

207.98 ENGAGING IN SEXUAL [CONTACT] [PENETRATION] UNDER PRETEXT  
OF MEDICAL TREATMENT—INCAPACITATED PATIENT. FELONY.

The defendant has been charged with engaging in sexual [contact]  
[penetration] with an incapacitated patient.

For you to find the defendant guilty of this offense, the state must prove  
three things beyond a reasonable doubt:

First, that the defendant undertook medical treatment of a patient.  
Medical treatment includes an examination or procedure. A patient is a person  
who has undergone or is seeking to undergo medical treatment.

Second, that, in the course of that medical treatment, the defendant  
engaged in sexual [contact] [penetration] with the patient.

[Sexual contact is the intentional touching of a person's intimate parts  
or the intentional touching of the clothing covering the immediate area of the  
person's intimate parts, if that intentional touching can reasonably be  
construed as being for the purpose of sexual arousal or gratification, done for  
a sexual purpose, or done in a sexual manner.]

[Sexual penetration is [sexual intercourse] [cunnilingus] [fellatio] [anal  
intercourse] [any intrusion, however slight, of any part of a person's body or  
of any object into the genital or anal openings of another person's body,  
regardless of whether semen is emitted, if that intrusion can reasonably be  
construed as being for the purpose of sexual arousal or gratification, done for  
a sexual purpose, or done in a sexual manner.]

And Third, that the defendant engaged in this sexual [contact]  
[penetration] with the patient while the patient was incapacitated. A patient  
is incapacitated if the patient is incapable of appraising the nature of a medical

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treatment, either because the patient is unconscious or under the influence of an impairing substance.<sup>1</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant undertook medical treatment of a patient, that in the course of that medical treatment the defendant engaged in sexual [contact] [penetration] with the patient, and that the defendant engaged in this sexual [contact] [penetration] with the patient while the patient was incapacitated, it would be your duty to return a verdict of guilty. If you do not so find, or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

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1. Impairing substances include, but are not limited to, alcohol, anesthetics, controlled substances listed under Chapter 90 of the General Statutes, or any other drug or psychoactive substance capable of impairing a person's physical or mental faculties.