

The Doctor Did WHAT?!?
Tackling Sticky Professionalism Issues

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Objectives

After completing this activity,
participants should be better able to:

- Describe the current expectations regarding professionalism and the medical staff.
- Identify and strengthen bylaws and policies to support effective intervention of professional lapses.
- Identify the range of options available to address professionalism lapses when they occur.



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Professionalism

Professionalism

*A commitment to uphold shared
ethical values...*

and

*What the public and individual
patients can and should expect from
medical professionals*

Paraphrased ABMS definition of medical professionalism

So, What is the Opposite?

*Behavior that fails to meet the
ethical and professional
obligations expected by the
public and by the profession*



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Unprofessional Conduct in the News

jacksonville.com | [The Florida Times-Union](http://www.floridatimesunion.com)
Doctor who lied to patients to perform laser treatments sentenced to 10 years by Jacksonville judge

Physician who called opioids his 'Skittles,' convicted of 38 charges

Marcus Robertson • Thursday, April 21st, 2022 Print | Email

BECKER'S
ASC REVIEW

Journal News, Hamilton, Ohio
State board suspends license of Oxford doctor who had relationships with patients



Lauren Pack, Journal-News, Hamilton, Ohio

April 20, 2022 • 2 min read

\$168 Million Awarded in California Sex Harassment Suit



Physician assistant says she was tormented in cardiac surgery unit.

By ENJOLI FRANCIS

March 1, 2012, 6:07 PM • 4 min read



Cardiac Surgery PA

Alleged she was terminated for repeatedly filing complaints to HR department

Claimed tormented and sexually harassed by surgeons in cardiac surgery center

Bullying and inappropriate environment carried over to others on staff

Supervisor laughed and did nothing

Terminated and privileges revoked for sleeping on the job

Unable to find other employment

Could it happen at your hospital?

A California doctor performed surgery during a Zoom court appearance

By Kelsie Smith and Dan Simon, CNN
Updated 10:30 PM ET, Mon March 1, 2021



- Plastic surgeon appeared in virtual traffic court hearing wearing scrubs, gloves, mask and surgical cap
- Said he was in an active operating room and available for trial
- Another surgeon was there to assist in closing of the face lift
- Doc thought surgery would be done by the time of the hearing
- Claims there was no risk to patient or to confidentiality

Unprofessional Conduct



Severity of Misconduct



Professionalism Concerns in the Hospital Setting

- Inappropriate touching
- Sexual banter & suggestive behavior in OR
- Inadequate indications for procedures
- Falsely reporting Board Certification status
- Unauthorized access of EMR
- Inappropriate billing
- Inadequate supervision of PAs or residents
- Boundary violations

Examples of Unprofessional Behavior

Internal medicine physician who sent unwanted texts of flirtatious and sexual content to a resident

General surgeon who prescribed a benzodiazepine to spouse on several occasions

Family physician who accessed the EMR of his sister's boyfriend because he was suspicious that the boyfriend was abusing drugs

ENT physician unable to arrive in a timely manner for urgent procedure because he was taking call from outside the agreed-upon range; had to talk the ER doc through the procedure

General surgeon who brought homemade beer to the OR and offered it to the surgical team to try before the surgery

A recent general surgery residency graduate who was dismissed from his first training program for performance issues omitted this information from his application materials and CV



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What are the potential consequences of unprofessional conduct in the healthcare setting?

Poor morale

Increased staff turnover

Risk of complications or poor clinical outcomes

Lawsuits

Perpetuation of a culture of tolerance

Medical Staff Implications

Unprofessional Conduct

- Unprofessional conduct encompasses disruptive behavior, but is broader
- A holistic professionalism policy will establish a means to address and remediate the entire spectrum of unprofessional conduct – not just the most egregious.
- It is important to be aware of the tools available to remediate the spectrum of unprofessional behaviors, and, from the physician's perspective, to be aware of potential due process and other protections that may apply.

Professionalism Standards Have Not Changed

– but –

Accountability Expectations Have

- Modern clinical life can cause physicians to feel burnt out, cut corners, or fail to consider the consequences of their actions when rushed or stressed.
- This sometimes leads them to take actions that violate professionalism expectations of the medical staff and of their patients.
- Historically, these issues have been under reported and under addressed.
- In the current culture, hospitals are much less tolerant of professional missteps.
- Failing to address these behaviors can result in significant legal risks and repercussions for the institution.

Why the change in attitude?

Less - “That’s just the culture in the OR.”

More – staff education and reporting

#MeToo Implications for Healthcare

- Healthcare is at a particular risk for sexual harassment allegations
- Complaints of inappropriate conduct may be diminished due to nature of work
- Employees work in close proximity
- Hierarchical nature of medical setting can empower predators
- Different generational expectations

Training and Reporting

Medical Staff and employees should be trained on the code of conduct and reporting system.

The code of conduct should be enforced consistently and fairly.

These issues should be investigated and addressed in a timely manner, regardless of the prestige or seniority of the person involved.

NOV 22 | MORE ON COMPLIANCE & LEGAL (/RESOURCE-TOPIC/COMPLIANCE-LEGAL)

Why hospitals can't ignore their 'Harveys', must create supportive culture for reporting sexual harassment

Expert says failure to address and punish the behavior, regardless of the perpetrator's status, can have big costs.

Apply to all ethical issues	Be proactive	Have written policies	Inform employees	Investigate and take action
Apply these principles to sexual harassment and all other ethical violations	Be proactive in laying the groundwork for a safe, secure environment where employees can report behavior without fear of retaliation	Have appropriate policies that are written and implemented regarding harassment and discrimination of any kind	Inform employees of such policies and provide a safe method to report	Investigate and take action swiftly, whether reported bad behavior is an executive, a physician or staff member

<https://www.healthcarefinancenews.com/news/why-hospitals-cant-ignore-their-harveys-must-create-supportive-culture-reporting-sexual>



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How should hospitals respond?

Goal: To arrive at an outcome that prioritizes patient and staff safety while recognizing the rights of the clinician involved

Considerations

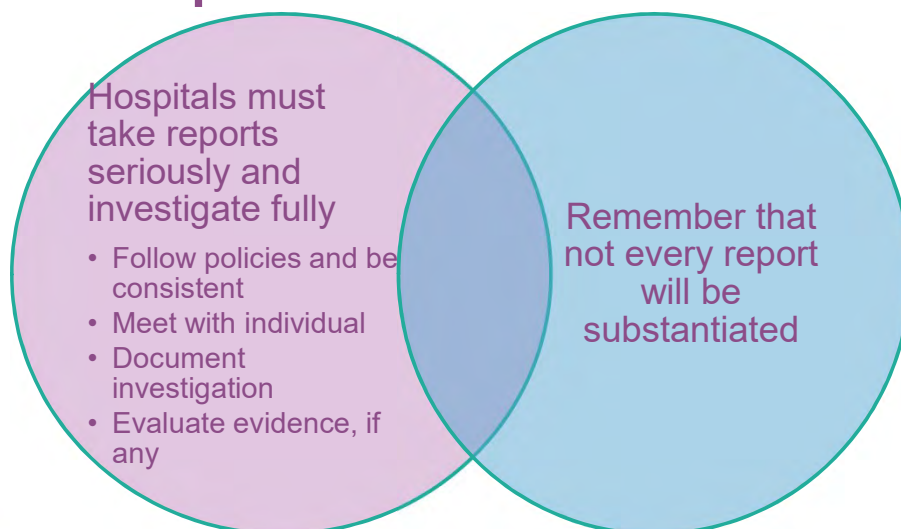
- Egregiousness of the behavior
- Potential impact of the behavior
- One-time or repetitive conduct
- Prior intervention and outcome



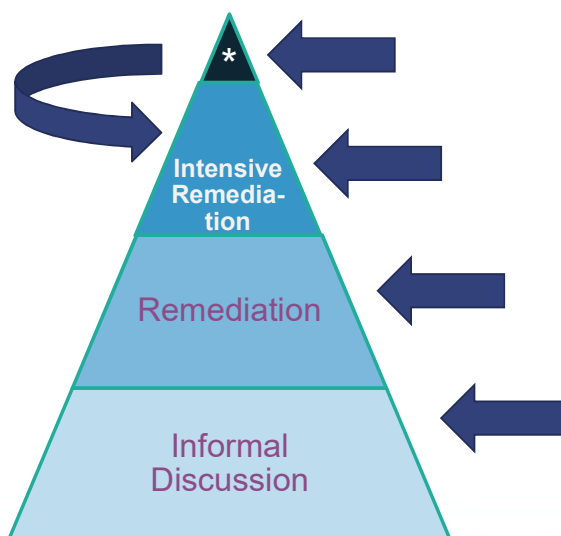
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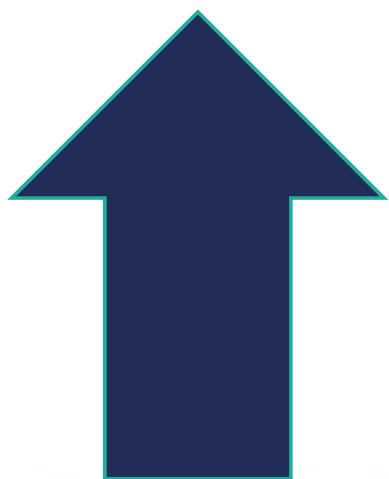
What should hospitals do if unprofessional conduct is reported?



Graduated Evaluation and Response



Significant Incident? Hospital's Perspective:



If an incident is significant enough, hospital may move straight to:

- Skip steps in policy
- Summary suspension of privileges
- Filing criminal charges
- Other disciplinary action

Informal Discussion

Cup of Coffee Chat



Conversation must
be documented in
physician's peer
review file

Cup of Coffee Chat

- An informal conversation can help address problematic behavior
- Goal is to deliver a single "story" or observation and let the physician know what was observed
- Bring the issue to the physician's attention so they can reflect on their behavior
 - Not to "fix" the situation or place blame
- Not having the conversation may imply endorsement of the behavior and may risk its repetition
- Promotes accountability for what appears to be a non-egregious unprofessional conduct

Promoting professionalism by sharing a cup of coffee

<https://www.myamericannurse.com/wp-content/uploads/2017/05/ant5-Coffee-417b.pdf>

Case Study #1

- Dr. AlwaysLate is constantly running behind schedule and causing the whole OR to run late.
- Dr. Chief sees Dr. AlwaysLate in the cafeteria and asks if they can have a quick chat.
- Dr. Chief tells Dr. AlwaysLate he's heard of the troubles with sticking to the OR schedule and asks what is going on.



Case Study #1

- Dr. AlwaysLate nods and says he knows, but he's having trouble getting from his clinic across the street to the OR most days.
- Dr. Chief offers some suggestions on scheduling to help alleviate the issue. Dr. AlwaysLate listens and nods.
- Dr. Chief tells Dr. AlwaysLate his door is open if he wants to talk more and he expects to see an improvement in Dr. AlwaysLate's timeliness.
- Dr. Chief returns to his office and sends an email documenting the conversation to Dr. AlwaysLate. He forwards the email to the Medical Staff Office for the peer review file.



Professionalism Remediation

Intensive, Skill-building Seminars

Common Professionalism Infractions Amenable to Remediation

- Boundaries Violations
 - Sexual misconduct/Privacy
 - Dual relationships
 - Drug diversion
 - Supervisory responsibilities
 - Accessing privileged info of non-patients
- Financial Violations
 - Billing issues
 - Self-referral
 - Insurance fraud
 - Unnecessary testing/treatment
- Misrepresentation
 - Lying or omitting information
 - Misrepresentation of credentials
 - Falsification
 - Practicing outside of scope/training or with lapsed license
- Other
 - Clinical issues
 - Professional accountability
 - Inadequate record keeping or communication
 - Abandonment of patients
 - Breach of confidentiality
 - Civil or criminal violations

Case Study #2

- Dr. Jones is family physician who recently completed his residency training and joined the medical staff.
- He accessed the medical record of his little sister's boyfriend because he was concerned the boyfriend was abusing drugs.
- Further investigation found that this was an isolated incident by Dr. Jones and that he had not repeated the behavior with this patient or with other patients.



Case Study #2

- While it was an isolated incident, it was a clear violation of HIPAA and other hospital policies.
- The leadership felt it was important for this young physician to understand the gravity of the behavior and the consequences should other professionalism missteps occur in the future.
- The Hospital referred Dr. Jones to an ethics and professionalism remediation course.



Case Study

#3

- Dr. Todd is an orthopedic surgeon who has practiced at the hospital for many years.
- On National Beer Day, May 25, Dr. Todd brought some of his own homemade beer into the operating room. He opened and poured a bottle of beer and asked staff to taste it while the patient was under anesthesia being prepared for surgery.
- The staff refused the beer, refused to proceed with the case, and reported Dr. Todd to the Administrator on Call, Ms. Jennifer.



Case Study

#3

- Later, Dr. Todd informed the hospital that he had entered a treatment facility for alcohol use disorder. He requested and was granted a medical leave of absence from the hospital.
- After Dr. Todd completed 30 days of treatment, the hospital requested that he successfully complete an ethics and professionalism remediation seminar as a condition of his return from the leave of absence.



How can professionalism remediation impact ethical decision-making?

Moral Sensitivity

Increase awareness of professionalism issues and ethical dilemmas

Moral Judgment

Teach tools to analyze situations from an ethical and professionalism point of view

Moral Motivation and Commitment

Train to look for and recognize conflicts of interest and dual-roles

Moral Character and Implementation

Increase awareness and recognition, and mitigate risk factors such as fatigue and stress

Example of a professionalism and ethics program

PROBE Program

Educational intervention in ethics, professionalism, boundaries

- For healthcare professionals under discipline by a licensing body or oversight agency
 - All healthcare professions
- Small-group, intensive intervention
 - Taught via zoom
 - Max of 14 participants/session
 - 2 – 3 faculty members
 - 14 hours over 3 days
 - 21.25 hours of CME with pre- & -post work
 - Attendees must participate fully and disclose their “infraction”



What's Involved?

Seminar Content

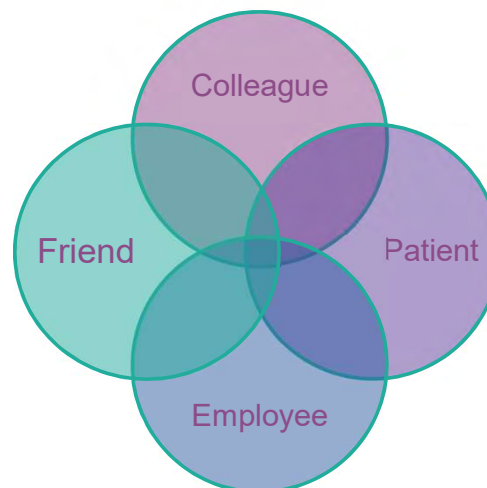
- Ethical theories
- Clinician-patient relationships, including boundaries
- Accountability in the healthcare profession
- Sharing of infractions that led to referral and application of learning to one's own conduct

Faculty Evaluation

- Final Essay (major)
 - Demonstrated understanding of material
 - Able to apply ethical principles to own case
 - Able to see their misconduct through the eyes of the referring organization
- Seminar (minor)
 - Preparation
 - Participation

Tale of 2 HIPAA Violations – Dr. Boss

- Dr. Boss and Ms. Friend
 - Had multiple overlapping relationships
 - All was going well until it wasn't...
 - Ms. Patient missed work
 - Dr. Boss checked the EMR because she was "worried about her"
 - Ms. Friend had been treated by a different physician at a hospital facility
- Dr. Boss accessed the hospital EMR without authorization – HIPAA violation
- Hospital:
 - Suspended for 30 days
 - Required additional HIPAA training
 - Sent to ethics intervention



Tale of 2 HIPAA Violations – Dr. Gotta Know

Audits of Dr. Gotta Know's access of EMR found numerous instances of unauthorized access to medical records of family members, including his mother, brother and children as well as his own medical record

CMO instructed Dr. GK to stop unauthorized access of medical records of those not his patients

He continued to do so and did not follow the direction provided by the CMO. "I'm a doctor and have the right to access the EMR."

Hospital ordered him to:

- Immediately stop and commit in writing
- Complete HIPAA training
- Complete Ethics training
- Hospital will audit activity for 24 months

Excerpts from Final Essays

Dr. Boss

"My action was not how I could be acting as a trusted, respected person who understands HIPAA. I am less than trustworthy, which is not a physician-clinician and also the trust of the people I work."

"I need to be accountable for my action of accessing a patient's medical information without their knowledge and consent."

"As a physician and employer are both positions of power, ... mixing these roles, I realize, can cause major harm."

PASS

Dr. Gotta Know

"Regarding my continuing to access my mother's record after I was told to stop doing so, the circumstances of my mother's illness, to developing COVID-19 are the reasons for my continued access to the record."

"The unique challenges and the dangers of the COVID-19 pandemic make my continued access understandable, if not justified in the circumstances."

FAIL



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Case Study #4

- Dr. Flirt is a married physician who has practiced at the hospital for a few years. She has made comments on Resident Ted's appearance and body and sent suggestive text messages to him for weeks. Resident Ted has expressed that he wishes to keep their relationship professional.
- When Resident Ted finishes his shift at 7:00 p.m., he begins to leave the Hospital. Dr. Flirt is waiting for him at the Hospital entrance and follows Resident Ted to his car.
- When at his car, Dr. Flirt states that her office is just across the street and tries to kiss Resident Ted. The next day, Resident Ted reports this to his supervising physician.



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Case Study #4

- This is the first complaint regarding Dr. Flirt's behavior.
- Hospital parking lot surveillance cameras confirm Resident Ted's report. He also provides copies of the text messages to the Hospitals.
- The Hospital suspended Dr. Flirt and referred to a boundaries and professionalism remediation course.



Case Study #4

Excerpts from final essay

- "I did not maintain professional and appropriate communication with a resident. I sent him text messages and verbal exchanges with him."
- "I did not consider the consequences to my profession, nor the consequences to my colleagues, the hospital or the patient."
- "My behavior was sexual harassment, and the Hospital has no tolerance for such serious allegations."
- "In the future, I need to draw a clear line and maintain a professional distance with trainees, given the inevitable power differentials."

PASS



Case Study #5

- Dr. Med is a trauma surgeon who was hired by the hospital three years ago. He moved from another community to join his new practice.
- A local pharmacist contacted the hospital with concerns about Dr. Med's prescribing practices.
- Upon investigation, the hospital found Dr. Med was prescribing oxycodone and benzodiazepines without appropriate documentation or a physician-patient relationship.
- Dr. Med acknowledged he was still prescribing occasional benzos to a patient from his prior practice; he had not seen the patient in more than 3 years. He also "helped" his wife with pain management occasionally when she ran out of her medicine.
- He acknowledge issues with his recordkeeping but contended he had a legitimate physician-patient relationship at the time of the prescribing.
- Hospital required him to complete an ethics seminar.

Case Study #5

- Dr. Med was 1 hour late logging in on the first evening of the virtual seminar despite receiving numerous email reminders and phone calls from the staff. When he logged in, he appeared to be sitting on the floor, possibly in an airport.
- The next morning, he logged in from a hotel room and could be seen folding clothes while the session started. There also appeared to be other individuals in the room.
- The faculty put Dr. Med in a breakout room and informed him that he was not meeting the confidentiality and participation expectations of the course. He was asked to log off and told he could rejoin the session when he could meet those requirements.
- He logged back in 30 minutes later and was driving his car.
- He was dismissed from the seminar and not allowed to continue. This was reported to his referring hospital.

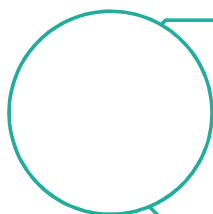
Case Study #6



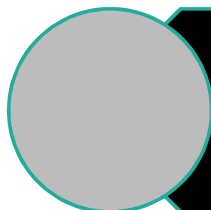
- Young surgeon did wrong site surgery
 - Operative note did not accurately reflect progression of case
- QA committee felt note was evasive and misleading
- Required to attend professionalism intervention and other interventions
- In Seminar, he gained clarity about how to make good decisions when faced with competing pressures

"In his final essay, he acknowledged that he had failed his colleagues, and developed a plan to change his behavior going forward." PROBE Program Director

Other professionalism remediation resources



Federation of State Medical Board
(FSMB)
Directory of Physician Assessment
And Remedial Education Programs



Coalition For Physician
Enhancement
Organizational Member Directory

What happens next?

Peer Review Committee Action/Recommendations

FPPE or Performance Improve Plan	Patient selection issue?	Mandatory consultation
	Harassment?	Monthly meetings with CMO and CNO
	Unprofessional documentation?	Retroactive chart review
	HIPAA violation?	Training and monitoring
	Notice for Physician	Next violation goes directly to MEC for investigation

Summary

- Professionalism, ethics and boundaries issues do occur.
- Bylaws and policies should include a code of conduct.
- Medical Staff and employees should be trained on the code of conduct and reporting system.
- The code of conduct should be enforced consistently and fairly.
- These issues should be investigated and addressed in a timely manner, regardless of the prestige or seniority of the person involved.
- Medical staff professionals should be familiar with the types of intervention available and able to guide their medical staff leaders.

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Thank You!

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**Feel free to contact us if you
have any questions!**