

Colorado State Board of Medical Examiners Policy

POLICY NUMBER:	10-12
Title:	Sexual Misconduct Statement and Policy
Date Issued:	11/8/93
Date(s) Revised:	11/13/03
Reference:	12-36-117(1)(p) and (1)(r), C.R.S.
Purpose:	To put licensees on notice as to the Board's position on sexual contact with current and former patients.

POLICY: On November 8, 1993, the Board of Medical Examiners adopted the below policy statement regarding sexual misconduct.

COLORADO STATE BOARD OF MEDICAL EXAMINERS SEXUAL MISCONDUCT STATEMENT AND POLICY

INTRODUCTION

...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...

The prohibition against sexual contact between a physician and a patient is well established and is embodied in the Hippocratic Oath, a time-honored basis for ethical behavior by physicians. The reason for this proscription is the awareness of the adverse effects of such conduct on patients. The report of the Council on Ethical and Judicial Affairs of the American Medical Association indicates that most researchers now agree that the effects of physician-patient sexual contact are almost always negative or damaging to the patient. Patients are often left feeling humiliated, mistreated, or exploited.

Believing that a patient has a right to trust and believe that a physician is dedicated solely to the patient's best interests, the Colorado State Board of Medical Examiners takes a strong stand against physicians who exploit patients sexually. Discipline will be imposed as appropriate to protect the public. Introduction of sexual behavior into the professional relationship violates this trust because the physician's own personal interests compete with the interests of the patient. This violation of trust produces not only serious negative psychological consequences for the individual patient but also destroys the trust of the public in the profession.

Sexual contact with a patient occurs in many circumstances ranging from situations where a physician is unable to effectively manage the emotional aspects of the physician-patient relationship to consciously exploitative situations. Underlying most situations is a disparity of power and authority and a physically or emotionally vulnerable patient.

The prohibition against sexual contact between a physician and a patient is not intended to inhibit the compassionate and caring aspects of a physician's practice. Rather, the prohibition is aimed at behaviors which overstep the boundaries of the professional relationship. When boundaries are violated, the physician's patient may become the physician's victim. The physician is the one who must recognize and set the boundaries between the care and compassion appropriate to medical treatment and the emotional responses which may lead to sexual misconduct.

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The Colorado State Board of Medical Examiners is charged with the duty of protecting the public against the unprofessional actions of physicians licensed to practice medicine in Colorado. The Medical Practice Act defines unprofessional conduct to include sexual contact with a patient during the course of patient care or within six months immediately following the termination of the licensee's professional relationship with the patient. C.R.S. 12-36-117(1)(r). A physician's sexual contact with a patient is a violation of this statute and subjects a physician's license to disciplinary action by the Board.

The Medical Board's responsibility to ensure that the public is protected from future misconduct is consistent with actions taken by the Board in sexual misconduct cases. In some instances, revocation is the only means by which the public can be protected. In other cases, the Medical Board may restrict and monitor the practice of a physician who is actively engaged in a rehabilitation program. Rehabilitation of a physician is a secondary goal that may be pursued if the Medical Board can be assured that the public is not at risk for recurrence of the misconduct.

It is the physician's responsibility to maintain the boundaries of the professional relationship by avoiding and refraining from sexual contact with patients. To this end, the Medical Board encourages and strongly recommends the following:

1. Physicians must respect a patient's dignity at all times and should provide appropriate gowns and private facilities for dressing, undressing and examination. In most situations, a physician should not be present in the room when a patient is dressing or undressing.
2. A physician may wish to consider having a chaperon present during examination of any sensitive parts of the body for protection of both the patient and the physician. A physician should refuse to examine sensitive parts of a patient's body without a chaperon present if the physician believes the patient is sexualizing the examination.
3. To minimize misunderstandings 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.
4. Physicians should choose their words carefully so that their communications with a patient are clear, appropriate and professional.
5. Physicians should be alert to feelings of sexual attraction to a patient and may wish to discuss such feelings with a colleague. 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 and should seek help in understanding and resolving feelings of sexual attraction without acting on them.
6. 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.
7. Physicians should not discuss their intimate personal problems/lives with patients.
8. Physicians should seek out information and formal education in the area of sexual attraction to patients and sexual misconduct, and should in turn educate other health care providers and students.

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In addition, the Medical Board reminds all physicians of their statutory duty to report to the Board any physician known or believed to have engaged in sexual misconduct, or any act which may constitute unprofessional conduct or which may indicate that a physician is unable to practice medicine with reasonable skill or safety to patients.

SEXUAL MISCONDUCT POLICY

- I. **SEXUAL MISCONDUCT.** Sexual contact with a patient is sexual misconduct and is a violation of C.R.S. 12-36-117(1)(r).
- II. **DEFINITIONS.** C.R.S. 12-36-117(1)(r) defines unprofessional conduct as "engaging in a sexual act with a patient during the course of patient care or within six months immediately following the termination of the licensee's professional relationship with the patient." A sexual act is defined as "sexual contact, sexual intrusion, or sexual penetration as defined in Section 18-3-401, C.R.S."
 - A) Section 18-3-401(4) defines sexual contact as: the knowingly touching of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or the knowingly touching of the clothing covering the immediate area of the victim's or actor's intimate parts if that sexual contact can reasonably be construed as being for the purposes of sexual arousal, gratification, or abuse.
 - B) Section 18-3-401(5) defines sexual intrusion as: "any intrusion, however slight, by any object or any part of a person's body, except the mouth, tongue, or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification, or abuse."
 - C) Section 18-3-401(6) defines sexual penetration as: "sexual intercourse, cunnilingus, fellatio, anilingus, or anal intercourse. Emission need not be proved as an element of any sexual penetration. Any penetration, however slight, is sufficient...".
 - D) Section 18-3-401(2) defines intimate parts as: "the external genitalia or the perineum or the anus or the pubes or the breasts of any person."
 - E) "During the course of patient care" encompasses all sexual acts between the physician and patient during the period of time a physician-patient relationship exists and not just during times of actual examination or treatment.
- III. **DIAGNOSIS AND TREATMENT.** Sexual behavior or involvement with a patient excludes verbal or physical behavior that is required for medically recognized diagnostic or treatment purposes when such behavior is accomplished in a manner that meets the standard of care appropriate to the diagnostic or treatment situation.
- IV. **PATIENT.** The determination of when a person is a patient for purposes of C.R.S. 12-36-117(1)(r) 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. The fact that a person is not actively receiving treatment or professional services from a physician is not determinative of this issue. A person is presumed to remain a patient until the physician-patient relationship is terminated.
- V. **TERMINATION OF PHYSICIAN-PATIENT RELATIONSHIP.** Once a physician-patient relationship has been established, the physician has the responsibility to establish that the relationship no longer exists. The mere passage of time since the patient's last visit to the

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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 purposes of C.R.S. 12-36-117(1)(r) 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; the extent of the physician's general knowledge about the patient.

- A) Some physician-patient relationships may never terminate because of the nature and extent of the relationship. These relationships may always raise concerns of sexual misconduct whenever there is sexual contact.
 - B) Sexual contact between a physician and a former patient more than six months after termination of the physician-patient relationship may still constitute unprofessional conduct under other sections of the Medical Practice Act if the sexual contact is a result of the exploitation of trust, knowledge, influence or emotions derived from the professional relationship.
- VI. CONSENT.** A patient's consent to, initiation of or participation in sexual behavior or involvement with a physician does not change the nature of the conduct nor lift the statutory prohibition.
- 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 C.R.S. 12-36-117(1)(o). Any such condition is also defined as unprofessional conduct.
- VIII. OTHER STATUTORY PROHIBITIONS.** Sexual contact with patients may also constitute the basis for other forms of unprofessional conduct under the Medical Practice Act. For example, engaging in sexual contact with a patient may also fall below generally accepted standards of professional practice and so constitute a violation of C.R.S. 12-36-117(1)(p). Furthermore, to the extent that the sexual contact results in a conviction of a felony, it is also unprofessional conduct under C.R.S. 12-36-117(1)(f).
- IX. 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 C.R.S. 12-36-118(5)(g)(III) and include restriction or limitation of the physician's practice, suspension, or revocation of the physician's license.