

CROSSING THE LINE

Prevention is the best way to eliminate sexual harassment in your office.

BY ANDREA LINNE

Several years ago, a podiatrist in his late 40s who runs his own practice with three employees needed a lawyer. He and his back-office assistant who was in her late 20s had been sharing texts containing shocking or outlandish jokes and pictures, some of a sexual nature, in an effort to see “who can gross whom out more.” One day, the podiatrist sent his employee a photo of a penis abnormality. She, in turn, showed the photo to her older sister who then became aware of the “game” they’d been playing. Outraged, the employee’s sister called the podiatrist and informed him that her sister was resigning effective immediately, and they expected him to pay her two months’ severance. The employee’s sister also told the podiatrist that he was



June Laird

lucky he wasn’t being sued for sexual harassment. He apologized immediately and agreed to pay the severance if the employee would sign a release for him and the practice.

The podiatrist hired June Laird, a partner in the Colorado law firm McElroy, Deutsch, Mulvaney & Carpenter, to draft the document. The

state authorities or a lawsuit,” Laird says. “There was no sexual relationship between the podiatrist and his employee. He was adamant on that point, and there was never any allegation of a sexual relationship from the employee. But it still teaches an important lesson. This conduct was unquestionably inappropriate and should not have been going on, even though it was consensual. The podiatrist did not have

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employee signed it and the agreement was finalized. “This situation did not develop into a complaint to the U.S. Equal Employment Opportunity Commission (EEOC) or

a written policy defining sexual harassment and all of its components. If there had been a written sexual harassment policy, hopefully, the

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podiatrist and the employee would have thought twice before engaging in such behavior.” Following this incident, Laird created a written sexual harassment policy for the podiatrist.

Obvious vs. Less Obvious

In the #MeToo era, most people are aware of what constitutes obvious sexual harassment, including propositions to engage in sexual activity, unwanted physical contact, comments about anatomy or body parts, being asked repeatedly for a date, offers of a promotion in exchange for a sexual favor, infringing on a person’s body space, and rape. Less obvious is over-familiarity, flirting, inappropriate jokes, and sexual banter among employees. While it may seem harmless, this type of behavior may cross the line into illegal conduct when it is unwelcome. It is often referred to as a “hostile work environment.”

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII is a federal law that prohibits discrimination in employment on the basis of sex, race, color, national origin, and religion. It applies to employers with 15 or more employees. The law also

as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex. The harasser can be the victim’s supervisor, an agent of the employer, a supervisor in another area, a co-worker or a non-employee. The victim does not have to be the per-

viewing on YouTube (www.ny.gov/combating-sexual-harassment-workplace/employers).

Sarah Avilleira, practice administrative leader, is responsible for training new employees at Family Foot & Ankle Specialists, a New Jersey podiatry practice that has two

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son harassed but could be anyone affected by the offensive conduct. Unlawful sexual harassment may occur without economic injury to or discharge of the victim.

Prevention Is Key

Prevention is the best way to eliminate sexual harassment in your office. “Podiatry offices are often in a confined space, forcing various employees to be in close contact with each other,” says Lawrence Kobak, DPM, JD, senior counsel in Frier Levitt’s healthcare department, in New York. “The best way to prevent sexual harassment among co-workers is to have a comprehensive written policy that is enforced. Most healthcare attor-

offices and 19 employees, including three male podiatrists and one female podiatrist. Peter Wishnie, DPM, worked with a lawyer to create the original employee handbook, which includes a sexual harassment policy. It states: “It is the policy of Family Foot & Ankle Specialists to recognize the right of all employees

to a workplace environment free from sexual harassment.” The policy defines sexual harassment and includes a complaint policy for employees who believe that they are the victims of harassment: “Employees who believe that they are the victims of harassment should immediately report the incident to the senior doctor in charge of the office. If the complaint involves the doctor in charge of the office, the employee should report the incident to the junior doctor.”

“About five years ago, we updated the handbook to include hostile work environment,” Avilleira says. It states: “Employers have an obligation to provide a workplace that is free from harassment. Actions which can be part of a hostile work environment can include physical touching and assaults, inappropriate or insulting comments and jokes, racial, sexual or other epithets, explicit emails or pictures, excessive yelling, screaming, or swearing, and other offensive or demeaning conduct that is motivated by race, age, gender, pregnancy, mental or physical disability, religion, color, national origin, sexual orientation, military status, or any

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Dr. Kobak

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makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. If your podiatry practice has fewer than 15 employees, you are likely subject to anti-discrimination and anti-harassment state laws.

According to the EEOC, sexual harassment can occur in a variety of circumstances, including but not limited to the following: The victim

neys should be able to provide sexual harassment policy for you. More generic versions are available on-line. The best policies are specific for your office.”

It’s also important to train employees on a sexual harassment policy. “You can bring in an outside consultant or trainer,” Kobak says, adding that there are also online training videos. New York State, for example, recently published two sexual harassment prevention training videos, which are available for download or

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other protected category.”

“You want to be upfront with policies and procedures to protect employees and the practice,” Avil-leira says. “I want my female employees to know their comfort is protected.”

J. Kevin West, a senior health-care attorney in the Idaho office of Parsons Behle & Latimer, also believes that having a written sexual harassment policy is essential and that podiatrists should consider updating it every five years. Since the #MeToo movement, West says, certain states are passing laws specifically addressing sexual harassment. He advises podiatrists to look for an employment law attorney to put together a handbook, adding that it’s not that expensive. That’s the first step. The second step is training, which can be simple or sophisticated, West says. He suggests podiatrists bring in an employment



J. Kevin West

small practice, there often is an office manager who can field complaints, West says. But if she is being harassed by the doctor, there is really no remedy other than filing a charge of discrimination. These cases are almost always someone’s

“When I hear someone say, ‘our office is different, we are a very close group,’ my legal radar goes on” says C. Keith Greer, a California attorney who has been handling the legal needs of podiatric physicians for 26 years and is an ad-

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word against the other, he adds.

West recalls defending a podiatrist who was accused of harassing a medical assistant. “She said he was texting suggestive comments to her and making inappropriate remarks,” West says. “She kept the texts, but it turned out to be banter and she was a willing participant. She quit, then filed a charge with a human rights commission and went through an investigation. The human rights commission didn’t find cause, she filed a lawsuit and she ended up dropping the case. The doctor behaved inappropriate-

ly between an overly rigid environment that no one wants to be part of and a comfortable office in which employees feel they are part of a team, but understand it is still a workplace.”

“It’s all about boundaries and a professional office culture,” Greer says. “Although overt flirtation and sexual innuendo in the office still occur, despite the fact that everyone knows it is wrong, that isn’t the problem that worries me most. Because employees frequently spend more time with co-workers than with their family and friends, the more pervasive problem is that inter-office relationships frequently rise to the level of emotional attachment and dependence. This can happen very gradually and seem harmless. Then when an event happens, such as a



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law attorney or a human resources consultant. Some companies conduct training annually, though if you have the same staff and no issues, that might not be necessary. But when you have any employee turnover, West says, you need to conduct training again.

“Podiatry offices are unique in that they are quite small, often one male doctor and two or three female staff members,” West says. “When I do training, the key person is the doctor. I would refuse to do training without the doctor being present. It has to involve the entire office to be effective, and the biggest risk is typically the doctor. It’s very rare that a female doctor is accused of sexual harassment. It almost always is a male.” In a

ly, but there was no strong case of harassment. Co-workers didn’t see or support her position. She never complained to the office manager. There was friction between her and the podiatrist, and it appeared she was using sexual harassment to get back at the doctor.”

Boundaries

Podiatrists must be aware of what constitutes sexual harassment, West says. “You cross a line when comments go beyond ‘Oh, you look nice today’ to ‘I really like it when you wear short skirts or low-cut blouses.’ When banter crosses the line, it’s a gray area. The podiatrist sets the tone. Don’t let banter start and then you don’t have to worry about crossing the line.”

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new employee gets more attention, one party to the relationship has a negative emotional reaction, such as jealousy or envy.”

It’s up to the podiatrist to let

ment the action you have taken, and make sure the offending employee knows that such behavior cannot be tolerated. If you don’t, you are setting yourself up for a lawsuit, even though you’re not the one causing the problem.”

“If a co-worker tells you, either verbally or by body language, that they are uncomfortable, listen!”—Dr. Kobak

staff know what isn’t proper in the workplace, Greer says. “Risque comments, improper language, and any comments of a sexual nature are simply not acceptable in today’s hypersensitive environment,” he says. “If an employee ever makes you aware of any behavior that has sexual connotations, you must immediately address the issue, docu-

For additional guidance, consider the American Podiatric Medical Association’s Code of Ethics: “The podiatrist shall not engage in any deliberate act of emotional abuse, physical abuse, sexual misconduct, or sexual exploitation related to the podiatrist’s position as an employer, employee, partner, or associate. Sexual intimacy with any employee,

associate, or business partner is inappropriate unless the personal relationship precedes the business relationship.” If you don’t already have a written sexual harassment policy, the APMA recommends contacting an attorney that specializes in healthcare law.

Finally, if you’re not sure how to distinguish between friendly banter and inappropriate behavior, Kobak says, “common sense and manners go a long way. If a co-worker tells you, either verbally or by body language, that they are uncomfortable, listen!” **PM**



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