Professional Boundaries

Defining Limits of Personal Responsibility

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Due to the nature of its content, Professional Boundaries: Defining Limits of Personal Responsibility contains sexually explicit material that may be considered offensive in nature. Reader discretion is advised.

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Foreword/Introduction:

One of the things that I enjoy most about being president of NCMIC Group is the opportunity to meet doctors from all over the country. While there are many approaches to chiropractic care, our common ground and value is our unwavering dedication to our patients.

Chiropractors today are constantly adapting to a changing world. One of the most significant changes in recent years is the advent of the internet and adapting to social media. Like other professionals an increasing number of doctors are embracing social media as a means to connect with patients and to share helpful healthcare information.

While social media can be advantageous in many ways, there are some downsides that we should all consider. One of these is that relationships can become blurred and professional boundaries inadvertently crossed. When this happens, there is potential for increased risk.

Because the profession is continually being exposed to new risks, NCMIC has updated its practical Boundaries Guide to include a section on social and electronic media. We want to help doctors understand the benefits and risks associated with these communication channels.

Additionally, this guide provides information on the following topics:

- Why the patient—not the doctor—sets the boundaries
- What to say (and avoid saying) to patients
- How to reduce boundary risks with physical treatment
- How to identify and prepare for high-risk situations
- What to do if a boundary violation has already occurred
- How behavior can lead to a boundary violation
- What legal implications come into play
- What risk factors are specific to employers

I would like to thank Drs. Michael Stahl and Stephen Foreman for providing the initial research for the guide, as well as defense attorney Ms. Mandi Karvis for providing updates. I hope this guide helps you become more aware of our changing times and allows you to remain focused on what matters most—delivering excellent patient care.

Sincerely,

Wayne Wolfson, D.C.
NCMIC Group, Inc., President

Boundary Violations Can be Unintentional

Many doctors are surprised to learn that the patient—not the doctor—sets the boundaries, and a doctor's statements or actions can be perceived differently than how the doctor intended them. It does not matter what you intended. If your patient felt offended, there was a boundary violation.

In addition, chiropractors may be at greater risk due to the unique nature of the chiropractic profession. It's more hands-on than many other healthcare specialties and, because chiropractors often treat the same patients over many years, the doctor/patient relationship tends to become more familiar. As a result, D.C.s tend to develop excellent rapport with their patients, and while this is a testament to the profession, doctors need to be careful not to compromise the professional aspect of their relationships with patients.

Finally, another important issue is how judges and juries might view a doctor's behavior. Keep in mind that these individuals may look at a D.C.'s actions several years later, with 20/20 hindsight and preconceived notions about what actually transpired.

Doctors Held to Higher Standards

Some doctors have questioned why they are held to higher standards than some other nonhealthcare professionals. One reason is the "fiduciary" nature of the doctor/patient relationship—doctors are required and have a duty to make decisions in the best interest of their patients, not themselves.

Those who aid others typically are held at the highest end of social standing. With this elevated status comes added fiduciary responsibilities:

Lawmakers and the public expect healthcare providers to conform to the highest moral and ethical standards.

Doctors also are more accountable due to the intimate nature of the doctor/patient relationship. Patients need to be able to trust their healthcare providers. Without this trust, many patients would not share certain facts about themselves that would enable proper care and treatment. The fact that a patient is frequently at the mercy of a doctor's decision causes an inequity in the distribution of power in the doctor/patient relationship.

What Happens in the Corporate World

Society has begun to recognize the inherent imbalance of power in employer/employee relationships, as well as in doctor/patient relationships. Thus, the sexual boundary issue is being taken very seriously in the corporate world with numerous training programs geared to educating supervisors and employees about workplace behavior. What does this mean to you as a doctor? The patient population is much more educated about—and possibly more sensitive to—boundary issues when they seek healthcare treatment.

An unethical doctor has the ability, and more importantly the power, to convince a patient that unnecessary tests and treatments might be needed. It is unreasonable to expect a patient to have the expertise and/or medical knowledge to decide if, in fact, the doctor is telling the truth about the need for treatments or the manner in which they are administered. Thus, a doctor may have the ability to manipulate a vulnerable patient due to the patient's perception of the doctor's power.

When Patients May Feel More Vulnerable

As noted previously, one concept that surprises many doctors is that the patient—not the D.C.—sets and determines the boundaries. (The exception is when a patient's boundaries are inappropriate. See page 10 for further guidance on this topic.) Doctors are accustomed to being in charge, and they may believe they are surrendering their professionalism when they provide patients with a sense of control. Doctors can reduce the risk of a boundary violation by enabling patients to maintain a degree of control over their bodies and encouraging mutual decision making regarding care approaches. Making the patient feel like a member of the team is important to the decision-making process.

By being aware of the situations when many patients feel vulnerable, doctors can take steps to help patients feel more comfortable:

- **Requests for intimate details.** When the patient is asked to share personal details about his or her life or health, which may be clinically necessary, the patient may feel vulnerable.
- **Owing the doctor money.** Many doctors do not consider a patient who owes them money to be vulnerable since they see billing as a separate aspect of the practice. However, patients who owe doctors money may be hesitant to express concerns about a doctor's treatment.

- **Not questioning the doctor's decisions.** Often, when patients remain quiet, doctors assume it's because the patient understands and agrees with the recommended course of treatment. However, many patients hesitate to ask questions out of a fear of appearing unintelligent. Encourage your patients to ask questions and engage in a dialogue about their care.
- **Feeling vulnerable due to personal circumstances.** A patient with minimal education or income levels may feel intimidated by a doctor's displays of numerous diplomas or the use of complex, sophisticated equipment.
- **Disrobing.** When patients enter a doctor's office, they are fully clothed. Examinations that require the patient to disrobe can create a climate of exposure and intimidation for the patient. This can increase a patient's sense of vulnerability before receiving treatment.
- **Fear of exposure.** Many patients experience anxiety that their private areas will be revealed—even if the doctor has no intention to do so.

Helping patients feel a sense of control during visits can help minimize a doctor's risks.

Risk Management Practice Tips for Common Patient Scenarios

Though you may not be able to eliminate all of the risks associated with practicing chiropractic, you can take steps to manage risks and to practice in a reasonable manner.

Consider verbal communications

One of the ways doctors can help patients overcome feelings of vulnerability and regain a sense of control is through communication. You can tell patients in advance where you plan to touch them, what they can expect and what will happen next. Explain what you intend to do, allow patients to ask questions and obtain their permission before moving forward.

Clearly explain what you are going to do and why during the initial exam, so there are no surprises that could be perceived as a boundary violation. A patient's first visit to your office is an especially critical time for effective communications.

Give explicit instructions regarding the articles of clothing to be removed. Do not have patients disrobe unless it is absolutely necessary, and then ensure that only the necessary articles of clothing are removed. Example: "Please remove your shoes, socks, pants, and shirt, but do not remove any of your undergarments. Wear the gown with the opening in the back. Be sure and close the gown using the Velcro or ties on the back." After giving these instructions to the patient, the patient should be directed to slightly open the examination room door to acknowledge that they have finished gowning. This prevents the doctor from walking in while the patient is still in the process of putting on the gown. When patients open the door, they initiate the examination process and maintain more control.

Explain all tests and obtain the patient's permission before performing them. This usually requires explaining the clinical necessity of examinations. A patient's consent and permission is especially important for exams involving any private areas, and permission may be required by state statutes or regulations.

Explain the types of treatments performed. This helps avoid misunderstandings. For example, someone with radicular lower extremity pain secondary to a piriformis syndrome might not understand the need for an ultrasound of the sciatic nerve in the buttock region. Therefore, the patient may be reluctant to expose the area for an ultrasound. Without a proper explanation, the patient may feel out of control and may misconstrue this as an erotic act or improper treatment.

Consider informed consent. Some states mandate that doctors implement an informed consent process with all of their patients. Consult with your state licensing board regarding the form and substance of its informed consent requirements. Not all states require a written form, but most require at least documentation of the discussion. Having something signed or acknowledged by the patient is often helpful.

Be aware that texting, blogging and posting to social networks may constitute a boundary or HIPAA violation.

Ask questions post-visit to determine whether the patient had any areas of concern. For example:

- How are you feeling after your visit? Same, better, worse? If worse, please explain.
- Do you have any concerns about your visit? If yes, please explain.
- Do you have any questions that you would like us to address at the time of your next appointment? If yes, please explain.

Beware of physical interactions

The practice of chiropractic involves hands-on interaction between doctors and patients. The fact that chiropractors place their hands on patients

Your staff can help manage risk by using appropriate verbal communications and physical interactions.

more than most health professionals could be a risk factor to the profession. Helping patients feel in control to the extent possible and using the following measures can help minimize risks during visits:

Perform all initial examinations, whenever possible, during normal business hours. This is especially important with patients of the opposite sex. After-hours examinations, when the chiropractor is the only staff member present in the office, can result in misunderstandings. These misunderstandings can lead to allegations of improper conduct and ultimately he said/she said scenarios. Such scenarios unreasonably put you in a position to defend yourself and make you vulnerable to allegations of misconduct.

Consider performing initial examinations in a room close to the front office. This will enable you to call in staff to chaperone, if necessary. It may also help to avoid the appearance that treatment was purposely conducted away from the front office.

Consider a chaperone when it is necessary to examine the patient's genitals, breasts or rectum. In addition, a chaperone is strongly advised when the doctor encounters a patient who is making inappropriate comments or actions that may escalate into overt problems (see the section on the high-risk patient on page10) or when the doctor is terminating the doctor/patient relationship. Ideally, a patient should be given the option to request a third party be present during any examination. (A chaperone should be present during the examination and treatment of a minor.) You may wish to add a question to the patient intake form. State statutes may require a chaperone be present for examining "sensitive areas."

> *Example: "Do you wish to have a third person present during your examination and treatment?" This question may help identify patients who are sensitive to such issues before they even enter the examination room. The response could also alert the staff to provide a chaperone without the patient having to request one. In fact, some patients' bill of rights suggest patients have the right to have a person of their sex present during certain physical exams.*

Use examination gowns when necessary. If your practice requires patients to don a gown, make sure to administer gowning procedures consistently. (For example, require all patients to wear a gown or patients with previously identified conditions to wear a gown.) Gowns that afford the greatest degree of privacy while allowing for a complete competent clinical examination should be used. Examples include large gowns or gowns with shorts. Consider the following gowning example of how a doctor/patient interaction could be misconstrued, potentially leading to a boundary violation:

> *A female patient enters a male D.C.'s office for the first time. When the D.C. enters the room, the patient is wearing jeans under the gown. In this situation, the doctor may think: My staff did not instruct the patient to remove all of her outer clothing. However, the patient may have abuse issues or may be concerned that chiropractic maneuvers may reveal more of her body than she is comfortable with.*

The manner in which a doctor handles a situation like this can be critical. Some doctors may attempt to reassure the patient by becoming more physically demonstrative, but this can be a mistake if a patient does not want to be touched. The doctor's ability to avoid a boundary violation in this situation may hinge upon his or her ability to relinquish some sense of control to the patient.

Drape for privacy. When the clinical investigation includes placing the patient in a prone position, draping of a towel over the buttocks is suggested. This affords the patient the highest level of privacy without interfering with the clinical investigation.

Avoid removal of patient undergarments and do not place hands inside of undergarments. Proper chiropractic care would require the removal of undergarments in only the rarest of clinical situations, so avoid it, if possible, as it lessens the chances of allegations of improper conduct. Encouraging a patient to disrobe in and of itself could be the source for a complaint against the doctor.

Example: a patient needs to remove her bra for X-rays. If clinically required, explain the procedure to the patient and why the removal of undergarments is necessary. Seek the patient's permission and expose the smallest area possible. This will help patients feel more control over their bodies.

If possible, have a parent/guardian of the same gender supervise when treating a minor, even after the parent signs a "consent to treat a minor" authorization.

Keep in mind that staff should be involved in helping you manage the risk for your practice through appropriate verbal communications and physical interactions. Training can be done when staff is hired and/or during regular staff meetings. Always post or print in a manual the policies and procedures for staff in areas only staff can see. Note: Additional training is available online and through various seminars throughout the country.

Identifying and Preparing for High-Risk Situations

As most seasoned doctors are clearly aware, there are situations in which a patient initiates improper behavior. In such situations, what can you do to regain the professional environment and to protect yourself against false allegations of improper conduct? Two steps can be beneficial in this regard: identifying and preparing for high-risk patients.

Identifying high-risk patients

Though the patient normally establishes the boundaries, there are generally three exceptions (keeping in mind a patient may fall into more than one category).

The flirtatious patient. Some flirtatious patients may just want a reaction from the doctor while others wish to establish a relationship with the chiropractor. These patients may attempt to justify inappropriate behavior by saying something like, "Don't worry. It'll be our little secret." Other patients may be naturally flirtatious or flirtatious only with the doctor—the doctor may not be able to differentiate the behavior.

> ***A flirtatious patient may attempt to justify inappropriate behavior by saying, "Don't worry. It will be our little secret."***

By asking your staff to observe the patient outside the treatment room, you can gather clues about the patient. For example, is the patient flirtatious in the waiting room as well as in the examination room? By collecting information from your staff, you will be better able to determine the best management approach to use with the patient, such as including a chaperone.

The predatory patient is one who is looking for a lawsuit or has a hidden agenda. He or she may appear to be simply flirtatious, but is actually very scheming. A predatory patient may:

- Want to be your last patient of the day or see you only after hours. This is always a red flag and should not be ignored.
- Be very blatant and intimidating with staff. (Note: Staff will often recognize this behavior before the doctor.)
- Disregard staff instructions (e.g., may appear naked in the treatment room).
- Attempt to appeal to your ego. For example, he or she may say, "The last two doctors I saw were idiots, but I've heard wonderful things about you."

Predatory patients can be experts at appealing to a doctor's ego.

Patients with unrealistic expectations/perceptions of the doctor. These are patients who unconsciously idolize or see the doctor as a replacement for another important person from the patient's past or present. When trust develops between a doctor and a patient, these extremely vulnerable patients may unconsciously misinterpret the role of the clinician[1] as follows:

- Dr. Perfect (idealization)
- Dr. Prince Charming (romantic idol, rescuer)
- Dr. Good Parent (nurturing, reparenting)
- Dr. Magical Healer (savior)
- Dr. Beneficent (devoted caretaker, e.g., nanny or the first doctor)
- Dr. Indispensable (only one who can cure)
- Dr. Omniscient (knows and understands all)

Though this may be difficult for doctors to perceive, watch for out-of-the-ordinary behavior. For example, a patient who sees you as "Prince Charming" may come dressed in seductive clothing and wearing perfume. The patient may invite you to comment about their appearance, "Don't I look nice today?"

Preparing for high-risk situations

By being prepared and establishing your personal policy in advance, you can avoid being caught off guard, thus avoiding some awkward—and potentially risky—situations. Here are some ways to prepare for situations in which you must establish control:

Train your staff on how to:

- Be aware of risky patients and situations. Develop procedures for staff to alert you to potential problems—without letting the patient know. One office developed a fictional code name of "Dr. Black" for situations where the doctor wanted a staff member present during the treatment phase. The doctor would tell a staff member, "Dr. Black needs copies of the records" to communicate the need to be present and assist in the treatment of a high-risk patient.

- Recognize, respond and deal with aggressive patients and empower your staff to handle difficult situations and share with you their concerns about certain patients.

Listen to your staff even if it goes against your ego. Staff will tend to have a more objective viewpoint and can observe patients' behavior with staff and other patients.

Check with past doctors to find out why a patient was discharged (a release from the patient will be needed to contact the previous doctor). Flirtatious and/or predatory patients are experts at appealing to a doctor's ego, and this step can provide doctors with a reality check.

Understand diversity within cultures and how this affects sexual boundaries. Different cultures have different expectations regarding touching, personal space, chaperoning and the parts of their bodies they consider private. Be aware of the needs of ethnic or cultural groups, especially those prevalent in your community.

Ensure effective communications. Avoid inappropriate jokes and plan ahead for ways to put patients at ease without appearing inappropriate. For example, doctors should be less chit-chatty with mildly flirtatious patients, while being firmer with patients who exhibit blatant behavior. Doctors should be able to communicate honestly with their patients if they feel uncomfortable about a patient's behavior.

Include a chaperone in the treatment room. The presence of a third party in the room will usually stop inappropriate behavior. If a high-risk patient refuses to receive treatment while a chaperone is in the treatment room, this is a huge warning flag. Appropriate discharge procedures should be considered. The situation should be documented in the patient's chart.

Always get consent for photography, medical or otherwise. And with minors, have a parent in the room.

Taking Action When a Boundary Violation May Have Already Occurred

Sometimes Doctors of Chiropractic unknowingly cross a sexual boundary violation or they find out they violated a boundary after the fact. Here are some ways to identify and mitigate these situations and take more drastic measures if needed:

Watch for signs of patient discomfort

When patients feel uncomfortable, they often will provide certain clues.

The patient pulls away when touched. Doctors should ask if that particular touch made the patient feel uncomfortable or caused pain. As a way to measure a patient's comfort level, the doctor may wish to start with a touch to the forearm. The doctor can then demonstrate the degree of pressure applied during the performance of a chiropractic palpation and what it will feel like. A touch to the forearm is generally considered acceptable because it is nonsexual and allows the patient to see and respond to the touch without surprise. In contrast, a patient who has no prior experience with chiropractic care or one who has issues with being touched may react negatively if the first touch is the chiropractor's hands being placed on the shoulder from behind.

The patient or the patient's significant other makes comments to staff. If a patient tells a staff member that he or she felt uncomfortable with your "bedside manner," it's time to change your behavior and to include a chaperone in the room during treatment. Furthermore, doctors should establish procedures for patients to inform the doctor when they feel uncomfortable.

The patient does not return for appointments or returns with another person. If the patient returns with another person, listen to how the patient introduces the other person. For example, if the patient says, "Doctor, this is my husband. I want him to be in the room with us," it could be a red flag that either the patient or the patient's husband is feeling distrust of the doctor.

You receive notification from another provider that the patient felt uncomfortable with your treatment.

You receive a complaint from the patient.

Take additional steps for at-risk situations

Sometimes identifying problems and planning ahead is not enough to resolve particular patient situations. At that point, you may need to take some or all of the following actions:

1. **Seek help from a peer, a legal counsel or a sensitivity training course.** It is not taboo to discuss patient situations as long as you maintain the patient's confidentiality.

2. **Document as carefully and precisely as possible all office visits and events.** In addition, keep all letters, phone messages, etc.

3. **Terminate the doctor/patient relationship and refer the patient to another doctor.** (See "Terminating the doctor/patient relationship" that follows for further guidance.)

4. **Call your malpractice carrier.** If you're an NCMIC policyholder, call our confidential Claims Advice Hotline at 1-800-242-4052 to discuss any concerns you're not sure how to handle. We will assist you in obtaining an attorney if you need legal counsel.

The breadth of possible misconduct is quite diverse, ranging from nonphysical acts to intercourse.

Terminating the doctor/patient relationship

Terminating the doctor/patient relationship may be necessary in some high-risk situations. Once you have determined you need to take this step, be sure to:

Communicate with the patient that you will no longer be able to treat him/her and document this in the patient's chart.

Explain that you will need to refer the patient to a colleague (a patient with a history of sexual abuse will often benefit by seeing a doctor of the same gender) or to a doctor in another healthcare field (e.g., a general practitioner or a specialist). Provide the names of several different doctors to the patient.

Include a colleague or staff member in the room when you refer the patient to another doctor.

Give the patient adequate time to find another doctor to avoid allegations of abandonment. Offer to make copies of the patient's records available to the new doctor, without charge.

Even if you are able to tell the patient in person that you will no longer be able to treat him or her, send a withdrawal letter by certified mail, return receipt requested. (This letter should be worded diplomatically.) Keep the certified receipt when it is returned. Maintain a copy of the letter in the patient's file with the receipt attached.

Avoiding Behavior that Can Lead to a Boundary Violation

Sometimes a doctor's own behavior can contribute to a boundary violation. By heightening their sensitivity toward certain behaviors, doctors can minimize their risks. Some preventative measures suggested by researchers Summer and McCrory include:[2]

1. **Do not seek emotional support from patients.** It is inappropriate for doctors or patients to discuss personal issues, such as personal finances, marital problems, social issues or sexual fantasies.
2. **Do not ask patients to perform personal services** for you and avoid seeing patients after hours. Avoid personal interactions that create the impression of breaching the doctor/patient relationship.
3. **Recognize and stop any problem behavior in its tracks.** If you would feel comfortable in telling a joke or making a comment in front of a child, typically you could do so at the office. However, if you would not feel comfortable, omit these behaviors.

If a patient tells a staff member that he or she felt uncomfortable with your "bedside manner," it's time to change your behavior.

4. **Be careful when exchanging gifts with patients.** This includes being lax about fees or allowing fees to mount. It may be questioned later about what types of considerations were in place, if fees were not collected.

5. **Take action if a patient is aggressively seductive.** For example, say in a calm voice: "This behavior is inappropriate and not in the best interest of our professional relationship." Document the situation. If the doctor/patient relationship does not terminate after this incident, use a chaperone for subsequent office visits and consider discharging the patient. (See "Identifying high-risk patients" on pages 10-11 for additional tips.)

It is advisable to establish a code with your office staff to alert them that a problem may be present and that you would like them to be in the room during treatment.

The "downhill slide" to the most serious violations

Though there are occasions when doctors abuse patients at their first doctor/patient meeting, it is more common for sexual misconduct to occur over a period of time.[3] During this longer timeframe, there are subtle actions, which may evolve into the most serious type of abuse—sexual contact between doctor and patient.

By recognizing the warning signs of this progression toward a boundary violation or sexual misconduct, doctors can take steps to prevent the inappropriate behaviors from progressing.

Clearly, the amount of time and the number of patient visits can influence the progression to a boundary crossing. For example, a first-time visit likely would not provide sufficient time for the doctor to cross several boundaries. Also, a doctor's degree of "power" and influence over a patient tends to increase over time and with additional visits.

"Though there are occasions when doctors abuse patients at their first doctor/patient meeting, it is more common for sexual misconduct to occur over a period of time."

The following is a typical progression of a doctor on the way to a professional boundary violation:

1. Intrusive thoughts of the patient
2. Feelings of falling in love with the patient
3. Arranging appointments with the patient for times when other staff have left the office
4. Thoughts of meeting the patient outside the office
5. According "special" treatment to the patient
6. Increasingly irrelevant self-disclosure to the patient
7. Behavior/activities the doctor would not want colleagues or family to know about

Spectrum of Sexual Misconduct

Though no doctor wants to be accused of any form of sexual misconduct violation, different levels of sexual misconduct and boundary violations can take place.

The prohibition against sexual acts between doctors and their patients dates back to Hippocrates. However, the breadth of possible misconduct is now quite diverse, ranging from nonphysical acts to intercourse. Summer and McCrory identified 10 sexual offenses, which reveal the breadth of the spectrum:

- Affairs with patients
- Inappropriate sexual touching through massage or masturbation
- Inappropriate affectionate behavior (kissing and hugging)
- Unnecessary sexual talk with patients (talking about irrelevant sexual conduct, orgasms, masturbation, etc.)
- Exposing the patients
- Rape of patients
- Taking pictures or videos of patients for sexual purposes
- Peeping on patients while they are undressing
- Using patients to gain sexual access to their children
- Sexual involvement with staff

The inclusion of sexual exploitation with sexual misconduct adds to the spectrum of what is considered inappropriate behavior:[4]

1. Inappropriate touching
2. Sexually exploitative relationships that may occur during or after a formal professional relationship

3. "Therapeutic sexual acts" when a healthcare provider claims a sexual act with the provider will benefit the patient
4. Sexual assault of impaired, sedated or decision-compromised patients

(Note: Though sedating patients is generally not within the scope of practice in a chiropractic office, a number of patients today take medications or sedatives that can cloud their clarity of thought.)

Sexual and Nonsexual Relationships with Current and Former Patients

Various "types" of doctor/patient relationships may pose ethical difficulties for the Doctor of Chiropractic. These range from nonsexual friendships and business relationships with former patients to sexual relationships with current patients.

Nonsexual relationships with former patients

Many doctor/patient relationships are more common than the sexual variety. Though they seem harmless at first glance, consider the following when forming nonsexual relationships with former patients:

1. The former patient may return for care. A significant business relationship after care ended would make return to treatment difficult as the business relationship can skew the chiropractor's clinical objectivity or alter the patient's level of trust and respect for the doctor's treatment opinions, depending on the business outcome.
2. Some patients are mentally or emotionally vulnerable and may improperly rely on the chiropractor in other types of relationships. Such vulnerability may open them up to being taken advantage of.
3. The doctor may be required to furnish records or testify in court about past chiropractic care. Examples include offering professional opinions in court about injuries, pain and suffering, and future chiropractic care after an automobile accident. The same can be true for the injured worker who now requires permanent disability or vocational rehabilitation. In these cases, the doctor must be an independent observer of the patient's clinical condition and unbiased by personal or business connections.

Sexual relations with former patients

As one might imagine, the area of sexual relationships with former patients can be unclear since chiropractic care differs from many other specialties in how the doctor/patient relationship is terminated. With many medical specialties, the doctor/patient relationship ends after a specific condition is treated. With chiropractic, on the other hand, there may never be a formalized end to the doctor/patient relationship since many chiropractors emphasize lifelong care and many patients claim benefit from such care. If a doctor would like to terminate a doctor/patient relationship, the chiropractor should take formalized and definitive steps to formally end the doctor/patient relationship. (See "Terminating the doctor/patient relationship" on page 14.)

Patient reaction to sexual exploitation

A doctor may not be aware that a patient has a previous history of being sexually exploited or abused because many patients are unwilling or reluctant to share this information. However, the patient may exhibit signs and symptoms of post-traumatic stress disorder—if the person was profoundly affected by the situation and reacted to it with extreme feelings of "fear, helplessness, or horror."[5] In these patients, you may see the following symptoms, individually or in combination:

- Difficulty with concentration
- Anger or rage
- Preoccupation with death
- Anxiety or panic
- Depression
- Suicidal feelings
- Psychosomatic complaints

Regulatory boards do not have a unified position on the subject of ethical standards of former doctor/patient relationships. This is true in other professions as well; some states take no ethical or regulatory position on sexual relations with former patients, while others advocate a permanent prohibition.[6] The dominant view is that a practitioner should not have a sexual relationship with a former patient, while some ethics experts advocate waiting until some time period has passed and some licensing boards may require it. Since there is no universally accepted time period, each state's licensing board should be consulted when in doubt about this situation.

Sexual relations with current patients

There is universal agreement from all corners of the world, by regulatory statues and/or ethical edicts, that sexual relations with current patients is prohibited.

The American Chiropractic Association (ACA) has weighed in on the sexual misconduct issue in its 1991 code of ethics statement:[7] "The physician/patient relationship requires the Doctor of Chiropractic to exercise utmost care that he or she will do nothing to 'exploit the trust and dependency of the patient.' Doctors of Chiropractic should make every effort to avoid dual relationships that could impair their professional judgment or risk the possibility of exploiting the confidence placed in them by the patient." The ACA ethics committee further clarified, "It is the opinion of the committee that sexual intimacies with a patient is unprofessional and unethical based on the existing ethical provisions in the ACA code of ethics: A(6), A(7), A(10), and C(2)."

The International Chiropractic Association (ICA) also has a code of ethics with general language that prohibits doctor/patient sexual relationships. The ICA code of ethics, Principle 1K states, "The Doctor of Chiropractic shall not take physical, emotional, or financial advantage of the public or any patient he/she serves."[8]

Here is an example of a doctor who was held accountable for a boundary violation.

James Ramsey, D.C.,* a married 38-year-old with two children, had a very busy, growing practice. He was active in the community, involved with his church and held in high esteem by his patients and peers. This all changed when Dr. Ramsey was alleged to have been sexually inappropriate with a patient.

The patient was initially offended by soft tissue work Dr. Ramsey was performing in her lumbarsacral area. It may have been simply a misunderstanding due to the fact that Dr. Ramsey failed to explain what he was doing and why. Unfortunately, while he was performing the soft tissue work, Dr. Ramsey inadvertently reinforced the patient's perception that his behavior was inappropriate when he jokingly asked: "Where is the rest of your underwear?"

Consequently, the patient decided to file a complaint against Dr. Ramsey for sexual misconduct with the state's board of chiropractic examiners. He was found guilty of sexual misconduct and his license was suspended for two years.

The resulting publicity severely affected Dr. Ramsey's family and his practice. A divorce ensued; the doctor's professional reputation was damaged; and his patient flow diminished. (Dr. Ramsey had to hire a new graduate to keep his practice open during the suspension.)

Two years and three months later, after complying with all the board's requirements, Dr. Ramsey's license was reinstated. However, he was required to have a female on staff observe all of his treatments with female patients and make other changes to his office policies before he could practice again. As a result of his conduct, Dr. Ramsey learned a costly lesson and paid an enormous personal, financial and professional price.

* The doctor's name is fictitious. Any use of real names is purely unintentional.

Legal Implications for Sexual Misconduct

There are various ways in which a violation of professional boundaries can result in "legal trouble." Not only can a chiropractor be accused of violating sexual boundaries by having a relationship with a current or former patient, but hugging or telling a joke could also result in such allegations being brought forward.

It is quite possible that when an allegation of sexual misconduct is made, many different legal actions will be initiated against the doctor. Each legal proceeding carries with it a different set of rules and evidentiary standards. There is an ever-cascading scenario of legal trouble when an allegation of sexual misconduct occurs. Even if the doctor manages to defeat each and every allegation levied, the doctor may not be able to overcome the tremendous financial, professional and personal reputation losses for many years.

Civil legal system

The civil legal system allows a venue where wronged and injured parties can be made whole for their injuries by seeking monetary damages. This court system has the lowest standard of evidence for a determination of finding. The complaining party, the plaintiff, must convince the jury by a "preponderance of the evidence." In practical terms, this equates to a mere tipping of the evidence (more likely than not) in favor of the plaintiff to prevail.

Administrative/regulatory boards

The administrative/regulatory boards are publicly funded agencies whose primary function is to protect the public. Typically, there is a separate regulatory board for each profession. Each regulatory board has a mandate to ensure a minimal level of competency for that particular vocation or profession. The rules governing chiropractors are typically codified in state statutes, regulations and administrative rules. If there is an allegation of a breach of conduct, the proceeding is overseen by the members of the board, which typically is a mix of licensed professionals and public members. The standard necessary for an adverse ruling in an administrative hearing is typically "clear and convincing evidence." This burden is greater than what is needed in civil courts but lower than what is required in criminal trials. Some boards have a lower standard more like the civil legal system.

An administrative/regulatory board can revoke or suspend a doctor's license, mandate practice restrictions, as well as issue a citation, fine or letter of censure. And this information becomes a matter of public record where others can read about it.

The mandate of the administrative system is different than civil courts. This is why doctors accused of sexual transgressions may find themselves defending parallel actions in administrative court and civil court at the same time. An aggressive and savvy attorney may encourage clients to initiate board complaints prior to filing a civil lawsuit with the hope of using the outcome in the civil lawsuit.

With chiropractic care, there may never be a formalized end to the doctor/patient relationship, which can complicate any outside relationship with a patient.

Criminal justice system

The criminal justice system has the mandate of protecting society at large. Such protection may mean incarceration to protect the public. This differs from administrative proceedings, which protect the public by acting on a doctor's license. Incarceration is not taken lightly in the criminal justice system. A criminal conviction requires the jury to determine the evidence was "beyond a reasonable doubt." This represents the highest standard of evidence required to be found guilty of criminal conduct.

In the past, the criminal justice system only became involved with a doctor/patient sexual relationship in two instances: when the patient was underage or when the sexual advances were unwanted by the patient.

Today, traditional criminal acts and jail time can occur even when no direct physical contact with the patient occurred. An example of this was a complaint filed by the United States Attorney's Office.[9]

The government charged a chiropractor with the "production of a visual depiction of a minor engaging in sexually explicit conduct." The unsuspecting victims —minors and adults—were instructed to disrobe completely and then change into a hospital gown. The patients were then told to perform various flexibility exercises while standing directly over a hidden camera, which was concealed in the floor of the X-ray room. Officers confiscated 380 videotapes in the chiropractor's office. The doctor stated that he intended to place the videos on the Internet to fund his retirement. The doctor surrendered his license to practice to the state board.[10]

This point bears repeating: Criminal charges are not limited to physical contact between a doctor and a patient. With the advent of technology, new areas of misconduct also evolve. A prominent example of such a situation involved a California chiropractor who was indicted in November 2002 for possession of child pornography.[11]

The mere possession, no matter where this material is located (office or home), is considered a federal offense. The doctor was alleged to be part of an international ring that sold these images worldwide. Investigators in California checked more than one million images stored on the chiropractor's computer. An accusation against the doctor to revoke his license to practice was filed.[12]

Legal representation and associated costs needed to defend a doctor from criminal allegations are generally not covered by malpractice insurance and will be paid for by the doctor out of pocket.

State associations and/or professional societies

Depending on the outcome of criminal and/or administrative hearings, a state association may ask for a doctor's membership to be withdrawn. Since there are no associated required rules of evidence for such proceedings, many of the actions taken can be quite arbitrary and political in nature.

Even if the doctor manages to defeat each and every allegation levied, he or she may not be able to overcome the tremendous financial, professional and personal reputation losses for many years.

Jurisdictional Mandate to Report Colleagues

Doctors may have a jurisdictional mandate to report other physicians for inappropriate behavior. These are most often mandated by state licensing boards and typically can cover:

- Alcohol and/or drug abuse
- Excessive questions into the personal sex life of patients
- Disrespectful sharing of patient information with peers (e.g., "She is hot!")
- Witnessing or observing peers making patient calls outside of business hours that seem to be personal rather than professional in nature
- Frequent late night hours without staff
- Strange and/or unconventional treatments being used on patients. (Some chiropractic approaches are more likely to be misconstrued than others.)
- Inappropriate use of language, touching or personal space violations
- Quid Pro Quo—The concept of getting something of value in return for giving something of value

Even well-intentioned doctors can get into trouble with this mandate to report other physicians. In Iowa, for example, a doctor could be penalized for not reporting a D.C. in his practice who is treating patients while under the influence of a drug or alcohol. If it became known that the first doctor knew about the substance abuse but did not report it, he could be called to appear before his state licensing board. Even if the D.C. didn't know about the mandate, the board could hold the doctor accountable for not adhering to the requirement.

Professional Boundaries with Social and Electronic Communication

Many doctors are using social and electronic media as a way to communicate with patients and to market their practices. But what innocuous information might be misconstrued? What snap judgments could be made about your practice and/or personal life? Many doctors don't think about how the information they share might be perceived later by a chiropractic board of examiners or a judge or jury in a malpractice case.

Social media

In this digital age, social media usage is extremely common. A 2015 study concluded that 65 percent of the total population uses social media and that 90% of young adults (ages 18-29) use social media.[13] In fact, a 2017 survey determined that 81 percent of the U.S. population utilized some form of social media. As such, many chiropractors consider utilizing social media as a marketing tool for their business. Similarly patients are often curious about their doctor and may use social media to attempt to learn more information about their doctor. If you are going to utilize social media, you should have two separate pages—one personal and one professional. It is important to maintain adequate privacy settings for your personal pages and frequently revisit the privacy policies of the platform as they may change over time.

If you are going to participate in social media, create and maintain a separate page for your practice. If you choose to have personal social media profiles you need to set adequate privacy settings to preclude patients from gaining access to personal information, which could lead to boundary violations. If you receive a friend request from a current patient, it may be a good idea to develop a standard response in this area. For example, tell patients that you make it your policy not to friend current or former patients on social networking sites out of respect for the doctor/patient relationship and to safeguard patient confidentiality. Some doctors also develop a social media policy that addresses the professional use of all types of social media by the doctor and practice staff. This policy could be incorporated into the practice's new patient information packet so patients are aware of the policy upfront and are not offended by not being "friended" on social media.

The American College of Physicians and the Federation of State Medical Boards publish ethical guidelines regarding online medical professionalism and maintaining appropriate relationships and perceptions with patients and the public. The guidelines emphasize that standards for professional interactions should

Many doctors don't think about how the information they share on social media or through texting might be perceived later by a chiropractic board or jury.

be consistent across all forms of communication between doctors and patients, whether in person or online. There is greater danger for misconception in online patient interactions because of the ambiguity with written communication and lack of body language. Additionally, people, including doctors, tend to be far more casual behind a computer screen than they might be in a face-to-face interaction.

Society expects a certain level of professionalism from doctors. In the context of civil litigation, jurors often have strong reactions when they learn that a doctor interacted with a patient in a casual manner. Jurors, especially older jurors, will question the appropriateness of a doctor having social interactions with patients, which may in turn cause them to be skeptical about the care that doctor provided. Furthermore, while patients may have participated and engaged in the informal "banter" during the doctor/patient relationship, they will often change their story in the context of a lawsuit and try to say that it made them uncomfortable, but they went along with it because that is the way the doctor wanted to communicate with them.

Electronic media (texting)

According to The Pew Research Center, 73 percent of Americans text regularly.[14] In fact, many people prefer the convenience of text messaging to having an actual conversation. The question is whether it is ever appropriate for a doctor to exchange text messages with patients. The answer is that it is depends on the circumstances and the nature of the communication. While patients and doctors alike may appreciate the convenience of texting regarding simple tasks like scheduling, the more frequent the communication the more likely it is that a boundary will be crossed. While the conversation may begin being strictly related to scheduling, it can easily evolve into something else entirely. A casual "thank you" or "hope you are having a good day" can quickly cross the line into a more personal and perhaps inappropriate interaction. Even if the patient is the one to initiate the informal banter, the doctor, as the professional, must be the one to establish the communication boundaries.

Social Media Tips

- Maintain separate practice and personal social media profiles
- Maintain adequate privacy settings on your personal profile to avoid unwanted access to your personal information
- Do not initiate or accept "friend" requests from patients
- If you interact with patients via your practice's social media profile, maintain the utmost professionalism

Absent unusual circumstances, a doctor should not provide treatment recommendations or possible diagnoses to patients via text messaging. Patients should instead be encouraged to make an appointment or to present to the emergency department if it is an urgent situation.

You must also consider how the text messages might be used in the future should the patient experience a bad outcome and file a board complaint or a lawsuit. In the moment and in context, a text message that might not be interpreted as offensive can be twisted and placed in a different light once the patient is an adversary. For instance, if you are friendly with a patient who experiences what is believed to be an adjustment-related complication and, in the moment, you joke about adjusting them again, it might seem funny. Nevertheless, this comment could later put you in a bad light with a jury.

In addition to boundary issues, text communication with patients can also cause privacy/HIPAA violations. Pursuant to HIPAA regulations, doctors must follow appropriate security protocols for the storage and transfer of patient information. Nearly everyone has inadvertently sent a text message to an unintended recipient, which can be embarrassing. However, in the context of the provision of healthcare, it can have much more serious consequences. If a doctor unintentionally communicates patient identifying information to someone other than the patient, it could be a privacy violation. There are several secure text messaging applications available for doctors to use for substantive conversations about patient care.

Lastly, text message communication with patients can create recordkeeping issues. Patient interactions are supposed to be part of the chart and, in some states, they could be deemed to include text messages. If you are not uniform in which messages you keep and which you delete, it could also give rise to an argument that certain messages were intentionally deleted.

Nearly everyone has inadvertently sent a text message to an unintended recepient, which can have serious consequences in the context of healthcare.

The D.C. as an Employer

As an employer, you naturally have additional obligations when it comes to sexual boundaries. Not only must you consider your own actions, but you are also responsible for your staff's behavior, as well. Therefore, it is imperative to have policies and procedures and follow through on them consistently and appropriately. As an employer, a Doctor of Chiropractic should keep in mind these considerations relating to sexual misconduct:

1. **Comply with the Equal Employment Opportunity Commission's (EEOC) definition of sexual harassment:** "Unwanted and repeated verbal or physical advances, derogatory statements or sexually explicit remarks, made by someone in the workplace, which has the effect of offending or humiliating the recipient."

2. **Ensure appropriate office communications, which include communicating with staff, establishing an office manual, enforcing policies and documenting all actions:**
   - Prohibiting employees from soliciting patients for sexual or financial benefit.
   - Providing chiropractic services to staff with the same care and professionalism, quality and recordkeeping used with outside patients.
   - Requiring written and printed materials to be professional and appropriate. (For example: "It is inappropriate for sexually explicit materials, including inappropriate magazines, cartoons or drawings to be within the clinic. This includes the waiting room, employee break room and the doctor's office.")
   - Prohibiting inappropriate material on the office computer. Internet filters can prevent downloading and accessing of inappropriate websites or software programs by staff. It also allows the doctor to monitor the Internet sites accessed by staff members. Downloading sexually explicit pictures or written material is a serious situation and should be dealt with as soon as the doctor becomes aware of it.
   - Investigating and responding appropriately to patient or staff complaints.

Not only must you consider your own actions, but you are also responsible for your staff's behavior as well.

3. **Be aware of vicarious liability issues.** You may be liable for the inappropriate actions of staff. For instance if you employ a massage therapist to provide massage therapy services to your patients and that individual is accused of touching a patient inappropriately you could be subject to a licensing board action or a lawsuit for failure to properly supervise the therapist. The same could be true if you allow an independent contractor massage therapist to use your office, space to provide services to your clients. By allowing them to use space in your office, you are essentially encouraging your patients to use them and to a certain extent vouching for them and their abilities. Therefore, choose such individuals wisely and with caution.

4. **Understand the risk of disgruntled former employees.** They may be vindictive and derive satisfaction from sharing confidential information about your office with the Centers for Medicare & Medicaid Services, the IRS, competitors, state licensing boards, insurance companies, etc.

5. **Know the risks of using social and electronic media when it comes to discussing patients.** Seriously consider prohibiting your staff from blogging, texting or posting information about your patients.

> ***"The reputation of a thousand years may be determined by the conduct of one hour."***
>
> ***—Japanese proverb***

Summary: Boundary Violations are a Concern for All Healthcare Providers

Every healthcare provider has reason to be concerned about the possibility of an allegation of a boundary violation, not to mention a conviction of such conduct.

By recognizing the warning signs outlined in this guide, you can minimize your chances of acting inappropriately and being accused of sexual misconduct. In doing so, you'll be able to focus on providing care to your patients.

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Professional Boundaries Resources

NCMIC understands that an allegation of sexual misconduct is stressful, as well as potentially damaging to your professional and personal life. That's why, in addition to this guide, we offer articles on this topic. Find them on www.ncmic.com/learning-center/articles/risk-management/professional-boundaries/

Case Study: Doctor Learns Why Not to Date a Patient

Some doctors don't necessarily see anything wrong with dating a patient. They may live in communities where everyone runs in the same social circles. Others think who they date is a private matter. This case study shares the true story of one doctor who made this mistake.

Sexual Misconduct Allegations Can Include the Employer

Courts may allow a plaintiff to introduce evidence of a clinic's "environment of permissiveness" to support a boundary violation claim. In this case, the plaintiff used theories of negligent supervision and negligent retention to support the allegations.

Can a Doctor Be "Too Friendly?"

Doctors sometimes wonder how they can stay true to their personable nature without crossing the line into a boundary violation. This article offers tips for doctors who want to keep things on a professional level while maintaining their friendly demeanor.

Online Courses Available

At NCMIC, we are now making it easier for you to participate in risk management education and get your continuing education (CE) credits while you save money on your malpractice insurance premiums.

To earn CEs and get your malpractice insurance discount, simply go to www.ncmic.com/ce and select a program you're interested in from several offered by chiropractic colleges and universities.

Full-time D.C.s who complete a total of 8 hours of approved programming within 1 year—online and/or onsite—qualify for a 5% discount for three consecutive years on the renewal of their malpractice insurance premiums (2.5% discount for part-time D.C.s).

Example: You complete 4 hours of an NCMIC-provided seminar at a state association event and 4 hours of online courses on www.ncmic.com/ce.

At NCMIC, we are proud to offer our doctors outstanding resources while supporting the chiropractic colleges and universities. It's just another example of how "We Take Care of Our Own®."

See www.ncmic.com/ce for a complete program listing.

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