

Sexual Harassment: Health Care, It Is #YouToo, *Managed Care*, ft. Keith Gutstein

Keith Gutstein, Esq., Co-managing Partner in the Long Island office of Kaufman Dolowich & Voluck, LLP, was quoted in an article written by Susan Ladika for *Managed Care* magazine on sexual harassment in healthcare.

Time magazine called them the Silence Breakers. Five women, including Ashley Judd and Taylor Swift, featured on the magazine's Person of the Year cover.

Just the arm of a sixth woman is shown. It belongs to a 28-year-old hospital worker and mother of two from an unnamed Texas town who didn't want to be identified. *Time* reported that she told the human resources department at the hospital where she works that an executive repeatedly propositioned her. "I kept thinking: 'Did I do something, did I say something, did I look a certain way to make him think that was OK?'" she told the magazine.

The #MeToo movement is sweeping through politics and the country's entertainment and media industries. Women are speaking up about sexual harassment and assault, and scores of men have lost their positions and reputations. American health care hasn't gone untouched, although it hasn't seen as many of the high-profile cases as other sectors.

There's no question that sexual harassment—and worse—is common at the country's hospitals, clinics, research labs, and doctors' offices. Health care's gender imbalances create situations that are ripe for abuse: Women make up the majority of the workforce in health care but men still dominate positions of authority.

During the 2016 fiscal year, the federal Equal Employment Opportunity Commission (EEOC) received more than 27,000 complaints of sex-based discrimination, according to the news website *FiveThirtyEight*. The industries involved weren't recorded in about 60% of the cases, so the EEOC stats may paint a skewed picture. Still, of the industries recorded, health care topped the list, with 14% of complaints, followed by manufacturing and retail.

Reporters at *BuzzFeed News* also combed through EEOC claims for an investigative story last year (whatever you might think of *BuzzFeed*'s listicles, the website's reporting staff does some legitimate journalism). Of 8,300 health care-related complaints they identified from 1999 to 2016, more than 3,000 were from employees at hospitals, 1,500 from workers at nursing care facilities, and more than 1,900 from "other miscellaneous ambulatory health care services."

It's time that you update your sexual harassment policies

With sexual harassment allegations hitting the headlines seemingly on a daily basis, now is the time for health care companies to implement policies or update the ones they have.

Keith Gutstein, a labor and employment attorney with Kaufman, Dolowich, Voluck LLP in Woodbury, N.Y., works with health care clients. He has seen an uptick in calls from companies asking to revise their policies or schedule sexual harassment training sessions. "The policy is where it starts," Gutstein says. But companies must also establish a complaint process that is easy for employees to navigate. He also recommends that, at the very least, all managers receive training so they know which conduct to guard against.

If someone files a complaint, their identity should be shielded and they should be protected from retaliation, Gutstein says. "An employee who complains can't suddenly become persona non grata." An investigation should be launched, and the accuser should be notified when it is completed, he says. "You don't need to detail what you do, but it's important to get back to the alleged victim. Don't let them think they've been ignored," he says.

If a supervisor ignores a complaint, it increases the risk the company can be held liable, Gutstein says, and the accuser could seek redress through local, state, or federal agencies, such as the Equal Employment Opportunity Commission, or through the courts. “Not having precautions in place is just a bad step,” Gutstein says.