


## Creating, Handling, and Terminating Patient Relationships

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Compliance Bootcamp  
(5/16)



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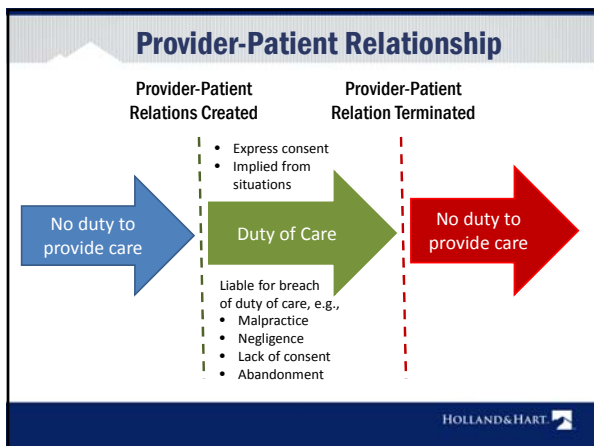
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### Creating Relationship



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

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### 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.



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### 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.

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### Refusing Patients

- General Rule:  
*You are not a bus!*



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### Refusing Patients

- In general, practitioners can legally refuse to treat anyone they want. (See IC 39-1391b and -1391c)
  - Ethics rules may differ...
- Exceptions:
  - EMTALA
  - Anti-discrimination laws
  - Contracts require care
  - Grant requirements
  - Charity care obligations
  - Cannot abandon patient



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### Creating Provider-Patient Relation

<p><b>Provider-Patient Relations Created</b></p>	<p><b>Provider-Patient Relation Terminated</b></p>
<p>No duty to provide care</p> 	<p>Duty of Care</p> 
<p>Liability for breach of duty of care, e.g.,</p> <ul style="list-style-type: none"> <li>• Malpractice</li> <li>• Negligence</li> <li>• Lack of consent</li> <li>• Abandonment</li> </ul>	
	<p>No duty to provide care</p> 

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### Dealing with Problem Patients

Provider-Patient  
Relations Created



Provider-Patient  
Relation Terminated



**Duty of Care** → **No duty to provide care**

Liability for breach of duty of care, e.g.,

- Malpractice
- Negligence
- Lack of consent
- Abandonment

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### 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.



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### 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**



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**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.

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**Dealing with Problem Patients**



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**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.

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**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.

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**Dealing with Problem Patients**



**Listen  
Understand &  
Talk**

- 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.

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**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...”*

(IC 9-207)

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**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.

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**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.

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**Dealing with Problem Patients**

- ***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.*

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### Avoiding Patient Abandonment

<p style="text-align: center; font-weight: bold;">Provider-Patient Relations Created</p>  <p style="text-align: center; font-weight: bold; color: green;">Duty of Care</p> <p style="font-size: small;">Liable for breach of duty of care, e.g.,</p> <ul style="list-style-type: none"> <li>• Malpractice</li> <li>• Negligence</li> <li>• Lack of consent</li> <li>• Abandonment</li> </ul>	<p style="text-align: center; font-weight: bold;">Provider-Patient Relation Terminated</p> <div style="text-align: center; color: red; font-weight: bold; font-size: 2em;">➔</div> <p style="text-align: center; color: red; font-weight: bold;">No duty to provide care</p> <p style="font-size: small;">Terminated by:</p> <ul style="list-style-type: none"> <li>• Patient</li> <li>• Provider</li> <li>• Circumstances, e.g., passage of time, but be careful</li> </ul>
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### 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)

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**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

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**Avoiding Patient Abandonment**

- 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

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**Avoiding Patient Abandonment**

- 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.

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### 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?”

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