

**WAC 363-11-410 Adjudicative hearings—Testimony.** (1) Testimony in hearings brought pursuant to WAC 363-116-083 and 363-116-084. The board and the exam committee shall be required to produce no more than a total of three fact witnesses (two board/committee members, one test developer), and no more than one expert witness, for any hearing requested pursuant to WAC 363-116-083 and 363-116-084, unless the board's chair, in his/her sole discretion, determines that additional witnesses are necessary. If the petitioner asserts that there is a necessity for additional witnesses, he/she must demonstrate to the presiding officer that "exceptional circumstances" exist and that such information cannot be obtained through other means in order to increase the number of witnesses.

The scope of the hearing shall be limited to those issues set forth in WAC 363-116-083(5) and 363-116-084(5) and shall not include inquiry into the mental processes of a board or committee member concerning their decision making processes once a decision has been made and a written explanation has been provided. A written explanation may be in the form of a written recommendation, board or committee meeting minutes, performance evaluations, correspondence to the petitioner, and/or other documents submitted to the board as a part of the decision making process.

(2) Testimony in hearings brought pursuant to WAC 363-116-086.

(a) Board/TEC witnesses - The board and the trainee evaluation committee (TEC) shall be required to produce no more than a total of two fact witnesses (one board witness, one TEC witness) and no more than one expert witness in support of its decisions made pursuant to WAC 363-116-080, unless the chair, in his/her sole discretion, determines that additional witnesses are necessary. If the petitioner asserts that there is a necessity for additional witnesses, he/she must demonstrate to the presiding officer that "exceptional circumstances" exist and that such information cannot be obtained through other means in order to increase the number of witnesses. The scope of the testimony for the hearing will be limited as set forth in WAC 363-116-086

(3)(b) and (c) and shall not include inquiry into the mental processes of a board or committee member concerning their decision making processes once a decision has been made and a written explanation has been provided. A written explanation may be in the form of a written recommendation, board or committee meeting minutes, training trip reports, training trip report summary spreadsheets, correspondence to the petitioner, and/or other documents submitted to the board as a part of the decision making process.

(b) Training and supervising pilots - The board has determined that requiring or permitting the testimony of training and supervising pilots in connection with a hearing pursuant to WAC 363-116-086 would jeopardize the integrity of the training program and would stifle candid and honest assessments of a trainee's performance in the training program. The training and supervising pilots prepare written training trip reports for each training trip. Those reports shall speak for themselves. Notwithstanding any other provision in these regulations, no training or supervising pilot shall be called as a witness in connection with a hearing brought pursuant to WAC 363-116-086. To the extent a particular training trip report is considered by a party to be vague and/or ambiguous, a party may seek, by way of motion, a declaration from a training or supervising pilot, seeking clarification of specific issues which the party believes, for good cause shown, should be clarified. The burden to demonstrate that there is a necessity for

such a declaration shall be on the petitioner, who must demonstrate to the presiding officer that "exceptional circumstances" exist and that such information cannot be obtained through other means. Such declaration may then become a part of the record of proceedings, upon a motion duly made by a party to the proceedings.

(3) Testimony in hearings brought pursuant to RCW 88.16.100(5), WAC 363-116-370 and 363-116-420. The board shall be required to produce no more than a total of two fact witnesses and, if it deems necessary one expert witness, in connection with any hearing requested pursuant to RCW 88.16.100(5), WAC 363-116-370 and 363-116-420, unless the board's chair, in his/her sole discretion determines that additional witnesses are necessary. If the petitioner asserts that there is a necessity for additional witnesses, he/she must show just cause to the presiding officer as to why additional witnesses should testify and that such information cannot be obtained through other means.

The scope of the testimony for the hearing will be limited to those issues set forth in RCW 88.16.100(5), WAC 363-116-370 and 363-116-420 and shall not include inquiry into the mental processes of a board or committee member concerning their decision making processes once a decision has been made and an adequate written explanation has been provided. A written explanation may be in the form of a written recommendation, board or committee meeting minutes, incident reports, correspondence to the petitioner, and/or other documents submitted to the board as a part of the decision making process.

[Statutory Authority: Chapter 88.16 RCW. WSR 12-12-041, § 363-11-410, filed 5/30/12, effective 6/30/12. WSR 97-08-042, recodified as § 363-11-410, filed 3/28/97, effective 3/28/97; Rule .08.410, effective 3/1/60, filed 3/23/60.]