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Psychiatry and Addictions Case Conference
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SEXUAL INTIMACY IN LONG TERM BEHAVIORAL HEALTHCARE

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project ECHO

SPEAKER DISCLOSURES

✓ No conflicts of interest

Planner disclosures

The following series planners have no relevant conflicts of interest to disclose; other disclosures have been mitigated.

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OBJECTIVES

1. **Understand** what practices comprise sexual intimacy and how common sexual acts are occurring in long term behavioral healthcare facilities
2. **Identify** key ethical issues involved in sexual health of patients with mental health disorders
3. **Learn** about key legal precedents and how they may affect policy at these facilities
4. **Consider** alternatives and/or future directions based on research or other jurisdictions

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CASE

Patient X is a 32-year-old male admitted to a State Psychiatric Hospital three years ago after he failed to improve at a local county psychiatric facility. He has been in and out of mental health facilities since age 15 and has not improved substantially on any medication regimen. One day in group he expresses feelings for patient Y who, on a separate encounter, expressed interest in patient X. Later that day, staff finds patient X and patient Y unclothed in a bathroom together. Patients are separated and the incident is reported. When patient Y's family hears of the incident, they pursue legal action against patient X as well as the State Hospital.

BACKGROUND

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PREVALENCE

- 2003 review - estimated sexual behavior on **inpatient units** around **1.5-5%** of patients (Ford et al.) - studies from 1985-1994

- 2012 study interviewing program directors of **192 state-supported psychiatric facilities** indicated that almost **one-third** of their patients had engaged in sexual conduct (includes hand-holding) (Wright et al.)

- 2022 literature review looking at sexual health in forensic mental health care, **30% of patients** identified engaging in some form of sexual activity (masturbation, porn) (Brand et al.)

ETHICAL AND LEGAL IMPLICATIONS

- Right to intimacy?
- Does hospitalization negate this right?
- Capacity to consent?
- Vulnerable patient protection?
- What does the law say?

A RIGHT TO SEX?

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According to the World Health Organization (WHO):

"**sexuality** is a central aspect of **being human** and encompasses sex, gender identities and roles, sexual orientation, **eroticism, pleasure, intimacy** and reproduction"

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SEXUAL ACTIVITY IS ONE OF THE "ACTIVITIES OF DAILY LIVING" (ADLS)

As defined by the American Occupational Activity Association

Category	Description
ACTIVITIES OF DAILY LIVING (ADLs)—Activities oriented toward taking care of one's own body (adapted from Rogers & Holm, 1994). ADLs also are referred to as *basic activities of daily living (BADLs)* and *personal activities of daily living (PADLs)*. These activities are "fundamental to living in a social world; they enable basic survival and well-being" (Christiansen & Hammecker, 2001, p. 156).	
Bathing, showering	Obtaining and using supplies; soaping, rinsing, and drying body parts; maintaining bathing position; and transferring to and from bathing positions
Toileting and toilet hygiene	Obtaining and using toileting supplies, managing clothing, maintaining toileting position, transferring to and from toileting position, cleaning body, and caring for menstrual and continence needs (including catheter, colostomy, and suppository management), as well as completing intentional control of bowel movements and urination and, if necessary, using equipment or agents for bladder control (Uniform Data System for Medical Rehabilitation, 1996, pp. III-20, III-24)
Dressing	Selecting clothing and accessories appropriate to time of day, weather, and occasion; obtaining clothing from storage area; dressing and undressing in a sequential fashion; fastening and adjusting clothing and shoes; and applying and removing personal devices, prosthetic devices, or splints
Swallowing/eating	Keeping and manipulating food or fluid in the mouth and swallowing it; *swallowing* is moving food from the mouth to the stomach
Feeding	Setting up, arranging, and bringing food [or fluid] from the plate or cup to the mouth; sometimes called *self-feeding*
Functional mobility	Moving from one position or place to another (during performance of everyday activities), such as in-bed mobility, wheelchair mobility, and transfers (e.g., wheelchair, bed, car, shower, tub, toilet, chair, floor). Includes functional ambulation and transportation of objects.
Personal device care	Using, cleaning, and maintaining personal care items, such as hearing aids, contact lenses, glasses, orthotics, prosthetics, adaptive equipment, glucometers, and contraceptive and sexual devices
Personal hygiene and grooming	Obtaining and using supplies; removing body hair (e.g., using razor, tweezers, lotion); applying and removing cosmetics; washing, drying, combing, styling, brushing, and trimming hair; caring for nails (hands and feet); caring for skin, ears, eyes, and nose; applying deodorant; cleaning mouth; brushing and flossing teeth; and removing, cleaning, and reinserting dental orthotics and prosthetics
Sexual activity	Engaging in activities that result in sexual satisfaction and/or meet relational or reproductive needs

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RELEVANCE IN THE LITERATURE

- Attachment Theory, Depression
- Belgium study of forensic facilities identified sexuality and **sexual health as important in recovery** (Boons et al., 2024)
- “Deficit in sexual intimacy” was named as **large unmet need** by forensic in-patient populations (Brand et al., 2022)
- In a survey of nurses in a longer-term forensic hospital, many identified **a need for sexual intimacy support** for patients (Quinn et al., 2016)

VULNERABLE PATIENTS?

- Duty to protect
- STI, Trauma, Pregnancy
- Patients that have been either victims or perpetrators of sexual violence
- Hypersexuality can be a feature of certain conditions (mania, BPD, organic brain syndromes)

OR… “Arbitrary imposing special protections and limitations based on own conception that they don't need it?” (Perlin et al, 2014)

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LAW

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LEGAL RIGHT TO SEX

- The legal right to sex is a complex issue
- U.S. Supreme Court recognizes the right to privacy for consensual sexual activity
- Limitations
  - Sexual partner evolution
  - Age of consent
  - Capacity to consent

LANDMARK LEGAL PRECEDENT - PRIVACY

Griswold v. Connecticut (U.S. 1965)

- Constitution protects the liberty interests of married couples to use contraceptives without government restrictions
- A right to privacy can be inferred from the Constitution

Lawrence v. Texas (U.S. 2003)

- State laws criminalizing certain intimate sexual acts between consenting adults of the same sex are unconstitutional
- Liberty protected by the constitution allows the right to consensual sexual relationships

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LANDMARK LEGAL PRECEDENT - PATIENTS' RIGHTS

Johnson v. United States (W.D. Fla 1976)

- Least restrictive policies on inpatient psychiatric units

Wyatt v. Stickney (M.D. Ala 1971)

- Precursor to Patients' Bill of Rights
- Patients have a right to suitable opportunity for interaction with members of the opposite sex

Foy v. Greenbelt (Cal.App.3d 1983)

- Public policy interest in "maximizing patients' individual autonomy, choice, and rights of informed consent."
- Degree of facilities' duty of care is measured by the ability of the patient to care for themself

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LONG-TERM CARE RESIDENTS' RIGHTS

- **Nursing Home Reform Act of 1987**
  - Sexual expression is not explicitly stated, but several rights relevant to sexuality are addressed:
  - Privacy; confidentiality regarding personal affairs; make independent choices; personal decisions; private and unrestricted communication with visitors; to be free from abuse and restraints
- Supported by **Resident Rights Act, 42 CFR 483.10 (2024)**
  - Right to "dignified existence, self-determination, and communication and access to persons/services inside and outside the facility."

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INSTRUCTIVE CASES FROM SENIOR LIVING FACILITIES

State v. Rayhons (Iowa 2015)

- Acquitted of charge for 3rd Degree Sexual Abuse;
- Example of claim against

Neighbors Rehabilitation Centers LLC v. U.S. DHHS (7th Cir. 2018)

- CMS determined that Neighbors inadequately addressed sexual interactions between 3 cognitively impaired residents; issued citation; and fined the facility
- Court affirmed Agency's determinations and rejected claims that the sexual interactions were consensual

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USEFUL COURT FINDINGS

Neighbors Rehabilitation Centers LLC v U.S. DHHS (7th Cir. 2018)

- Although aware of sexual interactions, staff did not talk to residents about their feelings about these "relationships"
- Did not document the residents' capacity for consent (or lack thereof) or communicate with residents' physicians about medical assessment of how their cognitive deficits impacted that capacity
- Did not discuss the developments with the residents' responsible parties; and
- Did not make a record of any monitoring of the behavior or make any care plans to account for them
- Facility's "**non-intervention policy**" prevented any real inquiry into consent except in extreme cases where resident was yelling/physically acting out

CLAIMS AGAINST FACILITIES

- Negligence
- Gross negligence
- Abuse of Vulnerable Adult Act
- Failure to report
- Negligent infliction of emotional distress

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CLAIMS AGAINST FACILITIES - NEGLIGENCE

- Failure to properly supervise the care for the resident
- Failure to properly supervise staff and ensure staff follow accepted standards of care to prevent the sexual abuse of its residents
- Failure to implement proper policies and procedures to prevent sexual abuse of its residents
- Failure to follow an accepted safety plan to prevent the sexual abuse of its residents
- Failure to report sexual abuse of its residents

INFORMED CONSENT

- Information/knowledge
- Capacity
- Voluntariness

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SEXUAL CONSENT EVALUATIONS

- There is no universally accepted criteria for capacity to consent to sexual relationships
- The legal standards and criteria for sexual consent vary across states
  - Understanding of the **sexual nature of the act** and that it is voluntary
  - Some states: understanding the **potential consequences** of the sex act
  - Additional: understanding the "**moral quality**" of sexual conduct
- The law prohibits non-consensual activity – with or without force

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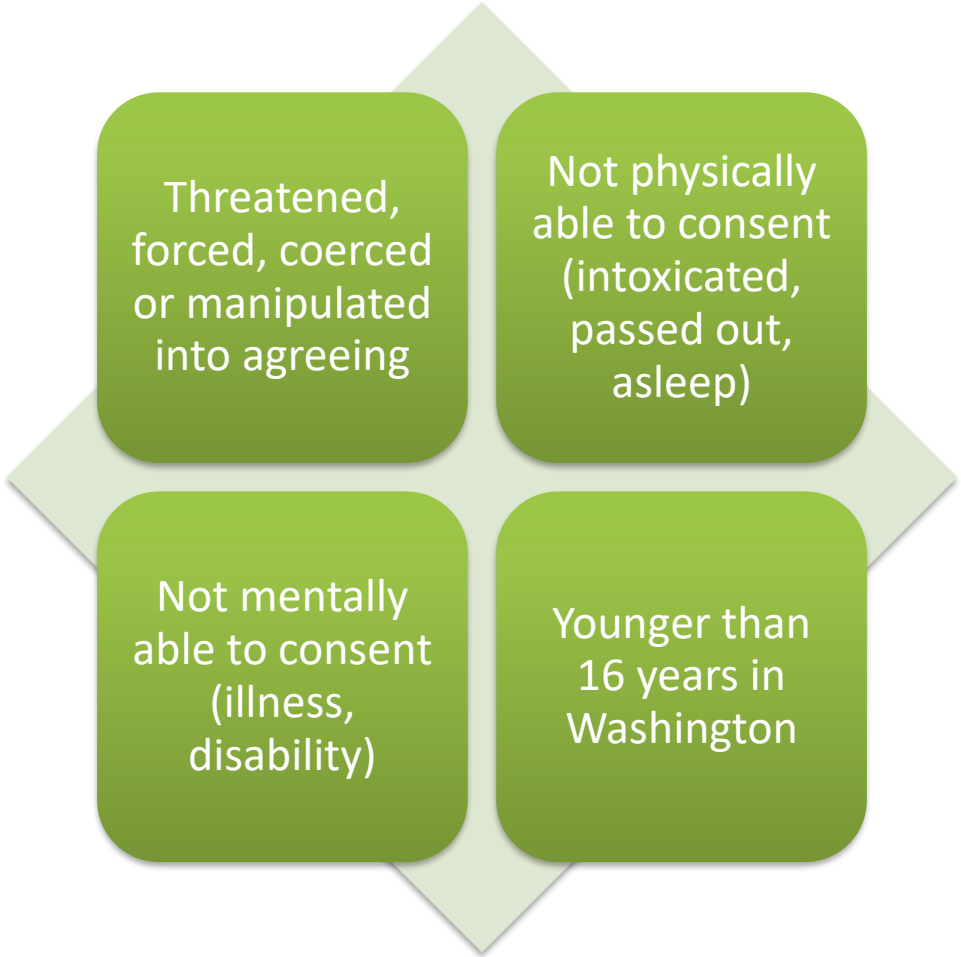
ABSENCE OF LEGAL CONSENT IN WASHINGTON



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WA DEFINITIONS – SEXUAL OFFENSES (RCW 9A.44.010)

- **Sexual contact**: any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of wither party or a third party

- **Consent**: At the time of the act of sexual intercourse or sexual contact, there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact

- **Mental incapacity**: A condition existing at the time of the offense which prevents a person from **understanding the nature or consequences of the act of sexual intercourse** whether the condition is produced by illness, defect, the influence of a substance or some other cause

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ASSESSING CAPACITY TO CONSENT TO SEX

- Most of the literature is based on senior living facilities and patients with dementia (cognitive deficits)
- Use of cognitive screening tools (MMSE, MoCA)
- Basics of informed consent
  - Information/knowledge
  - Capacity
  - Voluntariness

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SEXUAL CONSENT: INFORMATION

- Knowledge of basic anatomy/body parts
- Familiar with basic information about the sexual activities in question and the potential risks
- Knowledge of how to determine whether sexual activities are not desired by the partner
- Knowledge of appropriate times and places for the sexual activities

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SEXUAL CONSENT: CAPACITY

- Clinicians should recall that capacity consists along a continuum
- Time and question specific
- A person may lack capacity for certain types of decisions, and not others
- Each situation/patient is unique, so approach should reflect individual differences

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SEXUAL CONSENT : ASSESSING CAPACITY

- Understand the options related to sexual behavior
- Appreciate consequences of various courses of action
- Express a choice based on rational/logical consideration of relevant information
- Choice is consistent with individual's values and preferences
- Can be useful to consider a spectrum of activities and whether the individual can distinguish and make decisions regarding particular activities (kissing, petting, intercourse)

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SEXUAL CONSENT - VOLUNTARINESS

- The decision should be free from:
  - Coercion
  - Unfair persuasion
  - Inducements

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TOPICS TO EXPLORE

Explore Relationship	Explore Potential Risks	Explore Values
Who is initiating sexual contact? Who is the prospective partner? Does the individual believe the other person is a spouse or romantic partner? Is this logical (or delusional)? What level of sexual intimacy are they comfortable with?	Besides physical risks (STD, pregnancy), explore emotional impact: How do they *feel* about engaging in sex? Is there a realization that the relationship may be time limited? What would/will happen when the relationship ends? Is the person able to resist sexual advance/say NO to unwanted sexual contact?	Is the behavior consistent with formerly held beliefs/values? Does the individual attach a moral import to sex?

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OTHER CONSIDERATIONS

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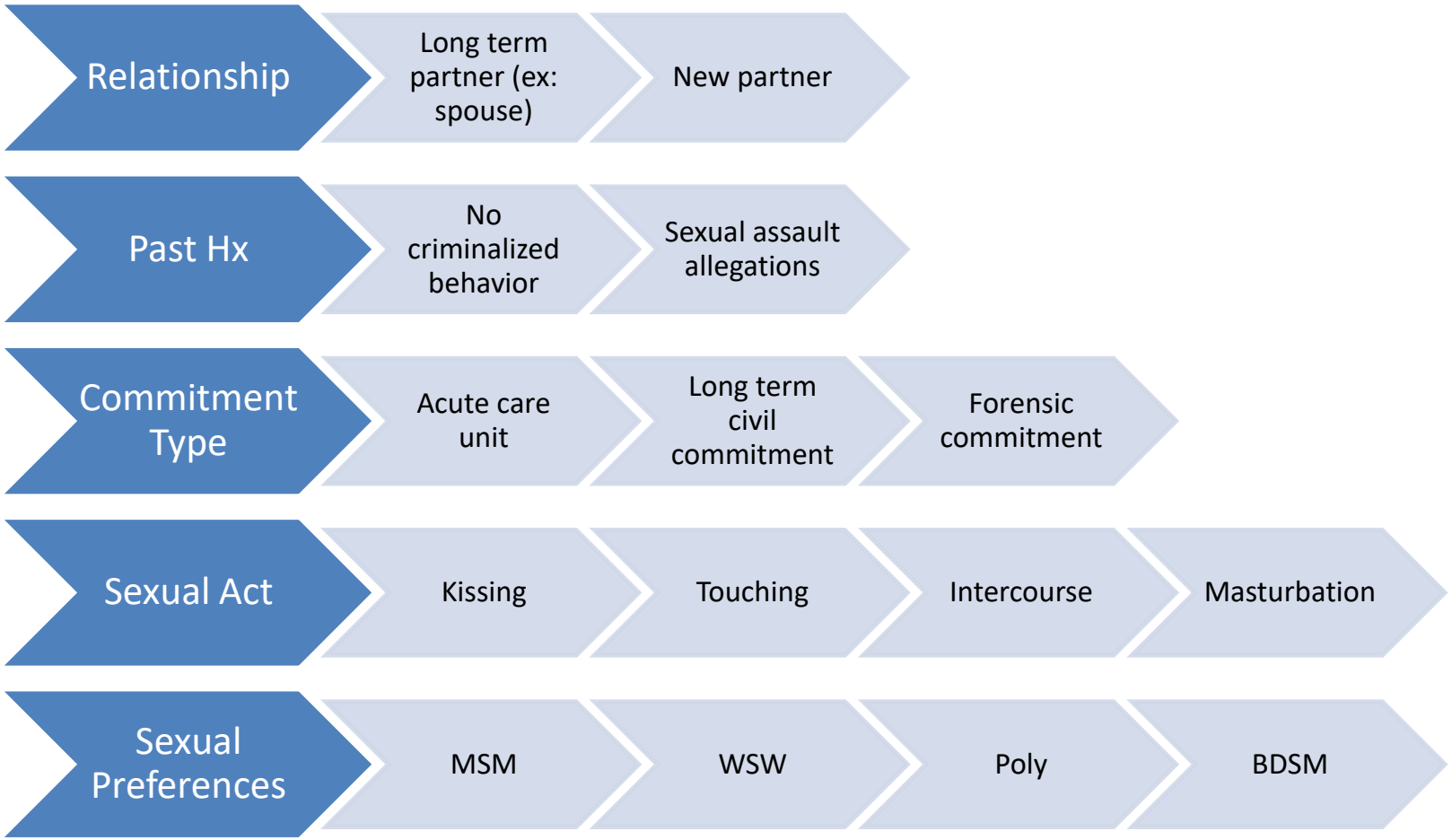
ARE ALL CONDITIONS EQUAL?



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PREVALENCE REMINDER – STILL HAPPENING

- 2003 review - estimated sexual behavior on **inpatient units** around **1.5- 5 %** of patients (Ford et al.) - studies from 1985-1994.

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IN EXAMINING THE LITERATURE

- Provide **Private Spaces**?
  - Patients named lack of privacy - space and time - as main barriers
- Provide **Education**?
  - Many patients will return to community after long term care
  - In some studies, there was concern for lack of education of safe practices
  - Model pro-social behavior for benefit outside facilities - promote feelings of connectedness
- Provide **Protection**?
  - In one study, 60% (*n* = 15) of forensic mental health patients supported the free availability of condoms in the high-security hospital and 64% (*n* = 16) indicated that they would use them if available

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ALTERNATIVES TO MAINTAIN WELL-BEING

- **Solitary Practices** - Masturbation, Porn (Brand et al, 2022)

- **Sexual Assistance Services** - sex education and relationship coaching to more intimate services like surrogate partner therapy.
  - Ex: Netherlands - a person with disability can access the services of a sex worker once a month at the government's expense

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SEXUAL ADVANCED DIRECTIVE

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CASE

Patient X is a 32 year-old male admitted to a State Psychiatric Hospital three years ago after he failed to improve at a local county psychiatric facility. He has been in and out of mental health facilities since age 15 and has not improved substantially on any medication regimen. One day in group he expresses feelings for patient Y who on a separate encounter expressed interest in patient X. Later that day, staff finds patient X and patient Y unclothed in a bathroom together. Patients are separated and the incident is reported. When patient's Y family hears of the incident and they pursue legal action against patient X as well as the State Hospital.

WHAT COULD HAVE BEEN DONE?

- Informed Consent Interview
  - Information, Capacity, Voluntariness
- Documentation of decision
- Provide avenues for solitary self-gratification
  - Private time and spaces
- Looking back... *"in and out of facilities since age 15"*... would this individual have benefited from sex education?
- Looking forward... Sexual Advance Directive or Sexual Assistance Services

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QUESTIONS?

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ON-GOING RESEARCH

Link to optional survey addressing health professional opinion on this topic:

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