

**Department of Health
Health Professions Quality Assurance Division
Medical Quality Assurance Commission
Policy/Procedure**

Title:	Sexual Misconduct Statement and Policy of the Medical Quality Assurance Commission	Number: MD2002-05
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Contact:	Beverly A. Teeter, Health Administrator	
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	Hampton Irwin, MD, Chair, Medical Quality Assurance Commission	

... I will come for the benefit of the sick, remaining free of all intentional injustice, of all mischief and in particular of sexual relations with both female and male persons¹

Introduction:

Sexual misconduct between health care providers and patients or key third parties detracts from the goals of the health care provider-patient relationship, -exploits the vulnerability of the patient, obscures the health care provider’s objective judgment concerning the patient’s health care, and is detrimental to the patient’s well-being. The Commission wishes to inform health care providers that sexual misconduct, in any form, will not be tolerated.

In enacting this policy governing sexual misconduct by health care providers, the Commission urges all health care providers to be aware that:

- A. The health care provider has sole responsibility to maintain the boundaries of the professional relationship by avoiding any type of sexual behavior with patients, or any suggestion of interest in sexualizing the health care provider-patient relationship.
- B. The health care provider has a statutory duty to report any act of sexual misconduct, unprofessional conduct, or any action that indicates that a health care provider is unable to practice with reasonable skill or safety to patients.
- C. There are serious consequences to the health care provider, patients, and the profession when the professional boundary is violated.

Policy:

I. Definitions:

A. Patient. The determination of when a person is a patient for purposes of Chapter 18.130.180(24) RCW is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the health care provider and the person. The fact that a person is not actively receiving treatment or professional services is not determinative of the issue. A person is presumed to remain a patient until the health care provider-patient relationship is terminated.

B. Health Care Provider. A health care provider, as used in this policy, is a physician licensed under RCW 18.71 or a physician assistant as licensed under RCW 18.71A.

C. Key Third Parties. A key third party is a person in a close personal relationship with the patient and includes, but is not limited to spouses, partners, parents, siblings, children, guardians and proxies.

II. Sexual Misconduct. Any sexual or romantic behavior between a health care provider and a patient or key third party is forbidden and constitutes sexual misconduct. It includes any and all sexual and romantic behaviors, physical and verbal, whether inside or outside the professional setting, with persons a particular profession is intended to serve. Sexual misconduct by a health care provider frequently, though not always, involves use of the power, influence, and/or special knowledge inherent in one's profession in order to obtain sexual gratification or romantic partners.

Sexual misconduct between a health care provider and a patient or key third party includes, but is not limited to, the following behaviors:

1. Any direct, intentional genital stimulation or sexual gratification via oral, manual, genital, instrumental or other means;
2. Any manipulation or penetration of any bodily orifice by any means that is not medically indicated;
3. Any exposure, touch, or manipulation of the breasts, nipples, genital area, buttocks, or anus that is not medically indicated, is not reasonably part of routine care of the patient, or is engaged in for the purpose of sexual gratification;
4. Any medically indicated procedure or aspect of routine care involving the sexual or private parts of the body that is sexualized, prolonged, or altered in order to provide sexual gratification;
5. Any sexualized comments or gestures intended to invite or suggest sexual contact or a romantic relationship;
6. Kissing, fondling, or dating.

Each of the above actions constitute sexual misconduct by the health care provider whether initiated and/or performed by the health care provider or the patient, or by both, and whether or not it occurred inside or outside the professional setting.

III. Consent. A patient's or key third party's consent to, initiation of, or participation in sexual behavior or involvement with a health care provider does not change the nature of the conduct. The health care provider has full and sole responsibility to maintain proper boundaries. It shall not be a defense or a mitigating factor that the patient or key third party consented to, proposed, or initiated the sexual contact or the sexual or romantic relationship.

It is improper for a health care provider who engages in sexual misconduct with a patient or key third party to make efforts to avoid full and sole responsibility by pointing to the patient's or key third party's consent or initiation, or by making any other attempt to shift responsibility to the

patient, for example, by asserting that the patient or key third party was seductive or manipulative.

IV. Termination of Health Care Provider-Patient Relationship. Once the health care provider-patient relationship has been established, the health care provider has the burden of showing that the relationship no longer exists. The mere passage of time is not determinative of the issue. Because of the varying nature of types of health care provider-patient relationships, variety of settings, differing practice types, and imbalance in power between health care provider and patient, individual analysis is essential. The Commission will consider a number of factors in determining whether the health care provider-patient relationship has terminated for purposes of determining whether sexual misconduct with a patient has occurred. These factors include, but are not limited to, the following:

1. formal termination procedures;
2. transfer of the patient's care to another health care provider;
3. whether care was terminated for the purpose of entering into a sexual or romantic relationship;
4. the length of time that has passed;
5. the length of time of the professional relationship;
6. the extent to which the patient has confided personal or private information to the health care provider;
7. the nature of the patient's health problem;
8. the degree of emotional dependence and vulnerability; and
9. the extent of the health care provider's general knowledge about the patient.

Some health care provider-patient relationships may never terminate because of the nature and extent of the relationship. These relationships may always raise concerns of sexual misconduct whenever there is sexual contact.

V. Former Patients. A health care provider who engages in any of the above behaviors with a patient, or key third party, not currently receiving care from the health care provider commits sexual misconduct if the behavior:

1. Occurs as a result of knowledge derived by the health care provider from within the context of the professional relationship;
2. Results from the exploitation of a patient's or key third party's emotions, trust, or influence in the previous health care provider-patient relationship; or
3. Reasonably appears to constitute an abuse of power on the part of the health care provider.

VI. Diagnosis and Treatment. Sexual misconduct excludes behavior that is required for medically diagnostic or treatment purposes and when such behavior is performed in a manner that meets the standard of care appropriate to the diagnostic or treatment situation.

VII. Discipline. A health care provider who engages in sexual misconduct commits unprofessional conduct pursuant to Chapter 18.130.180(1) and/or (24) RCW. Upon a finding that a health care provider has committed unprofessional conduct by engaging in sexual misconduct, the Commission will impose one or more sanctions set forth in Chapter 18.130.160 RCW. In some cases, revocation may be the appropriate sanction. In others, the Commission may restrict and monitor the practice of a health care provider who is actively engaging in a treatment program. When imposing sanctions, the Commission must first consider what sanctions are necessary to protect the public. Only after this is done may the Commission consider and include sanctions designed to rehabilitate the health care provider.

VIII. Recommendations to Health Care Providers.

The Commission strongly recommends that a health care provider:

1. Consider having a chaperone present during examination of any sensitive parts of the body.
2. Be aware of any feelings of sexual attraction to a patient or key third party. The health care provider should discuss such feelings with a supervisor or trusted colleague. Under no circumstances should a health care provider act on these feelings or reveal or discuss them with the patient or key third party.
3. Transfer care of a patient to whom the health care provider is sexually attracted to another health care provider. Recognizing that such feelings in themselves are neither wrong nor abnormal, a health care provider should seek help in understanding and resolving them.
4. Be alert to signs that a patient or key third party may be interested in a sexual relationship. All steps must be taken to ensure that the boundaries of the professional relationship are maintained. This could include transferring the care of the patient.
5. Respect a patient's dignity and privacy at all times.
6. Provide a professional explanation of the need for each of the various components of examinations, procedures, tests, and aspects of care to be given. This can minimize any misperceptions a patient might have regarding the health care provider's intentions and the care being given.
7. Communicate with a patient in a clear, appropriate and professional manner. A health care provider should never engage in communication with a patient or key third party that could be interpreted as flirtatious, or which employ sexual innuendo, off-color jokes, or offensive language.
8. Refrain from discussing the health care provider's personal problems, or any aspect of the health care provider's intimate life with a patient.

¹ Excerpt from Hippocratic Oath, Fourth Century B.C.