

Managing Disruptive Physicians

presented to the
California Association of Physician Groups
Human Resources Committee
Los Angeles, California
July 10, 2007

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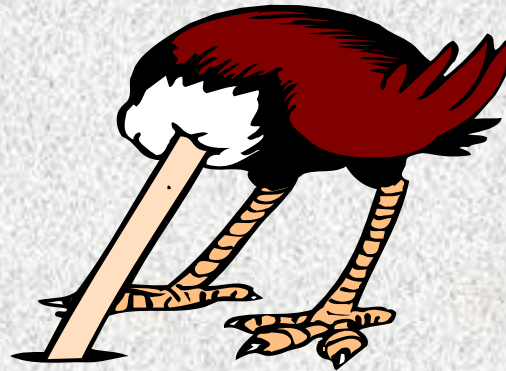
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How do you deal with this?



Like this?



Or like this?



Four Behavior Patterns

Type	Activity	Response	What's inside	Illness
Angry	Yelling	"I care about patients!"	Insecure	Mood disorder, subst. abuse
Out of compliance	Flakey	"That's not important"	Over-extended	Mania, subst abuse, ADHD
Inappropriate	Tasteless jokes	"It was just a joke"	Clueless	Narcissism mania
Creepy	Sexual	"I was just being friendly"	Lonely	Depressed, or sociopath

Action Plan

- Understand that not all disruptive behavior = illness
- Get the doctor's attention
- Be specific about the changes that must occur
- Counseling / coaching can work
- Take disciplinary action in a timely manner

Tools Needed to Address Behavior Issues:

Adequate Policies and Procedures

- Creates the foundation for enforcing behavior expectations
- Provides framework for managing the problem
- Provides hearing rights when required by law

Tools *(cont'd)*

Code/Standards of Conduct

- Puts all members of the medical group on notice regarding expectations
- Provides basis for challenging inappropriate behavior

Performance Management Must Be Prompt, Fair and Consistent

- Was the rule or standard reasonable and clear?
- Is there sufficient evidence that the rule was violated or the standard not met?
- Did the employee have sufficient training – notice?
- Are there extenuating circumstances?
- Is the penalty reasonable and appropriate?
- Is the same penalty given to other employees under similar circumstances?

Performance Improvement Process

- Step 1 – Identify clear expectations
- Step 2 – Communicate expectations effectively
- Step 3 – Measure behavior to drive improvement
- Step 4 – Manage the poor performance
- Step 5 – Take corrective action in a timely manner

Step 1 - Identify Clear Expectations

- Drafting a policy or Standards of Conduct.
- Begin with a dialogue among the physicians regarding acceptable and unacceptable behaviors.
- Involve physicians at all levels of the organization.
- If you aren't achieving consistent compliance with a current policy, do you need to revisit the way you set expectations and communicated them?

Step 2 – Communicate Expectations Effectively

- Policies and procedures should support behavior expectations and require compliance with Standards of Conduct
- Standards of Conduct should be distributed upon hiring

Step 3 – Measure Behavior to Drive Improvement

- Document concerns brought by staff and fellow physicians; preserve in order to trend
- Investigate to establish the merits of the concern
- Communicate the findings to the physician
- **Adopt a clear nonretaliation policy and enforce it firmly**

Step 4 – Manage the Poor Performance

- Provide feedback – both positive and negative
- Even imperfect data can include valid information that can be used to improve and self-correct
- Praise in public; criticize in private
- When setting new behavior expectations, provide initial feedback in a private, face-to-face meeting

Intervene When:

- A physician demonstrates repeated disruptive behavior despite receiving clear expectations of behavior and multiple instances of feedback that the behavior has not been consistent with these expectations.
- A physician demonstrates a single episode of grossly disruptive behavior that warrants immediate intervention.

Plan Each Intervention Carefully

- Who?
- Where?
- When?
- Goal? (Commitment to comply with the policy?)
- How will the physician react?

Plan Each Intervention Carefully *(cont'd)*

- What will you do when this reaction occurs?
- What is your back-up plan if the physician refuses to change?
- How will you measure significant change in behavior?
- How will you document the intervention?

Essential Elements of the Intervention

- Identify the problematic behavior or incident
- Refer to previously agreed upon expectations or the approved policy
- Invite the physician to provide another side of the story (not appropriate for third and fourth interventions)
- Deflect excuses and justifications

Essential Elements of the Intervention *(cont'd)*

- Constantly refer to data
- Focus on the behavior, not the person
- Clarify the nonretaliation policy
- Be persistent
- Keep the intervention time limited
- Close with the physician's commitment and next steps
- Inform the physician how the meeting will be documented

When to Include a Witness

- Significant disciplinary actions
- Where credibility will be an issue
- If physician has threatened a claim
- Who should the witness be?

Initial Intervention:

Performed the first time a decision has been made to move beyond simply providing feedback into a focused intervention with the physician. It is usually collegial and focused on answering the question, “Why is your performance different?” not “Why are you bad?”

Second Intervention:

Performed if the initial intervention is ineffective in achieving the desired behavior change. This is less collegial and more focused on the physician being responsible for creating a plan to change his or her behavior, and then achieving that plan.

Third Intervention:

Performed if the second intervention has not achieved the desired behavior change. This intervention is still less collegial and is focused on the physician making a clear commitment to the necessary change.

Fourth Intervention:

This is the final warning. It is delivered as a monologue, not a dialogue. It is the last step before corrective action is taken.

Step 5 – Take Corrective Action in a Timely Manner

- May require an 805 report to the Medical Board of California
- If so, then fair hearing must be afforded as well
- Business & Professions Code § 821.5 may also be implicated if peer review body compels a physical or mental examination

Business and Professions Code Section 805

Requires CEO/Administrator and Medical Director to report to MBOC when a provider's employment/contract is:

- Terminated
- Restricted (either voluntarily or involuntarily)

for a "medical disciplinary cause or reason" meaning that aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or the delivery of patient care

Business and Professions Code

Section 805 *(cont'd)*

- If a report is filed under section 805, the physician must be afforded specific hearing rights described in Business and Professions Code section 809.

Business and Professions Code Section 821.5

- Business and Professions Code § 821.5 requires Peer Review Bodies to report to the MBOC Diversion Program within 15 days of initiating a formal investigation of a physician's ability to practice medicine safely based upon information that the physician may be suffering from a disabling mental or physician condition that poses a threat to patient care.

Limitations on Termination “At-Will”

- Statutory Limitations
 - Anti-discrimination laws
 - Retaliation and whistleblower protection
 - Leave laws
 - Various Labor Code provisions

Limitations on Termination “At-Will” *(cont’d)*

- Public Policy Limitation – Engaging in Protected Conduct
 - Opposing an unlawful practice
 - Filing a claim or report with a government agency
 - Presenting an internal complaint regarding a significant matter
 - Exercising a legal right
 - Performing a legal duty

Limitations on Termination “At-Will” *(cont’d)*

- Express Contractual Limitation
 - Written agreement that employment is for a specific period, and can be terminated only for “cause.”
 - This can also be provided by oral agreement.

Preserving At-Will Status

- Include at-will language in your employment application.
- Include at-will language in your offer letters (Recent case - *Dore v. Arnold Worldwide, Inc.*, (2006) 39 Cal.4th 384).
- Include at-will language in your handbook and employee acknowledgment.
- Watch for handbook and policy language that may limit your right to terminate at will.
- Be careful about statements that may imply a promise of continued employment.

At-Will: The Bottom Line

- Preserve it, but don't rely on it.
- Always have a good reason for any termination decision.

Proceeding with Termination – Best Practices

- Ensure the decision is well supported and documented.
- Avoid the “surprise” termination.
- Review any potential risk factors.
- Ensure compliance with company policies and past practices.

Proceeding with Termination – Best Practices *(cont'd)*

- Communicate to the employee in writing – be specific about reasons.
- Communicate the decision in person – with a witness.
- Consider a severance package and release agreement.
- Carefully draft the release – particularly where the employee is over 40. (*Syverson v. IBM*, (9th Cir. 2006) 472 F.3d 1072.)

Documentation Issues

Employee right to review personnel file

- This is not limited to the employee's "official" file:

"Every employee has the right to inspect the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee." (Labor Code § 1198.5)

E-mail issues

- Every e-mail is potential evidence!

When to Document

- Any significant performance issue, or breach of company policy
- Any complaint regarding discrimination, harassment or retaliation
- Document promptly

How to Document

- State facts, not opinions
- If it's a communication, clearly state what is required of the employee
- Where possible, use objective goals
- Don't make commitments you can't keep

QUESTIONS ??

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