Chapter 246-11 WAC
MODEL PROCEDURAL RULES FOR BOARDS

Last Update: 10/13/25

WAC

SECTION I
PRELIMINARY MATTERS

246-11-001 Purpose and application of chapter.
246-11-010 Definitions.
246-11-020 Signature authority.
246-11-030 Appearance of parties.
246-11-040 Computation of time.
246-11-050 Certification and authentication.
246-11-060 Current address.
246-11-070 Representation.
246-11-080 Filing and service of documents.
246-11-090 Jurisdiction.
246-11-100 Telephone proceedings.
246-11-110 Hearing location.
246-11-120 Good faith requirement.
246-11-130 Public records.
246-11-140 Expenses and witness fees.
246-11-150 Immunity.
246-11-160 Official notice and agency expertise.
246-11-170 Sanctions.
246-11-180 Intervention.
246-11-190 Form of pleadings and orders.
246-11-200 Notice to limited-English proficient parties.
246-11-210 Interpreters for hearing or speech impaired persons and persons with limited-English proficiency.
246-11-220 Subpoenas.
246-11-230 Presiding officer and panel members.

SECTION II
INITIATING ACTIONS

246-11-250 Form and content of initiating documents.
246-11-260 Amendment of initiating documents.
246-11-270 Request for adjudicative proceeding.
246-11-280 Default.
246-11-290 Scheduling orders.

SECTION III
EMERGENCY ADJUDICATIVE PROCEEDINGS

246-11-300 Conduct of emergency adjudicative proceedings.
246-11-310 Effect of summary action.
246-11-320 Form and content of summary actions.
246-11-330 Adjudicative proceedings upon summary action.
246-11-340 Opportunity for show cause hearing.
246-11-350 Proceedings prior to prompt adjudicative proceeding.

SECTION IV
SETTLEMENT AND PREHEARING PROCEEDINGS

246-11-360 Settlement conference.
246-11-370 Discovery.
246-11-380 Motions.
246-11-390 Prehearing conference.
246-11-400 Protective orders.

SECTION V
BRIEF ADJUDICATIVE PROCEEDINGS

246-11-420 Application of brief adjudicative proceedings.
246-11-425 Preliminary record in brief adjudicative proceedings.
246-11-430 Conduct of brief adjudicative proceedings.
246-11-440 Effectiveness of orders on brief adjudicative proceedings.
246-11-450 Agency record in brief proceedings.

SECTION VI
HEARING

246-11-470 Notice of adjudicative proceeding.
246-11-480 Conduct of adjudicative proceeding.
246-11-490 Evidence.
246-11-500 Proposed order.
246-11-510 Issuance of final order.
246-11-520 Standard of proof.
246-11-530 Consolidated proceedings.
246-11-540 Initial order.

SECTION VII
POST HEARING PROCESS

246-11-550 Appeal from initial order.
246-11-560 Final orders.

246-11-570 Stay of final orders.
246-11-580 Reconsideration of final orders.
246-11-590 Agency record of adjudicative proceedings.
246-11-600 Judicial review.
246-11-610 Vacating an order for reason of default or withdrawal.
246-11-700 Failure to comply with a disciplinary order.

SECTION I
PRELIMINARY MATTERS

WAC 246-11-001 Purpose and application of chapter. (1) This chapter contains model rules for adjudicative proceedings authorized to be conducted under the authority of a board having disciplining authority under the Uniform Disciplinary Act, chapter 18.130 RCW. Each board may adopt these rules as contained in this chapter or as modified.

(2) This chapter, as modified and adopted by the board, applies to adjudicative proceedings authorized to be conducted under the authority of the board.

(3) The rules in this chapter are the exclusive rules governing adjudicative proceedings under the jurisdiction of the board.

(4) To the extent that these rules differ by inclusion, deletion, or content from the model rules adopted by the chief administrative law judge pursuant to RCW 34.05.250, this chapter shall prevail in order to provide a process consistent with the organization of the department and the board.

(5) Where a provision of this chapter conflicts with another chapter of Title 246 WAC, the provision of this chapter shall prevail.

(6) Where a provision of this chapter conflicts with a provision of the Revised Code of Washington, the statute shall prevail.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-001, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1), 34.05.220 and 4.24.250. WSR 93-08-003 (Order 347), § 246-11-001, filed 3/24/93, effective 4/24/93.]

WAC 246-11-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adjudicative clerk's office" means the unit with responsibility for: Docketing; service of orders; and maintaining custody of the adjudicative proceeding record, whose address is:

Department of Health
Adjudicative Clerk's Office
P.O. Box 47879
Olympia, WA 98504-7879

(2) "Adjudicative proceeding" or "hearing" means a proceeding required by statute or constitutional right and conducted under the rules of this chapter, which provides an opportunity to be heard by the board prior to the entry of a final order under this chapter.

(3) "Board" means a board or commission disciplining authority under RCW 18.130.040 (2)(b).

(4) "Brief adjudicative proceeding" means an adjudicative proceeding or hearing, the scope or conduct of which is limited as provided in this chapter.

(5) "Department" means the Washington state department of health and, where appropriate, the secretary of the Washington state department of health or the secretary's designee.

(6) "Docket" or "docketing" means the list or calendar of causes set to be heard at a specified time, prepared by the adjudicative clerk's office for the use of the department.

(7) "Filing" means receipt by the adjudicative clerk's office.

(8) "Initiating document" means a written agency document which initiates action and which creates the right to an adjudicative proceeding. Initiating documents may be a statement of charges, notice of intent to deny, or any other document indicating the action or proposed action to be taken.

(9) "License" has the same meaning as defined in RCW 34.05.010 and includes license to practice the profession for which the board is the disciplining authority and any approval of school or curriculum required by law or rule to be obtained from the board.

(10) "Presiding officer" means the person who is assigned to conduct an adjudicative proceeding and who may either be a member of the board, an individual appointed pursuant to RCW 18.130.095(3), or an administrative law judge employed by the office of administrative hearings.

(11) "Presiding officer for brief adjudicative proceedings" means an employee of the department authorized by the board to conduct brief adjudicative proceedings.

(12) "Program" means the administrative unit within the department responsible for implementation of that chapter of Title 18 RCW establishing the board or its powers and responsibilities.

(13) "Protective order" means an order issued under this chapter which limits the use of, access to, or disclosure of information or evidence.

(14) "Respondent" means a license holder or applicant for license under the jurisdiction of the board who is named in an initiating document.

(15) "Secretary" means the secretary of the department of health or his or her designee.

(16) "Show cause hearing" means a hearing authorized under RCW 18.130.135 and WAC 246-11-340 for the limited purpose of determining whether a summary action taken by the disciplining authority shall remain in effect pending a full administrative hearing.

(17) "Summary action" means an agency action to address an immediate threat to the public health, safety, or welfare and includes, but is not limited to, an order of summary suspension, and an order of summary restriction of a license.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-010, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.135 and 43.70.040. WSR 09-03-089, § 246-11-010, filed 1/20/09, effective 2/20/09. Statutory Authority: RCW 18.155.040. WSR 97-13-015, § 246-11-010, filed 6/6/97, effective 7/7/97. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-010, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1) and 34.05.220. WSR 93-08-003 (Order 347), § 246-11-010, filed 3/24/93, effective 4/24/93.]

WAC 246-11-020 Signature authority. (1) A person designated by the board shall sign all initiating documents issued under this chapter.

(2) All final orders shall be signed by a member of the panel of board members who heard the matter.

(3) All other orders shall be signed by the presiding officer conducting the proceeding.

(4) Authority to sign is indicated by designation of the title of the person signing and shall not require any other affirmation, affidavit, or allegation.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-020, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-020, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-020, filed 3/24/93, effective 4/24/93.]

WAC 246-11-030 Appearance of parties. If a respondent requests an adjudicative proceeding to contest the action, that party shall appear at all stages of the proceeding except as otherwise provided in this section.

(1) If the respondent is represented as provided in this chapter, the respondent shall appear personally at the hearing and at any scheduled settlement conference but need not appear at the prehearing conference or at presentation of motions.

(2) Parties may be represented by counsel at all proceedings.

(3) The respondent may appear by telephone at any portion of the proceedings conducted by telephone, in the discretion of the presiding officer following reasonable advance notice to the presiding officer and to the opposing party.

(4) The requirement of personal appearance may be waived for good cause at the discretion of the presiding officer.

(5) Failure to appear as provided in this chapter is grounds for taking action by default.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-030, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-030, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-030, filed 3/24/93, effective 4/24/93.]

WAC 246-11-040 Computation of time. (1) When computing a period of time prescribed or allowed by an applicable statute or rule, the day of the act, event, or default from which the designated period of time begins to run is not included.

(2) The last day of the computed period is included unless the last day is a Saturday, Sunday, or legal holiday.

(3) When the last day is a Saturday, Sunday, or legal holiday, the period ends at 5:00 p.m. on the next day which is not a Saturday, Sunday, or legal holiday.

(4) When the period of time prescribed or allowed is seven days or less, any intermediate Saturday, Sunday, and legal holiday is excluded from the computation.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-040, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 34.05.220. WSR 93-08-003 (Order 347), § 246-11-040, filed 3/24/93, effective 4/24/93.]

WAC 246-11-050 Certification and authentication. (1) A person's written statement, declaration, verification, certificate, or oath may be authenticated by a written statement which is executed in substantially the following form:

> I certify (or declare) under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.
>
> _____ _____
> (Date and Place) (Signature)

(2) Documents or records may be authenticated by a certification, as provided in subsection (1) of this section, from the custodian of the records or other qualified person that the documents or records are what they purport to be.

(3) Signature of any attorney must be accompanied by and authenticated by that attorney's Washington State Bar Association number.

(4) Documents prepared and submitted by a party who is not represented by an attorney must be signed and dated by that party and must include that party's current address.

(5) Signature by a party or an attorney on a document shall constitute a certificate by the party or attorney that he or she has read the document, believes there are grounds to support it, and has not submitted the document for the purpose of delay, harassment, or needless increase in the cost of a proceeding.

(6) Compliance with certification requirements of subsections (1) and (2) of this section creates a rebuttable presumption that a document is authentic.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-050, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-050, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-050, filed 3/24/93, effective 4/24/93.]

WAC 246-11-060 Current address. Each license holder and applicant shall provide a current mailing address and all subsequent address changes to the program. Whenever service upon any such person is required by these rules, the most recent address provided may be used unless the program has actual knowledge that the person resides at a different address.

[Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-060, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-060, filed 3/24/93, effective 4/24/93.]

WAC 246-11-070 Representation. (1) License holders, applicants for license, and recipients of benefits may be represented subject to the following conditions:

(a) A license holder or applicant for license may represent himself or herself or may be represented by an attorney who has complied with the admission to practice rules of the supreme court of the state of Washington.

(b) Every attorney representing a license holder or applicant for license shall file a notice of appearance with the adjudicative clerk's office upon commencing representation, and shall file a notice of withdrawal of counsel with the adjudicative clerk's office upon terminating representation.

(c) No license holder or applicant may be represented in an adjudicative proceeding by an employee of the department.

(2) No current or former employee of the department may appear as an expert, character witness, or representative of any party other than the department if the employee took an active part in investigating or evaluating the case or represented the agency in the matter, unless written permission of the secretary is granted.

(3) No current or former employee of the attorney general's office who participated personally and substantially in investigating or evaluating the matter at issue while so employed may represent a party other than the department or otherwise participate in a related proceeding without first having obtained the written consent of the attorney general's office.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-070, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-13-015, § 246-11-070, filed 6/6/97, effective 7/7/97. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-070, filed 3/24/93, effective 4/24/93.]

WAC 246-11-080 Filing and service of documents. (1) For purposes of this section "document" means pleadings, briefs, exhibits, orders, or other materials requested or relevant to an adjudicative proceeding.

(2) Filing. Filing is the act of delivering documents to the adjudicative clerk's office.

(a) A party must file with the adjudicative clerk's office documents required or allowed pursuant to this chapter.

(b) Unless otherwise provided by law or directed by the presiding officer, documents must be filed by:

(i) Hand delivery to the adjudicative clerk's office, except when the office is closed during normal business hours due to exigent circumstances;

(ii) First class, registered, or certified mail;

(iii) Fax transmission;

(iv) Electronic mail sent to ACOfax@doh.wa.gov; or

(v) Other secure electronic means as established by the department.

(c) The date of filing is the date the documents are received by the adjudicative clerk's office.

(d) Filing is effective when the documents are received by the adjudicative clerk's office during normal business hours. For documents received after 5:00 p.m. on a business day or on a Saturday,

Sunday, or legal holiday, the filing is effective the next business day.

(3) Service. Service is the act of delivering a document to a party or a party's designated representative.

(a) Unless otherwise provided by law, documents must be served by:

(i) Personal service;

(ii) First class, registered, or certified mail; or

(iii) Fax transmission.

(b) A party must serve copies of documents required or allowed by this chapter prior to or simultaneously with filing the original document with the adjudicative clerk's office.

(c) Service is complete when the documents are:

(i) Personally served;

(ii) Properly stamped, addressed, and deposited in the United States mail; or

(iii) Successfully transmitted by fax.

(d) A party may prove service by filing in compliance with this chapter any of the following:

(i) An acknowledgment of service; or

(ii) A certificate of service including the date the documents were served, the parties upon whom served, the signature of the serving party, and a statement specifying which type of service was used.

(e) Service on a licensee, applicant, or a person requesting an adjudicative proceeding will be made at the last known address provided to the department in accordance with WAC 246-12-310, unless the program has actual knowledge of a different correct address for the person being served.

(4) The parties may agree to use electronic mail for service of documents.

(5) A party may agree with the adjudicative clerk's office to service of documents via electronic mail or other secure electronic means as established by the department, including notices of hearing, initial orders, and final orders.

(6) The adjudicative clerk's office will serve documents via electronic mail or other secure electronic means as established by the department in those cases in which all parties have agreed to electronic service.

[Statutory Authority: RCW 43.70.040 and 34.05.220 (1)(a). WSR 21-13-121, § 246-11-080, filed 6/21/21, effective 7/23/21. Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-080, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-13-015, § 246-11-080, filed 6/6/97, effective 7/7/97. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-080, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-080, filed 3/24/93, effective 4/24/93.]

WAC 246-11-090 Jurisdiction. (1) The board has jurisdiction over all licenses issued by the board and over all holders of and applicants for licenses as provided in RCW 18.130.040 (2)(b) and (3). Such jurisdiction is retained even if an applicant abandons or requests to withdraw the application, or a licensee fails to renew a license.

(2) The department has jurisdiction over practice by unlicensed persons of any activity, profession or business for which a license is required unless otherwise prohibited by law.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-090, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-090, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-090, filed 3/24/93, effective 4/24/93.]

WAC 246-11-100 Telephone proceedings. (1) The presiding officer may conduct all or part of the proceedings or permit a party or witness to appear by telephone or other electronic means if each participant in the proceedings has an opportunity to participate in, hear, and, if technically and economically feasible, see the entire proceeding while it is taking place. Cost of such appearance may be assessed to the party so appearing or on whose behalf the witness appears.

(2) If all or part of the proceedings is conducted as provided in subsection (1) of this section, the parties shall file and serve copies of all documentary evidence no less than three days prior to the proceeding. The presiding officer may, for good cause, allow exceptions to this requirement.

[Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-100, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1) and 4.24.250. WSR 93-08-003 (Order 347), § 246-11-100, filed 3/24/93, effective 4/24/93.]

WAC 246-11-110 Hearing location. The presiding officer shall designate sites for the conduct of proceedings taking into account accessibility, efficiency, and economy.

[Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-110, filed 1/31/94, effective 3/3/94; WSR 93-08-003 (Order 347), § 246-11-110, filed 3/24/93, effective 4/24/93.]

WAC 246-11-120 Good faith requirement. Good faith is the standard for compliance with these rules. Failure to make a good faith effort to comply with these rules is grounds for sanctions as provided in this chapter.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-120, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-120, filed 3/24/93, effective 4/24/93.]

WAC 246-11-130 Public records. (1) All papers, exhibits, transcripts, and other materials required by or submitted in accordance with this chapter are public records.

(2) Release of information upon a request for public records is subject to the following limitations:

(a) Release of health care information must comply with chapter 70.02 RCW and any applicable statutes or rules; and

(b) Chapter 42.56 RCW governs the release of records.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-130, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-130, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-130, filed 3/24/93, effective 4/24/93.]

WAC 246-11-140 Expenses and witness fees. (1) The party requesting the appearance of a witness under a subpoena shall pay witness fees and expenses.

(2) The party requesting service of an expert witness shall negotiate and pay fees for the expert witness.

(3) The party incurring expenses in connection with proceedings under this chapter shall pay the expense.

(4) The program shall pay expenses associated with:

(a) The facility in which proceedings are conducted; and

(b) Recording of the proceedings.

(5) The party filing a motion or request for review of an initial order or petition for reconsideration, appealing a final order, or otherwise requesting a transcript of a proceeding shall pay all expenses related to preparation and distribution of the transcript.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-140, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-140, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1), 18.130.060(3) and 34.05.566. WSR 93-08-003 (Order 347), § 246-11-140, filed 3/24/93, effective 4/24/93.]

WAC 246-11-150 Immunity. The legislature has determined that persons who file complaints with or provide information to the department or board regarding health care practitioners licensed by the board or department are immune from civil liability, provided that such persons have acted in good faith. RCW 4.24.240 through 4.24.260, 18.130.170, 18.130.180, and 18.130.300 set forth the provisions under which immunity is granted.

[Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-150, filed 3/24/93, effective 4/24/93.]

WAC 246-11-160 Official notice and agency expertise. (1) Official notice may be taken as provided in RCW 34.05.452(5).

(2) The board may use its expertise and specialized knowledge to evaluate and draw inferences from the evidence presented to it.

[Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-160, filed 1/31/94, effective 3/3/94. Statutory

Authority: RCW 18.130.050(1) and 34.05.452(5). WSR 93-08-003 (Order 347), § 246-11-160, filed 3/24/93, effective 4/24/93.]

WAC 246-11-170 Sanctions. (1) Orders may include sanctions against either party.

(2) Grounds for sanctions may include:

(a) Failure to comply with this chapter or orders of the presiding officer; and

(b) Willful interference with the progress of proceedings.

(3) Sanctions may include:

(a) Dismissal of the matter;

(b) Proceeding in default; and

(c) Other sanctions as appropriate.

(4) The order must state the grounds upon which any sanctions are imposed.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-170, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-170, filed 3/24/93, effective 4/24/93.]

WAC 246-11-180 Intervention. (1) The presiding officer may grant a petition for intervention pursuant to RCW 34.05.443.

(2) A request to intervene will be handled as a prehearing motion and will be subject to the dates contained in the scheduling order. The presiding officer may allow intervention if:

(a) The intervenor is not a party to the matter but has a substantial interest in the outcome of the matter and the interest of the intervenor is not adequately represented by a party, or other good cause exists; and

(b) Any representative of the intervenor meets the requirements of WAC 246-11-070.

(3) A person will not be allowed to intervene if that person had notice of the board's decision and, upon timely application, would have been able to appear as a party in the matter in which intervention is sought, but failed to make such timely application.

(4) If intervention is granted, the intervenor shall comply with this chapter on the same basis as the other parties to the proceeding, unless otherwise limited in the order granting intervention.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-180, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-180, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-180, filed 3/24/93, effective 4/24/93.]

WAC 246-11-190 Form of pleadings and orders. (1) Pleadings, orders, and other papers filed, served, or entered under this chapter must:

(a) Have a caption with the name of the state of Washington, the name of the board, and the title and cause number, if any, of the proceeding; and

(b) Be signed by the person filing, serving, or entering the document. When that person is an attorney representing a party, the signature block must include the attorney's Washington State Bar Association number.

(2) All orders must comply with RCW 34.05.461 and the requirements of this chapter.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-190, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-190, filed 3/24/93, effective 4/24/93.]

WAC 246-11-200 Notice to limited-English proficient parties. (1) "Limited-English proficiency" means, for purposes of this section and WAC 246-11-210, that a person is unable to communicate effectively in English because their primary language is not English and they have not developed fluency in the English language. A person with limited-English proficiency may have difficulty speaking or reading English.

(2) The department shall ensure that when it serves an initiating document, it includes a notice that the respondent has the right to request an interpreter for the hearing if one is needed. The notice will be in the top ten primary languages in Washington state as determined pursuant to subsection (4) of this section.

(3) When the adjudicative clerk's office is notified by a party that he or she has limited-English proficiency, is a party to an adjudicative proceeding, and their non-English language is one of the top ten primary languages in Washington state as determined pursuant to subsection (4) of this section, the department shall ensure that notices concerning a hearing, including notices of hearing, continuance, and dismissal are translated into the person's primary language.

(4) The top ten primary languages will be reevaluated each year to respond to demographic changes using:

(a) U.S. Census data;

(b) Office of financial management limited-English proficiency population forecasts; and

(c) Department tracking of frequency of encounters with limited-English proficient persons.

(5) When the adjudicative clerk's office is notified by a party that he or she has limited-English proficiency, is a party to an adjudicative proceeding, and their non-English language is not a primary language addressed in subsection (4) of this section, the department shall make a reasonable effort to ensure that either all notices concerning the hearing, including notices of hearing, continuance, and dismissal, are in the person's primary language or include a notice in the party's primary language which describes the significance of the notice and how the party may receive assistance in understanding and, if necessary, responding to the notice.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-200, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-13-015, § 246-11-200, filed 6/6/97, effective 7/7/97. Statutory Authority: RCW 18.130.050(1) and 34.05.220. WSR 93-08-003 (Order 347), § 246-11-200, filed 3/24/93, effective 4/24/93.]

WAC 246-11-210 Interpreters for hearing or speech impaired persons and persons with limited-English proficiency. (1) A "hearing or speech impaired person" means a person who, because of a hearing or speech impairment cannot readily understand or communicate in spoken language. A "hearing impaired person" includes a person who is deaf, deaf and blind, or hard of hearing.

(2) If a hearing or speech impaired person or person with limited-English proficiency is involved in an adjudicative proceeding and notifies the adjudicative clerk's office of the need for an interpreter, the presiding officer shall appoint an interpreter who is acceptable to the parties or, if the parties are unable to agree on an interpreter, the presiding officer shall select and appoint an interpreter.

(3) Before beginning to interpret, an interpreter shall take an oath or make affirmation that:

(a) A true interpretation will be made to the person using the interpreter of all the proceedings in a language or in a manner the person understands; and

(b) The interpreter will repeat the statements of the person using the interpreter to the presiding officer, in the English language, to the best of the interpreter's skill and judgment.

(4) When an interpreter is used in a proceeding:

(a) The interpreter shall interpret all statements made by other participants in the proceeding;

(b) The presiding officer shall ensure sufficient extra time is provided to permit interpretation; and

(c) The presiding officer shall ensure that the interpreter interprets the entire proceeding to the person using the interpreter so that the person has the same opportunity to understand the statements made as a person not requiring an interpreter.

(5) An interpreter appointed under this section is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The program shall pay the interpreter fee and expenses incurred for interpreters for license holders, applicants, or recipients of benefits. The party on whose behalf a witness requiring an interpreter appears shall pay for interpreter services for that witness.

(6) All proceedings must be conducted consistent with chapters 2.42 and 2.43 RCW.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-210, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-13-015, § 246-11-210, filed 6/6/97, effective 7/7/97. Statutory Authority: RCW 18.130.050(1) and 34.05.220. WSR 93-08-003 (Order 347), § 246-11-210, filed 3/24/93, effective 4/24/93.]

WAC 246-11-220 Subpoenas. (1) The board, through the presiding officer, or other designated person, and attorneys for parties may issue subpoenas to residents of the state of Washington, to license holders and applicants for license, and to other persons or entities subject to jurisdiction under RCW 4.28.185.

(2) The presiding officer shall issue subpoenas pursuant to RCW 34.05.446(1) for parties not represented by counsel upon request of the party and upon a showing of relevance and reasonable scope of the testimony or evidence sought. Requests for issuance of subpoenas must

be made in writing to the presiding officer stating the relevance and the scope of testimony or evidence sought.

(3) The person on whose behalf the subpoena is issued shall pay any witness fees and expenses as provided in WAC 246-11-140 or costs for interpreters for such witnesses as provided in WAC 246-11-210.

(4) Attendance of persons subpoenaed and production of evidence may be required at any designated place in the state of Washington.

(5) Every subpoena must:

(a) Comply with WAC 246-11-190;

(b) Identify the party causing issuance of the subpoena; and

(c) Command the person to whom the subpoena is directed to attend and give testimony or produce designated items under the person's control at a specified time and place.

(6) A subpoena may be served by any suitable person eighteen years of age or older by:

(a) Giving a copy of the subpoena to the person to whom the subpoena is addressed;

(b) Leaving a copy at such person's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein;

(c) Sending a copy of the subpoena by mail to the current address on file with the program if the person is licensed by the board or has filed an application for a license with the board; or

(d) Sending a copy of the subpoena by certified mail with proof of receipt if the person is neither licensed by nor has applied for a license with the board.

(7) Proof of service may be made by:

(a) Affidavit or declaration of personal service;

(b) Certification by the person mailing the subpoena to a license holder or applicant; or

(c) Return or acknowledgment showing receipt by the person subpoenaed or his or her representative. Any person accepting certified or registered mail at the last known address of the person subpoenaed will be considered an authorized representative.

(8) The presiding officer, upon motion made promptly and before the time specified for compliance in the subpoena, may:

(a) Quash or modify the subpoena if the subpoena is unreasonable or requires evidence not relevant to any matter at issue; or

(b) Condition denial of the motion upon just and reasonable conditions, including advancement of the reasonable cost by the person on whose behalf the subpoena is issued of producing the books, documents, or tangible things; or

(c) Issue a protective order under RCW 34.05.446 or WAC 246-11-400.

(9) The board may seek enforcement of a subpoena under RCW 34.05.588(1) or proceed in default pursuant to WAC 246-11-280.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-220, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-220, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1), 4.24.240, 4.24.250 and 4.24.260. WSR 93-08-003 (Order 347), § 246-11-220, filed 3/24/93, effective 4/24/93.]

WAC 246-11-230 Presiding officer and panel members. (1) The board may appoint one or more persons as presiding officer for brief adjudicative proceedings as provided in WAC 246-11-430(1).

(2) The board shall authorize one of the following to serve as presiding officer for adjudicative proceedings:

(a) A board member; or

(b) An individual appointed pursuant to RCW 18.130.095(3); or

(c) An administrative law judge employed by the office of administrative hearings.

(3) The board may designate certain of its members to hear a matter as a hearing panel as provided by law.

(4) Any party may move to disqualify the presiding officer, or a member of the board hearing the matter, as provided in RCW 34.05.425(3).

[Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-230, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-230, filed 3/24/93, effective 4/24/93.]

SECTION II
INITIATING ACTIONS

WAC 246-11-250 Form and content of initiating documents. (1) Initiating documents shall include a clear and concise statement of the:

(a) Identity and authority of the person issuing the document;

(b) Factual basis for the action or proposed action set forth in the document;

(c) Statutes and rules alleged to be at issue;

(d) Identity of the party against whom the action is taken or proposed to be taken;

(e) Action or proposed action or penalties, including the statutory or rule authority for those actions or penalties;

(f) Signature of the person issuing the document and the date signed; and

(g) Method by which an adjudicative proceeding may be requested.

(2) Initiating documents must be accompanied by the following documents:

(a) Notice that the respondent may defend against the action or proposed action; and

(b) Form for requesting adjudicative proceeding.

(3) Initiating documents must be served as described in WAC 246-11-080.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-250, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-250, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1) and 34.05.220. WSR 93-08-003 (Order 347), § 246-11-250, filed 3/24/93, effective 4/24/93.]

WAC 246-11-260 Amendment of initiating documents. (1) Prior to the hearing date, initiating documents may be amended:

(a) Subject to the following conditions:

(i) Amended initiating documents must meet the requirements of WAC 246-11-250(1).

(ii) Amended initiating documents must be accompanied by the documents described in WAC 246-11-250(2).

(b) Whenever amended initiating documents are served, a new interval for response will begin, as described in WAC 246-11-270. Whenever amended initiating documents are served, the respondent shall file an answer within the time period specified in the amended initiating document, unless otherwise permitted to extend the filing period under WAC 246-11-270(3), or if the case is within thirty days of the scheduled hearing as described in subsection (c) of this section.

(c) If amended initiating documents are filed within thirty days of the scheduled hearing, the presiding officer will convene a status conference to discuss response deadlines and the case schedule. Upon motion of a party and a showing of good cause, or upon his or her own initiative, the presiding officer may grant a continuance on all or part of the matter and may modify the scheduling order as necessary.

(2) On the hearing date, the initiating documents may be amended subject to the following conditions:

(a) The documents may be amended upon motion of the state.

(b) The presiding officer will determine whether amendments are substantive and may grant a continuance on all if necessary to afford the respondent an opportunity to prepare a defense to the amended documents.

(3) For purposes of this section, motions may be made orally.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-260, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-260, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1) and 34.05.220. WSR 93-08-003 (Order 347), § 246-11-260, filed 3/24/93, effective 4/24/93.]

WAC 246-11-270 Request for adjudicative proceeding. A respondent may respond to an initiating document by filing an application for an adjudicative proceeding or by waiving the opportunity for adjudicative proceeding.

(1) If the respondent wishes to file an application for an adjudicative proceeding:

(a) An application for adjudicative proceeding must be filed in accordance with the following time periods:

(i) For matters under chapter 18.130 RCW, the Uniform Disciplinary Act, within twenty days of service of the initiating documents unless an extension has been granted as provided in subsection (3) of this section; and

(ii) For all other matters, within twenty days of service of the initiating documents, unless otherwise provided by statute.

(b) The application for adjudicative proceeding must be made on the Request for Adjudicative Proceeding form accompanying the initiating documents or by a written document including substantially the same information.

(c) By filing a request for adjudicative proceeding, the responding party agrees to appear personally at the adjudicative proceeding or, if otherwise approved in advance by the presiding officer, by telephone, unless appearance is waived by the presiding officer as authorized in WAC 246-11-030(4).

(d) The application for adjudicative proceeding must contain a response to the initiating documents, indicating whether each charge is admitted, denied or not contested, and responses will be subject to the following conditions:

(i) Once admitted or not contested, an allegation may not be denied; and

(ii) An allegation denied or not contested may later be admitted.

(e) When an allegation is admitted or not contested, it will be conclusively deemed to be true for all further proceedings. No proof of the allegation need be submitted.

(f) The application for adjudicative proceeding must specify the representative, if any, designated pursuant to WAC 246-11-070 and any request for interpreter. The responding party shall amend the name of the representative and need for interpreter immediately if circumstances change prior to the hearing.

(g) The application for adjudicative proceeding must be filed at the adjudicative clerk's office.

(2) A respondent may waive an adjudicative proceeding and submit a written statement and other documents in defense or in mitigation of the charges. Such waiver and documents shall be filed:

(a) In accordance with the timelines in subsection (1)(a) of this section; and

(b) As required in subsection (1)(g) of this section.

(3) For matters under RCW 18.130.180, if the twenty-day limit for filing an application for adjudicative proceeding results in a hardship to the respondent, the respondent may request an extension of not more than sixty days upon a showing of good cause.

(a) The request for extension must be filed within the twenty-day limit and include:

(i) The reason for the request and the number of days for which the extension is requested; and

(ii) Documentation of the circumstances creating the hardship.

(b) The request may be granted for a period not to exceed sixty days upon showing of:

(i) Illness of the respondent; or

(ii) Absence of the respondent from the county of residence or employment; or

(iii) Emergency in the respondent's family; or

(iv) Other good cause as determined by the presiding officer.

(c) If a request for extension is denied, the respondent shall have ten days from service of the order denying the extension or twenty days from service of the initiating documents, whichever is longer, to file an application for adjudicative proceeding.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-270, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-13-015, § 246-11-270, filed 6/6/97, effective 7/7/97. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-270, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1) and 34.05.220. WSR 93-08-003 (Order 347), § 246-11-270, filed 3/24/93, effective 4/24/93.]

WAC 246-11-280 Default. (1) If a party fails to respond to initiating documents according to WAC 246-11-270, that party will be deemed to have waived the right to a hearing, and the board shall enter a final order without further contact with that party.

(2) If a party requests an adjudicative proceeding but fails to appear, without leave to do so, at a scheduled prehearing conference, the presiding officer may issue an order of default. The order must include notice of opportunity to request that the default order be vacated pursuant to RCW 34.05.440(3). Unless vacated, a default order under this subsection will be grounds for the board to proceed to decide the matter in the absence of the respondent and without additional notice to the respondent and to issue a final order.

(3) If a party requests an adjudicative proceeding but fails to appear at the hearing, the presiding officer may issue an order of default in the same manner as subsection (2) of this section, or may proceed to hear the matter in the absence of the party and issue a final order.

(4) Final orders entered under this section shall contain:

(a) Findings of fact and conclusions of law based upon prima facie proof of the allegations contained in the initiating documents;

(b) Proof of service of or a good faith attempt to serve initiating documents and appropriate notices;

(c) A finding that there is no reason to believe that the party in default is in active military service;

(d) The penalties or conditions imposed by the order; and

(e) Notice of the opportunity to request reconsideration of a final order pursuant to RCW 34.05.470.

(5) Final and default orders entered under this section will be served upon the parties in accordance with WAC 246-11-080.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-280, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-280, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1), 34.05.220, 34.05.440 and 34.05.470. WSR 93-08-003 (Order 347), § 246-11-280, filed 3/24/93, effective 4/24/93.]

WAC 246-11-290 Scheduling orders. (1) Within thirty days after receipt of the application for adjudicative proceeding, the board or designee shall:

(a) Approve the application for full adjudicative procedure and issue and serve on the parties a scheduling order or initial conference order establishing timelines for discovery, settlement, and scheduled hearings; or

(b) Approve the application for a brief adjudicative procedure and issue and serve a notice of the date by which any additional written materials are to be submitted for consideration; or

(c) Deny the application according to RCW 34.05.416.

(2) If a scheduling order is issued:

(a) The scheduling order must specify:

(i) The date, time, and place of a prehearing conference and the hearing;

(ii) The deadlines for completion of discovery and submission of prehearing motions; and

(iii) The name, address, and telephone number of the assistant attorney general or other department representative who will represent the department in the matter.

(b) The scheduling order may be modified by order of the presiding officer upon his or her own initiative or upon motion of a party. Any request for change to the initial scheduling order must be made by motion as provided in WAC 246-11-380.

(c) The presiding officer may waive establishing dates for the completion of discovery, submission of prehearing motions, and the prehearing conference, if, in the discretion of the presiding officer, those proceedings are not necessary or appropriate in a particular matter or type of case. However, either party may request by motion to the presiding officer that any or all of the dates be set.

(d) Dates contained in the scheduling order may be changed by the adjudicative clerk's office upon written request of either party made within fifteen days of issuance of the first scheduling order. All other changes must be made by motion pursuant to WAC 246-11-380.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-290, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-13-015, § 246-11-290, filed 6/6/97, effective 7/7/97. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-290, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1) and 34.05.419. WSR 93-08-003 (Order 347), § 246-11-290, filed 3/24/93, effective 4/24/93.]

SECTION III
EMERGENCY ADJUDICATIVE PROCEEDINGS

WAC 246-11-300 Conduct of emergency adjudicative proceedings. (1) Except as otherwise required by law summary action may be taken under chapter 18.130 RCW only after a review by the board of such evidence, including affidavits or declarations, if appropriate, to establish:

(a) The existence of an immediate threat to the public health, safety, or welfare;

(b) The board's ability to address the threat through a summary action; and

(c) The summary action is necessary to address the threat.

(2) Except as otherwise required by law summary action may be taken under chapter 34.05 RCW only after a review by the board of such evidence, including affidavits or declarations, if appropriate, to establish:

(a) The existence of an immediate danger to the public health, safety, or welfare;

(b) The board's ability to address the danger through a summary action; and

(c) The summary action is necessary to address the danger.

(3) No notice to any person potentially affected by a summary action is required prior to issuance of a summary action.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-300, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and

18.130.060(3). WSR 94-04-078, § 246-11-300, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1), 34.05.422 and 34.05.479. WSR 93-08-003 (Order 347), § 246-11-300, filed 3/24/93, effective 4/24/93.]

WAC 246-11-310 Effect of summary action. (1) Summary action takes effect upon entry of the order.

(2) No person will be required to comply with a summary action until service has been made or the person has knowledge of the order, whichever occurs first.

(3) A summary action must be served as promptly as practicable, in accordance with WAC 246-11-080.

(4) A summary action shall not be subject to the post hearing process provided in WAC 246-11-550 through 246-11-610, but a summary action may be appealed to superior court as provided by law.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-310, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1), 34.05.422 and 34.05.479. WSR 93-08-003 (Order 347), § 246-11-310, filed 3/24/93, effective 4/24/93.]

WAC 246-11-320 Form and content of summary actions. (1) A summary action must be entered in the form of an order containing findings of fact, conclusions of law, and the summary action imposed, as well as a statement of policy reasons for the decision.

(2) Except as otherwise required by law a summary action imposed by emergency adjudicative proceeding under chapter 18.130 RCW must be limited to those actions necessary to alleviate an immediate threat to the public health, safety, or welfare.

(3) Except as otherwise required by law a summary action imposed by emergency adjudicative proceeding under chapter 34.05 RCW must be limited to those actions necessary to alleviate an immediate danger to the public health, safety, or welfare.

(4) Initiating documents, and all other documents required by WAC 246-11-250 or 246-11-260 must accompany a summary action order when served.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-320, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1), 34.05.473 and 34.05.479. WSR 93-08-003 (Order 347), § 246-11-320, filed 3/24/93, effective 4/24/93.]

WAC 246-11-330 Adjudicative proceedings upon summary action. Following summary action taken by the board, the respondent may:

(1) Request a hearing as provided in RCW 18.130.090 and request a show cause hearing conducted in accordance with RCW 18.130.135 and WAC 246-11-340; or

(2) Request a regularly scheduled adjudicative proceeding conducted in accordance with this chapter; or

(3) Waive the right to an adjudicative proceeding and submit a written statement to be considered prior to the entry of the final order; or

(4) Waive the opportunity to be heard.

[Statutory Authority: RCW 18.130.135 and 43.70.040. WSR 09-03-089, § 246-11-330, filed 1/20/09, effective 2/20/09. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-330, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1) and 34.05.479. WSR 93-08-003 (Order 347), § 246-11-330, filed 3/24/93, effective 4/24/93.]

WAC 246-11-340 Opportunity for show cause hearing. (1) A license holder's request for a show cause hearing must be filed within twenty days of the service of the summary action. A license holder must also respond to the statement of charges by requesting a hearing or an extension of time as provided in RCW 18.130.090.

(2) The show cause hearing will be conducted by a panel of the board within fourteen days of the license holder filing the show cause hearing request.

(3) Unless otherwise specified by the presiding officer, the license holder must file, and deliver a copy to the department's attorney, any documents or written testimony to be admitted into evidence at the show cause hearing by noon on the fourth business day after filing the show cause hearing request.

(4) Unless otherwise specified by the presiding officer, the department must file, and deliver a copy to the license holder's attorney or to the license holder if not represented by counsel, any rebuttal documents or written testimony to be admitted into evidence at the show cause hearing by noon on the seventh business day after the date the show cause hearing request was filed, but no less than the close of business two business days before the show cause hearing.

(5) In reviewing the order of summary action, the show cause hearing panel will consider the statement of charges, the motions and documents supporting the request for summary action, the license holder's answer to the statement of charges, documentary evidence or written testimony presented by the license holder and department in rebuttal that is timely filed pursuant to subsections (3) and (4) of this section, and unless waived, the parties will be given an opportunity for oral argument.

(6) In cases under RCW 18.130.050 (8)(a) and 18.130.370, the department has the burden of proving at the show cause hearing that the licensee is prohibited from practicing a health profession in another state, federal, or foreign jurisdiction and that the conduct is substantially equivalent to unprofessional conduct. A copy of the order, stipulation, or agreement from a competent authority in another state, federal, or foreign jurisdiction showing that a license is prohibited from practicing their health profession is prima facie evidence that the requirements of RCW 34.05.479 (1) and (2) have been met.

(7) In cases under RCW 18.130.050 (8)(b), the department has the burden of proving at the show cause hearing that the licensee is prohibited from employment in the care of vulnerable adults based upon a department of social and health service's final finding of abuse or neglect of a minor or abuse or abandonment, neglect, or financial exploitation of a vulnerable adult.

(8) The show cause panel will issue an order and may overturn, uphold or amend the summary suspension or restriction.

(9) Within forty-five days of a determination by the panel of the board to sustain the summary suspension or place restrictions on the

license, the license holder may request a full hearing on the statement of charges on the merits of the disciplining authority's decision to suspend or restrict the license. A full hearing must be provided within forty-five days of receipt of the request for a hearing, unless stipulated otherwise.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-340, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.135 and 43.70.040. WSR 09-03-089, § 246-11-340, filed 1/20/09, effective 2/20/09. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-340, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1) and 34.05.479. WSR 93-08-003 (Order 347), § 246-11-340, filed 3/24/93, effective 4/24/93.]

WAC 246-11-350 Proceedings prior to prompt adjudicative proceeding. A settlement conference may be requested, a settlement may be offered, and a prehearing conference may be conducted prior to a prompt adjudicative proceeding. Prehearing proceedings shall not delay a prompt adjudicative proceeding except by mutual agreement of the parties.

[Statutory Authority: RCW 18.130.050(1) and 34.05.479. WSR 93-08-003 (Order 347), § 246-11-350, filed 3/24/93, effective 4/24/93.]

SECTION IV
SETTLEMENT AND PREHEARING PROCEEDINGS

WAC 246-11-360 Settlement conference. (1) Following a request for an adjudicative proceeding, a settlement conference may be held if settlement is not achieved through written documents. The parties shall arrange the date, time and place of the settlement conference. If another scheduling mechanism is issued, a settlement conference may be scheduled and held at the discretion of the board or other settlement processes may be used at the discretion of the board.

(2) The purpose of the settlement conference or other settlement process is to attempt to reach agreement on the issues and on a proposed order to be entered. Any agreement of the parties is subject to final approval by the board.

(3) The respondent shall attend the settlement conference as scheduled and may also be represented as provided in WAC 246-11-070. Representatives of the board will also attend. Representatives of the department may attend. Other persons may attend by agreement of the parties. Attendance may be in person or by phone.

(4) Either party may bring documents or other materials to the settlement conference for the purpose of settlement negotiations. No testimony will be taken. No documents or information submitted at the settlement conference will be admitted at the adjudicative proceeding unless stipulated by the parties or otherwise admitted into evidence by the presiding officer.

(5) If a settlement offer has been made in writing to the respondent and it is signed and returned by the respondent to the board, all subsequent dates set in the scheduling order or other scheduling

mechanism are stayed or stricken pending final review of the settlement by the board.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-360, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-360, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-360, filed 3/24/93, effective 4/24/93.]

WAC 246-11-370 Discovery. The parties should exchange information and documents related to the case prior to the adjudicative proceeding. Formal discovery is obtained as follows:

(1) Methods, scope and limits:

(a) Parties may obtain discovery by production of records or things; deposition upon oral examination; requests for admission; or, if ordered by the presiding officer, written interrogatories.

(b) Unless otherwise limited by order of the presiding officer in accord with these rules, the scope of discovery are as follows:

(i) Parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter in the pending action. It is not grounds for objection that the information sought will be inadmissible at the adjudicative proceeding if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(ii) The frequency or extent of use of the discovery methods established in these rules shall be limited by the presiding officer if the presiding officer determines that:

(A) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive; or

(B) The party seeking discovery has had an ample opportunity by discovery to obtain the information sought; or

(C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, limitations of the parties' resources, and the importance of the issues at stake.

(iii) The presiding officer may limit discovery upon his or her own initiative after reasonable notice or pursuant to a motion submitted by a party.

(2) Production of records, documents, or things:

(a) Upon written request of a party the opposing party shall identify experts and other witnesses to be called at the hearing and shall provide other information necessary to enable the party to conduct depositions of the witnesses.

(b) Any party may serve on any other party a request, which must be signed by the party or designated representative:

(i) To produce and permit the party making the request or designee to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of discovery and which are in the possession, custody or control of the party upon whom the request is served; or

(ii) To permit entry onto designated land or other property which is in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing or sampling the property or designated object or operation thereon which is within the scope of discovery.

(c) Any party who produces documents for inspection shall produce them as they are kept in the usual course of business or may, if the parties agree, organize and label them to correspond with the categories in the request.

(d) The party upon whom a request is made may, by motion to the presiding officer, move for an order denying the request to produce or modify the conditions of the request. Denial of the request of change in the conditions of the request shall be within the discretion of the presiding officer and shall be made by written order.

(3) Depositions may be taken subject to the following conditions:

(a) Within the United States or a territory or insular possession subject to the dominion of the United States, depositions must be taken before an officer authorized to administer oaths by the state of Washington or of the place where the examination is held. A presiding officer may, in his or her discretion or following motion of a party, preside at the deposition. Within a foreign country, depositions must 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 presiding officer or agreed upon by the parties by stipulation in writing filed with the presiding officer, if any, and otherwise with the disciplining authority. Except by stipulation, no deposition may be taken before any person who is a party or a privy of a party, or a privy of a representative of a party, or who is financially interested in the proceeding.

(b) A party desiring to take the deposition of a person upon oral examination shall give reasonable notice of not less than five days in writing to the person to be deposed and to the opposing party. The notice must 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 description sufficient to identify the person to be examined or the particular class or group to which the person to be examined belongs. On motion of a party upon whom the notice is served, the presiding officer may for good cause shown, lengthen or shorten the time.

(c) After notice is served for taking a deposition, or upon motion of the presiding officer, or upon motion reasonably made by any party or by the person to be examined, and upon notice and for good cause, the presiding officer may issue an order that the deposition may not be taken or that it be taken subject to specified restrictions, conditions, or limitations.

(d) Depositions must be recorded.

(i) The officer before whom the deposition is taken shall put the witness on oath or affirmation and shall personally or by someone acting under the officer's direction and in the officer's presence, record the testimony.

(ii) The officer or person acting under the officer's direction shall transcribe the testimony at the request of any party, provided that any expenses are paid by the requesting party.

(iii) The transcribed testimony must be submitted to the person deposed for review and signature, unless review and signature are waived by that person. The officer shall append to the transcript any changes in form or substance that may be submitted by the parties.

(iv) Copies of the transcribed and, unless review and signature has been waived, signed testimony will be served upon the person deposed and upon the parties.

(e) If the parties so stipulate in writing or on the record, 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 any other deposition.

(4) Following motion of a party and opportunity for response by the opposing party, the presiding officer may order a party to respond to written interrogatories and may order that the interrogatories be subject to specified restriction, condition, or limitation.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-370, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-370, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-370, filed 3/24/93, effective 4/24/93.]

WAC 246-11-380 Motions. (1) The presiding officer shall rule on motions. The presiding officer may rule on motions without oral argument or may request or permit the parties to argue the motion in person or by telephone. Oral argument may be limited in time at the discretion of the presiding officer.

(2) All prehearing motions, including discovery and evidentiary motions, must be made in writing, filed, and served on all other parties by the dates set in the scheduling order. Filing must be made with the adjudicative clerk's office, unless filing is directed in writing to be made at another address.

(3) Motions for continuance must be made in writing and filed prior to the dates set in the scheduling order. If the adjudicative proceeding is scheduled to take place fewer than twenty days from service of the scheduling order, motions for continuance must be made within ten days of service of the scheduling order, but in no event fewer than five days prior to the hearing. Continuances may be granted by the presiding officer for good cause.

(4) The presiding officer may grant a continuance when a motion for continuance is not submitted within the time limits contained in subsection (3) of this section for good cause.

(5) The following is the recommended format for motions:

(a) A succinct statement of the facts contended to be material;

(b) A concise statement of the issue, issues or law upon which the presiding officer is requested to rule;

(c) The specific relief requested by the moving party;

(d) If the motion requires the consideration of facts or evidence not appearing on the record, the moving party shall also serve and file copies of all affidavits, declarations, and photographic or documentary evidence presented in support of the motion;

(e) The legal authority upon which the motion is based; and

(f) A proposed order may accompany the motion, and should contain findings of fact and conclusions of law.

(6) The moving party shall file the motion, and the accompanying affidavits, declarations, and photographic or documentary evidence when necessary, with the board's office and with the presiding officer, and shall serve the motion, and the accompanying affidavits, declarations, and photographic or documentary evidence when necessary, on all other parties. The motion may not exceed twenty-five pages without permission of the presiding officer.

(7) The opposing party shall file with the adjudicative clerk's office, and serve upon the moving party, a responsive memorandum, and accompanying affidavits, declarations, and photographic or documentary

evidence when necessary, no later than eleven days following service of the motion, unless otherwise ordered by the presiding officer. A responsive memorandum may not exceed twenty-five pages without permission of the presiding officer.

(8) The moving party may file with the adjudicative clerk's office, and serve upon the opposing party, a reply memorandum no later than five days following service of the responsive memorandum, unless otherwise ordered by the presiding officer. A reply memorandum may not exceed fifteen pages without permission of the presiding officer.

(9) Unless otherwise ordered by the presiding officer, all motions must be decided without oral argument. A party requesting oral argument on a motion shall so indicate by typing "ORAL ARGUMENT REQUESTED" in the caption of the motion or the responsive memorandum. If a request for oral argument is granted, the presiding officer shall notify the parties of the date and time of the argument and whether the argument will be in person or by telephone conference.

(10) Motions to shorten time or emergency motions must be exceptions to the rule, and a party may only make such motions in exigent or exceptional circumstances. When making such a motion, the moving party shall:

(a) Suggest a date and time when the moving party seeks to have the presiding officer hear the motion to shorten time, which should be at least forty-eight hours after filing;

(b) Suggest a date and time when the moving party seeks to have the presiding officer consider the merits of the underlying motion;

(c) Describe the exigent or exceptional circumstances justifying shortening of time in an affidavit, declaration, or memorandum accompanying the motion;

(d) Certify that the motion to shorten time and the underlying motion have been served on all other parties prior to the filing of the motion with the presiding officer. Any opposition to the motion to shorten time must be served and filed within twenty-four hours of the service of the motion. If the presiding officer grants the motion to shorten time, the presiding officer shall notify the parties of the date by which the responsive memorandum to the underlying motion must be served and filed.

(11) All motions will be decided as soon as practical, but not more than thirty days following the filing of the motion. If the presiding officer will not decide the motion within this time, the presiding officer shall notify the parties in writing of the date by which the motion will be decided.

(12) If a party serves a motion or responsive memorandum by mail, pursuant to WAC 246-11-080, three days will be added to the time within which the opposing party must file and serve the responsive or reply memorandum. Service by electronic telefacsimile transmission (fax) upon each party is permitted upon agreement of the parties, with proof of confirmation of service to be filed with the presiding officer.

(13) All computations of time must be calculated pursuant to WAC 246-11-040.

(14) Departmental motions for summary actions are exempted from all requirements of this section.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-380, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-13-015, § 246-11-380, filed 6/6/97, effective 7/7/97. Statutory Authority: RCW 18.130.050 and 43.70.040. WSR 96-21-027, § 246-11-380,

filed 10/7/96, effective 11/7/96. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-380, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-380, filed 3/24/93, effective 4/24/93.]

WAC 246-11-390 Prehearing conference. (1) If a scheduling order is issued, the parties will be notified of the time and place of the first prehearing conference in the scheduling order. If another scheduling mechanism is issued, a prehearing conference will be held upon motion of either party, unless board policy provides otherwise.

(2) The presiding officer shall determine whether the prehearing conferences will be conducted in person or by telephone conference call.

(3) The presiding officer shall conduct the prehearing conference and shall issue rulings related to prehearing motions and evidentiary issues. The rulings must govern the conduct of subsequent proceedings.

(4) A prehearing conference may be recorded as ordered by the presiding officer. All offers of proof and objections concerning matters raised at the prehearing conference must be made on the record at the prehearing conference.

(5) Following the final prehearing conference, the presiding officer shall issue a written prehearing order which will:

(a) Identify the issues to be considered at the hearing and indicate which party has the burden of proof on these issues;

(b) Specify the facts which are admitted or not contested by the parties;

(c) Identify those documents and exhibits that will be admitted at hearing and those which may be distributed prior to hearing;

(d) Identify expert and lay witnesses that may be called at hearing and the issues to which those witnesses may testify;

(e) Rule on motions;

(f) Address such other issues or matters as may be reasonably anticipated to arise and which may aid in the disposition of the proceedings; and

(g) Rule on objections made in any preserved testimony.

(6) Following the prehearing conference, the presiding officer may issue an order directing that the matter be heard as a brief adjudicative proceeding, pursuant to WAC 246-11-420 through 246-11-450.

(7) Documentary evidence not offered in the prehearing conference will not be received into evidence at the adjudicative proceeding in the absence of a clear showing that the offering party had good cause for failing to produce the evidence at the prehearing conference.

(8) Witnesses not identified during the prehearing conference will not be allowed to testify at the adjudicative proceeding in the absence of a clear showing that the party offering the testimony of such witness had good cause for failing to identify the witness at the prehearing conference.

(9) If the authenticity of documents submitted at the prehearing conference is not challenged at the prehearing conference, the documents will be deemed authentic. However, a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to object at the prehearing conference.

(10) Nothing in these rules prohibit the presiding officer from conducting a conference at any time, including during the hearing. The

presiding officer shall state on the record the results of such conference.

(11) A party bound by a stipulation or admission of record may withdraw it in whole or in part only upon a determination by the presiding officer or hearing officer that:

(a) The stipulation or admission was made inadvertently or as a bona fide mistake of fact or law; and

(b) The withdrawal will not unjustly prejudice the rights of the other parties.

(12) In an appeal to superior court involving issues addressed in the prehearing order, the record of the prehearing conference, written motions and responses, the prehearing order, and any orders issued by the presiding officer pursuant to WAC 246-11-380, are the record.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-390, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-390, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-390, filed 3/24/93, effective 4/24/93.]

WAC 246-11-400 Protective orders. (1) The presiding officer shall issue a protective order to preserve confidentiality related to health care records or provider-client information as required under state and federal law including, but not limited to, chapter 70.02 RCW; Public Law No. 104-191, 110 Statute 1936 (Health Insurance Portability and Accountability Act (HIPAA); and 45 C.F.R. Part 164.

(2) The presiding officer may issue additional protective orders at his or her discretion:

(a) To protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense;

(b) To protect examination processes;

(c) To protect the identity of a person supplying information to the department or board where the person indicates a desire for nondisclosure unless that person testifies or has been called to testify at an adjudicative proceeding; or

(d) To comply with applicable state or federal law.

(3) Parties submitting exhibits for administrative proceedings are required to redact all exhibits in a manner consistent with any protective order issued by the presiding officer. The clerk's office shall not accept documents that are not redacted consistent with the protective order.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-400, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-400, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1) and 34.05.446. WSR 93-08-003 (Order 347), § 246-11-400, filed 3/24/93, effective 4/24/93.]

SECTION V
BRIEF ADJUDICATIVE PROCEEDINGS

WAC 246-11-420 Application of brief adjudicative proceedings. (1) If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(a) A determination whether an applicant for a license meets the minimum criteria for an unrestricted license and the board proposes to deny such a license or to issue a restricted license, or a determination that a license holder is ineligible for an expedited license or compact privilege from an interstate compact. For the purposes of this subsection:

(i) "Compact privilege" means the authorization granted by a remote state to allow a licensee from another state to practice or work in the remote state under its laws and rules as outlined in Title 18 RCW for its respective profession.

(ii) "Interstate compact" means an agreement between two or more states that allows a license holder through a streamlined process to become licensed in multiple states. The license holder is under the regulations of the state where the patient/client is located at the time of the patient/client encounter.

(iii) "Remote state" means a member state other than the home state where a license holder is exercising or seeking to exercise the compact privilege.

(b) A determination whether a person is in compliance with the terms and conditions of a final order previously issued by the board, except final orders under RCW 18.130.110;

(c) Any approval of a school or curriculum when such approval by the board is required by statute or rule;

(d) A determination whether a license holder requesting renewal has submitted all required information and meets minimum criteria for renewal;

(e) An action to suspend a credential under RCW 18.130.125 and 18.130.127;

(f) Issuance of written citation and assessment of a fine under RCW 18.130.230;

(g) A decision to withdraw a credential issued in error. For the purposes of this rule, "credential issued in error" means a credential issued to an individual who did not fully complete the application process or meet the credentialing requirements yet was inadvertently granted a credential;

(h) A decision to deny a request for a list of applicants for professional licenses or for professional licensees for commercial purposes under RCW 42.56.070(8); or

(i) A determination to reject or withdraw approval of an ancillary utilization plan pursuant to RCW 18.64A.040 and 18.64A.060.

(2) If an adjudicative proceeding is requested in a matter not listed in subsection (1) of this section, a brief adjudicative proceeding may be conducted in the discretion of the presiding officer when it appears that:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief adjudicative proceeding; and

(c) The protection of the public interest does not require that the board provide notice and an opportunity to participate to persons other than the parties.

[Statutory Authority: RCW 43.70.040, 34.05.413, 34.05.482, 34.05.485, 18.130.050, chapters 18.71B and 18.74 RCW. WSR 25-21-064, s

246-11-420, filed 10/13/25, effective 11/13/25. Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-420, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-420, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1) and 34.05.482. WSR 93-08-003 (Order 347), § 246-11-420, filed 3/24/93, effective 4/24/93.]

WAC 246-11-425 Preliminary record in brief adjudicative proceedings. (1) The preliminary record with respect to an application for a license or for approval of a school or curriculum must consist of:

(a) The application for the license or approval and all associated documents;

(b) All documents relied upon by the program in proposing to deny the application; and

(c) All correspondence between the applicant for license or approval and the program regarding the application.

(2) The preliminary record with respect to determination of compliance with a previously issued final order must consist of:

(a) The previously issued final order;

(b) All reports or other documents submitted by the license holder, or at the direction of the license holder, in full or partial fulfillment of the terms of the final order; and

(c) All correspondence between the license holder and the program regarding compliance with the final order.

(3) The preliminary record with respect to an action to suspend a credential under RCW 18.130.125 or 18.130.127 shall consist of the report from the lending agency to the department of the licensee's nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship, and such other documents as the person making the request and the department may wish to include in the preliminary record.

(4) The preliminary record with respect to the issuance of a written citation and assessment of a fine under RCW 18.130.230 shall consist of the citation, as described in RCW 18.130.230(2), the request by the disciplining authority to produce documents, records, or other items within the licensee's control, the licensee's request for extension of time and the disciplining authority's response if a request for extension of time was made, and such other documents as the licensee or disciplining authority may wish to include in the preliminary record with respect to whether or not the licensee timely provided the items requested.

(5) The preliminary record with respect to a decision to withdraw a credential issued in error shall consist of the application for credential and any associated documents, all documents relied on by the program in proposing to withdraw the credential, and all correspondence between the person to whom the credential was issued in error and the program regarding the application or credential.

(6) The preliminary record with respect to a decision to deny a request for a list of applicants for professional licenses or of professional licensees for commercial purposes shall consist of the written request for the list, any other documents relied on by the program in proposing to deny the request, all correspondence regarding the request between the person making the request and the department, and such other documents as the person making the request and the department may wish to include in the preliminary record.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-425, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-425, filed 1/31/94, effective 3/3/94.]

WAC 246-11-430 Conduct of brief adjudicative proceedings. (1) Brief adjudicative proceedings are conducted by a presiding officer for brief adjudicative proceedings designated by the board. The presiding officer for brief adjudicative proceedings shall have agency expertise in the subject matter but may not have personally participated in the decision to issue the initiating document.

(2) The parties or their representatives may present written documentation. The presiding officer for brief adjudicative proceedings shall designate the date by which written documents must be submitted by the parties.

(3) The presiding officer for brief adjudicative proceedings may, in his or her discretion, entertain oral argument from the parties or their representatives.

(4) No witnesses may appear to testify.

(5) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(6) The presiding officer for brief adjudicative proceedings may not issue an oral order. Within ten days of the final date for submission of materials or oral argument, if any, the presiding officer for brief adjudicative proceedings shall enter an initial order in accordance with WAC 246-11-540.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-430, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050 and 43.70.040. WSR 96-21-027, § 246-11-430, filed 10/7/96, effective 11/7/96. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-430, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-430, filed 3/24/93, effective 4/24/93.]

WAC 246-11-440 Effectiveness of orders on brief adjudicative proceedings. (1) Initial orders on brief adjudicative proceedings become final twenty-one days after service of the initial order unless:

(a) Administrative review has been requested pursuant to WAC 246-11-550; or

(b) On its own initiative, the board determines to review the matter and, within twenty-one days of service of the initial order, provides notice to the parties of the date by which a determination will be made.

(2) If review is taken under subsection (1) of this section, each party must be provided an opportunity to state its view of the matter, and a written order containing findings of fact, conclusions of law, and order must be entered and served upon the parties within twenty days of service of the initial order or the request for review, whichever is later.

(3) A request for review is deemed to be denied if the board does not act on the request within twenty days after the request is submitted.

(4) If administrative review is taken under subsection (1) of this section, the presiding officer may convert the matter to a full adjudicative proceeding.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-440, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-440, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1), 34.05.455, 34.05.485, 34.05.488 and 34.05.491. WSR 93-08-003 (Order 347), § 246-11-440, filed 3/24/93, effective 4/24/93.]

WAC 246-11-450 Agency record in brief proceedings. The agency record of brief adjudicative proceedings must consist of:

(1) The preliminary record as set forth in WAC 246-11-425;

(2) All initiating documents including the notice of opportunity to defend;

(3) The request for adjudicative proceeding;

(4) All documents submitted in the proceeding;

(5) Any transcript or recording of any testimony or arguments presented; and

(6) All orders issued in the case.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-450, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-450, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1) and 34.05.494. WSR 93-08-003 (Order 347), § 246-11-450, filed 3/24/93, effective 4/24/93.]

SECTION VI
HEARING

WAC 246-11-470 Notice of adjudicative proceeding. Notice of an adjudicative proceeding must be issued pursuant to RCW 34.05.434.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-470, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 34.05.434. WSR 93-08-003 (Order 347), § 246-11-470, filed 3/24/93, effective 4/24/93.]

WAC 246-11-480 Conduct of adjudicative proceeding. (1) The adjudicative proceeding must be conducted as provided in RCW 34.05.449 through 34.05.455.

(2) The presiding officer may take the following actions to the extent not already determined in a prehearing order:

(a) Conduct the hearing de novo;

(b) Determine the order of presentation of evidence;

(c) Administer oaths and affirmations;

(d) Issue subpoenas;

(e) Rule on procedural matters, objections, motions, and offers of proof;

(f) Receive relevant evidence;

(g) Interrogate witnesses called by the parties in an impartial manner to develop any facts necessary to fairly and adequately decide the matter;

(h) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

(i) Take any appropriate action necessary to maintain order during the adjudicative proceeding;

(j) Determine whether to permit or require oral argument or briefs and determine the time limits for submission thereof;

(k) Permit photographic and recording equipment at hearing subject to conditions necessary to preserve confidentiality and prevent disruption;

(l) Permit a person to waive any right conferred upon that person by chapter 34.05 RCW or this chapter, except as precluded by law; and

(m) Take any other action necessary and authorized by applicable law or rule.

(3) The presiding officer shall:

(a) Apply as the first source of law governing an issue those statutes and rules deemed applicable to the issue;

(b) If there is no statute or rule governing the issue, resolve the issue on the basis of the best legal authority and reasoning available, including that found in federal and Washington Constitutions, statutes, rules, and court decisions; and

(c) Not declare any statute or rule invalid.

(4) If the validity of any statute or rule is raised as an issue, the presiding officer may permit arguments to be made on the record concerning the issue for the purpose of subsequent review.

(5) Members of the board hearing the matter may ask questions of any witness and may call additional witnesses.

(6) A party may move to disqualify the presiding officer or any member of the board pursuant to RCW 34.05.425(3).

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-480, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-480, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-480, filed 3/24/93, effective 4/24/93.]

WAC 246-11-490 Evidence. (1) The presiding officer shall rule on objections to the admissibility of evidence pursuant to RCW 34.05.452 unless those objections have been addressed in the prehearing order.

(2) The refusal of a witness to answer any question ruled proper is basis for the presiding officer, at his or her discretion, to strike some or all prior testimony by that witness on related matters or to grant a continuance to allow a party to seek a court order to compel the witness to answer.

(3) Each person called as a witness in an adjudicative proceeding shall swear or affirm that the evidence about to be given in the adjudicative proceeding is the truth under the provisions of RCW 5.28.020 through 5.28.060.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-490, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-490, filed 3/24/93, effective 4/24/93.]

WAC 246-11-500 Proposed order. At the conclusion of the hearing or by a date specified by the presiding officer, the presiding officer may require each party to submit to the presiding officer proposed findings of fact and conclusions of law and a proposed order.

[Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-500, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-500, filed 3/24/93, effective 4/24/93.]

WAC 246-11-510 Issuance of final order. If the adjudicative proceeding is heard by the board or a panel of the board the presiding officer and board or panel of the board shall:

(1) Issue a final order containing findings of fact and conclusions of law and an order; and

(2) Cause the adjudicative clerk's office to serve a copy of the order on each party and any designated representative of the party.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-510, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-13-015, § 246-11-510, filed 6/6/97, effective 7/7/97. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-510, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-510, filed 3/24/93, effective 4/24/93.]

WAC 246-11-520 Standard of proof. (1) The order must be based on the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs.

(2) In all cases involving an application for license the burden is on the applicant to establish that the application meets all applicable criteria. In all other cases the burden is on the department to prove the alleged factual basis set forth in the initiating document.

(3) Except as otherwise required by law, the burden in all cases is a preponderance of the evidence.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-520, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050 and 34.05.220. WSR 08-14-137, § 246-11-520, filed 7/1/08, effective 8/1/08. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-520, filed 3/24/93, effective 4/24/93.]

WAC 246-11-530 Consolidated proceedings. (1) When two or more applications for adjudicative proceeding involve a similar issue, the applications may be consolidated by the presiding officer and the hearings conducted together. The presiding officer or hearings officer may consolidate on his or her own motion or upon the request of a party.

(2) A party scheduled for a consolidated proceeding may request to withdraw from the consolidated proceeding in favor of an individual proceeding. The presiding officer may grant a motion to withdraw from a consolidated proceeding at any time when good cause is shown.

(3) Each respondent in a consolidated proceeding shall retain the right to representation.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-530, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-530, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1) and 34.05.220. WSR 93-08-003 (Order 347), § 246-11-530, filed 3/24/93, effective 4/24/93.]

WAC 246-11-540 Initial order. (1) If the adjudicative proceeding is not heard by the board or panel of the board the presiding officer shall:

(a) Issue an initial order containing proposed findings of fact, conclusions of law, and a proposed order;

(b) Cause the adjudicative clerk's office to serve a copy of the initial order on each party and any designated representative of a party; and

(c) Forward the initial order and record of the adjudicative proceeding to the adjudicative clerk's office.

(2) Initial orders on brief adjudicative proceedings become final orders as provided in WAC 246-11-540.

(3) Following receipt of initial orders in matters other than brief adjudicative proceedings, the board shall review the initial order and the record as provided in RCW 34.05.464, and issue a final order as provided in WAC 246-11-560.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-540, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-13-015, § 246-11-540, filed 6/6/97, effective 7/7/97. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-540, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-540, filed 3/24/93, effective 4/24/93.]

SECTION VII
POST HEARING PROCESS

WAC 246-11-550 Appeal from initial order. (1) Any party may file a written petition for administrative review of an initial order issued under WAC 246-11-430 or 246-11-540 stating the specific grounds upon which exception is taken and the relief requested.

(2) Petitions for administrative review must be served upon the opposing party and filed with the adjudicative clerk's office within twenty-one days of service of the initial order.

(3) The opposing party may file a response to a petition for administrative review as provided in this section. The response must be filed at the place specified in subsection (2) of this section. The party filing the response shall serve a copy of the response upon the party requesting administrative review. If the initial order was entered pursuant to WAC 246-11-430, the response will be filed within ten days of service of the petition. In all other matters, the response will be filed within twenty days of service of the petition.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-550, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-13-015, § 246-11-550, filed 6/6/97, effective 7/7/97. Statutory Authority: RCW 18.130.050 and 43.70.040. WSR 96-21-027, § 246-11-550, filed 10/7/96, effective 11/7/96. Statutory Authority: RCW 18.130.050(1) and 34.05.464. WSR 93-08-003 (Order 347), § 246-11-550, filed 3/24/93, effective 4/24/93.]

WAC 246-11-560 Final orders. (1) The form and content of final orders:

(a) Must contain findings of fact, conclusions of law, and an order. All final orders must be signed by a member of the panel of board members who heard the matter.

(b) May adopt by reference the initial order in whole or in part.

(c) May modify or revise the initial order in whole or in part.

(2) Final orders must be served upon the parties and their representatives as provided in WAC 246-11-080.

(3) Final orders must be issued following:

(a) A review of the record;

(b) A review of the initial order, if any;

(c) A review of any request for review of the initial order and any response thereto; and

(d) Consideration of protection of the public health and welfare.

(4) Unless a later date is stated in the final order, final orders will be effective when entered but a party is not required to comply with a final order until the order is served upon that party.

(5) Final orders may contain orders that specified portions of the agency record are not disclosed as public records if necessary to protect privacy interests, the public welfare, or vital governmental functions. Such orders include but are not limited to protective orders issued during the proceeding or pursuant to WAC 246-11-400.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-560, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-560, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1), 34.05.464, 34.05.473 and chapter 42.17 RCW. WSR 93-08-003 (Order 347), § 246-11-560, filed 3/24/93, effective 4/24/93.]

WAC 246-11-570 Stay of final orders. No final order will be stayed except by its own terms or by order of a court of competent jurisdiction.

[Statutory Authority: RCW 18.130.050(1) and 34.05.467. WSR 93-08-003 (Order 347), § 246-11-570, filed 3/24/93, effective 4/24/93.]

WAC 246-11-580 Reconsideration of final orders. (1) Within ten days of service of a final order, either party may file a petition for reconsideration, stating the specific grounds upon which reconsideration is requested and the relief requested.

(2) Grounds for reconsideration are limited to:

(a) Specific errors of fact or law; or

(b) Implementation of the final order would require department activities inconsistent with current department practice; or

(c) Specific circumstances render the person requesting the reconsideration unable to comply with the terms of the order.

(3) Petitions for reconsideration must be served upon the opposing party and filed with the adjudicative clerk's office within ten days of service of the final order.

(4) If reconsideration is requested based on an error of fact, the request for reconsideration must contain specific reference to the record. If reconsideration is requested based on testimony of record, the request for reconsideration must contain specific reference to the testimony. The presiding officer may require that the party requesting reconsideration submit a copy of the transcript of the adjudicative proceeding and provide specific reference to the transcript.

(5) The petition for reconsideration is denied if, within twenty days of the date the petition is filed, the presiding officer:

(a) Denies the petition;

(b) Does not act upon the petition; or

(c) Does not serve the parties with notice of the date by which he or she will act on the petition.

(6) If the presiding officer determines to act upon the petition, the opposing party must be provided at least ten days in which to file a response to the petition.

(7) Disposition of petitions for reconsideration must be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-580, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-13-015, § 246-11-580, filed 6/6/97, effective 7/7/97. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-580, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1) and 34.05.470. WSR 93-08-003 (Order 347), § 246-11-580, filed 3/24/93, effective 4/24/93.]

WAC 246-11-590 Agency record of adjudicative proceedings. (1) The department shall maintain an official record of each adjudicative proceeding.

(2) The record shall include:

(a) Notices of all proceedings;

(b) Any prehearing order;

(c) Any motions, pleadings, briefs, petitions, and requests filed, and rulings thereon;

(d) Evidence received or considered;

(e) A statement of matters officially noted;

(f) Offers of proof and objections and rulings thereon;

(g) Any proposed findings, requested orders, and exceptions;

(h) Any recording of the adjudicative proceeding and any transcript of all or part of the adjudicative proceeding considered before final disposition of the matter;

(i) Any final order, initial order, or order on reconsideration; and

(j) Matters placed on the record following an ex parte communication, if any.

(3) The record is subject to disclosure as provided by chapter 42.56 RCW, the Public Records Act, and by WAC 246-11-130, except as limited by protective orders and provisions contained in the final order.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-590, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-590, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1), 34.05.476 and chapter 42.17 RCW. WSR 93-08-003 (Order 347), § 246-11-590, filed 3/24/93, effective 4/24/93.]

WAC 246-11-600 Judicial review. (1) Judicial review of actions taken under this chapter shall comply with RCW 34.05.510.

(2) Notice of the opportunity for judicial review must be provided in all final orders.

(3) Following a request for judicial review, the record forwarded to the reviewing court must be those portions of the agency record designated by the parties within the time period set by the board.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-600, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-600, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1) and 34.05.510. WSR 93-08-003 (Order 347), § 246-11-600, filed 3/24/93, effective 4/24/93.]

WAC 246-11-610 Vacating an order for reason of default or withdrawal. (1) A party may petition to vacate a default order entered against that party for failing to attend an adjudicative proceeding requested by that party for good cause. The requesting party shall:

(a) Specify the grounds relied upon in the petition; and

(b) File the petition at the adjudicative clerk's office and with the opposing party within seven days of service of the default order.

(2) The presiding officer shall consider the petition and shall:

(a) Grant the motion to vacate and reinstate the application for adjudicative proceeding, and may impose conditions on licensure pending final adjudication; or

(b) Deny the motion to vacate the default order.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-610, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-13-015, § 246-11-610, filed 6/6/97, effective 7/7/97. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-610, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1) and 34.05.220. WSR 93-08-003 (Order 347), § 246-11-610, filed 3/24/93, effective 4/24/93.]

WAC 246-11-700 Failure to comply with a disciplinary order. (1) If the disciplining authority alleges failure to comply with a disciplinary order, the board may file a motion for hearing with the adjudicative clerk's office and service a copy on the respondent.

(2) Upon receipt of the motion, the adjudicative clerk's office shall issue a notice of hearing on motion notifying the parties of the time, place and date of the administrative hearing.

(3) The sole issue at the hearing will be whether the respondent failed to comply with a disciplinary order.

(4) At the hearing, the department has the burden of proving it is more probable than not that the respondent failed to comply with a disciplinary order.

(5) The presiding officer will issue an order including findings of fact and conclusion of law.

(6) If the department has proven failure to comply with a disciplinary order, the sanction will be indefinite suspension until compliance is achieved as determined by the disciplining authority.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-700, filed 8/29/18, effective 9/29/18.]