

**WAC 220-220-440 Grounds for reversing or modifying an order of suspension or revocation.** An adjudicative proceeding to review a department order of revocation or suspension shall reverse or modify an order only when the order was not authorized by law, or as otherwise provided in this section. Where an issue of fact is material to determining the validity of an order, then the department shall be required to prove the fact by a preponderance of evidence, except that a person contesting the order shall have the burden to prove any fact that is in the nature of an affirmative defense.

(1) Adjudicative proceedings to contest an order shall be limited to the following issues:

(a) Whether the person was in fact convicted of the relevant offenses or committed any conduct or actions that are material to the order;

(b) Whether the law authorizes the order of revocation or suspension of the particular license(s) or privilege(s);

(c) Whether the period of revocation or suspension is consistent with the period required or allowed by law; and

(d) Any other issue that the presiding officer determines is necessary to review of the order or review of the discretion exercised by the director.

(2) The presiding officer may, after appropriate conference with the person seeking review and a representative of the department, enter a prehearing order to identify the issues that will be reviewed at the adjudicative proceeding, and to set the time, place, and manner of the proceeding. A prehearing order shall control all future proceedings and issues shall not be raised except as allowed by that order, except when the presiding officer determines that there is good cause. If no prehearing order is entered, then the adjudicative proceeding may occur and review the grounds stated in the request at a time, place, and manner set by the presiding officer. When there is no substantial prejudice to the appellant's ability to contest a department order, an adjudicative proceeding under this subsection may be conducted based on written submissions.

(3) Discovery and subpoenas. Discovery is not allowed except as provided in this rule. A party wishing to engage in discovery, or to compel the attendance of witnesses at the hearing or in discovery, must file a motion with the presiding officer to obtain permission. Such motion shall be served on all parties to the proceeding, and all parties shall have at least five days to respond to the motion before the presiding officer rules, unless the presiding officer shortens time for such a motion based upon a showing of good cause. In addition to the criteria set by RCW 34.05.446(3) for such motions, the moving party shall demonstrate that he or she has attempted in writing to seek a stipulation to the fact or facts that the person seeks to prove using discovery. The presiding officer has discretion to condition or deny discovery.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-220-440, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 75.08.080. WSR 00-01-101 (Order 99-209), § 220-125-060, filed 12/16/99, effective 1/16/00.]