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## PRACTICE GROUP: HEALTHCARE

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### #UsToo: SEXUAL HARASSMENT IN HEALTHCARE

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We've had an outpouring of media attention on the issue of sexual misconduct in the workplace. The world has heard actors, models, congresswomen, as well as business women come forward to say, "Me too", but what about those individuals in the healthcare industry?

The few studies and surveys conducted do indeed demonstrate that sexual harassment issues occur in healthcare. In 1995, a cross-sectional survey of U.S. Academic Medical Faculty indicated that 52 percent of women and five percent of men reported harassment in their careers. In a more recent survey in 2014, 30 percent of women and four percent of men indicated they personally experienced harassment. Of the women, 92 percent reported sexist remarks or behavior and 41 percent unwanted sexual advances. Moreover, 59 percent of the women perceived a negative effect on their confidence as a professional, and 47 percent believed the experiences negatively affected their career advancement.

Sexual harassment in the workplace is a form of sex discrimination unlawful under Title VII of the 1964 Civil Rights Act and other state-specific laws. It can take two forms – quid pro quo, which involves sexual favors in

exchange for some job favor and typically involves a manager/supervisor and subordinate, or a hostile work environment, which is unlawful if the behavior is unwelcome and severe or pervasive enough to create an atmosphere that a reasonable person would consider intimidating or abusive. Harassers in healthcare can include a coworker, a professional colleague like a physician, patient, their significant other, or other third party, such as vendor representatives.

A recent special report by NBC News focused on the experiences of a number of female physicians subjected to sexual harassment. The unique healthcare environment may allow harassment to proliferate. The industry is typically hierarchical, with young physicians and nurses having a lower status without much power. The working environment of the healthcare industry can also foster inappropriate behavior – 24/7 coverage, and easy access to beds and call rooms. Stress can play a factor as well; when people are under stress, they're more likely to lash out, which includes not only sexual but negative comments as well. Stereotyping can also play a role, although that seems to be changing with more males entering the nursing profession and more females going into medical specialties, like surgery.

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In response to a Medscape poll asking whether they had been harassed by a patient, 71 percent of nurses responded, "Yes." By gender, female nurses and physicians were more likely to be sexually harassed than their male counterparts (73 percent female vs 46 percent male nurses; 58 percent female vs 39 percent male physicians). Fifty-eight percent of other healthcare specialists, such as dietitians, paramedics, and physical therapists, also reported patient harassment. Almost all nurses stated that they had been physically threatened, with the majority of incidents related to pain medications.

### Prevention of harassing behavior is an ongoing process.

Most people do not report these behaviors. Why? When harassing behavior is frequent, it becomes normalized to the point of becoming the culture of the organization. Additionally, if the harasser is important to the viability of the organization, such as a surgeon who is not easily replaced, staff comments like, "That's just the way it is" or, "Boys will be boys" are all too common. Lack of time and energy as well as fear that speaking out could cost career advancement or other retaliation also contribute to silence. No one wants to rock the boat and be associated with sexual harassment. Inappropriate behavior from patients is often attributed to a state of inebriation, being on drugs, or stress from being ill, and the harassment is tolerated as part of the job. But what toll does this take on the victim or patient? Staff may feel guilty knowing the harasser is likely targeting others. This environment can also be detrimental to patient safety – both the harasser and the victim's minds are not focused on the patient, resulting in substandard care.



### EXAMPLES OF SEXUAL HARASSMENT IN HEALTHCARE ORGANIZATIONS:

- Surgeon comments about anatomical differences among female staff in surgery and asks other men in the room if they would sleep with them
- Lewd "locker room conversation"
- Patient calling a nurse a "cute little thing"
- Patient exposing themselves
- Colleague flipping through a cell phone looking for nude pictures of the nurse
- Questions asked about bra size
- Patting a nurse's butt when passing by

Harassment occurs on a continuum and not only at the most extreme level. That often makes it difficult to determine if the behavior qualifies as harassment. It's very likely your organization has a policy on sexual harassment in place and your staff has been trained on this subject. However, people come and go. It's not sufficient to do this once during orientation so the box is checked. Prevention of harassing behavior is an ongoing process.

- Transform organizational culture to ensure that men are aware that sexual harassment is unacceptable and women feel encouraged to support one another

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- Leaders, including those on the medical staff, must “walk the walk” and act as role models for expected behaviors
- Awareness updates should be included in annual employee education and feature examples of unacceptable behavior
- Require your medical staff to participate in harassment training
- Policies should address not only employee, but third-party conduct as well
- Well-trained investigators should treat all complaints seriously
- Actions taken should fit the offense demonstrating your no tolerance culture
- Periodically check back with the victim to ensure no retaliation is perceived
- Go beyond training that involves only reading a policy or watching a video which can easily be misinterpreted

Harassment in healthcare can be particularly newsworthy if it involves criminal activity or is widely pervasive. Create a public relations plan in advance to ensure you

are prepared for a potential event. Since October 2017, when the #MeToo movement gained momentum through social media, several healthcare organizations reported that staff members (and patients) have come forward with concerns that they too are victims. Depending upon the nature of the allegations and investigation results, incidents or claims of sexual assault or harassment should be reported to your insurance carrier. The insurance carriers providing your employment practices coverages often offer risk management consulting assistance where strategies for addressing such incidents can be discussed with you. While sexual harassment claims are often covered under the organization’s director and officers or employment practices coverage, sexual assault may not be covered, or have exclusions or limitations to coverage. Claims may also be filed through the EEOC, and these investigations should be reported to your insurance carrier as well. Whatever the circumstances, it’s prudent to consider coverage of such allegations when renewing your insurance policies.

## References and Resources

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