

Sure, Dr. Chuck Was A Creep, But Did He Kill

Your Facility Agreement... or Worse?

BY MARK F. WEISS, JD

The Mark F. Weiss Law Firm, Dallas, TX, Los Angeles and Santa Barbara, CA

Staffing pressure, the inability to recruit and retain, is like a virus, infecting medical groups of many sorts and nearly all sizes.

Perhaps that's why the "Somewhere Group," an amalgam of hospital-based groups with a pretend name, one of which might just be a few miles from where you are now, overlooked Chuck's somewhat odd demeanor and the fact that he'd held three handfuls of practice positions over the past handful of years.



Soon, the complaints started coming in. "He stands way too close to me, sometimes inches from my face." "Chuck comes up behind me and touches my arms." "He brushes up against me."

Then, out of the not-so-blue, comes a lawsuit, publicized in the local paper, brought by a hospital volunteer, alleging civil assault: Chuck had used his finger to "draw" on the plaintiff to show where an incision had been made on a patient.

The story is picked up by television news, featuring interviews not only with the plaintiff but with hospital employees who decry that they've been complaining about creepy Chuck for months.

The hospital's CEO is having a meltdown. Chuck's got to go, and fast. The CEO calls Somewhere Group's leader and says he's exercising his rights under Somewhere's exclusive contract.

What might those rights be and is Somewhere itself on the chopping block?

SOME POTENTIAL PROVISIONS

The CEO is likely referring to a class of hospital contract provisions that consists of two sorts.

The first is generally found in the breach/termination section of the agreement. An example would be a provision that provides that, "Hospital may terminate this Agreement immediately upon a good faith determination by Hospital that a Provider has done something to cause material harm to the business reputation of Hospital."

The second is comprised of two elements.



The initial element might be found in a provision dealing with professional qualifications, such as one stating that, "Group shall ensure that no Provider engages in any conduct that is unethical, unprofessional or jeopardizes, or threatens to jeopardize, the health or safety of patients."

The other element is a standard provision that permits the hospital to terminate the agreement upon the group's breach; it would look something like this:

"Any party hereto may terminate this Agreement immediately if any other party breaches this Agreement and such breach is not cured within [some number of days]."

TWO BIG PROBLEMS

The Chuck saga presents two contract drafting issues for medical groups to consider.

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The first is that the agreement attaches standards to particular providers but places the impact of their breach on the group. Chuck violates the terms, but the Somewhere Group pays the price.

When negotiating the agreement, Somewhere should have negotiated for language that specifies that if an individual provider breaches a qualification provision or if a breach relates to a specific provider's conduct, then the breach can be cured by removing the provider from the schedule or terminating his or her relationship with the group.

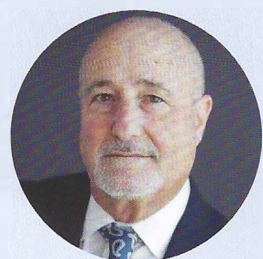
The second is that chucking Chuck from the schedule or from the group, even if the group had successfully negotiated for the ability to cure by removing the "offending" provider, will often draw a wrongful termination or similar lawsuit against the group. Consider, though, that the decision to chuck Chuck was really made by the hospital's CEO.

The solution to that quagmire is for groups to negotiate for an indemnification provision: If the hospital triggers the removal of a provider, the hospital indemnifies the group for any blowback from the provider.



Note that although the Chuck saga is far from uncommon, other triggers, such as a physician's exclusion from participation in federal healthcare programs or medical license issues or provisions giving a hospital administrator carte blanche to withdraw approval of any provider, can put the group into one or both of these predicaments.

In your own group's contract negotiations, hope for the best, but plan for the worst. That bit of planning might prevent your group from Somewhere's fate.



MARK F. WEISS, JD

Mark F. Weiss, JD, is an attorney specializing in the business and legal issues affecting anesthesia groups and healthcare facilities on a national basis, practicing at The Mark F.

Weiss Law Firm, with offices in Dallas, Texas and Los Angeles and Santa Barbara, California. He served as a clinical assistant professor of anesthesiology at USC Keck School of Medicine. He can be reached by email at markweiss@weisspc.com.