

JOINT COMMISSION ALERT TARGETS INTIMIDATING/DISRUPTIVE BEHAVIOR: AIMS TO STAMP OUT THE “EQUAL OPPORTUNITY HARASSER”

Insights

Jul 10, 2008

Recognizing that intimidating and disruptive behavior can compromise the delivery of quality healthcare, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) on July 9, 2008, issued a Sentinel Event Alert focusing upon its new requirements to address such behavior. The Sentinel Event Alert suggests what healthcare organizations must do to address all kinds of harassing and disruptive behavior, not just conduct made illegal under workplace discrimination and harassment laws.

The new standards dovetail nicely with workplace practices long recommended to prevent legal claims such as sexual harassment, race discrimination and retaliation. Although these standards are contained in the Leadership chapter of the JCAHO accreditation manual, successful implementation is likely to demand extensive participation by Human Resources (HR) professionals, who are already experienced in dealing with many similar requirements.

Acknowledging that only a small percentage of individuals actually engage in the offensive behavior being targeted, the JCAHO is seeking to eliminate intimidating and disruptive behavior that extends well beyond the scope of physician and nurse interactions. In fact, it recognizes that other healthcare professionals, such as pharmacists, therapists, support staff and administrators, sometimes engage in unacceptable conduct. JCAHO found these new standards and the Alert necessary in part because of what it termed a “history of tolerance and indifference” toward such behavior.

The standards themselves (LD.03.01.01) become effective January 1, 2009, but hospitals and others should begin planning implementation now. Strikingly similar to

no-harassment and related policies long encouraged by employment attorneys, the JCAHO recommends the following actions, among other things:

- Educate all team members regarding appropriate behavior defined by the organization's code of conduct;
- Hold all team members accountable and enforce the code of conduct equitably;
- Develop and implement policies to address: "zero tolerance" for intimidating/disruptive behaviors; reducing fear of retaliation; and how and when to begin disciplinary action.
- Develop processes for addressing unacceptable behavior;
- Provide training for managers and develop systems for assessing the staff's perception of the seriousness and extent of unacceptable conduct;
- Develop reporting systems, including possible anonymous systems, and evaluate how those systems are working;
- Intervene as required, including implementation of progressive discipline when necessary; and
- Document all attempts to address intimidating and disruptive behaviors.

In many respects, these requirements mirror employment practices that should already be in place, including the need for policies and training, options for lodging a complaint, no-retaliation, effective intervention and documentation. Thus, hospitals can meet many of these new requirements by broadening the scope of their existing policies. In fact, existing policies may already encompass intimidating and disruptive behavior.

Policy implementation, however, represents only half of the battle. Under the new standards, employee training must address conduct that is not necessarily illegal, but is nevertheless unacceptable. If there were any lingering doubts, the Joint Commission has made it clear that the days of the so-called "equal opportunity" harasser must come to an end, at least within healthcare organizations that want to maintain accreditation. The new requirements encompass physicians, nurses and anyone else whose disruptive conduct could compromise the performance of the healthcare team, including employees and third parties.

Beyond the accreditation issue, implementing these standards will further help healthcare organizations avoid employment-related legal claims and maintain a union-free workplace. As always, however, they should be mindful to ensure that

their policies, training and implementation demonstrate consistency and fairness, as well as an absolute prohibition against retaliation.

For more information or assistance with respect to policy implementation or training, contact your Fisher Phillips attorney.

This Legal Alert is provided to report on a particular event or legal development; it is not intended to be, nor should it be considered as, legal advice for any specific situation.