



Processing Complaints Against Licensees Enrolled in the Washington Physicians Health Program

Introduction

The Washington Medical Commission (Commission) provides this guidance document to (1) explain how it handles complaints against physicians and physician assistants (hereafter licensees) who may be impaired by a health condition and are enrolled in the Washington Physicians Health Program (WPHP), and to (2) enhance consistency and fairness in decision-making in such cases.

The Commission promotes patient safety and enhances the integrity of the profession through licensing, discipline, rule-making and education. To fulfill its mission to enhance patient safety, the Commission reviews and investigates complaints that licensees have engaged in unprofessional conduct or have health conditions that affect their ability to practice medicine with reasonable skill and safety.

The Uniform Disciplinary Act, Chapter [18.130 RCW](#), sets forth the process by which a disciplinary authority like the Commission may impose disciplinary sanctions upon a licensee who commits unprofessional conduct or has a health condition that renders the licensee unable to practice with reasonable skill and safety. [RCW 18.130.160](#) states that when a disciplinary authority imposes sanctions, the first priority is to protect the public. Only after the public is protected may the disciplinary authority include requirements designed to rehabilitate the licensee.

[RCW 18.130.175](#) provides that if the disciplining authority determines that the unprofessional conduct may be the result of a health condition, the disciplining authority may, in lieu of discipline, refer the license holder to a physician health program approved by the disciplining authority. The licensee must sign a waiver allowing the program to notify the disciplinary authority if the licensee fails to comply with the program or is unable to practice with reasonable skill and safety.

The Washington State Department of Health has contracted with the WPHP as the approved physician health program for a number of healthcare professions, including physicians and physician assistants. The WPHP is an independent, nonprofit organization that facilitates the rehabilitation of licensees who have health conditions that could compromise public safety. The conditions include substance use disorder and other behavioral health disorders, as well as non-psychiatric medical conditions and cognitive disorders. The Commission fully supports the work of the WPHP and notes that it has had remarkable success in rehabilitating licensees and helping them to manage their illnesses and practice medicine safely.

Most of the licensees enrolled in the WPHP have entered confidentially and are unknown to the Commission. As long as the licensee complies with the requirements of the program and is safe to practice under monitoring, the WPHP will not report the licensee to the Commission. Many of these

licensees complete treatment and monitoring and go on to practice medicine safely for the remainder of their careers.

While uncommon, some licensees experience illness recurrence or return to substance use while being monitored by the WPHP. WPHP assists licensees in addressing recurrence and/or return to use and will recommend that the licensee cease practice if the illness recurrence or return to substance use poses a risk to patient safety. . Some licensees will require additional treatment and then have an opportunity to return to clinical practice under active monitoring by the program, while others may need intensification of health monitoring or treatment services without the need to discontinue clinical practice. Illness recurrence or return to substance use, in itself, is not an indication that a licensee is not capable of practicing medicine safely. The WPHP has demonstrated an ability to accurately assess licensees who have suffered illness recurrence or return to use and determine appropriate interventions including whether and when they are safe to continue or return to practice.. The Commission relies on WPHP to determine whether a licensee who has illness recurrence or return to use should be reported to the Commission as unsafe to return to practice.

When the Commission receives a complaint that a licensee has committed unprofessional conduct or is impaired, and during the investigation the Commission learns that the licensee has signed an agreement with the WPHP and is compliant with the requirements of the program, the Commission must decide whether to impose discipline or to close the case under [RCW 18.130.175](#). This decision will depend on the facts and circumstances of each case.

The Commission adopts this guidance document to explain how it handles cases against impaired or potentially impaired physicians, and to help ensure consistency and fairness in decision making in these cases. Consistent with its statutory mandate, its mission statement, and the expectation of the public, the Commission will take necessary action to protect the public from licensees who commit unprofessional conduct or are unable to practice with reasonable skill and safety due to a health condition.

Guidance

The Commission may take disciplinary action for certain behavior regardless of the licensees health status or involvement in WPHP. The rationale for acting against licensees who fall into these categories is not only to protect the public, but to hold licensees accountable for their conduct. The Commission believes that disciplinary action should be determined on a case by case basis, taking into consideration the specifics of the circumstances. The presence of an impairing or potentially impairing health condition and/or involvement in WPHP may or may not mitigate against disciplinary action depending on the nature and specifics of the complaint. .

The Commission may take action in the following circumstances:

1. **A licensee harmed a patient, regardless of whether the harm is due to impairment.** This may include negligent care such as a missed diagnosis, poor judgment or improper technique. It will also include reckless or intentional behavior such as abuse, sexual contact, or assault.
2. **A licensee's behavior presented a risk of harm to a patient or to the public, regardless of whether it is due to impairment.** This may include treating a patient or being on call while under the influence of drugs or alcohol, or engaging in behavior unrelated to patient care such as driving erratically, leaving the scene of an accident, or exhibiting threatening behavior.

3. **A licensee engaged in acts of moral turpitude or dishonesty.** This may include any type of dishonest behavior, sexually inappropriate behavior with patients or non-patients, and behavior that lowers the standing of the profession in the eyes of the public.
4. **A licensee engaged in criminal activity regardless of the existence of a conviction.** This may include diversion of a controlled substance or legend drug, forging a prescription, or any other criminal activity. This would also include behavior that resulted in a conviction of a gross misdemeanor or a felony.

In all other circumstances, the Commission may choose not to take further action against a licensee if the licensee is enrolled in the WPHP, compliant with the program, and the Commission is assured that the public is protected. If the licensee is not enrolled in the WPHP, the Commission may choose not to take further action and instead refer the licensee to the WPHP under RCW 18.130.175. The procedure for the referral is as follows:

1. The staff attorney sends a letter to the licensee stating that the panel is referring the licensee to WPHP under RCW 18.130.175. The letter will state that the case will remain open until the Commission receives confirmation that the licensee has met with WPHP.
2. The staff attorney also sends a letter to WPHP informing them of the referral and asking WPHP to notify the staff attorney when the licensee has met with WPHP.
3. When WPHP receives the letter, WPHP will contact the staff attorney to get more information. After the licensee has met with WPHP, WPHP will notify the staff attorney that the meeting has taken place. If the licensee does not make an appointment with WPHP, or does not meet with WPHP, WPHP will notify the staff attorney.
4. When the staff attorney receives confirmation from WPHP that the licensee has met with WPHP, the staff attorney will bring the case back to the panel for closure. The panel may close the case with a unique closure. The closure letter should indicate that the reason for the closure is that licensee has been referred to WPHP under RCW 18.130.175, and that the Commission expects the licensee to comply with the program requirements.

The Commission will rely on the WPHP to report to the Commission if the licensee fails to comply with the requirements of the program or if the licensee is unable to practice with reasonable skill and safety. If the Commission receives such a report, the Commission will immediately investigate the matter and take necessary disciplinary action. If a licensee presents an immediate danger to the public, the Commission will suspend the license.

The above principles are designed to provide transparency to the public and WMC licenses. They also serve to guide the Commission in making decisions and are not meant to be uncompromising. The Commission will use its judgment in each case to determine the course of action that first, best protects the public, and second, provides the opportunity to rehabilitate the licensee.

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