

AMENDATORY SECTION (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)

WAC 314-42-030 (~~(Appearance by)~~) May a former employee of board or former member of attorney general's staff(--) appear before the board and under what circumstances? No former employee of the board or member of the attorney general's staff may (~~at any time after severing his/her employment with the board or the attorney general~~) appear(~~(, except with the written permission of the board,)~~) in a representative capacity on behalf of other parties in a formal proceeding wherein he/she previously took an active part as a representative of the board unless the board grants permission in writing.

AMENDATORY SECTION (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)

WAC 314-42-040 (~~(Practice and procedure.)~~) What rules apply to the procedures used in practice before the board? The board (~~hereby~~) adopts the model rules of procedure, found in chapter 10-08 WAC, promulgated by the office of administrative hearings (~~insofar as they are not in conflict with a specific board~~) unless the board implements a different procedure by rule.

AMENDATORY SECTION (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)

WAC 314-42-045 (~~(Service of process--Filing)~~) How do you file papers with (agency-) the board? Papers required to be filed with the board are deemed filed upon actual receipt by the board during office hours at its headquarters office in Olympia.

NEW SECTION

WAC 314-42-051 What are the procedures when a licensee or mandatory alcohol server training permit holder requests an administrative hearing? (1) If the licensee or permit holder requests an administrative hearing, it is conducted pursuant to chapter 34.05 RCW (Washington Administrative Procedure Act and chapter 314-42 WAC).

(2) The board's hearing coordinator will notify the assistant attorney general of the licensee's or permit holder's request for an administrative hearing.

(3) If the hearing concerns an administrative violation notice, the assistant attorney general will draft an administrative complaint and send it to the licensee or permit holder and to the office of administrative hearings.

(4) The office of administrative hearings will schedule the hearing date, and notify the licensee or permit holder and his/her attorney and the assistant attorney general in writing of the hearing date, time, and location.

(5) The hearing will be conducted by an administrative law judge assigned by the office of administrative hearings. Subpoenas may be issued by an attorney for any party, or by the assigned administrative law judge.

AMENDATORY SECTION (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)

WAC 314-42-070 Presumptions. Upon proof by direct, clear, and convincing evidence of the predicate facts (~~(specified)~~) in the following (~~(six)~~) subdivisions (~~(hereof without substantial dispute and by direct, clear, and convincing evidence)~~), the board, with or without prior request and with adequate notice to all parties, may make the following presumptions (~~(, where consistent with all surrounding facts and circumstances and consistent with the following subsections:)~~). The facts may not be in substantial dispute and must be consistent with all surrounding facts and circumstances.

(1) (~~(**Continuity.** That a fact of a continuous nature, proved to exist at a particular time, continues to exist as of the date of the presumption, if the fact is one which usually exists for at least that period of time;~~

~~(2))~~ **Identity.** (~~(That)~~) Persons and objects of the same name and description are identical(~~(7)~~).

~~((3))~~ (2) Delivery. (~~(Except in a proceeding where the liability of the carrier for nondelivery is involved, that)~~) Mail (~~(matter)~~), communications, express or freight, properly addressed, marked, billed and delivered (~~(respectively)~~) to the post office, (~~(telegraph, cable or radio company,)~~) or authorized common carrier

of property with all postage(~~(, tolls and charges)~~) properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business(~~(7)~~).

~~((4) **Ordinary course.** That a fact exists or does not exist, upon proof of the existence or nonexistence of another fact which in the ordinary and usual course of affairs, usually and regularly coexists with the fact presumed;~~

~~(5) **Acceptance of benefit.** That a person for whom an act is done or to whom a transfer is made has, does or will accept same where it is clearly in his/her own self-interest to do so;~~

~~(6) **Interference with remedy.** That evidence, with respect to a material fact which in bad faith is destroyed, removed, suppressed or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact.)~~ (3) **Spoliation.** When a party in bad faith destroys, suppresses, or withholds evidence material to the case, the administrative law judge can presume the evidence would have been unfavorable to that party's position.

AMENDATORY SECTION (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)

WAC 314-42-085 Written arguments. (1) At the conclusion of the evidentiary portion of a hearing, the ~~((examiner))~~ administrative law judge may call for an oral legal argument on the record, ~~((after which the examiner shall render his/her oral proposals,))~~ or(~~(7)~~) the ~~((examiner))~~ administrative law judge may call for written arguments to be submitted to his/her office by the licensee or his/her attorney and the ~~((board's))~~ assistant attorney general. Such written arguments must be submitted in triplicate to the ~~((hearing examiner))~~ administrative law judge and may not be exchanged by opposing counsel.

(2) When both arguments have been received, the ~~((hearing examiner))~~ administrative law judge shall deliver one of the copies of the licensee's argument to the ~~((board's))~~ assistant attorney general, and one copy of the board's argument shall be forwarded to the licensee or his/her attorney.

(3) Unless a different time is fixed at the ~~((field))~~ hearing, written arguments must be filed within ten days after the conclusion of the taking of the testimony at the ~~((field))~~ hearing.

(4) After the receipt of both written arguments, the ~~((hearing examiner))~~ administrative law judge shall ~~((render his/her written proposals))~~ issue an initial order which will be served on the licensee or his/her attorney and the assistant attorney ~~((for the board))~~ general.

NEW SECTION

WAC 314-42-095 What happens after an administrative hearing?

(1) Following an administrative hearing, the administrative law judge will prepare an initial order and send it to the licensee or permit holder, the assistant attorney general, the board's offices, and any other party to the administrative hearing.

(2)(a) Either the licensee, permit holder, or the assistant attorney general may file a petition for review of the initial order with the liquor control board within twenty days of the date of service of the initial order. With notice to all parties the board may change the time for filing a petition for review of the initial order. The board may extend or shorten the filing time based on a voluntary stipulation of the parties or upon motion of a party that demonstrates a clear and convincing showing of exigent circumstances. The petition for review must:

(i) Specify the portions of the initial order to which exception is taken; and

(ii) Refer to the evidence of record which is relied upon to support the petition.

(b) Within ten days after service of the petition for review, any party may file a reply with the liquor control board and copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.

(3) The administrative record, the initial order, and any petitions for review and replies filed by the parties will be circulated to the board members for review.

(4) Following this review, the board will enter a final order which is appealable under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act). The board may issue a final order that differs from the initial order even though no party has filed a petition for review or reply.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-42-025	Appearance in certain proceedings may be limited to attorneys.
WAC 314-42-050	Subpoenas--Fees.
WAC 314-42-060	Depositions upon interrogatories--Submission of interrogatories.
WAC 314-42-065	Official notice--Material facts.
WAC 314-42-075	Stipulations and admissions of record.
WAC 314-42-080	Form and content of decisions in contested cases and proposed orders.

WAC 314-42-090

Definition of issues before hearing.

WAC 314-42-100

How can a person petition the board for the adoption, amendment, or repeal of a rule?

WAC 314-42-105

How can a person petition the board for a declaratory order?