



WA Pharmacy Quality Assurance Commission - Business Practices Committee

*Issue Assessment – Meal and Rest Breaks*

*Draft 2 – For Public Comment – May 11, 2015*

<p>Concerns</p>	<ul style="list-style-type: none"> <li>• Inadequate breaks, especially combined with long shifts, can exacerbate fatigue and may contribute to errors.</li> <li>• Some feel that the lack of breaks away from the pharmacy, and uninterrupted lunchtime, also are a basic issue of work conditions.</li> </ul>
<p>Evidence</p>	<ul style="list-style-type: none"> <li>• The Commission’s 2014 pharmacy survey provided very strong evidence of concern by pharmacy personnel. Among the 2038 “substantially complete” responses to the survey, 45% of respondents disagreed or strongly disagreed with the statement, “I have adequate time for breaks/lunches at my primary practice site.” Concern about inadequate or interrupted breaks/lunches also was the most frequent area of written comments (536 responses out of 1078 respondents who filled in the open comments field of the survey).</li> <li>• In research literature reviewed, there were significant associations between prescription error measures and more general issues of workload, staffing level, and interruptions – but no findings were specific to timely, uninterrupted breaks.</li> </ul>
<p>Current Law (Summary and References)</p>	<ul style="list-style-type: none"> <li>• WA <b>pharmacy</b> rules do not appear to address this issue in any fashion.</li> <li>• David Johnson, Wage and Hour Technical Specialist from the Department of Labor and Industries, met with the committee to provide information on current law in this area. In Washington, requirements for meal and rest periods are established under authority of the state Industrial Welfare Act (RCW 49.12), administered by the Department of Labor and Industries (L&amp;I). This law incorporates by reference certain exemptions to who are “covered employees” under a separate state law on minimum wage and overtime (RCW 47.45 and related rules). It appears that State laws about meal and rest breaks do not apply to most <b>pharmacists</b> due to the exemption of “professionals” as defined in WAC 296-128-530. There may be some exceptions to this general statement, but for the most part it would take a change in L&amp;I rules to alter the professional exemption. The situation for <b>pharmacy technicians and assistants</b> is different; by and large they are not exempted from meal and rest break requirements.</li> </ul>
<p>Other States (Summary)</p>	<ul style="list-style-type: none"> <li>• At least ten states address the issue of meal and rest breaks for pharmacists in their rules. In six states (AL, CA, MA, MT, NJ, VT, Washington DC) the focus is on situations when only one pharmacist is on duty. Generally, these rules provide clarity on what is necessary to keep the pharmacy open while the (sole) pharmacist is out of the area. Such provisions vary. Some states allow the pharmacist to leave the building, some do not. In AL, for example, the pharmacist can determine (before the break) that counseling is not required for some new or refill medications, but must remain in the building. In CA (where Labor law apparently does require breaks for pharmacists), the pharmacist can determine that a refill does not require counseling.</li> <li>• In four states provisions apply to all pharmacies/shifts (FL, MS, NC, OR, TN). Oregon requires an “outlet” (licensed pharmacy entity) to provide “appropriate opportunities for uninterrupted rest periods and meal breaks.” MS requires periodic breaks with a statement of purpose: “To relieve fatigue and mental and</li> </ul>

<p>Action Options (Rule Making or Other)</p> <p><i>These rule options are not mutually exclusive</i></p>	<p>physical stress.”</p> <p>At its meeting on April 30, 2015, the Business Practices Committee decided to request public comment on the following possible action (“trial balloon”). The Committee will review all feedback prior to deciding on what ideas to move forward to in-person discussion and potential rule development.</p> <ol style="list-style-type: none"> <li><b>1. Ask the Pharmacy Commission (by formal action) to request the Department of Labor and Industries (L&amp;I) to review their rules about meal and rest breaks for pharmacists, including reviewing the logic by which pharmacists are classed with other professionals who may have greater discretion to ask clients or patients to wait while they take a break.</b></li> </ol> <p>The Committee decided against a related action, asking the Pharmacy Commission to formally <b>petition</b> L&amp;I to consider a change in their rules about meal and rest breaks. The Committee believes that a less formal letter of request would be more important in this interagency discussion.</p> <p>The Committee decided against an option to:</p> <ol style="list-style-type: none"> <li>2. Adopt a rule requiring that all pharmacy employees (including pharmacists) be allowed meal and rest breaks.</li> </ol> <p>This action is based in part on a presumption that L&amp;I has (sole) jurisdiction over the issue of employee breaks. However, the Committee does plan to request the Assistant Attorneys General supporting L&amp;I and the Pharmacy Quality Assurance Commission (PQAC) to confer on this issue and to report back on their joint opinion of the law. The Committee reserves the right to <b>reconsider</b> option 2 if the jurisdictional discussion determines that PQAC has jurisdiction in this area. Note that the Committee has not decided what it could do in that event.</p> <p>The Committee tabled discussion on whether or not to pursue further consideration of:</p> <ol style="list-style-type: none"> <li>3. A rule clarifying what can and cannot occur (without completely closing the pharmacy) during the absence of a “sole pharmacist” for meal or rest breaks. Such clarification might reduce disincentives to breaks outside the pharmacy enclosure.</li> </ol> <p>Option 3 would appear to be within jurisdiction of PQAC. However, consideration of any departure from current rules on what actions require the presence of a pharmacist may make sense only if there are rules requiring breaks outside the pharmacy enclosure for pharmacists.</p>
<p>The Committee requests public comment on the actions, options, and “trial balloon” above. Comments received by <b>June 5, 2015</b>, will be considered by the Committee for further action on these issues at the Committee or Commission. Submit comments to <a href="mailto:WSPQAC@doh.wa.gov">WSPQAC@doh.wa.gov</a>.</p>	