TENNESSEE BOARD OF MEDICAL EXAMINERS

POLICY REGARDING SEXUAL MISCONDUCT AND SEXUAL HARASSMENT

The Board of Medical Examiners is charged with the duty of protecting the public against the unprofessional actions of physicians licensed to practice medicine in Tennessee. T.C.A. Section 63-6-214(b)(1) authorizes the Board to discipline any physician for unprofessional, dishonorable, or unethical conduct.

It is the responsibility of the Board of Medical Examiners to promote and protect the health, safety, and welfare of people in Tennessee.

The physician-patient relationship is unique. It can be an intensely emotional interaction that develops and is maintained in private and without a nurse or chaperone present. This cloistered relationship can cultivate emotional dependency or vulnerability by the patient leading to exploitation by the physician. The relationship between a physician and patient is inherently imbalanced. The knowledge, skills and training statutorily required of all physicians puts them in a position of power in relation to the patient. Conversely, the patient often enters the relationship from a position of vulnerability due to illness, suffering, and a need to divulge deeply personal information and subject themselves to intimate physical examination. The abuse of this relationship, unintended or purposeful, is detrimental to the patient's well-being and can compromise the Physician's clinical objectivity.

It is the physician's responsibility to maintain the boundaries of the professional relationship by avoiding and refraining from sexual contact or misconduct with patients. It is the duty of every physician to report unethical and unprofessional behavior, including sexual misconduct, when encountered.

Physician sexual misconduct is behavior that exploits the physician-patient relationship in a sexual way. Sexual behavior, whether verbal, or physical, can occur in person or virtually and may include expressions of thoughts and feelings or gestures that are of a sexual nature or that a patient or surrogate[1] may reasonably construe as sexual. Sexual behavior between a physician and a patient is never beneficial therapeutic, or consensual due to the disparity of power.

Physician sexual misconduct often takes place along a continuum of escalating severity. This continuum comprises a variety of behaviors, sometimes beginning with "grooming" behaviors which may not necessarily constitute misconduct on their own, but are precursors to other, more severe violations. Grooming behaviors may include gift-giving, special treatment, sharing of personal information or other acts or expressions that are meant to gain a patient's trust and acquiescence to subsequent abuse. When the patient is a child, adolescent, or teenager, the patient's parents may also be groomed to gauge whether an opportunity for sexual abuse exists.

The severity of sexual misconduct increases when physical contact takes place between a physician and patient and is explicitly sexual or may be reasonably interpreted as sexual, even if initiated by the patient. So-called "romantic" behavior between a physician and a patient is never appropriate, regardless of the appearance of consent on the part of the patient.

[1] Surrogates are those individuals closely involved in patients' medical decision-making for spouses or partners, parents, guardians, and/or other individuals involved in the care of and/or decision making for the patient.

The term "sexual assault" refers to any type of sexual activity or contact without consent (such as through physical force, threats of force, coercion, manipulation, imposition of power, etc., or circumstances where a person lacks the capacity to provide consent due to age or other circumstances).

Sexual harassment in the practice of medicine is unethical. Sexual harassment exploits inequalities in status and power, abuses the rights and trust of those who are subjected to such conduct; interferes with an individual's work performance, and may influence or be perceived as influencing professional advancement in a manner unrelated to clinical or academic performance harm professional working relationships, and create an intimidating or hostile work environment; and is likely to jeopardize patient care. Sexual relationships between medical supervisors and trainees are not acceptable, even if consensual. The supervisory role should be eliminated if the parties wish to pursue their relationship.[2]

To this end, the Board of Medical Examiners encourages and strongly recommends the following:

1. Physicians should be alert to feelings of sexual attraction to a patient. To maintain the boundaries of the professional relationship, a physician should transfer the care of a patient to whom the physician is attracted to another physician. Physicians must be alert to signs indicating that a patient may be encouraging a sexual relationship and must take all steps necessary to maintain the boundaries of the professional relationship including transferring the patient.

2. Physicians must respect a patient's dignity at all times. This includes providing appropriate gowns and private facilities for dressing, undressing, and examination.

3. Patient permission should be obtained for the presence of any persons in the room while dressing, undressing, or being examined. The physician should consider having a chaperone present during any physical examination. The request, whether by the patient or physician, for a chaperone during physical examination should be accommodated.

4. To minimize misunderstanding and misperceptions between a physician and patient, the physician should explain the need for each of the various components of an examination and for all procedures and tests.

5. Physicians should choose their words carefully so that their communications with a patient are clear, appropriate, and professional.

6. Physicians should not disclose the intimate details of their personal lives to patients.

7. Sexual contact or a romantic relationship between a physician and patient surrogates should not occur as this may jeopardize the treatment and care that the patient receives. A sexual or romantic relationship between a physician and a patient surrogate can lead to a risk of breaching confidentiality. The physician often communicates with these individuals offering patient information, clinical advice, and sometimes emotional support. The patient's needs can be compromised by a romantic or sexual relationship with a patient surrogate.

8. Physicians should promote and adhere to strict sexual harassment policies in medical workplaces.

[2] AMA Code of Medical Ethics, Ethics Opinion 9.1.3 Sexual Harassment in the Practice of Medicine

Physicians who participate in grievance committees should be broadly representative with respect to gender identity or sexual orientation, profession, and employment status, have the power to enforce harassment policies, and be accessible to the persons they are meant to serve.[3]

To provide further guidance to physicians in this area, the Board of Medical Examiners hereby adopts the following policy:

I. SEXUAL MISCONDUCT-- Sexual contact with a patient is sexual misconduct and is considered to be a violation of T.C.A. Section 63-6-214(b)(1) unprofessional, dishonorable, or unethical conduct.

II. SEXUAL CONTACT DEFINED-- For purposes of this policy, sexual contact between a physician and a patient includes, but is not limited to the following:

A. Sexual impropriety includes, but is not limited to, verbal, and/or physical actions or involvement with a patient and can occur in person, online, by mail, by phone, and through texting which:

1. through behavior, improper gestures, or language may reasonably be interpreted as seductive, sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient; whether such involvement occurs in the professional setting or outside of it;

2. neglects to employ disrobing or draping practices respecting the patient's privacy, or deliberately watching a patient dress or undress;

3. subjects a patient to an intimate examination in the presence of medical students or other parties without the patient's consent or in the event such consent has been withdrawn;

4. involves examining or touching genital mucosal areas without the use of gloves;

5. involves making inappropriate comments about or to the patient, including making sexual comments about a patient's body or underclothing, making sexualized or sexually demeaning comments to a patient, criticizing the patient's sexual orientation, making comments about potential sexual performance during an examination;

6. uses the physician-patient relationship to solicit a date or romantic relationship;
7. involves conversation regarding the sexual problems, preferences, or fantasies of the physician;
8. involves performing an intimate examination or consultation without clinical justification;
9. involves performing an intimate examination or consultation without explaining to the patient the need for such examination or consultation even when the examination or consultation is pertinent to the issue of sexual function or dysfunction;

10. involves requesting details of sexual history or sexual likes or dislikes when not clinically indicated for the type of examination or consultation; and,

11. involves inappropriate or unsolicited contact or messaging with a patient via social media, phone call or text message, video chatting, or other modes of electronic communication.

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[3] AMA Code of Medical Ethics, Ethic Opinion 9.1.3 Sexual Harassment in the Practice of Medicine

B. Beyond sexual impropriety, a physician engages in sexual violation of the patient when physical sexual contact occurs between a physician and a patient, whether or not initiated by the patient, including, but not limited to, any of the following manners:

1. sexual intercourse, genital to genital, or genital to anal contact;
2. oral to genital or anal contact;
3. kissing in a romantic or sexual manner;
4. touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient has refused or has withdrawn consent;
5. encouraging the patient to masturbate in the presence of the physician or masturbation by the physician while the patient is present; and
6. offering to provide practice-related services, such as drugs or prescriptions, in exchange for sexual favors.

III. SEXUAL HARASSMENT DEFINED—sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature[4] towards subordinates to include, but is not limited to, medical students, residents, fellows, nursing trainees, advanced practice registered nursing students and physician assistant students. Sexual harassment is considered to be a violation of T.C.A. Section 63-6-214(b)(1) unprofessional, dishonorable, or unethical conduct.

IV. DIAGNOSIS AND TREATMENT. Verbal, electronic, or physical interaction that is required for medically indicated diagnostic or treatment purposes, when conducted in a manner that meets the standard of care appropriate to the diagnostic or treatment situation, is not considered sexual behavior. Contextual sexual discussions held during a physician patient encounter for diagnostic or therapeutic purposes may be necessary, and when conducted in a professional and sensitive manner, do not constitute sexual behavior.

V. PATIENT. The determination of when a person is a patient for purposes of this policy is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the physician and the person.

VI. TERMINATION OF PHYSICIAN-PATIENT RELATIONSHIP. Once a physician-patient relationship has been established, the physician has the burden of showing that the relationship no longer exists. The mere passage of time since the patient's last visit to the physician is not solely determinative of the issue. Some of the factors considered by the Board in determining whether the physician-patient relationship has terminated for purpose of this policy include, but are not limited to, the following: formal termination procedures; transfer of the patient's care to another physician; the reasons for wanting to terminate the professional relationship; the length of time that has passed since the patient's last visit to the physician; the length of the professional relationship; the extent to which the patient has confided personal or private information to the physician; the nature of the patient's medical problem; the degree of emotional dependence that the patient has on a physician; and the extent of the physician's general knowledge about the patient.

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[4] AMA Code of Medical Ethics, Ethics Opinion 9.1.3 Sexual Harassment in the Practice of Medicine

Sexual contact between a physician and a former patient after termination of the physician-patient relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, influence, or emotions derived from the professional relationship.

Some physician-patient relationships may never terminate because of the nature and extent of the relationship. It should also be noted that the ethical code in some specialties, such as psychiatry, suggest once a patient always a patient.

These relationships always raise concerns of sexual misconduct whenever there is sexual contact.

VII. CONSENT-- A patient's consent to, initiation of, or participation in sexual behavior with a physician does not change the nature of the conduct or absolve the physician of responsibility for his or her behavior.

VIII. IMPAIRMENT-- In some situations, a physician's sexual contact with a patient may be the result of a mental condition which may render the physician unable to practice medicine with reasonable skill and safety to patients pursuant to T.C.A. Section 63-6-214(b)(18).

IX. DISCIPLINE-- Upon a finding that a physician has committed unprofessional conduct by engaging in sexual misconduct, the Board will impose such discipline as the Board deems necessary to protect the public. The sanctions available to the Board are set forth in T.C.A. Section 63-6-214(a) and Rule 0880-2-.12(1) of the Official Compilation of Rules and Regulations of the State of Tennessee and include restriction or limitation of the physician's practice, revocation, or suspension of the physician's license.

Table 1: Considerations in determining appropriate disciplinary response

• Patient Harm	•Age and competence of patient
•Severity of impropriety or inappropriate behavior	•Vulnerability of patient
•Context within which impropriety occurred	•Number of times behavior occurred
•Culpability of licensee	•Number of patients involved
•Psychotherapeutic relationship	•Evaluation/assessment results
•Existence of a physician-patient relationship	•Prior professional misconduct/disciplinary history/malpractice
•Scope and depth of the physician-patient relationship	•Recommendations of assessing/treating professional(s) and/or state physician health program
•Inappropriate termination of Physician-patient relationship	•Risk of reoffending

Table 2: Possible Conditions of Practice Following a Finding of Sexual Misconduct

•Supervision of the physician in the workplace by a supervisory physician

•Requirement that practice monitors are always in attendance and sign the medical record attesting to their attendance during examination or other patient interactions as appropriate.

•Periodic on-site review by board investigator or physician health program staff if indicated.
•Practice limitations as may be recommended by evaluator(s) and/or the state physicians health program.

•Regular interviews with the board and/or state physician health program as required to assess status of probation.

•Regular reports from a qualified and approved licensed practitioner, approved in advance by the board, conducting any recommended counseling or treatment.

•Completion of a program in maintaining appropriate professional boundaries, which shall be approved in advance of registration by the board.

X. MONITORING— A practice monitor differs from a chaperone. A practice monitor is part of a formal monitoring arrangement required at all patient encounters, or all encounters with patients of a particular gender or age. The practice monitor's presence in the clinical encounter is meant to provide protection to the patient through observation and reporting.

Practice monitors should only be used if the following conditions have been met:

•The practice monitor has undergone formal training about their role.

•It is highly recommended that all practice monitors have clinical backgrounds. If they do not, their training must include sufficient content about clinical encounters so they can be knowledgeable about what is and is not appropriate as part of the monitored physician's clinical encounters with patients.

•The practice monitor should be approved by the Board of Medical Examiners and cannot be an employee or colleague of the monitored physician that may introduce bias or otherwise influence their abilities to serve as a practice monitor and report to the board or intervene when necessary. Pre-existing contacts of any sort are discouraged, but where a previously unknown contact is not available, the existing relationship should be disclosed.

•The practice monitor has been trained in safe and appropriate ways of intervening during a clinical encounter at any point where there is confidence of inappropriate behavior on the part of the physician, the terms of the monitoring agreement are not being followed, or a patient has been put at risk of harm.

•The practice monitor submits regular reports regarding the monitored physician's compliance with monitoring requirements and any additional stipulations made in a board order.

XI. REMEDIATION-- Many forms of sexual misconduct and harmful actions that run against the core values of medicine should appropriately result in revocation of licensure. However, there may be some less egregious forms of sexual impropriety with mitigating circumstances for which a physician may be provided the option of participating in a program of remediation to be able to re-enter practice or have license limitations lifted following a review and elapse of an appropriate period of time.

In the event of license revocation, suspension, or license restriction, any petition for reinstatement or removal of restriction should include the stipulation that a current assessment, and if recommended, successful completion of treatment, be required prior to the board's consideration to assure the physician is competent to practice safely. Such assessment may be obtained from the physician's treating professionals, state physician health program (PHP), or from an approved evaluation team as necessary to provide the board with adequate information upon which to make a sound decision.

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Tennessee Board of Medical Examiners