



# LEGAL UPDATE

## SEXUAL ASSAULT BY FRAUD OF A MEDICAL PROFESSIONAL

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On August 8, 2024, the Governor signed an Act Criminalizing Sexual Assault by Fraud of a Medical Professional into law. The law goes into effect on Wednesday, November 6, 2024. The Act created two new crimes under MGL c 265.

**MGL c 265 § 13H½: Indecent Assault and Battery on a Patient or Client by a Health Care Provider**

(a) For the purposes of this section, “health care provider” shall mean a person licensed by the commonwealth to provide health care as a physician, dentist, registered or licensed nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, social worker or acupuncturist acting in the scope and course of their employment.

(b) A person who is, or holds themselves out to be, a health care provider or clergy member and commits an indecent assault and battery on a patient or client during the course of diagnosis, counseling or treatment shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment in a house of correction for not more than 2 1/2 years.

In a prosecution commenced under this section, the patient or client shall be deemed incapable of consenting to contact of a sexual nature when consent was procured by a false representation that such contact was for a legitimate medical, counseling or treatment purpose and not consistent with generally accepted principles of professional medical practice.

For specific guidance on the application of this case or any law, please consult your supervisor or your department’s legal advisor.

## **MGL c 265 § 22D Rape of a Patient or Client by a Health Care Provider**

- (a) For the purposes of this section, “health care provider” shall mean a person licensed by the commonwealth to provide health care or professional services as a physician, dentist, registered or licensed nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, social worker or acupuncturist acting in the scope and course of their employment.
- (b) A person who is, or holds themselves out to be, a health care provider or clergy member and who knowingly induces by false misrepresentation a patient or client to engage in sexual intercourse during the course of diagnosis, counseling or treatment shall be punished by imprisonment in the state prison for not more than 20 years.

In a prosecution commenced under this section, the patient or client shall be deemed incapable of consenting to contact of a sexual nature when consent was procured by false representation that such contact was for a legitimate medical, counseling or treatment purpose and not consistent with generally accepted principles of professional medical practice.

### **Statute of Limitations**

The statute of limitations (MGL c 277 § 63) for Rape of a Patient or Client by a Health Care Provider is the same as forms of rape.

The statute of limitations for Indecent Assault and Battery on a Patient or Client by a Health Care Provider and Indecent Assault and Battery Committed by Law Enforcement Officers on Certain Vulnerable Persons in their Custody (MGL c 265 § 13H ½)<sup>1</sup> are tolled if the victim was under the age of 16 at the time of the crime.

Officers who are investigating crimes in which the statute of limitations may be implicated are encouraged to reach out to their local prosecutor for guidance.

### **“Sex Offense” definition in other statutes**

The definition of “sex offense” for purposes of the Sex Offender Registry (MGL c 6 §§ 178C to 178P); Sexually Dangerous Persons (MGL c 123A) and the statute regarding who can testify at a parole hearing (MGL c 127 § 133E), now include:

indecent assault and battery on vulnerable persons in custody by law enforcement (MGL c 265 § 13H½)

indecent assault and battery on a patient or client by a health care provider (MGL c 265 § 13H¾)

rape of a patient or client by a health care provider (MGL c 265 § 22D)

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<sup>1</sup> MGL c 265 § 13H ½ was enacted in 2021.

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