



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Health- Veterinary Board of Governors

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: WAC 246-934-100 Sexual Misconduct. The Veterinary Board of Governors has modified the rule to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by a veterinary provider.

Citation of existing rules affected by this order:

Repealed: none
Amended: WAC 246-934-100
Suspended: none

Statutory authority for adoption: RCW 18.92.030 and 18.130.050

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 15-19-057 on 09/11/2015 (date).

Describe any changes other than editing from proposed to adopted version: WAC 246-934-100(2), the word "sexual" was added before the word "contact" to specify that sexual contact as described in the rule constitutes sexual misconduct. The omission of the word was an administrative error during the revision of an earlier version of the rule.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: phone
Address: fax
e-mail

Date adopted: 12/07/2015

NAME (TYPE OR PRINT)
Ethan Nelson, DVM

SIGNATURE

TITLE
Board Chair

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 16, 2016
TIME: 3:36 PM

WSR 16-05-088

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

New	<u>0</u>	Amended	<u>1</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>1</u>	Repealed	<u>0</u>

WAC 246-934-100 Sexual misconduct. (1) A health care provider shall not engage, or attempt to engage, in sexual misconduct with a key party, inside or outside the health care setting. Key party initiation or consent does not excuse or negate the health care provider's responsibility. 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;
- (c) Rubbing against a key party for sexual gratification;
- (d) Kissing, touching, fondling or caressing of a romantic or sexual nature;
- (e) Encouraging masturbation or other sex act in the presence of the health care provider;
- (f) Masturbation or other sex act by the health care provider in the presence of the key party;
- (g) Suggesting the possibility of a sexual or romantic dating relationship;
- (h) Discussing the sexual history, preferences or fantasies of the health care provider;
- (i) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;
- (j) Making statements regarding the key party's body, sexual history, or sexual orientation;
- (k) Any verbal or physical contact which may reasonably be interpreted as sexually demeaning;
- (l) Taking sexually explicit photographs or films of a key party;
- (m) Showing a key party sexually explicit photographs.

(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 health care provider shall not:

- (a) Offer to provide health care services or professional knowledge in exchange for sexual favors;
- (b) Use health care information to contact the key party for the purpose of engaging in sexual misconduct or to meet the health care provider's sexual needs.

~~((3))~~ (4) A health care provider shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section with a former key party when:

- (a) There is a significant likelihood that the key party will seek or require additional services from the health care provider; or
- (b) The provider uses or exploits the trust, knowledge, influence or emotions derived from the professional relationship; or
- (c) The health care provider uses or exploits privileged information or access to privileged information to meet the health care provider's sexual needs.

~~((4))~~ (5) When evaluating whether a health care provider is attempting to engage, or has engaged, in sexual misconduct, the board may consider factors~~((7))~~ including, but not limited to:

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

- (b) Transfer of care to another health care provider;
- (c) Duration of the health care provider-patient relationship;
- (d) Amount of time that has passed since the last health care services were rendered to the patient;
- (e) Communication between the health care provider and the key party between the last health care services rendered and commencement of the personal relationship;
- (f) Nature of the patient's health condition during and since the professional relationship;
- (g) The key party's emotional dependence and vulnerability; and
- (h) Normal revisit cycle for the profession and service.

~~((+5))~~ (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 legitimate health care purpose and that meets the standard of care appropriate to the profession; or

(c) Providing health care services for a legitimate health care purpose to an animal patient for a key party who is in a preexisting, established personal relationship with a health care provider where there is no evidence of, or potential for, exploiting the key party.

~~((+6))~~ (7) Sexual conduct or sexual contact with an animal as defined in RCW 16.52.205 is unprofessional conduct. Violation of RCW 16.52.205 will be reported to the appropriate jurisdiction.