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Date: December 23, 2008

To: Chiefs of Medical Staff and Chairs of Medical Staff Bylaws Committees

From: Cynthia A. Markus, MD; WSMA President

**Re: Recommendations to Medical Staffs: New Joint Commission
Disruptive Physician Behavior Requirement**

Joint Commission Sentinel Event Alert. Effective January 1, 2009 the Joint Commission will require accredited organizations to comply with a new leadership standard that addresses disruptive and inappropriate behaviors. Pursuant to this Joint Commission sentinel event alert hospitals must have a *“code of conduct that defines acceptable and disruptive and inappropriate behaviors,”* and hospital *“leaders create and implement a process for managing disruptive and inappropriate behaviors.”*

Medical staffs need to be aware of this new requirement, but more importantly they need to be attentive to requests that either ask, or imply there is a requirement, that the medical staff adopt a new hospital disruptive code of conduct policy or amend its existing medical staff bylaws to incorporate a new disruptive physician policy. The WSMA has found that some of these policies are problematic and advises all medical staffs to review such policies closely, ideally by independent legal counsel, prior to adoption.

The most significant problem with the disruptive physician policies we have reviewed is their definition of “disruptive behavior” which is often times overly vague and subjective. A vague definition can (and has) resulted in medical staff members being improperly labeled as disruptive. For example, criticism offered in good faith with the aim of improving patient care should not be construed as disruptive behavior.

What to do. Prior to adopting any new policy or amending the bylaws the medical staff should retain independent legal counsel to review the changes. This review will ensure the medical staff is legally protected, while providing some impartiality and transparency to the process that will hopefully result in greater buy-in by the medical staff. *Please feel free to contact the WSMA's Director of Legal Affairs, Tim Layton, for more information on retaining legal counsel, and any questions you may have regarding review of proposed policy or bylaws changes.*

Recommendations. The WSMA also strongly encourages each medical staff to review the following recommendations of the American Medical Association (AMA) prior to adopting any changes that seek to comply with the new Joint Commission requirement on disruptive behavior.

Medical Staff Recommendations:

- The medical staff defines disruptive behavior and its nexus to quality care.
- The medical staff provides a mechanism whereby instances of possible alleged disruptive behavior are recorded.
- The medical staff develops a process whereby the physician accused of disruptive behavior is notified at the time of the event and provided an opportunity to respond within the confines of the organized medical staff. *See suggestions by the Washington Physicians Health Program attached and/or call Tim Layton, WSMA Director of Legal Affairs for more information.*
- The medical staff, in consultation with independent medical staff legal counsel, develops bylaw language that allows freedom of expression by physicians when describing flaws within a hospital.
- The medical staff, in consultation with independent medical staff legal counsel, develops bylaws language that protects from retribution physicians who speak about quality concerns.
- The medical staff establishes a process to investigate and assess, in a timely fashion, reports of alleged disruptive behavior.
- The medical staff develops corrective actions that are commensurate with the reported behavior. *See suggestions by the Washington Physicians Health Program attached and/or call Tim Layton, WSMA Director of Legal Affairs for more information.*
- The medical staff bylaws contain procedural safeguards that protect due process.
- The medical staff code of conduct shall identify, by position, which members or committee will be involved in the various stages of the process for reviewing reports, informing physicians and monitoring conduct.
- The medical staff shall develop processes for the protection of confidentiality.

Hospital Recommendations:

- The hospital must also have a code of conduct, applicable to members of the board, management and all employees.
- The hospital must have policy that defines alleged disruptive and inappropriate behaviors for its constituents placed in the employee manual and administrative manual.

- The hospital and the medical staff must provide a mechanism to review episodes of alleged disruptive behavior to ascertain if the system of medical delivery in the hospital is responsible for some of the so-called “disruptive behavior.”

What we are doing:

- The WSMA in conjunction with the Washington State Hospital Association (WSHA) and the Washington Physicians Health Program (WPHP) is sending a letter to all Hospital CEOs, Hospital CMOs, Chiefs of Medical Staffs, and other interested stakeholders about the role that the WPHP can play in assisting in the treatment of some disruptive physician disorders.
- The WSMA is in the process of drafting updated model medical staff bylaws. We hope to have them completed by February 2009. More to come.
- The AMA is working on: (1) a definition of disruptive physician, and (2) a model disruptive physician policy.
- The WSMA and WSHA are in discussions regarding development of a model disruptive physician policy. This process is part of a new joint Chief Medical Officer roundtable the two associations are convening to work on medical staff/hospital issues. *For more information on the roundtable please contact Jennifer Hanscom, WSMA Senior Director of Public Affairs and Operations.*

Contact Information. For more information on any of the items discussed in this memo please feel free to contact:

- **Tim Layton, JD**, is the Director of Legal Affairs. Tim works in the Olympia Office and can be reached at tim@wsma.org; (360) 352-4848.
- **Jennifer Hanscom** is the Senior Director of Public Affairs and Operations for the WSMA, and the Director of the Center for Medical Professionalism. Jennifer can be reached at jen@wsma.org; (206) 441-9762.

WPHP Disruptive Behavior Policy and Procedure¹

Introduction

The intent of this policy and procedure is to assist all referral sources to manage disruptive behavior in healthcare practitioners and to utilize WPHP when appropriate. The goal of this 3-step procedure is to determine whether or not an underlying treatable illness exists and whether rehabilitation is a feasible medical option. WPHP asks that this 3-step procedure be followed prior to a referral to WPHP although WPHP is willing to assist in the implementation of the procedure.

Step 1

The first meeting is a confidential, informal, one-on-one discussion of the alleged behavior between the involved practitioner and a “friendly” colleague who represents the referral source. Prior to the discussion the practitioner is informed that confidentiality will cease if the behavior persists.

Step 2

If the behavior persists, the second meeting is a non-confidential, formal meeting between the practitioner and an administrative committee which includes the “friendly” colleague, medical staff leaders, and appropriate administrative and supervisory representatives. The documented behavior is reviewed and a behavioral contract is implemented. The practitioner is informed that compliance with the contract will be monitored and that a violation of the contract will probably result in a disciplinary action.

Step 3

If the behavior persists, the third meeting is a non-confidential, formal meeting with the disciplinary body that provides the practitioner with two choices: be referred to WPHP or face suspension. If the practitioner accepts the referral to WPHP, the practitioner also agrees to the following:

- To sign the appropriate consents for two-way communication between WPHP and the referral source
- Make an appointment with WPHP (206-583-0127) within three working days
- Agree to a comprehensive evaluation by WPHP or its designee
- Agree to implement a contract with WPHP that includes appropriate treatment and monitoring
- Agree to a behavioral contract composed by the referral source and WPHP

The practitioner is informed that any violation of the WPHP contract or the behavioral contract will probably result in disciplinary action.

¹ Oreskovich v. 12.19.2008