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## OUR PATIENT DID WHAT? THE DUTY OF HEALTHCARE EMPLOYERS TO PROTECT THEIR EMPLOYEES FROM PATIENT HARASSMENT

by Marcus Fettinger, Gray Reed & McGraw LLP  
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Healthcare providers generally focus on the actions of their employees to ensure that patients are receiving exceptional medical care. As though that responsibility is not onerous enough, providers now have to focus on the actions of their patients toward their staff. Recently, the U.S. Court of Appeals for the Fifth Circuit ruled that a patient can potentially sexually harass a healthcare provider's employee and create a hostile work environment for a provider's employees. In that case, a nursing home resident suffering from dementia frequently touched a female staff member inappropriately and solicited her for sex. When she notified the nursing home's leadership, she was told to put her "big girl panties on and go back to work."

Unless you haven't seen the news in over a year, you are certainly aware of the rise of sexual harassment allegations in the workplace associated with the #MeToo movement. Employers have responded by implementing new policies, conducting training, and fostering cultures of respect and equality, but the Fifth Circuit's recent decision adds a new risk to healthcare providers and organizations. Not only do practices need to monitor the conduct of employees; they now have to monitor the conduct of their patients.

Healthcare providers cannot turn a blind eye to the actions of their patients. If an organization becomes aware of sexually suggestive comments, inappropriate touching, or other troubling conduct, leadership must take reasonable steps to intervene and end the offensive conduct. While the appropriate remedial action depends on the nature and severity of the conduct, employers must be willing to take reasonable steps to ensure that an employee is not subjected to a hostile work environment. The Fifth Circuit noted that appropriate responses to harassing behavior by a problematic patient include reassigning the patient to a different staff member or even removing the patient from the facility, if necessary. Of course, the appropriate response is fact-specific and should be addressed on a case-by-case basis with the guidance of legal counsel.

If you have any questions about how your organization should respond to this new Fifth Circuit opinion, sexual harassment in the workplace, or the #MeToo movement, please contact Marcus Fettinger at [mfettinger@grayreed.com](mailto:mfettinger@grayreed.com).

### ABOUT THE AUTHOR



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Marcus focuses his practice on labor and employment litigation representing employers and executives in trade secret, noncompetition and nonsolicitation litigation. He has experience in all aspects of labor and employment litigation, including drafting and responding to discovery requests, taking and defending depositions, briefing and arguing motions and hearings, evidentiary arbitration hearings, trials, and appellate briefing. Marcus earned his B.B.A. from The University Texas in Austin and his J.D., *cum laude*, from Southern Methodist University Dedman School of Law.

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