

## Representing Members in Crisis

The foundation for representing members in crisis is "fitness for duty" substantiated by a medical professional. When a member has not only fallen from grace due to the use of alcohol or other drugs, or manifests a mental health or behavioral pattern, his or her diminished capacity to perform the essential functions of the job is not far behind. Advocates who present a case that the member has a disability, says he or she has a disability, is willing to do something about the disability and actually does something to correct the disability are successful. The advocate is stating that the member will take corrective action and return to work fit for duty without prejudice and supports the claim with a doctor's letter that the member has successfully completed a treatment program and deserves reasonable accommodation without undue hardship to the employer. The fitness for duty defense is the best defense because it acknowledges that the essential functions of the job have not only not been ignored but are the basis for the return to work claim that the employee will be able to perform those functions. The member's untreated condition is an obstacle and disciplinary actions could be suspended pending a resolution beneficial to the untreated member and the employer.

Representatives cannot successfully defend ongoing employment if the employee is not able to perform the essential functions of the job. Therefore, it makes sense to help the member find his or her own access to appropriate medical care in order to become fit to perform the essential functions of the professional responsibilities required to return to work without prejudice.

Access to care is the first step to help the the employee find and take advantage of a remedial program. Successful completion of the program provides the representative with evidence that the member is ready to return to work and may require reasonable accommodation while the recovery process is underway. However, a lot can happen between the time negative documentation provokes discipline and the time when the employee provides documentation that a remedy has been found.

The employee may not be a reliable or compliant patient and hence unable to return to work able to perform the essential functions of the job. The remedial treatment program may be compromised by managed care and so limited that even the most reliable and cooperative patient will not benefit sufficiently to return to work fit for duty. Stigma may present a formidable barrier to the patient and not be sufficient to mitigate prejudice. Hence, the employee representative has to take all this into account because employees acting totally on their own are too vulnerable or do not know enough to represent themselves successfully.

The first line of defense is a good insurance program and access to employee assistance programs that help the member understand the nature of his or her disability while supporting their genuine effort to remedy the treatable illness. Effective health care provides the basis for recovery but the member needs recovery support before, during and after treatment. The signature symptom of chronic is that they respond to a continuum of treatment. As the member responds to treatment and is able to return to work, aftercare and support groups are available to assume apply the regimen needed for recovery support.

The member's employment history may include a pattern or practice of behavior that has been tolerated for a long period of time. Subsequently, management and colleagues are impatient to rid themselves of the problem to the detriment of the member without full representation or the completion of the program. Denial is the primary symptom in these cases that is often enabled without justification until patience is extinguished or strained. The urgency and importance of confronting the problem early cannot be overemphasized. The longer the problem exists, the thicker the employee file becomes. The more documentation collected, the more justified the accusers become that this member is beyond redemption and does not deserve further representation by the bargaining agent or accommodation by management.

Herein lies the challenge for the informed advocate. Lessons learned have taught us that scolding the untreated employee to avoid consequences makes sense to those who are not affected by addiction, mental health, stress or behavioral health problems but demanding change does little for the untreated employee. Education is not only necessary, it is vital to the skill set required if the advocate is to be effective in defending members appropriately. Training cannot be underemphasized. Sooner or later training will be a requirement without which mistakes and failures to represent will become the norm rather than the exception.

Impaired employees present all kinds of subtle and then not so subtle signs and symptoms before the case become obvious enough to deal with by management and the employee representative. On that continuum of evidence that something is wrong, early intervention may be warranted and possible. Early intervention is preferred over late intervention because the damage done to reputations, collateral problems caused to others and the medical consequences mount up and pile up until no amount of denial and/or enabling will sweep the problem under the rug.

Often, the call to the representative is made after the fact with a long history of problematic behavior and the village is somewhat or entirely alerted that a public employee does not belong near children due to the member's untreated condition. The problem is what it is when the call comes and the advocate has either a simple task or a complex task to overcome. This session will discuss the ways and means the representative can legally, medically and appropriately provide fair representation, education, advocacy and remedial help to all those affected by an untreated medical condition.

Once treatment is completed, the change in the patient's condition is remarkable in some degree. However, as just as the illness is progressive, so is recovery. Hence, the return to work stipulations take this into account in order to favor the successful effort to return to work in fit condition able to do what is required by the job at hand. Any agreement that is made regarding the terms and conditions of returning to work must be negotiated according to the recovery plan and this patient is an optimistic case. If that optimism is not evidenced by behavior, the patient may have to return to intensive care for a time until he or she is able to fulfill the requirements. Meanwhile, temporary suspension of discipline is necessary. Those who are so impaired that they are unable to return to work may require a "last chance agreement" which may include termination or "second or third chance agreement" that allows for aftercare. Assignment and re-assignment are matters to be considered. Light duty and other duties are an option. Assistance on the job for a time could also be helpful.

If termination is necessary, termination agreements may include retirement or disability benefits, termination pay, letters of commendation, or other considerations should the employee need a recommendation for employment elsewhere. In any case, a person who has accumulated a negative personnel file may need help expunging the record. Personnel files are notorious for containing conclusions that are motivated by performance criteria absent any consideration of the employee's medical condition, efforts to do something about the medical condition, obstacles that the employee encountered that prevented progress toward recovery and above all stigma and prejudice that would impair the employee's future.

By Allen McQuarrie June 2008