

WSR 23-17-036

EXPEDITED RULES

DEPARTMENT OF HEALTH

(Podiatric Medical Board)

[Filed August 9, 2023, 10:16 a.m.]

Title of Rule and Other Identifying Information: Substance abuse monitoring program language updates for podiatric physicians. WAC 246-922-400, 246-922-405, 246-922-410, and 246-922-415. The podiatric medical board (board) is proposing amendments to rules regarding health profession monitoring programs to update language changes made by SSB 5496 (chapter 43, Laws of 2022).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5496 updated terminology, definitions, and references for podiatric physicians in RCW 18.22.250. The changes made by these rules reflect the changes in law which will provide consistency. There are no anticipated impacts beyond the updates to terms and definitions. Changes include removing the term "impaired" and replacing "substance abuse" with "substance use disorder."

Reasons Supporting Proposal: The proposed rules make technical amendments to conform existing rule language with the changes made in SSB 5496. Changes include removing the term "impaired" and replacing "substance abuse" with "substance use disorder." The proposed changes will align the rules with currently accepted language for substance use disorders and related monitoring programs.

Statutory Authority for Adoption: RCW 18.22.015; and SSB 5496 (chapter 43, Laws of 2022).

Statute Being Implemented: SSB 5496 (chapter 43, Laws of 2022).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, podiatric medical board, governmental.

Name of Agency Personnel Responsible for Drafting: Tommy Simpson III, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4910; Implementation and Enforcement: U. James Chaney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4910.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed amendments align the rules with the new statutory language.

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 Tommy Simpson III, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4910, fax 360-236-2901, email <https://fortress.wa.gov/doh/policyreview>, podiatric@doh.wa.gov, AND RECEIVED BY October 23, 2023.

August 9, 2023

U. James Chaney
Executive Director
Podiatric Medical Board

OTS-4291.4

AMENDATORY SECTION (Amending WSR 94-14-082, filed 7/5/94, effective 8/5/94)

WAC 246-922-400 Intent of substance abuse monitoring. It is the intent of the legislature that the podiatric medical board seek ways to identify and support the rehabilitation of podiatric physicians and surgeons where practice or competency may be impaired due to ~~((the abuse of or dependency upon drugs or alcohol))~~ an applicable impairing health condition. The legislature intends that these ~~((practitioners))~~ podiatric physicians be treated so that they can return to or continue to practice podiatric medicine and surgery in a way which safeguards the public. The legislature specifically intends that the podiatric medical board establish an alternate program to the traditional administrative proceedings against podiatric physicians and surgeons.

In lieu of disciplinary action under RCW 18.130.160, if the podiatric medical board determines that the unprofessional conduct may be the result of ~~((substance abuse or dependency))~~ an applicable impairing health condition, the board may refer the licensee to a physician health program or a voluntary substance ((abuse)) use disorder monitoring program approved by the board.

AMENDATORY SECTION (Amending WSR 94-14-082, filed 7/5/94, effective 8/5/94)

WAC 246-922-405 Definitions used relative to ~~((substance abuse))~~ monitoring of applicable impairing health conditions. ~~((1))~~ "Approved) The definitions in this section apply throughout WAC 246-922-400 through 246-922-415 unless the context clearly requires otherwise.

(1) "Aftercare" and "continuing care" means that period of time after intensive treatment that provides the podiatric physician and the podiatric physician's family with group, or individualized counseling sessions, discussions with other families, ongoing contact and participation in self-help groups, and ongoing continued support of treatment program staff.

(2) "Contract" is a comprehensive, structured agreement between the recovering podiatric physician and the monitoring program wherein the podiatric physician consents to comply with the monitoring program and the required components for the podiatric physician's recovery activity.

(3) "Drug" means a chemical substance alone or in combination with other drugs, including alcohol.

(4) "Impaired podiatric physician" means a podiatric physician and surgeon who is unable to practice podiatric medicine and surgery

with judgment, skill, competence, or safety due to an impairing health condition.

(5) "Impairing health condition" means a mental or physical health condition that impairs or potentially impairs the podiatric physician's ability to practice with reasonable skill and safety which may include a substance use disorder characterized by the inappropriate use of either alcohol or other drugs, or both to a degree that such use interferes in the functional life of the licensee, as manifested by personal, family, physical, emotional, occupational (professional services), legal, or spiritual problems.

(6) "Monitoring program" means an approved voluntary substance ((abuse/dependency)) use disorder monitoring program((")) or (("approved)) physician health monitoring program(("is a program)) that the board has determined meets the requirements of the law and rules established by the board according to the Washington Administrative Code which enters into a contract with podiatric ((practitioners)) physicians who have ((substance abuse/dependency problems)) an impairing health condition. The ((approved substance abuse)) monitoring program oversees compliance of the podiatric ((practitioner's)) physician's recovery activities as required by the board. ((Substance abuse)) Monitoring programs may provide either evaluation ((and/)) or treatment, or both to participating podiatric ((practitioners)) physicians.

((2) "Impaired podiatric practitioner" means a podiatric physician and surgeon who is unable to practice podiatric medicine and surgery with judgment, skill, competence, or safety due to chemical dependence/substance abuse.

(3) "Contract" is a comprehensive, structured agreement between the recovering podiatric practitioner and the approved monitoring program wherein the podiatric practitioner consents to comply with the monitoring program and the required components for the podiatric practitioner's recovery activity.

(4) "Approved treatment facility" is a facility approved by the bureau of alcohol and substance abuse, department of social and health services.

(5) "Chemical dependence/substance abuse" means an illness/condition which involves the inappropriate use of alcohol and/or other drugs to a degree that such use interferes in the functional life of the licensee, as manifested by personal, family, physical, emotional, occupational (professional services), legal, or spiritual problems.

(6) "Drug" means a chemical substance alone or in combination with other drugs, including alcohol.

(7) "Aftercare/continuing care" means that period of time after intensive treatment that provides the podiatric practitioner and the podiatric practitioner's family with group, or individualized counseling sessions, discussions with other families, ongoing contact and participation in self-help groups, and ongoing continued support of treatment program staff.

(8) "Podiatric practitioner support group" is a group of podiatric practitioners and/or other health care professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced facilitator in which participants may safely discuss drug diversion, licensure issues, return to work, and other professional issues related to recovery.

(9) "Twelve-step groups" are groups such as Alcoholics Anonymous, Narcotics Anonymous, and related organizations based on a philosophy

of anonymity, belief in a power greater than oneself, peer group association, and self-help.

(10) "Random drug screens" are laboratory tests to detect the presence of drugs of abuse or dependency in body fluids which are performed at irregular intervals not known in advance by the person to be tested. The collection of the body fluids must be observed by a treatment or health care professional or other board or monitoring program-approved observer.

(11) "Recovering" means that a chemically dependent podiatric practitioner is in compliance with a treatment plan of rehabilitation in accordance with criteria established by an approved treatment facility and an approved substance abuse monitoring program.

(12) "Rehabilitation" means the process of restoring a chemically dependent podiatric practitioner to a level of professional performance consistent with public health and safety.

(13) "Reinstatement" means the process whereby a recovering podiatric practitioner is permitted to resume the practice of podiatric medicine and surgery.)

(7) "Podiatric physician support group" is a group of either podiatric physicians or other health care professionals, or both meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced facilitator in which participants may safely discuss drug diversion, licensure issues, return to work, and other professional issues related to recovery.

(8) "Random drug screens" are laboratory tests to detect the presence of drugs of abuse or dependency in body fluids which are performed at irregular intervals not known in advance by the person to be tested. The collection of the body fluids must be observed by a treatment or health care professional or other board or monitoring program-approved observer.

(9) "Recovering" means that a podiatric physician with an impairing health condition is in compliance with a treatment plan of rehabilitation in accordance with criteria established by the monitoring program.

(10) "Rehabilitation" means the process of restoring a podiatric physician with an impairing health condition to a level of professional performance consistent with public health and safety.

(11) "Reinstatement" means the process whereby a recovering podiatric physician is permitted to resume the practice of podiatric medicine and surgery.

(12) "Treatment facility" means a facility recognized as such according to RCW 18.130.175(1).

(13) "Twelve-step groups" are groups such as Alcoholics Anonymous, Narcotics Anonymous, and related organizations based on a philosophy of anonymity, belief in a power greater than oneself, peer group association, and self-help.

AMENDATORY SECTION (Amending WSR 94-14-082, filed 7/5/94, effective 8/5/94)

WAC 246-922-410 Approval of ((substance abuse)) monitoring programs. The board ((will)) shall approve the monitoring program((-(s)- which will participate in)) to facilitate the recovery of podiatric ((practitioners)) physicians. The board ((will)) shall enter into a

contract with the ~~((approved substance abuse))~~ monitoring program ~~((s))~~.

(1) ~~((An approved))~~ A monitoring program:

(a) May provide either evaluations ~~((and/))~~ or treatment, or both to the participating podiatric ~~((practitioners))~~ physicians;

(b) Shall enter into a contract with the podiatric ~~((practitioner))~~ physician and the board to oversee the podiatric ~~((practitioner's))~~ physician's compliance with the requirement of the program;

(c) Shall maintain records on participants;

(d) Shall be responsible for providing feedback to the podiatric ~~((practitioner))~~ physician as to whether treatment progress is acceptable;

(e) Shall report to the board any podiatric ~~((practitioner))~~ physician who fails to comply with the requirements of the monitoring program;

(f) Shall provide the board with a statistical report and financial statement on the program, including progress of participants, at least annually, or more frequently as requested by the board;

(g) Shall provide for the board a complete biennial audited financial statement;

(h) Shall enter into a written contract with the board and submit monthly billing statements supported by documentation ~~((+))~~.

(2) ~~((Approved))~~ Monitoring program staff must have the qualifications and knowledge of ~~((both substance abuse/dependency))~~ impairing health conditions and the practice of podiatric medicine and surgery as defined in chapter 18.22 RCW to be able to evaluate:

(a) Drug screening laboratories;

(b) Laboratory results;

(c) Providers of ~~((substance abuse))~~ treatment for impairing health conditions, both individual and facilities;

(d) Podiatric ~~((practitioner))~~ physician support groups;

(e) Podiatric ~~((practitioners'))~~ physicians' work environment;

and (f) The ability of the podiatric ~~((practitioners))~~ physicians to practice with reasonable skill and safety.

(3) The program staff of the ~~((approved))~~ monitoring program may evaluate and recommend to the board, on an individual basis, whether a podiatric ~~((practitioner))~~ physician will be prohibited from engaging in the practice of podiatric medicine and surgery for a period of time and restrictions, if any, on the podiatric ~~((practitioner's))~~ physician's access to controlled substances in the workplace.

(4) The board shall provide the ~~((approved))~~ monitoring program ~~((board))~~ orders and agreements requiring any treatment, monitoring, ~~((and/))~~ or limitations on the practice of podiatric medicine and surgery for those participating in the program.

AMENDATORY SECTION (Amending WSR 94-14-082, filed 7/5/94, effective 8/5/94)

WAC 246-922-415 Participation in ~~((approved substance abuse))~~ monitoring programs. (1) The podiatric ~~((practitioner))~~ physician who has been investigated by the board may accept board referral into the ~~((approved substance abuse))~~ monitoring program. Referral may occur in lieu of disciplinary action under RCW 18.130.160 or as a result of a

board order as final disposition of a disciplinary action. The podiatric (~~practitioner~~) physician:

(a) Shall undergo a complete physical and psychosocial evaluation before entering the approved monitoring program. This evaluation is to be performed by a health care professional(s) with expertise in (~~chemical dependency~~) impairing health conditions;

(b) Shall enter into a contract with the (~~approved substance abuse~~) monitoring program to comply with the requirements of the program which (~~shall~~) may include, but not be limited to (~~The podiatric practitioner~~):

(i) (~~Shall undergo intensive substance abuse~~) Treatment of an impairing health condition by an approved treatment facility;

(ii) (~~Shall agree~~) An agreement to abstain from the use of all mind-altering substances, including alcohol, except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101. (~~Said~~) The prescriber shall notify the monitoring program of all drugs prescribed within (~~fourteen~~) 14 days of the date care was provided;

(iii) (~~Must complete the~~) Completion of any prescribed after-care (~~and~~) and continuing care program of the (~~intensive~~) treatment facility. This may include either individual (~~and~~) or group psychotherapy, or both;

(iv) (~~Must cause~~) Directing the treatment counselor(s) and authorized prescriber(s) to provide reports to the appropriate monitoring program at specified intervals. Reports shall include treatment prognosis, goals, drugs prescribed, etc;

(v) (~~Shall submit~~) Submitting to random drug screening, with observed specimen collection, as specified by the (~~approved~~) monitoring program;

(vi) (~~Shall attend~~) Attending podiatric (~~practitioner~~) physician support groups facilitated by either health care professionals (~~and~~) or twelve-step group meetings, or both as specified by the contract;

(vii) (~~Shall comply~~) Complying with specified employment conditions and restrictions as defined by the contract;

(viii) (~~Shall sign~~) Signing a waiver allowing the (~~approved~~) monitoring program to release information to the board if the podiatric (~~practitioner~~) physician does not comply with the requirements of the contract;

(c) Is responsible for paying the costs of the physical and psychosocial evaluation, (~~substance abuse/dependency~~) treatment of the impairing health condition, random urine screens, and other personal expenses incurred in compliance with the contract;

(d) May be subject to disciplinary action under RCW 18.130.160 and 18.130.180 if the podiatric (~~practitioner~~) physician does not consent to be referred to the (~~approved~~) monitoring program, does not comply with specified practice restrictions, or does not successfully complete the program.

(2) A podiatric (~~practitioner~~) physician who is not being investigated by the board or subject to current disciplinary action (~~r~~) or not currently being monitored by the board for (~~substance abuse or dependency~~) an impairing health condition, may voluntarily participate in the (~~approved substance abuse~~) monitoring program without being referred by the board. Such voluntary participants shall not be subject to disciplinary action under RCW 18.130.160 and 18.130.180 for their (~~substance abuse/dependency~~) impairing health condition, and shall not have their participation made known to the board if they

continue to satisfactorily meet the requirements of the ~~((approved))~~ monitoring program. The podiatric ~~((practitioner))~~ physician:

(a) Shall undergo a complete physical and psychosocial evaluation before entering the ~~((approved))~~ monitoring program. This evaluation will be performed by a health care professional with expertise in ~~((chemical-dependency))~~ impairing health conditions;

(b) Shall enter into a contract with the ~~((approved-substance-abuse))~~ monitoring program to comply with the requirements of the program which ~~((shall))~~ may include, but not be limited to: The podiatric ~~((practitioner))~~ physician:

(i) ~~((Shall-undergo-intensive-substance-abuse))~~ Treatment for an impairing health condition by an approved treatment facility;

(ii) ~~((Shall-agree))~~ Agreeing to abstain from the use of all mind-altering substances, including alcohol, except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101. Said prescriber shall notify the monitoring program of all drugs prescribed within ~~((fourteen))~~ 14 days of the date care was provided;

(iii) ~~((Must-complete-the))~~ Completion of any prescribed after-care~~((/))~~ and continuing care program of the ~~((intensive))~~ treatment facility. This may include either individual ~~((and/))~~ or group therapy, or both;

(iv) ~~((Must-cause))~~ Directing the treatment counselor(s) and authorized prescriber(s) to provide reports to the approved monitoring program at specified intervals. Reports shall include treatment prognosis, goals, drugs prescribed, etc;

(v) ~~((Shall-submit))~~ Submitting to random drug screening, with observed specimen collection, as specified by the approved monitoring program;

(vi) ~~((Shall-attend))~~ Attending podiatric ~~((practitioner))~~ physician support groups facilitated by either a health care professional ~~((and/))~~ or twelve-step group meetings, or both as specified by the contract;

(vii) ~~((Shall-comply))~~ Complying with specified employment conditions and restrictions as defined by the contract;

(viii) ~~((Shall-sign))~~ Signing a waiver allowing the approved monitoring program to release information to the board if the podiatric ~~((practitioner))~~ physician does not comply with the requirements of the contract. ~~((The))~~ A podiatric ~~((practitioner))~~ physician may be subject to disciplinary action under RCW 18.130.160 and 18.130.180 for noncompliance with the contract or if ~~((he/she-does))~~ the program is not successfully ~~((complete-the-program))~~ completed;

(c) Is responsible for paying the costs of the physical and psychosocial evaluation, ~~((substance-abuse/dependency))~~ treatment of the impairing health condition, random urine screens, and other personal expenses incurred in compliance with the contract.