Sexual Harassment in the Health Care Industry: A Follow-Up Inquiry

A nationwide survey of hospital human resources managers reveals that allegations of sexual harassment in hospitals are increasing. Reported statistics for a 4.5-year period show that nurses continue to bring the largest number of charges. Most are “hostile environment” allegations, and most formal charges are levied against coworkers. When compared to data gathered in an earlier survey, these statistics show an alarming trend. A significant increase in allegations occurred in 1999 and 2000, corresponding to two US Supreme Court rulings that clarify an employer’s responsibility to eliminate this form of sexual discrimination from the workplace. Key words: EEOC, hostile environment, sexual discrimination, sexual harassment

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In 1994, a nationwide study of hospitals revealed that formal charges of sexual harassment within the health care industry were increasing at an alarming rate. Of the total number of sexual harassment allegations reported during a 4.5 year period, more than 80% of the complaints were “hostile environment” allegations, with the remainder being quid pro quo charges.1 Although most allegations reported in that study were made by women, a significant percentage were filed by male employees. This 1994 study also showed that the largest number of complaints was filed by nurses and that most charges were filed against coworkers. Nearly 10% of the allegations were levied against physicians.1

After 1994, sexual harassment filings with the Equal Employment Opportunity Commission (EEOC) continued to increase, totaling nearly 16,000 in 1999.2 According to the National Organization for Women, 50% to 75% of working women will experience sexual harassment on the job. Men, too, will be victims of sexual harassment, but in smaller numbers. A report by a Maryland

Health Care Manager, 2002, 20(4), 46–52
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consulting firm revealed that 15% of men have experienced sexual harassment in the workplace.³

Perhaps the most publicized sexual harassment cases in recent years involved those brought against Astra USA, a worldwide pharmaceutical company, and Ford Motor Company.³ Astra agreed to pay $9.85 million to settle sexual harassment claims brought by the EEOC, after admitting that some of its executives pressured women for sex and replaced older women with younger, single women who might be more likely to accept sexual advances.³ In September 1999, Ford Motor Company reached a $17.5 million settlement resulting from allegations of sexual harassment in two Chicago-area factories. In essence, the company agreed to set aside $7.5 million to compensate victims of sexual harassment and $10 million more to train managers and male workers to stop an ongoing pattern of groping, name-calling, and parties with strippers and prostitutes.⁴

As evidenced by the results of the 1994 study referenced previously, hospitals and other health care institutions are not immune from the problem of sexual harassment. Sexually abusive remarks are often exchanged in tense moments in operating rooms, nurses are sometimes shown little respect by physicians, and sexual graffiti is sometimes present in work units. Such conditions, experts contend, make hospitals especially vulnerable to allegations of sexual harassment.⁵

**SEXUAL HARASSMENT DEFINED**

Twenty years ago, the EEOC defined sexual harassment with the following statement:

Harassment on the basis of sex is a violation of Section 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made explicitly or implicitly a term or condition of an individual’s employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive environment.⁶(p.788)

This statement embodies two forms of sexual harassment: quid pro quo harassment and hostile environment harassment. The *casting couch* is a term used to describe how young actors and actresses are encouraged to have sex with producers and directors to get parts in movies. The legal term for this type of sexual harassment is *quid pro quo*. This Latin term means “this for that.” When an employee’s salary, promotion, or other conditions are dependent on unwelcome sexual advances from a boss, that is quid pro quo harassment. Hostile environment harassment is different. A hostile environment is created when an employee is made to feel uncomfortable because of his or her sex. This situation can be caused by obscene gestures or explicit language, the posting of lewd pictures, making unwelcome sexual advances, or talking about sex in an offensive manner.⁷ Hostile environment also can arise from making sexual innuendoes; turning work discussions to sexual topics; telling sexual jokes; asking about sexual preferences; asking personal questions about one’s social or sex life; making sexual comments about one’s clothing, body, or looks; giving letters or gifts of a sexual nature; or invading another’s personal space.⁸

In short, sexual harassment is a form of gender discrimination that violates Title VII of the Civil Rights Act of 1964. Sexual harassment is any unwelcome sexual behavior
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RECENT LANDMARK COURT DECISIONS

The US Supreme Court has recognized quid pro quo and hostile environment harassment since 1977 and 1986, respectively. But two recent court decisions have given clear guidance to employers with respect to their responsibility: Burlington Industries v. Ellerth and Faragher v. Boca Raton.6

Kimberly Ellerth, a former employee of Burlington Industries, quit her job and thereafter complained of sexual harassment by one of her supervisors. In her lawsuit, Ellerth offered no evidence that she had suffered retaliation for resisting the supervisor’s advances. Initially, her suit was thrown out. A federal appeals court reversed the lower court, and Burlington appealed to the US Supreme Court, which agreed with the appeals court and sent Ellerth’s suit back for trial. Justice Kennedy, in writing for the majority, said that even in the absence of a tangible job action, Burlington Industries would be liable for the supervisor’s behavior unless the company could prove it had exercised reasonable care to prevent it and that Ellerth herself had unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.7 Thus quid pro quo harassment can occur even if the victim suffers no job actions.

In the other case, Beth Ann Faragher, a former lifeguard, sued the City of Boca Raton, Florida, claiming sexual harassment by two beach supervisors. She won in federal court, but the judgment was reversed on appeal. The appeals court agreed that the supervisors’ behavior constituted an abusive work environment, but it declined to hold the city liable for their conduct because the city did not know the harassment was happening. The Supreme Court reversed that ruling, saying that the City of Boca Raton was liable for abuses by the supervisors.6,7 Under the strict-liability standard accepted by the court in Faragher, employers are liable for supervisors’ sexual harassment, regardless of whether the employers were informed that the harassment took place. This ruling resolves all doubt about employers being liable for sexual harassment, whether or not they know that such behavior is ongoing. In the words of one attorney, “The Supreme Court has made it clear that companies will virtually automatically be liable.”6,7

AN EMPLOYER’S RESPONSIBILITY

Employers have the responsibility for ensuring a harassment-free workplace. When a complaint is made, they have a duty to investigate and take corrective measures. A failure to take complaints seriously can put the company at risk.

Because of the impact that sexual harassment can have on an organization, some companies are going to unusual lengths to learn where potential problems exist. According to a recent survey by the American Management Association, half of all large
US companies monitor the Internet activity of their employees. Two-thirds monitor e-mail messages, computer files, or telephone conversations. An employee who is unwittingly exposed to offensive graphic material on a colleague’s computer screen may file a hostile work environment charge.

Some employers who fear lawsuits are stopping harassment before it starts. Wal-Mart and General Motors, for example, have instituted zero-tolerance policies, banning speech or conduct with sexual undertones. Other firms are attempting to minimize the risk of lawsuits by hiring sexual harassment consultants, individuals who specialize in sexual harassment training and prevention.

SEXUAL HARASSMENT IN HOSPITALS: A SECOND INQUIRY

In 1992, 10,532 formal complaints of sexual harassment were filed with the EEOC, an increase of 69% over 1991. Sexual harassment filings with the EEOC are now about 16,000 per year, but the number has not changed much in the past few years. In fact, a recent survey of human resource managers revealed that they were handling fewer sexual complaints than in 1995.

To determine if hospitals are experiencing a decline in sexual harassment allegations, a nationwide survey of hospital human resources managers (HRMs) was conducted in July 2001. The research instrument was designed, pretested, and mailed to 500 randomly selected HRMs listed in the membership directory of the American Hospital Society for Health Care Human Resources Administration of the American Hospital Association. Responses to the survey totaled 64, representing a 12.8% response rate. Thirty of the respondents are employed by public hospitals; 34 are employed by private institutions.

Sixty-three of the 64 hospitals represented in this study have formal, written policies on sexual harassment. Most of these hospitals rely on a combination of methods for disseminating the policy, including policy manual statements, training programs, discussions in departmental meetings, newsletters, and orientation programs.

Sexual harassment allegations

The 64 survey respondents reported a total of 263 sexual harassment allegations from January 1997 through June 2001. Data in Table 1 show the gender of the complainants and the individuals against whom the charges were levied. Nurses filed 67 of the charges, followed by technicians (56), clerical-secretarial employees (48), custodial workers (30), and food service personnel (16).

In the 1994 study, 99 hospitals reported a total of 299 sexual harassment complaints during a 4.5 year period—an average of approximately three complaints per hospital. The current study shows an increase in the average number of allegations per reporting hospital—approximately four per hospital over a similar period. As in the earlier study, most charges were lodged by female employees against coworkers, but complaints levied against physicians increased significantly. In fact, about 15% of all sexual harassment charges reported in this study were made against physicians, as compared to 10% in the earlier (1994) study. Men lodged roughly 10% of all complaints, about the same percentage reported in the earlier study.

Figures in Table 1 show a dramatic increase in sexual harassment complaints in 1999 and 2000. This increase may be attributable to an increase in harassing activity or
Table 1. Sexual harassment complaints in reporting hospitals—January 1997–June 2001*  

<table>
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<th>Year</th>
<th>M</th>
<th>F</th>
<th>No. of complaints filed</th>
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<th>Manager other than supervisor</th>
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Table 1 shows the overwhelming majority of sexual harassment allegations reported in this study fall into the hostile environment category. Of the 263 reported cases, 40 (15%) were dropped before resolution, and 23 were pending at the time of reporting. Of the 200 cases that were resolved, 77.5% were judged to be with merit, whereas 22.5% were judged to be without merit. In the earlier (1994) study, nearly 30% of the charges that were investigated to conclusion were deemed to be without merit.  

Types and disposition of complaints

As the data in Table 2 show, the overwhelming majority of sexual harassment allegations reported in this study fall into the hostile environment category. Of the 263 reported cases, 40 (15%) were dropped before resolution, and 23 were pending at the time of reporting. Of the 200 cases that were resolved, 77.5% were judged to be with merit, whereas 22.5% were judged to be without merit. In the earlier (1994) study, nearly 30% of the charges that were investigated to conclusion were deemed to be without merit.  

Disciplinary policies

Penalties for engaging in sexual harassment are an integral part of hospitals' overall discrimination policies. First-time offenders typically receive verbal or written warnings, but 26 of the 64 hospitals represented in this study prescribe termination of employment as the appropriate penalty in some instances. Suspension without pay, either by itself or in conjunction with other penalties, is employed by 22 of the hospitals, whereas significantly fewer require counseling, transfers, demotions, or suspension of privileges. Table 3 provides a breakdown of the penal-
ties that are imposed by health care institutions represented in this study.

In their zeal to eliminate sexual discrimination, employers sometimes overreact to allegations of sexual harassment by terminating the accused without proper investigation. Such behavior can result in legal liability. If the allegations are without merit, the accused harasser may bring action for unlawful discharge or defamation, seeking both remedial and punitive damages.

For example, Jerold Mackenzie, a former Miller Brewing Company executive, challenged his dismissal after a coworker, Patricia Best, accused him of sexual harassment. A jury awarded Mackenzie $26.6 million. In another case, a California jury awarded Ralph Cotran $1.78 million in lost compensation in a wrongful termination lawsuit against his employer, Rollins Hudig Hall International, after two secretaries alleged sexual harassment. 

**CONCLUSION**

Sexual harassment is now the number one concern of HRMs, according to a poll conducted by the Jackson, Lewis, Schnitzler, & Krupman law firm. Hospitals, as with other organizations, continue to search for ways to eliminate all forms of discrimination, including sexual harassment. Even so, allegations of sexual harassment in hospitals appear to be increasing at an alarming rate.

Based on a 2001 survey of hospital HRMs, nurses, technicians, clerical employees, custodial workers, and other hospital employees frequently file charges of sexual harassment against coworkers, supervisors, third parties, and others. As expected, most charges are filed by women, and most fall into the “hostile environment” category. Surprisingly,
both this study and earlier studies reveal that 10% to 15% of sexual harassment allegations in hospitals are brought against physicians.

This study also revealed that virtually all hospitals now have formal, written policies governing sexual harassment. These policies are disseminated to employees in a variety of ways, including policy manuals, mandatory training programs, and discussions in departmental meetings. A typical policy statement includes examples of sexually harassing activity and prescribes penalties that may be imposed.

Although most employers apply penalties prudently, some take inappropriate punitive action against accused individuals before having thoroughly investigated the complaints. Such “off the cuff” behavior on the part of management can have devastating consequences. Not only can such action affect the lives and careers of accused individuals, but the organization may be liable for wrongful termination or defamation of character. Hence management should be careful to protect the rights of the accused as well as those of the alleged victim.

REFERENCES