WASHINGTON

Medical Commission

Licensing. Accountability. Leadership.

Policy: Interested Parties Meeting September 5, 2024

Policy:
Interested Parties Meeting

WASHINGTON Medical Commission
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In accordance with the Open Public Meetings Act, this meeting notice was sent to individuals requesting notification of the Washington Medical Commission (WMC) meetings. This agenda is subject to change. The WMC will take public comment at the Policy: Interested Parties meeting. To request this document in another format, call 1-800-525-0127. Deaf or hard of hearing customers, please call 711 (Washington Relay) or email doh.information@doh.wa.gov.

Virtual via Teams Webinar: Registration link can be found below.
Commissioners and staff will attend virtually.
Physical location: 111 Israel Rd SE, TC2 Room 166, Tumwater, WA 98501

Thursday, September 5, 2024

Open Session

10:00 am	Agenda	
To attend virtually, please **register** here: WMC Policy: Interested Parties		
The goal of this meeting is to provide an opportunity for anyone to comment on and suggest changes to the WMC's policies, guidance documents, procedures, and interpretive statements. The WMC encourages open discussion on the items listed on the agenda.		
Organizers: Kyle Karinen, Executive Director & Micah Matthews, Deputy Executive Director		
1	**Procedure: Processing Complaints Against Medical Students, Residents, and Fellows** *Review and discussion of current document and proposed revisions.* Draft with Track Changes on pages 4-8 Draft accepting above Track Changes (aka "clean") on pages 9-10	
2	**Proposed Policy: Commissioner and Pro Tem Recusal Policy to Address Conflicts of Interest** *Discussion of proposed policy.*	Pages 11-16
3	**Guidance Document: Medical Directors: Roles Duties and Responsibilities (GUI2020-02)** *Review and discussion of current document and proposed revisions.*	Pages 17-18
4	**Proposed Interpretive Statement: "Qualified Physician" Under Optometry Law** *Discussion of proposed interpretive statement.*	Pages 19-20
5	**Open Forum** Interested parties may provide ideas for new policies or suggestions to reform an existing policy. The comment period for each speaker will be limited to two minutes. We also welcome written comments, see below.	
Public Comment *The public will have an opportunity to provide comments on any topic. If you would like to comment, please use the Raise Hand function, or add your comments to the chat. Please identify yourself and who you represent, if applicable. If you would prefer to submit written comments, please email medical.policy@wmc.wa.gov by 5 pm on September 4, 2024.*		

PO Box 47866 | Olympia, Washington 98504-7866 | Medical.Commission@wmc.wa.gov | **WMC.wa.gov**

Future Topics for Discussion	
The following items are next up for review. Feel free to provide comments regarding these items at medical.policy@wmc.wa.gov.	
1	Guidance Document: A Collaborative Approach to Reducing Medical Error and Enhancing Patient Safety (GUI2014-02)
2	Policy: Elective Educational Rotations (POL2020-01)
3	Guidance Document: Processing Complaints Against Licensees Enrolled in the WPHP (GUI2020-02)
4	Guidance Document: Communicating Diagnostic Test Results to Patients (GUI2016-02)
5	Guidance Document: Completion of Death Certificates by Physicians and Physician Assistants (GUI2017-01)
6	Guidance Document: Sexual Misconduct and Abuse (GUI2017-03)
7	Guidance Document: Direct Communication of Time Critical Patient Medical Information (TCMI) Between Health Care Practitioners (GUI2021-01)
8	Policy: Practitioners Exhibiting Disruptive Behavior (MD2021-01)
9	Procedure: Interactive and Transparent Development of Evidence-based Policies and Guidelines (PRO2018-02)

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~~Procedure~~Policy

WASHINGTON Medical Commission
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~~Processing~~ Complaints Against ~~Medical~~ Students~~, Residents,~~, Residents, and Fellows~~Fellows~~

~~Introduction~~Policy Statement

In carrying out its disciplinary role to protect the public, the Washington Medical Commission (Commission~~WMC~~) ~~occasionally~~ receives complaints[1] against students ~~medical students~~and physicians during their post-graduate training~~ and fellows.~~ Because of the highly ~~-~~supervised environment in which students, resident physicians (residents), and fellows are ~~they~~ practicing~~e~~ medicine, the Commission ~~provides~~~~WMC~~establishes ~~creates this procedure for~~ the following ~~procedure~~policy on how complaints against P~~p~~hysician A~~a~~ssistant (PA), ~~anesthesiology~~Anesthesiologist A~~a~~ssistant (AA), and allopathic M~~m~~edical ~~(MD)~~ S~~s~~tudents, ~~in addition to~~ R~~r~~esidents, and F~~f~~ellows~~,~~ are ~~handled~~considered. For students and residents on whom the Commission receives a complaint, the Commission will, with some exceptions, refer the complaint back to Program Directors, Deans, and supervising physicians for correction. Complaints filed against Fellows, due to their increased training, will progress through the standard process established in law and Commission rule, unless circumstances of the complaint require additional consideration. This policy is enacted to further the goals of non-punitive educational systems and provide necessary grace to trainees on their journey to full scope practice.

Referring Student Complaints ~~Complaints against Students~~

A. ~~*Referring Student Complaints to Program Directors and Deans.*~~ PA, AA, and MD students are generally in the early stages of learning and practicing medicine, have little control over their practice conditions, and are being monitored in a highly structured, supervised environment. While the Commission may~~, at times,~~ receive complaints against PA, AA, or MD students, the Commission recognizes that training P~~p~~rogram directors and D~~d~~eans are generally better equipped to address standard of care concerns in an educational setting than the Commission. Complaints received by the Commission regarding actions outside of the training program related to the practice of medicine or not, may be investigated under the authority of RCW 18.71.230 and the investigatory and discipline process authorized under RCW 18.130. Examples of actions outside of a program of interest to the Commission include but are not limited to boundary violations, sexual misconduct, diversion, or criminal convictions.

[1] For the purpose of this procedure, the term "complaint" includes a mandatory report under RCW 18.130.070 and 18.130.080.

~~1. [2] Since medical students are in the early stages of learning in a highly structured and supervised environment, the dean of the medical school is often better equipped to address a concern~~I ~~than the WMC~~

~~f, however, the Commission receives a complaint against an MD student involving the practice of medicine *outside* of their training program, or involving a boundary violation, sexual misconduct, diversion of a medication or drug, criminal conviction, reckless behavior, or gross misconduct, the Commission may choose to investigate the complaint. If an investigation leads to a finding of unprofessional conduct, and the Commission decides that discipline is necessary to protect the public, the Commission may impose discipline under authority of RCW 18.71.230.~~

~~*The Procedure to Handle Complaints against MD Students.*~~

~~A panel of the Commission reviews a complaint against a student with applicable redactions to indicate their "student" status.~~

~~The panel may consider that the student is in training and whether the Commission is aware of previous complaints, and then may decide to proceed in the following manner:~~

~~Close the complaint;~~

~~Close the complaint and refer the complaint to the training program director or appropriate dean of their school;~~

~~Open an investigation and consider making a simultaneous referral to WPHP if a complaint includes that the student is impaired or potentially impaired as the result of a health condition; or~~

~~Open an investigation if the panel believes that the student may have engaged in a boundary violation, sexual misconduct, diversion of a medication or drug, reckless behavior, or gross misconduct, or if the student was convicted of a crime.~~

1. Residents~~Complaints against Residents~~

Complaints against Residents

A. ~~*Resident Complaints are generally Referred to Program Directors.*~~ Under authority of RCW 18.71.030(9), residents are legally permitted ~~and fellows, who may or may not possess a license~~ to practice medicine in a training program sponsored by a college or university or a hospital in this state, pursuant to their duties as a trainee. Postgraduate clinical training programs generally require each of their residents to initially obtain a limited license which permits them to ~~,[3] do not~~ practice medicine in connection with their duties in the residency program, though many residents seek full physician and surgeon licensure as soon as~~independently. Rather,~~ they meet eligibility requirements which include the successful completion of two years of postgraduate training.

Commented [MM1]: This is completely an operational section and not something subject to Commission vote. Removing as the process is already mapped internally and non-discretionary.

[2] Both residents and fellows are exempt from the license requirement under RCW 18.71.030(8) if they are in a program of clinical medical training sponsored by a college or university or hospital in this state and the performance of medical services are pursuant to their duties as residents and fellows. Although not required, many residents and fellows obtain a full license or a limited license under RCW 18.71.095(3) or (4)(b).

~~[3] RCW 18.71.030(8).~~

A limited license does not authorize a resident to engage in any practice of medicine outside of their residency program, but full licensure does. The Commission recognizes that residents practicing medicine *within* their program with or without a limited license have little control over their practice ~~in a learning~~ environment which, by design, provides ongoing learning opportunities with continuous evaluation and feedback processes~~designed~~ to cultivate~~develop~~ the skills necessary to be a competent physician. Attending physicians and ~~p~~Program ~~d~~Directors are ~~An attending physician is~~ responsible for training their residents on~~and fellows as to~~ the standard~~proper standards~~ of care and professional conduct involving the practice of medicine. Due to established supervisory roles within training programs, a residency ~~p~~Program ~~d~~Director, or alternatively an attending physician, graduate medical education officer, or hospital employer, may be~~appropriate behavior. The attending physician is therefore~~ in a better position than the Commission to manage practice concerns involving one of their residents. While the Commission generally refers standard of care issues to residency ~~program~~ Program ~~directors~~Directors, there are some exceptions.

B. *Exceptions or When the Commission May Authorize an Investigation.* When a resident is involved in unprofessional conduct or there is concern for a health condition impairment, the Commission may consider the following:

1. *Unprofessional Conduct.* A resident with or without a limited license is not shielded from being investigated or disciplined for unprofessional conduct. At times, a resident's supervising attending physician, or their ~~p~~Program ~~d~~Director, may also be investigated or disciplined by the Commission if ~~the Commission~~, on a case-by-case basis, the Commission determines such action is necessary to protect the public. ~~If the Commission receives a complaint involving a boundary violation, sexual misconduct, diversion of a medication or drug, criminal conviction, reckless behavior, or gross misconduct by a resident with a limited license, the Commission may choose to investigate the complaint to protect the public.~~ Further, the Commission may discipline a resident with a limited license for a finding of unprofessional conduct under authority of RCW 18.71.230 and a resident with a full license under authority of the Uniform Disciplinary Act RCW 18.130.

~~A. than the WMC. If, however, a resident or fellow practices outside the program and independent of the supervision of the attending physician, such as in a moonlighting setting, the WMC is the appropriate entity to address concerns and take action if necessary.~~

~~B.~~ *Health Condition Impairment.* Whether fully licensed as a physician and surgeon or not, if the Commission receives~~If~~ a complaint that~~alleges~~ that a resident is impaired~~or fellow engaged in reckless behavior~~ or potentially impaired as~~gross misconduct, the WMC may investigate~~ the result of a health condition,~~complaint against~~ the Commission~~resident or fellow, and~~ may ~~choose to~~ open an investigation and consider making a simultaneous referral to ~~on~~ the Washington Physician Health Program (WPHP). ~~attending physician as well.~~

~~A. Procedure~~

~~B. *Complaints against medical students*~~

C. A panel of the WMC reviews a complaint against a medical student.

D. The panel may close the case and refer the matter to the dean of the medical school in which the medical student is and/enrolled, unless the panel believes that the medical student may have engaged in reckless behavior or gross misconduct. In such a case, the panel may choose to investigate the complaint.

E. *CProcedural Handling of a Complaint against a Resident without a Full License residents and* When the Commission receives a complaint against a resident without a full license, and their residency status is known by the Commission, the Commission generally proceeds as follows:fellows

1. AA panel of the WMC rpplicable redactions should indicate "resident" (rather than "respondent") to indicate the resident's level of trainingor fellow..

A panel of the Commission reviews If the panel believes there was a breach of the standard of care, but there was no gross negligence or other reckless behavior, the panel will change the redacted complaint against name of the resident, may consider thatcase from the resident is in training and whetheror fellow to the Commission is aware of previous complaints, and may decide to proceed in the following manner.
Close the complaint, with or without a referral to the Commission's Physician Support Program (PSP);
Close but refer the complaint to the residency program director;
Open an investigation and consider making a simultaneous referral to WPHP if a complaint includes that the resident is impaired or potentially impaired as the result of a health condition;name of the and/or
Open an investigation on the resident if the panel believes that the resident engaged in a boundary violation, sexual misconduct, diversion of a medication or drug, criminal conviction, reckless behavior, or gross misconduct, or the safety of the public warrants opening an investigation; or

2. Open an investigation on the attending physician, and/or the residency program director if the panel believes that the standard of care was violated, and the safety of the public warrants opening such an investigation. .
If the panel believes that the resident or fellow engaged in reckless behavior or gross misconduct, the panel may decide to investigate the resident or fellow, and may open a new case and investigate the attending physician as well.

3. If the CommissionWMC takes disciplinary action against the resident's attending physician or program director, the CommissionWMC may consider restricting themthe attending physician from the training medical students,of residents or fellows, though the CommissionWMC is not limited to this particular sanction.

4.

Procedural Handling of a Complaint against a Resident with a Full License. In addition to the situations noted above in section B, *Exceptions: When the Commission May Authorize an Investigation*, the Commission may choose to consider the setting involved in the complaint against a resident. Once a resident obtains a full license, the standard complaint process includes redactions stating "respondent" (not "resident"), thus their residency status may not be recognized; however, if it is recognized by the Commission, the Commission may

consider their residency status in determining whether to open an investigation or impose discipline. The Commission may also consider the following:

1. *Residency Setting.* If a resident with full physician and surgeon licensure is performing duties *within* their residency program (e.g., not in a moonlighting setting), the Commission typically considers their resident status, if it is known, in determining whether to open an investigation or treat them as would any other fully licensed physician and surgeon.

2. *Moonlighting Setting.* If a resident with a full physician and surgeon license is performing duties *outside* their residency program (e.g., in a moonlighting setting), the Commission may consider their level of training but typically treats these licensees as they would other fully licensed physicians, and attending physicians and program directors are not subject to investigation or discipline.

3. 2. *Unauthorized Practice of Medicine.* If a resident is practicing medicine *outside* of their residency program and they are not licensed to do so, the Commission may proceed as it typically does involving a concern for the unauthorized practice of medicine, and attending physicians and program directors are typically not subject to investigation or discipline.

Commented [MM2]: Operational and already mapped out as part of the internal complaint handling process. Non-discretionary so deleting.

ResidentsComplaints against Fellows

The Commission typically processes complaints against fellows holding a limited license in a manner similar to how it processesprocessing complaints against on fully licensed licensees;. however, tThe Commission may consider their training status involving standard of care issues, especially those involving procedures being developed as a part of their fellowship training, in determining whether to investigate a complaint or impose discipline.

Date of Adoption:	July 10, 2020
Reaffirmed / Updated:	N/A
Supersedes:	N/A

Policy

WASHINGTON Medical Commission
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Title:	Complaints Against Students, Residents, and Fellows		POL202x-0x
References:			
Contact:	Washington Medical Commission		
Phone:	(360) 236-2750	E-mail:	medical.commission@wmc.wa.gov
Supersedes:			
Effective Date:			
Approved By:	,Chair		

Policy Statement

In carrying out its disciplinary role to protect the public, the Washington Medical Commission (Commission) receives complaints[1] against students and physicians during their post-graduate training. Because of the highly supervised environment in which students, resident physicians (residents), and fellows are practicing medicine, the Commission establishes the following policy on how complaints against Physician Assistant (PA), Anesthesiologist Assistant (AA), and allopathic Medical Students, Residents, and Fellows are considered. For students and residents on whom the Commission receives a complaint, the Commission will, with some exceptions, refer the complaint back to Program Directors, Deans, and supervising physicians for correction. Complaints filed against Fellows, due to their increased training, will progress through the standard process established in law and Commission rule, unless circumstances of the complaint require additional consideration. This policy is enacted to further the goals of non-punitive educational systems and provide necessary grace to trainees on their journey to full scope practice.

Referring Student Complaints

PA, AA, and MD students are generally in the early stages of learning and practicing medicine, have little control over their practice conditions, and are being monitored in a highly structured, supervised environment. While the Commission may receive complaints against PA, AA, or MD students, the Commission recognizes that training Program directors and Deans are generally better equipped to address standard of care concerns in an educational setting than the Commission. Complaints received by the Commission regarding actions outside of the training program related to the practice of medicine or not, may be investigated under the authority of RCW 18.71.230 and the investigatory and discipline process

[1] For the purpose of this procedure, the term "complaint" includes a mandatory report under RCW 18.130.070 and 18.130.080.

authorized under RCW 18.130. Examples of actions outside of a program of interest to the Commission include but are not limited to boundary violations, sexual misconduct, diversion, or criminal convictions.

Complaints against Residents

Under authority of RCW 18.71.030(9), residents are legally permitted to practice medicine in a training program sponsored by a college or university or a hospital in this state, pursuant to their duties as a trainee. Postgraduate clinical training programs generally require each of their residents to initially obtain a limited license which permits them to practice medicine in connection with their duties in the residency program, though many residents seek full physician and surgeon licensure as soon as they meet eligibility requirements which include the successful completion of two years of postgraduate training.

A limited license does not authorize a resident to engage in any practice of medicine outside of their residency program, but full licensure does. The Commission recognizes that residents practicing medicine *within* their program with or without a limited license have little control over their practice environment which, by design, provides ongoing learning opportunities with continuous evaluation and feedback processes to cultivate the skills necessary to be a competent physician. Attending physicians and Program Directors are responsible for training their residents on the standard of care and professional conduct involving the practice of medicine. Due to established supervisory roles within training programs, a residency Program Director, or alternatively an attending physician, graduate medical education officer, or hospital employer, may be in a better position than the Commission to manage practice concerns involving one of their residents. While the Commission generally refers standard of care issues to residency Program Directors, there are some exceptions.

- *Unprofessional Conduct.* A resident with or without a limited license is not shielded from being investigated or disciplined for unprofessional conduct. At times, a resident's supervising attending physician, or their Program Director, may also be investigated or disciplined by the Commission if, on a case-by-case basis, the Commission determines such action is necessary to protect the public. Further, the Commission may discipline a resident with a limited license for a finding of unprofessional conduct under authority of RCW 18.71.230 and a resident with a full license under authority of the Uniform Disciplinary Act RCW 18.130.

- *Health Condition Impairment.* Whether fully licensed as a physician and surgeon or not, if the Commission receives a complaint that that a resident is impaired or potentially impaired as the result of a health condition, the Commission may open an investigation and consider making a simultaneous referral to the Washington Physician Health Program (WPHP).

Complaints against Fellows

The Commission typically processes complaints against fellows holding a limited license in a manner similar to processing complaints on fully licensed licensees. The Commission may consider training status involving standard of care issues, especially those involving procedures being developed as a part of their fellowship training, in determining whether to investigate a complaint or impose discipline.

Policy

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Title:	Commissioner and Pro Tem Recusal Policy to Address Conflicts of Interest	POL202x-0x
Contact:	Washington Medical Commission	
Phone:	(360) 236-2750	E-mail: medical.commission@wmc.wa.gov
Supersedes:	NA	
Effective Date:		
Approved By:	,Chair	

Introduction

Administrative proceedings are to be free from the impression that a participating member pre-judged the matter at hand. In *Washington Med. Disciplinary Bd. v. Johnston*, the Supreme Court of Washington opined, "Under the appearance of fairness doctrine, proceedings before a quasi-judicial tribunal are valid only if a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing." [1]

Similarly, the Washington State Executive Ethics Board has issued advisory opinions regarding the Ethics in Public Service Act, Chapter 42.52 of the Revised Code of Washington (RCW), and its application to Boards/Commissions. That guidance has remained grounded in the basic concept that public servants are not to be decision-makers involving matters that personally benefit them. Advisory Opinion number 96-09 includes that boards and commissions may require members to disclose their interests and abstain from voting or attempting to influence votes when there is a conflict of interest.[2]

In compliance with the advisory opinion, the Washington Medical Commission (Commission) Code of Conduct states that commissioners will, "recuse themselves and proactively disclose when there is a real or potential conflict of interest, or the appearance of such a conflict." This code of conduct aligns with the Federation of State Medical Boards (FSMB) recommendation that boards adopt a conflict of interest policy. Such a policy should include that no board member shall participate in the deliberation, making of any decision, or taking of any action affecting the member's own personal, professional, or pecuniary interest, or that of a known relative or of a business or professional associate.

[1] *Matter of Johnston, 99 Wash. 2d 466, 478, 663 P.2d 457, 464 (1983).*
[2] Advisory Opinion on Disclosure Requirements for Boards and Commissions, Number 96-09, approved May 20, 1996, reviewed May 5, 2021, available at https://ethics.wa.gov/sites/default/files/public/AO%2096-09.pdf (Accessed April 8, 2024)

The Commission is committed to preventing bias from unjustly influencing Commission activities. The purpose of this policy is to prevent biases from unjustly impacting licensing, investigations, policy-making, and disciplinary matters.

Case Management Team Meetings

Case Management Team (CMT) meetings include at least three Commissioners who access complaints and determine whether to authorize an investigation. To further prevent bias from impacting Commission activities, staff redact the allopathic physicians (MD) or physician assistants (PA) identifying information including, but not limited to, name, gender or gender identity, and race.

Case Disposition Meetings

Case Disposition meetings involve a panel of Commissioners who hear presentations of cases that have the investigation completed. Each case is presented by a Reviewing Commission Member (RCM) who does not state the identifying details of the MD or PA, including, but not limited to, name, gender or gender identity, and race as part of their presentation. The panel then decides whether to authorize discipline or close the case for each instance.

While these redactions and exclusions are aimed at preventing bias and ensuring fairness, they may inadvertently obscure a Commissioner's immediate recognition of a conflict of interest. The redactions and limited information particularly impede the identification of reasons for recusal during both CMT and Case Disposition meetings. However, once a Commissioner or the Commission's Executive Director becomes aware of a potential conflict of interest involving a Commissioner, this recusal policy offers guidance on proceeding to uphold impartiality and fairness.

This policy is intended to provide guidance for Commissioner and Pro Tem appointees[3] in mitigating conflicts of interest that could compromise the integrity of Commission proceedings.

Legal Authority

United States Constitution

The 14th Amendment of the United States Constitution,[4] provides due process protection for individuals in the U.S., not just practitioners, to protect against biased, unjust governmental adjudications. The United States Supreme Court has clarified that due process protects against a likelihood of decision-maker bias from impacting a fair adjudication,[5] and these protections have been further enhanced through Washington state laws.

[3] To avoid redundancy, the term "Commissioner" henceforth includes a Commissioner or a Pro Tem appointee.
[4] Available at https://www.archives.gov/milestone-documents/14th-amendment (Accessed May 14, 2024)
[5] "Not only is a biased decisionmaker constitutionally unacceptable, but 'our system of law has always endeavored to prevent even the probability of unfairness.' Where there is merely a general predilection toward a given result which does not prevent the agency members from deciding the particular case fairly, however, there is no deprivation of due process." *Matter of Johnston*, 99 Wash. 2d 466, 475, 663 P.2d 457, 462 (1983) (quoting *In re Murchison,* 349 U.S. 133, 136 (1955)).

Revised Code of Washington

In Washington, commissioners are considered "state officers", and as such are bound by the Ethics in Public Service Act, chapter 42.52 RCW. Pertinent sections of this statute include the following:

RCW 42.52.020 Activities incompatible with public duties.

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

RCW 42.52.030 Financial interests in transactions.

(1) No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

RCW 42.52.160 Use of persons, money, or property for private gain.

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

RCW 42.52.903 Serving on board, committee, or commission not prevented.

Nothing in this chapter shall be interpreted to prevent a member of a board, committee, advisory commission, or other body required or permitted by statute to be appointed from any identifiable group or interest, from serving on such body in accordance with the intent of the legislature in establishing such body.

Guidance on Transparency Involving a Conflict of Interest and Recusal

There must be transparency in the handling of conflicts of interests involving Commission matters. To prevent a conflict of interest involving public duties from compromising fairness, the Commission recognizes that specific prohibitions in chapter 42.52 RCW must be read in conjunction with the exception specified in RCW 42.52.903 and, in limited circumstances, that conflicts of interest may occasionally be unavoidable. A commissioner's employer or affiliated health systems may not, in and of themselves, create a conflict of interest necessitating

recusal; however, when any of these affiliations, or others, create a scenario in which that a commissioner may financially, personally, or professionally benefit, or be harmed, that does necessitate recusal.

The Commission adopts the following guidance:

- Commissioners are responsible for handling conflicts of interest with full transparency at all times and for recusing themselves from cases as soon as reasonably possible if they recognize a conflict of interest that may compromise fairness, impartiality, or the appearance of impartiality;
- No commissioner may be beneficially interested, directly or indirectly, in a decision in which they are involved;
- No commissioner may participate, in their official capacity, in a transaction involving the state with a partnership, association, corporation, firm or other entity of which the commissioner is an officer, agent, employee or member, or in which the commissioner owns a beneficial interest;
- A commissioner is encouraged to announce their potential conflict of interest and recuse themselves as soon as they first recognize the potential conflict, and if there is a true conflict they should leave the room or call and not participate in any discussion involving the matter to avoid impartiality or the appearance of impartiality; and
- A commissioner must abstain from any discussion or vote taken by the Commission involving an action (including contracting, rulemaking, or policy decisions) or transaction with any entity with which the commissioner may benefit or be harmed (financially, personally, or professionally), and if a commissioner abstains from voting because of such involvement, such commissioner shall announce for the record their reason for their abstention.

Procedure for Commissioner Recusal[6]

Internal Process Among Commissioners

To ensure fundamental fairness, a commissioner should notify the Panel Chair and the Executive Director of any concerns they have regarding any commissioner's, including but not limited to their own, inability to be impartial. Disqualification processes and standards are

[6] This recusal procedure was heavily influenced by Texas Administrative Code, Rule Section 187.42, with quotation marks omitted, with modifications which incorporate Washington state law and ethics board guidance to ensure impartiality and to protect the public.

addressed in the Administrative Procedure Act, specifically in RCW 34.05.425[7], in addition to the Model Procedural Rules for Boards, specifically in WAC 246-11-230[8].

Standards for Recusal

A commissioner should exercise sound discretion in choosing whether to be recused from participation and voting regarding any matter. A commissioner should choose to be recused if they:

- Have a direct financial interest or relationship with any matter, party, or witness that would give the appearance of a conflict of interest;
- Have a current or past relationship* within the third degree of affinity with any party or witness; or
- Determine that they have knowledge of information that is not in the administrative record of a contested case and that they cannot set aside that knowledge and fairly and impartially consider the matter based solely on the administrative record.

Once a commissioner believes there may be a conflict of interest that has the potential to cause impartiality, or an appearance of impartiality, the first step is for the commissioner who recognizes that conflict to alert the Commission Executive Director, or their designee. Then, in consultation with the Commission Executive Director, or their designee, there will be a discussion with the commissioner with the potential conflict, if possible, to make a clear determination of the following: (1) "must" recuse, (2) "should" recuse, or (3) "unnecessary" to recuse. The determination will err on the side of recusal. If a conflict is recognized late, it will be addressed as soon as reasonably possible.

The fact that a commissioner participated in another matter regarding a respondent, applicant, attorney, or matter may not by itself mandate the commissioner's recusal from other matters. If a Commissioner is familiar with a respondent or applicant due to serving on a panel or serving as a reviewing commission member, that alone is generally not sufficient to warrant recusal. However, in the event that prior involvement may potentially prejudice the rights of any party to a fair proceeding, the presiding officer (presiding Commissioner or health law judge) may cure any such prejudice by an instruction to Commissioners or members of the hearing panel to not consider the statement during the course of the proceeding or during deliberations or discussion related to the proceeding.

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[7] "(3) Any individual serving or designated to serve alone or with others as presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is disqualified. (4) Any party may petition for the disqualification of an individual promptly after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification. (5) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination. (6) When the presiding officer is an administrative law judge, the provisions of this section regarding disqualification for cause are in addition to the motion of prejudice available under RCW 34.12.050. (7) If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute must be appointed by the appropriate appointing authority. (8) Any action taken by a duly appointed substitute for an unavailable individual is as effective as if taken by the unavailable individual." RCW 34.05.425.

[8] "(4) Any party may move to disqualify the presiding officer, or a member of the board hearing the matter, as provided in RCW 34.05.425(3)." WAC 246-11-230.

However, if the Commissioner has prior knowledge of a situation from having served as a hospital quality assurance reviewer or as an expert or fact witness or attorney of record on a civil case involving the respondent or applicant, recusal is warranted.

In summary, Commissioners must recuse themselves if there is a conflict of interest and should recuse if there is an appearance of a conflict of interest. Commissioners are expected to use reasonable judgment and should discuss the possible conflict of interest with the Commission's Executive Director, or their designee, and err on the side of recusal.

Guidance Document

WASHINGTON Medical Commission
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Medical Directors: Roles, Duties and Responsibilities

Introduction

Serving as a medical director may be more challenging than most practitioners[1] realize and come with certain responsibilities that, if not well-understood, could bring a practitioner to the attention of the Washington Medical Commission. A medical director can work in a wide variety of environments, including chief medical officer for a large or small medical or hospital system, a single-specialty or multi-disciplinary clinic, a long-term care facility, a medical spa, an addiction treatment facility, a telemedicine venture, or an entity seeking to gain credibility by hiring a "medical director" in some nebulous role. The Commission has reviewed complaints that practitioners failed to meet the obligations inherent in the role of a medical director. Whether this arises from simple ignorance of the laws or a reckless disregard of appropriate standards, the result can be harm to patients or a violation of state or federal law. The Commission provides this guidance document to help practitioners understand the roles, duties and responsibilities of a medical director.[2]

Guidance

While the duties will vary depending on the type of facility, and the legal relationship between the medical director and the facility, the medical director is ultimately responsible for the medical care provided and the safety of the patients. Regardless of the particular circumstances, the Commission recommends that a medical director should:

1. Prioritize staff and patient safety;
2. Understand and be familiar with the practice standards required of the particular type of practice;
3. Supervise and provide guidance to all clinical staff, whether they are employees or independent contractors;
4. Ensure that each member of the clinical staff is properly licensed, trained and acts within their legal scope of practice;
5. Coordinate care within the facility to promote teamwork and communication among the entire healthcare team;
6. Clearly communicate expectations to the clinical staff;
7. Develop and update policies, guidelines and protocols for clinical staff to ensure compliance with current practice standards, as well as federal and state regulations;
8. Ensure that the clinician staff exercise independent clinical judgment, put the patient first, and are not influenced by financial interests;

[1] Practitioners includes physicians and physician assistants.
[2] This guideline is not intended to cover medical directors for health insurance carriers or EMS systems, which are covered by specific statutes. See RCW 48.43.540 and 18.71.212 *et seq.*

9. Respond to emergencies in a timely manner and address issues that can impact patient care;
10. Ensure that an appropriate medical record is kept for each patient, and that health care information is confidential and secure; and
11. Promote professionalism and ethical values.

By following these best practices, practitioners will reduce the likelihood of a bad outcome for patients and the likelihood of a complaint to the Commission.

The Commission advises practitioners to be wary of entering into arrangements with unlicensed persons. These relationships may entail legal risks involving aiding or abetting the unlicensed practice of medicine, the corporate practice of medicine, and violating fee-splitting, rebating or anti-kickback laws. The Commission advises practitioners considering these arrangements to seek legal counsel.

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Interpretive Statement

WASHINGTON Medical Commission
Licensing. Accountability. Leadership.

Title:	"Qualified Physician" Under Optometry Law	IS2024-0x
References:	Chapter 18.53 RCW; Chapter 18.71 RCW	
Contact:	Washington Medical Commission	
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Approved By:	Karen Domino, MD ,Chair	

The Washington Medical Commission (WMC) interprets the term "qualified physician" in Enrolled Substitute Senate Bill 5389, Chapter 400, Laws of 2023, to mean a physician who meets the following criteria:

1. Holds a current license to practice as a physician and surgeon with the WMC;
2. Is not currently under any disciplinary action by the WMC, including a stipulation to informal disposition;
3. Holds a current certification from the American Board of Ophthalmology; and
4. Has a surgical suite on site or holds privileges at a local hospital.

On May 9, 2023, Governor Inslee signed Enrolled Substitute Senate Bill 5389 modifying Chapter 18.53 RCW, an act regulating the practice of optometry in Washington. This new law expanded the scope of optometry to include certain advanced procedures:

> (2)(a) The practice of optometry may include the following advanced procedures:
> (i) Common complication of the lids, lashes, and lacrimal systems;
> (ii) Chalazion management, including injection and excision;
> (iii) Injections, including intramuscular injections of epinephrine and subconjunctival and subcutaneous injections of medications;
> (iv) Management of lid lesions, including intralesional injection of medications;
> (v) Preoperative and postoperative care related to these procedures;
> (vi) Use of topical and injectable anesthetics; and
> (vii) Eyelid surgery, excluding any cosmetic surgery or surgery 1 requiring the use of general anesthesia.

The new law provides that an optometrist cannot perform these advanced procedures until the Board of Optometry issued a license endorsement. The Board of Optometry will issue the

license endorsement after the optometrist meets "the educational, training, and competence criteria" set forth in the new law.

To receive a license endorsement, the optometrist must successfully complete postgraduate courses as designated by the Board, successfully complete a national examination for advanced procedures, and

> (iii) Enter into an agreement with a qualified physician licensed under chapter 18.71 RCW or an osteopathic physician licensed under chapter 18.57 RCW for rapid response if complications occur during an advanced procedure.

The new law does not define the term "qualified physician licensed under chapter 18.71 RCW." Since the WMC licenses allopathic physicians under chapter 18.71 RCW, the WMC is the proper entity to define the term "qualified physician."

Being able to respond rapidly to complications from the procedures listed in the new law requires a high level of competence. The WMC interprets the term "qualified physician under chapter 18.71 RCW" in Enrolled Substitute Senate Bill 5389, Chapter 400, Laws of 2023, to mean a physician who meets each of the following criteria:

1. Holds a current license to practice as a physician and surgeon with the WMC;
2. Is not currently under an order or a stipulation to informal disposition with the WMC;
3. Holds a current and unrestricted certification from the American Board of Ophthalmology; and
4. Has a surgical suite on site or holds privileges at a local hospital.

From: Susie Tracy
To: WMC Medical Policy
Cc: Stephanie Cramer
Subject: Re: Comments for Sept. 5 Policy Meeting, Item 4
Date: Wednesday, September 4, 2024 4:54:51 PM
Importance: High

External Email

To: Washington Medical Commission

The Washington Academy of Eye Physicians and Surgeons (WAEPS) wishes to provide comments on Item 4 of the September 5 WMC Policy Agenda. This concerns the interpretative statement re "qualified physician" related to SSB 5389 (optometry scope of practice).

SSB 5389 requires that an optometrist who qualifies under the statute for an "endorsement" to provide "advanced procedures" (as defined in statute) must have an agreement with a "qualified physician" (a medical doctor or an osteopathic physician) for "rapid response if complications occur during an advanced procedure". As the legislation was being considered, WAEPS assumed that a qualified physician could only be an ophthalmologist since no other medical doctor would be inherently qualified to respond to an eye-related complication or an adverse event if one were to occur. Unfortunately, not all parties have agreed with that assumption and the Board of Optometry has, in its meetings concerning regulations pertaining to SSB 5389, contended that any medical doctor or osteopathic physician could be party to signing the mandated agreements. This is not acceptable to us.

WAEPS supports the current WMC proposal stating that agreements must only be with an ophthalmologist with current or unrestricted certification from the American Board of Ophthalmology. WAEPS is joined in that support by the Wa. State Medical Association, the Wa. State Hospital Association, and WA-ACEP (the Washington Chapter of the American College of Emergency Physicians).

WAEPS opposed SSB 5389, increasing the scope of practice of optometrists, because it felt strongly that optometrists were not adequately trained to undertake the lengthy list of procedures permitted in the proposed legislation. One of the very few patient safety provisions contained in the bill to offset those concerns is the requirement for an agreement between an optometrist and a qualified physician to handle complications.

These mandated agreements provide a vital level of patient protection. However, it is unrealistic to assume that a provider other than an ophthalmologist would be skilled or adequately and extensively trained to respond to a surgical complication or adverse event involving the eye or surrounding tissue. (The terms “complication” or “adverse event” are not specifically defined in statute for ophthalmic procedures --- yet another issue regarding SSB 5389.) Protecting vision or undertaking surgical procedures requires extensive training which no other medical provider undergoes. It is therefore not sensible to assume that any other medical doctor would have the knowledge to provide urgent care.

Timing is of the essence to respond to any of the potential complications of the advanced procedures

authorized in SSB 5389. For example, if any complication were presented to an emergency room medical doctor, it is highly likely that an ophthalmologist would be consulted, which adds another step and more time before the complication is properly addressed. This unnecessary hurdle could lead to lasting health problems for patients that could have been prevented by requiring direct access to an ophthalmologist.

Fortunately, in virtually all areas of Washington, there are ophthalmology practices, frequently in the same communities as optometrists. There should be no concern about the ability of an optometrist to contact an ophthalmologist with whom he or she has an established agreement for assistance in a timely manner.

One other item of concern to WAEPS regards the maintenance of the agreements mandated in statute. There is no process currently in place to assure agreements are made, maintained, updated or reviewed. WAEPS would encourage the Washington Medical Commission to create a process to assure the agreements (with ophthalmologists) are established and kept on file. Again, these agreements are necessary for patient protection and patients should be assured they are in place.

WAEPS will be happy to provide the WMC with further information if needed or requested. It appreciates your pursuit of regulatory language to provide the quality care Washington's patients deserve and expect.

Thank you.

Stephanie Cramer MD

WAEPS Legislative Chair
WAEPS Immediate Past President

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