

ARTICLE 50-01.1
DEFINITIONS

Chapter
50-01.1-01 Grounds for Discipline - Definitions

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GROUND FOR DISCIPLINE - DEFINITIONS

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The following definitions apply to grounds for discipline for licenses under the jurisdiction of the board.

1. "Chaperone" means a third individual who is present during a medical examination, with the patient's consent.
2. "Conduct" includes:
 - a. Behaviors, gestures, or expressions, whether verbal or physical; or
 - b. The creation, receipt, exchange, saving, or sending of images or communications, whether verbal or written, via a telecommunications device.
3. "Former patient" means one of the following:
 - a. An individual for whom the licensee has not rendered health care services since the licensee-patient relationship was terminated; or
 - b. An individual who has otherwise been admitted, discharged, or referred to another licensee for care subsequent to receipt of health care services by a licensee in an emergency setting or on an episodic basis, and such action has been recorded in the individual's medical record or chart.
4. "Health care services" means examination, consultation, health care, treatment, or other services provided by a licensee under the legal authority conferred by a license, certificate, or registration issued by the board.
5. "Intimate examination" means an examination of the pelvic area, genitals, rectum, breast, or prostate.
6. "Key third party" means an individual closely involved in the patient's decisionmaking regarding health care services, including the patient's spouse or partner, parent, child, sibling, or guardian. An individual's status as a key third party ceases upon the termination of the licensee-patient relationship or upon termination of the individual's relationship with the patient.
7. "Licensee" means any professional licensed under the jurisdiction of the board of medicine.
8. "Patient" means an individual for whom the licensee has provided health care services, whether provided by mutual consent or implied consent, or provided without consent pursuant to a court order. Once a licensee-patient relationship is established, an individual remains a patient until the relationship is terminated. The determination of whether an individual is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent, and context of the professional relationship between the licensee

and the individual. The fact that an individual is not actively receiving treatment or professional services is not the sole determining factor. The term includes:

- a. An individual who is receiving or has received health care services from the licensee without termination of the licensee-patient relationship; or
 - b. A key third party, as that term is defined in this section.
9. "Sexual abuse, misconduct, or exploitation" means conduct that exploits the licensee-patient relationship in a sexual way, whether verbal or physical, and may include the expression of thoughts, feelings, or gestures that are sexual or that reasonably may be construed by a patient or key third party as sexual. Sexual abuse, misconduct, or exploitation include:
- a. "Sexual impropriety" means conduct by the licensee that is seductive, sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient, including the following:
 - (1) Neglecting to employ disrobing or draping practices respecting the patient's privacy;
 - (2) Subjecting a patient to an intimate examination in the presence of a third party, other than a chaperone, without the patient's consent or if consent has been withdrawn;
 - (3) Making comments that are not clinically relevant about or to the patient, including making sexual comments about a patient's body or underclothing; making sexualized or sexually demeaning comments to a patient, criticizing the patient's sexual orientation, or making comments about potential sexual performance;
 - (4) Soliciting a date or romantic relationship with a patient;
 - (5) Participation by the licensee in conversation regarding the sexual problems, sexual preferences, or sexual fantasies of the licensee;
 - (6) Requesting details of the patient's sexual history, sexual problems, sexual preferences, or sexual fantasies if not clinically indicated for the type of health care services; and
 - (7) Failing to offer the patient the opportunity to have a third individual or chaperone in the examining room during an intimate examination or failing to provide a third individual or chaperone in the examining room during an intimate examination upon the request of the patient.
 - b. "Sexual contact" includes the following:
 - (1) Touching a breast, genital, or any body part that has sexual connotation for the licensee or patient, for any purpose other than appropriate health care services, or if the patient has refused or has withdrawn consent; and
 - (2) Examining or touching of the patient's genitals without the use of gloves.
 - c. "Sexual interaction" means conduct between a licensee and patient, whether or not initiated by, consented to, or participated in by a patient, that is sexual or may be reasonably interpreted as sexual, including:
 - (1) Sexual intercourse or genital to genital contact;
 - (2) Oral to genital contact;

- (3) Oral to anal contact or genital to anal contact;
 - (4) Kissing in a romantic or sexual manner;
 - (5) Encouraging the patient to masturbate in the presence of the licensee or masturbation by the licensee while the patient is present;
 - (6) Offering to provide health care services, including drugs, in exchange for sexual favors;
 - (7) Performing an intimate examination without clinical justification; or
 - (8) Conduct that is sexually demeaning to a patient or which demonstrates a lack of respect for the patient's privacy.
- d. Conduct described in paragraph 1 of subdivision a, paragraph 2 of subdivision a, paragraph 7 of subdivision a, and paragraph 1 of subdivision b of this rule does not constitute sexual abuse, misconduct, or exploitation if the following criteria are met:
- (1) The conduct occurred during the rendering of health care services in an emergency setting;
 - (2) The health care services rendered were clinically necessary;
 - (3) The patient was unconscious or otherwise unable to consent to health care services; and
 - (4) The patient's clinical condition required immediate action and the licensee's violation of paragraph 1 of subdivision a, paragraph 2 of subdivision a, paragraph 7 of subdivision a, or paragraph 1 of subdivision b of this rule was due to circumstances not within the licensee's control.
- e. This section does not prohibit conduct required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.
- f. It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.
10. "Unethical conduct" means conduct contrary to the following codes of ethics for each licensed profession:
- a. For medical doctors, the 2016 code of medical ethics adopted by the American medical association;
 - b. For osteopathic doctors, the 2016 code of ethics adopted by the American osteopathic association;
 - c. For physician assistants, the 2018 guidelines for ethical conduct for the physician associates profession adopted by the American academy of physician associates;
 - d. For genetic counselors, the 2017 code of ethics adopted by the national society of genetic counselors; and
 - e. For naturopaths, the 2015 code of ethics adopted by the American association of naturopathic physicians.

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