HALL RENDER
KILLIAN HEATH & LYMAN
HEALTH CARE UNINTERRUPTED

Disruptive Behavior in Health Care

Balancing Accountability, Fairness, and Legal Protection

MEDICAL STAFF SEMINAR 2025

Empowering Medical Staff. Enabling Excellence.

DECEMBER 4-5, 2025

HALL RENDER
KILLIAN HEATH & LYMAN
HEALTH CARE UNINTERRUPTED

Presenter Info

Brian C. Betner
Attorney, Hall Render
bbetner@hallrender.com
303.802.1298

Agenda

- Understanding Disruptive Behavior
- Governance Framework Essentials
- Intervention Strategies/Considerations
- Oversight Essentials
- Case Study Primers

MEDICAL STAFF
SEMINAR **2025**

Understanding Disruptive Behavior

Why it Matters

- Organizational culture/reluctance of others to interact with disruptive individuals
- Opportunity cost
- Medical errors, medication errors, and safety events
- Decline in employee morale
- Negligent credentialing/Employment-Related Claims
- Relationship and career
- Apathy by leadership
- No organization goes unscathed

What Counts as Disruptive?

- Common sense, AMA, and The Joint Commission as references
- Conduct that interferes with care or team functions
- Threatening or abusive language; profanity
- Degrading, demeaning, condescending or derogatory language/comments
- Sexual harassment or discriminatory conduct
- Refusal to answer questions, telephone calls, or pages (context matters)
- Chronically late (context matters)
- Anything physical or physically intimidating

Difficult or "Protected" Behavior

- Advocacy v. deflection
  - Following established processes to address concerns (legitimate patient safety advocacy)
- Whistleblower protections (internal safety, quality escalation, etc.)
- Tone/communication matters even when concerns are valid
- Expressing personal political views or other differences of opinion (context matters)
- Constructive criticism (intended to foster improvement)
- Having a “different” personality

The Drivers

- There is **<u>no single cause</u>** of Disruptive Behavior
  - Burnout
  - Predisposing psychological factors
  - Substance abuse/impairment
  - Personality traits and disorders
    - Narcissism, Perfectionism, Obsessive/Compulsive
  - Spillover of chronic/acute family/home problems
  - Poorly controlled anger; especially under situational stress
    - Poor clinical/administrative systems support
    - Poor practice management skills

Governance Framework

Governance/Oversight Structure

- Behavior management spans across an entire organization
- Components of a strong governance approach:
  - Clear expectations regarding organizational culture/professional conduct standards
  - Onboarding/orientation
  - Equipped and supported leadership
  - Leadership mindset and example
  - Medical Staff Bylaws
  - Conduct policies

Bylaws: Foundational Components

- Gratuitous phrasing vs clear standards
- Clear authority of MEC/leadership re oversight and intervention pathways
- Due process
- Connection to credentialing, reappointment, FPPE, and OPPE

Professional Conduct Policy

- Defines what is and is not acceptable
- Avoid ambiguity and bright lines (facts and leadership judgment matter)
- Converts abstract professionalism into observable standards
- More protocol than procedure (flexibility in approach is key)
- Guidance regarding progressive approach
- Consistent expectations across all provider types

Intervention Strategies/Considerations

Progressive Framework

- Informal → Formal→ Corrective
  - "Collegial" conversation
  - Verbal reinforcement/expectation-setting
  - Written counseling
  - FPPE-for-cause
  - Structured coaching/education/counseling/improvement plan
    - Mandatory evaluation
  - Corrective action → Hearing rights
- Consistency or justified approach is your legal bulwark

Your Starting Point

- Where you start in the process depends on where you have been:
  - Is this a long-time offender who has never been approached?
  - Is this a repeat offender who is not responding to informal efforts? Or is this a first-time offender?
- The best action or process to address disruptive behavior will be influenced by the cause of the behavior
  - Circumstances – financial, personal, burnout
  - Impairment – drugs, alcohol
  - Psychological issue – depression, personality disorder
  - Other….

Be Consistent

Wash, rinse, and repeat…

1) Appropriate engagement (format and level)
2) Openly explore the nature/source of the behavior
3) Address self-awareness
4) Reference the standard <u>and</u> the general approach/process
5) Communicate expectations and plan of action

Procedural/Situational Fairness

- Transparency, notice, and opportunity to respond
- “No surprises” principle – avoid abrupt escalation without prior expectations
- Unbiased reviewers (actual not perceived)
- Behavior interventions should be anchored in policy and evidence
- Be mindful of historic comparisons when escalating action

Collegial Interventions

- Non-punitive conversation to clarify expectations
- Private, professional, impact-focused
- “I want you to succeed…” scripting
- Solicit possible drivers
- Communicate know escalating concerns
- <u>Always documented</u>

Immediate Action/Summary Suspension

- Reserved for imminent danger and/or disruptive to operations
- Preliminary/precautionary in nature – commences an investigation
- Single event may justify immediate action; document “imminent danger”
- Identify evidence or basis for the possibility of an immediate danger/harm
- The clock has started - MEC reviews early

FPPE

- Apply when behavior affects reliability or teamwork and remediation is viable
- Available metrics: communication, teamwork, timeliness
- Understanding ability to be consistent and objective in tracking
- Document performance and follow-up

Coaching & Improvement Plans

- Ideally rooted in Bylaws driven obligation/condition/requirement
- Formalize expectations: timeliness, communication standards, OR behavior
- Outline monitoring, follow-up timeline, consequences of non-improvement
- Consider use of SMART metrics (situation and level appropriate)

Credentialing and Recredentialing

- Credential new applicants carefully
  - Gaps in history
  - Lots of movement
  - "Voluntary resignations"
  - *Conditional* or *with reservation* appointment?
- Recredentialing
  - Evaluate prior appointment period
  - Evaluate and refer to results of FPPE/OPPE
  - Ensure peer review committees are sharing relevant information
  - *Conditional* or *with reservation* reappointments?

HCQIA Immunity

- It's well established that Disruptive Behavior impacts or has the potential to impact the quality of care
- For immunity purposes, the term "professional review action" means an action or recommendation…. based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients)…..
- Because of this impact, matters involving conduct/behavior should be addressed in a manner that establishes:
  - Peer review immunity
  - Peer review privilege/confidentiality

Corrective Action: Immunity

- MEC Investigation → recommendation → notice/hearing
- **Remember**: Peer Review Immunity presumes a **reasonable investigation**
  - Is this a pattern of conduct or an egregious/isolated occurrence?
  - Consider past collegial intervention, investigations, actions
  - Review the pertinent documentation
  - Speak with the relevant witnesses
  - Consider need for outside evaluation
    - Investigating Committee should dictate (or minimally approve) this process
    - Address authorizations/releases up front

Corrective Action: Immunity

- MEC Investigation → recommendation → notice/hearing
- **Remember**: Peer Review Immunity presumes a **reasonable action**
  - Measured, proportional responses
  - Progressive action is preferred (when it is possible)
  - Document rationale for action
- Address retaliation
- Be careful with timing of summary suspension (if applicable)
- Be careful to appropriately address claims of disability

Oversight Essentials

Oversight Shortfalls

- Not viewing as a quality or competency issue
- Poor documentation
- Lack of definition, inconsistent enforcement
- Behavior is normalized
- Use of informal “everyone knows” knowledge instead of documentation
- Divergence between HR and Medical Staff processes

Importance of Documentation

- Protects integrity of the peer review process
- Core to HCQIA reasonableness
- Creates transparency and defensibility
- Necessary for pattern recognition and fairness
- Silence of “collegial interventions’

Effective Documentation

- Facts, dates, quotes, impact on patient/operations
- Reference to standards
- Impact on patient safety, workflow, and team cohesion
- Avoid subjective labels; use behavioral descriptions
- Include attempted interventions
- Vague notes, undocumented verbal warnings
- Email “venting”
- Document distinction between what was said (protected) and how it was said (behavioral)

HR vs Medical Staff

- Which is best equipped?
  - Employed providers: Common preference for HR to lead employment actions
  - Independent providers: Medical Staff leads
- Not a hard and fast rule
- Alignment necessary for credibility and privilege protection
- Avoid privilege waiver in mixed documentation

Case Study Primers

Case Study: The "Advocate or Disruptor?"

- Persistently challenges policies, sends aggressive emails
- Asserts patient safety concerns and whistleblower protections

1) Where is the line between advocacy and disruption?
2) How to avoid retaliation exposure?
3) Would a behavior improvement plan be defensible?

Case Study: High Volume Surgeon

- Repeated OR outbursts, yelling at nursing staff
- Arrives late for cases, delays schedule
- Raises retaliation concerns after nursing director documents concerns

1) What counts as disruptive behavior?
2) What's the proper intervention level?
3) What documentation is needed?
4) Is summary suspension warranted – would it satisfy HCQIA?

Practical Takeaways

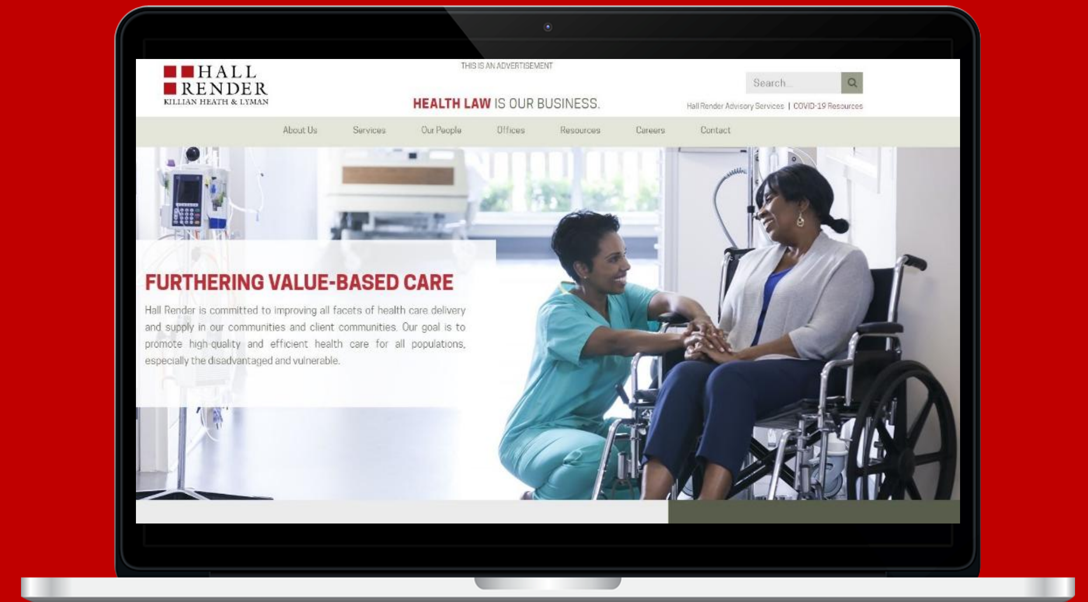
- Establish and understand your standards and expectations
- Early, consistent interventions and documentation
- Progressive, defensible framework grounded in bylaws/policy
- Ensure processes support both fairness and legal protection

Questions?

Contact Us

For more information on these topics visit hallrender.com.

Brian C. Betner
bbetner@hallrender.com
303.802.1298



This presentation is solely for educational purposes and the matters presented herein do not constitute legal advice with respect to your particular situation.