

WSR 22-14-002

PERMANENT RULES

DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed June 22, 2022, 12:33 p.m., effective July 23, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-808-590 Professional boundaries and sexual misconduct, rules for individuals under the authority of the chiropractic quality assurance commission (commission). The purpose of the adopted 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 of health's sexual misconduct rules in chapter 246-16 WAC.

Citation of Rules Affected by this Order: Amending WAC 246-808-590.

Statutory Authority for Adoption: RCW 18.25.0171, 18.130.050, and 18.13.062.

Adopted under notice filed as WSR 22-08-113 on April 6, 2022.

Changes Other than Editing from Proposed to Adopted Version: The rule was amended in subsection (3)(b) as follows: "Uses or exploits privileged information or access to privileged information to meet the health care provider's personal or sexual objectives."

The chiropractic quality assurance commission changed the language from "needs" to "objectives" to more closely align with other terminology used in the rule.

A final cost-benefit analysis is available by contacting Betty Moe, 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, website www.doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: May 12, 2022.

Robert J. Nicoloff
Executive Director

OTS-3545.3

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 third 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 or 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 objectives.

(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 the 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.]