Insulating Your Practice from Sexual Harassment Claims

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Merriam-Webster's Dictionary of Law describes *sexual harassment* as a form of employment discrimination consisting of unwelcome verbal or physical conduct directed at an employee because of his or her sex.

Quid pro quo sexual harassment occurs when a condition of future or current employment is predicated upon fulfilling sexual demands.

Finally, *hostile environment sexual harassment* occurs when the harassment has the effect of interfering with the victim's work performance or creates an intimidating, hostile, or offensive environment that affects the victim's psychological well-being.

Sexual harassment claims and lawsuits are among the most challenging and devastating claims affecting providers both in their capacity as an employer and as a healthcare professional because no matter how unsubstantiated the claim is, the aftermath can have significant recriminations both personally and professionally.

As with medical liability issues, you can help insulate yourself and your practice from sexual harassment claims by taking a few simple steps.

Sexual Harassment Policy

Most important, ensure that your office has a sexual harassment policy; every multiperson office should have one—in writing.

The document should delineate a zero-tolerance policy toward the offensive conduct and should instruct the victim to report any instances of misconduct immediately to their supervisor or to you. The policy should be part of the new-hire handbook and should be kept up to date.

Consult an attorney who specializes in employment law to ensure your policy contains the necessary information. Post literature detailing the laws and policies about sexual harassment and discrimination on the law in the employee break room.

Also, provide handouts about sexual harassment to your employees.

These actions will help you defend against a sexual harassment claim which the claimant believes occurred in your office.

Under federal law, an employer is strictly liable for sexual harassment committed by the supervisor or manager of the claimant.

Essentially, this means that the employer is liable in a sexual harassment claim decided against a manager or supervisor. Strict liability of the employer can also occur when one coworker sexually harasses another coworker if the employer is aware of it and does not take appropriate action.

Therefore, as the employer, you must investigate and document in writing all reports of sexual harassment. The documentation should include the findings of your investigation and what, if any, corrective action you will be taking.

It is often a challenge to maintain a professional working environment in a close-knit, high-stress environment. You will open yourself up to significant liability if the culture of your office permits or encourages off-color jokes, sexually suggestive comments or photos, or access to adult-content Internet sites.

Sexual harassment claims can also arise from allowing employees to work in an environment that is both objectively and subjectively offensive to a person of reasonable and ordinary sensitivity. This will become a problem if a disgruntled employee decides to make it an issue.

Workplace Romance

Given the amount of time spent at work, office romances are not an uncommon occurrence. Persistent demands for a date or relationship made by one employee which are not favorably received by another, however, are frequently the genesis of sexual harassment claims.

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A single inquiry by a physician to an employee would probably not constitute sexual harassment; however, the working relationship may become permanently impaired after the overture. The bottom line is to avoid office romances, particularly if you are in a position of authority or if the individual is in your direct reporting chain.

Having a sexual relationship with a patient is a sure-fire way to end up in front of your state medical board and/or in civil court if the relationship goes sour.

State medical boards generally forbid sexual encounters with current patients. Check your state medical practice act to determine the amount of time that must lapse after you have discharged a patient from your practice before you can see him or her romantically.

I know of one instance where a bitter ex-wife informed the state medical board that 18 years earlier, when she and her physician ex-husband started dating, she was still his patient.

Suffice it to say, the state medical board's response was less than positive about his relationship despite the fact that it was 18 years ago.

Know Your Insurance Policy

Understanding your insurance policy is of paramount importance in defending your practice against claims of sexual harassment.

A typical office will have two kinds of insurance: a general liability policy which covers slip and falls and events unrelated to the professional rendering of medical care, and malpractice or medical liability insurance which relates to claims arising in the professional rendering of medical services.

Many general liability and medical liability insurances exclude coverage of claims which allege sexual harassment, discrimination, or other types of sexual misconduct. If you get named in a sexual harassment suit and your policies exclude that class of claims, you will have to pay the cost of mounting a defense and whatever adverse judgment is awarded against you or your practice.

In summary, an ounce of prevention is worth a pound of cure insulating your practice against claims of sexual harassment, and there are many ways to protect yourself and your office against these very damaging claims.

In the end, following a few guidelines will lower your risk:

- Avoid office romances.
- Do not have romantic relationships with patients.
- Don't tolerate a sexually charged office atmosphere.
- Investigate and document claims of sexual harassment.
- Distribute sexual harassment information, including your policy, to your employees.
- Keep your policies and procedures up to date. ■