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"Firing" Patients: Avoiding Patient Abandonment

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Physicians and other healthcare providers often find themselves in situations in which they no longer want to care for a patient. It may be that the patient is disruptive, noncompliant, or is unable or refuses to pay for his or her care. It may be that the patient requires services outside the expertise or capability of the provider. Regardless of the reason, the provider must take care when "firing" or discharging the patient from the practice. By accepting the person as a patient, the provider assumes the duty to care for the patient unless and until the provider-patient relationship is properly terminated. If the provider fails to render care consistent with the applicable standard of care, the patient may sue for malpractice. If the provider fails or refuses to care for the patient before the patient is able to transfer their care elsewhere, the patient may also sue the provider under the common law theory of patient abandonment. (*See, e.g.*, 1 Am. Law Med. Malpractice § 3:15 (2017)). As one court explained:

> [I]t "is well settled that a physician or surgeon, upon undertaking an operation or other case, is under the duty, in the absence of an agreement limiting the service, of continuing his [or her] attention, after the first treatment, so long as the case requires attention." *Ricks v. Budge*, 91 Utah 307, 64 P.2d 208, 211 (1937) (emphasis added). "A physician has the right to withdraw from a case, but if the case is such as to still require further medical or surgical attention, he must, before withdrawing from the case, give the patient sufficient notice so the patient can procure other medical attention if he desires." *Id*. at 212. Accordingly, a medical provider "'is bound to exercise reasonable and ordinary care and skill in determining when he [or she] should discontinue his [or her] treatment and services.'" *Id*. (*quoting Mucci v. Houghton*, 89 Iowa 608, 57 N.W. 305, 306 (Iowa 1894)).

Newman v. Sonnenberg, 81 P.3d 808, 811 (Utah App. 2003). In addition, state licensing statutes or regulations often prohibit providers from "abandonment of a patient"; violations may result in administrative penalties and adverse licensure action. (*See, e.g.*, Idaho Code § 54-1814(15)). To avoid liability for patient abandonment, the provider generally must take certain steps to ensure the patient is not harmed while care is transferred to another provider.

1. Notify the patient. The provider must notify the patient that the provider

is terminating the patient relationship so that the patient may transfer their care to another provider. Although most states do not require any particular form of notice, providers will usually want to document the notice through a written letter. Sending a certified letter may help confirm the letter is received if the letter is accepted. If the patient fails to pick up the letter, however, the patient may not receive notice and the provider may be exposed to liability. The key is to ensure the patient actually knows the relationship is ending; to that end, simply sending a letter that is never received is likely insufficient. For that reason, I usually recommend (1) where appropriate, discussing the termination with the patient in person or via telephone and documenting the conversation in the medical record; and/or (2) sending an appropriate letter confirming the notice. To maximize the probability that the patient will receive the letter, the provider may send the letter by regular mail and/or a commercial overnight delivery service (*e.g.*, UPS or FedEx) that delivers the letter to the home and requires that the patient sign for the letter. Whatever form of notice used, the provider should take reasonable steps to make sure the patient understands that the relationship is ending on a certain date and the critical or urgent need for the patient to establish care with another qualified provider before then.

2. Explain the reason for termination in an appropriate manner. Some commentators recommend against explaining the basis for the termination in the notice letter. I think providing the notice without any explanation may surprise and frustrate the patient, which may create more problems. For that reason, I usually favor providing a brief explanation of the basis for termination in a tactful, professional, non-inflammatory manner. For example, the provider may explain that it is necessary to terminate the relationship because the patient is noncompliant with the treatment plan, has failed to pay amounts due, or has exhibited inappropriate conduct that adversely affects the practice or may interfere with the ability to render effective care in the future. Patients may not like it, but they may be more willing to accept termination and less likely to complain if they understand the reason for termination.

3. Give the patient a reasonable period of time to transfer care to another provider. Although 30 days is common, the amount of time required will depend on the circumstances, including the patient's condition; the patient's current or needed course of treatment; and the availability of other appropriate healthcare providers. For example, a family practitioner who only treats the patient periodically for common ailments may not need to give much advance notice. On the other hand, an obstetrician who is caring for a woman in her eighth month of pregnancy or an oncologist who is in the middle of a treatment regimen may need to complete their current course of treatment or provide a longer period of transition time to ensure that the patient can effectively transfer care without adverse consequences. The test is to ensure that the patient had a reasonable opportunity to transfer their care to another provider without suffering any adverse effect during the interim.

4. Provide any necessary care during the transition. The provider should explain to the patient that the provider will continue to render necessary care before the termination date. Remember: the provider is still responsible for the patient's care until the patient has a reasonable time to

transfer care elsewhere; the provider may be liable for damages that the patient suffers because of the provider's failure to render necessary care in the meantime. The extent and nature of care offered will depend on the circumstances of the patient's condition. If the patient is disruptive, the provider may appropriately condition continuing care on the patient's compliance with reasonable standards of conduct, such as behaving professionally. The provider should document any such conditions in the chart or, better yet, in a written communication with the patient. Ultimately, the provider should ask herself or himself, “If a jury or licensing board were to consider this situation, would it conclude that I acted reasonably to ensure that the patient did not suffer damage during the transition to a new provider?”

5. Facilitate the transfer. Providers are not necessarily obligated to find another provider to care for the patient or even recommend another provider, but they should act reasonably in facilitating the transfer. Among other things, they should advise the patient to have the new provider contact them so that they may transfer needed medical records. Providers may—but are not required to—refer the patient to their insurer or other community resources that may assist the patient in finding another provider. Remember: the provider wants the patient to find others who may assume the patient's care and should act accordingly. They should take appropriate steps to hand off care to the other provider in a manner that will not injure the patient.

6. Avoid taking the patient back. Once a patient has been properly discharged from the practice, beware intentionally or unintentionally resuming the patient relationship. For example, make sure that staff do not reschedule the patient for appointments or beware re-engaging with the patient unless you want to resume the patient relationship and corresponding duties. If contacted, remind the patient that the relationship was terminated, that you decline to resume caring for the patient, and instruct the patient to contact his or her other provider(s).

7. Beware relevant laws. Other laws may impact the ability to terminate a patient relationship. For example, EMTALA may require hospitals, emergency physicians, and on-call providers to render care to emergency patients who come to the hospital even if the patient was discharged from the provider's care on an earlier occasion. In such cases, the provider should advise the patient of the limited scope of his or her care, i.e., by treating the patient in the emergency room, the provider is not agreeing to and does not resume the provider-patient relationship outside the emergency room context. Other laws prohibit refusing care for or terminating a patient relationship due to illegal discrimination, e.g., race, sex, national origin, disability, etc. Finally, the provider should consider whether he or she has any contractual obligation to continue to care for the patient, e.g., through a managed-care contract or other arrangement. If so, terminating the relationship may breach the contractual obligations despite the reason for the termination.

8. There are exceptions. Admittedly, there are situations in which immediate termination may be justified, e.g., if continuing care would pose a serious and imminent threat of harm to the patient, the provider, staff, or

others. In such cases, the provider may not be able to give the advance notice normally required; instead, the risk of continuing care may outweigh the risk of patient abandonment. In such cases, the provider should carefully consider and document the exceptional facts that warrant such a determination. Again, the provider should ask whether a jury or licensing board would agree that the circumstances were so egregious as to warrant the provider's action despite possible injury to the patient.

Conclusion. Physicians and other healthcare providers are generally free to choose their patients, but once they assume the care of the patient, they may not fail or refuse to provide needed care without giving the patient notice and adequate time to transfer care elsewhere. The notice might include something like the following:

> Dear [PATIENT]:
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> Due to recent events, I will no longer be able to continue providing your medical care; accordingly, it will be necessary for you to transfer your care to another healthcare provider. I will continue to provide you with any necessary care until [STATE DATE, USUALLY 30 DAYS OUT], which should give you sufficient time to transfer your care; however, after that date, you will need to obtain medical care elsewhere.
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> Your condition [MAY/DOES] require continued care. I strongly encourage you to take immediate action to transfer your care to an appropriate healthcare provider. If you need assistance, [IDENTIFY LOCAL REFERRAL SERVICE] may be able to help you find another appropriate provider. Alternatively, your insurance program, local hospitals, or acquaintances may be able to refer you to an appropriate provider.
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> We will make your medical records available to your new provider upon his or her request. Please have your provider contact our office to make arrangements to transfer the records.

Following the suggestions set forth above may help the provider avoid or minimize the risk of patient abandonment.

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