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STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105

**RH05048173 December 19, 2006**

**TEXT OF PROPOSED REGULATION**

Adopt Title 10, California Code of Regulations, Chapter 5, Subchapter 4.3, Article 1, Sections 2614-2614.27 to read as follows:

**SUBCHAPTER 4.3 Procedures for Noncompliance Hearings.**

**Article 1 Governing Procedure for Noncompliance Hearings**

**§2614. Definitions.**

In this chapter unless the context or subject matter otherwise requires:

- (a) "Department" means the California Department of Insurance.
- (b) "Commissioner" means the Insurance Commissioner.
- (c) "Enforcement action" means any action based upon an allegation by the Department that an insurer, organization, group or association, or any rate, rating plan, rating system, or underwriting rule does not comply with the requirements and standards of Chapter 9 of the California Insurance Code entitled Rates and Rating and Other Organizations.
- (d) "Party" includes the Department, the respondent, intervenors, and any person, other than an officer or an employee of the Department in his or her official capacity, who has been allowed to appear or participate in the proceeding.
- (e) "Respondent" means any person or entity against whom a Notice of Noncompliance is filed.
- (f) "Intervenor" means any person or entity whose petition to intervene pursuant to California Insurance Code section 1861.10 has been granted.
- (g) "Notice of noncompliance" means the administrative document issued by the Commissioner. A notice of noncompliance shall set forth in ordinary and concise language in what manner and to what extent noncompliance is alleged to exist.

(h) "Administrative Hearing Bureau" means that office, within the office of the Commissioner and, except where otherwise specified in this subchapter, designated for receipt of all pleadings filed pursuant to this subchapter.

(i) "Administrative law judge" means a judge in the Administrative Hearing Bureau within the office of the Commissioner.

(j) "Hearing Officer" means a person appointed by the Commissioner to conduct a noncompliance hearing.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

#### **§2614.1. Authority Of Administrative Law Judge Or Hearing Officer.**

(a) To the extent not otherwise specified by law or regulation, the administrative law judge or hearing officer shall: control the course of proceedings; grant or deny requests for continuances; administer oaths; issue subpoenas; rule on motions to compel discovery; receive evidence; upon notice, hold appropriate conferences before or during hearings; rule upon all objections or motions which do not involve final determination of proceedings; receive offers of proof; hear argument; recommend to the Commissioner approval or disapproval of proposed stipulations and settlements; and fix the time and place for the filing of briefs.

(b) The administrative law judge or hearing officer shall eliminate unnecessary delay in the progress and ultimate resolution of the proceeding, assume and maintain control over the pace of the proceeding, actively manage the proceeding from commencement to disposition, and compel all parties to prepare and resolve all issues without delay. The administrative law judge or hearing officer shall discourage continuances, only granting continuances for good cause shown. Good cause includes circumstances such as serious illness of a participant in the proceeding, death in the family of a participant in the proceeding, or jury duty obligations of a participant in the proceeding.

(c) The chief administrative law judge shall exercise all authority set forth in this section until a proceeding is assigned to an administrative law judge or hearing officer.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

#### **§2614.2. Commencement Of Proceedings.**

(a) An enforcement action is commenced when the Department serves a written notice of noncompliance pursuant to California Insurance Code section 1858.1, which shall state in what manner and to what extent noncompliance is alleged to exist; specifying a reasonable time, not less than 10 days thereafter, in which that noncompliance may be corrected; and specifying the amount of any penalty that may be due under Insurance Code section 1858.07.

(b) An administrative proceeding is commenced when the Department files a request for hearing pursuant to California Insurance Code section 1858.2 with the Administrative Hearing Bureau. The request for hearing shall include copies of any notice of noncompliance served on respondent by the

Department and any written response thereto by respondent.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

### **§2614.3. Amended Or Supplemental Notice Of Noncompliance.**

At any time before the matter is submitted for decision the Department may file an amended or supplemental notice of noncompliance. If the amended or supplemental notice of noncompliance presents new charges, respondent shall be afforded a reasonable opportunity to prepare a defense thereto, but respondent shall not be entitled to file a further pleading unless the administrative law judge or hearing officer in its discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental pleading shall be in writing.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

### **§2614.4. Consolidation And Bifurcation.**

(a) When proceedings that involve a common question of law or fact are pending, the administrative law judge or hearing officer on the judge's or officer's own motion or on motion of a party may order a joint hearing of any or all the matters at issue in the proceedings. The administrative law judge or hearing officer may order all the proceedings consolidated and may make orders concerning the procedure that may tend to avoid unnecessary costs or delay.

(b) The administrative law judge or hearing officer, on the judge's or officer's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice, or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

### **§2614.5. Continuances.**

(a) When an administrative law judge or hearing officer has been assigned to a proceeding, no continuance may be granted except by him or her, and only for good cause shown.

(b) When seeking a continuance, a party shall apply for the continuance within 10 working days following the time the party discovered or reasonably should have discovered the event or occurrence that establishes the good cause for the continuance. A continuance may be granted for good cause after the 10 working days have elapsed if the party seeking the continuance is not responsible for and has made a good faith effort to prevent the condition or event establishing the good cause.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

### **§2614.6. Burden And Order Of Proof.**

(a) The Department or intervenor has the burden of proving, by a preponderance of the evidence, every fact necessary to show in what manner and to what extent noncompliance is alleged to exist.

(b) In addition to its burden of proof, the Department or intervenor shall have the burden of presenting its evidence and witnesses first.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

#### **§2614.7. Discovery: Exclusive Provisions.**

The provisions of Section 2614.8 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

#### **§2614.8. Requests For Discovery.**

(a) A party, upon written request made to another party, prior to the hearing and within 30 days after a request for hearing has been served, is entitled to obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing; and inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(1) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(2) statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (1) above;

(3) investigative reports made by or on behalf of the Department or other party pertaining to the subject matter of the proceeding, to the extent that these reports contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding; or reflect matters perceived by the investigator in the course of his or her investigation; or contain or include by attachment any statement or writing described in (1) or (2) or summary thereof;

(4) any other document or thing which is relevant and which would be admissible in evidence.

(b) For the purpose of this section, "documents" means a writing as defined in Evidence Code section 250 and "statements" includes written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written

reports or summaries of these oral statements.

(c) The written response to any discovery request shall be served on the requesting party within fifteen (15) days of service of the discovery request. Upon mutual agreement of all parties and interveners: 1) written documents may be converted into another mutually agreeable format, such as electronic or magnetic, and made readily available, or 2) a depository of original items may be used in place of delivery of copies, but the depository shall be open beyond regular business hours upon request of a party or intervener. The parties shall have an ongoing duty to produce additional items pursuant to whichever method is agreed upon as new items become relevant.

(d) When a party withholds information otherwise discoverable by claiming it is privileged, that party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the specifically asserted privilege or protection. Simultaneously, the withholding party shall also draft and provide a confidentiality agreement to the other parties and the administrative law judge or hearing officer if a confidentiality agreement can protect the interest in nondisclosure.

(e) If new information is discovered at any time during the course of the hearing, it shall be called to the attention of the administrative law judge or hearing officer immediately, who may grant discovery thereon if requested by a party. The administrative law judge or hearing officer shall specify the scope and timing of any such additional discovery.

(f) Nothing in this section shall require any party to disclose information contained in a document that is privileged from disclosure by law or otherwise made legally confidential or protected as an attorney's work product.

(g) Nothing in this section shall limit the Commissioner's investigatory powers as otherwise provided by statute including, but not limited to, Insurance Code Section 12924.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

#### **§2614.9. Compelling Discovery.**

(a) Any party claiming that a request for discovery has not been complied with shall, within five (5) business days of receipt of the responses, meet and confer with the party from whom discovery is sought to attempt to resolve the discovery dispute.

(b) Any party claiming that a request for discovery has not been complied with following the meet and confer session shall, within five (5) business days of the meet and confer session, file and serve a motion to compel discovery accompanied by a copy of the original discovery request and response thereto. The motion to compel discovery shall specify why the requested information is sought, and include facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

(c) The party from whom discovery is sought shall file and serve any additional response within five (5) business days of service of the motion. The administrative law judge or hearing officer shall set a hearing on the motion for a time within ten (10) business days after filing of the response or at a later time that the administrative law judge or hearing officer, on the judge's or officer's own motion, for good cause determines. At or before the

commencement of the hearing, the administrative law judge or hearing officer shall inform the parties of his or her tentative ruling on the motion. The administrative law judge or hearing officer shall issue a decision on the motion to compel discovery within five (5) business days of the date of the hearing on the motion to compel discovery.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

**§2614.10 . Prehearing Conference.**

(a) On motion of a party or by order of an administrative law judge or hearing officer, the administrative law judge or hearing officer may conduct one or more prehearing conferences. The administrative law judge or hearing officer shall set the times and places for the prehearing conferences, and shall give reasonable written notice to all parties.

(b) The prehearing conferences may address one or more of the following matters:

- (1) Exploration of settlement possibilities.
- (2) Preparation of stipulations.
- (3) Clarification of issues.
- (4) Rulings on identity and limitation of the number of witnesses.
- (5) Objections to proffers of evidence.
- (6) Order of presentation of evidence and cross-examination.
- (7) Rulings regarding issuance of subpoenas and protective orders.
- (8) Schedules for the submission of written briefs and schedules for

the commencement and conduct of the hearing.

(9) Exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing.

(10) Motions for intervention.

(11) Any other matters as shall promote the orderly and prompt conduct of the hearing.

(c) The administrative law judge or hearing officer may conduct all or part of a prehearing conference by telephone or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.

(d) The administrative law judge or hearing officer shall issue a prehearing order

incorporating the matters determined at the prehearing conferences. The administrative law judge or hearing officer may direct one or more of the parties to prepare a prehearing order.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

#### **§2614.11. Exchange Of Witness Lists.**

(a) Upon a date agreed upon by all parties or ordered by the administrative law judge or hearing officer, all parties who have appeared in the action shall exchange information concerning witnesses. The exchange of information may occur at a meeting of the attorneys for the parties involved or by a mailing on an agreed upon date.

(b) The exchange of witness information shall include the following:

(1) A list setting forth the name of any person who will be offering testimony.

(2) A brief narrative statement of the general substance of the testimony that each witness is expected to give.

(3) A brief narrative statement of the qualifications of each expert witness.

(4) All discoverable reports and writings, if any, made by each expert witness.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

#### **§2614.12. Supplemental Witness List Exchange.**

Within 30 days after the exchange described in 2614.11, any party who engaged in the exchange may submit a supplemental witness list containing the

name of any witness who will provide testimony on a subject to be covered by a witness designated by an adverse party to the exchange, if the party supplementing a witness list has not previously designated a witness to testify on that subject, and shall include all discoverable reports and writings, if any, made by each additional designated expert witness.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

#### **§2614.13. Prepared Testimony.**

(a) Prepared direct testimony, in narrative statement or question and answer format, of each direct witness expected to be called to testify by the Department or intervenor or participant in a proceeding, shall be filed and served on all parties at least forty (40) business days before the first day of the evidentiary hearing. Prepared direct testimony, in narrative statement or question and answer format, of each direct witness expected to be called to testify in a proceeding by respondent, shall be filed and served on all parties no later than twenty (20) business days after service of the prepared direct testimony by the Department

or intervenor or participant. Prepared direct testimony shall be signed under penalty of perjury under the laws of the state of California. Expert witness testimony shall be accompanied by the witnesses' curriculum vitae and list of authored or co-authored publications. Additionally, any documents reviewed by the expert for purposes of testifying in the specific case that were not previously provided to the other parties shall be produced with the testimony.

(b) Within ten (10) business days of service of any prepared direct testimony, any party may file a motion to strike all or part of the testimony and object to admission of exhibits referenced in such testimony. The motion shall state the specific page(s) and line(s) to which the party is objecting, and the specific legal authority for the objection. Within five (5) business days of service of a motion to strike, the party filing the prepared direct testimony may respond to the motion to strike. A hearing on any motion to strike shall be held within five (5) business days of service of any response to the motion to strike. At or before the commencement of the hearing on the motion to strike, the administrative law judge or hearing officer shall inform the parties of his or her tentative ruling on the motion. The administrative law judge or hearing officer shall rule on the motion to strike no later than three (3) business days after the hearing on the motion to strike. Any testimony not objected to and any testimony not stricken, together with exhibits referenced in that testimony, shall be deemed admitted.

(c) If rebuttal prepared testimony is allowed, motions to strike may be made orally and ruled upon immediately in order to expedite the proceeding.

(d) At the evidentiary hearing, the person whose prepared testimony is being offered shall be available for cross-examination by all parties.

(e) Prepared testimony of more than twenty (20) pages shall contain a subject index.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

#### **§2614.14. Additional Direct Testimony.**

Prior to his or her cross-examination, any witness may provide additional direct testimony responding to testimony elicited of any other witness. Any additional direct testimony which is likely to take more than one hour of hearing time to present shall meet all requirements applicable to direct testimony, shall be in the format specified in section 2614.13, and shall be filed and served on all parties at least two (2) business days before the witness is called to testify.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

#### **§2614.15. Rebuttal Testimony.**

At the conclusion of the direct presentations of all parties, the parties may file written rebuttal testimony or provide oral rebuttal testimony. Rebuttal testimony shall be subject to cross examination as provided in section 2614.13(d). The rebuttal testimony shall meet all requirements applicable to direct testimony, and shall be in the format specified in section 2614.13 and if in written format shall be filed and served on all parties at least two (2) business days before the rebuttal witness is called to testify. The rebuttal testimony shall



only respond to testimony of another party or witness.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

#### **§2614.16. Exhibits.**

(a) Any exhibit that a party wishes to be part of the evidentiary record of this proceeding shall be lodged with the administrative hearing bureau and served on all other parties in the manner and by the date directed by the administrative law judge or hearing officer.

(b) A party offering a document in excess of ten (10) pages shall designate specifically the relevant and material portions, and shall provide a copy of the entire document to every other party prior to the offer in evidence. The other parties shall be provided five (5) business days to examine the document, from the date of receipt of the document, and to offer in evidence other relevant and material portions of the document.

(c) Exhibits shall be legible and whenever practicable either prepared on paper not exceeding 8-1/2 inches wide and 11 inches long, or bound or folded to that approximate size. Exhibits may be created during the hearing, but shall be recreated for the record on paper not exceeding 8-1/2 inches wide and 11 inches long. Wherever practicable, the sheets of each exhibit shall be numbered. Copies of exhibits shall be clear and legible.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

#### **§2614.17. Oral Evidence.**

(a) Oral testimony shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided.

(d) Hearsay evidence may be used to supplement or explain other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case.

(e) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

(f) The administrative law judge or hearing officer has discretion to limit oral testimony and to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

**§2614.18. Official Notice.**

In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the Department's special field, and of any fact that may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the administrative law judge or hearing officer.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

**§2614.19. Settlement Conferences.**

(a) The administrative law judge or hearing officer may order the parties to attend and participate in a settlement conference. The chief administrative law judge shall assign an administrative law judge or hearing officer to conduct the settlement conference, other than the administrative law judge or hearing officer assigned to the case; set the time and place for the settlement conference; and give reasonable written notice to all parties.

(b) The administrative law judge or hearing officer assigned to conduct the settlement conference may conduct all or part of the settlement conference by telephone or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.

(c) Discussions, admissions, concessions, or offers to stipulate or

settle, whether oral or written, made during any negotiation or settlement conference are confidential and inadmissible for any purpose in any proceeding.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

**§2614.20. Stipulations And Settlements.**

(a) Parties may stipulate to the resolution of an issue of fact or the applicability of a provision of law material to a proceeding or may agree to settlement on a mutually acceptable outcome to a proceeding, with or without resolving material issues.

(b) If the parties agree to settlement on a mutually acceptable outcome to a proceeding, with or without resolving material issues, they shall obtain an order approving their settlement from the Commissioner. Immediately following the Commissioner's approval of a settlement, the parties shall file a signed request to withdraw their request for hearing with the Administrative Hearing Bureau.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

**§2614.21. Additional Evidence.**

(a) The administrative law judge or hearing officer may require the production of further evidence on any issue until the record is closed. If the administrative law judge or hearing officer determines that specific documentary evidence is necessary as a part of the record, the administrative law judge or hearing officer shall set a deadline for filing, reserving exhibit numbers therefor. Copies of all documents produced shall be served on all parties.

(b) If the administrative law judge or hearing officer requires the production of further evidence, that evidence shall be provided no later than ten (10) days from the date the administrative law judge notifies the party from whom the evidence is sought that additional evidence is required.

(c) Any objections to admitting the evidence produced upon the order of the administrative law judge or hearing officer shall be filed no later than five (5) days after the evidence is served.

(d) Unless ordered by the administrative law judge or hearing officer, evidence other than matters that can be officially noticed shall not be provided after the close of the evidentiary hearing.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

**§2614.22. Submission Of Proceeding.**

A proceeding shall stand submitted when the record is closed by the administrative law judge or hearing officer.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

**§2614.23. Amendment To Notice Of Noncompliance After Submission Of Case For Decision.**

The Department may request leave to amend the notice of noncompliance to conform to proof, after submission of the case for decision. Each party shall be given notice of the intended amendment and opportunity to show that it will be prejudiced thereby unless the case is reopened to permit the introduction of evidence on the party's behalf. If such prejudice is shown, the ALJ may either deny leave to amend or reopen the case to permit introduction of additional evidence.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

**§2614.24. Proposed Decision.**

(a) The administrative law judge or hearing officer shall prepare within 60 days after the

record is closed a proposed decision in a form that may be adopted by the Commissioner as the final decision in the case. Failure of the administrative law judge or hearing officer to deliver a proposed decision within the time required does not prejudice the rights of the Commissioner in the case.

(b) Within 100 days of receipt by the Commissioner of the administrative

law judge's proposed decision, the Commissioner may act as prescribed in subparagraphs (b)(1) to (5), inclusive. If the Commissioner fails to act as prescribed in subparagraphs (b)(1) to (5), inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the Commissioner. The Commissioner may do any of the following:

(1) Adopt the proposed decision in its entirety.

(2) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.

(3) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the Commissioner under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

(4) Reject the proposed decision and refer the case to the same administrative law judge or hearing officer if reasonably available, otherwise to another administrative law judge or hearing officer, to take additional evidence. If the case is referred to an administrative law judge or hearing officer pursuant to this subparagraph, he or she shall prepare a revised proposed decision based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision shall be furnished to each party or his or her attorney as prescribed in subparagraph (c).

(5) Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence.

(c) The decision of the Commissioner shall be filed immediately by the Department as a public record and a copy shall be served on each party or the party's attorney.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1, 1858.2 and 1858.3, Insurance Code.

#### **§2614.25. Petition For Reconsideration.**

(a) Within 15 days after service of a copy of the decision on a party, but not later than the effective date of the decision, a party may apply to the Commissioner for correction of a mistake or clerical error in the decision, stating the specific ground on which the application is made. Notice of the application shall be served on the other parties to the proceeding, with a copy filed with the Administrative Hearing Bureau. The application is not a prerequisite for seeking judicial review.

(b) The Commissioner may deny the application, grant the application and modify the decision, or grant the application and set the matter for further proceedings. The application is considered denied if the Commissioner does not dispose of it within 15 days after it is made.

(c) Nothing in this section precludes the Commissioner from modifying the decision to correct a mistake or clerical error. A modification under this subdivision shall be made within 15 days after issuance of the decision.

(d) The Commissioner shall, within 15 days after correction of a mistake or clerical error in the decision, serve a copy of the correction on each party on which a copy of the decision was previously served.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

#### **§2614.26. Effective Date Of Decision.**

(a) The decision shall become effective 30 days after it is delivered or mailed to the parties unless: reconsideration is ordered within that time, or the administrative law judge or hearing officer or Commissioner orders that the decision shall become effective sooner.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

#### **§2614.27. Default Proceedings.**

(a) If a respondent fails to appear at the hearing, the administrative law judge or hearing officer may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

(b) Notwithstanding the default of the respondent, the administrative law judge or hearing officer, before a proposed decision is issued, has the discretion to grant a hearing on reasonable notice to the parties. The administrative law judge or hearing officer may order the respondent, or the respondent's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing.

(c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The administrative law judge or hearing officer may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following: mistake, inadvertence, surprise, or excusable neglect.

Note: Authority cited: Section 11400.20, Government Code. Reference: Sections 1858, 1858.01, 1858.1 and 1858.2, Insurance Code.

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