Don't cross

Respecting professional

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the line

boundaries

AT BEST, NURSES AND PATIENTS develop a special bond based on trust, compassion, and mutual respect. The nurse-patient relationship can provide the "context for care" linked to improved patient outcomes, including satisfaction and trust.[1]

In most cases, professional standards of care and personal morals prevent inappropriate relationships from developing. But in some cases, the nurse-patient relationship develops into a personal relationship that can lead to inappropriate behavior, including sexual misconduct.

This article focuses on professional boundaries in nurse-patient relationships, describes behaviors that may be considered inappropriate, and examines possible legal ramifications of these behaviors.

Defining professional boundaries

According to the National Council of State Boards of Nursing (NCSBN), professional boundaries are "the spaces between the nurse's power and the client's vulnerability."[2] In relationships with any level of comfort and closeness, boundaries are needed to separate individuals appropriately.

According to Baca, professional boundaries support key elements of the nurse practitioner-patient relationship: trust, compassion, mutual respect, and empathy; these elements are needed in the nurse-patient relationship as well.[3] Boundaries also serve to keep lines of communication open and let patients and nurses interact in a professional atmosphere.

Unfortunately, setting boundaries isn't straightforward. The Code of Ethics for Nurses states, "When acting within one's role as a professional, the nurse recognizes and maintains boundaries that establish appropriate limits to relationships."[4] The familiarity and trust that develop between a nurse and a patient, combined with the seductive pull of helping, the complexity of the patient's treatment needs, the dependence of vulnerable patients (such as pediatric patients), and a general lack of understanding of boundary theory, can threaten the integrity of the relationship and lead to boundary violations.[5]

Male and female nurses alike can be influenced by emotions during patient encounters, leading them to perceive that interactions may have a deeper meaning. Boundaries may be blurred when either party initiates conversation or physical contact outside of professional boundaries. An example of an inappropriate conversation would be the nurse asking the patient where he or she normally hangs out on the weekends.

Depending on the nurse's and patient's gender, culture, age, and ethnicity, certain behaviors may be perceived differently than intended; for example, as having a meaning that's more personal than professional. Nurses must thoroughly understand what constitutes inappropriate behavior in healthcare environments.

According to Peternelj-Taylor and Yonge, behaviors considered inappropriate can be separated into three categories: boundary crossing, boundary violation, and sexual misconduct.[5] Baca describes a continuum of professional behavior, with boundary crossings toward the left and boundary violations, including sexual misconduct, toward the right.[3]

Each of these categories is different, and one boundary misstep doesn't necessarily precede another or fit

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into only one category. Nurses should visit their state board of nursing's website to explore how the concepts of boundaries and sexual misconduct are defined in their own state.

Besides reviewing the Code of Ethics for Nurses and the Nursing Scope and Standards of Practice, students at all levels of their nursing education should have open dialogues about what they, colleagues, and society consider to be unethical social behavior in the clinical setting. In addition, students should be educated about the legal ramifications of boundary crossings, boundary violations, and sexual misconduct.

Boundary crossing: Caution

The NCSBN defines a ***boundary crossing*** as a decision to deviate from an established boundary for a therapeutic purpose.[2] Examples include the nurse going out of his or her way to accommodate a patient with a convenient appointment, disclosing personal information to reassure the patient, or accepting gifts from the patient. Home health nurses may help patients with tasks outside their job description, such as washing dishes or doing laundry. A hospital-employed nurse may visit a former patient after discharge to check on his or her progress.

Pediatric nurses who become attached to a patient may believe they know best and step in to make decisions rather than letting the parent make them. An example is when a child is ready to be discharged and the nurse doesn't believe the parents—who've always cared for the child's needs—are appropriate caregivers and refuses to discharge the patient. This raises the issue of false imprisonment. Or, if the same nurse calls to check up on the patient after the hospitalization is over, this raises the question of when the nurse-patient relationship ends.

Boundary crossings that seem harmless to both parties can be interpreted as the nurse showing kindness or caring or in some cases as the nurse having control over the patient. Some may perceive these behaviors as boundary crossing; others may not. Minor boundary crossings are generally acceptable when performed for a patient's well-being, such as asking an older patient about his or her home environment before discharge. But seemingly trivial boundary crossings sometimes lead to more troublesome unprofessional behaviors.

Using touch as a therapeutic agent is another gray area. (See *When is touch appropriate?*) Consider this scenario:

A female nurse enters a male patient's room just after the healthcare provider has informed him that he has lung cancer. Noticing that the patient is very upset, the nurse sits on his bed and holds his hand, saying, "You seem upset. Would you like to talk about it?" After the patient starts crying, she hugs him. He stops crying after a few minutes, saying, "I just didn't expect that. I'll be okay." She says, "I'm here if you need me," and then leaves.

Can the nurse's behavior be considered inappropriate? Or was she just being compassionate? A nurse giving a patient a quick hug that's not seductive can be interpreted as a sign of compassion. Although it may be customary in American culture to hug a person to show support, this practice may not be viewed positively in all cultures. Also, because sitting on a patient's bed may be perceived as invading the patient's personal space, nurses are discouraged from doing so.

Boundary violation: Danger

Sometimes nurses cross professional boundaries for reasons that aren't even arguably therapeutic to the patient. This is considered a ***boundary violation***. This unprofessional behavior can escalate to even more serious misconduct. An example mentioned previously, keeping a patient in the hospital when a qualified caregiver is available, could fall under this category. Another example is the nurse disclosing the patient's personal information, which violates the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA).

Taking a stricter view, Peternelj-Taylor and Yonge suggest that boundary violations are clearly harmful or exploitive "transgressions."[5] The NCSBN believes that sexual misconduct is an extreme form of boundary violation.[2]

Sexual misconduct: Forbidden

One of the most serious failures of the nurse's responsibility for the welfare of the patient is sexual misconduct. In 2009, the NCSBN reported that of those nurses who were disciplined within a 10-year period, less than 1% were disciplined for sexual misconduct.[6] However, the actual number of nurses involved in sexual misconduct is potentially greater than this due to underreporting.

The NCSBN defines *sexual misconduct* as "engaging in contact with a patient that's sexual or may

When is touch appropriate?

O'Lynn and Krautscheid state that although intimate touch is recognized as a function of nursing work, nurses should be more aware of patients' attitudes about it.[14] Situations such as birth or death require closeness with patients, and touching is usually expected and accepted at these times. Intimate experiences may include a nurse assisting a new mother with breastfeeding, performing a vaginal exam when a woman is in labor, catheterizing a patient, or inspecting genitalia during a physical exam.

The patient's cultural practices might dictate when and how touch should be elicited during these specific times. Patients too may perceive touch differently and may be more inclined to consider an experience as intimate.

reasonably be interpreted by the patient as sexual; any verbal behavior that's seductive or sexually demeaning to a patient; or engaging in sexual exploitation of a patient or former patient."[6] In addition, "kissing," "suggesting or discussing the possibility of dating," having a "sexual or romantic relationship prior to the end of the professional relationship," or "soliciting a date with a patient, client, or key party" (immediate family members) are included under sexual misconduct.[6] Such actions are performed consciously, represent abuse of power, and are violations of patients' rights.

But not all examples of sexual misconduct are clear-cut. Consider the following situation:

A male nurse has been caring for a female patient who's being discharged. After completing his assessment and discharge instructions, he asks, "Do you have any other questions?" The patient replies, "Not about my discharge, but can I have your phone number?" The nurse says, "I don't see why not."

Did the nurse cross a boundary? Or, because the patient is being discharged, is it now considered acceptable to form a personal relationship?

As professionals, nurses have the duty to set and follow their own boundaries. The patient's consent to participate in a romantic or sexual relationship doesn't lessen the healthcare professional's responsibility to maintain boundaries.[7] The nurse must realize that boundaries have been violated.

Defining when the nurse-patient relationship has ended and when the potential intimate relationship between the nurse and former patient begins is difficult. Nurses need to seek out their own state board of nursing for guidelines and timelines for when they can initiate a relationship with a former patient. These may depend on the reason the patient was being treated as well as the environment in which the care took place.

Identifying those at risk

According to Holder and Schenthal, few cases of sexual misconduct are reported to professional nursing boards, but more men are reported than women; their article focuses on nurses and physicians.[8] Due to scarce research, it isn't known if women who initiated sexual contact with male patients were reported less often.

Any healthcare employee can cross professional boundaries, but some authors suggest that certain personalities are at particular risk. Inexperienced or younger nurses may be at risk for committing boundary violations because of lack of experience or understanding. Some who violate boundaries may also have preexisting or underlying personal issues, such as substance abuse.[7]

Certain patients are also more susceptible to becoming victims of inappropriate behaviors. Significant and emotional life events can pose risks for patients as they become vulnerable to compassionate feedback and seek to connect with others who can empathize with them. (See *Which patients are most vulnerable?*) On the other hand, nurses too can be the recipients of inappropriate behavior by patients and may become susceptible because of emotional or significant life events.[7] In this case, the nurse should clearly inform the patient that what he or she is saying or doing isn't appropriate and won't be tolerated.

In some nursing specialties, the practice environment may be more conducive to the development of inappropriate professional behavior. Boundary issues often arise in long-term-care and rehabilitation specialties, where nurses develop relationships with patients they care for frequently and come to know well. Over time, nurses and patients share healing experiences, bonding experiences among families, and emotional connections brought about by continuous caring relationships.

McGilton and Boscart noted in their study of patients in long-term-care facilities that patients, caregivers, and families all defined close care-provider relationships differently.[9] Care providers focused on reciprocity of the relationship and emotional connection, patients on attitude and behaviors of the caregiver, and families on the positive effect of behaviors of the care providers on the well-being of their relative.

Family members may be comforted when they perceive a positive relationship between their loved one and his or her caregiver. In fact, they may feel less stressed about the hospitalization or may have more confidence in the care being provided when a positive relationship has been established.

On the other hand, because each party has a different perception of a relationship, what the nurse views as a close bond may be seen by a patient or family member as emotionally straining and psychologically detrimental.

Besides long-term-care and rehabilitation environments, psychiatry has historically been known as a healthcare specialty that may foster inappropriate relationships between patients and healthcare professionals. To date, more research has been done on physician-patient and therapist-patient relationships, with little known about nurse-patient relationships, particularly in the hospital setting.[10,11]

Which patients are most vulnerable?[7]

Patients who are most at risk for boundary violations tend to have these characteristics:

- female gender
- a diagnosis of bipolar disorder and/or other personality disorders
- complain of emptiness or boredom
- are articulate and have reasonable social skills
- a history of childhood or physical abuse
- like to keep secrets with staff
- may wish to be touched, hugged, and reassured that they're liked.

Recognizing warning signs

Nurses are expected to be attentive, therapeutic, and caring. Recognizing a colleague who may be crossing boundaries isn't easy unless the misconduct is obvious.[7]

Signs of inappropriate behavior can be subtle at first. Early signs might include spending more time with a patient, showing favoritism, or meeting a patient in areas besides those used to provide direct patient care.[12]

As relationships progress, nurses may be more concerned about their own personal appearance when around the patient or become defensive when others ask about this patient interaction.[7] They may boast about a particular patient "hitting on them" or mention that they're attracted to or make unprofessional comments about a patient. Or, they may use a patient as a means to meet a family member.

Patients also demonstrate signs when involved in such a relationship. They may show dependence on a particular staff member, frequently request the same caregiver, or ask other staff questions about the nurse. Patients may ask for personal information during an informal conversation, which leads to further bonding. Family members may also be at risk for boundary crossings or violations.

Confrontation and legal ramifications

The duty to deal with inappropriate relationships extends not only to the nurse directly involved, but also to nurses who are peers or managers of the involved nurse.[5] When a questionable situation or relationship is suspected, it's every nurse's duty to report it. State boards of nursing may include a provision that specifically requires that a nurse manager report inappropriate conduct to the board. But many nurses and healthcare professionals are reluctant to confront or report an offender.[5]

Blatant acts of sexual misconduct that are witnessed are always reportable to the nurse's supervisor, the state board of nursing, and possibly even local law enforcement authorities depending on the state.[6] Of course, states also have laws affecting relationships between minors and adults that could be implicated here. Suspected violations between adults may move into an ethical gray zone; however, nurses still have a legal duty to report their suspicions according to the state board of nursing.

A reluctance to report friends and coworkers is a common barrier to reporting. Peternelj-Taylor and Yonge write that nurses may "experience divided loyalties and feel they are forced to choose between their relationships with their colleagues, their loyalty to their professional standards of practice, their responsibility to clients, and the expectations of their employers."[5] Although it's emotionally difficult to report someone, nurses have an ethical and professional responsibility to place the patient's well-being foremost.

Each state board of nursing creates policies about boundary crossing or sexual misconduct. (See *Different boundaries in different states* for examples of two states' laws.) Nurses are responsible for being familiar with and understanding their state's provisions and laws.

Each healthcare institution should have a mechanism in place for reporting boundary violations. Some institutions use event reports, while others have policies for putting the information in writing and submitting it directly to the supervisor of the person in question. These violations can also be reported through a compliance hotline or directly to the compliance department of a hospital.

When making a report, "thoroughly document dates, times, witnesses, circumstances surrounding the event, statements made, and actions taken. Don't document suspicions or hearsay."[12] Everything documented should be objective; use direct quotes whenever possible. Documenting

Different boundaries in different states

In the State of Washington, for example, practice standards clearly state:

Nurses and nursing technicians shall never engage, or attempt to engage, in sexual or romantic conduct with clients, or a client's immediate family members or significant others. Such conduct does not have to involve sexual contact. It includes behaviors or expressions of a sexual or intimately romantic nature. Sexual or romantic conduct is prohibited whether or not the client, family member or significant other initiates or consents to the conduct. Such conduct is also prohibited between a nursing educator and student. Regardless of the existence of a nurse/client relationship, nurses and nursing technicians shall never use patient information derived through their role as a health care provider to attempt to contact a patient in pursuit of a nurse's own sexual or romantic interests or for any other purpose other than legitimate health care.[15]

Some states such as New Jersey provide levels of reporting unprofessional behaviors and specify who should report. According to the State of New Jersey Division of Consumer Affairs' Mandatory Reporting Guidelines, "conduct that clearly violates expected standards of care and may result in various degrees of harm" and "conduct that demonstrates a pattern of poor judgment or skill" always requires reporting. The guidelines go on to state: "All licensed nurses have an affirmative obligation to report suspected violations of the Nurse Practice Act and the Uniform Enforcement Act to the Board of Nursing" and in the work setting "the highest nursing officer should take responsibility for reporting to the Board." Examples of what should be reported include sexual abuse or exploitation, suspected drug diversion, physical or verbal abuse, and falsification of documents.[16]

All nurses should know and understand the laws and regulations that apply to boundary violations in their state.

something that's subjective or not a direct quote can put the writer at risk for a defamation action if the information isn't true or accurate. Follow your facility's policies and procedures for reporting suspicions or allegations of sexual misconduct.

Depending on the situation, the supervisor or manager is bound by the institution's formal reporting requirements. Initially, he or she should assess the situation further and obtain more data. This can best be done by confronting the person and inquiring about the issue at hand. Based on this interaction, the supervisor may decide to have an informal discussion about the facts or file a formal complaint if the situation is a case of sexual misconduct. Further investigation may be performed under the direction of the facility's legal or compliance office or, in some cases, directly by these departments. When looking into these situations, it's always wise to seek the advice of the facility's counsel.

When a sexual misconduct claim is made, the nurse or other healthcare professional can be subject to investigation by licensing boards and/or criminal and/or civil proceedings.[7] Statutes for sexual misconduct depend on the state's nurse practice act. A nurse could face civil liability based on state law and be sanctioned by the state board of nursing, which may result in the loss of his or her license.

If the nurse's specific conduct (such as battery) is considered a felony or misdemeanor by the state, the nurse could face criminal liability. The NCSBN Model Nursing Practice Act defines battery/assault as the "use of excessive force upon or mistreatment or abuse of any patient." *Excessive force* means force clearly greater than would normally be applied in clinical situations. It also provides in-depth examples of sexual misconduct: "initiation of a sexual or romantic relationship, sexual intercourse, inappropriate or what the patient may perceive as offensive touching of the breasts, genitals, anus, or any sexualized body part."

Civil actions can arise for battery or other harm suffered by the patient such as intentional infliction of emotional distress. Should a relationship between a patient and a nurse come to an unpleasant end, the patient could bring a negligence claim based on psychological harm. The standard of care would be based on what a reasonably prudent nurse would do in a similar circumstance. The state could also bring civil actions that result in fines.

Exact charges may depend on many factors, including the nature of the relationship, and if that relationship occurred with a patient or former patient. Sexual involvement between the nurse and a former patient can be murky because lines between the professional relationship and the personal one may not be defined.[7]

A patient can initiate a civil or criminal lawsuit against a nurse even if the sexual involvement took place after the nurse-patient relationship ended. Nurses need to be aware of the recommended timeline suggested by the NCSBN about having relationships with former patients.[6] Allegations of sexual offenses are very serious and can result in severe disciplinary action. Legal issues vary from state to state. (See *Understanding the legal consequences of boundary violations*.)

If a patient makes a claim of boundary violations or sexual misconduct to the nurse's employer, the allegation is generally first reviewed internally. Some patients make a complaint directly to the state board of nursing, which might then bypass the first internal review by the employer. Most likely the state board would notify the employer, and the employer would do a separate investigation of its own. Alternately, the patient or a representative could first go to the police, who may notify the employer and the board. If evidence is found to suggest probable cause, the criminal court system becomes involved. State boards of nursing can initiate an investigation whether or not criminal charges are filed.[6]

Courts and state boards look for violations of state law. For civil cases

Understanding the legal consequences of boundary violations

Depending on the nature of the facts and state law, a state could initiate criminal charges for sexual misconduct between a minor and an adult, reckless endangerment of a minor, battery, or sexual harassment. Depending on circumstances, a charge of rape could also be brought. Another possible charge not related to sexual misconduct is false imprisonment, such as when the patient is kept in the hospital when ready for discharge because the staff consciously refuses to accept a competent caregiver as being suitable.

Penalties associated with criminal cases depend on state law and whether the charge arises to the level of a felony or misdemeanor. A criminal conviction for a felony could involve jail time. Misdemeanors generally involve limited jail time or community service and a fine. Some states have a first-offender statute that might preclude jail time. Any criminal conviction is likely to result in the loss of one's nursing license.

Civil actions could include intentional infliction of emotional distress, negligence, or civil battery. In addition, HIPAA issues that arise could result in fines assessed by the government. For civil actions, a nurse is certainly at risk for having a jury decide against him or her. The jury is generally charged with determining the amount of damages after the attorney representing the plaintiff presents proof of damages. Civil actions can be brought against the nurse personally and/or against the nurse's employer.

that don't rise to the level of a criminal charge, the Code of Ethics for Nurses and the state's nurse practice act can help interpret whether the nurse's behavior is sexual misconduct. To reach a judgment, they weigh evidence such as witness testimony and possibly testimony of the parties, prior work history, testimony of character witnesses, letters of reference, previous performance appraisals, and the complainant's credibility.

State boards of nursing have the option to take immediate action (such as suspending the nurse's license pending results of its investigation) to protect the public and separate a nurse from practice while an investigation is pending, take action based on the criminal conviction or disciplinary action that was taken in another jurisdiction, or decline to take formal action for a charge unless a formal investigation by the board of nursing provides evidence to substantiate the charges of misconduct. If and when such evidence is found, appropriate disciplinary action is taken in accordance with the state's nurse practice act. In addition to criminal and licensing proceedings, patients can also file claims in civil court for emotional or physical harm.[6]

Allegations of sexual misconduct can be very difficult to defend. Damages and legal representation fees may not be covered by professional liability insurance. Damages can include medical bills, such as for psychiatric and/or medical care sought as a result of the interaction between the nurse and patient, or for lost wages if the patient isn't able to work as a result of the harm caused by the interaction. Pain and suffering can also be considered based on state law; a jury decides on the amount awarded. Contributory negligence on the part of the plaintiff could reduce the award, or the jury could find in the defendant's favor, depending on the circumstances. State laws determine whether the plaintiff would be awarded court costs and attorneys' fees if the case finds for the plaintiff.

Boundaries may be blurred when the nurse or patient initiates conversation or physical contact outside of professional boundaries.

Settlements against healthcare providers or plaintiff verdicts can be recorded in the Health Integrity and Protection Data Bank, which can be used by individual healthcare providers, employers, and lawyers to investigate any charges that might have been made against an individual or hospital.[13] The nurse's name could be placed on a disqualified provider list for state Medicaid and/or federal Medicare programs or on a state's sexual predator listing. Nurses on the disqualified provider list can't be hired because the facility wouldn't receive Medicare or Medicaid funds; a facility that does use such excluded individuals could also be fined and penalized. Obtaining future employment as a nurse may be difficult if not impossible depending on the outcome of the case and whether the nursing license was suspended or revoked.

Steps to prevention

Research and risk analysis studies have shown prevention and education are the best ways to decrease nurse and patient risk for sexual misconduct. During nursing education, boundary theory is usually discussed with topics such as ethics, standards of practice, personal space, and therapeutic touch.

Faculty also need to formally teach nursing students about sexual misconduct, which includes flirtatious or seductive behavior, and its ramifications in healthcare. They need to learn how to identify indicators of sexual misconduct in colleagues, what to do if they observe questionable behavior, and steps they can take to prevent it.

Education should start at the entry into practice level in nursing programs and then be continued in higher nursing education programs by employers, boards of nursing, and nursing associations. Any such curriculum should include a clear definition of sexual misconduct, actions constituting boundary violations, the consequences of sexual violations, warning signs for violations, proper documentation, and reporting obligations.[7]

Within healthcare facilities, policies regarding sexual misconduct and boundary violations should be updated and made part of the staff's annual education. New employee orientation also provides an opportunity to explain policies and procedures and emphasize professional boundary issues.[7] Policies should be presented clearly and objectively, and hard copies should be provided to the staff.

Nurses need to become more informed about their own state's nurse practice act and periodically visit their state board of nursing's website. All nurses are responsible for understanding the rules of conduct as well as reporting requirements, maintaining professional liability insurance, knowing internal policies and procedures, and notifying their insurance carrier and consulting an attorney when allegations are made.

Whether or not insurance covers claims depends on the language of the contract. Insurance almost never pays damages associated with criminal convictions. Generally insurance doesn't cover intentional tort cases, battery, assault, or intentional infliction of emotional distress. The nurse could be responsible for all costs associated with a trial and any fines or damages awarded. Insurance policies have individual claim limits and annual aggregate limits. The nurse would be responsible for personally paying for the balance should a claim exceed the policy limits.

Healthy outcomes

The consequences of crossing over boundaries, especially those considered violations, can be devastating to both victims and healthcare professionals. With improved prevention and education, further research, and constant self-awareness, nurses can create a safe and therapeutic environment. ■

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