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Washington State
Court of Appeals
Division Two

October 20, 2026

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WASHINGTON STATE DENTAL ASSOCIATION, Appellant, v. WASHINGTON STATE BOARD OF DENTURISTS, Respondent.	No. 61441-3-II UNPUBLISHED OPINION

CHE, J. — The Washington State Dental Association (Dental Association) appeals the denial and dismissal of its petition for declaratory judgment and injunctive relief to invalidate the Washington State Board of Denturists' (Board) newly promulgated Washington Administrative Code (WAC) 246-812-462. WAC 246-812-462 allows denturists to place prefabricated implant abutments.

The Dental Association argues WAC 246-812-462 exceeds the Board's statutory rule-making authority, the Board acted arbitrarily and capriciously, and the Board failed to comply with the rule-making process. We hold that the Board failed to comply with the rule-making process, and because we so hold, we do not address the Dental Association's remaining arguments.

Accordingly, we reverse.

FACTS

I. BACKGROUND

In 1994, Washington voters approved Initiative 607, later codified as the Washington State Denturist Act. RCW 18.30.005, .900; *see also Charron v. Miyahara*, 90 Wn. App 324, 327, 950 P.2d 532 (1998). The act created a licensure program for denturists consistent with Washington's "policy of regulating health professions at the least restrictive level consistent with the public interest." RCW 18.30.005. The Denturist Act intended "to help assure the public's health, provide a mechanism for consumer protection, and offer cost-effective alternatives for denture care services and products to individual consumers and the state." RCW 18.30.005.

The Denturist Act established a Board which consists of four denturists, one dentist, and two people who are not affiliated with any health care profession or facility, at least one of whom represents the elderly. RCW 18.30.050. The Board determines qualifications and requirements for licensure and examinations, adopts rules to carry out the provisions of ch. 18.30 RCW, provides requirements for continuing competency, and evaluates and approves acceptable denturist schools. RCW 18.30.065. The Board serves as the disciplinary authority for denturists and has the authority to adopt standards of professional conduct and practice. RCW 18.30.135; 18.130.040(2)(b)(xvi); RCW 18.30.050.

The "practice of denturism" is defined as

> [5](a) *Making, placing, constructing, altering, reproducing, or repairing a denture*;
>
> (b) Taking impressions and furnishing or supplying a denture directly to a person or advising the use of a denture, and maintaining a facility for the same;
>
> (c) Making, placing, constructing, altering, reproducing, or repairing the following nonorthodontic removable oral devices . . . where accompanied by written encouragement to have regular dental checkups with a licensed dentist:
>
> (i) Bruxism devices;

> (ii) Sports mouth guards;
> (iii) Removable cosmetic appliances, regardless of whether the patient is missing teeth; and
> (iv) Snoring devices, only after a physician has ruled out snoring associated with sleep breathing disorders, including obstructive sleep apnea; and
> (d) Providing teeth whitening services, including fabricating whitening trays, providing whitening solutions determined to be safe for public use, and providing required follow-up care and instructions for use of the trays and solutions at home.

RCW 18.30.010(5) (emphasis added).

The Act defines "denture" as "a removable full or partial upper or lower dental appliance to be worn in the mouth to replace missing natural teeth." RCW 18.30.010(2).

Dental implants serve the function of tooth roots and are "surgically embedded in the [jaw] bone." Admin. Rec. (AR) at 282. Abutments are used to connect dental implants to crowns or dentures.[1] A prefabricated abutment is a "machine-manufactured post," connecting the implant to the crown or denture. AR at 54. In other words, an abutment is a screw or connector placed into an implant, and upon which the dental prosthetic is placed. When an abutment supports a denture, the denture may be designed to clip onto the abutment.

The Dental Association is a Washington not-for-profit corporation whose membership consists of more than four thousand Washington dentists.

II. PRE-RULE-MAKING EVENTS

Around February 2018, a lobbyist for the Washington Denturist Association (WDA), asked the Board whether placing abutments was within the scope of practice for a licensed denturist. The Board decided that it was and so notified the lobbyist.

[1] This case involves only prefabricated implant abutments. By using the term "abutments," we refer to only prefabricated implant abutments and no other types of abutments.

Over the course of the following year, the Board received input on the topic from multiple organizations. The input largely centered around whether placing abutments fell within the scope of practice for dentists or denturists and whether abutments were "removable." AR at 54, 55, 71.

Eventually, the Dental Association requested that the Board rescind its decision determining the denturist scope of practice included abutment placement. The Board, in turn, asked the Dental Collaboration Committee (DCC) to address the issue.[2]

The DCC considered the issue over the course of the next year. Participants disagreed about whether abutments were "removable," as required by the definition of "denture" in RCW 18.30.010(2). AR at 45-48; 91-95. Other participants noted that allowing denturists to place abutments increased access to care in rural communities and options for patients. In December 2020, the DCC tasked the Board with determining the definition of "removable" and how to prevent scope of practice "creep." AR at 95.

The Board assigned those tasks to a subcommittee, which in turn voted to suggest that the Board consider drafting a rule. Afterward, a Dental Association member sent the Board a definition of "removable dental prosthesis." AR at 119. She defined it as "a removable complete or partial denture, overdenture, or maxillofacial prosthesis that replaces some or all missing teeth; the dental prosthesis *can be readily inserted and removed by the patient*." AR at 119 (emphasis added).

[2] The DCC is comprised of three members of the Board, along with members of the Dental Quality Assurance Commission and Dental Hygiene Examining Committee.

At a Board meeting in April 2021, subcommittee members recommended beginning the rule-making process by filing a preproposal statement of inquiry (CR-101)[3] to clarify the definition of "removable" regarding abutments. AR at 132. The Board voted to begin work on the CR-101.

In January 2022, the Board filed a memorandum statement of inquiry with the Secretary of Health, stating rule-making was necessary to clarify when a denturist could place an abutment. It noted that denturists and dentists received identical education from abutment manufacturing companies and that denturists who place abutments obtain permission from dentists or oral surgeons before placing abutments.

The Board filed a CR-101 form on February 15, 2022.[4]

III. DEVELOPING DRAFT RULE LANGUAGE

A. *Meetings and Comments*

The Board created a special committee to draft a proposed rule. The special committee met four times during 2022. At each meeting, the special committee took public comments, often amending draft language accordingly and keeping the Board updated.

Between May 6 and September 20, the Board received nine written comments, some in support and some in opposition, from the WDA, the Dental Association, the Washington State Society of Prosthodontists, members of the public, the American College of Prosthodontists, and a denturist. *See* AR at 177, 173-74, 180-81, 175-76, 180, 182, 198, 197, 207, 215, 206. At its

[3] Code Reviser (CR).

[4] In the same CR-101, the Board also proposed amending WAC 246-812-501 to address infection control standards for denturists to ensure policies and procedures are maintained.

final meeting, on September 23, the special committee voted to bring its proposed draft rule to the next Board meeting for review.

The Board met several times to review the proposed draft rule. The Board met again in April 2023 and voted to file a notice of proposed rule-making (CR-102).

B. *Significant Legislative Rule Analysis (SLRA)*

In July, the Board produced an SLRA, explaining that the proposed rule required significant analysis under RCW 34.05.328 because it adopted "requirements under delegated legislative authority the violation of which subjects a violator to a penalty or sanction." AR at 248.

The SLRA described the proposed rule's development. It included that the Board began the rule-making process "to clarify when a denturist can place the abutment." AR at 248. The goal of the proposed rule was to add a process for placement of an abutment, describing the general goal of the Denturist Act as ensuring public health, "provid[ing] a mechanism for consumer protection, and offer[ing] cost-effective alternatives for denture care services." AR at 249. The proposed rule achieved that goal by "providing requirements that are clear, concise, and necessary to ensure patient safety by detailing the process for the placement of an abutment on an implant." AR at 249.

Additionally, in less than two pages, the SLRA analyzed the probable costs and benefits of the proposed rule. It anticipated additional cost for denturists who "do not perform this technique to obtain education and training," but not for those who had already obtained such

education.[5] AR at 250. Such training could usually be done on-the-job, in coordination with a licensed dentist. The Board estimated on-the-job training would take about one hour. It foresaw no cost for dentists as the on-the-job training would occur during an actual patient placement, and no cost for new denturists as "all students graduating from a board-approved denturist program receive education and training in the placement of . . . abutments." AR at 250. It also anticipated no additional cost to the patient based on the requirement that they receive a dentist's examination and documentation[6] before placement of the abutment and placement of the denture because patients "already receive this examination and verification and the written documentation does not pose an extra cost." AR at 250. It concluded that the probable benefits outweighed the probable costs.

In a separate section describing alternative versions of the rule considered by the Board, the SLRA explained that the Dental Association wanted the rule to require radiographic assessment by a dentist within 30 days prior to placement of the abutment. The Board explained that it "determined that it would not be reasonable to require a patient to see their dentist within the 30-day time frame," with no other comment on the matter. AR at 252.

[5] The probable cost benefit analysis noted a denturist's average annual salary, and based on that amount, calculated a probable average hourly rate by dividing the average annual salary by 52 weeks and 40 hours per week. It did not note the cost billed by dentists or denturists for any procedures or appointments.

[6] A dentist's documentation that the implant is ready to restore requires a clinical examination and confirmation that "the implant is sufficiently osseointegrated, the surrounding soft tissues are stable and healthy," and a "diagnosis that the implant is ready to restore." AR at 250. Verification of the abutment seat requires radiographic assessment by a licensed dentist.

IV. NOTICE OF PROPOSED RULE MAKING

On September 12, the Board sent the Secretary of Health a memorandum notice of proposed rule-making, explaining that doing so was necessary to "establish requirements for a denturist to place [an] abutment." AR at 267. The Board had determined that placing an abutment fell within a denturists' scope of practice under RCW 18.30.010(5)(a) ("making, placing, constructing, altering, reproducing, or repairing of a denture"). AR at 267.

On September 20, the Board filed a CR-102. The proposed rule language read,

> A licensed denturist, prior to placing an abutment on an implant for the purpose of fabricating, repairing, relining, or rebasing a denture, must have documented proof that a licensed dentist has examined the patient clinically. The documented proof from the licensed dentist must include a report that the implant is sufficiently osseointegrated, the surrounding soft tissues are stable and healthy, and provide a documented diagnosis that the implant is ready to restore. The abutment seat shall be verified by radiographic assessment by a licensed dentist prior to delivery of the denture.

AR at 274.

The CR-102 set the rule hearing for October 25 and provided the time, the physical location, and a virtual attendance option. It instructed the public to submit its written comments to the Board by October 18, and it provided a name, mailing address, email address, and facsimile number to which comments could be sent. It explained the purpose of the proposed rule and the reasons supporting it. It also explained that a cost-benefit analysis was required under RCW 34.05.328, and that it could be obtained by contacting a person whose contact information was provided. Finally, it stated that the proposed rule was fully exempt from the Regulatory Fairness Act, under RCW 19.85.025(4), because it did not affect small businesses, with no further discussion of the matter.

The Board received several comments prior to the rule hearing, which included a request to set a 60-day temporal parameter between when a radiograph was taken and when the denture was placed as well as a complaint regarding scope of practice creep. *See* 275, 278.

V. ADOPTION OF WAC 246-812-462

A. *Rule Hearing & Concise Explanatory Statement (CES)*

On October 25, the Board held the rule hearing, with some people attending in-person and others attending virtually. The Board chair informed attendees he would take oral comments and written comments for those who were uncomfortable speaking. Lauren Johnson, on behalf of the Dental Association, reiterated the Dental Association's recommendation that a timeframe be included between radiographic assessment and denture delivery. Dr. Bryan Edgar supported Johnson's request to add a timeframe between radiographic assessment and denture placement.

An attendee suggested that in the interest of public health, and in response to the Dental Association's request, the Board should adopt a 90-day timeframe between verification of the implant abutment seat and delivery of the denture. Both Johnson and Dr. Edgar agreed that 90 days would be adequate.

During a discussion about the 90-day amendment to the proposed rule, one attendee explained that he did not see the need for the amendment, but that he understood "the political aspect of it," and was fine going forward with it. AR at 303. A majority of the Board voted in favor, and the motion passed to adopt the proposed and amended language.[7]

[7] After the rule hearing, the Board made a technical change to add "prefabricated implant" to the proposed rule language. AR at 315. This action is not challenged in this appeal.

Following the hearing, the Board received three written comments. One person who had attended the hearing commented that he did not think the 90-day time frame was necessary but stated that he would support the timeframe if it meant agreement between the denturists and the Dental Association. The other two comments were submitted by individuals who did not attend the hearing and opposed the rule. The Board notified the three individuals that their comments would not be considered.

In December, the Department of Health issued a concise explanatory statement (CES) summarizing the Board's adoption of WAC 246-812-462. The CES explained the 90-day amendment the Board adopted and the change from "abutment" to "prefabricated implant abutment." AR at 324. The CES also discussed comments received regarding the proposed rule.

B. *Rule-Making Order (CR-103P)*

The Board filed a CR-103P on December 22. The CR-103P explained the purpose of the rule, the amendments that had been made to the proposed rule language of the CR-102, and that "[i]f a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis" could be obtained by contacting a person whose contact information was provided. AR at 335.

WAC 246-812-462 went into effect on January 22, 2024, and reads, in its entirety,

> A licensed denturist, prior to placing a prefabricated implant abutment on an implant for the purpose of fabricating, repairing, relining, or rebasing a denture, must have documented proof that a licensed dentist has examined the patient clinically. The documented proof from the licensed dentist must include a report that the implant is sufficiently osseointegrated, the surrounding soft tissues are stable and healthy, and provide a documented diagnosis that the implant is ready to restore. The prefabricated implant abutment seat shall be verified by radiographic assessment by a licensed dentist no more than 90 days prior to delivery of the denture.

WAC 246-812-462.

In April 2024, the Dental Association filed a petition for declaratory judgment and injunctive relief under the Administrative Procedure Act (APA)[8] in the superior court. The superior court denied the petition.

The Dental Association appeals.

ANALYSIS

The Dental Association challenges the validity of WAC 246-812-462 on three grounds. First, it argues enactment of WAC 246-812-462 exceeded the Board's statutory authority. Second, it argues the Board acted arbitrarily and capriciously. And third, it argues the Board did not comply with rule-making procedures. We agree that the Board failed to substantially comply with rule-making procedures, and accordingly, we do not address whether the Board exceeded its statutory authority or whether it acted arbitrarily and capriciously.

I. AGENCY LEGAL PRINCIPLES

A party may seek judicial review of agency action, including the validity of an agency rule, under the APA. RCW 34.05.510; .570(2)(a). Courts will only invalidate a rule if it "violates constitutional provisions; . . . exceeds the statutory authority of the agency; . . . was adopted without compliance with statutory rule-making procedures; or . . . is arbitrary and capricious." RCW 34.05.570(2)(c); *SYNNEX Corp. v. Dep't of Revenue*, 34 Wn. App. 2d 857, 863, 572 P.3d 1214 (2025). As the party seeking to invalidate WAC 246-812-462, the Dental Association bears the burden of showing its invalidity. RCW 34.05.570(1)(a); *SYNNEX*, 34 Wn. App. 2d at 863.

[8] Ch. 34.05 RCW.

We review the validity of an agency rule de novo. *SYNNEX*, 34 Wn. App. 2d at 864. When "reviewing an agency rule-making action, we sit in the same position as the superior court and our review is, in general limited to the record before the agency." *Gerow v. Washington State Gambling Comm'n*, 181 Wn. App. 229, 237, 324 P.3d 800 (2014).

We determine a rule's validity at "the time the agency took the action adopting the rule. The agency must keep a rule-making file, which serves as the record for review, though it is not necessarily the exclusive basis for agency action on the rule." *Wash. Indep. Tel. Ass'n v. Wash. Utils. & Transp. Comm'n*, 148 Wn.2d 887, 906, 64 P.3d 606 (2003).

"In enacting the 1988 APA, the Legislature intended to provide greater public access to administrative decisionmaking." *Simpson Tacoma Kraft Co. v. Dep't of Ecology*, 119 Wn.2d 640, 649, 835 P.2d 1030 (1992). The rule-making procedures of the APA require agencies to provide public notice of proposed rules along with an opportunity for public comment, "ensuring that members of the public can meaningfully participate in the development of rules pertaining to them." *Wash. Indep. Tel. Ass'n*, 148 Wn.2d at 902; *Ctr. for Biological Diversity v. Dep't of Fish & Wildlife*, 14 Wn. App. 2d 945, 981, 474 P.3d 1107 (2020). "Public input does not dictate the ultimate decisions of the agency, but it does allow all interested parties to have a voice before the decisions are made." *Hillis v. Dep't of Ecology*, 131 Wn.2d 373, 400, 932 P.2d 139 (1997).

II. FAILURE TO COMPLY WITH THE RULE-MAKING PROCESS

The Dental Association argues the Board failed to comply with rule-making procedures. We agree the Board failed to comply with the Regulatory Fairness Act (RFA)[9] and failed to

[9] Ch. 19.85 RCW.

create a sufficient record pursuant to the requirements of significant legislative rules under RCW 34.05.328.

A. *The Board Failed to Comply with the RFA*

The Dental Association argues the Board failed to comply with the requirements of the RFA. We agree.

The RFA requires that when an agency adopts a rule under the APA, it "shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry. . . ." RCW 19.85.030(1)(a).[10] A "minor cost" is "a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll." RCW 19.85.020(2). Small businesses are "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees." RCW 19.85.020(3).

In its CR-102 filing, the Board asserted that it was exempt from the requirements of the RFA under RCW 19.85.025(4). But RCW 19.85.025(4) exempts an agency from the requirements of the RFA only "if an agency is able to *demonstrate* that the proposed rule does not affect small businesses." (Emphasis added.) Here, the Board baldly asserted that WAC 246-

[10] An agency does not have to create an economic impact statement if it instead creates an analysis under RCW 34.05.328 that meets the small business economic impact statement requirements under RCW 19.85.040 "and if the agency reduced the costs imposed by the rule on small business to the extent required by RCW 19.85.030(2)." RCW 19.85.025(5). However, that portion of the analysis shall be filed with the code reviser, RCW 19.85.025(5), and we have no such analysis in the administrative record before us.

812-462 would not affect small businesses, and it failed to demonstrate any basis for that assertion. Thus, the Board failed to comply with the RFA.

B. *The Administrative Record is Inadequate under the Significant Legislative Rule Requirements of RCW 34.05.328*

The Dental Association also argues the Board did not comply with several significant legislative rule requirements, described in RCW 34.05.328. We agree.

Unless a rule is "adopted in substantial compliance with RCW 34.05.310 through 34.05.395," it will be considered invalid. RCW 34.05.375. Sections .310 through .395 of the APA outline rule-making procedures. *See* RCW 34.05.310-.395. "Substantial compliance [with] a statutory requirement means that the 'statute has been followed sufficiently so as to carry out the intent for which the statute was adopted.'" *Lee v. Metro Parks Tacoma*, 183 Wn. App. 961, 968, 335 P.3d 1014 (2014) (quoting *Banner Realty, Inc. v. Dep't of Revenue*, 48 Wn. App. 274, 278, 738 P.2d 279 (1987)).

A significant legislative rule

> is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

RCW 34.05.328(5)(c)(iii).

RCW 34.05.328 reads, in relevant part,

> (1) Before adopting a [significant legislative rule], an agency must:
> (a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;
> (b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;
> (c) Provide notification in the notice of proposed rule making under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. . . . A final cost-benefit analysis must be available when the rule is adopted under RCW 34.05.360;
> (d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;
> (e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;
> . . . .
> (2) In making its determinations pursuant to subsection (1)(b) through (h) of this section, *the agency must place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified*.

(Emphasis added.)

Here, the Board failed to comply with RCW 34.05.328(2) based on the record pertaining to its determinations under .328(1)(d). The *preliminary* cost-benefit analysis provided by the Board was not supported by "documentation of sufficient quantity and quality so as to persuade a reasonable person that [its] determinations [were] justified." *See* RCW 34.05.328(2). A reasonable person, reading the preliminary cost-benefit analysis, and reviewing the record, is left without knowing how many dentists and denturists will be affected by the rule, how many denturists work alongside dentists, the cost charged for these types of procedures, or what, if any, impacts the new rule might have on patients' insurance coverage—among other concerns.

For instance, the Board "estimates that it would take [denturists] an average of one hour of on-the-job training" to learn how to place an abutment. AR at 250. But the administrative record does not contain documentation of a sufficient quantity and quality to persuade a reasonable person that this training would take one hour, as opposed to any other amount of time.

As another example, the analysis provided that the new rule would not subject patients to any additional costs based on the rule's requirement that the abutment seat be verified by radiographic assessment by a licensed dentist. This determination was based, in part, on the Board's assertion that "[p]atients already receive this examination and verification and the written documentation does not pose an extra cost." AR at 250. But in the past, a patient could probably receive such verification at the same appointment during which a dentist placed the abutment, and the Board's preliminary analysis does not account for increased patient time or transportation costs to what would now be an additional appointment with a denturist. Nor does the Board's determination account for whether placement of an abutment by a denturist is billed or priced similarly to placement by a dentist, particularly for insurance purposes.

Furthermore, RCW 34.05.328(1)(e) required the Board to consider alternative versions of the rule in addition to the analysis required under .328(1)(d). But the Board failed to sufficiently document its determinations under RCW 34.05.328(1)(d), so we are unable to adequately assess its determination under .328(1)(e) that the adopted rule was the least burdensome alternative for those required to comply with it. And the same can be said for the Board's failure to either demonstrate why the rule did not affect small businesses or prepare a small business economic impact statement under the RFA. To the extent compliance with the RFA would have impacted the probable costs and benefits of the rule under RCW 34.05.328(1)(c) and (d), the

administrative record is deficient. Moreover, the administrative record does not contain a final cost-benefit analysis, even though RCW 34.05.328(1)(c) requires that such an analysis be available when the rule is adopted.

The rule-making procedures exist to allow meaningful public participation in the rule-making process. *Wash. Indep. Tele. Ass'n*, 148 Wn.2d at 902. A reasonable person would not find the Board's cost-benefit determinations justified because of the insufficient quantity and quality of documentation in the administrative record. *See* RCW 34.05.328(2). Because the Board failed to substantially comply with the significant legislative rule requirements and failed to demonstrate how it was exempt from the requirements of the RFA, we conclude that the Board did not comply with rule-making procedures. And rules that are not adopted in substantial compliance with RCW 34.05.328 are invalid. *See* RCW 34.05.375. Accordingly, WAC 246-812-462 is invalid.[11]

CONCLUSION

We hold that the Board failed to comply with the rule-making process, and because we so hold, we do not address the Dental Association's remaining arguments.

[11] Because we hold that the Board failed to substantially comply with a significant legislative rule requirement and with the requirements of the RFA, we do not reach the Dental Association's additional arguments as to how the Board failed to comply with the rule-making process, including: (1) other ways in which the Board allegedly failed to comply with RCW 34.05.328, (2) providing inadequate notice for public participation under RCW 34.05.325, (3) that the public hearing was a "sham" (Br. of Appellant at 63), (4) that the Board's CES was deficient under RCW 34.05.325(6), and (5) that the Board failed to properly change the language of the new rule at the hearing under RCW 34.05.340.

Accordingly, we reverse.

A majority of the panel, having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Che, J.

We concur:

Veljacic, C.J.

Lee, J.