

CHAPTER 2650
DEPARTMENT OF COMMERCE
ESTABLISHING FINANCIAL INSTITUTIONS

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2650.0100 DEFINITIONS.

Subpart 1. Scope. All terms which are defined in Minnesota Statutes, chapters 45, 51A, and 53, shall be construed to possess the same meaning when applied to these rules. Unless the language or context clearly indicates that a different meaning is intended, the following definitions are applicable to the department's rules as contained herein.

Subp. 2. Applicant. "Applicant" means any individual or group of individuals applying, pursuant to Minnesota Statutes, for a certificate to transact business as a financial institution.

Subp. 3. Application. "Application" means a request to transfer an existing financial institution, pursuant to the laws of Minnesota, or a request for a certificate of authorization to transact business as a proposed bank or industrial loan and thrift company, or a petition for a certificate of incorporation to transact business as a savings and loan association.

Subp. 4. Comparative hearings. "Comparative hearings" means separate hearings involving the original and competing applicants' application, where findings of each hearing will be considered by the department on a comparative basis before orders as to any of the applicants are issued.

Subp. 5. Competing applicant. "Competing applicant" means any existing or proposed financial institution filing an application to transact business in substantially the same general market area as the original applicant.

Subp. 6. Executive secretary. "Executive secretary" means the executive secretary of the Minnesota Department of Commerce.

Subp. 7. Filing. "Filing" means actual receipt of any document in the office of the executive secretary at St. Paul, Minnesota.

Subp. 8. Financial institution. "Financial institution" means a savings bank, bank of discount or deposit, trust company, savings, building and loan association, or industrial loan and thrift company.

Subp. 9. Hearing date. "Hearing date" means the date on which evidence is first received either in favor of or in opposition to the application.

Subp. 10. Hearings calendar. "Hearings calendar" means the official hearings docket of the department. Completed applications shall be entered on the hearings calendar by the executive secretary in the order in which they have been filed.

Subp. 11. Objector. "Objector" means any potentially affected citizen, existing financial institution, copartnership, association, or corporation having given

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timely notice of intent to appear at a hearing in opposition to the granting of an application.

Subp. 12. **Original applicant.** "Original applicant" means an existing or proposed financial institution first filing an application to transact business at a particular location.

Subp. 13. **Party or parties.** "Party or parties" means any applicant or objector who appears and participates at a prehearing conference or hearing.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.0200 SCOPE AND PURPOSE.

The procedures herein contain rules governing an application and hearing seeking approval of a certificate authorizing the formation of a new bank pursuant to Minnesota Statutes, chapter 45; the formation of a new savings, building, and loan association pursuant to Minnesota Statutes, chapter 51; or a new industrial loan and thrift company pursuant to Minnesota Statutes, chapter 53. The purpose of these procedures is to help bring to the attention of the Minnesota Department of Commerce facts deemed relevant to the rendering of a decision with respect to a particular application.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.0300 NOTICE BY DEPARTMENT.

Unless otherwise provided by law or these rules, notice may be given by the department by first class or certified mail, addressed to any party or his attorney of record, at his last known post office address.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.0400 COMPUTATION OF TIME.

In computing any period of time prescribed by these rules, by order of the department or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a legal holiday.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.0500 WAIVER.

Except as otherwise provided by law, and for good cause shown, the department reserves the right to waive compliance with any of these rules whenever, in its judgment, no party will be injured thereby.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.0600 CONSTRUCTION.

These rules shall not be construed to abrogate, modify, or limit any rights, privileges, or immunities granted or protected by the constitution or laws of the United States or the constitution or laws of the state of Minnesota.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

PREHEARING PROCEDURE

2650.1100 COMMENCEMENT OF PROCEEDINGS.

A hearing on an application for a certificate authorizing an applicant to transact business as a financial institution is instituted by completing and filing the appropriate application forms with the department pursuant to the following procedure:

A. The application shall be on forms approved by the commissioner of commerce and adopted by the department.

B. The initial application shall be delivered or mailed to the office of the Department of Commerce at Saint Paul, Minnesota.

C. Failure to provide any or all information requested on the application may delay the filing of the application with the department.

D. Upon approval of the applicant's materials as to disclosure and form, the Department of Commerce shall forward the application to the executive secretary for filing.

E. The executive secretary shall file the application by entering into the official minutes of the department the date the application was received from the Department of Commerce.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

2650.1200 NOTICE OF HEARING AND PUBLICATION.

The executive secretary shall enter the application on the hearings calendar and set a date within the time specified by law for hearing on the application.

Notice of the date, time, and place of the hearing and the date the application was filed shall be communicated in writing to the applicant or his representative by the executive secretary.

The executive secretary's notice of hearing shall be published, at the expense of the applicant, in accordance with the applicable statutory requirements.

The printer's affidavit of publication must be filed with the executive secretary not less than seven days prior to the date the hearing is opened. Failure to provide the affidavit of publication within the time specified may result in summary denial of the application.

All information that is required by the commissioner of commerce, after an applicant has received notification of the hearing date, shall be forwarded within such reasonable time as is specified by the commissioner of commerce. Failure to provide requested information within the time specified may result in summary denial of the application.

If there is entered on the hearings calendar an earlier application which has not been heard in its entirety, a hearing on a subsequently filed application may be opened pursuant to these rules within the time specified by law and immediately adjourned. The adjourned hearing will be reconvened, unless the department determines otherwise, in the order in which it was entered on the hearings calendar. The executive secretary shall, by registered mail, give each party to the subsequent application, 60 days written notice of the reconvened hearing date.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

2650.1300 NOTIFICATION BY OBJECTORS.

Anyone intending to oppose the application shall, not less than ten days prior to the hearing date, notify the executive secretary in writing of his intent to appear in opposition to the application. The objector shall also simultaneously mail a copy of his written notice to the office of the applicant or his representative whose address shall be included in the published notice of hearing.

All or any portion of the application, including the applicants' financial statements, shall be open to inspection by the parties. All or any portion of the application, except the financial statements of the applicants, shall be open to inspection by members of the public.

The executive secretary shall furnish a copy of the application to any party upon request and payment in advance of the appropriate charges.

For good cause shown, any potentially affected citizen, existing financial institution, copartnership, association, or corporation that has failed to give

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timely notice, as prescribed herein, may be permitted by the department to appear at the hearing in opposition to the application.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.1400 MOTIONS.

Motions may be presented requesting comparative hearings, addition of necessary parties, dismissal of improper parties, dismissal of the proceedings for want of jurisdiction, quashing of a subpoena, postponement of an effective date of an order, extension of time for compliance with an order, or such other relief or order as may be appropriate.

Motions, unless made during a hearing, shall be in writing, shall set forth the relief or order sought, shall be served upon all parties of record, and shall be filed together with an affidavit of mailing with the executive secretary, who shall bring it before the department at the earliest convenient time. The requirement of writing is fulfilled if the motion is stated in a written notice of the motion. Motions based on matters that do not appear of record shall be supported by affidavit.

A hearing on a written motion shall be within the sole discretion of the department. Upon determining that a written motion will be heard, the department shall order the executive secretary to notify the parties in writing of the time and place it will hear the motion. An opportunity shall be afforded each party, at the time the motion is heard, to file exceptions and present arguments in favor of or in opposition to all relevant matters raised by reason of said motion.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.1500 MOTION FOR COMPARATIVE HEARING.

Subpart 1. Competing applicant. Any competing applicant that alleges its application is mutually exclusive with an original applicant's application may file a motion for a comparative hearing not less than ten days prior to the date the hearing is first opened on the original applicant's application.

Subp. 2. Procedure. A motion for a comparative hearing shall be heard pursuant to the following procedure:

A. Evidence concerning whether there is sufficient reasonable public demand and probable volume of business to support an affirmative finding on these two issues as to the original and competing applicant's application will be heard on the day the original application is set for hearing. Upon completion of testimony on these two issues, the department will hear evidence on the remaining statutory criteria with respect to the original applicant only.

B. At the conclusion of the original applicant's hearing, the department shall determine whether the general market area to be served by the original and competing applicants is mutually exclusive so that if an order were issued granting a charter to the original applicant, it would render meaningless a hearing on the competing applicant's application.

Subp. 3. Not mutually exclusive. Upon determining that the applications are not mutually exclusive, the department shall deny the competing applicant's motion, and issue its order concerning the original applicant within the time prescribed by law.

Subp. 4. Mutually exclusive. Upon determining the applications mutually exclusive, the department shall:

A. grant the competing applicant's motion and order a comparative hearing on those issues that remain to be heard concerning the competing applicant's application; or

B. deny the competing applicant's motion, and original applicant's application if it finds that the general market area to be served by them does not possess sufficient public demand or volume of business to warrant the creation of one or more new financial institutions.

Subp. 5. **Summary denial.** A motion requesting a comparative hearing with an original application filed less than ten days prior to the date the hearing is first opened on the original applicant's application shall be summarily denied without prejudice.

Subp. 6. **Notice of order.** Notice of the department's order regarding the competing applicant's motion shall be served in accordance with these rules.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.1600 DISCOVERY.

Subpart 1. **Exchange of information.** Identity of witnesses, production of documentary evidence, and copies of working papers shall be exchanged by the parties.

Subp. 2. **Witnesses.** The name, address, and business or occupation of any witness who may be called to testify in support of or in opposition to the application shall be made available to all parties no later than seven days prior to the hearing date. Testimony from any witness not identified in accordance with this part shall not be received in evidence in absence of a clear showing that the offering party had good cause for his failure to supply the identity of the witness within the time prescribed by this part.

Subp. 3. **Documentary evidence.** Copies of all documentary evidence such as, but not being limited to, economic feasibility studies or economic surveys, which will be offered during the hearing in support of or in opposition to the application shall be made available, upon written request, to all parties no later than seven days prior to the hearing date in order to permit study and preparation of cross-examination and rebuttal evidence. Failure to supply requested data in accordance with this part shall result in forfeiture of the right to present and offer the material in evidence at the hearing, unless the offering party can clearly show that he had good cause for his failure to make available copies of the evidence within the time prescribed by this part.

Subp. 4. **Working papers.** Copies of any working papers containing figures or other information relied upon when preparing estimated or projected data called for in the application shall be made available upon written request, no later than seven days prior to the hearing date. Failure to provide working papers shall go to the weight given the estimated or projected data called for in the application, and not to its admissibility.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.1700 SUBPOENAS.

Subpart 1. **Requests.** Requests for subpoenas shall be made in writing, addressed to the office of the executive secretary, and shall contain a brief statement as to the relevance and reasonable scope of the testimony or evidence sought.

Subp. 2. **Issuance.** Request for subpoena may be made by the applicant or any objector or his duly authorized representative, and shall contain the name and address of the witness or witnesses whose presence is sought.

Subp. 3. **Form.** Every subpoena shall state the title of the proceeding, and shall command the individual to whom it is directed to attend and give testimony or produce designated evidence at a specified time and place.

Subp. 4. **Service.** Unless the service of a subpoena is acknowledged on its face by the witness, it shall be served by a person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein may be made by delivering a copy of the subpoena to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law, or by leaving such copy with a person of suitable age and discretion at witness' usual place of abode.

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Subp. 5. **Fees.** Cost of service and legal expenses of any witness summoned before the department shall be paid by the party at whose request the witness appears.

Subp. 6. **Proof of service.** The person serving the subpoena shall make proof of service by filing the subpoena and the required return affidavit, or acknowledgment of service with the executive secretary.

Subp. 7. **Quashing.** Upon motion made promptly, and in any event, at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed, and upon notice to the party to whom the subpoena was issued, the department or its duly delegated authority may quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue; or, condition denial of the motion upon just and reasonable conditions.

Subp. 8. **Enforcement.** Upon application and for good cause shown, the department will seek judicial enforcement of all valid subpoenas issued by its order.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.1800 PREHEARING CONFERENCE.

Subpart 1. **Order and notice.** A prehearing conference may be ordered by the department on its own motion or upon request of one of the parties. The executive secretary shall give all parties written notice of the time and place of the prehearing conference. At the prehearing conference, the parties should be prepared to consider:

- A. the simplification of the issues;
- B. the necessity of amendments to the application;
- C. the possibility of obtaining stipulations as to admissions of facts or documents which will avoid unnecessary proof;
- D. the limitation of the number of expert witnesses; and
- E. such other matters as may aid in the disposition of the proceeding.

Subp. 2. **Record.** A prehearing conference may be recorded, if requested in advance by any party. If no verbatim transcript is taken, the person conducting the prehearing conference shall prepare a summarized record reciting the results of the conference. Such record shall include matters considered and ruled upon at the conference together with appropriate stipulations by the parties, if any. The record shall be received into evidence during open hearing.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.1900 CONTINUANCES.

Subpart 1. **Timing.** Where good cause for continuance exists, a motion for continuance must be filed immediately.

A motion for continuance made within seven days of the hearing will be denied, unless good cause exists and the reason for the request could not, with the exercise of due diligence, have been earlier ascertained.

A motion for continuance filed not less than seven days prior to the hearing date will be granted upon showing of good cause.

Subp. 2. **Examples of not "good cause."** The following, without being limited thereto, are not considered "good cause":

- A. where law firm representing one of the parties consists of more than one member, unavailability of counsel responsible for the interest of one of the parties because of engagement in another court or otherwise;
- B. unavailability of a witness if his deposition could have been taken between the time the notice of hearing was published and the actual date of the hearing;
- C. agreement of the parties without consent of department.

Subp. 3. **During hearing.** During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the person conducting the hearing may, at his discretion, continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute notice of such continued hearing.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.2000 WITHDRAWAL OF APPLICATION FOR CERTIFICATION.

An applicant intending to withdraw an application shall do so in writing by serving written notice upon all parties and the executive secretary.

Notice of withdrawal received by the executive secretary, not less than seven days prior to the date of hearing, shall be without prejudice, except that the investigation fee shall be forfeited if the Department of Commerce had commenced its investigation prior to receipt of said notice.

An application withdrawn within seven days of the hearing date shall be with prejudice and shall result in forfeiture of the filing and investigation fee.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

2650.2100 FILING COPIES.

The original and four copies of written motions, briefs, petitions, and other papers called for by these rules, except the initial application, shall be delivered or mailed to the office of the executive secretary at Saint Paul, Minnesota.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

HEARING

2650.3100 PRESIDING AUTHORITY.

All hearings shall be conducted either by the department or a duly appointed hearing examiner and shall be open to the public. The hearing examiner shall have the authority to conduct prehearing conferences, administer oaths or affirmations, examine witnesses, rule upon the admissibility of evidence and amendments to applications, and make proposed findings of fact or proposals for decision, and such other action as authorized by the department.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.3200 ORDER OF PRESENTATION OF EVIDENCE.

Order of presentation of evidence:

A. All parties shall be required to enter their appearance on the record.

B. Unless otherwise ordered by the department, the applicant shall present his case-in-chief by calling witnesses and submitting other evidence. Parties appearing in opposition to the application, department members, and hearing examiner, in that order, shall have an opportunity to cross-examine each witness called by the applicants.

C. Any party in opposition to the granting of the application may thereupon present witnesses and other evidence. The applicant, department members, and hearing examiner, in that order, shall have an opportunity to cross-examine each witness called by the parties appearing in opposition to the application.

D. The applicant shall then be permitted to offer rebuttal evidence subject to these rules.

E. The department may then call for the production of further evidence upon any issue. It may also produce independent evidence which is material to the issues or necessary to complete the record.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

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2650.3300 STIPULATIONS.

Parties may, by stipulation, agree upon any facts involved in the proceeding. The facts stipulated shall be considered as evidence in the proceeding; provided that the department or hearing examiner may require proof of any fact by evidence where matters of public interest are involved.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.3400 WITNESSES.

Any party may be witness or present witnesses on his behalf at a hearing. All witnesses must be sworn and identify the party for whom they are appearing.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.3500 RULES OF EVIDENCE.

Subpart 1. Test of relevance. The department or hearing examiner may admit any relevant evidence, including hearsay evidence, if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions tried before a jury. The rules of privilege shall be effective to the same extent that they are recognized in civil actions. The department or hearing examiner may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record.

Subp. 2. Burden of proof. The applicant must prove facts at issue by a fair preponderance of the evidence. The burden of proof shall at all times be on the applicant to show that the application meets all statutory and regulatory requirements.

Subp. 3. Surveys and statistical data. Subject to these rules, evidence considered by the department to possess probative value may include, but not be limited to, special economic or public opinion surveys or statistical data, whether made primarily for the applicant or objector; or economic or statistical data produced by local industries, governmental subdivisions or agencies, or educational institutions for their own purpose. Such data shall not be subject to challenge because the evidence is not presented orally.

Subp. 4. Documents. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

Subp. 5. Expert opinion. Where expert or opinion testimony is contemplated, all interested parties shall endeavor to select one or more witnesses to speak for all parties or limit the number for each party.

Subp. 6. Official notice. Official notice may be taken of any generally accepted technical or scientific matter within the department's special field of competency, and also of any fact which may be judicially noticed by the courts. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any memoranda or data, and they shall be afforded an opportunity to contest the material so noticed.

Subp. 7. Inclusion on record. All evidence, including records, documents, or other factual information in possession of the Department of Commerce (except tax returns, tax reports, examination reports on existing banks, or personal financial statements of the applicants) may be offered in evidence by said agency, and, subject to these rules, made a part of the record. Only such matters (except tax returns, tax reports, examination reports on existing banks, or personal financial statements of the applicants) offered in evidence by the Department of Commerce and made a part of the entire record of the proceedings may be considered by the department in arriving at its final decision.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

2650.3600 DEPOSITIONS.

During the pendency of any proceedings, the department or its hearing examiner, either upon its or his own motion or upon application in writing by any party, may cause the deposition, for use as evidence in the proceeding, of any witness residing within or without the state to be taken in the manner provided by law for depositions in civil actions in the courts of this state, and to that end may compel the attendance of witnesses and the production of books, papers, accounts, and documents. Except, under special circumstances and for good cause shown, a deposition may be taken only upon ten days' prior written notice to all parties.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.3700 RECORD.

The department will designate an official reporter to make and transcribe a stenographic or recorded record of hearings in all proceedings, and will provide for such copies of the transcript as it may require for its own purpose. No copies of the transcript will be furnished to parties by the department, but copies may be obtained from the executive secretary upon payment of appropriate charges as may be determined by the department from time to time. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.3800 PROPOSAL FOR DECISION.

After hearing a motion, the hearing examiner may, in the interest of expediting the hearing, make an initial decision with respect to the motion. When an initial decision is rendered, the hearing examiner shall, when he is requested, or may at his discretion when no request is made, announce for the record at the close of the hearing that he will prepare a proposal for decision that he will recommend the department adopt.

The proposal for decision shall contain proposed findings of fact including a statement of reasons therefore, conclusions of law, and order.

The executive secretary shall serve, by registered mail, a copy of the proposal for decision upon each party or his attorney together with written notice of the date, time, and place the department will consider the proposal preparatory to its final decision.

The department's consideration of the proposal for decision shall take place not less than 20 days after written notice has been served on the parties. Any party may file exceptions or present arguments to the department at that time.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.3900 PROPOSED FINDINGS.

Subpart 1. Hearing officer. If a hearing examiner conducts the hearing, he shall make proposed findings of fact and submit them to the department.

Subp. 2. Parties. Upon the close of the hearing, any of the parties may request for the record or on its motion the department may require each party to file proposed findings of fact, conclusions of law and order.

Subp. 3. Filing. The original and four copies of the proposed findings shall be filed by each of the parties with the executive secretary within ten days from the close of the hearing, or within ten days from receipt of the transcript when a copy is requested.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.4000 DECISION AND ORDER.

Every decision and order rendered by the department shall be in writing or

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stated in the record and shall be accompanied by a statement of the reasons therefore. A statement of reasons shall consist of a concise statement of the conclusions upon each contested issue of fact necessary to the decision.

Every decision and order shall be signed by the department chairman, and shall bear the date of official publication.

The original of every decision and order shall be maintained by the executive secretary, and reference thereof shall be entered into the official minutes of the department.

Parties to the hearing shall be notified of the decision and order by mail.

Statutory Authority: *MS s 45.023; 46.01 subd 2*

2650.4100 EX PARTE CONSULTATION.

It is improper that there be any effort, direct or indirect, by any person to sway the judgment of any member of the department or hearing examiner by attempting to bring pressure or influence to bear upon any member of the department or hearing examiner.

The hearing examiner shall take no part in any preliminary investigation or inquiry into the facts or issues involved in the hearing except as provided by these rules. He shall not communicate directly or indirectly in connection with any issue of fact or law with any person or party, except upon notice and opportunity for all parties to participate.

The department may disqualify and deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person or hearing examiner who, after hearing by the department on reasonable notice, is found to have engaged in unethical or improper professional conduct concerning matters over which the department has jurisdiction.

Statutory Authority: *MS s 45.023; 46.01 subd 2*