# Challenges of Professional Boundaries (for Medical Students)

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## Learning Objectives

Upon completion of this activity, medical students should be able to:

1. Assess the importance of boundaries as they relate to a healthy patient-physician relationship;
2. Evaluate vulnerabilities of patients, physicians, and students to boundary violations and unethical conduct;
3. Recognize how boundary problems occur in a range of settings, from urban to rural;
4. List legal, ethical, and personal consequences to the student, physician, and patient when boundaries are crossed;
5. Recognize the importance of developing and instituting practice policies and procedures that establish clear ethical boundaries among physician, staff, health care trainees, and patients and their families;
6. Determine the ethical risks involved in digital communications, including those regarding patients; and
7. Identify sources of help available for physicians and students who are at risk of boundary problems or who have crossed boundaries.

## Focus

This activity discusses the challenges of maintaining professional boundaries among students, physicians, and patients. It reviews vulnerabilities and consequences of crossing boundaries, as well as proactive prevention measures.

## Target Audience

Medical students

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# I. Introduction

## Definition of Boundary

Boundaries are mutually understood, unspoken physical and emotional limits of the professional relationship between the patient and the physician or student, or the supervisor and student.

When these limits become altered, what is allowed in the relationship becomes ambiguous. Unethical conduct and other unprofessional behavior may occur.

The essence of a patient-physician relationship is trust. This relationship must have clear boundaries. Physician, students, and patients may misinterpret behaviors based on their own experiences.

Although this presentation emphasizes the patient-physician relationship, clear boundaries also are necessary between the following groups: staff, trainees, and patient families.

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## Boundary Violations

- A boundary violation may occur any time the relationship becomes anything other than patient and doctor or student.
- When a student uses his or her power over a patient for a tangible or intangible benefit or gain, he or she is committing a boundary violation.
- When a supervisor-student interaction becomes anything other than 'mentor-trainee,' a boundary violation may occur.

The student is in the position of power and knowledge. This makes the field quite uneven, and the student must always be in control of the emotional elements of the relationship.

## Physician/Student Role in Maintaining Boundaries

The American College of Physicians Ethics Manual: 6th Edition describes the patient-physician relationship as one that:

The patient-physician relationship is one that:

- Is a special and unique one,
- Involves specialized knowledge and skills, and
- Has an inherent imbalance of power.

The patient-physician relationship has inherently unequal powers because patients have trust and confidence that their physicians will do no harm. The patient-physician relationship is especially vulnerable to abuse because the physician is privy to the most intimate details of a patient's life.

The health and well-being of patients depends on a collaborative effort between patient and physician. Physicians can best contribute to this alliance by serving as their patients' advocates and supporting their patients' rights to receive good health care. Physicians are expected to deal honestly with patients and colleagues, to respect their rights, and to safeguard patient confidences within the constraints of the law. A physician must recognize responsibility not only to patients, but also to society, to other health professionals, and to self.

The same dynamics apply to patient-medical student interactions.

# II. Patient and Physician/Student Vulnerabilities

## Patient Vulnerabilities

Patients may be vulnerable to boundary violations due to:

- Childhood trauma/sexual abuse,
- Severe illness,
- Medical/Psychiatric comorbidities, and/or
- Life circumstances.

Patients come to the physician for help in times of need, presenting with physical, and often emotional, distress. Even psychologically healthy individuals may be vulnerable to the imbalance of power inherent in the patient-physician relationship. Patients who have other life stressors, such as impulsivity, dependence, loneliness, low self-esteem, domestic conflicts, cultural, and/or education differences, are especially vulnerable.

## Physician/Student Vulnerabilities

Personal factors that may make physicians/students vulnerable include the following:

- History of childhood trauma/sexual abuse,
- Excessive ambition,
- Inexperience,
- Fear of failure,
- Personality traits/disorders,
- Isolation,
- Addictions, and/or
- Rescue fantasy.

Physicians are trained to function effectively and cope with the numerous stresses that come with the responsibilities of their position. When additional personal stressors occur, normal coping mechanisms may become strained.

As a part of being human, physicians and students may become vulnerable to poor judgment and/or decision-making. They also may be at greater risk for succumbing to invitations of needy patients.

Physicians and students who violate sexual boundaries include the inexperienced, the vulnerable, and the predatory.

Particularly relevant to medical students are issues such as fear of failure, failing to graduate or obtain residency of choice, or losing important relationships.

External factors that may contribute to vulnerability include the following:

- Financial stresses,
- Family problems, and/or
- Excessive professional demands/stresses.

For today's medical students, increasingly large student debt, new regulations regarding repayment during training, and the prospect of reduced income over the lifetime of practice are of paramount importance.

Balancing time demands of family and training, and decisions regarding the timing of having children, are significant issues for medical students.

Increased competition from classmates also remains a significant problem. Excessive professional demands can include large caseload and conflict with the practice group or institutional treatment team.

It is important to keep in mind that although a patient may initiate boundary violations, the physician and student are responsible for maintaining the professional relationship. **Physicians and students are ethically bound to do no harm.** Anything that stresses the physician or student may increase the risk of poor judgment.

# III. Boundary Problems

## High Risk Situations

Situations at high risk for boundary violations include the following:

- Patient or supervisor interactions through
  - Over-familiarity/preferential treatment,
  - Business relationships/gifts,
  - Differing culture norms,
  - Social contact,
  - Digital communications, and
- Medical treatment of family and friends.

Many people find over-familiarity offensive. Business relationships and/or gift giving and receiving may lead to a decrease in

objectivity. Social contacts with patients may blur the professional boundary. Treating family and close friends often results in inadequate or overly involved patient care, and the sacrifice of objectivity.

Boundary problems between staff, patients, and trainees lead to undesirable consequences. A patient whose boundaries are violated may become demanding and belligerent. In these situations, patient care suffers. The health and well-being of patients depends upon a collaborative effort among all parties.

### Case Study No. 1. Over-Familiarity

- A young male trauma victim was seriously injured in a car crash in which his girlfriend was killed.
- A female medical student on the trauma service participates in his care as he recovers, and they begin sharing personal stories.
- She reveals that she has recently broken up with her boyfriend and is quite sad.
- As they become "friendlier," he grabs her one day and tries to kiss her. …

*Over-familiarity creates many problems, although at the outset it seems harmless. Over-familiarity goes both ways and may include the student revealing too much personal information (self-disclosure). Once a line is crossed, it is difficult to reestablish the previous relationship. Over-familiarity may cloud clinical judgment and lead to further reciprocal intrusions and obligations, coercion, and/or serious violations such as sexual misconduct.*

## Preferential Treatment

Preferential treatment refers to such actions as:

- Paying for a patient's medication,
- Providing transportation,
- Giving personal contact information, and
- Extending a selective invitation.

Initially it may not be considered preferential treatment for physicians or students to provide extra services to only a small number of patients; however, it sets up a patient hierarchy.

Examples of preferential treatments include the following:

- A physician or student gives a patient money to pay for his or her prescriptions rather than filling out a prior authorization.
- A physician or student gives a patient a ride home or pays for a cab.
- A physician or student gives a patient his or her personal cell phone number for emergency contacts, bypassing the clinic/hospital emergency services system in place.
- A clerkship director invites a couple of male medical students on his current rotation to play golf with him on the weekend. The female student on the rotation is not invited.

## Business Relationships

Business relationships can result in boundary violations such as:

- Misuse of information from patients,
- Personal gain, and/or
- Unnecessary treatments or referrals.

### Case Study No. 2. Business Relationships

- An attending physician has a financial stake in an urgent care center and tries to recruit residents to work there, but wants to pay them the lower hourly fee they get for moonlighting in the residency after hours clinic.
- The chief resident declines claiming that the urgent care shifts will cause her to exceed the weekly hour limit.
- The attending then reassures the resident that the hours worked there will be "off the record."

*Under no circumstances may a physician or student place his or her own financial interests above the welfare of patients, as this is unethical. Treatment and referrals should be based on clinical information, rather than for personal gain.*

### Case Study No. 3. Gift Giving and Accepting

- A medical student on surgery rotation takes interest in an elderly man admitted to the hospital.
- Being a foreigner, the patient does not understand the U.S. medical system.
- Prior to discharge, the patient gives the student a jewelry box.
- A week later, the patient is admitted for a procedure.
- Afterwards, the patient gives the student a Middle Eastern rug.

The medical student took special interest in the elderly man from a Middle Eastern country, who was admitted for acute cholecystitis. The patient was in the United States visiting relatives, and did not understand how the U.S. medical system works. The student spent significant amounts of time with the patient explaining things.

A decision was made to send the patient home for a few days, then readmit him for cholecystectomy. Prior to his discharge, he gave the student a beautiful inlaid jewelry box.

The patient was admitted a week later and underwent an uneventful elective cholecystectomy. Once again, the student spent time with the patient explaining what to expect. When discharged this time, the patient gave the student a Middle Eastern rug. The student was uncomfortable about accepting the rug, but the patient's family explained that it was "customary" in his native country to give such gifts to persons involved in medical care.

What should the student do — accept the rug because of the "customs" of the country, return the gift because of its substantial worth, or accept it and donate it to charity?

*In this case, the best response would be for the student to decline the gift, explaining to the patient that accepting it would not be considered appropriate in the United States. While accepting small gifts may be a reasonable option, accepting large, expensive gifts can be dangerous.*

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## Gift Giving and Accepting

Accepting small gifts from patients is sometimes reasonable, in particular because it makes the patient feel good. However, accepting large, expensive gifts can be risky-it leaves the physician open to the possibility of "owing" the patient something based upon the size and worth of the gift. The physician may feel obligated to provide the patient with "special" care in the future. It is particularly dangerous in the case of a student, who may feel obligated to provide "special care" in the form of sexual favors or other inappropriate gestures because the student cannot realistically provide medical care.

Patients frequently give gifts to physicians and/or students. Small gifts given in gratitude may sometimes be welcomed and not viewed as a boundary violation. However, gifts accompanied by compliments and other evidence of seductive behavior may represent an attempt by the patient to consciously or unconsciously control the patient-physician interaction. Larger or more expensive gifts are clear and serious boundary transgressions, unless they are given as a charitable donation to a non-profit institution, rather than as a personal gift to the physician or student. As implied by the saying, "There's no such thing as a free lunch," expectations arise from gifts. It should be made clear to patients that giving a gift will not secure preferential treatment. This also applies to patient gifts to staff.

The same can apply to the physician or student who gives gifts to patients, with the patient feeling burdened by a sense of obligation that can never be openly discussed.

Here are some guidelines.

- Patient to physician or student
  - A small gift versus larger or more expensive gift may be appropriate.
  - Response to the gift should be individualized.
- Physician or student to patient
  - Any gift would rarely be appropriate.
  - The patient's sense of obligation may affect ability to communicate freely with physician or student.

The TMA Board of Councilors offers an opinion on this topic, which is referenced in the bibliography.

**Case Study No. 4. Cultural Differences**

- A male medical student starts on a surgical service, one of whose patients is a Middle Eastern woman who has undergone an appendectomy.
- Her wound had been left open, and required dressing changes.
- One morning, the student tried to change the dressing, but the patient becomes upset because in her culture, a male other than her husband would not be allowed to examine her.

*The male medical student had only good intentions in trying to change the dressing on the appendectomy wound. What he did not realize, however, was that previously, only the female residents had been changing the dressing. In the patient's culture, it was not considered appropriate for a male to do so.*

*A better way of handling this situation would have been for the student to check with the residents before changing the dressing. Given that he did not, and the patient became upset, an apology was in order.*

## Cultural Differences

Boundaries differ among cultures regarding:

- Physician contact,
- Gift giving,
- Business relationships, and
- Social interactions.

In the current climate of medicine, physicians treat patients from many different cultures. It is important to realize that what is considered appropriate in one culture may not be appropriate in another. Although it is not possible to understand all the diverse cultural norms physicians see, respect and consideration for the patient should always come first.

The Committee on Physician Health and Wellness (PHW) has a course that addresses cultural competence.

## Inappropriate Social Contact

Consider these scenarios that pose risks:

- Urban versus rural differences, and
- Staff/trainee relationships.

It is certainly reasonable (and even expected) that in small communities, physicians and patients will encounter each other in the course of normal daily life activities. However, social contact with patients may become risky when either party begins to perceive that relationship as "special" and beyond the range of providing adequate medical care (e.g., becoming intimate friends).

Or consider a situation where a male faculty member hosts a holiday party, inviting medical students and house staff he knows. After an evening of drinking, the last person at the party is a female house staff member. Something allegedly happens between the two of them, and the next morning the house staff member files a sexual harassment complaint against the faculty member.

## Digital Communications

The sophistication of the Internet has made many new modalities of information transfer possible. Medical practice has embraced these, some which are acceptable and others are not. Here are some examples.

- Acceptable Internet medicine:
  - eScript/prescription,
  - Online evaluation of radiologic images, and
  - Telemedicine in certain circumstances

E-prescribing is mandated by Medicare for full payment. Radiologists interpret images and produce reports electronically and telemedicine consults provide improved access to care to rural communities. Secure email communication with patients is becoming an increasingly common occurrence. Physicians should remind patients regarding the risks of communicating information in a non-secure manner.

- Unacceptable Internet medicine: prescribing medications without adequate history and physical

Prescribing medications without appropriate face-to-face contact with a patient is a violation of the Medical Practice Act of Texas.

- Unacceptable on social networking sites:
  - **Friending patients.** "Friending" patients is unethical and initiates a blurring of professional boundaries. It also is possible that patients' confidential health information can become public. Despite privacy settings, students should assume anything posted online could become public knowledge.
  - **Online socializing in a patient-physician relationship.** This is inappropriate because it raises serious privacy and confidentiality concerns.

Professional and personal Facebook pages should be strictly separate — according to the Federation of State Medical Boards, patient-physician interactions should never occur on personal networking sites (FSMB 2013).

### Case Study No. 5. Social Networking

- A young gynecologist, during his first year in practice, is unaware of the professional risk associated with the use of social media and subsequently "friends" some patients on his personal Facebook page.
- Sometime later, he posts a picture of him and his spouse toasting with glasses of wine.
- A patient-"friend" subsequently shares this picture with her Facebook friends.
- Eventually, a patient who has had a bad outcome sees this picture and initiates a malpractice suit, accusing the physician of being under the influence during her procedure.

## Treatment of Family and Friends

- AMA Code of Medical Ethics
  - Physicians should not treat themselves or immediate family members.
- TMA Board of Councilors
  - It is ethical to treat family/friends with appropriate medical records.
  - Legal requirements exceed ethical opinions.
- TMB Rule on controlled substances
  - Inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others without treatment relationship and documentation is a violation of Medical Practice Act

The AMA Code of Medical Ethics (E-8.19) states that physicians should not treat themselves or members of their immediate families. Professional objectivity may be compromised, and the physician's personal feelings may unduly influence his or her professional medical judgment.

The TMA Board of Councilors opinion states that it is ethical to treat family and friends, but that physicians should maintain a medical record. It notes that in urgent or episodic situations, generating a medical record may not be practical or possible. The opinion notes that legal requirements exceed the ethics opinion.

Therefore, it may be appropriate to undertake self-treatment or treatment of immediate family members in emergency situations. In addition, while physicians should not serve as primary or regular care providers for immediate family members, there are situations in which routine care is acceptable in short-term, minor problems.

There are significant risks for physicians who write prescriptions for controlled substances for themselves or immediate family members. Physicians should always document any treatment provided to avoid legal sanctions by TMB.

TMB Rule 190(8)(1)(M) states that inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship is a violation of the Medical Practice Act. The rule states that 1) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; and 2) prescribing controlled substances in the absence of immediate need constitute inappropriate prescribing. Immediate need shall be considered no more than 72 hours.

### Case Study No. 6. Treating Family

- A family physician is on a camping trip with his family.
- He evaluates his sister, who injured her ankle, and determines that there is no apparent fracture.
- The closest emergency room is a 45-minute drive away, but there is a pharmacy in the closest small town.
- The physician's sister is in pain, so he prescribes a limited amount of narcotic pain reliever and recommends a nonprescription nonsteroidal anti-inflammatory drug.
- The physician documents his care as soon as possible and recommends his sister see her regular physician upon her return home

*This case study is an example of a difficult situation that occurred and how one family physician chose to treat a family member. This scenario represents only one of several less-than-ideal solutions. Development of a medical chart and documentation of the event, even after the fact, are a necessity. Referral of his patient-sister to her primary care physician as soon as she returned home was appropriate.* ***Ethically, what could the family physician have done differently?***

# IV. Sexual Boundary Violations

What constitutes as a sexual boundary is not always clear. It includes:

**Sexual impropriety:** any behavior such as gestures or expressions that are sexually demeaning to a patient, or which demonstrates a lack of respect for the patient's privacy.

**Sexual transgression:** any inappropriate touching of a patient that is of a sexual nature, short of sexual violation.

**Sexual violation:** physician-patient sex, whether or not initiated by the patient, including, but not limited to, sexual intercourse, masturbation, genital to genital

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contact, oral to genital contact, oral to anal contact, and genital to anal contact.

A sexual boundary violation within the context of ongoing medical treatment or within a professional relationship as long as it exists is prohibited in virtually every instance. In addition, sexual relationships with patients outside medical treatment and/or outside a professional relationship should be approached with extreme caution.

Sexual/romantic relationships with former patients are also fraught with risks. For example, the patient may terminate the medical/professional relationship in writing but not emotionally or mentally because of his or her position of vulnerability and dependence on the physician.

A sexual relationship with a patient is unethical and may lead to discipline by the TMB, as well as civil damages or criminal prosecution.

### The Slippery Slope

- Gradual erosion of physician neutrality
- Perception of patient treated as "special"
- Physician self-disclosures
- Nontherapeutic physical contacts
- Socialization outside the practice/dating
- Patient-physician sex

Boundary violations occur one small step at a time and almost without warning, yet if we are aware, the warning signs are there. What appears to be innocent and small ends up being a commitment to an unprofessional relationship with a patient.

The physician or student may phone the patient, requesting a meeting. Appointments are scheduled at the end of the day or additional time is taken for each appointment. Payment is deferred. All of these tend to make the patient "special." Dating may begin and sexual contact occur.

Be aware, also, that there are patients who may try to control the physician/student or the appointment. Transgressions by the patient in spite of the limits set by the doctor may occur. The doctor/student must still be in control of the situation.

## V. AMA and TMA Opinions

- Contact concurrent with the patient-physician relationship constitutes sexual misconduct and is unethical
- Sex with former patients or key third parties is unethical if physician uses or exploits trust, knowledge, or emotions

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.

The AMA stipulates that a former patient may still be influenced by the previous relationship and may not be able to function in an equal, consenting adult manner.

TMA Board of Councilors defines key third parties as including, but not limited to, spouses or partners, parents, guardians, or proxies of patients.

The Association of American Medical Colleges also recognizes the potential for conflict.

## VI. Sexual Harassment

**Case Study No. 6. Sexual Harassment**

- A female student is on rotation.
- Male team members consistently make derogatory comments and jokes.
- The female student is offended by remarks.
- She takes no action in fear of negative effects on her grades.

A third-year female medical student begins a clinical rotation with an all-male team. When referring to something considered stupid or inconvenient, the other members of the team constantly made offhand remarks such as, "that's so gay." The female student, who was openly homosexual, became offended by their inconsiderate manner but did not feel comfortable enough to speak up or file a complaint in fear of it negatively affecting her grade and reviews. Such jokes and comments continued through the rest of her rotation.

### Sexual Harassment

Sexual harassment is any unwanted or repeated:

- Verbal or physical advances,
- Derogatory statement or sexually explicit remarks, or
- Sexually discriminatory comments,

as a result of which:

- The recipient is offended or humiliated, or
- The recipient's job performance suffers.

Sexual harassment falls under this same principle of maintaining boundaries. Physical advances are not required to determine sexual harassment. It may be present if there are verbal advances or derogatory or sexually explicit remarks, and if the recipient is offended or humiliated and his or her performance suffers as a result.

According to the U.S. Equal Employment Opportunity Commission, unwelcome sexual advances, requests for sexual factors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Medical schools are required to have a policy on sexual harassment. The medical school is charged with educating faculty, staff, residents, and students, which includes describing physical and verbal instances that may be considered sexual harassment. The policy should state that behavior is considered to be sexual harassment if such conduct has the purpose or effect of interfering with an individual's work or academic performance or creating an intimidating or hostile educational or working environment.

Students are urged to review their school's handbook for policies regarding sexual harassment and learn the proper steps to follow should this become an issue.

*(Gabbard 1995)*

## Supervisor and Trainees

Sexual harassment between medical supervisors and trainees is unethical:

- Inequalities in the status and power are inherent.
- Even when consensual, such actions are not acceptable.
- The supervisory role should be eliminated if the parties wish to pursue their relationship.

The AMA holds that sexual harassment between supervisors and trainees is unethical. AMA defines sexual harassment as sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when 1) such conduct interferes with an individual's work or academic performance or creates an intimidating, hostile, or offensive work or academic environment or 2) accepting or rejecting such conduct affects or may be perceived to affect employment decisions or academic evaluations concerning the individual.

The supervising party must take personal responsibility for maintaining the boundary because of the inherent inequality of status and power. Even when both parties are consensual, such a relationship is unethical.

If parties wish to pursue a personal relationship when a supervisor-to-trainee hierarchy exists, such a hierarchy should be eliminated before beginning the relationship. (AMA Code of Medical Ethics, Opinion 3.08).

# VII. Consequences

**For students,** consequences may include:

- Notice of unprofessional conduct,
- Meeting with Dean of Student Affairs,
- Peer review committee,
- Dean's letter comments,
- Medical school dismissal, and/or
- Personal consequences.

For medical students, the consequences can be mild to severe depending on the type and frequency of boundary violations.

Promptness and courtesy are an important part of the medical student's interaction with patients and with the treating team, including resident physicians and attending physicians. While this does not endanger anyone, any display of unprofessional behavior (however minor) can result in a notice placed in the student's record. If there are several occurrences, or the student is not improving on the behavior, the Dean of Student Affairs (or each school's equivalent), will often intervene with a meeting to work on improving the student's professionalism and aiding them in maintaining boundaries  Some schools have peer review committees for this process. If this is not effective, the Dean's letter will refer to the student's unprofessionalism, thus impeding his or her ability to get into desired residency programs.

If the unprofessional conduct does not abate with interventions, or is egregious in the beginning, then the student may face dismissal from the school. This is very serious, as it would be very unlikely for the student to be able to get in to another medical school under these circumstances. Thus, a career in medicine would no longer be an option for him or her.

Finally, in the event of serious unprofessionalism, the student may face a loss of reputation, career aspirations, and/or relationships, and even lawsuits, in regard to the events.

**For physicians,** consequences can be:

- Professional,
- Personal, and/or
- Financial.

These are in addition to the legal consequences for physicians, discussed in the next section. Examples of professional, personal, and financial consequences are as follow:

- Professional:
  - o Report to the TMB with potential loss of license,
  - o Damage to practice,
  - o Loss of public trust, and/or
  - o Loss of hospital and health care payment plan affiliations.
- Professional/Personal: Negative publicity (notoriety)
- Personal:
  - o Harmful effect on family, and/or
  - o Emotional stress (guilt, shame, depression).
- Professional/Personal/Financial: Loss of revenue

**For patients,** consequences can be:

- Suicidal behavior,
- Dependence,
- Anxiety,
- Mistrust of medical profession/ reluctance to seek treatment,
- Sexual disorder,
- Sleep disorder,
- Substance abuse, and/or
- Relationship problems.

The patient may suffer many psychological problems from the inappropriate relationship. Remember when there is an imbalance of power, the relationship is viewed as an abusive one. The patient already may have been in an abusive relationship with previous lovers and/or spouses. Or as a child, the patient may have been in a helpless victimized relationship that ended in lack of trust and inability to have appropriate relationships with others. He or she may be living out the previous relationships again, this time with his or her physician. The loss of the relationship or the expectations of the relationship can lead to depression, anxiety, and sexual dysfunction. Those who are not able to cope with the relationship or the loss of the relationship may abuse substances. Patients may no longer comply with or even seek treatment for fear of being victimized once again. Extreme consequences may lead to an impulsive act (suicidal/homicidal ideation or attempt).

With boundary violations, everyone loses. This means the patient (plus his or her family), the physician or medical student (plus his or her family), as well as other unrelated patients.

If a patient files a lawsuit, the emotional upheaval for both patient and physician/ medical student is great.

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# VIII. Legal Consequences for Physicians

- Administrative law – TMB
- Civil law – professional liability
- Criminal law – sexual assault

## Administrative Law

- Disciplinary action by TMB;
- Most common outcome is loss of license

Sexual misconduct by physicians in regard to contacts with patients includes, but is not limited to, the following, and may be the basis for discipline under §§164.052-164.053 of the *Occupations Code:*

- Physical contact or bodily movement intended to express or arouse erotic interest,
- Relationship between a patient and physician where sexual behavior occurs,
- Sexual behavior that occurs within the context of a professional patient-physician relationship,
- Behaviors that are sexually demeaning or demonstrate a lack of respect for the patient's privacy,
- Inappropriate touching, and
- Patient-physician sex.

## Civil Law

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 [VTCA *Civil Practice & Remedies Code* §81.0001 et seq. (1999)].

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.

This statute, which applies to all physicians, ties back to the Administrative Law section regarding grounds for disciplinary action by TMB for an act that violates the laws of the state when connected with the physician's practice of medicine.

## Criminal Law

Sexual assault by a mental health services provider or a health care services provider is punishable under the Penal Code as a *felony* of the second degree [VTCA *Penal Code* §22.011(f)].

A "mental health services provider" is defined as "an individual, licensed or unlicensed, who performs or purports to perform mental health services."

A "health care services provider" includes "a physician licensed under Subtitle B, Title 3, *Occupations Code*."

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."

# IX. Action Steps and Strategies/Reporting Requirements

## Getting Help

- Stop behavior.
- Seek help from a qualified professional.
- Contact the PHW Committee for assistance: 24-hour hotline, (800) 880-1640, or
- Call your county medical society PHW Committee or PHW district coordinator.

Medical students and residents are encouraged to contact the committee. Support groups are available for physicians and students.

## Reporting Requirements

The Texas *Occupations Code* requires a person or committee to submit a report regarding the acts of a Texas physician if, in the opinion of the person or committee, that physician poses a continuing threat to the public welfare through the practice of medicine. [VTCA, *Occupations Code* §160.003(b)].

Vernon's Texas Codes Annotated *Occupations Code* §151.002(a)(2) defines "Continuing threat to the public welfare" as meaning:

> a real and present danger to the health of a physician's patients or to the public from the acts or omissions of the physician caused through the physician's lack of competence, impaired status, or failure to care adequately for the physician's patients …as determined by the board, a medical peer review committee in this state, physician licensed to practice in this state or otherwise lawfully practicing medicine in this state, a physician engaged in graduate medical education or training, or a medical student.

## What You Can Do Differently

- Be more cognizant of your behavior and how you may be perceived by others.
- Document inappropriate patient behaviors.
- Weigh consequences of gift acceptance and business relationships.
- Be cautious with any patient-related digital communication.

*The PHW Committee hopes this activity is useful educational information and welcomes your suggestions regarding these or other educational materials you think should be made available to Texas medical students.*

## Disclaimer

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## X. Source Page

1. Texas Medical Association Board of Councilors *Current Opinions*
   - A. Gifts from Patients
   - B. Treatment of Family Members and Friends
   - C. Use of Chaperones During Physical Exams
   - D. Sexual Misconduct

www.texmed.org/template.aspx?id=392 (accessed 3/17/14)

2. American Medical Association *Code of Medical Ethics*
   - A. Sexual Misconduct in the Practice of Medicine
   - B. Sexual or Romantic Relations between Physicians and Key Third Parties
   - C. Self-Treatment or Treatment of Immediate Family Members
   - D. Use of Chaperones During Physical Exams
   - E. Gifts from Patients

www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics.page (accessed 3/17/14)

3. Association of American Medical Colleges

www.aamc.org/about/medicalschools/ (accessed 3/17/14)

4. Texas Medical Association Committee on Physician Health and Wellness, "Sexual Misconduct by Physicians," May 2013

Available from the TMA PHW Committee at (800) 880-1300, ext. 1342, or linda.kuhn@texmed.org

5. Texas Medical Board Rule 190.8(1)(M) Violation Guidelines regarding Inappropriate Prescription of Dangerous Drugs or Controlled Substances to Oneself, Family Members, or Others in Which There is a Close Personal Relationship

http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&ti=22&ch=190&rl=8 (accessed 3/17/14)

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1. 3.08 Sexual Harassment and Exploitation between Medical Supervisors and Trainees
2. 8.14 Sexual Misconduct in the Practice of Medicine
3. 8.145 Sexual or Romantic Relations between Physicians and Key Third Parties
4. 8.19 Self-Treatment or Treatment of Immediate Family Members
5. 8.21 Use of Chaperones During Physical Exams
6. 9.124 Professionalism in the Use of Social Media
7. 10.017 Gifts from Patients

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Texas Medical Association

Physicians Caring for Texans

# Committee on Physician Health and Wellness

## Providing Physician Health Education for Physicians of All Specialties

### History

The Texas Medical Association House of Delegates established the Committee on Physician Health and Wellness in November 1976. The committee's charge is to "promote healthy lifestyles in Texas physicians and to identify, strongly urge evaluation and treatment of, and review rehabilitation provided to physicians with potentially impairing conditions and impairments." (*TMA Bylaws,* Section 10.621).

Composed of physicians who are concerned about the health and well-being of their colleagues, the PHW Committee endeavors to provide help and assistance. The function of the committee is three-fold: 1) to promote physician health and well-being, 2) to ensure safe patient care by identifying physicians who may have a potentially impairing illness, and 3) to advocate for the physician while maintaining confidentiality and the highest ethical standards.

### Educational Materials

The PHW Committee offers several ongoing courses on a wide range of topics to educate physicians, TMA Alliance members, hospital administrations, and others. PHW activities encourage physicians to promote and maintain their health and wellness, which fosters healthy lifestyles in patients. The PHW Committee is committed to providing ongoing education of all physicians and medical students regarding physician health and wellness as well as services for health-related conditions that may affect a physician's ability to practice medicine with reasonable skill and safety.

### Speakers' Bureau

PHW Committee courses can be given upon request as live presentations at meetings of county medical societies, hospitals, and other entities. An administrative fee is charged to offset speaker travel and administrative expenses. To ensure that we can secure a speaker for your program, please make your request at least one month before the scheduled presentation. Contact Sasha Toj at TMA at (800) 880-1300, ext. 1343, sasha.toj@texmed.org for additional information.

Speakers who participate in the PHW Committee's regional education teams are knowledgeable about physician health and wellness issues. The committee offers training annually for new team members, which also serves as a refresher course for other team members.

### Services

As advocates, the PHW Committee helps with:

- Intervention;
- Referral for evaluation and treatment, if necessary;
- Monitoring upon return from treatment; and
- **Education** for physicians, family members, and support staff regarding possible impairments.

The PHW Committee seeks to rehabilitate, rather than punish, physicians who are impaired. All referrals made to the committee are confidential — both for the physician who has a potentially impairing illness and for the individual making the referral. The committee is interested in the health and well-being of the physician, patient, and families of all constituents.

### Activities

- 24-hour hotline: **(800) 880-1640**
- Continuing medical education programs
- Drug screen program for physicians
- Physician Health and Rehabilitation (PHR) Assistance Fund
- Outreach to medical students and resident physicians
- Hospital/Joint Commission Standard re: Licensed Independent Practitioner Health

A 24-hour toll free number is available that anyone may call if he or she is concerned about a physician who may have a potentially impairing illness.

The PHW Committee provides CME activities on a wide variety of topics related to physician health and well-being. In addition, the committee offers statewide conferences and local workshops each year.

The drug screen program for physicians provides a statewide, consistent method for random drug screening of physicians under agreement with county medical society PHW committees, district coordinators, and hospital-based peer assistance committees.

Through the PHR Assistance Fund, financial assistance is available to physicians who cannot afford treatment for depression, substance use disorders, or other problems. Financial assistance also is available for short-term living expenses while a physician receives treatment. Donations to the fund are appreciated and are tax-deductible.

The committee also offers assistance, education, and literature to help medical students and resident physicians who may know of a peer who needs assistance or who may need assistance themselves.

The PHW Committee developed resources available to hospitals to help them respond to the Joint Commission requirement related to physician health.

### Types of Referrals

- Substance Use Disorders
- Mood disorders
- Sexual boundary violations
- Disruptive behavior
- Personality disorders
- Cognitive disorders
- Ethical misconduct

The majority of cases referred to Texas county medical society PHW committees have involved substance use disorders. However, as hospitals and medical societies are more aware of physician impairment, disruptive and dysfunctional behaviors of all types are being reported. A psychiatric illness may be at the root of the behavior. Psychiatric illnesses can be diagnosed with a proper evaluation and most often respond to treatment.

Stress management and boundary issues also are referred to the PHW Committee, as well as mood disorders, sexual boundary violations, and cognitive disorders.

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Ethical misconduct does not only include sexual misconduct, but can include things such as sexual harassment in the workplace. There are many institutional guidelines laid down by hospitals, large medical groups, as well as the federal government that spell out sexual harassment. Other forms of ethical misconduct can include such things as double billing and overcharging for services.

## Table: Recent Statistics

| Type | Percentage of Cases |
|---|---|
| Substance Use Disorders | 47% |
| Depression | 9% |
| Stress/overwork | 4% |
| Disruptive behavior | 3% |
| Cognitive impairment | 3% |
| Physical disabilities | 2% |
| Other psychiatric disorders | 32% |

(TMA PHW Hotline Calls and Quarterly Reports 2013)


Physicians and medical students may be referred to the TMA PHW Committee 24 hours a day by calling the toll-free hotline number, **(800) 880-1640**. The direct line to committee staff is **(512) 370-1342**.


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