



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Health- Board of Osteopathic Medicine and Surgery

- Preproposal Statement of Inquiry was filed as WSR 13-19-083 ; or
- Expedited Rule Making--Proposed notice was filed as WSR _ ; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: (Describe Subject)

Chapter 246-853 WAC (Osteopathic Medicine and Surgery). Proposed amendment or repeal of rules relating to: (1) the examination for licensure as an osteopathic physician; (2) delegation of the use of laser, light, radiofrequency, and plasma (LLRP) devices as applied to the skin; and (3) general housekeeping. Also proposing new sections establishing a retired active status credential and imposing re-entry requirements for licensed osteopathic physicians who have been out of practice for a certain period of time.

Hearing location(s): Oxford Suites
1701 E. Yakima Ave.
Yakima, WA 98901
Town Meeting Rooms 1 & 2

Date: 5/15/15 Time: 9:30 a.m.

Submit written comments to:

Name: Brett Cain
Address: PO Box 47852
Olympia WA 98504-7852
e-mail: <http://www3.doh.wa.gov/policyreview/>
fax (360) 236-2901 by (date) 05/13/2015

Assistance for persons with disabilities: Contact

Cece Zenker at (360) 236-4633 by 05/01/2015

TTY (800) 833-6388 or () 711

Date of intended adoption: 05/15/2015

(Note: This is NOT the effective date)

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

The proposed rules will update the list of examinations available for licensure as an osteopathic physician, reduce barriers for delegation of LLRP devices, establish requirements for a retired active status credential and requirements for re-entry to practice; as well as make general housekeeping changes. The fees for the retired active license are being adopted separately by the department.

Reasons supporting proposal:

The proposed rules establish standards to ensure that physicians returning to practice meet certain requirements to ensure patient safety. The proposed rules also set requirements to allow physicians who would like to work on a limited or emergent basis to obtain a credential for a reduced fee, and will allow osteopathic physicians to delegate LLRP devices to other qualified professionals not licensed by the Department of Health. Finally, the proposed rules make general housekeeping changes to ensure the chapter is current, relevant, and aligns with industry standards.

Statutory authority for adoption:

RCW 18.57.005, RCW 18.57A.020, and RCW 18.130.250

Statute being implemented:

RCW 18.57.005 and RCW 18.130.250

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 31, 2015

TIME: 12:36 PM

WSR 15-08-086

DATE 03/31/2015

NAME (type or print)

Catherine Hunter, DO

SIGNATURE

TITLE

Chair

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization)
Surgery

Department of Health, Board of Osteopathic Medicine and

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Brett Cain	111 Israel Rd SE Tumwater WA 98504	(360) 236-4766
Implementation.... Brett Cain	111 Israel Rd SE Tumwater WA 98504	(360) 236-4766
Enforcement..... Brett Cain	111 Israel Rd SE Tumwater WA 98504	(360) 236-4766

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone
fax
e-mail

No. Explain why no statement was prepared.

A small business economic impact statement was not prepared. The proposed rule would not impose more than minor costs on businesses.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Brett Cain

Address: PO Box 47852
Olympia WA 98504-7852

phone (360) 236-4766
fax (360) 236-2901
e-mail brett.cain@doh.wa.gov

No: Please explain:

AMENDATORY SECTION (Amending WSR 93-24-028, filed 11/22/93, effective 12/23/93)

WAC 246-853-020 Osteopathic medicine and surgery examination.

~~(1) An applicant((s)) for licensure as an osteopathic physician((s)) must successfully pass ((the Federation of State Licensing Board (FLEX) with a minimum score of seventy five on each component of the FLEX I and II examination or after December 1993 satisfactorily pass the United States Medical Licensing Examination (USMLE) with a minimum score as established by the coordinating agencies, Federation of State Medical Boards of the United States and the National Board of Medical Examiners; and obtain at least a seventy five percent overall average on a board administered examination on osteopathic principles and practices.~~

~~The board shall waive the examination required under RCW 18.57.080 if the applicant has passed the FLEX examination prior to June 1985 with a FLEX weighted average of seventy five percent, or the FLEX I and FLEX II examinations with a minimum score of seventy five on each component and satisfactorily passes the board administered examination on the principles and practices of osteopathic medicine and surgery.~~

~~An applicant who has passed all parts of the examination given by the National Board of Osteopathic Examiners may be granted a license without further examination.))):~~

~~(a) Parts I, II, and III of the Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA) or Parts I, II, and III of the exam administered by the National Board of Osteopathic Medical Examiners (NBOME); or~~

~~(b) The Washington Osteopathic Principles and Practices (OP&P) Examination with a minimum score of seventy-five percent in each section; the Comprehensive Osteopathic Variable-Purpose Examination (COMVEX) administered by NBOME with a minimum passing score as established by NBOME; or other state administered OP&P exam approved by the board.~~

~~(2) In addition to the exams identified in subsection (1)(b) of this section, the applicant must also pass at least one of the following:~~

~~(a) The Federation of State Licensing Board (FLEX) Examination taken prior to June 1985 passed with a FLEX weighted average of a minimum seventy-five percent; or~~

~~(b) The FLEX I and FLEX II Examination with a minimum score of seventy-five on each component; or~~

~~(c) The United States Medical Licensing Examination (USMLE) Steps I, II, and III after December 1993 with a minimum score as established by the Federation of State Medical Boards and the National Board of Medical Examiners.~~

AMENDATORY SECTION (Amending WSR 91-20-120, filed 9/30/91, effective 10/31/91)

WAC 246-853-130 General provisions for mandatory reporting rules. (1) "Unprofessional conduct" shall mean the conduct described in RCW 18.130.180.

(2) "Hospital" shall mean any health care institution licensed pursuant to chapter 70.41 RCW.

(3) "Nursing home" shall mean any health care institution regulated under chapter 18.51 RCW.

(4) "Board" shall mean the Washington state board of osteopathic medicine and surgery(~~(, whose address is:~~

~~Department of Health
Professional Licensing Services
1300 Quince St., MS: EY 23
Olympia, WA 98504))~~.

(5) "Physician" shall mean an osteopathic physician and surgeon licensed pursuant to chapter 18.57 RCW.

(6) "Physician's assistant" shall mean an osteopathic physician's assistant approved pursuant to chapter 18.57A RCW.

(7) "Mentally or physically impaired practitioner" shall mean an osteopathic physician and surgeon or osteopathic physician's assistant who has been determined by a court to be mentally incompetent or mentally ill or who is unable to practice medicine with reasonable skill and safety to patients by reason of any mental or physical condition.

NEW SECTION

WAC 246-853-235 Retired active license. (1) To obtain a retired active license an osteopathic physician must comply with chapter 246-12 WAC, Part 5, excluding WAC 246-12-120 (2)(c) and (d).

(2) An osteopathic physician with a retired active license may not receive compensation for health care services.

(3) An osteopathic physician 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 non-permanent basis.

(4) A retired active license expires each year on the license holder's birthday. Retired active credential renewal fees are accepted no sooner than ninety days prior to the expiration date.

(5) An osteopathic physician with a retired active license shall complete and report one hundred fifty hours of continuing medical education every three years.

NEW SECTION

WAC 246-853-245 Reentry to practice requirements. An osteopathic physician who has not been in active practice for a period of at least five years in any jurisdiction in the United States must:

(1) Successfully pass a board approved competency evaluation;

(2) Successfully pass a board approved exam;

(3) Successfully complete a board approved retraining program arranged by the osteopathic physician; or

(4) Successfully complete a board approved reentry to practice or monitoring program.

WAC 246-853-630 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this section, laser, light, radiofrequency, and plasma (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 prescriptive devices.

(2) Because an LLRP device is used to treat disease, injuries, deformities, and other physical conditions in human beings, the use of an LLRP device is the practice of osteopathic medicine under RCW 18.57.001. 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 those in subsection (1) of this section constitutes surgery and is outside the scope of this section.

OSTEOPATHIC PHYSICIAN RESPONSIBILITIES

(4) An osteopathic physician 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) An osteopathic physician must use an LLRP device in accordance with standard medical practice.

(6) Prior to authorizing treatment with an LLRP device, an osteopathic physician 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 ((~~an allied health care professional~~)) a nonphysician may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

(7) Regardless of who performs LLRP device treatment, the osteopathic physician is ultimately responsible for the safety of the patient.

(8) Regardless of who performs LLRP device treatment, the osteopathic physician is responsible for assuring that each treatment is documented in the patient's medical record.

(9) The osteopathic physician must ensure that there is a quality assurance program for the facility at which LLRP device procedures are performed regarding the selection and treatment of patients. An appropriate quality assurance program shall include the following:

(a) A mechanism to identify complications and problematic effects of treatment and to determine their cause;

(b) A mechanism to review the adherence of supervised ((~~allied health care~~)) professionals to written protocols;

(c) A mechanism to monitor the quality of treatments;

(d) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols required by subsection (10)(d) of this section and osteopathic physician supervising practices; and

(e) Ongoing training to maintain and improve the quality of treatment and performance of the treating (~~allied health care~~) professionals.

OSTEOPATHIC PHYSICIAN DELEGATION OF LLRP TREATMENT

(10) An osteopathic physician who meets the requirements in subsections (1) through (9) of this section may delegate an LLRP device procedure to a properly trained (~~allied health care professional licensed under the authority of RCW 18.130.040~~) and licensed professional, whose licensure and scope of practice allows the use of a prescriptive LLRP medical 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 osteopathic medicine;

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

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

(d) An osteopathic physician has a written office protocol for the supervised (~~allied health care~~) 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 osteopathic physician authorized to use the LLRP device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised (~~allied health care~~) 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 (~~allied health care~~) professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing osteopathic physician concerning specific decisions made;

(e) The supervised (~~allied health care~~) professional has appropriate training including, but not limited to:

(i) Application techniques of each LLRP device;

(ii) Cutaneous medicine;

(iii) Indications and contraindications for such procedures;

(iv) Preprocedural and postprocedural care;

(v) Potential complications; and

(vi) Infectious disease control involved with each treatment;

(f) The delegating osteopathic physician ensures that the supervised (~~allied health care~~) 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 delegating osteopathic physician shall be on the immediate premises during the patient's initial treatment and be able to treat complications, provide consultation, or resolve problems, if indicated. The supervised (~~allied health care~~) professional may com-

plete the initial treatment if the physician is called away to attend to an emergency;

(h) Existing patients with an established treatment plan may continue to receive care during temporary absences of the delegating osteopathic physician provided there is a local back-up physician, licensed under chapter 18.57 or 18.71 RCW, who satisfies the requirements of subsection (4) of this section. The local back-up physician must agree in writing to treat complications, provide consultation or resolve problems if medically indicated. In case of an emergency the delegating osteopathic physician or a back-up physician shall be reachable by phone and able to see the patient within sixty minutes.

(11) The use of, or the delegation of the use of, an LLRP device by an osteopathic physician assistant is covered by WAC 246-854-220.

(12) This section only applies to the use of LLRP devices by osteopathic physicians and osteopathic physician assistants.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-853-260 USMLE examination application deadline.