

Significant Legislative Rule Analysis
New WACs 246-853-235 and -240
Rules Establishing Requirements for Re-entry to Practice and for Obtaining
a Retired Active License
Amendments to WAC 246-853-630 to Allow Osteopathic Physicians to
Delegate LLRP Equipment to Individuals Not Licensed by the Department
February 2015

Describe the proposed rule, including a brief history of the issue, and explain why the proposed rule is needed.

The Board of Osteopathic Medicine and Surgery (board) is proposing a rules package that has several components. Two new sections are being proposed. One new section establishes a process for an osteopathic physician who has not practiced for five years to demonstrate that they have the skills and knowledge to safely practice by meeting certain requirements. The other proposed new section establishes requirements to allow an osteopathic physician to work without compensation on a limited or emergent basis to obtain a retired active license for a reduced fee.

In addition to the proposed new sections, the board is proposing amendments to allow an osteopathic physician to delegate the use of light, laser, radiofrequency and plasma (LLRP) devices to qualified professionals not licensed by the Department of Health (department). This proposed amendment will align the osteopathic physician LLRP delegation rules with current allopathic physician rules. Finally, the board is proposing general housekeeping changes to ensure that the chapter is current and relevant.

History

Governor Christine Gregoire issued an executive order suspending non-critical rulemaking (referred to as the “rules moratorium”) that lasted from November of 2010 through December of 2012. In response to the expiration of the executive order, the Washington Osteopathic Medical Association (WOMA) sent a March 25, 2013 letter to the Secretary requesting that rulemaking be explored to establish a retired active credential for osteopathic physicians and surgeons and to amend the rules for osteopathic physicians and surgeons, pertaining to the use of LLRP devices as applied to the skin.

The board agreed with the petition and determined that rulemaking was necessary. The proposed rules address the issues raised by WOMA by reducing barriers for delegation of LLRP devices and creating a retired active credential. In addition to addressing WOMA’s concerns the board determined that it will update the list of examinations available for licensure as an osteopathic physician, establish requirements for re-entry to practice, and make general housekeeping changes.

Is a Significant Analysis required for this rule?

Yes, as defined in RCW 34.05.328, portions of the proposed rule require a significant analysis. However, the department has determined that no significant analysis is required for the general housekeeping and changes made for clarification in WAC sections 246-853-020 and -130 and the repeal of section WAC 246-853-260 that sets an application deadline for an exam no longer administered by the department.

Clearly state in detail the general goals and specific objectives of the statute that the rule implements.

The mandate of the board is to ensure that osteopathic physicians and osteopathic physician assistants working in Washington State are qualified and providing safe care. Creating return to practice requirements for osteopathic physicians will ensure that practitioners who have been out of practice for more than five years are properly qualified to resume caring for patients. The proposal will also set requirements to allow osteopathic physicians who would like to work on a limited or emergent basis to obtain a retired active license for a reduced fee. Osteopathic physicians who obtain this license will not be allowed to be paid for the healthcare services they provide. The intent of creating this license is to increase the number of primary care providers who can practice in limited or emergent circumstances. Finally, this proposal will allow osteopathic physicians to delegate the use of LLRP devices to professionals not necessarily licensed by the department.

Explain how the department determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rule.

The proposal will achieve the authorizing statute’s goals and objectives by amending rules to create a license that allows a physician to provide care without compensation in limited or emergent circumstances, ensure that osteopathic physicians who have been out of practice are competent before receiving a license, potentially increase access to LLRP services, and update sections of the chapter so that they are relevant and consistent with current national standards.

No alternatives to rulemaking are available. The board, in consultation with department staff, determined that the repeal, amendments, and new sections must be put in rule to make the changes effective and enforceable.

Explain how the department determined that the probable benefits of the rule are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

A total of six sections of rule were amended, repealed, or created in this proposal.

Two of the proposed amended sections do not require analysis:

- WAC 246-853-020 Osteopathic medicine and surgery examination. Amendments to this section are exempt from analysis under RCW 34.05.328(5)(b)(iv) by clarifying language in the rule without changing its effect. The name of the exam administered by the National Board of Osteopathic Medical Examiners has change and the proposal amends

this section to reflect that change. The proposal also restructures and reformats this section to improve readability and comprehension of the requirements.

- WAC 246-853-130 General provisions for mandatory reporting rules. The amendment to this section is exempt from analysis under RCW 34.05.328(5)(b)(iv) by correcting a typographical error. This section currently lists the board's physical address, which is incorrect. The address will be removed from rule as it is available on the board's webpage, which can easily be amended when the address changes in the future.

The section the board is proposing be repealed does not require analysis:

- WAC 246-853-260 USMLE examination application deadline. The proposal repeals this section. The repeal of this section is exempt from analysis under RCW 34.05.328(5)(b)(iv) as it adds clarity to the rest of the chapter by removing this unnecessary section. This section sets deadlines for those applying to the Department of Health to sit for the United States Medical Licensing Examination (USMLE). Applicants currently apply directly to USMLE so these deadlines are no longer relevant or applicable.

One proposed amended section requires analysis:

- WAC 246-853-630 Use of laser, light, radiofrequency, and plasma devices applied to the skin. The current rule stipulates that an osteopathic physician may delegate the operation of LLRP devices to a properly trained health care professional licensed under the authorization of RCW 18.130.040, whose scope of practice allows the use of a prescriptive LLRP device. The current rule does not allow an osteopathic physician to delegate the operation of these devices to professionals who are not licensed by the department.

The proposed rule states that the use of these devices may be delegated to “a properly trained and licensed professional, whose licensure and scope of practice allow the use of an LLRP device...” This proposed language allows an osteopathic physician to delegate use of LLRP devices to professionals not licensed by the department, such as a master esthetician licensed by the Department of Licensing. The current allopathic rules include this language for allopathic physicians under WAC 246-919-605 and this proposal will further align the osteopathic physician and allopathic physician chapters of rule. The proposed rule will increase the number of professionals to whom an osteopathic physician can delegate the use of LLRP devices. There are no costs associated with complying with the proposed amendments.

Two proposed new sections require analysis:

- Proposed WAC 246-853-235 Retired active license. The proposed rule establishes the process that an osteopathic physician must follow to obtain a retired active license. The purpose for adding this proposed new section is to allow physicians to obtain a retired active license in order to update and modernize current rules regulating physicians. Adding a retired active license status for osteopathic physicians, which is authorized under RCW 18.130.250, is consistent with other health care professions that are moving to adopt retired active status for members of their professions. The retired active license allows the osteopathic physician to work for limited periods each year or during

emergencies, and may not charge fees for services. The licensee must complete continuing medical education every year to maintain a retired active license.

There is a provision under RCW 18.130.250 that exempts an allopathic physician licensed under chapter 18.71 RCW from paying a fee for the retired active license. This exemption does not exist for osteopathic physicians licensed under chapter 18.57 RCW. Therefore, an osteopathic physician seeking a retired active license will have to pay a retired active fee to be determined by the department (by amending WAC 246-854-990). The fee will be less than an initial license or renewal of license fee for osteopathic physicians. The board proposes that because an allopathic physician with a retired active license may not receive compensation for healthcare services, neither should an osteopathic physician holding a retired active license. Because there is no exemption in law for osteopathic physicians, a fee is necessary to cover the administrative costs associated with issuing the license. An osteopathic physician who wishes to continue practicing for compensation will need to keep an active full license.

The board used the language currently in rule for allopathic physicians as a model when developing the proposed language for this section. The benefit of this rule is that it will increase the number of practitioners available in an emergency, yet ensure they have the skills to practice safely.

- Proposed WAC 246-853-245 Re-entry to practice requirements. The proposed rule establishes the process that an osteopathic physician who has been out of practice for five years must follow to reactivate his or her license. It is the board's mandate to ensure that those who practice osteopathic medicine and surgery in Washington State are properly trained and safe to provide care to patients. Establishing a mechanism that requires those who have been out of practice to demonstrate competency before returning to practice aligns with the board's legislative mandate. Competency must be demonstrated through passage of a board approved exam, a board approved competency evaluation, a board approved retraining program, or a board approved monitoring program.

The benefit of the new proposed rule is that it ensures that osteopathic physicians who have been out of practice are competent before providing care. There are potential costs to the physician returning to practice associated with taking an exam, undergoing a competency evaluation, or completing a retraining or monitoring program. However, the benefit of ensuring patient safety outweighs the personal financial costs to the osteopathic physician.

Identify alternative versions of the rule that were considered, and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated previously.

No alternatives to the proposal were considered as these changes must be made through rulemaking or legislative mandate. The board reviewed standards from other states and rules from other Washington State health professions while developing language for the proposed rules. The proposed changes made to the rule are supported by the board, the state osteopathic

association (WOMA), and those who participated in the rule workshops and board meetings when the proposal was developed.

Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

The proposed rule does not require those to whom it applies to take an action that violates requirements of federal or state law.

Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The proposed rule does not impose more stringent performance requirements on private entities than on public entities.

Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.

The proposed rule does not differ from any federal regulation or statute applicable to the same activity or subject matter.

Demonstrate that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

The proposed rule is coordinated to the maximum extent practicable with other applicable laws, including current osteopathic physician law under chapter 18.57 RCW. The proposed rule also adds and amends sections that would further align the osteopathic physician rules with current allopathic physician rules under chapter 246-919 WAC.