The disruptive physician

Key words: Abusive physician, competence, disruptive behavior, refusal of privileges, termination of privileges.

One of the most frustrating experiences for the hospital staff is dealing with the difficult, abusive physician and the sense of hopelessness which accompanies these day-to-day conflicts. In fact, there is legal precedent for dealing with these issues. This article serves to review some of the case law relevant to the abusive physician.

Hospital privileges of a competent physician can be refused or revoked if that physician displays disruptive behavior. Disruptive behavior can consist of a variety of behavior patterns. In Colorado, the staff privileges of an anesthesiologist were terminated as a result of conducting himself in an unprofessional manner. In Even v. Longmont United Hospital Association, the physician's conduct at issue "consisted of strong hostility, an uncontrolled temper and actions which intimidated personnel of the hospital working with him in the operating room and recovery rooms of the hospital to such a degree as to disrupt the normal functioning of the operating and recovery rooms of the hospital with real and potential danger to the care of patients in the hospital."  

In Indiana, a family practice physician was reported and privileges suspended because of his conduct. The conduct in Kiracofe v. Reid Memorial Hospital was described as continuing to refuse to explain orders to nurses, abusive behavior toward nurses who questioned his orders, entering inappropriate and defamatory statements in medical records, and giving orders which were inappropriate and potentially harmful.

Other examples of disruptive behavior can be found in another Colorado case, Leonard v. Board of Directors. In this case, the hospital board repeatedly requested that the surgeon meet and discuss a possible medical malpractice issue with them. He sent the board a letter expressing his opinion that the board's request was a "kangaroo court" proceeding. He responded to the board's attorney with a memorandum that had "a set of lips on the posterior of a nude figure." Ultimately, his privileges were permanently revoked. The court stated that the actions were so notorious that condemnation was appropriate and that the hospital had an interest in patient safety.

Patient safety

Patient safety is the key issue behind the courts' decision to uphold refusal or termination of privileges. A hospital has the right and the duty to regulate the conduct of its medical staff and to maintain the quality of medical care its patients receive. The court in Smith v. Cleburne County Hospital stated that the conduct of the physicians was within the parameters of the hospital's legitimate interest in promoting the efficiency of the hospital. The physician's conduct was found to be a
calculated effort to disrupt the efficiency of the hospital and created an adverse effect on the hospital's purpose. Termination of his privileges was appropriate.⁴

In Miller v Eisenhower, the California Supreme Court stated that certain forms of disruptive conduct may have an adverse effect on patient care, but not all unpleasant behavior is prohibited. If a physician applicant is merely disagreeable or annoying, it is not enough to reject him. The court further stated that even if a physician is controversial, outspoken, abrasive, hypercritical or otherwise personally offensive, this, too, is not enough to reject him. The rejection of an otherwise qualified, competent applicant is permitted “only when it can be shown that the applicant’s ability to work with others in the hospital setting is limited in a manner which would pose a realistic and specific threat to the quality of medical care to be afforded patients at the institution.”⁵

Competency of the physician is not relevant if that physician is truly disruptive. In Straube v Emanuel Lutheran Charity Bd., a radiologist had his staff privileges suspended. He was an excellent physician but was unable to work with others. This behavior was felt to interfere with patient care, so his privileges were terminated.⁶

In another Oregon case, Huffaker v Bailey, an internal medicine specialist had his application for admission to the hospital’s staff denied, even though he was clinically competent. His ability to work with others was a legitimate consideration. As long as the denial was made in good faith and supported by a factual basis, it is valid. Not all professional people have a personality that allows them to work well with others and that inspires confidence in colleagues and patients.⁷

Recourse available to the physician

The recourse available to the physician depends on the status of the hospital. While a physician does not have a constitutional right to be appointed to a hospital’s medical staff, a public hospital must provide due process. Private hospitals do not need to provide full due process unless they are so closely involved with governmental interests as to be considered state action.⁸ A private hospital may exclude a licensed physician from its staff without being subject to judicial review. If a hospital is determining whether to reappoint, its action shall be subject only to limited review to determine whether administration followed procedure set out in bylaws. Therefore, as long as the hospital follows procedure as set out in bylaws, the hospital’s decision is not subject to judicial review.

In its decision in Straube v Emanuel Lutheran, Oregon’s Supreme Court stated that hospitals are more knowledgeable about hospital operations than are courts. The court stated that since the “bylaws to which plaintiff agreed when he accepted staff privileges provide for the decision to be made by persons with training in those fields, and there is no reason for upsetting their decision so long as there was a rationale therefor.”⁹

A hospital has the right to take reasonable measures to protect itself and patients. The court in Kiracofe v Reid Memorial Hospital stated that the decision of a hospital concerning staff privileges is accorded great deference. Judicial intervention is limited to an assessment of whether procedures are fair and standards are reasonable and applied without arbitrariness and capriciousness.⁴

In one case involving a private hospital, Yarnell v Sisters of St. Francis, an anesthesiologist was accused of threatening and abusing the medical staff personnel and being generally disruptive of hospital procedures and unable to work with others. The court ruled that these are sufficient reasons for this private hospital to deny staff privileges and would not take further action and would not review the case further.⁵

A privilege, not a right

An older rule, as outlined in McElhinney v William Booth Memorial Hospital, regards staff privileges to practice in a private hospital to be considered a privilege rather than a right. This distinction is increasingly under fire but nonetheless, a different rule still often prevails with public hospitals.¹⁰

A decision to deny application for privileges in a public hospital is permissible as long as the decision is not arbitrary, capricious, or discriminatory. Ritter v Board of Commissioners of Adams County Public Hosp. Dist. and Grodjesk v Jersey City Medical Center both state that staff selection should be done with fairness.¹¹,¹²

A qualified physician admitted to practice in a public hospital not only cannot be arbitrarily or capriciously excluded but also must be given notice and an opportunity to be heard. Arbitrary and capricious action means willful and unreasonable action, without consideration and in disregard of circumstances. Where there is room for two opinions, an action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion had been reached.

Whether a hospital is public or private, McElhinney v William Booth Memorial Hospital states that it must act in accordance with its charter and bylaws. Standards cannot be so vague and ambigu-
ous as to provide a substantial danger of arbitrary discrimination in their application. 10

In summing up appropriate decisions regarding disruptive physicians, the court in Mahmoodian v United Hospital Center explained that any hospital is clearly allowed to adopt and enforce a medical staff bylaw "denying, suspending, restricting, refusing to renew or revoking" privileges of a physician, if that disruptive conduct and inability to work with others has an adverse effect upon patient care. 13

The ultimate objective of the healthcare professional and the healthcare facility is to deliver quality patient care. These disruptive practitioners who are otherwise competent, and the facility that allows them to practice, do not achieve that objective.

REFERENCES
(4) Smith v Cleburne County Hospital, 870 F.2d 1375 (8th Cir. 1989).
(6) Stroube v Emanuel Lutheran Charity Bd., 600 P.2d (Or. 1979).
(7) Huffman v Bailey, 540 P.2d 1398 (Or. 1975).
(9) Yarnell v Sisters of St. Francis Health Services, Inc. 446 N.E.2d (Ind. Ct. App. 1983).
(10) McElhinney v William Booth Memorial Hosp. 544 S.W.2d (Ky. 1977).

AUTHOR
Linda Williams, CRNA, JD, received her diploma in nursing from St. Mary’s School of Nursing, Huntington, West Virginia, and her certificate in Nurse Anesthesia from Ohio State University, Columbus. She also holds a BA in Health Science from Stephens College, Columbia, Missouri, and a JD from the University of Denver College of Law. She currently practices anesthesia at Presbyterian/St. Luke’s Medical Center, Denver, Colorado, and is a medical-legal consultant as well as a lecturer on medical/legal issues.

Ms. Williams is a member of the Colorado and Denver Bar Associations, Academy of Health Care Attorneys, American Association of Health Care Consultants, and American Society of Law, Medicine and Ethics. She is a past-president of the Colorado Association of Nurse Anesthetists and recently completed a two-year term as AANA director of Region 5.