

For purposes of Chapter 4731-26 of the Administrative Code:

- (A) “Licensee” means an individual holding a certificate to practice as a physician assistant under Chapter 4730. of the Revised Code, a certificate to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery under Chapter 4731. of the Revised Code, or a certificate of registration as an anesthesiologist assistant under Chapter 4760 of the Revised Code.
- (B) “Patient” means a person for whom the licensee has provided services to address medical needs, whether the service was provided by mutual consent or implied consent, or was provided without consent pursuant to a court order. Patient includes any of the following:
 - (1) A person who is receiving health care or treatment from the licensee or has received health care or treatment from the licensee without the termination of the physician-patient relationship pursuant to rule 4731-27-01 of the Administrative Code; or
 - (2) A person who meets the criteria of a key third party, as that term is defined in paragraph (C) of this rule.
- (C) “Key third party” means an individual closely involved in the patient’s medical decision-making and care, including but not limited to, the patient’s spouse or partner, parents, child, sibling, or guardian. For purposes of this chapter, an individual’s status as a key third party ceases upon the termination of the physician-patient relationship or upon termination of the individual’s relationship with the patient.
- (D) “Chaperone” means a third person who, with the patient’s consent, is present during a medical examination.
- (E) “Former patient” means one of the following:
 - (1) A person for whom the licensee has not rendered medical service since the physician-patient relationship was terminated in accordance with rule 4731-27-01 of the Administrative Code; or
 - (2) A person who has otherwise been admitted, discharged, or referred to another physician for care following receipt of services by a licensee in an emergency setting or on an episodic basis, and such action has been recorded in the person's medical record or chart.
- (F) “Intimate examination” means an examination of the pelvic area, genitals, rectum, or, if the person is a female, a breast, or, if the person is a male, the prostate.
- (G) “Sexual misconduct” means behavior that exploits the physician-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 as sexual. Sexual misconduct includes the following:

- (1) Sexual impropriety by the licensee, such as behaviors, gestures, or expressions that are seductive, sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient, including but not limited to, the following:
 - (a) Neglecting to employ disrobing or draping practices respecting the person's privacy;
 - (b) Subjecting a patient to an intimate examination in the presence of a third party, other than a chaperone, without the patient's consent or in the event such consent has been withdrawn;
 - (c) Making comments that are not clinically relevant about or to the patient, including but not limited to, 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;
 - (d) Soliciting a date or romantic relationship;
 - (e) Initiation by the licensee of conversation regarding the sexual problems, preferences, or fantasies of the licensee;
 - (f) Requesting details of sexual history or sexual likes or dislikes when not clinically indicated for the type of examination or consultation; and
 - (g) Failing to offer the patient the opportunity to have a third person or chaperone in the examining room during an intimate examination and/or failing to provide a third person or chaperone in the examining room during an intimate examination upon the request of the patient.
- (2) Sexual contact by a licensee, including but not limited to, the following:
 - (a) Touching a breast or any body part that has sexual connotation for the licensee or patient, for any purpose other than appropriate examination or treatment, or where the patient has refused or has withdrawn consent; and
 - (b) Examining or touching of the patient's genitals without the use of gloves.
- (3) Sexual conduct between a licensee and patient whether or not initiated by, consented to, or participated in by a patient, and any conduct with a patient that is sexual or may

be reasonably interpreted as sexual, including but not limited to, the following:

- (a) Sexual intercourse, genital to genital contact;
 - (b) Oral to genital contact;
 - (c) Oral to anal contact, genital to anal contact;
 - (d) Kissing in a romantic or sexual manner;
 - (e) Encouraging the patient to masturbate in the presence of the licensee or masturbation by the licensee while the patient is present;
 - (f) Offering to provide practice-related services, such as drugs, in exchange for sexual favors; and
 - (g) Performing an intimate examination or consultation without clinical justification.
- (4) Conduct described in paragraphs (G)(1)(a), (G)(1)(b), (G)(1)(g), and (G)(2)(b) of this rule does not constitute sexual misconduct when all of the following criteria are met:
- (a) The conduct occurred during the rendering of medical care in an emergency setting;
 - (b) The care rendered was medically necessary; and
 - (c) Both of the following conditions are met:
 - (i) The patient was unconscious or otherwise unable to consent to treatment; and
 - (ii) The patient's medical condition required immediate action and the licensee could not comply with the provisions of paragraph (G)(1)(a), (G)(1)(b), (G)(1)(g), or (G)(2)(b) of this rule, as applicable, due to circumstances not within the licensee's control.

(H) "Emergency setting" means an emergency department or an urgent care center.

(I) "Board" means the state medical board of Ohio.

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Statutory Authority: 4730.07, 4731.05, 4760.19

Rule Amplifies: 4730.25, 4731.22, 4760.13

Prohibitions.

Sexual behavior between a licensee and a patient is never diagnostic or therapeutic.

- (A) A licensee shall not engage in sexual misconduct with a patient, key third party, or chaperone.
- (B) Conduct included within the definition of sexual misconduct occurring between a licensee and a former patient constitutes sexual misconduct and is prohibited if it meets any of the following criteria:
 - (1) The conduct occurred within ninety days after the physician-patient relationship was terminated;
 - (2) The conduct occurred between a psychiatrist and a person to whom the physician formerly provided psychiatric or mental health services, in violation of the code of ethics of the American Psychiatric Association; or
 - (3) The board determines that the conduct constitutes sexual misconduct upon consideration of the following factors:
 - (a) The duration of the physician-patient relationship;
 - (b) The nature of the medical services provided;
 - (c) The lapse of time since the physician-patient relationship ended;
 - (d) The extent to which the patient confided personal or private information to the licensee;
 - (e) The degree of emotional dependence that the former patient has on the licensee; and
 - (f) The extent to which the licensee used or exploited the trust, knowledge, emotions, or influence derived from the previous physician-patient relationship.

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Violations, Miscellaneous.

- (A) Except as provided in paragraph (C) of this rule, a violation of rule 4731-26-02 of the Administrative Code, as determined by the board, shall constitute the following:
 - (1) For a physician, “a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,” as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.
 - (2) For a physician assistant, “a departure from, or failure to conform to, minimal standards of care of similar physician assistants under the same or similar circumstances, regardless of whether actual injury to a patient is established, as that clause is used in division (B)(19) of section 4730.25 of the Revised Code.
 - (3) For an anesthesiologist assistant, “a departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to the patient is established,” as that clause is used in division (B)(4) of section 4760.13 of the Revised Code.
- (B) Where the alleged behavior does not in itself constitute sexual misconduct, the board may consider expert testimony or other evidence in making its determination.
- (C) Nothing in this rule shall limit the board’s authority to investigate and take action under sections 4730.25, 4731.22, or 4760.13 of the Revised Code.

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