

SEXUAL CONDUCT/HARASSMENT/ABUSE

Can a physician be disciplined for sexual contact with a current patient?

Yes. Sexual contact with a patient is considered unprofessional conduct.¹ See UNPROFESSIONAL CONDUCT.

Can a physician be disciplined for sexual contact with a former patient or a person in a close personal relationship with the patient?

Yes. A physician shall not engage in sexual conduct with a former patient or a key third party (a person in a close personal relationship with the patient – including spouses, partners, parents, siblings, children and guardians)² if the physician:³

- Uses or exploits the trust, knowledge, influences, or emotions derived from the professional relationship.
- Uses or exploits privileged information or access to privileged information to meet the physician's personal or sexual needs.

See UNPROFESSIONAL CONDUCT.

What activities comprise sexual misconduct?

A physician engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:⁴

- Sexual intercourse or genital to genital contact.
- Oral to genital contact.
- Genital to anal contact, or oral to anal contact.
- Kissing in a romantic or sexual manner.
- Touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment.
- Examination or touching of genitals without using gloves.
- Not allowing a patient the privacy to dress or undress.

¹ RCW 18.130.180(24).

² WAC 246-919-630(2).

³ WAC 246-919-630(3).

⁴ WAC 246-919-630(2).

- Encouraging the patient to masturbate in the presence of the physician, or masturbation by the physician while the patient is present.
- Offering to provide practice-related services, such as medications, in exchange for sexual favors.
- Soliciting a date.
- Engaging in a conversation regarding sexual history, preferences, or fantasies of the physician.

A physician may be found to have engaged in sexual misconduct even if the contact was initiated by the patient, former patient, or key third party, or if the party consented to the contact, or if the contact occurred outside the professional setting.⁵

Can a physician be disciplined for inappropriate examinations?

Yes, if sexually explicit questions are asked or sexually explicit comments are made, or if an examination is inappropriate and has no bearing on the patient's complaints, diagnosis or treatment, the conduct could constitute unprofessional conduct, even without sexual contact.⁶ See UNPROFESSIONAL CONDUCT.

How does Washington State handle complaints involving alleged sexual misconduct?

Unlike other disciplinary matters pertaining to physicians which are handled by the Medical Quality Assurance Commission (See MEDICAL DISCIPLINE), all complaints which allege a physician has committed unprofessional conduct relating to sexual misconduct are addressed by the Department of Health.⁷ The Department of Health initiates investigations, performs investigations, determines the disposition of complaints, holds hearings, and decides the matter.⁸

Can a physician be disciplined for abuse of a patient?

Yes, abuse of a patient by a physician is considered unprofessional conduct. A physician abuses a patient when the physician:⁹

- Makes statement regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose.
- Removes a patient's clothing or gown without consent.

⁵ WAC 246-919-630(5).

⁶ WAC 246-919-630, -640.

⁷ RCW 18.130.062.

⁸ RCW 18.130.062.

⁹ WAC 246-919-640.

- Fails to treat an unconscious or deceased patient's body or property respectfully.
- Engages in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.

What is sexual harassment?

Sexual harassment is a form of unlawful sex discrimination under Title VII of the Civil Rights Act.¹⁰ Sexual harassment consists of unwelcome sexual advances, requests for sexual favors and other verbal or physical of a sexual nature when:¹¹

- Submission to such conduct is either explicitly or implicitly a term or condition of an individual's employment;
- Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such an individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Under what circumstances may sexual harassment occur?

Sexual harassment may occur in a variety of circumstances including, but not limited to the following:¹²

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.¹³
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

¹⁰ 42 U.S.C. § 2000e-2.

¹¹ 29 C.F.R. § 1604.11.

¹² EEOC website, <http://www.eeoc.gov/eeoc/publications/fs-sex.cfm>, last visited 5/30/2012.

¹³ *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75 (1998).

What are some examples of sexual harassment?

Sexual harassment may take many forms, including:

- Unwelcome sexual advances.
- Requests for sexual favors.
- Unnecessary touching.
- A display of sexually suggestive objects or pictures.
- Sexually explicit objects or pictures.
- Sexually explicit or offensive jokes or remarks.
- Threats or insinuations that refusal to submit to sexual advances will adversely affect that person's employment, work status, evaluation, wages, advancement, assigned duties, shifts, or any other condition of employment or career development.
- Same-sex harassment regardless of whether the alleged harasser is gay or lesbian.

The federal, state, and local laws governing sexual harassment set minimum standards only. Hospitals, clinics and other businesses may have policies that prohibit less offensive conduct. A physician may violate these policies and be subject to disciplinary action by the hospital, clinic or other business even though the physician may not necessarily have violated any law.

In what capacities may a physician be accused of sexual harassment?

The capacities in which a physician could be accused of sexual harassment include:

- The physician as an employer. Title VII of the Civil Rights Act of 1964 prohibits sexual harassment by employers with 15 or more employees.¹⁴ Washington's Law Against Discrimination prohibits sexual harassment by employers with eight or more employees¹⁵. The King County Code,¹⁶ the Tacoma Municipal Code,¹⁷ and the Spokane Municipal Code¹⁸ also prohibit sexual harassment by employers with eight or more employees. The Seattle Municipal Code prohibits sexual harassment by employers with one or more employees.¹⁹ **See DISCRIMINATION.**

¹⁴ 42 U.S.C. § 20000e.

¹⁵ RCW 49.60.040(11).

¹⁶ KCC 12.18.020(G).

¹⁷ TMC 1.29.040.

¹⁸ SMC 01.06.030(E).

¹⁹ SMC 14.04.030(K).

- The physician as a supervisor.
- The physician as co-worker.
- The physician as an independent contractor.
- The physician as a customer or vendor.
- The physician as a faculty member/instructor.
- The physician as a service provider.

Does a physician as an employer have a duty to provide a workplace free of harassment by others?

Yes. A physician who is an employer has a duty not only to avoid engaging in harassment toward employees and third parties, but also to provide a workplace free of harassment from others, including employees and third parties, such as patients, vendors, and other non-employees.²⁰

In what capacities might a physician be sexually harassed?

The capacities in which a physician could be a victim of sexual harassment include:

- The physician as an employee.
- The physician as a supervisee.
- The physician as a co-worker.
- The physician as a customer or vendee.
- The physician as a student.
- The physician as a service provider.

Note: Under Washington law, independent contractors are not entitled to the protections of the laws²¹ prohibiting unfair practices and discrimination in employment,²² but are still protected against discrimination.²³ There are a number of factors used by the Washington State Human Rights Commission to determine if an individual is an employee or an independent contractor.²⁴

²⁰ EEOC, http://www.eeoc.gov/facts/fs-relig_ethnic.html, last visited 5/30/2012.

²¹ RCW 49.60.180.

²² WAC 162-16-230(1).

²³ RCW 49.60.030(1).

²⁴ WAC 162-16-230(3).

Is a person who, in good faith, reports an incident of sexual harassment protected from retaliation?

Yes. It is against the law to retaliate against anyone who, in good faith, makes a formal or informal complaint or files a grievance alleging sexual harassment.²⁵ It is also against the law to retaliate against anyone who participates in the investigation of such a complaint²⁶ or testifies in any legal proceeding arising from such a complaint.²⁷

Most public and private businesses also have internal policies that prohibit retaliation.

Are there other forms of harassment that constitute unlawful discrimination?

Yes, various laws against discrimination, in addition to prohibiting sexual harassment, also prohibit harassment on the basis of other protected statuses, such as age, race, creed, religion, color, national origin, sexual orientation, disability, or use of a service animal.²⁸ Prohibited harassment is conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or use of service, or that creates an intimidating, hostile, or offensive work or service environment.²⁹ See **DISCRIMINATION**.

²⁵ RCW 49.60.210(1).

²⁶ RCW 49.60.210(3).

²⁷ RCW 49.60.210(1).

²⁸ RCW 49.60.180.

²⁹ 29 C.F.R. § 1604.11(a)(3).