

# Responding to Patient Problems



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(10-16)

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# HAMSTER TAILS

...by  
GAR-E!

Staff

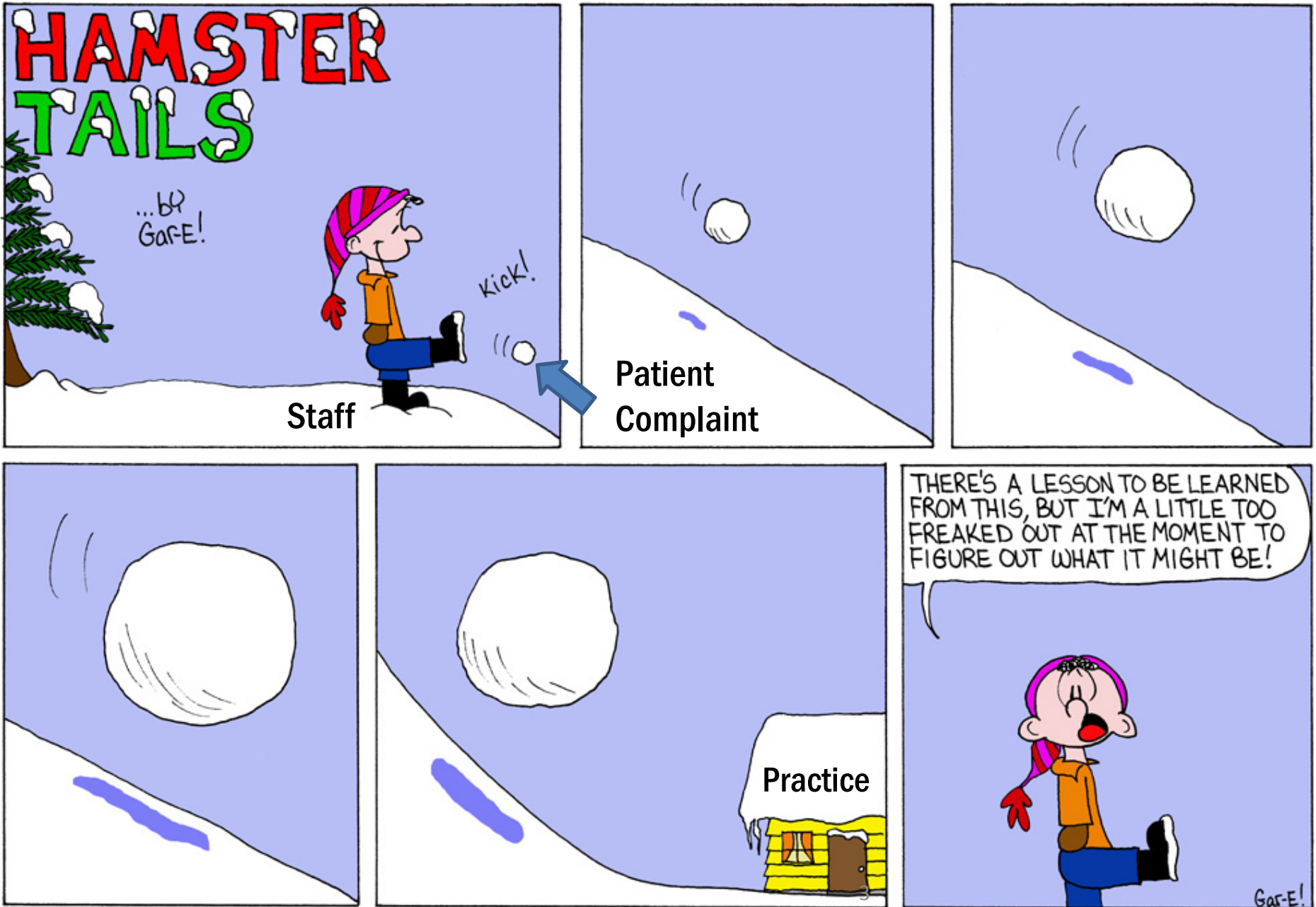
Kick!

Patient  
Complaint

THERE'S A LESSON TO BE LEARNED  
FROM THIS, BUT I'M A LITTLE TOO  
FREAKED OUT AT THE MOMENT TO  
FIGURE OUT WHAT IT MIGHT BE!

Practice

GAR-E!



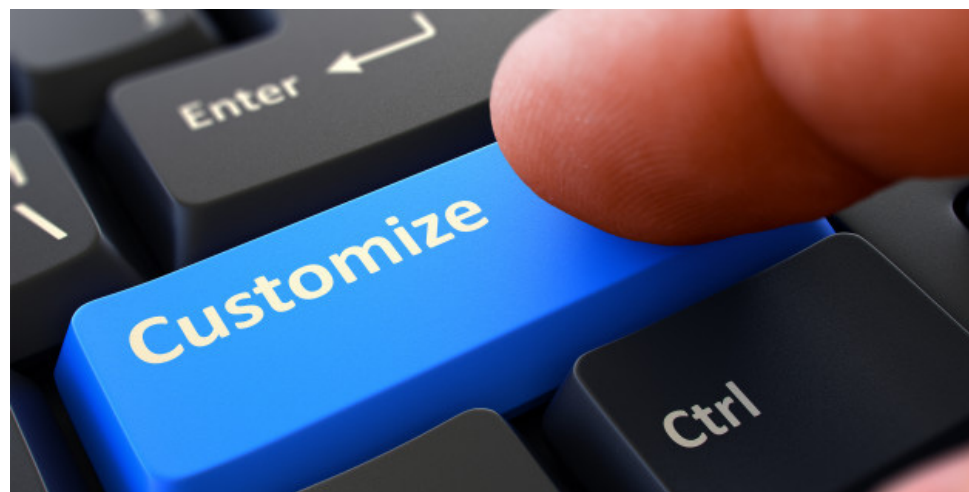
# Overview



- Preventing patient complaints
- Responding to patient complaints
- Documenting complaints
- Apologies and admitting fault
- Dealing with the disruptive patient
- Terminating patient relationships

# Responding to Patient Problems

- **Much of this is:**
  - More about human relations;
  - Less about legal issues.
- **Law and standards may vary depending on circumstances.**
  - State laws
  - Type of provider, e.g.,
    - Physician practice
    - Hospital
    - Long term care
    - Other
  - Patient circumstances
  - Seriousness



# Preliminaries

- Presentation will be recorded and available for download at [www.hhhealthlawblog.com](http://www.hhhealthlawblog.com).
- If you have questions, please submit them using chat line or e-mail me at [kcstanger@hollandhart.com](mailto:kcstanger@hollandhart.com).



# Preventing Patient Complaints



- *What are the most common complaints?*
- *What is their cause?*
- *What do you do to prevent them?*

# Preventing Patient Complaints



***Treat others the way you would want to be treated!***

- Be friendly and sincere.
- Be alert and attentive to patient needs.
- Understand the patient's condition or circumstances.
- Respect the patient concerns.
- Respond timely to patient requests or concerns.



# Preventing Patient Complaints

- Ensure patient knows what to expect.
  - Clinical care.
  - Consent.
  - Charges.
  - Other items.
- Don't over promise.
- Don't under perform.



*\* Expectations – Experience = Frustration → Complaints*

# Preventing Patient Complaints

- Consider providing key info up front in brochure or packet.
  - Practice info, e.g., directions, hours, phone numbers, etc.
  - Policies re:
    - Appointments, cancellations, fees
    - Prescription refills
    - Financial issues
    - Respect in interactions
    - Termination of relationship

# Staff Behavior Triggering Complaints

- Clerical mistakes
- Impatient
- No empathy
- Apathy
- Speaks in technical terms
- Fatigue
- Angry or defensive
- Dogmatic
- Inexperienced
- Distracted
- Condescending
- Unprofessional
- Does not listen



# Responding to Patient Complaints



# Responding to Patient Complaints

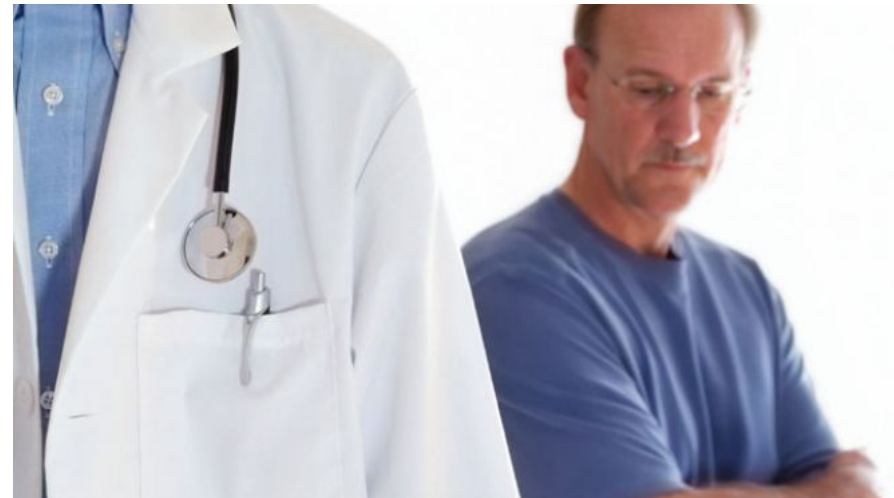
*Do not do this!*



*Or this!*

# Responding to Patient Complaints

- If the patient doesn't feel that you have taken their concerns seriously, they'll often go to someone who will!
  - Other providers.
  - Other potential patients.
  - Online posts.
  - Licensing boards.
  - Litigation.





# Responding to Patient Complaints

- Complaint may be legit and give chance to improve.
  - Better to know so you can respond.
  - Chance to turn patient into an advocate of the practice.
- Response depends on seriousness of the complaint.



**Minor complaint**  
(e.g., inconvenience, late appointment, rudeness, etc.):

Handle on the spot through effective communication

**Serious complaint**  
(e.g., adverse outcome, violation, etc.):

May require formal investigation and response

# Responding to Patient Complaints

- Train staff how to respond.
  - Take complaint seriously and respond promptly.
- Appoint qualified person to respond to significant concerns.
  - *All concerns are significant to the patient!*
- Remember:



# Responding to Patient Complaints

- **Keep in mind the goals of your response:**

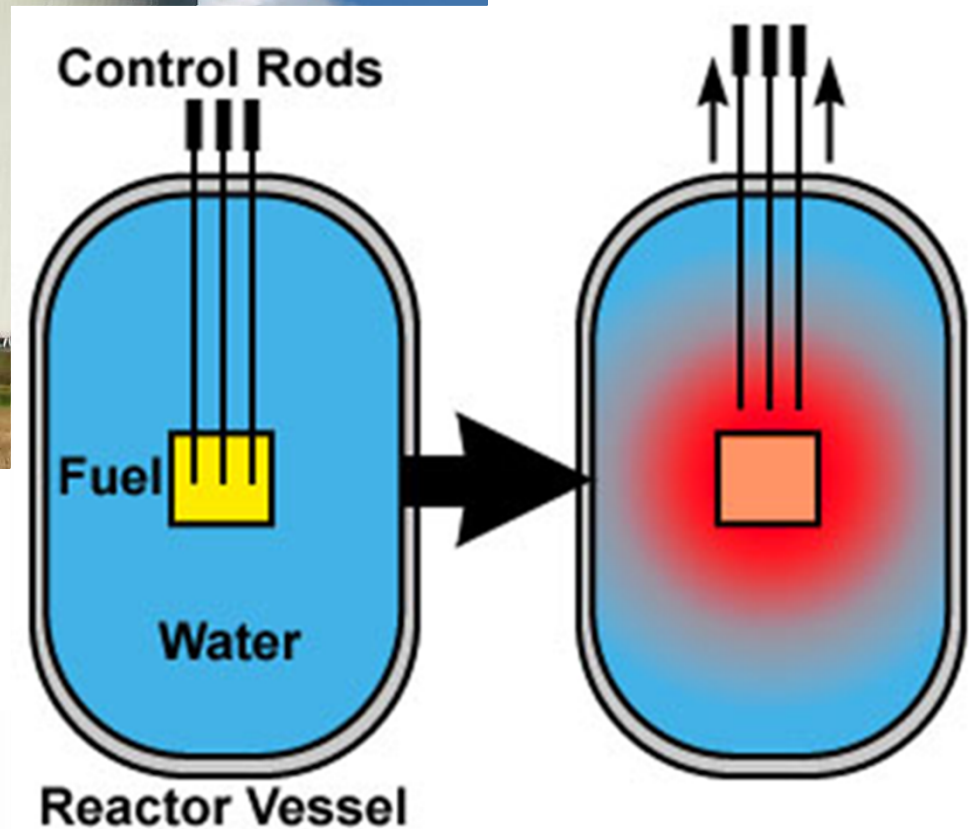
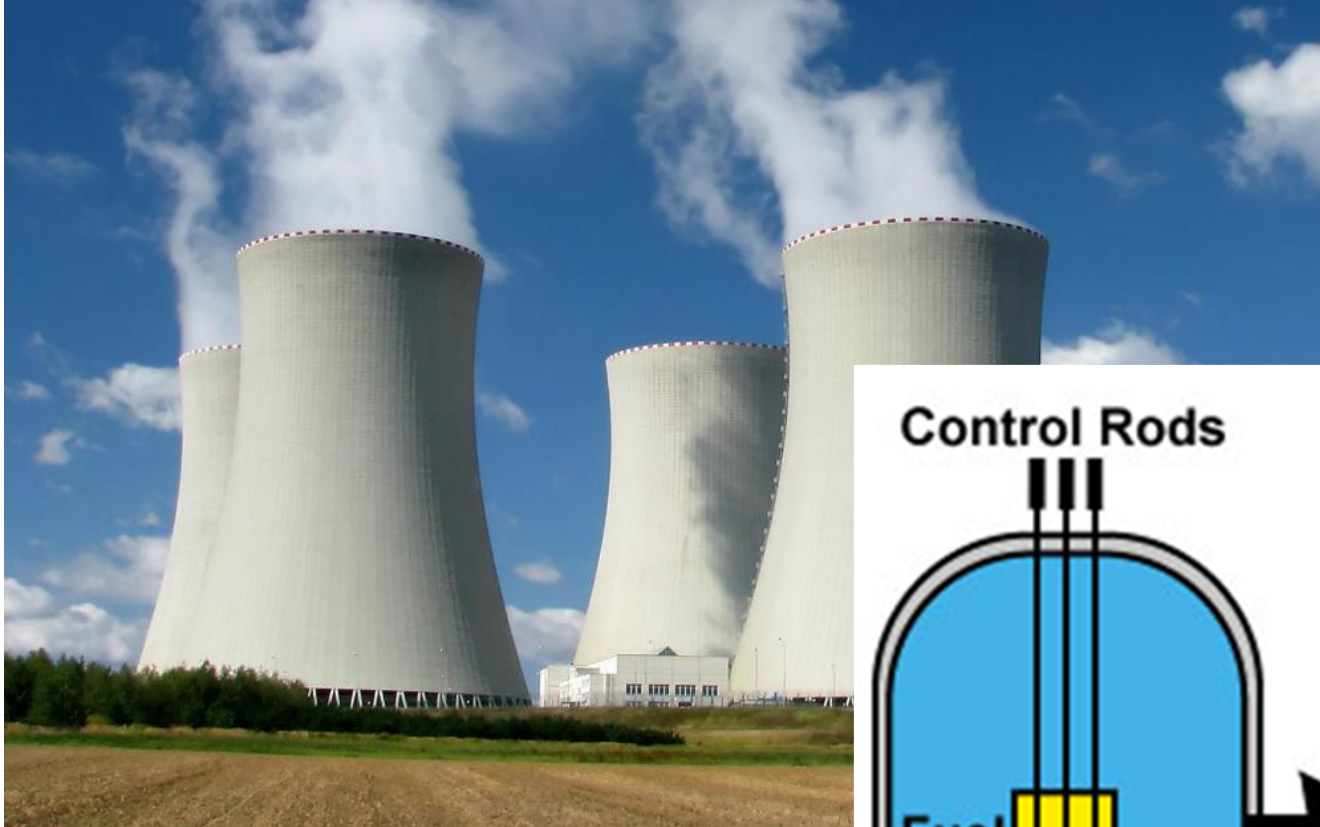
## Constructive

- Learn the facts.
- Ensure you understand.
- Ensure patient knows you understand.
- Address legitimate concerns.
- Improve performance.
- Strengthen patient relationship.

## Destructive

- “Win” the argument.
- Justify self regardless of truth.
- Assume you know the facts.
- Assume you understand the patient.
- Trivialize the patient’s concerns.
- Belittle the patient.
- Avoid addressing the real issues.

# Responding to Patient Complaints



# Responding to Patient Complaints



**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.

# Responding to Patient Complaints

- Use the complaint as a learning opportunity and chance to improve.
  - Follow up with and involve the staff member who is the subject of the complaint.
    - Learn the facts.
    - Assess understanding.
    - Provide additional education as appropriate.
    - Impose corrective action as appropriate, including documentation in personnel file.
  - Train others as appropriate.



# Documenting Patient Complaints



- Document significant complaints in file separate from the medical record.
  - Not subject to patient’s right to access per HIPAA.
  - May be protected by state peer review privilege.
    - Understand privilege and act to protect info.
    - Designate documents as “peer review privileged”.
- In significant cases, may document facts in letter to attorney to invoke attorney-client privilege.

# Documenting Complaints

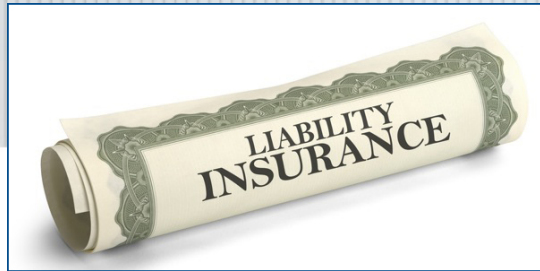
- **Beware: there is no absolute protection for investigations.**
  - State law may require disclosure.
  - Federal investigators may generally access info.
    - Participation agreement requires access.
    - Civil Monetary Penalties Law allows for imposition of penalties for failure to comply with subpoena.
    - State law privileges may not apply.
  - May need to disclose info to defend self.
- **Assume outsider will read someday.**

# Documenting Complaints

- **Anything you document may be used against you, so...**
  - Use qualified, trained persons to document.
    - More serious the incident, more important to document.
  - Document accurately and professionally.
  - Don't speculate or cast aspersions.
  - Supplement the records as appropriate.
    - Use appropriate late entries.
    - Never falsify the record.
  - Report up the chain.
  - Follow through on whatever you write.

# Documenting Complaints

- Document complaint file:
  - Nature of complaint, including communications.
  - Investigation (e.g., witness statements, documents, etc.)
  - Determination.
  - Response.
    - Sanctions against practitioner or employee.
    - Corrective process.



# Notifying Malpractice Insurer

- Check malpractice policy terms.
  - May need to provide notice of claim to trigger coverage.
    - Claims made v. occurrence policies.
    - Policy conditions re notice.
  - May prohibit admissions or settlements without insurer's consent.
- Check with broker.
  - Policy requirements.
  - Effect on policy premiums.
- When in doubt, discuss with malpractice carrier.
  - Document communications re significant matters.



# 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.
  - Check state apology laws...



# 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)



# Writing Off Bill

- **Do not bill for unnecessary or inappropriate services.**
  - May violate False Claims Act.
- **Generally, cannot waive or discount copays or deductibles.**
  - Payer contracts.
  - Federal and state fraud and abuse laws.
- **May be able to waive or discount payments if:**
  - Isolated occurrence.
  - Resolution of documented patient concern.
  - Do not charge payers.
- **In tactful way, confirm it is offered as an accommodation, not admitting liability.**

# Settling a Complaint



- **If offer something to resolve complaint, consider obtaining release.**
  - **Benefit:** proper release protects you from subsequent litigation or claims arising out of same facts.
    - **Ensure the release contains appropriate terms.**
    - **Must be supported by consideration.**
  - **Risk:** asking for release may prompt patient to reconsider settlement and instead pursue claims.
- **Check with malpractice carrier before settling a claim.**

# Notifying Agencies

- **May have affirmative obligation to notify agencies of certain types of complaints, e.g.,**
  - **Incident/accident reports.**
  - **Alleged abuse or neglect of patient or resident.**
  - **Alleged misconduct by physician, nurse, etc.**
  - **Others?**
- **Check state licensure or other laws.**

# Licensing Board Complaints

- Take them seriously.
- Be professional and respectful in response.
  - Maintain credibility and be cooperative at all times.
  - Do not act impulsively.
  - Respond objectively; do not be overly defensive.
- Explain basis for your actions.
  - Remember: Board does not have all the facts.
  - Provide records, but only if necessary.
  - Answer the questions that are asked; beware raising new matters.
- Always tell the truth.
- Consider review by qualified colleague or attorney.
- Notify insurer, if appropriate.



# Licensing Board Complaints

- Beware stipulations and settlements.
  - May be efficient way to resolve dispute, but...
  - May carry significant adverse consequences.
    - Report to National Practitioners Data Bank (“NPDB”)
    - May adversely affect other relationships.
      - Employment
      - Payer contracts
      - Licensure in other states
      - Board certification
    - Likely must report in future applications
- Consider alternatives, e.g., hearing, informal reprimand, etc.





Dislike

# Online Complaints

New Review



I would not recommend this company to my worst enemy.



- *Just because the patient can say it online does not mean that you can!*



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## Policing Patient Privacy



# Stung by Yelp Reviews, Health Providers Spill Patient Secrets

The vast majority of reviews on Yelp are positive. But in trying to respond to critical ones, some doctors, dentists and chiropractors appear to be violating the federal patient privacy law known as HIPAA.

by [Charles Ornstein](#)  
ProPublica, May 27, 2016, 11 a.m.

58 Comments



This is part of an ongoing investigation

### [Policing Patient Privacy](#)

ProPublica is exploring how patient privacy violations are affecting patients and the medical care they receive.



### 4 Stages to a Heart Attack



# Online Complaints

- Do **NOT** disclose protected health info in online response.
  - HIPAA prohibits unauthorized use or disclosure of protected health info, including:
    - Fact that a person is or was a patient.
    - Info that could reasonably identify the patient.
  - There is no HIPAA exception for responding to a patient complaint online.
  - Patient does not waive HIPAA privacy rights by posting info online.

# Online Complaints

- Options for responding:
  - Ignore it.
  - Contact patient to resolve concerns or obtain consent to respond.
  - Respond generically.
    - Do not confirm or deny that complainant was a patient, or include any info about the patient or patient encounter.
    - May explain policies or practices without reference to patient.
  - Contact online company to request removal of complaint.
  - Encourage and emphasize positive reviews.
  - If review is defamatory, may threaten lawsuit.

# HIPAA Complaints



- **HIPAA requires:**
    - Have a process for patient complaints.
    - Document complaint and disposition.
    - Do not retaliate.
    - Mitigate harmful effects.
    - Sanction workforce members.
    - Record improper disclosures on disclosure log.
- (45 CFR 164.528 and .530)

# HIPAA Complaints

- Must self-report breach of unsecured protected health information in violation of the privacy rule unless there is a low probability that the data has been compromised.
  - To patient.
    - Letter containing certain info within 60 days
  - To HHS.
    - Electronic report available at <http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/brinstruction.html>.
  - To media, if breach involves > 500 persons in state.

(45 CFR 164.400)



# Disruptive Patients



# Disruptive Patients

- **Risk areas**
  - **Higher likelihood of poor outcomes**
    - Noncompliant with care
    - Staff dislike patients
    - Poor communication
  - **Malpractice**
  - **Complaints**
    - Licensing or accreditation complaints
    - Public relations problems
  - **Cost in time and money in dealing with them**
  - **Adverse effect on work environment**



# Disruptive 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 payer programs.
  - Adverse licensure actions.



# Disruptive Patients

- **How to deal with disruptive patients?**
  - Try not to take them in the first place.
    - Practice preventative medicine.
    - Check prior providers.
    - Check medical history.
  - Once you have them, try to deal with them in appropriate manner.
  - If you can't deal with them, terminate relationship without abandoning them.

# Provider-Patient Relationship

- Relationship = Duties.
  - Treat per standard of care.
    - Malpractice
  - Treat until relationship properly terminated.
    - Abandonment
- No relationship = No duties.
- *Be careful about taking on problem patients.*

# Avoiding Disruptive Patients

- In general, providers can legally refuse to accept a new patient if they want.
  - Ethics rules may differ.
- Exceptions:
  - EMTALA (emergency patients)
  - Charity care obligations
    - Public or 501(c)(3) hospitals
    - Federal grantees
  - Anti-discrimination laws
  - Contracts require care
  - Cannot abandon patient

# Avoiding Disruptive Patients

- Beware cases in which relationship established but may not be intended, e.g.,
  - Follow up visit after ER care
  - Phone calls or emails with patient
  - Call for appointments
  - Consultations with colleagues
  - Courtesy or favor
  - IME, employer physical, etc.
- Each case depends on its own facts.
- Clarify relationship with prospective patient.

# Avoiding Disruptive Patients

- Establish patient expectations up front.
- “Patient Rights and 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 practice and make available to patients.
- Use in communications with patient.

# Dealing with Disruptive Patients



# Dealing with Disruptive 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 Disruptive 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 Disruptive Patients

- Establish a “code green” team.
  - Call security and/or the police if necessary.
    - HIPAA allows internal uses or disclosures for provider’s 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.*

# Dealing with Disruptive Patient

- **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.

# Dealing with Disruptive Patients

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

# Ending Patient Relationship

- In general, providers can end patient relationship if they want.
- Exceptions:
  - EMTALA (emergency patients)
  - State or federal laws affecting withdrawal of treatment or discharges
  - Charity care obligations
    - Public hospitals
    - 501(c)(3) hospitals
    - Section 330 grantees
  - Anti-discrimination laws
  - Contracts require care
  - Cannot abandon patient

**But most of these would not require continued care if there is documented disruptive behavior**

# Ending Patient Relationship

- Abandonment = failure to give patient sufficient—
  - Notice of ending relationship;
  - Time to find new practitioner; and
  - Proper care until patient can transfer to a new practitioner.
- Penalties
  - Lawsuit by patient for damages.
  - Discipline by licensing agencies.
  - Payor penalties.

# Ending Patient Relationship

- **Legitimate reasons for ending patient relationship:**
  - Disruptive conduct, e.g., violence, threats, abusive conduct, sexual harassment, etc.
  - Refusal to pay bills.
  - Breakdown in relationship or communication.
  - Noncompliance with treatment.
  - Disagreement with treatment.
  - Moral or religious objection to treatment.
  - Missed appointments.
  - Closing or limiting practice.
  - Etc., etc., etc....

# Ending Patient Relationship

- Factors to consider before termination:
  - Patient’s current health care needs.
  - Availability of alternative care.
  - Basis for termination, e.g., legitimacy and urgency compared to patient’s health care needs.
  - Whether patient is in protected class.
  - Documentation that supports termination.
  - Alternative actions, e.g.,
    - Warnings.
    - Patient care conference.
    - Behavioral contract.
- *Ask yourself: “What would a jury think?”*



# Ending Patient Relationship

- If termination is necessary and appropriate,
  - Notify patient in writing and perhaps orally.
    - Ensure patient receives the letter.
  - Give sufficient time to transfer care.
    - Depends on patient's health care status.
    - Norm is 30 days.
  - Facilitate transfer of care.
  - Provide necessary care in the interim.
    - Comply with EMTALA.
  - Inform staff of situation.
  - Do not resume care unless resume relationship.

# Ending Patient Relationship

- Notice to patient should—
  - Explain basis for ending relationship in objective terms.
  - Explain that circumstances limit ability to provide care.
  - State the effective date of termination.
  - Advise patient to continue care elsewhere.
  - Provide referral sources for continued care if available.
  - Offer to provide interim or EMTALA care.
  - Offer to transfer records.
- Keep copy of letter in patient record.

# Ending Patient Relationship

- There may be situations that justify immediate termination without advance notice or time, e.g.,
  - Danger to patient, staff, or others.
  - Criminal misconduct.
- But be careful.
  - Consider patient care needs, e.g., where condition stabilized.
  - Consider alternative sources of treatment.
  - Consider statutory obligations, e.g., EMTALA, state statues, or conditions of participation.
  - Consider what a jury would think.
- Document justification for actions.

# Ending Patient Relationship

- Establish policies for addressing disruptive patients.
  - Acceptance of patients.
  - Responding to disruptive conduct.
    - Identify skilled personnel to respond.
  - Ending patient relationship.
    - Identify skilled personnel to take appropriate action.
- Train personnel and document training.

**ANGRY PATIENT LEAVES  
HAPPY**



**SUCCESS**

[memecrunch.com](http://memecrunch.com)

# Future Webinars



- *Health Law Basics* monthly webinar series
  - 11/10/16 Drug Diversion: Reporting and Liability Issues for Physicians
  - 11/17/16 EMTALA
  - 1/17 Fraud and Abuse Laws
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- Under “Publications” at [www.hollandhart.com](http://www.hollandhart.com).
- E-mail me at [kcstanger@hollandhart.com](mailto:kcstanger@hollandhart.com).

# Questions?

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