

# Title 446 WAC

## STATE PATROL

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### Chapter 446-08 WAC

#### PRACTICE AND PROCEDURE

#### WAC

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**WAC 446-08-005 Definitions.** (1) "Board" wherever used in these rules shall mean the trial board constituted as provided in RCW 43.43.070.

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

(3) "Hearing officer" wherever used in these rules shall mean the chief of the Washington state patrol, whose duty it is to preside over such hearings as are conducted by the trial board, as in RCW 43.43.090 provided. [Rule .04.010, filed 3/23/60.]

**WAC 446-08-007 Agency defined.** As used in this chapter, "agency" means the Washington State Patrol. [Order II, § 446-08-007, filed 11/22/74.]

**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 the following:

(1) Attorneys at law duly qualified and entitled to practice before the Supreme Court of the state of Washington;

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law. [Order II, § 446-08-010, filed 11/22/74; Rule .08.010, filed 3/23/60.]

**WAC 446-08-030 Solicitation of business unethical.** It shall be unethical for persons acting in a representative capacity before the agency to solicit business by circulars, advertisement or by personal communication or interviews not warranted by personal relations, provided that such representatives may publish or circulate business cards. It is equally unethical to procure business indirectly by solicitors of any kind. [Order II, § 446-08-030, filed 11/22/74.]

**WAC 446-08-040 Standards of ethical conduct.** All persons appearing in proceedings before a hearing officer or board in a representative capacity shall 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. [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 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 he previously took an active part in the investigation as a representative of the agency. [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 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. [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 within the statutory time as required by statute governing the agency or proceeding and in the absence of a statutory requirement, then a reasonable time before the date set for hearing. The notice shall state the time, place, and issues involved. [Order II, § 446-08-080, filed 11/22/74; Rule .08.080, filed 3/23/60.]

**WAC 446-08-090 Service of process—By whom served.** The agency shall cause to be served all orders, notices, and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it. [Order II, § 446-08-090, filed 11/22/74; Rule .08.090, filed 3/23/60.]

**WAC 446-08-100 Upon whom served.** All papers served by either the agency or any party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record

and all parties not represented by counsel of such fact. [Order II, § 446-08-100, filed 11/22/74; Rule .08.100, filed 3/23/60.]

**WAC 446-08-110 Service upon parties.** The final order, and any other paper required to be served by the agency upon a party, shall be served upon such party or upon the agent designated by him or by law to receive service of such papers, and a copy shall be furnished to counsel of record. [Order II, § 446-08-110, filed 11/22/74; Rule .08.110, filed 3/23/60.]

**WAC 446-08-120 Method of service.** Service of papers shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail, or by telegraph. [Order II, § 446-08-120, filed 11/22/74; Rule .08.120, filed 3/23/60.]

**WAC 446-08-130 When service complete.** Service upon parties shall be regarded as complete: By mail, upon deposit in the United States mail properly stamped and addressed; by telegraph, when deposited with a telegraph company properly addressed and with charges prepaid. [Order II, § 446-08-130, filed 11/22/74; Rule .08.130, filed 3/23/60.]

**WAC 446-08-140 Filing with agency.** Papers required to be filed with the agency shall be deemed filed upon actual receipt by the agency at the Washington State Patrol Headquarters accompanied by proof of service upon parties required to be served. [Order II, § 446-08-140, filed 11/22/74; Rule .08.140, filed 3/23/60.]

**WAC 446-08-150 Subpoenas—Where provided by law—Form.** 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 control at a specified time and place. [Order II, § 446-08-150, filed 11/22/74.]

**WAC 446-08-160 Issuance to parties.** Upon application of counsel or other representative authorized to practice before the agency for any party to a contested case, there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The Chief, Washington State Patrol, may issue subpoenas to parties not so represented upon request or upon a showing of general relevance and reasonable scope of the testimony or evidence sought. [Order II, § 446-08-160, filed 11/22/74.]

**WAC 446-08-170 Service.** Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one day's attendance and the mileage allowed by law. [Order II, § 446-08-170, filed 11/22/74.]

**WAC 446-08-180 Fees.** Witnesses summoned before the agency 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. [Order II, § 446-08-180, filed 11/22/74.]

**WAC 446-08-190 Proof of service.** The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgement of service with the hearing officer or board or the officer before whom the witness is required to testify or produce evidence. If service is made by a person other than an officer of the agency and such service has not been acknowledged by the witness, such person shall make an affidavit of service. Failure to make proof of service does not affect the validity of the service. [Order II, § 446-08-190, filed 11/22/74.]

**WAC 446-08-200 Quashing.** Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed and upon notice to the party to whom the subpoena was issued, the Board or the authorized agency officer may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable conditions. [Order II, § 446-08-200, filed 11/22/74.]

**WAC 446-08-210 Enforcement.** Upon application and for good cause shown the agency will seek judicial enforcement of subpoenas issued to parties and which have not been quashed. [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 Depositions and interrogatories in contested cases—Right to take.** Except as may be otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding. The attendance of witnesses may be compelled by the use of a subpoena. Depositions shall be taken only in accordance with this rule and the rule on subpoenas. [Order II, § 446-08-230, filed 11/22/74.]

**WAC 446-08-240 Scope.** Unless otherwise ordered, the deponent may be examined regarding any matter not privileged, which is relevant to the subject matter involved in the proceeding. [Order II, § 446-08-240, filed 11/22/74.]

**WAC 446-08-250 Officer before whom taken.** Within the United States or within 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 laws of the state of Washington

or of the place where the examination is held; 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 agency or agreed upon by the parties by stipulation in writing filed with the agency. Except by stipulation, no deposition shall be taken before a person who is a party or the privy of a party, or a privy of any counsel of a party, or who is financially interested in the proceeding. [Order II, § 446-08-250, filed 11/22/74.]

**WAC 446-08-260 Authorization.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than three days in writing to the agency and all parties. 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 general description sufficient to identify him or the particular class or group to which he belongs. On motion of a party upon whom the notice is served, the hearing officer or board may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, 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 other depositions. [Order II, § 446-08-260, filed 11/22/74.]

**WAC 446-08-270 Protection of parties and deponents.** After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the hearing officer or board may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed, the deposition shall be opened only by order of the hearing officer or board or that business secrets or secret processes, developments, or research need not be disclosed or that the parties shall simultaneously file specified documents, or information enclosed in sealed envelopes to be opened as directed by the hearing officer or board or the hearing officer or board may make any other order which justice requires to protect the party or witness from annoyance, embarrassment or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the hearing officer or board may order the officer conducting the examination to cease forthwith from taking the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the hearing officer or board. Upon demand of the objecting party or

deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. [Order II, § 446-08-270, filed 11/22/74.]

**WAC 446-08-280 Oral examination and cross-examination.** Examination and cross-examination shall proceed as at an oral hearing. In lieu of participating in the oral examination, any party served with notice of taking a deposition may transmit written cross interrogatories to the deposing officer who, without first disclosing them to any person, and after the direct testimony is complete, shall propound them seriatim to the deponent and record or cause the answers to be recorded verbatim. [Order II, § 446-08-280, filed 11/22/74.]

**WAC 446-08-290 Recordation.** The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by someone acting under his direction and in his presence, record the testimony by typewriter directly or by transcription from stenographic notes, tape or record recorders, which record shall separately and consecutively number each interrogatory. Objections to the notice, qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of the deposing officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived. [Order II, § 446-08-290, filed 11/22/74.]

**WAC 446-08-300 Signing attestation and return.** (1) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him. Unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress, the hearing officer or board holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(2) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the proceeding and marked "Deposition of (here insert name of witness)" and shall promptly send it by registered or certified mail to the hearing officer or board for filing. The party taking the deposition shall give prompt notice of its filing to all other parties. Upon payment of reasonable charges therefore, the officer shall furnish a copy of the deposition to any party or to the deponent. [Order II, § 446-08-300, filed 11/22/74.]

**WAC 446-08-310 Use and effect.** Subject to rulings by the hearing officer or board upon objections, a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the hearing officer upon his own motion or the motion of any party. Except by agreement of the parties or ruling of the hearing officer or board, a deposition will be received only in its entirety. A party does not make a party, or the privy of a party, or any hostile witness his witness by taking his deposition. Any party may rebut any relevant evidence contained in a deposition whether introduced by him or any other party. [Order II, § 446-08-310, filed 11/22/74.]

**WAC 446-08-320 Fees of officers and deponents.** Deponents whose depositions are taken and the officers taking the same shall be entitled to the same fees as are paid for like services in the superior courts of the state of Washington, which fees shall be paid by the party at whose instance the depositions are taken. [Order II, § 446-08-320, filed 11/22/74.]

**WAC 446-08-330 Depositions upon interrogatories—Submission of interrogatories.** Where the deposition is taken upon written interrogatories, the party offering the testimony shall separately and consecutively number each interrogatory and file and serve them with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom they are to be taken. Within ten days thereafter a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five days thereafter, the latter may serve redirect interrogatories upon the party who served cross-interrogatories. [Order II, § 446-08-330, filed 11/22/74.]

**WAC 446-08-340 Interrogation.** Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in WAC 446-08-250, the officer taking the same after duly swearing the deponent shall read to him seriatim, one interrogatory at a time and cause the same and the answer thereto to be recorded before the succeeding interrogatory is asked. No one except the deponent, the officer and the court reporter or stenographer recording and transcribing it shall be present during the interrogation. [Order II, § 446-08-340, filed 11/22/74.]

**WAC 446-08-350 Attestation and return.** The officer before whom interrogatories are verified or answered shall (1) certify under his official signature and seal that the deponent was duly sworn by him, that the interrogatories and answers are a true record of the deponent's testimony, that no one except deponent, the officer and the stenographer were present during the taking, and that neither he nor the stenographer, to his knowledge, is a party, privy to a party, or interested in the event of the proceedings, and (2) promptly send by registered or certified mail the original copy of the deposition and exhibits with his attestation to the agency, or its designated hearing officer, one copy to the counsel who submitted

the interrogatories and another copy to the deponent. [Order II, § 446-08-350, filed 11/22/74.]

**WAC 446-08-360 Provisions of deposition rule.** In all other respects, depositions upon interrogatories shall be governed by the previous deposition rule. [Order II, § 446-08-360, filed 11/22/74.]

**WAC 446-08-370 Official notice—Matters of law.** The hearing officer or board, upon request made before or during a hearing, will officially notice:

(1) **Federal law.** The constitution; congressional acts, resolutions, records, journals and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the Federal Register;

(2) **State law.** The constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; decisions of administrative agencies of the state of Washington, executive orders and proclamations by the governor; and all rules, orders and notices filed with the code revisor.

(3) **Governmental organization.** Organization, territorial limitations, officers, departments, and general administration of the government of the state of Washington, the United States, and several states and foreign nations;

(4) **Agency organization.** The department, commission or board organization, administration, officers, personnel, official publications, and practitioners before its bar. [Order II, § 446-08-370, filed 11/22/74; Rule .08.370, filed 3/23/60.]

**WAC 446-08-380 Material facts.** In the absence of controverting evidence, the hearing officer or board, upon request made before or during a hearing may officially notice:

(1) **Agency proceedings.** The pendency of, the issues and position of the parties therein, and the disposition of any proceeding then pending before or theretofore concluded by the agency;

(2) **Business customs.** General customs and practices followed in the transaction of business;

(3) **Notorious facts.** Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute, or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency;

(4) **Technical knowledge.** Matters within the technical knowledge of the agency as a body of experts, within the scope or pertaining to the subject matter of its statutory duties, responsibilities or jurisdiction;

(5) **Request or suggestion.** Any party may request, or the hearing officer or board may suggest, that official notice be taken of a material fact, which shall be clearly and precisely stated, orally on the record, at any pre-hearing conference or oral hearing or argument, or may make such request or suggestion by written notice, any

pleading, motion, memorandum or brief served upon all parties, at any time prior to a final decision;

(6) **Statement.** Where an initial or final decision of the hearing officer or board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision. In determining whether to take official notice of material facts, the hearing officer or board may consult any source of pertinent information, whether or not furnished as it may be, by any party and whether or not admissible under the rules of evidence;

(7) **Controversion.** Any party may controvert a request or a suggestion that official notice of a material fact be taken at the time the same is made if it be made orally, or by a pleading reply or brief in response to the pleading or brief or notice in which the same is made or suggested. If any decision is stated to rest in whole or in part upon official notice of a material fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by appropriate exceptions if such notice be taken in an initial or intermediate decision or by a petition for reconsideration if notice of such fact be taken in a final report. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the existence or nonexistence of the material fact assumed or denied in the decision;

(8) **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. [Order II, § 446-08-380, filed 11/22/74; Rule .08.380, filed 3/23/60.]

**WAC 446-08-390 Presumptions** Upon proof of the predicate facts specified in the following six subdivisions hereof without substantial dispute and by direct, clear, and convincing evidence, the hearing officer or board, with or without prior request or notice, may make the following presumptions, where consistent with all surrounding facts and circumstances:

(1) **Continuity.** That a fact of a continuous nature, proved to exist at a particular time continues to exist as of the date of the presumption, if the fact is one which usually exists for at least that period of time;

(2) **Identity.** That persons and objects of the same name and description are identical;

(3) **Delivery.** That mail matter, or communications, properly addressed, and delivered to the post office, telegraph, or cable company, with all postage, and charges properly prepaid, is or has been delivered to the addressee in the ordinary course of business;

(4) **Ordinary course.** That a fact exists or does not exist, upon proof of the existence or nonexistence of another fact which in the ordinary and usual course of affairs, usually and regularly coexists with the fact presumed;

(5) **Acceptance of benefit.** That a person for whom an act is done or to whom a transfer is made has, does or will accept same where it is clearly in his own self-interest so to do;

(6) **Interference with remedy.** That evidence, with respect to a material fact which in bad faith is destroyed, eloiigned, suppressed, or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact. [Order II, § 446-08-390, filed 11/22/74; Rule .08.390, filed 3/23/60.]

**WAC 446-08-400 Stipulations and admissions of record.** The existence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) **Upon whom binding.** Such a stipulation or admission is binding upon the parties by whom it is made, their privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or nonexistence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a prehearing conference, oral hearing, oral argument or by a writing filed and served upon all parties within five days after a copy of such stipulation or admission has been served upon them;

(2) **Withdrawal.** Any party bound by a stipulation or admission of record at any time prior to final decision may be permitted to withdraw the same in whole or in part by showing to the satisfaction of the hearing officer or board such a stipulation or admission was made inadvertently or under a bona fide mistake of fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding. [Order II, § 446-08-400, filed 11/22/74; Rule .08.400, filed 3/23/60.]

**WAC 446-08-410 Form and content of agency decisions in contested cases.** Every decision, order, or recommendation shall:

(1) Be correctly captioned as to name of agency and name of proceeding;

(2) Designate all parties and counsel to the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Be accompanied by appropriate numbered findings of fact and conclusions of law;

(5) Whenever practical, the conclusions of law shall include the reason for the particular action taken;

(6) Whenever practical, the conclusions, recommendations, and/or order shall be referenced to specific provisions of the law and/or regulations appropriate thereto, together with reasons and precedents relied upon to support the same. [Order II, § 446-08-410, filed 11/22/74; Rule .08.410, filed 3/23/60.]

**WAC 446-08-420 Definition of issues before hearing.** In all proceedings the issues to be adjudicated shall 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.

[Order II, § 446-08-420, filed 11/22/74; Rule .08.420, filed 3/23/60.]

**WAC 446-08-430 Prehearing conference rule—Authorized.** In any proceeding the hearing officer or board upon its own motion, or upon the motion of one of the parties or their qualified representatives, may in its discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider:

(1) The simplification of issues;

(2) The necessity of amendments to the pleading;

(3) The possibility of obtaining stipulations, admissions of facts and of documents;

(4) The limitation of the number of expert witnesses;

(5) Such other matters as may aid in the disposition of the proceeding. [Order II, § 446-08-430, filed 11/22/74; Rule .08.430, filed 3/23/60.]

**WAC 446-08-440 Record of conference action.** The hearing officer or board shall make an order or statement which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties or their qualified representatives 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. [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), be not received in evidence in the absence of a clear showing that the offering party had good cause for his 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, 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. [Order II, § 446-08-450, filed 11/22/74; Rule .08.450, filed 3/23/60.]

**WAC 446-08-460 Excerpts from documentary evidence.** 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. [Order II, § 446-08-460, filed 11/22/74; Rule .08.460, filed 3/23/60.]

**WAC 446-08-470 Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses.** That the hearing officer or board in all classes of cases where practicable make an effort to have the interested parties agree upon the witness or witnesses who are to give expert or opinion testimony, either by selecting one or more to speak for all parties or by limiting the number for each party; and, if the interest parties cannot agree, require them to 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, by a date determined by the board and fixed sufficiently in advance of the hearing to permit the other interested parties to investigate such qualifications. [Order II, § 446-08-470, filed 11/22/74.]

**WAC 446-08-480 Written sworn statements.** That the hearing officer or board in all classes of cases in which it is practicable and permissible, make every effort to bring about by voluntary submission, that all direct opinion or expert testimony and all direct testimony based on economic or statistical data be reduced to written sworn statements, and, together with the exhibits upon which such statements are based, be submitted to the hearing officer or board and to the other parties to the proceeding by a date determined by the hearing officer or board and fixed a reasonable time in advance of the hearing; and that such sworn statements be acceptable as evidence upon formal offer at the hearing, subject to objection on any ground except that such sworn statements shall not be subject to challenge because the testimony is not presented orally, and provided that witnesses making such statements shall not be subject to cross-examination unless a request is made sufficiently in advance of the hearing to insure the presence of the witnesses. [Order II, § 446-08-480, filed 11/22/74.]

**WAC 446-08-490 Supporting data.** That 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 446-08-480, but wherever practicable that he restrict to a minimum the placing of such data in the record. [Order II, § 446-08-490, filed 11/22/74.]

**WAC 446-08-500 Effect of noncompliance with WAC 446-08-470 or 446-08-480.** Whenever the manner of introduction of opinion or expert testimony or

testimony based on economic or statistical data is governed by requirements fixed under the provisions of WAC 3-08-470 or 3-08-480 [WAC 446-08-470 or 446-08-480], 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 failure to conform to such requirements. [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 knowledge, notify the hearing officer or board of said desire, stating in detail the reasons why such continuance is necessary. The hearing officer or 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 or board may grant such a continuance and may at any time order a continuance upon its or his own 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 or 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. [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.** 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 best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness. In passing upon the admissibility of evidence, the officer conducting the hearing shall give consideration to, but shall not be bound to follow the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior court of the state of Washington. [Order II, § 446-08-520, filed 11/22/74; Rule .08.520, filed 3/23/60.]

**WAC 446-08-530 Tentative admission—Exclusion—Discontinuance—Objections.** When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. 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. [Order II, § 446-08-530, filed 11/22/74; Rule .08.530, filed 3/23/60.]

**WAC 446-08-540 When not applicable.** These rules and provisions shall not apply to actions of the Chief of the Washington State Patrol taken pursuant to RCW 43.43.060. [Order II, § 446-08-540, filed 11/22/74.]

**Chapter 446-16 WAC**  
**WASHINGTON STATE IDENTIFICATION**  
**SECTION**

<b>WAC</b>	
446-16-010	Definitions.
446-16-020	Scope of the rules.
446-16-025	Expungement of arrest records.
446-16-030	Inspection by the subject of his records.
446-16-040	Reporting of persons detained in custody.
446-16-050	Report by Social and Health Services on change of parole status—Other changes—Requirements.
446-16-060	Disposition reports—When required.
446-16-070	Report contents—General.
446-16-080	Report time limitations.
446-16-090	Law enforcement agencies—Reporting responsibilities.
446-16-100	Prosecutorial agencies—Reporting responsibilities.
446-16-110	Courts—Reporting responsibilities.
446-16-120	Audit of reporting compliance.

**WAC 446-16-010 Definitions.** For the purposes of these rules, the following words and phrases shall have the following meanings:

(1) "Criminal offender record information" includes, and shall be restricted to identifying data and public record information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal offender record information" shall not include intelligence, analytical or investigative reports and files.

(2) "Criminal justice agencies" are those public agencies within or outside the state which perform, as a principal function, activities directly relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

(3) "Disposition" shall mean that result which is reached at a determination of criminal proceedings against an individual at any stage in the criminal justice system and resulting in the culmination or final disposal of the criminal charge.

(4) "Section" shall mean the section on identification of the Washington State Patrol established in RCW 43.43.700, et seq. [Order 1, 446-16-010, filed 2/11/74.]

**WAC 446-16-020 Scope of the rules.** Criminal offender record information shall not be released or inspected except in accordance with RCW 43.43.700 et seq. and these rules. [Order 1, § 446-16-020, filed 2/11/74.]

**WAC 446-16-025 Expungement of arrest records.** (1) A person desiring the destruction of his fingerprints and/or other identifying data, pursuant to RCW 43.43.730, shall make his request therefor on a form furnished by the Washington State Patrol Section on Identification. The request shall be mailed or delivered to the central office of the Section located at 3330 Capitol Boulevard, Tumwater, Washington.

(2) The request shall be completed, signed by the person whose record is sought to be expunged and his signature witnessed. It shall include the address of the applicant, the printed name and the address of the witness to the applicant's signature and such other information requested on the application as identifies the

applicant and the offense for which the request of expungement is made.

(3) The request shall include reasonable proof that the person making the request for expungement is the same person whose fingerprints or other identifying data are sought to be expunged. Such proof shall include fingerprints of the applicant if requested by the Section.

(4) The request shall include reasonable proof that the person making the request has no prior criminal record and that he has been found not guilty of the offense for which the fingerprints and/or other identifying data were taken or was finally released without a conviction for such offense having been obtained or has other lawful grounds for expungement. Such proof shall include the furnishing of all details pertaining to the finding of not guilty or release without conviction of such criminal charges. Where the finding or release is based on an order of a court, the applicant shall furnish a certified or xeroxed copy of the court order. [Order 1, § 446-16-025, filed 2/11/74.]

**WAC 446-16-030 Inspection by the subject of his records.** (1) Any person desiring to inspect criminal offender record information which refers to himself may do so at the central office of the Washington State Identification Section located at 3330 Capitol Boulevard, Tumwater, Washington, between the hours of 8 a.m. and 5 p.m., Monday through Friday, excepting legal holidays.

(2) Any person desiring to inspect criminal offender record information pertaining to himself shall first permit his fingerprints to be taken by the Section for identification purposes if requested to do so. The section in their discretion may accept other identification in lieu of fingerprints.

(3) A reasonable period of time, not to exceed 15 minutes, shall be allowed each individual to examine criminal offender record information pertaining to themselves.

(4) No person shall be allowed to retain or reproduce any criminal offender record information pertaining to themselves except for the purpose of challenge or correction of entries of arrests by submitting law enforcement agencies of the state of Washington. Visual examination only shall be permitted of such information unless the individual asserts his belief that criminal offender record information from a submitting law enforcement agency of the state of Washington concerning him is inaccurate, incomplete or maintained in violation of the law; and unless he requests correction or completion of the information on a form furnished by the section, or requests expungement pursuant to WAC 446-16-025.

(5) If any person who desires to examine criminal offender record information pertaining to himself is unable to read or is otherwise unable to examine same because of a physical disability, he may designate another person of his own choice to assist him. The person about whom the information pertains shall execute, with his mark, a form provided by the Section consenting to the inspection of criminal offender record information pertaining to himself by another person for the purpose of it being



read or otherwise described to him. Such designated person shall then be permitted to read or otherwise describe or translate the criminal offender record information to the person about whom it pertains. [Order 1, § 446-16-030, filed 2/11/74.]

**WAC 446-16-040 Reporting of persons detained in custody.** (1) The principal officers of the jails, correctional institutions, state mental institutions or other places of detention to which a person is committed under chapters 10.76 or 71.06 RCW shall report to the Section any inter-institutional transfer, release or change of release status of any person held in their custody, within 72 hours of such occurrence, upon forms provided by the Section.

(2) Said form shall include the name and address of the subject, the date on which he was arrested and the offense or cause for which he was placed in custody or confinement, the expected date of release and shall contain the subject's fingerprints. It shall also contain a physical description of the individual and other identification data contained in the files of the agency. [Order 1, § 446-16-040, filed 2/11/74.]

**WAC 446-16-050 Report by Social and Health Services on change of parole status—Other changes—Requirements.** The Department of Social and Health Services shall notify the Section of the release on order of the State Board of Prison Terms and Paroles, or the discharge from custody or the expiration of sentence or the discharge from active parole supervision of any person who is serving a sentence for a term of confinement in a state correctional facility for convicted felons pursuant to court commitment within ten days of such occurrence. Such notice shall be made on forms provided by the Section and shall include the name of the person released or discharged, the place to which such person has been released or discharged, the conditions of his release or discharge and fingerprints and other identifying data concerning said person. The Department of Social and Health Services shall additionally notify the Section of any change in residence or conditions of release or discharge of persons on active parole supervision on forms prescribed and furnished by the Section within ten days of such occurrence. [Order 1, § 446-16-050, filed 2/11/74.]

**WAC 446-16-060 Disposition reports—When required.** In every case where a fingerprint record or other report of the arrest of an individual on criminal charges has been submitted to the Section, the agency which makes the final determination of such criminal charges or in whose jurisdiction the final determination is made shall report the disposition of such charges to the Section. [Order 1, § 446-16-060, filed 2/11/74.]

**WAC 446-16-070 Report contents—General.** The report of disposition shall be made on forms provided by the Section. The name of the subject about which the report is made, the designated fingerprints of the subject, the name of the original contributor of the fingerprint or arrest record, and the original arrest number

shall be entered on the disposition report exactly the same as they appear on the fingerprint card or arrest record previously forwarded to the Section. The Section number should be indicated on the disposition report if known. [Order 1, § 446-16-070, filed 2/11/74.]

**WAC 446-16-080 Report time limitations.** All of the information requested on the disposition report shall be completed and the report mailed to the Washington State Identification Section, P.O. Box 2527, Olympia, Washington 98504, within 10 days of the date that a disposition becomes effective. [Order 1, § 446-16-080, filed 2/11/74.]

**WAC 446-16-090 Law enforcement agencies—Reporting responsibilities.** (1) If the disposition of criminal charges is made by the arresting agency, as where the individual is released without charge, the arresting agency shall fill in and complete the disposition report and mail same to the Section. If the disposition is known at the time and arrest record or fingerprint card is submitted to the Section, this information should be noted thereon. In this case, it shall be unnecessary to forward a disposition report.

(2) In all cases where the arresting agency does not make the final disposition, it shall initiate the preparation of a disposition report by recording the name of the individual arrested, the designated fingerprints of the individual, the charges on which he was arrested, the name of the contributor of the arrest or fingerprint record, the arrest number and any other information that may identify the individual. At this stage the disposition of charges shall be left blank, but the agency shall note the action that it has taken, e.g., referred to the prosecutor, etc. The partially completed disposition report shall then be included as part of the individual's case file and shall be forwarded with other information concerning the charges against the individual to the prosecutor or other agency to which the arresting agency forwards the case. [Order 1, § 446-16-090, filed 2/11/74.]

**WAC 446-16-100 Prosecutorial agencies—Reporting responsibilities.** (1) The prosecutor or city attorney shall complete the disposition report if he determines not to press charges or the case is not otherwise acted upon by a judicial body. In such cases, the prosecutor or city attorney shall mail the completed disposition report to the Section within 10 days from the date that it is determined no further judicial action will be taken on the charges. [Order 1, § 446-16-100, filed 2/11/74.]

**WAC 446-16-110 Courts—Reporting responsibilities.** Where the disposition of criminal charges occurs as a result of action taken by or within the jurisdiction of any court in the State of Washington, the disposition of such charges shall be reported to the Section pursuant to Rules of the Supreme Court of the State of Washington on forms approved by the Supreme Court and supplied by the Section. [Order 1, § 446-16-110, filed 2/11/74.]

**WAC 446-16-120 Audit of reporting compliance.** The Section shall administer a compliance audit procedure at least once annually to insure that all disposition reports have been received and added to the criminal offender record information. The Section shall prepare listings of all criminal offender record information for which no disposition report has been received and has been outstanding for more than 9 months since the date of arrest. Each criminal justice agency shall be furnished with a list of outstanding disposition reports for criminal offender record information of persons who were arrested or against whom charges were filed by that agency. Within 30 days of receipt of such list each criminal justice agency shall provide the Section with a current disposition report or status report for each person for whom a disposition report is overdue. [Order 1, § 446-16-120, filed 2/11/74.]

### Chapter 446-30 WAC

#### DISPOSITION OF VEHICLES SEIZED FOR ALTERED VEHICLE IDENTIFICATION NUMBERS—HEARINGS

##### WAC

446-30-010	Purpose.
446-30-020	Definitions.
446-30-030	Hearing officer.
446-30-040	Procedure.
446-30-050	Burden of proof.
446-30-060	Record.
446-30-070	Appeal.

**WAC 446-30-010 Purpose.** The purpose of this regulation is to provide administrative rules and standards for hearings conducted pursuant to chapter 124, Laws of 1974, 1st ex. sess. (RCW 9.54.030(3)) relating to the disposition of motor vehicles, motorcycles, motor-driven cycles, trailers, vessels, motorboats, or component parts thereof impounded by the Washington State Patrol. [Order II, § 446-30-010, filed 11/22/74.]

**WAC 446-30-020 Definitions.** (1) The term "aggregate value" of an article or articles whose ownership is in question shall be the current market value of the article as determined by procedures set out in WAC 446-30-040(2) as of the time of the proposed disposition.

(2) The term "interested party" or "party in interest" is defined as a party claiming ownership or a right to possession of the article involved.

(3) The term "article" shall encompass the plural "articles" and includes motor vehicles, motorcycles, motor-driven cycles, trailers, vessels, motorboats, or component parts thereof. [Order II, § 446-30-020, filed 11/22/74.]

**WAC 446-30-030 Hearing officer.** The hearing shall be conducted by a person appointed by the Chief of the Washington State Patrol. The hearing shall be conducted at a place within the state designated by the hearing officer who shall consider the convenience of the witnesses involved in the hearing, and the convenience of the parties in interest. The hearing officer, after having

heard evidence submitted to him and having conducted a hearing in accordance with this chapter and chapter 446-08 WAC, shall decide whether a party in interest has presented a claim of ownership or right to possession of the article involved sufficient to award possession of the article to the party. If so, he shall order the article released to such party. [Order II, § 446-30-030, filed 11/22/74.]

**WAC 446-30-040 Procedure.** Insofar as it is applicable, (1) Chapter 446-08 WAC, shall govern hearing procedure, and the service of notice of the hearing upon the person who held possession or custody of the article when it was impounded, and upon any other person who, prior to final disposition, notifies Headquarters, Washington State Patrol, in writing of a claim of ownership or lawful right to possession thereof.

(2) In accordance with chapter 124, Laws of 1974, 1st ex. sess. (RCW 9.54.30(3)), any person claiming ownership or right of possession hereunder may remove the matter to a court of competent jurisdiction if the aggregate value of the article involved is one hundred dollars (\$100) or more. If the article involved is a component part or parts of a vehicle, then the right to remove the matter to a court of competent jurisdiction shall be conditioned on the component part or parts having an aggregate value of one hundred dollars (\$100) or more. An officer of the Washington State Patrol assigned to the Motor Vehicle Theft Section shall determine the current market value of the article based on such factors as the condition of the vehicle, the year, and the make of the vehicle, etc. The value finally arrived at by the officer should reflect the value of the vehicle on the open market. If the value of the article cannot be agreed upon by the officer and the interested party, a dealer who specializes in the type article shall be contacted to determine the current market value.

(3) The hearing officer, after having heard all pertinent evidence submitted to him, shall make written findings of fact based on the evidence and written conclusions based on his findings and applicable law in accordance with WAC 446-08-410. The findings and conclusions of the hearing officer shall be served on all parties to the hearing within fifteen (15) days of the close of the hearing. If a decision adverse to an interested party is made, no disposition shall be made of the property until after thirty (30) days following service of the hearing officer's decision, or until expiration of any stay of disposition granted by the hearing officer or court of competent jurisdiction, whichever date comes last.

(4) Upon application to the hearing officer by any interested party aggrieved by the decision for a stay of disposition in any matter in which an appeal has been filed, the hearing officer shall stay his order of disposition pending the outcome of the appeal to a court of competent jurisdiction. [Order II, § 446-30-040, filed 11/22/74.]

**WAC 446-30-050 Burden of proof.** The person or party in interest claiming to be the lawful owner or to have the lawful right to possession shall have the burden

of establishing his claim of ownership. [Order II, § 446-30-050, filed 11/22/74.]

**WAC 446-30-060 Record.** Any oral proceedings shall be recorded on tape and such tape shall become part of the hearing record. [Order II, § 446-30-060, filed 11/22/74.]

**WAC 446-30-070 Appeal.** Appeal from the decision of the hearing officer to a superior court by an interested party aggrieved by a decision in a contested case shall be in accordance with RCW 34.04.130 and applicable court rules. [Order II, § 446-30-070, filed 11/22/74.]

**Chapter 446-40 WAC**  
**DISABILITY RETIREMENTS—**  
**APPLICATIONS—DECISIONS—APPEALS**

**WAC**

446-40-010	Purpose.
446-40-020	Definitions.
446-40-030	Application for disability.
446-40-040	Application by member or personnel officer.
446-40-050	Action by Chief.
446-40-060	Finality of Chief's decision—Exception.
446-40-070	The Board—Responsibilities and functions.
446-40-080	Procedure.
446-40-090	Responsibility of member.
446-40-100	Duties of Board following hearing.
446-40-110	Decision by the Chief.
446-40-130	Statement of earnings and status.

**DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

446-40-120	Pay when disability retirement status in question. [Order II, § 446-40-120, filed 11/22/74.] Repealed by Order 4, filed 2/27/76.
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**WAC 446-40-010 Purpose.** The purpose of this regulation is to provide an administrative procedure and standards for disability retirements under RCW 43.43-.040. [Order II, § 446-40-010, filed 11/22/74.]

**WAC 446-40-020 Definitions.** (1) The term "active service," as it applies to a member of the Washington State Patrol, is defined as all performance of duties of whatever type, performed pursuant to orders by a superior of the member, provided, such duties shall be consistent with the responsibilities of the Washington State Patrol. "Active service" shall consist of "line duty" and "other duty."

(2) "Line duty" is active service which encompasses the traffic safety and other law enforcement responsibilities of the Washington State Patrol, the accomplishment of which require, from time to time, extreme physical exertion.

(3) "Other duty" is active service which encompasses activities consistent with the responsibilities of the Washington State Patrol, but which do not foreseeably require more physical exertion than that normally required for the performance of clerical tasks.

(4) "Disability" is defined as any injury or incapacitation of such an extent as to render a member of the

Washington State Patrol mentally or physically incapable of active service.

(5) "Applicant" as the term is used in this regulation shall refer either to the member or to the department, whichever is initiating action pursuant to this regulation.

(6) The term "member" is defined as a regularly commissioned officer in the Washington State Patrol.

(7) The term "chief" in this regulation refers to the Chief of the Washington State Patrol.

(8) The term "personnel officer" is defined as the person designated by the Chief to be responsible for personnel matters within the Washington State Patrol.

(9) The term "department" refers to the Washington State Patrol as a state agency. [Order II, § 446-40-020, filed 11/22/74.]

**WAC 446-40-030 Application for disability.** No member shall be placed in or removed from disability retirement status by application of the member, the department, or the personnel officer except in accordance with this regulation. [Order II, § 446-40-030, filed 11/22/74.]

**WAC 446-40-040 Application by member or personnel officer.** (1) Whenever a member of the Washington State Patrol desires to be placed in disability retirement status or the Personnel Officer determines that the member should be placed in disability retirement status, the member or the Personnel Officer, as appropriate, will make application through command channels to the Chief, stating in full the basis of his claim of disability and include with his application such supporting documents as may be available to include medical history, reports, doctors' analyses, and other pertinent materials. When the Personnel Officer makes such application, he shall forward a copy of the application and supporting documents to the member concerned.

(2) Upon receipt of such application, the Chief, after seeking such evaluation and advice as he shall deem necessary, shall determine whether the applicant shall be placed in disability retirement status. Following this determination, the Chief shall indicate to the applicant that based upon the information available to him at that time, placement in disability retirement status is or is not warranted. If the Chief orders a member into disability retirement status, the member shall not be prejudiced by a failure to obey this order if, within seven (7) days of receiving the order, he requests a formal hearing as provided for in WAC 446-40-070 et seq.

(3) Similarly, when a member of the Washington State Patrol is in disability retirement status and seeks return to active service status, he shall apply to the Chief, stating in full the basis for his seeking return to active status and including with his application such supporting documents as may be available to include medical history, reports, doctors' analyses, and other pertinent materials. Upon receipt of such application, the Chief, after seeking such evaluation and advice as he may deem necessary, shall determine if the applicant should be restored to active service. Following this determination, the Chief will indicate to the applicant that

based upon the information available to him at that time, restoration is or is not warranted. [Order II, § 446-40-040, filed 11/22/74.]

**WAC 446-40-050 Action by Chief.** When the Chief determines pursuant to RCW 43.43.040 and based upon available medical history, reports, doctors' analyses and the like, that a member in disability retirement status should be returned to active service status, he may so order the member to active service status pursuant to RCW 43.43.040. The member shall not be prejudiced by failure to report if, within seven days after receipt of the order, he requests a formal hearing as provided for in WAC 446-40-070, et seq. [Order 4, § 446-40-050, filed 2/27/76; Order II, § 446-40-050, filed 11/22/74.]

**WAC 446-40-060 Finality of Chief's decision—Exception.** The decision of the Chief, made under any of the circumstances set out in WAC 446-40-040 or WAC 446-40-050, shall be final, unless the member concerned, within seven days of receipt of the decision, requests a formal hearing before the Washington State Patrol Disability Retirement Board. [Order II, § 446-40-060, filed 11/22/74.]

**WAC 446-40-070 The Board—Responsibilities and functions.** (1) The Board shall consist of four members appointed by the Chief, three of whom shall be appointed annually and shall include the Personnel Officer. The fourth member shall be appointed each time the Board is convened and shall be of the same rank as the member whose case the Board is hearing.

(2) The Board shall inquire into all pertinent matters relating to the disability retirement questions before the Board.

(3) The Board shall obtain and review reports or testimony of mental or physical examinations of the member and shall advise the Chief whether, in its opinion, the member is mentally or physically capable of continuing in active service or of resuming active service.

(4) When reviewing the case of a member in disability retirement status, the Board shall recommend whether disability retirement should be continued or whether the member shall be directed to return to active duty.

(5) When reviewing an application by a member of [or] the Personnel Officer for disability retirement status, the Board shall recommend whether the Chief should deny or grant the application.

(6) When the Board recommends that a member presently in disability retirement status should return to active duty, or that a request for disability retirement should be denied, the Board shall also make findings based on the evidence before it whether the member is physically or mentally capable of performing any specific assignment while on active duty. Where the Board finds the member has a physical or mental impairment or disability, it shall describe such impairment or disability and the expected duration thereof, and shall recommend specific job assignments within the department which the member is mentally and physically capable of performing in his present condition.

(7) When the Board recommends that the application for disability retirement status should be granted, it shall also determine whether the departmental member was injured or incapacitated while in the performance of his official duties or while on standby or available for duty. [Order 4, § 446-40-070, filed 2/27/76; Order II, § 446-40-070, filed 11/22/74.]

**WAC 446-40-080 Procedure.** The provisions of chapter 446-08 WAC shall govern the conduct of the hearing and procedure before the Board. The burden of proof in the hearing before the Board shall be upon the applicant, whether a member or the department, who is seeking a change in a member's status to disability retirement or to active service. [Order 4, § 446-40-080, filed 2/27/76; Order II, § 446-40-080, filed 11/22/74.]

**WAC 446-40-090 Responsibility of member.** All department members having knowledge pertinent to the issues before the Board shall cooperate with the Board and shall not withhold information or facts within their knowledge, provided that no person shall be required to furnish any information or statements which would tend to incriminate him. [Order II, § 446-40-090, filed 11/22/74.]

**WAC 446-40-100 Duties of Board following hearing.** In all cases, the Board shall prepare a record of the hearing as described in RCW 34.34.090(4) [34.04.090(4)]. All oral testimony before the Board shall be taped. The tapes shall be part of the record. Such record shall be presented to the Chief within fourteen (14) days following the conclusion of the Board's hearing. A copy of the record shall be delivered to the member within fourteen (14) days following the conclusion of the Board's hearings. [Order 4, § 446-40-100, filed 2/27/76; Order II, § 446-40-100, filed 11/22/74.]

**WAC 446-40-110 Decision by the Chief.** (1) The Chief shall review the record and decide on the basis of this material and upon no other basis or prior action whether the member shall or shall not be placed in or removed from disability retirement status. The Chief may order the hearing reopened in the event he finds it necessary to do so to make a decision and he shall inform the Board what additional inquiry is required. The Board's supplemental action, if any, shall be made in the manner set out in WAC 446-40-070 through WAC 446-40-100.

(2) In accordance with RCW 34.04.110, prior to making a final decision which is adverse to the member, the Chief, if he has not heard or read the evidence, shall cause to be served on the member a proposal for decision, including findings of fact and conclusions of law, and shall afford the member an opportunity to file exceptions and present written arguments to the Chief, who shall personally consider the whole record or such portions thereof as may be cited by the member. Such exceptions and arguments shall be filed with the Office of the Chief within twenty (20) days of receipt of the proposal for decision. The Chief may grant additional time for filing upon good cause shown. In his discretion,

the Chief may allow oral arguments in support of the exceptions. [Order 4, § 446-40-110, filed 2/27/76; Order II, § 446-40-110, filed 11/22/74.]

**WAC 446-40-130 Statement of earnings and status.**

A member who is in disability retirement status and to whom the provisions of RCW 43.43.040(2) apply shall file with the Chief every six months a signed, sworn statement of earnings. In addition, every member in disability retirement status shall file with the Chief every six months a signed, sworn statement of his current status of health, any medication or treatment he is undergoing, the nature and description of his employment, if any, and the medical prognosis of his condition. [Order 4, § 446-40-120, (codified as WAC 446-40-130), filed 2/27/76; Order II, § 446-40-130, filed 11/22/74.]