HPSO Healthcare Providers Service Organization℠ Risk Advisor

Substance abuse in the workplace: What is your responsibility?

In This Issue . . .

Have you ever suspected a coworker of abusing drugs but were afraid to speak up for fear of being wrong? No one wants to falsely accuse someone of substance abuse, but if you don't act, you could be in violation of state and federal laws and face time in court.

If you think you'll never be in this situation, think again. It's estimated that about 10% to 15% of healthcare professionals misuse drugs or alcohol during their career, about the same as the general population.[1]

A duty to act

An impaired healthcare professional should never be ignored from either a legal or ethical perspective. Compounding legal and ethical issues can be financial losses due to missed work time and decreased productivity by the impaired professional. Legal considerations include state licensure boards and practice acts, state laws about drug diversion and prescription fraud, and regulations from the Drug Enforcement Agency (DEA), says Nancy Brent, RN, MS, JD, an attorney who represents impaired and recovering healthcare professionals.

States typically have a requirement for reporting unsafe behavior, so if an impaired healthcare professional's actions may harm the patient, you must act. Depending on your organization's policy, you'll usually be reporting the person to your supervisor, or, depending on the situation, to the appropriate state practice board.

If you are a supervisor, it's also important to be aware of substance abuse requirements included in union contracts. For example, an employee may still have to be paid even when suspended for suspected substance abuse.

Besides what is required by law, professional organizations often have codes of ethics that obligate members of the profession to report an impaired colleague to protect patients and the general public. One of the principles from the American Physical Therapy Association code of ethics, for example, states, "A physical therapist shall exercise sound professional judgment."

Is there a problem?

It's not always easy to identify a healthcare professional with a substance abuse problem. Addiction is a disease that doesn't discriminate by profession or ability: Professionals who abuse substances such as drugs (either prescription or "street" drugs) and alcohol frequently function at a high level and may even be seen as star employees—at least for a while. Once the effects of substance abuse appear at work, the professional likely has a serious problem.

Be alert for subtle signs and symptoms. Watch for changes in behavior or work patterns. Is an EMT withdrawing from interactions with coworkers? Has a respiratory therapist started calling in sick more often? Chronic lateness, social isolation, defensiveness, and anxious behavior are other red flags for substance abuse. Physical signs such as weight loss or gain, or poor physical condition or hygiene may also appear.

In the case of professionals who handle narcotics, pharmacists can help identify abnormal patterns of prescribing or signing out drugs.

Return to work is possible

Professionals who voluntarily enter treatment for their addiction are usually granted a medical leave of absence. Professionals who return to work may sign a contract that outlines work responsibilities and outcomes if abuse recurs. Random urine sampling may also be used to monitor the professional for abuse of drugs or alcohol.

Remember, you have a legal obligation to protect the impaired healthcare professional's privacy. Don't talk about the person's past problems with coworkers, friends, family, and certainly not other patients.

In addition, the American Disabilities Act prevents discrimination against employees who are recovering from addiction. "For example, if an employee needs time off to go to an AA meeting, an organization should support this when possible in accordance with their duty to reasonably accommodate the individual," Brent says.

Break the stigma

The stigma associated with addiction may be a barrier to getting help. Colleagues are reluctant to say anything about potential addiction. Yet, you could open yourself to a liability claim if you fail to sound an alarm.

Don't think you are doing the person a favor by remaining silent or covering up mistakes. By speaking up, you can help keep patients safe and give someone the opportunity for successful treatment.

REFERENCE

1. Baldisseri M R. Impaired health professional. ***Crit Care Med***. 2007;35(2, Suppl 1), S106-S116.

Why Incident Reports Are Important

When is it important to file incident reports with HPSO? An incident report should be filed whenever an unexpected event occurs. Any time a patient or client makes a complaint, a medication error occurs, a device malfunctions, or anyone—patient, staff member, or visitor—is injured or involved in a situation with the potential for injury, an incident report should be filed, and right away.

You may be concerned about filing an incident report. But an incident report, in and of itself, will not necessarily have any negative impact on your policy. Remember, a claim could be filed against you years after an event, and you will be responsible for recreating the event for your attorney if a lawsuit is filed against you. You may not be able to rely on memory to recall facts pertinent to the incident, but you can refer back to the incident report for those details.

How to report an incident

HPSO makes it easy and convenient to submit incident reports. You can call us at (800) 982-9491 to provide the information over the phone, or use the on-line incident report available at **www.hpso.com/incident report**. This report can be submitted electronically, or a printed copy can be faxed or mailed.

To complete an incident report, you'll need:

- Your policy number
- Your telephone number and best time you can be reached
- An address where you can receive mail
- The date of the incident
- A brief description of the facts of the incident (if available)
- The injured party's name (if available).

Remember to also complete an incident report at your facility, following policies and procedures, and file it with your risk manager. Don't make reference to it or put it in the patient's medical record. This could allow a potential plaintiff's attorney to obtain the report.

For more information about incident reporting, visit the FAQs in the Customer Service section of the HPSO Web site at **www.hpso.com/faqclaims**.

Speak up to avoid liability risks

Many lawsuits brought against healthcare organizations and providers have their roots in poor communication. And, if you witness inappropriate care and fail to speak up, you, too, could be held liable.

Address the *right* problem

Before taking action, think carefully about the problem you witnessed, the action or lack of action by your co-worker, and what behavior or solution should have occurred. Let the person who committed the inappropriate care know exactly what was expected and what was observed. Then end with a question that invites the other person to respond ("What happened?").

People can become defensive when confronted, so make sure you create an environment of safety. Do this by sharing your good intentions and seeking common ground. Let the person know why you're bringing the problem up and that you want to be a part of the solution.

Learning to speak up and confront problems effectively takes time, but the good news is that it can be learned. While some people may be naturally competent at confronting problems, the rest of us can become proficient at the skills to do so.

REFERENCE

1. Patterson K, Grenny J, McMillan R, Switzler A. Crucial Confrontations: Tools for Resolving Broken Promises, Violated Expectations, and Bad Behavior. New York, NY: McGraw-Hill; 2005.

EDITORIAL INFORMATION:
Send comments and questions c/o HPSO *Risk Advisor* at 159 East County Line Road, Hatboro, PA 19040-1218. Due to space limitations, all editorial sources and references may not be listed, but may be available on request.

SPECIAL THANKS TO:
Emily Moss, MD • Cynthia Saver, RN, MS • Susan Jensen, PhD, RN, CCM, • Rene Teper, MA, CRC, • Barbara Billek-Sawhney, PT, EdD, GCS • E. Anne Reicherter, PT, DPT, MEd, OCS, • Sheila K. Nicholson, Esq., MBA, MA, PT

EDITOR-IN-CHIEF
Michael J. Loughran

EXECUTIVE EDITOR
Dolores A. Hunsberger

SENIOR MANAGING EDITOR
Diane Widdop

MANAGING EDITOR
Alicia R. D'Onofrio

ART DIRECTOR
Edward Rosanio

PUBLISHER'S REPRESENTATIVE
Alicia R. D'Onofrio

When your client can't read

About 90 million people, or 47% of all American adults, have problems accessing, reading, understanding, and using healthcare information.[1] This deficiency can lead to disastrous results. One study found that patients with inadequate health literacy are 50% more likely to die than patients who can understand healthcare material.[2]

Illiteracy should not stand in the way of patient teaching. If a patient is injured through lack of education, you could still be held liable for failure to meet patient teaching standards.

One challenge is that it's not always easy to detect illiteracy. Patients with poor literacy skills are often embarrassed and try to hide this information. Watch for clues such as poor eye contact when presented with written materials, signing paperwork forms without looking at the material, or reporting reading glasses were left at home. The patient may also become defensive or provide an inaccurate or incomplete health history form.

How should you handle illiteracy when teaching a patient? Try alternative forms of education such as audiotapes, videotapes, or CD-ROMs. To assess patient comprehension, use open-ended or demonstrative-type questions, instead of the traditional closed-end questioning pattern. For example, an athletic trainer should not ask, "do you understand these exercises?" Instead, he or she should say, "please explain your exercises to me" or "please show me your exercises." With the patient's permission, involve the patient's friend, family member or guardian.

Remember to document any findings related to the patient's ability to read, understand, and adhere to recommended care. This documentation can help you and other members of the healthcare team improve health outcomes for clients with low health literacy. And, it can protect you from a liability claim.

REFERENCES

1. National Center for Education Statistics. National Assessment of Adult Literacy 2003. Washington, DC: National Center for Education Statistics. Available at: http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2006483. Accessed March 26, 2008.

2. Baker DW, et al., Health literacy and mortality among elderly persons. Archives of Internal Medicine; 2007;167:1503-1509.

Surviving a deposition

Being called to give a deposition can be stressful, but you can take steps to reduce that stress and ensure your testimony is accurate and well received.

A deposition is a formal legal process of obtaining the testimony of a witness before a trial, out of court and while under oath. Attorneys pose questions to the deposed witness and a court reporter transcribes the questions and answers.

Testifying at a deposition is easier if you thoroughly review your documentation in the client's record ahead of time. The defense attorney can help you prepare by discussing approaches the plaintiff's attorney may take and the types of questions you may be asked.

After you are sworn in by the court reporter, the plaintiff counsel will ask questions. During questioning, the defense counsel has the opportunity to object. This same format is followed when it's the defense counsel's turn to ask questions.

Listen carefully to each question to make certain that you understand it. Be honest, stay calm, and listen carefully. Don't talk more than is necessary to answer the question. You are there to answer questions honestly and succinctly.

Not all questions have a "yes" or "no" answer, so take the time to carefully explain your answer. In addition, you may be asked the same question more than once, but worded differently. Stay consistent with your responses because the more consistent the answers, the more valid the testimony.

Remember, it's never appropriate to "guess" and you should strive not to stumble over your words—it will make your testimony appear less valid. Give your responses clearly and in a professional manner. And if you don't know the answer, it is appropriate to say so.

Giving testimony can be an intimidating experience; however, proper preparation and keeping calm will help you confidently deliver accurate testimony.

MOVING?

Have you changed your e-mail address? Have you moved or are you planning to move? Report your new e-mail address or change of mailing address by e-mailing us at service@hpso.com, writing to us at HPSO *Risk Advisor*, 159 E. County Line Road, Hatboro, PA 19040-1218, or calling HPSO at 800-982-9491. You can also change your address online via the Virtual Customer Service Representative (VCSR) by logging on www.hpso.com and clicking the My Account button.

HPSO
Healthcare Providers Service Organization℠
HPSO *Risk Advisor*
159 East County Line Road
Hatboro, PA 19040-1218

HPSO Helps the Environment

HPSO *Risk Advisor* is going green! And you can help, too. You can register to receive the next edition of the HPSO *Risk Advisor* via e-mail. To do so, go to www.hpso.com/gogreen and sign up. However, if you'd like to continue to receive the paper version, we'll print it on recycled paper. You can also read past issues of the HPSO *Risk Advisor* on our website by visiting www.hspo.com/news.

LESSONS FROM COURT

Failure to monitor a disoriented heart attack patient

A 57-year-old man, hospitalized for a heart attack, was experiencing some disorientation. He was initially restrained, and after the restraints were removed, he fell while attempting to get out of bed. The man suffered a herniated disc, which required surgery, a broken nose, right-sided weakness, and numbness in his hand and feet. The plaintiffs (the man and his wife) claimed the hospital staff was negligent in not monitoring the husband and not installing any preventive measures such as a bed alarm. The husband died before trial, and his wife accepted a settlement of $25,000.

Staff. (2008). *Medical Malpractice Verdicts, Settlements & Experts*, 24(1), 19.

Advice from the expert:

When removing restraints or any other type of safety device from a patient, it's recommended to implement and document heightened monitoring initially to verify that the device(s) is not needed. The documentation in this case would be critical to demonstrate that the patient's disorientation had resolved, which made the continued use of the restraint unnecessary. Or, there could have been documentation to support the reason for removing the restraint, for example, perhaps it was agitating the patient, causing more stress on the patient's heart, and therefore was contraindicated. However, if the latter was the rationale, then some other intervention(s) should be documented because the problem of disorientation with its risks had not been resolved. Additional documentation should include the plan of care.

Sheila K. Nicholson, Esq., MBA, MA, PT; Quintairos, Prieto, Wood & Boyer, P.A.; Tampa, Florida.