Sexual Misconduct by Physicians

Texas Medical Association
Committee on Physician Health and Wellness
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Background
From the time of Hippocrates, sexual involvement between patient and healer has been forbidden. In 1992, the American Medical Association Council on Ethical and Judicial Affairs stated that sexual contact that occurs concurrent with the patient-physician relationship constitutes sexual misconduct. In 1995, the Ad Hoc Committee on Physician Impairment Report on Sexual Boundary Issues concluded that sexual misconduct “exploits the physician-patient relationship, is a violation of the public’s trust, and causes immeasurable harm, both mentally and physically, to the patient.”

The issue of physician sexual misconduct has become increasingly visible to patients, physicians, and medical boards. The number of complaints of physician sexual misconduct made to state medical boards has increased dramatically in recent years.

In a 1995 Gabbard study, which was based on voluntary questionnaires, 12 percent of physicians reported they had had sexual contact with a patient. The percentage of physicians who have felt a sexual attraction toward a patient has been reported to be as high as 80 percent.

In a 1996 article by Bayer, et al., 1600 surveys were sent to physicians in the fields of internal medicine, family practice, obstetrics and gynecology, and ophthalmology. There was a 52 percent response rate. Of those responding, 4 percent had dated a patient, 3 percent had sex with a current patient, 3 percent had sex with a former patient, and 20 percent knew of a colleague dating or intimate with a patient.

A 2012 article from the Colorado Physician Health Program (PHP) stated that 120 of 1,080 participants (11 percent) were referred for boundary violations. Of these, 34 percent were referred for “patient sexual” violations. Most PHP boundary violations were men between the ages of 40 and 49 who were established in practice.

Sexual boundary violations cross all medical specialties; none are immune. It is well-established that any sexual relationship between patient and physician is damaging to the patient. Such activity also destroys individual and public trust in the profession.
Boundary Violations: The Slippery Slope
Boundaries are unspoken, mutually understood, physical and emotional limits of the professional patient-physician relationship. A boundary violation occurs any time this relationship becomes more than just doctor and patient. Boundary violations may occur one small step at a time and almost without warning.

Risk Factors Contributing to Boundary Violations/Sexual Misconduct

- Lack of education or training about sexual and/or romantic boundaries;
- Naiveté about the seductive patient;
- Sexual exploitation begins with the “slippery slope.” There is a progressive scenario of personal involvement between the patient and physician that is similar from case to case. Boundary violations leading up to sex with a patient occur gradually and incrementally;
- Failure to recognize nonsexual boundary violations including dual relationships, gifts and services from patients, and problems of sexual harassment. These violations can lead to sexual misconduct;
- Lack of awareness of the differences in our multicultural population and the challenges these present (e.g., in regard to touching, use of chaperones);
- Failure to have clear, written office behavior policies;
- Difficulty in refusing requests for after-hours appointments, meetings, or other special favors for certain patients.

Realities of Sexual Misconduct Involving Physicians

- No matter how difficult or boundary-testing the patient may be, it is ALWAYS the physician’s responsibility to maintain appropriate boundaries, or, if having difficulty doing so, to refer the patient to another physician for care.
- The patient-physician relationship inherently involves an imbalance of power; a physician crossing boundaries is a violation of this power differential. Once boundaries are crossed, it is hard to return to the original relationship. This may contribute to further reciprocal intrusions and obligations, lead to coercion, cloud clinical judgment, and lead to serious violations (sexual).
- No level of medical training confers immunity from sexual misconduct by a physician.

Types of Physician Sexual Misconduct
There are primarily two types of professional sexual misconduct: sexual impropriety and sexual violation. Both types are the basis for disciplinary action by a state medical board if the board determines that the behavior exploited the patient-physician relationship. Additionally, the physician may face both civil and criminal prosecution.
**Sexual impropriety** refers to behaviors, gestures, or expressions that are sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient. These may include but are not limited to:

1. Neglecting to employ disrobing or draping practices respecting the patient’s privacy, or deliberately watching a patient dress or undress.
2. Subjecting a patient to an intimate examination in the presence of medical students or other parties without the patient’s informed consent or in the event such informed consent has been withdrawn.
3. Examining or touching genital mucosal areas without the use of gloves.
4. Making inappropriate comments about or to the patient, including but not limited to, making sexual comments about a patient’s body or underclothing, making sexualized or sexually demeaning comments to a patient, criticizing the patient’s sexual orientation, making comments about potential sexual performance during an examination.
5. Using the patient-physician relationship to solicit a date or romantic relationship.
6. Initiating conversation regarding the sexual problems, preferences, or fantasies of the physician.
7. Performing an intimate examination or consultation without clinical justification.
8. Performing an intimate examination or consultation without explaining to the patient the need for such examination or consultation even when the examination or consultation is pertinent to the issue of sexual function or dysfunction.
9. Requesting details of sexual history or sexual likes or dislikes when not clinically indicated for the type of examination or consultation.

**Sexual violation** includes physical sexual contact between physician and patient, whether or not initiated by the patient, and engaging in any contact with a patient that is sexual or may be reasonably interpreted as sexual. These include but are not limited to:

1. Sexual intercourse, genital to genital contact;
2. Oral to genital contact;
3. Oral to anal contact, genital to anal contact;
4. Kissing in a romantic or sexual manner;
5. Touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient has refused or has withdrawn consent;
6. Encouraging the patient to masturbate in the presence of the physician or masturbation by the physician while the patient is present; and
7. Offering to provide practice-related services, such as drugs, in exchange for sexual favors.
AMA and TMA Ethical Statements

The AMA Code of Medical Ethics states the following with regard to sexual misconduct in the practice of medicine:

Sexual contact that occurs concurrent with the patient-physician relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patients detract from the goals of the patient-physician relationship, may exploit the vulnerability of the patient, may obscure the physician’s objective judgment concerning the patient’s health care, and ultimately may be detrimental to the patient’s well-being. If a physician has reason to believe that non-sexual contact with a patient may be perceived as, or may lead to, sexual contact, then he or she should avoid the non-sexual contact. At a minimum, a physician’s ethical duties include terminating the patient-physician relationship before initiating a dating, romantic, or sexual relationship with a patient. Sexual or romantic relationships between a physician and a former patient may be unduly influenced by the previous patient-physician relationship. Sexual or romantic relationships with former patients are unethical if the physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship.¹

The AMA Code of Medical Ethics also defines sexual harassment/misconduct between medical supervisors and trainees as unethical.⁶

The Texas Medical Association Board of Councilors Ethics’ Opinion on Sexual Misconduct states the following:

Sexual contact that occurs concurrent with the patient-physician relationship constitutes sexual misconduct and is unethical. Sexual or romantic relationships with current or former patients or key third parties are unethical if the physician uses or exploits trust, knowledge, emotions, or influence derived from the professional relationship. Key third parties include, but are not limited to, spouses or partners, parents, guardians, or proxies.⁷

Disciplinary Action, Civil Damages, and Criminal Prosecution

In addition to the ethical implications arising from sexual misconduct in the patient-physician relationship, the physician also may face action by the Texas Medical Board (TMB), civil damages, and criminal prosecution depending on the nature of the alleged sexual misconduct.

More specifically, TMB may take disciplinary action against a physician if he or she fails to practice medicine in an acceptable professional manner consistent with public health and welfare.⁸ A physician commits a prohibited practice if he or she commits unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure the public.⁹ Sexual misconduct by physicians clearly falls into the category of such prohibited behaviors.¹⁰ Further, the Medical Practice Act states that TMB “must give priority to complaints that involve sexual misconduct, quality of care, and impaired
physician issues.\textsuperscript{11} Notably, sexual misconduct cases result in suspension of a license more often than any other type of case. Sexual misconduct cases also are much more likely to result in a disciplinary outcome of surrender or revocation of license, versus probation.

Additionally, sexual exploitation by physicians in the scope of practicing medicine may be the basis for a civil lawsuit and subject the physician to tort liability. According to the Texas Civil Practice and Remedies Code §81.002, “a mental health services provider is liable to a patient or former patient of the mental health services provider for damages for sexual exploitation if the patient or former patient suffers, directly or indirectly, a physical, mental, or emotional injury caused by, resulting from, or arising out of:

1. Sexual contact between the patient or former patient and the mental health services provider;
2. Sexual exploitation of the patient or former patient by the mental health services provider; or
3. Therapeutic deception of the patient or former patient by the mental health services provider.”\textsuperscript{12}

Sexual assault between a mental health services provider or health care services provider and a patient is punishable under the Penal Code as a \textit{felony} of the second degree.\textsuperscript{13} A “mental health services provider” is defined as “an individual, licensed or unlicensed, who performs or purports to perform mental health services.”\textsuperscript{14} A “health care services provider” includes “a physician licensed under Subtitle B, Title 3, \textit{Occupations Code}.”\textsuperscript{15} By virtue of Texas Penal Code §22.011(b)(9), a mental health services provider or a health care services provider commits a sexual assault if he or she “causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person’s emotional dependency on the actor.”\textsuperscript{16}

Sexual misconduct by physicians warrants specialized assessment and management by a multidisciplinary team, and each case requires an individualized approach. Evaluation, addressing legal issues, formal education, clinical treatment, and careful follow-up with monitoring are necessary in determining whether a physician may successfully return to the practice of medicine.

\textbf{Prevention}
Guidelines that will protect the public and allow physicians to continue to genuinely “care” for their patients need to be articulated carefully. Guidelines include the following:

- At the first indication of a potential sexual boundary violation by a physician (for example, recognizing a seductive patient), the patient should be referred to another provider.
- Remember the “slippery slope”: Non-sexual boundary violations can lead to sexual violations.
- Take early steps to stop progression.
- Seek personal therapy from a qualified mental health services provider.
Self-Assessment Practices

- Is this activity a routine, expected part of practice for members of my profession?
- Might engaging in this activity compromise my relationship with this patient? With other patients? With my colleagues? With this institution? With the public?
- Could this activity cause others to question my professional objectivity?
- Would I want my other patients, fellow physicians, or the public to know that I engage in such activities?

Importance of Education

- The key to preventing violations is education.
- Who should be educated?
  o Medical Community
  o Public

For example, a national survey of 3,504 physicians (58 percent response rate) showed that 91 percent of responders felt that sexual contact with a patient was never appropriate; 9 percent thought it might be. Support for “sensitive relationships” was associated with “rejection of patient welfare over physician financial interests.”

Assessment and Intervention

- When a report of a potential sexual boundary violation is made to a state, county, or hospital Committee on Physician Health and Wellness, it is appropriate for an investigation to be undertaken attempting to substantiate the report.
- Information-gathering may include interviews with practice associates, family members, other health care professionals, and friends.
- A meeting (intervention) is then held with the physician to address the concerns.
- A recommendation may be made by a qualified health care professional.
- Medical peer review committees, physicians, and medical students shall report to the TMB and any known health care entity in which the physician has clinical privileges if the person or committee determines that, through the practice of medicine, the physician poses a continuing threat to the public welfare.
- Additional information on how state medical boards may handle reports is available from a publication from the Federation of State Medical Boards.
- Best practices on how to conduct an intervention is addressed in an educational module available from the TMA PHW Committee in the form of live presentations, home study, and online at www.texmed.org/phrCourses.
Treatment

- Treatment for sexual boundary violations is available in the form of individual and group therapy. Some treatment facilities provide specialized programs for physicians. A resource list is available from the TMA PHW Committee.
- Treatment also can include education, exploration family of origin issues, identification of risk factors for relapse, addressing coexisting psychiatric and/or Substance Use Disorders, and “intent to change” exercises.

References

12-Step Programs
Sex Addicts Anonymous (SAA): www.sexaa.org
Sex and Love Addicts Anonymous (SLAA): www.slaafws.org
Sexaholics Anonymous (SA): www.sa.org
Sexual Recovery Anonymous (SRA): www.sexualrecovery.org

Applicable Statutes and Regulations
Texas Medical Board Rule 190.8(2)(E) and (F) (2012).
www.tmb.state.tx.us/rules/docs/Current%20Rules%20-%20%201-4-07.pdf
Vernon’s Texas Code Annotated Occupations Code §§ 164.051-164.053 (Vernon 2011).

For Family and Friends
Codependents of Sex Addicts (related to SAA): www.cosa-recovery.org
Recovering Couples Anonymous: www.recovering-couples.org
S-Anon (related to SA): www.sanon.org

Organizations
Association for the Treatment of Sexual Abusers (ATSA): www.atsa.com
Society for the Advancement of Sexual Health (SASH): www.sash.net/