THE IMPACT OF THE #METOO MOVEMENT ON THE HEALTHCARE INDUSTRY

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RELEVANT STATISTICS

Ratio of male to female doctors nationwide is about 2:1 (Kaiser Family Foundation)

Women make up 80% of healthcare workforce (Advisory Board)

Women make up only 40% of healthcare executive leadership (Advisory Board)

Recent survey – 30% women on medical faculties reporting experiencing sexual harassment at work. (JAMA, 315(19):2120-2121. doi:10.1001/jama.2016.2188)

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RELEVANT STATISTICS

8,307 cases of sexual harassment (2005-2016) made by workers in the health care and social assistance field (EEOC)

3rd highest; eclipsed only by hospitality and manufacturing

While 1:4 women experience workplace harassment, up to 94% do not file a complaint (EEOC)

In October, 2018, EEOC released preliminary FY2018 statistics:

- 12% in sexual harassment Charges from FY2017;
- Filed 66 lawsuits (50% increase from FY2017):
- Collected $70million for victims of sexual harassment (collected $47.5 million in FY2017)

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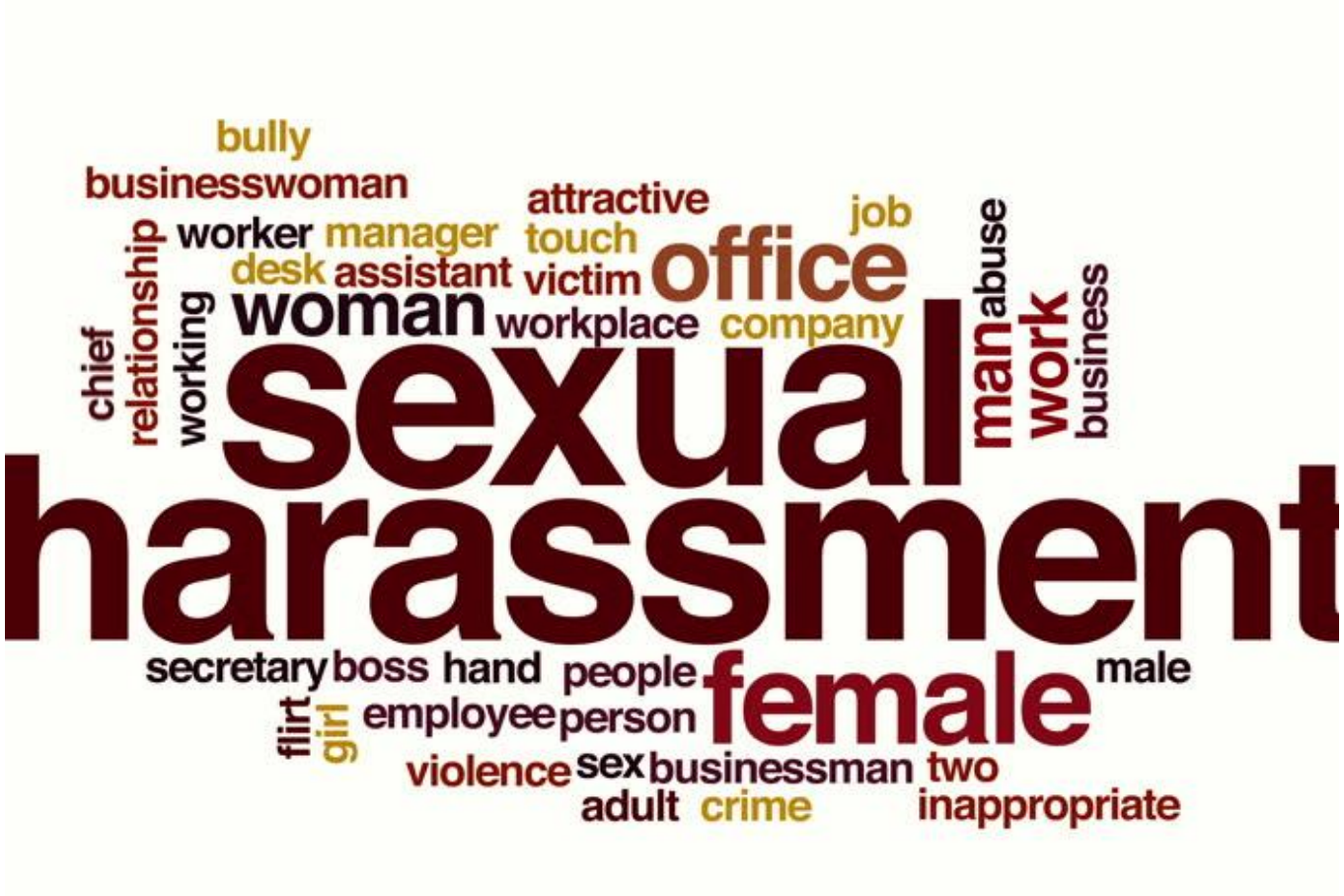
IT'S NOT JUST SEXUAL HARASSMENT

- Bullying
- Disruptive Behavior
- Retaliation
- Whistleblower
- Hostile Environment
- Poor Morale
  - Turn over
  - Less productivity
  - Clinical errors/patient safety
- Fiscal Considerations



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SEXUAL HARASSMENT IN HEALTHCARE

CMS Tag A-0145 – Patients' right to protection in healthcare environments:

- 482.13(c)(3) – The patient has the right to be free from all forms of abuse or harassment

OSHA – guidelines for preventing workplace violence

Joint Commission – issued several Sentinel Event Alerts

- The essential role of leadership in developing a safety culture
- Preventing violence in the health care setting
- Behaviors that undermine a culture of safety
- Bullying has no place in health care

Physicians – Independent Contractor

- Hospital/Healthcare System liability

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MANAGING HARASSMENT IN HEALTHCARE

The answer is NOT to “do nothing”
- Leadership resignations
- Board Member resignations
- Large settlement and verdicts

Power Structure
- Bylaws
- Due process/Suspension of Privileges

National Practitioner Databank Report

Licensing Implications – discipline

Loss of Revenue Source

Publicity

SOLUTIONS

Prevention
Polices/Procedures
In-Services
Training
Follow through
Making Hard Decisions
Detection
Complaint policy/structure
Investigation
Remediation
Make the Tough Decisions

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crico | Protecting Providers. Promoting Safety.

EMPLOYMENT PRACTICES: #YOUTOO

Beth Cushing, Esq., Senior Vice President, Claims
Chief Compliance Officer

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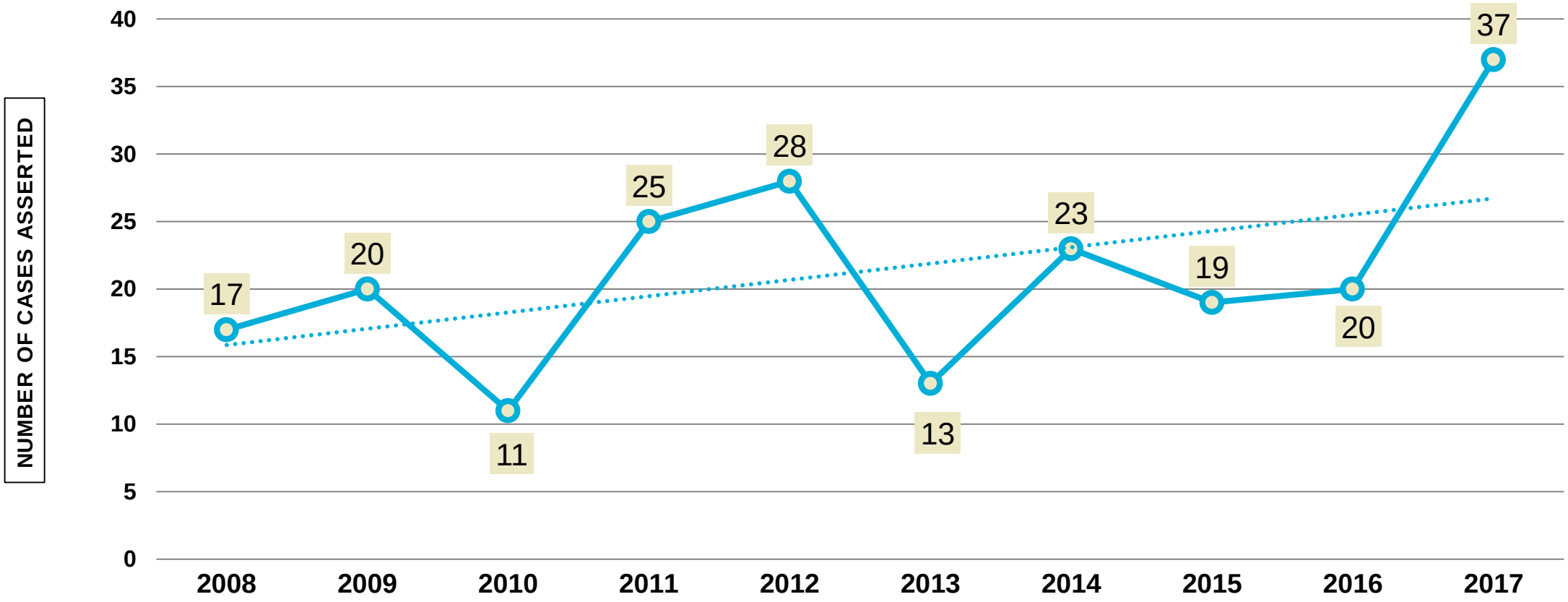
INCREASED CLAIMS EXPERIENCE?

ASSOCIATION LIABILITY CASES SPIKED IN 2017.
AL CASES ASSERTED



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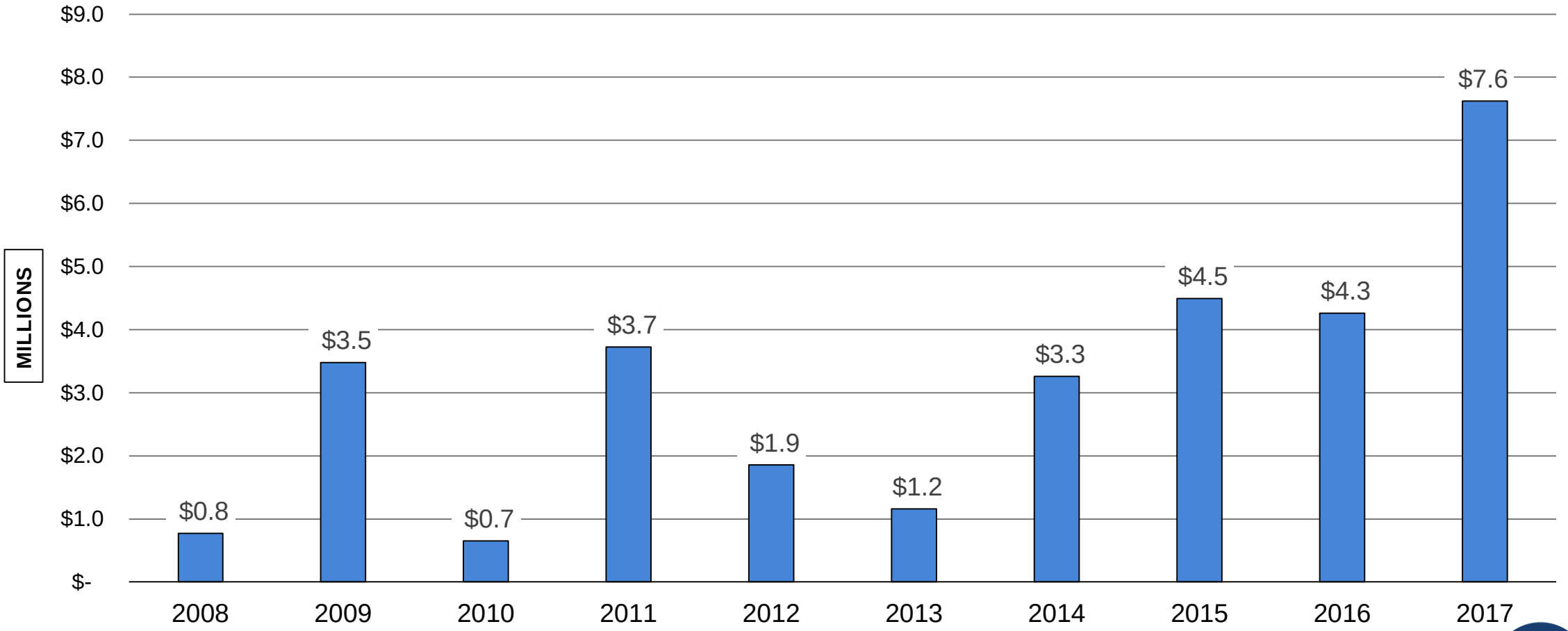
AL INCURRED LOSSES ARE DRIVEN UP BY HIGHER FREQUENCY
POLICY YEAR INCURRED LOSSES AT 12 MONTHS



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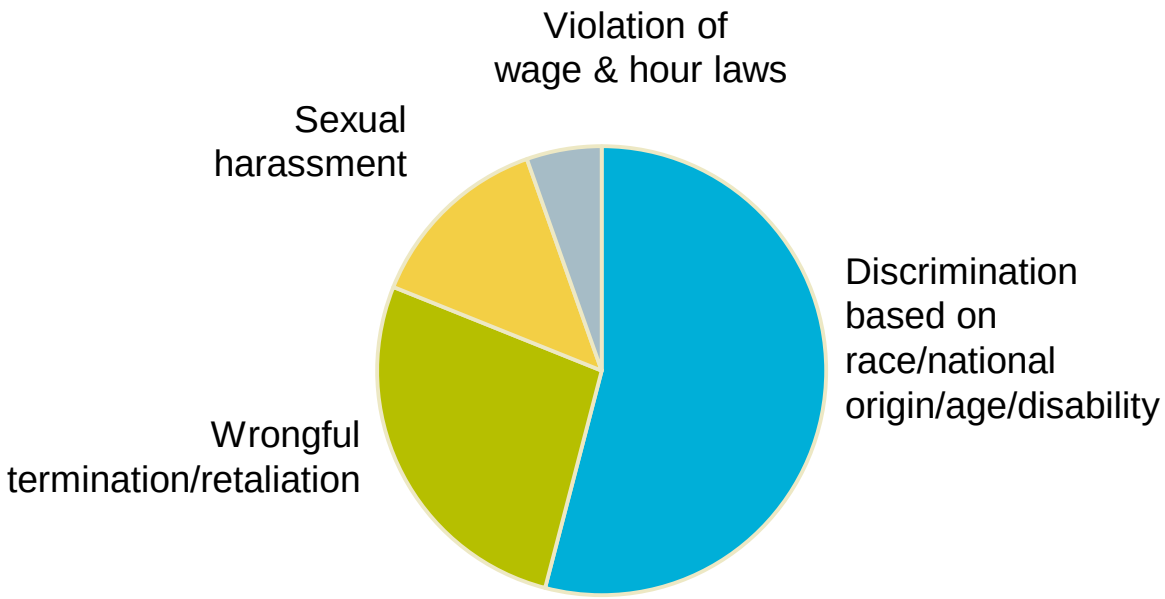
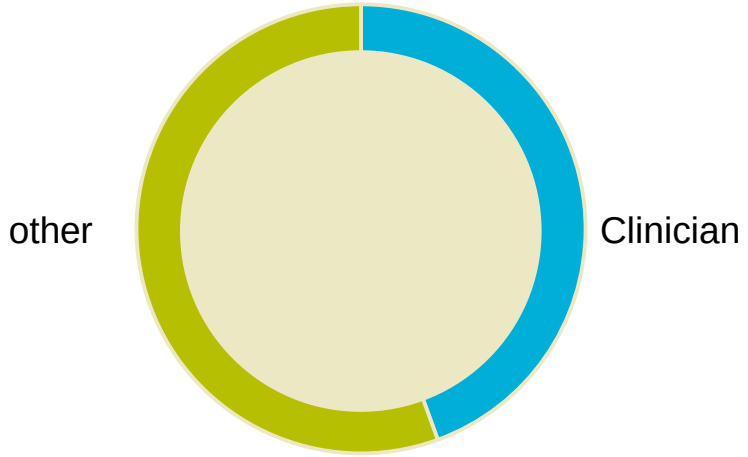
USUAL MIX OF LEGAL ISSUES IN 2017

ALLEGATION



COMPLAINANT



37 cases asserted in 2017

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HISTORICAL EXPERIENCE
10-YEAR AL CLAIMS ACTIVITY

606	OBSERVATIONS
206	CASES ASSERTED
126	CASES CLOSED
$780K	AVERAGE INDEMNITY
$967K	AVERAGE EXPENSE

Of the 126 cases closed…

34 closed with indemnity payment (73% CWOP rate)

Of the those…

14 (41%) involved a “hostile work environment”

26 (76%) involved “clinician” complainants/plaintiffs (MDs, PhDs, RNs)

Surgeons, anesthesiologists and researchers lead in complaints

TOP LITIGATION CONCERNS

- Defensibility
- compliance with law/internal policies
- hidden agendas (power and control)
- reliability of employee witnesses (jurors are employees)
- private emails and texts, audit trails (often no privilege, limited peer review protection)
- Expenses (plaintiffs collect fees)
- Reputational loss (hot media focus)
- Reinsurance impact

TOP RISK ISSUES
ARE YOU ON NOTICE?

- Known offenders – “Everyone knows he/she is an arrogant, albeit brilliant, bully.” (culture)
- Known or reported hostile work environments (leadership response?)
- Termination in setting of position elimination/restructuring (claims to counter severance offers)
- Age discrimination – a growing concern with the number of over 65 professionals (HR/OGC)
- Lawsuits may not be the route: social media campaigns and pressure for action (termination)

BEST PRACTICES TO MITIGATE RISKS "THE #METOO AWAKENING"

- Mandate from board/senior leadership of zero-tolerance
- Updated, disseminated anti-discrimination/anti-harassment policies
- Clear and functional reporting mechanism for all levels of staff
- Prompt and consistent response to all complaints
- Caution against retaliatory conduct – Consult HR/OGC
- Process for routine insight into each department and independent areas (e.g., research labs)
- Education and Training

EDUCATION AND TRAINING GRANT

Cascading effort:

- Board Engagement
- Clinical Leadership Training
- Workforce Education

CRICO Grant Funding

- Reallocation of resources
- MEEI Workplace Improvement Pilot

THE LAWYER'S RX FOR ACADEMIC MEDICAL CULTURE IN THE #METOO MOVEMENT

Physician/Faculty Behavior and Legally-Facilitated Cultural Change at Academic Medical Centers & Systems

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CULTURAL SEA CHANGE

Cultural Sea Change in the Workplace

- A sea change is occurring in workplace culture where conduct of high status individuals is subject to acute scrutiny. Misconduct cannot be protected, disregarded, or minimized but must be subject to equitable and meaningful inquiry, assessment, and accountability measures
- This change has been prompted by the #MeToo Movement but also before that by changing views of status and fair treatment in the workplace regardless of status, gender or protected class considerations

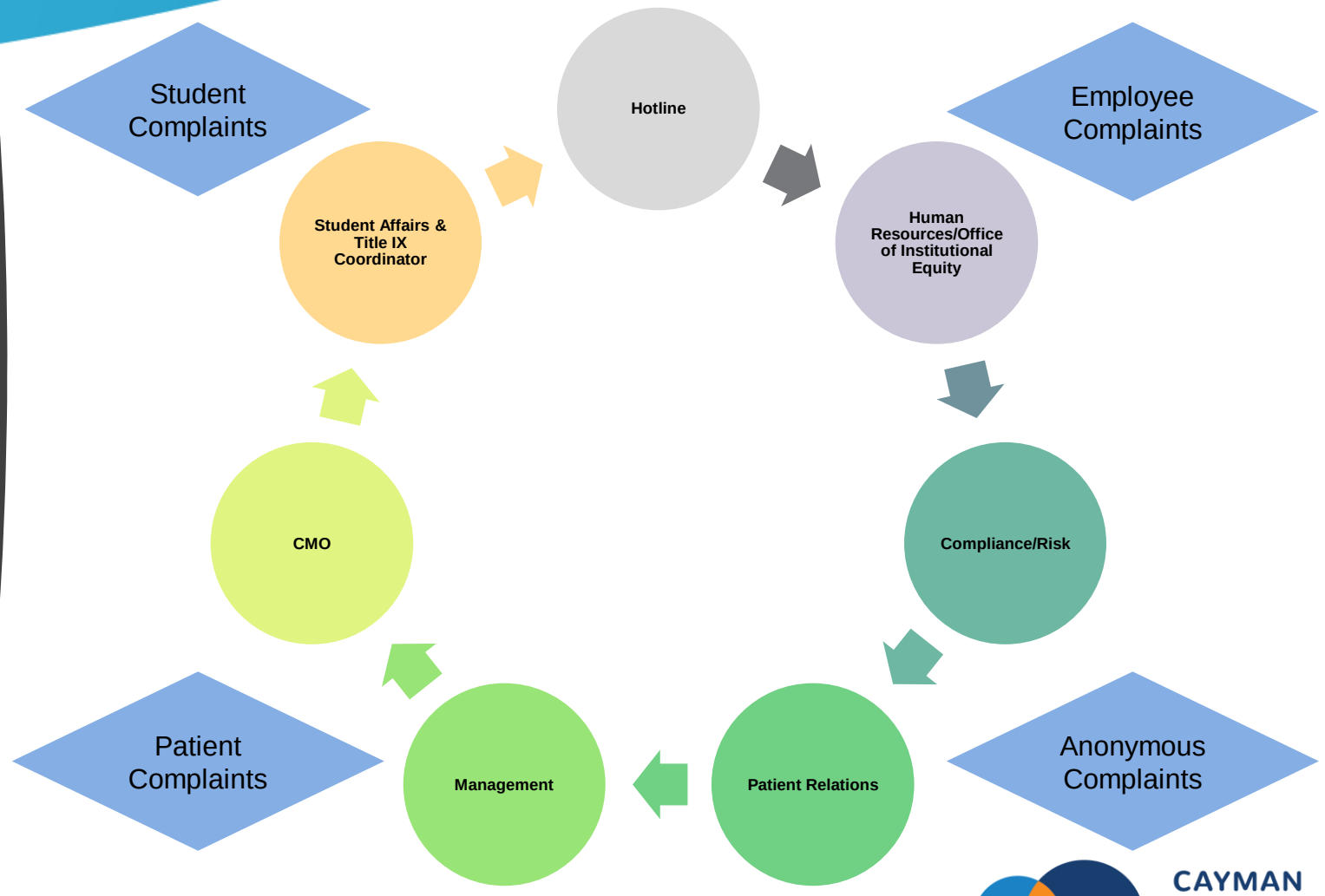
BUILDING AWARENESS

- Awareness of Physicians and Faculty Processes
- Institutions should not presume non-physician/non-faculty employees or stakeholders are aware of the processes, policies, and laws which apply to physicians and faculty
- Education on these structural and legal differences can help build understanding and perspective and decrease perceptions of unjustified, imbalanced inquiries and treatment
- That education must be accompanied by a commitment to consistent and equitable processes: i.e., a consistent and equitable review of, inquiry into, and resolution of complaints about physicians and faculty under those laws and processes
- Processes must yield accountability and communication of those results

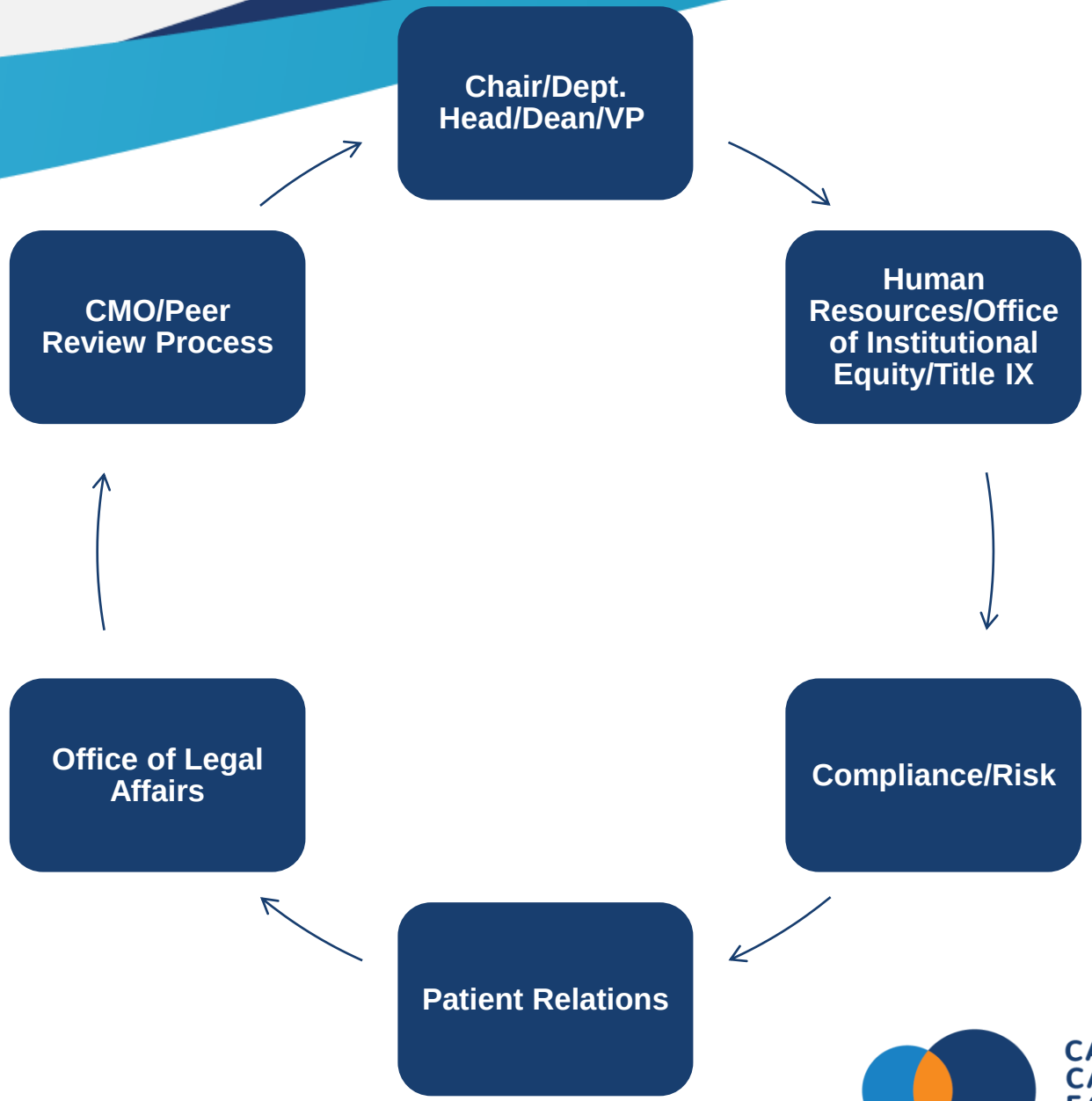
CULTURE CHANGE

- Key is Culture Change
- Demonstrate to employees, patients, and public that institution is committed to addressing this issue
- That commitment is evidenced through active processes known to leaders and to stakeholders and yielding results that are, in turn, communicated throughout the AMC – up to appropriate leaders and oversight bodies, and out to stakeholders
- Clear Processes + Real Accountability + Communication of Processes and Outcomes ➔Cultural Change

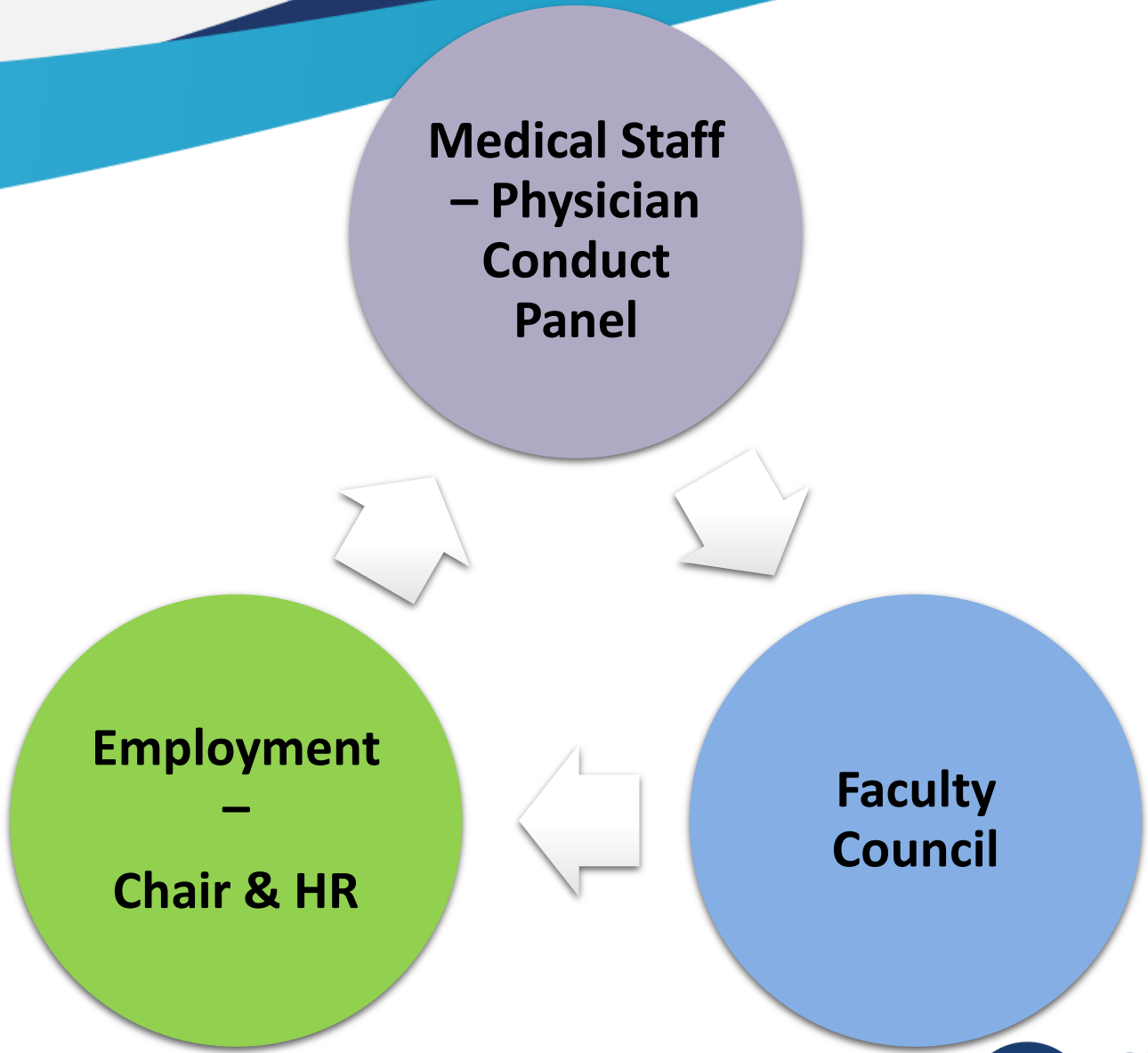
COMPLAINTS COME IN THROUGH VARIOUS SOURCES:



WHEN COMPLAINTS COME IN, THEY ARE SENT TO ONE OR MORE OF THE FOLLOWING FOR INQUIRY:



AFTER COMPLAINTS ARE VETTED, THEY ARE SENT TO ONE OR MORE OF THE FOLLOWING FOR RESOLUTION:



CONDUCT PROCESS - INTAKE

- Intake:
- A more comprehensive complaint intake triage team to provide infrastructure for initial review and categorization of complaints
- Triage Team staffed by members of and support personnel from HR, Title IX Coordinator, Compliance, Legal/Risk, CMO
- Using a standard algorithm, they categorize complaints as:
  - Sexual misconduct
  - Other conduct toward and discrimination of legally protected class
  - Non-discriminatory behavioral issues
  - Patient care, safety and welfare
  - Compliance violations
- Triage Team inputs case information in protected database for tracking, and these cases are discussed with the senior level Conduct Workgroup (CW)

CONDUCT PROCESS - INQUIRY

- <u>Inquiry and Monitoring:</u>
- Triage Team routes complaint to appropriate party for inquiry per pertinent process
  - Sexual harassment/misconduct – Title IX/OIE
  - Other discrimination of legally protected class – HR/OIE
  - Non-discriminatory behavioral issues – HR/Chair/Dean
  - Patient care, safety and welfare – CMO/PRC
  - Compliance violations – Corporate Compliance
- Triage and inquiry teams have appropriate resources
- Status of inquiries inputted into database and reported to Conduct Workgroup (CW)

CONDUCT PROCESS - RESOLUTION

- Resolution:
- Results of inquiries reported to CW and to appropriate body for assessment, resolution, and corrective action, per applicable process.
  - Medical Staff/Physician Conduct Panel – private and employed physicians principally for patient care, quality and welfare issues and professionalism issues per Medical Staff Bylaws and Disruptive Conduct Policy
  - Dean and Faculty Council – private and employed faculty members principally for conduct related to the learning environment per Faculty Rules for Governance and Title IX
  - Dean/Chair and HR – employed physicians and faculty for conduct relating to employment issues

CONDUCT PROCESS - COMMUNICATION

- Communication → Cultural Change
- This is the critical part of the process in terms of risk mitigation – creating a culture of attention to this issue and accountability around this issue
- Decisions are communicated back to CW and then to complainant, subject, and other stakeholders, as appropriate
- Communication must ultimately go back in some form to patient population (e.g., de-identified, aggregated data)
- Cases and data must be regularly reviewed by CW and Triage Team so progress can be assessed, potential trends can be identified, and process improvement efforts properly resourced

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THANK YOU

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Questions?

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