Advisory Opinion

DISCIPLINARY SANCTIONS FOR

SEXUAL MISCONDUCT AFFECTING PATIENTS.

Explanatory Statement about Advisory Opinions

An advisory opinion adopted by the Alaska Board of Nursing is an interpretation of what the law requires. W
law, it is more than a recommendation. In other words, an advisory opinion is an official opinion the Alaska
practice of nursing as it relates to the health and safety of the Alaska healthcare consumer. Facility policies
their setting and/or require additional expectations related to competency, validation, training and superv
patient.

INTRODUCTION:

For the express purpose of protecting the public, Alaska statutes and regulations provide legal prohibitions against "*unprofessional conduct*" and "*sexual misconduct*" towards patients. (See Alaska statutory references below.). Most other state Boards of Nursing have gone even further and adopted more finite and specific policies. In addition, the National Council of State Boards of Nursing also recommends such specific guidelines. Therefore, both the NSCBN's guidelines and other state's policies are incorporated into the Alaska advisory opinion.

PURPOSE:

Accordingly, the following Alaska BON Advisory Opinion is designed for the strict objectives of;

1). protecting Alaska patients through clear and concise standards for enforcement against sexual misconduct; and

2). preemptive information to all nurses (RNs, (including ANPs and CRNAs) LPNs, and CNAs stating the professional boundaries required by law against sexual misconduct.

Statutory References

- A.S. 08.68.270(7) [prohibiting unprofessional conduct by RNs].
- A.S. 08.68.334(4) [prohibiting abuse of clients by CNAs]

Regulatory References:

- 12 AAC 44.770(28) [prohibiting sexual misconduct by Nurses]
- 12 AAC 44.870(18) [prohibiting sexual misconduct by CNAs]
- 12 AAC 44.990 [definitions of sexual contact, impropriety, misconduct, penetration]

ADVISORY OPINION:

The Alaska Board of Nursing, in keeping with its mission to protect the public health, safety, and welfare, believes it is imperative to take a strong position regarding the licensure and certification of individuals who engage in sexual misconduct towards patients or in the workplace, who have been convicted of sexual misconduct, or whose sexual misconduct outside the workplace may affect the ability to safely care for patients.

The Board's Advisory Opinion applies to all persons regulated by the Alaska Board of Nursing under A.S. 08.68 et seq., which includes all Registered Nurses, all Licensed Practical Nurses, and all Certified Nurse Aides, and all applicants for licensure or certification under this statute.

The Board adopts the following assumptions as the basis for its advisory opinion:

1). Patients* under the care of a Nurse/CNA are vulnerable by virtue of illness or injury, and the dependant nature of the Nurse/CNA-patient relationship.

2). Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized.

3). Nurses and CNAs are frequently in situations where they provide intimate care to patients or have contact with partially clothed or fully undressed patients. Nurses/CNAs may also care for these patients without direct supervision.

4). There are appropriate boundaries in the Nurse/CNA-patient relationship which nurses and CNAs must clearly understand and be trusted not to cross.

5). Sexual misconduct towards patients or in the workplace raises serious questions regarding the individual's ability to provide safe, competent care to vulnerable patients.

6). Sexual misconduct which occurs outside of the workplace, including conviction of a crime, may raise questions as to whether that same misconduct will be repeated in the workplace and therefore affects the ability of the nurse or CNA to safely provide patient care.

***The terms "resident" "client" are often substituted for the term "**patient**" in health care facilities. For purposes of this document, "**patient**" includes all these terms.*

DISCIPLINARY SANCTIONS: *Any RN, LPN, or CNA committing sexual misconduct, as stated in the general and specific definitions set forth below, shall be subject to discipline up to and including revocation of licensure or certification.*

DEFINITION OF SEXUAL MISCONDUCT:

Below are the general and specific definitions of sexual misconduct to be applied to Alaska RNs, LPNs, and CNAs under A.S. 8.68.270(7) and A.S. 8.68.344.

"Sexual Misconduct" **– General Definition**

1). Engaging in conduct with a patient that is sexual or may reasonably be interpreted by the patient as sexual; any verbal behavior that is seductive or sexually demeaning to a patient; or engaging in sexual exploitation of a patient.

2). A specific type of professional misconduct which involves the use of power, influence and/or special knowledge that is inherent in one's profession in order to obtain sexual gratification from the people that a particular profession is intended to serve. Any and all sexual, sexually demeaning, or seductive behaviors, both physical and verbal, between a service provider (i.e., a nurse/CNA) and an individual who seeks or receives the service of that provider (i.e., patient), is unethical and constitutes sexual misconduct.

3). Engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with, or in the presence of a current patient. For purposes of this subsection, an adult receiving **psychiatric nursing services** shall continue to be a patient for two years after the termination of professional services. If the person receiving psychiatric nursing services is a **minor**, the person shall continue to be a patient for the purposes of this subsection for two years after termination of services, or for one year after the patient reaches the age of majority, whichever is longer.

"Sexual Misconduct" – **Specific Definition**

The following are **specific** definitions of sexual misconduct applied to Alaska RNs, LPNs, and CNAs (denoted as health care providers below):

1). A health care provider shall not engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party[i]* inside or outside of the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

a). Sexual intercourse;

b). Touching of the breasts, genitals, anus or any sexualized body part, except as consistent with accepted community standards of practice for examination, diagnosis and treatment within the health care practitioner's scope of practice;

c). Rubbing against a patient, client or key party for sexual gratification;

d). Kissing;

e). Hugging, touching, fondling or caressing of a romantic or sexual nature;

f). Examination of, or touching genitals without using gloves;

g). Not allowing a patient or client privacy to dress or undress, except as may be necessary in emergencies or custodial situations;

h). Not providing the patient or client with a gown or draping, except as may be necessary in emergencies;

i). Dressing or undressing in the presence of the patient, client or key party;

j). Removing a patient's or client's clothing, gown or draping without consent, emergent medical necessity or being in a custodial setting;

k). Encouraging masturbation or other sex acts in the presence of the health care provider;

l). Masturbation or other sex acts performed by the health care provider in the presence of the patient, client or key party;

m). Suggesting or discussing the possibility of dating, sexual or romantic relationship prior to the end of the professional relationship

n). Soliciting a date with a patient, client or key party;

o). Discussing the sexual history, preferences or fantasies of the health care provider;

p). Any behavior, gestures or expressions that may reasonably be interpreted as seductive or sexual;

q). Making statements regarding the patient, client or key party's body, appearance, sexual history or sexual orientation other than for legitimate health care purposes;

r). Sexually demeaning behavior, including, but not limited to, any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening, or harming a patient, client or key party;

s). Posing, photographing or filming the body, or any body part of a patient, client or key party, other than for legitimate health care purposes; and

t). Showing a patient, client or key party sexually explicit materials, other than for legitimate health care purposes.

u). Providing or offering to provide drugs or treatment in exchange for sexual favors.

v). Using or causing the use of anesthesia or any other drug affecting consciousness for the purpose of engaging in conduct that would constitute sexual misconduct.

2). A health care provider shall not:

a). Offer to provide health care services in exchange for sexual favors;

b). Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;

c). Use health care information or access to health care information to meet or attempt to meet the health care provider's sexual needs.

3). A health care provider shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section with a current patient, client or key party until after the provider-patient/client relationship ends. In the case of a patient who is a minor (under age 18), a health care provider shall not engage, or attempt to engage, in the activities listed in subsection (1) within one year after the patient reaches the age of majority or within one year after the provider/patient relationship ends, whichever is longer.

4). A health care provider shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section if:

a). There is a significant likelihood that the patient, client or key party will seek or require additional services from the health care provider; or

b). There is an imbalance of power, influence, opportunity and/or special knowledge of the professional relationship.

5). When evaluating whether a health care provider is prohibited from engaging or attempting to engage in sexual misconduct, the regulator will consider factors, including, but not limited to:

a). Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

b). Transfer of care to another health care provider;

c). Duration of the provider-patient relationship;

d). Amount of time that has passed since the last health care services were provided to the patient or client;

e). Communication between the health care provider and the patient or client between the last health care services rendered and commencement of the personal relationship;

f). Extent to which the patient's or client's personal or private information was shared with the health care provider;

g). Nature of the patient or client's health condition during and since the professional relationship;

h). The patient or client's emotional dependence and vulnerability; and

i). Normal revisit cycle for the profession and service.

6). Patient, client or key party initiation or consent does not excuse or negate the health care provider's responsibility.

7). These rules do not prohibit:

a). Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

b). Contact that is necessary for a legitimate health care purpose and that meets the standards of care appropriate to that profession; or

c). Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the health care provider where there is no evidence of, or potential for, exploiting the patient or client.

* "*Key Party*" refers to immediate family members and others who play a role in health care decisions of the patient or client.

Adopted by the Alaska Board of Nursing, July 2011

Attachment: NCSBN Foundational Findings:

The NCSBN's publication entitled Practical Guidelines for Boards of Nursing on Sexual Misconduct Cases (2009) makes several foundational findings for the protection of the public through sexual misconduct disciplinary standards. Specifically at page 1 this NCSBN Guide states the following:

"In 2007, Halter, Brown, and Stone reviewed the published empirical literature on sexual misconduct. The researchers drew the following conclusions from the studies they reviewed:

- Clear sexual boundaries are crucial to patient safety.
- Specific education about this subject, delivered in conducive environments, changes health care providers' attitudes toward sexual contact with patients.
- Sexual boundary violations result in significant and enduring harm to patients.
- Reported incidence of sexual misconduct in health care is low, and is concentrated in general practice and psychological therapies.
- Patient vulnerability is associated with higher prevalence of sexual misconduct."

Further, this NCSBN Guide at page 2 also underscores the impact on the public of such sexual misconduct; "The impact of sexual misconduct on patients is serious. The Council for Health Care Regulatory Excellence (2008) cites the following disorders and

complaints as being resultant of sexual misconduct by a health care provider to a patient/client:

- Post-traumatic stress disorder and distress;
- Major depressive disorder;
- Suicidal tendencies and emotional distrust;
- High levels of dependency on the offending professional;
- Confusion and disassociation;
- Failure to access health services when needed;
- Relationship problems;
- Disruptions to employment and earnings; and
- Use and misuse of prescription (and other) drugs and alcohol.