

Sexual Misconduct: Legal and Licensing Ramifications to the Acupuncture Profession, Part II

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In part I of this series, we discussed the legal and licensing ramifications of sexual misconduct charges against acupuncturists. We also discussed the ranges of sexual misconduct and the strong attitude that seems to be against male practitioners.

The next question to be considered is, "What can a doctor do when falsely accused?" The following are two real-life examples of what can happen.

Accusation #1: Poor Communication

A female patient new to the United States visited an acupuncturist in a pleasant suburban community. A friend had referred her to the clinic. The doctor's office overlooked a golf course; he had no assistants, no front office personnel, and no other doctors in the office.

The patient complained of lower back pain radiating into the right lower extremity to her knee. After taking her history, the doctor asked her to wear a gown for an examination. Since she had not been given any specific instructions in regard to the removal of her undergarments, she removed all her clothing. She wore the gown with the opening in the back. The physical exam was performed without incident.

Following the exam, the patient was taken to a different room, one that did not overlook the golf course and was much darker than the first room. Because of language difficulties, she did not understand the type of care she was about to receive. Hot packs were placed over her back. The doctor turned the lights off, then turned on soft music and told her to relax. He placed warm lotion on her back with his hands and massaged the areas of complaint, then administered needles. Later, the patient was escorted back to the original exam room.

The patient complained to the local district attorney and acupuncture board. It was contended that the doctor requested all young unsuspecting female patients to remove their underclothing; that she was isolated from her clothing to create a sense of vulnerability; that there was no clinical value in the hand massage; and that the doctor had improperly placed his hands on her buttocks. The acupuncturist immediately hired a lawyer.

A thorough investigation revealed that the needling and massage were clinically legitimate. The doctor showed several advertisements demonstrating his massage technique. When the doctor's statement was compared to his patient's, very little differed. The doctor was able to present an extensive list of female patients who confirmed his customs and practices. The doctor was cooperative and forthcoming, and the charges were dropped. The cost of the doctor's attorney, professional experts, lost time and mental suffering were borne by the accused.

What was the problem? In a nutshell, poor communication. The following tips can help keep what

happened to this acupuncturist from happening to you.

1. The doctor always takes a chance when working alone with female patients. If at all possible, include a female assistant when treating female patients.
2. Never have any patient disrobe. It can lead to faulty impressions and can create an air of indecency.
3. Even if communication isn't an issue, try and explain to the patient what you are doing. If there is a potential for misunderstanding, note it in your records.

Accusation #2: The Setup

A middle-aged, divorced woman sought care from an acupuncturist for chest pain, neck pain and general lethargy. She saw an advertisement for the doctor, who exclaimed that care at the clinic would "rejuvenate" her body, and that she would feel young again.

Her first visit involved a physical examination with partial disrobing. She was not asked to remove her blouse before the exam. The clinic was staffed with another doctor and a part-time receptionist, neither of whom were present during the exam. The clinic featured several treatment rooms, and other patients were being treated simultaneously.

During the exam, the patient voluntarily removed her blouse in front of the doctor and showed him where she was in pain. He proceeded to ask questions about her complaints and asked her to put her blouse back on. He did not touch her breasts, but he did examine her chest.

After routine needling and prescribing herbs, the patient returned for a second visit. Upon examination, she again voluntarily removed her blouse to show the doctor the area of her pain. Again, the doctor explained the removal of her blouse was not necessary. He did not touch her chest at all. She put on her blouse and left angrily, telling the doctor how disappointed she was.

The female patient contacted a malpractice attorney for sexual harassment. Her attorney (also a woman) contacted the local district attorney for a criminal investigation. (Were a DA to make charges against a doctor in a civil case, it would be much easier to collect money if the doctor had been convicted of sexual battery.) The attorney also filed a complaint with the acupuncture board and made sure the doctor received a copy of the board complaint.

The doctor was thus faced with a criminal investigation, a civil lawsuit and a state board complaint. The doctor believed he had acted professionally and was "set up." He also believed the lawyer was trying to make money by creating a firestorm against the doctor so that he would try to "settle early."

The acupuncturist held his ground, hiring an attorney who reviewed his records with the DA. The attorney and DA also interviewed patients who were under the acupuncturist's care at the time of each exam. They testified to the doctor's professional manner; one patient heard the doctor tell the complaining patient to "put your blouse on, it's not necessary to take it off." The doctor also recorded in his second exam exactly what had happened during the last office visit.

Naturally, the DA didn't file any charges. The board also dismissed an inquiry. The patient was clearly trying to entrap the doctor. Eventually, the patient's attorney fired her as well.

What can be learned from this incident?

1. As long as you serve the public, you will encounter difficult patients from time to time.
2. The doctor would have had a better defense if he had documented in his first visit that he did not permit disrobing. He should have walked out after she disrobed the first time.

3. If the doctor had a female assistant help with a "new" female patient, he would have had sufficient evidence to defeat any sexual harassment claim.

As the acupuncture and Oriental medicine fields grow in popular acceptance, more litigious-minded patients will likely come to your office. Modern acupuncturists will have to adopt strategies to handle potential problem cases before they get out of hand. Your best defense is to use your common sense and have a female assistant attending your female patients.

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