PRACTICE Challenges

by Mark F. Weiss, J.D.

The Disruptive Physician – You Know Who! (He/She Works For You)

When you think of a medical group failing, you often think that a competitor crushed them. That's sometimes what happens. But often the rot started from within — a disruptive or megalomaniacal or bad-mouthing group member. Benjamin Franklin is said to have quipped that house guests and fish smell after three days. Crappy group members stink a lot faster than that.

Sure, it's all PC to "counsel" these guys. To tell them how much you love them if only they will toe the line and be good boys or girls and get along with everyone while singing Kumbaya. Go ahead, try it once. But after that, realize that these people just can't help themselves. In your group they are a rot that will spread. In some other setting they may be perfectly happy, highly productive, good citizens. Do them a favor and get them started on their journey to find their perfect spot: it is somewhere else. Fire them.

The corollary is that you must make certain that your group's contracts, your employment agreement, partnership agreement or other applicable agreements, create the ability to save your group from this rot.

Does Your Employment Contract Have Teeth?

Your practice has worked hard to expand to a second location or a third or a fourth.

But what happens when one of the members of your group who is assigned to work at different sites, acts out on his or her bias against working at a particular location, perhaps by showing up late, or by making untoward comments to the staff, or by engaging in some other type of disruptive behavior?

The answer, of course, is that slowly but surely it begins to destroy your business opportunities. An anesthesiologist showing up late at a surgery center can be the beginning of the end of your group's entire relationship with that facility.

Certainly, there are personnel, management, and contractual issues involved. But on the purely contractual side, your practice's employment agreement or subcontract agreement with physicians must either delineate level of service expectations or make reference to policies and procedures that must be complied with. And your group must have "teeth" to enforce compliance as well as the will to do so.

Practices fall apart from the inside more often than most realize.

Take the time to analyze the contractual protections your group has developed, or hasn't developed, now, before you need to start looking at what you can enforce.

Contracts Don't Contain Extra Baggage

Imagine that you are an engineer packing a space vehicle for flight. You'd include what you'd intend to be used and toss in some backups – but you certainly wouldn't include anything that won't be required.

The same rule holds true with provisions in contracts, from seemingly simple employment agreements to inch-plus, thick exclusive contracts.

No matter what the other negotiator says, no matter how lovingly she explains that section such-and-such is simply "corporate policy," and no matter how wonderful your relationship with her ("She'd never screw the group over, we've known her for years!"), each provision in an agreement is a tool that's intended to be used.

For your safety, consider the phrase "intended to be used" as including "against you." Just as in packing for a space flight, there is no extra baggage in that contract.

About the Author: *Mark F. Weiss is an attorney who specializes in the business and legal issues affecting physicians and physician groups on a national basis. He served as a clinical assistant professor of anesthesiology at USC Keck School of Medicine and practices with The Mark F. Weiss Law Firm, a firm with offices in Dallas, Texas and Los Angeles and Santa Barbara, California, representing clients across the country. He can be reached by email at markweiss@advisorylawgroup.com. Complimentary resources are available at advisorylawgroup.com.*