Dealing with Disruptive Physicians: Lessons Learned from Countless Battles

Session Code: MN11

Date: Monday, September 19, 2016

Time: 12:45pm - 2:15pm

Total CE Credits: 1.5

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Dealing with Disruptive Physician – Lessons Learned from Countless Battles
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Definition of Disruptive Behavior

Disruptive behavior is any inappropriate behavior, confrontation, or conflict, ranging from verbal abuse to physical or sexual harassment. Disruptive behavior causes strong psychological and emotional feelings, which can adversely affect patient care.


Examples of Disruptive Behavior

• Yelling and otherwise being abusive to staff
• Use of inappropriate jokes
• Refusing to respond or cooperate with staff
• Failing to abide by policies or procedures
• Inappropriate use of resources
6 Drivers of Disruptive Behavior

- Substance abuse, psychological issues
- Narcissism, perfectionism, selfishness
- Spillover of chronic/acute family/home problems
- Poorly controlled anger, especially under stress
  - Poor clinical/administrative systems support
  - Poor practice management skills
  - Providers whose constant criticisms create poor practice environments.
- Bad behavior gets results & is rewarded!
- Clinical administrative inertia
  - No one does anything about it & the behavior is considered the individual’s “norm”.


Diagnostic Perspective

Comprehensive Assessment Program at Vanderbilt

DSM-IV Axis Diagnoses
- Depression (15%)
- Substance Use Disorder (13%)
- Adjustment Disorder (9%)
- Bipolar (7%)
- Anxiety Disorder (4%)
- PTSD (3%)
- Psychotic Disorder (.7%)

Personality Disorders
- Narcissistic
- Obsessive Compulsive
- Borderline
- Antisocial

Burnout Rates by Specialties

Consequences of Disruptive Behavior

Recognizing the Risks

- Risks to Patient Safety
- Risks to Employee Morale
- Risks to Hospital’s Reputation
- Risks of Employment related claims

Recognizing the Risks

- Risks to Patient Safety
  - Reluctance of staff to interact with disruptive physicians
    - Not seek clarification of orders
    - Not want to call for instructions
    - Not want to call to provide information
    - Reluctance to question inappropriate orders/actions
    - Reluctance to bring errors to physician’s attention
Recognizing the Risks
– Institute for Safe Medication Practices
  • 40% of clinicians reporting remaining quiet rather than confront known intimidator
  • 75% asked colleagues to help interpret an order to avoid interacting with an intimidating prescriber
  • 39% felt hospital dealt effectively with intimidating behavior

“RN did not call the physician about change in patient condition because that physician had a history of being abusive when called. Patient suffered because of this.”

Recognizing the Risks

Decline in Employee Morale

- Loss of confidence in leadership
- Feeling no one cares
- Feeling abused
- Loss of respect for organization

Resulting in

- High employee turnover
- Disgruntled employees (whistleblowers)
- Poor job performance
- Stop reporting incidents

Recognizing the Risks

Decline in Employee Morale

- Can mask non-compliance
- Reluctance of staff to challenge non-compliant conduct
- Reluctance to report non-compliant conduct

Recognizing the Risks

Risks to Hospital’s Reputation

- Inappropriate conduct in front of patients/families
- Hospital’s reputation among health care providers
- Erodes the community’s confidence in the Hospital’s ability to provide quality patient care
Recognizing the Risks

Employment Related Claims

• Hostile work environment
• Constructive discharge
• Sexual Harassment

The Joint Commission
Sentinel Event Alert, Issue 40, July 9, 2008
Joint Commission Standards
LD. 03.01.01
EP 4 – required code of conduct
EP 5 – process for managing disruptive practitioners

American Medical Association

• Model Code of Conduct
• Educational Programs and Materials
Current Approaches
Prevention and Management

Nearly two-thirds (62%) of the respondents to a survey of 7,740 adults reported that employers IGNORED the situation.

Risk of Not Addressing the Problem

“The evidence reveals that the instances of [Dr.] Albaghdadi’s abusive treatment of women were greater in number and severity than those involving men.”

“The evidence also suggests that the hospital was aware of Albaghdadi’s treatment of Kopp and others.”

Kopp v. Samaritan Health System
13 F.3d 264 (8th Cir., 1993)

Risk of Not Addressing the Problem

Nieto v. Kapoor, 268 F.3d 1208 (10th Cir., 2001)

“Dr. Kapoor’s behavior – which led at least six people to leave the ENMMC, some to leave the state, and some of the profession of nursing altogether – affected not only the patients, plaintiffs, and other employees of the Eastern New Mexico Medical Center, it arguably impacted the overall public health.”
Risk of Not Addressing the Problem

*Nieto v. Kapoor*, 268 F.3d 1208 (10th Cir., 2001)

Compensatory Damages - $1,875,000
Punitive Damages - $1,875,000

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Case #1 – The Verbally Abusive Doctor

- Incident involved Doctor yelling at a female surgical tech for failing to provide him with the correct instruments during a complicated procedure.
- Surgical tech complained to Nurse Manager that the Doctor used inappropriate and demeaning language towards her during the procedure. Other staff confirmed the report and stated “That is just how Dr. Day acts.”

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Case #1 – The Verbally Abusive Doctor

- 1st Intervention – Chair of Surgery spoke with Dr. Day, required him to apologize to the surgical tech and to refrain from further outburst.
- Dr. Day has another incident a month later involving yelling at the OR scheduling staff.
- 2nd Intervention – Chair of Surgery refers the incident to the MEC. MEC requires Dr. Day to undergo professionalism course.
- Six months later, Dr. Day has another incident involving screaming at a nurse.
### Case #1 – The Verbally Abusive Doctor

- **3rd Intervention** – Dr. Day is summarily suspended by the CEO and the matter is referred to the MEC for further action. MEC requires Dr. Day to submit to a psychiatric evaluation. During the one hour psychiatric evaluation by a local psychiatrist, the psychiatrist does not find any specific disorder or condition.
- Five months later, Dr. Day again yells at a female surgical tech during a procedure.
- Dr. Day is summarily suspended and MEC recommends termination.

### Case #1 – The Verbally Abusive Doctor

- Did the Medical Staff/Hospital take sufficient steps to address the behavior?
- What other options would the Medical Staff have?
  - Comprehensive psychiatric evaluation
  - Determination whether stress is causing outburst and practice management efforts to address stress
  - Should Dr. Day have been permitted to have four episodes of disruptive behavior

### Case #2 – The Somethings Wrong Doctor

- A number of patients complained that Dr. Ruth has not seen them in two days. A review of the EHR shows that Dr. Ruth put notes in the record for the days in question that appeared similar to the prior days evaluation.
- The CMO confronts Dr. Ruth on whether she saw the patients. Dr. Ruth confirms she did but that the patients must have been asleep when she evaluated them.
- A review of her badge shows that Dr. Ruth did come to the Hospital at 2 a.m.
Case #2 – The Somethings Wrong Doctor

• The President of the Medical Staff sends Dr. Ruth a formal letter reprimanding her for inappropriate patient care.
• A month later a nurse complained that Dr. Ruth appeared intoxicated while sitting at the nurse station entering notes into the EHR.
• The CMO confronts Dr. Ruth who denies any substance abuse problems and states she was just tired from a busy night on call.

Two months later Dr. Ruth does not respond to the pages from the ED while she is the on-call physician. Dr. Ruth later claims that she never received a call. Interviews with ED staff confirm that Dr. Ruth is often difficult to reach or is unreachable.
• A week later Dr. Ruth’s name appears in the local newspaper as having been arrested for a DUI.
• The MEC summarily suspend Dr. Ruth and request that she submit to a substance abuse evaluation.

Did the Medical Staff/Hospital take sufficient steps to address the behavior?
• What other options would the Medical Staff have?
  – Does the Hospital have a policy permitting random drug or alcohol testing?
  – The MEC could have required an evaluation of Dr. Ruth following the report of her being intoxicated.
  – The MEC could have removed Dr. Ruth from call to avoid the risk of her being called late in the evening.
Case #3 – The Inappropriate Doctor

- Dr. Dory appears to be a nice doctor. She always says hello and asks about the staffs’ day. However, Dr. Dory is constantly hanging around the nurses’ station to “gossip,” sends members of the medical team text messages inviting to join her for various excursions, and brings patients her iPod player to play her favorite music.
- 1st Intervention – The Chair of Medicine speaks with Dr. Dory and asks her to refrain from loitering around patient treatment areas when she is not there to provide treatment and asks to respect individuals boundaries.

- A few weeks after the Chair’s conversation with Dr. Dory, she is reported to have brought flowers to a patient on the ICU and she invited another doctor (who happened to be married) to join her in a weekend trip to NY City.
- 2nd Intervention – A formal letter was sent to Dr. Dory asking her to abide by the hospitals policies (referencing flowers in the ICU) and again asking her to respect her colleagues boundaries.

- A month after the 2nd intervention, Dr. Dory is reported to be on ICU at the nurses’ station discussion her personal problems. The nurses ask her to please leave while they are taking care of patients yet she remained.
- 3rd Intervention – Dr. Dory is asked to submit to a psychiatric evaluation. The evaluation does not identify any particular disorder or mental illness. Therefore, due to the repeated disruptive behavior Dr. Dory’s reappointment application is denied.
Case #3 – The Inappropriate Doctor

- Did the Medical Staff/Hospital take sufficient steps to address the behavior?
- What other options would the Medical Staff have?
  - Require the doctor to attend a comprehensive evaluation program?
  - Determine whether there are personal stressors in life that are leading to the behavior?
  - Could this be a cultural issue that requires professional career counseling?

Dealing with Behavioral Problems

- Importance of having an infrastructure
  - Policies/procedures relating to Disruptive practitioners
    - Code of Conduct
    - Disruptive Practitioner Policy

Dealing with Behavioral Problems

- Appropriate Medical Staff Bylaws
  - Absolute and unconditional release
  - Disruptive Conduct defined as presenting immediate threat to patient care
Policy and Procedure

Subject: ZERO TOLERANCE FOR ABUSE

Effective date: ------------

Policy: It is the policy of [Hospital or Health Care System] to promote a work environment that is pleasant, healthy, comfortable, free from intimidation, hostility, and free of abuse, verbal or physical, that could interfere with work performance and the delivery of safe and quality patient care within the [Hospital or Health Care System]. The [Hospital or Health Care System] has Zero Tolerance for behavior that is verbally or physically abusive and which could interfere with work performance and the delivery of safe quality patient care.

Employees, contractors, and volunteers are expected to report any behavior that is abusive or creates a hostile work environment. Reports of abuse or harassment shall be submitted to the immediate supervisor, to the Director of Human Resources, or to the administrative officer of the [Hospital or Health Care System].

Upon any report of alleged abuse or harassment, the [Hospital or Health Care System] will initiate an investigation. The investigation will be handled in a manner that is consistent with the procedures of the [Hospital or Health Care System].

Five Step Process

• Defining expected behavior
• Measuring actual behavior
• Feedback and coaching
• Managing disruptive behavior
• Caring for and protecting the victims

The MSP's Role in the Solution

• Help manage the process.
• Ensure early investigation/intervention
  - Immediate intervention
    - Prompt discussion with practitioner
    - May start with casual conversation
    - Address every incident
• Ensure follow-up.
• Ensure that the system is in place.
• Ensure that the processes are followed.

The [Hospital or Health Care System] will ensure that the system is in place and that the processes are followed.
The MSP’s Role in the Solution

• Help Obtain Essential documentation
  – What was reported
  – What the physician claims happened
  – Outcome of investigation
  – Conclusions/Actions
  – Document every incident/encounter
  – Keep records indefinitely
  – Document reasonableness of investigation
• Clear communication of concerns and expectations

Dealing with Behavioral Problems

• Don’t become enablers
• Be firm and persistent
• Don’t let the problem practitioner control the process
• Do what you say you will – follow through

Dealing with Behavioral Problems

• Failure to act
  – Encourages inappropriate conduct
  – Tells staff no one cares
  – Discourages reporting
  – Communicates lack of concern to physician
Dealing with Behavioral Problems

- Failure to act
  - Sends message to others with behavioral issues
  - Creates atmosphere encouraging further disruptive conduct
  - Exposes Hospital to claims from staff for harassment and hostile work place

Dealing with Behavioral Problems

- Have a clear and clearly understood process
  - Informal discussion
  - Formal intervention
    - Letters of warning/reprimand/admonition
    - Appearances before committees
    - Letters of apology
    - Corrective action under bylaws

Dealing with Behavioral Problems

- Formal Peer Review Action
  - Suspension (possibly graduated)
  - Required counselling/treatment
  - Termination
  - Denial of reappointment

Importance of following Bylaws and hearing procedures
Dealing with Behavioral Problems

In re Peer Review Action
749 N.W. 2d 822 (Minn, 2008)

“Hospital repeatedly acted in manners contrary to its established safeguarding policies; it treated Physician differently from others who had been subjected to peer review; and it imposed a harshly public punishment against Physician without first attempting a less-extreme intervention.”

Dealing with Behavioral Problems

In re Peer Review Action
749 N.W. 2d 822 (Minn, 2008)

“The factual findings made by the district court are sufficient to support the conclusion that Hospital engaged in ‘the intentional doing of a wrongful act’ or ‘the willful violation of a known right’.”

Legal Protections

Health Care Quality Improvement Act of 1986
– Immunity for Professional Review Actions

“Action or recommendation of a professional review body . . . Which is based on the competence or professional conduct of an individual physician.”

42 U.S.C. 11151(9)
Legal Protections

Standards for Immunity under HCQIA

- Reasonable belief action in furtherance of quality healthcare
- Reasonable effort to obtain the facts
- Adequate notice and hearing procedures
- Reasonable belief that action warranted by facts

42 U.S.C. 11112(a)

Legal Protections

Case law upholding immunity

- Cohlmia v. Cardiovascular Surgical Specialists
  2012 U.S. App. LEXIS 18877 (10th Cir., 2012)
- Summers v. Ardent Health Services
  150 N.M. 123, 257 P.3d 943 (2011)
- Couch v. Board of Trustees of the Memorial Hospital of Carbon County
  587 F.3d 1223 (10th Cir., 2009)

In Conclusion

“We can’t change the human condition, but we can change the conditions under which humans work”

Professor James Reason