EXPEDITED RULE MAKING

CR-105 (December 2017)
(Implements RCW 34.05.353)

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FILED

DATE: July 16, 2024
TIME: 12:13 PM

WSR 24-15-055

Agency: Department of Health – Washington Medical Commission

Title of rule and other identifying information: Implementation of the physician assistant collaborative practice. The Washington Medical Commission (commission) is proposing amendments to chapter 246-918 WAC to implement Engrossed Substitute House Bill (ESHB) 2041 (chapter 62, Laws of 2024) which aims to establish clear guidelines and requirements for the collaboration between physician assistants (PAs) and supervising physicians. Proposed changes also include clarifying and updating terms.

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

From March 2020 to October 2022, physician assistants (PAs) were allowed to practice without a delegation agreement under the governor's proclamation 20-32. During this period, PAs delivered safe and efficient care, improving access to essential services statewide. Given the ongoing need for more healthcare providers, especially in underserved and rural areas, the legislature passed ESHB 2041 to authorize PAs to engage in a collaborative practice with physicians. This collaborative practice seeks to enhance the scope of practice for PAs, streamline processes for their practice agreements, and ensure better integration within healthcare teams. This will promote team-based care and enhance healthcare access for the state's residents.

The commission is proposing amendments to several sections of chapter 246-918 WAC, pertaining to physician assistants, to incorporate the objectives of ESHB 2041.

Reasons supporting proposal: To implement the legislative changes and intentions of ESHB 2041; enhance the collaborative practice framework between physician assistants and physicians; improve access to healthcare services, particularly in underserved and rural areas; and ensure regulatory consistency and clarity for physician assistants practicing in Washington State.

Statutory authority for adoption: RCW 18.71A.020, 18.130.050 and Engrossed Substitute House Bill 2041 (chapter 62, Laws of 2024)

Statute being implemented: Chapter 18.71A RCW, ESHB 2041

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

Name of proponent: Washington Medical Commission

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

☐ Relates only to internal governmental operations that are not subject to violation by a person;

☒ Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

☒ Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

☒ Content is explicitly and specifically dictated by statute;

☐ Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or

☐ Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

☐ The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;

☐ The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;

☐ The rule is no longer necessary because of changed circumstances; or

☐ Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): The purpose of this rulemaking is to align existing rules with the changes made by ESHB 2041. The proposed amendments in this rule making are explicitly dictated by statute. Clarifying changes include replacing gender-specific terms.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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AND RECEIVED BY September 23, 2024

Date: 7/16/2024 **Name:** Kyle Karinen **Title:** Executive Director, Washington Medical Commission	**Signature:** Signature on file

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-005 Definitions. The definitions in this section and definitions in RCW 18.71A.010 apply throughout this chapter unless the context clearly requires otherwise:

(1) "Collaboration agreement" means a written agreement that describes the manner in which the physician assistant is supervised by or collaborates with at least one physician and that is signed by the physician assistant and one or more physicians or the physician assistant's employer.

(2) "Commission" means the Washington medical commission.

((~~(2)~~)) (3) "Commission approved program" means a physician assistant program accredited by the committee on allied health education and accreditation (CAHEA); the commission on accreditation of allied health education programs (CAAHEP); the accreditation review committee on education for the physician assistant (ARC-PA); or other substantially equivalent organization(s) approved by the commission.

((~~(3)~~)) (4) "Employer" means the scope appropriate clinician, such as a medical director, who is authorized to enter into the collaboration agreement with a physician assistant on behalf of the facility, group, clinic, or other organization that employs the physician assistant.

(5) "NCCPA" means National Commission on Certification of Physician Assistants.

((~~(4) "Osteopathic physician" means an individual licensed under chapter 18.57 RCW.~~

~~(5)~~)) (6) "Participating physician" means a physician that supervises or collaborates with a physician assistant pursuant to a collaboration agreement.

(7) "Physician" means an individual licensed under chapter 18.57, 18.71, or 18.71B RCW.

((~~(6)~~)) (8) "Physician assistant" means a person who is licensed under chapter 18.71A RCW by the commission to practice medicine ((~~to a limited extent only under the supervision of a physician or osteopathic physician~~)) according to a collaboration agreement with one or more participating physicians.

(a) "Certified physician assistant" means an individual who has successfully completed an accredited and commission approved physician assistant program and has passed the initial national boards examination administered by the National Commission on Certification of Physician Assistants (NCCPA).

(b) "Noncertified physician assistant" means an individual who:

(i) Successfully completed an accredited and commission approved physician assistant program, is eligible for the NCCPA examination, and was licensed in Washington state prior to July 1, 1999;

(ii) Is qualified based on work experience and education and was licensed prior to July 1, 1989;

(iii) Graduated from an international medical school and was licensed prior to July 1, 1989; or

(iv) Holds an interim permit issued pursuant to RCW 18.71A.020(1).

(c) "Physician assistant-surgical assistant" means an individual who was licensed under chapter 18.71A RCW as a physician assistant between September 30, 1989, and December 31, 1989, to function in a limited extent as authorized in WAC 246-918-250 and 246-918-260.

((~~(7)~~)) (9) "Practice agreement" means a mutually agreed upon plan, as detailed in WAC 246-918-055, between a supervising physician and physician assistant, which describes the manner and extent to which the physician assistant will practice and be supervised.

((~~(8)~~)) (10) "Supervising physician" means any physician or osteopathic physician identified in a practice agreement as providing primary clinical and administrative oversight for a physician assistant.

((~~(9) "Alternate physician" means any physician or osteopathic physician who provides clinical oversight of a physician assistant in place of or in addition to the supervising physician.~~))

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-035 Prescriptions. ((~~(1)~~)) A physician assistant may prescribe, order, administer, and dispense legend drugs and Schedule II, III, IV, or V controlled substances consistent with the scope of practice ((~~in an approved practice agreement filed with the commission~~)) provided:

((~~(a)~~)) (1) The physician assistant has an active DEA registration; and

((~~(b)~~)) (2) All prescriptions comply with state and federal prescription regulations.

((~~(2) If a supervising physician's prescribing privileges have been limited by state or federal actions, the physician assistant will be similarly limited in their prescribing privileges, unless otherwise authorized in writing by the commission.~~))

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-055 Collaboration and practice agreements. (1) A practice agreement must meet the requirements in RCW 18.71A.120.

(2) A physician assistant ((~~may have more than one supervising physician if the practice agreement is entered into with a group of physicians and the language of the practice agreement designates the supervising physicians.~~

~~(3) Pursuant to a practice agreement,~~)) practicing under a practice agreement that was entered into before July 1, 2025, may continue to practice under the practice agreement until the physician assistant enters into a collaboration agreement, as defined in RCW 18.71A.010. A physician assistant specified in this section shall enter into a collaboration agreement by either the renewal date of their license or July 1, 2025, whichever is later.

(3) A physician assistant may administer anesthesia, except the types of anesthesia described in subsection (4) of this section, without the personal presence of a ((~~supervising~~)) participating physician.

(4) Administration of general anesthesia or intrathecal anesthesia may be performed by a physician assistant with adequate education

and training under direct supervision of a supervising anesthesiologist. Adequate education and training for administration of general or intrathecal anesthesia is defined as:

(a) Completion of an accredited anesthesiologist assistant program; or

(b) Performance of general or intrathecal anesthesia clinical duties pursuant to a valid practice agreement prior to September 22, 2021.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-075 Background check—Temporary practice permit. The commission may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the commission may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

A temporary practice permit that is issued by the commission is valid for six months. A one-time extension of six months may be granted if the national background check report has not been received by the commission.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician assistant during the time period specified on the permit. The temporary practice permit is a license to practice medicine as a physician assistant provided that the temporary practice permit holder has a ((~~practice~~)) collaboration agreement ((~~on file with the commission~~)) with a participating physician.

(3) The commission issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or the application for a full license is denied.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-080 Physician assistant—Requirements for licensure. (1) Except for a physician assistant licensed prior to July 1, 1999, individuals applying to the commission for licensure as a physician assistant must have graduated from an accredited commission approved physician assistant program and successfully passed the NCCPA examination.

(2) An applicant for licensure as a physician assistant must submit to the commission:

(a) A completed application on forms provided by the commission;

(b) Proof the applicant has completed an accredited commission approved physician assistant program and successfully passed the NCCPA examination;

(c) All applicable fees as specified in WAC 246-918-990; and

(d) Other information required by the commission.

(3) The commission will only consider complete applications with all supporting documents for licensure.

(4) ((~~A physician assistant may not begin practicing without first filing a practice agreement with the commission.~~

~~(5)~~)) A physician assistant licensed under chapter 18.57A RCW prior to July 1, 2021, renewing their license on or after July 1, 2021, must do so with the commission. Individuals licensed under chapter 18.57A RCW and renewing their license after July 1, 2021, will follow the renewal schedule set forth in WAC 246-918-171. The commission shall issue a physician assistant license to the individuals described in this subsection without requiring full application or reapplication, but may require additional information from the renewing physician assistant.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-105 Practice limitations due to participating physician disciplinary action. (1) To the extent a supervising, but not a collaborating, physician's prescribing privileges have been limited by any state or federal authority, either involuntarily or by the physician's agreement to such limitation, the physician assistant will be similarly limited in their prescribing privileges, unless otherwise authorized in writing by the commission.

(2) The physician assistant shall notify their supervising physician whenever the physician assistant is the subject of an investigation or disciplinary action by the commission. The commission may notify the supervising physician or other supervising physicians of such matters as appropriate.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-125 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this rule, laser, light, radiofrequency, and plasma devices (hereafter LLRP devices) are medical devices that:

(a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue; and

(b) Are classified by the federal Food and Drug Administration as prescription devices.

(2) Because an LLRP device penetrates and alters human tissue, the use of an LLRP device is the practice of medicine under RCW 18.71.011. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than the purpose set forth in subsection (1) of this section constitutes surgery and is outside the scope of this section.

PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) A physician assistant must be appropriately trained in the physics, safety and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(5) A physician assistant may use an LLRP device so long as it is with the consent of ((~~the supervising~~)) a participating physician((~~, it is in compliance with the practice agreement on file with the commission,~~)) and it is in accordance with standard medical practice.

(6) Prior to authorizing treatment with an LLRP device, a physician assistant must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that a nonphysician may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

PHYSICIAN ASSISTANT DELEGATION OF LLRP TREATMENT

(7) A physician assistant who meets the above requirements may delegate an LLRP device procedure to a properly trained and licensed professional, whose licensure and scope of practice allow the use of an LLRP device provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) Such delegated use falls within the supervised professional's lawful scope of practice;

(c) The LLRP device is not used on the globe of the eye; and

(d) The supervised professional has appropriate training in, at a minimum, application techniques of each LLRP device, cutaneous medicine, indications and contraindications for such procedures, preprocedural and postprocedural care, potential complications and infectious disease control involved with each treatment.

(e) The delegating physician assistant has written office protocol for the supervised professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:

(i) The identity of the individual physician assistant authorized to use the device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised professional must follow when performing procedures delegated pursuant to this rule;

(iii) Selection criteria to screen patients for the appropriateness of treatments;

(iv) Identification of devices and settings to be used for patients who meet selection criteria;

(v) Methods by which the specified device is to be operated and maintained;

(vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(vii) A statement of the activities, decision criteria, and plan the supervised professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician assistant concerning specific decisions made. Documentation shall be recorded after each procedure, and may be performed on the patient's record or medical chart.

(f) The physician assistant is responsible for ensuring that the supervised professional uses the LLRP device only in accordance with the written office protocol, and does not exercise independent medical judgment when using the device.

(g) The physician assistant shall be on the immediate premises during any use of an LLRP device and be able to treat complications, provide consultation, or resolve problems, if indicated.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-126 Nonsurgical medical cosmetic procedures. (1) The purpose of this rule is to establish the duties and responsibilities of a physician assistant who injects medication or substances for cosmetic purposes or uses prescription devices for cosmetic purposes. These procedures can result in complications such as visual impairment, blindness, inflammation, burns, scarring, disfiguration, hypopigmentation and hyperpigmentation. The performance of these procedures is the practice of medicine under RCW 18.71.011.

(2) This section does not apply to:

(a) Surgery;

(b) The use of prescription lasers, noncoherent light, intense pulsed light, radiofrequency, or plasma as applied to the skin; this is covered in WAC 246-919-605 and 246-918-125;

(c) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(d) The use of nonprescription devices; and

(e) Intravenous therapy.

(3) Definitions. These definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes. Laser, light, radiofrequency and plasma devices that are used to topically penetrate the skin are devices used for cosmetic purposes, but are excluded under subsection (2)(b) of this section, and are covered by WAC 246-919-605 and 246-918-125.

(b) "Prescription device" means a device that the federal Food and Drug Administration has designated as a prescription device, and can be sold only to persons with prescriptive authority in the state in which they reside.

PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) ((~~A physician assistant may perform a nonsurgical medical cosmetic procedure only after the commission approves a practice plan permitting the physician assistant to perform such procedures. A~~)) For a physician assistant to perform a nonsurgical medical cosmetic procedure, the physician assistant must ensure that ((~~the supervising~~)) their participating physician is in full compliance with WAC 246-919-606.

(5) A physician assistant may not perform a nonsurgical cosmetic procedure unless their ((~~supervising~~)) participating physician is fully and appropriately trained to perform that same procedure.

(6) Prior to performing a nonsurgical medical cosmetic procedure, a physician assistant must have appropriate training in, at a minimum:

(a) Techniques for each procedure;

(b) Cutaneous medicine;

(c) Indications and contraindications for each procedure;

(d) Preprocedural and postprocedural care;

(e) Recognition and acute management of potential complications that may result from the procedure; and

(f) Infectious disease control involved with each treatment.

(7) The physician assistant must keep a record of their training in the office and available for review upon request by a patient or a representative of the commission.

(8) Prior to performing a nonsurgical medical cosmetic procedure, either the physician assistant or the delegating physician must:

(a) Take a history;

(b) Perform an appropriate physical examination;

(c) Make an appropriate diagnosis;

(d) Recommend appropriate treatment;

(e) Obtain the patient's informed consent including disclosing the credentials of the person who will perform the procedure;

(f) Provide instructions for emergency and follow-up care; and

(g) Prepare an appropriate medical record.

(9) The physician assistant must ensure that there is a written office protocol for performing the nonsurgical medical cosmetic procedure. A written office protocol must include, at a minimum, the following:

(a) A statement of the activities, decision criteria, and plan the physician assistant must follow when performing procedures under this rule;

(b) Selection criteria to screen patients for the appropriateness of treatment;

(c) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(d) A statement of the activities, decision criteria, and plan the physician assistant must follow if performing a procedure delegated by a physician pursuant to WAC 246-919-606, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made.

(10) A physician assistant may not delegate the performance of a nonsurgical medical cosmetic procedure to another individual.

(11) A physician assistant may perform a nonsurgical medical cosmetic procedure that uses a medication or substance that the federal Food and Drug Administration has not approved, or that the federal Food and Drug Administration has not approved for the particular purpose for which it is used, so long as the physician assistant's supervising physician is on-site during the entire procedure.

(12) A physician assistant must ensure that each treatment is documented in the patient's medical record.

(13) A physician assistant may not sell or give a prescription device to an individual who does not possess prescriptive authority in the state in which the individual resides or practices.

(14) A physician assistant must ensure that all equipment used for procedures covered by this section is inspected, calibrated, and certified as safe according to the manufacturer's specifications.

(15) A physician assistant must participate in a quality assurance program required of the supervising or sponsoring physician under WAC 246-919-606.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-130 Physician assistant identification. (1) A physician assistant must clearly identify ((~~himself or herself~~)) themself as a physician assistant and must appropriately display on their person identification as a physician assistant.

(2) A physician assistant must not present ((~~himself or herself~~)) themself in any manner which would tend to mislead the public as to their title.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-175 Retired active license. (1) To obtain a retired active license a physician assistant must comply with chapter 246-12 WAC, excluding WAC 246-12-120 (2)(c) and (d).

(2) ((~~A physician assistant with a retired active license must have a practice agreement on file with the commission in order to practice except when serving as a "covered volunteer emergency worker" as defined in RCW 38.52.180 (5)(a) and engaged in authorized emergency management activities or serving under chapter 70.15 RCW.~~

~~(3)~~)) A physician assistant with a retired active license may not receive compensation for health care services.

((~~(4)~~)) (3) A physician assistant with a retired active license may practice under the following conditions:

(a) In emergent circumstances calling for immediate action; or

(b) Intermittent circumstances on a part-time or full-time nonpermanent basis.

((~~(5)~~)) (4) A retired active license expires every two years on the license holder's birthday. Retired active credential renewal fees are accepted no sooner than ((~~ninety~~)) 90 days prior to the expiration date.

((~~(6)~~)) (5) A physician assistant with a retired active license shall report ((~~one hundred~~)) 100 hours of continuing education at every renewal.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-260 Physician assistant-surgical assistant (PASA)—Use and supervision. The following section applies to the physician assistant-surgical assistant (PASA) who is not eligible to take the NCCPA certification exam.

(1) Responsibility of PASA. The PASA is responsible for performing only those tasks authorized by ((~~the supervising~~)) their participating physician(s) and within the scope of PASA practice described in WAC 246-918-250. The PASA is responsible for ensuring their compliance with the rules regulating PASA practice and failure to comply may constitute grounds for disciplinary action.

(2) Limitations, geographic. No PASA may be used in a place geographically separated from the institution in which the PASA and ((~~the supervising~~)) their participating physician are authorized to practice.

(3) Responsibility of supervising physician(s). Each PASA shall perform those tasks they are authorized to perform only under the supervision and control of the supervising physician(s). Such supervision and control may not be construed to necessarily require the personal presence of ((~~the supervising~~)) their participating physician at the place where the services are rendered. It is the responsibility of ((~~the supervising~~)) their participating physician(s) to ensure that:

(a) The operating surgeon in each case directly supervises and reviews the work of the PASA. Such supervision and review shall include remaining in the surgical suite until the surgical procedure is complete;

(b) The PASA shall wear identification as a "physician assistant-surgical assistant" or "PASA." In all written documents and other communication modalities pertaining to their professional activities as a PASA, the PASA shall clearly denominate their profession as a "physician assistant-surgical assistant" or "PASA";

(c) The PASA is not presented in any manner which would tend to mislead the public as to their title.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-410 Sexual misconduct. (1) The following definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the physician assistant-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to ((~~a number of~~)) several factors, including the nature, extent and context of the professional relationship between the physician assistant and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Physician assistant" means a person licensed to practice as a physician assistant under chapter 18.71A RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) A physician assistant shall not engage in sexual misconduct with a current patient or a key third party. A physician assistant engages in sexual misconduct when ((~~he or she engages~~)) they engage in the following behaviors with a patient or key third party:

(a) Sexual intercourse or genital to genital contact;

(b) Oral to genital contact;

(c) Genital to anal contact or oral to anal contact;

(d) Kissing in a romantic or sexual manner;

(e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;

(f) Examination or touching of genitals without using gloves, except for examinations of an infant or prepubescent child when clinically appropriate;

(g) Not allowing a patient the privacy to dress or undress;

(h) Encouraging the patient to masturbate in the presence of the physician assistant or masturbation by the physician assistant while the patient is present;

(i) Offering to provide practice-related services, such as medications, in exchange for sexual favors;

(j) Soliciting a date;

(k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the physician assistant.

(3) A physician assistant shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the physician assistant:

(a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the physician assistant's personal or sexual needs.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.030.

(5) To determine whether a patient is a current patient or a former patient, the commission will analyze each case individually, and will consider a number of factors including, but not limited to, the following:

(a) Documentation of formal termination;

(b) Transfer of the patient's care to another health care provider;

(c) The length of time that has passed;

(d) The length of time of the professional relationship;

(e) The extent to which the patient has confided personal or private information to the physician assistant;

(f) The nature of the patient's health problem;

(g) The degree of emotional dependence and vulnerability.

(6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(8) A violation of any provision of this rule shall constitute grounds for disciplinary action.

AMENDATORY SECTION (Amending WSR 06-03-028, filed 1/9/06, effective 2/9/06)

WAC 246-918-420 Abuse. (1) A physician assistant commits unprofessional conduct if the physician assistant abuses a patient. A physician assistant abuses a patient when ((~~he or she~~)) they:

(a) Make((~~s~~)) statements regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose;

(b) Remove((~~s~~)) a patient's clothing or gown without consent;

(c) Fail((~~s~~)) to treat an unconscious or deceased patient's body or property respectfully; or

(d) Engage((~~s~~)) in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.

(2) A violation of any provision of this rule shall constitute grounds for disciplinary action.