The Interface of Ethics and Law in the Clinic for Best Practice

APTA-Combined Sections Meeting 2017
San Antonio, TX
February 15–18, 2017

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Objectives

- Identify at least 4 core ethical principles valued in physical therapy clinical practice.

- Accurately explain the impact of legal obligations on ethical physical therapy clinical decision making.

- Analyze professional clinical conduct for breach of at least 2 legal/ethical duties.
Course Outline

- What is Ethics & what are the core ethical principles valued in clinical practice.
- Relationship between APTA ethical guidelines & values for PT & PTA
- Relationship between Ethics & Law – which is better or which is worse?
- Common ethical and/or legal concerns leading to professional negligence
- Risk Management strategies to prevent occurrence of professional negligence in the clinic
Startling Statistics
What is Ethics?

WHAT ARE VALUES?

ARE THEY CONNECTED?
Ethics Is Synonymous With:

- “rules of conduct”
- “moral code”
- “social values”
- “principles”
- “honesty”
Origins of “Ethics”

GREEK
hē ἔθικη τεχνή (the science of) morals

GREEK
ĕthos

LATIN
ethice

OLD FRENCH
éthique

ENGLISH
ethos

late Middle English
etic

Ethics Defined

- Ethics derived from Greek word:
  - Ethikos = “moral duty”

- Includes:
  - Biomedical ethics:
    - “the science or study of moral values or principles, including ideals of autonomy, beneficence & justice”
  - Professional ethics
    - APTA ethical guidelines
    - APTA values for PT & PTA
Biomedical Ethical Principles in Clinical Practice

- Principles:
  - Autonomy
  - Non maleficence
  - Beneficence
  - Justice
    - Distributive — societal
    - Comparative — individual
Autonomy [3,4]

- **Definition** = “Self governance” [3]

- **Right to Independent decision making**
  - Patient/client actions are the result of patient’s/client’s own choices & decisions [4]
  - regardless of patient’s/client’s ability to pay for services

- **Examples**
  - patient’s/client’s right to select practitioner of choice
  - right to refuse treatment
  - AMA – Patient Bill of Rights

• APTA Guide For Professional Conduct 2D states that “Physical therapists shall collaborate with patients/clients to empower them in decisions about their health care.” [3]

• Note: Principles of Confidentiality & Informed Consent extend from principle of Autonomy

• 4= APTA Code of Ethics. Available at APTA website located at: http://www.apta.org/uploadedFiles/APTAorg/About_Us/Policies/Ethics/CodeofEthics.pdf accessed 12-23-16
Nonmaleficence

“Above all do no harm”[3,4] - i.e. duty to do no intentional harm to patient/client.
- if you cannot help at least do no harm.
- applies to action & non-action [failure to act when action was required].

Examples of violations
- intentional abandonment of patient/client.
- Sexual relations [consensual & nonconsensual] with patient/client under care [COE 1.3].

Beneficence [1,4]

- Duty to prevent harm: “fiduciary duty owed to patient” [1]

- Act in patient’s best interest [COE]—examples:
  - looking out for patient’s well being
  - advocating for patient/client

- But not at the cost of harm to self—example:
  - no moral duty to save an individual from drowning if one cannot swim
  - moral duty to find help.

5= Kornblau, B., Starling, S. Ethics in Rehabilitation: A clinical Perspective. Slack: Thorofare, NJ; 2012; Pg. 13-15
Justice\[3,4]\n
- Duty to provide fair treatment to all patients/clients.

- Two types—Distributive & Comparative Justice

- Distributive
  - addresses issues of just distribution of health care at the *macro or societal level*—e.g.
    - Universal health insurance protection for all individuals,
    - Prevention & treatment of patients/clients with catastrophic diseases as AIDS
    - Health care rationing of services for terminally ill patients/clients

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Comparative Justice addresses issues of just distribution of health care at the **micro or individual level**

- E.g. denial of care to certain patients by HCP based on age, sex, race, disability, etc.

- Tuskegee Syphilis Study [1932-1972]—400 AA men with syphilis denied life saving treatment with penicillin so that researchers could study the effects of the disease [3].

- EMTALA — Emergency Medical Treatment and Active Labor Act of 1986 [federal antidumping law].
  - Prevents for profit hospitals from transferring indigent patients to charity hospitals.
  - Requires hospitals to conduct medical screening examinations on emergency patients & patients in active labor & stabilize emergency patients prior to transfer regardless of the patient’s ability to pay [3].

Professional Considerations in Dealing With Ethical Concerns
Significance of Professional Considerations

- Articulate standards of ethical care
- Provide guidance re: what is fair, & expected
- Provide support to practitioner re: what is considered ethical conduct by the profession
- Confirms practitioner’s & profession’s commitment to provide ethical care
- Promote public trust as expectations are known & standardized
Professional Considerations

- Code of Ethics
- Guide for Professional Conduct
- Standards of Ethical Conduct for PTA
- Guide for Conduct of PTA
- Standards of Practice & Criteria
APTA
Code of Ethics
&
Guide For Professional Conduct
First document of COE adopted in 1935 & addressed the following ethical violations:

- Making a diagnosis
- Offering a prognosis
- Advertising for patients
- Criticizing a physician or other HCPs [24]

Old 2010 version was revised significantly

• COE outlines the APTA principles for ethical physical therapy practice

• formulated by HOD--highest policy making body of the APTA.[26]

• Not legally binding
Current APTA-Ethical Principles & Standards

- “Principle/Standard 1 — Duty to all individuals
- Principle/Standard 2 — Duty to patients/clients
- Principle/Standard 3 — Accountability for sound judgments
- Principle/Standard 4 — Integrity in relationships
- Principle/Standard 5 — Fulfilling legal and professional obligations
- Principle/Standard 6 — Lifelong acquisition of knowledge, skills and abilities
- Principle/Standard 7 — Organizational behaviors and business practice
- Principle/Standard 8 — Meeting health needs of people” [27]

[26, 27. APTA official website:
  - http://www.apta.org/Ethics/Core/
Guide For Professional Conduct

- GFPC is a tool to assist in the interpretation of the Code with respect to:
  - the appropriateness of professional conduct in specific situations &
  - student professional development
  - not legally binding—"opinions, decisions, and advice of the Ethics & Judicial Committee" [receive authority through the APTA byelaws] [27].

STANDARDS OF ETHICAL CONDUCT FOR PTA:
HTTP://WWW/APTA.ORG/UPLOADEDFILES/APTAORG/ABOUT_US/POLICIES/HOD/ETHICS/STANDARDS.PDF
HTTP://WWW/APTA.ORG/UPLOADEDFILES/APTAORG/PRACTICE_AND_PATIENT_CARE/ETHICS/GUIDEFORCONDUCTOFTHEPTA.PDF
AND VIEWED ON 07-22-13.

APTA
Standards of Ethical Conduct for PTA
&
Guide For Conduct of the PTA [28]
Guide for Conduct of PTA serves to interpret the Standards of Ethical Conduct for the PTA.

- Standards have all directive provisions!
- Majority are directive provisions in Guide!
Standards of Practice & Criteria

[29] APTA OFFICIAL WEBSITE:
HTTP://WWW.APTA.ORG/UPLOADEDFILES/APTAORG/ABOUT_US/PO
LICIES/PRACTICE/STANDARDSPRACTICE.PDF#SEARCH=%22STANDA
RDS OF PRACTICE CRITERIA%22
HTTP://WWW.APTA.ORG/UPLOADEDFILES/APTAORG/ABOUT_US/PO
LICIES/PRACTICE/CRITERIASSTANDARDSPRACTICE.PDF#SEARCH=%2
2STANDARDS OF PRACTICE CRITERIA%22

AND VIEWED ON 07-22-13
Standards of Practice & Criteria

- Professional standards developed by APTA House of Delegates (HOD).

- Criteria developed by APTA Board of Directors (BOD) to elaborate on SOP.

- Provide direction re: various aspects of the profession including ethical considerations [Standard 1A]:
  - “The physical therapist practices according to the Code of Ethics of the American Physical Therapy Association.
  - The physical therapist assistant complies with the Standards of Ethical Conduct for the Physical Therapist Assistant of the American Physical Therapy Association.”
Not legally binding & so failure to follow SOPC:
- may not affect the individual’s license; but
- will affect the individual’s APTA membership

However, if State Practice Act makes reference to SOP then SOP may become legally enforceable

APTA recommends viewing the Professional Standards as “essential for provision of high quality professional service to society, and provide a foundation for assessment of physical therapist practice.” [30]

[30]. APTA Standards of Practice. APTA official website located at: [http://www.apta.org/uploadedFiles/APTAorg/About_Us/Policies/Practice/StandardsPractice.pdf#search=standards of practice criteria](http://www.apta.org/uploadedFiles/APTAorg/About_Us/Policies/Practice/StandardsPractice.pdf#search=standards of practice criteria) and viewed on 07-22-13
What are Values?
Values

❖ Values are important in their worth or usefulness to individuals such as:
  ○ ideals
  ○ principles
  ○ attitudes
  ○ actions; and

❖ Values guide individuals in their:
  • spiritual;
  • moral; and
  • practical decision-making

Three Types of Values

- Personal Values
- Professional Values
- Societal Values
Personal Values

- Values *shape and orient our choices.*

- How do we determine this?
  - by examining our choices; and
  - seeing if the choices we made are consistent to what we say we value
Personal Values

- Early values will often influence your later values
  - i.e. as you mature, your values will also evolve with you.

- Personal values sometimes may conflict with each other
Personal Values

- When patients seek physical therapy it is often their personal values that drive them to do so
  - Value: being well or getting well

- Physical therapists are therefore, expected to cultivate personal values that foster respect for themselves, patients, and others
As a member of the physical therapy profession, you are also expected to embrace the values that are consistent with the profession and what the professional practice entails.
Professional values may overlap with personal values

What are the APTA values?
- PT Core Values
- PTA Value-based behaviors
PT Core Values

- Developed in 2000 and approved by APTA-BOD in 2003.

- Purpose: define professionalism in PT by describing seven professional behaviors that a PT graduate was expected to display.

- With revision of Code of Ethics (COE) in 2009, each of the seven core values was linked with its appropriate principle in COE.

- 7. Value Based Behaviors For Physical Therapist Assistant Bod P01-11-02-02 [Position]. Available at APTA website located at: http://www.apta.org/uploadedFiles/APTAorg/About_Us/Policies/Judicial_Legal/ValueBasedBehaviorsPTA.pdf#search=%22PTA%20core%20values%22 accessed 12-23-16
<table>
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<td>3. <strong>E</strong> = Excellence</td>
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<td>7. Social Responsibility</td>
<td>7. <strong>L</strong> = <strong>aL</strong>truism</td>
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8. BOD P05-04-02-03Professionalism in physical therapy: core values [Amended BOD 08-03-04-10] Available at APTA website located at: [https://www.apta.org/uploadedFiles/APTAorg/About_Us/Policies/BOD/Judicial/ProfessionalisminPT.pdf](https://www.apta.org/uploadedFiles/APTAorg/About_Us/Policies/BOD/Judicial/ProfessionalisminPT.pdf) accessed 12-23-16.
Vale Based Behaviors For The PTA

Developed 2009 with input from:
- Professional in Physical Therapy: Core Values
- A Normative Model of PTA Education: Version 2007
- PTA-CPI: Version 2009
- Minimum Required Skills of PTA Graduates @ Entry Level
- Newly adopted Ethics documents
- Problem Solving Algorithms for PTA
- Applicable APTA positions and policies

Purpose: outline the depth and breadth of the values and attributes of the PTA
### PTA Value Based Behaviors

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<td>3. Continuing Competence</td>
<td>$E = \text{rEsponsibility}$</td>
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<tr>
<td>4. Duty</td>
<td>$C = \text{Caring and Compassion + Continuing Competence}$</td>
</tr>
<tr>
<td>5. Integrity</td>
<td>$I = \text{Integrity}$</td>
</tr>
<tr>
<td>6. PT/PTA Collaboration</td>
<td>$A = \text{Altruism}$</td>
</tr>
<tr>
<td>7. Responsibility</td>
<td>$L = \text{Legal Duty}$</td>
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<tr>
<td>8. Social Responsibility</td>
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Societal Values

- You belong to many communities within the larger society. Examples include:
  - extended family,
  - neighborhood,
  - ethnic community,
  - part of the country where you live,
  - school you attend,
  - religious affiliation,
  - social or civic organizations

- Each subgroup has values that you may accept, reject, or question
Societal Values

- Societal influence has increased globally because of technology including for example:
  - World Wide Web,
  - Radio,
  - TV, and
  - ability to travel extensively
Societal Values

• Some values seem to be held in common by most or all of humanity.

• The need to be accepted within the societal realm of values influences the well-being of almost everyone.
Relationship Between The 3 Values

**PERSONAL—PROFESSIONAL—SOCIETAL**

**WHY IS THIS IMPORTANT?**
Fragmented Values-in-Conflict

Diagram:
- Societal
- Professional
- Personal
Cohesive Value System
Everyone’s values change from time to time due to:
- unexpected opportunities/events/happenings
- tragedies in life
- new insights

Changes in a person’s values may impact their ethical decision making

Circumstances that force most people to change though usually evolve slowly
Relationship between Ethics & Values

EACH PRINCIPLE IN THE CODE OF ETHICS IS MATCHED WITH CORRESPONDING CORE VALES
Are the COE/SOEC/Guidelines/Values sufficient?
NO!

WHY?
The COE/SOEC/Values is a good starting point

However, need to also consider:
- good Moral Judgment
- deep Personal Commitment
- GOVERNING LAWS
  - State Practice Act
  - Supporting State Administrative Regulations

in any given situation!
Sample State Laws

Oklahoma
S. Dakota
Sample State Law

OKLAHOMA PHYSICAL THERAPY PRACTICE ACT

OKLAHOMA ADMINISTRATIVE CODE
Oklahoma Physical Therapy Practice Act

- Statute developed by Oklahoma State Legislature

- binding legal effect

- Section 887.13 (10) states that a PT/PTA license shall not be issued or renewed, or an issued license will be suspended or revoked of a PT/PTA who is “guilty of any act in conflict with the ethics of the profession of physical therapy.”

Empowers the State Board of Medical Licensure & Supervision to:

- promulgate certain rules & regulations for the purpose of carrying out the Board’s duties under the Practice Act.
- suspend, deny or revoke licenses for violation of the rules & regulations [32].

- and viewed on 07-22-13]
Oklahoma Administrative Code
• Rules & Regulations codified as Oklahoma Administrative Code.

• Outlines its purpose to facilitate administration of Practice Act [33].

• Legally binding as referenced in Practice Act.

• Violations may lead to loss of license/other legal ramifications.

• Include “Standards of Ethics and Professional Conduct” adopted by the Board.” — defined in Section 435:20-5-9

[33-35. Ok. Admin. Code Tit. 435 Ch. 20 et seq available at Oklahoma State Board of Medical Licensure & Supervision’s Official Website: http://www.okmedicalboard.org/physical_therapists/download/456/PTRULES.pdf and viewed on 07-22-13]
Outlines 12 ethical & professional principles:

- Respect rights & dignity
- Demonstrate Integrity & foster trust*
- Legal compliance
- Exercise sound professional judgment
- Improve professional competence
- Ethical research & physical therapy practice*
- Reasonable remuneration
- Confidentiality
- Advertise Services
- Refuse participation in/concealment of illegal & unethical acts*
- Socially responsible
- Respect Peers & other HCP
Specifically states that:

the board can either deny license to or revoke license or take other disciplinary action against an individual who violates the..... “Standards of ethics and professional conduct...” that was adopted by the board.
How Do We Resolve Ethical Concerns?

IS IT ETHICAL?

IS IT LEGAL?
Law-Ethics Paradigms
• 4 Paradigms based on whether there is an ethical obligation or legal obligation or both:
  ○ Clinical practice violations of both law & ethics
    • easy to detect
  ○ No clinical practice violations of both law & ethics
    • easy to detect
  ○ Clinical practice violation of ethics but not law
    • somewhat difficult: Legal but not Ethical
  ○ Clinical practice violation of law but not ethics
    • most difficult: Ethical action conflicting with the Law
**FACTS:**
- New PT with temporary license & previous reprimands for neglecting to lock patient w/c goes to treat a patient. Upon entering the room, finds patient on the floor

**Scenarios**
- +E+L = ?
- -E +L = ?
- +E -L = ?
- -E-L = ?
• +E+L = immediately seeks help to assist patient
  ○ E= principle of beneficence [duty to help pt.]
  ○ L= standard of care of a reasonably prudent similarly trained HCP in similar circumstances.

• – E – L = does not seek assistance for fear of being blamed for incident & improperly assists patient back to bed---dislocates patient’s shoulder & does not report incident.
  ○ -E = violation of principle of nonmalficence [do no harm] & veracity [duty to be truthful]
  ○ -L = violation of standard of care
- **E + L = PT examines patient for injury — finding none properly assists patient back to bed but does not report incident.**
  - **+L =** followed standard of care — no patient harm
  - **-E =** did not report — violation of principle of veracity & placed her needs over patient’s needs.

+ **E − L = PT fails to examine patient for injury & improperly assists patient back to bed & reports incident**
  - **+E =** followed principles of beneficence & veracity — recognized duty to assist & be truthful
  - **-L =** violated standard of care
Significance of ethical-legal distinction

- Differences in penalties:
  - Unethical conduct = penalty imposed by professional association:
    - loss of membership
    - loss of certification
    - reprimand--public or private
    - public censure
    - report made to license board
    - publication of sentence
Illegal conduct = penalty imposed by administrative agency or courts:

- fines
- monetary damages such as:
  - punitive damages (purpose is to punish)
  - compensatory damages (to make up for the harm)
  - restitution (restore to pre harm state)
- prison sentence
- injunction
- license revoked or suspended
- loss of job
- public notice of offense
COMMON AREAS OF ETHICAL VIOLATIONS?
- Informed Consent Violations
- Sexual Misconduct
- Sexual Harassment
Informed Consent

Ethical Duty vs. Legal Duty

- **Ethical Duty**
  - based on the patient’s right to autonomy

- **Legal/Professional Duty**
  - fundamental legal right protected by statute/case law/professional association guidelines, e.g.
    - Patient Bill of Rights
    - Patient Self-Determination Act
    - Joint Commission Standards
    - HIPAA
Examples

- Patient Bill of Rights--drafted by the American Hospital Association
  - requires patient to be informed by:
    - encouraging patients to communicate with their physicians;
    - participating in tx decisions;
    - informing HCP re: advanced directive [37]

- Patient Self-Determination Act [38]
  - HCPs receiving federal funding [M/M] must inform patients about their rights under state law & respect patient’s advanced health directives.

Joint Commission Standards [39]

- Standard R 1.1.10 requires organizations to engage in ethical business practices
- Standard R 1.2.30 requires patients to be involved in decision making
- Standard R 1.2.40 requires informed consent to be obtained

HCP should:
- have an institutional policy re: IC; &
- patient records must include evidence of patient IC for treatment.

Document no longer available free online

Federal Law that established the bare minimum required nationally to protect patient’s health information under its Privacy Rule Regulations.

However, if State Law provides stronger privacy protections than Federal Law, these will be enforced in addition to the Federal Law protection.

[40] HIPAA available at Dept. of Health & Human Services website: http://www.hhs.gov/ocr/privacy/ and viewed on 07-22-13
General Rule

- Patient must be informed re: an organization’s privacy policy; &

- An organization must make a good faith effort to obtain written documentation of having informed the patient re: the organization’s privacy policy
Display of written notice re: organization’s privacy policy that outlines:

- **Permitted lawful uses of PHI**
  - Eg. transmission to third parties for treatment purposes, billing, health care operations etc.

- **Permitted lawful disclosures of PHI**
  - Beneficial to public — reporting vital statistics, communicable diseases, adverse drug reactions, organ donations
Patient’s right to see own records

Patient’s right to request changes to correct inaccuracies in their medical records

Patient’s right to know who has had access to their medical records

Patient must be requested to sign acknowledgement of receipt of privacy notice
Exceptions:

- Delay in providing emergent care
  - However need to obtain authorization ASAP

- Disclosing to family & friends
  - However, patient must be given opportunity to object
How are Informed Consent legal violations determined?

BY: APPLICATION OF ONE OF TWO STANDARDS?
Legal Standards

- Two standards used by states:
  - **Professional Standard for disclosure**
    - majority states use this standard
    - need only disclose that information to a patient that another HCP would, who is from the same discipline & is under similar circumstances
    - Standard corroborated by expert testimony
  - **Lay person’s standard for disclosure**
    - minority states use this standard
    - need to disclose all relevant information to the patient that a reasonable ordinary patient would consider material under similar circumstances so as to make an informed decision re: treatment.
    - Expert testimony is not required, instead jury decides
Exceptions

Two important exceptions:

- **Emergency Doctrine**
  - applicable when patient unable communicate [e.g. comatose] what patient wants
  - presumption is that patient would give consent to HCP instituting life-saving tx.

- **Therapeutic Privilege**--rarely used
  - applicable when in MD’s judgment patient is unable to psychologically handle the information re: dx/px;
  - MD may then refrain from disclosing this information
Informed Consent Test [41]

HCP must ensure:

- patient has legal capacity to give consent
- patient has full understanding of:
  - results of examination & diagnosis
  - treatment/procedure
  - expected advantages/material disadvantages [expected benefits/material risks]
    - material = whether an ordinary reasonable patient after learning about the risk of harm would think seriously about whether to accept or reject tx.
  - other reasonable options
- patient provides consent without coercion from anyone
Lack of Informed Consent---is it an intentional tort? or malpractice?
Malpractice vs. Intentional Tort

- **Intentional Tort**
  - old theory
  - foundation in battery
  - why? b/c without IC, touching of a patient was regarded as non-consensual harmful touching of the patient.

- **Malpractice**
  - new theory
  - foundation in professional negligence
  - why? b/c even without proper IC, patient would have consented to treatment that led to injury.
Sexual Misconduct

Includes all illicit & unethical behavior of a sexual nature
Startling Statistics

Sexual misconduct by PTs/PTAs — less common
Sexual misconduct by Patients — most common

- A study in Canada revealed the following:
  - 92.9% PTs reported experiencing “some level of inappropriate patient sexual behavior.”
  - 32.8% F & 37.5% M reported “severe inappropriate sexual behavior by patients”.
  - Over 66% students reported experiencing “inappropriate sexual behavior by patients”.

- A study in US revealed the following:
  - 86% PTs experienced some form of “inappropriate sexual behavior by patients”.
  - 63% reported experiencing at least one incident of sexual misconduct by patients.

Types of Sexual Misconduct

- Two types:
  - Non-consensual
    - sexual assault
    - battery
  - Consensual
    - Putative* intimate relations between patient & HCP
      
* “generally considered or reputed to be” — Oxford Online Dictionary
http://www.askoxford.com/concise_oed/putative?view=uk
and viewed on 07-22-13
Non-consensual

Involves:

- intentional direct or indirect touching of a patient/client or HCP’s sexual organs.

- with an intention to arouse or satisfy sexual needs of HCP or patient/client; or

- with intention of sexually abusing patient/client.
Consensual

• Patient/client develops feelings of affection/emotion for HCP.

• HCP reciprocates with similar feelings.

• Patient/client then becomes vulnerable & dependent on HCP.

• HCP in violation of following professional standards: Code of Ethics: Principle #2
Liability

- Civil under intentional misconduct
  - punitive+ compensatory damages
  - malpractice insurance will not cover this

- Criminal

- Administrative--licensure/certification

- Professional association membership

- Institutional — accreditation

- Employment
What ethical principles are violated?
Violation of Ethical Principles

- Autonomy--total disregard for patient & professional ethical standards when HCP engages in an exchange of romantic feelings/emotions with patient.

- Nonmaleficence--duty to do no harm is violated with sexual misconduct.

- Beneficence--duty to serve patient’s best interest is violated when HCP mixes romantic feelings/emotions in a professional relationship

- Justice--duty of fairness violated when HCP breaches the patient’s trust in the HCP as a fiduciary.
How can a HCP prevent incidence of sexual misconduct?
• Presence of chaperone of the same gender as patient during tx.

• Announcing arrival prior to entering patient room

• Ensuring patient is well-informed re: nature & reasons of tx & extent of touching involved in txs that require close physical contact of any sort.

• Regular continuing education for staff re: sexual misconduct
Sexual Harassment
• Occurs usually in an Employer-Employee situation—Includes:
  ○ sexual behaviors of the Employer
  ○ that impact the Employee such that there is loss of:
    ▪ productivity
    ▪ morale
    ▪ work product
    ▪ including physical/mental well-being of Ee
Legal Definition

- Provided by EEOC
  - unwelcome sexual advances;
  - unwelcome requests for sexual favors;
  - unwelcome physical or verbal behavior;
  - that are either an explicit or implicit term of employment
  - resulting in a hostile work environment
  - with failure to abide resulting in employment consequences
Legal Standard

- ordinary reasonable person standard.

- i.e. whether an ordinary reasonable person would consider the individual’s behavior to be regarded as sexual misconduct.

- Not a good standard as usually interpreted as a reasonable “man” standard giving a man’s view.

- new modified standard that uses a reasonable person of the same gender as the victim.
Management Responsibility

- Employee education re:
  - gender differences
  - what behaviors can be interpreted as sexual harassment

- Facility policy re:
  - Employee reprimands for sexual harassment
  - enforcement of reprimands

- Employee encouragement to report & pursue action against sexual harassment.
Management Liability

- Liable for acts management is aware of.
- Liable for what management should have observed & corrected.
- May also be liable for acts management is unaware of if:
  - No reporting procedure in place
- May also be liable for ineffective resolution of a valid complaint
Remember

- All sexual harassment includes sexual misconduct, but;

- All sexual misconduct does **not** include sexual harassment!
ETHICAL DILEMMA ACTION PLAN

- What is the problem?
- What are the facts?
- Who are the affected parties?
- What are the affected interests of each party?
- Does the problem involve ethical violations?
- Does the problem involve legal violations?
• Is more information needed?

• What are the possible solutions?

• What are the pros/cons of each?

• What is the preferred solution?
  ○ Is the solution truthful?
  ○ Is the solution fair?
  ○ Is this solution beneficial to all involved?
  ○ Is this a WIN-WIN solution?
Case Study

Case Study

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QUESTIONS?
THANK YOU!