



Lexington Medical Society

Physicians caring for the community since 1799

NOVEMBER 2017

UPCOMING EVENTS:

November 3
Conference for
Healthcare Transpar-
ency & Patient Safety

November 10
LMS Senior Lunch
Campbell House

November 14
LMS November Mtg
Dr. Ralph Alvarado

December 2
Leadership of the
Business of Med
Gatton School of
Business

January 16, 2018
LMS General
Meeting

INSIDE THIS ISSUE:

10th District/
Past Presidents'
Dinner 4-5

LMS Bourbon
Chase Team 6-9

Article by Dr.
Nancy Swikert 12-13

Upcoming CME 14-15

LMS November
Meeting back



President's Message:

Robert P. Granacher, Jr., M.D., MBA

What do Harvey Weinstein and Roy Price have in common? Both have been discharged by their employers for predatory sexual harassment. Harvey Weinstein was employed by the Weinstein Company (New York Times, October 2017 and New Yorker, October 2017), and Roy Price was the Amazon Studios Chief (New York Times, October 12, 2017). Physicians are increasingly becoming employees of corporations, and therefore are subject to liability for alleged acts of sexual harassment.

The standard for employer liability for hostile work environment harassment, associated with sexual harassment, depends typically on whether or not the harasser is the victim's supervisor. The Supreme Court gave guidance on what is a supervisor by a decision in *Vance v. Ball State University* (133 S Ct 2434 (2013)).

The Supreme Court held that an employee (such as a physician) is a supervisor if the employer has empowered that employee "to take tangible employment actions against the victim, " i.e. to affect a *significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or decision causing a significant change in benefits.*"

The organization for Boards of Medicine across the United States is reporting an increase in sexual harassment claims against physicians. These, in turn, can result in charges against the physician through the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC has defined sexual harassment in their Guidelines as: unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either *explicitly* or *implicitly* a term or condition of an employee's employment; or
- Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or
- Such conduct has the purpose or effect of reasonably interfering with an indi-

2

vidual's work performance or creating an intimidating, hostile, or offensive working environment.

It is the latter bullet point that most often will be involved with claims against physicians.

Sexual harassment includes many things, and may include behaviors not commonly considered sexual harassment by supervisors, including physicians. The EEOC list of sexual harassment types includes 30 items. Obviously, actual or attempted rape or sexual assault speaks for itself. However, there are many others that are considered sexual harassment that might not be commonly understood to be so by a physician employee. These 30 items include gender neutral behaviors such as:

- Unwanted pressure for dates
- Whistling at someone
- Sexual comments
- Sexual innuendos or stories
- Neck massage
- Giving personal gifts
- Hanging around a person
- Looking a person up and down (elevator eyes)
- Staring at someone
- Sexually suggestive signals
- Facial expressions such as winking, throwing kisses, or licking lips
- Making sexual gestures with hands or through body movements

It is probable that a heightened awareness of sexual harassment in the workplace is going to emanate from the Price and Weinstein issues. Physicians are forewarned to reacquaint themselves with potential workplace issues of sexual harassment, whether you are male or female.

Mission:

The Lexington Medical Society is the principal voice & resource for Central Kentucky physicians to enhance their professional lives & improve the health of the community.

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LMS NEWSLETTER

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