

# Handling cases of sexual abuse of patients by physicians

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The problem of physicians having sex with patients was not seen as actionable in the early 1980s. In *Smith v. St. Paul Fire & Marine Ins. Co.*, 353 N.W. 2d 130, 132 (Minn. 1984), the court stated that the crucial factor in the therapist/patient relationship that leads to the imposition of legal liability for conduct that arguably is no more exploitative than sexual involvement of a lawyer with a client, a priest or minister with a parishioner, or a gynecologist with a patient is that lawyers, ministers, and gynecologists do not offer a course of treatment and counseling predicated upon handling the transference phenomenon. *Id.* at p. 1366.

Every 68 seconds, an American is sexually assaulted, and one out of six American women has been the victim of an attempted or completed rape in her lifetime.<sup>1</sup> Today, lawyers and judges having sex with clients is clearly prohibited in Louisiana,<sup>2</sup> yet 10 percent of all health-care providers have had sex with patients.<sup>3</sup>

There is only one reported Louisiana case in which damages were awarded for a doctor abusing a patient. In *Doe v. Doe*, 657 So. 2d 628 (La. App. 1 Cir. 1995), a treating psychologist committed malpractice and sexually abused the patient.

The female patient attempted suicide three times, was hospitalized, and had hundreds of visits to mental health professionals. Those visits would be required for the rest of her life.

The patient settled her claim against the psychologist for \$100,000, the maximum permitted under La. R.S. 40:1299.42B(2) and filed a claim against the Louisiana Patient's Compensation Fund. Affirming the jury's verdict for the patient, the court ruled that:



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1. although the psychologist became a health-care provider under La. R.S. 40:1299.42A(3) and 40:1299.44 on June 1, 1988, the admission of evidence of his malpractice that occurred prior to that date was proper because the settlement triggered the admission of liability provision of § 40:1299.44(C)(5);
2. the granting of a judgment notwithstanding the verdict was proper because the jury failed to award general damages; and
3. the trial court properly increased the award for future medical care to \$150,000, which was not included in the damage award of \$750,000 under La. R.S. 40:1299.43D. The damage award was subject to a credit for the settlement and the \$500,000 statutory limit.

## Sexual abuse by physicians is grossly underreported.

About 58 percent of women who are sexually harassed do not have the courage to file a sexual harassment complaint due to the rigorous attacks they will have to endure.<sup>4</sup> Even fewer file a lawsuit against a physician for fear of humiliation.

I remember attending a conference at which an attorney who defended sexual harassment cases filed by women bragged of always doing extensive research on sexual harassment plaintiffs by hiring private investigators. The search was to “look for everything about that female plaintiff, including her underwear and bra size.”

Many women who are already traumatized do not want to subject themselves to attacks in public and in depositions. Many judges allow multiple days of seven-hour

depositions in cases involving sexual harassment of a female.

The purpose of tort law is to deter bad conduct, not to have a system that encourages it through humiliation of a plaintiff who has a valid complaint and damages.

### Physicians who commit sexual abuse are not severely disciplined.

I handled two cases of gross sexual abuse by physicians where the discipline was only a 12-month suspension. Such penalties are so small that there is no real deterrence, and this conduct endangers all female patients in the community and inflicts severe emotional damage.

Most doctors accused of sexual misconduct avoid any penalty. An Associated Press article<sup>5</sup> by Jeff Horwitz and Juliet Linderman points out:

[A]cross the country, most doctors accused of sexual misconduct avoid a medical license review entirely. A study last year found that two-thirds of doctors who were sanctioned by their employers or paid a settlement as the result of sexual misconduct claims never faced medical board discipline. ... Sexually abusive physicians are not generally required to apologize or even acknowledge having acted inappropriately in order to keep their license. ... The lenience of penalties for sexually abusive doctors sometimes is a source of frustration even for members of the medical board who administer the discipline. ... Instances of sexual abuse of patients by physicians is underreported.

I have found this to be the case in Louisiana.

### Proving liability and damages is a challenge.

These cases are difficult. No one wants to believe that physicians who take an oath to do no harm would sexually abuse women of all ages. It is difficult to win a swearing contest between a doctor and a patient. Women with mental disabilities are vulnerable targets. More is needed.

I have used audio and video recordings, and I even had the victim's clothes analyzed



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for the accused physician's DNA. In the most recent case, the physician initially denied the sexual abuse until the DNA results arrived. Local district attorneys have not accepted criminal prosecutions even when there is DNA evidence.

Proving damages is also difficult, but possible. Expert testimony to support recovery for emotional and psychological injury is not necessary. *Dowden v. Mid State Sand & Gravel Co., Inc.*, 95-231 (La. App. 3 Cir. 11/2/95), 664 So. 2d 643, *writ denied*, 95-2864 (La. 2/2/96), 666 So. 2d 1099; *Laurents v. Louisiana Mobile Homes, Inc.*, 96-976 (La. 2/5/97), 689 So. 2d 536. The plaintiffs' testimony alone is sufficient. *Id.*

The court in *Dowden*, citing *Kolder v. State Farm Ins. Co.*, 520 So. 2d 960 (La. App. 3 Cir. 1987), recognized that sometimes more than just the plaintiff's own testimony is required to establish mental anguish damages. The use of witnesses to testify how the plaintiff victim was before and after the sexual abuse is one method I used and found to be effective.

Often it is difficult to find physicians to testify against a fellow physician. However, I always won in medical review panels and then called those physicians to testify as to

the American Medical Association and Louisiana administrative rules that were violated.

Sexual abuse by physicians and health-care providers can only be deterred by more severe penalties by medical boards, but that is not going to happen. It is up to us as trial lawyers to take on these cases of sexual abuse of patients by physicians to deter such bad conduct and to protect all patients in the community.

### Endnotes

1. RAINN National Sexual Assault Hotline; [rain.org/statistics/victims-sexual-violence](http://rain.org/statistics/victims-sexual-violence).
2. American Bar Association Model Rules of Professional Conduct Rule 1.8.
3. Dubois, James M., et al. "Sexual Abuse Violation of Patients by Physicians: A Mixed-Methods, Exploratory Analysis of 101 Cases," *Sage*, June 2017; [//whatto become.com/blog/sexual-harassment-in-the-workplace-statistics/](http://whatto become.com/blog/sexual-harassment-in-the-workplace-statistics/). Only 17 percent of sexually harassed male nurses report it to their employer.
4. "26 Shocking Sexual Harassment in the Workplace Statistics"; Sept. 13, 2022; [//whattobecome.com/blog/sexual-harassment-in-the-workplace-statistics/](http://whattobecome.com/blog/sexual-harassment-in-the-workplace-statistics/). Only 17 percent of sexually harassed male nurses report it to their employer. Only 1 percent of sexually harassed victims confront their perpetrators.
5. Horwitz, Jeff, and Juliet Linderman. "AP Investigation: Doctors keep licenses despite sex abuse," Associated Press, April 15, 2018; [//apnews.com/fd90fdeabd1042679513ab0bccdee9ab](http://apnews.com/fd90fdeabd1042679513ab0bccdee9ab).

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