Working With Disruptive Physicians

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The Disruptive Physician

...the hell with the convalescent patients waiting in the corridor for him to check out their new valves and new arteries, to tell how grateful they are to him for their new lease on life, Jerry shouts away, shouts all he wants if it’s shouting he wants to do, and the hell with the rules of the hospital. He is one of the surgeons who shouts: if you disagree with him he shouts, if you cross him he shouts, if you just stand there and do nothing he shouts. He does not do what hospitals tell him to do or fathers expect him to do or wives want him to do, he does what he wants to do, does as he pleases, tells people just who and what he is every minute of the day so that nothing about him is a secret, not his opinions, his frustrations, his urges, neither his appetite nor his hatred. In the sphere of the will, he is unequivocating, uncompromising; he is king. He does not spend time regretting what he has or has not done or justifying to others how loathsome he can be. The message is simple: You will take me as I come – there is no choice. He cannot endure swallowing anything else. He just lets loose.

Outline

I. Introduction: Hospital Environment
II. Parameters of Professional Behavior
III. Continuum of Disruptive Behavior
IV. When Disruptive Behavior Becomes An Unacceptable Risk to A Hospital
V. Disciplining Disruptive Physicians
VI. Reporting
Introduction: Hospital Environment

- Pressure
- Economic factors
- Access to drugs
- Staffing issues
- Egos
Introduction: Hospital Environment

• The Reality: Bad Actors go Unpunished
  – nearly always involves the same physician and the same, repetitive misconduct
  – most common complaints are ones of disrespect between physicians and staff

• The Reason:
  – bad actors typically generate the most revenue
  – favoritism: friends on board, high wage earners, perceived professional hierarchy, etc.
Introduction: Hospital Environment

Key Issue: Hospitals are on notice of professional misconduct.
Parameters of Professional Behavior

A. State/Federal law implicating misconduct or governing hospital’s failure to address misconduct
   - Federal, state and local anti-discrimination laws and state tort laws
   - State licensing laws and regulations: Generally contain reporting requirements for professional misconduct, and procedures for the rehabilitation of impaired professionals.
Parameters of Professional Behavior

B. Quality of Care Issues/ Common Sense

– Abusive conduct affects quality of care and can lead to:
  • Malpractice
  • Medical Mistakes

– Can undermine hospital’s ability to defend itself
Disruptive Behavior

- Exists on Continuum: general temperamental behavior requiring some measure of intervention far short of legal action to unlawful abuse, harassment, and/or criminal acts
Disruptive Behavior

- Conduct that is not clearly illegal may subject hospital to liability if not addressed
- Examples
  - daily use of profanity
  - short temper
  - abusive and vulgar dictatorial manner
  - yelling, screaming, cursing
  - physical threats
  - degrading and humiliating employees
  - refusal to be on call, routine failure to answer pages
  - unsubstantiated, retaliatory notes in patient record about staff
Disruptive Behavior

- Misconduct can give rise to following actions:
  - Intentional Infliction of Emotional Distress
    - **GTE Southwest, Inc. v. Bruce** (Tex. 1999): $275,000+
      verdict for employee plaintiffs based on constant humiliating and abuse behavior of supervisor
  - Negligent Retention
    - employers have been held liable for acts of violence by employees where they were on notice of violent tendencies
Disruptive Behavior

– Corporate Negligence

• Thompson v. Nason Hosp., 527 Pa. 330 (1991). Medical malpractice action for failure to diagnose brain hemorrhage in ER. Plaintiff argued hospital failed to monitor services provided. PA Supreme Court recognized cause of action for corporate negligence against hospitals for breach of duty to: use reasonable care to maintain safe and adequate facilities and equipment; select and retain only competent physicians; oversee all persons practicing medicine within its walls; formulate, adopt and enforce adequate rules and policies to ensure quality patient care.
When Disruptive Behavior Becomes Unacceptable Risk

• When it creates negative impact on patient care – i.e., risk of errors and malpractice

• When it creates negative impact on other professionals and staff
  – e.g., hostile work environment, absenteeism
When Disruptive Behavior Becomes Unacceptable Risk

- Context is need for improved patient-physician relationships and improved physician-staff relationships
- Use physician behavior as barometer
  - 53% of patients’ decisions to call malpractice attorney due to poor relationship with provider prior to injury
Disciplining Disruptive Physicians

• Create Hospital and Medical Staff Bylaws
  – Written Code of Behavior
  – Procedures for Informal Investigation and Formal Disciplinary Process
    • e.g., multi-stage process enforced by Chief of Staff when patient care not at risk; expedited procedures when care is at risk
  – Authority to Terminate Physicians or Revoke Privileges
  – Fair Hearing/Grievance Procedures
Disciplining Disruptive Physicians

- Informal Investigation/Formal Disciplinary Process
  - increase levels of punishment
    - collegial intervention: meet with physician/mediate conduct
    - order counseling
    - issue written warning/monitor behavior
    - suspend privileges
  - tie to privileges (i.e., disruptive conduct equals voluntary relinquishment of privileges)
  - thorough documentation of:
    - date and time of incident of misconduct
    - factual description of misconduct and circumstances
    - names of witnesses
    - consequences to patient care or hospital operations
  - action taken by hospital
Disciplining Disruptive Physicians

- **Create and Enforce Code of Conduct**
  - Workplace rules- must
    - be clear
    - be consistently applied
    - provide for immediate and thorough investigations of complaints
    - require prompt and effective action to respond to and resolve problems where necessary
  - Effective anti-discrimination/anti-harassment policies – implement and distribute
Disciplining Disruptive Physicians

- Elements of effective anti-discrimination/anti-harassment policy include:
  - requirement that complaints be submitted in writing
  - identification of multiple, easily accessible, highly-placed individuals to whom complaints must be directed (HR manager, upper management, corporate officer)
    » a requirement that complaints be made only to employee’s direct supervisor is not sufficient (many times, the alleged harasser is the direct supervisor)
    » don’t provide alternatives
    » identify individuals from both genders as people to whom complaints must be directed
  - prompt, thorough investigation of all complaints
  - confidential investigation process
  - written follow-up with complainant and accused
  - on-going monitoring of prior complaints
Disciplining Disruptive Physicians

- Elements of effective anti-discrimination/anti-harassment policy (cont.):
  - strong, effective remedial measures
  - prohibition on retaliation in any form
  - must be distributed and available to all employees
  - require employees to sign acknowledgement form
  - document all incidents to establish repetition or progression of deterioration
  - therapeutic benefits (i.e., help physician to confront issues)
  - legal prophylactic benefits (i.e., documented pattern of misconduct can support disciplinary decisions)
  - Involve physicians in development of policies to obtain buy-in
Disciplining Disruptive Physicians

• Training Programs
  – train physicians first
    • articulate definition of professional standards
    • demonstrate visible commitment by senior institutional leadership
  – use clinical leaders to define professionalism
  – train all staff as universal precaution, rather than reaction to specific behavior problem
  – get input from professionals and staff to develop program tailored to institution
  – train residents
Disciplining Disruptive Physicians

• Peer review and credentialing decisions
  – Peer review and credentialing decisions regarding physician misconduct can receive cloak of immunity under federal Health Care Quality Improvement Act (HCQIA)
  – Immunity granted to peer reviewers when professional review action is “based on... the professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients).”
  – Decision must be made “in the reasonable belief that the action was in furtherance of quality health care”
  – No actual patient harm is necessary to demonstrate threat to quality of care.
    • See Myers v. Columbia/HCA, 341 F.3d. 461 (2003). Hospital’s decision to deny a disruptive physician’s privileges under HCQIA where he had a history of temper tantrums, condescending remarks towards women, refusal to speak to a member of his surgical team during surgery, and several instances of throwing a scalpel during surgery, was made in the furtherance of quality health care.
Reporting Misconduct

• When to report: generally, when misconduct presents a threat of harm to patients or staff
Reporting Misconduct

- Federal and state reporting requirements
  - National Practitioner Data Bank (NPDB)
    - Established by HHS pursuant to authority under HCQIA.
    - Health care entities are required to report certain “adverse actions” taken against a physician, dentist or other health care practitioner to the State Board of Medicine. 42 U.S.C. §§ 11101-11152; 45 C.F.R. Part 60.
    - See www.nipd-hipdb.com for reporting requirements and guidance.
    - Not all disciplinary actions are reportable.
  - Check applicable state laws governing facility and physician licensure, malpractice, patient safety, etc.