Dealing With The Problematic Partner/Associate: What Tools Do You Need?

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Reference

Muroff LR. Dealing with the problematic partner or associate. J Amer Coll Radiol (8); 2007: 527-533
WHAT IS A PROBLEMATIC PARTNER/ASSOCIATE?
A problematic radiologist is one whose actions are contrary to the best interests of the practice or whose behavior jeopardizes the morale or even the tenure of the group and its radiologist members.
A radiologist does not have to exhibit egregiously bad behavior to be a problem. He/she could undermine morale by being habitually tardy, by “cherry-picking” the cases, and/or by undermining the professional competence of his/her partners.
No matter what the problem is, it must be addressed promptly and decisively, because failure to do so is extremely demoralizing to the group members who adhere to the policies and expectations of the practice.
RULE #1

Dealing with the problematic partner (associate) starts with holding divisive physicians accountable for their actions and dealing with them quickly and decisively!
The ability of a group to deal with its problems starts with the contracts that a practice has with its radiologist members and the policies that a practice has prospectively put in place.
References


Contracts between radiology groups and their members are not agreements between two equal entities.

The protections are in place for the benefit of the group, not the individual.
Perceived “onerous” contract clauses are more palatable if all group members sign, not just new hires.
Five Important Protective Contract Clauses

1. Termination without cause
2. Non-compete
3. Automatic resignation from all group’s hospitals at end of employment
4. Full-time medical employment with group
5. Protection against sale/reposssession of stock to/by an “outside entity”
Personnel Decisions

1. When in doubt, don’t hire-keep looking.
2. You will not likely be able to rehabilitate a problematic potential hire.
3. It is rare to be able to hit personnel needs just right. You are either a bit too fat or too thin. The group has significantly more flexibility if it runs a little fat.
4. When you need to make a people change, act quickly.
In the last 5 years, my practice has fired a partner or an associate.

1. Yes

2. No

3. We have not fired a partner or associate, but have given them the choice of resigning or being fired.
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Termination Without Cause

1. For all group members — partners and non-partners

2. 2/3 vote of shareholders — affected partner has no vote

3. Short termination time — 30-90 days; pay off individual and immediately end employment
Non-Compete

1. Prohibits a radiologist from engaging in the “same or similar” activities as the group for a specific period of time with respect to a specific geographic area.

2. General Test of “Reasonableness”: Scope of duties; Duration; Geographic Area; and Public Interest — but must consult state law.
Why Is a Non-compete Essential for Private Practice?

1) Prevents the hospital from “cherry-picking” the practice members.

2) Prevents a practice member from leaving the group and “setting up shop” in the practice’s “backyard”

NECESSARY TO MAINTAIN ORDER
Automatic Resignation from All Group’s Hospitals at End of Employment

1. For partners and non-partners alike

2. Upon retirement or termination

3. Consider securing an executed Power of Attorney in advance
Full-Time Medical Employment with Group

1. All patients of the radiologist are patients of the group. The group retains all rights to bill for services and owns any records and other material relating to its patients.
Full-Time Medical Employment with Group

2. Radiologist is in the full-time practice of medicine as an employee of the group: all income earned by the radiologist — from lectures, medical-legal work, royalties, etc. — belongs to the group (can exempt stock, real estate, etc.).
Protection Against Sale/Repossession of Stock

1. Shares are worth far more than redemption value because buy-ins and buy-outs are usually kept artificially low.

2. A shareholder should not be able to sell shares to any entity other than the group.

3. If a partner declares bankruptcy, the stock must be protected from creditors.
The need for a sixth contract clause!

A practice member must reimburse the group for any expenses incurred by the group on behalf of, or as a result of, the actions or practices of the member.
Practice Policies
Groups can be held responsible for the “misbehavior” of practice members.
Some hospital contracts mandate that if one group member loses hospital privileges, all lose their privileges.
More commonly, however, is the fact that practices have lost or significantly endangered their hospital contracts because of the bad behavior of one (or a few) group member(s).
AND STAY OUT!

HOSPITAL ADMINISTRATOR

M Boot!
Practice Policies

1) Leave
   a) family
   b) medical
   c) sabbaticals

*Certain policies concerning leave can be governed by state and federal requirements.
Practice Policies

2) Impairment
   a) substance abuse
   b) psychological
   c) eroded skill sets

*A key point for policies governing impairment of any kind is the requirement that a member treat or remediate the problem.*
Practice Policies

3) Behavioral Issues

a) rudeness
b) absence/habitual tardiness
c) cherry-picking the work
d) unwillingness to participate in practice-related activities
e) acting contrary to interests of group
4) Sexual harassment/creation of a hostile work environment

*These actions can cost a hospital contract; however, they can also result in litigation against a practice (and all its radiologists). The awards will probably not be covered by the group’s insurance.
Practice Policies

5) Productivity expectations

6) Service/Practice-building expectations

7) Nepotism/Fraternization

8) Disability
Disability should be dealt with in the employment agreement. It should dovetail with the group’s disability policy so that the individual neither is at financial hardship nor gets a windfall as a result of the disability.
Policies may be group-specific, but be wary of state and federal laws.
Because any action will set a precedent, policies should be in place before they are needed.
The “Or Else” Factor

1. There must be a meaningful consequence if a policy is not adhered to by a practice member.

2. The consequence may vary from one policy to another, but it cannot vary from one individual member to another.
For some policy infractions, the consequences may be measured and graded; for other policy infractions, there may be a zero tolerance response.
What Might Be Considered a “Meaningful” Consequence?

1. Significant monetary fines

2. Extra call (night and/or weekend)

3. Less vacation

4. Termination
Appropriate contracts and prospectively implemented policies put groups in the best position to deal with problems and problematic radiologists.
Failure to have policies in place prospectively is at best difficult for a practice, but most often it can be chaotic and destructive.
Actions for Your Practice

1) Get your employment agreements in order
2) Adopt policies that will help practice members know what is expected of them
3) Have meaningful consequences for policy breaches
4) If problems are present (or when they occur), deal with them promptly and decisively
Actions for Your Practice

5. Develop a culture of “mutual expectation” - each practice member should be expected to practice-build and be a vital and willing member of the group

6. Consider a mentoring program for your group so that a new hire can seek advice without fear of consequences

7. Remember that each shareholder “owns the business- nobody washes a rental car"