

Report on Medicare Compliance Volume 30, Number 26. July 19, 2021 Remediation May Help Disruptive M.D.s; They Shouldn't Be Confused With Whistleblowers

By Nina Youngstrom

Although the older generation of nurses at a hospital has tolerated the boorish behavior of a longtime surgeon, times have changed and the newer nurses report him to the chief of surgery. They explain that Dr. Tim berates several scrub techs, calling them useless and stupid. His disruptive and unprofessional behavior can have adverse consequences for the hospital, which initially tries to turn things around with an informal conversation. When Dr. Tim's improvement is short-lived, the hospital takes more formal action, including remediation.

This kind of situation, and variations on the theme, may play out in many hospitals, which risk poor morale, lawsuits and potential harm to patient safety, experts say. Hospitals and medical practices should have a professionalism policy that sets forth the expectations for physicians and other employees and the consequences for not meeting them, including remediation, said attorney Alexis Angell, with Polsinelli in Dallas, at the annual meeting of the American Health Law Association June 29.^[1] The policies are not meant to "chill" disagreements by physicians who may be "challenging billing procedures or raising concerns about health or safety or potentially unethical or illegal conduct," said Elizabeth Grace, M.D., medical director of the Center for Personalized Education for Professionals in Denver, Colorado.

Remediation or discipline for unprofessional conduct should be reserved for objectively bad behaviors, said attorney Amy Shulman, with Outten & Golden LLP in New York City. "Most of the time, allegations that a physician is a bad actor raise a fairly complicated issue because a lot of times doctors who are labeled as troublemakers or disruptive are advocating for changes within the hospital system or raising a compliance complaint or complaint about patient safety, and that's where they are getting blowback," she explained. "People should be able to raise concerns and engage in debate and disagreement in the workplace without being labeled bad actors."

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