Abuse of a Patient… A Clinical Perspective

WASHINGTON Medical Commission
Licensing. Accountability. Leadership.

Diana Currie, MD
WMC Physician at Large

If you're like me you weren't taught anything about the laws that govern licensees in the health professions when you were in school. The goal of this article is to educate you about an important part of the law so you don't end up learning about it "the hard way."

The Uniform Disciplinary Act for the Regulation of Health Professions (UDA for short) is found in chapter 18.130 of the Revised Code of Washington (RCW). When the WMC investigates complaints from the public, we evaluate if there was 'Unprofessional Conduct' according to UDA subsection RCW 18.130.180. Listed under Unprofessional Conduct are 28 variations that constitute a violation of the UDA. Some are obvious such as: don't commit fraud, don't hire an unlicensed person in your practice, don't misrepresent yourself or your credentials, don't come to work intoxicated or with a serious infectious disease. Some are a little arcane, such as (19) "the offering undertaking or agreeing to cure or treat a disease by a secret method". One of these, (24) "Abuse of a client or patient or sexual contact with a client or patient", is unfortunately a source of many of the complaints we receive here at the WMC.

The Washington Administrative Code (WAC) for Physicians and Physician Assistants is the interpretation of the RCW. It is the means by which the RCW is understood and implemented on a practical level. The category of **abuse (**WAC 246-919-640) is an interesting one and the name, in my opinion, is a bit misleading. Personally, I think of it as behavior that could be misconstrued or experienced as inappropriate or offensive by a patient.

Many common activities that we routinely perform could be a potential violation depending upon how a patient interprets the situation. During an exam, for example, taking a patient's clothing or gown off or just moving it to one side to expose a body area *without adequate explanation and consent* is a potential violation of paragraph (b). Asking personal questions about the patient's sexuality, sex life or gender without clearly explaining why the information is relevant to the chief complaint or medical condition being evaluated is a violation of (a). Making casual comments, using casual or slang language, could be construed as disrespectful by a patient, and cause them to feel embarrassed or demeaned which could be a violation of paragraph (d). Making comments about a patient's hair, body, clothing or appearance, even as a way to establish rapport, could be misconstrued by a patient and taken the wrong way (a).

We realize this may feel unfairly restrictive, but it behooves us all to remember that we work with a wide variety of people from many different backgrounds and cultures and what we think of as a benign comment could be misinterpreted by a patient who comes from a different background than our own. It is always safest to remain very professional, use only professional language, and keep non-medical comments general and as broadly socially acceptable as possible. The general advice about steering clear of all talk of religion, sex or politics applies here as well. We receive many complaints from patients that allege the provider was inappropriate, disrespectful, rude, dismissive, arrogant and when we investigate it turns out there was a communication issue. The provider meant to be funny, but the patient was offended. The provider paid a complement, but the patient did not understand it as such. The provider said something about politics or religion and the patient felt threatened.

A frequent scenario we find when we investigate allegations about a disruptive or rude provider is the provider is trying to explain something, maybe interrupts the patient, or doesn't give weight to a certain symptom, (often because the symptom doesn't shed light on the diagnosis) and the patient feels unheard or that their concerns are brushed off as unimportant which leads the patient to feel threatened, humiliated, or angry. Our advice: try to explain your reasoning, explain what you are doing, why a concern of theirs isn't a concern for you,

and check the patient understands. If you don't know why they have a certain symptom, sympathize and tell the patient you don't know, offer follow up or a referral for a second opinion. Patients want to be taken seriously and sometimes in our hectic world we forget there is a worried human who thinks the hangnail is a cancer. Chuckling and brushing it off may lead to a call from the WMC that could be avoided with a little sympathy, brief explanation, and reassurance.

While most behavior that constitutes **sexual misconduct** is likely very apparent, it is worth pointing out some less obvious aspects of this law. Not only is it not OK to have sex with a patient, it is also not OK to have sex with a ***key third party*** which is explained 1b in the sexual misconduct WAC. Paragraph 1(g) states ***that not allowing a patient the privacy to dress or undress*** can constitute sexual misconduct. Paragraph (7) **states it is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.** Finally, for those of us who do pelvic exams all day, paragraph (6) reassures us the WAC does *not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.*

As a parting reminder to help us all stay out of trouble, the WMC has developed policies, rules, guidelines and interpretative statements to guide practitioners. These contain recommendations, opinions, and also explain the WMC's current approaches to particular issues. There is a guideline on sexual misconduct, discrimination in healthcare, informed consent and many others.

Abuse: WAC 246-919-640 (Physicians) and WAC 246-918-420 (Physician Assistants) are essentially identical.

Sexual misconduct: WAC 246-919-630 (physicians) and WAC 246-918-410 (physician associates) are essentially identical.