

CHAPTER 9

Professional Boundaries and Ethics In a Clinical Setting

- **Lesson Purpose**

To give the student a comprehensive review of professional boundaries and ethics in a clinical setting.

- **Lesson Objective**

Upon completion the student will:

- Learn seven principles of ethical standards
- Understand power dynamics in fiduciary relationships
- Learn differences between sexual and non-sexual misconduct
- Learn warning signs for potential problems and proactive prevention

*“To be persuasive, we must be believable,
To be believable, we must be credible,
To be credible, we must be truthful.”*

–Edward R. Murrow

*“Conscience: The inner voice that warns us that
someone may be looking.”*

–H.L. Mencken

Introduction

Knowledge of your professional code of ethics or the governing laws which pertain to professional conduct and practice is insufficient protection from a boundary violation. Many unconscious factors can guide or misguide our interaction with those we serve. Becoming aware of these variables is essential for safe practice. From awareness comes enlightenment and the reduction of new risks.

Topics covered in this chapter include: ethics, law, power dynamics in fiduciary relationships, sexual and nonsexual misconduct, sexual harassment, professional vulnerabilities, personal risk factors, warning signs for potential problems, and proactive prevention. Risks for transgressions vary according to internal factors and external influences. Stages of professional growth and personal crises or challenges can increase the likelihood of a boundary crossing, which typically precedes a boundary violation.

In order to safeguard yourself, your place of work, and the patients you serve, you must maintain high standards in professional and ethical practices.

The Committee on Standards in Public Life (the Nolan Committee) organized seven principles of conduct for those who hold public office. These principles have been widely accepted and are applicable in areas beyond those for which they were initially intended. They offer a useful set of principles for doctors and staff to apply in day-to-day practice.

The seven principles are:

- **selflessness**
- **integrity**
- **objectivity**
- **accountability**
- **openness**
- **honesty**
- **leadership**

Chiropractic Standards

As a foundation of professionalism for the chiropractic therapy assistant, we advise:

- You must not use your professional position to establish or pursue a sexual or improper emotional relationship with a patient or someone close to them.
- Always treat patients with dignity. Protect patients from risk of harm posed by another colleague's conduct. The safety of patients must come first at all times.
- If you are concerned that a colleague does not meet this high standard in practice, you must take appropriate steps so that the concerns are investigated and patients protected, without delay.

YOU represent the profession of chiropractic

We have a responsibility, not only to ourselves and our employer, but to the profession of chiropractic to be good couriers of public relations.

- Be aware that you are a professional. Use the highest level of ethics when dealing with patients and the public.
- Be sincerely interested in every patient that enters the office.
- Work diligently toward increasing respect for your profession.
- Never let your community lose confidence in you.

Keys to Communicating with Patients

It is always important to listen to patients and show respect for their views about their health. Take patients' descriptions of events seriously. Respond to their questions or inquiries honestly and fully, without compromising your duty of confidentiality.

Examination and Treatment Recommendations

Trust is a critical component in the staff/doctor/patient partnership. Patients must be able to trust you with their health and well being. A professional boundary must exist between the doctor/staff and patient in order for the relationship to be successful. If this boundary is breached, it will undermine the patient's trust, as well as the public's trust in the chiropractic profession.

The staff/doctor/patient relationship involves an imbalance of power. This imbalance is a necessary element of the relationship. The imbalance is due to the differing roles each must assume in order to ensure the best outcome.

The doctor and staff offer access to the expertise and healthcare resources that the patient is seeking. A person seeking healthcare may be both physically and emotionally vulnerable. The patient must be shown the appropriate level of respect. His/her vulnerability must never be abused. To take advantage of this imbalance is inappropriate and may lead to a boundary violation.

Examinations

It is particularly important to maintain a professional boundary when examining patients; examinations can be embarrassing or distressing for patients. Whenever you examine a patient, you should be sensitive to what they may perceive as intimate. This is likely to include examinations where it is necessary to touch or even be close to the patient.

Before you begin the examination, you should explain what you are going to do before you do it. Discontinue the examination if the patient asks you to. Always make every effort to keep all conversations and discussions relevant to their care and do not make unnecessary personal comments.

Exam Recommendation Checklist:

- Perform all initial examinations during normal business hours
- Examine in room in the closest proximity to the front desk
- Give explicit instructions regarding clothing to be removed
- Have the patient open the door when they are ready for the doctor
- Use gowns to allow for examination procedures and maximum privacy
- Use drapes when necessary, for privacy
- Use shorts for privacy
- Explain test procedures and why performed
- Only in rarest of clinical examinations should undergarments around buttocks be removed
- Staff should be fully aware of office policies regarding gowning, draping, and chaperoning
- Add question, “Do you wish to have a chaperone present during your exam?” to your intake form

Should you use a chaperone?

When possible, you should offer the patient the security of having an impartial observer (a “chaperone”) present during an examination. This applies whether or not you are the same gender as the patient. A chaperone does not have to be a staff member but will need to possess the following:

- sensitivity and respect of the patient’s dignity and confidentiality
- a prepared script to reassure the patient if they show signs of distress or discomfort
- familiarity with the procedures involved in a routine chiropractic exam
- a prepared protocol to raise concerns about a doctor or staff member if misconduct occurs

If a chaperone is present, you should record that information and be sure to note their identity. **If the patient does not want a chaperone, you should record that the offer was made and declined.**

Essential Responsibilities

First impressions are made on the patient through office appearance and staff behavior. They are lasting impressions and will be conveyed to others. It is vital to make a great first impression.

Three In-Office Public Relations Guidelines:

1. **Make sure the office is comfortable, appealing, efficient, and professional in every aspect.**
2. **Develop the ability to make friends, gain confidence of patients, work efficiently, and act professionally.**
3. **Provide education regarding chiropractic healthcare.**

Who is responsible?

The responsibility is on the professional by virtue of their role. The professional holds the power – unequal power/authority over the patient. For professional effectiveness, emotional distance is necessary between a patient and the doctor or other healthcare providers in the clinic.

Consent

Statutory requirements – There are some state statutes that require written consent to be obtained for particular treatments. It is your responsibility to stay informed and obey the law.

Implied consent – Relying on a patient's apparent compliance with a procedure as a form of consent can be a risk for the provider. For example, the fact that a patient lies down on an examination table does not indicate that the patient has understood what you propose to do and why.

Reviewing consent – A previously signed consent form is not sufficient evidence that a patient has given, or still gives, informed consent to the proposed treatment in all its aspects. The doctor, the CTA, or a member of the team, must review the patient’s decision near to the time of treatment.

This is especially important when:

- *significant time has elapsed between obtaining consent and the start of treatment;*
- *there have been material changes in the patient’s condition, or in any aspects of the proposed treatment plan which might invalidate the patient’s existing consent;*
- *new, potentially relevant information has become available, for example, the risks of the treatment, or other treatment options.*

Verbal and Non-Verbal Communications

Light-hearted banter and joking in the office is helpful for keeping stress low and spirits high. Unfortunately, crude humor can sneak up and become inappropriate, leading to offensive joke-telling over time.

Knowing how to react when a co-worker or patient makes a racist or sexual joke in the office can be extremely difficult. If you do not handle the incident, you could imply that you are condoning the behavior. If you say something, you risk alienating them and jeopardizing your patient/work relationship.

Respect is hard to gain once it is lost.

Printed Material

Publications that display sexually oriented material in patient areas or employee break rooms is not considered professional. You should not display printed material that would imply sexual content. Examples include cartoons, e-mails, or other written materials passed around the office.

Medical Photography

There may be times when your doctor feels photography is needed to document patient care, the practice of patient photography in healthcare operations should be included in the Health Insurance Portability and Accountability Act (HIPAA) – mandated notice of information practices,

as well as in the consent for treatment, signed on admission. It is advised that a consent paragraph, such as the one below, be inserted into the standard admission consent form.

I understand that photographs, videotapes, digital, or other images may be recorded to document my care, and I consent to this. I understand that [office name] will retain the ownership rights to these photographs, videotapes, digital, or other images, but that I will be allowed access to view them or obtain copies. I understand that these images will be stored in a secure manner that will protect my privacy and that they will be kept for the time period required by law or outlined in [organization name]'s policy. Images that identify me will be released and/or used outside the institution only upon written authorization from me or my legal representative.

Note: This consent does not authorize the use of the images for other purposes, such as teaching or publicity. A separate consent for photography form should be used for such purposes.

HIPAA requires patient authorization for the release of protected health information, which includes patient photography, for purposes beyond treatment, payment, and healthcare operations.

If images will be routinely recorded as part of a diagnostic or therapeutic procedure, the above paragraph may be incorporated into the consent form for that procedure.

Sexual Harassment

Definition of Sexual Harassment

Sexual harassment is **unwanted** or **unwarranted** contact that affects a condition of employment. Courts and employers generally use the definition of sexual harassment contained in the guidelines of the **Equal Employment Opportunity Commission (EEOC)**.

These guidelines hold the employer responsible for the actions of its employees. The guidelines state that unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- a. Submission to such conduct is made either explicitly or implicitly, a term or condition of an individual's employment.
- b. Submission to or rejection of such conduct by an individual is used as the basis for an employment decision affecting such individuals.
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Define the two general categories of sexual harassment.

Sexual harassment is generally placed into two general categories consisting of **quid pro quo** and **hostile work environment**.

- a. **Quid Pro Quo** – Quid pro quo (“this for that”) harassment occurs when an employee is forced to choose between giving in to a **supervisor's sexual demands** or forfeiting an economic benefit such as a pay increase, promotion, or continued employment.
- b. **Hostile Environment** Hostile environment harassment occurs when sexual conduct is so severe and pervasive that it interferes with an individual's performance or creates an intimidating, hostile, or offensive work environment.

Harassment can be created by a supervisor, co-workers, or non-employees, such as a patient. What may be seen as harmless joking, teasing, or fun by some, may be seen as offensive or hostile to others. An example of this is commenting on dress or appearance, telling jokes that are suggestive or sexual in nature. Allowing displays of centerfold posters, or making continual requests for after work hour meetings can lead to the creation of a hostile work environment.

Social Ethical Guidelines for Sexual Harassment

Is my intent the same as the impact?

To determine if your behavior could be unwelcome to another person, remember that “unwelcome” is decided by the *recipient* of the behavior, not the person doing the behavior. Therefore, it is the impact of the behavior, not the intent of the person who did the behavior, which determines if sexual harassment has occurred.

Do I display any of the following behaviors at work?

- Tell sexual jokes
- Use sexual innuendos
- Ask questions about other employees' personal lives
- Make sexual comments about a person's clothing, anatomy, or looks
- Repeatedly ask a person out
- Give personal gifts to co-workers
- Give neck massages
- Look a person up and down with "elevator eyes"
- Stare at somebody
- Use sexual gestures
- Have sexually suggestive visuals
- Hug people

Is my behavior welcome?

To determine if your behavior is unwanted, ask yourself the following:

- A. Would I want any of my behaviors to appear on the evening news?
- B. Is there equal power between me and the person that I am interacting with?
- C. Would I behave the same way if the person I am in a relationship with were standing next to me?
- D. Would I want someone else to act this way toward a person that I am in a relationship with?
- E. Is there equal initiation and participation between me and the person I am interacting with?

If you answered "no" to A, B, C, and D your sexual behavior is probably unwanted by the recipients of your behavior.

If you answered "no" to E, your sexual behavior is very likely unwanted.

Types of Harassment Behaviors

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| Unwelcome Sexual Advances | From co-workers, supervisors, or others |
| Coercion | When employment decisions such as promotions and raises are based on sexual favors being required, whether implicitly or explicitly, as a condition of employment |
| Favoritism | When employees who submit to sexual favors are rewarded while others are denied promotions or other benefits |
| Indirect Harassment | Employee who witnesses sexual harassment on the job even if he/she is not the direct victim |
| Physical Environment | Graffiti written on restroom walls about other employees, or pornographic pictures. Flirting and other behavior with sexual overtones can be the basis of harassment charge |
| The “Reasonable Woman” Standard | If a reasonable woman would find this conduct offensive or threatening, then it probably is |

Harassment from the Patient

If a patient displays sexualized behavior, when possible, treat him or her politely and considerately and make every effort to re-establish a professional boundary. If you are unable to do so and find it necessary to end the professional relationship, consult with the doctor or your direct superior to discuss the proper procedures. Make sure that your office has established, and you are aware of, policies for handling difficult patients.

Sexual and Improper Relationships with Current and Former Patients

It is important to maintain the trust of your patients and the public. Avoid establishing or pursuing a sexual or improper emotional relationship with patients. Do not use your professional relationship with patients to establish or pursue a relationship with someone close to them.

Avoid pursuing a sexual relationship with former patients when, at the time of the professional relationship, the patient was vulnerable. Examples would be a patient having mental health problems or a lack of maturity. Pursuing a sexual relationship with a former patient may be inappropriate, regardless of the length of time elapsed since the professional relationship ended. Take the following into account: when the professional relationship ended and how long it lasted; the nature of the previous professional relationship; whether the patient was particularly vulnerable at the time of the professional relationship; whether they are still vulnerable and/or whether you will be caring for other members of the patient's family.

If you are not sure and are concerned about whether you are (or could be seen as) abusing your professional position, you should consider discussing your situation with an impartial colleague, the state, or the federal ethics division.

The Law

Sexual harassment is a form of sex discrimination that violates **Title VII of the Civil Rights Act of 1964**. It states:

“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 the 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.”

United States Equal Employment Opportunity Commission (U.S. EEOC)

U.S. EEOC is a government task force committed to achieve its statutory mission of eradicating discrimination of any kind from the work place.

Sexual harassment is unlawful and violates your rights as a citizen. It can occur in a variety of circumstances, but is not limited to the following:

1. The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
2. The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
3. The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
4. Unlawful sexual harassment may occur without economic injury to, or discharge of, the victim.
5. The harasser's conduct must be unwelcome.

Remember: Take appropriate action when harassment of any kind occurs.

Prevention is the best tool to eliminate harassment in the workplace.

Who is liable?

The employer is always responsible for harassment when they know or should have known of the conduct. Supervisors can be, and have been, forced to pay damages because they did not take action to protect an employee from harassment.

Employers and supervisors can be liable if a non-employee (patient) sexually harasses an employee while he/she is performing the job.

Sexual Behavior...Your Duty vs. Your Duty to Report

Your Duty

To maintain professional boundaries and gain the trust of patients and the public. You must never make a sexual advance towards a patient nor display a “sexualized behavior.” Sexualized behavior has been defined as “acts, words or behavior designed or intended to arouse or gratify sexual impulses and desires.”

Your Duty To Report

If you have grounds to believe that a colleague has demonstrated sexual behavior with a patient, you must take appropriate steps without delay, so that your concerns are investigated and patients are protected where necessary. Where there is a suspicion that a sexual assault or other criminal activity has taken place, it should be reported to the police.

