

Executive Director Report



WASHINGTON
**Medical
Commission**
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Unlicensed Practice of Medicine

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Over the past few months, the Commission has been approached on a number of occasions and asked, in essence, “Does a person need a MD or PA license in Washington in order to do X, Y, or Z?” While in theory, the answer is not complicated, in practice, it can be complex. In this article, I am going to run through a number of considerations that go into addressing the issue of the unlicensed practice of medicine in Washington.

1. There are numerous exemptions from licensure.

The Medical Practice Act in Washington is relatively clear. “No person may practice or represent himself or herself as practicing medicine without first having a valid license to do so.”¹ However, there are also no less than 15 exemptions from that requirement.² Whether or not an activity is exempt from the licensure requirement is inherently a legal question. Which leads us to . . .

2. The Commission is not in a position to provide legal advice.

The Commission, as well as the Department of Health (the Department), are licensing and regulatory agencies. Neither the Commission nor the Department are authorized to provide ad hoc legal advice.

3. Practice of medicine in Washington is broad.

The statutory definition includes instances where an individual:

- Offers or undertakes to diagnose, cure, advise, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality.
- Administers or prescribes drugs or medicinal preparations to be used by any other person.
- Severs or penetrates the tissues of human beings;³

The takeaway here is that many things can be the practice of medicine. Every practice act for all 80+ healthcare-related professions have some accounting of what an individual is licensed to do.

4. The Commission does not enforce laws that prohibit the unlicensed practice of medicine.

This is a central concern factor here. Even if the Commission were inclined to offer legal advice to any of the dozen inquiries a year about license requirements, the Commission does not have a regulatory role for

unlicensed practice. Under the Uniform Disciplinary Act, primary authority over unlicensed practice is vested with the Secretary of Health.⁴ The Commission maintains a supportive role as the Secretary investigates claims of unlicensed practice. For cases the Secretary designates as unlicensed practice of medicine, the Commission pays for the services of the Secretary’s investigators, legal staff, and administrative staff. However, the Commission does not provide any substantive input. This enforcement structure has analogues in many states and, notably, attempts to steer clear of federal antitrust concerns.⁵ The primary takeaway here is that while the Commission would almost certainly have a concern or two to offer, it is not the Commission’s role or place to enforce the prohibition. That said, the Secretary does have a role. Which leads us to soccer.

The 2025 FIFA Club World Cup starts on June 14. In brief, it is a soccer tournament held every four years that involves club teams from all over the globe. It provides an example of how these issues come into play that’s illustrative of the moving regulatory parts. Last December, the Commission was approached by FIFA and asked whether health care practitioners accompanying the teams would need to be licensed in Washington.

As you might expect, the clubs wish to have their own medical staff attend to their players while they are working in the U.S. Also, as you might expect, very few of their staff are licensed in the United States, let alone Washington. In discussions with FIFA staff, I was happy to point them to the statutory exemptions for licensure, explain the structure around who does what within the Department of Health, i.e. the Commission only regulates MDs and PAs, and reference the side issue of the state and federal controlled substances acts. The FIFA representatives were quick to stipulate that the medical staff would only be treating their respective club’s players.

In this particular case, the Commission directed them to the Department and the concerns raised by the FIFA representatives were addressed. Please see [the letter](#) from the Interim Secretary of Health. While this is just one example of the sort of concerns that arise in this area, it’s one of the most frequently misunderstood.

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1 RCW 18.71.021.

2 Included are exemptions for licensed of dentistry, osteopathic medicine, nursing, and podiatric medicine, among others where there is a separate practice act and license requirement.

3 RCW 18.71.011.

4 RCW 18.130.190. There is a portion of this statute that also allows other bodies and individuals to maintain a civil action for injunctive relief that has rarely, if ever, been relied upon to address the issue of unlicensed practice.

5 In 2015, the United States Supreme Court entered a decision in a case involving the Federal Trade Commission and the North Carolina Board of Dental Examiners. While the ruling might actually be somewhat different if it were argued now, the majority based part of its ruling on a legal doctrine called the state action doctrine. A detailed discussion of the majority and dissent reasoning would be lengthy. This is not the right venue for the Commission to do anything other than recognize the factors present in the majority's opinion and be mindful of them.

ACOG Releases Updated Guidelines for Pain Management

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