Overview: Critical Thinking Part One

- Consent for photography, filming, 1st Amendment movement
- Workplace violence, disruptive patients
- Discharging the homeless patient
- Employee privacy rights — name tags, other issues

Photography, Filming, and 1st Amendment Audits in Public Entity Facilities

Andy Anarchist and Betsy Busybody are well known in your town for their frequent outbursts at City Council meetings. Recently they’ve started an “inventory” of public buildings including the Public Works Department, the Assessor’s Office and your hospital and clinic. Each day they pick a “target” and videotape all of the cars in the parking lot, all of the employees arriving for work, and all of the people coming and going from the buildings. After auditing the outside, they enter the building and videotape everyone inside the building as they work. They then post their videotapes to YouTube and solicit comments from like-minded groups. Your hospital CEO wants you to make this stop, NOW. What are some of the issues you are looking at?
The First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

First Amendment - Speech - limits

- The government may regulate speech in both public forums and designated public forums with reasonable time, place, and manner regulations.
- Such regulations are not generally concerned with the content or viewpoint of someone’s speech rather, the regulations are concerned with the when, where, and how someone is communicating.
- Regulations must further an important government interest.
  - E.g., traffic safety, orderly crowd movement, personal privacy, noise control, litter control, etc.
  - E.g., “yelling fire” in a crowded theater or “inciting violence”

"First Amendment Audits"

A made-up, often misinformed, way in which some citizens “test” the strength of their First Amendment speech rights – lately, more than just videotaping law enforcement.
First Amendment Audits (cont.)

Now, it often involves "auditors" filming government employees at government worksites. Unfortunately, these "auditors" usually do not understand the complexities of the First Amendment, including location rules!

“First Amendment Audits” (cont.)

“Auditors” often believe they have a full, unrestricted right to film government employees at government worksites. Not true, of course, for example, citizens cannot freely enter the Oval Office and film the president as he works.

LOCATION MATTERS!

How Should You Handle “First Amendment Auditors”?

1. Create a policy that prohibits unauthorized filming and photography on the premises; be clear about what is “private area” vs. “public area”
2. Post visible notices in your waiting rooms and front desk areas about this policy (“No Photography or Filming”)
3. Consider citing patient privacy as the rationale for the policy (this is a legitimate reason for limiting “speech”)
**“First Amendment Audits”**

**Handling Problems**

1. If someone insists on violating the filming and photography policy, immediately notify a supervisor.

2. The supervisor should **calmly** instruct the person to immediately stop all filming and photography (remember you’re going to be on YouTube forever!)

3. The supervisor can then call the police if the person refuses.

4. Document everything, and **your reasons** for taking the actions you took!

**“First Amendment Audits”**

**Handling Problems (cont.)**

Do not try explaining the First Amendment or its complexities to the “auditors”

First, it is complicated law that is difficult to discuss in the heat of the moment.

Second, the goal is to quickly diffuse the situation, if you try discussing or arguing the First Amendment with the “auditor,” you will likely prolong the interaction.

**“First Amendment Audits”**

**Do NOT Do This:**

Do not try confiscating any property from “auditors,” including their recording devices.

Do not initiate any physical contact with “auditors”

- While you should strenuously avoid physical contact, it is of course permissible in cases of self-defense.
“First Amendment Audits”
Do This:

Discreetly call your security and/or the police and let them handle it!

Free Speech, Filming and the Internet

Sara Sneak told your provider, Dr. Nancy Nice, at the END of her appointment that their entire discussion about her dissatisfaction with her hospital stay and post-surgical infection has been recorded and she intends to post it on her Facebook page.

Unfortunately, in an effort to calm her down, Dr. Nice admitted that she was also disappointed that Sara didn’t have a better outcome and that she too was concerned about the hospital’s post-surgical infection rates, but that she really couldn’t do much about it since it was up to the hospital’s patient safety and infection control committees to make the changes that she thought would be necessary to prevent this from happening again. And, she added, “that costs money.”
Secret Audiotaping (cont.)

Dr. Nice has now frantically called you to ask how she can stop it from being posted to Facebook since it makes her, and the hospital, “look bad.”

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Providers Have a Right to Object to Being Videotaped or Audiotaped!

1. In patient treatment areas there is a chance another patient’s privacy will be breached.
2. Even in private offices, being recorded is a distraction that interferes with patient care and safety.
3. Example: A doctor demonstrating flu shots during a live television broadcast accidentally injected co-host Sarah Purcell with the same needle he had just used for Gary Collins. (9/25/93 – LA Times)

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Privacy Crimes

California Penal Code
CHAPTER 1.5. Invasion of Privacy [630 - 638.55]
631(a) A person who, intentionally and without the consent of all parties to a confidential communication, uses an electronic amplifying or recording device to eavesdrop upon or record the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500) per violation, or imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.
Privacy Crimes — Added Last Year

California Penal Code
CHAPTER 1.5. Invasion of Privacy [630 - 638.55]

632.01. (a) (1) A person who violates subdivision (a) of Section 632 shall be punished pursuant to subdivision (b) if the person intentionally discloses or distributes, in any manner, in any forum, including, but not limited to, Internet Web sites and social media, or for any purpose, the contents of a confidential communication with a health care provider that is obtained by that person in violation of subdivision (a) of Section 632. For purposes of this subdivision, social media means an electronic service or account, or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.

Terms and Conditions of Admission

- I also understand that under California law I may not film, record, disclose or distribute any image of or conversation with a UCSF employee or physician without the consent of all parties to the conversation and that violation of this law may result in criminal or civil liability. Please refer to your patient handbook for more information concerning your stay here at UCSF’s hospitals and facilities.
- Question: Will your DA prosecute violations of this law?

Workplace Violence
Workplace Violence; Disruptive Patients

Johnny Goodfellow had a run in with some “gentlemen” over a drug deal gone bad, and is now in your hospital recovering from a “trip and fall down the stairs” – he has lots of visitors and they are not “impressed” by your rules. They haven’t exactly punched anyone, but “get in your face” and are very intimidating when they stare (or glare) at your employees.

Workplace Violence (cont.)

Several of your young residents and nurses have come to you to complain that they don’t “feel safe” caring for Mr. Goodfellow. What should you be thinking about?

• Record all violent incidents in log (eff. 4/1/17)
• Identify, evaluation and correct hazards; train and investigation (starting 4/1/17)
• Report incidents to Cal/OSHA (eff. 4/1/17)
• Have written plan (in place by 4/1/18)
• Train everyone (by 4/1/18)

But, What is “Violence” or a “Threat of Violence”?

Any statement or conduct that causes a person to fear for his or her safety because there is a reasonable possibility the person might be physically injured, and that serves no legitimate purpose.

The threat or use of physical force against an employee that results in, or has a high likelihood of resulting in, injury, or stress, regardless of whether the employee sustains an injury …

Question: Is it a “threat” if you fear a person because of how he dresses, his reputation, his “associates,” or his demeanor (e.g., glaring)? Can this be seen as “conduct” that would cause a person to fear for his or her own safety?
Assessing Visitors

Hospital may restrict visitors who are known to have a history of disruptive, abusive, aggressive or violent behavior (presumably, AT THE HOSPITAL)

Policy should address this, including what to do:
1. Ask visitor to stop
2. Tell visitor they will be asked to leave if they continue
3. Ask visitor to leave
4. Notify security
5. Call police

Terms and Conditions Language

BEHAVIOR: Medical Center has adopted a zero tolerance policy for violence in our facilities. As such, Medical Center is committed to maintaining a safe workplace that is free from threats and acts of intimidation and violence. For the safety and security of our patients, visitors and staff, weapons, knives, alcohol, illegal drugs and other dangerous materials are not allowed in our facilities. It is the expectation of the Medical Center that you and your visitors conduct yourselves in a respectful, non-violent, non-discriminatory and non-abusive manner and that you do not leave the hospital at any time during your stay. It is against hospital policy for you to leave your assigned unit with property belonging to the hospital (example: gowns, IV machines, oxygen tanks, etc.). You may be discharged if you leave the hospital without informing your clinical team or if you repeatedly violate the hospital’s smoking policy.

Reporting to Division of Occupational Safety and Health/Dept. of Industrial Relations (8 CCR 3342)

You must log and investigate all complaints
You must report the following incidents to DOSH:

1. Use of physical force against employee by patient or person accompanying patient that results in or has a high likelihood of resulting in injury, psychological trauma, or stress, regardless of whether the employee sustains an injury
2. Any incident involving a firearm or other dangerous weapon
Reports of Assault/Battery Against Personnel to Local Law Enforcement and/or Licensing

Health & Safety Code 1257.7 – reports of assault or battery against on-duty hospital personnel to local law enforcement are required if employee is injured or if it involved use of firearm or other dangerous weapon (eff. 7/1/10)

Health & Safety Code 1279.1 – reports to CDPH Licensing and Certification District Office involving patient injury/adverse events, or any adverse event (e.g., abduction, sexual assault, physical assault) that causes death or serious disability of a patient, personnel, or visitor. (eff. 1/1/08)

What Do You Think? Reportable?

• Immediately after baby was delivered, midwife (a visitor to the hospital) slaps the pediatrician’s hand, who is trying to do the initial baby exam. Says midwife as she slaps his hand: “this baby doesn’t need suctioning”
• Patient: “If I had a gun I would shoot you”
• Family member: “You will pay for the death of my son”
• Patient: “Remember, I have friends who are gang members”
• Patient/Attorney: “I am going to sue you”

What is Your Process? An Example

• Immediate review of threat by involved provider; if urgent, Security/Risk/police involved immediately — make a plan
• Workplace Violence Incident Report reviewed in a weekly huddle with Safety/Security/Risk/Manager for Involved area — review plan and continuing activity
• Involve TMT either immediately or after event
• Document plan of action
Discharging the Homeless Patient

Brent is well known to your staff. He comes into your facility with a variety of problems, mostly related to addiction. He is homeless but because of his drug use, he develops cellulitis and other issues for which he needs IV antibiotics for as long as six weeks — he insists that he wants to be “free.”

He declines assistance with finding housing saying that they are “too restrictive” for his life style, meaning that he cannot stay in this housing if he is using drugs.

Super Bowl Sunday Planning

- This day, he is ready for discharge but wants to stay to see the Super Bowl on the big screen TV in his room; staff know that tomorrow he will have another reason to want to stay.
- When he is in your facility, he is often disruptive and wants to periodically leave to “get some fresh air”, so elopement is common, interrupting the antibiotic administration.
- He often returns in an “altered” state; your staff initiates the room search, visitor restriction.
- The cycle continues.
Discharging Homeless Patients

- Every hospital is required to have a discharge planning policy (Health and Safety Code section 1262.5; Joint Commission Standards LD 04.02.05, RC 02.01.01, 02.04.01, PC 04.01.01, 04.01.03)
- Generally broken down by simple, complex, multi-disciplinary
- May include procedures for “difficult” or “complex” cases
- Consider policy related to multi-disciplinary treatment planning for complex adult inpatients
- The record should reflect all efforts to find resources and referrals

Discharging Homeless Patients

- Discharge summary should include the medical status, stability for discharge and follow up plans
- But what if the patient’s “baseline” is less than what anyone would want?
- What if the patient refuses discharge?
  - Policy example: “If medically stable, Security may be called to escort the patient from the premises after all other attempts to communicate have been exhausted” — will this continue to hold up as an acceptable practice?

Remember the Movie: "Jerry Maguire?"

Case Workers Often Feel Very Frustrated with This Process
This Societal Problem is Huge

• On the one hand, if a patient wants to live on the street, declines services, shelters, living situations, is that the patient’s right under the concept of autonomy?
  • If so, then absent a new mandate (see later slide), it is important to document the patient’s goals, desires and your efforts to provide services
  • On the other hand, homelessness results in a loss of autonomy — lack of employment, food, clothes, family

This Societal Problem is Huge

• Estimated 46% of homeless have a chronic substance abuse problem and/or a severe mental illness
• Homeless individuals experience 3-4 x higher mortality rate than housed*
• Length of stay is longer than medically necessary
• Re-admission rates are high due to:
  • Lack of rest
  • Lack of cleanliness
  • Medication non-compliance or lack of access
  • Failure to comply with planned follow-up care
  • Lack of understanding of medical condition

* The State of Homelessness in America 2013

Pilot: ED Screening for the Homeless and “Caring Wisely” for the Homeless

• Purpose: In an effort to improve care, reduce length of stay and decrease return visits, partner with a shelter and pay for treatment and shelter
• The ED must first screen for homelessness. There are many mandated questions — domestic violence, suicidal ideation. Proposal is to add questions about whether the patient has a stable home — must be timed and asked to avoid EMTALA violation.
Proposed New Law SB 1152 — Pending

- Would augment requirements for discharge planning to include specific planning for homeless – including services, referrals and coordination of care
- Discharge options would include: to “residence,” meaning the location identified by the patient to the hospital as his or her “principal dwelling place”; could this be the street?
- Discharge to an alternative location, would require the patient’s written consent — will that easily happen?

Proposed SB 1152 — Pending
CHA is Involved

Some of the required documentation before discharge:
- Hydration, meal, clothing
- Discharge during daylight, good weather
- Follow up care
- Durable medical equipment
- Medication
- Disease screening and vaccinations
- No disorientation and is able to provide written consent
- Transportation

Employee Privacy Rights — Name Tags and Other Topics
You require staff to wear name tags with their last name only, plus their type of license. Nervous Nancy is a bashful person by nature and is now very upset because the doctor just addressed her as “Nancy” in front a patient who has already asked for her phone number several times. He told her he’d like to see her once he’s patched up from his motorcycle accident. She is frightened that he will now not only be able to look up her phone number, but will also find out where she lives.

(Consent Manual page 1.5)

**Name Tags – Staff Privacy vs. Patients’ Rights**

22 CCR 70707 – patients in acute care hospitals have the right to have:

(b)(3) Knowledge of the name of the licensed healthcare practitioner acting within the scope of his or her professional licensure who has primary responsibility for coordinating the care, and the names and professional relationships of physicians and non-physicians who will see the patient.

**Name Tags (cont.)**

22 CCR 70721 (General Acute Care Hospitals)

(d) All employees of the hospital having patient contact, including students, interns and residents, shall wear an identification tag bearing their name and vocational classification.

22 CCR 21521 (Acute Psychiatric Hospitals) – same requirement
Name Tags (cont.)

Business & Professions Code 680 –
(a) Except as otherwise provided in this section, a health care practitioner shall disclose, while working, **his or her name and practitioner's license status**, as granted by this state, on a name tag in at least **18-point type**. A health care practitioner in a practice or an office, whose license is prominently displayed, may opt to not wear a name tag.

Name Tags (cont.)

B&P Code 680 – continued

If a health care practitioner or a licensed clinical social worker is working in a psychiatric setting or in a setting that is not licensed by the state, the employing entity or agency shall have the discretion to make an exception from the name tag requirement for individual safety or therapeutic concerns …

CDPH – Guidance on Name Tags

- Originally – both first and last name were required
- Now (after nurse was stalked by a patient) – either first OR last name is satisfactory.
- Still need proper licensure or job category, e.g., only registered or licensed vocational nurse may use the title “nurse”
Name Tags

- In a medical practice or office setting – provider has the option of prominently posting or displaying his or her license
- If office isn’t licensed facility, then additional information including board certification (for physicians who are board certified) and “highest level of academic degree” (not nurses or pharmacists) must also be given in writing to the patient or posted prominently (in at least 24-point font); must also be on website if provider has one.

Name Tags – Suggestions for Dealing With Staff Concerns

- Assist staff with script if staff is unsure about how to set appropriate professional boundary
- Talk with patient if there is issue of sexual harassment
- Reassign duties if patient doesn’t stop inappropriate behavior

Other Considerations from Susan

- Stalking is extremely rare, so does CDPH’s escape clause make sense?
- Are we treating nurses differently based on their status? Does this have the unintended consequence of deeming them “helpless” or “vulnerable”, or less “professional” with less authority?
- Where does it end? Residents are often substantially younger, less experienced, more vulnerable then nurses
- Does it draw MORE attention to the issue so patients will focus on this even more? Will it encourage them to ask for the record?
Staff Privacy Issues

- Personal behavior “off the clock” vs. “bad press” for your employer – what are the rules?
- Examples in the news …
  - March 23, 2018 - Faith Linthicum, Sacramento nurse who wrote on her Facebook page that Stephon Clark “deserved it,” and other offensive comments, was fired by Kaiser after another person snapped pictures of her posts and warned “other moms-to-be” that they should “know who was caring for their babies.” Person who was offended added, “Nurses are supposed to help people, not be happy when people die.”

Social Media – You May Be Acting As a “Private Citizen” But it May Still Reflect on Your Employer

- Example: “cry me a river Sweetheart just don’t sit next to me on the plane” – RN, Tragic County Hospital
- Example: MD’s public comments on NFL players’ kneeling
- Example: Letter to the Editor decrying “Sanctuary City” status, CFO Local Hospital
- Example: Kaiser labor and delivery nurse in Sacramento, CA posting controversial Facebook messages re: police shooting and immigrants
- All caused “negative press” for their facilities, and threats of boycotts (…and all suffered personal consequences, termination, or censure from their boss or facility)

Staff Privacy Issues: Your “privacy” isn’t that private anymore -- in other industries too!

- Government employee flipped off presidential limo while riding bike on her own time – fired from government job
- Fast food employee attended neo-Nazi rally and appeared on the evening news carrying a sign supporting the Alt-Right – fired after seen by co-workers
- Sexual misconduct years earlier – fired from movie, part recast with another actor
- Brewer at popular new brew-pub involved in front-page news story of a particularly ugly road rage incident – fired after social media fire-storm of negative comments
Do Healthcare Professionals Get Held to a Different Standard of Conduct in the Court of Public Opinion?

- Neurology resident melt-down and temper tantrum directed at Uber driver after evening out with her boyfriend; even after public apology on Good Morning America, still not welcome back

- In this time of political turmoil people really need to ask:
  - How might your private conduct reflect on your employer?
  - How might your private conduct impact your patients?
  - How does your private conduct impact funding of your program?

Questions

Thank You

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