

## WSR 24-05-036

## EXPEDITED RULES

## DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed February 14, 2024, 9:40 a.m.]

Title of Rule and Other Identifying Information: Substance abuse monitoring program for osteopathic physicians. The board of osteopathic medicine and surgery (board) is proposing amendments to WAC 246-853-290, 246-853-300, 246-853-310, and 246-853-320 to update the rules regarding health profession monitoring programs. The proposed changes reflect updated language changes made by SSB 5496 (chapter 43, Laws of 2022). In partnership with the secretary of health, technical amendments are also being proposed to WAC 246-853-990 to reflect changes to the updated rules and statute.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5496 updated terminology, definitions, and references for osteopathic physicians in RCW 18.57.005. SSB 5496 also made clarifications to confidentiality protections in RCW 18.130.070 for health professional monitoring programs.

The proposed rules make technical amendments to conform existing rule language with the changes made in SSB 5496. Changes include replacing "substance abuse" with "substance use disorder."

Reasons Supporting Proposal: The proposed amendments will align the rules with currently accepted language for substance use disorders and related monitoring programs.

Statutory Authority for Adoption: RCW 18.57.005; 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, board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McElhiney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4766; Implementation and Enforcement: James Chaney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2831.

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.

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 Becky McElhiney, Department of Health, Board of Osteopathic Medicine and Surgery, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2901, email <https://fortress.wa.gov/doh/policyreview>, [osteopathic@doh.wa.gov](mailto:osteopathic@doh.wa.gov), AND RECEIVED BY April 22, 2024.

February 13, 2024

U. James Chaney  
Executive Director  
Board of Osteopathic Medicine and Surgery  
and Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

**OTS-4302.5**

AMENDATORY SECTION (Amending WSR 23-19-059, filed 9/15/23, effective 10/16/23)

**WAC 246-853-290 Intent of substance use disorder monitoring.** It is the intent of the legislature that the board of osteopathic medicine and surgery seek ways to identify and support the rehabilitation of osteopathic physicians and surgeons where practice or competency may be impaired due to ~~((the abuse of drugs or alcohol))~~ an applicable impairing health condition. The legislature intends that ~~((these practitioners))~~ osteopathic physicians be treated so that they can return to or continue to practice osteopathic medicine and surgery in a way which safeguards the public. The legislature specifically intends that the board of osteopathic medicine and surgery establish an alternate program to the traditional administrative proceedings against osteopathic physicians and surgeons.

In lieu of disciplinary action under RCW 18.130.160 and if the board of osteopathic medicine and surgery determines that the unprofessional conduct may be the result of ~~((substance abuse))~~ an applicable impairing health condition, the board may refer the registrant/licensee to a voluntary substance ~~((abuse))~~ use disorder monitoring program approved by the board.

AMENDATORY SECTION (Amending WSR 23-19-059, filed 9/15/23, effective 10/16/23)

**WAC 246-853-300 Definitions used relative to ~~((substance abuse))~~ monitoring of an applicable impairing health condition.** ~~((1))~~ "Approved substance abuse monitoring program" or "approved monitoring program" is a program 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 osteopathic practitioners who have substance abuse problems. The approved substance abuse monitoring program oversees compliance of the osteopathic practitioner's recovery activities as required by the board. Substance abuse monitoring programs may provide evaluation and/or treatment to participating osteopathic practitioners.

~~((2))~~ "Impaired osteopathic practitioner" means an osteopathic physician and surgeon who is unable to practice osteopathic medicine and surgery with judgment, skill, competence, or safety due to chemical dependence, mental illness, the aging process, loss of motor skills, or any other mental or physical condition.

~~(3-))~~ The definitions in this section apply throughout WAC 246-853-290 through 243-853-320 and 243-853-990 unless the context clearly requires otherwise.

(1) "Aftercare" means that period of time after intensive treatment that provides the osteopathic physician and the osteopathic 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 osteopathic ((~~practitioner~~)) physician and the ((~~ap~~proved)) monitoring program wherein the osteopathic ((~~practitioner~~)) physician consents to comply with the monitoring program and the required components for the osteopathic ((~~practitioner's~~)) physician'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 as specified in RCW 18.130.175.~~

~~(5) "Chemical dependence/substance abuse" means a chronic progressive illness which involves)~~ (3) "Drug" means a chemical substance alone or in combination, including alcohol.

(4) "Impairing health condition" means a mental or physical health condition that impairs or potentially impairs the osteopathic 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 ((~~and/or~~)) or other drugs, or both to a degree that it interferes in the functional life of the ((~~registrant/~~licensee)) licensee, as manifested by health, family, job (professional services), legal, financial, or emotional problems.

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

~~(7) "Aftercare" means that period of time after intensive treatment that provides the osteopathic practitioner and the osteopathic 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-))~~ (5) "Monitoring program" means an approved voluntary substance use disorder monitoring program or physician health monitoring 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 osteopathic physicians who have an impairing health condition. The substance monitoring program oversees compliance of the osteopathic physician's recovery activities as required by the board. Monitoring programs may provide either evaluation or treatment, or both to participating osteopathic physicians.

(6) "((~~Practitioner~~)) Osteopathic physician support group" is a group of either osteopathic ((~~practitioners and/or~~)) 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.

~~((9) "Twelve-step groups" are groups such as Alcoholics Anonymous, Narcotics Anonymous, and similar organizations.~~

~~(10))~~ (7) "Random drug screens" are laboratory tests to detect the presence of drugs of ~~((abuse))~~ use disorder 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))~~ (8) "Recovering" means that ~~((a chemically dependent))~~ an osteopathic ((practitioner)) physician with an impairing health condition is in compliance with a treatment plan of rehabilitation in accordance with criteria established by ~~((an approved treatment facility and an approved substance abuse))~~ the monitoring program.

~~((12))~~ (9) "Rehabilitation" means the process of restoring ~~((a chemically dependent))~~ an osteopathic ((practitioner)) physician to a level of professional performance consistent with public health and safety.

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

(10) "Treatment facility" is a facility approved by the bureau of alcohol and substance abuse, department of social and health services as specified in RCW 18.130.175.

(11) "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 91-10-043, filed 4/25/91, effective 5/26/91)

**WAC 246-853-310 Approval of ~~((substance abuse))~~ monitoring programs.** The board will approve the monitoring program~~((s) which will participate in))~~ to facilitate the recovery of osteopathic ~~((practitioners))~~ physicians. The board will enter into a contract with the ~~((approved substance abuse))~~ monitoring program~~((s))~~ on an annual basis.

(1) ~~((An approved))~~ A monitoring program may provide evaluations ~~((and/or))~~ or treatment, or both to the participating osteopathic ~~((practitioners))~~ physicians.

(2) ~~((An approved))~~ A monitoring program staff must have the qualifications and knowledge of both ~~((substance abuse))~~ impairing health conditions and the practice of osteopathic medicine and surgery as defined in chapter 18.57 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) Osteopathic ~~((practitioner))~~ physician support groups;
- (e) Osteopathic ~~((practitioners'))~~ physicians' work environment;

and

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

(3) ~~((An approved))~~ A monitoring program will enter into a contract with the osteopathic ~~((practitioner))~~ physician and the board to oversee the osteopathic ~~((practitioner's))~~ physician's compliance with the requirement of the program.

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

(5) ~~((An approved))~~ A monitoring program shall maintain records on participants.

(6) ~~((An approved))~~ A monitoring program will be responsible for providing feedback to the osteopathic ~~((practitioner))~~ physician as to whether treatment progress is acceptable.

(7) ~~((An approved))~~ A monitoring program shall report to the board any osteopathic ~~((practitioner))~~ physician who fails to comply with the requirements of the monitoring program.

(8) ~~((An approved))~~ A monitoring program shall provide the board with a statistical report on the program, including progress of participants, at least annually, or more frequently as requested by the board.

(9) The board shall provide the ~~((approved))~~ monitoring program guidelines on treatment, monitoring, ~~((and/or))~~ or limitations on the practice of osteopathic medicine and surgery for those participating in the program.

(10) ~~((An approved))~~ A monitoring program shall provide for the board a complete financial breakdown of cost for each individual osteopathic ~~((practitioner))~~ physician participant by usage at an interval determined by the board in the annual contract.

(11) ~~((An approved))~~ A monitoring program shall provide for the board a complete annual audited financial statement.

(12) ~~((An approved))~~ A monitoring program shall enter into a written contract with the board and submit monthly billing statements supported by documentation.

AMENDATORY SECTION (Amending WSR 91-10-043, filed 4/25/91, effective 5/26/91)

**WAC 246-853-320 Participation in ~~((approved))~~ substance ~~((abuse))~~ use disorder monitoring program.** (1) The osteopathic ~~((practitioner))~~ physician who has been investigated by the board may accept board referral into the ~~((approved substance abuse))~~ monitoring program. This may occur as a result of disciplinary action.

(a) The osteopathic ~~((practitioner))~~ physician 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. The person(s) performing the evaluation shall not be the provider of the recommended treatment.

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

(i) The osteopathic ~~((practitioner))~~ physician will undergo ~~((intensive substance abuse))~~ treatment ~~((in an approved))~~ of an impairing health condition by a treatment facility.

(ii) ~~((The osteopathic practitioner shall agree))~~ An agreement to abstain from the use of all mind-altering substances, including alco-

hol, 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) ~~((The osteopathic practitioner must complete the))~~ Completion of any prescribed aftercare program of the ~~((intensive))~~ treatment facility. This may include individual ~~((and/or))~~ or group psychotherapy, or both.

(iv) ~~((The osteopathic practitioner 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) ~~((The osteopathic practitioner shall submit))~~ Submitting to random drug screening, with observed specimen collection, as specified by the ~~((approved))~~ monitoring program.

(vi) ~~((The osteopathic practitioner shall attend osteopathic practitioner))~~ Attending osteopathic physician support groups facilitated by health care professionals ~~((and/or))~~ or twelve-step group meetings, or both as specified by the contract.

(vii) ~~((The osteopathic practitioner shall comply))~~ Complying with specified employment conditions and restrictions as defined by the contract.

(viii) ~~((The osteopathic practitioner shall sign))~~ Signing a waiver allowing the ~~((approved))~~ monitoring program to release information to the board if the osteopathic ~~((practitioner))~~ physician does not comply with the requirements of the contract.

(c) The osteopathic ~~((practitioner))~~ physician is responsible for paying the costs of the physical and psychosocial evaluation, ~~((substance abuse))~~ treatment of the impairing health condition, random urine screens, and other personal expenses incurred in compliance with the contract.

(d) The osteopathic ~~((practitioner))~~ physician may be subject to disciplinary action under RCW 18.130.160 and 18.130.180 if the osteopathic ~~((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) An osteopathic ~~((practitioner))~~ physician who is not being investigated by the board or subject to current disciplinary action, or not currently being monitored by the board for ~~((substance abuse))~~ 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))~~ 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:

(a) The osteopathic ~~((practitioner))~~ physician 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. The person(s) performing the evaluation shall not also be the provider of the recommended treatment.

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

- (i) ~~((The osteopathic practitioner will undergo intensive substance abuse treatment in an approved))~~ Treatment for an impairing health condition by a treatment facility.
- (ii) ~~((The osteopathic practitioner will 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) ~~((The osteopathic practitioner must complete the))~~ Completion of any prescribed aftercare program of the ~~((intensive))~~ treatment facility. This may include individual ~~((and/or))~~ or group psychotherapy, or both.
- (iv) ~~((The osteopathic practitioner 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) ~~((The osteopathic practitioner shall submit))~~ Submitting to random drug screening, with observed specimen collection, as specified by the ~~((approved))~~ monitoring program.
- (vi) ~~((The osteopathic practitioner will attend practitioner))~~ Attending osteopathic physician support groups facilitated by a health care professional ~~((and/or))~~ or twelve-step group meetings, or both as specified by the individual's contract.
- (vii) ~~((The osteopathic practitioner will comply))~~ Complying with specified employment conditions and restrictions as defined by the contract.
- (viii) ~~((The osteopathic practitioner shall sign))~~ Signing a waiver allowing the ~~((approved))~~ monitoring program to release information to the board if the osteopathic ~~((practitioner))~~ physician does not comply with the requirements of the contract. The osteopathic ~~((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))~~ they do not successfully complete the program.
- (c) The osteopathic ~~((practitioner))~~ physician is responsible for paying the costs of the physical and psychosocial evaluation, ~~((substance abuse))~~ treatment of impairing health condition, random urine screens, and other personal expenses incurred in compliance with the contract.

AMENDATORY SECTION (Amending WSR 23-19-059, filed 9/15/23, effective 10/16/23)

**WAC 246-853-990 Osteopathic fees and renewal cycle.** (1) Licenses must be renewed every year on the ~~((practitioner's))~~ physician's birthday as provided in chapter 246-12 WAC, except postgraduate training limited licenses.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program dates.

(3) The following nonrefundable fees will be charged for osteopathic physicians:

Title of Fee	Fee
<b>Original application</b>	
Endorsement application	\$375.00

<b>Title of Fee</b>	<b>Fee</b>
UW online access fee (HEAL-WA)	16.00
<b>Active license renewal</b>	
Renewal	375.00
Late renewal penalty	190.00
Expired license reissuance	250.00
UW online access fee (HEAL-WA)	16.00
Substance (( <del>abuse</del> ) <u>use disorder</u> ) monitoring surcharge	50.00
<b>Inactive license renewal</b>	
Renewal	310.00
Expired license reissuance	225.00
Late renewal penalty	155.00
UW online access fee (HEAL-WA)	16.00
Substance (( <del>abuse</del> ) <u>use disorder</u> ) monitoring surcharge	50.00
<b>Retired active license renewal</b>	
Renewal	195.00
Late renewal penalty	100.00
UW online access fee (HEAL-WA)	16.00
Substance (( <del>abuse</del> ) <u>use disorder</u> ) monitoring surcharge	50.00
<b>Endorsement/state exam application</b>	500.00
<b>Reexam</b>	100.00
<b>Verification of license</b>	50.00
<b>Limited license</b>	
Application	285.00
Renewal	265.00
UW online access fee (HEAL-WA)	16.00
Substance (( <del>abuse</del> ) <u>use disorder</u> ) monitoring surcharge	50.00
<b>Temporary permit application</b>	70.00
<b>Duplicate certificate</b>	20.00