

WAC 246-851-550 Sexual misconduct. (1) The following definitions apply to this section:

(a) "Patient" means a person who has received professional services from the optometrist within the last three years and whose patient record has not been transferred to another optometrist or health care professional.

A referral of the patient record must be in writing and with the knowledge of both the patient and the optometrist or health care practitioner to whom the record is transferred.

(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 and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian and person authorized to make health care decisions of the patient.

(2) An optometrist shall not engage, or attempt to engage, in sexual misconduct with a patient or key party, inside or outside the health care setting. Patient or 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 patient or 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 patient or 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 body, sexual history, or sexual orientation of the patient or key party;

(k) Any verbal or physical contact which may reasonably be interpreted as sexually demeaning;

(l) Taking sexually explicit photographs or films of a patient or key party;

(m) Showing a patient or key party sexually explicit photographs.

(3) 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.

(4) An optometrist shall not:

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

(b) Use health care information to contact the patient 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 optometrist's sexual needs.

(5) An optometrist shall not engage, or attempt to engage, in the activities listed in subsection (2) of this section with a former patient or key party if:

(a) There is a significant likelihood that the patient 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.

(6) When evaluating whether an optometrist 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;

(e) Communication between the health care provider and the patient between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's personal or private information was shared with the health care provider;

(g) Nature of the patient's health condition during and since the professional relationship;

(h) The patient's emotional dependence and vulnerability; and

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

[Statutory Authority: RCW 18.54.070(2), 18.130.050, 18.130.062 and Executive Order 06-03. WSR 18-23-057, § 246-851-550, filed 11/16/18, effective 12/17/18. Statutory Authority: RCW 18.54.070. WSR 94-04-041, § 246-851-550, filed 1/27/94, effective 2/27/94.]