PROPOSED RULE MAKING

CR-102 (June 2012)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

Agency: Department of Health- Pharmacy Quality Assurance Commission

☒ **Preproposal Statement of Inquiry was filed as WSR** 15-24-107 **; 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 246-860-100 Sexual Misconduct. The Pharmacy Quality Assurance Commission (Commission) is proposing amendment to sexual misconduct standards to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by a pharmacist, or pharmacy intern, technician or assistant.

Hearing location(s):
Comfort Inn Tumwater
1602 74th Avenue SW
Tumwater, WA 98501

Date: 5/26/2016 Time: 9:15 AM

Date of intended adoption: 05/26/2016
(Note: This is **NOT** the **effective** date)

Submit written comments to:
Name: Brett Lorentson
Address: Department of Health, Pharmacy Quality Assurance Commission,
P.O. Box 47852
Olympia WA 98504-7852.

e-mail: http://www3.doh.wa.gov/policyreview/
fax 360-236-2260 by (date) 05/19/2016

Assistance for persons with disabilities: Contact
Brett Lorentson by 5/12/2016
TTY (800) 833-6388 or () 711

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
The Commission is proposing to update the sexual misconduct rule to establish clearer standards of conduct for pharmacy health care providers. The proposed rule clarifies what forcible or nonconsensual acts are within the definition of sexual misconduct. The proposed rule also updates and establishes clearer standards of conduct for pharmacy health care providers by adding to the existing rules sexual contact with any person, including people who are not 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:
Experience with investigating and enforcing the current rule has raised the need to clarify what acts constitute sexual misconduct. By establishing clearer standards of conduct for providers, the proposal will help the consistent enforcement of sexual misconduct rules to more fully comply with RCW 18.130.062 and Executive Order 06-03. The proposal makes the commission's rule consistent with recent amendments of the secretary's sexual misconduct rule and rules of other boards and commissions.

Statutory authority for adoption:
RCW 18.64.005, RCW 18.130.062 and RCW 18.130.050

Statute being implemented:
RCW 18.64.005, RCW 18.130.062 and RCW 18.130.050

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

DATE 04/19/2016

NAME (type or print)
Tim Lynch, PharmD, MS

SIGNATURE

TITLE
Chair

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 20, 2016
TIME: 6:54 AM

WSR 16-09-124

(COMPLETE REVERSE SIDE)

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

None

Name of proponent: (person or organization) Pharmacy Quality Assurance Commission

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Brett Lorentson	111 Israel RD SE, Tumwater, WA 98501	360-236-4611
Implementation....	Doreen Beebe	111 Israel RD SE, Tumwater, WA 98501	360-236-4834
Enforcement.....	Doreen Beebe	111 Israel RD SE, Tumwater, WA 98501	360-236-4834

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 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. RCW 34.05.328(5)(b)(iv). Rulemaking that only clarifiers the language of a rule without changing its effect does not require cost-benefit analysis.

AMENDATORY SECTION (Amending WSR 07-08-040, filed 3/28/07, effective 4/28/07)

WAC 246-860-100 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 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) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;

(g) Not providing the patient or client a gown or draping except as may be necessary in emergencies;

(h) Dressing or undressing in the presence of the patient, client or key party;

(i) Removing patient's or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;

(j) Encouraging masturbation or other sex act in the presence of the health care provider;

(k) Masturbation or other sex act by the health care provider in the presence of the patient, client or key party;

(l) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;

(m) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(n) Soliciting a date with a patient, client or key party;

(o) Discussing the sexual history, preferences or fantasies of the health care provider;

(p) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(q) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(r) 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;

(s) 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~~))

(t) Showing a patient, client or key party sexually explicit photographs, other than for legitimate health care purposes; and

(u) 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.

(2) 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) 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 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.

(4) When evaluating whether a health care provider engaged, or attempted to engage, in sexual misconduct, the ((~~board~~)) commission 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.

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

(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 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.