

AMENDATORY SECTION (Amending WSR 17-01-138, filed 12/20/16, effective 1/20/17)

WAC 292-100-050 Determination on reasonable cause. (1) Following an investigation and preparation of the written investigative report, if the complaint is not dismissed by the executive director under WAC 292-100-045, the ~~((board staff will prepare a written investigation report and make a recommendation))~~ results of the investigation will be presented to the board ((on whether to)). Board staff may recommend that the board find reasonable cause, including a recommendation as to the potential penalty, or may recommend that the matter be dismissed.

(2) Upon receipt of the board staff's investigation report and recommendation, the board will determine:

(a) Whether ((or not)) there is reasonable cause to believe that a violation of chapter 42.52 RCW has occurred, and the potential penalty; or

(b) Whether to dismiss the matter.

(3) The board's review of reasonable cause determinations will be done in closed session.

(4) If after determining reasonable cause, the board determines that the penalty and costs should be greater than ~~((five hundred dollars))~~ \$500, the respondent will be given the option to have an administrative law judge conduct the hearing and rule on procedural and evidentiary matters in accordance with RCW 42.52.500.

(5) The board may, on its own initiative, choose to retain an administrative law judge to conduct any hearing.

(6) Upon receipt of an investigation report and recommendation on a complaint referred to the employing agency for investigation, the board will either:

(a) Reject the report and recommendation and initiate its own investigation; or

(b) Reject or concur with the report and recommendation and dismiss the complaint; or

(c) Concur with the report and recommendation and proceed under this section; or

(d) Concur with the report and recommendation and refer the matter to the employing agency for implementation of the recommendation if the recommendation is within the agency's authority to implement. The agency will report implementation to the board and the board will then dismiss the complaint.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

WAC 292-100-060 Notice of hearing—Filing of answer. (1) Following the board's determination on reasonable cause, the board ~~((shall))~~ will provide the complainant, the respondent and the employing agency with a copy of the written determination on reasonable cause and ~~((a copy of the board staff's written investigation))~~ investigative report. ~~((If reasonable cause is found, the determination of reasonable cause shall include a statement of the alleged violations.~~

~~Prior to scheduling a public hearing, the board shall provide the respondent with an explanation of the option to request that the hearing be conducted by an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500.~~

~~(2) Within 30 days of service of the written determination on reasonable cause, the respondent shall file an answer to the written determination on reasonable cause which shall state his/her response to the alleged violations. The answer shall include either a request for or a waiver of the right to)~~ (2) The respondent has 30 days from the time the determination on reasonable cause is served to file an answer to the determination on reasonable cause and request an adjudicative proceeding and/or settlement. If the penalty is over \$500, the respondent may request an administrative law judge ((if the penalty and costs for the alleged violation may be greater than \$500)) at the hearing. The administrative judge's role is limited to ruling on procedural and evidentiary matters.

~~(3) Failure to file an answer ((to the written determination on reasonable cause)) and request an adjudicative hearing and/or settlement within 30 days of service constitutes a default, and the board may proceed to resolve the case without further notice to, or hearing for the benefit of, the respondent.~~

(4) Within 10 days after service of a default order under subsection (3) of this section, the respondent may file a written motion requesting that the default order be vacated((7)) and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the board chair or a designated board member may adjourn further proceedings or conduct them without the participation of the respondent.

~~(5) ((Within 30 days of service of the written determination on reasonable cause, the respondent shall have the right to request an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500. If the respondent fails to request an administrative law judge within 30 days, the right to have the matter presided over by an administrative law judge is waived. If the respondent does not request an administrative law judge within 30 days and has not defaulted pursuant to this section, the board staff may, at its option, commence an adjudicative proceeding to resolve the matter.~~

~~(6))~~ If a hearing is requested by the respondent, the respondent ((shall)) will be notified of the date of the hearing no later than ((20)) seven days before the hearing date.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

WAC 292-100-080 Investigation procedures—Subpoenas. (1) During the course of an investigation, the board(~~(7, a board member)~~), or the executive director(~~(7)~~) may issue ((a)) subpoenas ((directed to any person who is likely to possess information which is relevant and)) to persons to appear and give testimony, and may require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the investigation. The subpoena ((shall)) must:

(a) Specifically describe the information which is sought, and
(b) Require the production of information at a reasonable place and time, but no later than ~~((ten))~~ 10 days from the date it is served, and

(c) Notify the person that if the information is not produced, the board will apply to the superior court for an appropriate order or other remedy.

(2) The subpoena may be personally delivered or sent by certified mail, return receipt requested.

~~((2) The board may issue a subpoena under RCW 42.52.390 to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, memorandums or other documents which the board deems relevant and material.))~~

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

WAC 292-100-090 ~~((Informal settlement))~~ **Cases resolvable by stipulation.** (1) ~~((RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.~~

~~(a)) Any respondent may request settlement by notifying board staff in writing.~~

~~((b) If settlement may be accomplished by negotiation, negotiations shall be commenced at the earliest possible time. When board staff and the respondent agree that some or all of the facts are uncontested and a stipulation of the facts is reached, board staff is responsible for providing a written description of the recommended resolution or stipulation to the person(s) involved.~~

~~(c) If settlement of a hearing may be accomplished by informal negotiation, negotiations may be concluded by:~~

~~(i) Stipulation of facts by the parties; or~~

~~(ii) Stipulation of facts, conclusions and penalty by the parties.~~

~~(iii) A stipulated order agreed to by the parties.~~

~~(d) Board staff shall only present proposed stipulations and settlements to the board which it recommends the board adopt.))~~

(2) Settlement may be accomplished by a stipulation of facts, conclusions and penalty by the parties or a stipulated order agreed to by the parties.

(3) Any proposed stipulation ((shall)) must be in writing and signed by each party to the stipulation and ((his or her)) their attorney, if represented. ((The stipulation may be recited on the record at the hearing.)) Board staff will present the proposed stipulation to the board for consideration.

(4) The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented.

(a) If the board accepts the stipulation or modifies the stipulation with the agreement of the respondent, the board ((shall)) will enter ((an order in conformity with the terms of)) the stipulation.

(b) If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal hearing process will continue.

(c) If the board requests additional facts, the matter will be referred to the board staff for further investigation.

(5) The proposed stipulation and information obtained during ~~((formal))~~ settlement discussions ~~((shall))~~ will not be admitted into evidence at a subsequent ~~((public))~~ hearing. ~~((If the board requests additional facts be presented, the matter shall be referred to the board staff for further investigation.))~~

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

WAC 292-100-100 Prehearing conference (~~(—Rule)~~). (1) In any proceeding, the presiding officer upon ~~((his/her))~~ the presiding officer's own motion or upon request by board staff or the respondent or their counsel, may direct the board staff ~~((or))~~ and respondent to appear at a specified time and place for a prehearing conference to consider:

(a) Simplification of issues;

(b) ~~((The necessity of amendments to the hearing notice;~~

~~(e))~~ The possibility of obtaining stipulations, admissions of facts and of documents;

~~((d))~~ (c) Limitation on the number of witnesses;

~~((e))~~ (d) Authorizing discovery by any party;

~~((f))~~ (e) Scheduling order; and

~~((g))~~ (f) Procedural and such other matters as may aid in the disposition of the proceeding.

(2) Prehearing conferences may be held by ~~((telephone conference call or at a time and place))~~ teleconference, video conference, or any method specified by the presiding officer.

(3) Following the prehearing conference, the presiding officer ~~((shall))~~ will issue an order reciting the action taken and decisions made at the prehearing conference. If no objection to the order is filed with the presiding officer within seven days after the date the order is mailed, the order ~~((shall))~~ will control the subsequent course of the proceeding unless modified for good cause by subsequent order.

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

WAC 292-100-105 Discovery—Authority of presiding officer. After a finding of reasonable cause, no discovery is permitted by a party pursuant to WAC 292-100-110 through 292-100-150 unless authorized by the presiding officer. In deciding whether to authorize discovery and the extent of discovery to be allowed, the presiding officer ~~((shall))~~ will consider the party's need for discovery while ensuring that discovery does not unduly delay the hearing. ~~((If the determina-~~

~~tion of reasonable cause includes an allegation that the respondent has violated RCW 42.52.180, the presiding officer shall permit discovery by the parties. Prior to the appointment of a presiding officer, the chair or other member designated by the board may authorize discovery if the party can demonstrate a compelling reason why discovery must be conducted prior to the appointment of a presiding officer.)~~

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

WAC 292-100-110 Hearings—Discovery—Subpoenas. (1) ~~((The board, a board member, or the executive director may issue subpoenas for discovery, subpoenas to persons to appear and give testimony, and may require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material and the board or presiding officer may issue protective orders as appropriate. Any party may issue subpoenas.))~~ All subpoenas for hearings must be filed with the presiding officer, together with proof of proper service, at least five days prior to the date of the hearing for which they are issued. All subpoenas will be issued and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120.

(2) The presiding officer, upon motion and before the time specified in the subpoena ~~((for compliance therewith))~~ at issue, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(3) The attendance of witnesses and such production of evidence may be required from any place within the state of Washington to any location where a hearing is being conducted.

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

WAC 292-100-120 Hearings—Discovery—Methods authorized. The following discovery methods are authorized: Deposition upon oral examination, written interrogatories, requests for production, and requests for admission. Deposition upon oral examination, written interrogatories, and requests for admission may be used as evidence in the hearing. The attendance of witnesses to a deposition may be compelled by use of a subpoena. Depositions ~~((shall))~~ will be taken ~~((only))~~ in accordance with this rule and the rules on subpoenas, ~~((except that))~~ unless board staff and the respondent ~~((may))~~ stipulate to other arrangements.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

WAC 292-100-130 Hearings—Discovery—Depositions and interrogatories—Notice. A party (~~desiring to take~~) taking the deposition of any person upon oral examination (~~shall~~) must give reasonable notice of not less than five days in writing to the presiding officer and all parties. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. On motion of a party to whom the notice is served, the presiding officer may, for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

WAC 292-100-140 Depositions and interrogatories in hearings—Protection of parties and deponents. (1) After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the presiding officer may order that the deposition (~~shall~~) may:

(a) Not be taken (~~τ~~); or

(b) That it may be taken only at some designated place other than that stated in the notice (~~τ~~); or

(c) That it may be taken only on written interrogatories (~~τ~~); or

(d) That certain matters (~~shall~~) must not be inquired into (~~τ~~); or

(e) That the scope of the examination (~~shall~~) must be limited to certain matters (~~τ~~); or

(f) That the examination (~~shall~~) may be held with no one present except the parties to the action and their officers or counsel (~~τ~~); or

(g) The presiding officer may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

(2) At any time during the taking of the deposition, on motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer may order the party conducting the examination to cease (~~forthwith~~) from taking the deposition or may limit the scope and manner of the taking of the deposition as (~~above~~) provided above. If the order made terminates the examination, it (~~shall~~) may be resumed only upon the order of the presiding officer. Upon demand of the objecting party or deponent, the taking of the deposition (~~shall~~) must be suspended for the time necessary to make a motion for an order.

AMENDATORY SECTION (Amending WSR 07-02-001, filed 12/20/06, effective 1/20/07)

WAC 292-100-150 Discovery—Production of documents and use at hearing. (1) Any materials to be presented at the hearing (~~shall~~) must be provided to the executive director and to the opposing party no less than (~~ten~~) 10 days prior to the hearing.

(2) Upon agreement by both parties, additional documentary evidence may be presented at the hearing. The parties (~~shall~~) must arrive at the hearing location or make documents available in sufficient time before the time scheduled for the hearing for the purpose of exchanging exhibits to be introduced. When documents are to be offered into evidence at the hearing, the one offering the exhibit shall provide a minimum of (~~ten~~) seven copies.

(3) If the parties do not reach an agreement on the submission of additional documentary evidence, at the commencement of the hearing the presiding officer (~~shall~~) will, after hearing argument, rule on the admissibility of the documents. The proponent of the documents proposed for submission must show good cause why the documents could not be submitted (~~ten~~) 10 days prior to the hearing.

(4) "Good cause" is a substantial reason or legal justification for failing to appear, to act, or respond to an action. To show good cause, the presiding officer must find that a party had a good reason for what they did or did not do, using the provisions of Superior Court civil rule 60 as a guideline.

AMENDATORY SECTION (Amending WSR 07-02-001, filed 12/20/06, effective 1/20/07)

WAC 292-100-160 Conduct of hearings. (1) A hearing (~~shall~~) must be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW) and its supporting regulations (chapter 10-08 WAC) (~~shall be followed~~) unless modified by chapter 292-100 WAC.

(2) Hearings may be conducted in-person, by video conference, or other virtual means as determined by the presiding officer and in accordance with WAC 10-08-180. Preference should be given to the method which will facilitate the timeliest hearing.

When circumstances prevent the scheduling of an in-person hearing, virtual hearings are strongly encouraged unless a party can demonstrate it will be prejudiced by such a hearing in accordance with the APA and WAC 10-08-180.

(3) A hearing (~~shall~~) must be conducted either by the board or by an administrative law judge.

(a) If an administrative law judge participates by request of a respondent, the board may choose to sit with the administrative law judge to hear the matter. If an administrative law judge sits with the board, (~~he or she shall~~) the administrative law judge will rule on procedural and evidentiary matters.

(b) If an administrative law judge hears the matter at the request of the board, the board may choose to sit with the administrative law judge or the board may request that the administrative law judge hear the matter alone and prepare an initial order.

~~((3))~~ (4) Following a hearing ~~((in which the board partici-~~
~~pates))~~, the board or administrative law judge may conclude that:

(a) The respondent(s) did not violate the act, as alleged, and dismiss the case; or

(b) The respondent(s) has (have) violated chapter 42.52 RCW; or

(c) The respondent(s) is (are) in violation of chapter 42.52 RCW, the board's remedy would be inadequate and the matter should be referred to the appropriate law enforcement agency as provided in RCW 42.52.470.

~~((4))~~ (5) Following a hearing in which the board participates, the board:

(a) ~~((Shall))~~ Must set forth in writing its findings of fact, conclusions of law and decision on the merits of the case; and

(b) ~~((Shall))~~ Must serve each party, the complainant and the employing agency~~((r))~~ a copy of the findings of fact, conclusions of law and decision.

~~((5))~~ (6) Following a hearing in which the board does not participate, the administrative law judge ~~((shall))~~ must:

(a) Set forth written findings of fact, conclusions of law and decision on the merits of the case in an initial order;

(b) ~~((Shall))~~ Must serve each party and board staff a copy of the findings of fact, conclusions of law and decision, including a statement of the right to request review of the initial order by the board.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

WAC 292-100-170 Review of initial orders by an administrative law judge.

(1) An initial order by an administrative law judge ~~((shall))~~ will become the final order of the board within ~~((forty-five))~~ 45 days of the initial order unless:

(a) A board member determines that the initial order should be reviewed as provided in WAC 292-100-175;

(b) A party files a petition for review of the initial order within ~~((thirty))~~ 30 days of the entry of the initial order.

(2) The petition for review ~~((will))~~ must specify the portions of the initial order to which exception is taken and ~~((will))~~ refer to the evidence of record relied upon to support the petition.

(3) Petitions for review ~~((shall))~~ must be filed with the executive director and served on all other parties. The party not filing the petition for review ~~((shall))~~ will have ~~((twenty))~~ 20 days to reply to the petition for review. The reply ~~((shall))~~ must be filed with the executive director and copies of the reply ~~((shall))~~ must be served on all other parties ~~((or their counsel at the time the reply is filed, and)).~~ A reply to a petition for review may include a cross-petition for review.

(4) If the reply contains a cross-petition for review, it ~~((shall))~~ must specify portions of the initial order to which exception is taken by the replying party, and ~~((shall))~~ refer to the evidence of the record relied upon ~~((to support the reply.~~

~~((4))~~ A respondent to a cross-petition for review will have 20 days to reply to the cross-petition for review. The reply to the cross-petition for review must be filed with the executive director

and copies of the reply to the cross-petition for review must be served on all other parties.

(5) When considering a petition for review, the board (~~shall personally~~) must consider the whole record or (~~such~~) the portions of it (~~as may be~~) cited by the parties.

(a) The board (~~shall~~) will afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument.

(b) The board (~~shall~~) will enter a final order disposing of the proceeding.

(c) The board (~~shall~~) must serve copies of the final order on all parties, the complainant, and the employing agency.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

WAC 292-100-175 A board member's request for review of initial orders.

(1) Within five days after receiving an initial order by an administrative law judge the executive director (~~shall~~) must serve a copy of the initial order upon each board member.

(2) A board member who is requesting review of an initial order (~~shall~~) must provide written notice to the executive director within (~~thirty~~) 30 days of service on the board member.

(3) Upon receipt of a board member's (~~notice of~~) request for review the executive director (~~shall~~) must serve the (~~notice of review~~) request on all other parties.

(4) The board (~~shall personally~~) will consider the whole record or (~~such~~) the portions of (~~it as may be~~) the record as required for its deliberation.

(a) The board may afford each party an opportunity to present written argument (~~or~~) and may afford each party an opportunity to present oral argument.

(b) The board (~~shall~~) will enter a final order disposing of the proceeding.

(c) The board (~~shall~~) must serve copies of the final order on all parties, the complainant, and the employing agency.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

WAC 292-100-180 Brief adjudicative proceeding—Authority.

Pur-
suant to RCW 34.05.482 through 34.05.494, after a finding of reason-
able cause (~~and notwithstanding the provision of WAC 292-100-050
through 292-100-170~~), the board may provide a brief adjudicative pro-
ceeding as set forth in WAC 292-100-190 for alleged violations of pro-
visions in chapter 42.52 RCW and corresponding rules in which the
facts are undisputed, the violations appear to be relatively minor in
nature, and the penalty and costs no greater than \$500 will be as-
sessed for the violations.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

WAC 292-100-190 Brief adjudicative proceeding—Procedure. (1) A brief adjudicative proceeding may be presided over by the chair, or a member of the board designated by the chair.

(2) (~~When a violation is alleged, before taking action,~~) The executive director ((shall)) will send the ((alleged violator)) respondent notice, which ((shall)) must include:

(a) The determination of reasonable cause and the investigative report;

(b) The maximum amount of the penalty and costs which can be imposed at the hearing; and

(c) (~~Person's~~) The respondent's right to respond, within (~~twenty~~) 20 days, either in writing or in person to explain (~~his/her~~) the respondent's view of the matter.

(3) At the time of the hearing, if the presiding officer believes alleged violations no longer meet the criteria in WAC 292-100-180, the presiding officer (~~shall~~) must immediately adjourn the brief adjudicative proceeding and direct the matter to be scheduled for a (~~public~~) hearing by the full board and/or an administrative law judge.

(4) (~~At the time any unfavorable action is taken,~~) After the brief adjudicative proceeding, the presiding officer (~~shall~~) must serve upon each party a written statement describing the violation, the reasons for the decision, the penalty and costs imposed and their right to request review by the board.

(5) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order (~~shall~~) will be the final order.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

WAC 292-100-200 Brief adjudicative proceeding—Administrative review procedures. (1) The board will conduct a review of the initial order upon the written or oral request of a party if the board receives the request within (~~twenty~~) 20 days after the service of the initial order.

(2) If the parties have not requested review, the board may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review (~~shall~~) must be in writing stating the findings made, and the reasons for the decision, and notice that judicial review is available. The order on review (~~shall~~) must be entered within (~~twenty-one~~) 21 days after the date of the initial order or of the request for review, whichever is later.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

WAC 292-100-210 Reconsideration of final orders. (1) Within ~~((ten))~~ 10 days of the service of a final order, any party may file a petition for reconsideration ~~((as provided in RCW 34.05.470.~~

~~(2) Any party may make a motion for reconsideration of a final order of the board as provided in RCW 34.05.470. The request for reconsideration shall be filed at the office of the board and served on the parties no later than ten days after service of the final order. A request or motion for reconsideration shall specify the grounds therefor.~~

~~(3)) stating the specific grounds upon which relief is requested. The petition for review must be filed at the office of the board and served on the parties.~~

(2) Any party may respond to a ~~((request))~~ petition for reconsideration. The response is due no later than ~~((ten))~~ 10 days after the party is served with the request.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 292-100-220 Effective date.