



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)
(Implements RCW 34.05.310)
Do **NOT** use for expedited rule making

Agency: Department of Health- Pharmacy Quality Assurance Commission

Subject of possible rule making: WAC 246-860-100 Sexual Misconduct. The Pharmacy Quality Assurance Commission (Commission) is considering revising the rule to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by a pharmacist, pharmacy intern, technician, or assistant.

Statutes authorizing the agency to adopt rules on this subject: RCW 18.64.005 and RCW 18.130.062

Reasons why rules on this subject may be needed and what they might accomplish: The Commission is considering updating the sexual misconduct rule to establish clearer standards of conduct for pharmacy health care providers. The Commission's experience with investigating and enforcing the current rule has raised the need to clarify what acts constitute sexual misconduct by providers under the authority of the Commission. Updating the sexual misconduct rule will establish clearer standards of conduct and will help the department be consistent in its enforcement activities to more fully comply with RCW 18.130.062 and Executive Order 06-03.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:
None.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Collaborative rule making

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

(List names, addresses, telephone, fax numbers, and e-mail of persons to contact; describe meetings, other exchanges of information, etc.)

Stakeholders may provide input throughout the rulemaking process. Interested parties can sign-up to receive information, updates, or provide comments to the Pharmacy Quality Assurance Commission at WSPQAC@doh.wa.gov or by contacting Brett Lorentson, Rules Consultant, at the Department of Health, Pharmacy Quality Assurance Commission, P.O. Box 47852, Olympia WA 98504-7852. Email: brett.lorentson@doh.wa.gov. Phone: (360) 236.4611. Fax: (360) 236-2260.

DATE
December 1, 2015

NAME (TYPE OR PRINT)
Albert Linggi

SIGNATURE

TITLE
Chair, Pharmacy Quality Assurance Commission

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OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
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WSR 15-24-107

WAC 246-860-100 Sexual misconduct. (1) A health care provider 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 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) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;

(g) Not providing the patient or client a gown or draping except as may be necessary in emergencies;

(h) Dressing or undressing in the presence of the patient, client or key party;

(i) Removing patient's or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;

(j) Encouraging masturbation or other sex act in the presence of the health care provider;

(k) Masturbation or other sex act by the health care provider in the presence of the patient, client or key party;

(l) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;

(m) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(n) Soliciting a date with a patient, client or key party;

(o) Discussing the sexual history, preferences or fantasies of the health care provider;

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

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

(r) 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;

(s) 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

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

(2) 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.

~~(2)~~ (3) A health care provider 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 health care provider's sexual needs.

(3) A health care provider 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 if:

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

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

(4) When evaluating whether a health care provider engaged, or attempted to engage, in sexual misconduct, the 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 health care provider;

(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 health care provider 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 health care provider;

(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.

(5) Patient, client or key party initiation or consent does not excuse or negate the health care provider's responsibility.

(6) 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 health care provider;

(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 health care provider where there is no evidence of, or potential for, exploiting the patient or client.

[Statutory Authority: RCW 18.64.005 and 18.130.050. WSR 07-08-040, § 246-860-100, filed 3/28/07, effective 4/28/07.]