

Chapter VE 3

COMPLAINT PROCEDURES

Subchapter I — Authority and Definitions

- VE 3.01 Authority.
VE 3.02 Definitions.

Subchapter II — Procedures for Informal Complaints

- VE 3.04 Scope; kinds of proceedings.
VE 3.06 Receiving informal complaints.
VE 3.08 Screening.
VE 3.10 Non-credentialed persons.
VE 3.12 Negotiated settlement.
VE 3.14 Issuing an administrative warning.
VE 3.16 Contents of an administrative warning.
VE 3.18 Review of an administrative warning.
VE 3.20 Administrative warning review procedures.
VE 3.22 Review record.

Subchapter III — Procedures for Disciplinary Proceedings

- VE 3.24 Scope.
VE 3.26 Commencement of disciplinary proceedings.
VE 3.28 Pleadings to be captioned.
VE 3.30 Complaint.
VE 3.32 Service and filing of complaint.
VE 3.34 Answer.
VE 3.36 Administrative law judge.
VE 3.38 Settlements.
VE 3.40 Conduct of hearing.
VE 3.42 Witness fees and costs.
VE 3.44 Record of proceedings, transcripts.
VE 3.46 Proposed decision.

- VE 3.48 Assessment of costs.
VE 3.50 Service of proposed decision.
VE 3.52 Final decision and order.

Subchapter IV — Summary Suspensions and Limitations

- VE 3.54 Scope.
VE 3.56 Petition for summary suspension or limitation.
VE 3.58 Notice of petition to respondent.
VE 3.60 Issuance of summary suspension or limitation order.
VE 3.62 Contents of summary suspension or limitation order.
VE 3.64 Service of summary suspension or limitation order.
VE 3.66 Hearing to show cause.
VE 3.68 Delegation.
VE 3.70 Commencement of disciplinary proceeding.

Subchapter V — Administrative Injunctions

- VE 3.72 Scope; kinds of proceedings.
VE 3.74 Pleadings to be captioned.
VE 3.76 Petition for administrative injunction.
VE 3.78 Service and filing of petition.
VE 3.80 Answer.
VE 3.82 Administrative law judge.
VE 3.84 Settlements.
VE 3.86 Conduct of public hearing.
VE 3.88 Witness fees and costs.
VE 3.90 Record of proceedings, transcripts.
VE 3.92 Decision.
VE 3.94 Service of decision.
VE 3.96 Final decision and order.

Note: Chapter VE 3 as it existed on September 30, 1989 was repealed and a new Chapter VE 3 was created effective October 1, 1989. Chapter VE 3 as it existed on July 31, 2022, was repealed and a new Chapter VE 3 was created effective August 1, 2022.

Subchapter I — Authority and Definitions

VE 3.01 Authority. The rules in this chapter are adopted by the veterinary examining board pursuant to the authority in ss. 89.03 (1), 227.11 (2) (a) and 227.51 (3), Stats.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.02 Definitions. In this chapter:

(1) “Administrative injunction” means a special order enjoining a person from the continuation of a practice or use of a title without a credential required under ch. 89, Stats.

(2) “Administrative law judge” means the administrative law judge assigned by the division to hear a disciplinary proceeding or summary suspension or limitation appeal, on behalf of the board, or an administrative injunction proceeding on behalf of the department.

(3) “Board” means the veterinary examining board.

(4) “Case advisor” means a member of the board assigned to assist disciplinary counsel in an investigation of an informal complaint about a credential holder.

(5) “Complainant” means the person who signs a complaint.

(6) “Complaint” means the formal charging of violations against a credential holder in a disciplinary proceeding.

(7) “Court-ordered injunction” means a judgment and order by a court of competent jurisdiction enjoining a person from the continuation of a practice or use of a title without a credential required under ch. 89, Stats.

(8) “Credential” means a license, certification, or permit that is issued under ch. 89, Stats.

(9) “Credential holder” means an individual holding any license, permit, or certificate granted by the board, or having any right to renew a license, permit, or certificate granted by the board.

(10) “Department” has the meaning set forth at s. 89.02 (3d), Stats.

(11) “Department counsel” means the department attorney assigned an informal complaint against any person who may be continuing a practice or use of a title without a credential required under ch. 89, Stats.

(12) “DHA” means the division of hearings and appeals in the department of administration.

(13) “Division” means the division of animal health in the department.

(14) “Disciplinary counsel” means the department attorney assigned an informal complaint against a credential holder.

(15) “Disciplinary proceeding” means an administrative proceeding against a credential holder for any alleged violations of law constituting misconduct.

(16) “Informal complaint” means any written information submitted to the board or department by any person, which alleges facts that, if true, warrant action including an administrative warning, discipline, or an injunction.

(17) “Minor violation” means all of the following:

(a) No significant harm was caused by misconduct of the credential holder.

(b) Continued practice by the credential holder presents no immediate danger to the public.

(c) If prosecuted, the likely result of prosecution would be a reprimand or a limitation requiring the credential holder to obtain additional education.

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(d) The complaint does not warrant use of prosecutorial resources.

(18) “Misconduct” means a violation of a statute, rule, or regulation related to the profession or other conduct for which discipline may be imposed under ch. 89, Stats.

(19) “Petition” means a petition for summary credential suspension or limitation or a special order for an administrative injunction.

(20) “Petitioner” means the disciplinary or department counsel.

(21) “Respondent” means a credential holder who is charged in a disciplinary proceeding or a person who is charged in an administrative injunction proceeding.

(22) “Screening” means preliminary review of complaints to determine the disposition of any informal complaints.

(23) “Screening committee” means the committee of the board that meets with disciplinary counsel to determine the disposition of any informal complaints.

(24) “Special order” means an administrative order issued by the department enforced against a named or identified person.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

Subchapter II — Procedures for Informal Complaints

VE 3.04 Scope; kinds of proceedings. This subchapter governs procedures for investigating and disposing of informal complaints against credential holders and non-credentialed entities before the board and persons before the department.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.06 Receiving informal complaints. All informal complaints received shall be referred to the office of legal counsel in the department for filing, screening and, if necessary, investigation.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.08 Screening. Screening for complaints against credential holders shall be done by the board’s screening committee, in consultation with the disciplinary counsel. Considerations in screening include:

- (1) Whether the person complained against is credentialed.
- (2) Whether the matter alleged is a violation of any statute, rule, regulation, or standard of practice.
- (3) Whether the matter alleged, if taken as a whole, is any of the following:
 - (a) Not a violation, so that the matter may be closed.
 - (b) A minor violation, so that the matter may be disposed of with an administrative warning.
 - (c) Requires further investigation by disciplinary counsel, with assistance by a case advisor and department staff as assigned.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.10 Non-credentialed persons. Department staff shall investigate complaints, and may consult with the board, concerning any complaint against a person who may be engaged in the practice of veterinary medicine or veterinary technology without holding a credential.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.12 Negotiated settlement. (1) WHEN INITIATED. At the discretion of the disciplinary counsel, in consultation with the case advisor in assigned matters, or department counsel, negotiations for settlement may be held prior to the commencement of a disciplinary proceeding. Where the informal complaint in-

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vestigation reveals undisputed or clearly ascertainable facts, from documents received, resolution through negotiations is encouraged.

(2) **LIMITATION.** Negotiations for settlement shall not be held without the consent of the credential holder. No agreement reached between the parties through negotiations, which imposes discipline upon a credential holder, shall be effective or binding until the parties stipulate to the agreement in writing, signed by the credential holder and any representative and disciplinary counsel, for approval by the board in a signed final order.

(3) **ORAL STATEMENTS IN NEGOTIATIONS.** Oral statements made during negotiations shall not be introduced into or made part of the record in a disciplinary proceeding.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.14 Issuing an administrative warning. In lieu of commencing disciplinary proceedings under subch. III or injunction proceedings under subch. IV, the board or department may issue an administrative warning, after making all of the following findings:

- (1) That there is specific evidence of misconduct by the credential holder.
- (2) That the misconduct is a minor violation of a statute or rule related to the profession or other conduct for which discipline or an administrative injunction may be imposed.
- (3) That issuance of an administrative warning will adequately protect the public.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.16 Contents of an administrative warning. (1) An administrative warning shall be issued in writing, shall state the findings required by s. VE 3.12, and include a notice of the right to request a review under s. VE 3.18.

(2) An administrative warning may be issued to a credential holder by mailing the administrative warning to the last address provided to the department. Service by mail is complete on the date of mailing. The warning may also be issued by email, if the credential holder has given permission to send all notices to a specified email address. Service by email is complete upon sending.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.18 Review of an administrative warning. A credential holder who has been issued an administrative warning may make a request in writing for the board to review its issuance within 20 days after the date of mailing or emailing. The request shall be in writing and set forth:

- (1) The credential holder’s name and address.
- (2) The reason for requesting a review.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.20 Administrative warning review procedures. The procedures for an administrative warning review are:

- (1) Within 45 calendar days of receipt of a request for review, the board shall notify the credential holder of the time and place of the review.
- (2) No discovery is permitted. A credential holder may inspect records under s. 19.35, Stats., the public records law.
- (3) The board shall preside over the appeal and the review shall be electronically recorded.

(4) The board shall provide the credential holder with an opportunity to make a personal appearance before it and present a statement. The board may request the disciplinary counsel to appear and present a statement on issues raised by the credential holder.

holder. The board may establish a time limit for making a presentation. Unless otherwise determined by the disciplinary authority, the time for making a personal appearance shall be 20 minutes.

(5) If the credential holder fails to appear for a review, or withdraws the request for a review, the disciplinary authority may note the failure to appear in the minutes and leave the administrative warning in effect without further action.

(6) The board may adjourn into closed session to deliberate on the request for review. Any action taken by the board following deliberation shall be made in open session. The board shall send the final decision of its review to the credential holder.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.22 Review record. The credential holder may request a copy of the recorded review at no cost.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

Subchapter III — Procedures for Disciplinary Proceedings

VE 3.24 Scope. This subchapter governs procedures in all disciplinary proceedings against credential holders before the board.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.26 Commencement of disciplinary proceedings. Disciplinary proceedings commence when a complaint is served upon the respondent.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.28 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in disciplinary proceedings shall be captioned: “BEFORE THE WISCONSIN VETERINARY EXAMINING BOARD” and shall be entitled: “IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST _____, RESPONDENT.”

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.30 Complaint. The disciplinary counsel may make a complaint upon information and belief and it shall contain:

(1) The name and address of the credential holder complained against and the name and address of the complainant.

(2) A short statement in plain language of the cause for disciplinary action identifying with reasonable particularity the transaction, occurrence or event out of which the cause arises and specifying the statute, rule or other standard alleged to have been violated.

(3) A request in essentially the following form: “Wherefore, the complainant demands that the board hear evidence relevant to matters alleged in this complaint, determine and impose the discipline warranted, and assess the costs of the proceeding against the respondent.”

(4) The signature of the complainant.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.32 Service and filing of complaint. (1) The complaint and other papers may be served on a respondent by mailing a copy of the paper to the respondent at the last known address of the respondent, by any procedure described in s. 801.14 (2), Stats., or by electronic transmission if agreed to by the respondent or respondent’s authorized representative. Service by mail is complete upon mailing.

(2) Any paper required to be filed with the board may be mailed to the board’s office and, if an administrative law judge has been designated to preside in the matter, to the administrative

law judge and shall be deemed filed on the date of the postmark. Materials submitted by personal service or by inter-departmental mail shall be considered filed on the date they are received at the board’s office or by the administrative law judge. Papers required to be filed may instead be filed and served by electronic mail or facsimile transmission. For materials transmitted by electronic mail, the filing date shall be the date that the electronic mail was sent. For materials transmitted by facsimile, the date received shall determine the date of filing.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.34 Answer. (1) An answer to a complaint shall state in short and plain terms the defenses to each cause asserted and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 30 days from the date of service of the complaint.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.36 Administrative law judge. (1) DESIGNATION. The board may request DHA assign an administrative law judge to preside over any disciplinary proceeding.

(2) AUTHORITY AND DUTIES. An administrative law judge may, on behalf of the board, do all of the following:

(a) Gain permission from parties for service of all documents to be via electronic transmission, or other means if necessary.

(b) Require parties to clarify positions or issues.

(c) Hold prehearing conferences and issue memoranda for the record, summarizing all actions taken and agreements reached.

(d) Make procedural rulings and issue scheduling orders, including for motions, date, time and location of hearing, discovery, identification of witnesses and evidence for hearing, stipulations by the parties for hearing and other matters aiding in the orderly disposition of the proceedings.

(e) Hold motion hearings and make rulings on said motions.

(f) Adjourn or postpone proceedings.

(g) Grant continuances or extensions of time.

(h) Issue subpoenas to compel witness attendance and document production.

(i) Regulate discovery proceedings, and issue orders to compel or limit discovery.

(j) Select the location of the hearing.

(k) Preside over hearings and regulate the course of hearings.

(L) Administer oaths and affirmations.

(m) Make evidentiary rulings and receive relevant evidence.

(n) Impose sanctions on disobedient parties.

(o) Require or permit the parties to file written briefs and arguments.

(p) Supervise the required creation of a stenographic or electronic record of the portion of the proceedings conducted under the auspices of the administrative law judge.

(q) If required, order and supervise the preparation of a written transcript of proceedings conducted before the administrative law judge.

(r) Issue proposed decisions.

(3) LIMITS ON AUTHORITY. The administrative law judge may not exercise any authority reserved to the board.

(4) IMPARTIALITY. (a) An administrative law judge shall withdraw from a contested case if the administrative law judge determines that there is a conflict of interest or other circumstance which prevents the administrative law judge from acting impartially, or which creates an undue appearance of bias.

(b) If an administrative law judge receives an ex parte communication which violates s. 227.50 (1), Stats., the administrative law judge shall deal with the ex parte communication as provided in s. 227.50 (2), Stats.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22; correction in (4) (b) made under s. 35.17, Stats., Register July 2022 No. 799.

VE 3.38 Settlements. At any point in a proceeding, the parties may agree to settle the case. Parties wishing to settle a case shall file both a written stipulation, signed by the respondent and any representative and disciplinary counsel, setting forth the agreed terms of settlement, and a proposed final order disposing of the case, for approval by the board. No stipulation disposing of a complaint shall be effective or binding in any respect until approved by the board in a signed final order.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.40 Conduct of hearing. (1) RECORD. An electronic or stenographic recording shall be made of all hearings in which the testimony of a witness is offered as evidence.

(2) EVIDENCE. The respondent shall have the right to appear in person or by counsel, and both parties have the right to call, examine, and cross-examine witnesses and to introduce evidence into the record.

(2m) REMOTE HEARINGS. A hearing, or any portion of a hearing, may be held by telephone or video-conference if the administrative law judge determines that this method is justified for the convenience of any party or witness, and that no party is unfairly prejudiced by this method. The party calling a witness to testify by telephone or video-conference shall notify the administrative law judge before the hearing to allow for making the necessary arrangements and is responsible for providing the witness with a complete set of numbered copies of all exhibits.

(3) BRIEFS. The administrative law judge may require or permit the filing of briefs.

(4) MOTIONS. All motions, except those made at hearing, shall be in writing, filed by the date set by the administrative law judge, and a copy served upon the opposing party. If no date is set by the administrative law judge all motions shall be filed 10 business days before hearing.

(5) SUMMARY JUDGMENT. The parties may use the summary judgment procedure provided in s. 802.08, Stats.

(6) ADJOURNMENTS. The administrative law judge may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

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(b) An administrative law judge may issue protective orders according to the provisions of s. 805.07, Stats.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22; correction in numbering (2m) under s. 13.92 (4) (b) 1., Stats., and (2m) title created under s. 13.92 (4) (b) 2., Stats., Register July 2022 No. 799.

VE 3.42 Witness fees and costs. Witnesses subpoenaed at the request of the disciplinary counsel shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.44 Record of proceedings, transcripts. (1) RECORD OF ORAL PROCEEDINGS. Oral proceedings in a disciplinary proceeding shall be electronically recorded unless the administrative law judge determines that a stenographic record is required.

(2) ELECTRONIC RECORDING; COPIES. If an oral proceeding in a contested case is electronically recorded, a copy of the recording shall be furnished at cost to any party who requests a copy.

(3) STENOGRAPHIC RECORDING; COPIES. (a) If a stenographic recording is made, the reporting service who records the proceeding may charge a fee for an original transcription and for copies. Fees are identified in the state operational purchasing bulletin for reporting services and fees allowed to be charged.

Note: Purchasing bulletins may be obtained through the State Bureau of Procurement, PO Box 7867, Madison WI 53707-7867, call (800) 482-7813 or email doawispro@wisconsin.gov.

(b) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath.

VE 3.46 Proposed decision. The administrative law judge shall prepare a proposed decision for consideration by the board. The proposed decision shall include proposed findings of fact, conclusions of law, and a final order, with a signed opinion explaining the proposed decision.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.48 Assessment of costs. (1) The proposed decision shall include a recommendation whether all or part of the costs of the proceeding shall be assessed against the respondent.

(2) If a respondent objects to the recommendation that costs be assessed, objections to the assessment of costs shall be filed at the same time as other objections to the proposed decision.

(3) When costs are imposed, the administrative law judge shall file a supporting affidavit with the proposed decision, listing costs incurred to be paid by the respondent. Within 20 days, the disciplinary counsel shall file a supporting affidavit showing costs incurred. The respondent shall file any objection to the affidavits within 15 days after service of the disciplinary counsel's affidavit.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.50 Service of proposed decision. The administrative law judge shall deliver the proposed decision, with a copy of the record including the electronic recording of the proceedings, to the board. The administrative law judge shall serve the proposed decision on the parties, in the manner agreed to by the parties. Each proposed decision shall contain a notice providing each party, adversely affected by the proposed decision, with an opportunity to file objections and written argument with the board. A party adversely affected by a proposed decision shall have 20 days from the date of service of the proposed decision to file objections and argument.

Note: Objections may be electronically filed at datapv@wisconsin.gov or

mailed to the Wisconsin Veterinary Examining Board, PO Box 8911, Madison, WI 53708-8911.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.52 Final decision and order. After the time expires for filing all objections to the proposed decision and order, including assessment of costs, the board shall meet to make a final decision and order in a disciplinary proceeding. The final decision and order shall include a determination whether all or part of the costs of the proceeding shall be assessed against the respondent. If the final decision varies from the administrative law judge's proposed decision, the final decision shall explain the reasons for all variations.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

Subchapter IV — Summary Suspensions and Limitations

VE 3.54 Scope. This subchapter governs procedures in all summary suspension or limitation proceedings against credential holders before the board.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.56 Petition for summary suspension or limitation. (1) The disciplinary counsel shall petition the board for a summary suspension or limitation. The petition shall state the name and credential status of the respondent, and an assertion of the facts establishing that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires summary suspension or limitation of the respondent's credential.

(2) The petitioner shall sign the petition upon oath and make the petition upon information and belief or by affidavit of another person with knowledge of the necessary facts to sustain the petition.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.58 Notice of petition to respondent. Prior to presenting the petition, the petitioner shall give notice to the respondent and respondent's authorized representative of the time and place when the petition will be presented to the board. Notice may be given by mailing a copy of the petition and notice to the last-known address of the respondent as indicated in the records of the board, pursuant to s. 227.44 (1), Stats. Notice by mail is complete upon mailing. Notice may also be given by electronic transmission if agreed to by the respondent or authorized representative.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.60 Issuance of summary suspension or limitation order. (1) If the board finds that notice has been given under s. VE 3.58 and finds probable cause to believe that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension or limitation of the respondent's credential, the board may issue an order for summary suspension or limitation. The order may be issued at any time prior to or subsequent to the commencement of a disciplinary proceeding under s. VE 3.26.

(2) The petitioner may establish probable cause under sub. (1) by affidavit or other evidence.

(3) The summary suspension or limitation order shall be effective upon service, under s. VE 3.62, or upon actual notice of the summary suspension or limitation order to the respondent or respondent's attorney, whichever is sooner. The order shall continue through the effective date of the final decision and order made in the disciplinary proceeding against the respondent, un-

less the credential is restored or the limitation is lifted under s. VE 3.64 or the disciplinary proceeding is otherwise terminated.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.62 Contents of summary suspension or limitation order. The summary suspension or limitation order shall include all of the following:

(1) The manner in which the respondent or the respondent's attorney was notified of the petition for summary suspension or limitation.

(2) The identification of all witnesses providing evidence at the time the petition for summary suspension or limitation was presented and identification of the evidence used as a basis for the decision to issue the summary suspension or limitation order.

(3) A finding that the public health, safety or welfare imperatively requires emergency suspension or limitation of the respondent's credential.

(4) A statement that the suspension or limitation order is in effect and continues until the effective date of a final order and decision in the disciplinary proceeding against the respondent, unless otherwise ordered by the board.

(5) A statement of the respondent's right to request a hearing at any time to show cause why the summary suspension or limitation order should not be continued, with the board's office mailing address or email address where a request for hearing may be filed.

(6) A statement that the hearing to show cause shall be scheduled for hearing on a date within 20 days of receipt by the board of respondent's request for hearing, unless a later time is requested by or agreed to by the respondent.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.64 Service of summary suspension or limitation order. An order of summary suspension or limitation shall be served upon the respondent by mail or by email if agreed to by respondent or respondent's attorney.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.66 Hearing to show cause. (1) A hearing to show cause shall be scheduled for a date no later than 20 days after the filing of the request for hearing with the board, unless a later time is requested by or agreed to by the respondent.

(2) Unless the parties otherwise agree, no discovery is permitted, except for the taking and preservation of evidence as provided in ch. 804, Stats., with respect to witnesses described in s. 227.45 (7) (a) to (d), Stats. A respondent may inspect records under s. 19.35, Stats., the public records law.

(3) At the hearing to show cause, the disciplinary counsel may call, examine and cross-examine witnesses, or present other evidence in order to sustain its burden to show, by a preponderance of the evidence, why the summary suspension or limitation order should be continued. The respondent may testify, call, examine and cross-examine witnesses, and offer other evidence to rebut disciplinary counsel's showing.

(4) Immediately upon conclusion of the hearing to show cause the board shall make findings and an order on the record. If it is determined that the summary suspension or limitation order should not be continued, the suspended credential shall be immediately restored, and any limitation shall be lifted.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.68 Delegation. (1) The board may delegate authority to preside over and rule in a hearing to show cause to an administrative law judge employed by the division.

(2) A delegation of authority under sub. (1) may be continuing.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.70 Commencement of disciplinary proceeding.

(1) A complaint, under s. VE 3.26, commencing a disciplinary proceeding against the respondent shall be issued no later than 20 days following the issuance of the summary suspension or limitation order or the suspension or limitation shall lapse at the end of the tenth subsequent day, meaning the thirtieth day following the issuance of the summary suspension or limitation order. The formal disciplinary proceeding shall be determined promptly.

(2) If at any time the disciplinary proceeding is not advancing with reasonable promptness, the respondent may make a motion to the administrative law judge for an order granting relief.

(3) If it is found that the disciplinary proceeding is not advancing with reasonable promptness, and the delay is not as a result of the conduct of respondent or respondent's counsel, a remedy, as would be just, shall be granted including:

(a) An order immediately terminating the summary suspension or limitation.

(b) An order compelling that the disciplinary proceeding be held and determined by a specific date.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

Subchapter V — Administrative Injunctions

VE 3.72 Scope; kinds of proceedings. This subchapter governs procedures for public hearings before the department to determine whether a person has engaged in a practice or used a title without a credential required under ch. 89, Stats., and whether to issue a special order for an administrative injunction.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.74 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in an administrative injunction proceeding shall be captioned: "BEFORE THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION" and shall be entitled: "IN THE MATTER OF A PETITION FOR A SPECIAL ORDER TO ENJOIN _____, RESPONDENT."

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.76 Petition for administrative injunction. Department counsel, on behalf of the division, may petition for a special order from the department to issue an administrative injunction, which shall allege that a person has engaged in a practice or used a title without a credential required under ch. 89, Stats. A petition may be made on information and belief and shall contain:

(1) The name and address of the respondent and the name and address of the department attorney who is prosecuting the petition.

(2) A short statement in plain language of the basis for the belief that the respondent has engaged in a practice or used a title without a credential required under ch. 89, Stats., and specifying the statute or rule alleged to have been violated.

(3) A request in essentially the following form: "Wherefore, the petitioner requests that a public hearing be held and that the department issue a special order enjoining the person from the continuation of the practice or use of the title."

(4) The signature of the petitioner.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.78 Service and filing of petition. (1) The petition

and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent, by any procedure described in s. 801.14 (2), Stats., or by electronic transmission if agreed to by the respondent or respondent's attorney. Service by mail is complete upon mailing.

(2) Any paper required to be filed with the department may be mailed to the department secretary's office and, if an administrative law judge has been designated to preside in the matter, to the administrative law judge and shall be deemed filed on the date of the postmark. Materials submitted by personal service or by inter-departmental mail shall be considered filed on the date they are received at the department secretary's office or by the administrative law judge. Papers required to be filed may instead be filed and served by facsimile transmission or by electronic mail. For materials transmitted by facsimile, the date received shall determine the date of filing. For materials transmitted by electronic mail, the filing date shall be the date that the electronic mail was sent.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.80 Answer. (1) An answer to a petition shall state in short and plain terms the defenses to each cause asserted and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a petition are admitted when not denied in the answer.

(4) An answer to a petition shall be filed within 20 days from the date of service of the petition.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.82 Administrative law judge. (1) DESIGNATION. The department may request DHA assign an administrative law judge to preside over any administrative injunction proceeding.

(2) AUTHORITY AND DUTIES. An administrative law judge may, on behalf of the department, do all of the following:

(a) Gain permission from parties for service of all documents to be via electronic transmission, or other means if necessary.

(b) Require parties to clarify positions or issues.

(c) Hold prehearing conferences and issue memoranda for the record, summarizing all actions taken and agreements reached.

(d) Make procedural rulings and issue scheduling orders, including for motions, date, time and location of hearing, discovery, identification of witnesses and evidence for hearing, stipulations by the parties for hearing and other matters aiding in the orderly disposition of the proceedings.

(e) Hold motion hearings.

(f) Adjourn or postpone proceedings.

(g) Grant continuances or extensions of time.

(h) Issue subpoenas to compel the witness attendance and document production.

(i) Regulate discovery proceedings, and issue orders to compel or limit discovery.

(j) Select the location of the hearing.

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- (k) Preside over hearings and regulate the course of hearings.
- (L) Administer oaths and affirmations.
- (m) Make evidentiary rulings and receive relevant evidence.
- (n) Impose sanctions on disobedient parties.
- (o) Require or permit the parties to file written briefs and arguments.
- (p) Supervise the required creation of a stenographic or electronic record of the portion of the proceedings conducted under the auspices of the administrative law judge.
- (q) If required, order and supervise the preparation of a written transcript of proceedings conducted before the administrative law judge.
- (r) Issue proposed decisions.
- (s) Issue final decisions and orders, if requested by the department.

(3) LIMITS ON AUTHORITY. The administrative law judge may not exercise any authority which is reserved to the department, except as delegated in writing under sub. (2) (s).

(4) IMPARTIALITY. (a) An administrative law judge shall withdraw from a contested case if the administrative law judge determines that there is a conflict of interest or other circumstance which prevents the administrative law judge from acting impartially, or which creates an undue appearance of bias.

(b) If an administrative law judge receives an ex parte communication which violates s. 227.50 (1), Stats., the administrative law judge shall deal with the ex parte communication as provided in s. 227.50 (2), Stats.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22; correction in (3) made under s. 13.92 (4) (b) 7., Stats., and correction in (4) (b) made under s. 35.17, Stats., Register July 2022 No. 799

VE 3.84 Settlements. At any point in a proceeding, the parties may agree to settle the case. Parties wishing to settle a case shall file both a written stipulation, signed by the respondent and any representative, and the division representative and department counsel, setting forth the agreed terms of settlement, and a proposed final order disposing of the case, for approval by the department. No stipulation disposing of a petition filed under this subchapter shall be effective or binding in any respect until the final order is approved and signed by the department.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.86 Conduct of public hearing. (1) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(2) EVIDENCE. The respondent shall have the right to appear in person or by counsel, and both parties have the right to call, examine, and cross-examine witnesses and to introduce evidence into the record.

(3) BRIEFS. The administrative law judge may require or permit the filing of briefs.

(4) MOTIONS. All motions, except those made at hearing, shall be in writing, filed by the date set by the administrative law judge, with a copy served upon the opposing party.

(5) SUMMARY JUDGMENT. The parties may use the summary judgment procedure provided in s. 802.08, Stats.

(6) ADJOURNMENTS. The administrative law judge may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats.

Service shall be made in the manner provided in s. 805.07 (5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) An administrative law judge may issue protective orders according to the provision the provisions of s. 805.07, Stats.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.88 Witness fees and costs. Witnesses subpoenaed at the request of the department shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.90 Record of proceedings, transcripts. (1) RECORD OF ORAL PROCEEDINGS. Oral proceedings in an administrative injunction case shall be electronically recorded unless the administrative law judge determines that a stenographic record is necessary.

(2) ELECTRONIC RECORDING; COPIES. If an oral proceeding in an administrative injunction case is electronically recorded, a copy of the recording shall be furnished at cost to any party who requests a copy.

(3) STENOGRAPHIC RECORDING; COPIES. (a) If a stenographic recording is made, the reporting service who recorded the proceeding may charge a fee for an original transcription and for copies. Fees are identified in the state operational purchasing bulletin for reporting services and fees allowed to be charged.

(b) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.92 Decision. The administrative law judge shall prepare a proposed decision for consideration by the department or a final decision, if designated as final decision maker. The decision, whether proposed or final, shall include findings of fact, conclusions of law, and an order, with a signed opinion explaining the decision.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.94 Service of decision. The administrative law judge shall deliver the proposed or final decision, with a copy of the record including the electronic recording of the proceedings, to the department. The proposed or final decision shall be served by the administrative law judge on the parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file objections and written argument with respect to the objections to the department or to the administrator of DHA, depending on who is the final decision maker. A party adversely affected by a decision shall have 20 days from the date of service of the proposed decision to file objections and argument.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.

VE 3.96 Final decision and order. After the time expires for filing all objections to the proposed decision and order, the department or the administrator of DHA shall make a final decision and order in the administrative injunction proceeding. If the final decision varies from the administrative law judge's decision, the final decision shall explain the reasons for all variations.

History: CR 21-062: cr. Register July 2022 No. 799, eff. 8-1-22.