

Procedure

Title:	Panel Composition	PRO2017-04
References:	RCW 18.130.050 ; RCW 18.130.060 ; RCW 18.130.170 ; RCW 18.71.019 ; WAC 246-919-520	
Contact:	Daidria Underwood, Program Manager	
Phone:	(360) 236-2727	E-mail: daidria.underwood@doh.wa.gov
Effective Date:	January 08, 2016	
Approved By:	Warren M. Howe, MD, Chair (signature on file)	

Purpose

This document establishes a procedure for assembling a panel of Commission members to make disciplinary decisions. [RCW 18.130.050](#)(18) permits a board or commission to establish panels of at least three members to make a disciplinary decision. [RCW 18.130.060](#)(2) permits a board or commission to request the Secretary to appoint pro tem members to participate as members of a panel, but requires the chairperson of a panel to be a regular member of the board or commission. Consistent with this statute, a reference to a “regular” member of the Commission in this procedure means a current Governor-appointed member of the Commission. The procedure is organized according to the disciplinary decision being made.

Procedure

Decision to Authorize an Investigation

The Commission convenes a panel every week to review complaints and decide whether to investigate the complaint or to close the complaint as “below threshold.” This panel will be composed as follows:

1. The panel will consist of three or more members.
2. The chairperson must be a regular member of the Commission.
3. A majority of the panel members must be regular Commission members.
4. At least two clinical members must be on the panel.

Case Reviews

The Commission uses panels to review cases that have been investigated and to decide whether to close these cases or take informal or formal disciplinary action. This includes a panel that convenes by phone or in person to authorize the Attorney General’s Office to make a motion for summary action. A case review panel will be composed as follows:

1. The Panel will consist of three or more members.
2. The chairperson must be a regular Commission member.
3. A pro-tem member may present a case, or may participate in the discussion, but may not vote on a case.
4. The Reviewing Commission Member may present the case and make a recommendation, but will not vote.
5. If an issue in the case is whether respondent met the standard of care, at least 50% of the panel must consist of physicians or physician assistants.

Hearing on a Statement of Charges or a Notice of Decision on Application

A hearing panel¹ sits for a hearing after the issuance of a Statement of Charges or a Notice of Decision on Application. A health law judge presides and prepares the order. A hearing panel will be composed as follows:

1. The Panel will consist of three or more members.
2. At least one member will be a physician.
3. At least half of the panel must consist of regular Commission members (a three-person panel may include one pro-tem member; a four or five-person panel may include two pro-tem members).
4. The chairperson must be a regular Commission member.
5. The panel should include a public member, but must include a public member for sexual misconduct.
6. The panel should not consist of members who served on the panel that ordered the Statement of Charges.
7. The Reviewing Commission Member may not sit on the panel.
8. It is preferred that the panel includes a Commission member with experience in the clinical practice area at issue or the same specialty as the respondent.
9. In sexual misconduct cases, the panel must include a public member and must include members of both sexes.
10. The panel may include Commission members who served on a panel that ordered a summary action or who served on a show cause panel.
11. If an issue in the case is whether respondent met the standard of care, at least 50% of the panel must consist of physicians and/or physician assistants.
12. Before a Commission member, whether a regular member or a pro-tem member, serves on a hearing panel, the member should, whenever possible, complete a Commission training program and be approved by the Commission Executive Committee.²

¹ Formal hearings are governed by the RCW 34.05, RCW 18.130.100, and WAC 246-11. These laws do not address the composition of a hearing panel.

² The Commission may implement a training program as it deems necessary. The Commission Executive Committee will determine whether individual members have completed the training program and are qualified to serve as on a panel at a hearing on a Statement of Charges or a Notice of Decision on Application.

Hearing on Motion for Summary Action

The Commission must convene a panel to consider a motion to take summary action against a respondent.³ A health law judge presides and prepares the order.

A summary action panel will be composed as follows:

1. The panel will consist of three members.
2. The panel may contain no more than one pro tem member who has previously served at least one full four—year term as a regular member of the Commission.
3. A pro-tem member who has not served at least one term as a regular member of the Commission may not serve on a summary suspension panel.
4. The panel may include members of the panel that ordered the Statement of Charges and authorized the Attorney General’s Office to make the motion for summary action.
5. The Reviewing Commission Member may not sit on the panel.
6. If an issue in the case is whether respondent met the standard of care, at least two members of the panel must consist of physicians or physician assistants.

Show Cause Hearing

A respondent who has been summarily suspended or restricted has the right to ask a show cause panel⁴ to reconsider the summary action. A health law judge presides and prepares the order. Ideally, a show cause panel will consist of the same members who served on the summary action panel. Because of the tight time constraints, it may not be possible for the summary action panel members to serve on the show cause panel.

In such a case, the show cause panel will be composed as follows:

1. The panel will consist of three members.
2. A pro-tem member who has not previously served at least one term as a regular member of the Commission may not serve on a show cause panel.
3. The panel may consist of members of the panel that ordered the Statement of Charges.
4. The Reviewing Commission Member may not sit on the panel.
5. If an issue in the case is whether respondent met the standard of care, at least two members of the panel must consist of physicians or physician assistants.

Hearings on Challenges to Notices of Intent to Order Mental or Physical Examinations

The Commission may issue an order requiring a respondent to undergo a mental or physical evaluation under [RCW 18.130.170\(2\)\(a\)](#). To begin the process, the Commission issues a Notice of Intent to Order Mental or Physical Examination. A respondent may challenge the Notice of Intent by submitting a written response and relevant documents. The statute provides that a panel of the Commission that has “not been involved with the allegations against the license

³ Summary actions are governed by RCW 34.05.479, RCW 18.130.050(8), and WAC 246-11-300-350. These laws do not address the composition of a panel.

⁴ RCW 18.130.135, RCW 18.130.050(9) and WAC 246-11-340 govern the show cause process. These laws do not address the composition of a show cause panel.

holder” will review the respondent’s written material and decide whether the examination is justified. A health law judge presides and prepares the order.

A panel reviewing a challenge to a Notice of Intent will be composed as follows:

1. The panel will consist of three members.
2. The panel may contain no more than one pro tem member who has previously served at least one term as a regular member of the Commission.
3. No panel member who was involved in the allegations can serve on this panel, in accordance with [RCW 18.130.170\(2\)\(b\)](#). This may eliminate any person who is on the same panel as the Reviewing Commission Member.
4. The Reviewing Commission Member may not sit on the panel.

Hearings on a Petition for Modification or Termination of an Order and on a Petition for Reinstatement of a License

When a respondent petitions for a modification or termination of an order, or reinstatement of a license, a panel convenes to consider the petition. A health law judge *may* preside and prepare the order. A panel considering a petition for a modification or termination of an order or a petition for reinstatement of a license will be composed as follows:

1. The panel will consist of three or more members.
2. The chairperson must be a regular Commission member.
3. A majority of panel members must be regular Commission members.
4. The Reviewing Commission Member may not sit on the panel.
5. It does not matter whether members of this panel participated in the case by sitting on the charging panel, the hearing panel, a compliance review panel, or any other panel that made a decision at some point in the case.

Hearing on Review of Revocation of Physician’s License

Under [RCW 18.71.019](#), when the Commission revokes the license of a physician following a hearing, the physician may request a review of the revocation order “by the remaining members of the commission not involved in the initial investigation.” The Commission adopted a rule setting forth the process in [WAC 246-919-520](#).

[WAC 246-919-520\(4\)](#) provides that a review panel will review the final order and be “composed of the members of the commission who did not:

- (a) Review the initial investigation and make the decision to issue a statement of charges against the respondent in this matter; or
- (b) Hear the evidence at the adjudicative proceeding and issue the final order revoking the respondent’s license.

In addition to the requirements of [WAC 246-919-520](#), the review panel cannot include the RCM or pro tem members.

Exception: This procedure is intended to provide guidelines for composing panels. In rare cases, with the specific permission of the Commission Chair, staff may deviate from this procedure, except when mandated by statute.