

Patient Boundary Issues

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Introduction

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Disclaimer

Nothing in this lecture should be considered as “legal advice”

Consult with your legal counsel before making any changes to your practice, policies or your organization

THERE ARE NO PICTURES IN THIS LECTURE

Michigan

- Wayne County jury made a \$12.5 million award where a 14 year old girl was molested
- EMT 70% / Department 30%
- 35 year old EMT sentenced to 2 to 15 years

New York

- EMT arrested on charges of fondling a patient
- “Touched inappropriately on her back”

New York

- Incident June 2011
- EMT allegedly touched her breasts during examination
- Stayed with her in hospital for 3 hours
- Put his phone number into her cell phone

Indiana

- Trans Care EMT arrested on charges of sexual misconduct
- Accused of fondling patient, took her phone and sent pictures...

Florida

- Sunstar (Pinellas County) paramedic arrested on one count of felony sexual battery
- Patient complained of sexual assault during transport to the hospital

New Hampshire

- EMT charged with misdemeanor sexual assault for allegedly touching female patient
- Made patient remove clothes while checking her pulse and looking for "contraband"

Oregon

- AMR Portland paramedic arrested & charged with sexual assault
- Sentenced to three years in prison
- \$3.85 million civil verdict

Virginia

- Regional One EMS - 60 year old Paramedic accused of inappropriate touching of a 20 year old patient during transport
- Sentenced to Life plus 20 years
- 2 Prior accusations in Virginia and West Virginia

Unappreciated Epidemic

- Up to 50% of EMS Providers Report Sexual Overtures
- Virtually NO States have Laws Preventing Sexual Contact Between Providers and Patients
- 2008 Story reported 129 accusations of sexual misconduct in 18 months!

12 VAC 5-31-1030

EMS personnel may not engage in sexual harassment of patients or coworkers. Sexual harassment includes making unwelcome sexual advances, requesting sexual favors, and engaging in other verbal or physical conduct of a sexual nature as a condition of:

1. The provision or denial of emergency medical care to a patient;
2. The provision or denial of employment;
3. The provision or denial of promotions to a coworker;
4. For the purpose or effect of creating an intimidating, hostile, or offensive environment for the patient or unreasonably interfering with a patient's ability to recover; or
5. For the purpose or effect of creating an intimidating, hostile or offensive working environment or unreasonably interfering with a coworker's ability to perform his work.

Simple Language

- Don't Have Sex With Your Patients
- Don't Inappropriately Touch Your Patients
- Don't Seek Out Your Former Patients For Sexual Contact

Ramifications

- Administrative - Code - Certification or Licensure
- Criminal Liability - Sexual Assault, Harassment, Battery...
- Civil Liability - Battery, Intentional Infliction of Emotional Distress, Invasion of Privacy

HIPAA

- Civil Monetary Penalties
- Criminal Liability - Knowingly Obtains or Discloses PHI
- One Year - up to \$50,000
- False Pretenses - Five Years - up to \$100K
- Personal Gain - Ten Years - up to \$250 K

Job-Related

- Not Job-Related
- Probably Suspended Without Pay Pending
- Intentional Misconduct = NO DEFENSE
- Intentional Misconduct = NO INDEMNIFICATION

Recommendation #1

- Separation and Documentation
 - Separate the Individuals
 - Document the Occurrence
 - Investigate Every Time

Recommendation #2

- Chaperone Provisions
 - Any Breast and Genitalia Examination
- MALES AND FEMALES
- Refusal - No Obligation to Provide Further Care

Recommendation #3

- Clear Policy Elements
 - No Social or Sexual Contact Between Providers and Patients
 - 30 Day Waiting Period - NJAC 13:35-6.3
 - Social Media Prohibitions

Recommendation #4

- Training and Awareness
 - Policy Elements
 - Ways to Protect Yourself
 - Prohibited Conduct

Recommendation #5

- Post-Event Activities
 - Documentation and Investigation
 - Internal and External Communications
 - Don't Jump to Conclusions

Recommendation #6

- Background Checks
 - National Practitioner Data Bank (NPDB)
 - State Licensing Authorities - ALL
 - Prior Employers
 - Commercial Background Checks - LIMITS
 - Law Enforcement Authorities

Beware

- Cleveland, Ohio - October 2008
- Glenn Burks, 44, arrested after being accused of fondling two patients
- 34 year old man accused him of fondling his genitals
- 48 year old man accused him of performing oral sex on him

Details

- Partner told police she had constant visual contact
- Saw man fondling himself in the hospital
- Blanket allegedly contained DNA evidence
- Warrant claims sperm AND saliva on the blanket..
- Immediately placed on administrative leave

Outcome

- **May 2009 - Jury Finds Paramedic Not Guilty of ALL Charges**
- June 2009 - EMS Fired Paramedic
- Arbitration & Trial Courts in Favor of Paramedic - Wrongful Termination
- August 2011 - Appeals Court Agrees

Conclusions

- Separation and Documentation
- Chaperones
- Clear Policies
- Training
- Plan for the Worst

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Thank You For Coming!

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