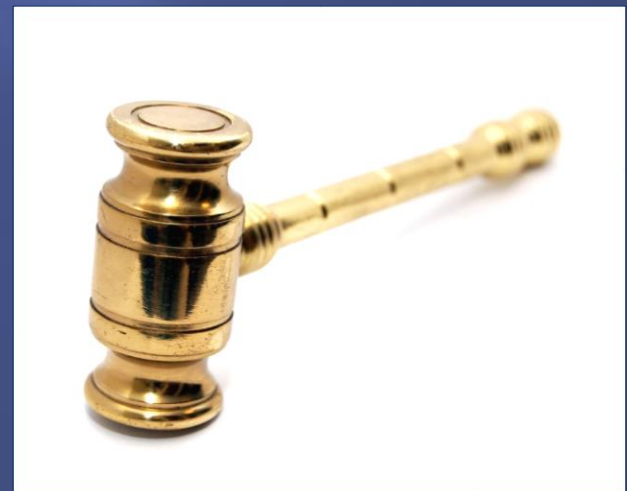
- Due to agency within 30 Days after submission of case
  - 30 days after submission to agency, PD becomes public record (does not mean it is adopted)
    - No prejudice to rights of agency if not within time limit
- Adoption/Non-Adoption
  - Argument on non-adoption
  - Correct technical, clerical errors
- No Action within 100 days = Adoption

Reconsideration

Final Decision

Case Closure

Writ



# Greatest Contributors to Delay

## Investigative Stage

- Criminal cases, co-investigations, supplementals

## Pleading Stage

- Complex cases, pleading review

## Settlement Stage

- Delays in mitigation, response to terms

## Hearing Stage

- Calendaring, continuances, witness availability

## Decision Stage

- Post-hearing submissions, reconsideration

# THE END





**Attorney General's Annual Report**  
on  
**Accusations Prosecuted for Department of  
Consumer Affairs Client Agencies**

**Business and Professions Code Section 312.2**

**January 1, 2018**



# **Attorney General's Annual Report on Accusations Prosecuted for Department of Consumer Affairs Client Agencies**

**January 1, 2018**

## **EXECUTIVE SUMMARY**

This is the first annual report by the Office of the Attorney General required under Business and Professions Code section 312.2, which became effective on January 1, 2016, and requires the first report to be filed by January 1, 2018. The report is based on information from Fiscal Year 2016-17. It provides a baseline concerning accusation referrals received and adjudicated accusations for each Department of Consumer Affairs client agency of the Licensing Section and Health Quality Enforcement Section of the Attorney General's Office.

Each client agency is unique and not comparable to each other, yet some general observations can be made from the data collected to compile this report. In Fiscal Year 2016-17, approximately 40 percent of the legal work performed by the Licensing Section and Health Quality Enforcement Section was for the prosecution of accusation matters, which are the focus of this report. During the year, 3,097 accusation referrals were received from our Department of Consumer Affairs client agencies. Less than 2.7 percent of accusation referrals to the Attorney General's Office were rejected, and 10 percent of accusation referrals required further investigation.

The Office of the Attorney General adjudicated 3,384 accusations during the year. The matters adjudicated were transmitted to this office in Fiscal Year 2016-17 or in a prior fiscal year. Multiple adjudications can occur when more than one licensee is included within one matter, each with different adjudication dates and types, or a client agency exercises its discretion to reject an initial adjudication. Close to 60 percent of the total adjudications were by stipulated settlement, approximately 25 percent by default, and 12 percent by administrative hearing.

We have provided individual reports of the information requested in Business and Professions Code section 312.2 for each Department of Consumer Affairs client agency represented by the Licensing Section and Health Quality Enforcement Section of the Attorney General's Office.

## **BACKGROUND**

### **Licensing Section and Health Quality Enforcement Section**

The Licensing Section and Health Quality Enforcement Section of the Office of the Attorney General's Civil Law Division specialize in licensing law in California. These sections represent 38 Department of Consumer Affairs agencies that issue multiple types of professional and vocational licenses. They provide legal representation to these agencies in many kinds of licensing matters to protect California consumers. Liaison deputies also regularly consult with agency clients and advise them on jurisdictional, legal, and programmatic issues. Deputy Attorneys General also frequently train Division of Investigation and agency investigators, agency staff, and expert witnesses.

Both sections prosecute licensing matters, including accusations (license discipline), which comprise about forty percent of their combined caseload. The balance of prosecution matters consist of statements of issues (appeal hearing when a license application has been denied), interim suspension

petitions (hearing before the Office of Administrative Hearings for immediate suspension of a license), injunction proceedings (brought in superior court to stop unlicensed practice), post-discipline matters (when a licensee petitions for reduction of penalty, or reinstatement of a revoked license), citations (appeal hearing when a citation has been issued), Penal Code section 23 petitions (seeking a license restriction during the pendency of a criminal proceeding), subpoena enforcement actions (to obtain records needed for the investigation of complaints), judicial review proceedings (superior court review of final administrative decisions), appeals (usually from superior court review proceedings), and civil litigation related to license discipline (defending agencies in civil lawsuits brought in state or federal courts).

Of these many types of legal actions, Business and Professions Code section 312.2 requests statistics only for the prosecution of accusation matters. Accusations are the primary component of the enforcement program for each licensing agency. The legal services in other types of licensing matters handled by the Licensing Section and Health Quality Enforcement Section are not included in this report, except where accusations are combined with petitions to revoke probation.

### **Department of Consumer Affairs Client Agencies**

The 38 Department of Consumer Affairs agencies represented by the Licensing and Health Quality Enforcement Sections each have different licensing programs and processes unique to their practice areas. A few agencies issue only one type of license, but most issue multiple license types. Agencies also differ in how they refer accusation matters to the Attorney General's Office; some referring one matter for each licensee, while others refer multiple licensees involved in the same or related acts for which discipline is sought as a single matter to be included in one accusation. They may also refer additional investigations to the Attorney General's Office while an initial accusation matter is pending. Depending on the circumstances, subsequent investigations may or may not be counted as additional *accusation referrals* in this report. Some agencies have higher default rates than others, perhaps because some licensees have invested less time and money to obtain their license than others, just as the respondents for some agencies are almost always represented by counsel, while others have a mix of represented respondents and those who represent themselves. Client agencies also differ in their applicable burdens of evidentiary proof, and some are not subject to a statute of limitations. Most agencies are entitled to recover their costs of investigation and prosecution from respondents. The statistics included in this report are consistent with each client's licensing programs and practices to the extent possible, but as a result of the wide variances among the many agencies, often are not comparable to each other in any meaningful way.

### **Investigation Process**

Agencies also differ in how they investigate their cases. They generally assign investigation of their cases in four ways with an aim to balance quality and efficiency, and avoid insufficiency of evidence, which causes delay while further investigation is done to gather supplemental evidence. First and most commonly, agencies investigate their cases using their own staff, including inspectors, sworn and unsworn investigators, investigator assistants, or analysts. Second, certain kinds of cases are required to be referred to the Department of Consumer Affairs Division of Investigation for investigation consistent with Complaint Prioritization Guidelines developed pursuant to Business and Professions Code section 328. Medical Board cases are excluded from the requirements of section 328 and instead, since 2006, their cases have been investigated under a third model known as Vertical Enforcement and Prosecution, pursuant to Government Code section 12529.6. The Vertical Enforcement model requires a deputy attorney general, who will be responsible for prosecuting the case if the investigation results in the filing of an accusation, to be jointly assigned to the investigation with a Division of Investigation investigator from the Health Quality Investigation Unit. Some agencies represented by the Health Quality Enforcement Section of the Office of the Attorney General opt to

have some or all of their cases investigated under the Vertical Enforcement model. Lastly, all Division of Investigation investigators, agency investigators, and agency staff have the option of consulting with a liaison deputy assigned to each client agency by the Office of the Attorney General to provide counsel with respect to any investigation.

### **Administrative Adjudication Process**

If the investigation reveals evidence that a licensee of an agency has violated the agency's practice act, the agency refers the matter to the Office of the Attorney General to initiate a legal proceeding to revoke, suspend, limit, or condition the license, which is called an *accusation*. (Gov. Code, § 11503.)

Upon receipt, the assigned deputy attorney general reviews the transmitted evidence to determine its sufficiency to meet the requisite burden of proof and for any jurisdictional issues. If the evidence is insufficient and circumstances suggest additional avenues for evidentiary development, the deputy may request further investigation from the agency. In such cases, in the Licensing Section, the file remains open pending receipt of supplemental investigation, and the file is documented to indicate the further investigation request. In the Health Quality Enforcement Section, the file will be returned to the client agency and will be rereferred to the Office of the Attorney General if further evidence is developed. When evidence is insufficient and further investigation is not recommended, or legal issues prevent prosecution, the Office of the Attorney General declines prosecution, and the case is rejected, or reviewed and returned to the agency.

Based upon sufficient evidentiary support, the Attorney General's Office prepares an accusation to initiate the agency's adjudicative proceeding. The accusation pleading is sent to the agency for signature by the executive director, executive officer, or other designated *complainant* for the agency. The accusation is *filed* when the complainant signs it, and it is then served by the agency, or returned to the Office of the Attorney General for service on the licensee, known in the accusation proceeding as the *respondent*. When charged in an accusation, a respondent has a right to an adjudicative hearing under the California Administrative Procedure Act (Gov. Code, tit. 2, div. 3, ch. 5, commencing with §11500.) A deputy attorney general is assigned to prosecute the case and bring it to hearing. Once served with an accusation, the respondent must file a notice of defense within fifteen days, or is in default. Once the notice of defense has been received, a hearing is scheduled with the Office of Administrative Hearings. If no notice of defense is received, then a default is prepared for presentation to the client agency for its ultimate decision.

The deputy attorney general prosecutes the accusation case before the Office of Administrative Hearings. Upon conclusion of the hearing, the case is submitted to the administrative law judge who presides over the hearing, issues a proposed decision, and sends it to the agency for its ultimate decision. Of course, settlement can occur at any time and is the most common method of adjudication of accusation matters.

Each licensing agency makes the final decision in each accusation case. The agency can accept or reject a settlement, and if rejected, the proceedings will continue. After an administrative hearing, the agency can accept the proposed decision issued by the administrative law judge, in which case it becomes the final decision. However, the agency may opt to reduce the penalty, or reject the proposed decision and call for the transcript. After review of the transcript, it can then adopt the proposed decision or issue its own decision. Most cases are resolved when the agency accepts a settlement or proposed decision, but if not, additional proceedings ensue, which take more time.

Even after an agency's decision is issued it may not be final. The respondent may exercise the right to petition for reconsideration, and if granted by the agency, the final decision will be reconsidered.

This can also happen if an agency decides a case based upon the default of the respondent for failure to timely file a notice of defense, or failure to appear at a duly noticed hearing. Upon petition by the respondent, the agency can vacate the default decision, and additional proceedings are conducted to ultimately decide the case. Each of these types of *post-submission* events will lengthen the processing of a case and require further adjudication.

Business and Professions Code section 312.2, subdivision (a)(7), and subdivision (b)(1) – (6) request the number of matters adjudicated by the Office of the Attorney General, and average number of days for various components of the adjudication process. *Adjudication* means the work of the Office of the Attorney General is complete to bring the matter back before the agency for issuance of its decision. Adjudication occurs in four different ways:

1. Default. If a respondent does not timely submit a Notice of Defense, or fails to appear at a duly noticed hearing on the accusation, a default is provided to the agency for its ultimate decision, or the deputy attorney general conducts the hearing without the presence of the respondent.
2. Settlement. The complainant may authorize settlement of an accusation on terms that are sufficient to protect the public, which will be presented to the agency for its ultimate decision.
3. Hearing Submitted. Upon completion of the adjudicative hearing, the matter is submitted to the administrative law judge, who prepares a proposed decision and sends it to the agency for its ultimate decision.
4. Withdrawal of Accusation. Under certain conditions, an accusation that has been filed may be withdrawn by the complainant of the agency as recommended by the Office of the Attorney General, and the matter is closed.

Multiple adjudications may be reported in a single accusation matter in one or more fiscal years because more than one licensee is included in one matter, each with different adjudication dates and types, or a client agency exercises its discretion to reject a proposed settlement, non-adopt a proposed decision, or grant a petition for reconsideration.

## **MEASURES REPORTED**

The following measures are reported, as required by Business and Professions Code section 312.2, which states:

- (a) The Attorney General shall submit a report to the department, the Governor, and the appropriate policy committees of the Legislature on or before January 1, 2018, and on or before January 1 of each subsequent year that includes, at a minimum, all of the following for the previous fiscal year for each constituent entity within the department represented by the Licensing Section and Health Quality Enforcement Section of the Office of the Attorney General:
  - (1) The number of accusation matters referred to the Attorney General.
  - (2) The number of accusation matters rejected for filing by the Attorney General.
  - (3) The number of accusation matters for which further investigation was requested by the Attorney General.

- (4) The number of accusation matters for which further investigation was received by the Attorney General.
  - (5) The number of accusations filed by each constituent entity.
  - (6) The number of accusations a constituent entity withdraws.
  - (7) The number of accusation matters adjudicated by the Attorney General.
- (b) The Attorney General shall also report all of the following for accusation matters adjudicated within the previous fiscal year for each constituent entity of the department represented by the Licensing Section and Health Quality Enforcement Section:
- (1) The average number of days from the Attorney General receiving an accusation referral to when an accusation is filed by the constituent entity.
  - (2) The average number of days to prepare an accusation for a case that is rereferred to the Attorney General after further investigation is received by the Attorney General from a constituent entity or the Division of Investigation.
  - (3) The average number of days from an agency filing an accusation to the Attorney General transmitting a stipulated settlement to the constituent entity.
  - (4) The average number of days from an agency filing an accusation to the Attorney General transmitting a default decision to the constituent entity.
  - (5) The average number of days from an agency filing an accusation to the Attorney General requesting a hearing date from the Office of Administrative Hearings.
  - (6) The average number of days from the Attorney General's receipt of a hearing date from the Office of Administrative Hearings to the commencement of a hearing.

## **METHODOLOGY**

### **Case Management System**

This report is based on data entered by legal professionals into the case management system of the Office of the Attorney General. Each matter received by the Licensing and Health Quality Enforcement Sections from a client is opened in this system. Rules for the entry of data have been created by the sections, and are managed by the Case Management Section of the Office of the Attorney General, which dictate the definitions, dating, entry, and documentation for each data point. Section-specific protocols, business processes, and uniform standards across all professionals responsible for data entry ensure the consistency, veracity, and quality of the reported data. The data entered has been verified to comply with established standards. The data markers in administrative cases have been used to generate the counts and averages in this report. Every effort has been undertaken to report data in a transparent, accurate, and verifiable manner. The Office of the Attorney

General continues to improve its technology, systems and protocols, and integrates them into its business routines and operations.

## Data Presentation

The statistical information required by Business and Professions Code section 312.2 has been organized on a separate page for each constituent entity in the Department of Consumer Affairs represented by the Licensing and Health Quality Enforcement Sections of the Office of the Attorney General. Each page includes the number of licenses and types of licenses issued by the agency, which were taken from the Fiscal Year 2015-16 Sunset Review Reports of individual boards or the 2016 Annual Report of the California Department of Consumer Affairs, containing data from Fiscal Year 2015-16. This report can be found on line at: [http://www.dca.ca.gov/publications/2016\\_annrpt.pdf](http://www.dca.ca.gov/publications/2016_annrpt.pdf). Further information concerning Department of Consumer Affairs agencies can be found through the links at: [http://www.dca.ca.gov/about\\_dca/entities.shtml](http://www.dca.ca.gov/about_dca/entities.shtml).

Table 1 on the page for each agency provides the counts for various aspects of accusation matters, as requested under subdivision (a) of section 312.2, such as the number of accusation referrals received and the number of accusations filed (subd. (a)(1) and (5)). Table 2 provides the averages requested under subdivision (b) of section 312.2, which are based on the accusation matters adjudicated during the year, as reported under section 312.2, subdivision (a)(7). The word *average* in subdivision (b), is a general word that expresses the central or typical value in a set of data, which is most commonly thought of as the arithmetic mean. The mean is the result obtained by adding together several values, and then dividing this total by the number of values. The central value in an ordered set of data is known as the median. The standard deviation (SD) for a data set provides context for averages. A low standard deviation indicates that the data points tend to be close to the mean (also called the expected value) of the set, while a high standard deviation indicates that the data points are spread out over a wider range of values. In Table 2, we have included the mean, median, and standard deviation, along with the number of values in the data set from which the averages were determined. The averages reported in Table 2 for section 312.2, subdivision (b)(2), were calculated from the date matters were received at the Office of the Attorney General until pleadings were sent to the agency, and include the time during which matters were reinvestigated and rereferred by the client back to the Office of the Attorney General. The pleadings filed reported in subdivision (b)(1) include the matters reported in subdivision (b)(2), that required further investigation before pleadings were sent to the agency for filing.

The individual client agency pages that follow have been organized in alphabetical order for convenience.

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## California State Board of Pharmacy

The Board of Pharmacy regulated 138,444 licenses in Fiscal Year 2015-16 with 20 different license types. The Board receives consumer complaints and routinely inspects pharmacies for compliance. Most complaints received by the Board are investigated by the Board's own inspectors, who are licensed pharmacists themselves, or referred to the Department of Consumer Affairs Division of Investigation, Investigations and Enforcement Unit, when appropriate. There were multiple respondents in about 26 percent of the Board's accusation matters adjudicated by the Attorney General, reported in subdivisions (a)(7) and (b), below. The tables below show data for Fiscal Year 2016-17.

Table 1 – Business and Professions Code Section 312.2, Subdivision (a)	
Number of –	Count
(1) accusation matters referred to the Attorney General.	258
(2) accusation matters rejected for filing by the Attorney General.	2
(3) accusation matters for which further investigation was requested by the Attorney General.	36
(4) accusation matters for which further investigation was received by the Attorney General.	23
(5) accusations filed.	238
(6) accusations withdrawn.	5
(7) accusation matters adjudicated by the Attorney General.	302

The statistics reported in Table 2 are based on the adjudicated accusation matters reported under Business and Professions Code section 312.2, subdivision (a)(7) in Table 1.

Table 2 – Business and Professions Code Section 312.2, Subdivision (b)				
Average number of days for adjudicated accusation matters –	Mean	Median	SD	Count
(1) from receipt of referral by the Attorney General to when an accusation is filed.	228	178	224	254
(2) to prepare an accusation for a case that is rereferred to the Attorney General after further investigation is received.	457	408	319	14
(3) from the filing of an accusation to when a stipulated settlement is sent to the agency.	308	249	227	143
(4) from the filing of an accusation to when a default decision is sent to the agency.	120	74	136	97
(5) from the filing of an accusation to the Attorney General requesting a hearing date.	127	118	103	85
(6) from the Attorney General's receipt of a hearing date to the commencement of a hearing.	167	143	112	44