

DUE PROCESS
What Does it
Require?

Notice and
Opportunity to be
Heard
(Gov. Code \$ 11425.10.)

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Parties Decision-Maker Complainant Executive Officer Represented by the Attorney General's Office Respondent Licensee Applicant Individual / business alleged to have engaged in unlicensed activity May be represented by an attorney

Notice/Opportunity to be Heard

The Executive Officer, aided by the Deputy Attorney General, files an accusation or statement of issues against a respondent

The accusation or statement of issues and other required documents are served on the respondent to the address of record

The respondent has 15 days to file a notice of defense after the date of service to request a hearing

Must be in writing and signed by (or on behalf of) the respondent and include the respondent's mailing address

A courtesy form is included, but no specific format is required

If the respondent falls to file a notice of defense within 15 days, they have waived their right to a hearing

BUT - the Executive Officer and Board have the discretion to grant a hearing anyway

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Stipulated Settlement: "The Stip"

A negotiated agreement to resolve a matter without going to hearing

Board Staff and Deputy Attorney General (DAG) develop the proposed terms

The respondent must agree to the terms and sign the proposed stipulation before the Board will consider it

The Board may speak to/receive a supportive memo from the DAG about the proposed terms

(Gov. Code \$ 11415.60; standard terms and conditions of settlement.)

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Stipulated Settlement: Options

The Board considers the stipulated settlement on the matter in closed

- Adopt
 - ▶ The signed stipulation will be sent back to the Board Staff for service
 - ▶ Board Staff adds the effective date based on date of service
- ▶ Reject and set the matter for hearing
 - The unsigned stipulation will be returned to Board Staff with a memo explaining why it was rejected
 - ▶ The Board may create proposed terms for a counter-offer
 - Board Staff works with the DAG to notify the respondent and reattempt negotiation or schedule the matter for hearing

(Gov Code § 11415.60, standard terms and conditions of settlement)

Proposed Decision: Administrative Hearing

- Hearing is presided over by an Administrative Law Judge (ALJ), employed by the Office of Administrative Hearings (OAH)
- A Notice of Hearing is mailed to the respondent at least 10 days before the hearing
- ▶ Each party has the right to present evidence and examine and cross-examine
- Complainant: represented by the Attorney General's Office
- > Respondent: may appear on their own or be represented by an attorney at

(Gov. Code §§ 11425.10, 11425.50, 11509, 11512, 11513, 11517.)

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Proposed Decision

Disciplinary Case (Accusation)

- ALJ reviews the law and evidence
- ALJ determines if the Board met clear and convincing evidence (high probability of truth) that the Architects Practice Act was violated.

Licensing Case (Statement of Issues)

- Proposes the granting or denial of an initial license
- Respondent has burden to prove the license should be issued by preponderance of the evidence "more likely than not"
- Initial license may be granted, immediately revoked with revocation stayed, and placed on probation with terms and conditions
- Disciplinary Guidelines
- ▶ Cost recovery not available

COST PECOVERY FIG. AVAILABLE

(Gov. Code \$5 11512, 11517; Bus. & Prof. Code \$ 125.3;

Zuckerman v. State Bd. Of Chiropractic

(2002) 29 Cal. 4th 32)

Proposed Decision: Five Options

- ▶ 100 days from the date the Board receives the Proposed Decision, the Board
 - Adopt the Proposed Decision in its entirety:
 - Make minor or technical changes to the Proposed Decision;
 - Mitigate (reduce) the proposed penalty and adopt the rest of the Proposed Decision.
 - Reject (non-adopt) the Proposed Decision and decide the case on the record, including the transcripts and exhibits introduced by both parties at the hearing. The parties must be given the opportunity to present either oral or written argument;
 - Reject and Remand (return) the Proposed Decision to the ALJ to take additional evidence:

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Default Decision

- Issued when the respondent:
 - Fails to file a notice of defense after proper service and opportunity to be heard;
 - Fails to appear at the hearing after requesting a formal hearing
- The Board may then take action without further notice to the respondent, specifically to issue a default decision closing the case



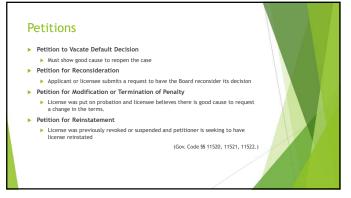


- Petition to Vacate Default Decision
- ▶ Petition for Reconsideration
- Petition for Modification or Early Termination of Probation
- ▶ Petition for Reinstatement

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Petition to Vacate Default Decision

Default Decision issued and served on the respondent

Within 7 days after the date of service, the respondent may request, in writing, that the Default Decision be "vacated"

No particular form is required

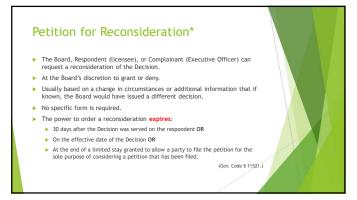
The Board has the discretion to vacate the decision and grant a hearing for "good cause"

"Good cause" includes, but is not limited to:

Respondent did not receive the accusation

Mistake, inadvertence, surprise, excusable neglect

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Petitions to Modify/Early Termination of Probation or Reinstate

After no less than one year after a decision by the Board is issued, a Respondent may petition for modification of the decision terms or to be reinstated if the license was revoked.

Respondent bears the burden of proof that the Board should amend its order or the license should be reinstated.

The Board may review the petition orally or in writing, with argument submitted by the Deputy Attorney General.

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