



It's Not Just Drugs and Rock and Roll

■ JOHN SHUFELDT, MD, JD, MBA, FACEP

Over the years I have attempted to cover it all. Drugs, rock and roll, BFRF (big F-ing red flag), airplane crashes, you name it. The one thing I have left out has been... well...sex. Sex has always been a challenging and awkward subject or me. In fact, I cried the first time I had sex—thank God I was alone.

Anyway, speaking of God, my challenges with this subject started at a young age. When I was 4, my very Catholic mother told our family doctor that “John keeps touching himself down there.” Without hesitation, he looked very sternly at me and said, “If you touch it again, I’ll cut it off.” I haven’t touched it since.

Fast forward 8 years to the seventh grade at Our Lady of the Wayside. My next God-inspired sex-related misadventure was at the hand of a nun. No, it wasn’t like that—get your minds out of the gutter. Sister Goebbels, who was Nazi-esque in her delivery and mannerisms, taught Marriage and the Family class which we always had immediately after attending Mass. It was Wednesday morning at 9:37 am when she told our class, “Sex is a very beautiful thing only to be shared between a husband and wife.” I raised my hand and when called upon, asked, “How would you know?”

When I awoke in the Principal’s office, my ears were ringing, my head was pounding, my watch had apparently stopped at the moment of impact, and I had no recollection of the event. To this day, I am still cognitively impaired. To this day, I am still cognitively impaired. Oh, wait, what are we talking about? Oh yeah—Sex.

A few years ago I applied for my New Mexico Medical License. As part of the final application process, I had to travel to Albuquerque to the headquarters of the New Mexico Board of Medical Examiners where I was interviewed by a very kind and genteel cardiologist who welcomed me to the practice of medicine

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in New Mexico. The final part of the process was joining the other 200 or so physicians who were also applying for licenses in a large gymnasium where we all heard a lecture about—wait for it—Not Having Sex with Patients. Up until that very moment, I had never actually considered the possibility—maybe because of where I practiced—but that’s beside the point.

After the introductory remarks and charge of, “YOU CAN’T HAVE SEX WITH YOUR PATIENTS” I got up ready to leave; what else was there to say? Then, for the next hour my fellow compatriots asked all sorts of questions on the subject. “But what if you were dating them before they became your patient?” “What if you were engaged?” “What if you had only kissed them?” “What if they kissed you and you just laid there?” “Tongue, no tongue?” I kid you not. I walked out of there after an hour of listening to soft-porn reenactments of what-if scenarios thoroughly disturbed—ok, even more disturbed.

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If only it were as clear as it was 2500 years ago.

So I started thinking more about it. Then I started getting requests to represent providers in front of their respective medical boards on this very subject. I know at this juncture you are saying “EWWWWWW are you kidding me?” Because you are thinking the same way I *used* to think about this. You are doing a urethral or vaginal swab for *gonorrhea* or *chlamydia* and you look up at the head of the bed, and say, “Hey, what are you doing later on? But it’s not like that, I mean at least wait for the culture results for God sake!

Clearly, the scenario above is well out of bounds. There are other instances, however, that are much murkier.

The Arizona Statute on unprofessional conduct while engaged in the practice of medicine includes the following:

Engaging in sexual conduct with a current patient or with a former patient within 6 months after the last medical consultation unless the patient was the licensee’s spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee.

The New Mexico Statute on the same subject includes the following:

Sexual misconduct, including sexual contact with patient surrogates, such as parents and legal guardians, that occurs concurrently with the physician-patient relationship.

Clear as day –right? Not so much. Arizona has relaxed their standards a bit over the years but here is what I have seen happen to some very well meaning providers. They are in a dating relationship and their significant other has a minor medical condition - bronchitis. The provider calls in a prescription and the significant other gets better. A few months go by, they have a bad end to the relationship and the jilted person reports the provider to the medical board. The provider has no record of the medical encounter (strike one “*Failing or refusing to maintain adequate medical records*”), they were in a dating relationship as well as a physician-patient relationship (strike two in some states) and, oh yeah, “we once smoked some pot together” (strike three in all states)!

I know this sounds a bit over the top, yet it happens all the time. The take-home point on this subject is to please read your state’s Statutes as they relate to unprofessional conduct while engaged in the practice of medicine. Some of the statutes are written a bit nebulously so take the time to dive into them and really understand the law surrounding some of the common medical-legal pitfalls.

Maybe Sister Goebbels was right... ■

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