



Garfunkel Wild

CLINICIAN HEAL THYSELF

How to Assist Struggling Clinicians And Address Disruptive Behavior

Presenters:

Tamir Aldad, MD, MBA
Marianne Monroy, Esq.

October 30, 2024

Have You Encountered This At The Jobsite?

- Long-tenured Provider Suddenly Becomes Angry, Antagonistic Or Inappropriate With Staff And Patients.
- Employee Uncharacteristically Starts Showing Up Late Or Missing Deadlines, Seems Withdrawn.
- Erratic Behavior, Coupled With Incoherent Or Labored Speech.
- Elderly Employee Showing Signs of Forgetfulness, Unsteady Gait, Shaking Hands.

What Do You Do About It?

Things To Consider In Response To Such Behaviors

- Protecting Patient Safety
 - Employee Suspension Pending Investigation
 - Consider Any Reporting Obligations

- Protecting The Employee's Safety and Rights
 - Employee Assistance Program
 - Employee Contract Rights, e.g. paid disability leave
 - Calling Emergency Contact

- Protecting The Work Environment
 - Addressing Inappropriate and Disruptive Behavior
 - Addressing Sexual Harassment
 - Calling The Police

Things To Consider In Response To Such Behaviors

– Getting Return To Work Medical Clearances Sufficiency

- Providing Job Description To Treating Provider
- Can you require participation in a treatment program?
- Risks of Talking Directly To Employee's Treating Provider

– Employee May Want To Leave Gracefully

- Voluntary Separation
- Retirement
- Contract Considerations

Things To Consider In Response To Such Behaviors

There May Be A Duty To Consider Reasonable Disability Accommodations

- If Employer Knows Or Has Reasons To Know An Employee Has A Disability Affecting Job Performance, There Is A Duty To Discuss And Provide Reasonable Accommodations.
- An Employer Is Not Obligated To Provide Accommodations That Would Impose An “Undue Hardship” On Business Operations.
- The Process May Be Triggered Even In The Absence Of An Express Request For Accommodation.

Things To Consider In Response To Such Behaviors

Consider Applicability of Leave and Wage Compensation Laws

- Federal Family and Medical Leave Act
- State Family Leave Laws, e.g. NYS Paid Family Leave, Connecticut Family & Medical Leave, New Jersey Family Leave Act.
- State Sick Leave Laws.
- Wage Replacement Laws May Also Apply, e.g. Connecticut Paid Leave, New Jersey Family Leave Insurance.
- Workers Compensation

Things To Consider In Response To Such Behaviors

- Conducting Proper Objective Investigations
- Cannot Jump To Conclusions Or Make Judgments Based on Actual or Unconscious Biases
 - *e.g.* someone given permission to leave early for medical appointment and caught lying about Reason. Cannot Assume Next Person Is Also Lying.
 - Assuming An Addiction Issue, But Employee May Be Adjusting To New Medications.
 - Applying Assumptions Without Investigation Could Run Afoul Of Legal Obligations.

Things To Consider In Response To Such Behaviors

- HR or Leadership May Have Difficulty Separating Interests of Business And Personal Compassion.
- The Importance of Boundary Setting
- Consistency In Application Of Requirements and/or Disciplinary Action
 - The Top Performer Conundrum
- Necessity Of Ongoing Monitoring

Concerns About No Good Deed Going Unpunished

- Does Too Much Information Present Risks Of Retaliation Claims?
- If An Employee Discloses A Mental Health or Addiction Issue, Can An Employer Terminate The Employment Relationship?

Importance Of Dealing With Adverse Behaviors

Employers Cannot Have A “Head In The Sand” Mentality

1. Minimize Risks Of Claims And Litigation Costs.
2. Poorly Handled Employee Discipline Issues May Likely Result In Lower Productivity, Reduced Morale In The Workplace, And Higher Turnover.
3. Diminished Reputation.
4. Permitting Adverse And Disruptive Employee Behaviors Can Adversely Impact The Quality Of The Services Provided To Patients And Clients; Statistics Support This Conclusion.

Reminder: In Responding To Adverse Behaviors, Attack The Issue, Not The Person.



Garfunkel Wild

Questions?

Marianne Monroy, Esq.

Partner/Director

516.393.2212 | mmonroy@garfunkelwild.com



Marianne Monroy, Chair of Garfunkel Wild's Employment Law Practice Group, has more than 25 years of experience representing private corporations, non-profits, and individual clients in connection with a broad range of employment law matters including age, disability, race, sexual harassment, wage and hour, benefits, audits, defamation, restrictive covenants, and breach of contract claims. Her practice also includes litigation of a wide variety of commercial and business issues, including contract disputes, managed care, and judicial review of agency and other administrative determinations and has defended clients against claims under the Americans With Disabilities Act, Family and Medical Leave Act, Fair Labor Standards Act, False Claims Act, New Jersey Law Against Discrimination and the Conscientious Employee Protection Act.

Marianne defends clients throughout the tristate area in state and federal courts, as well as before administrative agencies, including, among others, the Equal Employment Opportunity Commission, the New York State Division of Human Rights, the New York City Commission of Human Rights, the New Jersey Civil Rights Commission, and the Connecticut Commission on Human Rights and Opportunities.

Marianne has particular experience in counseling clients concerning general human resources issues and compliance with state and federal employment laws. She regularly conducts employee complaint investigations, drafts employee policies, develops employee on-boarding procedures and documentation, represents clients during agency audits (e.g. DOL audits), advises on employee benefit and COBRA issues; creates and implements reduction in force programs, and drafts and negotiates separation agreements. She also provides employee leadership training programs, as well as sexual harassment, wage and hour and disability training programs aimed at protecting clients from potential claims, increasing employee engagement and productivity, and reducing staff turnover.

Tamir Aldad, MD, MBA

Founder and CEO of Mindful Care

taldad@mindful.care



Dr. Tamir Aldad founded Mindful Care in 2018 with the mission to bring the urgent care model to mental health. Under his leadership, the company has created the first ever chain of psychiatric urgent-care clinics, offering same-day in-network medication management, therapy, and substance use counseling. Mindful Care has locations in New York, New Jersey, Michigan, Florida, Connecticut, and Illinois, as well as a telehealth offering, serving more than 30,000 visits a month. Nationwide expansion efforts are underway. Dr. Aldad has long believed that care should be accessible and affordable, and has built Mindful Care services to be in-network with major insurance carriers and offer reasonable private-pay options. He is a regular media contributor discussing breaking news and trends shaping the mental health ecosystem.

Dr. Aldad holds an M.B.A. from The University of Chicago Booth School of Business and is an M.D. from American University of Antigua College of Medicine. He completed his residency in general psychiatry and fellowship in addiction psychiatry at Northwell Health.

LinkedIn: [linkedin.com/in/taldad](https://www.linkedin.com/in/taldad)