

HOUSE BILL NO. HB0096

Healthcare provider-sexual assault protections.

Sponsored by: Representative(s) Bovee, Barlow, Blake,
Connolly, Dayton, Gierau and Harshman and
Senator(s) Anselmi-Dalton and Boner

A BILL

for

1 AN ACT relating to health care providers; requiring
2 specified individuals to be present during certain medical
3 treatments and examinations; providing exceptions;
4 requiring the promulgation of rules; clarifying offenses
5 relating to sexual assault; prohibiting the expungement of
6 criminal history records for sexual battery committed by a
7 health care provider; requiring criminal history record
8 investigations of physicians and physician assistants;
9 revising provisions relating to licensure in specified
10 professions and the effect of a felony conviction or plea;
11 requiring licensing boards to take disciplinary action
12 against a health care provider for sexual misconduct; and
13 providing for an effective date.

14

15 *Be It Enacted by the Legislature of the State of Wyoming:*

1

2 **Section 1.** W.S. 35-2-122 is created to read:

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4 **35-2-122. Requirement for specified individuals to be**
5 **present during certain medical treatments and examinations;**
6 **notice; waiver; exceptions; promulgation of rules.**

7

8 (a) Except as otherwise provided in subsections (b),
9 (c) and (d) of this section, a health care provider shall
10 ensure that an employee of the health care provider of the
11 same sex as the patient, or a parent or guardian of the
12 patient if the patient is a minor, is present during any
13 medical treatment or examination in which the health care
14 provider treats or examines an intimate part of the
15 patient's body.

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17 (b) A health care provider shall provide verbal and
18 written notice of the requirements of subsection (a) of
19 this section to a patient before beginning any medical
20 treatment or examination of an intimate part of the
21 patient's body. A patient may waive the requirements of
22 subsection (a) of this section by signing the written

1 notice and returning it to the health care provider before
2 the medical treatment or examination begins.

3

4 (c) A health care provider who does not employ an
5 employee of the same sex as the patient is not required to
6 comply with the provisions of this section, except when the
7 provider treats or examines an intimate part of a patient
8 who is a minor.

9

10 (d) A health care provider is not required to comply
11 with the provisions of this section if the provider is
12 providing emergency care to a patient.

13

14 (e) Nothing in this section shall be construed to
15 limit a parent or guardian's right to be present during any
16 medical treatment or examination of the parent or
17 guardian's child.

18

19 (f) The department of health shall promulgate rules
20 to carry out the provisions of this section.

21

22 (g) As used in this section:

23

1 (i) "Health care provider" means a person who is
2 licensed, certified or otherwise authorized or permitted by
3 the laws of this state to administer health care in the
4 ordinary course of business or practice of a profession;

5

6 (ii) "Intimate part" means the external
7 genitalia, perineum, anus or pubis of any person or the
8 breast of a female individual;

9

10 (iii) "Patient" means a person receiving
11 treatment or an examination from a health care provider.

12

13 **Section 2.** W.S. 6-2-301(a)(iv), by creating a new
14 paragraph (ix) and by renumbering (ix) as (x),
15 6-2-303(a)(viii), 7-13-1501(a) by creating a new paragraph
16 (iv) and (m) by creating a new paragraph (iv),
17 7-19-106(a)(xxiii), 7-19-201(a)(xxv) and by creating a new
18 subsection (f), 33-21-127(a)(iv), (v) and by creating a new
19 paragraph (vi), 33-21-146(a)(xi), by creating new
20 paragraphs (xiii) and (xiv) and by creating a new
21 subsection (c), 33-26-202(b)(xvi), 33-26-303(a) by creating
22 a new paragraph (ix), by renumbering (xi) as (xii) and (b),
23 33-26-402(a) by creating a new paragraph (xxxv),

1 33-26-503(b) by creating a new paragraph (viii),
2 33-26-504(b)(iv), by creating a new paragraph (vi) and by
3 creating a new subsection (h) and 33-26-508(a) are amended
4 to read:

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6 **6-2-301. Definitions.**

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8 (a) As used in this article:

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10 (iv) "Position of authority" means that position
11 occupied by a parent, guardian, relative, household member,
12 teacher, employer, custodian, health care provider or any
13 other person who, by reason of his position, is able to
14 exercise significant influence over a person;

15

16 (ix) "Health care provider" means an individual
17 who is licensed, certified or otherwise authorized or
18 permitted by the laws of this state to administer health
19 care in the ordinary course of business or practice of a
20 profession;

21

22 ~~(ix)~~ (x) "This article" means W.S. 6-2-301
23 through 6-2-320.

1

2 **6-2-303. Sexual assault in the second degree.**

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4 (a) Any actor who inflicts sexual intrusion on a
5 victim commits sexual assault in the second degree if,
6 under circumstances not constituting sexual assault in the
7 first degree:

8

9 (viii) The actor makes sexual contact or
10 inflicts sexual intrusion in the course of the treatment or
11 examination of a victim for purposes or in a manner
12 substantially inconsistent with reasonable medical
13 practices; or

14

15 **7-13-1501. Petition for expungement of records of**
16 **conviction of misdemeanors; filing fee; notice; objections;**
17 **hearing; definitions.**

18

19 (a) A person who has pleaded guilty or nolo
20 contendere to or been convicted of a misdemeanor may
21 petition the convicting court for an expungement of the
22 records of conviction, subject to the following
23 limitations:

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(iv) A health care provider who has pled guilty or nolo contendere to or been convicted of an offense punishable under W.S. 6-2-313 shall not be eligible for an expungement of the records of conviction, whether or not the offense occurred within the scope of the provider's practice or employment.

(m) As used in this section:

(iv) "Health care provider" means an individual who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

7-19-106. Access to, and dissemination of, information.

(a) Criminal history record information shall be disseminated by criminal justice agencies in this state, whether directly or through any intermediary, only to:

1 (xxiii) The board of medicine for purposes of
2 obtaining background information on ~~applicants~~ each
3 applicant for licensure or certification by the board ~~whose~~
4 ~~application or other information received by the board~~
5 ~~indicates the applicant has or may have been convicted of a~~
6 ~~crime,~~ and for purposes of investigation of complaints and
7 disciplinary action against licensees of the board;

8
9 **7-19-201. State or national criminal history record**
10 **information.**

11
12 (a) The following persons shall be required to submit
13 to fingerprinting in order to obtain state and national
14 criminal history record information:

15
16 (xxv) Health care ~~professionals~~ providers
17 applying for licensure under title 33 of the Wyoming
18 statutes, if required as a condition for licensure pursuant
19 to an interstate compact entered into by the state of
20 Wyoming or as otherwise required by law.

21
22 (f) As used in this section, "health care provider"
23 means an individual who is licensed, certified or otherwise

1 authorized or permitted by the laws of this state to
 2 administer health care in the ordinary course of business
 3 or practice of a profession.

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5 **33-21-127. Qualifications for licensure or**
 6 **certification; application requirements.**

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8 (a) An applicant for licensure or certification by
 9 examination to practice as an advanced practice registered
 10 nurse, registered nurse, licensed practical nurse or
 11 certified nursing assistant shall:

12

13 (iv) Have committed no acts which are grounds
 14 for disciplinary action as set forth in W.S. 33-21-146, or
 15 if the act has been committed, the board may, at its
 16 discretion and after investigation, determine that
 17 sufficient restitution has been made and issue a license,
 18 provided, the board may deny licensure based upon the plea
 19 or conviction alone;~~and~~

20

21 (v) Remit fees as specified by the board; ~~and~~

22

1 (vi) Submit to a criminal history record
2 investigation in accordance with W.S. 33-21-122(c)(viii).

3
4 **33-21-146. Disciplining licensees and certificate**
5 **holders; grounds.**

6
7 (a) The board of nursing may refuse to issue or
8 renew, or may suspend or revoke the license, certificate or
9 temporary permit of any person, or to otherwise discipline
10 a licensee or certificate holder, upon proof that the
11 person:

12
13 (xi) Has failed to submit to a mental, physical
14 or medical competency examination following a proper
15 request by the board made pursuant to board rules and
16 regulations and the Wyoming Administrative Procedure Act;

17 ~~or~~

18
19 (xiii) Has committed sexual misconduct; or

20
21 (xiv) Has failed to comply with W.S. 35-2-122.

22

1 (c) As used in this section, "sexual misconduct"
2 means:

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4 (i) Any behavior by a licensee which involves
5 offers of exchange of medical services for some form of
6 sexual gratification;

7
8 (ii) Sexual contact which occurs while the
9 patient is under the care of the licensee; or

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11 (iii) Any behavior by a licensee toward a
12 patient, former patient, another licensee, an employee of a
13 health care facility, an employee of the licensee or a
14 relative or guardian of a patient that exploits the
15 position of trust, knowledge, emotions or influence of the
16 licensee.

17
18 **33-26-202. Board; duties; general powers.**

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20 (b) The board is empowered and directed to:

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1 (xvi) Request criminal history background
2 information on each applicant for purposes of licensure and
3 discipline, as authorized under W.S. 7-19-106(a);
4

5 **33-26-303. Requirements for granting license.**
6

7 (a) The board may grant a license to practice
8 medicine in this state as provided in the Interstate
9 Medical Licensure Compact or, under this article, to any
10 applicant who demonstrates, to the board, that he:
11

12 (ix) Has completed to the satisfaction of a
13 majority of board members, if required pursuant to board
14 rule, a personal interview consisting of inquiry and oral
15 response to medical knowledge, personal and professional
16 history and intentions for practicing medicine in this
17 state;~~and~~
18

19 (xi) Has submitted to a criminal history record
20 investigation; and
21

1 ~~(xi)~~ (xii) Meets any additional requirements that
2 the board may impose by regulation which are necessary to
3 implement this act.

4
5 (b) A person who has pled guilty to or has been
6 convicted of a felony or any crime that is a felony under
7 Wyoming law in any state or federal court or in any court
8 of similar jurisdiction in another country may apply for
9 licensure. The board may, at its discretion and after
10 investigation, determine that sufficient restitution has
11 been made and issue a license, provided, the board may deny
12 licensure based upon the plea or conviction alone.

13

14 **33-26-402. Grounds for suspension; revocation;**
15 **restriction; imposition of conditions; refusal to renew or**
16 **other disciplinary action.**

17

18 (a) The board may refuse to renew, and may revoke,
19 suspend or restrict a license or take other disciplinary
20 action, including the imposition of conditions or
21 restrictions upon a license on one (1) or more of the
22 following grounds:

23

1 (xxxv) Failing to comply with W.S. 35-2-122.

2

3 **33-26-503. Board powers and duties.**

4

5 (b) The board shall:

6

7 (viii) Request criminal history background
8 information on each applicant for purposes of licensure and
9 discipline, as authorized under W.S. 7-19-106(a).

10

11 **33-26-504. License required; application;**
12 **qualifications; consideration of applications.**

13

14 (b) The board may grant a physician assistant license
15 to an applicant who:

16

17 (iv) Completes an application form;~~and~~

18

19 (vi) Has submitted to a criminal history record
20 investigation.

21

22 (h) A person who has pled guilty to or has been
23 convicted of a felony or any crime that is a felony under

1 Wyoming law in any state or federal court or in any court
2 of similar jurisdiction in another country may apply for
3 licensure. The board may, at its discretion and after
4 investigation, determine that sufficient restitution has
5 been made and issue a license, provided, the board may deny
6 licensure based upon the plea or conviction alone.

7

8 **33-26-508. Suspension, restriction, revocation or**
9 **nonrenewal of license.**

10

11 (a) The board may refuse to renew, and may revoke,
12 suspend or restrict a license or take other disciplinary
13 action, including the imposition of conditions or
14 restrictions upon a license on one (1) or more of the
15 grounds enumerated under W.S. 33-26-402(a) (i) through (x),
16 (xii) and (xiv) through ~~(xxxiv)~~ (xxxv) provided that each
17 reference in W.S. 33-26-402(a) to the "practice of
18 medicine," "practice medicine," or like phrase shall be
19 deemed the "practice as a physician assistant" for purposes
20 of this section.

21

1 **Section 3.** This act is effective July 1, 2018.

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(END)