The Joint Commission has issued a Sentinel Event Alert (the “zero tolerance” policy will apply in states that provide "zero tolerance" for serious 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
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.

**FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:**

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