
Allegations of Sexual Misconduct: An Old Problem with a New Reality

BLOG | JANUARY 31, 2020

[Click here to download a print friendly pdf.](#)



In 2018, Pew Research Center found that 59% of women and 27% of men indicate that they have experienced sexual harassment. From 2017 to 2018, EEOC Title VII lawsuits increased by 50% and courts are tending to view employer liability for employee acts more stringently based upon what the employer reasonably knew or should have known. Complaints of sexual harassment include verbal or physical conduct of a sexual nature that has the purpose or effect of adversely affecting an employee's job or creating a hostile or offensive work environment. In recent years, this old problem has gained increased publicity and is now subjected to heightened scrutiny, making it important that all businesses, including those in the healthcare industry be aware of disruptive behavior and be equipped to act if a complaint is lodged.

The Me Too Movement began in 2006 as a way to empower women who experienced sexual harassment or abuse through empathy and exploded in 2017 when Alyssa Milano encouraged women to hashtag the phrase on social media to show how many people have encountered similar experiences. The Me Too Movement is currently receiving national attention with the trial of Harvey Weinstein and conviction of Larry Nassar, M.D., the National Medical Coordinator for USA Gymnastics.

The prominence of the Me Too Movement is impacting sexual harassment and hostile workplace environment claims across business, including health care practices.

The prominence of the Me Too Movement is impacting sexual harassment and hostile workplace environment claims across business, including health care practices. The AMA Code of Medical Ethics defines sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.” AMA Code of Medical Ethics Opinion 9.1.3. Such disruptive and unprofessional behavior distracts from patient care and creates anxiety, which can lead to medical errors or near misses. Such behavior leads to patient dissatisfaction, poor office morale, increased staff turnover, and potentially negative publicity. Additionally, disruptive behavior can have a negative economic impact, including investigative costs, potential litigation costs, settlement amounts (average settlement is \$125,000), and costs associated with placing employees on administrative leave and/or replacing staff.

See below for some helpful tips for health care employers.

Train all employees regarding healthy, respectful, and inclusive behavior in the workplace per legal and regulatory standards

- Title VII
- Title IX
- Joint Commission Standards
- AMA Code of Ethics
- Accreditation Council for Graduate Medical Education Standards
- Medical Board Position Statements, *g.*, Avoiding Misunderstandings During Physical Examinations
- Other policies in play, including Human Resources Policies, Institutional Policies, Medical Staff Bylaws, Departmental Policies

Create and enforce a comprehensive policy regarding harassment

- Ensure employees know who to contact with a complaint
- Maintain protection from retaliation
- Include all protected classes, not just sex-based harassment
- Include substantiated claims of sexually hostile work environment as “for cause” termination in employment agreements

Establish clear expectations for an objective and timely investigation

- Determine who will conduct and be involved in the investigation
 - Medical Director
 - Department Director
 - Quality Assurance Committee
 - Credentialing Committee
 - Human Resources
 - Compliance

- Security
- Counsel

**Consider an external investigator depending on the seriousness and sensitivity of the allegations*

- Interview all individuals with knowledge and assess credibility and motives
- Review any and all documentation
- Consider prior acts and/or discipline
- Document all findings in an Investigative Report

Determine next steps

- Mandatory training
- Letter of reprimand/warning
- Conditional letter of reappointment
- Last Chance Agreement
- Probation
- Suspension
- Termination
- Recommendation against reappointment
- Reporting

About the Author

Madeleine (Maddi) M. Pfefferle is an attorney at Young Moore and defends health care providers in medical malpractice actions in North Carolina Superior Court and in Section 1983 civil rights litigation in federal court. She is a graduate of the University of Maryland and the University of North Carolina School of Law. Contact Maddi at (919) 861-5031 or Madeleine.Pfefferle@youngmoorelaw.com.

North Carolina health care providers discussed these issues with panelists Elizabeth McCullough, Dawn Raynor, and Barbara Thornton at seminar hosted by Young Moore on January 22, 2020.

Elizabeth P. McCullough
Health Care Attorney
Young Moore
(919) 861-5071
Elizabeth.McCullough@youngmoorelaw.com

Dawn D. Raynor
Employment Attorney

Young Moore
(919) 861-5067
Dawn.Raynor@youngmoorelaw.com

Barbara Thornton
Human Resources Executive
People Development Partners
(336) 817-6915
barbara@peopledevelopmentpartners.com

Related Links:

- [Download print friendly pdf](#)
- [Title VII of the Civil Rights Act of 1964](#)
- [Title IX](#)
- [EEOC Regulations](#)
- [AMA Code of Medical Ethics](#)
- [Accreditation Council for Graduate Medical Education Standards](#)
- [North Carolina Medical Board: Guidelines for Avoiding Misunderstandings During Patient Encounters and Physical Examinations](#)

CONTACT US

Phone: 919-782-6860
Fax: 919-782-6753

OFFICE

Young Moore and Henderson, P.A.
3101 Glenwood Ave. Suite 200
Raleigh, N.C. 27612

MAILING ADDRESS

Young Moore and Henderson, P.A.
P.O. Box 31627
Raleigh, N.C. 27622-1627