

641—33.16(17A,272C) Subpoenas in a contested case.

33.16(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, or other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing or may be issued separately. Subpoenas will be issued by the executive officer or designee upon written request. In the case of a request for a subpoena of mental health records, the request must confirm the conditions described in 641—subrule 34.5(1) prior to the issuance of the subpoena.

33.16(2) A request for a subpoena should include the following information, as applicable, unless the subpoena is requested in order to compel testimony or documents for rebuttal or impeachment purposes:

- a.* The name, address, and telephone number of the person requesting the subpoena;
- b.* The name and address of the person to whom the subpoena shall be directed;
- c.* The date, time, and location at which the person shall be commanded to attend and give testimony;
- d.* Whether the testimony is requested in connection with a deposition or hearing;
- e.* A description of the books, papers, records, or other real evidence requested;
- f.* The date, time, and location for production, or inspection and copying; and
- g.* In the case of a subpoena request for mental health records, confirmation that the conditions described in 641—subrule 34.5(1) have been satisfied.

33.16(3) Each subpoena shall contain, as applicable:

- a.* The caption of the case;
- b.* The name, address, and telephone number of the person who requested the subpoena;
- c.* The name and address of the person to whom the subpoena is directed;
- d.* The date, time, and location at which the person is commanded to appear;
- e.* Whether testimony is commanded in connection with a deposition or hearing;
- f.* A description of the books, papers, records, or other real evidence the person is commanded to produce;
- g.* The date, time, and location for production, or inspection and copying;
- h.* The time within which a motion to quash or modify the subpoena must be filed;
- i.* The signature, address, and telephone number of the board executive officer or designee;
- j.* The date of issuance; and
- k.* A return of service.

33.16(4) Unless a subpoena is requested in order to compel testimony or documents for rebuttal or impeachment purposes, the executive officer or designee will mail the subpoena to the requesting party, with a copy to the opposing party. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

33.16(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case, who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena describing the legal reasons why the subpoena should be quashed or modified. It may be accompanied by legal briefs or factual affidavits.

33.16(6) Upon receipt of a timely motion to quash or modify a subpoena, the presiding officer may hold a hearing and issue a decision. Oral argument may be scheduled at the discretion of the presiding officer. The presiding officer may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

33.16(7) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board's executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision.

33.16(8) If the person contesting the subpoena is not a party to the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

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