

Sexual Harassment: Court Finds Unprofessional Conduct By Physician.

The US District Court for the District of Maine upheld a short-term disciplinary suspension of a physician who sexually harassed a nurse at the VA hospital where they were both employed on staff. Sexual harassment is unprofessional conduct for a physician, the court said.

The physician grieved his suspension and was given a fair hearing in the court's judgment. The nurse's complaint was substantiated that the physician would not stop his unwanted sexual advances and that he was making it difficult for her to do her job. **Pathak v. Department of Veterans Affairs**, 130 F. Supp. 2d 140 (D. Me., 2001).

Title VII outlaws employment discrimination.

Discrimination can take the form of requiring an employee to work in an environment that is hostile or abusive because of the employee's gender.

The employer has the responsibility to remedy a sexually hostile or abusive environment.

It was appropriate to suspend this physician for seven days without pay for sexually harassing a nurse. He had a fair hearing and the nurse's complaint was substantiated.

UNITED STATES DISTRICT COURT,
MAINE, 2001.

Sexual Harassment: Hostile Environment Created By Patient, Employer Liable.

The case involved a female staff psychologist who worked at a state hospital serving mentally ill adolescents.

The case points to a healthcare employer's duties in the face of dangers faced by female staff working with patients who act out sexually toward female caregivers.

The US Circuit Court of Appeals for the Tenth Circuit looked to our basic anti-discrimination statute, Title VII of the US Civil Rights Act.

Title VII outlaws sexual harassment in the workplace committed by supervisors and co-workers.

Title VII also protects female caregivers from sexual harassment by patients. The law gives them the right to sue their employers if they are harmed due to inadequate on-the-job protection from sexual harassment by patients.

Prior Knowledge Of Patient's Tendencies

For a healthcare employer to face a lawsuit after the fact there has to have been reason before the fact to believe a particular patient had the tendency to act out sexually toward female caregivers.

The court said there was reason to expect trouble from this particular patient. There was reason for the hospital to be concerned for the safety of the patient's female caregivers. There should have been some level concern and that concern should have been translated into action.

A disturbing although not uncommon profile emerged from assessment interviews with psychiatrists at this hospital and when records from prior hospitalizations were obtained and examined.

The patient was known to be aggressive, to have difficulty respecting other persons' personal boundaries and stated he had committed rapes.

When data like that is entered in a patient's chart a hospital is on notice it must protect female caregiving staff, the court pointed out.

A female caregiver who is sexually assaulted by a patient experiences what the US Civil Rights Act refers to as a sexually hostile work environment.

The incident was abusive, dangerous, humiliating and profoundly traumatic.

Knowing this patient had a tendency to act out, the hospital should have done several things, including adding more staff.

UNITED STATES COURT OF APPEALS,
TENTH CIRCUIT, 2001.

Prompt Effective Action Is Required

Every employer must take prompt and effective action to protect an employee from sexual harassment, whatever the source, once the threat is substantiated as real and imminent.

More staff on the unit would have made the unit safer.

The inside of private treatment rooms should have been visible from more traveled areas of the unit.

Staff sometimes walked patients around the campus and conversed with them. Isolating a staff member with patients can be dangerous and that was when this caregiver was assaulted.

Staff should have been trained in martial-arts self-defense in addition to take-down and restraint.

The court also recommended battery-powered personal alarm devices.

The court sharply condemned the idea that sexual acting out by patients is just a clinical issue to be resolved in therapy. **Turnbull v. Topeka State Hospital**, 255 F. 3d 1238 (10th Cir., 2001).