

WSR 22-08-113

PROPOSED RULES

DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed April 6, 2022, 11:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-23-106.

Title of Rule and Other Identifying Information: WAC 246-808-590 Professional boundaries and sexual misconduct (formerly titled sexual misconduct). The chiropractic quality assurance commission (commission) is proposing clarifications to existing rules about sexual misconduct and more closely aligning these rules with the department's sexual misconduct rules in chapter 246-16 WAC.

Hearing Location(s): On May 12, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Join on your computer or mobile app https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F%23%2F1%2Fmeetup-join%2F19%3Ameeting_Mjk4MDMwOGYtMzIzMi00MjhmLTkyM2UtOWYzNzg3M2QyZDIz%40thread.v%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522Oid%2522%253a%2522842fd80d-c544-49c8-bc06-392ac3b3c17b%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=f43ae871-31fb-4a90-bef4-b405536f3f10&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true; or call-in (audio only) +1 564-999-2000,,268362475# United States, Olympia, Phone Conference ID 268 362 475#.

Date of Intended Adoption: May 12, 2022.

Submit Written Comments to: Betty J. Moe, Washington State Department of Health (DOH), Chiropractic Quality Assurance Commission, P.O. Box 47858, Olympia, WA 98504-7858, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2360, by May 3, 2022.

Assistance for Persons with Disabilities: Contact Betty J. Moe, phone 360-236-2868, fax 360-236-2360, TTY 711, email Betty.Moe@doh.wa.gov, by April 29, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The intent of updating the sexual misconduct rule is to: (1) Remove any ambiguities and create clear definitions; (2) ensure that the rules clearly outline professional boundaries and sexual misconduct; and (3) ensure the commission's definition of sexual misconduct is consistent with other professions' rules defining sexual misconduct.

These requirements already exist but are being outlined in more detail to provide clarity and to align with the department's sexual misconduct rules in chapter 246-16 WAC.

Reasons Supporting Proposal: It is the purpose of the commission under chapter 18.25 RCW to regulate the competency and quality of professional health care providers under its jurisdiction by establishing, monitoring, and enforcing consistent standards of practice and discipline, and those rules, policies, and procedures developed by the commission must promote the delivery of quality health care to the residents of the state.

RCW 18.130.062(1) requires the commission to review all cases of unprofessional conduct involving sexual misconduct and refer to the

secretary those cases that do not involve clinical expertise or standard of care issues.

RCW 18.130.180(24) cites abuse of a client or patient or sexual contact with a client or patient constitutes unprofessional conduct.

The proposed rules meet all stated intents by implementing statutory requirements. Additionally, the commission is proposing updates based on needs identified during the five-year review required by RCW 43.70.041.

Statutory Authority for Adoption: RCW 18.25.0171, 18.130.050, and 18.130.062.

Statute Being Implemented: RCW 18.25.002, 18.130.050, and 18.130.180.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DOH, chiropractic quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Betty J. Moe, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2868.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Betty J. Moe, DOH, Chiropractic Quality Assurance Commission, P.O. Box 47858, Olympia, WA 98504-7858, phone 360-236-2868, fax 360-236-2360, TTY 711, email Betty.Moe@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not impose more-than-minor costs on businesses because the proposed rules only apply to a provider's license or registration. A violation of the proposed rules could result in a penalty or sanction on the provider's license or registration.

April 6, 2022
Robert J. Nicoloff
Executive Director

OTS-3545.2

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

WAC 246-808-590 Professional boundaries and sexual misconduct.

~~((1) The chiropractor shall never engage in sexual contact or sexual activity with current clients.~~

~~(2) The chiropractor shall never engage in sexual contact or sexual activity with former clients if such contact or activity involves the abuse of the chiropractor-client relationship. Factors which the commission may consider in evaluating if the chiropractor-client relationship has been abusive include, but are not limited to:~~

- ~~(a) The amount of time that has passed since therapy terminated;~~
- ~~(b) The nature and duration of the therapy;~~

- ~~(c) The circumstances of cessation or termination;~~
~~(d) The former client's personal history;~~
~~(e) The former client's current mental status;~~
~~(f) The likelihood of adverse impact on the former client and others; and~~
~~(g) Any statements or actions made by the chiropractor during the course of treatment suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the former client.~~
- ~~(3) The chiropractor shall never engage in sexually harassing or demeaning behavior with current or former clients.)~~ (1) The following definitions apply throughout this section unless the context clearly requires otherwise.
- (a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the health care provider-patient relationship. The determination of when a person is a patient 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 the sole determining factor.
- (b) "Health care provider" means a person licensed or registered to practice under chapter 18.25 RCW.
- (c) "Key third 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) A health care provider shall not engage in sexual misconduct with a current patient or key party. Sexual misconduct includes, but is not limited to:
- (a) Sexual intercourse or genital to genital contact;
(b) Touching or exposing breasts, genitals, anus, or any sexualized body part for any purpose other than appropriate examination and treatment;
(c) Rubbing against a patient or key third party for sexual gratification;
(d) Kissing;
(e) Examination of or touching genitals, anus, or rectum without using gloves;
(f) Not allowing a patient the privacy to dress or undress;
(g) Dressing or undressing in the presence of the patient or key third party;
(h) Removing patient clothing or gown or draping without consent;
(i) Encouraging the patient to masturbate in the presence of the health care provider or masturbation by the health care provider while the patient is present;
(j) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;
(k) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;
(l) Soliciting a date with a patient or key third party;
(m) Communicating the sexual history, preferences, opinions, or fantasies of the health care provider, patient or key third party;
(n) Making statements regarding the patient key third party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(o) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening, or harming a patient or key third party;

(p) Photographing or filming the body or any body part or pose of a patient or key party, other than for legitimate health care purposes;

(q) Showing a patient or key third party sexually explicit photographs, other than for legitimate health care purposes.

(r) Offering to provide goods or services in exchange for sexual favors;

(s) Oral to genital contact; and

(t) Genital to anal contact or oral to anal contact.

(3) A health care provider shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the health care provider:

(a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the health care provider's personal or sexual needs.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent, sexually harassing or demeaning behavior with current or former patients or key third parties, or a conviction of a sex offense as defined in RCW 9.94A.030.

(5) To determine whether a patient is a current patient or a former patient, the commission will analyze each case individually, and will consider a number of factors including, but not limited to, the following:

(a) Documentation of formal termination of professional relationship;

(b) Transfer of the patient's care to another health care provider;

(c) The length of time that has passed since the last health care services were provided to the patient;

(d) The length of the professional relationship;

(e) The extent to which the patient has confided personal or private information to the health care provider;

(f) The nature of the patient's health problem; and

(g) The degree of emotional dependence and vulnerability of the patient.

(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 a legitimate health care purpose and that meets the standard of care appropriate to chiropractic profession; 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 health care provider where there is no evidence of, or potential for, exploiting the patient.

(7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(8) A violation of any provision of this rule shall constitute grounds for disciplinary action.

[Statutory Authority: Chapter 18.25 RCW. WSR 96-16-074, § 246-808-590, filed 8/6/96, effective 9/6/96.]