

WSR 21-08-007

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed March 24, 2021, 4:27 p.m., effective March 24, 2021, 4:27 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-10-109 and 246-11-080, fourth emergency rule responding to the coronavirus disease 2019 (COVID-19) pandemic. Amending the procedural rules applicable to adjudicative proceedings conducted by the department of health (department) and health professions boards and commissions in order to facilitate filing and serving documents as part of the department's continuing response and mitigation efforts to the evolving COVID-19 public health threat while vaccine distribution efforts are ongoing. Chapter 246-10 WAC applies to all adjudicative proceedings conducted by the department. Chapter 246-11 WAC applies to adjudicative proceedings conducted by health professions boards and commissions having disciplining authority under the Uniform Disciplinary Act, chapter 18.130 RCW.

This emergency rule is similar to the emergency rule filed on November 25, 2020, as WSR 20-24-080, on July 28, 2020, as WSR 20-16-055, and on March 30, 2020, as WSR 20-08-096. This emergency rule will continue to allow for the option of e-filing documents and recognizes that the parties may agree with the department's adjudicative clerk's office (ACO) to electronic service of documents, including notices of hearing, initial orders, and final orders. The rule includes clarifications regarding the use of electronic filing. It removes the options of filing with the department's ACO by hand delivery, and serving documents on a party or a party's designated representative by personal service. It retains the options of filing documents by mailing hard copies to or faxing to the ACO, or serving a party by mail or fax, but removes the requirement to mail copies at the same time as faxing them.

Citation of Rules Affected by this Order: Amending WAC 246-10-109 and 246-11-080.

Statutory Authority for Adoption: RCW 43.70.040 and 34.05.220

(1) (a)

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: In response to COVID-19, the department continues to take action to help prevent the spread of COVID-19 and follow social distancing practices while vaccine distribution efforts are ongoing. This emergency rule continues to include the options of e-filing, and recognizes that the parties can agree to electronic service of documents, which can be better options to help prevent the spread of COVID-19. It includes clarification regarding how to electronically file documents. It retains the options of mailing hard copies to or faxing to the ACO, or serving a party by mail or fax. This emergency rule removes the options of hand delivering documents to the ACO or personally serving documents on a party or a party's designated representative. Hand delivery of documents can defy the principles of social distancing practices, and can put individuals at the risk of spreading COVID-19. The buildings at the department continue to be temporarily closed, making hand delivery difficult. The emergency

rules filed as WSR 20-24-080 on November 25, 2020, will expire on March 25, 2021. To continue to help prevent the spread of COVID-19 and safely continue the essential functions of the agency during these unprecedented times, it is necessary to file a fourth emergency rule to allow for continued electronic filing and service of documents.

The department has filed a CR-101 (WSR 20-15-095) and anticipates permanently adopting these emergency rules, or something similar in late summer or early fall of 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0;

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0;

Date Adopted: March 23, 2021.

Jessica Todorovich  
Chief of Staff  
for Umair A. Shah, MD, MPH  
Secretary

### OTS-2168.3

AMENDATORY SECTION (Amending WSR 18-18-049, filed 8/29/18, effective 9/29/18)

**WAC 246-10-109 Filing and service of documents.** (1) For purposes of this section "documents" means pleadings, briefs, exhibits, orders, or other materials requested or relevant to an adjudicative proceeding.

(2) Filing. Filing is the act of delivering documents to the adjudicative clerk's office.

(a) A party must file with the adjudicative clerk's office documents required or allowed pursuant to this chapter.

(b) Unless otherwise provided by law, documents must be filed by:

(i) ~~((Hand delivery to the adjudicative clerk's office; (ii)))~~ First class, registered, or certified mail; ~~((or (iii)))~~ (ii) Fax transmission ~~((where copies are mailed simultaneously)); or~~

(iii) Electronic mail sent to ACOfax@doh.wa.gov.

(c) The date of filing is the date the documents are received by the adjudicative clerk's office.

(d) Filing is effective when the documents are received by the adjudicative clerk's office during normal business hours. For documents received after 5:00 p.m. on a business day or on a Saturday, Sunday, or legal holiday, the filing is effective the next business day.

(3) Service. Service is the act of delivering a document to a party or a party's designated representative.

(a) Unless otherwise provided by law, documents must be served by:

(i) ~~((Personal service;~~  
~~(ii))~~) First class, registered, or certified mail; or  
~~((iii))~~) (ii) Fax transmission (~~where copies are mailed simultaneously~~).

(b) A party must serve copies of documents required or allowed by this chapter prior to or simultaneously with filing the original document with the adjudicative clerk's office.

(c) Service is complete when the documents are:

(i) ~~((Personally served;~~  
~~(ii))~~) Properly stamped, addressed, and deposited in the United States mail; or

~~((iii))~~) (ii) Successfully transmitted by fax (~~and properly stamped and addressed copies are deposited in the United States mail~~).

(d) A party may prove service by filing in compliance with this chapter any of the following:

(i) An acknowledgment of service; or

(ii) A certificate of service including the date the documents were served, the parties upon whom served, the signature of the serving party, and a statement specifying which type of service was used.

(e) Service on a licensee, applicant, or a person requesting an adjudicative proceeding will be made at the last known address provided to the department in accordance with WAC 246-12-310, unless the program has actual knowledge of a different correct address for the person being served.

(4) The parties may agree to use electronic mail for service of documents.

(5) A party may agree with the adjudicative clerk's office to service of documents via electronic mail, including notices of hearing, initial orders, and final orders.

(6) The adjudicative clerk's office will serve documents via electronic mail in those cases in which all parties agree to electronic service.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-049, § 246-10-109, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-109, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-109, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-109, filed 6/3/93, effective 7/4/93.]

### OTS-2169.3

AMENDATORY SECTION (Amending WSR 18-18-050, filed 8/29/18, effective 9/29/18)

**WAC 246-11-080 Filing and service of documents.** (1) For purposes of this section "document" means pleadings, briefs, exhibits, orders, or other materials requested or relevant to an adjudicative proceeding.

(2) Filing. Filing is the act of delivering documents to the adjudicative clerk's office.

(a) A party must file with the adjudicative clerk's office documents required or allowed pursuant to this chapter.

(b) Unless otherwise provided by law, documents must be filed by:

(i) ~~((Hand delivery to the adjudicative clerk's office;~~  
~~(ii))~~) First class, registered, or certified mail; ~~((or~~  
~~(iii))~~) (ii) Fax transmission ~~((where copies are mailed simulta-~~  
~~neously))~~; or

(iii) Electronic mail sent to ACOfax@doh.wa.gov.

(c) The date of filing is the date the documents are received by the adjudicative clerk's office.

(d) Filing is effective when the documents are received by the adjudicative clerk's office during normal business hours. For documents received after 5:00 p.m. on a business day or on a Saturday, Sunday, or legal holiday, the filing is effective the next business day.

(3) Service. Service is the act of delivering a document to a party or a party's designated representative.

(a) Unless otherwise provided by law, documents must be served by:

(i) ~~((Personal service;~~  
~~(ii))~~) First class, registered, or certified mail; or  
~~((iii))~~) (ii) Fax transmission ~~((where copies are mailed simul-~~  
~~taneously))~~.

(b) A party must serve copies of documents required or allowed by this chapter prior to or simultaneously with filing the original document with the adjudicative clerk's office.

(c) Service is complete when the documents are:

(i) ~~((Personally served;~~  
~~(ii))~~) Properly stamped, addressed, and deposited in the United States mail; or

~~((iii))~~) (ii) Successfully transmitted by fax ~~((and properly stamped and addressed copies are deposited in the United States mail))~~.

(d) A party may prove service by filing in compliance with this chapter any of the following:

(i) An acknowledgment of service; or

(ii) A certificate of service including the date the documents were served, the parties upon whom served, the signature of the serving party, and a statement specifying which type of service was used.

(e) Service on a licensee, applicant, or a person requesting an adjudicative proceeding will be made at the last known address provided to the department in accordance with WAC 246-12-310, unless the program has actual knowledge of a different correct address for the person being served.

(4) The parties may agree to use electronic mail for service of documents.

(5) A party may agree with the adjudicative clerk's office to service of documents via electronic mail, including notices of hearing, initial orders, and final orders.

(6) The adjudicative clerk's office will serve documents via electronic mail in cases in which all parties have agreed to electronic service.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-080, filed

8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-13-015, § 246-11-080, filed 6/6/97, effective 7/7/97. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-080, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-080, filed 3/24/93, effective 4/24/93.]