

Medical Ethics & Boundaries Issues

Presented by:



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Objectives

- Learning what is the professional ethical definition of a boundary violation
- Learning what is the legal meaning of a boundary violation
- The evolution of sensitivity, enforcement, and prosecution of boundary violations in the regulatory and administrative field

Objectives

- Risk Management and Avoiding Violations
- Develop a Culture of Ethical Practice with An Effective Compliance Plan

Boundaries

- Professional Boundaries—the limits of appropriate professional behavior.
- Some things defy definition, but you know what they are:
 - a. What is a health care item or service?
 - b. What is medically necessary?

Boundary Issues

- Boundaries Issue—any departure from the limits of appropriate professional behavior.
- Some things defy definition.
 - Necessity in a particular situation may require a practitioner to depart from the typical limits of appropriate professional behavior.
 - Ethics committee

Boundary Violations

- Boundaries Issues have a tendency to grow into Boundaries Violations.

Boundary Violations

- Boundary violations have always been a concern for the medical profession.
- In the past few years, the boards have become increasingly sensitive to the dangers and pitfalls of boundary violations.
- Boards have taken a punitive, rather than a rehabilitative, approach to those who violate appropriate boundaries.

- When people think about the term “boundary violations,” they immediately think of unwitting sexual conduct.
- This is the most egregious example, but there are many other scenarios which regulators classify as boundary violations.
- The meaning of boundary violation is more broad than most professionals believe it to be.

- What is a Boundary Violation?
 - Any behavior that infringes upon the primary goal of providing care, and that might harm the patient, the clinician, or the therapy / treatment.
 - Essentially, a boundaries violation—is any departure from the limits of appropriate professional behavior that has an **adverse consequence for the patient.**

Some things defy definition

- Adverse Consequence for a patient is subjective.
 - Regulatory agencies/boards frequently make subjective determinations, which is one of the purposes of those bodies
 - Subjective determinations are difficult and EXPENSIVE to dispute
 - Subjective determinations are even more difficult and expensive to appeal

Types of Boundary Violations: Sexual Relationships

- Sexual relationship or the attempt to engage a patient in a sexual relationship
- Never—patients cannot consent to a relationship with a health care provider PERIOD.
- A nonsexual relationship that is too personal is also a violation; too close to the patient/family so that professional judgement is affected
- Reasonable person standard or effect on the complaining patient/family standard

Types of Boundary Violations: Financial Arrangements

- Financial arrangements may be a violation
 - Grandpa may have wanted to leave \$\$\$ to his home health aide, but the disenfranchised grandchildren will challenge using any means necessary.
 - The likelihood of a relative challenging the bequest is directly proportional to the number of \$\$\$\$\$.

Types of Boundary Violations:

Exercising influence over the patient for financial gain (goods, services, appliances drugs)

- Physician Owned Distributorship (POD)
- Vitamins, supplements, and other services in the office
- Self-Referral
- Kickbacks

Types of Boundary Violations: Information Disclosures

- Too much information—too casual with patients; applies to disclosing personal information to patients, and disclosing patient information inappropriately
- Not enough information—withholding information, keeping patient secrets may be substandard care

- Examples of other possible boundary violations include:
 - economic involvement
 - overtly political requests
 - similar conduct that the client would not otherwise engage in but for the actions, conduct, or directive of the practitioner.

Examples of Boundary Violations

- A study of disciplinary cases involving medical doctors cases from 2009 through 2014 revealed 19 cases against medical doctors where the Department issued administrative complaints alleging sexual misconduct. Of those the Board of Medicine accepted the surrender of 9 physicians' licenses.
- The Board revoked the license of one physician where the physician was also criminally charged with illegally operating a pain clinic and exchanging drugs for sex. The Board dismissed once case after a formal hearing. The Board imposed a one year suspension in two cases. In six cases the Board accepted settlement agreements with severe restrictions on the physician's license to practice.

Examples of Boundary Violations

- DOH Case Number 2005-59295, a female patient alleged the physician performed two inappropriate vaginal examinations. The patient also made a criminal complaint. Additional female patients made similar allegations after the Sheriff's Office held a press conference regarding the matter. The Board approved a settlement that included a reprimand, a \$10,000 fine, costs of \$17,365.14, and a permanent practice restriction requiring the physician to have a female chaperone in the room whenever providing care or treatment to a female patient.

Examples of Boundary Violations

- DOH Case Number 2009-10574, a female patient alleged the physician made vulgar comments during her physical examination, then lifted her dress, and grabbed her buttocks as she attempted to leave. During the DOH investigation, additional allegations were made that the physician was unable to practice medicine with reasonable skill and safety by reason of illness or the use of alcohol. The Board approved a settlement agreement that included a reprimand, a fine of \$15,000, costs of \$7,223.59, suspension until cleared to resume practice by PRN, 100 hours of community service, and safeguards to ensure the safety and welfare of female patients.

Examples of Boundary Violations

- DOH Case Number 2010-12482, a female patient sought care from a family practitioner, after her discharge from the hospital following a suicide attempt. The physician prescribed antidepressants and medication for the patient's anxiety. After several months, the female patient confided that she had left her husband and developed feelings for the physician. The patient asked the physician if she should find a new doctor. The physician advised the patient not to change doctors and commenced a sexual relationship with the patient. A few months later the physician abruptly terminated the relationship and the patient was hospitalized again for another suicide attempt. The Board approved a settlement agreement that included a reprimand, a fine of \$10,000, costs of \$4,612.90, suspension until cleared to resume practice by PRN, and a permanent practice restriction requiring the physician to have a female chaperone in the room whenever providing care or treatment to a female patient.

Examples of Boundary Violations

- DOH Case Number 2008-10746, a female patient had disclosed a childhood history of abuse and incest. The patient asked the physician to review a book she had written about her experience as a victim of incest. The physician made arrangements to meet with the female patient at his office on a weekend when the office was closed. As soon as the patient entered the office, the physician forcibly kissed the patient. The physician began a sexual relationship with the patient that continued for more than a year. The Board approved a settlement agreement that included a reprimand, a fine of \$10,000, costs of \$9,420.23, suspension until cleared to resume practice by PRN, and a permanent practice restriction requiring the physician to have a female chaperone in the room whenever providing care or treatment to a female patient.

Examples of Boundary Violations

- Case Number 2010-23877, the complaint alleged the physician engaged in sexual misconduct with four separate patients under his psychiatric care at a correctional facility. The female patients alleged that the physician requested the patients kiss him, hug him, and expose their breasts to him. The female patients also alleged that the physician asked to meet with the patients after their release from the correctional facility. The female patients understood the physician's request to mean that he would purchase items and prescribe medications for them in exchange for sexual favors. The Board approved a settlement agreement that included a reprimand, a fine of \$25,000, costs of \$26,366.59, suspension until cleared to resume practice by PRN, and a permanent practice restriction requiring the physician to have a female chaperone in the room whenever providing care or treatment to a female patient.

Examples of Boundary Violations

- DOH Case Number 2010-11372, the female patient alleged the physician exposed himself to her and requested oral sex. When the female patient refused, the patient alleged the physician masturbated in front of her. The patient alleged the physician left the examination room after he finished masturbating and then she left the examination room. The patient reported the incident to the law enforcement. The Board approved a settlement agreement that included a reprimand, a fine of \$15,000, costs of \$14,772.17, suspension until cleared to resume practice by PRN, and a permanent practice restriction preventing the physician from examining or treating all female patients.

The Nature of the Relationship between the Practitioner and the Patient

- Most experts agree that a patient-caregiver relationship is an inequitable one.
- The medical professional is the individual wielding the power, authority, and knowledge over the patient.
- Metaphorically speaking, the practitioner is on a pedestal. Patient, at times, believe the professional has power over life and death; or at least the power to ease their troubles.

- Patients may misperceive the professional relationship. It could be viewed as a:
 - Friendship
 - Mentorship/Advisor
 - Loving, romantic relationship
 - Parent-child relationship
 - Potential investor

Prohibited Acts

- Dual relationships – Relationships outside the patient-care giver dynamic.
- If a physician possesses special knowledge of the patient based on their professional relationship and use of that knowledge to instigate a relationship, it may be a violation of board policy.

The Duty is on the Physician

- If a client initiates inappropriate contact or communication, the duty rests solely with the practitioner to either attempt to educate the patient on how improper that is or to terminate the client-professional relationship immediately, or risk sanctions/discipline.
- **Document this happening!**

The Duty is on the Physician

- A witness from the office, preferably someone the same gender as the patient, should be present when the patient is educated.
- One needs to explain to the patient, in a professional manner, that he or she cannot legally become involved in this type of relationship.

Terminating an Improper Relationship

- If you elect to terminate the relationship, please do so properly, so you do not abandon the patient.
 - Termination in writing
 - Adequate time
 - Referral
 - Emergency

Gifts

- Gift may be viewed as a boundary violation.
- Things to think about
 - Value
 - Context
 - Reasonable person
- Do you need to create a policy?

Are you at risk?

- Whether intentional or not, boundary violations in all forms do occur.
- Boundary violations can and do occur innocently.
- To avoid such violations, it is necessary to first understand the pertinent law and become aware of boundary dilemmas that can arise in the course of practicing medicine in the 21st century.

Disciplinary outcomes

- Restrictions on Practice
- Monitoring by Impaired Practitioner Program
 - Repeated evaluations for sexual misconduct
- Fines
- Revocation
- Collateral consequences

V. Risk Management & Avoiding Violations

Documentation and Communication

- The best prevention is to communicate in an open and forthright manner with patients and document everything unusual.
- If in doubt, use a chaperone. Yes, this removes employees from work, and may even slow things down, but this preventive measure is far more cost-effective than an investigation by the board, civil law suit and a possible criminal complaint.

Patient Selection & Management

- Family and friends
- Litigious individuals
- Chaperones

Scope of Practice

- Pain Management
- Mental health and Psychiatrist

Adding Ancillary Services

- Questionable Revenue Schemes & Management Agreements
- Adding ancillary services without proper training
- Laser (fill in the blank)

Effective Compliance Program

- Policies and Procedures
- Internal Audits
- External audits
- Billing Audits

Who is ultimately responsible for a medical practice's compliance?

- The Physician

What should a Physician Remember if appearing before the Board?

- Deference
- Demonstrate current ability to practice safely
- Focus on the issues of concern to the Board
- Prepare
- Have experienced legal counsel

Board's Perspective

- The Boards are very aware of Boundary Violations. The sociopolitical reason is because of the potential media and political outcry over physicians' sexual misconduct, the board is generally unwilling to allow those who have abused the public trust to be maintain their license.

Board's Perspective

- This stance demonstrates the boards are performing its stated mission of protecting the public, and it places the public on notice of a particular physician's misdeeds.

Remember...

- THE BOARD'S PURPOSE IS TO PROTECT THE PUBLIC
- SHOW THE BOARD YOU ARE CURRENTLY SAFE TO PRACTICE
- SHOW THE BOARD YOUR CORRECTIVE ACTION TO PREVENT RECURRENCE



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