

K&L GATES

TRIAGE: RAPID LEGAL LESSONS FOR BUSY  
HEALTH CARE PROFESSIONALS



Sexual Harassment in  
Healthcare: #MeToo and  
Beyond

Bridget A. Blinn-Spears

## IN THE NEWS

- Time's Person of the Year: the Silence Breakers
  - Actress Ashley Judd
  - Singer Taylor Swift
  - Engineer Susan Fowler
  - Lobbyist Adama Iwu
  - A strawberry picker who immigrated from Mexico and used a pseudonym
  - An anonymous hospital worker

## BY THE NUMBERS

- 60% of women experience sexual harassment
  - 80% of healthcare workers are women
  - Half of medical students starting in 2017 were women
- Between 1995-2016, 170,000 sexual harassment EEOC charges filed
  - 3000 against medical/surgical hospitals
  - 2000 in ambulatory service
  - 1500 in nursing care facilities
- 30% of clinical researchers reported harassment

## TITLE VII:

- Enacted 1964, amended 1991.
- Prohibits discrimination because of employees' race, color, religion, sex, national origin.  
42 USC § 2000e(a)(1).
- Prohibition of discrimination includes harassment.  
*Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).
- Harassment is not limited to men harassing women.  
*Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998)

# TYPES OF HARASSMENT

- Harassment resulting in tangible employment action (“quid pro quo”)
  - Employment decisions or benefits conditioned on sexual conduct
  - Involves tangible employment action
    - Terminations, promotions, re-assignments, etc.
  - Automatic employer liability

# TYPES OF HARASSMENT

- Hostile work environment:
  - Unwelcomed conduct of a sexual nature that is sufficiently severe or pervasive to alter the conditions of an individual's employment or that creates an offensive, intimidating or abusive working environment
  - Extreme or frequent
  - "Totality of circumstances"
  - Intent of offender is irrelevant
  - Employers can avoid liability by proving they exercised reasonable care to prevent or correct harassment and victim unreasonably failed to take advantage of preventive or corrective opportunities.

## BIG VERDICTS

- \$168 million: physician's assistant
- \$15 million: nurse
- \$5.425 million to eight medical center employees

## FACTUAL BASIS FOR CLAIMS

- Derogatory comments
- Inquiring about sex life
- Commenting on appearance
- Standing too close, rubbing
- Lewd gestures
- Exclusion
- Propositions
- Favorable/unfavorable treatment
- Rape



# CONTRIBUTING FACTORS IN HEALTHCARE

- Long hours
- Isolated spaces
- Access to beds
- Hierarchy
- Many potential harassers

# IMPACT

- Loss of self-worth and professional confidence
- Depression
- Substance abuse
- Distraction
- Impaired decision-making
- Negative career advancement
- High turnover
- Lower productivity and engagement

## FEAR OF RETALIATION

- Hierarchy and power imbalance
  - Supervisory/management roles
  - Research grants
  - High volumes of patients
  - Philanthropic connections
- Unsupportive colleagues
- Reputation damage
- Career damage

## PRACTICAL NEXT STEPS

- Leadership is key: train and discuss to create buy-in
- Top-down approach
- Culture and expectation setting
- Bystander empowerment
- Retaliation protection
- Modeling correct behavior

## Today's Presenter



**Bridget A. Blinn-Spears**

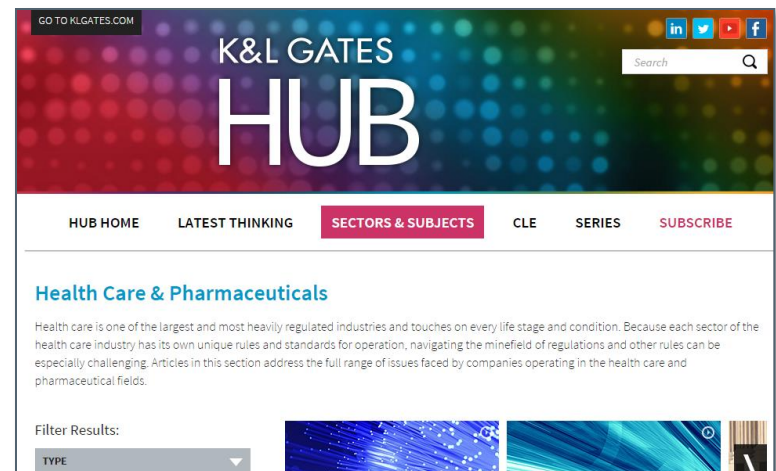
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