The Standard and Limited Guidance provided by the Joint Commission

Effective Jan. 1, 2009, the new Leadership Standard LD.03.01.01 provides, in pertinent part, that:

- **The hospital has a code of conduct that defines acceptable, 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 the following:

- **"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 policies aimed at non-physician staff.**
- **Provisions that protect those individuals who report intimidating behaviors.**
- **Methods of responding to patients and/or families who witness such behaviors.**
- **Specifics regarding how and when to begin disciplinary action.**

New rules on disruptive behavior require a measured approach

Over the past few years, there has been more intense focus on medical staff actions related to disruptive conduct of physicians.

In the past, many hospitals did not have any policies, procedures or guidelines to assist them when faced with the unprofessional conduct of a physician — especially when such conduct was not directly related to quality of care.

Too often the decision of whether disciplinary action should be taken against a physician was dependent upon such factors as whether that physician significantly contributed to the hospital's fiscal bottom line or whether that physician had a special relationship with the hospital's administration.

With the intent of having hospitals actively and appropriately address the issue of unprofessional physician conduct, 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 might agree that such policies and procedures would be beneficial in the hospital setting, the language of the policy adopted by a hospital and a hospital's medical executive committee (MEC) must be measured to prevent abuse. They must provide both hospitals and staff physicians with a fair and reasonable mechanism to appropriately rectify potential behavioral problems.

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

However, the Joint Commission has failed to define or specify what would constitute "unacceptable" or "disruptive behaviors."

Without more guidance from the Joint Commission, physicians must be concerned about, and involved in the drafting of, hospital policies and procedures aimed at addressing such behaviors in order to protect physicians from unnecessary adverse actions against their staff privileges.

This concern was echoed by the American Medical Association with regard to the broad definition of "unacceptable" or "disruptive behavior" which, if undefined, could lead to arbitrary enforcement of the standard.

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 disagreements simply on the basis that the physician raised 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 would agree that a hospital cannot tolerate egregious disruptive behavior, such as an assault upon 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 proceed to achieve the above-noted goal of the policy. In our opinion, any such policy should first provide a definition of the types of behaviors 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 accomplish 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.
- Attacks (verbal or physical) that go beyond the bounds of fair professional conduct.
- Inappropriate expressions of anger such as destruction of property or throwing items.
- Abusive language or criticism directed at the recipient in such a way as to ridicule, humiliate, intimidate, undermine confidence, or belittle.
- Derogatory comments that go beyond differences of opinion that are made to patients or patients' families' about caregivers (this is not intended to prohibit comments that deal constructively with the care given).
- Writing of malicious, arbitrary, or inappropriate comments/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/incidents regarding alleged disruptive conduct, including the documentation of such matters and the submission of such reports.

Next, the policy should address how the report is investigated and by whom (e.g., the chief of staff or a designated subcommittee of the MEC).

For reports substantiated by a preponderance of the evidence, the policy should include a step-by-step process that provides notice to the physician and ensures 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/incident is dismissed, a confidential memorandum summarizing the disposition of the complaint/incident shall be maintained in a record other than the physician's credential file.

Documentation of the initial incident should remain outside of the physician's credential file unless additional substantiated complaints of a similar nature are received. If additional complaints are made, documentation regarding these along with any related memorandum and correspondence should be retained and stored in the physician's credential file.

If the physician fails to correct the behavior and another substantiated complaint/incident occurs, the physician should be offered the opportunity to voluntarily participate in a program designed to rectify the disruptive behavior. This could take the form of an anger-management course and/or see a counselor such as a social worker, psychologist or psychiatrist designated by the hospital to assess, evaluate and attempt to correct the disruptive behavior.

If the physician refuses to do so voluntarily, the chief of staff should determine if the severity of the subject behavior warrants a mandatory mental health evaluation.

Finally, if the physician's behavior is not appropriately modified by the earlier steps or is of such a severe nature that makes the earlier steps unreasonable, 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/or fair-hearing plan, which typically provide the physician with a hearing to defend their behavior.

Such a process would protect the physicians and help the hospital achieve a healthy and safe working environment.

It should be noted that the aforementioned process is just a sample example of provisions that might be included in a hospital policy designed to fairly address the issue of physician disruptive behavior; it is by no means intended to be a complete policy.

A finding of unprofessional conduct may result in an adverse report to the NPDB

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).

Many physicians wrongly believe that the only types 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 affect 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 Data Bank report that could affect the physician's career forever.

For these reasons, it is imperative that staff physicians and the MEC take a measured approach in defining "unacceptable" or "disruptive behavior" and adopting related policies. Otherwise, physicians may be empowering the hospital to use this new standard as a sword to take arbitrary action against physicians for ulterior reasons, instead of encouraging a productive, safe, and healthy working environment.

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