Washington Healthcare News

wahcnews.com

Articles, Interviews and Statistics for the Healthcare Executive

VOLUME 4, ISSUE 3 MARCH 2009

2009 Joint Commission: Implementing the New Conduct Standards

By Greg E. Montgomery
Healthcare Attorney and Partner
Miller Nash LLP

The 2009 Joint Commission standards recognize "[d]isruptive behavior that intimidates others and affects morale or staff turnover can be harmful to patient care." Addressing members of the hospital governing body, senior hospital management, and officers of the organized medical staff as "leaders," the 2009 Joint Commission standards provide:

> "Leaders must address disruptive behavior of individuals working at all levels of the organization, including management, clinical and administrative staff, licensed independent practitioners, and governing body members."

To this end, the new Joint Commission leadership standards require hospitals to have a written code of conduct defining acceptable, disruptive, and inappropriate behaviors, as well as a process for managing inappropriate behavior. The Joint Commission standards suggest that any conduct code adopted for the medical staff complement and support existing conduct codes for nonpractitioner staff.

Drafting the conduct code

There is no single correct conduct code. However, some basic principles should be considered in creating or updating a conduct code to conform to the 2009 Joint Commission standards. The following suggestions, based on experience with corrective action procedures, primarily address medical staff conduct codes.

1. Keep it simple. The required conduct code need do only two things: (1) define acceptable and unacceptable behavior in easily understood terms with some illustrative examples; and (2) establish a clear process for reporting, investigating, and addressing incidents of unacceptable behavior.

   Extensive policy statements, statements of general principles of the conduct code or commitments to implement various laudable goals in the future often simply create fodder for legal debate in the course of any corrective-action proceeding.

2. Keep it flexible. Any conduct policy should allow the response to a reported incident of unacceptable conduct to be crafted to fit the nature of the incident, the person(s) involved, and any history of similar incidents. Everyone has the occasional bad day. Keep open the option of dealing with such occasions informally. Every reported conduct incident should not necessarily trigger step one of a multistep progressive response program. At the same time, reserve the ability to go directly to corrective action should the conduct and situation warrant such a response.

3. Preserve your immunities. Courts have been dealing with disruptive-conduct cases for decades because physicians who are subject to corrective action based on unacceptable conduct regularly sue everyone involved in the process. Generally, medical staff bylaws, state law, and federal law provide immunity from civil dam-

age actions for hospitals and members of the medical staff who participate in any corrective action taken with respect to a practitioner.

These immunities are generally conditional. To apply, they may require, for example, that all actions were in good faith, or that certain procedural rights were provided to the practitioner before any adverse action was taken. When you have completed your code of conduct, confirm that following it will lead you to, and not away from, available immunities.

Implementing the conduct code

The best possible code of conduct is of little value without consistent, disciplined implementation. In our experience, three areas are particularly critical.

1. Investigation. The inquiry should focus on facts: (a) what the actor did or said; (b) the statements or conduct that the actor was responding to; (c) the effect of the actor's statements or conduct on those present; (d) the history of the statements or conduct. While easier to obtain, descriptions or opinions such as "the actor behaved like a jerk" are considerably less helpful.
2. Documentation. Accurate and complete documentation of reported incidents of inappropriate conduct is essential. The intent of the required conduct code is to reduce incidents of behavior that can be harmful to patients. Thus, in addition to the facts of the incident, it is important to document any actual or potential impact on patient care.
3. Accountability. Too many performance improvement plans or personal conduct codes succumb to the "file and forget" syndrome. Any plan or personal conduct code intended to improve an individual's behavior should clearly establish who is responsible for ensuring adherence to all plan elements, both by the individual whose conduct precipitated the plan and by any others who are required to participate in achieving the objectives of the plan. The consequences of noncompliance with the plan or personal code requirements should be clearly stated and the individual responsible for ensuring compliance should be required to promptly report any noncompliance to those with authority to act on the information.

The new Joint Commission standards are premised on the belief that an environment of teamwork and respect for others fosters quality and safety in the delivery of health care services. Creating and enhancing such an environment should be the goal in drafting and implementing the required code of conduct.

Greg E. Montgomery is a healthcare attorney and partner at Miller Nash LLP. He can be reached at greg.montgomery@millernash.com. Miller Nash LLP is a multi-specialty law firm with offices in Seattle and Vancouver Washington and Portland and Central Oregon.