

Chapter 446-08 WAC

PRACTICE AND PROCEDURE

WAC

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[Order II, § 446-08-190, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Scope. [Order II, § 446-08-240, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Officer before whom taken. [Order II, § 446-08-250, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Authorization. [Order II, § 446-08-260, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Protection of parties and deponents. [Order II, § 446-08-270, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Oral examination and cross-examination. [Order II, § 446-08-280, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Recordation. [Order II, § 446-08-290, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Signing attestation and return. [Order II, § 446-08-300, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Use and effect. [Order II, § 446-08-310, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Fees of officers and deponents. [Order II, § 446-08-320, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Depositions upon interrogatories—Submission of interrogatories. [Order II, § 446-08-330, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Interrogation. [Order II, § 446-08-340, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Attestation and return. [Order II, § 446-08-350, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Provisions of deposition rule. [Order II, § 446-08-360, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Presumptions. [Order II, § 446-08-390, filed 11/22/74; Rule .08.390, filed 3/23/60.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Stipulations and admissions of record. [Order II, § 446-08-400, filed 11/22/74; Rule .08.400, filed 3/23/60.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Excerpts from documentary evidence. [Order II, § 446-08-460, filed 11/22/74; Rule .08.460, filed 3/23/60.]</p>
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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

<p>446-08-007 446-08-030 446-08-100 446-08-110 446-08-120 446-08-130 446-08-160</p>	<p>Agency defined. [Order II, § 446-08-007, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Solicitation of business unethical. [Order II, § 446-08-030, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Upon whom served. [Order II, § 446-08-100, filed 11/22/74; Rule .08.100, filed 3/23/60.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Service upon parties. [Order II, § 446-08-110, filed 11/22/74; Rule .08.110, filed 3/23/60.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Method of service. [Order II, § 446-08-120, filed 11/22/74; Rule .08.120, filed 3/23/60.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. When service complete. [Order II, § 446-08-130, filed 11/22/74; Rule .08.130, filed 3/23/60.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. Issuance to parties. [Order II, § 446-08-160, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14,</p>	<p>446-08-320 446-08-330 446-08-340 446-08-350 446-08-360 446-08-390 446-08-400 446-08-460</p>
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Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW.

446-08-480 Written sworn statements. [Order II, § 446-08-480, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW.

446-08-540 When not applicable. [Order II, § 446-08-540, filed 11/22/74.] Repealed by WSR 14-03-020, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW.

WAC 446-08-005 Definitions. (1) "Agency" means the Washington state patrol.

(2) "Board" wherever used in these rules shall mean the trial board constituted as provided in RCW 43.43.070.

(3) "Chief" wherever used in these rules shall mean the chief of the Washington state patrol.

(4) "Hearing officer" wherever used in these rules shall mean an administrative law judge as appointed by the chief administrative law judge under chapter 34.12 RCW, whose duty it is to preside over such hearings as are conducted by the trial board, as in RCW 43.43.090 provided.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-005, filed 1/7/14, effective 2/7/14; Rule .04.010, filed 3/23/60.]

WAC 446-08-008 Request for a trial board. A request for a trial board shall be made in writing by the commissioned officer complained of, or the officer's attorney, and must be received by the Washington state patrol headquarters within twenty days of the date the officer was served with the notice of discipline.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-008, filed 1/7/14, effective 2/7/14.]

WAC 446-08-010 Appearance and practice before a hearing officer or board—Who may appear. No person may appear in a representative capacity before a hearing officer or board other than attorneys duly qualified and entitled to practice in the state of Washington.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-010, filed 1/7/14, effective 2/7/14; Order II, § 446-08-010, filed 11/22/74; Rule .08.010, filed 3/23/60.]

WAC 446-08-040 Standards of ethical conduct. All persons appearing in proceedings before a hearing officer or board in a representative capacity must conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standards, the hearing officer or board may decline to permit such person to appear in a representative capacity in any proceeding before the hearing officer or board.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-040, filed 1/7/14, effective 2/7/14; Order II, § 446-08-040, filed 11/22/74; Rule .08.040, filed 3/23/60.]

WAC 446-08-060 Former employee as expert witness. No former employee of the agency shall, at any time after severing his or her employment with the state of Washington appear, except with the written permission of the agency, as an expert witness on behalf of other parties in a formal proceeding wherein the former employee previously

took an active part in the investigation as a representative of the agency.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-060, filed 1/7/14, effective 2/7/14; Order II, § 446-08-060, filed 11/22/74.]

WAC 446-08-070 Computation of time. In computing any period of time prescribed or allowed by this chapter or any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-070, filed 1/7/14, effective 2/7/14; Order II, § 446-08-070, filed 11/22/74; Rule .08.070, filed 3/23/60.]

WAC 446-08-080 Notice and opportunity for hearing in contested cases. In any contested case, all parties shall be served with a notice of trial board hearing within ten calendar days before the date set for hearing. The notice shall state the time, place, and issues involved.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-080, filed 1/7/14, effective 2/7/14; Order II, § 446-08-080, filed 11/22/74; Rule .08.080, filed 3/23/60.]

WAC 446-08-085 Trial board—Recording. All hearings shall be recorded by stenographer or court reporter.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-085, filed 1/7/14, effective 2/7/14.]

WAC 446-08-090 Service. (1) All notices, pleadings, and other papers filed with the hearing officer shall be served upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law.

(2) Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; or by commercial parcel delivery company.

(3) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(4) Proof of service. Where proof of service is required by statute or rule, filing the papers with the hearing officer, together with one of the following, shall constitute proof of service:

(a) An acknowledgment of service.

(b) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).

(c) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial parcel delivery company.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-090, filed 1/7/14, effective 2/7/14; Order II, § 446-08-090, filed 11/22/74; Rule .08.090, filed 3/23/60.]

WAC 446-08-140 Filing. Papers required to be filed with the agency shall be deemed filed upon actual receipt during office hours at the Washington state patrol headquarters.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-140, filed 1/7/14, effective 2/7/14; Order II, § 446-08-140, filed 11/22/74; Rule .08.140, filed 3/23/60.]

WAC 446-08-150 Subpoenas. (1) Every subpoena shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony, or produce designated books, documents or things under his or her control at a hearing.

(2) Subpoenas may be signed and issued by any member of the board, or the hearing officer, or the attorney of record of the party requiring the appearance of the witness. Parties desiring subpoenas to be signed by a member of the board or hearing officer must prepare subpoenas for issuance and submit the subpoenas for signature at least ten calendar days before a hearing.

(3) Parties requesting subpoenas must make arrangements for and bear the expense of service. All subpoenas must be served at least ten calendar days before a hearing.

(4) Subpoenas must be personally served in one of the following ways:

(a) By any suitable person over eighteen years of age;

(b) By exhibiting and reading it to the witness, or by giving him or her a copy thereof; or

(c) By leaving such copy at the place of his or her abode.

(5) When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury. Failure to make proof of service does not affect the validity of the service.

(6) A copy of the subpoena must also be provided to the opposing party or the party, if unrepresented.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-150, filed 1/7/14, effective 2/7/14; Order II, § 446-08-150, filed 11/22/74.]

WAC 446-08-180 Fees. Witnesses summoned before the board shall be paid by the party at whose instance they appear the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington: EXCEPT, if the witness works for the agency and is on duty at the time he or she appears as a witness on behalf of the agency.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-180, filed 1/7/14, effective 2/7/14; Order II, § 446-08-180, filed 11/22/74.]

(1/7/14)

WAC 446-08-200 Quashing a subpoena. (1) A party to the appeal or the person to whom the subpoena, or subpoena duces tecum, is directed may make a motion to quash. The motion must be made promptly and in any event at least five days before the time specified in the subpoena for compliance therewith.

(2) The hearing officer may:

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

(b) Condition denial of the motion upon just and reasonable conditions.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-200, filed 1/7/14, effective 2/7/14; Order II, § 446-08-200, filed 11/22/74.]

WAC 446-08-210 Enforcement of a subpoena. Upon application and for good cause shown the agency will seek judicial enforcement of subpoenas issued to parties and which have not been quashed. Enforcement of a subpoena shall be according to RCW 34.05.446 and 34.05.588(1).

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-210, filed 1/7/14, effective 2/7/14; Order II, § 446-08-210, filed 11/22/74.]

WAC 446-08-220 Geographical scope. Such attendance of witnesses and such production of evidence may be required from any place in the state of Washington, at any designated place of hearing.

[Order II, § 446-08-220, filed 11/22/74.]

WAC 446-08-230 No discovery allowed. There shall be no discovery allowed in the proceedings under this chapter. The record for hearing shall include:

(1) The entire office of professional standards investigation file for the conduct at issue before the board, the entire personnel record for the accused employee, including any training records and the employee's work history;

(2) Previous office of professional standards' investigations and files for the accused employee, when appropriate; and

(3) Any other information considered by the appointing authority in determining the discipline to be imposed.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-230, filed 1/7/14, effective 2/7/14; Order II, § 446-08-230, filed 11/22/74.]

WAC 446-08-370 Official notice. The hearing officer or board, upon request made before or during a hearing, may take official notice of facts pursuant to RCW 34.05.452(5).

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-370, filed 1/7/14, effective 2/7/14; Order II, § 446-08-370, filed 11/22/74; Rule .08.370, filed 3/23/60.]

WAC 446-08-380 Evaluation of evidence. Nothing herein shall be construed to preclude the hearing officer or board from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-380, filed 1/7/14, effective 2/7/14; Order II, § 446-08-380, filed 11/22/74; Rule .08.380, filed 3/23/60.]

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WAC 446-08-405 Burden of proof. The employer bears the burden of proof in any disciplinary matter. Said proof shall be by a preponderance of the evidence.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-405, filed 1/7/14, effective 2/7/14.]

WAC 446-08-410 Form and content of trial board decision. Every decision of the trial board shall contain only the following elements:

- (1) Be correctly captioned as to name of agency and name of proceeding;
- (2) Designate all parties and counsel participating in the proceeding;
- (3) Include a concise statement of the nature and background of the proceeding;
- (4) Contain appropriate numbered findings of fact meeting the requirements of RCW 34.05.461;
- (5) Contain appropriate numbered conclusions of law including citations of statutes, rules, and regulations relied upon;
- (6) In its findings and conclusions, the legal standard for determining whether the charges are sustained shall be the existence or nonexistence of cause as provided in RCW 43.43.070; and
- (7) Contain an initial order disposing of all contested issues and complying with the constraints contained in RCW 43.43.090.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-410, filed 1/7/14, effective 2/7/14; Order II, § 446-08-410, filed 11/22/74; Rule .08.410, filed 3/23/60.]

WAC 446-08-415 Form and content of final decision. Every final decision issued by the chief of the Washington state patrol shall:

- (1) Name of the agency and name of proceeding;
- (2) List all parties and counsel participating in the proceeding;
- (3) Include a concise statement of the nature and background of the proceeding;
- (4) Contain appropriate numbered findings of fact meeting the requirements of RCW 34.05.461 and 43.43.090:
 - (a) However, where the chief adopts, in whole or in part, the factual findings of the trial board, the chief may so state;
 - (b) Where the chief changes a finding of fact as allowed in RCW 43.43.090, the chief shall set forth the reasons for the different factual findings, as set forth in RCW 34.05.461.
- (5) In the chief's findings and conclusions, the legal standard for determining whether the charges are sustained shall be the existence or nonexistence of cause as provided in RCW 43.43.070;
- (6) Contain a statement of the discipline to be imposed and the basis of such discipline:
 - (a) The chief may review additional information contained in files maintained by the agency and relevant to determining the appropriate level of discipline, whether or not such evidence was before the trial board; and
 - (b) If the chief reviews additional information that is not contained in the trial board record when determining the appropriate level of discipline, such information shall be stated in the final order and placed in the administrative record.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-415, filed 1/7/14, effective 2/7/14.]

WAC 446-08-420 Definition of issues before hearing. In all proceedings the issues to be adjudicated must be made initially as precise as possible, in order that the hearing officer or board may proceed promptly to conduct the hearing on relevant and material matter only.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-420, filed 1/7/14, effective 2/7/14; Order II, § 446-08-420, filed 11/22/74; Rule .08.420, filed 3/23/60.]

WAC 446-08-430 Prehearing conference rule—Authorized. (1) The hearing officer may direct the parties or their counsel to engage in a prehearing conference(s) to consider the following:

- (a) The simplification of issues;
- (b) The necessity of amendments to the pleading;
- (c) The possibility of obtaining stipulations, admissions of facts and admissions of the genuineness of documents that will avoid unnecessary proof;
- (d) The limitation of the number of expert witnesses;
- (e) Number of witnesses expected to be called and their names when possible;
- (f) Approximate time necessary for presentation of the evidence of the respective parties;
- (g) Whether or when motions may be brought;
- (h) Exhibits;
- (i) Such other matters as may aid in the disposition of the proceeding.

(2) Prehearing conferences may be held by telephone conference or at a time and place specified by the hearing examiner.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-430, filed 1/7/14, effective 2/7/14; Order II, § 446-08-430, filed 11/22/74; Rule .08.430, filed 3/23/60.]

WAC 446-08-440 Record of conference action. (1) The hearing officer shall make an order or statement which recites the action taken at the conference, including agreements made by the parties as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order. If no objection to such order is filed within ten days after the date such order is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(2) In any proceeding the hearings officer may, in his or her discretion, conduct a conference prior to the taking of testimony, or may recess the hearing for such conference, for the purpose of carrying out the purpose of this chapter. The hearing officer shall state on the record the results of such conference.

(3) Nothing in this chapter shall be construed to limit the right of an agency to attempt informal settlement of an adjudicative proceeding at any time.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-440, filed 1/7/14, effective 2/7/14; Order II, § 446-08-440, filed 11/22/74; Rule .08.440, filed 3/23/60.]

WAC 446-08-450 Submission of documentary evidence in advance. Where practicable, the hearing officer or board may require:

(1) That all documentary evidence which is to be offered during the taking of evidence be submitted to the hearing officer or board and to the other parties to the proceeding sufficiently in advance of such taking of evidence to permit study and preparation of cross-examination and rebuttal evidence;

(2) That documentary evidence not submitted in advance, as may be required by subsection (1) of this section, not be received in evidence in the absence of a clear showing that the offering party had good cause for the failure to produce the evidence sooner;

(3) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, will be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection;

(4) When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered to the hearing officer or board and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-450, filed 1/7/14, effective 2/7/14; Order II, § 446-08-450, filed 11/22/74; Rule .08.450, filed 3/23/60.]

WAC 446-08-470 Expert or opinion testimony. The hearing officer may require that the parties submit to the hearing officer or board and to the other parties written statements containing: The names, addresses and qualifications of their respective opinion or expert witnesses; Any reports of the experts; and the nature of the testimony expected by the expert, by a date determined by the hearing officer and fixed sufficiently in advance of the hearing to permit the other interested parties to investigate such qualifications.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-470, filed 1/7/14, effective 2/7/14; Order II, § 446-08-470, filed 11/22/74.]

WAC 446-08-490 Supporting data of experts. The hearing officer or board, in its discretion but consistent with the rights of the parties, shall cause the parties to make available for inspection in advance of the hearing, and for purposes of cross-examination at the hearing, the data underlying statements and exhibits submitted in accordance with WAC 446-08-470, but wherever practicable must restrict to a minimum the placing of such data in the record.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-490, filed 1/7/14, effective 2/7/14; Order II, § 446-08-490, filed 11/22/74.]

(1/7/14)

WAC 446-08-500 Effect of noncompliance with WAC 446-08-470 or 446-08-490. Whenever the manner of introduction of opinion or expert testimony is governed by requirements fixed under the provisions of WAC 446-08-470 or 446-08-490, such testimony not submitted in accordance with the relevant requirements shall not be received in evidence in the absence of a clear showing that the offering party had good cause for his or her failure to conform to such requirements.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-500, filed 1/7/14, effective 2/7/14; Order II, § 446-08-500, filed 11/22/74.]

WAC 446-08-510 Continuances. Any party who desires a continuance shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such continuance come to his or her knowledge, notify the hearing officer and board of said desire, stating in detail the reasons why such continuance is necessary. The hearing officer and board, in passing upon a request for continuance, shall consider whether such request was promptly and timely made. For good cause shown, the hearing officer and board may grant such a continuance and may at any time order a continuance upon its own or a party's motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the hearing officer and board may, in its discretion, continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-510, filed 1/7/14, effective 2/7/14; Order II, § 446-08-510, filed 11/22/74; Rule .08.510, filed 3/23/60.]

WAC 446-08-520 Rules of evidence—Admissibility criteria. (1) Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the hearing officer or board, is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their business, or is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness.

(2) If not inconsistent with subsection (1) of this section, the hearing officer shall refer to the Washington rules of evidence as guidelines for evidentiary rulings.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-520, filed 1/7/14, effective 2/7/14; Order II, § 446-08-520, filed 11/22/74; Rule .08.520, filed 3/23/60.]

WAC 446-08-530 Exclusion—Discontinuance—Objections. The hearing officer or board may, in its discretion, either with or without object, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-530, filed 1/7/14, effective 2/7/14; Order II, § 446-08-530, filed 11/22/74; Rule .08.530, filed 3/23/60.]

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WAC 446-08-550 Testimony under oath or affirmation—Who may administer oath—Refusal to testify. (1) Every person called as a witness in a hearing shall swear or affirm that the testimony he or she is about to give in the hearing shall be the truth according to the provisions of RCW 5.28.020 through 5.28.060.

(2) The hearing examiner or court reporter may administer the oath or affirmation to the witness.

(3) Testimony by affidavit is not admitted at a trial board except for good cause shown, or as otherwise permitted in these rules, as provided in a prehearing conference statement or by stipulation of the parties.

(4) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the hearing officer or board, be grounds for striking all testimony previously given by such witness on a related matter.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-550, filed 1/7/14, effective 2/7/14.]

WAC 446-08-560 Hearing officer authority. The hearing officer shall have the authority to:

(1) Rule on evidentiary matters during the course of the hearing;

(2) Take official notice of facts pursuant to RCW 34.05.-452(5);

(3) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(4) Permit or require oral argument or briefs and determine the time limits for submission thereof; and

(5) Take any other action necessary and authorized by any applicable statute or rule.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-560, filed 1/7/14, effective 2/7/14.]

WAC 446-08-570 Board's right to call and question witnesses. The board may:

(1) Question witnesses called by the parties to develop any facts deemed necessary to fairly and adequately decide the matter; and

(2) 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.

[Statutory Authority: RCW 304-05-020 [34.05.020] and chapter 43.43 RCW. WSR 14-03-020, § 446-08-570, filed 1/7/14, effective 2/7/14.]