New rules on disruptive behavior require a measured approach

Over the past few years, there has been more intense focus on misconduct associated with disruptive behavior of physicians. In the past, many hospitals did not have any policies, procedures, or guidelines to assist them when facing these issues. The Joint Commission (formerly the Joint Commission on Accreditation of Healthcare Organizations) now requires accredited health care organizations to establish policies and procedures to address disruptive physician behavior in the workplace.

While all health care professionals agree that such policies and procedures would be beneficial in the workplace, the development and implementation of the policy adopted by a hospital and a hospital’s medical executive committee (MEC) must be measured to prevent abuse. Hospitals must provide both medical staff and staff physicians with an air of reasonable mechanisms to appropriately rectify potential behavioral problems.

From its pronouncements, it is clear that disruptive behavior means that an express policy to address disruptive behavior by physicians is necessary; otherwise, the hospital is implicitly promoting "disruptive behavior."

Therefore, the Joint Commission has not defined or specified what would constitute "acceptable" or "disruptive behavior.

The implementation of new policies requires a deliberate approach. In order to avoid scenarios, for example, where a hospital could initiate disciplinary action against a physician with whom the hospital has had political or economic ties, as well as anyone who provides care to the patient, the physician must raise his voice at a nurse during a tense moment, a hospital’s MEC must use careful and measured language in adopting a policy to address disruptive physician behavior.

While everyone agrees that a hospital cannot tolerate a threat or actual disruptive behavior, such as an assault on a co-worker, the adopted standards and accompanying policies need to be measured to truly achieve the goal of the policy, which is to make a productive, safe, and healthy working environment. This approach would provide more security to the physician and instruct the hospital how to prevent the above-noted goal of the policy. In our opinion, any such policy should first provide a definition of the types of behavior for which the policy is designed to address.

For example: "Disruptive conduct" by a medical staff member is defined as conduct that adversely affects the hospital’s ability to achieve its objectives and includes, but is not necessarily limited to, the following actions toward colleagues, hospital personnel, patients, or visitors:

- Hostile, angry, or aggressive confrontational voice or body language.
- Assaultive language or behavior.
- Actions (verbal or physical) that go beyond the bounds of fair professional conduct.
- Inappropriate expressions of anger, such as destruction of property or throwing items.
- Substantiated complaints or criticism directed at the recipient in such a way as to ridicule, humiliate, intimidate, undermine confidence, or belittle.
- Sarcastic comments that go beyond differences of opinion that are made to patients or physicians familiar about caregivers (this is not intended to prohibit comments that deal constructively with the care given).

Writing of malicious, arbitrary, or discriminatory notes in the medical record.

Sexual harassment and discrimination.

Guidelines must include step-by-step process for incident documentation.

The policy should also set forth procedures for reporting complaints about alleged disruptive behavior, including the documentation of such matters and the submission of such reports.

Next, the policy should address the process in which the MEC investigates the complaint. For reports submitted by a plaintiff or by the physician, the policy should include a step-by-step process that provides notice to the physician and outlines due process and fairness before any disciplinary action is taken by the hospital.

For instance, the chief of staff will determine if the subject behavior falls within the definition of "disruptive conduct." If so, the chief of staff will exercise reasonable judgment whether the behavior is of a minor nature and an isolated incident that does not need to be formally addressed or if the behavior requires corrective action.

If the initial complaint is dismissed, a confidential memo will list the reasons for this decision. The complaint/accident should be maintained in a record other than the physician’s personnel file. Documentation of the initial incident should be part of the physician’s personnel file and additional substantiated complaints of a similar nature are received, additional complaints are made, documentation regarding these along with recorded memoranda and correspondence should be maintained and stored in the physician’s personnel file.

If the physician fails to correct this behavior, the hospital may then initiate disciplinary action against the physician. This must be done in accordance with the fair hearing procedures set forth within the hospital’s medical staff bylaws and fair hearing plan, which typically provides the physician with a hearing to defend their behavior.

A finding of unprofessional conduct may result in an adverse report to the NPDDB. Physicians must be active in the adoption of a measured standard and policy on disruptive behavior because a finding of unprofessional conduct is reportable to the National Practitioner’s Data Bank (NPDB).

Physicians correctly believe that the only type of incidents that are reportable to the NPDB are malpractice actions or incidents occurring at the hospital that are directly related to quality of care. However, the NPDB handbook expressly states that a hospital must report any adverse clinical privilege action taken against a physician for unprofessional conduct that has, or could have, an adverse effect on a patient. Thus, if a hospital is allowed to take quick and unchecked disciplinary action against a physician for "disruptive behavior," it may result in an adverse NPDB report.

For these reasons, it is imperative that staff physicians and the MRC take a measured approach in defining "unacceptable" or "disruptive behavior" and adopting related policies. Otherwise, physicians may be empowered to encourage a production, safe, and healthy work environment.

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The Standard and Limited Guidance provided by the Joint Commission

Effective Jan. 1, 2009, the new Leadership Standard (1.0.3.01.01) provides, in pertinent part, that:

- The hospital has a code of conduct that defines unacceptable, disruptive, and inappropriate behaviors.
- Leaders create and implement a process for managing disruptive and inappropriate behaviors.
- The Joint Commission also has recommended physician conduct policies that relate to the new leadership standard. The new "disruptive behavior" policies should include:
  - "Zero-tolerance" for intimidating and/or disruptive behaviors, especially criminal acts such as assault.
  - Concepts that address intimidating behaviors of physicians that are complementary and supportive of physicians at non-professional staff.
  - Provides that protect those individuals who report intimidating behaviors.
  - Methods of responding to patients and/or families who witness such behaviors.
  - Specifies regarding how and when to begin disciplinary action.

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