SUMMARY OF COMMENTS BY LICENSING/HEALTH QUALITY ENFORCEMENT SECTIONS OF THE ATTORNEY GENERAL'S OFFICE AND DEPARTMENT OF CONSUMER AFFAIRS & OAH RESPONSES

A. Summary of Licensing and Health Quality Enforcement Comments & OAH Responses

1. **Comment on 1014(d):** Current regulation 1014(c) deals with the procedure the agency must follow when a party withdraws a notice of defense or request for hearing. Under the current provision, the agency notifies OAH when it decides whether it will proceed with the OAH hearing as a default or take the matter off calendar (presumably for an in-house office default). The proposed changes add new paragraph 1014(d), which incorporates some of 1014(c). As proposed under 1014(d), if the agency decides to take a hearing off calendar after a party withdraws a notice of defense or request for hearing, it must file a *written request* with OAH to take the matter off calendar and the written request must state the reasons the agency seeks to take the matter off calendar.

   The Licensing and Health Quality Enforcement sections of the Attorney General's office (Licensing/HQE) says proposed 1014(d) implies that OAH has discretion to decide whether the agency may proceed by office default or not when OAH determines whether it will grant a request to take the hearing off calendar. Licensing/HQE also argues that if the agency is required to include the reasons for the request to take a matter of calendar, it might be forced to disclose information that is subject to the attorney-client privilege. Licensing/HQE has included proposed language for addressing their concerns.

   Response: OAH understands that it is the agency's prerogative to proceed with a default hearing at OAH or request that the hearing be taken off calendar for an in-house default. However, OAH does have the authority and discretion to control its calendar and case docket and OAH can deny a request to take the hearing off calendar. OAH has encountered situations where an agency sought to take a Hearing off calendar where there were two respondents, but only one respondent had withdrawn the notice of defense. In that case, OAH denied the request to take the hearing off calendar and the agency proceeded with respect to the remaining respondent. This is one reason why it may be important to include some specific information in the request.

   We have attempted to address the Licensing/HQE comments with additional changes.

§1014. Pleadings; Notice of Defense; Withdrawal of Notice of Defense.

(c) A party who withdraws a notice of defense, a request for Hearing, or an asserted special defense shall immediately notify OAH and all other parties.

(d) When a party withdraws a notice of defense or a request for Hearing, the agency shall promptly notify OAH of the agency's decision either to proceed with the Hearing as a default or to request that the scheduled Hearing be taken off calendar as a result of the party's withdrawal of the notice of defense or request for Hearing. ~~An agency must file a written request to take the Hearing off calendar, which shall include the reasons for the request.~~If the agency's request to take the Hearing off calendar is made before the scheduled Hearing, the agency shall file the request in writing and include the name of the party who has withdrawn the notice of defense or request for hearing.

NOTE

Authority cited: Section 11370.5(b), Government Code. Reference: Sections 11505, 11506 and 11507, Government Code.

2. **Comment on 1018(a)(6):** As proposed, 1018(a)(6) would only permit agencies to include preferred hearing dates on the request to set form if both parties have agreed to the hearing dates. Licensing/HQE asks that we include language allowing the agency to include preferred hearing dates on the request to set if they have made good faith efforts to contact the other parties to obtain agreeable hearing dates.

   Response: This is a good suggestion and OAH will make the change along suggested lines, as follows:

§1018. Agency Request for Hearing; ~~Notice of Hearing~~.Required Documents

(a) An agency's request to OAH to set a Hearing date shall be in writing and contain the following information:

(6) Preferred Hearing dates, but only if the agency includes at least three alternative preferred Hearing dates and the agency confirms in the request either that all parties have agreed to the specific dates or that it has made reasonable efforts to confer with all other parties for mutually acceptable Hearing dates, and includes the reasonable efforts the agency has made;

3. **Comment on 1022(h):** Licensing/HQE's comment expresses concern that under 1022(h), OAH will deny the request for a reporter when one is necessary if the ALJ does not know the reasons for the request. The comment requests additional language allowing a party to retain a court reporter at its own expense if the ALJ denies the request.

   Response: As a practical matter, if a party requests a reporter, OAH almost always provides one. However, the conduct of the proceedings and creation of record is the ALJ's responsibility. It is not appropriate to allow other parties to

arrange for the reporter if OAH has denied the request. This would be accompanied by its own problems, such as whether or not the party's reporter has created the official record of the proceeding. Proposed regulation 1030(c) does allow the ALJ to permit the Hearing to be recorded but clarifies that it is not part of the official record.

OAH will make a change to allow the party to include the reasons for the request in writing, so that the Presiding Judge knows the reasons for the request before making a decision. Suggested change is:

(h) The Presiding Judge has discretion to decide whether oral argument shall be stenographically reported ~~upon the request of any party or~~ on his or her own motion or upon the written request of any party which includes justification for the request.

4. **Comment on 1028(b):** Rule 1028 addresses settlement conferences. The existing regulation, 1028(d), requires an agency representative to "attend" the settlement conference. In practice, this has resulted in the agency's counsel attending the settlement conference in person. Proposed rule 1028(b) replaces 1028(d). Licensing/HQE has expressed concern about the changes, stating that the changes would now require the agency representative and agency counsel to appear in person at settlement conferences. No such change in the current practice is intended. The Licensing/HQE comment also suggests that the regulation should not even require the personal appearance of agency counsel. In doing so, the comment cites Government Code section 11511.7(b), which permits, but does not require, ALJ's to conduct settlement conferences by telephone. The comment implies that the proposed regulation conflicts with the code section. Licensing/HQE would like everyone to be able to appear by telephone unless the ALJ orders otherwise. The current and proposed regulation will require the respondent, respondent's representative, and agency counsel to appear in person.

   Licensing/HQE also points out that the existing regulation, 1028(d), requires someone from the agency with authority to approve "recommended settlement terms" to be available to participate by phone or in person in the settlement conference. The proposed regulation at 1028(b) requires that an agency representative with authority "to approve settlement terms" be available by phone or in person to participate in the settlement conference. The comment correctly points out that only the agency head (Board, commissioner, etc.) has authority to approve the settlement.

   Response: The proposed regulation requires an agency representative (meaning the agency counsel) to "appear in person" at the settlement conference. The practice has been that the agency's attorney will appear in person at a settlement conference—whether the words "attend" or "appear in person" are used. No change is intended in this respect except that the words "appear in person" are

more precise. We will change the term "agency representative" to "agency counsel or other representative, if the agency is not represented by counsel," to clarify that agency counsel must appear in person. Government Code section 11511.7(b) continues to permit ALJ's to schedule telephonic settlement conferences and they frequently do. Although the Attorney General's comment did not raise this issue, one problem may be that the existing regulation, 1028(f), permitting the arrangement of a telephonic settlement conference, has been deleted. It was deleted because it was duplicative of 11511.7, not because there has been a change. It has been added back (see the version of 1028 at the end of this paper). The proposed regulation 1028(c) also allows the ALJ to excuse the attendance or participation of the agency representative for good cause shown.

OAH is adding some clarifying language in 1028(b). Also, OAH will include language along the lines the comments suggests regarding the agency participant's ability to recommend versus approve settlement terms:

§1028. Settlement Conferences; Settlements.

(b) Each respondent and his or her representative and an agency counsel or other representative, if the agency is not represented by counsel,~~representative~~ shall appear in person at all settlement conferences. Each party or representative who attends the settlement conference shall be fully familiar with the facts and issues in the Case and shall have authority, or be able to obtain authority immediately by telephone, to negotiate settlement terms subject to approval by the agency head. An agency representative who is familiar with the case, and has authority to approve settlement terms subject to approval by the agency head, must be available to participate in the settlement conference in person or by telephone, subject to section 11511.7(a).

(c) The Presiding Judge may excuse the attendance or participation of a party or representative upon a showing of good cause. A request to be excused shall be made not less than 3 business days before the date of the conference.

5. **Comment on 1028(h):** The Licensing/HQE comment expresses concern about the confidentiality of settlement conference materials because current regulation 1028(l) has been deleted in its entirety. This regulation included detailed internal procedures for making certain that settlement conference statements and other settlement materials were kept confidential.

   Response: The existing provision was deleted because it included detailed internal procedures for keeping settlement materials confidential that OAH could not always enforce. Settlement conference statements and materials are privileged under other laws, but we are proposing to add clarifying language to proposed 1028(h) in response to the comment as follows:

(h) The settlement conference statement, other settlement materials, and settlement discussions shall not be disclosed to the Hearing ALJ and are deemed confidential,

unless the parties agree otherwise.

6. **Comment on 1038(b):** The AG's comment expresses concern that the language in 1038(b), dealing with ordering the record and paying for the "cost" of preparation, might be construed as not complying with Government Code section 11523 when the transcript is ordered at the judicial rate for judicial review.

   Response: The comment implies that the cost or actual cost is the full cost of the transcript versus the reduced cost imposed by OAH under the judicial rate. If the term is interpreted as the "cost" imposed by OAH, then there is no inconsistency with 11523 because the cost is the judicial rate. OAH can propose a further change to clarify that the cost means the judicial rate "cost" if the record is ordered for judicial review. Note also that there is a correction to a mistaken reference in 1038(b):

(b) Except as provided in (f~~e~~), no portion of the record will be prepared until the requesting person has paid a deposit equal to the estimated cost of preparation. The deposit will be applied to the actual cost and any excess will be returned to the person who submitted it. The record will not be released until the person ordering the record has paid any balance due for the actual cost of preparing the record. For purposes of this paragraph (b), the cost of preparing the transcript shall be the rate provided in section 69950, if the transcript is ordered for the purpose of judicial review pursuant to section 11523.

7. **Comment on 1048 (Corrections Regulation):** Licensing/HQE has pointed out several problems with the proposal:

(1) The ALJ may correct a mistake or clerical error on its own motion without notice. If the Board is already considering the proposed decision but does not know of the ALJ's correction yet, the Board could adopt the proposed decision and not know that the ALJ has made the correction by issuing a new proposed decision. There could be two proposed decisions in the case, the one with the corrections and the one without.

Response: This situation exists now and the regulation would provide further guidance under the statute that currently provides for correction. It would also seem that if a Board adopts a proposed decision, it is the decision regardless of any contemporaneous corrections the ALJ has made. However, OAH will amend 1048(e) to provide that the agency's adoption of a proposed decision makes any corrections or changes to the proposed decision a nullity. In addition, OAH will amend 1048(a) to require parties other than the agency to submit their application for correction directly to the agency, rather

than to OAH. If the agency wants to refer it to OAH, it can. This should also put the agency on notice immediately when a respondent seeks a correction (which has happened only a few times).

(2) Under 11517, a proposed decision is deemed adopted if the agency does not act on it within 100 days of receipt. Licensing/HQE points out that it is unclear whether the 100-day period is tolled when there is an application for correction under this regulation.

Response: This is a problem that also exists now under the current statutory structure. Short of specifically providing for extension of the 100-days or providing another deadline for making clerical changes, there is no way to address this except to say that this does not ever seem to have been an issue in the past.

(3) Proposed 1048(c) and (d) seem to broaden the scope of the agency's statutory authority to make technical or minor changes to proposed decisions by requiring the agency to give notice and by specifying that the parties can stipulate to changes.

Response: Many agencies do have procedures in place to provide notice of corrections to proposed decisions. In addition, 1048(d) attempted to suggest to agencies that stipulations of the parties are another way to make minor changes to proposed decisions. However, ultimately, the agency's manner of giving notice and making changes is within its own purview. OAH will delete the cited portions of 1048(c) and all of (d).

(4) Proposed 1048(b) allows an ALJ to amend on his or her own motion. This should not be allowed once the ALJ sends the proposed decision to the agency. It could result in the agency's consideration and adoption of the first proposed decision when the ALJ has issued an amended one.

Response: An ALJ does have inherent authority to correct a proposed decision after it is issued. No further change will be made here, except insofar as the proposed change to 1048(e) renders the changes ineffective if the Board adopts or rejects the earlier proposed decision.

(5) Proposed 1048 refers generally to the correction of a "clerical error or mistake or other minor or technical changes", while 1048(f) refers only to "mistakes or clerical errors."

Response: Proposed 1048(f) refers to section 11518.5, which contains the reference only to "mistake or clerical error" in decisions. Section 11517(c)(2)(C) has the broader language that is included in most of 1048, dealing with corrections of proposed decisions.

(6) The entire regulation should be deleted because it is inconsistent with underlying statutes and will cause more problems than it will resolve.

Response: Agencies continually seek OAH's guidance on correcting errors. The failure to address the requests for correction that currently occur by promulgating a regulation

creates the potential for even more problems.

§ 1048. Technical and Minor Changes to Proposed and Final Decisions.

(a) ~~Any party~~The agency may make an application to OAH to correct a mistake or clerical error, or make minor or technical changes, in a proposed decision by filing a written request addressed to the Presiding Judge.

(1) The application must be signed on behalf of the agency ~~by the party~~that is seeking the correction(s) and identify the correction(s) being sought and the reasons therefore. The application shall be served on all other parties, together with a copy of the proposed decision. A copy of the proof of service shall be filed with the application.

(2) A party shall have a period of 10 days from the date the application is served to file written opposition. The opposition shall be served on all parties and filed with OAH, with a copy of the proof of service.

(3) If opposition is filed, the Presiding Judge may permit oral argument or decide the matter on the papers alone. If the Presiding Judge permits oral argument, at least 5 days notice of the time and place for oral argument shall be given. The Presiding Judge shall decide the matter no later than 5 days after it is submitted.

(4) If the application is granted, the Presiding Judge shall prepare, and cause to be served on all parties, a notice and order of correction and/or a corrected proposed decision, which shall identify the correction(s) made.

(5) If the application is denied, the Presiding Judge shall cause notice of the denial to be served on all parties.

(6) The Presiding Judge will designate the same ALJ who prepared the proposed decision in the case to review and decide the application for correction. If the same ALJ is not reasonably available, the Presiding Judge may designate another ALJ.

(b) Any party other than the agency shall file an application with the agency to correct a mistake or clerical error, or make minor or technical changes, in a proposed decision. Subject to section 11517(c)(2)(C), the agency may decide the application itself or refer it to the Presiding Judge to decide. If the application is referred to the Presiding Judge, the provisions of paragraph (a)(1)-(6) shall apply.

~~(b)~~(c) An ALJ who prepares a proposed decision may, on his or her own motion, correct any mistakes or clerical errors or make minor or technical changes in the proposed decision. The ALJ must cause to be served on all parties, a notice and order of correction and/or a corrected proposed decision, each of which shall identify the correction(s) made.

Before making any correction under this paragraph, an ALJ may, in his or her discretion, provide notice to all parties and an opportunity to be heard.

~~(c)~~(d) Section 11517(c)(2)(C) authorizes the ~~The agency itself may~~ agency to make technical or other minor changes to a proposed decision and adopt it as the decision in the ~~c~~Case. ~~pursuant to Government Code section 11517(c)(2)(C).~~ The agency may obtain an electronic copy of the proposed decision for this purpose upon written request addressed to the Presiding Judge of the OAH office that issued the proposed decision. When OAH provides an electronic copy of the proposed decision to the agency, it does not constitute OAH's approval of any changes the agency proposes. The agency shall send a copy of the proposed decision, as corrected, to OAH.

~~(1) The agency shall provide notice to all parties of corrections made to a proposed decision pursuant to Government Code section 11517(c)(2)(C).~~

~~(2) The agency shall send a copy of the corrected proposed decision to OAH.~~

~~(d) The agency may correct a clerical error or mistake, or make technical or minor changes, in a proposed decision if all of the parties agree to the correction. The stipulation pursuant to the agreement must be in writing, signed by all parties, and clearly identify the change(s) or correction(s) to be made in the proposed decision. The agency shall send a copy of the correction to OAH.~~

(~~d~~e) OAH may correct a clerical error or mistake, or make technical or minor changes, in a proposed decision if all of the parties agree to the correction. The stipulation pursuant to the agreement must be in writing, signed by all parties, and clearly identify the change(s) or correction(s) to be made in the proposed decision. The stipulation must be filed with the Presiding Judge. If the stipulation is accepted, the Presiding Judge shall prepare, and cause to be served on all parties, a notice and order of correction and/or a corrected proposed decision, each of which shall identify the correction(s) made. If the stipulation is rejected, the Presiding Judge shall cause notice thereof to be served on all parties.

(f) No change or correction to a proposed decision shall be effective if the agency ~~had already issued a final decision in the matter before the change or correction was made~~rejects or adopts the existing proposed decision without the change or correction.~~.~~

(g) Government Code section 11518.5 governs corrections of mistakes or clerical errors in agency decisions issued after adjudicative proceedings that are subject to the formal hearing provisions of the Administrative Procedure Act in Title 2, Division 3, Part 1, Chapter 5, commencing with Government Code section 11500.

(h) ~~Final d~~Decisions issued by an ALJ in proceedings that are not subject to the formal hearing provisions of the Administrative Procedure Act (Title 2, Division 3, Part 1, Chapter 5, commencing with Government Code section 11500) may be corrected in accordance with the procedures provided in paragraphs (a), (b) and (~~e~~d).

(i) In no event may any correction made pursuant to this policy statement result in reconsideration, or change the factual or legal basis, of a proposed or final decision.

(j) All documents filed or issued with a request to correct a proposed or final decision shall become a part of the record in the ~~case~~Case.

NOTE

Authority cited: Section 11370.5(b), Government Code. Reference: Sections 11517(c) and 11518.5, Government Code.

8. **Comment on 1050:** This regulation is a new one that deals with procedures for agencies to follows when remanding a case to OAH for taking further evidence. Section 11517 requires the agency to provide a copy of the administrative record to the ALJ on remand. The proposed regulation requires the agency to lodge the administrative record with OAH no later than 10 days after the remand. Licensing/HQE correctly point out that the agency cannot lodge the administrative record within 10 days after a remand if they do not yet have the transcripts. They have proposed language to resolve this problem.

Response: This is a problem and OAH will change the language. The 10-day requirement was somewhat arbitrary. But, in many instances, it is important to have the entire record lodged with OAH far enough in advance of the scheduled hearing on remand to allow the trial ALJ to review it and prepare for the hearing. The proposed regulation will be changed accordingly.

§1050. Remand or Reconsideration.

(a) An ~~agency's~~ agency referral of a Case to OAH for rehearing or reconsideration pursuant to sections 11517(c)(2)(D) or 11521(b) shall be filed in the OAH regional office that issued the proposed decision. The referral shall be in writing, directed to the Presiding Judge, and shall contain the following:

(1) Information as required in Regulation 1018, except for Hearing dates if no Hearing is requested;
(2) The name of the ALJ who prepared the proposed decision;
(3) A copy of any ~~agency's~~ agency order or decision for rehearing or

reconsideration and the proof of Service of the order or decision on all parties; and

(4) The evidence or issues to be considered on rehearing or reconsideration.

(b) The agency shall lodge the record in the Case, including the transcript, exhibits, and other papers that are part of the record, with OAH~~Within 10 days of the referral,~~ promptly after the agency has received it.~~the agency shall lodge the record of the Case with OAH, including the transcript, exhibits, and other papers that are part of the record~~. If the agency has not lodged the complete record at least 15 days before the scheduled Hearing in the case, it shall provide written notice thereof to OAH and all other parties.

NOTE

Authority cited: Section 11370.5(b), Government Code. Reference: Sections 11517(c)(2)(D) and 11521(b), Government Code.

B. Summary of Comments from Department of Consumer Affairs & OAH Responses

1. **Comment on 1006(h):** Department of Consumer Affairs (DCA) points out an error in the proposed regulation relating to filing of papers with OAH.

   Response: Change will be made.

§1006. Format and Filing of Papers.

(h) Papers delivered by the U.S. Postal Service are filed on the date received by OAH. Papers hand delivered to OAH and complete papers received by OAH by facsimile transmission during regular business hours (8 a.m. to 5 p.m.) will be filed on the date received. Papers received after regular business hours are deemed ~~will be~~ filed on the ~~date of the~~ next regular business day.

2. **Comment on 1014:** DCA has the same comments as Licensing/HQE. In addition, DCA seeks clarification of 1014(a) and (b) regarding whether OAH intends to require an agency to file a supplemental or amended pleading with OAH before it is served on the parties. The existing regulation used the language "file and serve" rather than "serve and file".

   Response: No change of substance was intended but the suggested change will be made to clarify.

§1014. Pleadings; Notice of Defense; Withdrawal of Notice of Defense.

(a) When a party amends a pleading, the party shall ~~file with OAH and~~ Serve on all parties and promptly file with OAH a complete, new pleading incorporating the amendments. The new pleading shall be titled a "First Amended" pleading, and subsequent amended pleadings shall be titled consecutively. If amendments are made during the Hearing, the party shall use highlighting or any other effective method to identify the changes made to the pleading. The ALJ may allow exceptions for minor amendments during Hearing.

(b) OAH prefers amended to supplemental pleadings. However, if a party issues a supplemental pleading, the party shall ~~file with OAH and~~ Serve on all other parties and promptly file with OAH the supplemental pleading which shall be titled a "First Supplemental" pleading. Subsequent supplemental pleadings shall be titled consecutively.

3. **Comment on 1015(c)(2):** This is a new rule that requires counsel to notify OAH when they assume or withdraw from representation of a respondent. DCA expresses concern that the regulation allows service on a party at the last known address if the party has not kept OAH apprised of a current address. However, current laws provide for service at the current address of record. Government Code section 11505(c) and several agency laws require respondents to keep current addresses of record on file with agency for the purpose of serving some documents.

   Response: Additional changes have been made to address these concerns.

1015. Notice of Representation and Withdrawal of Counsel or Other Representative

(a) Any counsel or other representative who has assumed representation of a party after the agency has referred a Case to OAH shall give written notice to OAH and all other parties of his or her name, address, telephone and fax number (if any) and the name of the represented party, within a reasonable time after assuming representation.

(b) Any counsel or other representative may withdraw as counsel or representative of record by giving written notice to OAH and all parties of the withdrawal. The written notice shall include the last known address of the formerly represented party.

(c) Upon withdrawal by counsel or other representative:

(1) OAH retains jurisdiction over the Case.

(2) The formerly represented party bears the burden of keeping OAH and all other parties informed of a current address for purposes of Service. If notice of address is not given, any party may Serve the formerly

represented party at the last known address and the current address of record with the agency if a statute or regulation requires the party to maintain an address with the agency and to notify the agency of any change of address.

(3) The formerly represented party is responsible for preparation and representation throughout the remainder of the Case, unless and until such party retains new counsel or other representative.

(d) Withdrawal or change of counsel or other representative does not alone constitute grounds for continuance of any previously scheduled proceeding in the Case.

NOTE

Authority cited: Section 11370.5(b), Government Code. Reference: Section 11440.20, Government Code

4. **Comment on 1016(d):** This rule deals with consolidation of hearings. The proposal specifically provides that if the proceedings are consolidated, separate proposed decisions will be prepared for each agency pleading, unless the agency requests otherwise. DCS believes the word "pleading" should be changed to "Case" or "proceeding".

   Response: 1016(d) addresses those situations where agencies want OAH to prepare a separate proposed decision for each agency pleading (not proceeding or Case). Specifically, the Department of Motor Vehicles asks for separate proposed decisions for each agency pleading even if multiple Cases were consolidated. No changes are necessary.

5. **Comment on 1018:** DCA has same comment as Licensing/HQE.

6. **Comment on 1022:** DCA has the same comment as Licensing/HQE.

7. **Comment on 1028:** DCA has the same comment on the settlement conference regulation as Licensing/HQE. DCA goes on to state in its comments that it could not send a Board member to a settlement conference without violating the Open Meeting Act.

   Response: See response to Licensing/HQE. The proposed regulation will not require the agency to send a Board or Commission to a settlement conference. A change has been made to clarify that the participating agency representative must have authority to approve settlement subject to approval by the agency head.

8. **Comment on 1034:** This is the regulation that provides for peremptory challenges and DCA expresses concern that the proposal has allowed peremptory challenges to be made so close to the hearing date that it might cause OAH to continue the hearings. The time for making a peremptory has

been reduced to Friday at noon for a hearing scheduled during the next week at one of the regional offices and 2 days before the hearing date, if the hearing is off site.

Response: No change will be made. The Presiding Judges previously discussed this and determined that OAH could apply these time constraints without having to continue cases.

9. **Comment on 1038:** Same comment as Licensing/HQE.

10. **Comment on 1048:** DCA had many of the same comments as Licensing/HQE on the corrections regulation. DCA felt there was an inconsistency between 1048(c) and (d), in that one allowed unilateral changes and the other stipulated changes. DCA also requested clarification of the meaning of "final" decision in proposed 1048(f). DCA also commented that 1048(f) is unclear because it did not specify whether it referred to the date the decision was issued or the date it takes effect. And, DCA commented that there should be some time limit on the ability to apply to correct a proposed decision.

    Response: The changes made in response to Licensing/HQE should resolve the issues raised by DCA. 1048(d) has been eliminated and 1048(f) has been changed. The change to 1048(f) should also address DCA's concern about a time limit.

OTHER MISTAKES NOTED DURING COMMENT PERIOD

§1000. Purpose.

These regulations specify the procedures for the conduct of matters before ~~by which~~ the Office of Administrative Hearings ~~conducts matters before it~~. Parties should also refer to the Administrative Procedure Act (Government Code sections 11370 through 11529) and/or other laws which apply to their ~~e~~Case. When a statute is in conflict with or inconsistent with these regulations, the statute shall take precedence.

§1006. Format and Filing of Papers.

(b) The first page of each paper filed should include the following:

(1) The name, address, and telephone number of the person ~~party~~ filing the paper, including the State Bar number if the person filing the paper ~~filer~~ is an attorney.

§1008. Service; Proof of Service.

(a) Proof of Service of papers shall be a Declaration stating the title of the paper Served or filed, the name and address of the person making the Service, and that he or she is over the age of 18 years and not a party to the matter.

(b) Service may be made by leaving the paper at the residence or business of the person named to be Served, with a person not less than 18 years of age. Where Service is made in this manner, the proof of ~~s~~Service shall also state the date and place of delivery and the name of the person to whom the papers were handed. Where the person making the Service is unable to obtain the name of the person to whom the papers were handed, the person making the Service may substitute a physical description for the name.

§1012. *Ex Parte* Petitions and Applications for Temporary or Interim Orders.

(a) This regulation applies to any *ex parte* petition or application an agency files with OAH for temporary relief or interim orders specifically authorized by statute or regulation.

(b) Absent a showing of good cause, parties shall be given at least 24 hours notice of the specific relief sought and the date, time, and place of the *ex parte* proceeding. Notice may be given by telephone or facsimile transmission.

(c) At the time of the *ex parte* appearance the petitioner or applicant shall submit a written Declaration stating the manner in which the notice was given.

(d) If prior notice was not given, the petitioner or applicant shall submit a written Declaration stating the facts showing cause why the notice under subdivision (b) could not be given or should not be required.

(e) *Ex parte* petitions and applications shall be in writing and comply with Regulation 1006. The petition or application shall state the statutory authority for the temporary relief and include a proposed order.

(f) Except as provided in Regulation 1022(b), Regulation 1022 does not apply to *Ex parte* petitions and applications filed under this regulation.

NOTE

Authority cited: Section 11370.5(b), Government Code. Reference: Section 494, Business and Professions Code; Sections 1550.5 and 1558, Health and Safety Code; and Section 11529, Government Code.

§1026. Prehearing Conferences.

(h) Upon request of a party, the ALJ shall prepare a written prehearing conference order ~~shall be in writing~~. The ALJ may ~~request~~direct a party to prepare a proposed prehearing conference order.

§1028. Settlement Conferences; Settlements.

(e) The settlement conference ALJ may structure the conference to meet the needs of the particular dispute. A telephonic settlement conference may be arranged pursuant to section 11511.7(b).

§1030. Conduct of Hearing; Protective Orders.

(a) A party seeking an order for closure or other protective order for all or part of a Hearing, including a request to seal the record~~,~~ pursuant to section 11425.20, shall file a Motion showing that good cause exists to issue the order.

(b) A party seeking to have all or part of a Hearing conducted by electronic means pursuant to section 11440.30 shall file a Motion showing that good cause exists to grant the request.

§1046. Amicus Briefs.

A non-party with an interest in the outcome of the Hearing may, by Motion, request permission to file an Amicus brief. The Motion shall show good cause for allowing the brief, giving consideration to the following factors:

(a) Due process of law;
(b) Whether matters in the Amicus brief will be helpful to the ALJ;
~~(c) The interests of the non-party in the outcome of the Hearing;~~
(c~~d~~) The interests of the public and public policy; and
(d~~e~~) The costs to the parties to reply to the Amicus brief.

NOTE

Authority cited: Section 11370.5(b), Government Code. Reference: Sections 11500(b) and 11512(b), Government Code.