
306.10 ACCEPTED MEDICAL PURPOSE (DEFENSE TO FIRST AND SECOND-DEGREE SEXUAL OFFENSES INVOLVING PENETRATION).

Where evidence is offered that tends to show that penetration was for an accepted medical purpose and you find that the penetration of the victim was in fact for an accepted medical purpose, the defendant would not be guilty of any crime, even though the defendant penetrated the victim. An act is for an accepted medical purpose only where the defendant can show the act was clearly [done for a purpose generally approved or accepted by a physician] [done for purposes accepted in the medical field or in the practice of medicine].[1] Such an act does not have to be performed by a medical professional to be for an accepted medical purpose.

When the defendant asserts that the penetration was for an accepted medical purpose, the defendant is, in effect, denying the existence of those facts, which the State must prove beyond a reasonable doubt in order to convict the defendant. The burden is on the State to prove those essential facts and, in so doing, disprove the defendant's assertion of an accepted medical purpose. The State must satisfy you beyond a reasonable doubt that the penetration was not for an accepted medical purpose before you may return a verdict of guilty.

NOTE WELL: Add to final mandate at end:

Now members of the jury, bear in mind that the burden of proof rests upon the State to establish the guilt of the defendant beyond a reasonable doubt. If you find from the evidence that the penetration was for an accepted medical purpose; that is, the defendant has shown that the act was clearly [done for a purpose generally approved or accepted by a physician] [done for purposes accepted in the medical field or in the practice of medicine], then

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you would find that the penetration of the victim was for an accepted medical purpose, and it would be your duty to return a verdict of not guilty.

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1. See *State v. Stepp*, 367 N.C. 772, 767 S.E.2d 324 (2015) (adopting the dissent from *State v. Stepp*, 232 N.C. App. 132, 753 S.E.2d 485 (2014)).