

October 2019

Called in to monthly board meeting with Legislative Update

Called in to Senate Behavioral Health Subcommittee Meeting, hosted by Manka Dhingra regarding the Involuntary Treatment Act ([SB 5720](#))

Met with the following legislators: Sen. Curtis King, Sen. Judy Warnick, Rep. Tom Dent, Sen. Sharon Brown, Rep. Joel Kretz, Rep. Alex Ybarra, Rep. Brad Klippert, Sen. Maureen Walsh, Rep. Chris Corry, Rep. Jeremy Dufault

There are new “sexual misconduct” rules that will apply to all health care professions:

As part of its ongoing patient safety commitment, the Department of Health continuously seeks to provide the more than 475,000 health care professionals credentialed by the state of Washington with information and updates to ensure that they are practicing safely, effectively, and within state statutes and rules.

This email is to remind you about the sexual misconduct rules (WAC 246-16-100). Legislation passed during the 2019 session that places new restrictions on providers who commit sexual misconduct violations. It is critical that providers understand these rules and the impacts of new legislation on their practices.

Background

The purpose of the sexual misconduct rules is to acknowledge that health care providers often have a unique position of power or influence over their patients or clients (and third parties, such as parents or guardians) and to ensure that they do not take advantage of that position.

What is Sexual Misconduct?

Under the rules, sexual misconduct can take many forms, such as, but not limited to:

- Sexual intercourse or engaging in or encouraging sexual acts, including those involving force, intimidation, or a lack of consent.
- Sexualized touching of a patient’s body not consistent with standards of care.
- Kissing, hugging, caressing or fondling.
- Disrobing a patient without consent or depriving a patient of the proper privacy.
- Soliciting a date or terminating a professional relationship in order to pursue a romantic relationship.
- Sexually commenting on or demeaning a person’s body.
- Exchanging health care treatment for sexual favors.
- Using health care data to engage in sexual misconduct.

For many health care professionals, the sexual misconduct rules prohibit sexual activity with patients or third parties for at least two (2) years after the end of the treatment relationship. Even then, a sexual relationship still may not be appropriate if:

- There is a reasonable chance the patient or third party will seek or require additional care, or
- The care provided results in an ongoing imbalance of power, influence, or opportunity.

Determining Whether Behavior is Inappropriate

If there is a question of whether sexual misconduct has occurred, the Secretary will consider factors such as, but not limited to:

- The existence of formal documentation terminating the provider-patient relationship.
- The duration of and frequency of visits in the relationship, and whether care has been transferred to another health care provider.
- The amount of time that has passed since the provider-patient relationship has ended. This includes whether communication between the parties continued after the end of the professional relationship.
- The extent to which private information was shared in the professional relationship, and the patient's emotional dependence and vulnerability.

Note that it does NOT matter whether the patient or third party initiates the misconduct or gives consent. It is always the health care professional's responsibility to not engage with the patient or third party.

Limitations

The sexual misconduct rules do not apply in emergent situations where services cannot or will not be performed by another health care provider, nor do the rules prohibit contact that is necessary for a legitimate health care purpose for that health profession. Finally, providing legitimate health care services to a person who is in an established personal relationship, where there is no potential or actual exploitation, is not prohibited.

Recent Developments

During the 2019 legislative session, the Legislature passed HB 1198. This bill requires a health care provider who is subject to the Uniform Disciplinary Act and has been sanctioned by the Secretary for sexual misconduct to provide, for the duration of the stipulation or order, a disclosure to every patient at the patient's next visit with the provider. The requirement also exists for any new patient to the provider, again, for the duration of the stipulation or order.

The bill specifically requires the disclosure to include:

- A copy of the order or stipulation to informal disposition.
- A description of all sanctions placed on the provider's credential.
- The duration of the sanctions.
- The programs phone number.
- An explanation of how the patient can find more information.

The health care provider must document that the patient has received and is aware of the order or stipulation to informal disposition, and the disclosure must be signed by the patient or surrogate decision maker. In addition, the signed disclosure must be maintained in the patient's file.

Thank you for your continuing efforts to protect and care for your patients. We encourage you to periodically review the laws and rules governing your health care credential. If you have questions, contact medical.assistants@doh.wa.gov.

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