Workplace violence

LEGALLY SPEAKING
Clifford Warren Lober, MD

Clifford Warren Lober, MD, JD, presents legal dilemmas in dermatology every other month. He is a dermatologist in practice in Florida and a partner in the law firm Lober, Brown, and Lober.

By Clifford Warren Lober, MD, JD, June 3, 2019

Question: What is workplace violence?

Answer: Workplace violence describes a wide gamut of unwanted, harmful behaviors ranging from verbal abuse, sexual harassment, hazing, unwanted touching, and stalking, to more overtly violent acts such as rape and murder. The General Duty Clause, Section 5(a)(1), of the Occupational Safety and Health Act of 1970 (OSHA Act) requires that employers provide a workplace that is “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” OSHA has liberally interpreted this statute and defined workplace violence as “any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site.”

Q: How common is workplace violence?

A: The Occupational Safety and Health Administration (OSHA) reported that from 2002 to 2013 “the rate of serious workplace violence incidents (those requiring days off for an injured worker to recuperate) was more than four times greater in health care than in private industry on average. In fact, health care accounts for nearly as many serious violent injuries as all other industries combined.”

Q: What is my liability as an employer if workplace violence occurs in my office?

A: Penalties for violating the OSHA Act depend upon the intent, severity, and history of the employer’s actions or failure to act to remedy a dangerous situation. Employers who are cited for “a serious violation” may be assessed a penalty of up to $7,000. A “serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or
processes which have been adopted or are in use, in such place of employment unless the employer did not, or could not with the exercise of reasonable diligence, know of the presence of the violation.” Violations resulting in death are punishable by fines of up to $10,000 and six months imprisonment.

The individuals who commit violence may be prosecuted under state statutes which prescribe civil and/or criminal penalties for those acts (harassment, assault, battery, murder, etc.).

**Q: Who commits workplace violence?**

**A:** Approximately 80% of workplace violence in the health care setting is committed by patients. Relatives and medical staff account for most of the remainder. Abusive or violent behaviors may result from employee dissatisfaction with their jobs, patients or their relatives upset about an office or hospital encounter, or mental illness.

**Q: Why is it important to address workplace violence as soon as possible?**

**A:** If lesser forms of violence such as unwanted touching are not addressed, those who commit these acts may interpret inaction as acceptance. They may continue offensive verbal or physical behaviors or commit even more serious forms of violence. Tolerance of verbal abuse, for example, has been shown to be a risk factor for subsequent physical assault.

Whether subtle or overt, workplace abuse and violence contribute to physician and staff dissatisfaction, turnover, and burnout.

**Q: What are the signs a fellow employee may become abusive?**

**A:** Employees who are increasingly late or absent from work, those who complain excessively about their job or work conditions, and people who have sudden changes in their mood are at increased risk to commit violence. Sometimes a particular life event, such as divorce, increased marital stress, the death of an immediate family member, or even learning of a poor job performance rating may send an employee or patient “over the edge” and cause him or her to become violent.

**Q: Why is workplace violence underreported or tolerated?**

**A:** Unfortunately, physicians and nurses often consider rude, disruptive, or other offensive behaviors acceptable from patients who are ill (physically or mentally) or merely stressed. They incorrectly consider these behaviors “part of the job” and feel that as professionals they need to “deal with it.” They may, alternatively, have little confidence in the reporting system and/or fear retribution from their employer.

**Q: What should be done to address workplace violence?**

**A:** Above all, employers must make it clear that absolutely no form of verbal or physical abuse or violence whatsoever will be tolerated. This policy should be stated when offering an applicant employment, strongly emphasized in your office policy and procedures manual, posted in the employee lounge, and mentioned in staff meetings. Employees should be encouraged to immediately report any instance of patient or fellow employee abuse or violence.
When an employee manifests a significant change in job performance or mood, speaking with that employee promptly and privately may prevent an underlying problem from boiling over. If a patient manifests abusive behavior, your interaction with that patient should be terminated until the abuse is directly addressed and satisfactorily resolved. If the office visit is continued, the physician or nurse should not be alone with the patient for the remainder of the interaction. Finally, if workplace violence or abuse occurs, it must be taken very seriously and not simply excused or overlooked because the employee or patient is “having a bad day.”

Q: Are there any other measures I should take?

A: Physical measures such as providing adequate lighting and video surveillance in common areas may decrease violence by patients and employees alike. In a medical office, reducing patient waiting times and having adequate staff levels decreases patient and employee stress.

Q: I have been told that it is illegal to retaliate against an employee who reports workplace violence. Is this true?

A: Section 11(c)(1) of the OSHA Act mandates that “no person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act” Retaliation against an employee for reporting abuse or violence may also be a violation of state law.

Q: Where can I get more information on workplace violence?

A: In addition to contacting your attorney, you may wish to contact OSHA at www.osha.gov or (800) 321-6742.