



# **Sexual Harassment, Misconduct and Medical Staff Credentialing**

## **What Surgical Chairs Need to Know**

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# What is Title IX?

- Federal law passed in 1972
- Protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance.
- **Under Title IX, discrimination on the basis of sex can include sexual harassment, rape, and sexual assault.**
- A college or university that receives federal funds may be held legally responsible when it knows about and ignores sexual harassment or assault in its programs or activities.
- The school can be held responsible in court whether the harassment is committed by a faculty member, staff, or a student.
- Most universities have a “Title IX Office” with an established process for investigating sexually-related complaints



# Sexual Misconduct

Conduct of a sexual nature that is non-consensual or has the effect of threatening, intimidating or coercing a person.



# Sexual Harassment

## ▪ Quid Pro Quo Sexual Harassment

- Occurs when there is unwelcome conduct of a sexual nature AND submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment status or academic status
- Requires a power differential between the parties. For example:
  - Supervisor vs. Employee
  - Faculty vs. Trainee (student, resident, etc.)
  - Tenured faculty vs. Non-tenured faculty
- Constitutes harassment even if it happens only once



# Sexual Harassment

## ▪ Hostile Environment Sexual Harassment

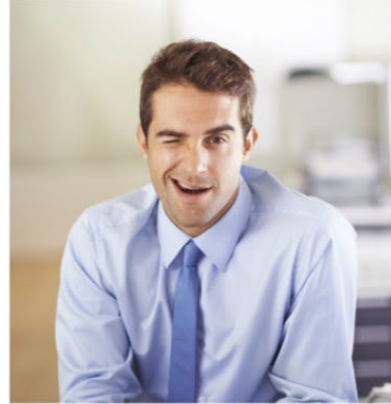
- Includes any situation in the employment context where there is harassing conduct that is sufficiently severe, persistent, or pervasive that it:
  - Unreasonably interferes with an individual's work performance, or
  - Creates an intimidating, hostile, or offensive work environment
- Hostile work environment does NOT require a power differential
- In the educational context, a hostile environment is when an individual's conduct limits, interferes with, or denies educational benefits or opportunities to the victim
- Can be determined by the viewpoint of a subjective person (i.e., the victim complains) or objective person (i.e., a reasonable third-party complains)



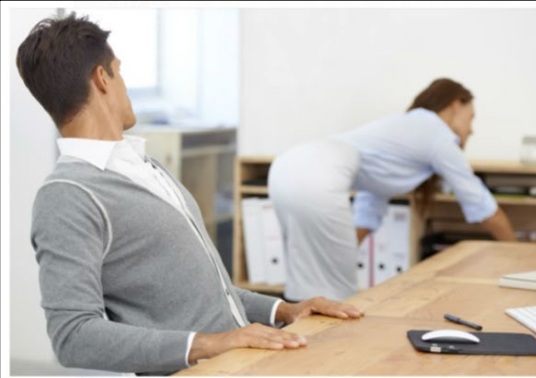


Telling sexual jokes,  
with or without innuendo

## Examples of “Hostile Environment”



Gesturing in a sexual manner



Staring at certain parts of the body,  
or leering (looking at someone up  
and down, and/or elevator eyes)





Making comments about a person's body, dress, sex, or private life

## Examples of "Hostile Environment"



Describing explicit sexual activities or experiences



Making sexual advances or propositions, or flirting, when it is clear that someone is not interested





# More Aggressive Behaviors

- Non-Consensual Sexual Contact
  - Any intentional sexual touching, however slight, with any body part or object, by any individual upon another that is without consent and/or by force or coercion.
- Non-Consensual Sexual Intercourse
  - Any sexual penetration, however slight, with any body part or object, by any individual upon another that is without consent and/or by force or coercion.
- Sexual Violence
  - Sexual acts perpetrated against an individual's will or when an individual is incapable of giving consent.
- Sexual Exploitation
  - Exploitation includes: voyeurism, exposing one's genitals, transmitting an STD to someone without their knowledge, non-consensual pictures, audio or video sexual activity, etc.
- Relationship Violence
  - Dating or domestic violence







# Medical Staff Credentialing

What is a Chair's role in these issues?



# What is Credentialing?

## Credentialing

- Process by which an organization determines whether an applicant is qualified for medical staff membership.

## Clinical Privileges

- The specific clinical activities that a provider is allowed to exercise or perform.
- Privileges are granted by the Board after recommendation by the Medical Staff.

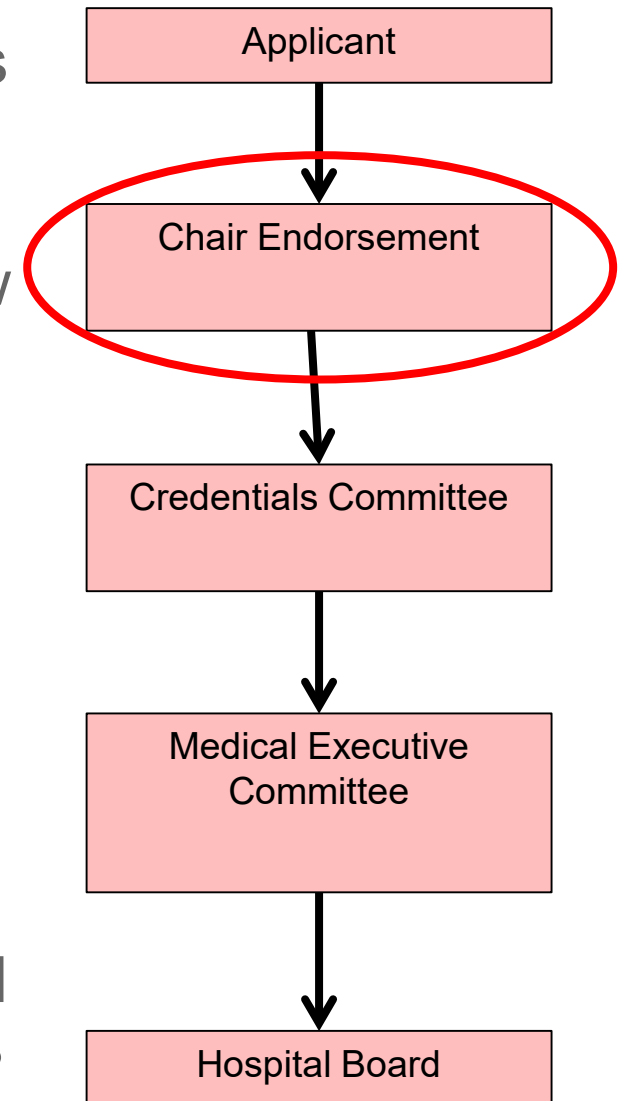
## Medical staff appointment

- Relationship between provider and medical staff, determined by the *Medical Staff Bylaws*.
- Separate relationship from employment/HR relationship.
- Specific expectations and rights for Medical Staff are described in the Bylaws related to quality, safety, disciplinary process, appeals, etc.



# How Do We Credential?

- Applicant submits application and other required documents
- Credentialing office collects, analyzes, and summarizes pertinent information and prepares credentials file for review
- *Application endorsed by department chair*
- Two-Step Medical Staff committee review
  - Corporate Credentials Committee
  - Medical Staff Administrative Committee
- Board review and action
  - Reviews and recommendations are based on established privileging criteria and Medical Staff Bylaws requirements



# Credentialing Information Collected

- National Practitioner Data Bank (NPDB) query
  - Database of state licensure, hospital and professional society disciplinary actions, large lawsuits, etc.
- Review of Federal “exclusion” lists
  - OIG List of Excluded Individuals and Entities (LEIE)
  - System for Award Management (SAM)
- Criminal background check (fingerprints required)
- Pre-appointment drug screen
- Completion of application and attestation questions
  - CAQH (Council for Affordable Quality Healthcare) form



Interviews

Peer  
References

Job Offer

Employment  
Contract

Credentialing  
Process



# What don't you know about the people you are hiring?

- When you call the recruit's current Chair or peers, are they telling you the **whole** story about the recruit?
- Do you know what "questions" page your organization uses as a part of the medical staff application?
  - CAQH national form?
  - Form devised by your organization?
  - Does your organization use "supplemental" questions that are specific to your institution?
  - How familiar are you with those questions?
- *What holes are there in this process?*



# Potential Holes in Your Process

Case 1: Physician has been sued three times in the past for sexual harassment but lists all of these cases as “dismissed.”

## MALPRACTICE CLAIMS HISTORY

19  YES  NO Have you had any professional liability actions (pending, settled, arbitrated, mediated or litigated) within the past 10 years?  
If yes, provide information for each case.

- Based on the above credentialing question, the applicant answers “no”.
- Upon further review, he was released from these cases within a week of the institution settling these cases privately with the patients out of court.
- Because he was dismissed from the case prior to settlement, there is no report to the National Practitioner Databank (NPDB)

When you met with the new recruit, did you ask him for details about any lawsuits against him that have been dismissed?





# Potential Holes in Your Process

Case 2: Physician has been investigated by their current employer for sexual harassment.

- At the conclusion of the HR investigation, his behavior is found to have not met the standards expected for a faculty member
- He was asked to go to a sexual harassment training program, but he was not otherwise placed on probation, suspended or disciplined by the Medical Staff.

12.  YES  NO Are you currently the subject of an investigation by any hospital, licensing authority, DEA or CDS authorizing entities, education or training program, Medicare or Medicaid program, or any other private, federal or state health program or a defendant in any civil action that is reasonably related to your qualifications, competence, functions, or duties as a medical professional for alleged fraud, an act of violence, child abuse or a sexual offense or sexual misconduct?"

15.  YES  NO Have you ever been convicted of, pled guilty to, pled nolo contendere to, sanctioned, reprimanded, restricted, disciplined or resigned in exchange for no investigation or adverse action within the last ten years for sexual harassment or other illegal misconduct?"

- Based on the above credentialing questions, the applicant answers “no”
- Because the individual was never disciplined by the Medical Staff, there is no report to the National Practitioner Databank (NPDB)

When you met with the new recruit, did you ask him if he had ever been investigated for sexual harassment?



# Potential Holes in Your Process

Case 3: Physician has been investigated their state medical board for making unwanted sexual advances to a patient.

- The investigation concludes and the doctor is not formally charged disciplined by the medical board.

1.  YES  NO Has your license, registration or certification to practice in your profession, ever been voluntarily or involuntarily relinquished, denied, suspended, revoked, restricted, or have you ever been subject to a fine, reprimand, consent order, probation or any conditions or limitations by any state or professional licensing, registration or certification board?"

2.  YES  NO Has there been any challenge to your licensure, registration or certification?"

12.  YES  NO Are you currently the subject of an investigation by any hospital, licensing authority, DEA or CDS authorizing entities, education or training program, Medicare or Medicaid program, or any other private, federal or state health program or a defendant in any civil action that is reasonably related to your qualifications, competence, functions, or duties as a medical professional for alleged fraud, an act of violence, child abuse or a sexual offense or sexual misconduct?"

- Based on the above credentialing questions, the applicant answers “no”
- Because the individual was never disciplined by the state medical board, there is no report to the National Practitioner Databank (NPDB) for the physician.

When you met with the recruit, did you ask him if he had ever been interviewed or investigated by his state medical board?



# Potential Holes in Your Process

Case 4: Physician has been arrested in the past for soliciting prostitution as a part of a local “sting” operation related to human trafficking

- The charges are dropped against all the “Johns” by the local prosecutor after the defendants attend a human trafficking education program

20.  YES  NO Have you ever been convicted of, pled guilty to, or pled nolo contendere to any felony?\*

21.  YES  NO In the past ten years have you been convicted of, pled guilty to, or pled nolo contendere to any misdemeanor (excluding minor traffic violations) or been found liable or responsible for any civil offense that is reasonably related to your qualifications, competence, functions, or duties as a medical professional, or for fraud, an act of violence, child abuse or a sexual offense or sexual misconduct?\*

- Based on the above credentialing questions, the applicant answers “no”
- Because the individual was never convicted or pled guilty to any crime, there is nothing found on his criminal background check.

When you met with the new recruit, did you ask him if he had ever been arrested or charged with a misdemeanor or felony?



# Potential Holes in Your Process

Case 5: Physician has been investigated by the police for non-consensual sexual contact with patients.

- He is never formally arrested and the investigation is dropped.
- Current employer settles case in civil court and removes physician name from the law suit.

20.  YES  NO Have you ever been convicted of, pled guilty to, or pled nolo contendere to any felony?"

21.  YES  NO In the past ten years have you been convicted of, pled guilty to, or pled nolo contendere to any misdemeanor (excluding minor traffic violations) or been found liable or responsible for any civil offense that is reasonably related to your qualifications, competence, functions, or duties as a medical professional, or for fraud, an act of violence, child abuse or a sexual offense or sexual misconduct?"

- Based on the above credentialing questions, the applicant answers “no”
- Because the individual was never arrested or convicted there is nothing found on the criminal background check.

When you meet with a new recruit, do you ask the applicant if they have ever been investigated by institution or authorities for claims of sexual harassment regardless of what charge they eventually pled to ?



## SUPPLEMENTAL DISCLOSURE QUESTIONS

(All "Yes" answers require a written response.)

Print Name: \_\_\_\_\_

1. Are you aware of any formal investigation of you either currently or in the past being done by an employer, hospital, training program, academic organization, or law enforcement body regarding allegations of sexual misconduct, sexual harassment, hostile work environment or unprofessional conduct made against you?  YES  NO
3. Have you ever resigned, not applied for reappointment or let a medical staff appointment expire in order to avoid an investigation or disciplinary action?  YES  NO
6. Have you ever been named a defendant in a professional/work-related lawsuit not related to medical malpractice?  YES  NO
7. Have you ever been charged **OR** ever been formally investigated by any law enforcement agency (local, state or Federal) related to a potential felony or a potential misdemeanor related to an act of violence, sexually-related offense, soliciting prostitution, human trafficking, domestic abuse, or child abuse/neglect?  YES  NO



# Questions and Discussion

Thank you!

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*Go Bucks!*



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