Out of Bounds

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Treated Fairly

Previous Claims Under Further Review

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Learning Objectives

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- Explain the relationship between physician-patient boundaries and professional liability risks
- Identify a previous encounter where expectations were not met
- Recognize the need to apply an internal or external boundary in a patient scenario

Overview

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Boundaries with Patients

- Sexual
- Prescribing
- Treatment relationship

Boundaries with Others

- Healthcare practitioners
- Third-parties

Internal Boundaries

- Burnout
- Impairment

Boundaries with Patients

Boundaries with Patients

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- Sexual
- Prescribing
- Treatment relationship

Sexual Boundaries

Boundaries with Patients

- Prohibition on sexual involvement dates to Hippocratic Oath:
  - "Whatever houses I may visit, I will come for the benefit of the sick, remaining free of all intentional injustice, of all mischief and in particular of sexual relations with both female and male persons. . . ."

Boundaries with Patients

- AMA Ethical Opinion 8.145 discourages relationships with "key third parties" playing integral role in patient-physician relationship
- Sexual relations with *former patients* improper if physician exploits trust, knowledge, emotions or influence derived from professional relationship

AMA Ethics Opinion 8.14 - Sexual Misconduct in the Practice of Medicine

Boundaries with Patients

- Boundary violations can result in direct or indirect professional liability claims
- Indirect claims include negligent training or supervision
  - May depend on type of knowledge (direct or circumstantial)
  - Willful ignorance not a defense

Boundaries with Patients

- Even if sexual misconduct is outside the scope of an employee's job duties, there may be exposure for employer under certain circumstances:
  - Misconduct occurs at place of employment, and
  - Employer knows and can address employee behavior

Boundaries with Patients

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- Case example
  - 59 YOF patient of family practice since 1986 with hx of migraines presents to Dr. X for first time in 2004 c/o migraines and hip pain from osteoarthritis and bursitis
  - Begins affair with Dr. X in 2007 and continues treatment relationship
  - Patient admits affair to nurse in practice and another physician in practice
  - Nurse reports inappropriate behavior to practice CEO

Boundaries with Patients

- Case example
  - Patient begins treatment with psychiatrist in Jan 2010, and confides affair with Dr. X to psychiatrist in April 2010
  - Psychiatrist tells patient of need to report Dr. X to state licensing board for inappropriate behavior
  - Patient ends relationship with Dr. X shortly after revealing affair to psychiatrist and brings suit against Dr. X and practice

Boundaries with Patients

- Case example
  - Allegations against Dr. X include inappropriately engaging in a sexual relationship with the patient
  - Allegations against practice and employer of Dr. X include failing to take reasonable steps to stop inappropriate advances it knew or should have known about

Boundaries with Patients

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- Case example
  - Plaintiff experts: Sexual relationship between physician and patient is breach of standard of care
  - Defense experts: May not be a breach of standard of care if two consenting adults and not at practice, but not a good idea
  - Case settled

Boundaries with Patients

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- Tips for sexual misconduct investigations:
  - Develop culture encouraging reporting
  - Standardize investigation procedures
  - Be fair, objective, and prompt
  - Document findings in separate file, not in patient chart
  - Focus on obtaining relevant facts
  - Consider one-on-one interviews
  - Consider subjective bias

Boundaries with Patients

- Inappropriate contact may be initiated by patients
  - Possible attempt to gain advantage over physician
  - Drug-seeking strategy
- Chaperones may protect physician and patient from allegations of inappropriate conduct

Boundaries with Patients

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- Efforts to provide comfortable and considerate atmosphere for patient and physician part of respecting a patient's dignity
  - Appropriate gowns
  - Private facilities for undressing
  - Sensitive use of draping
  - Clearly explaining various components of physical examination
  - Availability of chaperone

AMA Ethics Opinion 1.2.4, Use of Chaperones

Boundaries with Patients

- Communicate to patients they may request chaperone
- Honor patient's request for chaperone
- Designate authorized health care team member to serve as chaperone

AMA Ethics Opinion 1.2.4, Use of Chaperones

Boundaries with Patients

- Use chaperone even when patient's trusted companion present
- Provide opportunity for private conversation with patient without chaperone present

AMA Ethics Opinion 1.2.4, Use of Chaperones

Boundaries with Patients

- Many states have enacted requirements to offer chaperones (e.g., California, Georgia, Illinois, Louisiana, New Jersey, New York, Ohio)
- Georgia Composite Medical Board considers "unprofessional conduct" to include: "Conducting a physical examination of the breast and/or genitalia of a patient of the opposite sex without a chaperone present"

Ga. Comp. R. & Regs. 360-3-.02(12)

Boundaries with Patients

- Chaperone policy
  - Sets forth chaperone duties
  - Defines circumstances when a chaperone will be offered
  - Requires documentation
    - Observer present
    - Patient consent/refusal

Prescribing Boundaries

Boundaries with Patients

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- Case example
  - Family medicine physician prescribes narcotics to 58 YOF while the patient also treating with pain management doctor
  - Patient terminated by pain management physician for filling forged prescriptions
  - Following termination, family medicine physician increased patient's narcotic prescriptions
  - Patient dies as a result of multiple drug intoxication

Boundaries with Patients

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- Case example
  - Autopsy shows positive results for benzodiazepines and carisoprodol opiates
  - Family medicine physician never checked drug monitoring database
  - No toxicology screen
  - No investigation into circumstances of patient's discharge from pain management; took patient's word that she fired pain management physician

Boundaries with Patients

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- Case example
  - Plaintiff's expert testified physician breached the standard of care with the following allegations:
    - Prescription of medications in quantity, doses, and classifications that function to depress CNS
    - Failure to monitor pain medications prescribed
    - Failure to refer to other specialties (i.e., neurology, psychiatry)
  - Case settled

Boundaries with Patients

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- Treatment plan recommendations:
  - Thorough and updated H&P, including the following:
    - Nature & intensity of pain
    - Current/past diagnostic studies & treatments
    - Underlying coexisting diseases
    - Effect of pain on physical/psychological functioning
    - Screening for substance abuse/depression/suicide

Boundaries with Patients

- Treatment plan recommendations during treatment:
  - Consistent documentation of urine screen results
  - Descriptive qualifiers (i.e. aching, sharp, dull, etc.)
  - Identification of pain locations
  - Pain scale (numeric, pictorial)
  - Impact qualifiers on ADL

Boundaries with Patients

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- Treatment plan recommendations for continuing treatment:
  - Identification of objectives to measure treatment success
  - Documentation of diagnostic studies or consultations planned
  - Documentation of adjustments in drug therapy
  - Documentation of informed consent/pain contract
  - Documentation of regularly scheduled follow-up appointments

Boundaries with Patients

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- Establish expectations and consequences before prescribing controlled substances
  - No prescriptions from other physicians
  - Refills only at scheduled appointments
  - No replacement prescriptions
  - No illicit drug use
  - Medication only used as directed

Boundaries with Patients

- Subject patients to random drug screening
- Establish procedure for randomized pill counts
- Obtain acknowledgement that failure to meet expectations results in termination of treatment relationship or treatment with certain medications
- Memorialize expectations in a controlled substance agreement

Boundaries with Patients

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- Additional Resources
  - "Recommended Curriculum Guidelines for Family Medicine Residents: Chronic Pain Management," American Academy of Family Physicians
  - "Self-Check Tool: Opioid Prescribing," ECRI Institute, March 2018

Boundaries with Patients

- Additional Resources
  - ProAssurance online courses
    - CDC Guideline for Prescribing Opioids for Chronic Pain
    - Basic Principles and Advanced Concepts in Pain Management
    - Pain, Opioids, and Risk Management

Treatment Relationship Boundaries

Boundaries with Patients

- Why seek treatment from friend of family member who is a physician?
  - Convenience, cost, belief in quality of care
- Why provide treatment to friend or family member who requests?
  - Desire to help, pressure

Boundaries with Patients

- Dual roles of friend/family member and medical provider may create conflict of interest
- Requests from friends and family may affect treatment objectivity and consent process

Boundaries with Patients

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- Case example
  - 49 YOM (5'11", 246 lbs.) sees general surgeon with complaints of a cyst on neck and hx of headaches and blurred vision
  - Patient's wife is employee of wound center that employs surgeon
  - Visit with surgeon initiated by wife who asks surgeon to "take a look at her husband" as he could not see his PCP for two weeks

Boundaries with Patients

- Case example
  - Surgeon performs examination and recommends excision of the cyst
  - Cyst is excised completely and patient discharged
  - 1 week later, patient calls and c/o inability to elevate shoulder
  - Surgeon recommends seeing a neurosurgeon immediately to investigate possible nerve injury and even gets patient appointment to see neurosurgeon the following day

Boundaries with Patients

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- Case example
  - Patient delays visit to neurosurgeon to accommodate his own schedule, but eventually is diagnosed with severe spinal accessory nerve injury at C5 level
  - Neurosurgeon performs external neuroplasty and sural nerve graft of left spinal accessory nerve taken from patient's leg
  - Following neuroplasty, patient claims limited ability to raise arm and neuropathy from vein harvesting

Boundaries with Patients

- Case example
  - Lawsuit filed against general surgeon who removed cyst
    - Plaintiff's expert: surgeon negligently severed nerves near the cyst and underestimated complexity of procedure
    - Defendant's expert: met standard of care; however, physician should have documented complex procedure in greater detail
    - No informed consent documentation
  - Case settled

Boundaries with Patients

- Case example
  - Surgeon performed cyst excision as favor to co-worker
  - No documentation of consent or that patient appreciated the risks associated with procedure
  - Difficult to defend whether or not surgeon met standard of care

Boundaries with Patients

- American Medical Association cautions against treatment of self and family members
  - Exceptions:
    - Emergency or isolated settings
    - Short-term, minor problems

AMA Ethical Opinion 8.19; AMA Ethical Opinion 1.2.1

Boundaries with Patients

- Specialty societies like the American College of Physicians and the American Academy of Pediatrics also caution against treatment of close friends

"Providing Medical Care to Oneself; Persons with Whom the Patient Has a Prior Non-Professional Relationship; and VIPs," *ACP Ethics Manual*, (6th ed.)

American Academy of Pediatrics Committee on Bioethics, Policy Statement: Pediatrician-Family-Patient-Relationships: Managing the Boundaries," *Pediatrics*, 124:6 (2009)

Boundaries with Patients

- When treating family members, consider the following:
  - Consistent documentation
  - Communication with primary physician
  - Effect of one relationship on the other
  - Scope of practice
  - Reluctance to share info or submit to examination
  - Prescription concerns

Boundaries With Patients

- Many states require physicians to document encounters with family members in a formal medical record, e.g.:
  - North Carolina: physicians must prepare and keep a proper written record of any treatment
  - Virginia: records must be maintained of all written prescriptions or administrations of an drug
  - Massachusetts: documented medical history and physical exam before prescribing medication
  - Louisiana: physicians shall not prescribe controlled substances for themselves or their immediate family members

North Carolina Rules 32B.1001, 32S.0212 and 32M.0109, Code of Virginia, Regulation 18VAC85-20-25, 243 Code Mass. Regs 2.07(19), La. Admin Code tit.46, Pt XLV, § 7603

Boundaries with Others

Boundaries with Others

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- Healthcare practitioners
- Third-parties

Boundaries with Healthcare Practitioners

Boundaries with Others

- Care coordination
  - Sharing relevant patient-specific information to organize appropriate care
  - Physicians and other practitioners concurrently caring for patient
- Compare to…handoff communication
  - Sharing relevant patient-specific information to organize appropriate care
  - Transfer from one physician or practitioner to another

Boundaries with Others

- Concerns for both ineffective care coordination and handoff communication:
  - Different expectations
  - Incorrect or insufficient information
  - Unexpected or adverse outcomes

Boundaries with Others

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- Case Example
  - 25-YOF presents to Family Physician for OB care at 13 weeks
  - FP suspects twins and refers to OB for ultrasound at 17 weeks
  - Ultrasound performed at 20 weeks by OB reveals dichorionic twin pregnancy
  - Pt continues prenatal visits with FP and ultrasounds by OB

Boundaries with Others

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- Case Example
  - Subsequent ultrasounds do not address type of twin pregnancy
  - Patient admitted to hospital for preterm contractions at 33 weeks
  - Both FP and OB evaluate patient, issue orders and write discharge summaries
  - Patient presents to hospital in labor at 38 weeks
  - FP notes decelerations on fetal monitoring strips for Twin B; pages OB for C-section

Boundaries with Others

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- Case Example
  - After C-section, Twin B transferred to another hospital with dx: respiratory failure, cardiac arrest, hypoglycemia; presumed septic
  - Pathology report on placenta and re-reading of initial 20-week ultrasound reveals pregnancy as diamniotic monochorionic, not dichorionic
  - Patient sues FP and OB

Boundaries with Others

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- What was missing?
  - Coordination of care
    - No confirmation of scope of care for either physician
    - No specific communication between physicians
    - No documentation of scope of care, e.g., formal referral letter or references in patient chart

Boundaries with Others

- 2014 study of resident handoff-improvement program in nine hospitals measured rates of medical errors, preventable adverse events, miscommunications, and resident workflow
- Interventions included mnemonic-based standardization for handoffs, specific handoff communication training & faculty observation program
- 10,740 patient admissions analyzed
  - 23% medical error rate decrease
  - 30% preventable adverse events decrease
  - No significant time change in duration of handoffs or resident workflow

Amy J. Starmer, M.D., et al., "Changes in Medical Errors after Implementation of a Handoff Program," *New England Journal of Medicine*, November 6, 2014.

Boundaries with Others

- Tips for coordinating care
  - Consider mnemonic for standardization, e.g, SBAR or IPASS
  - Use referral letters/consultation reports to document expectations
  - Raise level of communication to clarify more complex matters, i.e., if too complex to describe in written documentation or communication, make a phone call

Boundaries with Third Parties

Boundaries with Others

- Third-parties with relevant interests in medical decisions:
  - Insurers
    - Health Insurers
    - Worker's compensation insurers
  - Litigants/attorneys in judicial/administrative actions
  - Pharmacies

Boundaries with Others

- For those patients whose treatment requires prior authorization, how often does this process delay access to necessary care?
- 91% report care delays
  - 44% sometimes, 36% often, and 11% always

2018 American Medical Association Prior Authorization (PA) Physician Survey

Boundaries with Others

- Case Example
  - 52 YOM truck driver presents to PCP c/o lower back pain radiating down to leg
  - Complaints are alleged to be workplace injuries, so worker's compensation insurer involved
  - PCP refers patient to neurosurgeon
  - Before appt with neurosurgeon, patient calls PCP and reports loss of bowel control

Boundaries with Others

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- Case Example
  - PCP instructs Patient to go to ED and reports same to Patient's worker's compensation (WC) case manager
  - WC case manager contacts Patient, who reports that he lost control of bowels because he could not get to bathroom in time
  - WC case manager instructs Patient that there is no need to report to ED

Boundaries with Others

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- Case Example
  - Patient does not report to ED, and eventually receives dx of cauda equina syndrome
  - Patient sues PCP and practice, alleging failure to recognize the signs and symptoms and properly treat cauda equina syndrome

Boundaries with Others

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- Tips for third-party involvement
  - Provide medical recommendations based on clinical findings, regardless of reimbursement decisions of third-parties
  - Advise patients of consequences to noncompliance with recommendations, especially in emergent situations
  - Document thoroughly treatment recommendations and potential consequences to patient

Internal Boundaries

Internal Boundaries

- 15,069 Physicians surveyed in 2018
  - Actively practicing within United States
- Respondents represent 29 specialties

Medscape National Physician Burnout, Depression & Suicide Report, 2019

Internal Boundaries

- Burnout defined:
  - Overwhelming exhaustion
  - Feelings of cynicism
  - Detachment from work
  - Sense of ineffectiveness
  - Sense of lack of accomplishment

Physician Wellness and Burnout: Report and Recommendations of the Workgroup on Physician Wellness and Burnout, Federation of State Medical Boards, April 2018.

Internal Boundaries

- Burned-out physicians more prone to:
  - Unprofessional behavior
  - Surgical and diagnostic medical errors
  - Loss of patient trust

Physician Wellness and Burnout: Report and Recommendations of the Workgroup on Physician Wellness and Burnout, Federation of State Medical Boards, April 2018.

Internal Boundaries

- Factors contributing to burnout include:
  - Choice of specialty
  - Control over work environment
  - Maximum standardization of processes
  - Frustration from EHR system complexity
  - Non-career contributing factors (e.g., family issues)

Physician Wellness and Burnout: Report and Recommendations of the Workgroup on Physician Wellness and Burnout, Federation of State Medical Boards, April 2018.

Internal Boundaries

- Physicians in middle of careers at highest risk
- Mental illness and substance abuse disorders compound struggle with burnout
- Disproportionate risk of suicide vs general population

Physician Wellness and Burnout: Report and Recommendations of the Workgroup on Physician Wellness and Burnout, Federation of State Medical Boards, April 2018.

Internal Boundaries

- Survey of 6695 Physicians in Active Practice
- 60 Questions
  - Tracked specialties
  - Documented weekly working hours
  - Questions assessed burnout and well-being

Tawfik, Daniel S., et al., "Physician Burnout, Well-being, and Work Unit Safety Grades in Relationship to Reported Medical Errors," Mayo Clin. Proc. XXX, (2018).

Internal Boundaries

- 691 (10.5%) of respondents reported major medical error within previous three months
  - Most common categories: error in judgment, wrong diagnosis, and technical mistake
  - Highest prone specialties: radiology, neurosurgery, and emergency medicine

Tawfik, Daniel S., et al., "Physician Burnout, Well-being, and Work Unit Safety Grades in Relationship to Reported Medical Errors," Mayo Clin. Proc. XXX, (2018)

Internal Boundaries

- Those reporting medical errors were more likely to have:
  - Symptoms of burnout (77.6% vs. 51.5%)
  - Fatigue (46.6% vs. 31.2%)
  - Recent suicidal ideations (12.7% vs. 5.8%)

Tawfik, Daniel S., et al., "Physician Burnout, Well-being, and Work Unit Safety Grades in Relationship to Reported Medical Errors," Mayo Clin. Proc. XXX, (2018)

Internal Boundaries

- What is your organization doing to address the issue?

  - "Mostly lip service. I'm constantly reminded of how differently administrators and physicians see the world."

    -Executive at Non-Profit Health System

Swensen, et al., "Leadership Survey: Why Physician Burnout is Endemic, and How Health Care Must Respond," NEJM Catalyst, December 8, 2016.

Internal Boundaries

- What is your organization doing to address the issue?
  - "Discussion and scheduled time off."

    -Clinician at Teaching Hospital
  - "Aggressively telling us to get over it or leave. It's very hostile."

    -Clinician in mid-sized health system

Swensen, et al., "Leadership Survey: Why Physician Burnout is Endemic, and How Health Care Must Respond," NEJM Catalyst, December 8, 2016.

Internal Boundaries

- What is your organization doing to address the issue?
  - "Very little. Within our group, we have created a 'relaxing' or 'time out' zone to take a break. We are also trying to equally manage and control our workload."

    -Clinical leader at teaching hospital.

Swensen, et al., "Leadership Survey: Why Physician Burnout is Endemic, and How Health Care Must Respond," NEJM Catalyst, December 8, 2016.

Thank You

Please complete your evaluation