

*From Policy to Practice:
Operationalizing Standard
Work to Address Sexual
Misconduct Allegations*

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Panel

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We have no real or perceived conflicts of interest that relate to this presentation

Objectives

1

Identify the scope, trends, and legal significance of sexual misconduct allegations in healthcare.

2

Review recent changes in the law and their reporting obligations.

3

Review standard work in order to reduce risk associated with, and defend, sexual misconduct allegations.

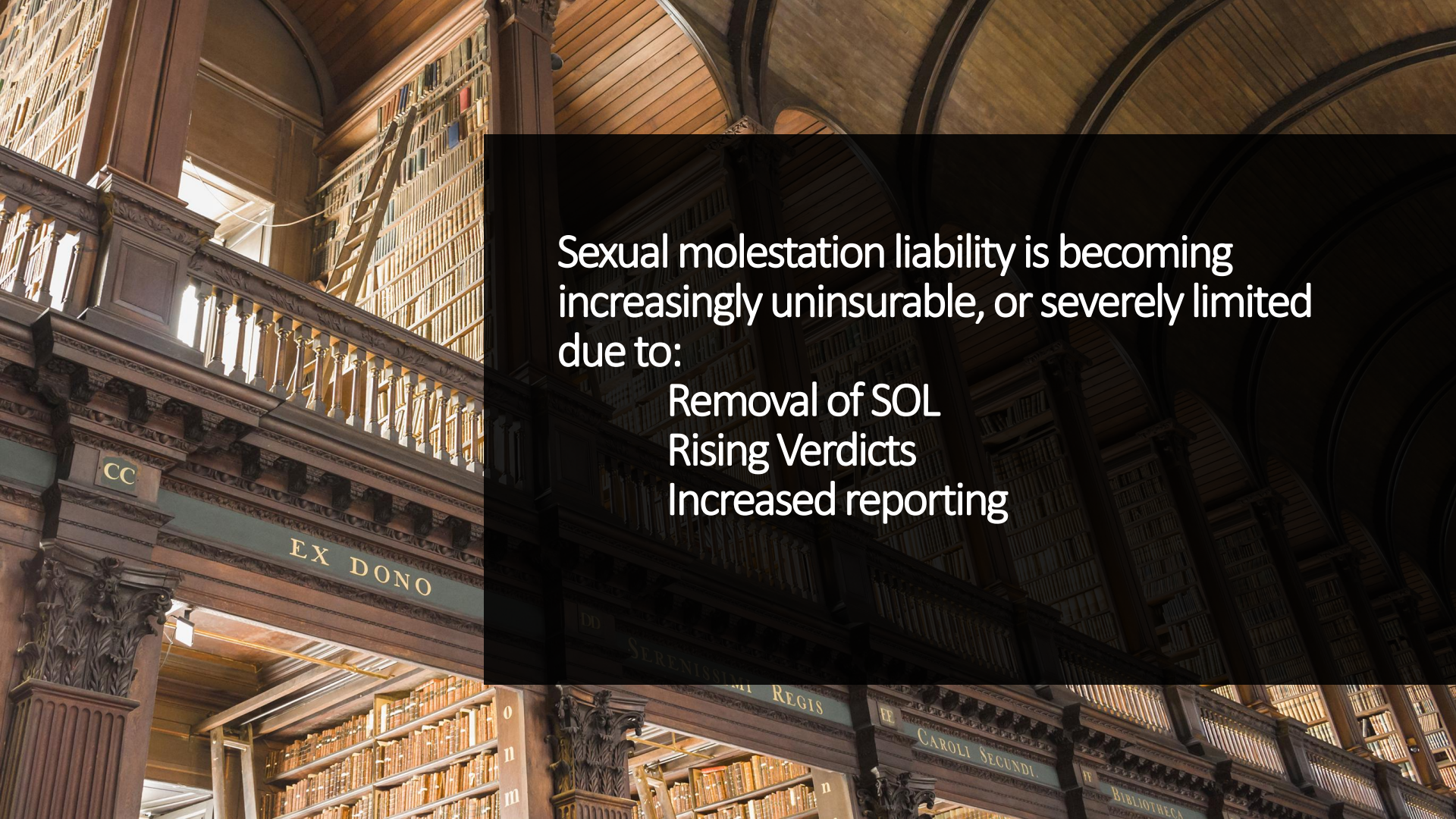
Sexual Abuse Molestation Liability (SML)

The legal responsibility and financial risk an organization faces regarding allegations of sexual misconduct, abuse, or molestation committed by employees, volunteers, or representatives. It covers defense costs and damages, often addressing negligent hiring, training, or supervision.

Why This Matters....

- Strive to Protect Our Patients
- Charged with Protecting our Hospitals





Sexual molestation liability is becoming increasingly uninsurable, or severely limited due to:

- Removal of SOL
- Rising Verdicts
- Increased reporting

Bad Actors

Sexual Predators
Missed at Hiring

Boundary Pusher

Sudden Actors
Secondary to
Desire/Opportunity

Why This Matters....

Henry Ford Health System Settlement exceeds \$125M to over 8,000 victims



By Dan Packer
October 26, 2017

Penn State Will Pay \$60M In Sandusky Settlements

LEWISBURG, Pa. (AP) — Pennsylvania State University announced Monday that it will pay nearly \$60 million to settle the claims of the victims of former assistant football coach Jerry Sandusky, who was convicted on charges of child molestation in 2012.

The university had received 25 claims from victims who were or might have been sexually abused by Sandusky and rejected six of the claims for being unproven. The school said 23 of the settlements are fully agreed and the remaining three are agreed to provide and accept final documentation on the next few weeks.

The actual settlements include a release of all claims against the university and are subject to confidentiality agreements.

"The Board of Trustees has had one of its primary objectives as a result of the Sandusky case, and that is to support the privacy of the individuals involved," said Clark White, attorney of the Board of Trustees, in a

statement related to claims made by the University to its self-supporting units.

Phyllis K. Hill, a partner with Kaye & Siegel P.C., also announced Monday it will settle with the school — and the university itself will likely pay up to \$50 million and then the \$10 million.

"As someone who has to litigate during the last few years, I can say that the fact that the university is willing to reach a settlement and settle the claims, which would allow it to move on and address the situation, is a good sign."

He said that in addition to the work he has done, the university would also need to ensure that the Sandusky case, the settlements themselves were handled by Sandusky.

Penn State had 60,000 hours with one of its faculty members ... Pennsylvania State University announced Monday it will pay the victims of Sandusky for

USAG/NASSAR SURVIVORS REACH \$380 MILLION SETTLEMENT



BREAKING NEWS
JUSTICE DEPARTMENT REACHES \$139 MILLION SETTLEMENT OVER FBI FAILURES IN INVESTIGATION OF LARRY NASSAR GYMNASTICS ABUSE CLAIMS

BREAKING NEWS
MICHIGAN STATE WILL PAY \$500M TO 332 NASSAR SURVIVORS IN SETTLEMENT



Efforts to Combat Sexual Molestation Liability

State Requirements:

- State Medical Board: Effective 2023, Physicians Have an INDEPENDENT Duty to Report ANY misconduct by a licensee, including alleged SML
- House Bill 109: Effective 2025, Hospitals and Other Licensees Must Report Any Knowledge of, or Belief Misconduct Occurred



SB109

Licensee
reporting
obligations

Facility
reporting
obligations

Criminal
conduct

Sexual
misconduct

Intimate
exams under
anesthesia

Other
reporting
obligations

SMBO Licensees

- Physicians (MD, DO,DPM)
- Physician Assistant
- Anesthesiologist Assistant
- Genetic Counselor
- Acupuncturist
- Dietician
- Massage Therapist
- Radiologist Assistant
- Respiratory Care Professionals

Best Practices



Hiring and credentialing processes

- Background checks
- Board reports or claims
- Previous employment separation
- References

Best Practices

Chaperone policy

- Mutual protection
- Specialized training
- Opt-out policy
- Compliance monitoring



Best Practices



Training for staff, providers, and leaders

- Initial and ongoing
- Recognition of red flags and grooming
- Reporting
- Professional boundaries
- Trauma-informed care
- Implicit bias and power dynamics

Create awareness and a culture of reporting

Red Flags & Grooming

Boundary testing

Emotional dependency

Isolation

Communications violations

Desensitizing physical contact

Manipulation

Targeting vulnerable patients

Resistance to Policy

Reputation



Best Practices

Patient education

- Importance of chaperone
- What to expect
- Education materials
- Reporting concerns



Best Practices

Assess sources

- Incident reports
- Ethics Hotline
- Patient complaints
- Patient surveys
- Employee engagement/safety surveys
- Improper utilization



Assess Peer Review process



Develop a tracking system



Implement standard work



Multidisciplinary approach

Every
complaint
matters



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Best Practices

- Multiple reporting pathways
 - Anonymous hotline
 - Incident reports
 - Leadership
 - Risk Management or Legal
- No retaliation

Tools for Risk Managers

- Develop standard work
 - Process for receiving report
 - Guidance on what information to obtain
 - Evidence to gather
 - Escalation/Reporting pathway
 - Templates for communication
- **Every report matters!**



Best Practices for Employment Investigations



CREATE/MAINTAIN A CODE OF CONDUCT AND POLICIES THAT ESTABLISH BEHAVIOR STANDARDS FOR ASSOCIATES AND ACTION TO BE TAKEN IF THOSE GUIDELINES ARE NOT MET.



DEVELOP STANDARD WORK FOR INVESTIGATIONS.



MAKE CONSISTENT RECOMMENDATIONS FOR DISCIPLINE BASED ON FINDINGS.



DEPENDING ON ALLEGATIONS SHARED, IT IS DETERMINED WHETHER A REPORT MUST BE FILED WITH THE APPROPRIATE STATE AGENCY.

Code of Conduct and Policies

In addition to training, education, and awareness, it is best practice to have a Code of Conduct and policies that establish behavior standards for associates and action to be taken if behavior guidelines are not met:

- A Code of Conduct that notifies the associate of their responsibilities in the workplace.
- Policies that clearly identify the following:
 - Expected behavior standards for associates;
 - Examples of unacceptable and/or egregious behavior; and
 - Disciplinary action that may be taken if a policy is violated.

Standard Work (Inpatient)

If a patient makes an allegation of sexual misconduct at the care site, security will be contacted and will meet with the patient to take a statement.

After taking a statement, security will contact investigators to conduct a more thorough investigation.

This investigation includes, but is not limited to:

- Speaking with the patient,
- Interviewing witnesses,
- Reviewing all evidence, and
- A report is created and filed consistent with applicable law.

The patient is provided with resources and information to file charges.

Investigators will contact Risk and OGC for further guidance.

Employment Investigation

Investigations are generally conducted under attorney-client privilege following a review of reported concerns.

Careful consideration of who participates in the investigation.

Investigation includes but is not limited to, interviewing complainant and witnesses; reviewing any objective evidence (video footage, medical records); and review of any prior employment history of alleged individual.

Interview of physician with a witness.

Complete findings, conclusion and recommendations for discipline, if any.

Depending on allegations shared, it is determined whether a report must be filed with the appropriate State agency.

| Courtesy: NY Daily News



Questions

Thank you!

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