

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.
- (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.
- (5) When evaluating whether a health care provider is attempting to engage, or has engaged, in sexual misconduct, the board may consider factors 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.

(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.

(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.

[Statutory Authority: RCW 18.92.030 and 18.130.050. WSR 16-05-088, § 246-934-100, filed 2/16/16, effective 3/18/16. Statutory Authority: RCW 18.92.030 and 18.130.050 (1), (12). WSR 07-06-027, § 246-934-100, filed 2/28/07, effective 3/31/07.]