Guidance Document

WASHINGTON Medical Commission
Licensing. Accountability. Leadership.

Sexual Misconduct and Abuse

"...I will go to help the sick, and never with the intention of doing harm or injury. I will not abuse my position to indulge in sexual contacts with the bodies of women or men..." *Oath of Hippocrates, translated 1950*[1][2]

Guidance to Practitioners

To help prevent sexual misconduct and abuse, and to help practitioners maintain good professional boundaries with patients and key third parties, the Commission strongly recommends that a practitioner:

1. Consider having a chaperone present during examination of any sensitive parts of the body.
2. Be aware of any feelings of sexual attraction to a patient or key third party. Under no circumstances should a practitioner act on these feelings or reveal or discuss them with the patient or key third party. The practitioner should discuss such feelings with a supervisor or trusted colleague.
3. Be alert to signs that a patient or key third party may be interested in a romantic or sexual relationship. All steps must be taken to ensure that the boundaries of the professional relationship are maintained. This could include transferring the care of the patient.
4. Transfer care of a patient to whom the practitioner is sexually attracted to another health care provider. Recognizing that such feelings in themselves are not compatible with competent professional practice, a practitioner should seek help in understanding and resolving them without exposing them to or impacting the patient or key third party in any way.
5. Respect patient and/or key third party's dignity and privacy at all times.
6. Provide a professional explanation of the need for each of the various components of examinations, procedures, tests, and aspects of care to be given. This can minimize any misperceptions a patient might have regarding the practitioner's intentions and the care being given.
7. Communicate with a patient in a clear, appropriate and professional manner. A practitioner should never engage in communication with a patient or key third party that

[1] https://www.hippocrates.fo/F%C3%ADlur/Anna%C3%B0/Hippocratic%20Oath%20Classical%20Modern%20Version.pdf

[2] https://history.nih.gov/download/attachments/1016866/hippocratic.pdf?api=v2

could be interpreted as flirtatious, or which employ sexual innuendo, off-color jokes, or offensive language.

8. Refrain from discussing the practitioner's personal problems, or any aspect of the practitioner's intimate life with a patient or key third party.

Background

Sexual misconduct between practitioners and patients or key third parties detracts from the goals of the practitioner-patient relationship, exploits the vulnerability of the patient, and obscures the practitioner's objective judgment concerning the patient's health care. It is a fundamental betrayal of trust and detrimental to the patient's well-being. The Washington Medical Commission (Commission) does not tolerate sexual misconduct or abuse in any form.

The Commission maintains rules prohibiting sexual misconduct and abuse. The Commission issues these guidelines to increase practitioner awareness of the rules and to help practitioners maintain appropriate practitioner-patient boundaries.

Definitions

A "patient" is a person who is receiving health care or treatment or has received health care or treatment. The determination of when a person is a patient is made on a case-by-case basis with consideration given to several factors, including the nature, extent and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.[3]

A "practitioner" is a physician licensed under Chapter 18.71 or 18.71B RCW, a physician assistant as licensed under Chapter 18.71A or 18.71C RCW, or a certified anesthesiologist assistant licensed under Chapter 18.71D RCW.

A "key third party" is a person in a close personal relationship with the patient and includes, but is not limited to spouses, partners, parents, siblings, children, guardians and proxies.[4]

Former Patients or Key Third Parties

As provided in the rules, a practitioner cannot engage in any of the above behaviors with a former patient or former key third party if the practitioner

(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 practitioner's personal or sexual needs.

Guideline

The Commission does not tolerate practitioners engaging in sexual misconduct with a patient or key third party. As stated in the rules, a practitioner engages in sexual misconduct when they engage in the following behaviors with a patient or key third party, regardless of setting, professional or otherwise:

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[3] WAC 246-919-630(1)(a) and WAC 246-918-410(1)(a).
[4] WAC 246-919-630(1)(c) and WAC 246-918-410(1)(c).

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 practitioner;[5]
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.

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.[6]

[5] WAC 246-919-630 (physicians), WAC 246-918-410 (physician assistants).
[6] Id.

Consent

A patient's or key third party's consent to, initiation of, or participation in sexual behavior or involvement with a practitioner does not change the prohibited nature of the conduct. As the party in the professional relationship with the power imbalance, the practitioner has full and sole responsibility to maintain proper professional boundaries at all times and in all settings. It is not a defense or a mitigating factor that the patient or key third party consented to, proposed, or initiated sexual contact or the sexual or romantic relationship.

Termination of Practitioner-Patient Relationship

Best practice for practitioners licensed with the Commission is to never enter a relationship of a non-professional, romantic, or sexual nature with a patient or key third party. Once the practitioner-patient relationship has been established, the practitioner has the burden of showing that the relationship no longer exists. The mere passage of time is not determinative of the issue. Because of the varying nature of types of practitioner-patient relationships, variety of settings, differing practice types, and imbalance in power between practitioner and patient, individual analysis by the Commission is essential. As stated in the rules, the Commission will analyze each case individually and will consider several factors including, but are 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 practitioner;
(f) The nature of the patient's health problem;
(g) The degree of emotional dependence and vulnerability of the patient or key third party.

Some practitioner-patient relationships may never effectively terminate because of the nature and extent of the relationship. As such, there is never an acceptable time when relationships of a sexual or romantic nature may occur in such instances. An example of one such specialty is psychiatry, where the national association has determined there is never an ability for the practitioner to engage in a non-therapeutic relationship of any kind with the patient or key third party. These relationships will always raise concerns of sexual misconduct whenever there is sexual contact.[7]

[7] Two opinions from the Washington Supreme Court provide guidance on the issue of whether a person is a current patient. In *Haley v. Medical Disciplinary Board,* 117 Wn.2d 1062 (1991), the court held that a patient whose contact with the surgeon was limited to the removal of her spleen and two follow up appointments was not a patient six months after the last follow up when a sexual relationship began. The court said that if the surgeon had been in another specialty that typically has an ongoing relationship with the patient, such as a family practitioner or an ob-gyn, the court would have found differently. In *Heinmiller v. Dept. of Health,* 127 Wn.2d 595 (1995), the same court found that a social worker who began a sexual relationship with a patient one day after terminating the professional relationship had sex with a client in violation of RCW 18.130.180(24).

Diagnosis and Treatment

Sexual misconduct does not include 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.

Abuse

The Commission does not tolerate a practitioner abusing a patient. As stated in the rules, a practitioner abuses a patient when they:

(a) Makes statements regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose;
(b) Removes a patient's clothing or gown without consent;
(c) Fails to treat an unconscious or deceased patient's body or property respectfully; or
(d) Engages in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.[8]

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[8] WAC 246-919-640 (physicians), WAC 246-918-420 (physician assistants).