

# Virtual Mentor

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## CLINICAL CASE

### **Zero-Tolerance for Hospital Romance?**

Commentary by Lisa K. Cannada, MD, and Becket Gremmels

Romantic relationships were common at Healer Hospital, and the administration's lenience was a gesture of trust in the professionalism of its employees. After numerous complaints from patients, staff, and students about distracted patient care and favoritism, along with claims of gender-based discrimination and sexual harassment, the hospital administration met to discuss the possibility of new policy.

"We have received some very disturbing complaints about physicians showing favoritism to certain nurses, or nurses and physicians carrying on tense and destructive interactions following romantic relationships that went sour," the hospital president, Dr. Rhodes, noted. "Such issues corrode collegial relationships and teamwork, and, ultimately, it's the patients who suffer. That's unacceptable if we are committed to putting patient care first, not to mention the morale of our employees and the standard of professionalism that we want to maintain."

Dr. Rhodes suggested a zero-tolerance policy, meaning that no inter-staff dating or romantic relationships of any kind would be allowed among hospital personnel. He proposed penalties for those who violated the policy, including transfer from a department or even dismissal from the hospital.

Others at the meeting argued that such a policy would not stop romantic relationships but would only drive them underground, creating tension between employees forced to conceal their relationships and fellow workers deciding whether to protect them in violation of hospital policy or bring their relationships to the attention of administration. "We will be investigating possible relationships left and right," opponents of the proposed policy said. "It will be a nightmare, and further undermine trust and teamwork among our employees!" They continued, "We will be punishing people for having relationships with each other—relationships that should be none of our business anyway!"

Dr Rhodes responded, "Their bad behavior makes it our business. Driving them underground protects our patients."

### **Commentary 1**

**by Lisa K. Cannada, MD**

Healer Hospital is considering a zero-tolerance policy for physician-nurse relationships, which will presumably extend to physician-physician relationships and

those between other hospital personnel. The workplace is frequently the site of consensual romantic relationships between adults. Television has gone to extremes in portraying relationships in hospital settings, oftentimes making the romance the central point of primetime “medical” dramas. Trysts occur in ambulances and hospital supply rooms; extramarital affairs are commonplace. Though these dramas exaggerate, they do demonstrate the range of problems that workplace relationships can create. Depending on the people involved and their roles, there may be favoritism in assigning cases or rotations or in promotion and advancement throughout training or employment. When a TV relationship goes sour, patient care is affected, spurned partners seek revenge, and their colleagues choose sides. Patient care becomes a distant second-place interest in such a drama.

It’s easy to understand how strong relationships can develop in hospitals. Staff work together under stressful circumstances and observe each other making decisions and acting in situations that critically affect patient outcomes. Working well together is satisfying, and respect for one another can grow to a friendship and then a romance. But the intense developing stages of a relationship can distract the romantic partners from patient care, and, if the relationship falls apart and becomes hostile, patient care suffers all the more.

So what sorts of ground rules can be put in place that recognize the inevitability of hospital relationships while informing workers of extremes that will invoke disciplinary action? Dr. Rhodes’ proposal doesn’t seem workable: staff members are adults, relationships will form, and a zero-tolerance policy will merely drive them underground. In a 2004 article in *Journal of Medical Practice Management*, attorney Bob Gregg described four types of policies concerning workplace romance [1]:

1. The no-fraternization policy prohibits all romantic advances, overtures, and relationships by anyone in the organization. This model, consistent with Dr. Rhodes’ zero-tolerance policy, seems impractical on many levels. Does such a policy violate personal privacy? As Gregg points out, the First, Fourth, Fifth, and Fourteenth Amendments of the U.S. Constitution provide basis for privacy, free association, and equal protection against government intrusions into personal decisions concerning procreation, marriage, and family relationships. If the policy is so restrictive that constitutional rights are felt to be violated, employees could challenge it. Some courts have upheld an employer’s restrictions on romance as long as the restrictions were reasonable and did not intrude too far into the employee’s relationships with nonemployees. At the hospital level, forcing all relationships to become secret can cause healthy people acting in normal ways to feel immoral and guilty, which is bound to lead to overall weakening of staff morale, certainly not Dr. Rhodes’ intent.
2. A power model prohibits romantic overtures and advances in relationships where there is power asymmetry; that is, relationships in which one person has authority over (or, in some places, is merely at a higher level than) the other person. If it becomes apparent that such a relationship exists, changes

are made to ensure that the two parties are not working where one can affect the performance, rating, or promotion of the other. The power model would be very difficult to employ in the hospital where the structure of roles is so hierarchical. Nurses could have relationships only with other nurses at the same level. The same would be true for residents and attending physicians.

3. The third policy prohibits anyone from being part of a relationship in which one or both parties is married to someone else. Like policies one and two, this is difficult to enforce.
4. The fourth policy permits all consensual relationships, requiring only that the parties notify the organization, so it can confidently verify that the relationship is welcome and consensual. If one person is in a supervisory role, the company would want to assure that no job discrimination took place.

In addition to driving relationships underground, policies 1-3 introduce ethical dilemmas for those who are not in a prohibited relationship but become aware of it. Should co-workers remain loyal to the couple or to the hospital? Does the policy include sanctions for those who knew about the relationship and did not inform the administration? Must the administration investigate every bit of information about a relationship that comes to its attention?

After examining these options, Dr. Rhodes' "zero-tolerance" policy is not one that I agree with. Consensual relationships should be allowed, but written policies against sexual harassment and discrimination must be in place and available to all employees, with methods for reporting and procedures for handling complaints clearly spelled out. Zero-tolerance is not necessary where and when adults understand what they are getting into, have seen the persons they are involved with under conditions of extreme duress, and are attracted to those individuals. Such experiences can be the bases for a stronger relationship, and it is difficult to hide such a relationship, especially when one is overworked and stressed. At the same time, it is important that relationship communication and affectionate displays take place outside the workplace. Particular care must be taken in today's communication-rich work environment. In a 2003 petition of the Board of Commissioners of Arapahoe County, Circuit Court appeal, for example, it was found that 101 romantic and sexually explicit e-mail messages between a county clerk and a girlfriend were public record as they were sent and received on a work computer during work hours [2].

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## **Commentary 2**

**by Becket Gremmels**

The patient is typically at the center of all that health care does, and a hospital's primary ethical concern is the patient's well-being. The zero-tolerance case, however, perfectly highlights the fact that patient caregivers are also employees.

The issue of workplace relationships is at the intersection between health care and business, and patient care is not the only ethical concern. James Dubois proposes a framework designed specifically for situations in which "a proposed action conflicts with certain legitimate values or prima facie norms." [1]. His framework seems ideal for this case because Dr. Rhodes' proposal conflicts with respect for the autonomy of physicians and employees, clearly a legitimate value.

### **Dubois' Framework**

According to Dubois, proposed actions that clash with a legitimate value can be justified if they meet the following five criteria: (1) Necessity: is it necessary to violate the value in question to achieve the desired goal, or would an alternative achieve the goal without that violation? (2) Effectiveness: will the action actually achieve the desired goal? (3) Proportionality: is the desired goal proportionate to the violated value? Do the positive effects of the action outweigh the negatives of violating the value? (4) Least infringement: Is this the least-infringing option? Is something done to minimize the violation? (5) Proper process: is the decision a result of an appropriate process? [1] This framework is not an algorithm; legitimate disagreements can and will exist over the answers to each of the five points. What one person believes to be necessary or proportionate, another might not. This framework offers neither infallibility nor certainty, but an approach to delving deeper into the complex moral issues of a difficult case.

### **Analyzing Dr. Rhodes' Proposal**

Before applying these criteria, the desired goal of the zero-tolerance policy must be established. The immediate goal is the prohibition of dating in the workplace, but it seems overly simplistic to call this the "desired goal." After all, Dr. Rhodes only desires such a prohibition because he believes it will reduce or eliminate some harmful effects these relationships have on the work environment, harmful effects that include distraction from patient care, favoritism toward certain employees, the "tense and destructive" relationships that develop after breakups, claims of gender-based discrimination, and sexual harassment. Thus, it can be assumed that the policy's desired goal is to avoid these five harms, inasmuch as they result from romantic relationships between physicians or staff.

Now let's apply Dubois' criteria. First, is the zero-tolerance policy necessary to achieve this goal? To answer this, one must determine if alternatives exist and then argue that at least one would achieve that goal without violating the autonomy of the physicians and staff at Healer Hospital. Interstaff dating is frequent in the business world—according to one article, 58 percent of workers have dated a co-worker, 14

percent have dated a superior, and 19 percent have dated a subordinate [2]. Thus, it seems reasonable to look to businesses for alternative approaches. A poll of 40 insurance companies in the Fortune 500 found that 21 had a policy restricting employees' freedom to date [3]. These companies take various approaches to the topic. Among these policies, alternatives to Dr. Rhodes' suggestion include (1) prohibiting fraternization only between superiors and subordinates; (2) prohibiting dating only if it would result in a conflict of interest because one employee has responsibility for something that affects the other; and (3) consensual-relationship contracts in which the dating parties declare that the relationship is consensual, agree to review the company's policy on sexual harassment, and agree to transfer departments if necessary [4]. This last provision protects the company from a future sexual harassment suit, might protect against distracted patient care, and could reduce the likelihood that the employees would interact after a break-up. These alternatives, the third of which avoids violating employee autonomy, should be discussed in addition to Dr. Rhodes' zero-tolerance proposal.

The second criterion is effectiveness. Will the zero-tolerance policy effectively reduce or eliminate these five harms? It is not possible to answer this question definitively until the policy is applied, since the answer depends on empirical evidence. Effectively prohibiting private behavior between two consenting adults is always difficult. Several members at the Healer Hospital meeting even doubt their ability to implement the policy, arguing that it "will only drive [the relationships] underground." Moreover, many relationships begin with romantic attractions or crushes, and the harms Dr. Rhodes wishes to circumvent could arise from one person's attraction for another in the absence of any response on the part of the other person. Attempting to monitor mere attraction would be ludicrous. Even though a definitive answer cannot be given here, Dr. Rhodes bears the burden of proving that the zero-tolerance policy could or would be effective in reducing harmful effects of attraction and romance.

Next, is the zero-tolerance policy proportionate to the harms caused by relationships? This is arguably the most controversial of the five criteria because judgments of proportionality are subjective [5]. Certainly there are many advantages to improving attention to patient care, fostering a collegial atmosphere, and reducing bases for claims of favoritism, sexual harassment, and discrimination. But do these advantages outweigh infringement of employee autonomy outside the workplace? If one views this case primarily as a *clinical* ethics case, the benefits will likely outweigh the harms because the patient is of primary concern in the clinical realm. (Even in this framing of the situation, though, there are legal limits to the infringement of employee autonomy in the name of patient safety. A recent example is the injunction by a New York judge overturning the mandate that health care workers receive influenza vaccinations [6]). On the other hand, if one sees this primarily as a *business* ethics question, the harm might outweigh the good; the employee, employer, or customer might come first depending on the scenario [7]. Given that this case is at the crossroads between health care and business, there is not a definitive answer to this question of proportionality. Yet the burden of proof again

seems to fall on Dr. Rhodes. He must show that the benefits of the policy are proportionate to such a significant infringement of employee autonomy.

Moving to criterion four, is the zero-tolerance policy the least-infringing option? The alternative policies mentioned above—allowing dating except between superiors and subordinates and in cases where it would cause conflict of interest—infringe less on the employees' autonomy than the zero-tolerance policy. Adopting any of these alternatives would minimize the violation of the employees' autonomy. What we cannot know is the degree to which each alternative will accomplish Dr. Rhodes' goals. But we cannot know whether the zero-tolerance policy will either.

Lastly, is the zero-tolerance policy the result of a proper process? In general, a proper process is one in which decisions are made by the appropriate authority and involve the relevant stakeholders. For public health decisions, a proper process would involve public justification, explanation, and transparency [8]. In human subjects research it would involve approval by an IRB and the informed consent of the research participants [9]. In this case, a unilateral decision by Dr. Rhodes would not constitute a proper process because supervision of employees is under the purview of multiple sections of the hospital administration. The human resources department should have some input into the decision as it relates to staff behavior. Dr. Rhodes might also need the approval of the medical executive committee or a similar body that governs the medical staff. If Healer Hospital employs or contracts with most of its physicians, he might be able to enact this policy contractually. Yet even that involves contract negotiation, not a unilateral decision. At the very least it would likely require the approval of other hospital administrators. Without more knowledge of the administrative structure at Healer Hospital, a definitive determination of the proper process is not possible. Regardless of the structure, a unilateral decision does not seem to constitute a proper process for an issue of such magnitude.

### **Conclusion**

Healer Hospital has experienced serious problems as a result of its permissive policy toward relationships between physicians and other employees. The above analysis, however, shows that there are alternatives to swinging the pendulum all the way in the opposite direction. Dr. Rhodes' zero-tolerance policy does not meet the criteria of necessity or least infringement, and, although it could result from a proper process, it does not appear to do so at the moment. While we cannot decisively determine here if it would be effective or proportionate, due to the severity of infringement in question, it is up to Dr. Rhodes to show that his policy meets these criteria. Given these factors, Dr. Rhodes should pursue a third option, like consensual-relationship contracts. This would help avoid some of the harms associated with these relationships and minimize infringement on employee autonomy. Ultimately he should pursue an option that lies somewhere between the extremes of zero-tolerance and total permissiveness.

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