

MODEL EXPERT OPINION #3

This opinion is an example of a written report prepared according to guidelines/recommended report format. It is provided for the purpose of reference as to form and expressions only, and in no way, reflects the decisions of the Board. The places, persons, and events are fictional.

*Note: In sexual misconduct cases, there are usually two versions of the events. The patient will allege that sexual misconduct occurred. The physician may allege that sexual misconduct did not occur or that the physician's actions were misinterpreted by the patient. The role of the expert reviewer is not to determine who is right or who is wrong. **The role of the expert is only to determine whether or not the actions alleged by the patient constitute a departure from the standard of care.** It is the role of the trier of facts to determine the validity of the allegations. PLEASE DO NOT ADD ANY COMMENTS IN YOUR OPINION ABOUT WHAT YOU BELIEVE COULD HAVE HAPPENED. Any unsolicited comments may compromise the integrity of the case.*

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Date

Investigator or Medical Consultant (requesting review)

Medical Board of California

Street Address (of District Office requesting review)

City CA Zip

Re: Case 17-2008-000000 (John Doe, M.D.)

Materials Reviewed:

1. Investigation report
2. Complaint from SF Police Department
3. Complaint from Patient Jane Go
4. Complaint from Patient Susan Dove
5. Medical records of Patient Go from Dr. Doe
6. Medical records of Patient Dove from Dr. Doe
7. SF Police Department's report on patient Dianna Smith
8. Medical Records of Dianna Smith from Dr. Doe

PATIENT: DIANNA SMITH

◆ **Summary of Case:**

On 2/1/08, Dianna Smith reported to the San Francisco Police Department what she thought was unusual behavior of Dr. John Doe during her last visit at his office. Patient Smith stated that she was seen by Dr. Doe on 2/1/08 for her annual physical examination. While she was in the examining room, behind closed doors, Dr. Doe started to touch her in an unusual manner. Patient Smith first thought it was part of the examination and allowed him to continue. Then, Dr. Doe touched and rubbed her breasts with his hands. He then placed his hand next to her vaginal area, maneuvering his hands under the garments and touching her vagina. At that time patient Smith pushed him away and told him that she was going to report his actions.

Dr. Doe opened the door and allowed patient Smith to leave. She went home and told her mother and was advised to file a report.

◆ **Medical Issue(s) Identified:**

1. **Examination of breasts and genitalia**

■ **Standard of Care:**

The standard of care is to perform breast and genital examination in the presence of a female chaperone. The standard of care for breast examination is to advise the patient that her breasts are going to be examined and to obtain her permission for breast examination. The standard of care does not include rubbing the breast or touching them for no medical reason. The standard of care is to touch the genitalia of a female patient only for good medical reason and after obtaining permission from the patient to proceed with such examination. The standard of care is to touch the genitalia of the patient only while wearing gloves.

■ **Analysis:**

Dr. Doe did not allege that a chaperone was present during the patient's examination. He did not allege that he obtained consent for breast and genital examination of the patient. There was no documentation showing that the patient was in gynecological position nor that Dr. Doe was gloved while performing genital examination.

■ **Conclusion:**

The alleged actions of Dr. Doe represent an extreme departure from the standard of care because he did not have a chaperone present while examining the breasts and genitalia of a patient. He did not obtain her consent for such examinations and the patient was not properly positioned for pelvic examination. He did not wear gloves during examination.

PATIENT : JANE GO

◆ **Summary of Case:**

Patient Jane Go was a 32-year-old divorcée who saw Dr. Doe for a variety of medical problems from 2002 to July 2008. In January 2007, she began to have a social relationship with Dr. Doe which led to a sexual relationship. She continued to have sexual relations with Dr. Doe until July 2008 when she found out that Dr. Doe was unfaithful to her and was having sexual relations with other patients. She decided to report him to the Medical Board of California.

◆ **Medical Issue(s) Identified:**

1. **Sexual relations with patient**

■ **Standard of Care:**

The standard of care is to preserve the boundaries of the physician-patient relationship.

■ **Analysis:**

There is documentation showing the existence of a patient-physician relationship which was uninterrupted from 2002 until July 2008. There is an allegation of repeated sexual relations while patient Go was being cared for by Dr. Doe.

■ **Conclusion:**

Dr. Doe's alleged action is an extreme departure from the standard of care (sexual relationship with an active patient).

PATIENT: SUSAN DOVE

◆ **Summary of Case:**

Patient Susan Dove was a 34-year-old female undercover agent who was equipped with a hidden surveillance equipment. She consulted with Dr. Doe on 7/1/08 for an ankle injury. At interview, she told Dr. Doe that she was a professional tennis player who had injured her ankle. Dr. Doe examined her and prescribed two medications for pain and inflammation. He then walked over to the sink and washed his hands. While the patient was sitting on the examination table, he stood in front of her with a light instrument and checked her eyes and mouth. He then asked her to turn her head to the right to check her left ear. At that time he quickly lifted up her shirt from the waist above her left breast. He lifted up her left breast and pulled up the left side of her bra. Her breast was exposed and he touched her nipple and breast with his hands. Patient Susan Dove pushed him away and asked in shock, "whoa, whoa, whoa, what are you doing?" She quickly pulled down her bra and shirt. Dr. Doe stepped backward and stated that he was sorry and that he was trying to check her stomach.

◆ **Medical Issue(s) Identified:**

1. **Appropriateness of stomach examination/touching breast and nipple during stomach examination**

■ **Standard of Care:**

The standard of care is to avoid exposure of the breast while a chaperone is not present in the room. The standard of care is to avoid touching the breast and nipple while performing abdominal examination. The standard of care is to perform abdominal examination with the patient lying down. If large breasts impede adequate abdominal examination, asking the patient to raise her arms, will raise the breasts sufficiently.

■ **Analysis:**

Review of video images corroborated that the breasts were exposed while in sitting position. It showed that one hand of the physician (Dr. Doe) was placed upon the breast and nipple. There was no documentation showing that there was a chaperone in the room. There was no documentation showing that the patient was advised that her breasts were going to be touched nor was there any documentation showing that permission was granted for lifting the breasts. Palpation of the abdomen was not performed after lifting the breast. If it was performed, it

would have been below the standard examination practice because the patient was in sitting position. The patient was not requested to raise her arms to lift her breasts. There was no medical reason to uncover the breasts.

■ **Conclusion:**

Dr. Doe's alleged action is an extreme departure from the standard of care because he uncovered the patient's breast without a chaperone in the room. He touched the breast and nipple without good medical reason. He alleged that he attempted to perform examination of the abdomen, in substandard fashion.

(Signature) Douglas Jones, M.D.

(Date) 1/5/09

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