

## Patients Bring #MeToo Complaints to Doctors, Hospitals

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Female patients are shining new light on an issue that, until now, has received little attention: doctors' sexual abuse of patients.

Hospitals and health systems increasingly are being implicated in these reports. They potentially could be on the hook for millions of dollars. Michigan State University settled the gymnasts' suit against it for \$500 million, for example.

Allegations of this type could also do lasting harm to their reputations.

Growing numbers of women are reporting that they've been sexually abused or harassed by their doctors, Kelli Garcia told Bloomberg Law. Garcia is the director of reproductive justice initiatives and senior counsel at the National Women's Law Center in Washington. The NWLC is putting together resources to educate hospitals, physicians, providers, and patients about the problem.

Women may be emboldened by the #MeToo movement to come forward, Garcia said. Stories told by at Michigan State University also have heightened national awareness of patient abuse.

### **Failure to Act**

A hospital's alleged failure to act could make it vulnerable to litigation. Take, for example, an Oct. 10 lawsuit filed by three women against Huntington Memorial Hospital in Pasadena, Calif.

The three patients alleged in a complaint filed in the U.S. District Court for the Central District of California that the hospital never investigated or otherwise acted upon their reports of sexual misconduct by Dr. Patrick Sutton. They are asking for an unspecified amount of damages.

The women say Sutton, an obstetrician and gynecologist, touched them inappropriately, made comments about their appearances, and asked them about their sex lives.

“This is absolutely unacceptable conduct toward vulnerable, trusting patients in a medical setting,” **attorney Joe Sauder, of Sauder Schelkopf in Berwyn, Pa., told Bloomberg Law.** Sauder represents the women, whom he said “have been empowered to speak about this abuse and mistreatment.”

The hospital is taking these as-yet unproven allegations “seriously,” Huntington Memorial spokeswoman Eileen Neuwirth told Bloomberg Law. It is “in the process of reviewing this matter” and had no comment on the litigation, she said.

## **Numbers Uncertain**

It’s hard to know how many women receive unwanted sexual attention from their doctors, Garcia said. There isn’t one place where women can go to report it, and some don’t try.

“It can be hard for patients in the moment to tell if a doctor’s actions are appropriate or inappropriate,” she said. And they aren’t always aware of their options, she said.

There is much patients can do, Garcia said. They can, for example, file complaints with hospitals or health systems, state medical boards that license physicians, or a local, state, or federal civil rights agency. They can also sue the doctor and the facility under the Affordable Care Act’s prohibition of sex discrimination by health-care providers.

## **Hospitals’ Reponse**

Doctors traditionally are independent contractors, and they are a part of and answer to a hospital’s medical staff. That group investigates allegations about doctors through a peer review process. It reports serious sanctions, such as a revocation or suspension of privileges, to the National Provider Data Bank.

The NPDB is intended to stop incompetent doctors from moving among unsuspecting hospitals. Hospitals are expected to query it before hiring or extending privileges to a provider. The database isn’t open to the public.

A hospital’s human resources department would investigate employed doctors. As an employer, a hospital could be held liable for forms of sex discrimination under Title VII of the Civil Rights Act.

Regardless of the doctor's status as an employee or independent contractor, hospitals formally should address allegations of inappropriate behavior that potentially subject it to state and federal discrimination laws, hospital attorney Phil Zarone told Bloomberg Law.

A partner at Pittsburgh's Harty, Springer & Mattern, Zarone spoke about the matter generally and not in connection with any specific case.

## Licensing Board Complaints

It isn't certain what the Huntington Memorial Hospital knew and when it knew it. One question revolves around three complaints alleging sexual misconduct by Sutton that were made to the California Medical Board. The board licenses doctors.

The board resolved complaints made in 1999 and 2009 by putting Sutton on probation. The sanctions, however, focused on recordkeeping violations. The remaining accusations weren't proven, according to the board's orders.

That's fits a familiar pattern, Garcia said. Medical boards have sanctioned physicians for "technical" violations, even when a complaint contained accusations of sexual misconduct.

It seems unlikely the hospital didn't know about the board's actions, attorney Michael Brohman told Bloomberg Law. Doctors periodically must reapply for privileges, and the committees that decide on applications must ask the board about any actions taken against a physician. Brohman is a shareholder at Chicago's Roetzel & Andress LPA who represents physicians in medical staff matters.

The board may not have been required to report "technical" conduct that occurred outside the hospital, such as in the doctor's office, Brohman said.

On the other hand, Brohman said he "couldn't imagine any set of circumstances where the hospital wouldn't have taken action," if the state put the physician on probation due to the sexual misconduct allegations, and the hospital knew about it.

The case is [Doe v. Pasadena Hosp. Ass'n Ltd.](#), C.D. Cal., No. 18-cv-8710, filed 10/10/18.