

OFFICE OF ADMINISTRATIVE HEARINGS
INFORMATION ABOUT HEARINGS AND THE RIGHTS OF PARTIES

INDEX

I. Introduction

II. The Hearing Process --- Frequently Asked Questions

1. What is an administrative hearing?
2. Is there a way to settle cases without a hearing?
3. Who can request a hearing?
4. Are there any deadlines?
5. Where do I send a request for hearing or other correspondence?
6. What happens after I request a hearing?
7. What is a Prehearing Conference?
8. Can I appear at the administrative hearing by telephone?
9. What is a video-teleconference ("VTC") hearing?
10. Can I call and speak with the judge personally?
11. How long will my case take?
12. How do I prepare for my hearing?
13. Will a real judge hear my case?
14. How do I file something in my case?
15. Can I bring witnesses and exhibits?
16. What about attendance of witnesses?
17. What is a subpoena and a subpoena duces tecum?
18. Do I have to pay any court costs or copy fees?
19. How does a hearing proceed?
20. When is the decision made in my case?
21. What if I disagree with the decision?
22. Do I need an Attorney?
23. Date, time and place of the hearing?
24. Can I postpone or continue a hearing?
25. What happens if I fail to attend the hearing?
26. What are my rights at the hearing?
27. What kinds of evidence will be excluded or disregarded?
28. What is "burden of proof"?
29. Can I make objections?

III. Miscellaneous Information

Directions

Parking

Security

Children

IV. Special Needs

Interpreters

Special Accommodations

I. Introduction

This document explains how the Office of Administrative Hearings (“OAH”) of the Oklahoma State Department of Health conducts proceedings, and is only a general guide to many of the legal requirements that apply to those hearings. This guide should not be considered a substitute for having a lawyer OR for obtaining legal advise for your particular situation. There are many other requirements of the law that may apply to your individual case.

Employees of OAH, including its judges, may not provide legal advice to agencies, organizations, or people involved in its hearings.

The OAH is an office within the Oklahoma State Department of Health (“OSDH”) that is autonomous and answers only to the Commissioner of Public Health. OAH provides Administrative Law Judges, (“ALJs”) who are impartial and who hear cases pursuant to the Oklahoma Administrative Procedures Act (“OAPA”) and other laws that apply.

Although administrative law proceedings are not as formal as civil court trials, there are still a number of statutes and rules that parties must observe when involved in administrative hearings. Those statutes and rules apply to all parties, with or without attorney representation.

II. The Hearing Process --- Frequently Asked Questions

1. **What is an administrative hearing?** An administrative hearing is conducted in basically the same way as a trial at the courthouse with the parties, including the OSDH, presenting evidence to the ALJ, who acts as both judge and jury.

2. **Is there a way to settle cases without a hearing?** Cases often settle without going to hearing. Settlements are encouraged. A party who thinks this might be to their advantage should contact the OSDH attorney assigned to the case to see if a settlement agreement can be worked out prior to the hearing.

3. **Who can request a hearing?** Anyone who receives a denial, termination, or citation for violation from the OSDH can request a hearing in writing within specific deadlines. In addition, the OSDH can request hearings for violations of laws and regulations.

4. **Are there any deadlines?** If you desire to request a hearing you must do so within a certain period of time. Different types of cases and proceedings have different deadlines. Adherence to deadlines is important in protecting your due process rights.

5. **Where do I send a request for hearing or other correspondence?** All correspondence regarding a case, including a request for hearing must be mailed, telefaxed or personally delivered to the OAH at:

Office of Administrative Hearings
Oklahoma State Department of Health
Room 211, 1000 NE 10th Street
Oklahoma City, OK 73117-1299

Telephone: 405-271-1269

Telefax: 405-271-1299

6. What happens after I request a hearing? The OAH schedules a hearing and notifies the parties by mailing an Order for Hearing with the date, time, and place of the hearing. The order may contain other important information that must be obeyed.

7. What is a Prehearing Conference? In some cases the administrative law judge may hold a prehearing conference before the hearing. The reasons for having a prehearing conference are: (1) to schedule things that may need to happen before the hearing; (2) to help parties narrow the issues that are in dispute; and (3) to give parties a chance to discuss settling differences without a hearing.

If a prehearing conference is required, the OAH will send you an order notifying you of the time and place. Sometimes these are held by telephone, especially if the parties live some distance from Oklahoma City.

8. Can I appear at the administrative hearing by telephone? Under certain circumstances, you may appear by telephone, but not by cellular phone. The court must approve a telephone hearing in advance.

9. **What is a video-conference (“VTC”) hearing?** In certain types of cases the Court will conduct hearings by video-conference (VTC). This allows parties to appear at different sites that are remote from the courtroom at the OSDH in Oklahoma City. By using modern technology, all parties can see and hear each other and a hearing can be conducted as if all parties were in the same location. Parties will be notified and provided additional instructions for VTC hearings by the OAH.

10. **Can I call and speak with the judge personally?** All communication with the judge must be done in the presence of all the parties involved with the case. If a party has an attorney, the attorney must be present.

11. **How long will my case take?** You may be in court all day and, in some cases, more than one day. There are usually other cases scheduled on the same day and you should plan on being at court most of a day.

12. **How do I prepare for my hearing?** Carefully read and comply with all court orders and correspondence. File a written response to any petition or motion. Call OAH if you still have questions about the process or need additional or special assistance. OAH cannot give you any legal advice but it can explain procedures to you.

- Be aware of deadlines for filing requests and documents to be used at your

hearing. Don't delay in preparing for your hearing.

- Send a copy of any document, photograph or other material you want entered into evidence to the OAH **five (5) days** prior to the hearing. Also, you **must** send a duplicate copy to the Office of General Counsel and any other party.
- Evaluate and prepare your side of the story. Be organized.
- Ensure your witnesses, if any, will be available to appear at the hearing.
- Be at the scheduled place and **be on time!**
- Bring all of the information you want the ALJ to use in making a decision.
- Each party is allowed to give a final argument to the court. Think about the evidence and testimony you want to present. Be ready to tell the ALJ why he should rule in your favor at the end of the hearing. Be brief and to the point.

13. **Will a real judge hear my case?** Yes, the administrative law judges of the OAH are real judges although they do not wear robes.

14. **How do I file something in my case?** You may file something in your case via fax, mail or in person at the OAH. Everything you file becomes a part of the official court record. All paperwork must include the names of the parties

involved, the case number and your return address and telephone number. Anything filed with the OAH must be signed by the party filing. Requests that do not include return addresses will not be processed. If you want file-stamped copies mailed back to you, you must include a self-addressed, stamped envelope. **You must send a copy of anything you file to the other parties in the case.**

IMPORTANT: When submitting any document to the OAH which you want to become a part of the official court record, you must submit the original document and all copies to the Hearing Clerk to file-stamp. The *original* copy should indicate:

1. the name and address of the other party;
2. how you delivered the copy to the other party, e.g., regular mail, certified mail or hand-delivered; and
3. the date you mailed or delivered the copy to the other party.

15. Can I bring witnesses and exhibits? You may ask other people to testify at your hearing as witnesses if their testimony is relevant to your hearing. A witness is a person with first-hand knowledge of the situation –usually someone who was present and saw or heard what happened. Be sure you know what testimony you can expect from each witness and that each witness knows what you will be asking. If it would be inconvenient for a witness to

come in person to the hearing, you may ask the witness to be available to testify by telephone *but this requires advance approval from the ALJ.*

16. **What about attendance of witnesses?** If you want a witness to testify, arrange for the witness to attend the hearing voluntarily. A continuance will not be granted based solely on unavailable witnesses.

17. **What is a subpoena and a subpoena duces tecum?** A subpoena is a command by the court for an *individual* to appear at a certain time and place to give testimony on a certain matter. A subpoena duces tecum is a command by the court to an individual that has control of certain *documents* to produce those documents.

If a witness is unwilling to appear at your hearing, and you believe his or her testimony is necessary, print the OAH subpoena form and submit to the OAH for court approval prior to sending to or serving the witness. A subpoena requires additional time to process and for you to serve the witness; therefore, it should be submitted to the court for approval well in advance of the hearing. *You are responsible for serving the subpoenas on your witnesses and for any costs or witness fees for your witnesses.*

If you are unable to obtain documents, records, or other papers you need to prove your case, print the OAH subpoena duces tecum form and submit to the OAH for court approval prior to sending to or serving the individual or entity who has possession. The subpoena duces tecum must identify the documents and who has them. It requires

additional time to process and serve a subpoena duces tecum; therefore, it should be submitted to the court for approval well in advance of the hearing. *You are responsible for serving the subpoena duces tecum and for payment of any fees.*

18. **Do I have to pay any court costs or copy fees?**¹ You are not required to pay any court cost or fees. Pursuant to 310-2-3-5 of the OAR, you have to pay for reproduction of records as follows:

(1) Paper Records

- (A) Regular Copy - \$0.25 per page
- (B) Certified Copy - \$1.00 per page
- (C) Copy Sent by Fax - \$0.35 per page
- (D) Copy of Pages Larger than 8-1/2 X 14 - \$0.50 per page

¹ **Official records.** Official records include records required to be maintained by law, the record in individual proceedings, records submitted to the agency by any person and any other "record" as that term is defined by the **Oklahoma Open Records Act**, 51 O.S. § 24A.1, *et seq.*, (OORA).

(b) **Access to official records.** Every record defined by subparagraph (a) above wherein disclosure is not otherwise specifically excepted by law or the OORA is subject to inspection and mechanical reproduction under the provisions set forth below.

(c) **Initial procedural requirements.** A request for inspection may be submitted orally or in writing. To encourage fully articulated and accurate response to a request, OSDH recommends a request be submitted in a form that is susceptible to memorialization such as a writing, electronic mail or facsimile transmission, and must reasonably describe the records sought. Additionally, if applicable, every request must specify a time period for which records are being sought. A request submitted in the manner above, reasonably describing the records sought and stating an appropriate time period for the records being sought will be timely acknowledged and further processed for a review and inspection. If, consistent with the OORA, agency personnel determine that a search is necessary to gather and collect the records sought by the requester, the requester is required to pay, in advance, a search fee pursuant to subparagraph (h) below.

(2) Audio Tapes

- (A) With Tape Provided - \$5.00 per tape
- (B) Without Tape Provided - \$10.00 per tape

(3) Electronic Records - Requester is required to furnish blank tape(s) if

reproduction is not in a printout format, and reimburse the agency for the actual cost of the use of the central processing unit of any computer used to access data stored therein

- (A) \$50.00 per hour programming time
- (B) \$50.00 per hour for other computer time
- (4) Search Fees - \$25.00 per hour

19. **How does a hearing proceed?** The people that attend the hearing are the ALJ, the parties and their attorneys, the witnesses, and perhaps a court reporter. Most hearings are open to the public, so there may be people present who are not associated with the dispute. Hearings can take a few minutes, hours, a week or longer, depending on the subject of the hearing.

The ALJ has the sole authority for the conduct of the hearing. In conducting the hearing, the ALJ may explain the issues and the meanings of terms the parties do not understand; explain the order in which persons will testify, ask questions and give rebuttal; take official or judicial notice of well-established matters of common knowledge and public records; and, rule on objections and the introduction of exhibits.

- ***Opening statement*** - Frequently, the administrative law judge will ask the parties to make *opening statements* before they begin putting on their evidence. An opening statement is simply a brief summary of the facts that you believe the evidence will establish - a sort of "road map." The opening statement is not evidence. The party with the burden of proof will be asked to make its opening first and the other party will follow. An opening statement is not necessary or required but it is helpful to the ALJ in order to understand your position.
- ***Presentation of evidence*** - In most cases, the party requesting action has the burden of proof and must show by evidence (testimony, documents, *etc.*) it is entitled to relief.
- ***Witnesses*** - Each party may call witnesses, who are placed under oath. Witnesses first answer questions from the party who called them and then may be cross-examined by opposing parties. In some circumstances, witnesses may be required to wait outside the hearing room until they are called to testify.

- ***Exhibits*** - If a party intends to offer a document into evidence at the hearing, the party must provide a copy for the ALJ, and a copy for all other parties. Each exhibit must be labeled in order of submission, e.g., Respondent's Exhibit No. 1. If the author of a document is not present to testify, the document may be considered hearsay and may not be admitted into evidence.
- ***Objections*** - Any party may object to questions, testimony, or exhibits. An objection must have a legal reason. The ALJ will either “sustain” the objection (excluding the testimony or exhibit from the record) or “overrule” the objection (admitting the evidence into the record).
- ***Closing statement*** - Each party may summarize what the evidence shows and argue why the ALJ should make a decision in that party's favor. The closing statement is not evidence. It may be either written or oral. You may need to testify about it before it can be admitted as evidence.

20. **When is the decision made in my case?** Generally, the decision will not be made at the hearing. The ALJ will carefully consider all of the evidence presented at the hearing, make findings of facts, and then apply the applicable laws and regulations to those facts. The resulting written decision (called an Order) will be sent to you.

21. **What if I disagree with the decision?** If you are dissatisfied with the Decision and Order, you may appeal to a District Court or file other motions. A brief explanation of these rights will be set forth in the Final Order. You must observe any deadlines for appeal or further action.

22. **Do I need an attorney to represent me in the administrative court?** All parties have a right to have an attorney represent them at their own expense. Only you can decide if you need an attorney. You may hire an attorney to represent you although an attorney is not required for individuals. The OSDH neither encourages or discourages legal representation. Some issues are more complicated than others. In a complex case you may be at a disadvantage without legal counsel. You must use your own judgment.

IMPORTANT: If an attorney represents you, he/she must appear at all negotiations and hearings, that is, neither representatives of the State nor the judge can speak with you unless your attorney is present.

IMPORTANT: State law requires an attorney to represent all parties who are NOT a natural person, such as corporations, limited liability corporations, etc. **ONLY individuals** will be allowed to proceed with a hearing without an attorney.

23. **How am I notified of the date, time and place of the hearing?** The OAH will notify you of the date, time and place of your hearing. In some cases, a telephone hearing or a VTC hearing may be scheduled. If your hearing is conducted by telephone or VTC method, additional information will be included with the notice.

24. **Can I postpone or continue a hearing?** A request made for a different time, date or place of hearing will not be granted unless you can show good cause. Good cause may include a necessary witness or attorney representing a party cannot attend the hearing because of a disabling personal illness, jury duty, or death in the immediate family.

IMPORTANT: Failure to make a timely effort to retain the services of an attorney is not good cause for granting a continuance.

Any request for a continuance must be made in writing and received by the OAH at the address above, at least **ten (10)** days before the scheduled hearing. If an emergency arises immediately before the hearing and you are unable to attend, please call the OAH immediately. You should assume a request has NOT been granted until notified by the OAH.

25. **What happens if I fail to attend the hearing?** If a party fails to appear at the hearing, testimony may be taken from the appearing party, and the case will be decided based on the records and testimony introduced at the hearing.

IMPORTANT: If an emergency arises that will make you late for your hearing, you should call the OAH immediately to explain the problem.

IMPORTANT: If a party fails to appear at a scheduled prehearing conference or hearing without the administrative law judge's prior consent, that party can be found to be "**in default**," which means that the issues in the case will be decided against that party without any further hearing.

26. What are my rights at the hearing?

- To testify on your own behalf,
- To be represented by an attorney or other representative of your choosing,
- To present documents and records,
- To question your own and the opposing party's witnesses,
- To explain or rebut evidence against you,
- To object to testimony or documents offered by the opposing party,
- To request a continuance when surprised by a new issue or unexpected evidence, and
- To state at the end of the hearing how the evidence and the law supports your position.

27. What kinds of evidence will be excluded or disregarded? The administrative law judge will only consider evidence that is relevant. Relevant evidence tends to prove or disprove a fact that is important to the courts decision. The administrative law judge will exclude or not consider evidence that is irrelevant, that is, evidence that is not important to how the case turns out.

Testimony is traditionally presented in a question-and-answer format. When you *personally* testify, you will be under oath, and what you say will be evidence the administrative law judge will consider in making his or her decision or recommendation. You will NOT be under oath when you are asking other witnesses questions, and any statements you make during the questioning of witnesses will NOT be considered as evidence. The evidence will be the witnesses' answers to your questions.

When asking questions of a person testifying on your side of the case, it is called direct examination. When you are finished with your testimony or asking questions of your witnesses, the OSDH attorney may ask you and your other witnesses questions. That is called cross-examination. You also have the right to cross-examine the OSDH witnesses.

28. **What is "burden of proof"?** In every administrative contested case, there are certain facts that need to be established in order for the administrative law judge to apply the law properly. If there is no evidence of those essential facts, the administrative law judge must find that they have not been proven. Burden of proof refers to the responsibility that one party or the other has to produce evidence that establishes essential facts. The party proposing that some kind of action be taken usually has the burden of proving the facts that are essential to the claim.

29. **Can I make objections?** From time to time, there may be objections to the questions asked. An objection is a request that the administrative law judge exclude evidence that is being offered and not consider it in reaching a decision or recommendation. Objections must be based on the various legal rules that specify what kind of evidence the administrative law judge may consider. If the administrative law judge sustains the objection, that means that the witness cannot answer the question that has been asked or that a document or other exhibit will not be received as part of the hearing record. If the administrative law judge overrules the objection, that means that the witness can proceed to answer the question or that a document or other exhibit will be received as part of the hearing record.

III. Miscellaneous Information

Directions

The Office of Administrative Hearings and its courtroom are located within the Oklahoma State Department of Health building at 1000 N.E. 10th street in Oklahoma City. This is at the corner of N.E. 10th and Kelly. It is south of

the State Capitol and east of Lincoln Boulevard. It is on the south side of the University of Oklahoma Health Sciences campus.

Parking

Visitor parking at the OSDH is clearly marked.

Security

The Oklahoma State Department of Health is a secure building. After you sign your name at the guard station, he will issue you a visitor's pass that must be visible at all times. You may be asked for photo identification. All bags are subject to search. You may be asked to leave large bags, purses or briefcases outside the courtroom or in your car. Lockers are not available and you will be responsible for your bag.

Children

You are discouraged from bringing children to court. If a child disrupts court, the ALJ may ask that the child not be allowed in the courtroom. There are no OSDH employees available to watch them during your hearing.

IV. Special Needs

Interpreters

All hearings are conducted in English, and the decision mailed to you after the hearing will be written in English. If you or a person who will be appearing at the hearing on your behalf speaks limited English, arrangements must be made *in advance* for an interpreter. You *cannot* bring a family member or friend with you to serve as your interpreter at the hearing.

Special Accommodations

If you or a person who will be appearing at the hearing on your behalf is hearing or speech impaired, or has some form of disability that requires special accommodation, notify the OAH **five (5) days prior to the hearing.**