Sexual Misconduct: Myth vs. Fact

WASHINGTON Medical Commission
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A touch, a word or a look can be reassuring to a patient, but it can also be interpreted as sexual assault or misconduct in today's environment. What may have been okay 30 years ago is no longer appropriate and it is up to you to learn the difference. Here are some hard and fast rules that you should incorporate into your practice if you haven't already done so:

- Never help a patient disrobe – there is no appropriate way to interpret that. If you want a patient to change into a robe, you need to leave the room and give them privacy. If the patient is a minor and needs assistance, have the parent help.
- Never pat a patient on the buttocks or in that general region.
- Never touch their hair, smell their hair or comment about their appearance unless it is pertinent to the examination, diagnosis and/or treatment plan.
- Stating a clinical observation is generally ok; relating that observation to their dating or sex life is not.
- Don't talk about their sex life, your sex life, anyone's sex life, unless it is pertinent to the examination, diagnosis and/ or treatment plan.
- Entering into a dating or sexual relationship consensually, or in exchange for services (such as prescriptions) is never allowed. Regardless whether or not they are a current patient, there will always be a power imbalance.
- Many acts performed by practitioners, when non-consensual or when the patient is unable to consent, legally constitute sexual assault and could result in criminal conviction.

Common misconceptions about sexual misconduct may lead you down a path you don't want to go. It behooves you to know the boundaries. Here are some examples from Washington and other jurisdictions:

1. **MYTH**: It is okay so long as there is no power imbalance. Some argue that a sexual relationship between practitioner and patient is not abusive when it is consensual.
   FACT: Expert evidence in a Texas case against a practitioner stated that a practitioner *always* has inherent power over a patient. Patients come to practitioners with a health condition or a need and are relying on the judgment and expertise of the practitioner.
2. **MYTH**: It's okay because no one can prove anything.
   FACT: Most sexual misconduct happens between two people, without outside witnesses, but that does not mean the misconduct cannot be proven. In a case from Canada, a client made a bizarre sounding allegation that the practitioner had put his penis on her forehead as she lay on the treatment table. No one else was present in the office. The practitioner denied the allegation and suggested the patient had misinterpreted his shirt tail as his penis. The Canadian Discipline Committee found the patient credible, not the practitioner. A significant reason they found the practitioner not credible was forensic evidence. He had rewritten part of his chart in an attempt to create doubt about the client's story and to establish that the client was a chronic liar.
3. **MYTH**: It's okay because no one is going to tell. Where a sexual relationship is consensual and is conducted privately, a practitioner may believe that no one will find out.
   FACT: Time passes, circumstances change and there is no statute of limitations on unprofessional conduct. In a Washington case, a practitioner and a patient began a sexual relationship while the patient was still being treated by the practitioner. They married. Years passed. No one knew that their sexual relationship had begun during the course of their earlier professional relationship. Then the marriage failed and the patient/spouse filed a complaint. While one can question the motivation for making the complaint then, the practitioner was found to have engaged in unprofessional conduct and was disciplined by the Medical Commission.

It's great to be a concerned practitioner, but when that concern is misconstrued by a patient, or goes beyond legitimate concern, it may lead to an accusation of sexual misconduct, or worse, actual sexual abuse or assault. Be alert and be safe.