

State of West Virginia *Board of Medicine*



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Statement of Public Policy

SEXUAL MISCONDUCT STATEMENT OF THE WEST VIRGINIA BOARD OF MEDICINE¹

...ENTER ONLY FOR THE GOOD OF THE PATIENT...KEEP YOURSELF FAR FROM ALL SEDUCTION AND ESPECIALLY THE PLEASURES OF MEN AND WOMEN...²

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.³

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.³

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.³

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.³ 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. It is the physician's responsibility to see that sexual intimacies do not occur.

The West Virginia Board of Medicine is charged with the duty of protecting the public against the unprofessional actions of physicians licensed to practice medicine and surgery in West Virginia. The West Virginia Medical Practice Act states that a physician may be disciplined for exercising influence within a patient-physician relationship for the purpose of engaging a patient in sexual activity. Also, the rules of the West Virginia Board of Medicine state that it is unprofessional conduct to fail to conform to the principles of medical ethics of the American Medical Association. The Current Opinions of the Council on Ethical and Judicial Affairs of the AMA state on the subject of sexual misconduct in the practice of medicine:

Sexual contact that occurs concurrent with the physician-patient relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patients detract from the goals of the physician-patient relationship, may exploit the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well-being.

If a physician has reason to believe that non-sexual contact with a patient may be perceived as or may lead to sexual contact, then he or she should avoid the non-sexual contact. At a minimum, a physician's ethical duties include terminating the physician-patient relationship before initiating a dating, romantic or sexual relationship with a patient.

Sexual or romantic relationships between a physician and a former patient may be unduly influenced by the previous physician-patient relationship. Sexual or romantic relationships with former patients are unethical if the physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship.

The writing of a prescription for a person may be enough to establish a patient-physician relationship. A patient is presumed to remain a patient until the patient-physician relationship is terminated. The fact that a person is not actively receiving treatment or professional services is not determinative of whether a patient-physician relationship is terminated.

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 in determining whether the physician-patient relationship has terminated 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...; the extent of the physician's general knowledge about the patient.³

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.

Sexual contact between a physician and a former patient after termination of the physician-patient relationship may still subject the physician to discipline under the West Virginia Medical Practice Act if the sexual contact is a result of exercising influence within a patient-physician relationship for the purpose of engaging a patient in sexual activity.

The Board of Medicine's responsibility to ensure that the public is protected from future misconduct is consistent with the Board's actions in sexual misconduct cases. In some cases, revocation is the only means by which the public may be protected. In other cases, the Board of Medicine 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 may be pursued if the Board is assured that the public is not at risk for recurrence of the misconduct.

The Board reminds physicians of their legal duty 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 Medicine 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 doing nothing to encourage this behavior and 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.

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

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

6. Physicians should 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.

7. Physicians should not discuss their intimate personal problems with patients.

8. Physicians should remember that treatment boundaries tend to erode gradually and that once a sexual relationship begins it may be impossible to terminate without serious consequences for both parties.

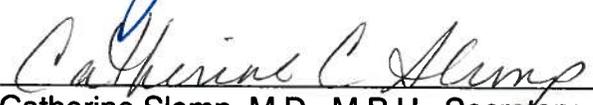
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WEST VIRGINIA BOARD OF MEDICINE



John A. Wade, Jr., M.D., President



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1. This statement has borrowed liberally from the Washington State Medical Disciplinary Board's Sexual Misconduct Statement and Policy of the Medical Disciplinary Board adopted by the Washington State Medical Disciplinary Board in 1992.

2. Hippocratic Oath as set forth in Dreiblatt, Irwin, "Health Care Providers and Sexual Misconduct", Federation Bulletin, January, 1992:8-14.

3. American Medical Association, Council on Ethical and Judicial Affairs, "Sexual Misconduct in the Practice of Medicine", Journal of the American Medical Association, November 20, 1991, Vol. 266, No. 19.