York Hospital and WellSpan Health have established a strong infrastructure for the identification and management of problematic and unprofessional conduct. At the foundation of this structure, is a WSH Code of Conduct which was developed over 25 years ago. All employees are required to know the expectations placed upon them in terms of ethical and competent behavior. All YH and WSH employees sign a Code of Conduct certifying that they have received, read, and acknowledge the Code of Conduct, as a condition of employment. Most importantly, employees at all levels (including the VP/SVP level) are required to read and sign the Code of Conduct, on an annual basis during their performance appraisal conference. This process allows a reminder to each employee of the importance WSH puts into the Code of Conduct, and a refresher of the high standards of conduct expected.

Excerpts from the Code of Conduct include: “In my role with WellSpan Health, I will endeavor to promote the highest standard of conduct by: Treating others with respect at all times; honoring patient rights; standards of patient safety and patient confidentiality; reporting any incident of dishonesty behavioral misconduct, disruptive behavior, disrespect, harassment, or other reportable matter to the proper authorities and bearing truthful witness in the investigation of such concerns. Examples of disruptive behavior include profane/angry language or yelling, throwing objects and other behaviors defined in HR policy ER 50, Corrective Action”. Later on in the Code of Conduct it states “I understand that failure to comply with the Code of Conduct will result in corrective action as prescribed in Administrative and Human Resources policies and could result in termination of my relationship with WellSpan Health”. The WSH Code of Conduct is taken seriously at every level in the organization as all employees are expected to behave according to this Code.

Policy #ER-20: Employee Responsibilities/Code of Conduct (OOD 20 & 22) provides written guidelines of Wellspan Health’s responsibilities to our patients, staff, physicians, and the community it serves. The policy outlines expectations of conduct that “reflect favorably upon themselves as well as WellSpan Health” in terms of behavior, dress, appearance, wearing of ID badge, Fitness for Duty, Smoking/tobacco use, etc.

WellSpan Health MAP #104: Compliance Program (OOD 20) is a WSH corporate program that promotes employees and agents of the health system to report matters that may have violated any of the federal or state laws have the right on such wrongdoing by directly contacting a regulatory agency. The purpose of the program as stated in the policy is “The WellSpan Health Compliance Program (Program) has been designed, adopted (1999), and implemented as a voluntary program to address the growing efforts of the Federal government’s initiatives to prevent fraud, abuse, waste and other illegal activities by health care organizations. This Program provides the framework for organizational improvement and develops a central coordinating effort to demonstrate the organization’s commitment to sound and ethical business practices, the compliance process, and to advancing the prevention, detection, and resolution of potential exposure from organizational misconduct”.

Whistleblowing
This right is protected by federal law, and Wellspan Health will not punish or retaliate against anyone who exercises this right. Pennsylvania has also adopted a Whistleblower Law (at 43 Pennsylvania Statues 1421-1428). Although the Law specifically provides protections to employees of a “public body,” some Pennsylvania court decisions have held that the Whistleblower Law can also apply
to a private employer (such as Wellspan) that receives reimbursement from the Medicaid program for services provided to Medicaid beneficiaries. Additionally, as a mandatory requirement for yearly Personal Safety (PS) training, there is a computer based module on Corporate Compliance that must be taken by each YH employee.

Although WellSpan will not retaliate against anyone who exercises their right to “blow the whistle” by directly contacting a regulatory agency, it is WellSpan’s preference that anyone who believes there has been a compliance violation should first notify WellSpan, in order to provide us with the opportunity to “do the right thing” and promptly investigate, verify, and correct the noncompliance. WellSpan’s preference is not motivated by a desire to “cover up” any non-compliance; rather, we believe that it is best to internally correct noncompliance without the expense, delay, adverse publicity, and disruption that can be caused by external investigations or lawsuits.

In addition to “blowing the whistle,” employees and other private citizens who in good faith believe that a provider has submitted a false claim to a federally-funded health care program have the right to file a lawsuit in federal court. The False Claims Act protects employees from being fired, demoted, threatened, or harassed by their employer for filing a lawsuit under the False Claims Act. If a court finds that the employer retaliated against the employee, the court can order the employer to rehire the employee and pay them twice the amount of back pay that is owed, plus interest and attorneys’ fees.

**WSH Safety Reporting System (SRS)**

Another safety and quality reporting system, the WellSpan Safety Reporting System (SRS) serves to capture incidents involving patient care and/or provider deficiencies. The system Intranet Homepage provides access to an “anonymous” reporting form, which can be downloaded and printed anywhere in the health system. The training provided for staff on use of the event reporting system emphasizes that there is a zero-threshold for reporting all incidents and concerns, that it is non-punitive by design and that the function and purpose of the system is to reduce risks of future errors or harm to patients and to improve patient outcomes. No original event report can be deleted from the system and the originators concerns and comments are preserved historically in the system for each event, even after management review and commentary. The PA Department of Health has reviewed events reported in the system and appreciates the broad scope of the system depth to address the nature of any concern raised by the staff.

Also, all WellSpan employees, including nurses, have access to the WellSpan Bioethics Committee by anonymous phone contact. In addition, all Wellspan employees have access to the Compliance Hotline. This phone line can be called anonymously, if so desired to “report” any concerns at all. All employees are made aware of the availability of this mechanism, during their new employee orientation.

As stated previously, YH has an active Patient Safety Program which entails an internal reporting mechanism. In order to have an effective patient safety, there must be an emphasis on reporting all types of events that may harm or have harmed patients. YH has adopted a non-punitive approach in its management of adverse events and reporting. All employees and members of the medical staff are required to report suspected and or identified medical errors and should do so without the fear of reprisal in relationship to their employment. YH focuses first and foremost on system process improvements and will not blame the individual(s) involved in the event or seek retribution against the individual for reporting the event. YH will always accept anonymous reports when submitted.
Employees are informed of their ability to make anonymous reports to the PA Patient Safety Authority and JC via their established formats during new employee orientation.

Just Culture

To continue the Wellspan philosophy of identification and management of problematic care or behavior, the philosophy of “Just Culture” has been implemented to increase error reporting. The training started in 2008, with executive leadership in the spring and then followed by department and hospital management in the summer and fall. The ‘Just Culture’ model, created by a human error management consultant to hospitals, airlines, and regulators, has been used in the health care industry for several years. The “Just Culture” model focuses on three behaviors: human error, at-risk behavior, and reckless behavior. It establishes expectations for staff as well as managers and promotes a culture of reporting by establishing a fair and consistent system for event follow-up. It also gives managers a clear process for identifying the root cause of a medical error. To aide in reporting of medical errors and unethical practice and behaviors, the ‘Just Culture’ model states that “human error is a simple mistake”. The response is to console the individual but also to look at the system to see if it contributed to the error. WellSpan Health has created and instituted a system-wide “Just Culture” model and expects all leadership to employ these concepts with respect to addressing employee behaviors. The WellSpan human resource processes for employees, whose actions are not in accordance with policy and procedure, have historically been founded on the same general philosophical basis as the “Just Culture” concepts. Thus, there has always existed general alignment within the HR policies and “Just Culture” theory.

Evidence of the effective outcome of the Just Culture program can be seen in the positive change that YH has made in the AHRQ Hospital Survey on Patient Safety in the “Non-punitive Response to Error” category over the past two years. Results are better than the national composite score for hospitals over 500 beds (39%) and have improved from 39% in 2011 to 43% in 2012.

- Staff feel like their mistakes are held against them – improved from 42% in 2011 to 45% in 2012
- When an event is reported, it feels like the person is being written up, not the problem – improved from 44% in 2011 to 48% in 2012
- Staff worry that mistakes they make are kept in their personnel file – improved from 30% in 2011 to 35% in 2012

Confidentiality

WSH MAP Policy #106: Confidentiality ensures that WellSpan employees, medical staff members, and non-system personnel authorized to access information of WellSpan Health appropriately safeguard confidential information. Inherent in these corporate compliance policies are the following conduct requirements:

1. Inherent with a position with WellSpan Health, individuals may have access to information or documents about the System’s or related organization’s business. In addition, the individual may possess confidential information regarding medical treatment of patients or the private and/or business affairs of the System’s customers and suppliers. Such information is privileged and should be held in the strictest confidence.

2. Under no circumstance may an individual seek or use confidential information for personal gain or pass it on to any person outside of Wellspan Health who does not need to know such information to carry out their duties (including to family, friends, or even other employees).
3. Only authorized individuals may have access to any portion of the medical record or any information originating there from.

4. Medical care discussions in any public place including elevators, corridors, cafeteria or anywhere that unauthorized persons can overhear, regarding a specific patient, is prohibited. Any individual who is found, upon appropriate investigation, to be responsible for improperly divulging patient information or allowing another unauthorized employee or person access to such information, either written, spoken or by electronic means, is subject to corrective action up to and including termination of employment.

5. All intellectual products, computer programs, finance, statistical, and marketing information developed at the expense of the Wellspan Health System or its related organizations, in development of a new product or service is often referred to as “proprietary information. “Proprietary information” is confidential and should not be disclosed.

6. Notwithstanding any provisions in this policy to the contrary, no Wellspan Health employee shall be precluded from good faith reporting of health information as required by State or Federal law.

Based on statistics from the WSH HIPAA Security Officer, there were 183 investigations that occurred in the calendar year 2012.

These resulted in:
- Level 1 – Unintentional Violations – 24 First and final warnings
- Level 2 – Intentional Violations/no willful intent or personal gain – 10 unpaid Suspensions (ranging from 3-5 days)
- Level 3 – Intentional/Repeatead/Willful intent or personal gain – 6 immediate terminations.

**Human Resources Policy #ER-50: Corrective Action** (OOD 21 & 22) further clarifies steps to be taken by managers and supervisors when performance expectations are not being met by employees. The main purpose of this policy is to address unacceptable behavior or clinical practice in order to maintain a working environment that everyone can enjoy. When violations do occur, it becomes necessary to consider the facts and circumstances of the individual case, the employee’s performance evaluations, length of service and work record to determine what corrective action is warranted (if any). This policy also defines those unsafe or unethical behaviors that warrant immediate suspension or termination.

The level of corrective action is discussed with HR to ensure that there is equity pursuant to the policy governing fair and equitable treatment for all employees across WellSpan regardless of the entity where the person is employed. In addition to the employee counseling report form, the manager/supervisor creates a written performance plan specific to the employee and the infraction. This performance improvement plan holds specific information related to expected behavior as well as any behaviors which could lead to further corrective action(s). The plan contains a timeline for each specific element of performance which can be measured for follow-up. This plan is shared with the employee and is cosigned by both parties and monitored for compliance.

The following examples illustrate compliance with YH’s policies and standards in terms of ethical behavior and practice, competent practice and fitness for duty.
Fitness for Duty

“I got a call from a charge nurse stating that they had a problem one of their employees wasn’t acting right. I asked what they meant by not acting right. The employee is falling asleep at the nursing station, can’t keep her head up, her eyes are blood shot, slurred words, and she isn’t making much sense. I said “Ok, I will be up to assess the employee for fitness for duty.” I will need you and to complete an “Observation Checklist,” (Appendix A) that I will bring up to be used with my assessment of the persons behavior.

I went on the INET and printed a copy of the policy, “Fitness for Duty,” Employee Health policy number 23. I reviewed the policy prior to going up to the floor. Once I got there the employee was observed, while appearing to be performing my normal rounds. The employee was standing at a wall mounted unit and I could see her eye’s opening and closing while being supported by her hand. She appeared pale, blood shot eyes, and hadn’t noticed I was present at the nursing station.

I introduced myself as Joe the nursing supervisor and asked her with a witness present if we could talk in an empty room. I told her that I was called to come up that some of her co-workers had some concerns. While here on the unit I noticed you falling asleep at the wall unit while standing supporting your head, your eyes appear blood shot, and your speech is off. “I am fine…what’s going on?” She was slow to answer me and her words were slurred. I told her I had some basic questions for her to answer and she said that would be fine. I wanted to determine if she was alert and oriented or under the influence of alcohol or drugs. I asked if she knew her name and she replied correctly. I asked if she knew where she was and she was correct. I asked if she knew the date and she did not. I asked if she knew what month it was and she replied February (the month was June). I told her I suspected she was under the influence of drugs or alcohol, and asked if she had taken anything? She replied, “No, I haven’t.”

I told her that based on my assessment I didn’t feel she was fit to be working. “What happens now she asked?” Well, I am asking you to submit to a blood and urine examination in the lab and if you refuse Wellspan has the right to terminate your employment for not submitting to the drug screen. You will be placed on Administrative leave with pay pending the outcome of the tests and follow up with Employee health. If, you agree to the testing and turn out positive or negative employee health and your nurse manager will work with you and take the appropriate steps. You are unable to return to work until notified by employee health or your nurse manager that you may do so. Do you understand? “Yes!” Once your testing is complete I will not be involved in the process any longer. Any questions or follow-up will be handled by employee health and your nurse manager. Do you agree to the drug screen? “Yes!”

I took the employee to the lab and explained to the lab technician that we were there for a fitness for duty screen and needed urine and blood collected! The employee said she hadn’t done one and needed to get the supervisor of the lab and pull the policy. While we were waiting I called the employee health on call nurse and made them aware of the situation and to ensure the proper steps had been taken. I also called the Hospital Administrator on Call and made them aware of the situation. We proceeded with urine and blood collection. The proper paperwork was completed. The urine and blood was collected in my presence, meaning I have to witness the blood and urine being collected.

I instructed the employee that she could not drive since I believed she was under the influence of alcohol or drugs and needed to call for a ride. I also reminded her that she was now on administrative leave until contacted by employee health or her nurse manager. I stayed with the
employee and watched her get into the car driven by her husband and leave the property.~ Joseph C Deak, RN, House Supervisor

Disruptive Physician Policy

In October 2010, Dr. Peter Hartmann, VPMA and Valerie Hardy-Sprengle, VPPCS/CNO presented a podium presentation at the national Magnet Conference entitled: Successful Interventions with Disruptive Physicians Session C 656. There was “standing room only” at their presentation, which reflects the issues and challenges that nurse leaders face with this issue. During this presentation, Valerie and Peter identified and spoke to the following objectives:

- To describe an innovative and successful multi-step process of effectively addressing disruptive physician behavior
- To identify new and non-traditional alternatives to successfully setting expectations and boundaries for physician behavior
- To describe the outcomes from the strategies we’ve implemented

As their presentation is described in this section, the structure and processes for addressing unsafe, incompetent and unprofessional conduct with the medical staff will be described in detail. In setting the context for the issue, they referenced the AONE Guiding Principles for Excellence in Nurse/Physician Relationships, Rosenstein’s article in AJN, Dr. Donald Moorman’s work with Crew Resource Management, The Joint Commission’s Leadership Chapter and Sentinel Event Alert, as well as the ACPE survey.

They next described the infrastructure and processes that are in place at YH which are innovative and successfully address the behaviors of disruptive practitioners. OOP is a key leadership structure in place, as well as the bi-weekly meeting between OOP and the elected president, vice-president, and immediate past-president of the medical staff. In both of these forums, identification of disruptive practitioners occurs, as well as discussion of the individual’s plan and his/her progress takes place. The VPPCS/CNO has a significant voice at this table and is respected for her insights and perspectives as well as her advocacy for the nursing staff at YH.

Peter spoke specifically about the YH Medical Staff Code of Conduct, and holding physicians accountable to this document. He also described in detail the YH Disruptive Practitioner Policy which generated passionate questions from the audience, as one might imagine. Nursing leaders from across the country were amazed and impressed that there was such commitment and clarity around holding physicians accountable to behaviors listed such as:

- Repeated use of vile, loud, intemperate, offensive or abusive language
- Repeatedly acting in a rude, insolent, demeaning or disrespectful manner
- Verbal or physical threats, intimidation or coercion
- Actual physical abuse or unwanted touching
- Lack of cooperation or unavailability to other practitioners for exchange of pertinent patient care information or resolution of patient care issues

These are just a few of the 13 behaviors defined in the policy as being “disruptive”. Peter also described the YH Fair Hearing Plan that is in the YH medical staff bylaws that is also part of the structure in place to address problematic medical staff behaviors. Peter also described the Vanderbilt School of Medicine’s 2 day, evidence based program which was adopted at YH, “Discouraging
Disruptive Behavior”. He shared his philosophy with the audience that “It Takes a Village” to address this issue, and at YH, the “Village” includes:
  - The Chairman of the Department
  - Vice President of Medical Affairs
  - President and Vice President of the Medical Staff
  - Hospital President and VPs
  - Medical Executive Committee
  - Legal Counsel

Peter also spoke to the additional resources that are utilized at YH in addressing disruptive physician behavior. These include the PULSE (Physician’s Universal Leadership Skills Education Program) in Florida, (Larry Harmon, PhD); the Physician's Health Program sponsored by the Pennsylvania Medical Society and the Center for Professional Well-Being in North Carolina. He gave specific examples of disruptive behavior that had been addressed: senior surgeon demeaning staff and using anger to get his way; internal medicine specialist accused of sexual harassment and an interventionalist found to be dishonest.

Outcomes of addressing disruptive behavior at YH can be categorized as follows:
  - Shorter credentialing period
  - VPMA collegial conversation
  - Appeared before MEC
  - Referred to Physician’s Health program
  - Referred to Center for Professional Well-Being
  - Referred to PULSE program
  - Suspended
  - Terminated

Valerie emphasized the importance of the collegial relationship between the CNO and VPMA and role modeling respectful relationships at “the top”. The constant communication between the two clinical leaders, the support and “managing up”, the trust and credibility between the two leaders and the medical and nursing staff were all critical to the success in the process of addressing the disruptive issues.

The audience asked a multitude of questions and identified the powerful partnership that Valerie and Peter clearly demonstrated in addressing this problematic, troublesome and very sensitive topic.

**Summary**

At YH, there are embedded and long standing structures and processes that are anchored in the organization which address issues related to unprofessional, unsafe or incompetent conduct, for employees at all levels in the organization. These characteristics of behavior are not tolerated and are dealt with as soon as they are identified and shared with leadership.