

# Chapter 196-09 WAC

## BOARD PRACTICES AND PROCEDURES

(Formerly chapter 196-08 WAC)

### WAC

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**WAC 196-09-010 Declaration of purpose.** This chapter contains rules and administrative procedures for proceedings held by the board in executing its responsibilities under chapter 18.43 RCW.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-09-010, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. WSR 98-12-045, § 196-09-010, filed 5/29/98, effective 7/1/98.]

**WAC 196-09-020 Adjudicative proceedings.** Chapters 34.05 RCW and 10-08 WAC apply to all adjudicative proceedings. The procedures described in Washington superior court civil rules 26 through 32, 34, 36 and 37 also apply.

[Statutory Authority: RCW 18.43.035. WSR 98-12-045, § 196-09-020, filed 5/29/98, effective 7/1/98.]

**WAC 196-09-050 Brief adjudicative proceedings.** (1) The board will conduct brief adjudicative proceedings as provided for in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. Brief adjudicative proceedings may be used whenever a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of chapter 18.43 RCW, chapter 18.210 RCW, chapter 18.235 RCW, administrative rules in Title 196 WAC or any statutes or rules that specifically govern the defined practices of engineering, land surveying and on-site wastewater treatment system designs. Brief adjudicative proceedings may also be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.

[(2)] Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant is eligible to sit for a professional licensing examination;

(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;

(d) Whether an applicant meets minimum requirements for an initial or renewal application;

(e) Whether an applicant has failed the professional licensing examination;

(f) Whether a licensee has sufficient continuing education credits when the licensee submits a renewal application;

(g) Whether an applicant or licensee failed to cooperate in an investigation by the board

(h) Whether an application or licensee was convicted of a crime that disqualifies the applicant or licensee from holding the specific license sought or held;

(i) Whether an applicant or licensee has defaulted on educational loans;

(j) Whether an applicant or licensee has violated the terms of a final order issued by the board or the board's designee;

(k) Whether a person has engaged in false, deceptive or misleading advertising; or

(l) Whether a person has engaged in unlicensed practice.

(3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

[Statutory Authority: RCW 18.43.035 and chapter 18.235 RCW. WSR 06-11-121, § 196-09-050, filed 5/19/06, effective 6/19/06. Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-09-050, filed 1/21/04, effective 2/21/04.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

**WAC 196-09-055 Records required for brief adjudicative proceeding.** The records for the brief adjudicative proceeding shall include:

(1) Renewal or reinstatement of license:

• All correspondence between the applicant and the board about the renewal or reinstatement;

• Copies of renewal notice(s) sent by the department of licensing to the licensee;

• All documents received by the board from or on behalf of the licensee relating to information, payments, or explanations that have been provided to the board.

(2) Applicants for certification/licensing:

• Original complete application with all attachments as submitted by the applicant;

[•] Copies of all supplementary information related to application review by staff or board member;

[•] All documents relied upon in reaching the determination of ineligibility;

[•] All correspondence between the applicant and the board about the application or appeal.

(3) Default of student loan payments:

[•] Copies of notices to the board showing the name and other identification information of the individual claimed to be in default on student loan payments;

[•] Copies of identification information corresponding to the person who is certified/licensed by the board that relate to the identity of the individual in default;

[•] All documents received by the board from or on behalf of the licensee relating to rebutting such identification [identification];

[•] Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state-guaranteed student loan or service-conditional scholarship; or

[•] A written release, if any issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.

(4) Determination of compliance with previously issued board order:

[•] The previously issued final order or agreement;

[•] All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

[•] All correspondence between the license holder and the program regarding compliance with the final order or agreement; and

[•] All documents relied upon by the program showing that the license holder has failed to comply with the previously issued final order or agreement.

[Statutory Authority: RCW 18.43.035 and chapter 18.235 RCW. WSR 06-11-121, § 196-09-055, filed 5/19/06, effective 6/19/06. Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-09-055, filed 1/21/04, effective 2/21/04.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

**WAC 196-09-060 Procedures for brief adjudicative proceedings.** A brief adjudicative proceeding shall be held under the supervision of a presiding officer as designated by the board chair. The presiding officer shall have knowledge and experience in the administrative processes of the board and the requirements of the provisions for a brief adjudicative proceeding as provided for in chapter 34.05 RCW and WAC 196-09-050 through 196-09-060, but shall not have participated in the determination or action under review. Except as may be otherwise required by the presiding officer, the following procedures shall apply:

(1) The petitioner shall present petitioner's position in writing in accordance with the process and schedule established by the presiding officer.

(2) The presiding officer may accept oral testimony and/or argument.

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(3) No witnesses may appear to testify.

(4) In addition to the written record, the presiding officer may employ agency expertise as a basis for the decision.

(5) The presiding officer will not issue an oral order at the time of the brief adjudicative proceeding. Within ten days of the final date established by the presiding officer for receipt of additional materials and/or oral arguments, if any, the presiding officer will enter a written initial order.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-09-060, filed 1/21/04, effective 2/21/04.]

#### **WAC 196-09-100 Investigative cost reimbursement.**

The reimbursement of investigative costs may be ordered by the board if the adjudicative process has resulted in a finding by the board that identifies conduct which is considered misconduct or malpractice and has resulted in the suspension or revocation of the license to practice. Costs subject to reimbursement are those expenses paid by the board during the investigation process, such as expert or consultant witness contracts.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-09-100, filed 1/21/04, effective 2/21/04.]

#### **WAC 196-09-110 Cooperation with board investigation.**

In the course of an investigation and request by the board under its authority in chapter 18.43 RCW, a licensee or registrant must provide any papers, records, or documents in their possession or accessible to them that pertain to the allegations in a complaint or investigation, and a written explanation addressing such complaint/investigation or other information requested by the board. A facility related to a complaint or investigation shall be made accessible by the licensee during regular business hours.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-09-110, filed 1/21/04, effective 2/21/04.]

**WAC 196-09-120 Meetings and officers.** All meetings of the board are held in accordance with the Open Public Meetings Act, chapter 42.30 RCW. The Washington state board of registration for professional engineers and land surveyors shall hold its annual meeting in the third week of June each year. All other meetings of the board are held at such times and places as the board may deem necessary.

At the annual meeting the board shall elect a chair and vice chair to hold office for one year commencing July 9. Any resignation from the position of chair shall be filled for the remainder of the term by the vice chair.

[Statutory Authority: RCW 18.43.035. WSR 10-05-016, § 196-09-120, filed 2/4/10, effective 3/7/10. Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-09-120, filed 1/21/04, effective 2/21/04.]

#### **WAC 196-09-130 Board member limitations—Contract selection.**

(1) When a member of the board of registration for professional engineers and land surveyors (Board) is beneficially interested, directly or indirectly, in a contract, sale, lease, purchase or grant that may be made by, through, or is under the supervision of the board in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract, sale, lease, purchase or grant, the member must:

(a) Exclude him or herself from the board discussion regarding the specific contract, sale, lease, purchase or grant;

(b) Exclude him or herself from the board vote on the specific contract, sale, lease, purchase or grant; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific contract, sale, lease, purchase or grant.

(2) The prohibition against discussion set forth in sections (a) and (c) may not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3) Under subsection (1), "any other person" has a beneficial interest in a contract, sale, lease, purchase or grant when the other person bids or otherwise seeks to be awarded the contract, sale, lease, purchase or grant.

**EXAMPLE:**

The board is composed of licensed professional engineers (PE) and professional land surveyors (PLS). A licensed PE member of the board is employed by a company, which conducts forensic evaluations for the purpose of determining whether an engineering design was properly performed. The board is in the process of selecting a contractor to conduct an evaluation of said engineering design for the board's use during disciplinary activities. The company that employs the PE member of the board has responded to the board's RFP.

The PE member of the board may use his general expertise regarding the performance of forensic evaluations to educate the board as to the general elements of such review. The member is prohibited from participating in the board's discussion, decision and vote for selecting a contractor.

[Statutory Authority: RCW 18.43.035. WSR 06-22-032, § 196-09-130, filed 10/25/06, effective 11/25/06.]

**WAC 196-09-131 Board member limitations—Transactions.** (1) When a member of the board of registration for professional engineers and land surveyors (Board) either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual, which is engaged in a transaction involving the board, the member must:

(a) Exclude him or herself from the board discussion regarding the specific transaction;

(b) Exclude him or herself from the board vote on the specific transaction; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in sections (a) and (c) may not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction" involving the board means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the member in question believes, or has reason to believe:

(i) Is, or will be, the subject of board action; or

(ii) Is one to which the board is or will be a party; or

(iii) Is one in which the board has a direct and substantial proprietary interest.

(b) "Transaction" involving the board does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rule making is not a "transaction" as described in this subsection.

(4) "Board action" means any action on the part of the board including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

**EXAMPLE:**

The board may discipline engineers or land surveyors for incompetence in their practice in Washington. The board is conducting an investigation involving questionable surveying services provided by a county engineer's office. One of the members of the board sits on that county's planning commission. The member must exclude him or herself from any board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from the investigation.

[Statutory Authority: RCW 18.43.035. WSR 06-22-032, § 196-09-131, filed 10/25/06, effective 11/25/06.]

**WAC 196-09-135 Reporting of board member recusal.** (1) If exclusion occurs pursuant to WAC 196-09-130 or 196-09-131, the member of the board should disclose to the public the reasons for his or her recusal from any board action whenever recusal occurs. The board staff should record each exclusion and the basis for the exclusion in the minutes of the board meetings.

[Statutory Authority: RCW 18.43.035. WSR 06-22-032, § 196-09-135, filed 10/25/06, effective 11/25/06.]