

ETHICS AND SEXUAL BOUNDRIES

Dr. Don Reno
Express Convention
Soaring Eagle Casino and Resort
November 23, 2019

Human Beings

Human beings are hard wired in many ways.

The key to a successful practice and working with the public is to be clear on boundaries that exist.

Where are you?



ETHICS

- a. A set of moral principles or values
- b. A theory or system of moral values
- c. The principles of conduct governing an individual or a group

Good Moral Character

Michigan Public Health Code – MCL
333.41

- Sec 1. (1) ...the propensity on the part of the person to serve the public in the licensed area in a **fair, honest, and open manner.**

Act 368 of 1978 333.16221

- a) A violation of general duty, consisting of **negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition that impairs, or may impair, the ability to safely and skillfully practice the health profession.**

**Act 368 of 1978
333.16221**

Personal disqualifications, consisting of 1 or more of the following:

- **Incompetence.**
- **Substance abuse.**
- **Mental or physical inability** ... to practice in a safe and competent manner.
 - **Declaration of mental incompetence** by a court.
 - **Conviction of a misdemeanor** punishable ...
 - *maximum term of 2 years;
 - *The illegal delivery, possession, or use of a controlled substance;
 - **A felony.**
- **Lack of good moral character.**

**Act 368 of 1978
333.16221**

- **Criminal Sexual Conduct**
- **False or Misleading Statements in a Patient's Medical Record**
- **Conviction of a misdemeanor or felony** involving fraud in obtaining or attempting to obtain fees
- **Final adverse administrative action** by a licensure, registration, disciplinary, or certification board ... by another state or a territory of the United States, by the United States military, by the federal government, or by another country.

**Act 368 of 1978
333.16221**

- **Conviction of a misdemeanor** that is reasonably related to ...ability to practice in a safe and competent manner.
- **Treating a Patient While You Have a Blood Alcohol Level of .05 or Greater or While Abusing Other Substances.**
 - **Prohibited acts**, consisting of 1 or more of the following:
- **Fraud or deceit** in obtaining or renewing a license or registration.
- **Permitting the license or registration to be used by an unauthorized person.**
 - **Practice outside the scope of a license.**

**Act 368 of 1978
333.16221**

- **Unethical business practices**, consisting of 1 or more of the following:
 - **False or misleading advertising.**
 - **Dividing fees.**
 - **Kickbacks.**
 - **Fraud or deceit** in obtaining or attempting to obtain third party reimbursement.

**Act 368 of 1978
333.16221**

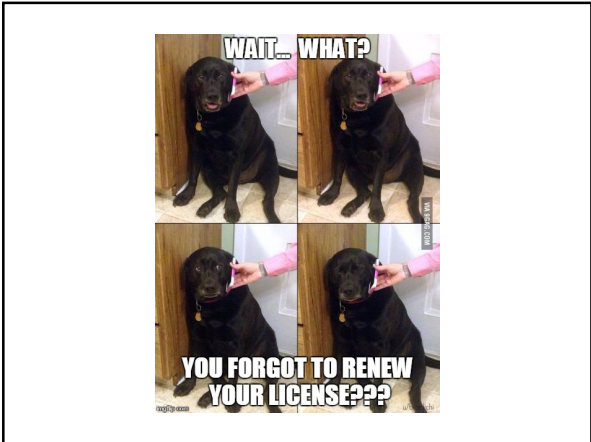
- **Unprofessional conduct**, consisting of 1 or more of the following:
 - **Misrepresentation to a consumer, patient or third party.**
 - **Betrayal of a professional confidence.**
 - **Promotion for personal gain** of an unnecessary drug, device, treatment, procedure, or service.
- **A requirement by a licensee** that an individual purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee has a financial interest.
- **Failure to report a change of name or mailing address** within 30 days after the change occurs.

**Act 368 of 1978
333.16221**

A violation of the medical records access act.

You Have the Obligation to Keep and Protect Your Patients Health Records

Your Patients Have an Absolute Right to a Copy of Their Records



**Act 368 of 1978
333.16261**

- An individual who is not licensed or registered under this article shall not ...induce the belief that the person is licensed or registered in this state.
- An individual shall not announce or hold himself or herself out to the public as ... health profession specialty field license, without first having obtained a specialty certification or a health profession specialty field license.
- An individual shall not announce or hold himself or herself out to the public as being able to perform a chiropractic adjustment, chiropractic manipulation, or other chiropractic services or **chiropractic opinion**, unless the individual is a chiropractor licensed under this article.
 - An individual licensed ...shall not use the terms "doctor" or "dr." in any written or printed matter or display without adding thereto "of chiropractic", ... or a similar term,

Chiropractic Administrative Rules

- R 338.12014 **Advertising**. Rule 14. (1) All licensees practicing chiropractic in Michigan shall use the word "**chiropractic**" or "chiropractor" or the initials "D.C." in conjunction with their names on all signs, letterheads, business cards, or similar items of identification. (2) Any advertisement or advertising which does any of the following is deemed by the board to be fraudulent, false, deceptive, or misleading: (a) Contains a misrepresentation of facts. (b) Is misleading or deceiving in its content or context. (c) Creates false or unjustified expectations of beneficial treatment or successful cures. (d) Fails to prominently identify the chiropractor or chiropractors referred to in the advertising as a chiropractor or chiropractors. (e) Contains any representation which identifies the chiropractic practice being advertised by a name which does not include the term "chiropractor" or "chiropractic" or some easily recognizable derivative thereof. (f) Appears in any classified directory, listing, or compendium under a heading which, when considered together with the advertisement, has the capacity or tendency to be deceptive or misleading with respect to the profession or professional status of the chiropractor

CHILD PROTECTION LAW (EXCERPT)
Act 238 of 1975

(f) **"Child abuse" means** harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy.

CHILD PROTECTION LAW (EXCERPT)
Act 238 of 1975

- Sec. 3.
- (1) **An individual is required to report** under this act as follows:
 - (a) **A physician, ...who has reasonable cause to suspect child abuse or neglect shall make immediately, by telephone or otherwise, an oral report, or cause an oral report to be made, of the suspected child abuse or neglect to the department. Within 72 hours** after making the oral report, the reporting person shall **file a written report**

Health Care Fraud (18 U.S.C 1347)

- Knowingly and willfully executing (or attempting to execute) a scheme to defraud any health care benefit program, or to obtain money or property from a health care benefit program through false representations.

**Theft or Embezzlement in
Connection with Health Care
(18 U.S.C. 669)**

- To knowingly and willfully embezzle, steal or intentionally misapply any of the assets of a health care benefit program.



**False Statements Relating to
Health Care Matters
(18 U.S.C. 1035)**

- To knowingly and willfully falsify or conceal a material fact, or make any materially false statement or use any materially false writing or document in connection with the delivery of or payment for health care benefits, items or services.

**Obstruction of Criminal
Investigations of Health Care
Offenses (18 U.S.C. 1518)**

- To willfully prevent, obstruct, mislead, delay or attempt to prevent, obstruct, mislead, or delay the communication of records relating to a Federal health care offense to a criminal investigator.

Mail and Wire Fraud (18 U.S.C. 1341 and 1343)

1. To use the mail, private courier, or wire service to conduct a scheme to defraud another of money or property.
- The term “wire services” includes the use of a telephone, fax machine or computer.







Alcohol and Substance Abuse

It appears that alcohol or substance abuse leads to many of the previously mentioned violations

Alcohol and Substance Abuse

Michigan Health
Professional Recovery
Program

Michigan Health Professional Recovery Program

As a licensed Michigan health professional, you could lose your right to practice due to substance abuse and/or mental health problems.

**Michigan Health Professional
Recovery Program**

- Established by legislation in 1993
- Substance abuse and/or mental health disorders
- Designed to encourage health professionals to seek treatment
 - Prevent harm to patients or your career

**Michigan Health Professional
Recovery Program**

- Program operated by private contractor to maintain participant confidentiality
- Contractor operates under the authority of the Health Professional Recovery Committee (HPRC)

**Michigan Health Professional
Recovery Program**

- The Michigan Department of Licensing and Regulatory Affairs (LARA) – Bureau of Health Professions (BHP) provides administrative services to the HRRC as well as funding for the contract.

Michigan Health Professional Recovery Program

- Currently, 24 licensed or registered health care professionals are eligible to participate in the confidential HPRP, including chiropractors
- HPRP participants are responsible for the cost of evaluation, treatment, drug testing and other services

Michigan Health Professional Recovery Program - How it Works

Referrals

- Self
- Colleagues
- Patients
- Family Members
- State of Michigan
- BOC
- Courts

Michigan Health Professional Recovery Program - How it Works

Evaluation

After initial intake, referral to qualified evaluator

- Evaluation determines
 - Eligibility
 - Nature of problem
 - Help HPRP contractor in designing recovery program

**Michigan Health Professional
Recovery Program -
How it Works**

Treatment

Based on evaluation, referral to an approved provider

**Michigan Health Professional Recovery
Program –
How it Works**

Monitoring

- Written monitoring agreement
- One to three years (typically)
- May include elements such as:
 - Treatment
 - Limitations on practice
 - Random drug screens
 - Group/individual therapy
 - Medical oversight
 - Monthly or quarterly reports

**Michigan Health Professional Recovery
Program -
How it Works**

Completion

- Released from HPRP upon successful completion of the monitoring agreement.
 - Records destroyed in 5 yrs.
- A health professional (HP) may be released for failure to comply
- Non-compliant HPs are reported to the Bureau of Health Professionals for possible disciplinary actions

Michigan Health Professional Recovery Program - Signs of Impairment

- Emotional or Behavioral Changes
 - Changes in Work Habits
 - Physical Changes
- Substance Use/Addiction

Michigan Health Professional Recovery Program

1-800-453-3784
www.hprp.org

The life you save may be your own!

Working with idiots can kill you!

IDIOTS in the office are just as hazardous to your health as cigarettes, caffeine or greasy food, an eye-opening new study reveals.

In fact, those dopes can kill you faster in one of the top causes of heart attacks — and working with stupid people on a daily basis is one of the deadliest forms of stress, according to researchers at Sweden's Lundberg University Medical Center.

The author of the study, Dr. Dagmar Andersson, says her team

studied 500 heart attack patients, and were puzzled to find 65 percent had relatively few of the physical risk factors commonly blamed for heart attacks.

"Then we questioned them about lifestyle habits, and almost all of those low-risk patients told us they worked with people so stupid they can barely find their way from the parking lot to their office. And their heart attack came less than 12 hours after having a major confrontation with one of those mafs."

"One woman had to be

rescued to the hospital after her assistant abandoned important car rental documents instead of copying them. A man told us he collapsed right at his desk because the woman at the next cubicle kept asking him for co-workers' fluid — for her computer monitor.

"You can cut back on smoking or improve your diet," Dr. Andersson says, "but most people have very poor coping skills when it comes to stupidity — they feel there's nothing they can do about

it, so they just internalize their frustration until they finally explode. Stupid co-workers can double or triple someone's blood load, she explains. "Many of our subjects feel sorry for the dummies they work with, so they try to cover for them by fixing their mistakes. One poor woman spent a week rebuilding client records because a clerk put them all in a recycle bin of her computer when emptied it — she thought the records would be deleted and need again."

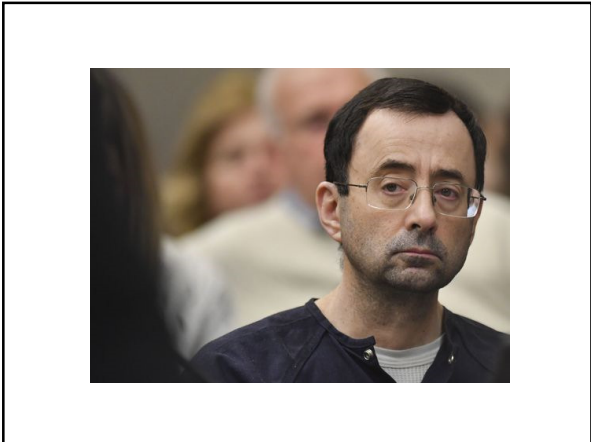
Sexual Boundaries

Where, What, Why



#MeToo





Sexual Boundaries

The chiropractic profession lends itself by the nature of its healing methods and the training in those methods to potential allegations of sexual harassment and misconduct.

Types of Boundary Problems

- Social Media
- Sexual Harassment
 - Doctor to Office Staff
 - Staff to Staff
 - Staff to Patients
 - Patient to Staff
- Sexual Misconduct
 - Doctor to Patient
- Mutual Attraction

Sexual Harassment

Generally, **sexual harassment** is defined according to **employer-employee relationship** and the student-teacher relationship **as a form of discrimination**.

Sexual misconduct is generally defined according to the **doctor-patient** relationship as **sexual impropriety**.

However, the definition of sexual harassment is expanding to include abusive quid pro quo relationships among all kinds professionals and their clients.

Sexual Harassment

- **1979** - *Harassment of Working Women* was published
- **1980** - The Equal Employment Opportunity Commission (EEOC) issued guidelines on Sexual Harassment
- **1986** - The US Supreme Court upheld the EEOC guidelines, ruling that sexual harassment that creates a hostile work environment is a violation of the Civil Rights Act.

Sexual Harassment - Defined

The EEOC adopted the following definition:
Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of 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.

Sexual Harassment

Under this definition there are two types of sexual harassment.

- Quid pro quo
 - Explicit or implicit condition of employment or basis of adverse action
- Hostile work environment (HWE)
 - Harder to define
 - Causes greatest confusion

Sexual Harassment - HWE

1986 Meritor Savings Bank v Vinson provided 4 conditions basis to define a hostile work environment

1. The complainant must be a member of a protected class;
2. The behavior of the harasser must be unwelcome from the employee's point of view;
3. The employee would not have been subjected to the alleged harassment except for the employee's sex; and
4. The harassment must be severe or pervasive enough to change the conditions of employment and create an abusive work environment.

Sexual Harassment

Sexual Harassment can be defined as a form of communications (asynchronous) in which one person is **perceived** to be sending sexually objectionable messages (**verbal or non-verbal**)

Synchronous communications – No power differential and mutually beneficial messages

Asynchronous communications – Power differential

Sexual Harassment

- The essence is discrimination based on sex
- Abuse of power
- Need not involve sexual conduct (usually does)
- Accardi v Superior
 - Spreading of untrue rumors
 - Singled out for unfavorable work
 - Unsubstantiated claims about the complainant's performance
 - Threats directed toward the complainant
- Harasser more of a bully than a sex-fiend

Sexual Harassment

- Women are usually the victim
- Men are usually the perpetrators
- Women tend to view this more seriously
- Women are less tolerant of this
- Women are more likely to perceive certain behaviors as harassment
- Public members of the board of chiropractic

Sexual Harassment

- Men perceive specific behaviors as harassing just as women do, but are likely to perceive the impact of the behaviors much differently.
- Men generally do not feel anxiety about sexualized gestures from women unless the gesture is experienced as undermining their masculinity.
- Men may experience harassment as a minor problem. This can be the basis of misunderstanding.

Sexual Harassment

- Same sex harassment also occurs, but is not widely studied.
- It is clearly recognized and is illegal.
- Like opposite sex harassment, it may not have anything to do with sex, per se, but follows the legal interpretation of harassment because of gender.

Sexual Harassment

Some factors that shape perception of sexual harassment;

- Gender
- Previous harassment or abuse in childhood
- Feminist orientation
- Status differential between the parties

Sexual Harassment

Doctors are responsible to protect their employees and patients. Can be liable if they **knew or should have known**.

Sexual Harassment

“Knew or should have known” means;

- Knowledge is implied because if the employer or employer agent was doing his/her job;
- Sexual harassment was obviously practiced but ignored;
- Sexual harassment is so common in the environment that a reasonable person would have known;
- If the employer had a complaint process in place, or a process that worked, the employer would have known.

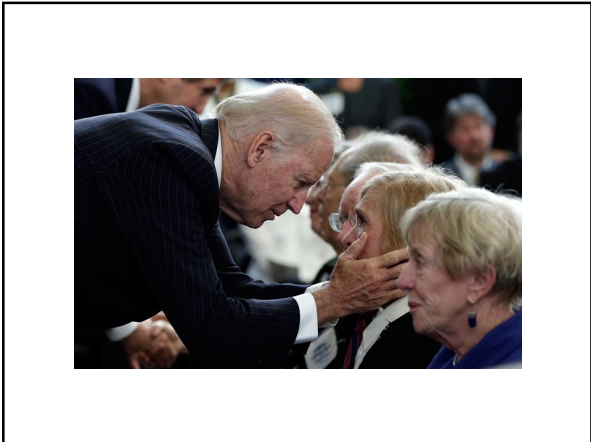
Sexual Harassment

Employer defenses;

- They took reasonable care to prevent and promptly correct any harassing behavior, and;
- The plaintiff unreasonably failed to take advantage of any preventative or corrective measures provided by the employer or to otherwise avoid harm.
- These apply to federal law, not necessarily to state laws.

Sexual Misconduct

- Much the same as Sexual Harassment, but between Doctor and Patient
- Types of perpetrator;
 - Naïve
 - Predator
 - Mutual consent
- Today’s society has zero tolerance



Sexual Misconduct

- Naive perpetrator;
- No harm or discrimination intended
- Your perception doesn't set the standards
- Must understand non-verbal clues from your patients
- Understand your SOP and be willing to change
- Increase your communication with patient
- Maintain professional relationship

Sexual Misconduct

- Predator perpetrator;
- Can range from verbal or non-verbal communications to criminal sexual conduct
- Probably did not start out as full blown predator
- Harms the patient
- STOP IT!



Sexual Misconduct

Harm to Patient;

- Feelings of loss of self-confidence, humiliation, fear of retribution for complaining, helplessness, disillusionment, depression, shame, anger, guilt, fear, loss of control, lack of direction, and loss of motivation
- Psychological/emotional and somatic complaints are varied and common, especially ones made by women

Sexual Misconduct

Harm to Patient;

- These feelings, thoughts and physical complaints manifest in avoidance behaviors, absenteeism, lowered productivity, reduced morale, reduced commitment to the organization, and employee turnover. Great harm to the victim can be done.

Sexual Misconduct

Prevention

- Be aware of behavior;
 - Meeting patients after hours, alone, on lunch, etc.,
 - Hugging, patting, stroking patients,
 - Talking about how patients look, smell, etc.,
 - Not explaining what your doing,
 - Patient behavior towards you.
- Have zero tolerance policy

Sexual Misconduct

Prevention

- Ethics tell how to act, but virtues dispose us to actual behavior.
- 4 virtues;
 - Self effacement,
 - Self-sacrifice,
 - Compassion, and
 - Integrity
- Practiced virtues will help preclude;
 - Lust,
 - Sexual impropriety, and
 - The need for power and control over others.

Sexual Misconduct

Prevention

- See harassment for what it is – the degrading dehumanization of another person
- See others as equal persons deserving of the same opportunities and advantages. “Equal” does not mean “the same”
- For men, learn from women who are more likely to treat others with respect and less likely to abuse power
- Understand power from a woman’s viewpoint
- Foster a “power with” as opposed to a “power over”

Sexual Misconduct

Prevention

- Respect all human beings with value and dignity
- Share power responsibly and equitably
- Maintain professionalism at all times

Consensual

- Can a Doctor/patient or Doctor/employee relationship ever be truly consensual?
- Unequal power
- Current vs. former patient/employee
- ACA/MAC code of ethics
- Board of Chiropractic

Harm to Others

- Your practice, career, and staff
- Your spouse
- Your kids
- Your parents
- Your friends

