

POLICY STATEMENT
TENNESSEE STATE BOARD OF MEDICAL EXAMINERS

POLICY: SEXUAL MISCONDUCT STATEMENT AND POLICY*

*... I WILL COME FOR THE BENEFIT OF THE SICK, REMAINING FREE OF ALL
INTENTIONAL INJUSTICE, OF ALL MISCHIEF AND IN PARTICULAR OF SEXUAL
RELATIONS WITH BOTH FEMALE AND MALE PERSONS ...*

The prohibition against sexual contact between a physician and a patient is well established and is embodied in the oath taken by all physicians, the Hippocratic Oath. The reason for this proscription is the awareness of the adverse effects of such conduct on patients. The report of the Council on Ethical and Judicial Affairs of the American Medical Association indicates that most researchers now agree that the effects of physician-patient sexual contact are almost always negative or damaging to the patient. Patients are often left feeling humiliated, mistreated, or exploited.

Further, a patient has a right to trust and believe that a physician is dedicated solely to the patient's best interests. Introduction of sexual behavior into the professional relationship violates this trust because the physician's own personal interests compete with the interests of the patient. This violation of trust produces not only serious negative psychological consequences for the individual patient but also destroys the trust of the public in the profession.

Sexual contact with a patient occurs in many circumstances ranging from situations where a physician is unable to effectively manage the emotional aspects of the physician-patient relationship to consciously exploitative situations. Underlying most situations is a disparity of power and authority and a physically or emotionally vulnerable patient.

The prohibition against sexual contact between a physician and a patient is not intended to inhibit the compassionate and caring aspects of a physician's practice. Rather, the prohibition is aimed at behaviors which overstep the boundaries of the professional relationship. When boundaries are violated, the physician's patient may become the physician's victim. The physician is the one who must recognize and set the boundaries between the care and compassion appropriate to medical treatment and the emotional responses which may lead to sexual misconduct.

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.

The Board of Medical Examiners' responsibility to ensure that the public is protected from misconduct is consistent with the Board's actions in sexual misconduct cases based on that statute. In some cases, revocation is the only means by which the public can be protected. In other cases, the Board may restrict and monitor the practice of a physician who is actively engaged in a rehabilitation program. Rehabilitation of a physician is a secondary goal that will be pursued if the Board can be assured that the public is not at risk for recurrence of the misconduct.

The Board of Medical Examiners reminds physicians of their ethical and professional responsibility to report sexual misconduct or any act which may constitute unprofessional conduct or which may indicate that a physician is unable to practice medicine with reasonable skill or safety to patients. It is the physician's responsibility to maintain the boundaries of the professional relationship by avoiding and refraining from sexual contact with patients. 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 and may wish to discuss such feelings with a colleague. 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 and should seek help in understanding and resolving feelings of sexual attraction without acting on them.
2. 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.

3. Physicians must respect a patient's dignity at all times and should provide appropriate gowns and private facilities for dressing, undressing and examination. In most situations, a physician should not be present in the room when a patient is dressing or undressing.
4. A physician may wish to consider having a chaperon present during examination of any sensitive parts of the body for the protection of both the patient and the physician. A physician should refuse to examine sensitive parts of a patient's body without a chaperon present if the physician believes the patient is sexualizing the examination.
5. 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.
6. Physicians should choose their words carefully so that their communications with a patient are clear, appropriate and professional.
7. Physicians should seek out information and formal education in the area of sexual attraction to patients and sexual misconduct and should in turn educate other health care providers and students.
8. Physicians should not discuss their intimate personal problems/lives with patients.

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

SEXUAL MISCONDUCT

- 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).
- II. SEXUAL CONTACT DEFINED.** For purposes of this policy, sexual contact between a physician and a patient includes, but is not limited to:
 - A.** Sexual behavior or involvement with a patient including verbal or physical behavior which:
 1. may reasonably be interpreted as romantic involvement with a patient regardless whether such involvement occurs in the professional setting or outside of it;
 2. may reasonably be interpreted as intended for the sexual arousal or gratification of the physician, the patient or both; or
 3. may reasonably be interpreted by the patient as being sexual.
 - B.** Sexual behavior or involvement with a patient not actively receiving treatment from the physician, including verbal or physical behavior or involvement which meets any one or more of the criteria in Section A above and which
 1. results from the use or exploitation of trust, knowledge, influence or emotions derived from the professional relationship;
 2. misuses privileged information or access to privileged information to meet the physician's personal or sexual needs; or
 3. is an abuse or reasonably appears to be an abuse of authority or power.
- III. DIAGNOSIS AND TREATMENT.** Sexual behavior or involvement with a patient excludes verbal or physical behavior that is required for medically recognized diagnostic or treatment purposes when such

behavior is performed in a manner that meets the standard of care appropriate to the diagnostic or treatment situation.

- VI. PATIENT.** The determination of when a person 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. The fact that a person is not actively receiving treatment or professional services from a physician is not determinative of this issue. A person is presumed to remain a patient until the patient-physician relationship is terminated.
- V. 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.
- A.** Some physician-patient relationships may never terminate because of the nature and extent of the relationship. These relationships may always raise concerns of sexual misconduct whenever there is sexual contact.
- B.** 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.
- VI. CONSENT.** A patient's consent to, initiation of or participation in sexual behavior or involvement with a physician does not change the nature of the conduct nor lift the statutory prohibition.
- VII. 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)**.
- VIII. 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.

Adopted by the Board of Medical Examiners on this the 17th day of September, 1993.

W. W. Cloud, M.D., President
Tennessee Board of Medical Examiners

*This entire document was, except for minor nomenclature and statutory citations, printed substantially from the State of Washington, Department of Health, Policy Statement, Washington State Medical Disciplinary Board, published in September, 1992.