Northwest ASC Update

April 13, 2015

MQAC Issues Interpretive Statement on Rule Governing Use of Laser, Light, Radiofrequency and Plasma Devices

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In 2007, the Medical Quality Assurance Commission (the "Commission") adopted WAC 246-919-605 to regulate the use of laser, light, radiofrequency and plasma ("LLRP") devices as applied to the skin. The rule was created in response to increasing reports to the Commission that unlicensed or inadequately trained persons were using the devices with insufficient supervision and consequently harming patients. By adopting WAC 246-919-605, the Commission sought to enhance the safety of patients by setting minimal standards for the use of LLRP devices by physicians.[1]

WAC 246-919-605 requires a physician who delegates the use of an LLRP device to be on the immediate premises during the initial treatment of a patient.[2] However, the rule provides that patients with an established treatment plan may continue to receive care from a properly trained and supervised professional whose licensure and scope of practice allow the use of an LLRP device during the delegating physician's temporary absences, provided a local back-up physician is available by phone and able to see the patient within 60 minutes.[3]

The Commission has become concerned about arrangements under which a physician serves as the medical director of a clinic in which LLRP devices are used, but the physician has his or her own practice in a separate facility. Under these arrangements, the physician is not on-site when most of the LLRP treatments occur. Instead, the physician spends a majority of his or her time in a separate practice, agreeing to be reachable to the clinic by telephone and able to respond within 60 minutes.

In response to its concern, the Commission recently issued an interpretive statement indicating that, in adopting WAC 246-919-605, it assumed that the physician supervising the use of an LLRP device generally would be working in the clinic where the supervised non-physician uses the device. The Commission indicates that it did not intend for the supervising physician to spend more time in a different

[1] The Commission also adopted a rule, WAC 246-918-125, setting minimal standards for the use of LLRP devices by physician assistants. The rule provides that, if a physician assistant delegates the use of an LLRP device to a properly trained and licensed professional, the physician assistant must be on the immediate premises during the use of an LLRP device.

[2] WAC 246-919-605(10)(g).

[3] *Id*. at (10)(h).

facility for his or her separate medical practice and provide only remote and limited supervision to non-physicians using the LLRP device to patients in a separate clinic.

Under WAC 246-919-605(10)(h), an existing patient with an established treatment plan may receive LLRP treatment from a properly trained and licensed professional during *temporary absences of the delegating physician*. In its recent statement, the Commission states that the word "temporary" means brief, intermittent, and for a limited time. In the context of WAC 246-919-605(10)(h), the Commission states that the phrase "temporary absences of the delegating physician" means that the delegating physician may be absent for brief, intermittent or limited periods of time. The Commission considers an arrangement in which the delegating physician spends significant amounts of time absent from the clinic where the supervised non-physician uses the device LLRP circumvents the intent of the rule and is contrary to the plain language of the rule.

The Commission's interpretive statement concludes that arrangements in which a delegating physician spends significant amounts of time absent from the clinic where the supervised non-physician uses an LLRP device violates WAC 246-919-605. Accordingly, arrangements between delegating physicians and clinics where supervised non-physicians use LLRP devices should be reviewed in light of this additional guidance.