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# A Primer on Sexual Harassment for Chiropractic Practice and Educational Settings

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**Keith A. Wells, D.C.**, Los Angeles College of Chiropractic

Although sexual harassment is a widely discussed and examined topic in today's public arena, there are less than 10 citations about this subject written by chiropractors directed to the chiropractic profession in the peer-reviewed literature. The purposes of this review are to provide a brief history of the development of sexual harassment law, define and describe sexual harassment according to the law, educate chiropractic practitioners and educators about the legal obligations for employers and the penalties for violations, and provide a suggested prevention paradigm against harassment. Several general and health science databases were searched for citations on the subject of sexual harassment. Search terms included sexual harassment, sexual misconduct, professional-patient relationship, doctor-patient relationship, professional boundaries, and multiple combinations of these terms and phrases using Boolean operators. This review explores sexual harassment from its legal historical development to a "virtues-based" prevention paradigm. Much of the research performed on sexual harassment is consistent and has been duplicated. Men are usually the perpetrators of sexual harassment and women are usually the victims. Sexual harassment in the health science practice and educational settings is prevalent. It is unknown to what extent sexual harassment exists in chiropractic offices and on chiropractic college campuses. There is a need for research on this topic within chiropractic. Chiropractors are positioned either to perpetuate sexual harassment or be change agents in reducing its prevalence in their surroundings. It is reasonable to believe if chiropractors behave according to the premium they place on human health and dignity, sexual harassment could fade away in their spheres of influence. (*The Journal of Chiropractic Education* 14(2): 88-102, 2000)

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## INTRODUCTION

Sexual harassment is widely prevalent and is one of the most extensively examined subjects in public and professional discourse today (1-4). The health science, educational, legal, and communication literature contains voluminous writings that address sexual harassment in non-health science and health science educational settings, as well as clinical practice settings. A significant amount of the health science literature treats the subject of sexual harassment together with sexual misconduct. The

two subjects are intertwined but have different legal definitions, interpretations, and implications.

Briefly, sexual harassment is generally defined according to the employer-employee relationship and the student-teacher relationship as a form of discrimination. Sexual misconduct is generally defined according to the doctor-patient relationship as sexual impropriety. California has broadened the definition of sexual harassment to include abusive quid pro quo relationships among all kinds of professionals and their clients. This is discussed below.

It is interesting to note there is scant contribution on the topics of sexual harassment and misconduct (less than 10 citations) written by chiropractors to the indexed, peer-reviewed literature addressing the chiropractic and/or other alternative

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health professions. This is surprising in that the chiropractic profession lends itself by the nature of its healing methods and the training in those methods to potential allegations of sexual harassment and misconduct. Chiropractors may believe there is no need to contribute to the chiropractic literature on the subjects of sexual harassment and misconduct. This might be due to easy accessibility to the extensive professional writing already compiled on these subjects in other professions. In addition, there is universal applicability of sexual harassment and misconduct law to practitioner/employers and educational institutions, presumably making them aware of the issues. If these are reasons for the lack of contribution to the sexual harassment/misconduct literature by chiropractors, it is hoped that chiropractic practitioners and educators are reading the health science literature, the legal and employment literature, and are implementing sexual harassment and misconduct policies in their practices and institutions.

This article reviews the history and legal definition of sexual harassment, the current issues related to sexual harassment, and how these apply to chiropractic education and practice. A prevention paradigm is also offered. Due to the interrelation of sexual harassment (primarily an employment and/or teacher–student issue) and sexual misconduct (which tends to be violation of the doctor–patient relationship), there will necessarily be information offered that includes sexual misconduct issues together with sexual harassment issues even though these differ in the legal sense. The main intent of this article, however, is to focus on sexual harassment, and sexual harassment terminology will be used when discussing the topics of sexual harassment and misconduct.

It is reasonable to assume that chiropractic colleges in North America are current with the issues on sexual harassment due to the fact that these institutions answer to the law, employ knowledgeable administrators that include human resources specialists, and obtain expert legal assistance to conduct daily operations. A recent abstract indicates that the accredited North American chiropractic colleges are in the process of collaboratively addressing the subject of doctor–patient sexual boundaries, and it seems reasonable to assume that the resulting paper will address sexual harassment to some extent (5). This is not to say that all chiropractic colleges are creating and effectively implementing policies and procedures to prevent sexual harassment/misconduct.

Also, it is unknown to what extent private chiropractic practitioners create and implement sexual harassment prevention policies, if at all.

## MATERIALS AND METHODS

Several health science and general databases were searched for literature on the subject of sexual harassment. These included Mantis, Cinahl, Medline, PsycLit, ERIC, and Ebsco Host. Mantis is the chiropractic database, Cinahl is the allied health database, Medline is the traditional medicine database, and ERIC is the general educational literature database. Ebsco Host is a general database that includes those journals devoted to communication research. Search terms/phrases included sexual harassment, sexual misconduct, professional–patient relationship, doctor–patient relationship, professional boundaries, and combinations of these terms using Boolean operators. The combinations of phrases were multiple and varied. The use of the search terms in multiple combinations will likely produce overlapping results and the current citations used, based on the author's experience with the search. The years searched varied depending on the database. Mantis and Cinahl were searched from inception, while the Medline, ERIC, PsycLit, and Ebsco Host databases were searched from the early 1980s to the present. Citations were selected based on legal analysis, disciplinary actions, ethics, issues in higher and health science education including academic freedom, employment issues, risk management, gender issues, and professional boundaries.

## A BRIEF HISTORY OF SEXUAL HARASSMENT LAW

In a review of sexual harassment history, Toobin states that modern sexual harassment law was invented by accident (6). The Civil Rights Act of 1964 was being debated. Representative Howard Smith of Virginia filed an amendment in an attempt to kill the bill, which included the Title VII ban on racial discrimination in employment. Smith's amendment would include a ban on employment discrimination on the basis of sex as well as race. At the time the thought of job discrimination based on gender was not taken seriously; therefore, the amendment was intended to drag down the Civil Rights Act by muddling the issues as opposed to enhancing

women's rights. Unexpectedly, Democrat Martha Griffiths of Michigan and the few women who had seats in Congress backed the amendment. With the help of other liberal votes, the amendment passed and became part of the law. Legal responsiveness to discrimination based on sex did not seriously begin to take root until the mid-1970s, possibly due to the country's attention to volatile racial problems and the war in Vietnam.

Until that time very few women successfully sued their employers for sexual harassment under Title VII. The courts declared sexual advances from a superior were "personal" and did not constitute discrimination (6). In 1977, Yale law student Catharine MacKinnon gave a paper to a law clerk which she had written on sexual harassment for an independent study course. That clerk was serving in federal appeals court on a case of sexual harassment that had been dismissed in lower court. MacKinnon's paper became the basis for the appeals court to overturn the lower district court's decision. Her paper also developed into a book in 1979, entitled *Sexual Harassment of Working Women*, which is in its 12th printing (6).

In the late 1970s and early 1980s, the idea that sexual harassment is a form of discrimination took firm root, and MacKinnon's original and continuing work was instrumental in that paradigm shift. In 1980, the Equal Employment Opportunity Commission (EEOC) issued its well-known guidelines on sexual harassment, which follow below. In 1986, the U.S. Supreme Court upheld the EEOC guidelines, ruling that sexual harassment that creates a hostile work environment is a violation of the Civil Rights Act (7,8).

In 1991, the public became aware of sexual harassment through the much-publicized Anita Hill-Clarence Thomas case. Thereafter the number of formal complaints filed with the EEOC increased 69% in 1992. Also in 1991, a California federal appeals court ruled that a hostile work environment should be assessed from the standpoint of a "reasonable woman" instead of a "reasonable person" (7). The "reasonable woman" standard has been adopted by the Ninth, Third, Sixth, and Eighth Circuit Courts of Appeals as well as at least two district courts (8). Based on the decision of the Ninth Circuit Court of Appeals in *Ellison v Brady* (1991), several courts have ruled that men and women may differ in their perceptions of what constitutes sexual harassment. In their opinions a "reasonable person" standard does not encompass the experience of sexual harassment

as women experience it (8,9). This assumption is based on an extensive body of research (considered below) that concludes women are more likely to perceive certain behaviors as sexual harassment than are men, and that women analyze nonverbal meaning more than men (10,11). In 1993, the U.S. Supreme Court ruled in *Harris v Forklift Systems, Inc.* that it is unnecessary to prove psychological injury in order to demonstrate a hostile work environment (8). Throughout the history of the development of sexual harassment law, the interpretation of the law has been steadily leaning toward the victim's subjective experience of harassment to define sexual harassment.

The Title IX Amendment of the Educational Act of 1972 is the principal statute that addresses sexual harassment in institutions of higher education. Complaints filed under Title IX are evaluated in much the same way as complaints filed under Title VII, with the application of the EEOC guidelines (12). An action may be filed in federal and/or state courts. Federal law (Title VII) applies to employers of 15 full- and/or part-time employees or more, while state laws apply to all employers in that state (13). The EEOC guidelines are not law, but serve as the basis for the interpretation of the law (7).

For readers interested in a more extensive history and legal assessment of sexual harassment law, Toobin (6), Weiner et al. (8), Blumenthal (14), and Nora (15) provide excellent reading and further resources.

## DEFINITION OF SEXUAL HARASSMENT

The EEOC adopted the following definition:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive work environment (16).

Under this definition there are two types of sexual harassment. The first and most obvious is *quid pro quo* (one thing in exchange for another) sexual harassment. This is established where submission to unwelcome sexual behavior is an explicit or implicit condition of employment or is the basis of adverse employment actions toward the employee (9,13). An

example of quid pro quo harassment would be sexual favors in exchange for a grade.

The other form of sexual harassment is the hostile work environment. This form of harassment is more difficult to define and causes the greatest confusion among employers and educational institutions. The 1986 case of *Meritor Savings Bank v Vinson* has provided a four-condition basis to define the hostile work environment: 1) the complainant must be a member of a protected class; 2) the behavior of the harasser must be unwelcome from the employee's point of view; 3) the employee would not have been subjected to the alleged harassment except for the employee's sex; and 4) the harassment must be severe or pervasive enough to change the conditions of employment and create an abusive work environment (9,13). This last condition is the most challenging to establish and is the issue of greatest controversy in the courts (15). It is also hostile work environment harassment that causes the greatest consternation for employers. This is because the courts may rule in favor of the subjective assessment of the perceiver of harassment. It should be known, however, that indiscriminate lawsuits and disciplinary horror stories are not the norm. Wiener et al. (8) state the following:

Not all social-sexual misconduct rises to the level of harassment. The courts and the EEOC agree that isolated instances of sexual misconduct do not satisfy the "severity and pervasiveness" test. Unless the defendant has engaged in a particularly severe incident of sexual misconduct such as intentionally touching intimate body parts, the courts require a demonstration of frequently occurring offensive behavior.

The disparity of court interpretations and the debate over how to define the hostile work environment are ongoing. Not all courts use the "reasonable woman" standard in the United States, but the trend is clear. Supporters of the "reasonable woman" standard make use of the research that establishes the perceptual differences between men and women, as well as the fact that women are harassed far more often than are men. Opponents of the standard argue that the "reasonable person" standard already takes the totality of circumstances into account for each case, including gender. The opponents also argue that the "reasonable woman" standard incorporates stereotypical paternalistic thinking about women (15). Toobin (6) quotes law professor Vicki Schultz:

By focusing on sexual advances as the quintessential harassment, the paradigm encourages courts to extend

protection to women for the wrong reasons. Rather than emphasizing the use of harassment law to promote women's empowerment and equality as workers, it subtly appeals to judges to protect women's sexual virtue or sensibilities.

Sexual harassment is also defined as a form of communication in which one person is perceived to be sending sexually objectionable messages (verbal and/or nonverbal) to another (10,11). A further communication perspective defines sexual harassment as a form of *asynchronous* relationship. Synchronous relationships occur typically between people of equal status and power and involve the exchange of mutually beneficial messages. Asynchronous relationships typically occur where there is a power differential, as in a student-teacher relationship. For example, the teacher may perceive the relationship with a particular student as high in immediacy (meaning apparently friendly eye contact, touching, expressiveness, etc.), but the student does not (17). The result is that the teacher erroneously believes the relationship to be more intimate than it actually is compared to the viewpoint of the student. This mismatch of perceptions may exist for a variety of conscious and unconscious reasons, but is fertile ground for misunderstanding and legal consequences.

Blumenthal offered the "reasonable victim" standard as an alternative to the "reasonable woman" standard. In his opinion, the proposed "reasonable victim" standard would recognize that not all victims of sexual harassment are alike, and would subsume perceptual differences between the genders (14).

## ESSENCE AND EXAMPLES OF SEXUAL HARASSMENT

The essence of sexual harassment is discrimination based on sex, typically through the abuse of power (15,18-20). It is important to note sexual harassment does not need to involve sexual conduct, although it usually does. In *Accardi v Superior Court*, the issues were the spreading of untrue rumors, being singled out for unfavorable work, unsubstantiated claims about the complainant's performance, and threats directed at the complainant. Although the original complaints did not include sexual advances or behavior, the court ruled there was a pattern of discrimination based on sex, and that sexual harassment need not concern sex (21). Underscoring the point, Bordo (19) argues that the sexual harasser should be defined as a bully, not as a

sex-fiend. The abuse of power does not necessarily depend on the superior status of the actor (harasser). *Contrapower* harassment (e.g., a student harasses a faculty member) and peer harassment have been studied and reported (1,22,23). This type of harassment is discussed below.

Examples of quid pro quo sexual harassment are relatively easy to describe. For example, a student must comply with a professor's request for sex in exchange for a grade. An employee must go on a date with a supervisor or risk an adverse promotion decision. Harassment behaviors that constitute a hostile work environment are more difficult to define, but many behaviors have reached the courts. Examples of physical contact include unwelcome touching, stroking, and assault. Verbal behaviors include repeated requests for dates, flirting, sexual remarks and innuendoes, comments about a person's body or manner of dress, jokes with sexual content, and sexual propositions. Nonverbal examples include gestures, facial expressions, leering or persistent staring, and displayed pornographic pictures (7,12). These examples not only include the target of the harassment, but also include any worker who overhears verbal harassment or sees pornographic material. For example, a male worker may tell a sexual joke to a female worker, who may welcome the joke and take no offense. However, another worker who hears the joke may feel embarrassed and take offense. If the behavior is repeated and/or is ignored by supervisory personnel, a sexual harassment complaint may be filed and substantiated.

It must be kept in mind these examples are not exhaustive. *Stopping Sexual Harassment: An Employer's Guide* (hereafter the *Guide*), published by the California Chamber of Commerce, is an excellent source for examples of behaviors that can constitute sexual harassment (21). California falls under the Ninth Circuit Court of Appeals, the largest of the Circuit Courts. As this court rules, other courts tend to follow. Regardless of the state in which a chiropractor practices, it is wise to follow the trends developing in the legal arena, and the *Guide* provides those trends. It should be remembered that the law is not simply addressing the sexual sensibilities of an offended employee or student. The law is addressing the work/educational environment in which these behaviors take place and whether the environment becomes intimidating, hostile, and abusive. That type of environment interferes with the opportunity to freely and productively work, to fairly

attempt legitimate promotions, and to fairly obtain an education *and secure a future from that education*. When the hostile environment occurs, discrimination has taken place based on gender. This is the fundamental issue.

## EXPERIENCE OF SEXUAL HARASSMENT

There is a wide diversity of workplace settings in which sexual harassment has been reported. There are also clear differences between the genders of how often women experience harassment, of the definition and severity of harassment, and of the impact of harassment. Some of the health professions where harassment is reported include nursing, athletic training, veterinary practice, dentistry, medicine, physical therapy, and psychiatry/psychology (7,12,13,23–27). There has been to date no known published report on the extent of sexual harassment in chiropractic, whether in practitioner's offices or in educational institutions. It seems likely, however, that sexual harassment does occur in these settings. Harassment in the educational setting will be considered separately below.

The literature supports that women are harassed far more than are men. Specific percentages of women who have been harassed vary widely depending on the setting and the surveyed population, but the range is roughly 25%–99% (1,2,9,12,15,18,23). Men are usually the actors (perpetrators) of sexual harassment, and direct the harassment primarily to women (1–3). It is difficult to assess what percentages of men in the workforce have been harassed. One government study estimated 6% of male federal employees have experienced harassment (7). Women tend to view sexual harassment more seriously than men, are less tolerant of sexual harassment, and are more likely to perceive certain behaviors as harassment as compared to men (3,4,8,15,18). This last point is important, as it is pivotal in the application of sexual harassment law (remember the “reasonable woman” standard). It is also pivotal to men becoming more aware of and sensitive to women's perceptions as all learn about harassment prevention.

Overall, women are more likely to believe the causes of sexual harassment reside with characteristics of the harasser as opposed to the victim (8). On the other hand, both men and women who have not been victims of sexual harassment are more likely to place responsibility on the victim (26).

Men may perceive specific behaviors as sexually harassing just as do women, but are likely to perceive the *impact* of the behaviors much differently. Bordo (19) reported her own experience of harassment and the realization that the experience made her feel disempowered and humiliated, whereas a male philosophy colleague reported no anxiety over being called “cute” by an older female department chair. For him there was no fear of not being taken seriously as a professional. Bordo further argues that men do not generally feel anxiety about sexualized gestures from women unless the gesture is experienced as undermining their masculinity. In a study of work-related harassment of men (including physical violence, ridicule, and other forms), Einarsen and Raknes (28) found sexual harassment infrequently reported and of little importance. This is consistent with other research that indicates men generally experience sexual harassment as a minor problem.

Both sexes may *cognitively* determine ambiguous behavior by a superior as appropriate (e.g., a compliment on their manner of dress), but *affectively feel differently* about the compliment. This is important because a teacher or practitioner may pay a compliment and misinterpret a resulting friendly smile and a “thank you” from a student or patient as a sign of welcome to further interaction, which may be the furthest thing from that person’s mind. Garlick (3) comments that men may be uncomfortable with sexual harassment from female professors, but are silenced by the societal expectation that men should be flattered by the attention. He also reflected that it is possible that men *are* flattered by the attention. Men are likely to perceive friendly behavior by women as a sign of sexual interest (in the *welcome* sense, hence the potential for trouble) and are also more likely to sexualize male–female communication exchanges (3,29). This happens frequently, for example, when women compliment men on their appearance. Men are more likely to perceive the compliment as a sign of sexual interest, where women most likely meant the compliment to be *only* that—a compliment. To the converse, women are more likely to perceive complimentary looks and comments from men as sexual in the *unwelcome* sense (29).

There has been debate over the *extent of the effect* of gender perceptual difference in the legal arena (8,14). Blumenthal (14) questioned the extent of the gender effect on perception of sexual harassment in a meta-analysis of the research papers that reported the differing perception between the sexes.

His conclusions were that the reported “wide divergence” between the perceptions of the sexes is actually relatively small, and his is not the only study to reach that conclusion. He also found men and women are very close together in perception when the *status of the harasser is greater than that of the harassed*. The “status effect” may in fact be much greater than the effect of divergent gender perceptions. It should be stressed that for Blumenthal, the *difference in perception of sexual harassment between the sexes is not in question. The debate is over the extent the gender effect should have in court disciplinary actions.*

Same-sex harassment also occurs, but its prevalence is not widely studied. Nevertheless, it is clearly recognized and is illegal. It also may have nothing to do with sex, per se, but follows the legal interpretation of harassment because of gender. The U.S. Supreme Court ruled and affirmed in 1998 that federal law protects against sexual harassment in the workplace by people of the same sex (30, p. 67). The *Guide* addresses same-sex harassment in California and the state courts affirm that this form of discrimination is illegal (21).

Perception and perpetration of sexual harassment are influenced by a number of factors in addition to gender. Stewart et al. (31) found correlation between reported experiences of childhood sexual abuse and current perceptions of harassment from professors. The power relationship between the student and teacher is a sensitive issue for young adults who have difficulty with trust of those in power as a result of sexual abuse. An example is presented as follows: A professor asks, “What are you willing to do to pass this course”? The question may be nothing more than an assessment of motivation, but the sexually abused student in the power relationship setting perceives the question as a solicitation.

Berryman-Fink and Riley (32) found feminist orientation to be a factor in perception. In their study, women perceived more behaviors as harassment and rated them as more offensive than did men. Feminists perceived more sexual harassment than did nonfeminists. Marks and Nelson (29) found the gender of a harassing professor did not significantly influence perception of sexual harassment by male and female students. But consistent with other studies, women found the content of videos showing harassment vignettes to be more harassing than men, and subtle forms of harassment were seen as more inappropriate by women than by men. It is also likely that the higher the status of the actor over the victim,

the more likely harassing behavior is to be perceived by both men and women as inappropriate (14,29). Booth-Butterfield (10) studied the effects of locus of control as it relates to perception of sexual harassment. In general, persons with an internal locus of control believe control of their lives and circumstances are in their own hands, whereas persons with an external locus of control believe their lives are controlled by other people, governments, fate, and so forth. Internal males were less likely to label behaviors as harassment, whereas external males were more likely to label the same behaviors as harassment. Locus of control in women had little effect on their perception of sexual harassment.

Bingham and Burlison (11) developed a Sexual Harassment Proclivity Scale. Their study found that based on the Scale, college men were more likely to harass, were more suspicious of dating, and were less satisfied in dating. They were also more anxious about communication, and were less rewarded by communication.

Mentioned earlier is *contrapower* harassment, which points out the difference between the genders in their experience of sexual harassment more clearly. McKinney (22) reported on the sexual harassment of university faculty. Contrapower harassment occurs when the victim has more formal power than does the actor. It is argued that in the case of female faculty members, although a female professor has formal power over a male student, she lacks power because of her ascribed status as a female. The male student may see her achieved status as illegitimate or unimportant. Schneider and Phillips (23) studied sexual harassment of female physicians and also reported this type of harassment. Based on a theoretical framework that holds that gender role is a more basic cognitive category than the work role, a male patient may feel free to harass his female physician, in spite of her educational and professional authority and power in the doctor-patient relationship. This once again points out the role of power and discrimination in sexual harassment rather than simple sexual attraction gone awry.

There are more factors that may influence perception of sexual harassment. The references provide a broad base of resources for further investigation.

## EMPLOYER LIABILITY

The employer is liable for damages resulting from sexual harassment complaints if the employer

*knew or should have known* that harassment has occurred (13,16,21). Again, the *Guide* is instructive. It is the employer's responsibility to exercise reasonable prevention measures against sexual harassment as well as to promptly correct harassing behavior (21). These measures are considered in the section on prevention. To "know" is knowledge based on actual complaints, witnessed behavior, hearing a rumor, or knowing of a complaint but failing to take action. In legal language, "should have known" means the following: 1) knowledge of sexual harassment is implied because if the employer or employer agent was doing his/her job, they would have known; 2) sexual harassment is obviously practiced but ignored; 3) sexual harassment is so common in the environment that a reasonable person would have known; and 4) if the employer had a complaint process in place, or a process that worked, the employer would have known (21). In California, *supervisors may be personally responsible for damages in addition to employer liability*. States may vary on this latter issue.

Vicarious liability is also an issue for chiropractors and chiropractic colleges. An organization may be held liable for the harassing actions of a supervisor even if no measurable adverse employment action results. The organization may defend itself in federal court by showing that 1) it took reasonable care to prevent and promptly correct any harassing behavior, and 2) the plaintiff unreasonably failed to take advantage of any preventive or corrective measures provided by the employer or to otherwise avoid harm (9,16). Note this defense applies to *federal* law. It does not apply in California and may not apply in other states (9). An employer may also be liable for the actions of visitors, vendors, salespeople, repair people, providers of after-hours services, providers of services at a company-sponsored event, and employees that travel together for work-related activities (21).

Doctors may be liable for the actions of their patients in the practice setting. Gabbar et al. (9) provide an excellent article on whether patients can sexually harass their physicians. In a solo practice where harassment of a physician by a patient occurs, the answer is technically "no," because the employer-employee relationship does not exist. However, employees of the practice could be harassed by a patient, including other doctors contracted or employed by the practice owner(s). In this case, the practice owner could be liable for damages as a result of a complaint by professional and/or nonprofessional employees of

the practice (9,25). Patient personality disorders may complicate the matter, but nevertheless the practice owner must be diligent in protecting the employees from harassing behavior. Depending on the circumstances, a referral of the harassing patient to a psychiatrist/psychotherapist may be in order.

Sexual harassment may be judged to have occurred off the workplace premises and outside normal working hours if the circumstances are shown to be work related (21). An example in chiropractic institutions would be the intern who is on preceptorship in a private office. The preceptor doctor is an agent of the college, and if the preceptor doctor sexually harasses the intern, the college could be liable if a report of harassment is made and no action is taken, or if the college knew or should have known that the harassment occurred.

It is beyond the scope of this paper to discuss the damages awarded to plaintiffs in sexual harassment cases. Suffice it to say the awards can be spectacular, e.g., the claim for \$34 million against Mitsubishi Motors in recent years (21). This is not to mention the cost of legal defense, regardless of whether the defendant is innocent or guilty.

## ADDITION TO THE CALIFORNIA LAW

In addition to the above, California has added to its Civil Code a cause of action for sexual harassment that occurs as part of a professional relationship. Sexual harassment of a patient by a doctor would typically be seen as sexual misconduct because the patient is not an employee of the doctor. However, under California law, business, service, or professional relationships with customer/clients are considered covered relationships and include doctors, attorneys, real estate agents, loan officers, teachers, executors of wills, and many other similar types of professional–client relationships (21). Virtually any professional–client relationship that has the potential for quid pro quo abuse is covered. This means a doctor of chiropractic could be subject to both sexual misconduct and harassment actions.

## ISSUES OF CONSENSUAL SEXUAL RELATIONSHIPS AND FRIENDLY, GOOD INTENTIONS

In any discussion of sexual harassment/misconduct the issue of consensual sexual relationships between

doctors and patients, students and teachers, or supervisors and employees surfaces. How can the law interfere with these relationships between consenting adults? What of those relationships that have resulted in marriage? The debated question is whether the subordinate person in any superior–subordinate relationship can give true consent to a relationship in an objective manner. It is not the intent of this paper to argue the point, but to inform the readership that the law regards sex between doctors and current patients as unacceptable. The relationship between doctors and patients is considered fiduciary, which means based on special trust. Stahl and Foreman (33) treat the fiduciary relationship in detail. They report a true consensual relationship can occur only when the two parties are equal in power and responsibility. It is felt by some that a true consensual relationship between doctor and patient is never possible, as the difference in power will always exist (33).

The psychotherapy professionals in California have established a 7-year period following the cessation of the fiduciary (doctor–patient) relationship, after which the psychotherapist may engage in a consensual relationship with a former patient. Whether this is a good idea is a matter of debate. Other states vary in their statutes, from never permitting relationships between psychotherapists and former patients to recommending a 3-month waiting period (33). Medicine is ambiguous on the issue. The American Medical Association (AMA) declares relationships with former patients unethical if the physician uses the relationship to exploit the patient with influence from the previous fiduciary relationship (33). It must be remembered that at some point a former patient may bring suit against a doctor after a relationship is terminated and may then accuse the doctor of sexual misconduct and/or harassment depending on the state.

Zange comments on the American Chiropractic Association (ACA) Code of Ethics, which explicitly addresses the forbidden nature of consensual doctor–patient romances for current patients, but does not explicitly mention dating former patients. It does state that chiropractors should avoid even the appearance of impropriety, which could be interpreted to include dating former patients. There is danger in dating former patients due to the problem of the “patient scorned” (34).

The issue of the rural practitioner and dual relationships of both a sexual and nonsexual nature is also a dilemma. It may be impossible for a rural practitioner to avoid all contact with former patients on

all levels, but great care can be taken with nonsexual dual relationships (35), and Zange (34) recommends avoiding any romantic involvement with former patients.

It is not the point of this paper to deny that legitimate and healthy romantic relationships can and do develop between supervisors and employees, teachers and students, and doctors and patients. Truly consensual relationships are not within the scope of the law (15). However, it is the point to show the tremendous risk and questionable objectivity involved. To that end many, if not most, major public and private institutions have developed nonfraternization policies in an effort to short-circuit harm to students and employees along with potential legal action. For example, the Los Angeles College of Chiropractic has instituted such a policy in addition to the policies forbidding sexual harassment/misconduct (36).

An important caveat for practitioners and educational institutions to remember is that in court, *consent is not a defense* (37). Consensual relationships that were harmonious and then turn hostile can be problematic for the employer (9). Regardless of how consensual a relationship appears (e.g., a relationship between a student and a faculty member), there is always the potential for harassment. Pearson and Piazza (24) state, "Whenever a personal relationship is added to a professional one there is always potential for harm. The critical issue here is the power differential inherent in the professional role. There is always the possibility the person with less power in the professional relationship will feel coerced or forced within the personal relationship" (p. 95). Robinson and Stewart (38) echo this position. Pearson and Piazza further note that even if the relationship is not coercive, there may be the perception among observers that there is a conflict of interest or the faculty member is susceptible to favoritism (24). This scenario could possibly create a hostile environment, because an observer may conclude that some sort of relationship with the professor is necessary to obtain a favorable grade (2).

What of sexual harassment that occurs in ignorance or as the result of a well intentioned compliment? Legally, it is still sexual harassment. The actor may not realize his/her conduct or speech is perceived as harassing, regardless of whether it was intended to be. It is recognized that not all perceived harassment is the outcome of intentional aggression or exploitation (2). Nevertheless, because men and

women differ in how they send and receive communication, a hostile working environment may still be perceived (21). This is not to say no one can ever compliment another on his or her appearance, but how, when, where, and by whom the compliment is delivered makes the difference. A "leering comment" by a male supervisor on how tightly a dress fits a female co-worker's figure in front of several male co-workers differs a great deal from a simple compliment delivered in passing in the hallway. It should be remembered that the sender of the message should always take into account how the receiver is likely to perceive the message. In an instance where an actor unintentionally harasses a co-worker, simple education of the actor should remedy the situation if the intentions were honorable. The actor may be frustrated and embarrassed when confronted, but will probably ultimately understand even if disappointed. In situations where education of the actor does not succeed and harassment continues, it is logical to wonder about the actor's real intentions.

## SEXUAL HARASSMENT IN HIGHER/HEALTH SCIENCE EDUCATION

Sexual harassment is prevalent in higher education and medical training, ranging from 34% to 98% among medical students, depending on the training setting (3,15,37,39,40). As stated earlier, the prevalence in chiropractic education is not known. Examples include faculty harassment of students, colleague (peer) harassment, harassment of faculty by peers and superiors, and harassment of faculty by students (22). The perceptions of harassment based on gender mirror those of the general information provided above (15,18). Special problems in the academic setting include peer harassment among students and confusion over ambiguous immediacy behaviors toward students by professors (1,3). The National Association of Women in Education reports student-to-student harassment is the most prevalent kind on college and university campuses (41). Peer harassment by students creates a dilemma for professors, because instructors and teaching assistants are construed as agents of the institution and function in a supervisory role. Faculty must be alert to harassing behavior between students and follow up on any complaint just as would a supervisor of employees. In addition, there is the potential for violation of the "known or should have known" expectation

of the law. The Supreme Court recently affirmed that educational institutions can be held responsible for ignoring student-to-student sexual harassment, especially when there has been a complaint registered. In the elementary school case of *Davis v Monroe County Board of Education*, the Court ruled that damages for sexual harassment are available under Title IX, reversing a lower court decision (41). Faculty members may be reluctant to “behave like police” toward their students in the prevention of student-to-student harassment. Nevertheless, a statement of zero tolerance for sexual harassment in the beginning of a course accompanied by a discussion on harassment is likely to reduce the potential for harassment (1).

Immediacy behaviors are those behaviors that serve to reduce distance between two people, in this case the teacher and student. A teacher takes a risk with ambiguous behaviors (i.e., the student is uncertain of the meaning of the behaviors in the context of the student-teacher relationship). An example would be inviting a student to lunch to privately discuss grade difficulty. Some students may take the gesture as genuine and well intended, while others may not. It must be remembered that in this scenario, a latent complaint of sexual harassment against the teacher cannot be defended by consent of the student to go to lunch. The student will always be able to say that given the power differential, the student was afraid to say no. The same difficulty exists with dual relationships of any kind, but particularly with sexual relationships between faculty and students. Faculty members can feel very frustrated nowadays because they are expected to be friendly and helpful, provide counseling and guidance, and provide significant leadership for students, particularly in the graduate setting. The closer faculty members become to students, the greater the potential for role confusion. The student will likely experience the dilemma of trying to figure out which role they are in at the moment in a dual relationship—the professional one or the personal one, be that business, friendship, or romance (42).

Sexual harassment has been debated in the context of academic freedom (43). The case of *Silva v University of New Hampshire* in 1992 illustrates the use of speech with sexual content in the classroom and to what extent the university will protect freedom of expression. Among other statements, Professor Silva used sex as a metaphor for the concept of “focus” and compared the two (i.e., focus and sex both seek a target, close in on the target,

and become one) (43). Regardless of how one interprets the case, in which Donald Silva was accused of using harassing statements in and out of the classroom, one thing is evident. If speech is sexual in content, there should be contextual justification for its use. For example, it would be appropriate for a faculty member in a chiropractic institution to discuss impotence and some of the metaphors men use in discussing their inability to achieve an erection so that students will be less shocked or embarrassed when taking a sexual history. If the faculty member behaves professionally and warns the students this will be the focus of discussion, and the purpose of the comments is to prepare for effective practice with delicate psychological and emotional issues regarding impotence, appropriateness should not be a problem. The warning gives an opportunity for students to prepare themselves for the discussion and to establish context. On the other hand, it is not difficult to imagine how the same example could be used as an opportunity to engage in sophomoric behavior on the part of both students and faculty. If the same faculty member repeats this behavior in a variety of contexts, a complaint could easily result. Debate over protected speech versus sexual harassment is ongoing.

## NEGATIVE EFFECTS OF SEXUAL HARASSMENT

Victims of sexual harassment report loss of self-confidence, humiliation, fear of retribution for complaining, helplessness, and disillusionment with faculty members/supervisors, in addition to depression, shame, anger, guilt, fear, loss of control, lack of direction, and loss of motivation. Psychological/emotional and somatic complaints are varied and common, especially in women (15,26,29,44). These feelings, thoughts, and physical complaints manifest in avoidance behaviors, absenteeism, lowered productivity, reduced morale, reduced commitment to the organization, and employee turnover (26). Women who have been harassed are more likely to become discouraged in pursuing careers in fields heavily populated by men, and may drop out of professional school or other educational settings altogether (29). This latter action by the victim can be very costly to an institution if it can be shown in court that future career plans and earning potential have been disrupted by the failure of the institution to protect a student from sexual harassment.

## A SEXUAL HARASSMENT PREVENTION PARADIGM

As the literature was reviewed for the preparation of this article, it seemed little had been written on the subject of ethics and sexual harassment. To be sure, the *tenor* of the literature implied that sexual harassment is unethical. Only one author presented guidelines for defining sexual boundaries in doctor–patient relationships based on “virtue” (45). The word “ethics” and its derivatives did appear occasionally in varying contexts, but there seemed to be a general absence of calling knowing and willful sexual harassment what it is—wrong.

It is reasonable to identify the limitations of the above conclusion. The various authors’ purposes may not have been to address the ethics of sexual harassment, but rather to measure it, define it, and warn employers about the legal consequences of allowing it to occur. It is also possible that the authors assumed the reader intuitively knows sexual harassment is more than unprofessional. Another possibility is that not enough citations were identified that address the ethics of sexual harassment. The word “ethics” was not used among the search terms, and not all possible databases were searched on the subject of sexual harassment. It is possible that authors are reluctant to address ethics with certain forms of harassment (such as more “benign” forms like single episodes of mildly offensive speech) because ethics seem situational and more difficult to define in these circumstances. Finally, ethics may not have been addressed because of the reluctance of today’s culture to use absolutes in addressing morality, ethics, and human behavior (46).

The author wishes to affirm that it is wrong to intentionally discriminate against or harass a woman or a man because of gender, regardless of the motivation. This is not to say all incidents of perceived sexual harassment are purposeful on a conscious level, nor is it to say it is easy to define and harness human behavior. It is also not to say that well-intentioned and respectful people have never been guilty of sexual harassment. It will require education and maturation to raise the sensitivity of harassers and potential harassers. In the author’s opinion, a paradigm shift must take place in the conscious awareness of harassers. A paradigm shift is the responsibility of the individual. To be sure, legal sanctions and policies and education are part of the process of changing perception and behavior, but it is not likely that wrong behavior will fundamentally

change without first affirming a behavior as wrong. Otherwise, the behavior is merely restrained, which unfortunately is all the employer can legally address.

In his commentary addressing a policy on mistreatment of students, Kornfeld (47) rightly states, “I do not agree that merely preaching righteousness or threatening punishment is adequate”; neither extreme is likely to reach beyond superficial control of harassment. It is necessary to establish a stable foundation on which to base policies and laws on sexual harassment. This suggested foundation is “virtues-based,” following McCullough et al. (45). They address the doctor–patient sexual relationship, and their argument is adapted here. Virtues are defined as traits or habits of character that routinely blunt self-interest in order to protect and promote the interests of others. The authors state that ethics tell us *how* to act, but virtues dispose us to *actual behavior*. The four virtues discussed include self-effacement, self-sacrifice, compassion, and integrity. It seems reasonable that if these are practiced, it is more likely that respect for the dignity and value of human beings will preclude lust, sexual impropriety, and the need for power and control over others (19), as well as unwitting harassment by well-intentioned people. Practitioners and educators can help safeguard against sexual harassment by first practicing these virtues and seeing harassment for what it is—the degrading dehumanization of another person. It seems this is the basis upon which any policy must rest.

Since men are typically the actors of harassment against women, and since perception differs between the sexes on what constitutes harassment, it seems reasonable to offer some solutions for men to positively develop in their perceptions. Conway and Conway (48) offer the following in *Sexual Harassment No More*. The first solution is for men to view women as equal persons deserving of the same opportunities and advantages afforded to men (p. 130). It is acknowledged that this statement provokes all sorts of emotions in both women and men. However, “equal” does not mean “the same.” While it is not the point of this paper to focus on what is different between the genders, it is the point to establish that women are equally deserving of respect, power, responsibility, and reward. A second solution is to learn from women (p. 131). Women are more likely to treat others with respect and less likely to abuse power; although this may be difficult for some men and even some women, practitioners

and institutions will do well to practice this solution. A third solution is to understand power from a woman's viewpoint (p. 137). Men tend to take power for granted and do not recognize this fact until it is threatened. Sexual harassment is discrimination through the improper use of power, and until recently in history, women have been powerless on a variety of levels. On a more global scale, the current literature on leadership addresses the sharing of power with all employees for a healthier organization (49,50). Jesus stated in the Scriptures, "...whoever wishes to become great among you shall be your servant, and whoever wishes to be first among you shall be your slave. . ." (51).

Employers, practitioners, and educators can learn about and implement *power with* as opposed to *power over*. Tom (20) is instructive in this concept, in that she discusses how faculty members can avoid the two extremes of exercising typical hierarchical power versus denying power with students. The first form undermines student growth and the second form self-undermines the legitimate power of the faculty. She offers a model called the "deliberate relationship" in which the faculty may exercise power in a manner that develops the student's independence and growth. It also facilitates the faculty member's growth, and avoids using students to meet emotional needs that should be met in other ways outside the teacher-student context. This model could be adapted to the doctor-patient relationship and the supervisor-employee relationship, and the reference is highly recommended to gain a complete understanding of the paradigm.

Now that the context of an ethical basis and the issue of power have been discussed, it is more reasonable to discuss sexual harassment policy and procedures. Much greater attention could be given to ethics and power, and those issues give rise to many debates. Nevertheless, a minimum principle on which to base a policy has been offered. First, respect all persons including the self as human beings with value and dignity. Second, share power responsibly and equitably. Third, maintain professionalism at all times.

Many authors have discussed the need for education about sexual harassment, posting of policies and procedures, complaint and follow-up procedures, and relationship of these policies to law (7,12,21,39, 52,53). It is not the intent to reinvent a policy, but to direct the interested person to educational models and model policies. The *Guide* gives extensive education to employers as to how to develop

a policy on sexual harassment, how to post and disseminate the policy, development of complaint procedures and follow-up, education of employees, and ongoing issues of law (21). It can be obtained by contacting: California Chamber of Commerce, P.O. Box 1736, Sacramento, CA 95812-1736; (916) 444-6670.

Not all readers will be disposed to obtain the above publication. It is recommended that practitioner/employers contact their respective state chambers of commerce or possibly their local professional associations to obtain the information. It is also recommended that employers find out which Circuit Court of Appeals oversees appeals proceedings in their region, as there is a difference in the legal standards depending on the district.

In health care, the Michigan State Medical Society adopted a model harassment policy that addresses all forms of harassment (52). The College of Medicine of the University of Tennessee (Memphis) developed a policy on the mistreatment of medical students using a diverse body of people, including students (53). This model also addresses sexual harassment. Robinson and Stewart (38,54) developed a training curriculum for students and faculty at the University of Toronto Faculty of Medicine. The program utilizes lectures and vignettes to educate participants on the issues of doctor-patient sexual boundaries and teacher-learner mistreatment. In this way it may be more effective than policy alone to raise the sensitivity to mistreatment in practice and education.

The *Guide* addresses several items of importance. All of the policies and procedures in the world are of little use if employers do not implement and follow up on them. Employers must routinely update themselves and employees on developments in the law. They must not only have a policy in place, but also establish that it is acceptable to utilize the complaint procedures without threat of reprisal. Employers must listen to and seriously treat complaints and act to correct any harassment behaviors. Simply having a policy is not protective if it is not used, is not accessible to all employees, and is not made known and updated on a regular basis (21). On an individual basis, much sexual harassment can be thwarted by a direct and unapologetic response to the harasser. The *Guide* indicates that a response to a request for a date such as, "No, I already have plans," leaves room in the harasser's mind that there is still opportunity for a date—because he didn't hear just "no" (p. 21).

Krolokke (55) examined women professors' responses in harassing and other communications situations. She found most of the subjects studied used nonassertive communication in interaction with others for a variety of reasons. This type of communication uses justifications, apologies, and permission-seeking statements such as, "I'm sorry to bother you . . .," "I'm terribly sorry, I didn't mean to . . .," etc. Only a few used assertive-empathic style, defined as standing up for one's own rights in such a way that the rights of others are not violated. This communication style uses statements beginning with, "I think . . .," "I feel . . .," and "I want . . ." An example would be, "I like working with you, but I would like you to stop making sexual jokes." This statement does not demean the other person but firmly establishes personal boundaries. Krolokke found some women were concerned that using assertive communication would bring reprisal in the future. Obviously, not all assertiveness will work all the time, but frequently short-circuits the milder forms.

## DEALING WITH EROTIC FEELINGS

It would be naïve to assume men and women are never affected by sexual feelings for a patient, employee, or student. Although primarily addressing the doctor-patient relationship, Golden and Brennan (56) offer a good methodology to avoid the pitfalls of both sexual harassment and misconduct. Beginning with the virtues mentioned above as a foundation, a doctor/teacher should decide before erotic feelings arise that the feelings will not be indulged. Then if erotic feelings do arise on the part of the patient or the doctor (teacher or student), there is better preparation. The superior in these settings must avoid inappropriate touching, speech, or other behaviors. Often it is the innocuous behaviors that lead to violations. It is imperative that the doctor/teacher not be alone with the patient/student and they must be accountable to another person. Bowers (57) discusses excellent guidelines to establish boundaries for chiropractors that could be utilized in chiropractic education.

## CHIROPRACTIC AND TOUCH

Redleaf (30) discusses touch at length. She notes some people are primarily touch oriented, as opposed to auditory or visual (p. 44). A patient may be

left with unconscious feelings and perceptions about how they have been touched. An inappropriate doctor or teacher during treatment or training may in essence be "found out" during ambiguous touching (nonprofessional). She also notes the following concerning touch: 1) good intentions are not enough—a doctor does not know the use of touch in the patient's family and culture; 2) a doctor may not know the patient's history with other doctors and touch, and the doctor's own comfort with touch will influence a patient; and 3) the doctor may not be aware of his/her own needs when touching a patient (p. 47). Finally, Redleaf reviews the types of touch (both sexual and nonsexual) and provides a self-assessment on touch (p. 55). She also provides an excellent checklist on the rules of touch, sexuality in professional relationships, and what to do in the case of attraction to a patient (which is transferable to a student or employee) (pp. 58–59).

## SUMMARY

This article has attempted to explore the issues of sexual harassment from its history to a paradigm of prevention. It is hoped that a greater understanding of sexual harassment has been achieved. It would be a monumental task to examine every aspect of sexual harassment as discussed in the literature, but a broad-based approach was offered with the intent of provoking thought and investigation into the subject from a variety of interests.

While it is naïve to think that every aspect of human behavior can be bound and placed in a rigid framework and examined like a laboratory experiment, much of what is written in the literature is consistent and has been duplicated. Most of the writing shows men to be the primary perpetrators of harassment and women the victims. Chiropractors and chiropractic educators are in a unique position to perpetuate sexual harassment or to be agents of change in its eradication, at least within their immediate spheres of influence. Research should be conducted on the prevalence of harassment in chiropractic education and, if possible, private practice. Regardless of the current prevalence, measures to deal with sexual harassment based on the respect for life that chiropractors espouse can be instituted at any moment by acting on an ethical and professional framework that could help shift the national paradigm.

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**Reprint requests:** Keith A. Wells, Diagnosis Department, Los Angeles College of Chiropractic, 16200 East Amber Valley Drive, Whittier, CA 90604

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