

Briefings on

# Credentialing

The monthly newsletter  
for medical services  
professionals

## Use your wellness committee when dealing with drug-impaired docs

Hospitals seeking a means to keep a better rein on impaired or troubled physicians should consider that a vehicle for this initiative may already exist in their facility's physician wellness committee.

"We've seen something of an evolution in working with impaired physicians over the past 25 years or so," says **Michael Callahan, Esq.**, an attorney with the Chicago law firm of Katten Muchin Rosenman, LLP.

The contributing factors to physician impairment and healthcare organizations' reaction to the problem have changed over the past decades. Fewer than 20 years ago, for example, the concept of a wellness committee simply did not exist. A troubled physician—whether he or she was disruptive or dealing with a chemical dependency or other impairment—was seen as a threat and dealt with accordingly by the hospital, says Callahan.

A number of reasons—ranging from increasing volumes of paperwork, to decreasing reimbursement rates, to burnout—are being blamed as the medical field finds more impaired and troubled physicians in its midst.

The idea of using random or mandatory drug testing to spot and aid troubled physicians often is discussed but has not yet been implemented in any significant way.

"The problem is very real, but the independent medical staff would

rise up in a holy war if someone attempted to institute [a drug-testing] policy across the board," says Callahan.

"That being said, I can see where hospitals are frustrated that other

avenues are not being utilized."

Random or mandatory drug testing raises several potential problems, particularly with regard to Americans with Disabilities Act (ADA) challenges.

"If you do use a drug-testing program, you could trigger an ADA challenge," says Callahan.

### Use existing resources

Two main concepts have evolved out of the transformation in organizations' view of impaired physicians: the wellness (or well-being) committee—a body that the JCAHO standards now require hospitals to have—and codes of conduct.

Wellness committees often are underutilized, says

> continued on p. 2

### Enclosed:

This month's *Clinical Privilege White Papers*:

- ▶ **Emergency ultrasound—Procedure 240**
- ▶ **Gastrointestinal endoscopy (update)—Procedure 23**
- ▶ **Special Report: Core and beyond: Exploring uncharted territories in assessing physician competency**
- ▶ **Core and BOC Continuing Education Quiz—October–December 2006**

### IN THIS ISSUE

**p. 4 AHP credentialing**

Vicki Searcy, CPMSM, and Lisa Eddy, RN, CPHQ, discuss JCAHO changes to authorizing AHPs and more on this challenging topic.

**p. 8 Standard changes below the radar**

Sally J. Pelletier, CPMSM, CPCS, discusses several 2007 JCAHO changes that have not been making headlines but still warrant attention.

**p. 10 News in brief**

Find the latest news from the field in the areas of credentialing and privileging.

**p. 10 BOC 2006 Index**

Look through a complete listing of this year's top stories.



## Wellness committee

< continued from p. 1

Callahan, as both committees and conduct codes attempt to deal with disruptive physicians or practitioners who engage in forms of harassment.

"[Both initiatives] come from a defensive posture," says Callahan. "If you have a program and educate people, it helps you defend your institution from exposure."

It has become the prevailing culture of the times to pursue measures other than the punitive options of the past when physician impairment problems are identified.

"We're seeing more efforts to amend bylaws or to empower staff leaders so when they have a reasonable suspicion of problem behavior, they have the authority to go to that physician and pull [him or her] aside," says Callahan.

The actions those "empowered individuals" take is where the use of existing resources comes into play.

## A better option than reporting

By documenting suspicion of impaired behavior and using the proper authority to approach the offending physician, the hospital has established a basis for dealing with this situation in a supportive manner.

"The appropriate individual—be that the chief of staff or another authority—can pull the physician aside and tell him or her to set up an appointment with the wellness committee," says Callahan.

**Tip:** Train and empower your staff to spot troubled physicians so that a paper trail exists to allow the appropriate authority figure to approach an impaired physician.

"As a bedside nurse for more than 13 years, I ran into more than my share of impaired physicians," says **Wendy Crimp, BSN, MBA, CPHQ**, a consultant in the areas of credentialing and privileging with The Greeley Company, a division of HCPro, in Marblehead, MA. "Typically the response of the staff was geared to the specific situation." This might mean sending the practitioner home, or bringing the matter to a house supervisor.

"Naturally, the staff are sometimes torn between protecting the physician and protecting the patient. Obviously protecting the patient is the priority," but knowing that a process is in place to deal with the physician without destroying his or her career is important, says Crimp. "If [the medical staff organization] wants to influence staff to take a more consistent approach when presented with these situations or suspicions, it is important to provide both the bedside staff and their supervisors with education and guidance on best practice procedures, otherwise judgment of the moment will prevail."

The physician should be made aware of the course of action that the medical staff will take if he or she does not follow through with the wellness committee. Consequences for failing to do so include corrective action and, eventually, National Practitioner Data Bank (NPDB) reporting as well as other implications.

The hospital must also be prepared to deal with a physician who refuses to follow through.

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## The effect of Kadlec on physician wellness

Earlier this year, a Louisiana jury awarded \$4.1 million to Kadlec Medical Center in Richmond, WA, after finding that two physician administrators from a New Orleans hospital made intentional misrepresentations to Kadlec in their recommendations of a former partner who had a drug problem. The physician, Robert Lee Berry, was involved in a 2002 surgery at Kadlec that left a woman severely brain damaged and resulted in an multimillion-dollar settlement in a claim against Berry and Kadlec.

Berry gave up his Washington medical license in 2004 after the state took action against him. The case may be appealed.

One result of the Kadlec case is that it has focused the field's attention on the effects of discussing a physician's suspected or existing drug problem to a future employer.

Specifically, people wonder whether the case sets a precedent for what must be disclosed.

"Kadlec was an important case because it's forcing a lot of [organizations] to realize they've got to be more forthcoming with their responses," says **Michael Callahan, Esq.**, an attorney with Katten Munchin Rosenman, LLP, in Chicago. People who work in healthcare law are realizing that the case "changed the landscape," he says.

Do hospitals now have to force a hearing for a troubled physician even if he or she prefers to resign rather than face one?

"It's something of an aggressive attitude, but it allows the hospital to say that it tried," says Callahan. "The hospital will have something prepared that it can send out" in the case of an inquiry.

"Maybe [the physician] embraces the request," says Callahan. "But typically if the bylaws are drafted the right way, if they refuse to be evaluated, that in and of itself can give rise to corrective action."

**Tip:** Be aware of your state statutes. Some states allow a physician with an impairment to be identified, go through an appropriate rehabilitation process, and return to work when well without being reported to the NPDB. However, other states require a report to the databank.

### Building a better wellness committee

So does the JCAHO dictate how a wellness or well-being committee should be constructed? The standards are not overly prescriptive on how to set up such a committee. They state only that the hospital must have one, that it serves a useful purpose, and that it must not be disciplinary in nature.

If a physician goes before the wellness committee for an evaluation, and the committee finds issues requiring action, then it simply must send the report back to the chief of staff and the medical executive committee. It should not make recommendations for action.

With regard to the JCAHO's mandate that wellness committees must not take a disciplinary role, Callahan adds, "If this were the case, it would not encourage people to make use of these committees. The logic would be that if the hospital is going to force the physician into a situation where there is going to be corrective action, why go through with it?"

Wellness committees are generally multidisciplinary in nature and include a psychiatrist with some expertise in evaluating physicians in this regard, as well as several rank-and-file physicians.

The trick is to find the right mix of personalities.

"You want to ensure that the committee is made up of people who are proactive and supportive," says Callahan. "It's only as good as the people on the committee."

**Tip:** Some wellness committees contain members who are formerly impaired physicians, with the premise that they can provide a unique level of insight and connection to the physicians who come before the committee.

Callahan advises against appointing staff leaders or department chairs to the committee.

"Avoid people who are in a position to exercise authority over the impaired physician involved. The group should be neutral," he stresses. ■