

Sexual Misconduct: Prevention and Reporting Strategies

► Objectives

At the conclusion of this program, participants should be able to:

- Review the current landscape of the risk and definitions of sexual misconduct
- Review specific sections of the Oklahoma statute on unprofessional conduct that relate to sexual misconduct
- Identify best practices, essential guidelines, and protocols that should be in place to prevent and defend allegations
- Discuss steps and considerations when an allegation occurs
- Review lessons learned through case examples



► Definition of sexual misconduct

Federation of State Medical Boards



- Physician-patient relationships of a sexual nature
- Sexual thoughts, feelings, or gestures
- Verbal or physical
- Behaviors interpreted by a patient or surrogate as sexual
- Inappropriate and non-therapeutic

▶ Sexual impropriety

Federation of State Medical Boards: Sexual impropriety may comprise behavior, gestures, or expressions that are seductive, sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient. Examples:

Deliberately watching a patient dress or undress

Having students or others present for sensitive exams without patient consent

Saying inappropriate things about a patient's genitalia, sexual innuendo, jokes

Asking about sexual history or preferences when not clinically pertinent

Asking for a date

Conducting intimate exam without clinical justification

► Crosses professional boundaries

Passive

- Sexual attraction to a patient
- Anticipation (sexual in nature) of patient's office visit
- Share personal problems with patient
- Hugs

Passive aggressive

- Sexually provocative social media communication
- Sexting
- Inappropriate sexual jokes, comments
- Not offering a chaperone when indicated
- Hugs

Aggressive

- Sexual assault
- Sexual favors in exchange for drugs
- Inappropriate touching
- Inappropriate sexual examinations not related to treatment or diagnosis

Provider romantic/sexual involvement with a patient is unethical

▶ Oklahoma Statute Title 59. Professions and Occupations

§59-509 Unprofessional conduct. Excerpts from specific sections below:

5. Conviction of a felony or of any offense involving moral turpitude;
8. Dishonorable or immoral conduct which is likely to deceive, defraud, or harm the public;
9. The commission of any act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine. A complaint, indictment or confession of a criminal violation shall not be necessary for the enforcement of this provision. Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine shall be unprofessional conduct;
17. Engaging in physical conduct with a patient which is sexual in nature, or in any verbal behavior which is seductive or sexually demeaning to a patient;

▶ Sexual misconduct consequences

Civil litigation

Criminal litigation

Board investigations and actions

Patient safety

Non-therapeutic

Reputation and goodwill

▶ Case examples from Board of Medicine press release

Sexual harassment and sexual misconduct

- 45-year-old physician made unwanted sexual advances toward female coworkers
- Conducted inappropriate physical exam of female patients
- Three state pattern

Board of Medicine settlement agreement

- \$5,000 fine
- Professional boundary class
- Board-approved female chaperones
- Five years of board monitoring: polygraphs and a work monitor

▶ Case examples

Physician Assistant:
Failure to provide
chaperone when
requested

- PA fondled 50-year-old patient, exposed himself, and barricaded patient in exam room
- Patient requested a nurse monitor before exam
- PA refused request

Medical assistant:
Negligent hiring

- 21-year-old medical assistant sexually assaulted a patient
- Clinic had not done criminal background check or sexual predator search

► Case examples

Physician

- Patient seeing neurologist post MVA who was also managing her pain
- Patient secretly videotaped neurologist during appointment for trigger point injections
- Patient was topless during exam, neurologist inappropriately touched her breasts
- Physician charged with criminal misconduct on 4 patients, sentenced to probation and lost license

Physician

- Shortly after his divorce physician began dating a patient.
- Broke up with her after several months. She reported him to the State Medical Board. Investigation resulted in a corrective action plan. Patient also filed a civil suit that was settled.

▶ Real situations, daily concerns

Vaginal
ultrasounds

Leads placed
on breasts
(female)

Sensitive
exams: breast
(female),
vaginal, rectal,
genitalia,
prostate

Patients at
higher risk to
misunderstand
exam or
treatment

Safe environment for patient & staff

▶ At-risk patients

- Disabilities and cognitive impairments
- Minors
- Patients with a history of being abused, emotionally fragile
- Previous or current behavioral health issues or history
- Patients with manipulative, seductive behaviors
- Patient statements or gestures outside a professional provider/patient relationship

► Chaperone goals

Provide a consistent, standard, and safe care environment for patients, providers, and staff.

Recognize there are physical, psychological, and cultural reasons why chaperones may be requested or needed.

Protect and enhance the patient's comfort, safety, privacy, security, and dignity during sensitive examinations or procedures. Provide assistance with the exam as appropriate.

Protect providers and staff against unfounded allegations of improper behavior.

▶ **Chaperone guidelines should include:**

- Patient/provider chaperone requests & state requirements
- Inclusion criteria for chaperones
- Patient refusal of chaperone
- Documentation
- Chaperone education

▶ Chaperone guidelines

Patient notice

- ▶ Upon provider or patient request
- ▶ Encourage or require a medical chaperone for certain exams
- ▶ Post signs
 - ▶ “Please let our staff know if you would like a chaperone during your exam”
- ▶ Verbally offer chaperone
- ▶ Include in new patient packets and have patients sign off on acknowledge of availability of chaperone

▶ Chaperone guidelines

Process

- ▶ Get new patient preference on intake
- ▶ Provide a brochure or information that explains chaperones and chaperoned exams
- ▶ Have front desk staff ask patient's preference at check-in to standardize the process
- ▶ Have chaperone act as a witness for the patient and provider during an exam or procedure. The chaperone should be in a location where he or she is able to assist as needed and observe the examination or procedure
- ▶ Identify chaperone criteria considering gender and training

▶ Chaperone guidelines

Inclusion criteria

Consider or require a chaperone for:

- ▶ Sensitive exams, procedures, or treatments: breasts (female), vagina, genitalia, and rectum, prostate
- ▶ Cognitively impaired
- ▶ Minors
- ▶ History of sexual abuse/assault/emotionally fragile
- ▶ Unusually anxious about an exam or treatment
- ▶ Apply criteria for both male and female providers

▶ Chaperone guidelines

Patient refuses

Refuses provider-requested chaperone

- ▶ Provider agrees or refers and considers termination

Refuses gender of staff chaperone

- ▶ Accommodates if and when possible
- ▶ Reschedules
- ▶ Refers (gender not employed) and considers termination

▶ Chaperone guidelines

Document

- ▶ Date/time
- ▶ Patient or provider request
- ▶ Chaperone's name
- ▶ Exam, treatment, procedure directly observed
- ▶ Refusal, accommodations, interventions

▶ Chaperone guidelines

Staff
education

- ▶ Goals
- ▶ Policy
- ▶ Privacy
- ▶ Draping
- ▶ Emotional support
- ▶ Direct observation of exam or treatment
- ▶ Documentation
- ▶ Reporting concerns

▶ Case: Provider displaying inappropriate behavior

Patient complains about provider displaying inappropriate behavior



“I am concerned. Dr. Jones makes me feel uncomfortable. He is rubbing up against me, telling dirty sexual jokes.

Today, I came in for a chest cold and he examined my breasts, which seemed very odd.

I don't want you to say anything to anyone, but I want to be changed to a different doctor.”

► Addressing complaints

Investigate

- Identify and train key person to investigate all complaints
- Interview patient and staff involved

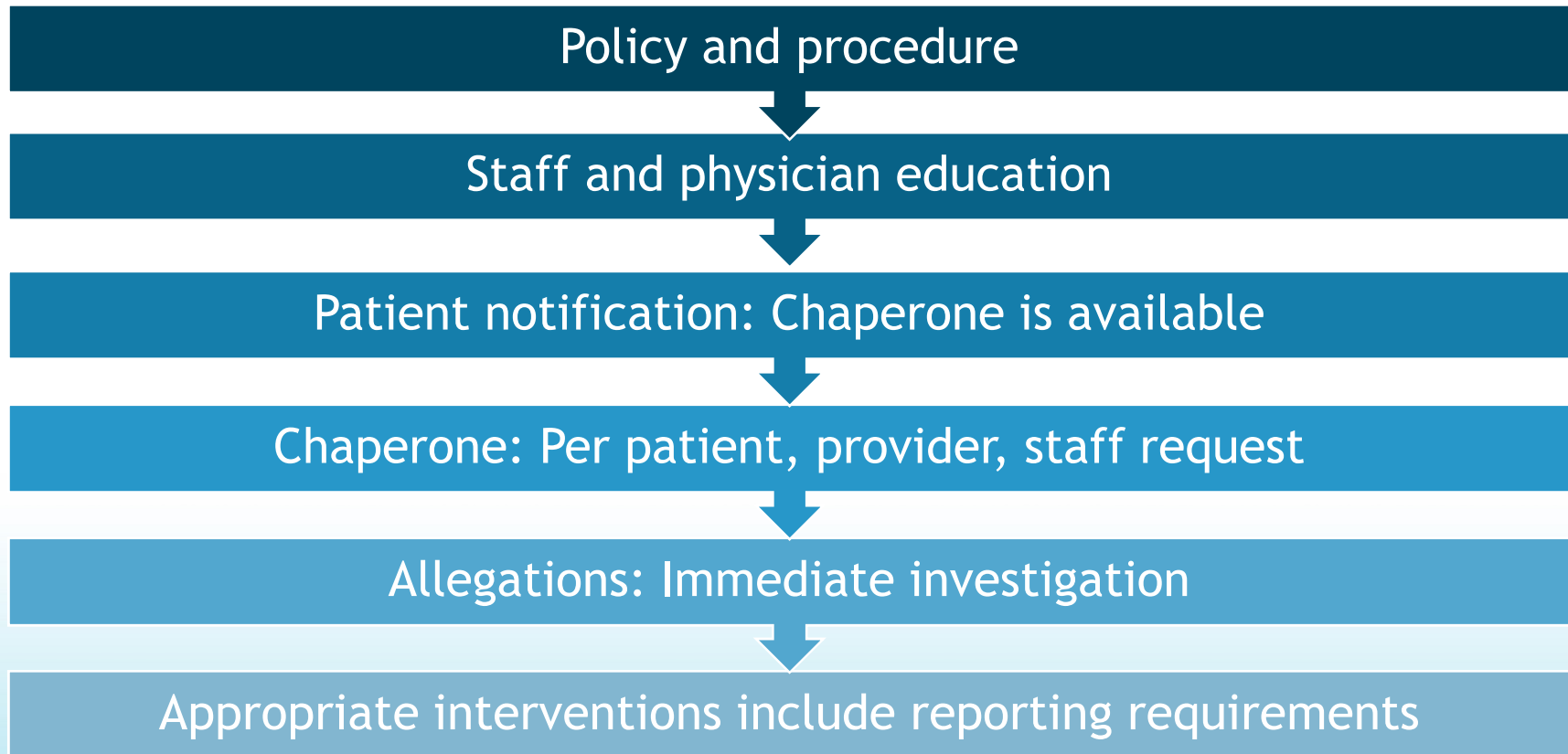
Employment actions

- Suspend or place on leave
- Require chaperone
- Limit or reschedule duties/workload

Reporting

- Notify authorities as requested or needed
- Notify Professional Liability (PL)/Employment Practices Liability (EPL) carrier
- Do statutory reporting as required

► Risk strategies



▶ Question #1

Patient complaint: Employee is telling sexually provocative jokes and hugs me, making me feel uncomfortable.

Your
answer

- a. Sexual harassment
 - b. Sexual misconduct
 - c. Both 1 & 2
 - d. Neither 1 or 2
-

▶ Answer to question #1

Patient complaint: Employee is telling sexually provocative jokes and hugs me, making me feel uncomfortable.

Correct
answer

- a. Sexual harassment
 - b. Sexual misconduct**
 - c. Both 1 & 2
 - d. Neither 1 or 2
-

▶ Question #2

The receptionist tells you that Ms. Smith told her she was surprised that Dr. B performed a breast exam for her complaint of a sore throat. What immediate actions should be taken?

Your answer

a. Tell the patient there was probably a clinical reason for it and then discuss with Dr. B.

b. Interview the patient. Talk to Dr. B. and determine next steps.

c. Discuss with Dr. B and then suggest a chaperone for when seeing this patient.

RR1

▶ Answer to question #2

The receptionist tells you that Ms. Smith told her she was surprised that Dr. B performed a breast exam for her complaint of a sore throat. What immediate actions should be taken?

Correct
answer

a. Tell the patient there was probably a clinical reason for it and then discuss with Dr. B.

b. Interview the patient. Talk to Dr. B. and determine next steps.

c. Discuss with Dr. B and then suggest a chaperone for when seeing this patient.

Slide 27

RR1

Query from Marcy: I created this slide because there wasn't a slide for the correct answer. The rest of the questions have a slide for "Your answer" and "Correct answer." I assumed #2 was the correct answer, but if that is wrong, please change.

Rosen, Rachel, 7/11/2019

▶ Question #3

True or False: It is acceptable to ask a recently divorced parent out for dinner.

Your
answer

a. True

b. False

▶ Answer to question #3

True or False: It is acceptable to ask a recently divorced parent out for dinner.

Correct
answer

a. True

b. False

▶ Question #4

True or False: A family member may serve as a chaperone.

Your
answer

a. True

b. False

▶ Answer to question #4

True or False: A family member may serve as a chaperone.

Correct
answer

a. True

b. False

▶ Question #5

Before placing EKG leads on a female patient's breasts, explain the procedure and select the following actions:

Your
answer

- a. Ask patient if she wants a chaperone during lead placement.
 - b. Inform patient a chaperone will be present during lead placement.
 - c. Either a or b
 - d. None of the above
-

▶ Answer to question #5

Before placing EKG leads on a female patient's breasts, explain the procedure and select the following actions:

Correct
answer

a. Ask patient if she wants a chaperone during lead placement.

b. Inform patient a chaperone will be present during lead placement.

c. Either a or b

d. None of the above

▶ Question #6

How should we handle a patient who is making unwelcome and sexually inappropriate gestures toward an employee? The patient is 45 years old and not cognitively impaired.

Your answer

- a. Counsel patient on behavior expectations and consequences if behavior persists (behavior contract)
 - b. Follow your sexual harassment policy
 - c. Tell the staff to ignore the patient's behavior
 - d. Both a and b
-


▶ Answer to question #6


How should we handle a patient who is making unwelcome and sexually inappropriate gestures toward an employee? The patient is 45 years old and not cognitively impaired.

Correct
answer

- a. Counsel patient on behavior expectations and consequences if behavior persists (behavior contract)
 - b. Follow your sexual harassment policy
 - c. Tell the staff to ignore the patient's behavior
 - d. Both a and b**
-

▶ Self-assessment checklist

Yes 	Risk reduction strategies
	A staff chaperone is present at the request of the patient, staff, or provider.
	A patient receives a detailed explanation prior to an exam or treatment.
	I leave the room while the patient is undressing.
	I ensure appropriate draping during an exam or treatment.
	An organizational or practice Chaperone Policy and Procedure is in place and followed.

Yes 	Personal behaviors
	I limit my physical patient contact to that which is necessary to conduct a diagnostic examination or treatment.
	I do not engage in sexual jokes or gestures or other unprofessional behavior.
	I immediately address any patient complaint or concern regarding a staff's inappropriate contact or behavior.
	I do not engage in romantic patient or patient surrogate relationships either in person or through digital media (social networking, texting, email, etc.).
	I separate my professional life from my personal life.

▶ Resources

- ▶ [Addressing Sexual Boundaries: Guidelines for State Medical Boards](#)
(Federation of State Medical Boards)
- ▶ [MedPro Group Patient Safety and Risk Resources](#)
(MedPro Group)
- ▶ [Sexual Misconduct](#)
(American College of Obstetricians and Gynecologists)
- ▶ [Use of Chaperones](#)
(American Medical Association)
- ▶ [Use of Chaperones During the Physical Examination of the Pediatric Patient](#)
(American Academy of Pediatrics)

▶ Disclaimer

The information contained herein and presented by the speaker is based on sources believed to be accurate at the time they were referenced. The speaker has made a reasonable effort to ensure the accuracy of the information presented; however, no warranty or representation is made as to such accuracy. The speaker is not engaged in rendering legal or other professional services. If legal advice or other expert legal assistance is required, the services of an attorney or other competent legal professional should be sought.