

Difficult and Ungovernable Licensees: Improving Regulatory Impact

Catherine V. Caldicott, MD, FACP
Medical Director
PBI Education

AADB Member Exclusive Webinar
March 28, 2023



Why Talk About This?

- A minority of licensees
- May take up most of your energy
- Frustrating to work with
- Raise concerns about recidivism
- Raise concerns about public safety



Learning Objectives

- Describe differences and similarities between difficult and ungovernable licensees
- List factors that may cause licensees to become difficult or ungovernable
- Explain practical approaches to communicating with these licensees
- Create more impactful regulatory orders to improve compliance and reduce recidivism

Case Scenario: Dr. A

- Multiple patient complaints
- Fails to respond to regulator's multiple requests for responses to the complaints
- Investigation finds
 - Multiple infection control violations
 - Spore test log out of date
 - Office policies & procedures last signed @ employee training 5 yrs ago
 - Assistant inadequately trained to serve as anesthesia monitor

Case Scenario: Dr.A

- Discipline Committee finds guilty of unprofessional conduct
- Consent Order: correction of multiple deficiencies
- Subsequent monitoring finds
 - Rx for UTI
 - Deferred billing
 - Poster advertising concert tickets for sale
 - Continued prior deficiencies

Case Scenario: Dr.A

- How to get Dr.A's attention?
 - Increase the number and severity of sanctions
 - Inform of "third strike"
 - Dr.A's attorney might convey seriousness

Difficult or Ungovernable?

Difficult or Ungovernable

- Labels
- “Earned” over time
- A spectrum
- Difficult implies remediable
- Ungovernable implies irremediable
- May be a retrospective assessment

Difficult

- Sometimes cooperative, sometimes uncooperative
- Avoidant
- Poor communicators > misinterpretations, “wishful hearing”
- Remediation may not “stick”
 - Going through motions
 - Poor attitude
- May require piling on of additional sanctions

Ungovernable

- Typically have multiple types of issues (e.g., records, prescribing, boundaries, etc.)
- Failure in duty to cooperate becomes an issue itself
- Conduct indicates pervasive disregard for legal, ethical, and/or regulatory context of their work
- Play by their own rules

A continuum?

- Some difficult licensees will become more cooperative and responsive
- Others will progress to becoming ungovernable
- Difficult to predict
- You can take steps to interrupt the continuum

Causes

Causes of Difficulty

- Communication style as an obstacle
- Aspects of personality

Causes of Difficulty

- Lack of effective communication skills
 - Interrupters (ADD?)
 - Use profanity (poor impulse control)
 - Long-winded (boundaries)
 - Righteous indignation (perfectionism, defensiveness)

Causes of Difficulty

- Lack of effective communication skills
 - Unable to pick battles; overly zealous; stand on principle (Asperger?)
 - Passive aggression / disrespect towards people, processes, system (anger issues)

Causes of Difficulty

- Mode of communication
 - Face-to-face
 - Phone
 - Virtual (Zoom, Teams, etc.)
 - Email

Causes of Difficulty

- Conflict avoidance
 - Due to anxiety, fear of the unknown
 - Wish to avoid bad news
- Desire to postpone interaction w/ regulator until healthier
- Procrastinator personality feature

Causes of Ungovernability

- Difficulty with authority figures (developmental)
- Play by their own rules
- Personality disorder?

Causes of Ungovernability

- Passive aggression \approx covert anger
 - Pretending not to understand
 - Engaging in self-defeating behaviors
 - Withdrawing, avoiding involvement in regulatory process

Causes of Ungovernability

- Resistance
 - Say “it” cannot happen to them (due to age, wisdom, experience, arrogance)
 - Lack remorse, insight, perspective-taking
 - Denial, other-blaming, rationalization

Practical Communication Approaches

Practical Communication Approaches

- Most will work for both difficult and ungovernable
- Others are better suited to one over the other, depending on details

Practical Communication Approaches

- Conversations with unhappy people
 - Prepare yourself: your expectations, feelings
 - “Name it to tame it”
 - Do you have prior experience with them?
 - Practice out loud

Practical Communication Approaches

- Create a safe space
 - Location
 - Time of day / office traffic
 - Private, confidential
 - Professional appearance, background

Practical Communication Approaches

- Frame the conversation
 - Bottom line: + / neutral / -
 - Tone of voice, language
 - Simply convey information
 - Assure consistent application of rules

Practical Communication Approaches

- Begin your persuasion: your goals = their goals!
 - Get them to recognize how they harmed (or could have harmed) the public = same side of the table
 - Get them to avoid re-offending
 - Keep them in practice w/ safeguards

Practical Communication Approaches

- More persuasion
 - Every licensed professional has the potential to commit a violation
 - Perception matters

Practical Communication Approaches

- Listen for
 - Resistance
 - Trauma history
 - Counter-transference, re-enactment
 - Cultural issues, misunderstandings

Practical Communication Approaches

- Breaking down resistance
 - Acknowledge their pain, suffering, etc.
 - Without condoning conduct
 - This models perspective-taking
 - Affirm knowledge, skills, accomplishments
 - Connect their inner being to their practice
 - Suggest other perspectives

Practical Communication Approaches

- Personal connection to the improper conduct
 - Professional risks
 - Personal vulnerabilities
- This awareness *should* lead to insight, change

Practical Communication Approaches

- Show respect and empathy w/o condoning
 - Do not interrupt them
 - “I can see you are surprised / upset / frustrated / confused...”
 - “Help me understand why you feel this way.”
 - This helps them name and tame their emotions

Practical Communication Approaches

- The 8” Rule
- WAIT = Why am I talking?

Practical Communication Approaches

- Try some compassion for them
 - This may be all they need
 - They may simply want to be heard
 - Could be disarming, increase cooperation and remediation potential
 - Could be difficult to do if conduct is egregious or triggering for you

Practical Communication Approaches

- Remember they have taken a big hit to a part of their identity
- They feel aggrieved
- They are accustomed to being in charge
- Despite their accomplishments, they may feel embarrassed, angry, defensive, shameful

Practical Communication Approaches

- Power dynamics between licensee and board member, attorney, compliance monitor, other staff
- They may not see you (or may not want to see you) as an authority figure
- Some may have difficulty w/ authority, boundaries
- Limitations on communication over Zoom or phone

Practical Communication Approaches

- Ignoring the heat in the room does not lower the temperature
- People in the throes of intense emotion are unable to process information

Practical Communication Approaches

- Intense feelings are inflamed when others do not acknowledge the distress
- Trying to calm someone w/o listening comes across as condescending and disrespectful

Practical Communication Approaches

- When your frustration intensifies, your ability to listen and process what you are hearing decreases.
- Strong emotions are transferable. Be aware of whether you are absorbing the licensee's agitation and telegraphing it.

Practical Communication Approaches

- Reflect on whether there is anything else going on to intensify your emotions (in addition to the difficult licensee). This will calm you.
- Allowing the licensee to vent their feelings can de-escalate their intensity.

Practical Communication Approaches

- Calm the waters by
 - Identifying what you are feeling
 - Using the snow globe technique
 - Recognizing what (emotion) is below the surface (words)

Practical Communication Approaches

- Calm the waters by
 - Avoiding an authoritarian approach, which may trigger defensiveness or power struggles

Practical Communication Approaches

- If the conversation escalates
 - Have a threshold for action: Create your own “uncomfortableness” scale
 - Ex: mildly annoyed < displeased < offended < upset
 - Choose your threshold for ending the call or meeting

Practical Communication Approaches

- If the conversation escalates
 - Provide boundaries: Mini time-out; go up chain of command
 - Memorize brief scripts so you don't have to search for words in the heat of the moment

Practical Communication Approaches

- If the licensee gets angry
 - Respond calmly
 - Stay safe. Leave the room if needed.
 - If you become too upset, involve others to resolve the situation

Practical Communication Approaches

- When call or meeting is ended
 - Immediately document what transpired
 - Include verbatim language
 - Document any actions you committed to
 - Send licensee follow-up email/letter w/ next steps
 - Reflect on what seemed effective or could have gone better

Practical Communication Approaches

- Try some compassion for yourself
 - *Not* self-pity, complacency, self-care
 - A healthy way of relating to yourself when faced with difficulties, distress
 - Recognition of our common humanity + mindfulness + self-kindness

• Kristin Neff, <https://self-compassion.org>

More Impactful Regulation

Impactful Regulation

- Broader investigations
 - May increase the potential for discovering patterns
 - May interrupt patterns
 - May uncover underlying vulnerabilities
 - May prevent development of ungovernability?

Impactful Regulation

- If the education doesn't "take"
 - Wrong course?
 - Wrong approach? (content vs process)
 - Not rigorous enough
 - Inadequate accountability expectations

Impactful Regulation

- Remedial courses
 - Safe, confidential learning environment
 - Telling of story required
 - Peers model taking responsibility
 - Education plan w/ action steps to apply in practice

Impactful Regulation

- Extend the regulatory reach: long-term accountability
 - Monitoring
 - Criteria for monitors
 - Monitor training
 - Coaching
 - Long-term accountability course

Impactful Regulation

- Extend the regulatory reach
 - Peer support
 - Decrease isolation
 - Chaperone

Summary: Recommendations for Regulators

Summary: Recommendations

- Explore underlying causes of difficult or ungovernable behavior
 - Risks
 - Vulnerabilities
- Communication techniques to reduce resistance, build trust, foster compliance, interrupt the difficult-to-ungovernable continuum

Summary: Recommendations

- Remedial course selection
- Extended regulatory reach
- Consider training for monitors
- Advocate for early education about the regulatory and legal context of professional work

Questions?

Thank you!

Catherine@pbieducation.com
info@pbieducation.com
<https://pbieducation.com/>