

Navigating the Risks of Sexual Misconduct Allegations in Healthcare

Sexual misconduct allegations in healthcare are on the rise, posing significant legal, financial, and reputational risks for medical providers and healthcare organizations. With evolving laws, heightened public scrutiny, and increasing litigation, it is important to understand the potential risks in this area and strategies to prevent them.

Staff education on what constitutes sexual misconduct and how and when it occurs within the healthcare setting is essential. Allegations can refer to in-person encounters or online interactions, and inappropriate behavior may range from sexually explicit comments to unwanted physical touch. The parties involved can include medical providers, employees, patients, vendors, visitors, contract workers, and volunteers. In addition, potential consequences vary—from professional liability claims to complaints filed with state medical boards to criminal prosecution.

Addressing sexual misconduct requires proactive, systemic responses by healthcare organizations and heightened awareness among medical providers. The following are some considerations that help foster a culture of respect, accountability, and vigilance to protect healthcare professionals, organizations, and their patients against these types of allegations.

GUIDANCE FOR HEALTHCARE FACILITIES/ORGANIZATIONS

Policy Development

- **Establish clear policies prohibiting sexual misconduct** that are easily accessible and reviewed annually.
- **Define acceptable and unacceptable behaviors**; this may include outlining common terminology and explaining the difference between terms such as “sexual harassment” and “sexual misconduct.”
- **Include mandatory reporting procedures** for staff and patients.
- **Clearly outline the process for investigating complaints** and how confidentiality will be protected.
- **Highlight the range of actions that may be taken if the allegations are determined to be true**; this should cover both employees and patients.
- **Be sure to outline any reporting requirements** that may apply.
- **Reinforce your policy by integrating it into key engagement points** such as employment contracts, employee onboarding processes, third-party vendor agreements, and patient conditions of treatment or admission.
- **When developing or revising policies, consult your legal counsel** to ensure that policies comply with state employment and reporting laws.

Staff Training and Education

- Implement mandatory annual training for all staff on sexual/professional boundaries, reporting procedures, and bystander intervention.

- Include specialized training for high-risk departments (e.g., OB/GYN, pediatrics, mental health).

Reporting and Response Protocols

- Create confidential, accessible reporting channels.
- Ensure prompt, impartial investigations.
- Protect whistleblowers and complainants from retaliation.
- Offer support services for affected individuals.

Chaperone Policies

According to ECRI¹, there are no federal requirements and no major accreditation organizations have issued requirements or guidance on chaperones. Some state medical boards have issued requirements and several professional associations have issued opinions, recommendations, and guidance regarding the use of chaperones.

- Chaperone policies should clearly define how and when chaperones are used; some examples around their use include:
 - a. Chaperones should be used for sensitive exams or procedures (i.e., those that involve breasts, vagina, genitalia, and rectum).
 - b. The use of a chaperone should be offered upon requests from a patient, provider, or staff member.
 - c. Outline situations where a chaperone is required versus recommended.
 - d. Ensure policies are aligned with state medical board requirements.
 - e. Policies should be applicable regardless of the gender of staff, provider, or patient.
 - f. Some guidelines (ACHA and ACOG) recommend against using family or friends of the patient as chaperones (unless the patient is a minor).
 - g. For patients who are minors, it is recommended that you perform physical examinations with a parent or guardian present; if a parent or guardian is not available, the use of a chaperone is recommended.
 - h. Other circumstances where chaperones may be appropriate include cognitively impaired patients, patients with a history of sexual abuse/assault, patients who are highly anxious about medical care, patients who have cultural considerations, and sedated patients.
- Use trained healthcare professionals for chaperones; create a description of the roles of a chaperone and develop a training plan for those who will serve in this role.
- Reinforce that providers and chaperones are focused on the patient's comfort, safety, and privacy and that chaperones may provide assistance as appropriate.
- Ensure there is adequate patient notice about the availability of chaperones (e.g., signs, chaperone preference on intake forms, verbal offers to use a chaperone, etc.).
- Document any chaperone presence in medical records; if a patient refuses the use of a chaperone, document this.
- It is important to highlight that a chaperone policy is also used to protect providers and staff against unfounded allegations.

Credentialing and Background Checks

- Conduct thorough background checks during the hiring process.
- Reassess credentials periodically, especially after complaints.

Culture & Leadership

- Promote a culture of respect, safety, and accountability.
- Encourage open dialogue about boundaries and ethics.
- Hold leaders accountable for modeling appropriate behavior.

Legal and Insurance Preparedness

- Know when to consult legal counsel (e.g., upon receiving a complaint).
- Consider sexual misconduct liability insurance and understand coverage limits.
- Keep incident and response protocols current.

GUIDANCE FOR HEALTHCARE PRACTITIONERS

At the individual level, healthcare professionals should be aware of the need to report the following situations to the relevant representative and/or legal counsel:

- Upon receiving a complaint or allegation.
- If contacted by law enforcement or licensing boards.
- When you are unsure about boundary issues or documentation practices.
- When there is an inquiry by medical staff.
- When a provider has a duty to report an incident to law enforcement (or to ensure someone else does).

In addition, the following are some proactive strategies for healthcare professionals to consider:

- Be informed about your organization's policies and procedures on sexual misconduct and the use of chaperones.
- Educate your patients prior to sensitive exams (why the exam is being performed, what it entails, etc.) and inform them of any relevant patient policies.
- Maintain detailed, contemporaneous documentation of patient interactions; this should include the clinical indication for the exam and patient education you provided about it, and the identity of the chaperone (if present).
- Maintain appropriate boundaries with provider-patient relationships (e.g., don't see patients alone after hours, separate professional and personal communication on social media, avoid sexual relations with any patient, etc.).
- Cooperate with investigations while protecting your legal rights.

KNOW YOUR COVERAGE LIMITATIONS

As part of developing an overall policy, it is important to review and understand the risks of sexual misconduct claims and what types of insurance coverage should be in place. Professional liability insurance policies often exclude coverage for criminal acts and/or sexual misconduct that occurs

between an insured provider and their patient. Consult your legal counsel and talk to your agent and/or Copic underwriter to determine what types of coverage are available and appropriate for your situation.

RESOURCES

Federation of State Medical Boards: [Physician Sexual Misconduct Report 2020](#)

ACOG: [Sexual Misconduct—Committee Opinion 2020](#)

AMA Code of Medical Ethics: [Use of Chaperones](#)

ACHA Guidelines: [Best Practices for Sensitive Exams 2019](#)

EEOC Enforcement Guidance: [EEOC Workplace Harassment Guidance](#)

WHO: [Preventing and Responding to Sexual Exploitation, Abuse and Harassment](#)

¹ ECRI: Providing Chaperones during Sensitive Examinations and Procedures; August 26, 2024

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