

Editorial:

The Insulting Physician “Code of Conduct”

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The physician “code of conduct” is a long list of prohibited physician behaviors in the hospital setting. It is increasingly being imposed on physicians by hospitals throughout the nation.

Unilateral Dictation of the Code by Hospital Administration

The typical physician code of conduct is initiated by a hospital administration. Its wording is curiously similar from one hospital to the next, suggesting that a template is being circulated.

Hospitals frequently employ the following tactic to implement the physician code of conduct: A hospital administration will submit a template physician code of conduct to the Medical Executive Committee (MEC) for approval. The MEC votes to adopt the code. The hospital administration then presents it to all physicians on staff and requires physicians to agree to it and sign it as a condition of maintaining privileges in the hospital.

Adoption of the physician code of conduct is thus often accomplished without the knowledge, review, or vote of the medical staff membership. Indeed, the hospital administration may not want the medical staff membership to know about the physician code of conduct before it is adopted, and they may not want the medical staff membership to review and vote on it.

Hospital administrations often take full advantage of the fact that MECs are generally authorized to act on behalf of the medical staff between regular medical staff meetings. And, if the hospital administration has followed the advice provided in legal seminars about how hospitals can gain more control over physicians on staff, the hospital administration may have no difficulty getting the code of conduct passed by the MEC. Hospital administrations typically gain majority control of an MEC via physician employment, exclusive contracts, paid directorships, and other financial arrangements that make members of the MEC financially dependent on the hospital administration.

Prohibited Physician Conduct

Examples of prohibited conduct include:

- Derogatory or inflammatory statements about the quality of care being provided by the hospital, another medical staff member, or any other individual outside of appropriate medical staff and/or administrative channels. [**Translation: Thou shalt not be a physician “whistleblower.”**]
- Theft or destruction of hospital property.
- Falsification, destruction, or improper alteration of the medical record.
- Verbal and/or physical attacks directed at other medical staff members, allied health professionals, hospital employees,

patient volunteers, or visitors that are personal, or go beyond the bounds of acceptable professional comment.

- Patient abuse or neglect including theft or improper handling of patient property.
- Inappropriate physical contact with another individual that is threatening, abusive, harassing, or intimidating.
- Degrading or demeaning statements concerning patients, families, nurses, physicians, hospital employees, or the hospital.
- Profanity or other offensive language while in the hospital and/or while talking with nurses, hospital employees, or others.
- Failure to present oneself with appropriate professional dress or demeanor in dealing with patients, family members, hospital administration, or hospital employees.
- Repetitive or persistent failure to complete medical records in a timely manner despite administrative notices, warnings, and/or suspension of privileges for failure to complete medical records. [**Note how this converts an administrative offense into a violation of the code of conduct.**]
- Inappropriate response to patient or staff needs or requests.
- Refusal to accept medical staff committee assignments or to participate in medical staff affairs except on one’s own terms, or to do so in a disruptive or uncooperative manner. [**Note how this makes accepting medical staff assignments mandatory irrespective of how busy the physician may be.**]
- Sexual harassment, which is defined as unwanted sexual advances, requests for sexual favors, and any other verbal or physical conduct of a sexual nature when (i) submission to or rejection of this conduct by an individual impacts decisions affecting hiring, evaluation, promotion, retention, or employment; (ii) this conduct interferes with the individual’s ability to perform his or her job function or creates an intimidating, hostile, or offensive work environment, or (iii) sexual conduct that is unwanted and offensive to those individuals who are subjected to it or others who witness it. Examples include, but are not limited to: innuendoes, sexually suggestive statements or comments, epithets, derogation, slurs, sexually inappropriate jokes, propositions, sexually graphic commentaries, threats, and/or sexually suggestive sounds; sexually explicit posters, cartoons, or drawings, sexually suggestive objects or pictures, leering, and/or sexually obscene gestures; unwanted physical contact of a sexual nature, including improper intimate touching, and/or sexual assault; retaliating or threatening retaliation as a result of an individual’s objection to sexually abusive or harassing conduct.
- Other behaviors not specifically delineated but deemed inappropriate by a majority of the Medical Executive Committee. [**Note how this places absolute power and control in the hands of the MEC, over which the hospital administration may have gained majority control.**]

Many of the prohibited behaviors in the physician code of conduct are vague and highly subjective, and can be easily manipulated and defined by a hospital administration so as to accomplish the hospital's goals, including improper goals (e.g. retaliation against a physician "whistleblower," anti-competitive actions against physicians, discrimination, etc.). Many of the prohibited physician behaviors also require no evidence beyond how the accuser feels. The accusation itself is sufficient to substantiate the charge against an accused physician.

Purpose of the Code

In the never-ending quest of hospital administrations to gain more power and control over physicians on staff, the underlying purpose of imposing a physician code of conduct on physicians is clear—it diminishes the professional standing of physicians on staff and in so doing increases the hospital's authority and control over physicians. The physician code of conduct is intentionally insulting, demeaning, and degrading to physicians, and reduces physicians to being treated like juvenile delinquents at a reform school. It assumes that all physicians, like juvenile delinquents, need to be subjected to a long list of prohibited behaviors because, in the hospital administration's view, physicians are predisposed to such things as theft, destruction of property, and physical and sexual assault. Conspicuous by its absence is any mention of "disruptive" or "abusive" hospital administrators, or any similar code of conduct applicable to a hospital administration.

Proposal for Equal Application of the Code of Conduct

First and foremost, Medical Staff Bylaws should include a statement that the Medical Staff Bylaws and all appended policy manuals and documents (including the hospital administration's code of conduct) represent a binding contract between the medical staff and the hospital.

If the hospital is intent on implementing a code-of-conduct policy, then the policy should apply equally and in like manner to the hospital administration as well as to physicians.

The term "disruptive hospital administrator" and/or "abusive hospital administrator" should be incorporated into the hospital administration's code of conduct and should be defined as anyone in the hospital administration who, in the view of the medical staff (as determined by majority vote), interferes with the ability of physicians to provide safe and high-quality care to patients in the hospital.

The hospital administration's code of conduct should also include the following prohibited behavior:

- Taking or threatening to take any adverse action against a physician whistleblower. A physician whistleblower shall be defined as a physician who advocates for high-quality care and safe care for patients in the hospital. No member of the hospital administration shall penalize, discriminate against, retaliate against, or threaten to retaliate against any physician whistleblower.
- Interfering in any manner with a physician's ability to provide safe and high-quality care to patients in the hospital.
- Making exclusive contracts and/or paid directorships between physicians and the hospital without the approval of the medical staff. In recognition of the fact that the medical staff is the primary entity in the hospital responsible for maintaining high-quality care for patients, all terms of exclusive contracts and/or paid directorships shall be made available to the medical staff for review so as to ensure high-quality care in the hospital.

- Threatening or abusive behavior or criticism that intimidates, undermines confidence, or implies incompetence of physicians on the medical staff. Threatening or abusive behavior may be either verbal or non-verbal (including threatening or intimidating facial expression, body language, or other non-verbal gestures).
- Failing to show proper respect and demeanor in dealing with physicians on the medical staff.
- Imposing onerous requirements on physicians for any purpose other than the furtherance of high-quality medical care. Cost-containment requirements that interfere with a physician's ability to provide appropriate care to patients in the hospital shall be prohibited.
- Coercing physicians or exerting pressure on physicians to provide substandard or unsafe care to patients in the hospital based on economic credentialing. Economic credentialing shall be defined as the application of any economic factor (e.g. length of stay, cost per patient, or cost per DRG), or any other non-medical factor not directly related to the provision of high-quality care in the hospital to the credentialing of physicians on staff.
- Compiling or maintaining a secret file on any physician member of the medical staff. The hospital administration must grant the physician complete access to the physician's own medical staff file.
- Accepting any anonymous complaints filed against any physician member of the medical staff. All complaints against a physician member of the medical staff must be in writing, with the complaint and identity of the complainant made available to the physician against whom the complaint is directed.
- Soliciting complaints against any physician on staff or disseminating negative rumors about any physician on staff.
- Allowing any attorney representing the hospital to interfere in any medical peer review matter before the accused physician's appeal goes before the board of directors of the hospital. Conflicts of interest, whereby a hospital employs an attorney to represent both the medical staff (or any entity thereof—including the MEC) and the hospital simultaneously shall be forbidden. No attorney shall be allowed to conduct peer review on any physician on the medical staff.
- Conducting a sham peer review or allowing a sham peer review to be conducted by the hospital. The hospital administration shall provide both procedural and substantive due process and fundamental fairness to all accused physicians subject to peer review and credentialing in the hospital.
- Creating a hostile work environment, and/or allowing any behavior on the part of any of the hospital's employees that would create a hostile work environment for any physician member of the medical staff. Such behavior would include, but not be limited to, passive-aggressive behavior of any hospital employee toward a physician, hostility of any hospital employee toward a physician, discrimination of any hospital employee against a physician, any refusal of a hospital employee to cooperate with any physician in delivering high-quality care, and any attempt by any hospital administrator or employee to provoke any physician member of the medical staff.
- Falsification of charges against any physician on the medical staff or abuse of the "disruptive physician" label.
- Falsification or improper altering of the minutes of any meeting of any medical staff committee.
- Degrading, demeaning, discriminatory, or harassing comments about any physician member on the medical staff, including

allowing its employees to make degrading, demeaning, discriminatory, or harassing comments about any physician on staff.

- Profanity or other offensive language while in the hospital and/or talking with physicians, nurses, other hospital employees, or others not employed by the hospital.
- Inappropriate physical contact, including but not limited to, hitting, slapping, kicking, biting, spitting, punching, bumping, pushing, tripping, or any other unwanted physical contact or assault on any physician member of the medical staff by any member of the hospital administration or any of its employees.
- Sexual harassment or assault, by any member of the hospital administration or its employees including unwanted sexual advances, requests for sexual favors and any other verbal or non-verbal conduct of a sexual nature when (i) submission to or rejection of this conduct by a physician impacts decisions affecting evaluation, credentialing, hiring, contracting, retention, promotion, employment, or medical staff privileges; (ii) this conduct interferes with the physician's work performance or creates an intimidating, hostile, discriminatory, or offensive work environment, or (iii) sexual conduct that is unwanted and offensive to those physicians who are subjected to it or to others who witness it. Examples include, but are not limited to, the following: Innuendoes, sexually suggestive statements or comments, epithets, slurs, jokes with inappropriate sexual content, propositions, sexually graphic commentaries, threats, and/or sexually suggestive sounds; sexually explicit posters, cartoons, or drawings, sexually suggestive objects or pictures, leering, and/or sexually obscene gestures; unwanted physical contact of a sexual nature, including improper intimate touching, and/or sexual assault; (iv) retaliating or threatening retaliation as a result of a physician's objection to the hospital administration's or hospital employee's abusive or sexually harassing conduct.
- Alcohol or drug abuse that impairs job performance.

- Violating any provision of the medical staff bylaws or policy manuals or other documents appended to the bylaws.
- Theft or destruction of property owned by any physician on the medical staff.
- Other behaviors not specifically delineated but deemed inappropriate by a majority of the medical staff.

Enforcement Provisions

The following enforcement provisions should be included in the hospital administration's code of conduct:

If in the view of the medical staff (by majority vote) anyone in the hospital administration violates any provision of the hospital administration's code of conduct, that individual shall be deemed to have voluntarily resigned his position and employment at the hospital. Periodic review of all members of the hospital administration and a vote of confidence by the medical staff shall be taken no less often than every two years. Failure to receive a favorable review via majority vote of the medical staff shall constitute a vote of no confidence and shall be cause for a recommendation by the medical staff to the hospital board of directors for immediate termination of the employment of the individual involved.

Conclusions

The implementation of a hospital administration's code of conduct provides necessary checks and balances in the hospital so as to ensure high-quality care and fair treatment of all physicians on the medical staff.

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