



## Liability and Disruptive Staff Members

by Susan W. Berson, J.D.

**B**ecause disruptive staff behavior can result in significant liability for the hospital or practice, such behavior must not be ignored or tolerated by any member of the oncology team. To mitigate the likelihood of liability, medical institutions should establish policies for dealing with disruptive staff members and include provisions for dealing with disruptive behavior in employment contracts. Putting in writing professional behavior guidelines, the consequences of not adhering to those guidelines, and how the guidelines will be enforced may help prevent instances of disruptive staff behavior.

In most cases, intervention and mediation are the first steps to take when disruptive behavior occurs. If these two options fail, determining steps to alleviate the disruptive behavior is often more difficult.

Getting an offending staff member to acknowledge that a problem exists is usually the biggest obstacle to successful mediation. The personality traits that cause the disruptive behavior often make it unlikely that the staff member will acknowledge wrongdoing or be willing to change. For such people, the self-evaluation required to modify behavior may be difficult, if not impossible.

When mediation fails, staff members often fall into their own form of denial: hoping that the situation will resolve itself, believing the disruptive staff member's pledges to change, or downplaying the adverse effect of the disruptive behavior. Many hospitals and practices believe they have no recourse if mediation is unsuccessful, particularly if the disruptive staff member is under contract and the contract does not provide an appropriate exit strategy.

Unfortunately, hospitals and practices can face various types of liability from the behavior of dis-

ruptive staff members. If the disruptive behavior creates even an impression of impropriety, the action could be viewed as harassment or the creation of a hostile work environment and result in an employment-related claim. An example of this behavior would be the physician that verbally abuses a nurse assisting in a patient's care. Patients or family members who witness such an incident may conclude that optimal care is not being provided and bring a malpractice suit, whether or not the patient was treated successfully. Legitimate grounds for this type of suit exist, since disruptive behavior can cause a lack of focus and/or low morale in the oncology team that can genuinely compromise patient care.

Disruptive behavior can also endanger licensing or accreditation standards if reports are not completed accurately or in a timely manner, or clinical standards are ignored. The result may be regulatory action.

All too often staff contracts, as well as the documents incorporated by reference (such as staff bylaws), do not clearly address disruptive staff behavior issues, and medical facilities fear that disruptive staff members they attempt to sanction or terminate will bring lawsuits against them because of these ambiguities. Staff members may claim that the actions taken were not provided for under the applicable agreements and sue for monetary damages based on loss of income and damage to reputation.

While no hospital or practice can ever fully protect itself from liability resulting from disruptive staff behavior, steps can be taken to bring such behavior to light as early as possible and to create a greater choice of remedies:

- **Maintain open lines of communication.** Ensure that staff members

have a way to report disruptive behavior by other staff members, either anonymously or by name. Encourage staff members to discuss any concerns they have, particularly during annual reviews and exit interviews. These actions provide the staff with an outlet and give the institution a "heads up" that a problem may exist.

- **Document professional standards and consequences for breaking these standards.** Staff bylaws and any other applicable documents should detail the institution's standards of professional conduct and its policies and procedures for dealing with disruptive behavior. Documenting a commitment to "zero tolerance" of disruptive behavior and outlining a process for dealing with instances of disruption will prevent problems from occurring and eliminate the grounds for a number of lawsuits by sanctioned staff members.

- **Contractual Terms.** Staff contracts should include information on disciplinary action and termination procedures for disruptive behavior. From the beginning of their employment, staff members should clearly understand the consequences for transgressing the facility's standards of professional behavior and the action(s) that will be taken if mediation is not successful. ☐

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An article describing disruptive physician behavior and how to handle it will appear in the May/June 2003 *Oncology Issues*.