

The Impact of the COVID-19 Pandemic on Professionalism Lapses and Regulatory Responses

Elizabeth Grace, M.D. (*PROBE* Program Director & CPEP Medical Director)

Mark Staz, M.A. (FSMB Management Consultant, Regulatory Policy & *PROBE* Faculty Member)

Introduction

While violations of professional ethics are not new to the healthcare environment, the COVID-19 pandemic created a new array of opportunities for unethical and problematic decision-making. Many of the well-publicized examples of such lapses fall into the category of communication of “misinformation.” However, there is limited understanding of the actual breadth of COVID-related misconduct that presents to regulators.

Methods

De-identified cases of seven healthcare professionals (5 MD, 2 ND) referred to PROBE, CPEP’s professional ethics and boundaries program, for ethical breaches related to COVID-19 are presented to demonstrate the breadth of related misconduct. Professional ethics remediation is a tool available to regulators to help address ethical misconduct, including lapses related to COVID-19. Specific characteristics of the violation are listed following each case description. (Note: Participants marked with an asterisk (*) have been subject to prior regulator actions or remediation, or are currently under investigation for a separate concern.)

Results

- **Participant 1* (MD)** sent a letter advising patients not to get the COVID-19 vaccine, alleging that it was inadequately tested and claiming unproven risks. (Communication & Clinical Competence infractions)
- **Participant 2* (MD)** failed to comply with mandatory requirements of public health orders pertaining to COVID-19, such as physical distancing, use of face coverings, and other requirements. (Regulatory Compliance infractions)
- **Participant 3 (MD)** complied with local public health orders requiring daily screening of workplace employees for signs of COVID-19. However, he treated these like medical visits, creating medical charts for all employees and billing for the services rendered. (Fraudulent behavior, Boundaries & Regulatory Compliance infractions)
- **Participant 4* (MD)** posted tweets that were critical of public health authorities’ handling of the COVID-19 pandemic, disparaged vaccines and made unfounded claims about adverse effects, and criticized lockdowns. (Communication & Clinical Competence infractions)
- **Participant 5 (MD)** requested that her nurse vaccinate her with the COVID-19 vaccine, prior to authorization for boosters or third doses and without disclosing that she was fully vaccinated and not eligible at that time for another dose. (Boundaries & Regulatory Compliance infractions)
- **Participant 6 (ND)** sent an email to her patients requesting that recently vaccinated patients not come to the office because of the adverse effects of spike protein shedding on her staff. She posted several Facebook posts and advertisements pertaining to the COVID-19 vaccine, promoting unproven risks and disparaging the vaccine. (Communication, Fraudulent Behavior & Regulatory Compliance infractions)
- **Participant 7 (ND)** advertised and sold "immune boost kits." She claimed the kits aid in immune function, protect against the COVID-19 virus, and help symptoms should an infection arise. (Communication, Clinical Competence, Fraudulent Behavior and Regulatory Compliance infractions)

Note: MD: Doctor of Medicine; ND: Doctor of Naturopathic Medicine

Figure 1: Categorization of Participant Violations
Misconduct Rarely Violates a Single Professional Responsibility

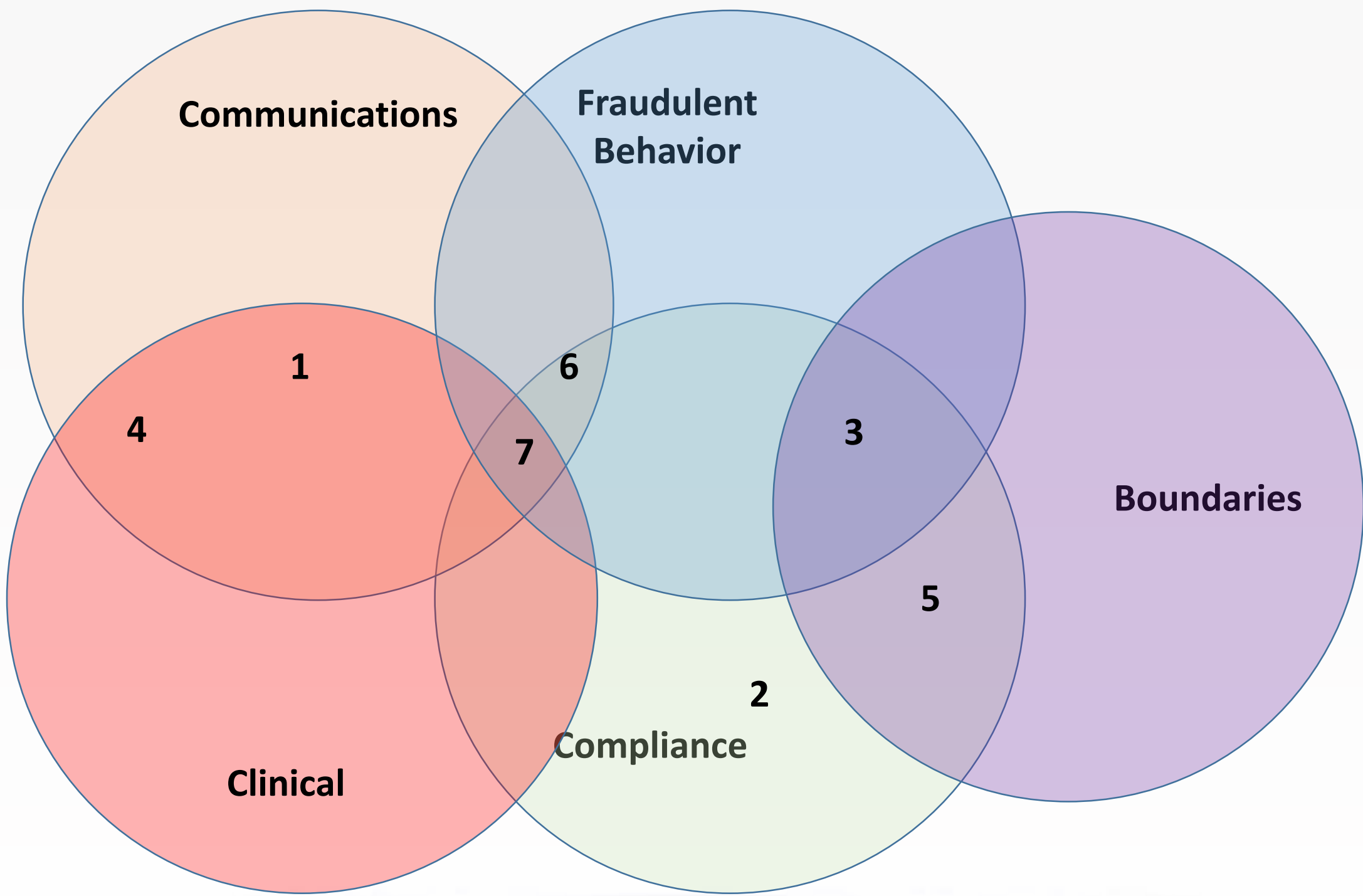


Figure 2: Description of Participant Violations:
Misconduct Often Represents Ethical Failure in Multiple Areas of Professional Responsibility

	Communication	Clinical	Fraud	Boundaries	Compliance
Participant					
1	Patient communication	Providing information contrary to evidence			
2					Failure to comply with Public Health Order
3			Fraudulent Billing	Dual Relationship	Manipulation of Intent of Public Health Order
4	Use of social media	Providing information contrary to evidence			
5				Dual Relationship Supervisory Failure	Failure to comply with vaccine eligibility criteria
6	Patient communication Use of social media		False advertising Credentials misrepresentation (scope)		Failure to comply with standards of advertising, scope of practice, and vaccination policy
7	Patient communication	Providing information contrary to evidence	False advertising Credentials misrepresentation (scope)		Compliance with regulations on scope of practice and others

Conclusion and Discussion

Based on referrals to PROBE, ethical breaches related to COVID-19 are heterogeneous and multifaceted and encompass elements of different types of misconduct. In this sample, violations pertaining to communication and compliance were most frequently represented.

Ethics remediation programs are educational resources that can be required by regulators as part of a comprehensive response to ethical misconduct, including lapses related to the COVID-19 pandemic. PROBE participants acquire knowledge and understanding of ethical theories and principles, and are asked to demonstrate that they can apply those theories and principles to the conduct that led to their own referral. Participants learn about professional accountability and gain insight into their conduct from the viewpoint of the referring organization. Ultimately, the skills gained can be used to improve decision-making when faced with new ethical dilemmas in the future. As an example of new insights gained by participants, one of the physicians described above wrote in his final essay, “By submitting unjustified billings, I have failed to act in accordance with principle of altruism. ... Taking part in the PROBE course made me realize that I allowed myself to be misguided by “unconscious bias.”

For some referred physicians, the COVID-19 related violation may represent part of a pattern of poor professional decisions, and individuals who have been cited for such violations may be vulnerable to poor decision-making in the future. Remediation may play a role in changing a pattern of poor decision-making.

Given the opportunities for new types of ethical breaches that have arisen during the COVID-19 pandemic, it is important to assess the current conceptualization of professional misconduct to ensure it is appropriate in the context of a pandemic and accurately captures the ethical breaches that occur.

The breaches identified thus far, while limited in number, fall squarely within traditional categories of professional misconduct. As such, the concept of professional misconduct appears capable of capturing these breaches. It is therefore imperative that regulators retain the ability to identify and sanction unethical conduct by their licensees and registrants related to COVID-19 and any future pandemic or public health emergency.