



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

**Agency:** Department of Health

- Preproposal Statement of Inquiry was filed as WSR 14-16-096 ; or
- Expedited Rule Making--Proposed notice was filed as WSR ; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

**Title of rule and other identifying information:** (Describe Subject)

WAC 246-16-100--Sexual misconduct. The Department of Health (department) is proposing rule modification to sexual misconduct standards to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by a health care provider.

**Hearing location(s):** Department of Health  
Town Center 2, Conference Room 153  
111 Israel Road, SE  
Tumwater, Washington 98501

Date: 8/25/15 Time: 10:30 a.m.

**Submit written comments to:**

Name: Maura Craig  
Address:  
P.O. Box 47850  
Olympia, WA 98504-7850  
e-mail: <http://www3.doh.wa.gov/policyreview/>  
fax (360)236-4626 by (date) 08/25/2015

**Assistance for persons with disabilities:** Contact

Maura Craig at 360.236.4997 by 08/21/2015

TTY (800) 833-6388 or () 711

**Date of intended adoption:** 08/27/2015

(Note: This is NOT the effective date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

The proposed rule clarifies and updates the sexual misconduct rule to establish clearer standards of conduct for health care providers in professions under the Secretary of Health's authority per RCW 18.130.040(2)(a). Clarification of sexual misconduct standards will help health care providers understand what constitutes sexual misconduct, which includes sexual contact with any person including people who are not patients, clients, or key parties that involves force, intimidation, lack of consent; or a conviction of a sex offense listed in RCW 9.94A.030.

**Reasons supporting proposal:**

The department's experience with investigating and enforcing the current rule has raised the need to clarify what acts constitute sexual misconduct by health care providers. The proposal will establish clearer standards of conduct for providers and will help the department be consistent in its enforcement activities to more fully comply with RCW 18.130.062 and Executive Order 06-03.

**Statutory authority for adoption:**

RCW 18.130.050, 18.130.062, Executive Order 06-03

**Statute being implemented:**

RCW 18.130.050, 18.130.062 and Executive Order 06-03

**Is rule necessary because of a:**

- Federal Law?  Yes  No
  - Federal Court Decision?  Yes  No
  - State Court Decision?  Yes  No
- If yes, CITATION:

**DATE** 07/08/2015

**NAME** (type or print)

John Wiesman, DrPH, MPH

**SIGNATURE**

DrPH, MPH

**TITLE**

Secretary of Health

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** July 08, 2015

**TIME:** 12:40 PM

**WSR 15-15-042**

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

None

**Name of proponent:** (person or organization) Washington State Department of Health

- Private
- Public
- Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting..... Maura Craig	111 Israel Rd SE, Tumwater, WA 98501	(360) 236-4997
Implementation.... Martin Mueller	111 Israel Rd SE, Tumwater, WA 98501	(360) 236-4600
Enforcement..... Marc Defrey	111 Israel Rd SE, Tumwater, WA 98501	(360) 236-4913

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

No. Explain why no statement was prepared.

A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025 and RCW 34.05.310(4)(d), a SBEIS is not required for proposed rules that only clarify the language of a rule without changing its effect.

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

No: Please explain: The agency did not complete a cost benefit analysis under RCW 34.05.328(5)(b)(iv). Rulemaking that only clarifies language of a rule without changing its effect does not require a cost benefit analysis.

**WAC 246-16-100 Sexual misconduct.** (1) A health care provider 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 community standards of practice for examination, diagnosis and treatment and within the health care practitioner's scope of practice;
- (c) Rubbing against a patient or client or key party for sexual gratification;
- (d) Kissing;
- (e) Hugging, touching, fondling or caressing of a romantic or sexual nature;
- (f) Examination of or touching genitals without using gloves;
- (g) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;
- (h) Not providing the patient or client a gown or draping except as may be necessary in emergencies;
- (i) Dressing or undressing in the presence of the patient, client or key party;
- (j) Removing patient or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;
- (k) Encouraging masturbation or other sex act in the presence of the health care provider;
- (l) Masturbation or other sex act by the health care provider in the presence of the patient, client or key party;
- (m) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;
- (n) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;
- (o) Soliciting a date with a patient, client or key party;
- (p) Discussing the sexual history, preferences or fantasies of the health care provider;
- (q) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;
- (r) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;
- (s) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;
- (t) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for legitimate health care purposes; and
- (u) Showing a patient, client or key party sexually explicit photographs, other than for legitimate health care purposes.

(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 in exchange for sexual favors;

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

~~((3))~~ (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 patient, client or key party within two years after the provider-patient/client relationship ends.

~~((4))~~ (5) After the two-year period of time described in subsection ~~((3))~~ (4) of this section, a health care provider shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section if:

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

~~((5))~~ (6) When evaluating whether a health care provider is prohibited from engaging, or attempting to engage, in sexual misconduct, the secretary 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 or client;

(e) Communication between the health care provider and the patient or client 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 health care provider;

(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; and

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

~~((6))~~ (7) Patient, client or key party initiation or consent does not excuse or negate the health care provider's responsibility.

~~((7))~~ (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 health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to that 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 or client.