

## WAC 246-841A-XXX: Philosophy governing voluntary substance use monitoring programs.

The board recognizes the need to establish a means of providing early recognition and treatment options for nursing assistants whose competency may be impaired due to the use of drugs or alcohol. The board intends that such nursing assistants be treated, and their treatment monitored so that they can return to or continue to practice their profession in a manner, that safeguards the public. The Washington health professional services (WHPS) program is the board's approved substance use monitoring program under RCW [18.130.175](#). The board may refer nursing assistants to WHPS as either an alternative to or in connection with disciplinary actions under RCW [18.130.160](#).

## WAC 246-841A-XXX: Definitions of terms used in WAC 246-840-XXX through 246-840- XXX .

The definitions in this section apply throughout WAC **246-841A-XXX** through **246-841A-XXX** unless the text clearly requires otherwise.

- (1) "Continuing care" means the phase of treatment following acute treatment. Common elements of continuing care include relapse prevention and self-help group participation.
- (2) "Monitoring contract" is a comprehensive, structured agreement between the recovering nursing assistant and WHPS defining the requirements of the nursing assistant's program participation.
- (3) "Peer support group" is a professionally facilitated support group designed to support recovery and re-entry into practice.
- (4) "Random drug screens" means laboratory tests to detect the presence of drugs in body fluids and other biologic specimens that are performed at irregular intervals not known in advance by the person to be tested.
- (5) "Referral contract" is a formal agreement between the board and the nursing assistant to comply with the requirements of the WHPS program in lieu of discipline.
- (6) "Self-help groups" means groups or fellowships providing support for people with substance use disorder to support their sobriety and recovery.
- (7) "Substance use disorder" (SUD) means a chronic progressive illness that involves the use of alcohol or other drugs to a degree that it interferes with the functional life of the registrant/licensee, as manifested by health, family, job (professional services), legal, financial, or emotional problems.

(8) "Washington health professional services (WHPS)" is the approved substance use monitoring program as described in RCW [18.130.175](#) that meets criteria established by the board. WHPS does not provide evaluation or treatment services.

#### WAC 246-841A-XXX: Approval of substance use monitoring programs.

The board uses WHPS as the approved monitoring program.

(1) WHPS will:

(a) Employ staff with the qualifications and knowledge of both substance use and the [nursing assistant scope of practice](#)~~practice of nursing~~ as defined in this chapter to be able to evaluate:

(i) Clinical laboratories;

(ii) Laboratory results;

(iii) Providers of substance use treatment, both individuals and facilities;

(iv) Peer support groups;

(v) The nursing [assistant](#) work environment; and

(vi) The ability of the nursing assistant to practice with reasonable skill and safety.

(b) Enter into a monitoring contract with the nursing assistant to oversee the nursing assistant's required recovery activities. Exceptions may be made to individual components of the contract as needed.

(c) Determine, on an individual basis, whether a nursing assistant will be prohibited from engaging in their scope of practice for a period of time and restrictions, if any, on the nursing assistant's access to controlled substances in the workplace.

(d) Maintain case records on participating nursing assistants.

(e) Report to the board any nursing assistant who fails to comply with the requirements of the monitoring program as defined by the board.

(f) Provide the board with an annual statistical report.

(2) The board approves WHPS' procedures on treatment, monitoring, and limitations on the practice of nursing for those participating in the program.

## WAC 246-841A-XXX: Conditions for participants entering the approved substance use monitoring program.

(1) Any nursing assistant participating in the substance use monitoring program must:

(a) Undergo a complete substance use disorder evaluation. This evaluation will be performed by health care professional(s) with expertise in chemical dependency.

(b) Enter into a monitoring contract with WHPS which includes, but is not limited to, the following terms, which require the nursing assistant to:

(i) Undergo any recommended level of treatment by a board-designated licensed treatment provider, including continuing care;

(ii) Abstain from all mind-altering substances including alcohol and cannabis except for medications prescribed by an authorized prescriber, as defined in RCW [69.41.030](#) and [69.50.101](#);

(iii) Cause the treatment counselor(s) to provide reports to the approved monitoring program at specified intervals;

(iv) Attend peer support group, or self-help group meetings, or both as specified by WHPS;

(v) Complete random or for-cause drug screening as specified by WHPS;

(vi) Comply with specified employment conditions and restrictions as defined by the monitoring contract;

(vii) Agree in writing to allow WHPS to release information to the board if the nursing assistant does not comply with any contract requirements or is unable to practice with reasonable skill and safety;

(viii) Pay the costs of any required evaluations, substance use treatment, peer support group, random drug screens, and other personal expenses incurred in relation to the monitoring program;

(ix) Sign any requested release of information authorizations.

(2) When referred to WHPS in lieu of discipline, the nursing assistant must enter into a referral contract with the board. The board may take disciplinary action against the nursing assistant's credential under RCW [18.130.160](#) based on any violation by the nursing assistant of the referral contract.

(3) A nursing assistant may voluntarily participate in WHPS in accordance with RCW [18.130.175](#)(2) without first being referred to WHPS by the board.

## WAC 246-841A-XXX: Early remediation program purpose.

WAC 246-841A-XXX and 246-841A-XXX establish the early remediation program and its eligibility criteria and procedures. The intent of this program is to effectively and efficiently protect patients by resolving allegations of practice deficiencies of a less serious nature through a plan of remedial education, training, and supervision. Such allegations may not include substance abuse or drug diversions. The ~~Board nursing care quality assurance board~~ may resolve allegations of practice deficiencies through early remediation during an investigation.

## WAC 246-841A-XXX: Early remediation program definitions.

The definitions in this section apply throughout WAC 246-841A-XXX and 246-841A-XXX unless the context clearly requires otherwise.

(1) "Action plan" means a documented agreement between the nursing assistant named in the complaint(s) and the board listing remedial steps to be taken by the nursing assistant to resolve the identified practice deficiencies. Action plans may require remedial education, ~~on-the-job training~~, and follow-up monitoring of the nursing assistant's clinical practice by the current employer or other practice monitor.

(2) "Board" means the Washington state board of nursing.

(3) "Complaint" means a documented report of a possible violation of the Uniform Disciplinary Act which the board shall assess and may subsequently authorize an investigation.

(4) "Early remediation program" means a process in which a complaint alleging practice deficiencies is resolved through an action plan without initiating disciplinary procedures.

(5) "Practice deficiencies" include, but are not limited to:

(a) Substandard nursing ~~assistant~~ practice;

~~(b) Failure to properly follow a patient plan of care, properly conduct a patient assessment, document treatment, report deviations from normal body functions in a timely manner or administer medications if within scope; and~~

~~(be)~~ Failure to comply with scope of practice requirements or delegation laws and regulations; ~~and~~;

~~(cd)~~ Practice deficiencies do not include drug diversion, patient abuse, fraud, theft, deceit or other willful misconduct, or conduct resulting in more than minor patient harm.

### WAC 246-841A-XXX: Early remediation program criteria.

(1) In any complaint where the board identifies practice deficiencies, the board may resolve the matter through the early remediation program.

(2) The board shall use the following criteria to determine eligibility for early remediation:

(a) The identified practice deficiencies could be corrected by remedial education, ~~on-the-job training~~ and practice monitoring within six months or less, and patient protection does not require significant long-term practice limits;

(b) The nursing assistant is willing and able to participate in the early remediation program;

(c) The nursing assistant's current employer agrees to participate in the action plan if required;

(d) The nursing assistant has no current charges or disciplinary history of unprofessional conduct and has not previously participated in an action plan; and

(e) The degree of patient harm suffered as a result of the nursing assistant's substandard practice is minor, if any.

(3) The board shall use the following process to implement the early remediation program:

(a) After a preliminary investigation identifies the practice deficiencies the board will apply criteria in subsection (2)(a) through (e) of this section to determine eligibility for early remediation;

(b) If all of the criteria are met, and if the board determines the nursing assistant is eligible for participation in the early remediation program the board shall propose an action plan to the nursing assistant ~~and employer~~.

(c) If the nursing assistant complies with the agreed action plan, the board may consider the nursing assistant's completion of the action plan as grounds to close the matter without further action.

(d) The board shall evaluate whether the practice deficiencies have been corrected and are unlikely to recur; and

(e) The board may decide to conduct a full investigation and consider disciplinary action if additional facts become known or circumstances change such that the nursing assistant is no longer eligible based on the criteria in subsection (2)(a) through (e) of this section.

## WAC 246-841A-XXX: Sexual misconduct prohibited.

(1) A nursing assistant shall not engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes but is not limited to:

- (a) Sexual intercourse;
- (b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis and treatment and within the health care practitioner's scope of practice;
- (c) Rubbing against a patient or client or key party for sexual gratification;
- (d) Kissing;
- (e) Hugging, touching, fondling or caressing of a romantic or sexual nature;
- (f) Examination of or touching genitals without using gloves;
- (g) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;
- (h) Not providing the patient or client a gown or draping except as may be necessary in emergencies;
- (i) Dressing or undressing in the presence of the patient, client or key party;
- (j) Removing patient or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;
- (k) Encouraging masturbation or other sex act in the presence of the nursing assistant;
- (l) Masturbation or other sex act by the nursing assistant in the presence of the patient, client or key party;
- (m) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;
- (n) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;
- (o) Soliciting a date with a patient, client or key party;
- (p) Discussing the sexual history, preferences or fantasies of the nursing assistant;

(q) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(r) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(s) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;

(t) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for legitimate health care purposes; and

(u) Showing a patient, client or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) 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](#).

(3) A nursing assistant shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the nursing assistant's sexual needs.

(4) A nursing assistant shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section with a former patient, client or key party within two years after the provider-patient/client relationship ends.

(5) After the two-year period of time described in subsection (4) of this section, a nursing assistant shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section if:

(a) There is a significant likelihood that the patient, client or key party will seek or require additional services from the nursing assistant; or

(b) There is an imbalance of power, influence, opportunity and/or special knowledge of the professional relationship.

(6) When evaluating whether a nursing assistant is prohibited from engaging, or attempting to engage, in sexual misconduct, the ~~secretary~~board will consider factors, including but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another nursing assistant;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the nursing assistant and the patient or client between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the nursing assistant;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and vulnerability; and

(i) Normal revisit cycle for the profession and service.

(7) Patient, client or key party initiation or consent does not excuse or negate the nursing assistant's responsibility.

(8) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another nursing assistant;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to that profession; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the nursing assistant where there is no evidence of, or potential for, exploiting the patient or client.

(9) Definitions. For the purposes of this section, these terms shall have the following meaning:



(a) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(b) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian, and person authorized to make health care decisions for the patient or client.

(c) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients or clients, including palliative care, as consistent with ~~standards of practice for the nursing and nursing technician professions~~[the scope of practice for the nursing assistant](#). The activity must be within the scope of practice of the nursing assistant.

(d) "Patient" or "client" means an individual who receives health care from a nursing assistant.