

Title 320 WAC

MEDICAL DISCIPLINARY BOARD

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Chapter 320-08 WAC

PRACTICE AND PROCEDURE

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WAC 320-08-010 Appearance and practice before agency—Who may appear. No person may appear in a representative capacity before the Washington state medical disciplinary board or a hearing committee of said 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. [Rule 320-08-010, filed 12/14/64.]

WAC 320-08-030 Appearance and practice before agency—Solicitation of business unethical. It shall be unethical for persons acting in a representative capacity before the Washington state medical disciplinary board or a hearing committee of said board to solicit business by circulars, advertisements or by personal communication or interviews not warranted by personal relations, provided that such representative may publish or circulate business cards. It is equally unethical to procure business indirectly by solicitors of any kind. [Rule 320-08-020, filed 12/14/64.]

WAC 320-08-040 Appearance and practice before agency--Standards of ethical conduct. All persons appearing in proceedings before the Washington state medical disciplinary board or a hearing committee of said 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 Washington state medical disciplinary board or a hearing committee of said board may decline to permit such person to appear in a representative capacity in any proceeding before it. [Rule 320-08-030, filed 12/14/64.]

WAC 320-08-050 Appearance and practice before agency--Appearance by former employee of board or former member of attorney general's staff. No member of the attorney general's staff assigned to represent the Washington state medical disciplinary board or a hearing committee of said board may at any time after severing his employment with the attorney general appear, except with the written permission of the Washington state medical disciplinary board, in a representative capacity on behalf of other parties in a formal proceeding wherein he previously took an active part in the investigation as a representative of the Washington state medical disciplinary board or a hearing committee of said board. [Rule 320-08-040, filed 12/14/64.]

WAC 320-08-070 Computation of time. In computing any period of time prescribed or allowed by the Washington state medical disciplinary board or a hearing committee of said board rules, by order of the Washington state medical disciplinary board or 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. [Rule 320-08-050, filed 12/14/64.]

WAC 320-08-080 Notice and opportunity for hearing in contested cases. In any case involving a charge of unprofessional conduct, the party shall be served with a specification of charges and a notice of hearing at least thirty days before the date set for the hearing. The notice shall state the time, place, and issues involved, as required by RCW 34.04.090(1) and the other requirements of notice prescribed by RCW 18.72.180. [Rule 320-08-060, filed 12/14/64.]

WAC 320-08-090 Service of process--By whom served. The Washington state medical disciplinary board or a hearing committee of said board shall cause to be served by the sheriff 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. [Rule 320-08-070, filed 12/14/64.]

WAC 320-08-100 Service of process--Upon whom served. All papers served by either the Washington state medical disciplinary board or a hearing committee of said board or any party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel. 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. [Rule 320-08-080, filed 12/14/64.]

WAC 320-08-110 Service of process--Service upon parties. The final order, and any other paper required to be served by the Washington state medical disciplinary board upon a party, shall be served upon such party and a copy shall be furnished to counsel of record. [Rule 320-08-090, filed 12/14/64.]

WAC 320-08-120 Service of process--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. [Rule 320-08-100, filed 12/14/64.]

WAC 320-08-130 Service of process--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. [Rule 320-08-110, filed 12/14/64.]

WAC 320-08-140 Service of process--Filing with Washington state medical disciplinary board. Papers required to be filed with the Washington state medical disciplinary board or a hearing committee of said board shall be deemed filed upon actual receipt by the Washington state medical disciplinary board or a hearing committee of said board at the place specified in its rules accompanied by proof of service upon parties required to be served. [Rule 320-08-120, filed 12/14/64.]

WAC 320-08-150 Subpoenas where provided by law--Form. Every subpoena shall state the name of the Washington state medical disciplinary board and the title of the proceeding, if any, 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. [Rule 320-08-130, filed 12/14/64.]

WAC 320-08-160 Subpoenas where provided by law--Issuance to parties. Upon application of counsel 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 Washington state medical disciplinary board 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. [Rule 320-08-140, filed 12/14/64.]

WAC 320-08-170 Subpoenas where provided by law--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. [Rule 320-08-150, filed 12/14/64.]

WAC 320-08-180 Subpoenas where provided by law--Fees. Witnesses summoned before the Washington state medical disciplinary board or a hearing committee of said board shall be paid by the party at whose instance they appear the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington. [Rule 320-08-160, filed 12/14/64.]

WAC 320-08-190 Subpoenas where provided by law--Proof of service. The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgment of service with the Washington state medical disciplinary board or the hearing committee of said board before whom the witness is required to testify or produce evidence. Failure to make proof of service does not affect the validity of the service. [Rule 320-08-170, filed 12/14/64.]

WAC 320-08-200 Subpoenas where provided by law--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 Washington state medical disciplinary board or a hearing committee of said board 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. [Rule 320-08-180, filed 12/14/64.]

WAC 320-08-210 Subpoenas where provided by law--Enforcement. Upon application and for good cause shown, the Washington state medical disciplinary board or a hearing committee of said board will seek judicial enforcement of subpoenas issued to parties and which have not been quashed. [Rule 320-08-190, filed 12/14/64.]

WAC 320-08-220 Subpoenas where provided by law--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. [Rule 320-08-200, filed 12/14/64.]

WAC 320-08-230 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, except that leave must be obtained if notice of the taking is served by a proponent within twenty days after the filing of a specification of charges and notice of hearing. 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. [Rule 320-08-210, filed 12/14/64.]

WAC 320-08-240 Depositions and interrogatories in contested cases--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. [Rule 320-08-220, filed 12/14/64.]

WAC 320-08-250 Depositions and interrogatories in contested cases--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 Washington state medical disciplinary board or agreed upon by the parties by stipulation in writing filed with the Washington state medical disciplinary board. [Rule 320-08-230, filed 12/14/64.]

WAC 320-08-260 Depositions and interrogatories in contested cases--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 Washington state medical disciplinary board 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 committee 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. [Rule 320-08-240, filed 12/14/64.]

WAC 320-08-270 Depositions and interrogatories in contested cases--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 Washington state medical disciplinary board or a hearing committee of said 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 limited to certain matters, or that the examination shall be held with no one present except the party or parties to the action and his or their counsel, or that after being sealed, the deposition shall be opened only by order of the Washington state medical disciplinary board or a hearing committee of said board, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Washington state medical disciplinary board or a hearing committee of said board or it 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 manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Washington state medical disciplinary board or a hearing committee of said board may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the Washington state medical disciplinary board or a hearing committee of said 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. [Rule 320-08-250, filed 12/14/64.]

WAC 320-08-280 Depositions and interrogatories in contested cases—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 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. [Rule 320-08-260, filed 12/14/64.]

WAC 320-08-290 Depositions and interrogatories in contested cases—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, wire 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 officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived. [Rule 320-08-270, filed 12/14/64.]

WAC 320-08-300 Depositions and interrogatories in contested cases—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 Washington state medical disciplinary board or a hearing committee of said 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 proceeding and marked "Deposition of (here insert name of witness)" and shall promptly send it by registered or certified mail to the Washington state medical disciplinary board, or a hearing committee of said board, for filing. The party taking the deposition shall give prompt notice of its filing to all other parties. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent. [Rule 320-08-280, filed 12/14/64.]

WAC 320-08-310 Depositions and interrogatories in contested cases—Use and effect. Subject to rulings by the hearing committee 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 committee upon its own motion or the motion of any party. Except by agreement of the parties or ruling of the hearing committee, 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. [Rule 320-08-290, filed 12/14/64.]

WAC 320-08-320 Depositions and interrogatories in contested cases—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. [Rule 320-08-300, filed 12/14/64.]

WAC 320-08-330 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 10 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. [Rule 320-08-310, filed 12/14/64.]

WAC 320-08-340 Depositions upon interrogatories--Interrogation. Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in WAC 320-08-250 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. [Rule 320-08-320, filed 12/14/64.]

WAC 320-08-350 Depositions upon interrogatories--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 Washington state medical disciplinary board or a hearing committee of said board, one copy to the counsel who submitted the interrogatories and another copy to the deponent. [Rule 320-08-330, filed 12/14/64.]

WAC 320-08-360 Depositions upon interrogatories--Provisions of deposition rule. In all other respects, depositions upon interrogatories shall be governed by the previous deposition rule. [Rule 320-08-340, filed 12/14/64.]

WAC 320-08-370 Official notice--Matters of law. The Washington state medical disciplinary board or a hearing committee of said 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 reviser.

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

(4) **Agency organization.** The Washington state medical disciplinary board's organization, administration, officers, personnel, official publications, and practitioners before its bar. [Rule 320-08-350, filed 12/14/64.]

WAC 320-08-380 Official notice--Material facts. In the absence of controverting evidence, the Washington state medical disciplinary board, or a hearing committee of said 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 Washington state medical disciplinary board or a hearing committee of said board;

(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 Washington state medical disciplinary board or a hearing committee of said board, 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 Washington state medical disciplinary board or a hearing committee of said 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 prehearing 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 Washington state medical disciplinary board or a hearing committee of said 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 committee of the Washington state medical disciplinary 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 Washington state medical disciplinary board or a hearing committee of said board, from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them. [Rule 320-08-360, filed 12/14/64.]

WAC 320-08-390 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 Washington state medical disciplinary board, or a hearing committee of said 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, communications, express or freight, properly addressed, marked, billed and delivered respectively to the post office, telegraph, cable or radio company, or authorized common carrier of property with all postage, tolls and charges properly prepaid, is or has been delivered to the addressee or consignee 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, elogned, suppressed or withheld by a party in control

thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact. [Rule 320-08-370, filed 12/14/64.]

WAC 320-08-400 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 party or 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 committee or the Washington state medical disciplinary board that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding. [Rule 320-08-380, filed 12/14/64.]

WAC 320-08-410 Form and content of decisions in contested cases. Every decision and order, whether proposed by the hearing committee, or as finally adopted by the Washington state medical disciplinary board, 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 or reasons for the particular order or remedy afforded;

(6) Wherever practical, the conclusions 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. [Rule 320-08-390, filed 12/14/64.]

WAC 320-08-420 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 committee may proceed promptly to conduct the hearing on relevant and material matter only. [Rule 320-08-400, filed 12/14/64.]

WAC 320-08-430 Prehearing conference rule—Authorized. In any proceeding the Washington state medical disciplinary board or its designated hearing committee, upon its own motion, or upon the motion of the party or parties or their counsel, may in its discretion direct the parties or their counsel to appear at a specified time and place for a conference to consider

- (1) The simplification of the issues;
- (2) The necessity of amendments to the pleadings;
- (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. [Rule 320-08-410, filed 12/14/64.]

WAC 320-08-440 Prehearing conference rule—Record of conference action. The Washington state medical disciplinary board or a hearing committee of said 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 party or parties or their counsel 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. [Rule 320-08-420, filed 12/14/64.]

WAC 320-08-450 Submission of documentary evidence in advance. Where practicable the Washington state medical disciplinary board or a hearing committee of said board may require:

(1) That all documentary evidence which is to be offered during the taking of evidence be submitted to the hearing committee 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. [Rule 320-08-430, filed 12/14/64.]

WAC 320-08-460 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 committee and to the other party or 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. [Rule 320-08-440, filed 12/14/64.]

WAC 320-08-470 Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses. That the hearing committee in all classes of cases where practicable make an effort to have the interested party or 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 interested parties cannot agree, require them to submit to him and to the other party or parties written statements containing the names, addresses and qualifications of their respective opinion or expert witnesses, by a date determined by him and fixed sufficiently in advance of the hearing to permit the other interested parties to investigate such qualifications. [Rule 320-08-450, filed 12/14/64.]

WAC 320-08-510 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 Washington state medical disciplinary board or a hearing committee of said board of said desire, stating in detail the reasons why continuance is necessary. The Washington state medical disciplinary board or a hearing committee of said board, in passing upon a request for continuance, shall consider whether such request was promptly and timely made. For good cause shown, the Washington state medical disciplinary board or a hearing committee of said board may grant such a continuance and may at any time order a continuance upon its 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 committee conducting the hearing 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. [Rule 320-08-460, filed 12/14/64.]

WAC 320-08-520 Rules of evidence—Admissibility criteria. Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the officer conducting the hearing, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the hearing committee 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. [Rule 320-08-470, filed 12/14/64.]

WAC 320-08-530 Rules of evidence—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 committee conducting the hearing may, in its discretion, either with or without objection, 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. [Rule 320-08-480, filed 12/14/64.]

WAC 320-08-540 Petitions for rule making, amendment or repeal--Who may petition. Any interested person may petition the Washington state medical disciplinary board or a hearing committee of said board requesting the promulgation, amendment, or repeal of any rule. [Rule 320-08-490, filed 12/14/64.]

WAC 320-08-550 Petitions for rule making, amendment or repeal--Requisites. Where the petition requests the promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule together with briefs of any applicable law. Where the petition requests the amendment or repeal of a rule presently in affect, the rule or portion of the rule in question must be set out as well as a suggested amended form, if any. The petition must include all reasons for the requested amendment or repeal of the rule. [Rule 320-08-500, filed 12/14/64.]

WAC 320-08-560 Petitions for rule making, amendment or repeal--Agency must consider. All petitions shall be considered by the Washington state medical disciplinary board and the Washington state medical disciplinary board may, in its discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule. [Rule 320-08-510, filed 12/14/64.]

WAC 320-08-570 Petitions for rule making, amendment or repeal--Notice of disposition. The Washington state medical disciplinary board shall notify the petitioning party within a reasonable time of the disposition, if any, of the petition. [Rule 320-08-520, filed 12/14/64.]

WAC 320-08-580 Declaratory rulings. (1) As prescribed by RCW 34.04.080, any interested person may petition the Washington state medical disciplinary board for a declaratory ruling. The Washington state medical disciplinary board shall consider the petition and within a reasonable time the Washington state medical disciplinary board shall:

- (a) Issue a nonbinding declaratory ruling; or
- (b) Notify the person that no declaratory ruling is to be issued; or
- (c) Set a reasonable time and place for hearing argument upon the matter, and give reasonable notification to the person of the time and place for such hearing and of the issues involved.

(2) If a hearing as provided in subsection (c) is conducted, the Washington state medical disciplinary board shall within a reasonable time:

- (a) Issue a binding declaratory rule; or
- (b) Issue a nonbinding declaratory ruling; or
- (c) Notify the person that no declaratory ruling is to be issued. [Rule 320-08-530, filed 12/14/64.]

WAC 320-08-590 Forms. (1) Any interested person petitioning the Washington state medical disciplinary board for a declaratory ruling pursuant to RCW 34.04.080, shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the Washington state medical disciplinary board," on the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory ruling." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

The original and two legible copies shall be filed with the Washington state medical disciplinary board. Petitions shall be on white paper, either 8-1/2" x 11" or 8-1/2" x 13" in size.

(2) Any interested person petitioning the Washington state medical disciplinary board requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the Washington state medical disciplinary board." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for (state whether promulgation, amendment or repeal) of rule (or rules)." Opposite the following caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for amendment, the new matter shall be underscored and the matter proposed to be deleted shall appear in double parentheses. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by

agency rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

(3) Petitions shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and two legible copies of the petition shall be filed with the Washington state medical disciplinary board. Petitions shall be on white paper, either 8-1/2" x 11" or 8-1/2" x 13" in size. [Rule 320-08-540, filed 12/14/64.]

Chapter 320-12 WAC ELECTION OF BOARD MEMBERS

WAC

320-12-010	Election years in congressional districts.
320-12-020	Residential requirement.
320-12-030	Nominating petitions.
320-12-040	Eligibility requirement in elections.
320-12-050	Time of election—Ballots.
320-12-060	Identification by congressional district.
320-12-070	Ballots.
320-12-080	Canvassing and certification.

WAC 320-12-010 Election years in congressional districts. Election of board members in even numbered congressional districts shall be held in even numbered years, and election of board members of odd numbered congressional districts shall be held in odd numbered years. [Rule 320-12-010, filed 12/14/64.]

WAC 320-12-020 Residential requirement. In order for a licensed physician to be eligible to be a candidate for a term of office as a member of the medical disciplinary board, he must be a resident of the congressional district in which he is nominated. [Rule 320-12-020, filed 12/14/64.]

WAC 320-12-030 Nominating petitions. Nominating petitions shall be signed by not less than twenty-five licensed physicians residing in the congressional district in which the nominee resides. The nominating petitions shall be distributed by the division of professional licensing the first Monday in May and must be returned to the division by the third Monday in June. Nominating petitions will be provided by the division of professional licensing, department of licensing, to Washington state medical association, to the chief of the medical staff of Washington licensed hospitals, the county clerk of each county, and the local medical societies. [Statutory Authority: RCW 18.72.150. 82-01-066 (Order PL 388), § 320-12-030, filed 12/18/81; Rule 320-12-030, filed 12/14/64.]

WAC 320-12-040 Eligibility requirement in elections. In order for a licensed physician to be eligible to vote in an election for the selection of a member of the

disciplinary board, the physician must live in the congressional district of the candidate for whom the physician desires to vote, and must hold a current valid registration for the year in which the election is held, except in cases where the voter is in the military service where no current fee is required by law. [Statutory Authority: RCW 18.72.150. 82-01-066 (Order PL 388), § 320-12-040, filed 12/18/81; Rule 320-12-040, filed 12/14/64.]

WAC 320-12-050 Time of election—Ballots. The election shall be held on the second Monday in September. Ballots for the election of a member to the medical disciplinary board from each congressional district shall be sent to the physicians residing in each congressional district not later than the second Monday in August and must be returned to the election commission in the division of professional licensing in Olympia, Washington, by the second Monday in September. [Statutory Authority: RCW 18.72.150. 82-01-066 (Order PL 388), § 320-12-050, filed 12/18/81; Rule 320-12-050, filed 12/14/64.]

WAC 320-12-060 Identification by congressional district. In order for the physician's vote to be valid, each physician must print his or her name on the mailing envelope, which is returned to the division in Olympia, so that the name of each physician voting in the election may be checked off the list of eligible voters. [Statutory Authority: RCW 18.72.150. 82-01-066 (Order PL 388), § 320-12-060, filed 12/18/81; Rule 320-12-060, filed 12/14/64.]

WAC 320-12-070 Ballots. Voting shall be by secret ballot which shall be enclosed in a separate envelope and neither the ballot nor the ballot envelope shall contain any signature or identifying mark whereby the identity of the voter can be ascertained. [Mailing envelopes,] ballot envelopes and ballots will be provided by the division of professional licensing. [Statutory Authority: RCW 18.72.150. 82-01-066 (Order PL 388), § 320-12-070, filed 12/18/81; Rule 320-12-070, filed 12/14/64.]

Reviser's note: RCW 34.04.058 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 320-12-080 Canvassing and certification. Immediately after the election date in September of each year, the election commission will canvass and certify the final vote prior to October 1st of each year, the date upon which the term of office of members of the disciplinary board commences. [Rule 320-12-080, filed 12/14/64.]

Chapter 320-16 WAC SUBSTANTIVE RULES

WAC

320-16-001	Promulgation.
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320-16-010	Suspension or revocation.
320-16-015	Conditional suspension or revocation.

WAC 320-16-001 Promulgation. Pursuant to the powers in it vested by the laws and statutes of the state of Washington, particularly RCW 18.72.150, the Washington state medical disciplinary board does hereby adopt and promulgate the following rules and regulations. [Promulgation, filed 3/22/60.]

WAC 320-16-010 Suspension or revocation. The board in appropriate cases after finding the holder of a license to practice medicine and surgery guilty of unprofessional conduct may, in its discretion, suspend imposition of a penalty of suspension or revocation for such period of time as the board may determine proper. [Rule 1, filed 3/22/60.]

WAC 320-16-015 Conditional suspension or revocation. The board in appropriate cases after finding a holder of a license to practice medicine and surgery guilty of unprofessional conduct may, in its discretion, impose such terms and conditions as the board determines proper as a condition to suspension or imposition of an order of revocation or suspension. [Rule 2, filed 3/22/60.]

Chapter 320-18 WAC

STANDARDS FOR PROFESSIONAL CONDUCT

WAC	
320-18-010	Prescriptions—Schedule II stimulant drugs.

WAC 320-18-010 Prescriptions—Schedule II stimulant drugs. (1) A physician shall be guilty of unprofessional conduct if he or she prescribes, orders, dispenses, administers, supplies or otherwise distributes any amphetamines or other Schedule II nonnarcotic stimulant drug to any person except for the therapeutic treatment of:

- (a) Narcolepsy
 - (b) Hyperkinesis
 - (c) Brain dysfunction of sufficiently specific diagnosis, or etiology which clearly indicates the need for these substances in treatment or control
 - (d) Epilepsy
 - (e) Differential psychiatric evaluation of depression
 - (f) Depression shown to be refractory to other therapeutic modalities;
- or for the clinical investigation of the effects of such drugs or compounds in which case an investigative protocol must be submitted to and reviewed and approved by the medical disciplinary board before the investigation has begun.

(2) A physician prescribing or otherwise distributing controlled substances as permitted by section 1 shall maintain a complete record which must include:

- (a) Documentation of the diagnosis and reason for prescribing
- (b) Name, dose, strength, and quantity of drug, and the date prescribed or distributed.

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(3) The records required by section 2 shall be made available for inspection by the board or its authorized representative upon request.

(4) Schedule II stimulant drugs shall not be dispensed or prescribed for the treatment or control of exogenous obesity. [Statutory Authority: RCW 18.72.150(1). 79-02-044 (Order 296, Resolution 296), § 320-18-010, filed 1/29/79.]

Chapter 320-20 WAC

PHYSICIANS—UNPROFESSIONAL CONDUCT

WAC	
320-20-010	General provisions.
320-20-020	Mandatory reporting.
320-20-030	Health care institutions.
320-20-040	Medical associations or societies.
320-20-050	Health care service contractors and disability insurance carriers.
320-20-060	Professional liability carriers.
320-20-070	Courts.
320-20-080	State and federal agencies.
320-20-090	Professional standards review organizations.

WAC 320-20-010 General provisions. (1) "Unprofessional conduct" as used in these regulations shall mean the conduct described in RCW 18.72.030.

(2) "Hospital" means any health care institution licensed pursuant to chapters 70.41 and 70.71 RCW.

(3) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.

(4) "Board" means the medical disciplinary board, whose address is:

Department of Licensing
Division of Professional Licensing
P.O. Box 9649
Olympia, WA 98504

(5) "Physician" means a physician licensed pursuant to chapter 18.71 RCW.

(6) "Mentally or physically disabled physician" means a physician who has either been determined by a court to be mentally incompetent or mentally ill or who is unable to practice medicine with reasonable skill and safety to patients by reason of any mental or physical condition. [Statutory Authority: RCW 18.72.265. 80-16-024 (Order PL 360), § 320-20-010, filed 10/29/80, effective 1/1/81.]

Reviser's note: Chapter 70.71 RCW as used by the agency in this section is a chapter that does not exist in the Revised Code of Washington as of 1980.

WAC 320-20-020 Mandatory reporting. (1) All reports required by these regulations shall be submitted to the board as soon as possible, but no later than sixty days after a determination is made.

(2) A report should contain the following information [is] [if] known:

- (a) The name, address and telephone number of the person making the report.
- (b) The name and address and telephone numbers of the physician being reported.

(c) The case number of any patient whose treatment is a subject of the report.

(d) A brief description or summary of the facts which gave rise to the issuance of the report, including dates of occurrences.

(e) If court action is involved, the name of the court in which the action is filed along with the date of filing and docket number.

(f) Any further information which would aid the evaluation of the report.

(3) The mandatory reporting shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept for the confidential use of the board as provided in the Medical Disciplinary Act and shall not be subject to subpoena or discovery proceedings in any civil action as provided in RCW 4.24.250, and shall be exempt from public disclosure pursuant to chapter 42.17 RCW except for review as provided in RCW 18.72.265(2). [Statutory Authority: RCW 18.72.265. 80-16-024 (Order PL 360), § 320-20-020, filed 10/29/80, effective 1/1/81.]

Reviser's note: RCW 34.04.058 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 320-20-030 Health care institutions. The chief administrator or executive officer of any hospital or nursing home shall report to the board when any physician's clinical privileges are terminated or are restricted based on a determination, in accordance with an institution's bylaws, that a physician has either committed an act or acts which may constitute unprofessional conduct or that a physician may be mentally or physically disabled. Said officer shall also report if a physician accepts voluntary termination or restriction of clinical privileges in lieu of formal action based upon unprofessional conduct or upon being mentally or physically disabled. [Statutory Authority: RCW 18.72.265. 80-16-024 (Order PL 360), § 320-20-030, filed 10/29/80, effective 1/1/81.]

WAC 320-20-040 Medical associations or societies. The president or chief executive officer of any medical association or society within this state shall report to the board when a medical society hearing panel or committee determines that a physician has committed unprofessional conduct or that a physician may not be able to practice medicine with reasonable skill and safety to patients as the result of any mental or physical condition and constitutes an apparent risk to the public health, safety or welfare. The report required by this subsection shall be made without regard to whether the license holder appeals, accepts or acts upon the determination made by the association or society. Notification of appeal shall be included. [Statutory Authority: RCW 18.72.265. 80-16-024 (Order PL 360), § 320-20-040, filed 10/29/80, effective 1/1/81.]

WAC 320-20-050 Health care service contractors and disability insurance carriers. The executive officer of

every health care service contractor and disability insurer, licensed under chapters 48.20, 48.21, 48.21A and 48.44 RCW operating in the state of Washington, shall report to the board all final determinations that a physician has engaged in flagrant overcharging for medical services or has flagrantly engaged in overutilization of medical services or has charged fees for medical services not actually provided. [Statutory Authority: RCW 18.72.265. 80-16-024 (Order PL 360), § 320-20-050, filed 10/29/80, effective 1/1/81.]

WAC 320-20-060 Professional liability carriers. Every institution or organization providing professional liability insurance directly or indirectly to physicians shall send a complete report of any malpractice settlement, award or payment over thirty thousand dollars as a result of a claim or action for damages alleged to have been caused by an insured physician's incompetency or negligence in the practice of medicine. Such institution or organization shall also report the award, settlement or payment of three or more claims during a year as the result of alleged physician incompetency or negligence in the practice of medicine regardless of the dollar amount of the award or payment. [Statutory Authority: RCW 18.72.265. 80-16-024 (Order PL 360), § 320-20-060, filed 10/29/80, effective 1/1/81.]

WAC 320-20-070 Courts. The board requests the assistance of all clerks of trial courts within the state to report all medical malpractice judgments and all convictions of licensed medical doctors, other than minor traffic violations. [Statutory Authority: RCW 18.72.265. 80-16-024 (Order PL 360), § 320-20-070, filed 10/29/80, effective 1/1/81.]

WAC 320-20-080 State and federal agencies. The board requests the assistance of executive officers of any state or federal program operating in the state of Washington, under which a physician is employed to provide patient care services, to report to the board whenever such a physician has been judged to have demonstrated his/her incompetency or negligence in the practice of medicine, or has otherwise committed unprofessional conduct; or is a mentally or physically disabled physician. [Statutory Authority: RCW 18.72.265. 80-16-024 (Order PL 360), § 320-20-080, filed 10/29/80, effective 1/1/81.]

WAC 320-20-090 Professional standards review organizations. When authorized by federal law, every professional standards review organization operating within the state of Washington shall report to the board any determinations that a physician has engaged or is engaging in consistent, excessive utilization of any medical or surgical test, treatment or procedure when such procedures are clearly not called for under the circumstances in which such services were provided. [Statutory Authority: RCW 18.72.265. 80-16-024 (Order PL 360), § 320-20-090, filed 10/29/80, effective 1/1/81.]