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**Provider-Patient Relationship**

- **Provider-Patient Relations Created**
  - Express consent
  - Implied from situations

- **Provider-Patient Relation Terminated**
  - No duty to provide care
  - Duty of Care
  - Liable for breach of duty of care, e.g.,
    - Malpractice
    - Negligence
    - Lack of consent
    - Abandonment
  - No duty to provide care
Creating Relationship

• General rule:
  patient seeks care from practitioner
  + practitioner consents to provide care
  practitioner-patient relationship

Creating Patient Relationship

• Beware cases in which relationship may not be intended.
  — Phone calls or emails w/patient
  — Telemedicine
  — Social media
  — Call for appointments
  — Consultations with colleagues
  — Courtesy or favor
  — Emergency care
  — IME, employer physical, etc.
  * Each case depends on its own facts.

Creating Patient Relationship

To avoid creating unintended patient relationship—
• Be careful what you say or do.
• Don’t get involved or give advice.
• Define or limit your relationship.
  — Explain non-existence or limits to your care.
  — Refer to another practitioner.
• Document the parties’ relationship.
  — Policies, forms, consents
  — Discharge/referral instructions
  — Letters or emails
• Check your insurance to ensure you have coverage.
Refusing Patients

• General Rule:
  You are not a bus!

Refusing Patients

• In general, practitioners can legally refuse to treat anyone they want. (Acts 39-1391b and -1391c)
  — Ethics rules may differ...

• Exceptions:
  — EMTALA
  — Anti-discrimination laws
  — Contracts require care
  — Grant requirements
  — Charity care obligations
  — Cannot abandon patient

Creating Provider-Patient Relation

Provider-Patient Relations Created

• Express consent
• Implied from situations

Provider-Patient Relation Terminated

• Liable for breach of duty of care, e.g.,
  • Malpractice
  • Negligence
  • Lack of consent
  • Abandonment

No duty to provide care

Duty of Care

No duty to provide care
Dealing with Problem Patients

Provider-Patient Relations Created

Provider-Patient Relation Terminated

Duty of Care

Liable for breach of duty of care, e.g.,
- Malpractice
- Negligence
- Lack of consent
- Abandonment

No duty to provide care

Dealing with Problem Patients

Do not do this...

- Unless you want to risk liability for:
  - Malpractice.
  - Patient abandonment.
  - Civil penalties under EMTALA or COPs
  - Participation in third party payor programs.
  - Adverse licensure actions.

Dealing with Problem Patients

Where possible, check on patient before you take them.
- Referral record.
- Source of payment.
- Other?

Establish and manage expectations up front.
- Clear policies explained to patient.
- Truly informed consent.

* Expectation – reality = frustration
Dealing with Problem Patients

- Patient responsibilities document
  - Explain that patient’s cooperation and appropriate conduct are essential to effective care.
  - Require, among other things,
    - Cooperation in developing treatment plan.
    - Compliance with treatment plan.
    - Ongoing communication and respect.
    - Professional, non-disruptive conduct.
  - Post in facility.
  - Use in communications with patient.

Dealing with Problem Patients

- Assess the cause of the disruptive behavior.
  - Medical or psychological condition, e.g., medication, intoxication, withdrawal, psychosis, pain.
    - Consider clinical consult or evaluation.
    - May be resolved once the clinical situation is stabilized.
  - Misunderstanding.
  - Miscommunication.
  - Patient is simply a jerk.
- Consult with appropriate, objective person who was not involved in crisis situation.
Dealing with Problem Patients

- Many situations can be resolved through effective communication.
  - Allow the patient to vent.
  - Listen.
  - Acknowledge their concerns.
  - Respond in appropriate manner.
    - Consider timing.
    - Consider personnel involved.
- But don’t let them interfere with operations or endanger staff or patients.

Dealing with Problem Patients

- Respect patient’s concerns.
- Listen actively.
- Be open minded.
- Ask questions.
- Beware your body language.
- Be patient and empathetic.
- Avoid argument.
- Restate patient concerns to confirm understanding.
- Follow up.

Idaho Apology Law

- Expressions of apology, condolence and sympathy: "[A]ll statements … expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence, including any accompanying explanation, … which relate to the care provided to the patient, or … the discomfort, pain, suffering, injury, or death of the patient as the result of the unanticipated outcome of medical care shall be inadmissible as evidence...."
  - "I’m sorry that you are going through this..."
  - Be careful how you phrase it!
- Admission of Fault: "A statement of fault which is otherwise admissible and is part of or in addition to [an apology] identified [above] shall be admissible."
  - "It is our fault; we made a mistake..."
Apologizing

- In appropriate circumstances, you may want to accept responsibility and apologize.
  - May help address concerns and avoid litigation.
  - May be the “right” thing to do.
- But carefully consider before doing so.
  - You may not have all the facts.
  - Consult with your malpractice insurer and/or attorney.
  - Admissions may adversely affect coverage.
  - Admissions may adversely affect litigation.

Dealing with Problem Patients

- Patient Care Conference / Contract
  - Refer to “Patient’s Rights and Responsibilities”.
  - Explain that inappropriate conduct interferes with our ability to provide effective care.
  - Require, among other things,
    - Cooperation in developing treatment plan
    - Compliance with treatment plan
    - Ongoing communication
    - Professional, non-disruptive conduct
  - Warn that we will need to end relationship if they fail to comply.
  - Advise them that they may go elsewhere.

- Document, document, document!
  - Medical record
    - May be subject to patient’s right of access.
    - May be discoverable.
    - Be objective, use quotes, etc.
  - Incident report or other peer protected
  - Documentation is critical in case we need to take additional corrective action.
  - Remember: “If it’s not in the chart, it didn’t happen.”

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Dealing with Problem Patients

- Establish a “code green” team.
- Call security and/or the police if necessary.
  - HIPAA allows internal uses or disclosures for hospital operations, including security.
  - HIPAA allows disclosures to law enforcement:
    - To avoid risk of serious and imminent harm.
    - To report crime on provider’s premises. (45 CFR 164.512)
- Always do what is necessary to protect your other patients and staff.

Avoiding Patient Abandonment

Provider-Patient Relations Created

- Express consent
- Impaired from situations

Duty of Care

Provider-Patient Relation Terminated

No duty to provide care

Terminated by:
- Patient
- Provider
- Circumstances, e.g., passage of time, but be careful

Patient Abandonment

- Abandonment =
  - Leaving town without securing coverage for your patients.
  - Terminating relationship without giving patient sufficient:
    - Notice that you are ending relationship
    - Time to find a new practitioner
    - Care until the patient can transfer to a new practitioner
- Penalties
  - Lawsuit by patient for damages
  - Action against license (See IC 54-1814(15); IDAPA 22.01.03.037.02)
Avoiding Patient Abandonment

- Can terminate relationship for any legitimate reason or no reason, but not bad reason.
  - Legitimate reasons
    - Failure or refusal to pay bills
    - Breakdown in relationship or communications
    - Disruptive conduct
    - Noncompliance with treatment
    - Missed appointments
    - Etc., etc., etc.
  - Bad reasons
    - Discrimination

Factors to consider before ending patient relationship
- Patient’s current health needs
- Availability of alternative care
- Basis for termination (e.g., legitimacy compared to patient’s health care needs)
- Whether patient is in protected class
- Documentation supporting termination
- Alternative actions
  - Warnings
  - Patient care conference
  - Behavior contract

If termination necessary and appropriate:
- Notify patient in writing and perhaps orally
- Give sufficient time to transfer care
  - Depends on patient’s condition
  - Usually 30 days, but no hard and fast rule
- Provide necessary care in interim
- Facilitate transfer of care
- Retain letter in patient chart or elsewhere.
- Hospitals: remember EMTALA obligations.
Avoiding Patient Abandonment

- There may be situations that justify immediate termination without advance notice, e.g.,
  - Danger to patient, staff or others
  - Criminal misconduct
- Be careful before terminating without notice; consider:
  - Patient care needs
  - Availability of alternative sources for treatment
  - Statutory obligations, e.g., EMTALA or state statutes
  - Contractual obligations
  - “What would a jury think?”