



Compliant Management of Non-Compliant Staff

■ JOHN SHUFELDT, MD, JD, MBA, FACEP

Are you from the era where *Spare the Rod, Spoil the Employee* was the title of the disciplinary section in the employee manual?

Most urgent care centers in the United States discontinued the practice of caning employees after Michael Fay received his licks for vandalizing cars in Singapore in 1994. Now-a-days, you may want to consider following a few simple rules when it comes to employee remediation (as opposed to simply strapping your employees to the code cart and whipping out the ol' birch stick).

Let's be honest: many of us are not great at managing a staff made up of individuals with diverse backgrounds and maturity levels. Unfortunately, though, your practice will certainly suffer if your team is not properly and proactively managed.

This is where the 80:20 rule comes into play; 80% of your time will be spent managing the 20% of your staff who are not performing or behaving optimally.

Here are some things you can do to facilitate a smoothly running operation while protecting yourself from personnel-related liability.

Keeping Time

Accurate time and attendance policies and procedures are probably the most important single area to concentrate on when developing your center's employee manual.

Many physicians do not use a time clock to track employees' attendance, instead relying on the honor system or the employees' self-reported records.

However, not keeping precise records will expose your practice to considerable liability from both former and cur-

rent employees. Clear expectations need to be established regarding:

- scheduled work hours
- time off for holidays and illness
- leaves of absence
- vacation

More likely than not, the largest part of your overhead will be spent on employee compensation. Therefore, the productivity of your employees is critical to the success of your practice.

'Family Style' Might Not Cut It

Who remembers Sister Sledge?

Most physician practices in the United States employ fewer than nine doctors and less than 20 ancillary staff members. The practices tend to run with the Sister Sledge, "we are family" style of management.

If the practice has an employee handbook, it is often one that came from the local chamber of commerce or off the Internet. These one-size-fits-all documents usually do not cover many of the nuances that are inherent in small medical practices. Moreover, these documents can actually be harmful if they are not kept up to date or are followed only intermittently or selectively.

It is also important to have written job descriptions. Employees need to know what is expected in order to be successful at their job. Disciplining an employee for poor performance is impossible unless they know what duties are expected.

Nip Problems in the Bud

All of us know the phrase, "an ounce of prevention...." It applies not only to health-related issues, but also to employee issues.

Failing to correct bad behavior is the same as tacitly condoning the behavior. Deal with employee problems immediately.

The only caveat to this rule is that you should never discipline an employee while you are angry or upset; wait until you can respond with a cool, clear head so that you do not make remarks or take actions which you may regret later.



John Shufeldt is the founder of the Shufeldt Law Firm, as well as the chief executive officer of NextCare, Inc., and sits on the Editorial Board of *JUCM*. He may be contacted at JJS@shufeldtlaw.com.

Get the Facts Straight

While you are waiting to respond with detached objectiveness, let the appropriate party know that you will be taking action once you have gathered all the facts.

“Make sure your discipline does not tread upon areas where an employee may be protected under statute.”

Fact finding is very similar to conducting tests to determine the cause of a patient’s medical complaint. Use all the resources you have at your disposal:

- Keep an open mind. Don’t let preconceived ideas or past behavior cloud your judgment. Beware, many issues which arise are simply personality conflicts carried to the extreme.
- Use the employee manual. Refer to your office policies and procedures or to the employee manual when formulating your response.
- Look for tangible evidence. Facts are hard to dispute; take statements, look for objective evidence, and gather as much information as you can.
- Ask open-ended questions and search out additional witnesses during data gathering.
- Ask the witnesses to give written statements. Depending on the incident, ask the person whose behavior is in question to also give a written statement.
- Keep the notes, statements and findings in a separate, locked file.

Be Consistent

Make sure that punishment is doled out with an even hand. It is very tempting to alter the punishment depending upon who violated a particular policy. Often, highly regarded employees are treated differently than those employees who are less well regarded.

Before imposing discipline, evaluate any precedent which may exist. The goal is to keep the disciplinary process as consistent as possible.

Be careful to have the discipline tailored to the breach. In other words, be clear and direct and take the time to sit down with the employee and discuss the issue and the response in detail.

I have found it very useful and telling to work with the em-

ployee on the organization’s response. I am often surprised on the harshness of the response the employee recommends.

The employee should be given timelines for compliance and guidance on how the breach occurred and what must be done to prevent it from happening again.

Most importantly, follow-up conversations must occur to gauge compliance with the prescribed action plan.

Seek Expert Advice When Needed

Consultation with an attorney or human resource professional may be necessary to ensure that your policies and procedures do not violate state or federal law.

For example, if an employee is not adhering to a specific work schedule because of religious beliefs, military duty, or requested medical or family leave, disciplining their behavior may run afoul of federal law.

The take-home point is to make sure your discipline does not tread upon areas where an employee may be protected under statute.

Document

Finally, document the discussions and follow up with the employee. Think of it as charting on a patient.

Contemporaneous documentation is an essential component of effective disciplinary proceedings. The documentation should factually memorialize the events that took place, the actions taken, and the follow-up plan.

Documentation is absolutely mandatory when the discipline results in adverse actions such as termination, suspension or loss of wages.

Managing employees is by far the most difficult, as well as the most rewarding, part of practice management. The bottom line is that a successful medical practice can flourish only with the help of well-managed, engaged, and professional employees.

To accomplish this goal, providers must have and evenly enforce written policies and procedures which ensure appropriate employee behavior, customer service, and exemplary medical care.

Recap

Using the tips suggested in this column will help your office run smoothly while keeping you on the right side of the law. Remember:

- Keep precise attendance records.
- Have an employee handbook that suits your needs.
- Correct bad behavior quickly, fairly, and uniformly.
- Seek expert advice.
- Document employee issues as you would a patient chart.

At the end of the day, your practice is only as successful as its most noncompliant employee. ■