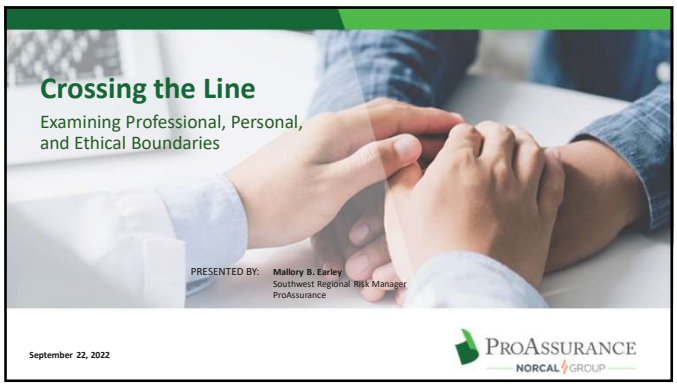
Crossing the Line

Examining Professional, Personal, and Ethical Boundaries

A Risk Management Seminar

Presented by


Crossing the Line
Examining Professional, Personal, and Ethical Boundaries
PRESENTED BY:
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ProAssurance
September 22, 2022
ProAssurance
NORCAL GROUP

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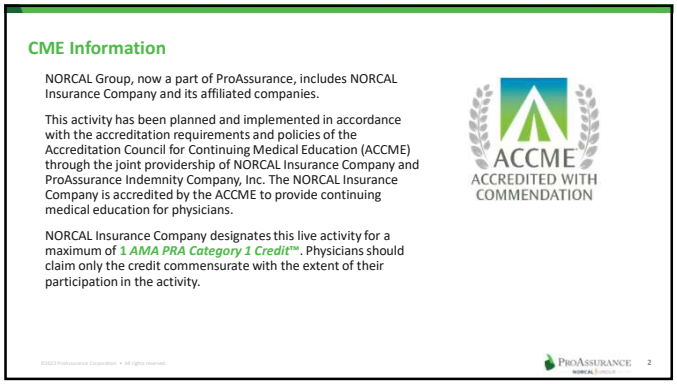
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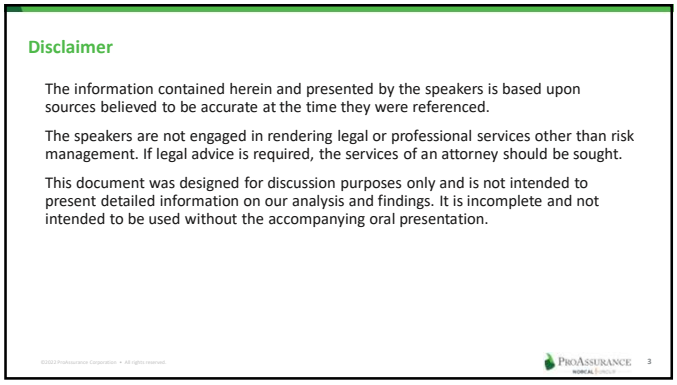
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Learning Objectives

This educational activity will support your ability to:

- Explain the relationship between physician-patient boundaries and professional liability risks
- Identify a previous encounter where expectations were not met with either a patient or another healthcare professional
- Apply risk reduction strategies to reduce liability risks and preserve professional and ethical boundaries

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Overview

- Boundaries with Patients
  - Chaperones
  - Prescribing
  - Treatment Relationships
- Boundaries with other Physicians

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Hippocratic Oath

Whatever houses I may visit, 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, be they free or slaves.

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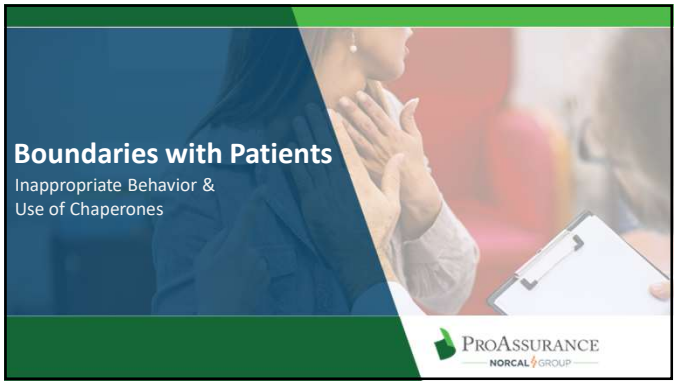

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Polling Question

- Do you have a chaperone policy?
  - Yes
  - No

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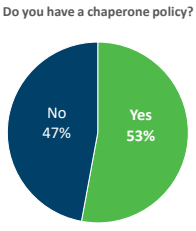
Polling Question Results



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NPDB Stats

KA0

Years 2000 to 2019: 1,721 reports of physician sexual misconduct

10.78 per 100,000 U.S. Licensed Physicians

Kunal K Sidhu et al., "Honoring the Public Trust: Curbing the Bane of Physician Sexual Misconduct." *Journal of Law and the Biosciences* 9, no. 1 (2022):1-17, https://doi.org/10.1093/jlb/lsac007.

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AS1I

Allegations of Misconduct

- Media cases
- #MeToo
- FSMB updates
- Misinterpretation of procedural touch

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EM0

A Case Study

- 30 YOF with large breast implants presents to Family Practitioner
- Chief Complaint: Chronic Chest Pain
- FP suspects Costochondritis
- Diagnosis: Anxiety
- No Chaperone
- Allegations: FP handled her breasts for his own sexual gratification

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AMA Code of Medical Ethics Opinion 1.2.4

"Physicians should:

(a) Adopt a policy that patients are free to request a chaperone and ensure that the policy is communicated to patients.

(b) Always honor a patient's request to have a chaperone.

(c) Have an authorized member of the health care team serve as a chaperone. Physicians should establish clear expectations that chaperones will uphold professional standards of privacy and confidentiality.

(d) In general, use a chaperone even when a patient's trusted companion is present.

(e) Provide opportunity for private conversation with the patient without the chaperone present. Physicians should minimize inquiries or history taking of a sensitive nature during a chaperoned examination."

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Risk Reduction Strategies

- Use individualized approach to intimate examinations
- Communicate the office chaperone policy to patients
- Give clear instructions
- Provide gown/sheet/drape
- Introduce chaperone
- Document the presence of the chaperone and what occurred during the exam

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Chaperone Policy

- Sets forth chaperone duties
- Defines circumstances when a chaperone will be offered
- Requires documentation
  - Patient consent or Observer present
  - Refusal

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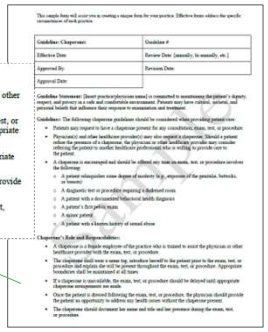
Chaperone Policy

Chaperone's Role and Responsibilities:

- A chaperone is a female employee of the practice who is trained to assist the physician or other healthcare provider with the exam, test, or procedure.
- The chaperone shall wear a name tag, introduce herself to the patient prior to the exam, test, or procedure and explain she will be present throughout the exam, test, or procedure. Appropriate boundaries shall be maintained at all times.
- If a chaperone is unavailable, the exam, test, or procedure should be delayed until appropriate chaperone arrangements are made.
- Once the patient is dressed following the exam, test, or procedure, the physician should provide the patient an opportunity to address any health issues without the chaperone present.
- The chaperone should document her name and title and her presence during the exam, test, or procedure.



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Risk Reduction Strategies: Allegation of Sexual Misconduct

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- Implement and follow a policy for:
  - Reporting the allegations
  - Documenting the event
  - Investigating a complaint
- Ensure additional necessary care and examination
- Appropriate investigation
- Document in an incident report separate and apart from the medical record
- Notify the Claims department

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Risk Reduction Strategies: Allegation of Sexual Misconduct

- Investigate the allegations
- Analyze the allegations to prevent recurrence
- Limit communications about the allegations
- Discipline appropriately
- Provide the accused individuals with due process

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Summary

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Polling Question

- When prescribing controlled substances, do you use a pain contract?
  - Yes, always
  - Sometimes
  - No, I do not use a pain contract
  - Not applicable because I do not prescribe controlled substances

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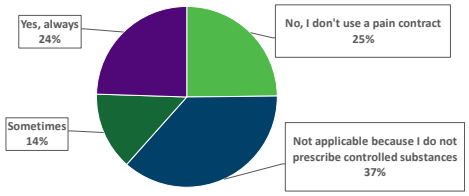
Polling Question Results

When prescribing controlled substances, do you use a pain contract?



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A Case Study

- 58 YOF prescribed narcotics by FP while also seeing Pain Management (PM)
- Pt terminated by PM
- FP increased narcotics
- Pt died
- Autopsy: positive for benzodiazepines, carisoprodol, & opiates

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ASO

Risk Reduction Strategies: Initial History & Physical

- Document the nature & intensity of pain
- Consider current/past diagnostic studies & treatments
- Identify underlying coexisting diseases
- Describe the effect of pain on physical/psychological functioning
- Screen for substance abuse/depression/suicide
- Review PDMP if available

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Risk Reduction Strategies: During Treatment

- Consistent documentation of urine screen results
- Descriptive qualifiers (i.e. aching, sharp, dull, etc.)
- Identification of pain locations
- Pain scale (numeric, pictorial)
- Impact qualifiers on ADL

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Risk Reduction Strategies: Continued Treatment

- Identification of objectives to measure treatment success
- Documentation of diagnostic studies or consultations planned
- Documentation of adjustments in drug therapy
- Documentation of informed consent/pain contract
- Documentation of regularly scheduled follow-up appointments

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GDQ

Risk Reduction Strategies: Prescribing Controlled Substances

- Set expectations with patients before prescribing
- Random drug screening
- Random pill counts
- Possible termination
- Controlled substance agreement

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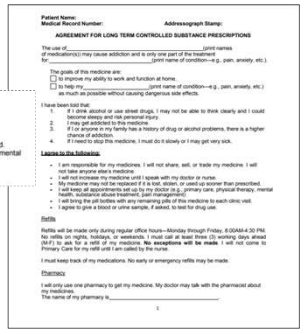
Pain Management Agreement

I agree to the following:

- I am responsible for my medicines. I will not share, sell, or trade my medicine. I will not take anyone else's medicine.
- I will not increase my medicine until I speak with my doctor or nurse.
- My medicine may not be replaced if it is lost, stolen, or used up sooner than prescribed.
- I will keep all appointments set up by my doctor (e.g., primary care, physical therapy, mental health, substance abuse treatment, pain management)
- I will bring the pill bottles with any remaining pills of this medicine to each clinic visit.
- I agree to give a blood or urine sample, if asked, to test for drug use.



Patient Name:
Medical Record Number: Addressograph Stamp:

AGREEMENT FOR LONG TERM CONTROLLED SUBSTANCE PRESCRIPTIONS

The use of _____ (print names of medication(s)) may cause addiction and is only one part of the treatment for _____ (print name of condition—e.g., pain, anxiety, etc.).

The goals of this medicine are:
☐ to improve my ability to work and function at home.
☐ to help my _____ (print name of condition—e.g., pain, anxiety, etc.) as much as possible without causing dangerous side effects.

I have been told that:
1. If I drink alcohol or use street drugs, I may not be able to think clearly and I could become sleepy and risk personal injury.
2. I may get addicted to this medicine.
3. If I or anyone in my family has a history of drug or alcohol problems, there is a higher chance of addiction.
4. If I need to stop this medicine, I must do it slowly or I may get very sick.

I agree to the following:

- I am responsible for my medicines. I will not share, sell, or trade my medicine. I will not take anyone else's medicine.
- I will not increase my medicine until I speak with my doctor or nurse.
- My medicine may not be replaced if it is lost, stolen, or used up sooner than prescribed.
- I will keep all appointments set up by my doctor (e.g., primary care, physical therapy, mental health, substance abuse treatment, pain management)
- I will bring the pill bottles with any remaining pills of this medicine to each clinic visit.
- I agree to give a blood or urine sample, if asked, to test for drug use.

Refills

Refills will be made only during regular office hours—Monday through Friday, 8:00AM-4:30 PM. No refills on nights, holidays, or weekends. I must call at least three (3) working days ahead (M-F) to ask for a refill of my medicine. **No exceptions will be made**. I will not come to Primary Care for my refill until I am called by the nurse.

I must keep track of my medications. No early or emergency refills may be made.

Pharmacy

I will only use one pharmacy to get my medicine. My doctor may talk with the pharmacist about my medicines.
The name of my pharmacy is_____

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https://nida.nih.gov/sites/default/files/SamplePatientAgreementForms.pdf
Accessed 12/7/2022.

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Additional Information

- ProAssurance Resources
  - Opioid Prescribing: Keeping Patients Safe
  - Prescribing Controlled Substances: What a Practice Needs to know from a DEA Perspective
- Other Resources
  - American Academy of Pain Medicine https://painmed.org/resources-providers/
    - Resources: COVID 19 Resources, Clinical Guidelines for Pain Treatment, Business Tools for Practices, and Patient Education Resources
    - Pain Treatment with Opioid Medications: Patient Agreement
  - National Institute on Drug Abuse
    - Sample Patient Agreement Form https://nida.nih.gov/sites/default/files/SamplePatientAgreementForms.pdf

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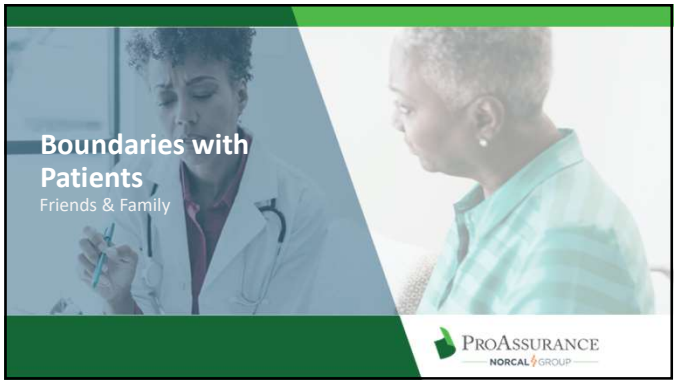

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Polling Question

Have you ever written a prescription for a friend or family member?

- Yes
- No

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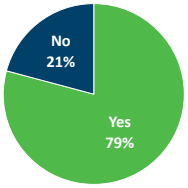
Polling Question Results

Have you ever written a prescription for a friend or family member?



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Case Study

49 YOM sees general surgeon for cyst on neck

Pt's wife is employee at wound center

Surgeon excises cyst

Pt calls 1 week later with complaint

Pt referred to Neurosurgeon

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Case Study Discussion

Surgeon performed cyst excision as favor to co-worker

No documentation of consent or that patient appreciated the risks associated with procedure

Difficult to defend whether or not surgeon met standard of care

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Risk Reduction Strategies

- Document consistently
- Communicate with primary physician
- Acknowledge the effect of one relationship on the other
- Adhere to scope of practice
- Recognize patient reluctance to share info or submit to examination
- Identify potential risks associated with prescribing for family members or friends

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Polling Question

How often do you interact with physicians outside your practice regarding patient care?

- Always
- Sometimes
- Never

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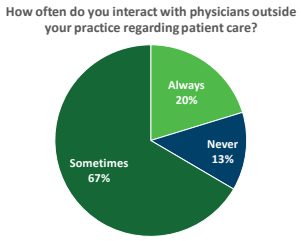
Polling Question Results



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Case Study

25 YOF sees FP for OB care at 13 weeks

Suspects twins and refers to OB for ultrasound at 17 weeks

Ultrasound at 20 weeks – Dichorionic twin pregnancy

Pt sees FP for prenatal visits and OB for ultrasounds

Pt admitted at 33 weeks with FP and OB evaluating Pt, issue orders, discharge summaries

Pt in labor at 38 weeks

C-section ordered

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Case Study: Discussion

- Undefined roles and lack of coordinated care SDO
  - No confirmation of scope of care for either physician
  - No specific communication between physicians
  - No documentation of scope of care, e.g., formal referral letter or references in patient chart

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Risk Reduction Strategies

- Coordinate care with other physicians
- Utilize hand-off communication tools such as SBAR or IPASS
- Establish expectations with co-treaters and patients

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2. Complete the entire post-webinar survey.

3. When asked, be sure to enter your complete name. (e.g., Mary A. Smith, M.D.)

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