

WAC 106-125-235 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) The conduct council chair shall review all questions for relevance and shall explain on the record the chair's reasons for excluding any question based on lack of relevance. Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(2) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(3) Unless this rule is abrogated by operation of law pursuant to WAC 106-125-201, if a party or witness does not submit to cross-examination during the live hearing, the conduct council must not rely on any statement by that party or witness in reaching a determination of responsibility.

(4) Except as abrogated by operation of law pursuant to WAC 106-125-201, the conduct council may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(5) The conduct council shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: RCW 28B.35.120. WSR 22-06-018, § 106-125-235, filed 2/22/22, effective 3/25/22.]