Systemwide Title IX Meeting
December 2019

Prohibited Conduct in the Clinical Setting
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Investigative Model

- **Purpose:** patient/community safety
- **Approach:** apply lessons learned from UC and non-UC cases to develop a framework that addresses unique clinical context
- **Key Feature:** focus on interdisciplinary collaboration across traditional silos, all dedicated to patient safety and continuous quality improvement
Incident Response Team

- **Core Members**
  - Title IX Officer (Chair)
  - Chief Medical Officer
  - Chief Nursing Officer

- **Regular Attendee**
  - Chief Health Counsel

- **Ad Hoc Members**
  - DIO, Dean, or Program Director (where respondent is a student, resident, or fellow)
  - Department chair, service chief, or unite director (depending on nature and location of incident and identities of complainant and respondent)

- **Potential Consultants**
  - Risk Services;
  - Compliance;
  - Medical Staff;
  - Medical Group/Faculty Practice Plan;
  - Human Resources;
  - Academic Affairs or Personnel, as appropriate;
  - Regulatory Affairs;
  - Discipline Specific Experts (e.g. mental health);
  - Medical Group CMO.
Key Tasks

- Identify Core Members of Incident Response Team
- Convene Team, Conduct Training
- Develop Response Plan Consistent with Guidance
- Develop Supplemental Notice Materials for Complainants

- Optional: Appoint Embedded Health Enterprise Investigator(s) with clinical experience

- OP on request will provide technical guidance and meet with the IRT or any subsidiary groups at their location
Initial Assessment

- Remains within Title IX Purview
- Title IX retains exclusive authority to recommend and oversee interim measures
- Clinical locations can implement additional (but not less restrictive) measures pursuant to local policies
Initial Assessment: Preliminary Review

- **Purpose**
  - Assure patient safety
  - Address mandatory reporting, preservation, escalations as appropriate

- **Considerations on Preliminary Review**
  - whether there are prior allegations of Prohibited Conduct or other similar allegations against the respondent;
  - particular vulnerability of the respondent’s patient population (immigrants, minors, or patients with mental illness, for example);
  - medical necessity and appropriateness of the conduct as described by the complainant.
Initial Assessment: Immediate Removal

- Time-out during initial assessment/preliminary review
- Applies if:
  - Respondent is a physician; and
  - Allegation is Sexual Assault-Penetration, Sexual Assault-Contact, or Invasion of Sexual Privacy; and
  - Allegation is inherently plausible – lower bar than a credibility determination, intended to be determined quickly
- Result:
  - Temporary administrative reassignment
  - During brief review period
  - Unless exigent circumstances exist, per Governing Body
Investigation Considerations

- Alternative Resolution – *not available in patient care context*

- Formal Investigation
  - Title IX maintains oversight/control over response and reporting under SVSH Policy
  - Other policies are often implicated
  - Title IX officer can, in consultation with the IRT, reach factual conclusions relevant to associated claims – conclusions to be issued to relevant units for adjudication – avoids duplicative investigations reaching inconsistent factual conclusions
Investigation: Special Procedures

- Notifications: VCHS/Governing Body receive notifications in addition to chancellor etc. under current frameworks
- Expert Consultations: provided by IRT and/or external consultants
- Physician/Provider Respondents: may be subject to additional disciplinary action under other policies, even for boundary or other violations that do not meet definition of Prohibited Conduct under the SVSH Policy
Mandated and Non-Mandated Reporting

- Mandated Reporting: far more extensive in clinical context than in other settings
- Non-Mandated Reporting: considerations
  - the nature and seriousness of the allegations (inappropriate comments versus physical conduct, for example);
  - whether allegations suggest grave patient safety concerns (inappropriate touching of an intimate body part during a sensitive exam, for example);
  - Any circumstances suggesting the respondent is targeting a particularly vulnerable population (immigrants, minors or patients with mental illness, for example);
  - whether others have alleged conduct similar in nature by the same respondent (arising within UC or elsewhere).
Additional Clinical Directives

- Chaperone Policy
- Supplemental Credentialing Application
- Acquisition/Affiliation Guidelines
- Model Website Notice
- Training Guidelines/Education

Also: Immediate Threat Guidance (for summary suspension in medical staff or medical group context)
Writing Workshop: Credibility Assessment
Objectives

- Review credibility factors
- Understand how to apply credibility factors to “findings and analysis”
- Understand the importance of documenting credibility assessments in investigation reports;
- Distinguish *reliability* from *credibility*
- Understand when credibility is *not* central to the determination
- Understand how offices across the system are performing credibility assessments
Factors to Consider

- Inherent Plausibility
- Corroboration
  - Direct
  - Indirect
- Motive to Falsify
- Consistent/Inconsistent Statements
- Material Omission
- Detail
- Demeanor
- Past Record
Inherent Plausibility

Refers to whether the facts put forward by the party are reasonable: whether their story holds together.

Is it plausible that events occurred in the manner alleged? Why? Why not?
Corroborating Evidence

Refers to whether a direct or indirect witness corroborates some or all of the allegations or response to allegations.

Is there a witness statement, document or other evidence that is consistent or inconsistent with what was stated?
Motive to Falsify

Refers to whether a party has a motive to be untruthful (based on the existence of bias, interest, or other motive).

Does the person have a motive to lie, omit, or falsify portions of their testimony?
Consistent/Inconsistent Statements

Refers to one individual giving statements that are inconsistent - either with their own previous testimony or the testimony of other witnesses - in a way that is not easily explained.

Are there shifting explanations or shifting recitation of events?

Does the testimony conflict with the testimony of other witnesses or other evidence?
Material Omission

Did the witness omit material information?

Is the omission reflective of your questioning? (Consider whether you posed a question that would have elucidated the omitted material).

Consider the impact of trauma on memory.
Detail

Is the level of detail offered by a witness reflective of their credibility? Is the lack of detail have an alternative explanation (i.e. intoxication, passage of time, ability to observe/process the information being requested)

Consider the impact of trauma on memory.
Demeanor

Proceed with caution.

Experts caution against using demeanor evidence as most people cannot effectively evaluate truthfulness from an individual’s demeanor.

Demeanor can be used as a credibility factor, but apply it judiciously and understand the pitfalls of relying on demeanor when making a finding.

Was there hesitancy, uncertainty, as to direct questions, etc.?
Past Conduct

Has the Respondent acted similarly in the past?

What weight is past conduct given in an investigation?

When is past conduct relevant?
Credibility vs. Reliability

Are credibility and reliability synonymous?

How do credibility and reliability interact? How do they influence your findings?

Can a credible witness provide unreliable testimony?
Credibility vs. Reliability

**Credibility** refers to the sincerity of the witness and the believability of their account.

- Examines plausibility, bias, motive to falsify, etc.

**Reliability** refers to the dependability or trustworthiness of the evidence.

- Examines how information was acquired. Would the witness be in a position to observe the behavior? Would the witness have been able to process/retain information? Is there evidence that independently corroborates the testimony?
Exercise: How do you perform credibility assessments?

Pair up with your neighbor - preferably someone from a different campus. Think about how you perform credibility assessments and how they are documented in your reports.

- Do you and/or your partner have credibility factors you tend to find compelling? Any factors that you don’t find compelling?
- How do you document your credibility analyses in your reports?
- What do you find challenging about performing/documenting credibility assessment?
Credibility assessment in your findings and analysis

- Separate disputed and undisputed facts
- For each disputed material fact, make a finding using credibility decisions as necessary.
- Support your decision with evidence *in the record*
- Show your work
Undisputed Facts

Why do we accept undisputed facts as true?

Are we performing a credibility analysis when we make findings of undisputed fact?
UCSC house style for credibility assessment in reports

Analyze credibility of evidence for each fact in dispute.

At the outset, clearly state what is in dispute.

Summarize the positions of both parties, and the evidence for/against. The credibility of the statements of parties and witnesses impacts the weight you give the evidence.

Establish finding by a preponderance of evidence and make that finding explicit.
Different Approaches

Some campuses assess the relative credibility of the parties as to their entire account (i.e. “Respondent was on the whole more credible than Complainant, therefore we accept his account.”).

- Others assess credibility as to specific portions of their testimony.

Some campuses assess the credibility of each party and each witness, generally, before proceeding to their findings and analysis.

- Others incorporate credibility assessments into the findings.
As discussed above, I found both parties characterized facts to support their own positions.

Ultimately, I found Respondent’s statements more reliable than not. For those disputed allegations lacking a percipient third-party witness, I balanced the relative credibility of the parties with the context of the parties’ relationship, internal consistency and inherent plausibility.

_Witness A_

Witness A reliably represented that he considered himself friends with both Complainant and Respondent, an impression supported by the parties. Complainant and Respondent both requested Witness A be interviewed.

Overall, I had the impression that Witness A provided his best recollection of events and circumstances.

_Witness B_

As Complainant’s close friend, Witness B’s statements were unsurprisingly aligned with Complainant’s interests. Witness B expressed both an awareness of Complainant’s complaint against Respondent and characterized Witness B’s hearsay-based impressions of Respondent’s conduct in ways that were out of line and occasionally more severe than Complainant’s own descriptions.

While I did not find Witness B’s statements dishonest, I did evaluate her statements in light of her relationship with and support of Complainant.
When credibility may not be “central” to a finding

- Where the undisputed facts and the Respondent’s own statements support a finding independent of inconsistent statements from key witnesses.
  - I.e. Respondent’s admissions and undisputed facts, standing alone, are sufficient to support a finding without analyzing the relative credibility of witness accounts.

- Where there is “ample evidence” to support a finding despite inconsistencies in a party’s account.
  - I.e. even though a party’s credibility is in doubt, there is enough third party witness information to sustain a finding.
  - Corroborating physical evidence that can resolve conflicting accounts
Talking About Sexual Health & Sex Off the Binary/Improving Trans Students’ Experience with Title IX
Tip #1: Create a culture around Names & Pronouns

- Names
  - Why are they important? It’s a simple and impactful way to show support and affirm transgender students’ gender identity.
  - Impact of us getting it right: Transgender youth who are able to use their lived name in school, home, work and with friends show “71 percent fewer symptoms of severe depression, a 34 percent decrease in reported thoughts of suicide and a 65 percent decrease in suicidal attempts” (Pollitt et al, 2019). Making the effort to use students’ lived names by having a space for “Lived Name” on forms and intake process signals to students that you & your office are aware of the existence of trans people.
  - Impact of us getting it wrong: Without this signal of support and respect you are risking the following: Office/staff person may lose vital trust with students and risks being seen as not welcoming, affirming or trans inclusive. This may inhibit students from being vulnerable, open and reflective with Title IX staff.
Tip #1: Create a culture around Names & Pronouns

- **Pronouns:**
  - **Why are they important?** Pronouns stand in for someone’s name in a sentence. Pronouns are just as important for trans & non-binary people as lived names. Using someone’s pronouns shows respect and is a simple way to build trust with students.
  - **Impact of us getting it right:** Asking people about their pronouns & sharing our pronouns is a way to retrain our brains to not assume someone’s gender identity. Using people’s pronouns signals to students that you respect them & their gender identity. Normalizing pronouns on forms & everyday life has a positive campus wide impact.
  - **Impact of us getting it wrong:** 1. You continue an exhausting pattern of students having to educate others which may influence students’ willingness to access Title IX resources 2. You risk misgendering someone and negatively impacting their mental health 3. You break a student’s trust and this might decrease a student’s ability to continue accessing this office/resources.
Tip #2: Degender Language

This starts before the first meeting - this starts with communication such as formal letters, email correspondence, etc.

Consider using first and last name in place of “Mr/Ms/etc.” until/unless you’ve had interactions and have confirmed which salutation makes sense.

Language matters for intimate or sexual activity for trans and nonbinary people (and women and men). During an investigation, inquiring with complainant and/or respondant about how they wish for parts of their body to be referenced should become a common practice.
Tip #2: Degender Language

If you’re meeting with someone more than once, check back in around language... Because most people’s feelings about- or experiences in- their bodies can change over time, it is important to revisit language when/if possible and re-confirm the words, language used specifically when talking about intimate parts.

Also, because most people’s sexual or intimate desires, feelings about, or experiences in their bodies can change over time, this and other conversations about sex are important to have with revisit with long-term sexual partners AND violations of the above practices may be a precursor to your interactions with our LGBTQIA+ community, given your roles on campus.
Tip #3: Take a dive into Queer & Trans Sex Ed...

Most folks’ socializations around sex ed, if any, are heteronormative, cisnormative: taught through families, schools, religious organizations, media (internet porn), etc.

People (often young) on our campuses, are exploring what sex means given their gender identities and their sexual partner’s gender identity(ies) ... often with very few blueprints.

Because your roles can often ask you to navigate reports that may describe sexual practices of queer and trans folx, you have a unique responsibility to become more informed if you are not already about the practices of...

- Trans and nonbinary people and their sex lives with other men, women and nonbinary people
- Women who have sex with women (and men and trans and nonbinary people)
- Men who have sex with men (and women and trans and nonbinary people)
In order to better serve, understand and practice cultural competence/humility in cases with queer and trans folx, consider some of the following...

- Meeting with LGBT Center staff on your campus, requesting a training or workshop about queer and/or trans sex ed
- Title IX staff reading group, “Trans Bodides, Trans Selves” as part of professional development
- Connect with staff in your student health centers and talk generally about what’s up currently for LGBTQIA+ students
- If you want to go the extra mile, set up a joint meeting with LGBT Center staff, Health Center staff and your Title IX colleagues, to do a deep dive into Queer & Trans sexual practices and health on your campus
Call To Action

1. **Be an active ally:** Attend 1 LGBTQIA+ event per semester/quarter
2. **Be an informed ally:** Read 1 article per semester/quarter that focuses on the latest LGBTQIA+ intimate partner violence research
3. **Be an ally that advocates:** Use only gender neutral restrooms on your campus for a week, what was that like? Advocate for a gender neutral restroom in your office/building.
4. **Be an ally that builds more allies:** Coordinate a yearly training in collaboration with your campus LGBTQIA+ center for a Trans 101 & Queer 101

2. “Predictors and Mental Health Benefits of Chosen Name Use Among Transgender Youth” (Pollitt et al, 2019)


4. “LGBTQ+ Resources: Allyship” (UC Berkeley Gender Equity Resource Center)

5. Trans Bodies Trans Selves by Laura Erickson-Schroth
Questions and Discussion
Systemwide Title IX Meeting

Student Success Division
Resource Centers
“Intersectionality and Investigations”
This land is the traditional and unceded territory of the Uypi Tribe of the Awaswas Nation. Today these lands are represented by the Amah Mutsun Tribal Band who are the descendants of the Awaswas and Mutsun Nations.
PLAN TODAY

- Introductions
- Learning Outcomes
- Hxstory/ Framing

- Group Discussion
- Final Thoughts
- Q&A
Who are we?

African American Resource and Cultural Center (AARCC)

Asian American/Pacific Islander Resource Center (AA/PIRC)
Learning Outcomes

- Understand and identify intersectionality framework (vs. intersectional identities)
- Understand why identity matters during T9 process
- Identify theoretical underpinnings of support for minoritized identities
- Develop safety plan/interim measures for students with minoritized identities
- Engage in meaningful dialogue to hear from talent in room
Knowledge check
Intersectionality (1851- Now)

Sojourner Truth, Abolitionist, Women’s Right Advocate

- 1851 “Ain’t I A Woman” speech
- At her core, she spoke of equality!
- Should she have to choose to fight for women’s rights or abolition movement? How are systems of privilege & oppression intersecting?
- The overlapping categories of identity (race, class, sexuality, ability, age, etc.) profoundly shape our experience within institutions

bell hooks, Feminist Scholar, Author of all the things amazing, Lemonade squeezer, & UCSC Alumna

- Shifting more towards equity!
- Slavery – differences between how black women and men were treated
- The role of white women and slavery
- Class divisions between White and Black folks

Kimberlé Crenshaw, Legal Scholar, [Coined Intersectionality as a framework in 1989]

- Framework examines the idea that people experience oppressions and privileges based on a number of different identities. (E.g., examine how Black women were being discriminated not just as women and not just as Black, but as Black women.)
- Synthesis of various forms of oppression
- Multiple factors can/do affect how one is perceived and treated in school, the media, and in the world at large.
Examine intersectionality as analytical strategy (it matters!)

Patricia Hill Collins, Feminist scholar, Author: “Intersectional Definitional dilemmas”
- Intersectional vs Intersectionality
- You don’t “DO” intersectionality; “… you HAVE an intersectional way of thinking about sameness & difference” (pg. 11)
- Expand knowledge production about social world & social identities beyond race/class/gender, e.g. sexuality, disability, etc.
- Think about interplay of violence

Chayla Haynes Davidson, Scholar, Published author
- Enacting TIX in 1972 was giant leap for women, however no one woman is the same; nor are the needs of any population of women.
- To achieve the equitable outcomes in education and beyond, we need to place a greater emphasis on intersectionality and intersectional interventions/
- Achieving equality in education will not happen if other factors like economic, racial and health equality are not addressed.
- “When I teach students how to examine issues of educational equality from an intersectional point of view, they are better positioned to create educational conditions that can improve the economic, health and social outcomes for all learners,”

Kat Blaque, Activist, Public Speaker, Youtuber
On Sunday, March 12, 2017, a study published in "The Psychology Of Women Quarterly" found that white female college students were less apt to help a black individual at risk of rape or sexual assault. A group of 160 undergraduate white women were given a hypothetical scenario: a sober male dragging a very drunk woman into a room at a party. The difference between the way these scenarios were given each time during the study was the woman’s name: Laura vs. LaToya. And, it turns out that while the white female students correctly pointed out that LaToya was in a dangerous situation, they were less likely to intervene or help the woman with the supposedly black-sounding name, not feeling personally involved in the scenario.

Bias is present, both consciously and unconsciously.

Finally, our working group advances a model of accountability that does not define a safe workplace as somehow entirely evacuated of sex and sexuality or resort to a politics of respectability. We are concerned about how feminist and queer teachers and researchers are rendered vulnerable by such approaches. These faculty members often teach courses and conduct research on gender, sexuality, and sex and institute pedagogies and methodologies that undermine conventional teacher-student and researcher-subject hierarchies. As the AAUP recognized in its Title IX report, “Faculty members who teach and present their research in sexuality studies, gender studies, and related disciplines are in essence being asked to self-censor or risk running afoul of Title IX. To safeguard academic freedom when faculty members stand accused, the AAUP’s longstanding recommendations on academic due-process standards must be maintained.” How might we not only allow nonnormative, queer, and feminist scholarship, pedagogy, and mentoring within the academy but indeed look to and learn from them as we build alternative models of accountability? Such models would not impose a queer exceptionalism to ethics but instead take into account the structural hierarchies that inhere in, for example, faculty-student relationships, and work to undermine those hierarchies rather than exploit them.
How is your purpose relative to integration?

- Title IX prohibits all forms of sex discrimination
  - Including sexual violence and harassment within educational programs that accept federal funding.
  - Require educational institutions to intervene and address gender violence when committed by faculty, staff, students or campus visitors
  - This law was set up to up to give equal access to education
    - But if you can’t do this if YOU ARE NOT ADDRESSING discrimination based on race, ethnicity, age, disability, gender, sexual orientation, class, and other intersecting factors.

- We work for institution of higher learning and we are here to support and uphold holistic student success
  - Lead with student centricity-- that’s why we’re here in GENERAL
  - Not all students are the same-- that’s why we’re here TODAY

- These are HARD jobs!
Purpose of Theory
- Theoretical frame for knowledge, expertise, and practice
- Creates a common language (community of scholars)
- Describe, explain, predict, and control

Purpose of Student Development Theory
- We learn how students grow, change, & learn
- We learn how students become complex individuals
- About increasing differentiation & integration of self

**BE WARNED!** Student development theories do not explain all behavior. We are holistic beings!
Diversity Minded

- Embrace compositional diversity and welcome multiculturalism, but are unwilling to tackle structural issues that reproduce inequity.

- While a diversity-minded practitioner might be concerned about diversity and outcomes, they do not take ownership or confront the challenge, frequently viewing that action as someone else’s work.
- Why the new approach?
- Trauma Informed Practice
- Impact & Intent
  - What does Community Care/Support resemble?
- Biases & Dynamics of Power
- Shift focus from diversity to equity
Let’s Talk!

- How do you perceive this to apply to your work?
- What have been some of your challenges with having an intersectional approach?
- What are suggestions you have for your colleagues?
In Closing...

+ Students seeking support from TIX are likely in a critical point in their life and there’s likely an accompaniment of pain and/or trauma
+ We have real opportunity to do something special
+ This work requires constant and continuous self-reflection
+ **As educators, we are the champions of equity and access and WE are the ones we’ve been waiting for to support the whole student!**
“Definitions belong to the definers not the defined!”

-Toni Morrison, Beloved


