



7 Steps To Sever Ties With An Employed Physician

Insights

10.31.17

It is always unpleasant for a healthcare entity or medical practice to have to sever ties with an employed physician, but it is sometimes necessary. Perhaps the physician has committed serious policy violations or lost an insurance contract, creating financial problems for the healthcare entity. Or perhaps other employees have repeatedly complained about the physician's demeanor and the physician has refused to modify their conduct.

Practically speaking, any number of scenarios may result in a physician's involuntary departure. Regardless of the reason, a doctor's unique role presents considerations that merit special attention. Before terminating an employed physician, every healthcare entity or medical practice should, at a minimum, prepare by reviewing these seven steps:

1. Document Performance Issues And Reasons For Termination

Always critical, this rule takes on even greater significance for a number of reasons when you part ways with a physician. First, physicians play a unique role in the public perception of their employers. The doctor-patient bond is, of course, recognized as one of the most important and revered relationships in an individual's life. Disrupting that relationship significantly affects many people.

Second, physicians are generally highly compensated and large revenue generators, thus high-stakes financial questions are raised when they leave an employer. Third, physician departures often present issues related to insurance contracts and, sometimes, pending litigation. These are just a few of the issues likely to emerge that are unique to the departure of an employed physician, and they serve as a reminder that, in every case, the departure makes it even more important than usual to pay attention to all relevant documentation.

If the reason for the physician's departure is not as clear-cut as the loss of the individual's medical staff privileges or a very obvious, egregious policy violation, you should carefully review your supporting documentation to ensure it is clear and complete. The more subjective the underlying reason for the separation, the more important it will be to review documentation in detail. Does it explain what happened, when it happened, why the issue was important, and how the issue was addressed with the doctor? Does the documentation show the physician was on notice of your expectations going forward from the incident?

Recognizing the respect and deference that doctors usually receive, your documentation must paint a very clear picture of the physician's misconduct or poor performance, as well as your efforts to put the doctor on notice of the need for behavioral change. The absence of such documentation will make any subsequent litigation far more challenging.

2. Review The Employment Contract

In the case of an employed physician, there is often some form of employment contract in place. It is a good practice to employ doctors pursuant to a comprehensive written contract. If one exists, review the document thoroughly before taking action, focusing obviously on the termination clause, but not ignoring other crucial provisions. Look first at the term of the agreement and the requirements for ending it prematurely. For example, the contract may contain a two-year commitment and provisions for early termination under specific circumstances and with a particular form of notice. The specific language contained in the agreement is, of course, critical.

Contracts may provide for early termination "at will" (without cause) or "for cause." Often there are separate provisions that allow termination without cause under specific circumstances, and others that permit termination for cause (with "cause" being defined in the agreement). Generally, a "without cause" termination provision will require, at a minimum, a specified notice period or will state that the provision may only be exercised within particular time periods.

On the other hand, for-cause termination usually is immediate, although it may require that the physician be given an opportunity to cure the "cause" before terminating. The contract may define "cause" to include a variety of situations, such as the loss of medical license, loss of hospital privileges, or the loss of participation status with third-party payors. For-cause clauses may also identify specific triggering events, such as a material breach or willful misconduct.

The contract may also address issues of compensation, severance pay, or cooperation in future activities such as completing medical records or involvement in pending litigation. Whatever terms the contract may include, you need to understand how they apply to the situation at hand before initiating a termination.

3. Consider Negotiating Severance Pay Or Other Terms

An existing contract may address how pay and benefits are to be handled in the event of termination. Otherwise, you will not owe any money, aside from compensation that has already been earned, to the employed physician upon departure or termination. Even without a contract, however, you may want to negotiate such terms and obtain a waiver of claims upon termination in order to avoid a protracted dispute. In such cases, it would make sense to explore from the start whether a palatable agreement can be reached to avoid the significant costs and distractions associated with litigation.

4. Ensure Continuity Of Care

When a physician is terminated, you must ensure continuity of care, particularly for the patients who had been receiving medical care from the departing doctor. Depending upon the circumstances,

including the credentials and availability of other qualified physicians, you may be able to continue providing care for all of the departed doctor's patients. If not, you should make arrangements to ensure those patients will continue to have access to care.

Check with your state and local licensing agencies to confirm what is required of you when a physician is terminated from employment. Generally, medical records will belong to your organization, not the employed doctor. Of course, the patient always retains rights as to their own medical records. Depending upon the jurisdiction, however, and discussed further below, you may have to provide certain other information to patients, or even to the departing physician.

5. Carefully Plan Communications

You will need to inform various individuals and entities – which could include your staff, patients, state medical licensing organizations, insurance carriers, and government programs such as Medicaid and Medicare – when a physician is no longer associated with your organization. You should ensure, however, that you provide only the necessary facts when you craft your communication announcing the departure. Your staff must not speculate or further explain the physician's departure to patients, coworkers, or others. If patients ask why a particular doctor departed, your staff should be trained to refrain from commenting or attempting to explain the reason.

Some states require healthcare entities to send a formal notice within a specified time period (typically 30 days) upon a physician's departure. These notices may typically be transmitted by mail or HIPAA-compliant electronic means to all patients who were treated by the physician within the two years preceding their departure. Your medical practice may, in some instances, transfer these notification requirements to the departing physician by providing a list of those patients and their contact information. Any such notice should be factual and concise, to include the following information:

A statement that the physician will no longer be practicing at your health care entity;

- The final date the physician provided services at your health care entity, or the expected date if applicable;
- The contact information for the physician's new location, if applicable;
- Contact information for other physicians at your organization who can provide care to the patient; and
- Information on how patients can acquire their medical records in the transition.

6. Handle Medical Records Properly

You also must determine what to do with any medical records belonging to the departing physician's patients. Depending on the circumstances, you may retain medical records, provide patients reasonable time to retrieve copies, or have the records transferred to another healthcare provider.

Always maintain a balance between providing medical records to the patient and preserving the patient's privacy.

7. Consult A Professional

Finally, as with all employees, a doctor's protected classifications (such as gender, race, and age) cannot be factors in the termination or you will run afoul of various federal, state, and local civil rights laws. If there is a chance that a terminated physician might question whether you considered any improper factors in making your employment decision, it is advisable to consult a lawyer who understands these areas before taking any adverse employment actions. Similarly, you should seek counsel's advice when dealing with any of the steps described in this article.

The involuntary departure of a physician is never a pleasant experience, but with appropriate preparation and planning, you can at least minimize associated costs, disruptions, and distractions that can often accompany terminations.

For more information, contact the authors at MPost@fisherphillips.com (610.230.2146) or KTroutman@fisherphillips.com (713.292.5602).

Related People



A. Kevin Troutman
Senior Counsel
713.292.5602
Email

Service Focus

Litigation and Trials
Counseling and Advice

Industry Focus

