

## Harassment

### THE TOUCHY-FEELY MASSAGE THERAPIST

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You've worked hard for 20 years. Your practice is thriving and your patients count has never been better. It's time to expand.

Charlie Goodhands presents a professional appearance. His credentials appear impeccable. You hire him as a massage therapist for your practice. The patients like him and he thrives.

After working for you for about three months, you are served with a lawsuit alleging assault and battery and sexual harassment. The suit names Amy Flirtalot as plaintiff. You and Charlie are the unfortunate defendants.

In the suit, Amy alleges that during a 25-day period, Charlie touched her breasts and buttocks in an unprofessional manner. In Amy's suit for sexual harassment, the jury awards her \$50,000 for emotional distress; punitive damages of \$250,000 against Charlie; and \$3 million against you.

The jury's award was based on: evidence that Charlie had indeed gone too far; that you either (a) had advance knowledge of Charlie's unfitness and continued to employ him (even though a defense of "independent contractor" was raised); or (b) ratified Charlie's conduct subsequent to the conduct having taken place.

Fortunately, you have expensive malpractice insurance that covers sexual harassment, so your insurance carrier picks up the tab.

#### The "It's OK in My Country" Defense

Despite this ordeal, your practice continues to thrive and you now have several DCs and a massage therapist on staff.

You decide to hire an administrator. You hear through the "grapevine" of a man who worked in his home country in South America as a vice president of a multinational company, with annual sales in the billions of dollars. Although well compensated, he has had enough of the corporate ladder and wants to work for a small company in the United States. He is not a U.S. citizen, but his English is impeccable. You offer him the position and he accepts.

Your practice continues to grow. You screen your employees carefully. You like to hire workers who are docile and nonaggressive.

Two of your female employees tell co-workers that the administrator, who is their supervisor, fondled them in the copy room. Your administrator denies the accusations. You're not sure how to proceed, but the two female employees quit shortly thereafter and you dismiss the accusations as groundless. But then you are served with a sexual harassment suit. The lawsuit includes the two women staff members as plaintiffs and 11 others who were supervised by your administrator.

The administrator doesn't deny touching the females, but states that in his country such contact is

permissible. The jury finds that because you had knowledge of past sexual harassment and failed to act, you are liable for punitive damages of \$5 million. Since punitive damages are no longer covered by your malpractice insurance (not since the previous lawsuit), you have been forced out of business and into bankruptcy. The state board also has you under investigation and is contemplating suspending your license.

#### Let's Do Lunch

I. Lovesalot, DC, was having a good day. All seemed right with the world. His health was excellent and his personality jubilant. Being a friendly sort, he would often speak to his receptionist in a flippant way. He would also compliment her on her "cute body." He frequently would ask her to have a drink with him after work.

Dr. Lovesalot was sued shortly thereafter. She succeeded in obtaining a large settlement and he was disciplined by the state board.

The above examples are based on real life situations. The best advice to be offered to a doctor of chiropractic with a roving eye: don't do it! Confine the libido to nonpatients and nonemployees.

In this day and age, employees and patients are also hypersensitive to the possibilities involving sexual harassment suits. Even off-color jokes, however mild, should be avoided.

With respect to the conduct of others, screen prospective employees carefully. Establish sexual harassment policies and insert in the personnel manual corrective procedures and measures to be taken when any potential act of sexual harassment is raised. Otherwise, you too may soon be out of practice.

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