Boundary Violations and Professional Sexual Misconduct are Always Harmful

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The explosive case against Dr. Larry Nasser involving young athletes in training with USA Gymnastics held the nation's attention last year; it was a heinous case and the most recent to turn the spotlight onto professional sexual misconduct and boundary violations within the medical community. If you search you will find varying studies and statistics but experts agree the overall problem is underreported.

Fortunately, the Tennessee Medical Foundation rarely sees these cases, but they do happen. We as physicians need to know and understand the definitions, expectations, and the consequences of crossing a boundary with a patient.

Boundary violations exist at several levels but they can cross into the most severe: professional sexual misconduct. It is important to understand general boundary violations before focusing on sexual boundary violations.

Boundary Violations

A boundary violation occurs anytime a physician misuses his or her power to exploit a patient for tangible or intangible benefit or gain, or anytime the relationship becomes anything other than about patient welfare. There are many types and examples of boundary violations. They all have a similar thread, which is the violator wants to gain influence over the other person. A common example is when a patient brings the physician an expensive gift with the expectation that the physician then provides special services. Those may include giving the patient their cell phone number or email address, special access or appointments, or even house calls. Lavish and expensive gifts should be refused.

A common theme (especially in Music City) is for a VIP to provide backstage passes to gain influence. The physician grows to like the easy access to the celebrity and the prestige and in time gets starstruck. Then the VIP or someone in the band/entourage asks the physician to prescribe a controlled substance, usually a stimulant or opioid. The physician realizes that if they refuse, they won't be invited back, so they cross this boundary and keep crossing it. The misprescribing accelerates until disaster happens.

Professional Sexual Misconduct

Boundary violations cross into even more dangerous territory as professional sexual misconduct (PSM), which is any behavior that exploits the physician-patient relationship in a sexual manner. PSM happens any time physician-patient sex occurs. It may be verbal, physical, or subliminal. It can be initiated by either party and includes but is not limited to sexual intercourse, masturbation, genital-to-genital contact, oral-to-genital contact, or any skin-to-skin contact that can be perceived as sexual. It may include expressions of thoughts, feelings, or gestures that are either overtly sexual or construed by the patient as sexual.

Professional sexual misconduct is behavior between a physician and a patient of the same or different gender of a sexual nature that can be welcome or unwelcome. If unwelcome, the behavior occurs through intimidation, coercion, or manipulation. This can include frotteurism (touching without consent), coercing or pressuring for sexual acts, forced intercourse, unnecessary contact with body parts, or demanding sex in return for a prescription (sextortion).

To help with identification and understanding it is easier to look at PSM as a continuum that exists between the extremes of the "lovesick" physician and the physician with predatory behavior. While on opposite ends of the spectrum, neither is acceptable nor appropriate. Both of these extremes and everything in between are harmful to the therapeutic alliance formed between the physician and patient, and to quality patient care.

The lovesick physician is the physician of any gender who falls in love with their patient. It sounds benign and innocent; however, it can lead to the same problems and cause the same harm as other sexual boundary violations because it can never be consensual due to the power disparity.

As mentioned at the beginning of this article, the most recent and egregious example of predatory sexual violations is Dr. Larry Nassar, who brazenly used his position of power as a team doctor over young vulnerable women to sexually violate them. Because of that position, power, and

"In every house where I come I will enter only for the good of my patients, keeping myself far from all intentional ill doing and all seduction, and especially from the pleasures of love with women or with men."

—HIPPOCRATIC OATH

patient vulnerability, he did not have the opportunity or even the need to utilize "grooming" techniques described below to achieve this end. However, physicians in the customary office-based practice usually utilize grooming to sexually exploit their patient.

Grooming

The term "grooming" is often used to describe the behavior that frequently occurs as a lead-in to sexual boundary violations. Grooming is generally a slow and methodical process of manipulating a person to a point where they can be victimized in a sexual manner. Grooming by the physician begins with treating the patient in a special way. The physician's motives are to gain influence over the patient to achieve a sexual act. The physician and patient can be any gender. As an example, the physician schedules follow-up appointments on a Friday afternoon when fewer staff are on hand or stay late. The physician spends extra time with the patient and discounts the patient's fee or copay. Then the appointments are moved outside the office to a coffee shop. The physician engages in self-disclosure and may reveal confidential information about themselves or other patients. The physician initiates physical contact with a hug or even a kiss. Over time there is an increasingly blurred line between the professional and personal relationship. The grooming is consummated when a sexual relationship occurs with the patient.

Grooming is also the process used when the patient is the initiator or perpetrator of the sexual boundary violation. When the patient is the initiator their motives are to gain undue influence over the physician, usually in order to get prescribed controlled drugs. Once sexual contact happens, even when completely and totally initiated by the patient, the physician is placed in a position to be extorted. The patient threatens to report the physician if they don't do what is asked. The ask is usually to prescribe the requested scheduled medications, usually stimulants and opioids. The misprescribing for the patient is then expanded to include their friends and family. Very quickly the physician is prescribing significant amounts of scheduled medications without any justification. Sometimes the ask is not for drugs but instead is for money, and lots of it. Being extorted by a patient does not negate the culpability incurred for the professional sexual misconduct.

Sexual behavior between a physician and a patient is never diagnostic or therapeutic and is always harmful to the patient. The repercussions can be devastating to both the physician and the patient. It is always the physician's responsibility to prevent such occurrences, even when the sexual behavior is initiated by the patient. A sexual relationship between a physician and the patient can never be consensual, based on the disparity of power inherent in the physician-patient relationship. That relationship is the keystone to quality care, to the healing process, and to optimal patient outcomes.

Consequences

The consequences of PSM are devastating to both parties. Penalties on the physician side include suspension and/or revocation of a medical license by the Board of Medical Examiners. If the behavior is perceived as predatory then criminal prosecution can occur, resulting in fines, jail time, and registration as a sexual offender. Civil lawsuits are also a possibility, which may not be covered under a medical malpractice policy.

The consequences to the patient from PSM run the gamut from development of Post-Traumatic Stress Disorder as a result of the sexual trauma, to poor quality care and decreased compliance and not trusting the practice of medicine.

The best way to prevent PSM is by education, the use of well-trained chaperones that are used for every patient, and avoiding special treatment for any patient. Another preventative measure is to avoid dual relationships; this is when the physician-patient relationship overlaps with another type of relationship. For example, when the patient is also a spouse, first-line relative, office nurse, or best friend. In rural areas dual relationships may be necessary due to healthcare workforce shortages, but in urban or suburban areas there is little reason to cross boundaries by embracing a dual relationship.

Get Help

Boundary violations — especially sexual relations of any kind between a physician and a patient – are never acceptable because they are harmful to the patient. As stated earlier, we cannot fail to emphasize that the onus is always on the physician, as it can never be consensual because of the disparity of power.

There are many other types of sexual and non-sexual boundary violations. The AMA Code of Ethics and the Tennessee Board of Medical Examiners and Federation of State Medical Boards policy statements are good resources to better understand the finer points of gifts, boundary violations, dual relationships, romantic relationships with an ex-patient, and professional sexual misconduct.

For the physician who has violated a patient's boundary it is mandatory to get help immediately. The required help will depend upon the type of boundary violation but includes individual and/or group therapy, legal advice, and professional coaching. Although PSM is generally out of the wheelhouse of the TMF-PHP, we can refer to vetted available resources. Please don't hesitate to call us if you or someone you know is caught up in or even has questions about boundary violations or professional sexual misconduct. You can reach the TMF at 615-467-6411 or online at e-tmf.org.

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For assistance or to make a tax deductible contribution to the Physicians Health Program, contact the Tennessee Medical Foundation at 615-467-6411; write to the Tennessee Medical Foundation, 5141 Virginia Way, Ste 110, Brentwood, TN 37027; or visit e-tmf.org to send a confidential email or donate online.