REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*

CEJA Report 3-I-09

Subject: Physicians with Disruptive Behavior

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At the 2008 Interim Meeting of the American Medical Association (AMA) House of Delegates (HOD), the HOD adopted Resolution 1 (I-08), "Disruptive Behavior by a Physician." Introduced by the Florida Delegation, the Resolution requested in part that the Council on Ethical and Judicial Affairs (CEJA) update Policy E-9.045, "Physicians with Disruptive Behavior." Consequently, the Council has undertaken a careful review of this Opinion.

CEJA believes that E-9.045 and the AMA's Model Medical Staff Code of Conduct adequately address the concerns raised by Resolution 1 (I-08) and related testimony to the Reference Committee on Amendments to Constitution and Bylaws. Therefore, CEJA has chosen to prepare this informational report in lieu of a revised Opinion on disruptive behavior by a physician.

This informational report examines existing policy with respect to concerns articulated in Resolution 1 (I-08) and testimony. In particular, this report examines policy relevant to good faith criticism that is wrongly labeled "disruptive" by a hospital administration and the role of an organized medical staff in dealing with disruptive behavior by a physician.

BACKGROUND

At the 1999 Annual Meeting of the AMA House of Delegates, the HOD adopted Resolution 9 (A-99), "Addressing the Disruptive Physician." Introduced by the Resident and Fellow Section, Resolution 9 (A-99) requested that the AMA "identify and study behavior by physicians that is disruptive to high quality patient care," and that the AMA "define the term 'disruptive physician' and disseminate guidelines for managing the disruptive physician." In response to Resolution 9 (A-99), the Council on Ethical and Judicial Affairs wrote CEJA Report 2-A-00, "Physicians With Disruptive Behavior." In developing its report, CEJA contacted the AMA's Governing Councils of the Resident and Fellow Section and the Organized Medical Staff Section, as well as the American Psychiatric Association, the Federation of Medical State Boards, and the American College of Legal Medicine. CEJA Report 2-A-00 was adopted at the 2000 Annual Meeting, and its recommendations formed the basis for Policy E-9.045.

In July 2008, the Joint Commission published Standard LD.03.01.01. In recognition of disruptive physicians' ability to intimidate others and affect morale or staff turnover that can be harmful to patient care, Standard LD.03.01.01 requires accredited health care organizations to create a code of conduct that defines "acceptable," "disruptive," and "inappropriate" behaviors and to establish a

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formal process for managing unacceptable behavior.[1] A related "Sentinel Event Alert" noted that "disruptive and intimidating behaviors" undermine a culture of safety and can contribute to medical errors and preventable adverse outcomes.[2]

Concerns about the possible pernicious effect of LD.03.01.01 led to Resolution 1 (I-08). The Resolution reflected a concern that hospitals could misuse the term "disruptive physician" if there was no clear definition of what acts by a physician rise to the level of truly disruptive behavior. CEJA was thus asked to consider updating E-9.045, for further clarification and consideration of issues raised in reference committee hearing testimony, such as the need to address further the inappropriate use of allegations of "disruptive behavior" by institutions to retaliate against members of the medical staff, or by members of the medical staff against their peers. The Council has undertaken a careful review of this Opinion.

DEFINING DISRUPTIVE BEHAVIOR

Disruptive behavior by a physician, sometimes called "abusive" behavior, generally refers to a style of interaction by physicians with others, including hospital personnel, patients, and family members, that interferes with patient care or adversely affects the health care team's ability to work effectively.[3,4] It encompasses behavior that adversely affects morale, focus and concentration, collaboration, and communication and information transfer, all of which can lead to substandard patient care.[2,3,5-7] Disruptive behavior by a physician can also increase apprehension and anxiety among patients, both those being treated by the physician as well as other patients who may witness outbursts or other inappropriate behavior.[7]

The frequency of disruptive behavior is relevant, as a pattern of behavior may be considered disruptive when a single instance of such behavior would not.[3] As the Federation of State Medical Boards (FSMB) has observed, "[d]isruptive behavior in physicians is characteristically a chronic or habitual pattern of behavior" that creates a hostile environment, the effects of which have serious implications on the quality of patient care and patient safety.[7] The AMA's *Code of Medical Ethics* and the OMSS Model Medical Staff Code of Conduct both provide further insight on appropriate, inappropriate, and disruptive behavior by physicians.

AMA Ethics Policy

Opinion E-9.045, "Physicians with Disruptive Behavior," defines disruptive behavior as "personal conduct, whether verbal or physical, that negatively affects or that potentially may negatively affect patient care."[4] Disruptive behavior by a physician does not include "criticism that is offered in good faith with the aim of improving patient care."[4] E-9.045 provides that each medical staff should develop and adopt bylaw provisions or policies for intervening in situations where a physician's behavior is identified as disruptive.[4,8] These bylaw provisions or policies should contain procedural safeguards that protect due process and facilitate prompt and fair intervention.[3,4,8]

OMSS Model Medical Staff Code of Conduct

The Model Medical Staff Code of Conduct developed by the Organized Medical Staff Section encourages organized medical staffs to adopt bylaws containing a three-tiered approach to identifying physicians with disruptive behavior. The model code distinguishes appropriate,

inappropriate, and disruptive behavior and makes clear the difference between truly disruptive behavior and good faith criticism wrongly labeled disruptive.

Appropriate Behavior

It is entirely appropriate for physicians to "advocate for patients, to recommend improvements in patient care, to participate in the operations, leadership or activities of the organized medical staff, or to engage in professional practice including practice that may be in competition with the hospital." Physicians who speak about quality concerns within their hospital or take other steps in an attempt to improve patient care and safety should be protected from retribution.[8,9]

AMA's Model Medical Staff Code of Conduct provides the following examples of appropriate physician behavior:

- Criticism communicated in a reasonable manner and offered in good faith with the aim of improving patient care and safety;
- Encouraging clear communication;
- Expressions of concern about a patient's care and safety;
- Expressions of dissatisfaction with policies through appropriate grievance channels or other civil non-personal means of communication;
- Use of cooperative approach to problem resolution;
- Constructive criticism conveyed in a respectful and professional manner, without blame or shame for adverse outcomes;
- Professional comments to any professional, managerial, supervisory, or administrative staff, or members of the Board of Directors about patient care or safety provided by others;
- Active participation in medical staff and hospital meetings (i.e., comments made during or resulting from such meetings can not be used as the basis for a complaint under this Code of Conduct, referral to the Health and Wellbeing Committee, economic sanctions, or the filing of an action before a state or federal agency);
- Membership on other medical staffs; and
- Seeking legal advice or the initiation of legal action for cause.[9]

The model code identifies the following as types of physician behaviors—inappropriate and disruptive—that a medical staff should not tolerate.

Inappropriate Behavior

Inappropriate behavior is conduct that is unwarranted and is reasonably interpreted to be demeaning or offensive. This behavior can have a detrimental effect on relationships between healthcare practitioners. Inappropriate behavior includes such things as belittling or berating statements, use of profanity or disrespectful language, inappropriate comments written in the medical record, deliberate failure of cooperation without good cause, and refusal to return phone calls, pages, or other messages concerning patient care or safety.[9] Persistent, repeated inappropriate behavior can become a form of harassment and thereby rise to the level of disruptive behavior.[9]

Disruptive behavior

In keeping with E-9.045, the OMSS model code defines disruptive behavior 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.[9] Disruptive physician behavior includes, but is not limited to:

- Physically threatening language directed at anyone in the hospital including physicians, nurses, other medical staff members, or any hospital employee, administrator or member of the Board of Directors;
- Physical contact with another individual that is threatening or intimidating;
- Throwing instruments, charts or other things;
- Threats of violence or retribution;
- Sexual harassment; and,
- Other forms of harassment including, but not limited to, persistent inappropriate behavior and repeated threats of litigation.[9]

Because of the detrimental effects on patient care and the ability to work with other members of the health care team, disruptive behavior by a physician should not be tolerated.

AMA policy is consistent in providing that an organized medical staff, not a hospital's administrative body, is the proper entity to deal with disruptive behavior by physicians.[4,9] OMSS supports tiered, nonconfrontational intervention strategies, starting with informal discussion of the matter and escalating to the use of summary suspension when the disruptive physician behavior presents danger to the health of any individual.[9] Both E-9.045 and the model code of conduct hold that policies should allow for self-correction and a means of monitoring change in behavior, with the focus on restoring trust, placing accountability on and rehabilitating the offending medical staff member, and protecting patient care and safety. When there is reason to believe that inappropriate or disruptive behavior is due to illness or impairment, the matter should be evaluated and managed confidentially according to the established procedures of the medical staff's health and well-being (or equivalent) committee.[4,9]

CONCLUSION

Disruptive physician behavior is undoubtedly a serious issue that organized medical staffs must address. CEJA believes, however, that Policy E-9.045 and AMA's Model Medical Staff Code of Conduct adequately address the concerns raised by Resolution 1 (I-08) and related Reference Committee hearing testimony.

REFERENCES

1. Joint Commission Leadership Standard LD.03.03.01.
2. Joint Commission. Sentinel Event Alert, Issue 40, July 9, 2008.
3. American Medical Association's Council on Ethical and Judicial Affairs. Report 2-A-00, Physicians With Disruptive Behavior. Chicago, IL: American Medical Association, 2000. Available at http://www.ama-assn.org/ama1/pub/upload/mm/code-medical-ethics/9045a.pdf.
4. American Medical Association. Opinion E-9.045 "Physicians With Disruptive Behavior." AMA Code of Medical Ethics. Chicago, IL: American Medical Association, 2008.
5. Rosenstein AH, O'Daniel M. A survey of the impact of disruptive behaviors and communication effects on patient safety. The Joint Commission Journal on Quality and Patient Safety. 2008;34(8):464-471.
6. Pfifferling JH. Physicians' "Disruptive" Behavior: Consequences for Medical Quality and Safety. American Journal of Medical Quality. 2008;23(3):165-167.
7. Russ C, et al. Report of the Special Committee on Professional Conduct and Ethics. Federation of State Medical Boards of the United States. 2000.
8. H-225.956 "Behaviors That Undermine Safety"
9. Cohen BI, Snelson EA. Model Medical Staff Code of Conduct. American Medical Association. 2008.