

TENNESSEE BOARD OF MEDICAL EXAMINERS

POLICY REGARDING 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.

It is the responsibility of the Board of Medical Examiners to promote and protect the health, safety and welfare of people in Tennessee.

The physician-patient relationship is unique. It can be an intensely emotional interaction that develops and is maintained in private and without a nurse or chaperone present. This cloistered relationship can cultivate emotional dependency or vulnerability by the patient leading to exploitation by the physician. The abuse of this relationship, unintended or purposeful, is detrimental to the patient's well-being and can compromise the Physician's clinical objectivity.

It is the physician's responsibility to maintain the boundaries of the professional relationship by avoiding and refraining from sexual contact or misconduct with patients. It is the duty of every physician to report unethical and unprofessional behavior, including sexual misconduct, when encountered. Sexual behavior, whether verbal, electronic, or physical, between a physician and a patient is never beneficial or therapeutic. 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. 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. 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.
2. Physicians must respect a patient's dignity at all times. This includes providing appropriate gowns and private facilities for dressing, undressing, and examination.
3. A patient agreement should be obtained for the presence of any persons in the room while dressing, undressing, or being examined. The physician should consider having a chaperone present during any physical examination. The request, whether by the patient or physician, for a chaperone during physical examination should be accommodated.
4. 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.
5. Physicians should choose their words carefully so that their communications with a patient are clear, appropriate, and professional.

6. Physicians should not disclose the intimate details of their personal lives to patients.
7. Sexual contact or a romantic relationship between a physician and key third parties including spouses or partners, parents, guardians, surrogates and other significant others of a patient should not occur as this may jeopardize the treatment and care that the patient receives. A sexual or romantic relationship between a physician and a key third party can lead to a risk of breaching confidentiality. The physician often communicates with these individuals offering patient information, clinical advice, and sometimes emotional support. The patient's needs can be compromised by a romantic or sexual relationship with a third party.

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

SEXUAL MISCONDUCT

“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).

“SEXUAL CONTACT” – For purposes of this policy, sexual contact between a physician and a patient includes, but is not limited to the following:

- A. Sexual impropriety includes verbal, electronic, physical actions or involvement with a patient which:
 1. Through behavior, gestures, or expressions may reasonably be interpreted as seductive, sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient; whether such involvement occurs in the professional setting or outside of it;
 2. Neglects to employ disrobing or draping practices respecting the patient's privacy, or deliberately watching a patient dress or undress;
 3. Subjects a patient to an intimate examination in the presence of medical students or other parties without the patient's consent or in the event such consent has been withdrawn;
 4. Involves examining or touching genital mucosal areas without the use of gloves;
 5. Involves making inappropriate comments about or to the patient, including making sexual comments about a patient's body or underclothing, making sexualized or sexually demeaning comments to a patient, criticizing the patient's sexual orientation, making comments about potential sexual performance during an examination;
 6. Uses the physician-patient relationship to solicit a date or romantic relationship;
 7. Involves conversation regarding the sexual problems, preferences, or fantasies of the physician;
 8. Involves performing an intimate examination or consultation without clinical justification;
 9. Involves performing an intimate examination or consultation without explaining to the patient the need for such examination or consultation even when the examination or consultation is pertinent to the issue of sexual function or dysfunction; and

10. Involves requesting details of sexual history or sexual likes or dislikes when not clinically indicated for the type of examination or consultation.

11. Involves inappropriate or unsolicited contact or messaging with a patient via social media, phone call or text message, video chatting, or other modes of electronic communication.

B. Beyond sexual impropriety, a physician engages in sexual violation of the patient when physical sexual contact occurs between a physician and a patient, whether or not initiated by the patient, including in any of the following manners:

1. Sexual intercourse, genital to genital, or genital to anal contact;

2. Oral to genital or anal contact;

3. Kissing in a romantic or sexual manner;

4. Touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient has refused or has withdrawn consent;

5. Encouraging the patient to masturbate in the presence of the physician or masturbation by the physician while the patient is present; and

6. Offering to provide practice-related services, such as drugs or prescriptions, in exchange for sexual favors.

III. DIAGNOSIS AND TREATMENT. Verbal, electronic, or physical interaction that is required for medically indicated diagnostic or treatment purposes, when conducted in a manner that meets the standard of care appropriate to the diagnostic or treatment situation, is not considered sexual behavior. Contextual sexual discussions held during a physician patient encounter for diagnostic or therapeutic purposes may be necessary, and when conducted in a professional and sensitive manner, do not constitute sexual behavior.

IV. PATIENT. The determination of when a person is a patient 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.

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. 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.

B. Some physician-patient relationships may never terminate because of the nature and extent of the relationship. These relationships always raise concerns of sexual misconduct whenever there is sexual contact.

VI. CONSENT. A patient's consent to, initiation of, or participation in sexual behavior with a physician does not change the nature of the conduct or absolve the physician of responsibility for his or her behavior.

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 the 29th day of November, 2017.