2014

Washington State Board of Professional Engineers and Land Surveyors Board Member Manual

Department of Licensing

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Welcome

Welcome to the Washington State Board of Registration for Professional Engineers and Land Surveyors. This regulatory board's primary function is to protect public health, safety, and welfare through regulation of the practices of engineering, land surveying, and on-site design. Your responsibilities as a board member are considerable and we appreciate your willingness to serve the citizens of Washington State.

As a board member, you are responsible not only to the profession but also to the consumers of the state of Washington. You will help ensure our government remains accessible and accountable to its citizens.

Your responsibilities are outlined briefly below. See the associated sections for more detail.

- Attend board meetings; prepare as needed and actively participate.
- Participate in board committees for specific projects: outreach, Board Journal articles, rulemaking, crossover issues with other professions.
- Act as a case manager or as part of the judicial panel in disciplinary cases.
- Responsibly represent the board to the profession and to the public.

As needed:

- Attend association meetings
- Review applications

The appendix at the end of this manual contains material that will be updated periodically during your tenure on the board such as:

- RCW 18.43, 18.210, 18.235, 58.04, 58.09, WAC 196, 332-130: the laws and rules relating to engineers, land surveyors, and on-site septic system designers and the Uniform Regulation of Business and Professions Act
- Board policies
- Board roster
- Staff list
- Board meeting schedule
- Current board action items
- Travel information
- Disciplinary process details
- Rulemaking process details
- Open government training materials
- Board Journal

Board member responsibilities

The authorities and duties of the Washington State Board of Professional Engineers and Land Surveyors are established in Chapter 18.43, 18.210 RCW and Chapter 18.235 RCW.

Board structure

The Engineer and Land Surveyor Board has seven members, all appointed by the Governor.

- Five licensed engineers
- Two licensed land surveyors

Board meetings

- The Board has at least six meetings each year.
- Meeting dates, times, and locations are decided by the board and administrative staff and are posted on the Board's website.
- Board members and select staff attend all meetings.
- Board meetings are open to the public, except for closed sessions for specific reasons such as disciplinary case review, in accordance with the Open Public Meetings Act.
- Four board members constitute a quorum. Any time a quorum is present, do not discuss board business. Board business discussions within a quorum are considered open public meetings, thus subject to the Open Public Meeting Act.
- The meeting materials, or board packet, will be distributed in advance of the board meeting. The packets are also posted on the Board Resources webpage, if you choose to view the materials electronically.

Your role:

Attend board meetings; prepare as needed and actively participate.

Participate in board committees for specific projects: outreach, Board Journal articles, rule-making, cross-over issues with other professions.

Board committees

Board committees oversee efforts such as outreach, rulemaking, and policy or procedure development. To avoid quorum issues, committees generally include three or fewer board members. There are three standing committees and two ad-hoc committees. All committees meet in advance of the board meeting and report any recommendations or action items before the full board at the board meeting. The standing committees reports require a motion for approval, the ad-hoc committees do not. However, if an ad-hoc committee has a specific recommendation or action item, a motion should be taken at the board meeting for the purpose of recording full board support.

Standing Committees:

- Practice Committee
- Exam Qualifications Committee
- Executive Committee

Ad-hoc Committees:

- Surveying Committee
- Structural Committee

Laws and rules

The laws that govern the licensing and regulation of engineers, land surveyors, and on-site septic system designers are created and passed by the legislature and are documented as the Revised Code of Washington (RCW). Only the legislature can change the language under the RCW during legislative session, and any changes are generally implemented following the session conclusion.

Rulemaking is a serious undertaking. Rules properly enacted have the full force and effect of law and should be regarded with identical respect. Rules often have a more direct influence on the health and welfare of the public than their authorizing statute. The rules – Washington Administrative Code (WAC) – clarify, support, and implement provisions of law. They can be changed by the board through a formal public process. The rulemaking process usually takes between three to six months and is scheduled by the Board.

The rulemaking process can be prompted by a variety of circumstances:

- The passage of a new statute by the legislature or a change to existing statutes
- Review of existing rules
- Modernization or streamlining of procedures
- Public concern

A brief summary of the rulemaking process:

1. The board chair / staff identify a need for rule changes.
2. Board staff give formal public notice of the board's rulemaking authority.
3. The board and staff develop the changes.
4. When the changes are approved by the board, board staff publish a draft of the proposed rules.
5. Board staff schedule an opportunity for public comment.
6. Board staff compile public comments for board review.
7. The board adopts the final rule. If the rule adjusts licensing fees, the agency can implement the rule without final board adoption.
8. Board staff publish the final rule on the board website and through the board's listserv.

Under certain special circumstances, the board can adopt rules without prior public notice and publication of the rules. Rules adopted without prior public notice must be clearly justified under a very rigid standard of "emergency" and only remain in effect temporarily. The adoption of an emergency rule is permitted only if necessary for the immediate preservation of the public health, safety, and welfare. The agency implementing the emergency must be prepared to document the danger, the need, and the fairness of the rule.

See the Appendix for a more detailed outline of the rulemaking process.

Policy development

The board develops policies to clarify existing laws or rules. Board committees, with staff assistance, draft policies to present to the full board for adoption.

Policies may be developed as a short-term interpretation while a rule change is planned. This allows the board immediate response as it formalizes the change.

Policy development is the most flexible option for implementing and clarifying laws and rules.

Disciplinary Cases

The Washington State Board of Professional Engineers and Land Surveyors receives complaints against licensed and unlicensed individuals. Board members who are licensed engineers typically serve as case managers for engineering and on-site septic design cases and licensed land surveyors typically serve as case managers for land surveying cases. All board members serve as the judicial body and hear formal charges.

Because any case has the potential to go before the board for a formal hearing, you must not discuss cases with other board members. Do not use the names of people in the complaints until after the case has been closed.

Complaints fall under three general categories:

- Unlicensed practice
- Unprofessional conduct by a licensee
- Incompetence in the profession by a licensee

Board staff assign cases to board members based on factors including current case load, geography, and past case familiarity.

Your role:

Act as a case manager in disciplinary cases:

- Review cases
- Recommend closure or action
- Respond to complaint assignments in a timely manner
- Communicate only with board staff about the cases - keep case information confidential

As case manager, you provide technical expertise in reviewing the case. **When you review cases, remember the board's primary role is to protect the public's health, safety, and welfare.** After review, you will determine one of the following recommendations:

1) You need further information. You may ask board staff to conduct additional research. The case will be on the agenda for the following board meeting.

2) Close the case with no further action
   a) The complaint is outside board jurisdiction, OR
   b) The complaint is within board jurisdiction and you recommend the board take no further action. Common reasons for this decision include:
      - The respondent provides information to mitigate the complaint.
      - The respondent treats the request for a response as an educational reprimand or compliance request and remedies the activity initiating the complaint.

- You determine there is insufficient evidence a violation occurred.

The case manager summarizes recommendations to the full board during the closed session of a board meeting. The Department of Licensing's goal is to close 80% of complaints within 90 days. Your assistance in reviewing cases promptly and participating in board meetings is vital to successfully meeting this goal.

3) Take formal disciplinary action
   The complaint is within board jurisdiction and you recommend the board take disciplinary action. Action can be one or more of the sanctions listed in RCW 18.43, 18.210, and 18.235. Examples include:
   - Specific request from the board to alter activity (remedy only)
   - Remedial counseling
   - Reprimand
   - Monetary fine
   - License suspension or revocation
   - Peer review

If you recommend charges, the case manager (you), the board's executive director, deputy executive director, and the board's prosecuting assistant attorney general will work together to develop the documents. You need to provide an appropriate sanction. For this path, you do not bring a recommendation to the full board. If you are involved, as a board member, in a disciplinary issue prior to a disciplinary hearing, you may have to excuse yourself from participation as a board member during the hearing.

When you decide to charge the respondent, the board becomes an adjudicative body and some formal distinctions must be observed:

The prosecuting team:

- The case manager, the board executive director, deputy executive director, and the board's prosecuting attorney work to develop the charging documents and become the prosecution team. As case manager, you should only communicate with the board executive director and deputy executive director about the case. You may be asked to participate in meetings or conference calls with board staff and attorneys.

The adjudicative team:

- The board's advising attorney works with the other board members in their role as adjudicators. Case hearings may be scheduled during board meetings or special meetings where other board members deliberate and rule on the charges.
- The program's management analyst serves as board clerk and takes direction from the advising attorney. All formal communications about the case come from the board clerk.

Ethics

All board members and board staff must follow the Code of Ethics for Public Officers and Employees (Chapter 42.52 RCW). Board members and other state employees may not use their public positions for private benefit or gain. Under the provisions of this act:

- You may not have financial or other interests, or engage in any business or professional activity that conflicts with official board duties.
- You may not use your official position to secure special privileges for yourself or any other person.
- You may not receive compensation from any person, except the state of Washington, for performing your official duties.
- You may not receive a gift or favor, if it could be reasonably expected to influence or reward your vote, judgment, action, or inaction.

Other examples of conflicts of interest include:

- Familiarity with a person under investigation.
- Acting on behalf of a licensee before the board.
- Representing your advice or comments to individuals as "Board" or "Department" opinion.

If you ever have a question about ethical issues, please talk to your board staff.

Board Journal and outreach

Board staff publish the Board Journal biannually, once in the Spring and once in the Fall. The Board Journal contains standing topics including messages from the chair, board meeting schedules, any new rules or policies, closed disciplinary case summaries, etc. We encourage board members to write articles on specific topics.

Board staff organize the development of the Board Journal, including managing deadlines, requesting articles, and working with the graphic designer.

National and regional organizations

The board partners with national and regional organizations to regulate engineering, land surveying, and on-site wastewater professions. As a board member, you need to become familiar with the relationship of the board and these organizations. The organizations we most frequently work with are summarized below.

The National Council of Examiners for Engineering and Surveying (NCEES) develops, administers, and scores examinations used for engineering and surveying licensure in the United States. It also facilitates professional mobility and promotes uniformity of U.S. licensure processes through various services for its member licensing boards and licensees. These services include the records program, study materials, credentials evaluations, exam administration, and more. Board members may serve as representatives on NCEES committees and may be asked to attend annual meetings. Learn more at www.ncees.org.

The Washington On-Site Sewage Association (WOSSA) is a trade association that encompasses all disciplines of the wastewater industry and supports improvements in the industry. WOSSA represents this industry through education, certification, legislative involvement, ethical standards, and technical advancement to elevate professionalism within all segments of the on-site wastewater professions. Learn more at www.wossa.org.

The Land Surveyors' Association of Washington (LSAW) is a professional organization representing over 1000 individuals practicing in the various disciplines of surveying. LSAW provides a means to keep members informed of changes in laws, regulations, and rapidly changing technology. Their mission is to work together to protect the principles and practices upon which surveying was founded. They promote lifelong learning, high standards of ethics and practice, legislative leadership, and community involvement. Learn more at www.lsaw.org.

The Structural Engineers Association of Washington (SEAW) engages in the design and construction professions of engineering. SEAW pursues issues affecting public safety and professional practice in structural engineering. They provide continuing education opportunities, a forum for structural engineering issues, participate in local and national code advisory and development processes, and provide input to legislative bodies and regulatory agencies. This statewide organization is divided into four chapters; Seattle, Southwest, Spokane, and South Central. Each chapter operates independently under its own board of directors. Representatives from each board serve on the Statewide Board of Trustees. Learn more at www.seaw.org.

The Washington Society of Professional Engineers (WSPE) represents the interests of engineers from all fields of practice. WSPE's membership includes licensed professional engineers, licensed structural engineers, licensed land surveyors, engineer interns, graduate engineers, and engineering students. WSPE's primary objective is to advance and promote public welfare. WSPE is active in the legislative process and government affairs and frequently presents testimony before legislative committees and governmental rule-making agencies in the areas of construction, environment, licensing, public health, and transportation. They also work closely with Washington engineering schools to promote academic achievement and licensing. Learn more at www.washingtonengineer.org.

The American Society of Civil Engineers (ASCE) provides valuable services to their members and partners, advances civil engineering, and serves the public good. They strive to advance technology, encourage lifelong learning, promote professionalism and the profession, develop civil engineer leaders, and advocate infrastructure and environmental stewardship. Learn more at www.asce.org.

The National Society of Professional Engineers (NSPE) is committed to addressing the professional concerns of licensed professional engineers across all disciplines. Through education, licensure advocacy, leadership training, multi-disciplinary networking, and outreach, NSPE strives to enhance their members' ability to ethically and professionally practice engineering. Learn more at www.nspe.org.

We encourage board members to actively participate with various associations. These organizations regularly distribute updates about their work and general trends in the

engineering, land surveying, and on-site wastewater management professions. Through participation in national and regional meetings, board members have significant opportunity to influence registration experience for Washington's candidates.

Application review

Board staff review applications for licenses and determine if candidates meet education and experience requirements to sit for the various exams.

When an application requires a more in-depth analysis, staff consult with the Exam Qualification Committee. If you receive an application for review, please respond to staff as soon as possible.

Board support

Your primary staff contacts are the board executive director, the deputy executive director and the board's executive assistant. The executive assistant is your primary resource; she can help you with most issues and direct you to other resources as needed.

To help with your board duties, board staff:

- Organize and manage board meetings
- Maintain records for licensees, disciplinary proceedings, etc.
- Maintain records of applicants for licensure
- Review applications for licensure
- Issue and renew licenses
- Designate case managers for disciplinary complaints
- Address consumer and licensee questions and concerns
- Answer questions from government officials, the media, etc.
- Manage the board budget and monitor expenditures
- Represent the board program before DOL, BPD and other state, local and federal government agencies, as well as with professional associations
- Support the legislative process to the betterment of laws governing engineering, land surveying, and on-site septic system designers
- Assist the Board in developing rules

Board pay

Board members receive $50 for every eight hours of conducting board duties. Board work includes:

- Attending board and committee meetings
- Reviewing disciplinary cases
- Participating in disciplinary case settlement conferences and hearings
- Attending national conference meetings
- All travel on behalf of the board

Your role:

- Track your board work on the payroll sheet. Report your board time to the administrative assistant before the tenth of each month
- Submit travel forms at the end of each month

Upon appointment to the board, you will submit a W-4 form to receive board pay. You will receive payment for board time and payment for travel expenses, issued separately. The DOL payroll and accounting office issues two separate payments for time and travel reimbursements; the timing of these payments may depend on workload. Click here to learn how to access paystubs.

Other Resources:

- **Travel** – You are in travel status from the time you leave home until you return home. Reimbursement rates vary by county and are set based on your destination. Expenses incurred while traveling on board business are reimbursable with the same limits and restrictions set for all state employees. The travel information in the Appendix directs you to state-approved travel resources and procedures. You will be reimbursed for the following travel expenses:
    - Mileage – The reimbursement rate is .56 per mile. You do not need to submit fuel receipts; record and submit actual miles on the travel form.
    - Parking –Record parking expenses on your travel form. Receipts required.
    - Rental car – You will work with the executive assistant to arrange rental cars. Receipts required.
    - Lodging – You may have an overnight stay if you cannot reach the meeting or return home by traveling during reasonable hours on the day of the meeting. To qualify for lodging reimbursement, your destination must be greater than 50 miles from your residence. Lodging expenses must not exceed the maximum allowable per diem rate. Receipts required.
    - Meals – Meal per diem rates vary by county. You will qualify for meal reimbursement if you are in travel status for at least twelve hours in one day, and your destination is more than 50 miles from your residence. Meal reimbursements for single day trips (no overnight stay) are considered taxable income by the IRS. You will not receive meal per diems if meals are offered at your event. No receipts required.
    - Air Travel – You must work with the administrative assistant when you make your airline reservations.

Within the Department of Licensing

The Board of Registration for Professional Engineers and Land Surveyors is one of ten regulatory boards within the agency. Both the board's and the agency's mission is to protect the health, safety, and welfare of the public. Board members provide technical expertise to regulate the profession; board staff handle daily operations of government business.

Open Government

The board, like all government, is responsible for transparency to the public.

The board must adhere to the Open Public Meetings Act (OPMA) as defined by RCW 42.30. The rules are generalized below. Please see the presentation in the Appendix on RCW 42.30 for details.

- All board meetings must be open to the public and meet ADA standards.
- The board must publish meeting schedules, agendas, and approved meeting minutes.
- Four board members equal a quorum, thus subjecting your meeting to the requirements of the OPMA.
- Email conversations can be considered meetings if a quorum is present. Correspondence is subject to public disclosure.

- The board must formally delegate individual members or committees to act on its behalf at regional or national meetings.
- Only under very limited circumstances can the board hold executive session and close the meeting to the public.
- Board members are obligated to comply with public records requests and must maintain information (both electronic and paper) you receive and generate while conducting board business.

Appendix

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Law book

Rosters & Meetings Contents

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Rulemaking process

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AAG Trainings
Open public meetings
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Tri-Cities Herald article
Commonly used acronyms

Journals

Board Journals

Role of the Board Case Manager (CM) in the Complaint Process

Process:

1) Staff receive a complaint.
2) Staff acknowledge receipt of complaint to complainant, the person making the complaint, via a preliminary investigation notification letter.
3) Staff send a copy of the complaint and the preliminary investigation notification letter to the respondent, the person whom the complaint was made against. The respondent has two weeks to respond to the allegations. Additional time may be permitted if the complaint warrants covert investigation, or a "sting."
4) Staff take both the redacted complaint and the response to the Practice Committee. The Practice Committee decides if there is probable cause to open a formal investigation.
5) Staff assign a case manager (CM) based on:
    - Current case load
    - Geography
    - Past case familiarity
6) If a formal investigation is opened, a board investigator will conduct an investigation and prepare an investigative file. A copy of the file is then sent to the CM.
7) CM reviews the investigative file and determines one of the following:
    a) Needs further information
        i) The CM sends specific questions to the investigator.
    b) Make a recommendation to the full Board
        i) Recommend Board close case with no action based on CM review.
        ii) Recommend Board take no action– this usually happens because the respondent treats the request for a response as an educational reprimand or compliance request and remedies the activity initiating the complaint.
        iii) Recommend remediation– upon successful outcome, close case.
    c) Recommend action via charging documents

    Action can be any of the sanctions listed in the Uniform Regulation of Business and Professions Act (URBP) or a combination. Examples include: specific request from the Board to alter activity (remedy only), remedial counseling, fine, license suspension, or revocation.

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Adjudicative Process

The process outlined below is a general guideline. Please talk to board staff with specific questions.

Proceedings

Nature of Proceedings

An adjudicative (disciplinary) proceeding in the Department of Licensing is defined as a procedure for hearing and settling complaints against professionals who are licensed in Washington or people alleged to be practicing without a license (the respondent). The proceedings are usually less formal than judicial proceedings, but are conducted to best serve the interests of justice. The board must conduct such proceedings in accordance with considerations of fair play and constitutional requirements of due process. They must also observe any requirements set by law (RCW) or rules (WAC).

Settlement Opportunity

By law, the first consideration in any case resolution is the safety and welfare of the public. Settlement of complaints at the outset of the adjudicative proceeding is encouraged provided the public is adequately protected. If settlement is not possible, the adjudicative proceeding continues through a process which may continue for some months and involve a prehearing conference and a formal hearing.

Use of Formal Hearing

The formal hearing is used to determine whether disciplinary action should be taken against the respondent. The board may suspend, revoke or deny a license, or impose other sanctions provided by law. Formal hearings involve a contested case, in which the respondent challenges or contests the charges brought against him or her. A formal hearing may be appropriate when, the complexity of the cases and the sophistication of the respondents and their attorneys have elevated the case to a higher level of legality and adherence to courtroom rules of evidence.

Role of the Board

The board's responsibility in an adjudicative proceeding is to reach a decision and render a judgment. The Washington case of *Washington Medical Disciplinary Board v. James C. Johnston*, 99 Wn.2d 466, 663 P.2d 457 (1983), requires that care be taken to separate the processes of investigation and prosecution from the process of criminal judgment.

The board uses a case manager (CM) to review complaints. The CM is assigned to the complaint after it is received by the board. The CM participates with staff during the investigation and disposition of a case. The CM cannot participate in the judgment of the case with the rest of the board. The Board is assigned two Assistant Attorney Generals (AAG). One AAG represents the state as the prosecutor, effectively separating the processes of investigation and prosecution from the process of judgment. The other AAG serves as the board advisor. This AAG regularly attends board meetings and advises the board during adjudicative processes.

The board makes final judgments during adjudicative proceedings. The board chair is the presiding officer during the adjudicative proceedings unless he or she is the case manager. The vice-chair may be the presiding officer if the chair is not available.

Board Adjudicative Roles

Prosecution:

- Board case manager
- Prosecuting AAG
- Board administrator
- Program manager

Judicial:

- Board members, with the chair (or delegate) as presiding officer
- Advising AAG
- Court clerk (management analyst)

Participants

There are usually two parties in a proceeding: the state, which brings the charges, and the respondent, against whom they are brought. The state frequently brings charges as a result of a complaint by a private individual or other entity, although such person or entity is not an official party to the action. An Assistant Attorney General (AAG) prosecutor who presents evidence supporting disciplinary action against the respondent represents the state. The AAG may present allegations brought by other persons or governmental agencies and may call witnesses to support the charges.

The respondent, as the other party, may also present witnesses. An attorney frequently represents the respondent during the adjudicative proceeding.

Jurisdiction of the Board

The Board can only initiate adjudicative proceedings against those persons over whom it has jurisdiction. The Board must also have jurisdiction over the subject matter of the complaint; the complaint must concern a rule or regulation of a statute administered by the Board. A complaint about a licensee which does not concern his or her fitness, competence, or qualifications to be professionally licensed, as defined by statute and rule, is not within the Board's jurisdiction.

Initiation of an Administrative Case

An administrative case as described in Chapter 34.05 RCW is a contested case in which the respondent has been given notice of the allegations against him or her. This formal legal notice is called a "Statement of Charges." In the terms of this manual, a case in the investigative stage is not a contested case until a Statement of Charges is served on the respondent.

The Statement of Charges is served with three additional documents: an answer to charges and/or settlement conference, a proposed agreed order, and a notice of legal rights.

PARTIES' RIGHTS TO THE PROCEEDING

Parties Initially Notified

When a board initiates action, which will affect the rights, duties, or privileges of a person, it must serve that person with notice. The person then becomes a party to the proceeding.

Right to Appear

Any person who is a party to a proceeding has the right to appear and be heard, either in person or by counsel. A party also has a right to notice, or a statement of what accusations have been made. If, however, a party does not appear after proper notice has been given, the party could be considered to have waived these rights and the board may proceed with the hearing without the presence of the party.

Right to Present Evidence and to Cross-Examine

Every person who is a party to a proceeding has the right in a hearing to:

1. Present evidence on questions of fact, provided that such evidence is acceptable under the rules governing the hearing.
2. Present arguments on issues of law and policy.
3. Cross-examine witnesses.

Right to Counsel

The respondent against whom the proceeding is brought has a constitutional right to be accompanied and advised by counsel. The respondent also has the right to be examined by his or her own counsel. There are no constitutional requirements, however, that the board pay for or appoint counsel for the respondent, even if he or she is indigent.

The filing of an answer, a motion, or other appearance by an attorney constitutes an appearance on behalf of the licensee. The board must be notified in writing if the attorney withdraws from the proceeding.

Right to Copy of Testimony

Any person who gives evidence, whether as a party or witness, is entitled to procure a copy of any transcript of his or her testimony. The person requesting the copy is required to pay for the transcript.

Right to Judicial Review

A respondent may have the right to ask the courts to review a decision of the board adverse to the respondent. In Washington State, appeals are made to Superior Court.

INITIATING AN ADMINISTRATIVE DISCIPLINARY PROCEEDING

Need for Formal Adjudication

One regular member of the board is named as the case manager to work with staff and the assistant attorney general in determining the course of a complaint. Ultimately, the designated member recommends charges, case closure, or some other option for each complaint. The case manager does not participate in any further adjudication of the

complaint in order to preserve fairness. If charges are issued, the full board will decide the case only on the basis of the evidence presented, either at a hearing or during the settlement process.

The decision to initiate formal disciplinary action using a Statement of Charges is a judgment call, usually determined after consideration of each the following:

1. The nature and severity of the unprofessional conduct alleged to have occurred.
2. The respondent's disciplinary history.
3. The strength and quantity of the evidence for and against the respondent as developed in the investigation of the complaint.
4. The costs of prosecuting the case in light of board resources.

The Board's disciplinary process is not intended for adjudication of civil disputes between individuals. The board does not generally involve itself in billing disputes, unless there is an allegation of fraud or misrepresentation. Often a civil lawsuit will be in progress concurrently with board disciplinary proceedings. The decision to proceed with board action during the pending of a civil suit on the same issues is made at the board's discretion.

Initiating the Process– Statement of Charges

The Board initiates an administrative disciplinary proceeding by issuing a Statement of Charges. Discipline includes denial of licensure, the board's response to unprofessional conduct by a licensee, and orders to cease and desist unlicensed practice. The board's disciplinary action usually originates from a complaint made by a private individual, a state investigator, or other government agency. Investigation of the complaint is then undertaken to the extent of available resources and the complexity of the complaint.

The Statement of Charges serves to officially initiate the disciplinary process, give notice of the essential allegations of the complaint, and inform the respondent of his or her right to contest the accusations. The three documents that accompany the Statement of Charges inform the respondent of his or her rights to contest the charges. Once a person has been charged, he or she is referred to in the proceedings as the respondent.

Right to a Hearing

The Constitution of the United States provides that no person be deprived of life, liberty, or property without due process of law. A respondent therefore has the right to a hearing in any action to deny, suspend, revoke, refuse to renew, or otherwise restrict a license.

A person may choose to waive his or her right to a hearing, either by nonappearance (default) or by negotiation and settlement of the charges.

Application for Adjudicative Hearing

Three additional documents, outlined below, are issued with every Statement of Charges. They inform the respondent of his or her rights throughout the adjudicative process.

Request for Hearing and Settlement Conference

This document reminds the respondent he or she must respond within 20 days to avoid a default on the charges. It also serves as a vehicle for admitting or denying

some or all of the charged allegations, and requesting a hearing or settlement opportunity in the matter. Some respondents will note their affirmative defenses in the application. The process of adjudicating the charges begins when the Board receives the completed application.

Agreed Findings of Fact, Conclusions of Law and Order

This document outlines the charges, identifies the sanction, and informs the respondent of his or her rights concerning the charge. It also explains the obligation to adequately and timely respond to the charges or risk a default.

Notice of Legal Rights

This document informs the respondent how to request a hearing. It also explains the settlement process and ramifications if a timely response to the Statement of Charges is not received. It also informs the respondent how to request special accommodations, such as an interpreter.

The board can issue default orders where the record shows the respondent was served (constructive or actual) and the respondent fails to answer. Every effort must be made to ensure that the respondent was fully aware of the charges and declined to address them.

When a Hearing is Not Required

A hearing is not required when the licensee allows his or her license to expire. Similarly, a hearing is not required based solely on the failure to file a renewal application, or on a failure to pay required fees or maintain required insurance. If a licensee requests reinstatement of a lapsed or expired license in accordance with statutes or rules, the right to a hearing will generally be upheld before the board may deny reinstatement.

Summary Suspension

In rare cases, the board may need to suspend a license before a formal hearing is held. Qualifying circumstances are limited to situations where, in the board's judgment, continued practice by the respondent poses a grave and immediate danger to the public health, safety, or welfare, and when no lesser restriction on the respondent will adequately protect the public. The notice of summary suspension must offer the suspended respondent an opportunity for a prompt hearing, within twenty days of the summary action. Usually a set time and place is stated in the notice served on the licensee with the summary suspension order. The respondent may opt to have a regularly scheduled hearing at a later date.

THE SETTLEMENT AND HEARING PROCESS

Constitutionality Required

The constitutional requirement of due process makes it necessary for the board to provide adequate notice to the respondent throughout all stages of the disciplinary process. The Statement of Charges is analogous to the complaint in a civil action; it recites certain acts or omissions, which the respondent is alleged to have committed and asserts that those acts or omissions violate a statute or rule of the board. Sufficient notice must be given to all parties in advance of each stage of the proceeding to allow a reasonable opportunity for

preparation. Failure to give adequate notice may cause the Superior Court to set aside an order resulting from the proceeding.

Settlement

The policy of the board is to encourage settlement of complaints so long as the public is adequately protected. By law, the first consideration in any case resolution is the safety and welfare of the public. The respondent's circumstances, no matter how dire or deserving of sympathy, must always be secondary. Therefore, the board attempts to fashion resolutions, and expedite the process to the benefit of all parties. If and when the parties' attorneys and the reviewing board member agree upon a settlement, a Stipulation and Agreed Order is prepared for presentation to the full board. The board may accept or reject the agreed settlement, and is not bound by any agreement between the lawyers. If the board rejects the agreed outcome, it can proceed to a hearing on the charges.

Hearing and Post-Hearing

A hearing most resembles a trial in a civil court. While administrative hearings are intended to be less formal than a trial, the complexity of the cases and the sophistication of the respondents and their attorneys have forced a higher level of legality and adherence to courtroom rules of evidence.

After the board makes a final decision, the assistant attorney general drafts the Findings of Fact, Conclusions of Law, and the Final Order, pronouncing the board's decision. The board members must review the documents to ensure accuracy. Once signed, the documents are given to the respondent as a final board order. Although the respondent may request the board reconsider its decision, the primary route of appeal for a dissatisfied respondent is to file an appeal in Superior Court. The Attorney General will appear on behalf of the state, but the Board is not usually involved in the appeal process. The Superior Court decides the appeal based on the record of the administrative proceedings, and should not recreate the hearing. Even if the court disagrees with the conclusions of the board, it is generally bound by the board's finding unless clearly illegal.

Disqualification of a Board Member, WAC 196-09

If unable to conduct a fair and impartial hearing, a board member should be disqualified from participating in the case. Determination of bias involves many considerations. Generally, bias concerning issues of law or policy is not grounds for disqualification. Bias or pre-judgment about issues of fact in a case, however, is grounds for disqualification, as is bias or prejudice for or against one party in a proceeding. Another ground for disqualification is personal interest; i.e., when the member stands to gain or lose from the outcome of a proceeding.

A board member must disqualify himself or herself if, because of past affiliation or underlying circumstances, the person's involvement would make the hearing appear to be unfair to a disinterested third party.

Procedures for Disqualification

If a board member determines he or she cannot participate in a hearing in an impartial manner, he or she will submit to the board a request to be disqualified, outlining the reasons therefore.

A party to a proceeding may also file an affidavit or motion with the board if a member is perceived as unable to remain impartial throughout the hearing due to bias or other disqualification. The affidavit should state the grounds for disqualification as precisely as possible. It must be filed before the commencement of the hearing or at the first opportunity after the party becomes aware of the facts supporting disqualification.

Action on Disqualification

If, after investigation, the board finds the hearing could not be conducted in an impartial manner, it should remove that person from the proceeding. The reasons for this decision then become part of the case record. All parties are informed of this decision. A new presiding officer may then be appointed and the hearing resumes. However, if the new presiding officer determines substantial prejudice to the rights of the parties, a new hearing is initiated or the case is dismissed without prejudice. The staff and board maintain the right to initiate a new hearing.

If a member is removed, the hearing proceeds without that member so long as there are enough members to constitute a duly qualified board. If removal would result in less than a quorum, the boards' legal advisor should be consulted for advice on further proceedings.

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Rulemaking Process

DEFINING RULES – Washington Administrative Code (WAC)

What is a rule? By definition, a rule is any statement of general applicability that:

- Implements, interprets, or prescribes law (RCW) or policy, or
- Defines procedures or practices of an agency of state government.

Three kinds of rules are generally recognized:

- Procedural rules adopt, amend, or repeal an agency's internal procedures through and establish rules of practice.
- Interpretive rules interpret legal standards or phrases.
- Significant legislative rules set out the law and establish specific standards directed by the legislature.

Individual boards are responsible for developing their own substantive rules, while the central agency or another state agency may have oversight of procedural rules. Thus boards may use the agency expertise in administration, while the agency relies upon the expertise of the board to develop rules relating to education, competency, and professional requirements. Statute grants authority to adopt rules. Rules promulgated must be reasonably related to the statutory language and the purpose of the law.

Typically, there is a uniform drafting style mandated by state law. Board staff and the board's legal counsel will advise board members when developing new rules.

An administrative or judicial review may be conducted. Staff will make every effort to comply with all of the procedural due process requirements for rulemaking.

REGULAR PROCEDURES FOR ADOPTING RULES

In order to be legally binding, proposed rules or changes in rules must be adopted according to the proper procedures. In general, procedures require:

- Written public notice of inquiry.
- Opportunity for the public to submit written comments on the proposed rule and/or to appear at a public hearing for oral comment.
- Consideration of the comments.
- Concise explanatory statement.
- Publication of final rule.

Notice and Publication

A board must give adequate advance notice of proposed rules, except in emergency situations. Notice allows all interested persons to learn of the proposal and to comment if they so desire. Generally, notice is given through mailings to stakeholders, in the official state register publication, and in other publications likely to reach those who may be interested. Time requirements for publication of notice are set by statute and must be followed to ensure the legal enactment of rules.

The notice in the official state publication, as a minimum, should contain:

1. A concise statement of the substance of the proposed rule and the issues.

2. A statement of the statute or other authority giving the board authority to issue rules.

3. A statement of the statute to which the rule relates.

4. A request for comments, notice of the date by which comments must be received and an explanation of how comments should be submitted, whether in writing or at a hearing.

5. Certification by the appropriate official.

6. A statement regarding whether or not a small business economic impact statement has been prepared. (RCW 19.85)

7. A probable cost vs. probable benefits analysis, if rule is a "significant legislative rule." (RCW 34.05.328)

Notice should also contain any other information that is required by statute or that the board feels would be helpful to the persons affected.

Public Comment

1. Written Comments

All interested parties must be given a reasonable opportunity to submit data, views, or arguments concerning a proposed rule. The board or department must give careful consideration to such submissions.

Although administrative laws set forth the specific procedures for written comments, the board may also prescribe the general form of written comments. It may also prescribe the number of copies required. The board should specify the time and place where written comments will be received. A list of all such comments received should be kept. A copy of all comments should be made available for public inspection.

2. Hearing Process

Washington state law requires a public hearing prior to the adoption of a rule or a change in a rule. Given the technical nature of a proposed rule, a board may choose to hold general public hearings before drafting a rule.

Consideration of Comments

After consideration of the views presented in the comments or at a hearing, the board or department is ready to take final action on its proposed rule(s). At this point it may choose to:

- Adopt the rule as originally proposed.
- Withdraw the proposed rule.
- Make minor changes in the rule.
- Make major changes in the rule.

If major changes are made, the board is required to treat the revised rule as a new proposed rule and repeat the entire rulemaking process.

Publication

Before a final rule is adopted, the board or department must prepare a concise explanatory statement of the rule, a summary of all comments received, and a substantive response to the comments.

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Commonly Used Acronyms

AAG	Assistant Attorney General
ABET	Accreditation Board For Engineering And Technology
AD	Assistant Director
ANSI	American National Standards Institute
AO	Agreed Order
ASCE	American Society of Civil Engineers
BAP	Brief Adjudicative Proceeding
BLM	Bureau of Land Management
BLS	Business License Service
BORPELS	Board Of Registration For Professional Engineers and Land Surveyors
BPD	Business & Professions Division
C&D	Cease & Desist
CBT	Computer-Based Testing
CE	Continuing Education
CM	Case Manager
CPD	Continuing Professional Development
CR	Code Reviser
CTS	Compliance Tracking System
DNR	Department of Natural Resources
DOH	Department of Health
DOL	Department of Licensing
EAC/ABET	Engineering Accreditation Commission of ABET
EIT	Engineer In Training
FE exam	Fundamentals of Engineering Examination
FIQ	Fiscal Impact Questionnaire
FS exam	Fundamentals of Surveying Examination
GLO	General Land Office
IS	Information Services
ISO	International Organization for Standardization
LQS	License Query System
LSAW	Land Surveyors Association Of Washington
MLE	Model Law Engineer
NCEES	National Council Of Examiners For Engineering And Surveying
NSPE	National Society of Professional Engineers
OSBEELS	Oregon State Board of Examiners for Engineering and Land Surveying
PDH	Professional Development Hours
PE	Professional Engineer
PLS	Professional Land Surveyor
RCW	Revised Code of Washington
SBP	Strategic Business Plan

SE	Structural Engineer
SEAW	Structural Engineers Association Of Washington
SME	Subject Matter Expert
SOC	Statement Of Charges
TEMS	Travel And Expense Management System
Venture	Venture Professional Licensing Database
WABO	Washington Association Of Building Officials
WAC	Washington Administrative Code
WOSSA	Washington On-Site Sewage Association
WSPE	Washington Society Of Professional Engineers
WZ	Western Zone

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