July 2012

**Breaking Up Is Hard To Do**

Neil Sedaka may have said it best. Breaking up is hard to do. But breaking up isn’t just about teenage crushes, or failed marriages. Physician practices suffer unexpected breakups too, and physician departures from groups can represent risks to the practice in the form of financial loss, diminished reputation, possible claims of patient abandonment, and damage to internal practice processes. Ultimately, if your practice is thrown into disarray, even temporarily, patient safety and risk management can suffer and put you at risk for liability claims.

Unexpected physician departures may occur when a partner leaves to start or join another practice, sometimes in direct competition to their former group. A partner or employed physician may need to leave to follow a spouse who is taking a job too far away to commute. Occasionally, a group will realize that they need to terminate an employed physician, and in unfortunate circumstances, practices have had to cope with the unexpected death of a partner or employed physician.

This article will address some of the steps a practice can take before and during this type of situation to ease the process for physicians, staff and patients.

Before you face this situation, you can:

1. **Assess your group’s relationships**
   
   If you are not currently in the process of losing a partner or employed physician, this is a good time for the managing partners to do a thorough and critical self-assessment of the status of your practice’s relationship strengths and weaknesses. Are compensation packages and call schedules viewed as fair by all physicians in the group? Is every physician empowered to speak up if they feel improvements could be made in patient services or other areas of the practice? Do they speak up? Are there signs of discontent?

   If there is room for improvement, you have an opportunity to do so. All practices can include an assessment at this level as part of their ongoing and annual business assessment.

2. **Assess your partnership and employment documents**

   Partnership and employment documents should be carefully drawn up with the assistance of an attorney familiar with healthcare law.

   *Partnership documents* should be clear in terms of what the partnership will owe a departing partner and what that departing partner’s responsibilities will be to the practice.

   Compensation to be paid to the departing partner, and whether the practice will buy back any shares that partner has in the practice, should be addressed. Any accrued vacation may be able to be paid, but how will the physician’s share of accounts receivable be handled? Does the departing physician get a pro-rated share of any year-end bonus which the practice pays to the partners? What will the physician’s share be in the practice’s physician retirement plan? Is the partner a party to any owned property contracts (land, buildings, equipment), or a signatory on mortgages, leases, loans to the practice, or other debts? Who will bear the costs of the letter of notification to the patients, and the postage for those letters? Financial issues will undoubtedly be a big part of any discussions when a partner leaves, so plan meticulously for the occasion.

   If the practice has claims-made coverage, tail coverage will be needed for the departing partner. The practice’s insurance agent can define what coverage is needed, but it will be the partnership documents that define who will pay for this coverage. Going without tail coverage is a risk that neither the practice nor the departing physician should consider.

   These documents should also address issues of non-competition and non-solicitation, or the departing partner could set up practice across the street and actively try to take as many of the existing practice’s patients possible. The documents should
also specify what constitutes an appropriate notice of departure, including the manner in which the notice is to be given and how long before departure notice is to be given. If the partner holds more than one title at the practice, such as partner and managing partner, the resignation documents should specifically resign him or her from each role held. Sudden absence of an active member of the group may require that the practice hire an interim locum tenens while searching for a replacement. This and other unexpected business costs are expenses which the practice may wish to recoup from the physician who left if inadequate notice was given.

Patient care is the function of a practice, and it should not be forgotten in these important documents. Partnership documents should address continuity of patient care in the event that a partner leaves the area, making it impossible for patients to continue their care with that physician.

Employment documents will cover most of the above topics, though it is not likely that employed physicians share in practice debts or bonuses. Employment papers should also include clauses regarding non-competition and non-solicitation of patients similar to those contained in partnership documents, since often physicians just starting out, who begin practice as employees, may be more interested in starting their own practices after "learning the ropes".

Employment documents should also contain language regarding terminations, spelling out what compensation may be given and under what circumstances. This will make it easier in the event that a practice finds it necessary to terminate an employed physician.

Communication

News like the breakup of a practice usually does not remain secret for long, no matter how hard physician partners and office management try to “keep a lid” on it. Rising tension levels along with an increase in special meetings and whispered conversations tip staff and patients off that something is happening.

Staff should be informed before patients so that the practice can present a unified approach to disseminating the information to patients. How and when staff members are notified depends a great deal on the size of the practice and on office relationships. A very large practice may be able to wait longer than a smaller group with more close relationships.

Patients should be informed as early as the practice can manage, at least three months prior to the physician’s departure. If patients are not appropriately notified, they may claim that they have been abandoned by their physician and/or the practice. Some important points to remember:

- Consider telling patients who have chronic and/or serious conditions which require them to be seen frequently personally during an office visit, if possible; they should also get a letter of notification from the practice.
- All patients of the departing physician should get a letter notifying them about the upcoming departure (contents of the letter are itemized below).
- The letter of notification should be sent out by certified mail, return receipt requested, and also by first class mail. The letter is sent out in both forms to assure that every patient receives the letter.
- A copy of the letter should be maintained in the patient’s chart.

The letter of notification should contain a number of elements to adequately inform patients that their physician is leaving the practice. These elements may include:

- The name of the departing physician and the reason for leaving (if the physician has been terminated, or the reason for departure is similarly confidential or embarrassing, this information should be made sufficiently vague).
- When the physician is leaving.
- The practice’s sincere concern about continuity of care, management of medical conditions, and preventive care, emphasizing that they will work with the patient to achieve these goals.
• An emphasis on the patient’s right to choose whether they wish to stay with the practice, go with the departing physician (if they will remain in the same geographic area), or transfer to another practice/physician.

• An explanation that a copy of the patient’s medical record will be made available to them at no charge if they decide to leave the practice. (Note: this is one of the few circumstances in New Jersey when a patient record is required to be released to the patient without charge.)

• Explain how the record can be obtained, and enclose a copy of a HIPAA compliant medical record release authorization.

Other methods of notification to consider include:

• The New Jersey Board of Medical Examiners (NJ BME) requires all physicians who are closing their practices to “publish a notice and the established procedure for the obtaining of records in a newspaper of general circulation at least once a month for the first three months after the practice closes.” A sign in the waiting room, announcing the physician’s departure.

• Written notice given to patients at the time of their appointments.

• Notice on the practice’s website.

As practices become larger and continue to change, as the practice of medicine continues to evolve, and as hospitals again become more involved in the acquisition of physician practices, it can be anticipated that groups will experience the departure of partners and employees, perhaps more frequently.

Preparation for this eventuality will help everyone through this situation and may reduce the inevitable difficulties involved.

Breaking up will always be hard to do, but it need not be traumatic.

Sources used in the development of this article include:
