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Joint Commission Issues Sentinel Event Alert on Disruptive Behavior

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The Joint Commission has issued a Sentinel Event Alert (the "Alert") that recognizes intimidating and disruptive behavior as a widespread problem in hospitals with serious negative effects on the delivery of care. (See www.jointcommission.org/SentinelEvents/sea_40.htm.) "To assure quality and to promote a culture of safety," the Alert provides that, "health care organizations **must** address the problem of behaviors that threaten the performance of the health care team." (Emphasis added.)

The Joint Commission requires hospitals to implement a Leadership standard to prevent and police disruptive behavior, effective January 1, 2009. Implementation of the new Leadership standard will require a code of conduct, which must define acceptable and prohibited behaviors, and a disruptive behavior management plan. In the Alert, the Joint Commission also enumerates 11 separate suggested actions for preventing and dealing with inappropriate behavior of professionals.

Most significantly, the Joint Commission expects each health care organization to incorporate into its medical staff bylaws and contracts a policy of "zero tolerance" for serious intimidating and/or disruptive behavior, "especially the most egregious instances of disruptive behavior such as assault and other criminal acts." Such a policy should not only allow medical staffs and hospitals to deal with problem physicians swiftly and decisively, but also could serve the critical function of deterrence.

However, it remains to be seen how the Joint Commission's "zero tolerance" policy will apply in states that provide

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statutory or common law protection for whistleblowers within health care organizations. Virtually all disruptive practitioners attempt to justify their inappropriate conduct as a response to purportedly unsafe conditions, policies, or coworkers. And some states, such as California, impose liability on health care providers for taking adverse actions against physicians (and other health care workers) who have complained to regulatory bodies or the organization's leadership. One recently amended California law (Health & Safety Code § 1278.5, AB 632) presumes that an organization has engaged in prohibited retaliation merely because the physician or health care worker complained within 120 days before the organization took action. As a result, hospitals may find themselves between the proverbial "rock and a hard place" when attempting to implement the Joint Commission's directives and protect patients and employees from disruptive practitioners, while simultaneously trying to respect the right of physicians to lodge legitimate complaints and to avoid whistleblower litigation.

This dilemma underscores the need to document disruptive behavior and its effects thoroughly, and follow established procedures carefully, so that appropriate corrective action against disruptive practitioners will withstand challenge.

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[Terri D. Keville](#) Ms. Keville is recognized for her expertise in health care litigation and health care facility operations, particularly medical staff matters. Her litigation practice focuses on case-dispositive motions and appeals (including participation as amicus curiae) in civil litigation involving hospitals and hospital systems, nursing homes, physician groups, and other health care providers, plans, and trade associations. Ms. Keville has made new law for California health care organizations in cases involving physician peer review, Medicare preemption, ERISA preemption, and California's Unfair Competition Law.



[Doreen W. Shenfeld](#) Ms. Shenfeld represents hospitals, medical staffs, medical groups and health care systems in all phases of peer review, from advising clients on the credentialing process, through preparation for and representation at internal administrative hearings, as well as any court challenges to credentialing and corrective action decisions. Ms. Shenfeld has 20 years of complex business litigation experience, including multiple cases where she successfully defended peer review damage actions filed against hospitals, medical staffs and individual physicians, which gives her a unique perspective and ability to guide clients through the process in a way that minimizes the risk of litigation.