

# 10.32.[17]04 Sexual Misconduct

## .01 Scope

This chapter prohibits sexual misconduct by health care practitioners.

## .02 Definitions

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Health care practitioner" means *a licensee or registrant* ~~[an individual licensed under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland].~~

(2) Key Third Party.

(a) "Key third party" means an individual who participates in the health and welfare of the patient concurrent with the physician-patient relationship.

(b) "Key third party" includes, but is not limited to the following individuals:

(i) Spouse;

(ii) Partner;

(iii) Family member;

(iv) Guardian;

(v) Surrogate; or

(vi) Proxy designated by durable power of attorney.

(3) Sexual Contact.

(a) "Sexual contact" means the knowing touching directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the health care practitioner's own prurient interest or for sexual arousal or gratification.

(b) "Sexual contact" includes, but is not limited to:

(i) Sexual intercourse, genital to genital contact;

(ii) Oral to genital contact;

(iii) Oral to anal contact or genital to anal contact;

(iv) Kissing in a romantic or sexual manner; or

(v) Nonclinical touching of breasts, genitals, or any other sexualized body part.

(4) "Sexual harassment" means an unwelcome sexual advance, request for sexual favor, [or] other verbal or physical conduct, *or electronic communication* of a sexual nature.

### .03 Sexual Misconduct

A. Health care practitioners may not engage in sexual misconduct.

B. Health Occupations Article, §§ 1-212, 14-404(a)(3), 14-5A-17(a)(3), 14-5B-14(a)(3), 14-5C-17(a)(3), 14-5D-14(a)(3), 14-5E-16(a)(3), 14-5F-18(a)(19), *14-5G-18(a)(3)* and 15-314(a)(3), Annotated Code of Maryland, includes, but is not limited to, sexual misconduct.

C. Sexual misconduct includes, but is not limited to:

(1) Engaging in sexual harassment of a patient, key third party, employee, student, or coworker regardless of whether the sexual harassment occurs inside or outside of a professional setting;

(2) Failing to provide privacy for disrobing;

(3) Performing a pelvic or rectal examination without the use of gloves;

(4) Discussing the health care practitioner's sexual problems, sexual likes or dislikes, or fantasies;

(5) Using the health care practitioner-patient relationship to initiate or solicit a dating, romantic, or sexual relationship;

(6) Engaging in a dating, romantic, or sexual relationship ~~[which]~~ *that* violates §D of this regulation or the code of ethics of the American Medical Association, American Osteopathic Association, American Psychiatric Association, or other professional code of ethics;

(7) Participating in any form of sexual contact with a patient or key third party;

(8) Having nonconsensual sexual contact with a coworker or employee;

(9) Causing a patient or key third party to touch the health care practitioner's breasts, genitals, or any sexualized body part;

(10) Encouraging a patient or key third party to masturbate in the presence of the health care practitioner or masturbation by the health care practitioner while a patient or key third party is present;

(11) Offering to provide practice-related services in exchange for sexual favors; and

(12) Exposing the health care practitioner's breasts, genitals, or any sexualized body part.

D. Sexual or Romantic Relationships. A health care practitioner may not engage in sexual behavior with:

(1) A current patient;

(2) A key third party if the key third party's decisions directly affect the health and welfare of the patient or if the relationship could otherwise compromise the patient's care based on the following considerations, which include, but are not limited to:

(a) The nature of the patient's medical problem and the likely effect on patient care;

(b) The length of the professional relationship;

(c) The degree of emotional dependence on the health care practitioner;

(d) The importance of the clinical encounter to the key third party and the patient; and

(e) Whether the health care practitioner-patient relationship can be terminated in keeping with ethics guidance and what implications doing so would have for the patient; and

(3) A former patient upon consideration of the following factors:

(a) Duration of the health care practitioner-patient relationship;

(b) Nature of the health care services provided;

- (c) Lapse of time since the health care practitioner-patient relationship ended;
- (d) Extent to which the former patient confided personal or private information to the health care practitioner;
- (e) Degree of emotional dependence that the former patient has or had on the health care practitioner;
- (f) Extent to which the health care practitioner used or exploited the trust, knowledge, emotions, or influence derived from the previous health care practitioner-patient relationship; and
- (g) Whether the health care practitioner-patient relationship was terminated in order to enter into a romantic or sexual relationship.

Draft