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Establishing a Positive Patient Relationship ...and Knowing When and How to Let Go

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Disclaimer

No planner or faculty of this program has any relevant financial relationship to disclose.

- CAP Membership Engagement and Education Committee -



Objectives - Patient Relationship/Termination

- Identify when a physician-patient relationship is established to determine duty and obligation to your patients.
- Demonstrate how to appropriately terminate the physician-patient relationship and mitigate risk.
- Apply risk management best practices to reduce medical professional liability claims related to allegations of abandonment.
- Integrate contemporary issues (telemedicine, vaccination status, and social media) and their impact on the modern physician/patient relationship.
- Identify cultural, linguistic, and health literacy limitations that may impact communication with patients (understanding) and possibly erode the physician-patient relationship.



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**What is
Risk Management ?**

CAP Risk Management & Patient Safety | Risk Management Strategies



RISK MANAGEMENT IS...

- Risk Avoidance
- Risk Assessment
- Risk Mitigation
- Resolution (Claims)





Establishment of the Physician/Patient Relationship





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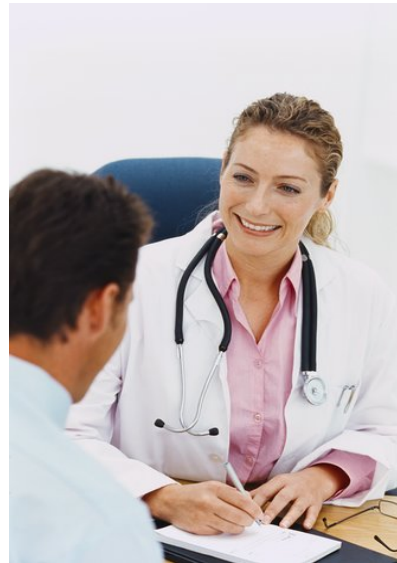
The Relationship...

What is it?

What starts it?

Who starts it?

What stops it ?



When does a “person”
become a “patient”?

What unwinds it?



What Starts It?

Sometimes there is no well-defined starting point...



The courts look to the actions
and
behaviors of the parties



For Starters...

Person's reasonable belief...

Office staff behaviors

- Making appointment
- Rooming the "person"
- MA taking vitals and history
- What else?

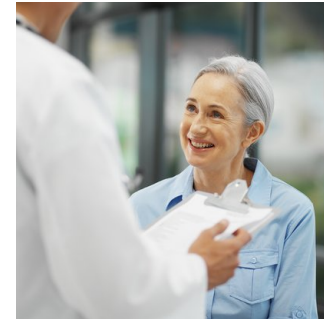




More Starters

– Physician’s Actions:

- Agreeing to see the “person”?
- Entering the exam room
- Taking a history
- Conducting an initial assessment
- Making a referral
- Writing a Rx
- Recommending a treatment
- What about NPs and PAs
- Establishing a telemedicine relationship





The Future of Telemedicine

Telemedicine is here to stay...

Study Findings - Patients:

- 65% of patient would like to continue telemedicine visits
- 77% stated quality of care comparable with in-person visit

Providers:

- 75% want to continue telemedicine encounters
- 50% reported patient satisfaction
- 60% indicate lack of physical exam is a limitation
- 87% believe quality of care better with in person visit
- No show rate decrease: 30% to 27%
- Management of chronic care patients...improvement



More Starters...

- Contractual Creations
 - HMO Contracts
 - Capitated Agreements
 - Physician designated as patient's PCP by insurer
- Hospital By-Laws
 - Call schedules and Rotations
- Laws
 - ER call / EMTALA





What is it?

- An Ethical Obligation
 - A relationship rooted in trust and mutual consent
- A Legal Duty
 - To act within the Standard of Care
 - Not to abandon
- Optional
 - Either party may agree or decline the relationship

**What's missing?*

The Patient's part? Like cooperation ...follow medical advice...be nice?



Extends to absences

On-call coverage...

-> when physician ill, vacationing or otherwise gone whether by accident or design

Exception -

Extenuating circumstances

(like emergency or death...)

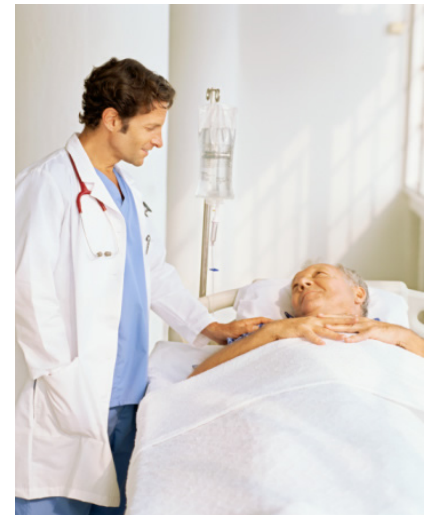




Scope of Relationship

It's not everything and anything

- Generalist vs. specialist
- Emergency on-call/EMTALA
- PRN providers
 - Cases with clear start and stop points





The Forever Factor - *until death do you part..*

- Once started - it's like marriage- it continues until *terminated* by one or both parties.
- Some signs of *terminal* behaviors:
 - Patient moved
 - Patient's insurance changed - new PCP assigned
 - Records requested by new provider
 - Patient comments (social media)
 - Patient died
 - Doctor died



What it's not - the exceptions

No relationship created during activities done on behalf of others

- Examples: IME/QME, employment exams, drug screens

Precedent generally holds relationship required to create duty of care.

No Duty  No Liability

Exception -> (There are always “*exceptions*”)
we cause harm during the exam/IME



What is “Liability” ???

li-a-bil-i-ty

noun

1. the state of being responsible for something, especially by law. *Webster*

In Healthcare ->

- Duty to act within standard of care
- Breached that standard
- Injured the patient as a result



Can You Say “No” ...?

Physicians right to select their patients
(pre-relationship)

- Close practice to new patients
- Limit area of practice
- Medicare/Medi-Cal/insurances/cash only
- Attitude/compatibility/personality issues



Right may be affected by ADA restrictions



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Termination of the Physician/Patient Relationship

It's not me. It's You...



What's the risk?

In a word - Abandonment

An intentional Tort - or intentional “civil” offense

Allows for economic and punitive damages\$\$\$

Requires:

- An established physician patient relationship
- Patient has a reasonable expectation of medical care
- The physician fails to provide necessary care
- Patient is injured/harmed from lack of access/care



Abandonment



Increases physician liability



Decreases patient safety



Immediate Termination

Intimidating Behavior

Bullying

Harassment

Threat of Violence

Physical Violence

Use of a Weapon



“I’m never coming back here again!”





Managing the risk

Documenting... on the patient's side

Those terminal behaviors

- Patient moved
- Patient's insurance changed - new PCP assigned or you are no longer accepting their insurance
- Records requested by new provider
- Patient comments (social media)
- Patient died
- Whatever it is...



Therapeutic Alliance

Rehabilitation





Therapeutic Alliance:

Communication

Office policy

Timely intervention

Collaborate



Therapeutic
Alliance:

Formulate treatment plan

Patient contract

Document!

Informed refusal



Patient Termination

Some common reasons for termination include:

No Shows and cancellations

Noncompliance/Nonadherence

Initiation of legal proceedings

Failure to pay bills/ Adhere to payment plan

Violent, threatening or offensive behavior

Dishonesty



American Medical Association Code of Medical Ethics Opinion 1.1.5

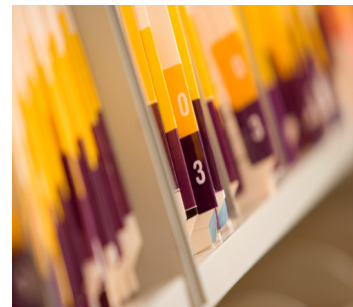
- *Physicians' fiduciary responsibility to patients entails an obligation to support continuity of care for their patients. At the beginning of patient-physician relationship, the physician should alert the patient to any foreseeable impediments to continuity of care.*
- *When considering withdrawing from a case, physicians must:*
- *Notify the patient (or authorized decision maker) long enough in advance to permit the patient to secure another physician.*
- *Facilitate transfer of care when appropriate.*



Managing the risk

Documenting... on the *physician's* side

- Written notice with *all* required elements
- Health insurer/contact requirements - if any





Dear John/Jane - the letter

The *absolute* elements of a termination notice

- Written (you need “proof” of how and when)
- Provides reasonable time to obtain another doctor
- Provides for care during transition
- Provides a referral source to another doctor
 - ❖ May be influenced by insurance contracts
 - ❖ *Strongly recommended* - have proof it was received
(USPS certified mail, return receipt)



A closer L👁👁K at the parts

- **Written** - on individual or group letterhead
 - Does not need to give a reason -
 - May be extremely valuable to include a reason
- Provides reasonable time to obtain another doctor
 - Generally considered 15 days
 - Violent types don't get a hall pass
- Provides for care needs during transition
 - Clinically driven - could be acute conditions to Rx/refills



A closer L👁👁K at the parts

- Insurance contracts

Some HMOs/IPAs/Carriers have internal requirements to justify patient termination - know them

- Provides a referral source

County medical society or patient's health insurer

- Have proof it got there

Send by tracking method -

USPS delivery receipt confirmation - *auto forwarding*

Indicate on letter the method



A closer L👁👁K at the parts

- Clinically Driven issues
 - > Life threatening patient noncompliance

The opposite of informed consent = **Informed refusal**

*Termination letters based in part or whole due to noncompliance
should always explain in simple lay terms how the patient's
behavior threatens their health*



A closer L👁👁 K at the parts

Dear Difficult Patient:

I am writing to advise that our offices are no longer available to continue with your healthcare needs.

We are required to maintain a professional working environment free from hostile behaviors that affect our staff. Your behavior at our office creates a hostile work environment that requires us to end our professional relationship. Please select another provider from your healthcare network ASAP to continue with your care.

We will remain available over the next 15 days for your urgent care needs while you make this transition.



A closer L👁️👁️K at the parts

Dear Non-Compliant Patient:

I am writing to advise that I am no longer available to be your physician.

I have recommended that you obtain a diagnostic breast MRI for a mass suspicious of being breast cancer. While I respect your decision to not follow my advice, I require my patients to partner with us in managing their health. Your decision to not obtain that MRI means we are unable to identify the nature of the breast mass which may lead to you developing fatal metastatic breast cancer. We highly recommend that you reconsider your decision and pursue a diagnostic evaluation of your breast mass as soon as possible with another physician of your choosing.

I will remain available for your urgent healthcare needs for the next 15 days while you make the transition to your new doctor. We recommend that you contact your healthcare plan to obtain a physician within your healthcare network.



Sample Letter

Sample Letter for Discontinuing Patient Care

(Type on physician's own letterhead)

(Date)

Dear

Please be advised that I will no longer provide medical care to you effective (Month Day Year) because _____ (*). I will remain available until the above date for emergency care only.

Please select another physician within this time frame to continue your care. You may call _____ (Physician Referral Service/Specialty Organization) _____ for assistance in selecting another physician.

The risks of not continuing your medical care include, but are not limited to, the following:

I am including a medical record request form that requires your signature and identification of the physician selected. Once my office receives the form, a copy of your records will be transferred within 15 days.

Sincerely,

Physician Name

Enclosure

* If you provide a reason, keep it brief, generic and factual. For example, "I've recommended treatments and tests, but after repeated discussions, you have declined to follow my advice. Since it appears you have lost confidence in my advice, I must withdraw as your physician."



A closer K at the parts

- Include info about how to obtain or have records forwarded to the patient's new provider
- Include a record transfer request/authorization with letter
- Think about the wisdom of providing a free copy
- Send the letter regular USPS mail as well



Retirement/Closing Practice Considerations



Determination of Patient Status

ACTIVE PATIENTS:

- Scheduled F/U
- Prescribing Medication(s)
- Treatment of acute conditions
- Post-op



In Closing...

- Maintain healthy and productive relationships with patients.
- Recognize when it is necessary and timely to address patient problems or behaviors that could result in terminating the physician/patient relationship.
- Consider alternatives to terminating; salvaging/rehabilitating the physician/patient relationship.
- Execute appropriate steps when terminating the physician/patient relationship to avoid allegations of abandonment.





RESOURCES/REFERENCES

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Claims, Risk Management,
and CAP Cares Hotline

800-252-0555

24 hours a day, 7 days a week

Reporting a claim of adverse outcome:

Claims: When reporting a claim, please have notice of intent or lawsuit, as well as the medical record,
Be prepared to provide a brief summary of the care.

Risk Management: We encourage you to call about risk management questions and concerns.

CAP Cares: When you have an adverse outcome, call CAP Cares.
See details on the reverse.