

# Promoting a Culture of Respecting People: Preventing Sexual Harassment

# Faculty:

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# Professional Practice Gap and Activity Purpose

The purpose of this CME activity is to raise providers' level of awareness in recognizing and preventing sexual harassment in the workplace. The awareness includes knowledge of types of sexual harassment and effects of sexual harassment on the healthcare organization including healthcare team members and patients and their families. In addition, this CME activity will suggest strategies healthcare team members should use to prevent sexual harassment in the workplace.

# Objectives

At the conclusion of this presentation, participants will be able to:

- ▶ Describe the types of sexual harassment.
- ▶ Discuss the effects of sexual harassment.
- ▶ Explain strategies to prevent sexual harassment
- ▶ Describe barriers to reporting sexual harassment



# Sexual harassment

UNWANTED SEXUAL ADVANCES, REQUEST FOR SEXUAL FAVORS, AND OTHER  
VERBAL OR PHYSICAL HARASSMENT OF SEXUAL NATURE

# Promoting a Culture of Respecting People:

## Defining Harassment

- ▶ Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), and the Americans with Disabilities Act of 1990, (ADA)
- ▶ Harassment is defined as an unwelcomed behavior based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information
- ▶ Harassment becomes *unlawful* when:
  - ▶ Offensive behavior becomes a condition to continue employment or
  - ▶ The behavior becomes severe or pervasive enough to cause a hostile, abusive, or intimidating work environment
- ▶ Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws

# Promoting a Culture of Respecting People: Defining Sexual Harassment

**As stated in both the Code of Federal Regulations: § 1604.11 Sexual harassment and the Florida Administrative Code: Chapter 60L-36.004 Sexual Harassment is defined as follows:**

(1). *unwelcome* sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature from any person directed towards or in the presence of an employee or applicant when:

(a) Submission to such conduct is either explicitly or implicitly a term or condition of an individual's employment;

(b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Code of Federal Regulations (n.d.) Chapter 29, § 1604.11 Sexual harassment. Retrieved from <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1604/section-1604.11>

Florida Administrative Code Chapter 60L-36.004 Sexual Harassment. Retrieved from <http://flrules.elaws.us/fac/60L-36.004/#:~:text=Sexual%20Harassment,->

Effective%20on%20Tuesday&text=(c)%20Such%20conduct%20has%20the,hostile%2C%20or%20offensive%20working%20environment.



# Promoting a Culture of Respecting People: Potential Areas for Sexual Harassment

Including, but not limited to:

▶ Verbal

- \*Sexually suggestive and/or offensive language, comments, jokes, or rumors
- \*Inappropriate questions regarding someone's private life and/or dating requests
- \*Intrusive comments regarding physical appearance
- \*Derogatory and/or discriminatory remarks

▶ Nonverbal

- \*Staring or leering
- \*Indecent exposure

▶ Visual images (electronic or printed)

- \*Sexually suggestive and/or derogatory pictures, photos, screensavers, calendars, cartoons, graffiti, emails, texts, social media postings, magazines, pornographic images and/or websites

▶ Physical

- \*Whistling, offensive gestures, touching, fondling, groping, hugging, patting, kissing, repeated brushing against someone's body and/or blocking normal work movement

**REMEMBER: Actions must be UNWELCOME to be considered sexual harassment**

# Promoting a Culture of Respecting People: Historical Overview of Sexual Harassment

- ▶ The Federal Civil Rights Act of 1964 prohibited sex discrimination in the workplace.
- ▶ In the 1970's the first sexual harassment lawsuit was filed
- ▶ In 1975, activists from Cornell University created the term sexual harassment
- ▶ Sexual harassment was not considered a form of sexual discrimination by the U.S. Supreme Court until 1986 (*Meritor Savings Bank vs. Vinson*, 1986)
- ▶ Title VII was modified by Congress in 1991 allowing the victims of sexual harassment the right to collect compensatory and punitive damages (Civil Rights Act, 1991)
- ▶ In 1994, the Violence Against Women Act was created
- ▶ The Congressional Accountability Act of 1995, was created so that Congress has to follow the same laws as citizens

# Promoting a Culture of Respecting People: Two Types of Sexual Harassment

The U.S. Supreme Court has identified *quid pro quo* and hostile work environment as the two types of sexual harassment:

## Quid pro quo

- ▶ **Quid pro quo** occurs when “submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual” 29 C.F.R. § 1604.11(a)(2).<sup>1</sup> 29 C.F.R. § 1604.11(a)(3) <sup>1,2</sup>
- ▶ Quid pro quo means "this for that." In this context, it involves expressed or implied demands for sexual favors in exchange for some benefit (e.g., a promotion, pay increase) or to avoid some detriment (e.g., termination, demotion) in the workplace. Quid pro quo sexual harassment is perpetrated by someone who is in a position of power or authority over another (e.g., manager or supervisor over a subordinate). A clear example of quid pro quo sexual harassment is when a supervisor threatens to fire an employee if he or she does not have sex with the supervisor. <sup>2,3</sup>

## Hostile work environment

- ▶ **Hostile work environment** arises when speech or conduct is so severe and pervasive that it creates an intimidating and/or demeaning environment and/or a situation that negatively affects a person's job performance. It can be perpetrated by anyone in the work environment, including a peer, supervisor, subordinate, vendor, customer or contractor. Hostile work environment sexual harassment situations are not easy to recognize. Individual offensive comments or incidents may appear to be innocent. Also, demeaning behavior appearing not to be based on sex may occur. In addition, there may be long periods between offensive and demeaning comments or incidents. <sup>2,3</sup>

1. Code of Federal Regulations (n.d.) Chapter 29, § 1604.11 Sexual harassment. Retrieved from <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1604/section-1604.11>

2. Policy guidance on current issues of sexual harassment. (n.d.). U.S. Equal Employment Opportunity Commission. Retrieved from <https://www.eeoc.gov/laws/guidance/policy-guidance-current-issues-sexual-harassment>

3. What are the different types of sexual harassment? (2019). Society for Human Resources (SHRM). Retrieved from <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/typesofsexualharassment.aspx>

# Promoting a Culture of Respecting People: Potential Effects of Sexual Harassment

Sexual harassment may be perpetrated by professional colleagues, supervisors and/or subordinates, vendors, volunteers, students, patients, patients' families/friends and/or others and can result in the following effects:

- ▶ Regular, commonplace daily verbal, behavioral, or environmentally-related indignities whether intentional or unintentional, including hostile communication
- ▶ Abuse of inequalities in status and power exploiting the rights and trust of others
- ▶ Interference with work performance potentially causing intimidating, hostile, and/or dysfunctional work environment leading to job dissatisfaction and increased attrition
- ▶ Negative impact on quality of patient care
- ▶ Symptoms of depression, stress, anxiety, PTSD, low self-esteem, eating disorders, guilt, embarrassment, substance abuse, and physical ailments such as headache, fatigue and gastrointestinal disorders
- ▶ Students skipping class or clinical experiences, getting lower grades, switching programs of study, or dropping out of school
- ▶ Potential legal fees related to sexual harassment charges
- ▶ Damage to personal and/or organizational reputation

Johnsons, P. A., Widnall, S. E., & Benya, F. F. (2018). Sexual harassment of women: Climate, culture, and consequences in academic sciences, engineering, and medicine. *National Academies of Sciences, Engineering, and Medicine*. doi: <https://doi.org/10.17226/24994>.

AMA. (2020). Sexual harassment in the practice of medicine: Code of medical ethics opinion 9.1.3. *AMA Principles of Medical Ethics: II, IV, VII*. Retrieved from <https://www.ama-assn.org/delivering-care/ethics/sexual-harassment-practice-medicine>

Ross, S., Naumann, P., & Hinds-Jackson, D. V. (2019). Sexual harassment in nursing: Ethical considerations and recommendations. *The Online Journal of Issues in Nursing*. doi:10.3912/OJIN.Vol24No01Man01

Dzau, V. J. & Johnson, P. A. (2018). Ending sexual harassment in academic medicine. *The New England Journal of Medicine*. doi: 10.1056/NEJMp1809846

# Promoting a Culture of Respecting People: Potential Sexual Misconduct Resulting from Sexual Harassment

**Florida Statute 394.4593 addresses the definition of “sexual misconduct” as follows:**

- (c) “Sexual misconduct” means any sexual activity between an employee and a patient, regardless of the consent of the patient. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee.
- (2) An employee who engages in sexual misconduct with a patient who:
  - (a) Is in the custody of the department; or
  - (b) Resides in a receiving facility or a treatment facility, as those terms are defined in s. 394.455, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

# Promoting a Culture of Respecting People: Potential Sexual Misconduct Resulting from Sexual Harassment

**Florida Statute 394.4593** specifically defines the term “sexual activity” in addressing sexual misconduct :

(b) “Sexual activity” means:

1. Fondling the genital area, groin, inner thighs, buttocks, or breasts of a person.
2. The oral, anal, or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object.
3. Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, of a person, or forcing or enticing a person to touch the perpetrator.
4. Intentionally masturbating in the presence of another person.
5. Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person.
6. Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim.

# Promoting a Culture of Respecting People: Sexual Harassment vs Sexual Assault vs Stalking

## ▶ Sexual harassment

Sexual harassment violates Title VII of the Civil Rights Act of 1964, which may include verbal, nonverbal, physical or visual actions regarding an individual's sex, unwanted sexual advances, and requests for sexual favors. Pervasive physical sexual harassment may be legally considered as sexual assault and verbal, nonverbal, or visual actions/electronic communications may be legally considered stalking or aggravated stalking.

### **\*Sexual assault**

Physical sexual harassment that includes persistent unwanted touching or penetration may be considered sexual assault or battery per Florida Statute 794.011 and may be considered a felony in the first degree <sup>1</sup>

### **\*Stalking**

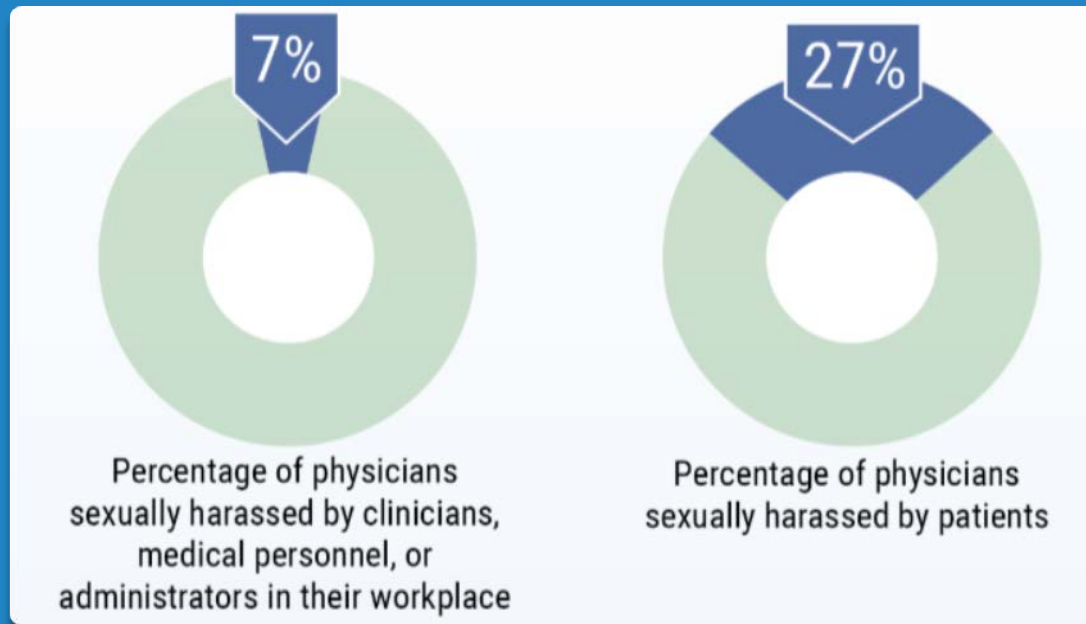
Pervasive harassment conveyed verbally and/or through electronic communication may be legally considered stalking (misdemeanor of the first degree) or aggravated stalking (a felony of third the degree) per Florida Statute 784.048 <sup>2</sup>

1. The Florida Statute. (2022). Chapter 794 Sexual Battery. Retrieved from [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0700-0799/0794/0794.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0794/0794.html)  
Rainn. (2020). *Sexual harassment*. Retrieved from <https://www.rainn.org/articles/sexual-harassment>

2. The Florida Statute (2022). Chapter 784.048:Stalking. Retrieved from [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0700-0799/0784/Sections/0784.048.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0784/Sections/0784.048.html)

# Promoting a Culture of Respecting People: Sexual Harassment and Sexual Assault 2018 Statistics

In the 2018 Medscape Report entitled *Patients Sexually Harassing Physicians*, it was shown that physicians feel a range of emotions from annoyance and worry to fear that when patients become romantic or sexually aggressive the behavior could potentially escalate. One male physician stated that “You have to be tactful in not offending your patient but quickly get out of the situation and get rid of that patient, because they could accuse you of harassment.” The 2018 Medscape report also showed the following data from a sample of 3711 physician respondents.



**Notable Exception:** Some harassment by patients can be unintentional, such as patients who have cognitive diseases/conditions causing them to demonstrate inappropriate sexual behavior.



# Promoting a Culture of Respecting People: Sexual Harassment and Sexual Assault 2018 Statistics

A systematic review and synthesis of quantitative research on the topic of sexual harassment against female nurses was conducted in 2018. A descriptive analysis was completed with the following findings:

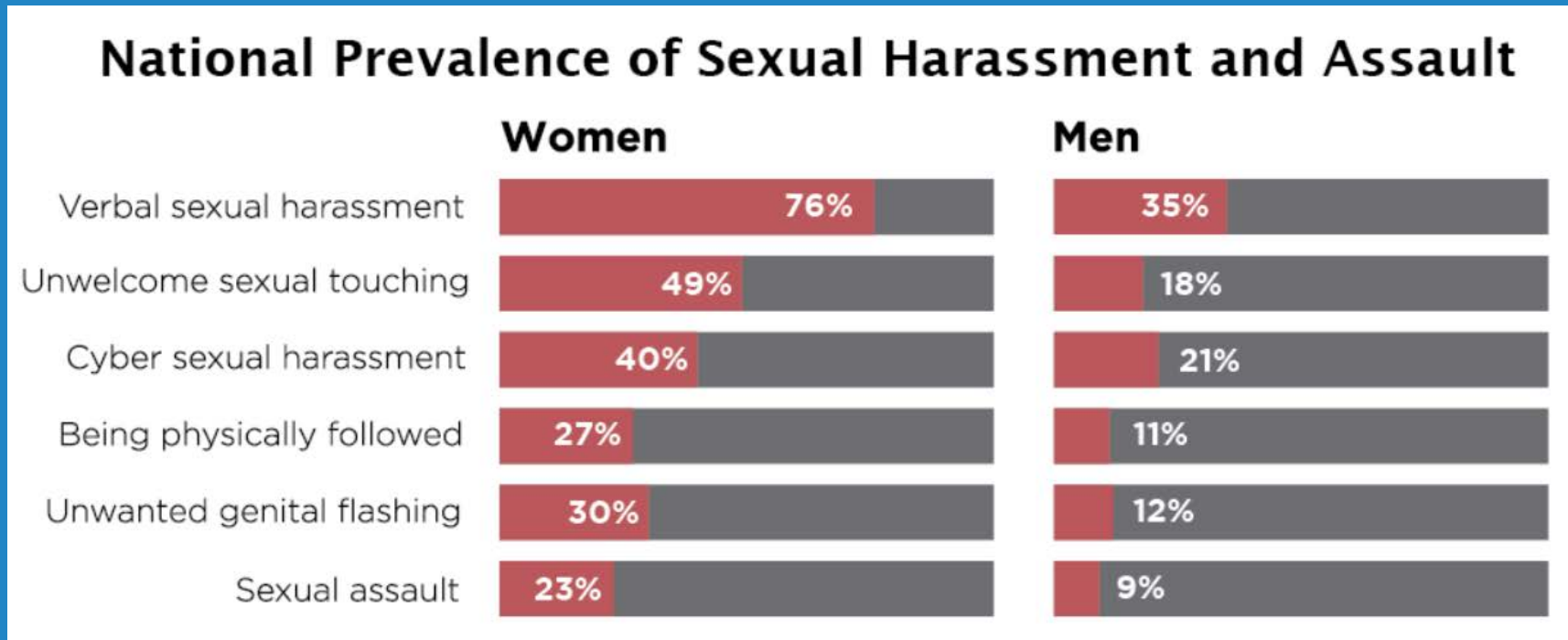
- ▶ Nurses have the highest rate of sexual harassment in the medical field because they are considered to be physically and emotionally close to patients and colleagues
- ▶ Worldwide, 1 in 4 nurses report being exposed to sexual harassment
- ▶ Nurses are sexually harassed by co-workers, patients, patient's family, and patient visitors
- ▶ Studies show 73% female nurses report sexually harassment compared to 46% of male nurses
- ▶ 60% female nurses worldwide report they were sexually harassed by patients
- ▶ Some female nurses report hearing bad words of sexual matters, bad jokes relating to sexual issues, perpetrators making comments in a sexual manner, unwanted mail/blackmail, and asked for a sexual relationship

Gebregziabher, W. K., Negarandeh, R., Nayeri, N. D., Hasanpour, M. (2020). Sexual harassment against female nurses: a systematic review. *BMC Nursing*, 19(58). Doi: <https://doi.org/10.1186/s12912-020-00450-w>

Frellick, M. (2018). Harassment from patients prevalent, poll shows. *Medscape*. Retrieved from <https://www.medscape.com/viewarticle/892006#:~:text=By%20gender%2C%20female%20nurses%20and,39%25%20for%20male%20physicians>.

# Promoting a Culture of Respecting People: Sexual Harassment and Sexual Assault 2019 Statistics

Significantly, in the *2019 Study on Sexual Harassment and Assault*, overall 81% of women and 43% men reported experiencing some form of sexual harassment and/or assault in their lifetime. The main categories of sexual harassment and assault found in the study are shown in the following graph.

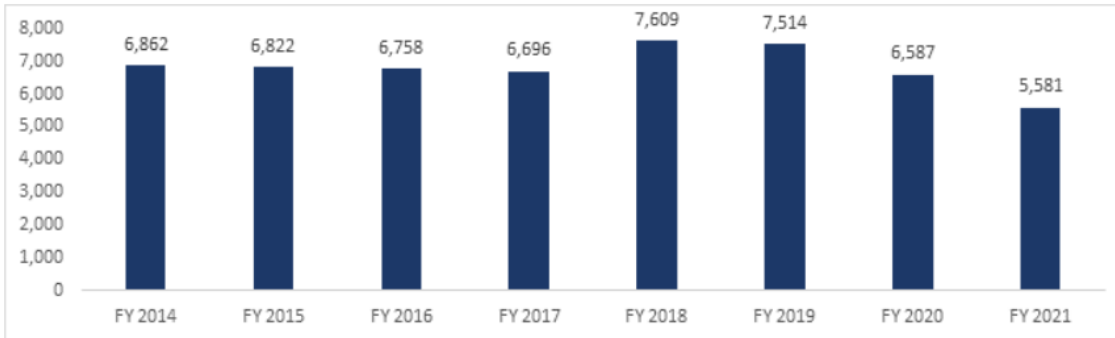


**Independent Reading:** *The Facts Behind the #metoo Movement.* (2018). Retrieved from <https://www.nsvrc.org/resource/facts-behind-metoo-movement-national-study-sexual-harassment-and-assault>

# Promoting a Culture of Respecting People: Sexual Harassment and Sexual Assault 2022 Statistics

The U.S. Equal Employment Opportunity Commission's study entitled *Sexual Harassment in Our Nation's Workplaces* published in April 2022 shows Sexual Harassment data depicted in Figures 1-3 below:

**Figure 1.** Sexual Harassment Charge Receipts, FY 2014 – FY 2021



SOURCE: U.S. EEOC, Integrated Mission System, Charge Data, FY 2014 – FY 2021.

**Figure 2.** Percent of Sexual Harassment Charges Filed by Women, FY 2018 – FY 2021



**Figure 3.** Percent of All Harassment Charges Filed by Women, FY 2018 – FY 2021



SOURCE: U.S. EEOC, Integrated Mission System, Charge Data, FY 2018 – FY 2021.

# Promoting a Culture of Respecting People: Preventing Sexual Harassment

The U.S. Equal Employment Opportunity Commission (EEOC) recommends key ways organizations should address prevention of sexual harassment:

- ▶ Conduct assessments to determine risk factors associated with sexual harassment and assault and conduct surveys to evaluate the extent to which harassment is an issue within their organization
- ▶ Adopt and maintain comprehensive anti-harassment policies, communicate the policies to employees frequently, offer multi-faceted reporting procedures, and “test” their reporting systems to determine their functionality
- ▶ Enforce punishment for perpetrators who are responsible for workplace harassment in a prompt, consistent, and proportionate to the severity of the circumstance
- ▶ Provide training to managers and supervisors on how to respond effectively to observed sexual harassment situations
- ▶ Provide training to employees regarding sexual misconduct

# Promoting a Culture of Respecting People: Reporting Sexual Harassment

- ▶ Report sexual harassment to Medical Staff President, or Flagler Health + Administration, or Flagler Health + Human Resource Department, as appropriate. *Flagler Health + does not tolerate retaliation against anyone for reporting harassment, assisting in making a harassment complaint, or cooperation in harassment investigation.*
- ▶ Reference the Flagler Health + Code of Conduct and the following policies in reporting sexual harassment:
  - ▶ E-HR-Workplace Violence, Intimidation and Harassment Policy
  - ▶ E-IT- Acceptable Use
  - ▶ I-SAF/SEC-Patient Rights & Responsibilities

# Promoting a Culture of Respecting People: Barriers to Reporting Sexual Harassment

Common barriers to reporting sexual harassment:

- ▶ Fear of retaliation by perpetrator or financial dependence on the perpetrator
- ▶ Perceived negative consequences of reporting and lack of resources for getting help
- ▶ Confusion with the policies for reporting or lack of trust in response of system/organization
- ▶ Lack of clarity about what constitutes sexual harassment
- ▶ Feelings of shame, guilt and embarrassment
- ▶ Disbelief in getting a successful prosecution and/or distrust of the criminal justice system
- ▶ Cultural or language barriers

Russell, H. A. et al. (2021). "Am I making more of it than I should?": Reporting and responding to sexual harassment. *Family Medicine*, 53(6), 408-415. Retrieved from <https://pubmed.ncbi.nlm.nih.gov/34077959/>

Jeglic, E.L. (2019). Understanding the barriers to reporting sexual abuse. *Psychology Today*. Retrieved from <https://www.psychologytoday.com/us/blog/protecting-children-sexual-abuse/201910/understanding-the-barriers-reporting-sexual-abuse>

# Promoting a Culture of Respecting People: Incorporating Professional Ethics in the Practice Environment

## American Medical Association:

- ▶ 9.1.3 Sexual Harassment in the Practice of Medicine
  - ▶ Sexual harassment can be defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Sexual harassment in the practice of medicine is unethical. Sexual harassment exploits inequalities in status and power, abuses the rights and trust of those who are subjected to such conduct; interferes with an individual's work performance, and may influence or be perceived as influencing professional advancement in a manner unrelated to clinical or academic performance harm professional working relationships, and create an intimidating or hostile work environment; and is likely to jeopardize patient care. Sexual relationships between medical supervisors and trainees are not acceptable, even if consensual. The supervisory role should be eliminated if the parties wish to pursue their relationship. Physicians should promote and adhere to strict sexual harassment policies in medical workplaces. Physicians who participate in grievance committees should be broadly representative with respect to gender identity or sexual orientation, profession, and employment status, have the power to enforce harassment policies, and be accessible to the persons they are meant to serve. AMA Principles of Medical Ethics: II,IV,VII

# Promoting a Culture of Respecting People: Incorporating Professional Ethics in the Practice Environment

## American Osteopathic Association

- ▶ Section 15. It is considered sexual misconduct for a physician to have sexual contact with any patient with whom a physician-patient relationship currently exists.
- ▶ Section 16. Sexual harassment by a physician is considered unethical. Sexual harassment is defined as physical or verbal intimation of a sexual nature involving a colleague or subordinate in the workplace or academic setting, when such conduct creates an unreasonable, intimidating, hostile or offensive workplace or academic setting.



# Promoting a Culture of Respecting People: Incorporating Professional Ethics in the Practice Environment

## American Nursing Association

### ▶ Ethical Position Statement on Sexual Harassment

ANA believes that nurses and students of nursing have a right to and responsibility for a workplace free of sexual harassment. Sexual harassment has an adverse impact on the health care environment.

# Promoting a Culture of Respecting People: Hippocratic Oath- A Modern Version

*I swear to fulfill, to the best of my ability and judgment, this covenant:*

- ❖ *I will respect the hard-won scientific gains of those physicians in whose steps I walk, and gladly share such knowledge as is mine with those who are to follow.*
- ❖ *I will apply, for the benefit of the sick, all measures [that] are required, avoiding those twin traps of overtreatment and therapeutic nihilism.*
- ❖ *I will remember that there is art to medicine as well as science, and that warmth, sympathy, and understanding may outweigh the surgeon's knife or the chemist's drug.*
- ❖ *I will not be ashamed to say "I know not," nor will I fail to call in my colleagues when the skills of another are needed for a patient's recovery.*
- ❖ *I will respect the privacy of my patients, for their problems are not disclosed to me that the world may know. Most especially must I tread with care in matters of life and death. If it is given me to save a life, all thanks. But it may also be within my power to take a life; this awesome responsibility must be faced with great humbleness and awareness of my own frailty. Above all, I must not play at God.*
- ❖ *I will remember that I do not treat a fever chart, a cancerous growth, but a sick human being, whose illness may affect the person's family and economic stability. My responsibility includes these related problems, if I am to care adequately for the sick.*
- ❖ *I will prevent disease whenever I can, for prevention is preferable to cure.*
- ❖ *I will remember that I remain a member of society, with special obligations to all my fellow human beings, those sound of mind and body as well as the infirm.*
- ❖ *If I do not violate this oath, may I enjoy life and art, respected while I live and remembered with affection thereafter. May I always act so as to preserve the finest traditions of my calling and may I long experience the joy of healing those who seek my help.*

# Promoting a Culture of Respecting People: Osteopathic Oath

- ❖ *I do hereby affirm my loyalty to the profession I am about to enter. I will be mindful always of my great responsibility to preserve the health and the life of my patients, to retain their confidence and respect both as a physician and a friend who will guard their secrets with scrupulous honor and fidelity, to perform faithfully my professional duties, to employ only those recognized methods of treatment consistent with good judgment and with my skill and ability, keeping in mind always nature's laws and the body's inherent capacity for recovery.*
- ❖ *I will be ever vigilant in aiding in the general welfare of the community, sustaining its laws and institutions, not engaging in those practices which will in any way bring shame or discredit upon myself or my profession. I will give no drugs for deadly purposes to any person, though it be asked of me.*
- ❖ *I will endeavor to work in accord with my colleagues in a spirit of progressive cooperation and never by word or by act cast imputations upon them or their rightful practices.*
- ❖ *I will look with respect and esteem upon all those who have taught me my art. To my college I will be loyal and strive always for its best interests and for the interests of the students who will come after me. I will be ever alert to further the application of basic biologic truths to the healing arts and to develop the principles of osteopathy which were first enunciated by Andrew Taylor Still.*

# Promoting a Culture of Respecting People: Physician Assistant Professional Oath

*I pledge to perform the following duties with honesty and dedication:*

- ❖ I will hold as my primary responsibility the health, safety, welfare, and dignity of all human beings.*
- ❖ I will uphold the tenets of patient autonomy, beneficence, nonmaleficence, and justice.*
- ❖ I will recognize and promote the value of diversity.*
- ❖ I will treat equally all persons who seek my care.*

# Promoting a Culture of Respecting People: International Council of Nursing Pledge

- ❖ *In the full knowledge of the obligations I am undertaking, I promise to care for the sick with all of the skill and understanding I possess, without regard to race, creed, color, politics, or social status.*
- ❖ *I will respect at all times the dignity and religious beliefs of the patients under my care, holding in confidence all personal information entrusted to me and refraining from any action that might endanger life or health.*
- ❖ *I will endeavor to keep my professional knowledge and skill at the highest level and to give loyal support and cooperation to all members of the health team.*
- ❖ *I will do my utmost to honor the international code of ethics applied to nursing and to uphold the integrity of the nurse.*

## In Summary:

In promoting a culture of respecting people relative to preventing sexual harassment in the workplace, it is critical that all healthcare team members expect the challenges and adopt strategies to prevent sexual harassment. All healthcare team members must conduct themselves with integrity and ethics in the adherence to their professional codes and oaths that are deeply ingrained principles that should guide all their decisions and actions.