

# CREATING AND TERMINATING PATIENT RELATIONSHIPS



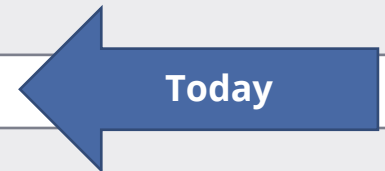
KIM C. STANGER

(3/21)

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Date	Webinar
2/4/2021	Cybersecurity and Data Privacy
2/9/2021	Information Blocking Rule
2/11/2021	HIPAA
2/16/2021	42 CFR Part 2
2/18/2021	Immunity for Healthcare Entities regarding COVID
2/23/2021	Unique Compliance Concerns Applicable to Utah
2/25/2021	Employment Law Issues
3/4/2021	Interpreters, Translators, and Assistance for Those with Disabilities
3/11/2021	EMTALA
<b>3/18/2021</b>	<b>Creating, Managing and Terminating Patient Relationships</b>
3/25/2021	Antitrust
4/1/2021	FDA Regulatory Issues for Medical Device Companies



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# OVERVIEW

- Creating patient relationships
  - Intentional
  - Unintentional
- Handling problem patients
- Ending patient relationship
  - Limits
  - Avoiding patient abandonment
- Submit questions using chat feature or e-mail me at [kcstanger@hollandhart.com](mailto:kcstanger@hollandhart.com).

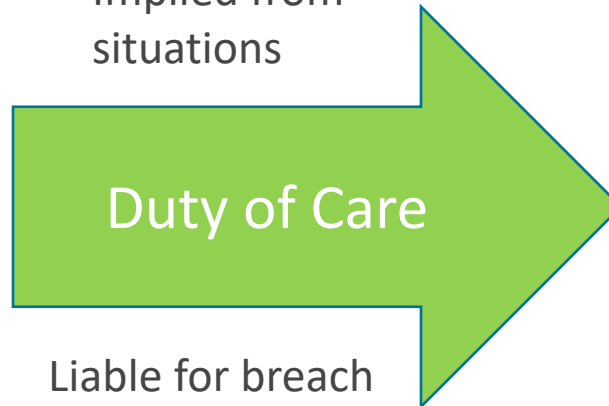
# PROVIDER-PATIENT RELATIONSHIP

Provider-Patient  
Relations Created

Provider-Patient  
Relation Terminated



- Express consent
- Implied from situations



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

- Contract
- Statute or regulation
- Malpractice
- Negligence
- Lack of consent
- Abandonment



# CREATING RELATIONSHIP



➤ General rule:

**patient seeks care from practitioner  
+ practitioner consents to provide  
care  
practitioner-patient relationship**

# REFUSING PATIENTS

- In general, practitioners can legally refuse to treat anyone they want.
  - Ethics rules may differ...
- Exceptions:
  - EMTALA
  - Anti-discrimination laws (e.g., race, religion, nationality, language, disability, sexual orientation, etc.)
  - Contracts require care (e.g., Medicare, payers, employment, etc.)
  - Grant requirements
  - Charity care obligations
  - Cannot abandon patient



# 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 or call coverage
  - Health fairs or other volunteer situations
  - Testing or vaccination programs
  - IME, employer physical, sports 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.
  - Include disclaimers or limits on consents, registrations, websites, etc.
  - 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.

# SAMPLE DISCLAIMER LANGUAGE

“This service does not establish a practitioner-patient relationship, nor does [PROVIDER] undertake to provide additional or follow-up care for the Patient or advise Patient of the results of any exam, tests or care. The Patient is responsible for contacting their regular healthcare provider to obtain appropriate follow-up care or to address any questions or conditions that may arise.”

# CREATING PATIENT RELATIONSHIP

## *Beware telehealth!*

- Usually, must be licensed in state where patient is located.
  - Many states waived requirements during COVID.
- States may impose telehealth requirements, e.g.,
  - Must establish provider-patient relationship through two-way audio/visual interaction subject to limited exceptions.
  - In-person community standard of care applies.
  - Special consent rules.
  - Others

(See, e.g., IC 54-5705)

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Duty of Care

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# MANAGING PATIENT RELATIONSHIP

- Comply with standard of care.
- Obtain informed consent
  - **Informed consent v. consent form**
    - Informed consent = patient understands risks, benefits, alternatives, providers, etc. and agrees to care.
- Establish and manage expectations
  - **Expectations – Actual Experience = Frustration**
    - Scope of services to be provided
    - Anticipated process and outcomes
    - Policies and practices
      - Practice/facility policies
      - Patient rights and responsibilities
    - Updates and ongoing communication
    - Listen, understand, and respond professionally

# MANAGING PATIENT RELATIONSHIP

Beware laws, regulations, and contracts affecting patient relationship, e.g.,

- Payer agreements
- Provider agreements and policies
- Medicare/Medicaid provider agreements and conditions of participation (“COPS”)
- State licensure acts and regulations
- State medical practices act

# MANAGING PATIENT RELATIONSHIP

Medical practices act may prohibit:

- “Providing health care which fails to meet the standard of health care provided by other qualified physicians or physician assistants in the same community or similar communities, taking into account his training, experience and the degree of expertise to which he holds himself out to the public.”
- “Engaging in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient.”
- “Engaging in a pattern of unprofessional or disruptive behavior or interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient. Such behavior does not have to have caused actual patient harm to be considered unprofessional or disruptive.”
- “Abandoning a patient”

(Idaho Medical Practices Act, IC 54-1814)

# DEALING WITH PROBLEM PATIENTS

- **Beware simply terminating relationship without reason**
- Unless you want to risk liability for:
  - Malpractice.
  - Patient abandonment.
  - Civil penalties under EMTALA or COPs
  - Participation in third party payer programs.
  - Adverse licensure actions.
  - Patient complaints.





# 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 record
- Documentation is critical in case we need to take additional corrective action or defend our actions.
- Remember: *"If it's not in the chart, it didn't happen."*

# DEALING WITH PROBLEM PATIENTS

- Patient Responsibilities Document
  - Post and distribute as part of registration or otherwise.
  - Explain that patient's cooperation and appropriate conduct are essential to effective care.
  - Require, e.g.,
    - Cooperation in developing treatment plan.
    - Compliance with treatment plan.
    - Ongoing communication.
    - Professional, respectful, non-disruptive conduct.
  - Use in communications with patient.

# 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.

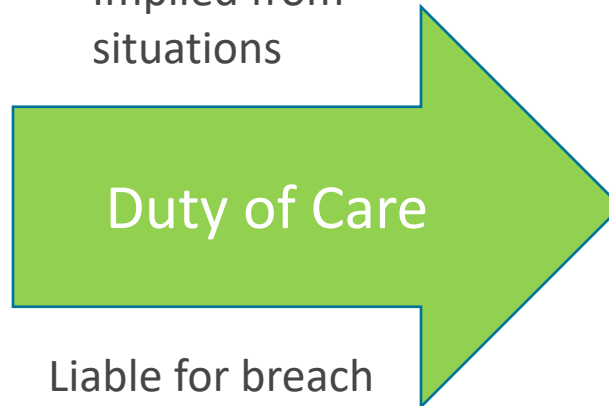
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# TERMINATING PATIENT RELATIONSHIP

- Different providers may have different requirements, e.g.,
  - Hospitals
    - Discharge plan
    - Notice
    - Appeal process
  - Long term care facilities
    - Notice
    - Termination requirements
  - Physicians and other providers
    - Standard of care
    - Patient abandonment

# PATIENT ABANDONMENT

Common elements for tort claim

1. An established doctor-patient relationship.
2. Provider abandoned the patient while medical attention was needed.
3. Patient was not given adequate opportunity to transfer care to another provider.
4. Patient suffered damages as a result of the abandonment.

# PATIENT ABANDONMENT

- Abandonment =
  - Failing to follow up or provide ongoing, needed care.
  - Unavailability for significant time or leaving town without securing coverage for patients.
  - Terminating relationship or closing practice without giving sufficient:
    - Notice that you are ending relationship
    - Time to find a new practitioner
    - Care until patient can transfer to new practitioner
- Penalties
  - Lawsuit by patient for damages
  - Action against license
  - Adverse employment and payer action

# AVOIDING PATIENT ABANDONMENT

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



# 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 a protected class (e.g., age, race, disability, etc.)
  - Documentation supporting termination
  - Alternative actions
    - Warnings
    - Patient care conference
    - Behavior contract

# 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.

# SAMPLE LETTER TO PATIENT

Dear [PATIENT]:

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 health care 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.

Your condition **[MAY/DOES]** require continued care. I strongly encourage you to immediately take action to transfer your care to an appropriate health care provider. If you need assistance, **[IDENTIFY LOCAL PHYSICIAN REFERRAL SERVICE, IF AVAILABLE]** 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.

We will make your medical records available to your new physician upon his or her request. Please have your physician contact our office to make arrangements to transfer the records.

Thank you.

# 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?”

# AVOIDING PATIENT ABANDONMENT

- Once you have terminated patient relationship, be careful about resuming relationship.
  - Setting new appointments.
  - Taking new calls.
- If provide emergency or necessary care pending termination or per on-call obligations:
  - Reaffirm termination of patient relationship and/or no ongoing patient relationship.
- Flag records to avoid resuming care.
- Respond promptly if mistakenly resume care.

# ADDITIONAL RESOURCES



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PRACTICES/INDUSTRIES

NEWS AND INSIGHTS

## CONTACTS



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- Owners of healthcare assets
- Imaging centers
- Ambulatory surgery centers
- Medical device and life science companies
- Rehabilitation centers

# UPCOMING COMPLIANCE WEBINAR SERIES

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# QUESTIONS?



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