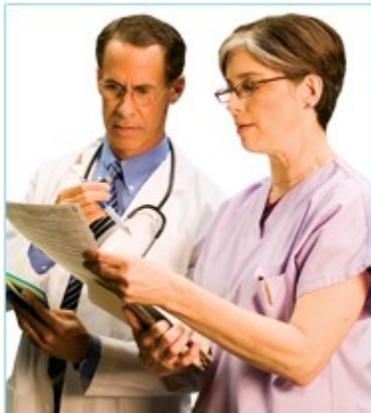


## Doctor's Sexual Harassment of Nurse Results in \$15,000,000 Jury Verdict But Trial Judge Allows Only \$750,000 for Past Pain and Suffering

Posted on October 7, 2009 by [John Hochfelder](#)

**Sexual harassment in the workplace** – in some cases it's quite real and devastating to the victim; in others it's a baseless claim. It is clear, though, that sexual harassment is a form of impermissible discrimination outlawed under several statutes (e.g., 42 U.S.C. Section 2000e, known as Title VII of the 1964 Civil Rights Act and New York's Executive Law Section 296, known as New York State's Human Rights Law) and that when actual sexual harassment is proven victims may sue and recover damages such as psychological pain and suffering, lost earnings and, in certain cases, punitive damages. An excellent **overview is [here, from New York's Attorney General Andrew Cuomo.](#)**

The **case against Matthew Miller**, at first blush, may have appeared to be one that didn't merit much attention by the law or warrant any significant remedy for a nurse who claimed he groped her at their hospital. Here was a primary care physician with a general practice in family medicine in Queens, New York who was **accused by nurse Janet Bianco of a course of inappropriate conduct towards her over several years at Flushing Hospital Medical Center.**



It culminated, she said, on September 7, 2001 when she was tending to a bedridden patient and the doctor blocked her path, felt her vagina and squeezed her buttock.



**Bianco filed a complaint with the hospital, Miller was promptly investigated and he resigned later that week.** If true, Bianco's allegations would form the basis of a viable civil suit against Miller but to what end? Were his actions really that bad? Did Bianco suffer any significant damages? Yes and yes, said a Queens County jury in February 2009 in **Bianco v. Flushing Hospital Medical Center** (Supreme Court, Queens County, Index # 18702/04).

Although she waited to complain about Miller until after the September 7<sup>th</sup> incident, it's now clear that he was one vile man. He quickly settled the lawsuit with Bianco (for an undisclosed sum), leaving the hospital as the sole defendant. A review of public records discloses that **Miller was sanctioned in 1998 by New York's Department of Health (the "DOH")** because he had engaged in a sexual relationship with a patient over a 16 month period during which time he treated her for nervousness and prescribed medication such as Valium. The sanction? Not much. The **DOH issued a three year suspension from the practice of medicine but stayed enforcement** because it said Miller would be rehabilitated and the public would be protected. Wrong.

In her lawsuit, Bianco charged, and other victims said in sworn statements, that Miller engaged in an almost constant and unchecked pattern of sex talk and unwanted physical contact. New York's Daily News staff writers Nicole Bode and Thomas Zambito have been all over this story, [here](#), [here](#) and [here](#).

So, after Miller settled (for an undisclosed sum), the question was what if any responsibility the hospital bore for Miller's illegal actions. Plenty, said the jury.

The jury awarded Bianco **\$15,000,000**

- (\$8,000,000 past emotional distress (8 years)
- \$5,500,000 future emotional distress
- \$1,500,000 punitive damages)

**Liability against the hospital required a finding that it had prior notice of Miller's misconduct and that it failed to take reasonable steps to take corrective action.** Bianco claimed that before the September 7, 2001 incident, a medical director of the hospital actually witnessed Miller trying to kiss her and on that basis [an earlier appeal by the hospital seeking a pre-trial dismissal was denied and the case was allowed to be considered by the jury on the question of whether the hospital had prior notice.](#)

Bianco's **pain and suffering was all psychological** – she began treating with a clinical psychologist shortly after she started her lawsuit in 2004. The psychologist testified that Bianco suffered from **post-traumatic stress disorder and a major depression.**

In a [post-trial decision recently released, here.](#) the trial judge eviscerated the jury's damage awards and **all that now stands is \$750,000 for past pain and suffering** (reduced from \$8,000,000 as excessive).

Future pain and suffering in the sum of \$5,500,000 was completely tossed out because plaintiff's medical witness would not state with any degree of certainty the degree and length of Bianco's future post-traumatic stress and depressive disorders.

As to punitive damages, the judge said there was no valid line of reasoning to support the jury's conclusion that the hospital's action was malicious or willful since its medical director did take prompt corrective action after Bianco's complaint against Miller. So the entire punitive damages award of \$1,500,000 was thrown out.

Left with only \$750,000, **plaintiff will appeal.** There's no doubt that the \$13,500,000 in pain and suffering awards was wildly excessive. There's also no doubt, though, a new jury would be disgusted with evidence of what Miller did and who he was. By **consent order dated July 9, 2004**, Miller agreed he would not contest Bianco's September 7, 2001 charges (detailed in gruesome detail) as well as similar such acts over years with another nurse. And, he **agreed to a three year suspension of his license to practice medicine.**

The question at any new trial will be the proper amount of damages. I predict the denial of punitive damages will stand and that no more than \$750,000 for past pain and suffering will be awarded or allowed to stand (either on retrial or by an appellate court). And, if, as in the first trial, there is no credible evidence of future pain and suffering then the \$750,000 the trial judge let stand may be all that plaintiff recovers. As always, we will follow, report and analyze.