

Guidelines on Prohibited Conduct Definitions in the Context of Patient Care

The Systemwide Title IX Office issues these *Guidelines on Prohibited Conduct Definitions in the Context of Patient Care* to UC Title IX Officers. These guidelines address how to apply definitions of Prohibited Conduct in the Sexual Violence and Sexual Harassment (SVSH) Policy when allegations arise in the context of patient care.

A. Application. The Title IX Officer¹ will apply the definitions in this document to allegations of Prohibited Conduct if:

1. the alleged conduct occurred during or in connection with a clinical encounter in which the Complainant was a patient and the Respondent was a health care provider or health care worker; and
2. the allegation is that the Respondent, for a sexual purpose:
 - o penetrated the Complainant’s vagina or anus with either (a) any part of the Respondent’s hand or (b) a medical device (Sexual Assault – Penetration);
 - o touched the Complainant’s intimate body part (Sexual Assault – Contact);
 - o made the Complainant touch themselves on an intimate body part (Sexual Assault – Contact);
 - o engaged in Sexual Harassment (Quid Pro Quo or Hostile Environment);
 - o watched or enabled others to watch Complainant’s nudity or sexual acts (Invasion of Sexual Privacy); or
 - o made or attempted to make photographs (including videos) or audio recordings, or posted, transmitted or distributed such recorded material, depicting the Complainant’s nudity or sexual acts (Invasion of Sexual Privacy).

For all other allegations (such as that Respondent penetrated Complainant’s mouth with Respondent’s genitalia, used depictions of Complainant’s sexual activity to extort Complainant, or exposed their genitals), the Title IX Officer will apply the definitions in Section II of the SVSH Policy rather than the definitions in this document.

B. Definitions.

1. Prohibited Conduct.

- a. **Sexual Assault – Penetration.** Penetration, no matter how slight, of the Complainant’s vagina or anus by any part of the Respondent’s hand or by a medical device, if the Respondent engaged in the conduct for a sexual purpose.
- b. **Sexual Assault – Contact.** Intentionally --
 - touching Complainant’s intimate body part (genitals, anus, groin, breast, or buttocks), or
 - making the Complainant touch themselves on an intimate body part,whether the intimate body part is clothed or unclothed, if the Respondent engaged in the conduct for a sexual purpose.

¹ “Title IX Officer” may be a member of the Title IX Office staff, such as a deputy or investigator, who the Title IX Officer appropriately designates to carry out the referenced task or function. Other capitalized terms have the meanings assigned to them in the SVSH Policy.

c. **Invasions of Sexual Privacy.** For a sexual purpose:

- watching or enabling others to watch the Complainant's nudity or sexual acts; or
- making or attempting to make photographs (including videos) or audio recordings, or posting, transmitting or distributing such recorded material, depicting the Complainant's nudity or sexual acts.

d. **Sexual Harassment.** Conduct that meets the definition of Pro Quo Sexual Harassment or Hostile Environment Sexual Harassment as defined in Section II of the SVSH Policy, if Respondent engaged in the conduct for a sexual purpose.

Note on Sexual Purpose: In determining whether the Respondent engaged in conduct for a sexual purpose, the Title IX Officer will consider all relevant facts and circumstances, such as whether the conduct was Clinically Indicated. Whether the conduct was Clinically Indicated is typically relevant to but not determinative of whether Respondent engaged in Prohibited Conduct. A Respondent has a "sexual purpose" if, for example, they engage in conduct with any sexual motivation, for sexual gratification, or as an expression of dominance.

2. **Clinical Encounter:** An inpatient visit, medical office visit, or ancillary service visit during which a patient has a direct interaction with a health care provider or worker, where a health care provider has responsibility for diagnosing, evaluating, or treating the patient's condition, or a health care worker is tasked with delivering a health care item or service (for example, a test or procedure) prescribed by a health care provider.

3. **Clinically Indicated:** Health care services are clinically indicated in either of the following circumstances.

a. **Clinical Care:**

- a health care provider, exercising prudent clinical judgment, would provide them to a patient for the purpose of preventing, evaluating, diagnosing, or treating an illness, injury, disease, condition, or its symptoms;
- as performed, they meet the applicable Standard of Care (as defined below);
- as performed, they are appropriate, in terms of type, frequency, extent, site, and duration; and
- as performed, they are considered effective for the patient's illness, injury, disease, condition, or symptoms.

b. **Research or Clinical Trial:** They are required for the performance of a clinical trial approved by an IRB with jurisdiction, and are provided consistent with the IRB-approved protocol and with the IRB-approved consent process.

Note on Informed Consent: "Informed consent" of a patient or the patient's legally authorized representative to an examination or procedure the health care provider knows or should know is not Clinically Indicated, or to the making or distribution of media involving an examination or procedure for purposes unrelated to Clinically Indicated patient care, or legitimate research or education activities, is not a defense to an allegation of Prohibited Conduct under the SVSH Policy.

4. **Standard of Care:** The reasonable degree of skill, knowledge and care, based on credible scientific evidence published in current peer-reviewed medical literature, and ordinarily possessed and exercised by members of a person's profession and specialty under similar circumstances. The Standard of Care encompasses whether and under what circumstances a procedure is performed; the way it is performed; and whether and if so in what manner informed consent should be obtained prior to performance (for example, whether consent must be obtained in writing, whether documentation of consent in the medical record is required, or whether it may be implied under the circumstances, and the required content of the consent discussion, form, or both).