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DON'T LET DISRUPTIVE PHYSICIANS HURT YOUR ACCREDITATION

Problems with disruptive staff changed quickly from an occasional distraction to a priority issue for hospital administrators on July 9, 2008, when the Joint Commission on Accreditation of Healthcare Organizations issued a Sentinel Event Alert regarding what it called "behaviors that undermine a culture of safety." Effective January 1, 2009, institutions that have or seek Joint Commission accreditation will be required to address "intimidating and disruptive behaviors" by healthcare workers. Policies and procedures must be put in place and implemented in order to comply with the new Joint Commission standards.

In its alert, the Joint Commission documents that intimidating and disruptive events in healthcare organizations are not rare, but often go unaddressed. The alert cites a survey by the Institute for Safe Medication Practices in which 40% of clinicians surveyed admitted to keeping quiet or remaining passive during a staff intimidation incident. The Joint Commission concludes that "[o]rganizations that fail to address unprofessional behavior through formal systems are indirectly promoting it."

To address the tendency to overlook disruptive behavior, the Joint Commission will evaluate hospitals in two new elements of performance:

- EP-4 — whether the hospital has a code of conduct defining "acceptable and disruptive and inappropriate behaviors"; and
- EP-5 — whether a process for "managing disruptive and inappropriate behaviors" has been created and implemented.

The Joint Commission will also include interpersonal skills and professionalism as two of six "core competencies" to be addressed in the Medical Staff credentialing process.

The Joint Commission standards focus on the conduct of both physician and non-physician staff. The complexity and size of today's hospitals and healthcare systems can make instituting these policies difficult. For instance, non-employed physicians' issues are administered through the Medical Staff structure, governed by Medical Staff bylaws that must be approved by the Medical Executive Committee or the physicians themselves, while employed Medical Staff members may have employment agreements that require slightly different procedures. Non-physician staff are likely to be hospital employees and subject to the policies and procedures of the hospital's human resources department, but some staff, such as nurse anesthetists, may be employees of physician practice groups under contract with the hospital.

Specific procedures must be developed, therefore, for each category of employee or professional appropriate to the individual's status but coordinated with the procedures applicable to other staff. The steps to be followed in addressing misconduct must be outlined to assure that appropriate criteria and procedural safeguards are in place and can be easily followed. As progressive disciplinary steps become more severe, the institution's adherence to its written standards and procedures, and documentation of each step taken, are essential in justifying an appropriate sanction.

A disciplinary action may be reversed if written procedures have not anticipated the particular situation or if the procedures were not followed in imposing the sanction. Failure to justify an appropriate level of response may also give rise to civil malpractice liability if the disruptive behavior culminates in an adverse outcome for a patient.

All policies should show "zero tolerance" for intimidating or disruptive behaviors and should protect against retaliation for identifying and reporting misconduct. Medical staff policies should be complementary and supportive of corresponding policies for non-physician staff, with education and training provided to staff at all levels. Physicians and non-physicians should be required to report and cooperate in the investigation of improper behavior.

The Joint Commission documents that disruptive behavior by members of a healthcare team generates medical errors, leads to adverse outcomes, and results in poor patient satisfaction when patients witness disrespectful conduct between members of the team. Disruptive behavior is also stressful to other team members, even if the behavior is not directed at them, and a dissatisfied team member may leave and find another position.

In addressing these issues, healthcare institutions should follow these important steps to form an integrated code of conduct:

- Make sure that the code of conduct and applicable procedures address all staff categories.
- In developing procedures for imposing sanctions, clearly describe the criteria for imposing progressive levels of intervention, the steps to be taken at each stage and the person or entity responsible for deciding and imposing the corrective action.
- Provide safeguards to ensure that when intimidating or disruptive behavior is reported, policies and procedures will be followed and appropriate action taken.

The new Joint Commission standards, if approached correctly, should foster improved patient care and employee satisfaction by clarifying the institution's commitment to addressing disruptive behavior.

If you have a question on this material or would like to discuss legal services, please contact us at healthcare@duanemorris.com.

Philip H. Lebowitz, *a partner at Duane Morris, practices primarily in the area of healthcare law and litigation, and provides regulatory and general counseling to healthcare providers.*

Nina L. Russakoff, *a health law associate at the firm, focuses on regulatory compliance and related civil and criminal litigations.*