

WAC 246-840-740 Sexual misconduct prohibited. (1) Sexual misconduct. A nurse or nursing technician 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 standards of practice for examination, diagnosis, and treatment and within the nurse or nursing technician's scope of practice;
- (c) Rubbing against a patient or client or key party for other than a legitimate health care purpose;
- (d) Kissing, hugging, touching, fondling, or caressing of a romantic or sexual nature;
- (e) Examination of or touching genitals without using gloves;
- (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 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 nurse or nursing technician;
- (k) Masturbation or other sex act by the nurse or nursing technician in the presence of the patient, client, or key party;
- (l) Suggesting or initiating a discussion of 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, accepting, or going on a date with an individual the nurse or nursing technician knows, or reasonably should know, to be a patient, client, or key party;
- (o) Discussing the sexual history, acts, or fantasies of the nurse or nursing technician;
- (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 for other than legitimate health care purposes;
- (r) Any behavior including any verbal or physical contact which may reasonably be interpreted as sexually 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, for other than legitimate health care purposes or at the request of and for the benefit of, the patient, client, or key party; and
- (t) Showing a patient, client, or key party sexually explicit photographs, for other than legitimate health care purposes.

(2) A nurse or nursing technician shall not:

- (a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information or access to health care information to contact the patient, client or key party for other than legitimate health care.

(3) A nurse or nursing technician shall not engage, or attempt to engage, in sexual misconduct defined in subsection (1) of this section with a person he or she knows or should know is a former patient, client, or key party within two years after the provider-patient/client relationship ends, except as specified in subsection (5) of this section.

(4) After the two-year period of time described in subsection (3) of this section, a nurse or nursing technician shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section if:

(a) The patient, client, or key party will seek or require additional services from the nurse or nursing technician.

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

(5) A nurse who has provided psychological or psychiatric diagnostic or therapeutic services to a patient shall never engage, or attempt to engage, in sexual misconduct as defined in subsection (1) of this section with a former patient, former client, or former key party.

(6) When evaluating whether a nurse or nursing technician is prohibited from engaging, or attempting to engage, in sexual misconduct, the commission 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 nurse or nursing technician;

(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 nurse or nursing technician and the patient or client during the time 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 nurse or nursing technician;

(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;

(i) Normal revisit cycle for the profession and service; and

(j) Imbalance of power in the nurse-patient relationship.

(7) Patient, client, or key party initiation or consent does not excuse or negate the nurse or nursing technician's responsibility.

(8) 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 nurse or nursing technician;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to the nursing and nursing technician professions; 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 nurse or nursing technician where there is no evidence of, or potential for, exploiting the patient or client, unless prohibited by another statute or rule.

(9) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense listed in RCW 9.94A.030.

(10) Definitions. For the purposes of this section, these terms shall have the following meaning:

(a) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(b) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian, and person authorized to make health care decisions for the patient or client.

(c) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients or clients, including palliative care, as consistent with standards of practice for the nursing and nursing technician professions. The activity must be within the scope of practice of the nurse or nursing technician.

(d) "Nurse" means a registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW.

(e) "Nursing technician" means a nursing student, registered under chapter 18.79 RCW and preparing for registered nurse licensure, who is employed in a hospital licensed under chapter 70.41 RCW, a nursing home licensed under chapter 18.51 RCW, or a clinic.

(f) "Patient" or "client" means an individual who receives health care from a nurse or nursing technician.

[Statutory Authority: RCW 18.79.110 and 18.130.050. WSR 14-21-112, § 246-840-740, filed 10/16/14, effective 11/16/14; WSR 07-19-131, § 246-840-740, filed 9/19/07, effective 10/20/07. Statutory Authority: RCW 18.130.180(24). WSR 99-04-051, § 246-840-740, filed 1/28/99, effective 2/28/99.]