The law and the “disruptive physician”

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The American Medical Association (AMA), through its Council on Ethical and Judicial Affairs, supports the designation of “disruptive physician” as a potential disciplinary mechanism. It has defined two distinct forms of physician behaviors (inappropriate and disruptive) upon which such actions can be based.

Physicians who verbally intimidate others or refuse to follow orders can be seen as “disruptive.”

Inappropriate behavior
The AMA defines inappropriate behavior as “conduct that is unwarranted and is reasonably interpreted to be demeaning or offensive. Persistent, repeated inappropriate behavior can become a form of harassment and thereby become disruptive, and subject to treatment as ‘disruptive behavior.’”

Examples of inappropriate behavior include, but are not limited to, the following:

- Making belittling or berating statements
- Name calling
- Using profanity
- Writing inappropriate comments in the medical record
- Blatantly failing to respond to patient care needs or staff requests
- Deliberately refusing to return phone calls, pages, or other messages concerning patient care or safety
- Making intentionally degrading or demeaning comments regarding patients and their families, nurses, physicians, hospital personnel, and/or the hospital

**Disruptive behavior**

Disruptive behavior is defined as “any abusive conduct, including sexual or other forms of harassment, or other forms of verbal or nonverbal conduct that harms or intimidates others to the extent that quality of care or patient safety could be compromised.” Disruptive physician behaviors include, but are not limited to, the following:

- Physical or verbal intimidation or challenge, including disseminating threats or pushing, grabbing, or striking another person involved with the hospital
- Physically threatening language directed at anyone in the hospital
- Physical contact with another individual that is threatening or intimidating
- Throwing instruments, charts, or other items
- Threats of violence or retribution
- Sexual or other forms of harassment including, but not limited to, persistent inappropriate behavior and repeated threats of litigation

As this protocol to identify disruptive physicians becomes more accepted, patients, peers, or other clinicians will no longer accept such behaviors. Twenty years ago, a physician known to be abrasive, argumentative, flirtatious, or demanding in the operating room would rarely become the subject of scrutiny. Today, however, he or she may be labeled as disruptive, and in today’s investigatory, regulatory, and competitive climate, physicians should avoid even the inference of being disruptive.

**Defining a physician as disruptive**

Disruptive, as a developing legal term, is defined both by the AMA and by various documents (medical staff bylaws, employee manuals or handbooks, state and/or federal regulations, employment contracts) that set expectations for physician conduct. These documents also typically contain related clauses that enable disruptive conduct to be tied to physician discipline or termination. In these cases, disruptive conduct includes hostility, tardiness, belligerence, incompatibility with patients or staff, religious insensitivity, cultural insensitivity, racial insensitivity, uncooperative behavior, sexual impropriety, and the use of profanity. Disruptive conduct can also be described in terms of the work environment that it causes, such as a “disharmonious environment.”
Based on recent cases, the disruptive physician could be any of the following:

- The surgeon who raises his or her voice at residents, nurses, and/or medical assistants in the operating room
- The family physician perceived as being dismissive to a patient’s family member
- The specialist who criticizes or changes the primary care provider’s hospital orders
- The resident who refuses to follow the incorrect orders of a chief resident or fellow
- The attending physician who does not answer his or her pages
- The physician who is viewed as insensitive to a patient’s or colleagues religious observances in providing and scheduling treatment or assigning on-call schedules

Studies have cited a correlation between intimidating physicians and increased medical error rates (and poor patient satisfaction). From a financial standpoint, disruptive physicians may cause patients to seek care elsewhere, resulting in a break in continuity of care and increasing costs. From an operational standpoint, such behaviors can cause well-qualified medical practice and/or hospital personnel to resign or seek transfers. Disgruntled patients, colleagues, and staff can increase the likelihood of medical liability lawsuits, whistleblower actions, and complaints to various state and/or federal agencies.

**Ramifications and risk factors**

Being labeled as disruptive can be a career-ender. State and federal agencies can discipline a physician for engaging in disruptive behavior that affects the quality of patient care or suggests moral, ethical, or professional shortcomings. Complaints by patients can lead to investigations, termination of the physician’s contract, and dramatic losses in income. A physician may lose hospital privileges for intimidating, uncooperative, or insensitive behavior. Reports to the National Practitioner Data Bank may trigger cross investigations and/or actions when the physician seeks credentialing or recredentialing.

The following questions may serve as warning signs of a pending accusation of disruptive or inappropriate behavior:

- Does the physician have a high turnover rate of staff or clinicians?
- Do patients or staff regularly complain about him or her?
- What is the physician’s personal reputation in the medical and patient community?
- What does an Internet search of the physician’s name show?
- Have any patient surveys been conducted by the practice, the facility, or a health plan? What are the results?

**Avoiding the “disruptive” label**

To avoid the label of “disruptive physician,” orthopaedic surgeons should obtain any and all
rules, regulations, policies, or protocols (most commonly referred to as codes of conduct) under which they practice. These codes of conduct should be carefully reviewed and strictly followed. If any are viewed as unreasonable, the accepted structures at either the place of employment or through the offices of the medical staff should be used to change them.

Any inference that behavior has been labeled as disruptive should be addressed squarely and professionally, using the following guidelines:

- Obtain and review the code of conduct, policy, manual, handbook, and/or bylaws that covers the governing “Disruptive Physician” policy.
- Obtain a copy of any involved patient records.
- Demand that any accusation be confirmed, by the source, in writing.
- Attend meetings pertaining to a complaint of disruptive conduct only after confirming, in writing, who will attend the meeting and the specific allegations or topics to be discussed.
- Require that any favorable resolution of the complaint (ie, dismissal) be put in writing and inserted in any applicable medical staff, employment, and/or credentialing file. Obtain a copy for yourself.
- If the result is unfavorable (corrective action), carefully review any appeal deadlines and/or challenge requirements.

Ignorance of these new rules of conduct may well threaten a physician’s future ability to practice medicine. Choosing instead to openly address and manage the risk protects the physician and helps secure his or her future.

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