

Guideline

Title:	Processing complaints against licensees enrolled in the Washington Physician's Health Program	MD2016-03
References:	RCW 18.130.175 , RCW 18.130.160	
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Purpose

The Medical Quality Assurance Commission (Commission) provides this guideline to (1) explain how it handles complaints against physicians and physician assistants (hereafter licensees) who may be impaired by drugs or alcohol (also known as a substance use disorder) and are enrolled in the Washington Physicians Health Program (WPHP), and to (2) enhance consistency and fairness in decision-making in such cases.

Background

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 mental or physical 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 mental or physical 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 substance abuse, the disciplining authority may, in lieu of discipline, refer the license holder to a substance abuse monitoring 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 substance abuse monitoring 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 physical or mental conditions that could compromise public safety. The conditions include substance abuse and behavioral health disorders, as well as physical 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 voluntarily 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.

Some licensees experience a relapse while being monitored by the WPHP. Most licensees notify the WPHP and come back into compliance with the requirements of the program. Some require additional treatment and then have an opportunity to return to clinical practice under active monitoring by the program. Relapse, by 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 a relapse and determine whether they are safe to practice. The Commission relies on WPHP to determine whether a licensee who has relapsed 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 a contract 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 guideline to explain how it handles cases against 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 mental or physical condition.

Guideline

The Commission will take disciplinary action for certain behavior whether or not the licensee is in current compliance with a WPHP contract. The rationale for taking action 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 a licensee enrolled in the WPHP should be accountable for his or her conduct to the same extent that a non-impaired licensee is accountable for his or her conduct.

The Commission will take action in the following circumstances:

1. **A licensee harmed a patient and the harm is due in part or in whole 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 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.

If a case does not involve any of the circumstances listed above, the Commission may, under [RCW 18.130.175](#), choose not to discipline a licensee if all of the following conditions exist:

1. the licensee is enrolled in the WPHP;
2. the licensee is compliant with the requirements of the program; and
3. the licensee's participation in the program will protect the public.

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 guide the Commission in making decisions and are not meant to be inflexible. The Commission will use its judgment in each case to determine the course of action that first, best protects the public, and second, rehabilitates the licensee.