



Mitigating the Risk of a #MeToo Lawsuit Against Your Medical Group or Practice

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A NORTH COUNTY family medicine physician surrendered his license¹ after he was accused by several patients of groping and other sexually inappropriate acts in the exam room. A San Diego-based internal medicine physician pled guilty to eight counts of sexual penetration of an unconscious person, three counts of sexual battery, and one count of possession of child pornography. Although he escaped jail time, the physician had to register as a sex offender for life and was barred from practicing medicine.²

The Medical Board of California relies on two important statutes related to sexual conduct. Business and Professions Code Section 726 provides that physicians who engage in any act of sexual abuse, misconduct, or relations with a patient, client, or customer are guilty of unprofessional conduct and are subject to disciplinary action. Business and Professions Code Section 729 more clearly defines unprofessional conduct of a sexual nature that can be punishable by imprisonment or fines.

A 2018 article in *Harvard Business Re-*

view titled “Sexual Harassment Is Rampant in Health Care. Here’s How to Stop It”³ listed three key factors that make an organization more prone to sexual harassment: “a hierarchal structure, a male-dominated environment, and a climate that tolerates transgressions.” The business of medicine “has all three of these elements,” the article stated. So much so that Twitter has its own hashtag (#metoomedicine) dedicated to sexual harassment in medicine.

However, there are ways medical groups and physicians in private practice can mitigate their risk of facing sexual misconduct claims from patients. Having a clear, zero-tolerance anti-harassment policy in an employee handbook that is circulated to every employee, regardless of their status in the organization, is a good first step. In addition to including language about conduct between employees and patients, it is critical that an anti-harassment policy addresses conduct between employees. Employers also need to make sure that employees read and understand the policy. An acknowledgement form that includes descriptions of the various types of harassment (e.g., unwanted sexual advances toward any individual, quid pro quo, and inappropriate visual, verbal, or physical conduct) should also be drafted, circulated, and signed by every employee.

Practices may also want to consider prohibiting social interactions between employees and patients, including prohibiting online social media interaction. It is critical for human resource managers to work with key stakeholders, including physicians, attorneys, and employees, to establish policies and procedures that deter sexual harassment at all levels of a practice. An employee handbook with a descriptive, comprehensive anti-harassment policy, policy acknowledgement forms, and ongoing training can help to shape and institutionalize a zero-toler-

ance stance on harassment.

Physicians and medical groups also need to provide thorough and responsive channels for employees and patients to report sexual harassment or misconduct by a physician. If it is determined that any wrongdoing has occurred, prompt remedial action should be taken. Appropriate responses could include discipline and possibly immediate termination. Physicians may also have an obligation to report any sexual misconduct by other providers to the Medical Board. However, prior to taking action, practices need to conduct a thorough investigation, which includes interviews and documentation. Employers should consult with legal counsel prior to launching an investigation to ensure compliance with federal and state laws. It is also critical to take steps such as providing ongoing anti-harassment training to supervisory and non-supervisory employees, and focusing on creating a culture grounded in values

that are antithetical to harassment in order to prevent further misconduct.

Creating a zero-tolerance culture is no easy feat. Physicians need to communicate the urgency of the issue with all members of their organization, ensure that all members of the organization buy into their vision, and consistently align their zero-tolerance policy with behaviors. Reinforcing cultural values takes time and requires cooperation from all stakeholders within an organization. Establishing and enforcing clear policies, open and responsive channels to voice complaints, and a well-defined policy are all hallmarks of a zero-tolerance culture. **SDP**



Mr. Jayakumar is a founding partner of Carlson & Jayakumar LLP, a Southern California-based law

firm focused on healthcare and employment law, and business partner of the San Diego County Medical Society. For any questions about sexual harassment policies, employee handbooks, and anti-harassment training, contact Carlson & Jayakumar at (949) 222-2008 or visit www.cjattorneys.com.

References

¹<https://www.10news.com/news/team-10/exclusive-more-than-150-san-diego-doctors-disciplined-for-sex-abuse-negligence>

²<https://timesofsandiego.com/crime/2015/09/25/doctor-who-sexually-assaulted-low-income-patients-gets-no-jail-time/>

³<https://hbr.org/2018/11/sexual-harassment-is-rampant-in-health-care-heres-how-to-stop-it>

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