

51037 Conduct of Formal Hearing

(a)

Testimony shall be taken only on oath, affirmation or penalty of perjury.

(b)

The proceedings at the formal hearing shall be electronically recorded.

(c)

Each party shall have the right to: (1) Call and examine parties and witnesses. (2) Introduce exhibits. (3) Question opposing witnesses and parties on any matter relevant to the issue even though the matter was not covered in the direct examination. (4) Impeach any witness regardless of which party first called the witness to testify. (5) Rebut the evidence against him.

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(5)

Rebut the evidence against him.

(d)

The provider shall not be called to testify during presentation of the Department's prima facie case pursuant to subsection (i). A provider who thereafter fails to testify, in the provider's behalf, may be called and examined by the Department as if under examination.

(e)

The formal hearing need not be conducted according to technical rules relating to evidence and witnesses.(1) Relevant evidence, including hearsay, shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. (2) Hearsay evidence shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. (3) The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

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(f)

The following additional exception to the "best evidence" rule (Evidence Code Section 1500) applies: (1) A duplicate is admissible to the same extent as an original unless: (A) A genuine question is raised as to the authenticity of the original or the duplicate. (B) It would be unfair to admit the duplicate in lieu of the original.

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(B)

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(g)

A hearing officer may question any party or witness and may admit any relevant and material evidence.

(h)

The hearing officer shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the hearing officer shall set forth the order in which evidence will be received.

(i)

The Department shall present its audit findings and evidence first at the hearing.

The Department has the burden of proof of demonstrating, by a preponderance of the evidence, that the audit findings were correctly made. Once the Department has presented such a prima facie case, the burden of proof shifts to the provider to demonstrate, by a preponderance of the evidence, that the provider's position regarding disputed issues is correct.

(j)

The burden of producing evidence as to a particular fact is on the party against whom a finding on that fact would be required in the absence of further evidence.

(k)

The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who does not speak the English language proficiently shall provide an interpreter, approved by the hearing officer, proficient in the English language and the language in which the witness will testify, to serve as interpreter during the hearing. The cost of the interpreter shall be paid by the party providing the interpreter.