

# Chapter 246-10 WAC

## ADMINISTRATIVE PROCEDURE—ADJUDICATIVE PROCEEDINGS

### WAC

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#### SECTION I PRELIMINARY MATTERS

**WAC 246-10-101 Application of chapter.** (1) This chapter shall apply to adjudicative proceedings authorized to be conducted under the authority of the department of health.

(2) This chapter applies to adjudicative proceedings begun on or after the effective date of this chapter in programs administered by the department of health. For purposes of this section, "begun" shall mean the receipt by the appropriate office of an application for an adjudicative proceeding. These rules shall be the exclusive rules governing adjudicative proceedings under the jurisdiction of the department.

(3) To the extent that these rules differ by inclusion, deletion, or content from the model rules adopted by the chief administrative law judge pursuant to RCW 34.05.250, this chapter shall prevail in order to provide a process consistent with the organization of the department.

(4) Where a provision of this chapter conflicts with another chapter of this title, the provision of this chapter shall prevail.

(5) Where a provision of this chapter conflicts with a provision of the Revised Code of Washington, the statute shall prevail.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-101, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-102 Definitions.** As used in these rules of practice and procedure, the following terms shall have the meaning set forth in this section unless the context clearly indicates otherwise. Other terms shall have their ordinary meaning unless defined elsewhere in this chapter.

"Adjudicative clerk office" shall mean the unit with responsibility for: Docketing; service of orders; and maintaining custody of the adjudicative proceeding record, whose address is:

Department of Health  
Adjudicative Clerk Office  
310 Israel Rd. S.E.

P.O. Box 47879  
Olympia, WA 98504-7879

"Adjudicative proceeding" or "hearing" shall mean a proceeding required by statute or constitutional right and conducted under the rules of this chapter, which provides an opportunity to be heard by the department prior to the entry of a final order under this chapter.

"Brief adjudicative proceeding" shall mean an adjudicative proceeding or hearing, the scope or conduct of which is limited as provided in this chapter.

"Department" shall mean the Washington state department of health and, where appropriate, the secretary of the Washington state department of health or the secretary's designee.

"Docket" or "docketing" shall mean the list or calendar of causes set to be heard at a specified time, prepared by the adjudicative clerk office for the use of the department.

"Filing" shall mean receipt by the adjudicative clerk office.

"Initiating document" shall mean a written agency document which initiates action against a license holder or applicant for license or recipient of benefits and which creates the right to an adjudicative proceeding. It may be entitled a statement of charges, notice of intent to deny, order, or by any other designation indicating the action or proposed action to be taken.

"License" shall have the meaning set forth in RCW 34.05.010, and includes any license, certification, registration, permit, approval, or any similar form of authorization required by law to be obtained from the department.

"Office of professional standards" shall mean the unit responsible for conducting adjudicative proceedings.

"Presiding officer" shall mean the person who is assigned to conduct an adjudicative proceeding. The presiding officer may be an employee of the department who is authorized to issue a final decision as designee of the secretary, or an administrative law judge employed by the office of administrative hearings.

"Presiding officer for brief adjudicative proceedings" shall mean an employee of the department who is authorized to conduct brief adjudicative proceedings.

"Program" shall mean the administrative unit within the department responsible for implementation of a particular statute or rule.

"Prompt adjudicative proceeding" or "prompt hearing" shall mean a hearing conducted at the request of the respondent following summary action taken in accord with this chapter.

"Protective order" shall mean an order issued under this chapter which limits the use of, access to, or disclosure of information or evidence.

"Recipient of benefits" shall mean an individual who has qualified for benefits administered by the department.

"Respondent" shall mean a person eligible to request an adjudicative proceeding in a program under the jurisdiction of the department who is named in an initiating document.

"Secretary" shall mean the secretary of the department of health or his/her designee.

"Summary action" shall mean an agency action to address an immediate danger to the public health, safety, or

welfare and shall include, but not be limited to, a cease and desist order, an order of summary suspension, and an order of summary restriction of a license.

[Statutory Authority: RCW 18.130.135 and 43.70.040. WSR 09-03-089, § 246-10-102, filed 1/20/09, effective 2/20/09. Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-102, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-102, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-102, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-103 Signature authority.** (1) A person designated by the program shall sign all initiating documents issued under this chapter.

(2) The presiding officer shall sign all orders issued under this chapter.

(3) Authority to sign shall be indicated by designation of the title of the person signing and shall not require any other affirmation, affidavit, or allegation.

[Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-103, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-103, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-104 Appearance of parties.** If a respondent requests an adjudicative proceeding to contest the action, that party shall appear at all stages of the proceeding except as otherwise provided in this section.

(1) If the respondent is represented as provided in this chapter, the respondent shall appear personally at the hearing and at any scheduled settlement conference but need not appear at the prehearing conference or at presentation of motions.

(2) Parties may be represented by counsel at all proceedings.

(3) The respondent may appear by telephone at any portion of the proceedings conducted by telephone, in the discretion of the presiding officer following reasonable advance notice to the presiding officer and to the opposing party.

(4) The requirement of personal appearance may be waived for good cause in the discretion of the presiding officer.

(5) Failure to appear as provided in this chapter shall be grounds for taking final action by default.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-104, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-105 Computation of time.** (1) When computing a period of time prescribed or allowed by an applicable statute or rule, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

(2) The last day of the computed period shall be included unless the last day is a Saturday, Sunday, or legal holiday.

(3) When the last day is a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(4) When the period of time prescribed or allowed is seven days or less, any intermediate Saturday, Sunday, and legal holiday shall be excluded from the computation.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-105, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-106 Notarization, certification, and authentication.** (1) A person's sworn written statement, declaration, verification, certificate, oath, or affidavit may be authenticated by an unsworn written statement which is executed in substantially the following form:

I certify (or declare) under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

\_\_\_\_\_  
(Date and Place)

\_\_\_\_\_  
(Signature)

(2) Documents or records may be authenticated by a certification, as provided in subsection (1) of this section, from the custodian of the records or other qualified person that the documents or records are what they purport to be.

(3) Signature of any attorney shall be accompanied by and authenticated by that attorney's Washington State Bar Association number.

(4) Documents prepared and submitted by a party who is not represented by an attorney shall be signed and dated by that party and shall include that party's current address.

(5) Signature by a party or an attorney on a document shall constitute a certificate by the party or attorney that he/she has read the document, believes there are grounds to support it, and has not submitted the document for delay, harassment, or needless increase in the cost of a proceeding.

(6) Compliance with certification requirements of subsections (1) and (2) of this section creates a rebuttable presumption that a document is authentic.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-106, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-107 Persons who may request adjudicative proceedings.** The persons indicated may request an adjudicative proceeding under this chapter.

(1)(a) With respect to the denial of applications made under WAC 246-290-100, 246-290-110, 246-290-120, 246-290-130, 246-290-140, 246-291-100, 246-291-110, 246-291-120, 246-291-130, 246-291-140, and 246-295-040, the denied applicant may request an adjudicative proceeding.

(b) A person whose application for the approval of a new public water system is denied under WAC 246-293-190, a purveyor whose license is adversely affected by a departmental decision under WAC 246-293-190 or the county legislative authority having jurisdiction in the area affected by the decision may request an adjudicative proceeding under this chapter.

(c) A purveyor affected by the decision of the department under WAC 246-293-430 or the county legislative authority having jurisdiction in the area may request an adjudicative proceeding with respect to a decision made under WAC 246-293-430.

(d) A person upon whom a civil penalty is imposed under RCW 70.119A.040 may request an adjudicative proceeding.

(2) With respect to all other matters involving the issuance, denial of, or adverse action against, a license, the applicant or licensee may request an adjudicative proceeding.

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(3) With respect to matters involving receipt of benefits or application therefor, the recipient of or applicant for the benefits may request an adjudicative proceeding.

(4) With respect to an application for approval of a school or curriculum, the person or authority that applied for such approval may request an adjudicative proceeding.

(5) With respect to the department's final threshold determination that an environmental impact statement (EIS) is or is not necessary and with respect to the adequacy of a final EIS, any person may request an adjudicative proceeding who:

(a) Is seeking to protect an interest within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question; and

(b) Will be specifically and perceptibly harmed by the proposed action.

(6) Any application for an adjudicative proceeding that on its face demonstrates that the person making the application does not have standing under this rule may be summarily dismissed by entry of a decision pursuant to RCW 34.05.416. A motion to dismiss a matter for lack of standing may be made at any time prior to entry of the final order.

[Statutory Authority: RCW 18.130.050 and 43.70.040. WSR 96-21-027, § 246-10-107, filed 10/7/96, effective 11/7/96. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-107, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-107, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-108 Representation.** (1) Persons requesting an adjudicative proceeding may be represented subject to the following conditions:

(a) A person requesting an adjudicative proceeding may represent himself/herself or may be represented by an attorney who has complied with the admission to practice rules of the supreme court of the state of Washington;

(b) Every attorney representing a person requesting an adjudicative proceeding shall file a notice of appearance with the adjudicative clerk office upon commencing representation, and shall file a notice of withdrawal of counsel with the adjudicative clerk office upon terminating representation.

(c) No person requesting an adjudicative proceeding may be represented in an adjudicative proceeding by an employee of the department.

(2) No current or former employee of the department may appear as an expert, character witness, or representative of any party other than the state of Washington if he/she took an active part in investigating or evaluating the case or represented the agency in the matter, unless written permission of the secretary is granted. No current or former member of the attorney general's office staff who participated personally and substantially in investigating or evaluating the matter at issue while so employed may represent a party or otherwise participate in a related proceeding without first having obtained the written consent of the attorney general's office.

[Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-108, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-108, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-109 Service and filing.** (1) A party filing a pleading, brief, or paper other than an initiating document or application for an adjudicative proceeding as required or permitted by these rules, shall serve a copy of the paper upon

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the opposing party or any designated representative of the opposing party prior to or simultaneous with filing.

(2) Unless otherwise provided by law, filing and service shall be made by personal service; by first class, registered, or certified mail; or by electronic telefacsimile transmission (fax) where copies are mailed simultaneously.

(3) Filing shall be complete upon actual receipt during normal business hours at the adjudicative clerk office.

(4) Service shall be complete when personal service is made; or mail is properly stamped, addressed, and deposited in the United States mail; or fax transmission is completed and copies are deposited in the United States mail properly stamped and addressed.

(5) Proof of service shall consist of filing as required by these rules, together with one of the following:

(a) An acknowledgement of service;

(b) A certificate of service including the date the papers were served, the parties upon whom served, the signature of the serving party, and a statement that service was completed by:

(i) Personal service; or

(ii) Mailing in the United States mail a copy properly addressed with postage and fees prepaid to each party and each designated representative.

(6) For the purpose of service on a licensee or a person requesting an adjudicative proceeding, service shall be made at the last known address provided to the department in accordance with WAC 246-01-100, unless the program has actual knowledge of a different correct address for the person being served.

[Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-109, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-109, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-109, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-110 Jurisdiction.** (1) The department has jurisdiction over all licenses issued by the department and over all holders of and applicants for licenses. Such jurisdiction is retained even if an applicant requests to withdraw the application, or a licensee surrenders or fails to renew a license.

(2) The department has jurisdiction over unlicensed practice of any activity for which a license is required unless otherwise prohibited by law.

[Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-110, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-110, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-111 Telephone proceedings.** (1) The presiding officer may conduct all or part of the proceedings or permit a party or witness to appear by telephone or other electronic means if each participant in the proceedings has an opportunity to participate in, hear, and, if technically and economically feasible, see the entire proceeding while it is taking place. Cost of such appearance may be assessed to the party so appearing or on whose behalf the witness appears.

(2) If all or part of the proceedings is conducted as provided in subsection (1) of this section, the parties shall file and serve copies of all documentary evidence no less than three days prior to the proceeding. The presiding officer may, for good cause, allow exceptions to this requirement.

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[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-111, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-112 Hearing location.** The presiding officer shall designate sites for the conduct of proceedings taking into account accessibility, efficiency, and economy.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-112, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-113 Good faith requirement.** Good faith shall be the standard for compliance with these rules. Failure to make a good faith effort to comply with these rules shall be grounds for sanctions as provided in this chapter.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-113, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-114 Public records.** (1) All papers, exhibits, transcripts, and other materials required by or submitted in accordance with this chapter shall be considered public records.

(2) Release of information upon request for public records shall be subject to the following limitations:

(a) Release of health care information shall comply with chapter 70.02 RCW and rules promulgated thereunder;

(b) Protective orders issued pursuant to WAC 246-10-405 shall prevail; and

(c) Chapter 42.17 RCW shall govern the release of records.

[Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-114, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-114, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-115 Expenses and witness fees.** (1) Fees and expenses shall be paid at the following rates to witnesses appearing under subpoena by the party requesting the appearance:

(a) Fees shall be paid at the daily rate established for jurors in district court of Thurston County; and

(b) Expenses shall be paid at the rate established for employees of the state of Washington, or as otherwise required by law.

(2) Fees for an expert witness shall be negotiated by and paid by the party requesting services of the expert.

(3) All expenses incurred in connection with proceedings under this chapter shall be paid by the party incurring the expense.

(4) The department shall pay expenses associated with:

(a) The facility in which proceedings are conducted; and

(b) Recording of the proceedings.

(5) Expenses related to preparation and distribution of the transcript of proceedings shall be paid by the party filing a motion or request for review of an initial order or petition for reconsideration, appealing a final order, or otherwise requesting the transcript.

[Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-115, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-115, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-116 Immunity.** The legislature has determined that persons who file complaints with or provide information to the department regarding health care practitioners

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licensed by the department are immune from civil liability, provided that such persons have acted in good faith. RCW 4.24.240 through 4.24.260, 18.130.170, 18.130.180, and 18.130.300 set forth the provisions under which immunity is granted.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-116, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-117 Official notice and agency expertise.** (1) Official notice may be taken as provided in RCW 34.05.452(5).

(2) The department, through its designated presiding officer, may use its expertise and specialized knowledge to evaluate and draw inferences from the evidence presented to it.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-117, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-118 Sanctions.** (1) Orders may include sanctions against either party.

(2) Grounds for sanctions may include:

(a) Failure to comply with these rules or orders of the presiding officer; and

(b) Willful interference with the progress of proceedings.

(3) Sanctions may include:

(a) Dismissal of the matter;

(b) Proceeding in default; and

(c) Other sanctions as appropriate.

(4) The order shall state the grounds upon which any sanctions are imposed.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-118, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-119 Intervention.** (1) The presiding officer may grant a petition for intervention pursuant to RCW 34.05.443.

(2) A request to intervene shall be handled as a prehearing motion and shall be subject to the dates contained in the scheduling order. Within the sound exercise of discretion, the presiding officer may allow intervention if:

(a) The intervenor is not a party to the matter but has a substantial interest in outcome of the matter and the interest of the intervenor is not adequately represented by a party, or other good cause exists; and

(b) Any representative of the intervenor meets the requirements of WAC 246-10-108.

(3) A person shall not be allowed to intervene if that person had notice of the agency's decision and, upon timely application, would have been able to appear as a party in the matter in which intervention is sought, but failed to make such timely application.

(4) If intervention is granted, the intervenor shall be subject to these rules on the same basis as the other parties to the proceeding, unless otherwise limited in the order granting intervention.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-119, filed 6/3/93, effective 7/4/93.]

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**WAC 246-10-120 Form of pleadings and orders.** (1) Pleadings, orders, and other papers filed, served, or entered under this chapter shall be:

(a) Captioned with the name of the state of Washington, department of health and the title of the proceeding; and

(b) Signed by the person filing, serving, or entering the document. When that person is an attorney representing a party, the signature block shall include the attorney's Washington State Bar Association number.

(2) All orders shall comply with RCW 34.05.461 and the requirements of this chapter.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-120, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-121 Notice to limited-English-speaking parties.** When the program or the adjudicative clerk office is notified or otherwise made aware that a limited-English-speaking person is a party in an adjudicative proceeding, all notices concerning the hearing, including notices of hearing, continuance, and dismissal, shall either be in the primary language of the party or shall include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and, if necessary, responding to the notice.

[Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-121, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-121, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-122 Interpreters.** (1) A "hearing impaired person" means a person who, because of a hearing impairment or speech defect, cannot readily understand or communicate in spoken language. A "hearing impaired person" includes a person who is deaf, deaf and blind, or hard of hearing.

(2) A "limited-English-speaking person" means a person who because of a non-English-speaking cultural background cannot readily speak or understand the English language.

(3) If a hearing impaired person or a limited-English-speaking person is involved in an adjudicative proceeding and a need for an interpreter is made known to the adjudicative clerk office, the presiding officer shall appoint an interpreter who is acceptable to the parties or, if the parties are unable to agree on an interpreter, the presiding officer shall select and appoint an interpreter.

(4) Before beginning to interpret, an interpreter shall take an oath or make affirmation that:

(a) A true interpretation shall be made to the impaired person of all the proceedings in a language or in a manner the impaired person understands; and

(b) The interpreter shall repeat the statements of the impaired person to the presiding officer, in the English language, to the best of the interpreter's skill and judgment.

(5) When an interpreter is used in a proceeding:

(a) The interpreter shall translate all statements made by other participants in the proceeding;

(b) The presiding officer shall ensure sufficient extra time is provided to permit translation; and

(c) The presiding officer shall ensure that the interpreter translates the entire proceeding to the hearing impaired person or limited-English-speaking person to the extent that the

person has the same opportunity to understand the statements made as would a person not requiring an interpreter.

(6) An interpreter appointed under this section shall be entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The program shall pay the interpreter fee and expenses incurred for interpreters for license holders, applicants, or recipients of benefits. The party on whose behalf a witness requiring an interpreter appears shall pay for interpreter services for that witness.

(7) All proceedings shall be conducted consistent with chapters 2.42 and 2.43 RCW.

[Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-122, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-122, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-123 Subpoenas.** (1) The presiding officer, the secretary or designee, and attorneys for parties may issue subpoenas to residents of the state of Washington, to license holders and applicants for license, and to other persons or entities subject to jurisdiction under RCW 4.28.185.

(2) The presiding officer shall issue subpoenas pursuant to RCW 34.05.446(1) for parties not represented by counsel upon request of the party and upon a showing of relevance and reasonable scope of the testimony or evidence sought. Requests for issuance of subpoenas must be made in writing to the presiding officer stating the relevance and the scope of testimony or evidence sought.

(3) The person on whose behalf the subpoena is issued shall pay any witness fees and expenses as provided in WAC 246-10-115 or costs for interpreters for such witnesses as provided in WAC 246-10-122.

(4) Attendance of persons subpoenaed and production of evidence may be required at any designated place in the state of Washington.

(5) Every subpoena shall:

- (a) Comply with WAC 246-10-120;
- (b) Identify the party causing issuance of the subpoena;
- (c) State the title of the proceeding; and
- (d) Command the person to whom the subpoena is directed to attend and give testimony and/or produce designated items under the person's control at a specified time and place.

(6) A subpoena may be served by any suitable person eighteen years of age or older by:

(a) Giving a copy to the person to whom the subpoena is addressed;

(b) Leaving a copy at the residence of the person to whom the subpoena is addressed with a person of suitable age and discretion;

(c) Sending a copy by mail to the current address on file with the department if the person is licensed by the department or has filed an application for a license with the department; or

(d) Sending a copy by certified mail with proof of receipt if the person is neither licensed by nor has applied for a license with the department.

(7) Proof of service may be made by:

(a) Affidavit of personal service;

(b) Certification by the person mailing the subpoena to a license holder or applicant; or

(c) Return or acknowledgment showing receipt by the person subpoenaed or his/her representative. Any person accepting certified or registered mail at the last known address of the person subpoenaed shall be considered an authorized representative.

(8) The presiding officer, upon motion made promptly and before the time specified for compliance in the subpoena, may:

(a) Quash or modify the subpoena if the subpoena is unreasonable or requires evidence not relevant to any matter at issue; or

(b) Condition denial of the motion upon just and reasonable conditions, including advancement of the reasonable cost by the person on whose behalf the subpoena is issued of producing the books, documents, or tangible things; or

(c) Issue a protective order under RCW 34.05.446.

(9) The department may seek enforcement of a subpoena under RCW 34.05.588(1) or proceed in default pursuant to WAC 246-10-204.

[Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-123, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-123, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-124 Preliminary requirements.** (1) An applicant for an initial license or renewal of an existing license shall not be entitled to an adjudicative proceeding unless the applicant has submitted:

(a) A completed initial application or renewal application, as appropriate; and

(b) All applicable application, examination, or renewal fees payable in connection with such application or license.

(2) An aggrieved applicant shall not be entitled to an adjudicative proceeding with respect to the denial of an application submitted under WAC 246-290-100, 246-290-110, 246-290-120, 246-290-130, 246-290-140, 246-291-100, 246-291-110, 246-291-120, 246-291-130, 246-291-140, or 246-295-040, unless the applicant has submitted to the district engineer or other departmental employee responsible for reviewing the submittal, a certification that, to the best of the applicant's knowledge and belief, the submittal is complete and demonstrates compliance with the state's drinking water regulations. Certification with respect to water system plans, project reports, construction documents and other submittals requiring preparational review by a licensed professional engineer shall be provided on behalf of the applicant by the licensed professional engineer preparing or reviewing the submittal. Failure to comply with these preliminary requirements shall result in the denial of the application for adjudicative proceeding without further review.

(3) An affected party shall not be entitled to an adjudicative proceeding with respect to a decision made under WAC 246-293-190 unless:

(a) Except with respect to a county legislative authority, the applicant shall have complied with all preliminary requirements established under the coordinated water system plan approved by the county legislative authority and the department or, if the critical water supply service area's external boundaries have been approved but a coordinated water system plan has not been approved and adopted, then with any interim requirements imposed by the county legislative authority; and

(b) Within sixty days of the department's receipt of the request for an adjudicative proceeding, the applicant submits copies of the complete record of all proceedings conducted under the applicable coordinated water system plan or interim requirements. If such proceedings were taped or otherwise recorded, the record submitted to the department shall include a transcript of the hearing or hearings which shall be prepared and certified as correct by a registered professional court reporter.

(c) Failure to comply with the preliminary requirements outlined herein shall result in a denial of the hearing application without further review.

(4) WAC 246-293-430.

(a) An adjudicative proceeding shall not be conducted with respect to a departmental decision made under WAC 246-293-430 unless, within sixty days of the department's receipt of the request for an adjudicative proceeding, the applicant has, at his or her own expense, submitted a transcript of the hearing conducted under WAC 246-293-430 from tapes or other record of the hearing which the department shall make available for that purpose. The transcript shall be prepared and certified as correct by a registered professional court reporter. Failure to comply with preliminary requirements established under this section shall result in the dismissal of the hearing application without further review.

(b) If a request for an adjudicative proceeding has been timely filed under this section and a transcript of the record has been timely submitted, the department shall promptly provide the presiding officer with copies of all documents and exhibits admitted at the hearing conducted under WAC 246-293-430.

(c) The departmental employee responsible for the department's decision under WAC 246-293-430 shall provide a copy of his or her decision to the presiding officer and may submit documents or evidence not made part of the record at the hearing conducted under WAC 246-293-430. Copies of all such documents shall be provided to all other parties involved in the proceeding.

[Statutory Authority: RCW 18.130.050 and 43.70.040. WSR 96-21-027, § 246-10-124, filed 10/7/96, effective 11/7/96. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-124, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-124, filed 6/3/93, effective 7/4/93.]

## SECTION II INITIATING ACTIONS

**WAC 246-10-201 Form and content of initiating documents.** (1) Initiating documents shall include a clear and concise statement of the:

- (a) Identity and authority of the person issuing the document;
- (b) Factual basis for the action or proposed action set forth in the document;
- (c) Statutes and rules alleged to be at issue;
- (d) Identity of the party against whom the action is taken or proposed to be taken;
- (e) Action or proposed action or penalties, including the statutory or rule authority for those actions or penalties;
- (f) Signature of the person issuing the document and the date signed; and

(9/18/13)

(g) Method by which an adjudicative proceeding may be requested.

(2) Initiating documents shall be accompanied by the following documents:

(a) Notice that the respondent may defend against the action or proposed action; and

(b) Form for requesting adjudicative proceeding.

(3) Initiating documents shall be served as described in WAC 246-10-109.

[Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-201, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-201, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-202 Amendment of initiating documents.** (1) Prior to the hearing date, initiating documents may be amended subject to the following conditions:

(a) Amended initiating documents shall meet the requirements of WAC 246-10-201(1);

(b) Amended initiating documents shall be accompanied by the documents described in WAC 246-10-201(2);

(c) Whenever amended initiating documents are issued, a new interval for response will begin, as described in WAC 246-10-203, unless the respondent requests the time periods set by the original initiating document; and

(d) Issuance of amended initiating documents ends all obligations of the parties under the prior initiating documents.

(2) On the hearing date, the initiating documents may be amended subject to the following conditions:

(a) The documents may be amended upon motion of the state;

(b) The documents may not be amended without the approval of the presiding officer; and

(c) Upon motion of a party or upon his/her own initiative, the presiding officer may grant a continuance on all or part of the matter if necessary to afford the respondent an opportunity to prepare a defense to the amended documents.

[Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-202, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-202, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-203 Request for adjudicative proceeding.** A respondent may respond to an initiating document by filing an application for an adjudicative proceeding or by waiving the opportunity for adjudicative proceeding.

(1) If the respondent wishes to file an application for an adjudicative proceeding:

(a) An application for adjudicative proceeding must be filed in accordance with the following time periods:

(i) For matters under chapter 18.130 RCW, the Uniform Disciplinary Act, within twenty days of service of the initiating documents unless an extension has been granted as provided in subsection (3) of this section; and

(ii) For all other matters in which the program proposes to deny, suspend, revoke or modify a license or proposes to impose a civil fine, within twenty-eight days of receipt of the initiating documents, unless otherwise provided by statute; and

(iii) For all other matters, within twenty days of service of the initiating documents, unless otherwise provided by statute.

(b) The application for adjudicative proceeding shall be made either on the Request for Adjudicative Proceeding Form accompanying the initiating documents or by a written document containing at least the following information:

(i) Name and address of the party requesting an adjudicative proceeding;

(ii) Name and address of the attorney representing the party, if any;

(iii) Identification of the portion or portions of the initiating documents contested;

(iv) Summary of the party's position on the portion or portions contested;

(v) Statement of the party's standing to request an adjudicative proceeding under WAC 246-10-107; and

(vi) For matters not under chapter 18.130 RCW and in which the department proposes to deny, suspend, revoke or modify a license or proposes to impose a civil fine, the application shall include a copy of the initiating document containing the adverse notice.

(c) By filing a request for adjudicative proceeding, the responding party agrees to appear personally at the adjudicative proceeding or, if otherwise approved by the presiding officer, by telephone, unless appearance is waived as authorized in WAC 246-10-104(4).

(d) The application for adjudicative proceeding shall contain a response to the initiating documents, indicating whether each charge is admitted, denied, or not contested, and responses shall be subject to the following conditions:

(i) Once admitted or not contested, an allegation may not be denied; and

(ii) An allegation denied or not contested may later be admitted.

(e) When an allegation is admitted or not contested, it shall be conclusively deemed to be true for all further proceedings. No proof of the allegation need be submitted.

(f) The application for adjudicative proceeding shall specify the representative, if any, designated pursuant to WAC 246-10-108 and any request for interpreter. The responding party shall amend the name of the representative and need for interpreter immediately if circumstances change prior to the hearing.

(g) The application for adjudicative proceeding shall be filed at the adjudicative clerk office at the address specified in WAC 246-10-102.

(2) A respondent may waive an adjudicative proceeding and submit a written statement and other documents in defense or in mitigation of the charges. Such waiver and documents shall be filed:

(a) In accordance with the timelines in subsection (1)(a) of this section; and

(b) At the address indicated in subsection (1)(g) of this section.

(3) For matters under RCW 18.130.180, if the twenty-day limit for filing an application for adjudicative proceeding results in a hardship to the respondent, the respondent may request an extension of not more than sixty days upon a showing of good cause.

(a) The request for extension shall be filed within the twenty day limit and shall include:

(i) The reason for the request and the number of days for which the extension is requested; and

(ii) Documentation of the circumstances creating the hardship.

(b) The request shall be granted for a period not to exceed sixty days upon showing of:

(i) Illness of the respondent; or

(ii) Absence of the respondent from the county of residence or employment; or

(iii) Emergency in the respondent's family; or

(iv) Other good cause as determined by the presiding officer.

(c) If a request for extension is denied, the respondent shall have ten days from service of the order denying the extension or twenty days from service of the initiating documents, whichever is longer, to file an application for adjudicative proceeding.

[Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-203, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-203, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-203, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-204 Default.** (1) If a party fails to respond to initiating documents according to WAC 246-10-203, that party will be deemed to have waived the right to a hearing, and the secretary shall enter a final order without further contact with that party.

(2) If a party requests an adjudicative proceeding but fails to appear, without leave to do so, at a scheduled prehearing conference, the presiding officer may issue an order of default. The order shall include notice of opportunity to request that the default order be vacated pursuant to RCW 34.05.440(3). Unless vacated, a default order under this subsection shall be grounds for the presiding officer to proceed to decide the matter in the absence of the respondent and without additional notice to the respondent and to issue a final order.

(3) If a party requests an adjudicative proceeding but fails to appear at the hearing, the presiding officer may issue an order of default in the same manner as subsection (2) of this section, or may proceed to hear the matter in the absence of the party and issue a final order.

(4) Final orders entered under this section shall meet the requirements of WAC 246-10-702 and shall contain:

(a) Findings of fact and conclusions of law based upon prima facie proof of the allegations contained in the initiating documents;

(b) Proof of service of or a good faith attempt to serve initiating documents and appropriate notices;

(c) A finding that there is no reason to believe that the party in default is in active military service;

(d) The penalties or conditions imposed by the order; and

(e) Notice of the opportunity to request reconsideration pursuant to RCW 34.05.470.

(5) Final and default orders entered under this section shall be served upon the parties in accordance with WAC 246-10-109.

(6) Notwithstanding subsections (1) through (5) of this section, if a party fails to respond to an initiating document issued consistent with the requirements of RCW 43.70.095 or 43.70.115, the initiating document shall become a final order upon its effective date unless the initiating document otherwise provides.



[Statutory Authority: RCW 18.130.050 and 43.70.040. WSR 96-21-027, § 246-10-204, filed 10/7/96, effective 11/7/96. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-204, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-204, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-205 Scheduling orders.** (1) Within thirty days after receipt of the application for adjudicative proceeding, the office of professional standards, or other designee of the secretary, shall:

(a) Approve the application for full adjudicative procedure and issue and serve on the parties a scheduling order specifying the course of the proceeding; or

(b) Approve the application for a brief adjudicative procedure and issue and serve a notice of the date by which any additional written materials are to be submitted for consideration; or

(c) Deny the application according to RCW 34.05.416.

(2) For matters under chapter 18.130 RCW, the scheduling order shall contain:

(a) The date, time, and place of a settlement conference, a prehearing conference, and the hearing;

(b) The deadlines for completion of discovery and submission of prehearing motions; and

(c) The name, address, and telephone number of the assistant attorney general or other department representative who will represent the state in the matter.

(3) The scheduling order may be modified by order of the presiding officer upon his/her own initiative or upon motion of a party. Any request for a change in the scheduling order shall be made by motion as provided in WAC 246-10-403.

(4) The presiding officer may waive establishing dates for the settlement conference, completion of discovery, submission of prehearing motions, and the prehearing conference, if, in the discretion of the presiding officer, those proceedings are not necessary or appropriate in a particular matter or type of case. However, either party may request by motion to the presiding officer that any or all of the dates be set.

(5) Dates contained in the scheduling order may be changed by the adjudicative clerk office upon written request of either party made within fifteen days of issuance of the first scheduling order. All other changes must be made by motion pursuant to WAC 246-10-403.

[Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-205, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-205, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-205, filed 6/3/93, effective 7/4/93.]

### SECTION III

#### EMERGENCY ADJUDICATIVE PROCEEDINGS

**WAC 246-10-301 Conduct of emergency adjudicative proceedings.** (1) Summary action may be taken only after a review by the secretary or designee of such evidence, including affidavits, if appropriate, to establish:

(a) The existence of an immediate danger to the public health, safety, or welfare;

(b) The department's ability to address the danger through a summary action; and

(c) The summary action necessary to address the danger.

(9/18/13)

(2) No notice to any person potentially affected by a summary action shall be required prior to issuance of a summary action.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-301, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-302 Effect of summary action.** (1) Summary action takes effect upon entry of the order. Entry shall be the date of signature unless otherwise specified.

(2) No person shall be required to comply with a summary action until service has been made or the person has knowledge of the order, whichever occurs first.

(3) A summary action shall be served as promptly as practicable, in accordance with WAC 246-10-109.

(4) A summary action shall not be subject to the post-hearing process provided in WAC 246-10-701, et seq., but a summary action may be appealed to superior court as provided by law.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-302, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-303 Form and content of summary actions.** (1) A summary action shall be entered in the form of an order containing findings of fact, conclusions of law, and the summary action imposed, as well as a statement of policy reasons for the decision.

(2) A summary action imposed by emergency adjudicative proceeding shall be limited to those actions necessary to alleviate an immediate danger to the public health, safety, or welfare.

(3) Initiating documents, and all other documents required by WAC 246-10-201, shall accompany a summary action order when served.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-303, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-304 Adjudicative proceedings upon summary action.** (1) Except as identified in subsection (2) of this section, following a summary action taken by the department, the respondent may:

(a) Request a prompt adjudicative proceeding conducted in accordance with this chapter; or

(b) Waive the prompt adjudicative proceeding and request a regularly scheduled adjudicative proceeding conducted in accordance with this chapter; or

(c) Waive the right to an adjudicative proceeding and submit a written statement to be considered prior to the entry of the final order; or

(d) Waive the opportunity to be heard.

(2) For summary actions to suspend, restrict or limit the practice of a license holder of a secretary profession, the respondent may:

(a) Request a hearing as provided in RCW 18.130.090 and request a show cause hearing conducted in accordance with RCW 18.130.135 and WAC 246-10-307; or

(b) Request a regularly scheduled adjudicative proceeding conducted in accordance with this chapter; or

(c) Waive the right to an adjudicative proceeding and submit a written statement to be considered prior to the entry of the final order; or

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(d) Waive the opportunity to be heard.

(3) In this section, "secretary profession" means a health care profession for which the secretary of health is the disciplining authority under RCW 18.130.040 (2)(a).

[Statutory Authority: RCW 18.130.135 and 43.70.040. WSR 09-03-089, § 246-10-304, filed 1/20/09, effective 2/20/09. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-304, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-304, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-305 Opportunity for prompt adjudicative proceeding.** Except as provided in WAC 246-10-304(2), any respondent affected by a summary action shall be provided the opportunity to request a prompt adjudicative proceeding.

(1) Notice of the opportunity shall be provided in the notice of opportunity to defend against the allegations that are the basis for the summary action. The form for requesting an adjudicative proceeding shall include the option of requesting a prompt adjudicative proceeding.

(2) Any respondent affected by a summary action may request a prompt adjudicative proceeding, may elect a regularly scheduled adjudicative proceeding instead of a prompt adjudicative proceeding, or may waive the opportunity for adjudicative proceeding in accordance with WAC 246-10-203.

(3) Any request for a prompt adjudicative proceeding must be filed within ten days of the service of the summary action.

(4) If requested by the respondent, a prompt adjudicative proceeding shall be conducted within twenty days of service of a summary action.

(5) Regardless of whether a prompt adjudicative proceeding is requested, the matter shall be resolved as quickly as feasible in accordance with all other applicable rules.

[Statutory Authority: RCW 18.130.135 and 43.70.040. WSR 09-03-089, § 246-10-305, filed 1/20/09, effective 2/20/09. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-305, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-305, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-306 Proceedings prior to prompt adjudicative proceeding.** A settlement conference may be requested, a settlement may be offered, and a prehearing conference may be conducted prior to a prompt adjudicative proceeding. Prehearing proceedings shall not delay a prompt adjudicative proceeding except by mutual agreement of the parties.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-306, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-307 Show cause hearing.** (1) A license holder's request for a show cause hearing must be filed within twenty days of the service of the summary action. A license holder must also respond to the statement of charges by requesting a hearing or an extension of time as provided in RCW 18.130.090.

(2) The show cause hearing will be conducted within fourteen days of the license holder filing the show cause hearing request.

(3) By noon on the fourth calendar day after filing the show cause hearing request, the license holder must file, and deliver a copy to the department's attorney, any documents or

written testimony to be admitted into evidence at the show cause hearing.

(4) By noon on the eighth calendar day after the date the show cause hearing request was filed, but no less than the close of business two business days before the show cause hearing, the department must file, and deliver a copy to the license holder's attorney or to the license holder if not represented by counsel, any rebuttal documents or written testimony to be admitted into evidence at the show cause hearing.

(5) In reviewing the order of summary action, the presiding officer will consider the statement of charges, the motions and documents supporting the request for summary action, the license holder's answer to the statement of charges, any documentary evidence or written testimony presented by the license holder and department in rebuttal, and unless waived, the parties will be given an opportunity for oral argument.

(6) At the show cause hearing, the department has the burden of proving it is more probable than not that the license holder poses an immediate threat to the public health and safety.

(7) The presiding officer will issue an order and may overturn, uphold, or amend the summary suspension or restriction.

(8) Within forty-five days of a determination by the secretary to sustain the summary suspension or place restrictions on the license, the license holder may request a full hearing on the merits of the disciplining authority's decision to suspend or restrict the license. A full hearing must be provided within forty-five days of receipt of the request for a hearing, unless stipulated otherwise.

[Statutory Authority: RCW 18.130.135 and 43.70.040. WSR 09-03-089, § 246-10-307, filed 1/20/09, effective 2/20/09.]

## SECTION IV SETTLEMENT AND PREHEARING PROCEEDINGS

**WAC 246-10-401 Settlement conference.** (1) Following a request for an adjudicative proceeding, a settlement conference may be scheduled as provided in WAC 246-10-205. The parties shall be notified of the date, time, and place of the settlement conference.

(2) The purpose of the settlement conference shall be to attempt to reach agreement on the issues and on a proposed order to be entered. Any agreement of the parties is subject to final approval by the presiding officer.

(3) The respondent shall attend the settlement conference as scheduled and may also be represented as provided in WAC 246-10-108. Representatives of the department will also attend. Other persons may attend by agreement of the parties.

(4) Either party may bring documents or other materials to the settlement conference for the purpose of settlement negotiations. No testimony will be taken. No documents or information submitted at the settlement conference will be admitted at the adjudicative proceeding unless stipulated by the parties or otherwise admitted into evidence by the presiding officer.

(5) If a settlement offer has been made in writing to the respondent and it is signed and returned by the respondent to the adjudicative clerk office prior to the settlement conference, all subsequent dates set in the scheduling order are con-

tinued pending final review of the settlement by the presiding officer.

[Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-401, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-401, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-401, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-402 Discovery.** The parties are encouraged to exchange information and documents related to the case prior to the adjudicative proceeding. Formal discovery is obtained as follows:

(1) Methods, scope and limits:

(a) Parties may obtain discovery by production of records or things; deposition upon oral examination; requests for admission; or, if ordered by the presiding officer, written interrogatories.

(b) Unless otherwise limited by order of the presiding officer in accord with these rules, the scope of discovery shall be as follows:

(i) Parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter in the pending action. It is not grounds for objection that the information sought will be inadmissible at the adjudicative proceeding if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(ii) The frequency or extent of use of the discovery methods set forth in these rules shall be limited by the presiding officer if the presiding officer determines that:

(A) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive; or

(B) The party seeking discovery has had an ample opportunity by discovery to obtain the information sought; or

(C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, limitations of the parties' resources, and the importance of the issues at stake.

(iii) The presiding officer may limit discovery upon his or her own initiative after reasonable notice or pursuant to a motion submitted by a party.

(2) Production of records, documents or things:

(a) Upon written request of a party the opposing party shall identify experts and other witnesses to be called at a hearing and shall provide other information necessary to enable the party to conduct depositions of the witnesses.

(b) Any party may serve on any other party a request, which must be signed by the party or designated representative:

(i) To produce and permit the party making the request or designee to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of discovery and which are in the possession, custody or control of the party upon whom the request is served; or

(ii) To permit entry onto designated land or other property which is in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing or sampling the property or designated object or operation thereon which is within the scope of discovery.

(c) Any party who produces documents for inspection shall produce them as they are kept in the usual course of

business or may, if the parties agree, organize and label them to correspond with the categories in the request.

(d) The party upon whom a request is made may, by motion to the presiding officer, move for an order denying the request to produce or modifying the conditions of the request. Denial of the request or change in the conditions of the request shall be within the discretion of the presiding officer and shall be made by written order.

(3) Depositions may be taken subject to the following conditions:

(a) Within the United States or a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the state of Washington or of the place where the examination is held. A presiding officer may, in his or her discretion or following motion of a party, preside at the deposition. Within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice-consul or consular agent of the United States, or a person designated by the presiding officer or agreed upon by the parties by stipulation in writing filed with the office of professional standards. Except by stipulation, no deposition shall be taken before any person who is a party or a privy of a party, or a privy of any representative of a party, or who is financially interested in the proceeding.

(b) A party desiring to take the deposition of a person upon oral examination shall give reasonable notice of not less than five days in writing to the person to be deposed and to the opposing party. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a description sufficient to identify the person to be examined or the particular class or group to which the person to be examined belongs. On motion of a party upon whom the notice is served, the presiding officer may for cause shown, lengthen or shorten the time.

(c) After notice is served for taking a deposition, or upon motion of the presiding officer or upon motion reasonably made by any party or by the person to be examined, and upon notice and for good cause, the presiding officer may issue an order that the deposition shall not be taken or that it be taken subject to specified restrictions, conditions, or limitations.

(d) Depositions shall be recorded.

(i) The officer before whom the deposition is taken shall put the witness on oath or affirmation and shall personally or by someone acting under the officer's direction and in the officer's presence, record the testimony.

(ii) The officer or person acting under the officer's direction shall transcribe the testimony at the request of any party, provided that any expenses shall be paid by the requesting party.

(iii) The transcribed testimony shall be submitted to the person deposed for review and signature, unless review and signature are waived by that person. The officer shall append to the transcript any changes in form or substance that may be submitted by the parties.

(iv) Copies of the transcribed and, unless review and signature has been waived, signed testimony shall be served upon the person deposed and upon the parties.

(e) If the parties so stipulate in writing or on the record, depositions may be taken before any person, at any time or

place, upon any notice, and in any manner and when so taken, may be used as any other deposition.

(4) Following motion of a party and opportunity for response by the opposing party, the presiding officer may order a party to respond to written interrogatories and may order that the interrogatories be subject to specified restriction, condition, or limitation.

[Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-402, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-402, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-403 Motions.** (1) The presiding officer shall rule on motions. The presiding officer may rule on motions without oral argument or may request or permit the parties to argue the motion in person or by telephone. Oral argument may be limited in time at the discretion of the presiding officer.

(2) All prehearing motions, including discovery and evidentiary motions, shall be made in writing and filed with the adjudicative clerk office prior to the dates set in the scheduling order.

(3) Motions for continuance must be made in writing and filed prior to the dates set in the scheduling order. If the adjudicative proceeding is scheduled to take place fewer than twenty days from service of the scheduling order, motions for continuance must be made within ten days of service of the scheduling order, but in no event fewer than five days prior to the hearing. Continuances may be granted by the presiding officer for good cause.

(4) The presiding officer may grant a continuance when a motion for continuance is not submitted within the time limits contained in subsection (3) of this section for good cause.

(5) The following is the recommended format for motions:

(a) A succinct statement of the facts contended to be material;

(b) A concise statement of the issue, issues or law upon which the presiding officer is requested to rule;

(c) The specific relief requested by the moving party;

(d) If the motion requires the consideration of facts or evidence not appearing on the record, the moving party shall also serve and file copies of all affidavits and photographic or documentary evidence presented in support of the motion;

(e) The legal authority upon which the motion is based; and

(f) A proposed order may accompany the motion, and should contain findings of fact and conclusions of law.

(6) The moving party shall file the motion, and the accompanying affidavits and photographic or documentary evidence when necessary, with the adjudicative clerk office and shall serve the motion, and the accompanying affidavits and photographic or documentary evidence when necessary, on all other parties.

(7) The opposing party shall file with the adjudicative clerk office, and serve upon the moving party, a responsive memorandum, and accompanying affidavits and photographic or documentary evidence when necessary, no later than eleven days following service of the motion, unless otherwise ordered by the presiding officer.

(8) The moving party may file with the adjudicative clerk office, and serve upon the opposing party, a reply memorandum no later than five days following service of the responsive memorandum, unless otherwise ordered by the presiding officer.

(9) Unless otherwise ordered by the presiding officer, all motions shall be decided without oral argument. A party requesting oral argument on a motion shall so indicate by typing "ORAL ARGUMENT REQUESTED" in the caption of the motion or the responsive memorandum. If a request for oral argument is granted, the presiding officer shall notify the parties of the date and time of the argument and whether the argument will be in person or by telephone conference.

(10) Motions to shorten time or emergency motions shall be exceptions to the rule, and a party may only make such motions in exigent or exceptional circumstances. When making such a motion, the moving party shall:

(a) Suggest a date and time when the moving party seeks to have the presiding officer hear the motion to shorten time, which should be at least forty-eight hours after filing;

(b) Suggest a date and time when the moving party seeks to have the presiding officer consider the merits of the underlying motion;

(c) Describe the exigent or exceptional circumstances justifying shortening of time in an affidavit or a memorandum accompanying the motion;

(d) Certify that the motion to shorten time and the underlying motion have been served on all other parties prior to the filing of the motion with the presiding officer. Any opposition to the motion to shorten time must be served and filed within twenty-four hours of the service of the motion. If the presiding officer grants the motion to shorten time, the presiding officer shall notify the parties of the date by which the responsive memorandum to the underlying motion shall be served and filed.

(11) All motions will be decided as soon as practical, but not more than thirty days following the filing of the motion. If the presiding officer will not decide the motion within this time, the presiding officer shall notify the parties in writing of the date by which the motion will be decided.

(12) If a party serves a motion or responsive memorandum by mail, pursuant to WAC 246-10-109, then three days shall be added to the time within which the opposing party must file and serve the responsive or reply memorandum.

(13) All computations of time shall be calculated pursuant to WAC 246-10-105.

(14) Departmental motions for summary actions are exempted from all requirements of this rule.

[Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-403, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 18.130.050 and 43.70.040. WSR 96-21-027, § 246-10-403, filed 10/7/96, effective 11/7/96. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-403, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-403, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-404 Prehearing conference.** (1) As provided in WAC 246-10-205, the presiding officer may schedule a prehearing conference to be held prior to the hearing. Parties shall be notified of the time and place of the first prehearing conference in the scheduling order.

(2) The presiding officer shall conduct prehearing conferences and shall issue rulings related to prehearing motions and evidentiary issues. The rulings shall govern the conduct of subsequent proceedings.

(3) The prehearing conference may be recorded as ordered by the presiding officer. All offers of proof and objections concerning matters raised at the prehearing conference must be made on the record at the prehearing conference.

(4) Following the final prehearing conference, the presiding officer shall issue a written prehearing order which will:

(a) Identify the issues to be considered at the hearing and indicate which party has the burden of proof on these issues;

(b) Specify the facts which are admitted or not contested by the parties;

(c) Identify those documents and exhibits that will be admitted at hearing;

(d) Identify expert and lay witnesses that may be called at hearing and the issues to which those witnesses may testify;

(e) Rule on motions;

(f) Accept amendments to the pleadings;

(g) Address such other issues or matters as may be reasonably anticipated to arise and which may aid in the disposition of the proceedings; and

(h) Rule on objections made in any preserved testimony.

(5) Following the prehearing conference, the presiding officer may issue an order directing that the matter be heard as a brief adjudicative proceeding, pursuant to WAC 246-10-501, et seq.

(6) Documentary evidence not offered in the prehearing conference shall not be received into evidence at the adjudicative proceeding in the absence of a clear showing that the offering party had good cause for failing to produce the evidence at the prehearing conference.

(7) Witnesses not identified during the prehearing conference shall not be allowed to testify at the adjudicative proceeding in the absence of a clear showing that the party offering the testimony of such witness had good cause for failing to identify the witness at the prehearing conference.

(8) If the authenticity of documents submitted at the prehearing conference is not challenged at the prehearing conference, the documents shall be deemed authentic. However, a party shall be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to object at the prehearing conference.

(9) Nothing in these rules shall prohibit the presiding officer from conducting a conference at any time, including during the hearing. The presiding officer shall state on the record the results of such conference.

(10) A party bound by a stipulation or admission of record may withdraw it in whole or in part only upon a determination by the presiding officer or hearing officer that:

(a) The stipulation or admission was made inadvertently or as a bona fide mistake of fact or law; and

(b) The withdrawal will not unjustly prejudice the rights of the other parties.

(11) In an appeal to superior court involving issues addressed in the prehearing order, the record of the prehearing conference, written motions and responses, the prehear-

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ing order, and any orders issued by the presiding officer pursuant to WAC 246-10-403, shall be the record.

[Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-404, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-404, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-405 Protective orders.** The presiding officer may issue a protective order at his or her discretion:

(1) To protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense;

(2) To preserve confidentiality related to health care records or provider-client information;

(3) To protect examination processes;

(4) To protect the identity of a person supplying information to the department where the person indicates a desire for nondisclosure unless that person testifies or has been called to testify at an adjudicative proceeding; or

(5) To comply with applicable state or federal law.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-405, filed 6/3/93, effective 7/4/93.]

## SECTION V BRIEF ADJUDICATIVE PROCEEDINGS

**WAC 246-10-501 Application of brief adjudicative proceedings.** (1) If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(a) A determination whether an applicant for a professional, business, or facility license meets the minimum criteria for an unrestricted license and the department proposes to deny such a license or to issue a restricted license;

(b) An application to approve a water system plan under WAC 246-290-100;

(c) An application to approve a project report under WAC 246-290-110;

(d) An application for source approval under WAC 246-290-130;

(e) An application to approve construction documents under WAC 246-290-120;

(f) An application to approve an existing Group A water system under WAC 246-290-140;

(g) An application for source approval under WAC 246-291-100 or 246-291-110;

(h) An application to approve a design report under WAC 246-291-120;

(i) An application to approve an existing Group B water system under WAC 246-291-130;

(j) An application to approve a water system plan under WAC 246-291-140;

(k) A decision under WAC 246-293-190;

(l) A decision with respect to service area conflicts under WAC 246-293-430;

(m) An application for approval as a satellite management agency under WAC 246-295-040;

(n) A civil penalty imposed under RCW 70.119A.040 when the amount of the civil penalty does not exceed two thousand five hundred dollars;

(o) A request to bank nursing home beds under RCW 70.38.111(8) and 70.38.115(13);

(p) A determination as to whether a person is in compliance with the terms and conditions of a final order previously issued by the department;

(q) Any approval of a school or curriculum when such approval by the department is required or authorized by statute or rule;

(r) A determination whether a license holder requesting renewal has submitted all required information and meets minimum criteria for license renewal;

(s) A decision to deny, modify, or impose conditions upon an operating permit under WAC 246-294-050; or

(t) A decision to deny or revoke certification as a home care aide when a long-term care worker is disqualified from working with vulnerable persons under chapter 74.39A RCW.

(2) If an adjudicative proceeding is requested, in a matter not listed in subsection (1) of this section, a brief adjudicative proceeding may be conducted in the discretion of the presiding officer when it appears that protection of the public interest does not require that the department provide notice and an opportunity to participate to persons other than the parties and:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief proceeding.

[Statutory Authority: Chapters 18.88B and 18.130 RCW, 2012 c 164, and 2013 c 259. WSR 13-19-087, § 246-10-501, filed 9/18/13, effective 10/19/13. Statutory Authority: RCW 18.130.050 and 43.70.040. WSR 96-21-027, § 246-10-501, filed 10/7/96, effective 11/7/96. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-501, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-501, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-502 Preliminary record in brief adjudicative proceedings.** (1) The preliminary record with respect to an application for a professional, business, or facility license, or for approval of a school or curriculum shall consist of the following:

(a) The application for the license or approval and all associated documents;

(b) All documents relied on by the program in proposing to deny the application;

(c) All correspondence between the applicant for license or approval and the program regarding the application.

(2) Preliminary record.

(a) The preliminary record with respect to decisions made under WAC 246-290-100, 246-290-110, 246-290-120, 246-290-130, 246-290-140, 246-291-100, 246-291-110, 246-291-120, 246-291-130, and 246-291-140 shall consist of the decision document, all documents constituting the applicant's submittal and such other documents as the applicant or the departmental employee reviewing the submittal may wish to include in the preliminary record.

(b) WAC 246-293-190.

(i) If proceedings are required and have been conducted by local agencies under the applicable coordinated water system plan, the preliminary record shall consist of the record submitted to the department under WAC 246-10-124(3).

(ii) If hearings are not required or have not been conducted by local agencies under the applicable coordinated water system plan or if the external boundaries of the coordination act area have been approved but a coordinated water system plan has not been adopted, then the preliminary

record shall consist of such documents as the presiding officer may solicit from the affected parties.

(c) The preliminary record with respect to a decision made under WAC 246-293-430 shall consist of the record submitted to the presiding officer under WAC 246-10-124(4).

(d) The preliminary record with respect to a decision under WAC 246-294-050 shall consist of:

(i) The permit, if any;

(ii) All documents relied upon by the program in proposing to deny, modify, or impose conditions upon the permit; and

(iii) The decision document.

(e) The preliminary record with respect to decisions made under WAC 246-295-040 shall consist of the decision document, all documents constituting the applicant's submittal, comments submitted by the county, and such other documents as the applicant or the department may wish to include in the preliminary record.

(f) The preliminary record with respect to civil penalties imposed under RCW 70.119A.040 shall consist of the notice of imposition of penalties, the departmental order, if any, all documentation of communication between the program and the person or persons incurring the civil penalties regarding the violation or violations for which the civil penalties were imposed, and such other documents as the person or persons incurring the civil penalties or the department may wish to include in the preliminary record.

(3) The preliminary record with respect to compliance with prior department orders shall consist of:

(a) The official department file of the proceeding in which the order was issued;

(b) All matters submitted by the person to whom the order is directed purporting to demonstrate compliance with the order;

(c) All documents relied on by the department in asserting noncompliance; and

(d) All correspondence between the department and the person to whom the order is directed respecting compliance.

(4) The preliminary record with respect to matters submitted to a brief adjudicative proceeding under WAC 246-10-501(2) shall be as agreed by the parties.

(5) For the purposes of this section, "decision document" shall mean one or more documents that provide notice to the affected party of the department's action, and that contain(s) the information provided by an initiating document.

[Statutory Authority: RCW 18.130.050 and 43.70.040. WSR 96-21-027, § 246-10-502, filed 10/7/96, effective 11/7/96. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-502, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-502, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-503 Conduct of brief adjudicative proceedings.** (1) Brief adjudicative proceedings shall be conducted by a presiding officer for brief adjudicative proceedings designated by the assistant secretary having responsibility for the program that issued the initiating document that is the subject of the proceeding. The presiding officer for brief adjudicative proceedings shall have agency expertise in the subject matter but shall not have personally participated in the decision to issue the initiating document.

(2) The parties or their representatives may present written documentation in addition to the preliminary record. The presiding officer for brief adjudicative proceedings shall designate the date by which written documents must be submitted by the parties.

(3) The presiding officer for brief adjudicative proceedings may, in his or her discretion, entertain oral argument from the parties or their representatives, at a time and place designated by the presiding officer for brief adjudicative proceedings.

(4) No witnesses may appear to testify.

(5) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(6) The presiding officer for brief adjudicative proceedings shall not issue an oral order. Within ten days of the final date for submission of materials or oral argument, if any, the presiding officer for brief adjudicative proceedings shall enter an initial order in accordance with WAC 246-10-608.

[Statutory Authority: RCW 18.130.050 and 43.70.040. WSR 96-21-027, § 246-10-503, filed 10/7/96, effective 11/7/96. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-503, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-503, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-504 Effectiveness of orders on brief adjudicative proceedings.** (1) Initial orders on brief adjudicative proceedings shall become final twenty-one days after service of the initial order unless:

(a) Administrative review has been requested pursuant to WAC 246-10-701; or

(b) On his or her own initiative, a designee of the secretary authorized to issue final orders determines to review the matter and, within twenty-one days of service of the initial order, provides notice to the parties of the date by which a determination shall be made.

(2) If administrative review is taken under subsection (1) of this section, each party shall be provided an opportunity to state its view of the matter, and the presiding officer shall issue a written order containing findings of fact, conclusions of law, and order which shall be entered and served upon the parties within twenty days of service of the initial order or the request for review whichever is later.

(3) A request for review is deemed to be denied if the presiding officer does not act on the request within twenty days after the request is submitted.

(4) If administrative review is taken under subsection (1) of this section, the presiding officer may convert the matter to a full adjudicative proceeding.

[Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-504, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-504, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-505 Agency record in brief proceedings.** The agency record of brief adjudicative proceedings shall consist of:

(1) The preliminary record as set forth in WAC 246-10-502;

(2) All initiating documents including the notice of opportunity to defend;

(3) The request for adjudicative proceeding;

(4) All documents submitted in the proceeding;

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(5) Any transcript or recording of any arguments presented; and

(6) All orders issued in the case.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-505, filed 6/3/93, effective 7/4/93.]

## SECTION VI HEARING

### **WAC 246-10-601 Notice of adjudicative proceeding.**

Notice of an adjudicative proceeding shall be issued pursuant to RCW 34.05.434.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-601, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-602 Conduct of adjudicative proceeding.** (1) The adjudicative proceeding shall be conducted as provided in RCW 34.05.449 through 34.05.455.

(2) The presiding officer may take the following actions to the extent not already determined in a prehearing order:

(a) Conduct the hearing de novo;

(b) Determine the order of presentation of evidence;

(c) Administer oaths and affirmations;

(d) Issue subpoenas;

(e) Rule on procedural matters, objections, motions, and offers of proof;

(f) Receive relevant evidence;

(g) Interrogate witnesses called by the parties in an impartial manner to develop any facts necessary to fairly and adequately decide the matter;

(h) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

(i) Take any appropriate action necessary to maintain order during the adjudicative proceeding;

(j) Determine whether to permit or require oral argument or briefs and determine the time limits for submission thereof;

(k) Permit photographic and recording equipment at hearing subject to conditions necessary to preserve confidentiality and prevent disruption;

(l) Permit a person to waive any right conferred upon that person by chapter 34.05 RCW or this chapter, except as precluded by law; and

(m) Take any other action necessary and authorized by applicable law or rule.

(3) The presiding officer shall:

(a) Apply as the first source of law governing an issue those statutes and rules deemed applicable to the issue;

(b) If there is no statute or rule governing the issue, resolve the issue on the basis of the best legal authority and reasoning available, including that found in federal and Washington constitutions, statutes, rules, and court decisions; and

(c) Not declare any statute or rule invalid.

(4) If the validity of any statute or rule is raised as an issue, the presiding officer may permit arguments to be made on the record concerning the issue for the purpose of subsequent review.

(5) A party may move to disqualify the presiding officer pursuant to RCW 34.05.425(3).

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-602, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-603 Evidence.** (1) The presiding officer shall rule on objections to the admissibility of evidence pursuant to RCW 34.05.452 unless those objections have been addressed in the prehearing order.

(2) The refusal of a witness to answer any question ruled proper shall be grounds for the presiding officer, at his/her discretion, to strike some or all prior testimony by that witness on related matters or to grant a continuance to allow a party to seek a court order to compel the witness to answer.

(3) Each person called as a witness in an adjudicative proceeding shall swear or affirm that the evidence about to be given in the adjudicative proceeding shall be the truth under the provisions of RCW 5.28.020 through 5.28.060.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-603, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-604 Proposed order.** At the conclusion of the hearing or by a date specified by the presiding officer, the presiding officer may require each party to submit to the presiding officer proposed findings of fact and conclusions of law and a proposed order.

[Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-604, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-604, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-605 Issuance of final order.** If the adjudicative proceeding is conducted by a presiding officer authorized to make the final decision, the presiding officer shall:

(1) Issue a final order containing findings of fact and conclusions of law and an order; and

(2) Cause the adjudicative clerk office to serve a copy of the order on each party and any designated representative of the party.

[Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-605, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-605, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-606 Standard of proof.** (1) The order shall be based on the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs.

(2) In all cases involving an application for license the burden shall be on the applicant to establish that the application meets all applicable criteria. In all other cases the burden is on the department to prove the alleged factual basis set forth in the initiating document.

(3) Except as otherwise required by law, the burden in all cases is a preponderance of the evidence.

[Statutory Authority: RCW 18.130.050 and 34.05.220. WSR 08-14-137, § 246-10-606, filed 7/1/08, effective 8/1/08. Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-606, filed 6/3/93, effective 7/4/93.]

### **WAC 246-10-607 Consolidated proceedings.** (1)

When two or more applications for adjudicative proceeding involve a similar issue, the applications may be consolidated by the presiding officer and the hearings conducted together. The presiding officer may consolidate on his/her own motion or upon the request of a party.

(2) A party scheduled for a consolidated proceeding may request to withdraw from the consolidated proceeding in favor of an individual proceeding. The presiding officer may grant a motion to withdraw from a consolidated proceeding at any time when good cause is shown.

(3) Each respondent in a consolidated proceeding shall retain the right to representation.

[Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-607, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-607, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-608 Initial order.** If the adjudicative proceeding is conducted by a presiding officer who is not authorized to make the final decision, the presiding officer shall:

(1) Issue an initial order containing proposed findings of fact, conclusions of law, and a proposed order;

(2) Cause the adjudicative clerk office to serve a copy of the initial order on each party and any designated representative of a party; and

(3) Forward the initial order and record of the adjudicative proceeding to the adjudicative clerk office.

[Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-608, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-608, filed 6/3/93, effective 7/4/93.]

## **SECTION VII POSTHEARING PROCESS**

**WAC 246-10-701 Appeal from initial order.** (1) Any party may file a written petition for administrative review of an initial order issued under WAC 246-10-503 or 246-10-608 stating the specific grounds upon which exception is taken and the relief requested.

(2) Petitions for administrative review must be served upon the opposing party and filed with the adjudicative clerk office within twenty-one days of service of the initial order.

(3) The opposing party may file a response to a petition for administrative review filed as provided in this section. The response shall be filed at the adjudicative clerk office. The party filing the response shall serve a copy of the response upon the party requesting administrative review. If the initial order was entered pursuant to WAC 246-10-503, the response shall be filed within ten days of service of the petition. In all other matters, the response shall be filed within twenty days of service of the petition.

[Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-701, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-701, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-701, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-702 Final orders.** (1) The form and content of final orders shall be as follows:

(a) Final orders shall contain findings of fact, conclusions of law, and an order, and shall be signed by the presiding officer.



(b) Final orders may adopt by reference the initial order in whole or in part.

(c) Final orders may modify or revise the initial order in whole or in part.

(2) Final orders shall be served upon the parties and their representatives as provided in WAC 246-10-109.

(3) Final orders shall be issued following:

(a) A review of the record;

(b) A review of the initial order, if any;

(c) A review of any request for administrative review of the initial order and any response thereto; and

(d) Consideration of protection of the public health and welfare.

(4) Unless a later date is stated in the final order, final orders shall be effective when entered but a party shall not be required to comply with a final order until the order is served upon that party.

(5) Final orders may contain orders that specified portions of the agency record shall not be disclosed as public records if necessary to protect privacy interests, the public welfare, or vital governmental functions. Such orders shall include but are not limited to protective orders issued during the proceeding or pursuant to WAC 246-10-405.

[Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-702, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-702, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-703 Stay of final orders.** No final order will be stayed except by its own terms or by order of a court of competent jurisdiction.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-10-703, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-704 Reconsideration of final orders.** (1) Within ten days of service of a final order, either party may file a petition for reconsideration, stating the specific grounds upon which reconsideration is requested and the relief requested.

(2) Grounds for reconsideration shall be limited to:

(a) Specific errors of fact or law; or

(b) Implementation of the final order would require department activities inconsistent with current department practice; or

(c) Specific circumstances render the person requesting reconsideration unable to comply with the terms of the order.

(3) Petitions for reconsideration must be served upon the opposing party and filed with the adjudicative clerk office within ten days of service of the final order.

(4) If reconsideration is requested based on an error of fact, the request for reconsideration shall contain specific reference to the record. If reconsideration is requested based on testimony of record, the request for reconsideration shall contain specific reference to the testimony. The presiding officer may require that the party requesting reconsideration submit a copy of the transcript of the adjudicative proceeding and provide specific reference to the transcript.

(5) The petition for reconsideration is denied if, within twenty days of the date the petition is filed, the presiding officer:

(a) Denies the petition;

(b) Does not act upon the petition; or

(c) Does not serve the parties with notice of the date by which he/she will act on the petition.

(6) If the presiding officer determines to act upon the petition, the opposing party shall be provided at least ten days in which to file a response to the petition.

(7) Disposition of petitions for reconsideration shall be in the form of a written order denying the petition, granting the petition, and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings.

[Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-704, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-704, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-704, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-705 Agency record of adjudicative proceedings.** (1) The department shall maintain an official record of each adjudicative proceeding.

(2) The record shall include:

(a) Notices of all proceedings;

(b) Any prehearing order;

(c) Any motions, pleadings, briefs, petitions, and requests filed, and rulings thereon;

(d) Evidence received or considered;

(e) A statement of matters officially noted;

(f) Offers of proof and objections and rulings thereon;

(g) Any proposed findings, requested orders, and exceptions;

(h) Any recording of the adjudicative proceeding and any transcript of all or part of the adjudicative proceeding considered before final disposition of the matter;

(i) Any final order, initial order, or order on reconsideration; and

(j) Matters placed on the record following an ex parte communication, if any.

(3) The record shall be subject to disclosure as provided by chapter 42.17 RCW, the Public Records Act, and by WAC 246-10-114, except as limited by protective orders and provisions contained in the final order.

[Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-705, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-705, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-706 Judicial review.** (1) Judicial review of actions taken under this chapter shall be as provided in RCW 34.05.510, et seq.

(2) Notice of the opportunity for judicial review shall be provided in all final orders.

(3) Following a petition for judicial review, the record forwarded to the reviewing court shall be those portions of the agency record designated by the parties within the time period set by the secretary.

[Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-706, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-706, filed 6/3/93, effective 7/4/93.]

**WAC 246-10-707 Vacating an order for reason of default or withdrawal.** (1) A party may petition to vacate a default order entered against that party for failing to attend an adjudicative proceeding requested by that party by:

- (a) Specifying the grounds relied upon in the petition;
  - and
  - (b) Filing the petition at the adjudicative clerk office within seven days of service of the default order.
- (2) The presiding officer shall consider the petition and shall:
- (a) Grant the motion to vacate and reinstate the application for adjudicative proceeding, and may impose conditions on licensure pending final adjudication; or
  - (b) Deny the motion to vacate the default order.

[Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-707, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-707, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-707, filed 6/3/93, effective 7/4/93.]