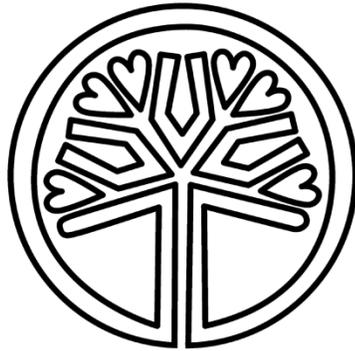


2012

Washington State Board of Licensure
for Landscape Architects
Board Member Manual



Department of Licensing

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- Open government training materials
- Newsletters

Welcome

Welcome to the Washington State Board of Licensure for Landscape Architects. This regulatory board's primary function is to protect the public's health, safety and welfare through the regulation of the practice of landscape architecture. 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: e.g. outreach, newsletter articles, rule making, cross-over 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 public

As needed:

- Attend national council meetings
- Review applications

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

- RCW 18.96, 18.235, WAC 308-13: the laws and rules relating to landscape architects 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
- Newsletters

Board member responsibilities

The authorities and duties of the Washington State Board of Licensure for Landscape Architects are established in Chapter 18.96 RCW and Chapter 18.235 RCW.

Board structure

The Landscape Architect Board has 5 members, all appointed by the Governor.

- 4 licensed landscape architects
- 1 public member, who is not expected to become an expert in the landscape architect industry, but should bring the general public perspective

Board meetings

- The board has at least four meetings each year. Two of the meetings are held at universities across the state.
- Meeting dates, times, and locations are decided by the board and administrative staff at the last meeting of the year and posted on the board's website.
- Board members and board staff attend all meetings.
- Board meetings are open to the public, except for closed sessions for specific reasons like disciplinary case review.
- Any time 3 or more board members are present, the board should not discuss board business unless we are in a board meeting.
- About 2 weeks before each meeting you will receive a packet from our office containing copies of documents that will be discussed at the board meeting.

Your role:

Attend board meetings; prepare as needed and actively participate

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

Board committees

The board chair may create committees of board members for specific projects. Examples of these projects may include:

- Outreach
- Rule making
- Policy or procedure development

To avoid quorum issues, committees generally include 2 board members.

You may be asked to represent the board at meetings or on task forces that cross professions or involve other agencies.

Laws and rules

The laws that govern the licensing and regulation of landscape architects 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.

The rules – Washington Administrative Code or 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 3-6 months and can happen as the board schedules it.

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 comment

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.

A brief summary of the rulemaking process:

1. The board chair identifies a need for rule changes
2. Board staff gives 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 will publish a draft of the rules
5. Board staff schedules an opportunity for the public to comment
6. Board staff compiles the 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 publishes the final rule in the board newsletter, on the board website, in a mailing to all licensee, and through new law books

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. Policies can be drafted by a board committee with staff assistance, and then presented to the whole board for adoption. Once adopted, the policies are published on the board's website and in the next newsletter.

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

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

Discipline cases

The Department of Licensing receives complaints on behalf of the Washington State Board of Licensure for Landscape Architects against licensed and unlicensed individuals. Board members who are licensed landscape architects serve as case managers for these cases and all board members serve as the judicial body hearing 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 3 general categories:

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

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

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.

If you need further information, you can send specific questions to board staff, who will assign the case to investigations. When the investigation is complete, you will receive a copy of the investigation report for review. Then you will need to make one of the recommendations below.

2) Close the case with no further action because

- a) The complaint is outside of board's jurisdiction, OR
- b) The complaint is within the board's 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 has occurred.

The case manager makes recommendations to close the case to the full board, for action during the closed session at a board meeting. The Department of Licensing has a goal to close 80% of complaints within 90 days. Your assistance in reviewing cases promptly and attending board meetings is vital to meet this goal.

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 the case information confidential

3) Take formal disciplinary action.

The complaint is within the board's jurisdiction and you recommend the board act via charging documents. Action can be one or more of the sanctions listed in 18.235 RCW. Examples include:

- Specific request from the Board to alter activity (remedy only)
- Reprimand
- Fine
- License suspension or revocation

If you recommend charges, the case manager (you), the board administrator, program manager 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 administrator, program manager 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 administrator and program manager 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 in special meetings where the other board deliberate and rule on the charges.
- The program's administrative assistant becomes the court clerk and takes direction from the advising attorney. All formal communications about the case will come from the court 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 interest, or engage in any business or professional activity that is in conflict with your official board duties.
- You may not use your official position to secure special privilege 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:

- being familiar or acquainted with a person under investigation
- being asked by a licensee to act on their behalf before the Board
- providing advice and comment to individuals and representing that as a “Board” or “Department” opinion

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

Newsletters and outreach

Board staff publishes news bulletins usually after each board meeting, with a summary of current issues before the board. We encourage board members to write articles on specific topics.

National and regional organizations

The board partners with national and regional organizations to regulate the landscape architect profession. As a board member, you need to become familiar with the relationship of the board with these organizations. The Council of Landscape Architectural Registration Boards (CLARB) develops the landscape architect registration examinations (LARE) required by the board for licensure. CLARB also manages the application process for eligible licensing candidates and administers the exam to all candidates. Board members may serve as representatives on CLARB committees and may be asked to attend its annual meeting each September.

We encourage board members to actively participate in CLARB. CLARB has a comprehensive website www.clarb.org. Board members, through participation in the national meetings, have a significant opportunity to influence the licensing experience for Washington’s candidates.

Application review

In April 2009, the board delegated to CLARB the authority to review candidate applications and administer the LARE. If a candidate’s education or experience differs from CLARB’s prescribed path, board staff will review the application and determine if the candidate has the required education and experience to sit for the exams.

Sometimes, staff will refer an application to a board member for review. If you receive an application to review, please respond to staff as soon as you can.

Board support

Your primary staff contacts are the board administrator and the administrative assistant. The administrative assistant is your primary resource; he or she can help you with most issues and direct you to other staff as needed.

To help you with your board duties, board staff will:

- Organize and manage the board meetings
- Maintain the records for licensees, disciplinary proceedings, etc.
- Maintain the records of applicants for licensure
- Review applications for licensure
- Issue new licenses and renew licenses
- Designate investigators for disciplinary complaints
- Assist consumers and licensees by responding to questions and concerns
- Answer questions from government officials, the media, etc.
- Maintain the 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 landscape architecture
- Assist the boards in developing rules.

Board pay

As a board member, you get paid \$50 for each day of official board work you do. Half days will be paid at the rate of \$25. Board work includes:

- Board meetings
- Board committee meetings
- Disciplinary case review
- Disciplinary case settlement conferences and hearings
- National conferences
- Traveling on behalf of the board

You will need to complete a W-4 form before the Department of Licensing can issue your board pay. You will receive separate checks for your board pay and your travel expenses. The Department of Licensing's payroll and accounting office issues your pay and travel reimbursements, and the timing of these checks may depend on their workload. [Click here](#) for information on accessing your paystub.

Your role:

- Track your board work in 4-hour time blocks
- Report your board time to the administrative assistant regularly
- Submit the yellow travel worksheet at each board meeting
- Submit any other travel forms at the end of each month

Other resources

- **Long distance calling card** – you will be issued a calling card for long distance phone calls relating to board business. The card may be used only for official board business. Records are kept and monitored monthly. The card must be turned in when your term expires.

- **Travel** – your expenses when travelling on board business are reimbursable up to a limit set for all government 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, up to the government limit (state rate). No receipts are needed.
 - Parking. Receipts are required for reimbursement.
 - Rental car, up to the government limit (state rate). You must work with a state-approved business when you make your reservations. Receipts required.
 - Lodging, up to the government limit (state rate) for that area. Receipts required.
 - Meals, up to the government limit (state rate) for that area, when you are in travel status and have worked at least a 12-hour day. No receipts are required.
 - Travel status is the time you leave home until you return home if this total time includes proceeding directly to and returning from the meeting location. 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. Meal reimbursements for single day trips are considered taxable income by the IRS.
 - The payment of eligible single day meals will be made through the Payroll system.
 - You will not be reimbursed for meals provided at the meeting.
 - Air Travel, up to the government limit (state rate). You must work with a state-approved travel agency when you make your airline reservations.
 - Ask for the **government rate** so your ticket is **REFUNDABLE**. The ticket may be more expensive but you must go with the contract first unless it absolutely does not work.
 - If you have to go off the state contract, contact the administrative assistant for an exception request to the Assistant Director of the Department of Licensing.

Within the Department of Licensing

The Washington State Board of Licensure for Landscape Architects is appointed by the Governor of the State of Washington and is one of 8 regulatory boards within the agency. Both the board's and the agency's primary obligation is to protect the health, safety and welfare of the public.

The board members provide technical expertise to regulate the profession; board staff handles the daily operation of government.

Board, Agency and Government roles

Board	Agency Staff	State Government
Complaint evaluation and resolution	Complaint handling process	Rule development process
Webpage content	Webpage design & layout	Budget allotment
Creating or changing rules (WACS)	Creating or changing rules (WACS)	Creating or changing laws/RCW (legislature)
Developing board policy	Licensing	Travel rules
	Budget maintenance	
	Fee setting	

Open Government

The board, like all government, is responsible for providing accessible and transparent processes to the public.

The board is governed by public meeting rules. 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
- The board must notify the public of its meetings
- Any time a majority of the board is present and board business is discussed, it is considered a meeting
- Email conversations can be considered meetings if they involve a majority of board members
- The board must formally delegate individual members or committees to act on its behalf at regional or national meetings
- Meeting minutes are available to the public
- Only under very limited circumstances can the board close the meeting to the public
- Board members are obligated to comply with public records requests and should responsibly maintain the information (both electronic and paper) you receive and generate as part of board business

Appendix

Laws, Rules & Policies Contents

[Law book](#)

[Board policies](#)

Rosters & Meetings Contents

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[Board meeting calendar](#)

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Disciplinary & Complaints Contents

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Board Training Contents

[Roberts Rules – condensed version](#)

[Ethics in public service](#)

[Open public meetings law – RCW 42.30](#)

AAG Trainings

[Open public meetings](#)

[Electronically stored information: awareness & management](#)

[Tri-Cities Herald article](#)

[Commonly used acronyms](#)

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

Process:

- 1) Staff receives a complaint
- 2) Staff acknowledges complaint to complainant (person making the complaint)
- 3) Staff sends copy of complaint to respondent, requests response within 2 weeks – unless the complaint warrants covert investigation (i.e., a “sting”)
- 4) Staff assigns a BCM based on:
 - Current case load
 - Geography
 - Past case familiarity
- 5) Staff sends copies of the original complaint and the response to BCM
- 6) BCM reviews information and determines one of the following:
 - a) Need further information

If the BCM needs further information, s/he sends specific questions to staff. Staff assigns case to investigations staff (outside of section). When investigation is complete, staff sends BCM a copy of investigations report for review.
 - b) Make a recommendation to the full Board
 - i) Complaint is outside of Board’s jurisdiction, recommend Board close case with no action
 - ii) Complaint is within jurisdiction, recommend Board take no action because no violation took place
 - iii) Complaint is within jurisdiction, recommend Board take no action - 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; or there is no evidence of a violation.
 - c) Complaint is within jurisdiction, take action via charging documents

Action can be any of the sanctions listed in the URBP or a combination. Examples include: Specific request from the Board to alter activity (remedy only), reprimand, fine, license suspension or revocation, etc.

[Return to appendix](#)

Disciplinary 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 by the State of 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 so long as the public is adequately protected. If settlement is not possible, the adjudicative proceeding continues through a process, which may continue for some months involving 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. The hearing is intended to be less formal than a trial, but 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 than was necessary in the past.

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* (1982) 99 Wash. 2d 466, 633 P. 2d 457) requires that care be taken to separate the processes of investigation and prosecution from the process of judgment.

The board uses a case manager (an assigned board member) to review complaints. The case manager is assigned to the complaint after it is received by the Department of Licensing. The case manager participates with staff during the course of investigation and disposition of a case, actively making recommendations on the course the case will follow. Because of this active participation, the case manager cannot participate in the judgment of the case with the rest of the board. An Assistant Attorney General (AAG) is assigned to each board and represents the state as the prosecutor. This procedure effectively separates the processes of investigation and prosecution from the process of judgment.

Another AAG is assigned to each board as an advisor. This AAG regularly attends board meetings and advises the board during adjudicative processes.

The board makes final judgments during the adjudicative proceedings. The board chair is the presiding officer during the adjudicative proceedings unless he or she is the case manager. The vice-chair or secretary 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 (the program's administrative assistant)

Participants

There are usually two parties in a proceeding: the state, which is bringing 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, but such person or entity is not an official party to the action. An Assistant Attorney General prosecutor who presents evidence that disciplinary action should be taken against the respondent represents the state. The Assistant Attorney General 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 licensee during the adjudicative proceeding.

Jurisdiction of the Board

The board can initiate adjudicative proceedings only against those persons over whom it has jurisdiction. The board must also have jurisdiction over the subject matter of the complaint, i.e., the complaint must be one which concerns a rule or regulation of a statute administered by it. 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 2 other documents: a request for hearing and settlement conference and an outline of the agreed findings of fact.

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; that is, to be given a statement of what accusations have been made. If, however, a party does not appear after proper notice has been given, the party may 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:

- (1) to present evidence on questions of fact, provided that such evidence is acceptable under the rules governing the hearing;
- (2) to present arguments on issues of law and policy;
- (3) to cross-examine witnesses.
- (4)

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 as a 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 that is 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 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 the appearance of 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 arrived at after consideration of 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, which would more appropriately be decided in a court of law. 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 another governmental 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 to the person complained against of the essential allegations of the complaint, and inform the respondent of his or her right to contest the accusations. The respondent is informed in more detail of his or her right to contest the charges in the two documents that accompany the Statement of 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 can be deprived of life, liberty or property without due process of law. A respondent therefore has the right to a hearing in an action to deny, revoke, and refuse to renew, suspend 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

Along with every Statement of Charges issued to a respondent are two documents designed to ensure that the respondent is aware of his or her rights in 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 respondent fills in the application, and when the board receives it, the process of adjudicating the charges begin.

Agreed Findings of Fact, Conclusions of Law and Order

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

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

No hearing is required when the licensee allows his or her license to expire. Similarly, no hearing is required where the action is based solely on the failure to file a renewal application, which meets the minimum requirement for renewal in a timely manner, 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, a board may need to suspend a license before a formal hearing is held. The circumstances in which this may be done 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 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, held 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. Notice must be given to all parties sufficiently 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, which will 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 has made a final decision, the Assistant Attorney General drafts a document Findings of Fact, Conclusions of Law, and Order, which pronounces the board's decision. This drafting process may take many weeks, and the document must be reviewed by the board members to ensure that it properly reflects their decision. When finally signed, it is given to the respondent as a final board order. Although the respondent may request that 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 in the appeal 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 they are clearly illegal.

Disqualification of a Board Member

A board member should be disqualified if bias or interest exists which makes that person unable to conduct a fair and impartial hearing. Determination of bias involves many considerations. Generally, bias about 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 or administrative law judge stands to gain or lose from the outcome of a proceeding.

In addition, an administrative law judge or member must disqualify himself or herself if, because of some prior involvement with one or more of the parties, or because of

important underlying circumstances, the person's involvement would make the hearing appear to be unfair to a disinterested third party.

Procedures for Disqualification

If a member determines he or she is unable to conduct a hearing in an impartial manner, that person should submit to the board a request to be disqualified, stating the reasons therefore.

A party to a proceeding may also file an affidavit or motion with the board alleging that a member is unable to conduct the hearing because of 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 upon which the claim of disqualification is based.

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 that particular proceeding. The reasons for this decision are made part of the case record. All parties are informed of this decision. A new presiding officer is then appointed and the hearing resumes, unless the new presiding officer determines that continuation would result in substantial prejudice to the rights of the parties, in which case a new hearing is initiated or the case is dismissed without prejudice to the right of the staff and board 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 generally any statement of general applicability that:

- Implements, interprets, or prescribes law (the Revised Code of Washington/RCW) or policy; or
- Defines the organization for the procedure and practice requirements of an agency of state government.

Three kinds of rules are generally recognized:

- Procedural Rules - Set out the agency's organization procedures through which information may be obtained and establish the rules of practice before the agency;
- Interpretive Rules - Interpret legal standards or phrases. In many states, 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; and
- Significant Legislative Rules - Set out the law, and/or provide any details and standards directed by the legislature.

The authority to adopt rules is granted by statute. Rules promulgated must be reasonably related to the statutory language and 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.

As a board member, you have to anticipate possible administrative and/or judicial review of your actions. Staff will make every effort to comply with all of the procedural due process requirements for rulemaking.

Staff will follow the procedures below during the rulemaking process:

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 the following information:

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); and,
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
AD	Assistant Director
AEG	Association of Engineering Geologists
AIA	American Institute of Architects
AIPG	American Institute of Professional Geologists
ARE	Architect Registration Exam
ASBOG	National Association of State Boards of Geology
ASLA	American Society of Landscape Architects
BLS	Business License Service
BORPEL	Board of Registration of Professional Engineers and Land Surveyors
BPD	Business & Professions Division
C&D	Cease & Desist
CLARB	Council of Landscape Architect Registration Boards
CM	Case Manager
CTS	Compliance Tracking System
DFC	Design, Funeral & Cemetery Section
DTS	Driver Training Schools
EG	Engineering Geology
FIQ	Fiscal Impact Questionnaire
HG	Hydrogeology
ICFSEB	International Conference of Funeral Service Examining Boards
IS	Information Services
ITS	Inspection Tracking System
LARE	Landscape Architect Registered Exam
LQS	License Query System
MBE	Member Board Executive
MBM	Member Board Member
NCARB	National Council of Architectural Registration Boards
SBP	Strategic Business Plan
SME	Subject Matter Expert
SOC	Statement of Charges
SWVN	Statewide Vendor Contract Number
TEMS	Travel and Expense Management System
Venture	Venture Professional Licensing Database
WABO	Washington Association of Building Officials
WCARB	Western Council of Architect Registration Boards
WCCFA	Washington Cemetery, Cremation and Funeral Association
WEBS	Washington Electronic Business Solutions (Contracts)
WSFDA	Washington State Funeral Directors Association

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