

**ESB 5282** - H COMM AMD

By Committee on Health Care & Wellness

**ADOPTED 02/27/2020**

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 18.130  
4 RCW to read as follows:

5 (1) A health care provider licensed under this title may not  
6 knowingly perform or authorize a student practicing under their  
7 authority to perform a pelvic examination on a patient who is  
8 anesthetized or unconscious unless:

9 (a) The patient or a person authorized to make health care  
10 decisions for the patient gave specific informed consent to the  
11 examination;

12 (b) The examination is necessary for diagnostic or treatment  
13 purposes; or

14 (c) Sexual assault is suspected, evidence may be collected if the  
15 patient is not capable of informed consent due to longer term medical  
16 condition, or if evidence will be lost.

17 (2) A licensed health care provider who violates subsection (1)  
18 of this section is subject to discipline pursuant to this chapter,  
19 the uniform disciplinary act.

20 **Sec. 2.** RCW 18.130.180 and 2019 c 427 s 17 are each amended to  
21 read as follows:

22 The following conduct, acts, or conditions constitute  
23 unprofessional conduct for any license holder under the jurisdiction  
24 of this chapter:

25 (1) The commission of any act involving moral turpitude,  
26 dishonesty, or corruption relating to the practice of the person's  
27 profession, whether the act constitutes a crime or not. If the act  
28 constitutes a crime, conviction in a criminal proceeding is not a  
29 condition precedent to disciplinary action. Upon such a conviction,  
30 however, the judgment and sentence is conclusive evidence at the  
31 ensuing disciplinary hearing of the guilt of the license holder of

1 the crime described in the indictment or information, and of the  
2 person's violation of the statute on which it is based. For the  
3 purposes of this section, conviction includes all instances in which  
4 a plea of guilty or nolo contendere is the basis for the conviction  
5 and all proceedings in which the sentence has been deferred or  
6 suspended. Nothing in this section abrogates rights guaranteed under  
7 chapter 9.96A RCW;

8 (2) Misrepresentation or concealment of a material fact in  
9 obtaining a license or in reinstatement thereof;

10 (3) All advertising which is false, fraudulent, or misleading;

11 (4) Incompetence, negligence, or malpractice which results in  
12 injury to a patient or which creates an unreasonable risk that a  
13 patient may be harmed. The use of a nontraditional treatment by  
14 itself shall not constitute unprofessional conduct, provided that it  
15 does not result in injury to a patient or create an unreasonable risk  
16 that a patient may be harmed;

17 (5) Suspension, revocation, or restriction of the individual's  
18 license to practice any health care profession by competent authority  
19 in any state, federal, or foreign jurisdiction, a certified copy of  
20 the order, stipulation, or agreement being conclusive evidence of the  
21 revocation, suspension, or restriction;

22 (6) Except when authorized by RCW 18.130.345, the possession,  
23 use, prescription for use, or distribution of controlled substances  
24 or legend drugs in any way other than for legitimate or therapeutic  
25 purposes, diversion of controlled substances or legend drugs, the  
26 violation of any drug law, or prescribing controlled substances for  
27 oneself;

28 (7) Violation of any state or federal statute or administrative  
29 rule regulating the profession in question, including any statute or  
30 rule defining or establishing standards of patient care or  
31 professional conduct or practice;

32 (8) Failure to cooperate with the disciplining authority by:

33 (a) Not furnishing any papers, documents, records, or other  
34 items;

35 (b) Not furnishing in writing a full and complete explanation  
36 covering the matter contained in the complaint filed with the  
37 disciplining authority;

38 (c) Not responding to subpoenas issued by the disciplining  
39 authority, whether or not the recipient of the subpoena is the  
40 accused in the proceeding; or

1 (d) Not providing reasonable and timely access for authorized  
2 representatives of the disciplining authority seeking to perform  
3 practice reviews at facilities utilized by the license holder;

4 (9) Failure to comply with an order issued by the disciplining  
5 authority or a stipulation for informal disposition entered into with  
6 the disciplining authority;

7 (10) Aiding or abetting an unlicensed person to practice when a  
8 license is required;

9 (11) Violations of rules established by any health agency;

10 (12) Practice beyond the scope of practice as defined by law or  
11 rule;

12 (13) Misrepresentation or fraud in any aspect of the conduct of  
13 the business or profession;

14 (14) Failure to adequately supervise auxiliary staff to the  
15 extent that the consumer's health or safety is at risk;

16 (15) Engaging in a profession involving contact with the public  
17 while suffering from a contagious or infectious disease involving  
18 serious risk to public health;

19 (16) Promotion for personal gain of any unnecessary or  
20 inefficacious drug, device, treatment, procedure, or service;

21 (17) Conviction of any gross misdemeanor or felony relating to  
22 the practice of the person's profession. For the purposes of this  
23 subsection, conviction includes all instances in which a plea of  
24 guilty or nolo contendere is the basis for conviction and all  
25 proceedings in which the sentence has been deferred or suspended.  
26 Nothing in this section abrogates rights guaranteed under chapter  
27 9.96A RCW;

28 (18) The procuring, or aiding or abetting in procuring, a  
29 criminal abortion;

30 (19) The offering, undertaking, or agreeing to cure or treat  
31 disease by a secret method, procedure, treatment, or medicine, or the  
32 treating, operating, or prescribing for any health condition by a  
33 method, means, or procedure which the licensee refuses to divulge  
34 upon demand of the disciplining authority;

35 (20) The willful betrayal of a practitioner-patient privilege as  
36 recognized by law;

37 (21) Violation of chapter 19.68 RCW or a pattern of violations of  
38 RCW 48.49.020 or 48.49.030;

39 (22) Interference with an investigation or disciplinary  
40 proceeding by willful misrepresentation of facts before the

1 disciplining authority or its authorized representative, or by the  
2 use of threats or harassment against any patient or witness to  
3 prevent them from providing evidence in a disciplinary proceeding or  
4 any other legal action, or by the use of financial inducements to any  
5 patient or witness to prevent or attempt to prevent him or her from  
6 providing evidence in a disciplinary proceeding;

7 (23) Current misuse of:

8 (a) Alcohol;

9 (b) Controlled substances; or

10 (c) Legend drugs;

11 (24) Abuse of a client or patient or sexual contact with a client  
12 or patient;

13 (25) Acceptance of more than a nominal gratuity, hospitality, or  
14 subsidy offered by a representative or vendor of medical or health-  
15 related products or services intended for patients, in contemplation  
16 of a sale or for use in research publishable in professional  
17 journals, where a conflict of interest is presented, as defined by  
18 rules of the disciplining authority, in consultation with the  
19 department, based on recognized professional ethical standards;

20 (26) Violation of RCW 18.130.420;

21 (27) Performing conversion therapy on a patient under age  
22 eighteen;

23 (28) Violation of section 1 of this act."

24 Correct the title.

EFFECT: Allows a health care provider to perform or authorize a student practicing under their authority to perform a pelvic examination and collect evidence from a patient who is anesthetized or unconscious if sexual assault is suspected and the patient is not capable of informed consent due to longer term medical condition or if evidence will be lost.

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