Healthcare
INBRIEF®

A Risk Management Bulletin for Allied Healthcare Facilities | 2024 Issue 1

Professional Boundaries: Five Strategies to Prevent Sexual Misconduct and Abuse

Professional boundary violations – i.e., actions that go beyond the accepted limits of the provider-patient/client relationship, up to and including sexual misconduct and abuse – appear to be on the rise in healthcare settings. According to the Joint Commission, "assault, rape/sexual assault/homicide" in healthcare settings were the third most common sentinel event in 2023, up from the sixth most frequent in 2022.* (To review the Joint Commission's definition of sexual assault/abuse within the Sentinel Event Policy, click here.)

These crimes may have serious consequences not only for the individuals who commit them, but also for organizations and practices deemed responsible for having hired, supervised and/or retained known perpetrators. In fact, sexual abuse by healthcare professionals has emerged as a major area of mass tort litigation, with some cases involving over 200 victimized patients/clients and resulting in massive indemnity payments on behalf of providers and organizations.

Sexual abuse has become a larger issue in recent years, both legally and culturally. As social attitudes evolve, some states have passed "reviver" laws, which permit adult survivors of childhood sexual abuse to bring civil claims after the statute of limitations has expired, while other states have eliminated statutes of limitations altogether for abuse cases. As a result, victims are displaying a greater willingness to seek redress, and society as a whole – including the healthcare industry – is taking action to increase accountability and prevent future occurrences.

This edition of *inBrief*® offers a range of risk management strategies to detect and prevent professional misconduct and sexual abuse, which can be grouped into five core directives:

1. **Define sexual abuse and molestation,** as well as actions that constitute boundary violations.
2. **Develop sound policies and procedures** with respect to investigating and reporting incidents, as well as ongoing compliance monitoring.
3. **Educate providers and staff** about the signs of abuse and the typical patterns of unprofessional and predatory conduct.
4. **Acknowledge the existence of "predatory blindness"** in order to better counteract its effects.
5. **Establish an anti-abuse campaign** highlighting the organization's zero tolerance policy for boundary violations and sexual abuse.

1. Define sexual abuse and molestation.

Organizations should clearly define sexual abuse and molestation in written policy. The CNA insurance companies define them in the following manner:

Any actual, alleged, attempted, proposed or threatened:

(i) molestation, abuse, assault or battery of any person, including, but not limited to, any sexual molestation, physical, mental or sexual abuse, or sexual assault or battery, whether negligent or intentional;

(ii) sexual, sexually-related or erotic activity, including but not limited to consensual, or nonconsensual sexual activity or intimacy, sexual harassment, sexual exploitation, sexual gestures, undue familiarity or voyeurism; or

* This includes events involving staff to patient perpetrations, as well as patient to patient, patient to staff, or visitor to patient or staff.

(iii) conduct as set forth in paragraphs (i) and (ii) above that is in violation, or alleged violation, of any applicable professional code of ethics or code of conduct.

In defining abuse, organizations should objectively describe the early warning signs of predatory behavior and emphasize that it typically occurs on a continuum, beginning with subtle and seemingly innocuous boundary crossings, which may take the form of special treatment. Over time, the patient/client develops a heightened trust in the provider and comes to believe that there is a tight personal bond between them, which might open the door to blatantly harmful and coercive acts. This is why it is so important for organizations to guard against even minor violations of professional limits.

The diagram below illustrates some of the more common steps and actions along the pathway to sexual abuse.

2. Develop sound policies and procedures.

Although individual perpetrators commit the crimes, organizations may be considered complicit if they fail to implement effective measures designed to prevent and respond to incidents of sexual abuse. The following strategies are a useful starting point when reviewing and updating abuse-related policies and procedures:

Background screening for all hired and contracted workers. Professional, criminal and sex-offender background checks can help ensure that providers and staff are qualified to care for vulnerable patients/clients. A documented check should be conducted in all states where an applicant has lived or worked, and it should include past crimes and pending criminal investigations, as well as professional references, licensure restrictions and disciplinary actions. Personnel files also should include a documented query of the National Sex Offender Registry, along with a signed attestation from the potential employee affirming that there is no past history of professional misconduct or abuse.

Use of chaperones during sensitive care encounters. The following tasks, among others, are considered sensitive in nature, therefore the inclusion of a trained medical chaperone is advisable, if not otherwise required by state law:

- **Performing any clinical task involving the genitalia, rectum or breasts,** including administration of drugs or insertion of medical devices.
- **Cleaning or massaging a patient,** or having any other contact with an intimate body part.
- **Conducting full-body examinations** that require the patient to disrobe.

A Common Pathway to Sexual Misconduct and Abuse

Boundary Crossings

A deviation from professional behavior that seems harmless in nature and is presented as meeting the special needs of the patient/client.

Examples:

- **Accommodating the patient/client** with a convenient appointment time not available to other patients/clients.
- **Taking on tasks beyond the job description,** such as delivering prescriptions or providing transportation to appointments.
- **Sharing personal information,** such as a home address or cell phone number, to facilitate contact with the patient/client.
- **Reducing fees** or refraining from billing the patient/client.

Boundary Violations

An action that furthers the provider's agenda rather than the patient's/client's interest, and which often becomes habitual.

Examples:

- **Scheduling appointments after clinical hours** and/or offering longer encounters.
- **Connecting on social media** for non-clinical purposes.
- **Socializing** outside of the clinical setting.
- **Prying** into personal affairs.
- **Asking the patient/client for professional advice,** e.g., on financial or legal matters.
- **Borrowing money** or requesting other favors.
- **Prolonging clinical relationships** when a referral is indicated.
- **Keeping secrets** with or for the patient/client.
- **Posting encounter-related information** on social media outlets.

Sexual Misconduct and Abuse

Any behavior that is overtly sexual in nature or may reasonably be interpreted by the patient/client as sexual.

Examples:

- **Flirting** or undue touching.
- **Disclosing sexual fantasies** or otherwise engaging in seductive, demeaning or harassing behaviors.
- **Non-consensual contact,** especially with the breasts, buttocks or perineal area.
- **Coercing the patient/client,** e.g., forced nudity or providing care in exchange for sexual favors.
- **Making and distributing sexually explicit images** or recordings of the patient/client.
- **Assaulting the patient/client,** i.e., committing rape, sodomy or any other form of sexual violence.

It should be underscored that chaperones are only one element of a comprehensive abuse prevention strategy, and that the other practices described in this section are of equal importance. (For additional procedural recommendations and provider expectations regarding chaperones, see *AlertBulletin*® 2020-Issue 1, "Medical Chaperones: Drafting Effective Policies and Procedures.")

Reporting protocols. Healthcare organizations and office practices should implement a policy to ensure that all perceived acts of sexual abuse and boundary violations are reported in a thorough, accurate and timely manner to leadership, protective service organizations, law enforcement agencies, state licensing boards and insurers. The policy should permit victims and witnesses of abuse to make anonymous reports, if they choose, and that staff members are free to inform superiors of any suspicious actions they notice without fear of retaliation. Prior to implementation, and periodically thereafter, the reporting policy should be reviewed by legal counsel, and staff compliance with it should be monitored on an ongoing basis by organizational leadership or practice managers.

Investigation and documentation. For multiple reasons – including patient/client welfare, regulatory compliance, quality improvement, basic accountability and legal defense – all incidents must be impartially and comprehensively investigated and documented. Although policies in this area may vary, they should, at a minimum, address the following procedural elements:

- **Investigative team selection,** making sure to appoint only those individuals who are unbiased, rigorous in pursuit of facts and capable of full transparency.
- **Required interviews,** including primary interviews with the alleged offender, complainant and/or the patient/client or surrogate, as well as secondary interviews with subsequent treating providers, colleagues of the alleged offender and staff working at the facility.
- **Compilation of physical evidence,** if any exists, as well as relevant video footage, photographs or documents.
- **Detailed reporting** on such issues as the nature of the incident, when it occurred, presence of witnesses, and whether the behavior was abusive, manipulative and/or unethical.
- **Time frames for commencing and completing investigations,** as well as for mandatory reporting to law enforcement agencies and other regulatory bodies.
- **Disposition of alleged offender** pending the investigation, e.g., removal from clinical setting or suspension of privileges.
- **Documentation of all pertinent investigative findings,** interview summaries and external reports.

Of note, organizations must be cognizant of the risk of data discoverability in the event of litigation, and adopt measures that preserve and protect sensitive information and documents from unwanted disclosure. To that end, incident investigation should be conducted under the aegis of risk management and legal counsel. It is also advisable that a written protocol address methods for secure storage of investigative reports and supporting materials, as well as prescribed retention periods, in order to reduce exposure to claims of evidence spoliation.

Compliance monitoring. Organizations are well-advised to establish a committee – comprising senior leaders and clinical representatives – to monitor all processes, policies and procedures related to sexual abuse prevention and response. In smaller organizations or office practices, the practice manager or a qualified staff member may be assigned to champion the process.

3. Educate the workforce.

Education and training about boundary violations and sexual misconduct/abuse prevention should be provided upon hire and annually thereafter to all staff, including leadership, physicians, advanced practice providers, clinical staff, therapists and counselors, volunteers, and contracted workers and service providers. Training sessions should …

- **Define misconduct** and discuss professional ethics and boundaries.
- **Provide examples of inappropriate acts** involving every type of healthcare professional, including physicians, nurse practitioners, physician assistants, nurses, therapists and counselors.
- **Offer guidance** on how to identify suspicious behavior and potential perpetrators.
- **Present reporting, investigation and documentation protocols** relating to sexual misconduct.
- **Emphasize that retaliation will not be tolerated** against those who report incidents.

4. Acknowledge the reality of "predatory blindness."

On occasion, perpetrators have been allowed to continue working despite ongoing complaints, vocalized suspicions and internal investigations. Abusers are often well-trained experts, who rationalize their boundary-crossing actions as a necessary element of patient/client care and attribute accusations to misunderstandings. Allegations against these high-status figures may be met with disbelief due to a phenomenon known as "predatory blindness" – i.e., a tendency to ignore or dismiss suspect behavior, thus enabling the abuse to continue. Predatory blindness is nourished by a culture of silence within organizations and a naïve belief that healthcare professionals always conduct themselves ethically.

In addition, it is estimated that only 5 to 10 percent of victimized patients/clients report sexual abuse committed by physicians. There are multiple reasons for this under-reporting, including feelings of shame on the part of the victim, unclear expectations concerning sensitive medical exams and treatment, and submissiveness toward widely respected authority figures within the hierarchical clinical environment. Furthermore, abused patients/clients may not know how to respond to misconduct and whether their accounts will be believed.

One effective method of combating predatory blindness – in addition to policy-making and staff education efforts – is to incorporate sexual misconduct awareness into organizational and individual performance goals, thus bringing home the point that patient/client safety and abuse prevention are everyone's responsibility. In addition, incidents, investigative findings, survey results and other relevant information should be an agenda item in leadership meetings.

5. Initiate an anti-abuse publicity campaign.

Anti-abuse campaigns help engage stakeholders – including staff, providers, patients/clients and families – by employing various communication tools, such as posters, flyers, social media and in-person Q&A sessions. In addition to disseminating organizational rules, expectations and values, such campaigns should also do the following:

- **Explain to patients/clients what caregiver actions are appropriate during a healthcare encounter,** as well as what behaviors are suspicious and should be reported.
- **Educate patients, clients, staff and family members on how to report incidents** – both internally and to law enforcement and licensing boards – that they have witnessed or experienced.
- **Reinforce the organization's commitment to a swift response to any potential misconduct,** including a full investigation and subsequent reporting to law enforcement agencies or state licensing boards.
- **Measure patient/client satisfaction with providers and staff,** and solicit questions and complaints, using questionnaires and other post-encounter follow-up tools.
- **Address all patient/client complaints in a timely manner,** thoroughly documenting any actions taken to resolve the grievance, and maintain those records according to the organization's quality assurance and performance improvement guidelines for patient/client safety work product.
- **Schedule regular focus groups with patients/clients** to assess their perceptions of the organization/practice in terms of not only quality of care, but also safety and respectful treatment.

The provider-patient/client relationship is based on trust, and sexual misconduct by healthcare professionals is the ultimate violation of that trust. By treating abuse not just as an individual infraction, but also as the product of flawed practices and protocols, organizations can create a safe environment while minimizing exposure to lawsuits and regulatory actions.

Did someone forward this newsletter to you? If you would like to receive future issues of *inBrief*® by email, please register for a complimentary subscription at go.cna.com/HCsubscribe.

For more information, please call us at 888-288-3534 or visit www.nso.com or www.hpso.com.

Published by CNA. For additional information, please contact CNA at 1-866-262-0540. The information, examples and suggestions presented in this material have been developed from sources believed to be reliable, but they should not be construed as legal or other professional advice. CNA accepts no responsibility for the accuracy or completeness of this material and recommends the consultation with competent legal counsel and/or other professional advisors before applying this material in any particular factual situation. Please note that Internet links cited herein are active as of the date of publication, but may be subject to change or discontinuation and are provided solely for convenience. CNA does not make any representations, endorsements, or assurances about content contained on any website referred to herein or on the accuracy of any of the content contained on third party websites. The views, statements, and materials contained on the website are those of the owner of the site. This material is for illustrative purposes and is not intended to constitute a contract. Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. All products and services may not be available in all states and may be subject to change without notice. Certain CNA Financial Corporation subsidiaries use the "CNA" service mark in connection with insurance underwriting and claims activities.

Nurses Service Organization and Healthcare Providers Service Organization are registered trade names of Affinity Insurance Services, Inc.; (TX 13695); (AR 100106022); in CA, MN, AIS Affinity Insurance Agency, Inc. (CA 0795465); in OK, AIS Affinity Insurance Services, Inc.; in CA, Aon Affinity Insurance Services, Inc., (CA 0G94493), Aon Direct Insurance Administrators and Berkely Insurance Agency and in NY, AIS Affinity Insurance Agency.

215-509-5437 www.nso.com www.hpso.com