



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Department of Health- Podiatric Medical Board

- Preproposal Statement of Inquiry was filed as WSR 15-7-066 ; 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 246-922-600 Sexual misconduct. The Podiatric Medical Board (board) is proposing to amend the rule to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by a podiatric physician.

Hearing location(s): Blackriver Training and Conference Center
800 Oakesdale Ave. S.W.
Renton, WA 98057

Date: 10/13/16

Time: 9:30 a.m.

Submit written comments to:

Name: Brett Cain
Address: PO Box 47852
Olympia, WA 98504-7852
e-mail: <https://fortress.wa.gov/doh/policyreview>
fax (360) 236-2901 by (date) 10/11/2016

Assistance for persons with disabilities: Contact

Cece Zenker at (360) 236-4633 by 10/10/2016

TTY (800) 833-6388 or () 711

Date of intended adoption: 10/13/2016

(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 what forcible or nonconsensual acts are within the definition of sexual misconduct by podiatric physicians. The board's proposed rule adds acts of sexual misconduct which include 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. Updating the sexual misconduct rule will establish clearer standards of conduct and will help the board be consistent in its enforcement activities to more fully comply with RCW 18.130.050, RCW 18.130.062, and Executive Order 06-03.

Reasons supporting proposal:

Experience with investigations and enforcement under the current rule has raised the need to clarify what acts constitute sexual misconduct by podiatric physicians. The proposal will establish clearer standards of conduct for podiatric physicians and will help them understand what acts constitute sexual misconduct.

Statutory authority for adoption:

RCW 18.22.015 and RCW 18.130.050

Statute being implemented:

RCW 18.130.050 and RCW 18.130.062

Is rule necessary because of a:

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

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 01, 2016

TIME: 9:14 AM

WSR 16-16-094

DATE 07/29/2016

NAME (type or print)

Suzanne Wilson, DPM

SIGNATURE

TITLE

Chair

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

None

Name of proponent: (person or organization) Washington State Podiatric Medical Board

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Brett Cain	111 Israel Rd SE Tumwater WA 98504	(360) 236-4766
Implementation....Brett Cain	111 Israel Rd SE Tumwater WA 98504	(360) 236-4766
Enforcement.....Brett Cain	111 Israel Rd SE Tumwater WA 98504	(360) 236-4766

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 was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry.

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) Rules that clarify language of a rule without changing its effect.

WAC 246-922-600 Sexual misconduct. (1) ~~((Definitions:))~~ The definitions in this section 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 podiatric physician-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 podiatric physician and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Podiatric physician" means a person licensed to practice podiatric medicine and surgery under chapter 18.22 RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, domestic partners, parents, siblings, children, guardians and proxies.

(2) A podiatric physician shall not engage in sexual misconduct with a current patient or a key third party. A podiatric physician engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the podiatric physician or masturbation by the podiatric physician while the patient is present;
- (i) Offering to provide practice-related services, such as medication, in exchange for sexual favors;
- (j) Soliciting a date;
- (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the podiatric physician.

(3) A podiatric physician 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 podiatric physician:

- (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 podiatric physician's personal or sexual needs.

(4) 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.

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

- (a) Documentation of formal termination;
- (b) Transfer of the patient's care to another health care provider;
- (c) The length of time that has passed;
- (d) The length of time of the professional relationship;
- (e) The extent to which the patient has confided personal or private information to the podiatric physician;
- (f) The nature of the patient's health problem;
- (g) The degree of emotional dependence and vulnerability.

~~((5))~~ (6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

~~((6))~~ (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.

~~((7))~~ (8) A violation of any provision of this section shall constitute grounds for disciplinary action.