Health Care Compliance Association

Quality of Care Compliance Conference

DISRUPTIVE PRACTITIONERS
AND
THE 2009 JOINT COMMISSION STANDARDS

Jonathan M. Joseph, Esquire
Christian & Barton, LLP • Richmond, Virginia

Michael C. Guanzon, Esquire
Clement & Wheatley, A Professional Corporation • Danville, Virginia

JCAHO LD.03.01.01

"Effective January 1, 2009 for all accreditation programs, The Joint Commission has a new Leadership standard (LD.03.01.01)[] that addresses disruptive and inappropriate behaviors in two of its elements of performance:

<u>EP 4</u>: The hospital/organization has a code of conduct that defines acceptable and disruptive and inappropriate behaviors.

<u>EP 5</u>: Leaders create and implement a process for managing disruptive and inappropriate behaviors. In addition, standards in the Medical Staff chapter have been organized to follow six core competencies (see the introduction to MS.4) to be addressed in the credentialing process, including interpersonal skills and professionalism."

OTHER SUGGESTED ACTIONS BY JCAHO REGARDING JCAHO LD.03.01.01

1. Educate all team members – both physicians and non-physician staff – on appropriate professional behavior defined by the organization's code of conduct. The code and education should emphasize respect. Include training in basic business etiquette (particularly phone skills) and people skills.

OTHER SUGGESTED ACTIONS BY JCAHO REGARDING JCAHO LD.03.01.01

2. Hold all team members accountable for modeling desirable behaviors, and enforce the code consistently and equitably among all staff regardless of seniority or clinical discipline in a positive fashion through reinforcement as well as punishment.

OTHER SUGGESTED ACTIONS BY JCAHO REGARDING JCAHO LD.03.01.01

3. Develop and implement policies and procedures/processes appropriate for the organization that address:

- "Zero tolerance" for intimidating and/or disruptive behaviors, especially the most egregious instances of disruptive behavior such as assault and other criminal acts. Incorporate the zero tolerance policy into medical staff bylaws and employment agreements as well as administrative policies.

OTHER SUGGESTED ACTIONS BY JCAHO REGARDING JCAHO LD.03.01.01

(Policies and Procedures that address:)

- Medical staff policies regarding intimidating and/or disruptive behaviors of physicians within a health care organization should be complementary and supportive of the policies that are present in the organization for non-physician staff.

OTHER SUGGESTED ACTIONS BY JCAHO REGARDING JCAHO LD.03.01.01

(Policies and Procedures that address:)

- **Reducing fear of intimidation or retribution and protecting those who report or cooperate in the investigation of intimidating, disruptive and other unprofessional behavior.**

  Non-retaliation clauses should be included in all policy statements that address disruptive behaviors.

OTHER SUGGESTED ACTIONS BY JCAHO REGARDING JCAHO LD.03.01.01

(Policies and Procedures that address:)

- **Responding to patients and/or their families who are involved in or witness intimidating and/or disruptive behaviors. The response should include hearing and empathizing with their concerns, thanking them for sharing those concerns, and apologizing.**

OTHER SUGGESTED ACTIONS BY JCAHO REGARDING JCAHO LD.03.01.01

(Policies and Procedures that address:)

- How and when to begin disciplinary actions (such as suspension, termination, loss of clinical privileges, reports to professional licensure bodies).

OTHER SUGGESTED ACTIONS BY JCAHO REGARDING JCAHO LD.03.01.01

(Policies and Procedures that address:)

4. Develop an organizational process for addressing intimidating and disruptive behaviors (LD.3.10 EP 5) that solicits and integrates substantial input from an inter-professional team including representation of medical and nursing staff, administrators and other employees.

OTHER SUGGESTED ACTIONS BY JCAHO
REGARDING JCAHO LD.03.01.01

(Policies and Procedures that address:)

5. **Provide skills-based training and coaching for all leaders and managers in relationship-building and collaborative practice, including skills for giving feedback on unprofessional behavior, and conflict resolution. Cultural assessment tools can also be used to measure whether or not attitudes change over time.**

OTHER SUGGESTED ACTIONS BY JCAHO
REGARDING JCAHO LD.03.01.01

(Policies and Procedures that address:)

6. **Develop and implement a system for assessing staff perceptions of the seriousness and extent of instances of unprofessional behaviors and the risk of harm to patients.**

OTHER SUGGESTED ACTIONS BY JCAHO REGARDING JCAHO LD.03.01.01

(Policies and Procedures that address:)

7. **Develop and implement a reporting/surveillance system (possibly anonymous) for detecting unprofessional behavior. Include ombuds services and patient advocates, both of which provide important feedback from patients and families who may experience intimidating or disruptive behavior from health professionals. Monitor system effectiveness through regular surveys, focus groups, peer and team member evaluations, or other methods. Have multiple and specific strategies to learn whether intimidating or disruptive behaviors exist or recur, such as through direct inquiries at routine intervals with staff, supervisors, and peers.**

OTHER SUGGESTED ACTIONS BY JCAHO REGARDING JCAHO LD.03.01.01

(Policies and Procedures that address:)

8. **Support surveillance with tiered, non-confrontational interventional strategies, starting with informal 'cup of coffee' conversations directly addressing the problem and moving toward detailed action plans and progressive discipline, if patterns persist. These interventions should initially be nonadversarial in nature, with the focus on building trust, placing accountability on and rehabilitating the offending individual, and protecting patient safety. Make use of mediators and conflict coaches when professional dispute resolution skills are needed.**

OTHER SUGGESTED ACTIONS BY JCAHO REGARDING JCAHO LD.03.01.01

(Policies and Procedures that address:)

9. **Conduct all interventions within the context of an organizational commitment to the health and wellbeing of all staff, with adequate resources to support individuals whose behavior is caused or influenced by physical or mental health pathologies.**

OTHER SUGGESTED ACTIONS BY JCAHO REGARDING JCAHO LD.03.01.01

(Policies and Procedures that address:

10. Encourage inter-professional dialogues across a variety of forums as a proactive way of addressing ongoing conflicts, overcoming them, and moving forward through improved collaboration and communication.

11. Document all attempts to address intimidating and disruptive behaviors.

SAMPLE DEFINITIONS OF "DISRUPTIVE BEHAVIOR"

Sample language from a hospital perspective (broad language):

Sample No. 1: "***Disruptive and Inappropriate Behavior***: Disruptive and inappropriate behavior is interaction among hospital personnel, patients, family members or others that interferes or may interfere with patient care or hospital operations. Such behavior includes, but is not limited to, verbal abuse, loud or obscene comments, offensive comments based upon an individual's gender, race, ethnicity, religion, disability or sexual orientation, misuse of operating room instruments or equipment, or inappropriate or unprofessional physical contact or gestures."

- Sample No. 2: "***Policy:*** All reported incidents of physician/staff disruptive behavior will be referred to the Medical Staff for either information or action

Criteria: In an attempt to define physician/staff disruptive behavior, the following are offered as criteria in determining appropriate incidents to be reported:

A. Verbal or physical attacks leveled at other appointees to the hospital which are personal and irrelevant, or go beyond the bounds of professional conduct;

B. Non-constructive criticism addressed to the recipient in such a way as to intimidate, undermine confidence, belittle or imply stupidity, bad motives, or impugn the competency of the individual;

C. Impertinent and inappropriate written comments in the medical record impugning the quality of care of the hospital, or attacking particular physicians, hospital staff or hospital policy;

D. Imposing unnecessary demands on hospital staff which have nothing to do with better patient care, but serve only to burden the hospital staff with special techniques and procedures;

E. Rude or abusive conduct to other care givers;

F. Intentional abuse of hospital property and equipment;

G. Rude or abusive behavior to patients or visitors;

H. Derogatory comments about physicians, hospital staff, or treatment being given the patient, or about the operation of the hospital; and/or

I. Threats and/or physical assaults on physicians, hospital staff, or any others in the hospital."

Sample language from the American Medical Association (*see* AMA Ethics Policy E-9.045(1)):

"Personal conduct, whether verbal or physical, that affects or that potentially may affect patient care negatively constitutes disruptive behavior. (This includes but is not limited to conduct that interferes with one's ability to work with other members of the health care team.) However, criticism that is offered in good faith with the aim of improving patient care should not be construed as disruptive behavior."

- **HOSPITAL'S PERSPECTIVE ON NEW JOINT COMMISSION STANDARDS**

- Hospital Personnel Manuals
- Medical Staff Bylaws
- Medical Staff Credentialing
- Code of Conduct
- Risk Management/ Quality Assurance

CONSIDERATIONS FOR HOSPITAL COUNSEL

- Review applicable state laws regarding peer review immunity and confidentiality protections to ensure that revisions to the Medical Staff Bylaws would not inadvertently fall outside of such protections.
- If applicable, review the terms of employment and service contracts to determine whether the definitions of unacceptable, disruptive and inappropriate behaviors could conflict with the Medical Staff bylaw revisions.
- Consider mediation services as method to resolve issues among Medical Staff members.

Scenario 1
"Dr. Studly" and Dr. Uptight in the Operating Room

- **Dr. Stuart DaLeigh ("Dr. Studly")**
  Renowned neurosurgeon
- **Dr. Sally Uptight ("The 40-Year Old Virgin")**
  Gifted anesthesiologist

Scenario 2

Dr. NoNonsense and Nurse Seinfield

- **Dr. John NoNonsense**
  Cardiovascular Surgeon

- **Nurse Jerry Seinfield**
  Nursing Supervisor in Pediatrics Department

- **Kramer**
  Cardiac Patient with STDs

- **Dr. Elaine Heavy**
  Chairman of Surgery Department

Scenario 3

Dr. Teamplayer - New Home Inhospitable

- **Dr. Teamplayer -** *Foot and Ankle Surgeon*
- **Hospital Corporation**
- **Hospital A**
- **Hospital C**
- **OR Nurses**
- **Post-Op Floor Staff**

ADDITIONAL RESOURCES

- **Conflict Management Toolkit,** American Health Lawyers Association, Jane Reister Conard *et al*., 2008, http://www.healthlawyers.org/Resources/ADR/Documents/ADRToolkit.pdf

Examples of State Law on Peer Review Activities: Confidentiality and Immunity (attached to materials):

DC Law on Peer Review:

- Confidentiality: D.C. CODE 44-805 (West 2009).
- Immunity: D.C. CODE 44-803 (West 2009).

ADDITIONAL RESOURCES

Examples of State Law on Peer Review Activities: Confidentiality and Immunity (attached to materials):

PA Peer Review Protection Act, 63 PA. STAT. ANN. 425.1 *et seq.* (2009):

- Confidentiality: 63 PA. STAT. ANN. 425.4 (West 2009).
- Immunity: 63 PA. STAT. ANN. 425.3 (West 2009).

VA Law on Peer Review:

- Confidentiality: VA. CODE ANN. 8.01-581.17 (West 2009).
- Immunity: VA. CODE ANN. 8.01-581.16 (West 2009).

ADDITIONAL RESOURCES

Examples of State Law on Peer Review Activities:
Confidentiality and Immunity (attached to materials):

NC Law on Peer Review:

- Confidentiality: N.C. GEN. STAT. 90-21.22A(c) (West 2009).
- Immunity: N.C. GEN. STAT. 90-21.22A(b) (West 2009).