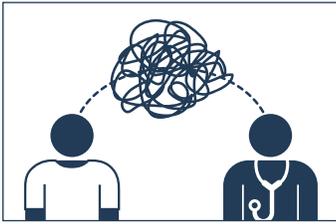


Looking to avoid risk?

WE CAN SHOW YOU THE WAY.

MANAGING CHALLENGING PATIENT RELATIONSHIPS

YOUR PRACTICE IS AT RISK



A patient responds to a postoperative complication with angry outbursts. Another is unable to pay his bill. A third refuses to comply with your recommendations so many times that terminating the relationship seems like your only option.

In these situations, what is your best course of action? How can you preserve a constructive physician-patient relationship when patients behave in challenging or unreasonable ways? When should you terminate the relationship, and how can you do it without exposing yourself to malpractice risk?

This report addresses these questions and provides recommendations for how to handle each of these problematic patient scenarios:

- ▶ No-show new patients.
- ▶ Potential patients unable to pay.
- ▶ Established patients unable to pay.
- ▶ Patients who do not follow their treatment plan.
- ▶ Patients who refuse treatment options.
- ▶ Patients angry after a bad outcome.
- ▶ Patient relationships that require termination.

The report's final sections provide details that will help you when terminating a patient relationship becomes unavoidable. They describe criteria for termination, situations that require particular caution, and steps in the termination process that will minimize your liability.

NO-SHOW NEW PATIENTS

You face certain risks and responsibilities when collecting patient information prior to the patient arriving for his or her appointment. A new patient may complete an online intake form but not show up for the appointment. Or a new patient may complete a paper record with an intake history but then leave before being seen. The data that is collected, either electronically or on paper, is in the hands of your office practice.

You now face a dilemma. What is your responsibility for the information provided by a patient whom you have not seen? Whether or not you review this information, you face a risk if the patient believes that a physician-patient relationship has been established. And if the patient has indicated a serious medical condition and you don't take action consistent with the community standard of care, then you are potentially liable.

 To avoid this risk, place a disclaimer on any data-collecting tools.

▶ On **paper forms**, place a disclaimer similar to the following:

Please be advised that completing preliminary health and insurance questionnaires does not establish a physician-patient relationship with this practice. Dr. <X> will review your health history and conduct an initial evaluation to determine whether you are a suitable candidate and whether the practice will accept you as a patient.



▶ On **online forms**, place a disclaimer similar to the following:

Please be advised that by providing this form for you to contact our office(s), we are not confirming an appointment nor establishing a physician-patient relationship. As a user of this mode of communication and of our website, you assume all risks with placing confidential information into this portal. Our office will follow up with you within 24 to 48 business hours. This form of communication is not intended for acute, emergency, or life-threatening health conditions. If you believe you are having a health emergency, contact 911 or go to your nearest emergency department.



POTENTIAL PATIENTS UNABLE TO PAY



You can refuse to establish a physician-patient relationship based on the patient's inability to pay—as long as the patient is not seeing you based on a referral from an emergency medical department (EMD) where you were on call when the patient was seen. If that is the case, follow the requirements of the particular hospital's medical staff bylaws and rules and

regulations. At a minimum, it is likely you will be required to see the patient at least one time to determine the patient's status and whether he or she has an emergency medical condition that qualifies under the Emergency Medical Treatment and Labor Act (EMTALA). If the patient is in need of emergency treatment, you will likely be required to provide the care regardless of his or her ability to pay, although you can ask for payment or payment arrangements.

If the patient did not come to you as a result of an EMD call and you have an established policy of not accepting patients who cannot pay, you can refuse to establish the relationship. Potential patients should be given an indication of your practice's financial requirements when they make an initial appointment for treatment.

If the potential patient is not aware of your financial requirements, he or she may delay making other care arrangements while waiting for an appointment with you. If the patient then arrives for an appointment and you decide not to accept him or her for financial reasons, your decision can appear questionable if the patient is injured by the subsequent delay in receiving medical care.

 To avoid this risk, implement the following:

- ▶ Include a disclaimer on your website and on data-collection tools stating that the practice does not consider an individual seeking treatment to be a patient until a preliminary assessment is completed and the individual has been notified that he or she has been accepted as a patient. (See the examples in the previous section.)
- ▶ Have your office advise potential patients at the outset that simply making an appointment does not automatically trigger a physician-patient relationship.
- ▶ Have the biller check the status of coverage before a patient arrives for an appointment. This can expedite your decision about whether to accept an individual as your patient.

ESTABLISHED PATIENTS UNABLE TO PAY

A doctor has the right to expect payment for services rendered. Your practice should have a policy and apply it consistently in a nondiscriminatory fashion. When an established patient receives care but is unable to pay, talk with the patient first. Investigate why he or she isn't paying the bill—for example, is there dissatisfaction with the care? After your discussion, you can consider alternative financing options or bill collection.

If you decide to terminate a patient relationship for nonpayment, you must follow a formal process that includes giving the patient proper notice and treating emergencies in the interim. (See “Terminating Patient Relationships” below.)

 To ensure patients are aware of your practice's policy, implement the following:

- ▶ Have a written document summarizing the practice's policy on financial matters that you give to each patient during the initial visit. When you can, remind each patient that he or she received a copy of your policy at the time of the first visit.
- ▶ Use a sign at the reception desk to indicate that payment is expected at the time of service—a sensitive way to notify patients. Check the regulations in your jurisdiction to determine if signs should be posted in multiple languages.

PATIENTS WHO DO NOT FOLLOW THEIR TREATMENT PLANS

Patients who do not follow their treatment plans may become high liability risks. When patients refuse to follow your recommendations, you can take a number of steps to improve patient compliance:



- ▶ Explain the risks of not following treatment recommendations.
- ▶ Ask if they have any questions.
- ▶ Verify that they fully understand what you have told them by having them repeat it back to you.
- ▶ Encourage them to be responsible for monitoring an aspect of their care—such as blood sugar levels, weight, or blood pressure—and have them record it and bring it to you.
- ▶ Write down your care instructions and give your instructions to them. Be sure to also file a copy in the medical record.
- ▶ Follow up to see if they have been doing what is required.
- ▶ If they have not been following the care plan, ask why and see if adjustments can be made. For example, maybe they could not afford the prescribed medication, and there is a less expensive alternative available.
- ▶ If necessary, enlist family members or significant people in their living circumstances to encourage patient compliance.
- ▶ Be persistent. Sometimes patients need to be told the same thing more than once in order to understand and comply.

! Thoroughly document all of these steps in the medical record. This will minimize your liability if the patient remains noncompliant and you are forced to consider terminating the relationship.

PATIENTS WHO REFUSE TREATMENT OPTIONS

More adults of sound mind are exercising their right to refuse test or treatment options. Patient refusal of procedures or tests doesn't equate with their incompetence. Refusal to comply, however, can be an important cautionary flag. When a patient expresses an unwillingness to undertake treatment, try to determine the basis for the patient's decision, especially if refusing treatment may result in death. Take a close look at your recommendations and at the reasoning behind the patient's refusal to follow them. In some cases, the patient may have misunderstood what the treatment includes or may have concerns about costs, payment methods, or other factors that can be remedied.

Physicians are responsible for making sure patients are aware of all significant risks that could result from noncompliance. Physicians' obligations apply equally to all tests and procedures, whether simple and routine or unusually complex. The obligation also applies to a recommendation that a patient see a specialist, holding that physicians must inform patients of the possible consequences of not getting a consultation.



Whenever a patient refuses test or treatment options, documentation of this refusal in a patient's medical record is key to minimizing your risk. Conduct the informed refusal process with the same specificity and care you would apply to an informed consent discussion. In the medical record, complete the following:

- ▶ Describe the information you gave the patient concerning his or her condition and the proposed treatment or test. Note the reasons for the treatment or test.
- ▶ Verify that you advised the patient of the possible risks and consequences, including the loss of life or limb, of failing to undergo treatment or a test.
- ▶ Note your referral of the patient to a specialist, including the reasons for the referral and possible risks of not seeing the specialist.
- ▶ Describe the patient's refusal of your treatment/testing plan or advice. Consider asking the patient to sign a specific refusal of treatment form. Though optional, this form offers physicians the strongest protection against claims alleging a lack of informed consent. (A sample form is available under the miscellaneous category at thedoctors.com/consent.)

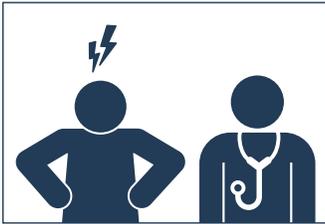
CONDITIONS OF TREATMENT

Managing expectations at the outset of the doctor-patient relationship is critical. Your practice should routinely ask patients to sign a Conditions of Treatment statement as part of your intake paperwork before they are accepted into your practice. This statement should reflect the following:

- ▶ The patient agrees to follow physician recommendations regarding treatment, therapy, medications, specialty referrals, and return visits to help promote continuity of care.
- ▶ The patient understands he or she is financially responsible for all professional services.
- ▶ The patient's failure to follow physician instructions or meet financial obligations may be grounds for termination from the practice.

If the patient repeatedly fails to follow physician advice, you can refer to this signed statement to show that the patient understood that noncompliance could result in the termination of the doctor-patient relationship.

PATIENTS ANGRY AFTER A BAD OUTCOME



When there has been an unfavorable outcome—anything from a known risk or complication to an unanticipated result—patients commonly react with bewilderment and anxiety. A tenuous line separates the patient’s anxiety from anger, with fear of the unknown as the critical factor. Blaming

the physician is a typical reaction, which creates defensiveness in the physician. Inevitably, patient complaints are interpreted as personal affronts that strike at the physician’s sense of professionalism, pride, and competence. When a complaint is perceived by the physician as unwarranted, such as with a known risk or complication, communication with the patient can quickly degenerate into mutual hostility. A vicious cycle is then established—which causes escalation of all emotions. In such a climate, the possibility of a lawsuit quickly becomes a probability.

Your response can either set into motion or prevent a chain reaction of increasing hostilities. If a frightened patient is using anger to gain control of the situation, make a supreme effort to put aside natural feelings of disappointment, anxiety, defensiveness, and hostility. By creating an atmosphere of trust and partnership, you can relieve anxieties and defuse anger. You and your patients can then work together as partners to decide medical care plans.

To help in this process, apply these communication techniques:

- ▶ **Listen well and remain calm.** When the patient is upset or angry, it is best to remain silent until the outburst subsides and the patient has calmed down. This technique of attentive silence often defuses a person’s anger.
- ▶ **Assess the patient’s level of understanding.** This technique is of particular importance when a complicated medical treatment plan is implemented. Tailor your responses to each patient’s level of comprehension. Use graphics if appropriate.
- ▶ **Apologize for the situation.** A sincere expression of concern for the patient and regret for the outcome and saying “I’m sorry this has happened” can go a long way in opening lines of communication with the patient. Such an apology, even for the patient experiencing a known risk and complication, can send a message of concern from the physician to the patient without being seen as an admission of fault. Many jurisdictions have statutes that, to varying degrees, permit healthcare providers to offer patients or family members statements of compassion that may not subsequently be used in court as an admission of liability against the physician. It is recommended that you acquaint yourself with the scope of what is permitted in your state.

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- ▶ **Be patient with questions.** Repeat information when necessary without registering impatience. Suggest that the patient bring a list of questions to the next interview.
 - ▶ **Include the patient as a team member.** Communicating to the patient the importance of involvement in the treatment plan sets the tone for shared responsibility in the outcome.
 - ▶ **Under no circumstances lose your temper.** Showing anger is the surest way to hasten a patient's visit to an attorney.
 - ▶ **Remain accessible.** One of the worst errors you can make in dealing with angry or dissatisfied patients is to avoid them. Although such a reaction is understandable, avoidance increases the chances of a lawsuit. Hiding from a bad outcome will not make it disappear. The more you talk with and listen to an angry patient, the more likely you are to avoid converting an incident into a claim. Take the initiative. Call the patient often. Make special arrangements for face-to-face time without interruptions.

If these efforts fail to establish rapport, suggest that the patient seek another healthcare provider. Offer to make such an arrangement. It helps if you can assure that it is done at no additional charge to the patient.

THE IMPORTANCE OF INFORMED CONSENT

It is very difficult, if not impossible, to be objective when you are a party to an incipient lawsuit. Therefore, controlling the course of events prior to the onset of mutual hostility is key to avoiding malpractice actions. The pretreatment or preoperative consultations during which informed consent is obtained can provide an excellent opportunity for the physician-patient relationship to be firmly established through the sharing of information about the treatment, including its uncertainty.

The therapeutic effects of informed consent include less anxiety, increased trust in the integrity of the physician, a smoother clinical course, and better patient understanding should anything go awry. But unless the doctor and the patient fully understand the significance of the interaction, both can be lulled into a false sense of security. View the informed-consent process as an opportunity to dispel uncertainty and help fill the gap between the patient's lack of information and the physician's knowledge.

THE IMPORTANCE OF INFORMED CONSENT *(continued from previous page)*

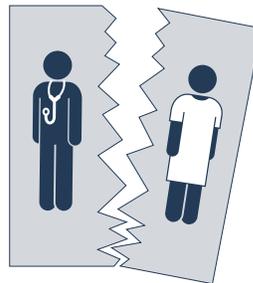
By making appropriate statements during this process, you can transform a potentially adversarial relationship into a therapeutic alliance through all stages of care:

- ▶ Use statements that reassure the patient, reflect cooperation, and create realistic expectations. For example: “Barring any unforeseen problems, I see no reason why you shouldn’t do very well. I’ll certainly do everything I can to help you. While I wish I could guarantee there will be no problems during your treatment or operation, that wouldn’t be realistic. Sometimes there are problems that cannot be foreseen, and you need to know about them. Please read about them and let’s talk about it.”
- ▶ Avoid detached, impersonal statements, such as “Here is a list of complications that could occur during your treatment or operation. Please read the list carefully and sign it. If you don’t understand something, please ask me.”
- ▶ Avoid statements that overreach or guarantee, such as “Don’t worry about a thing. I’ve taken care of hundreds of cases like yours. You’ll do just fine.”

TERMINATING PATIENT RELATIONSHIPS

Just as it is an acceptable and reasonable practice to screen incoming patients, it is acceptable and reasonable to end relationships.

Termination criteria are numerous and varied. Although not exhaustive, the following are situations in which termination is appropriate and acceptable:



- ▶ **Treatment nonadherence.** The patient does not or will not follow the treatment plan.
- ▶ **Follow-up nonadherence.** The patient repeatedly cancels follow-up visits or is a no-show.
- ▶ **Office policy nonadherence.** The patient uses weekend on-call physicians or multiple healthcare practitioners to obtain refill prescriptions when office policy specifies a certain number of refills between visits.
- ▶ **Verbal abuse.** The patient or a family member is rude and uses improper language with office personnel, exhibits violent behavior, makes threats of physical harm, or uses anger to jeopardize the safety and well-being of office personnel with threats of violent actions.
- ▶ **Sexual harassment.** The patient or a family member has exhibited unwelcome verbal or physical behavior of a sexual nature toward office personnel.
- ▶ **Nonpayment.** The patient owes the practice and has declined to work with the office to establish a payment plan.

TERMINATING PATIENT RELATIONSHIPS AND MINIMIZING LIABILITY

 It is an acceptable practice to end a patient relationship under most conditions. A few situations, however, may require additional steps or a delay of the termination:

- ▶ If the patient is in an acute phase of treatment, termination must be delayed until the acute phase has passed. For example, if the patient is in the immediate postoperative stage or is in the process of medical workup for diagnosis, it is not advisable to end the relationship.
- ▶ If you are the only source of medical or dental care within a reasonable driving distance, you may need to continue care until other arrangements can be made.
- ▶ When you are the only source of a particular type of specialized medical or dental care, you are obliged to continue this care until the patient can be safely transferred to another practitioner who is able to provide treatment and follow-up.
- ▶ If the patient is a member of a prepaid health plan, the patient cannot be discharged until you have communicated with the third-party payer to request a transfer of the patient to another practitioner.
- ▶ A patient may not be terminated solely because he or she is diagnosed with AIDS/HIV or for any reason if the patient is in a protected class. Many protected classes have been established by federal anti-discrimination law; check with your legal counsel to determine if your state has additional protected classes.
- ▶ If a patient is pregnant, termination can be safely accomplished during the first trimester with uncomplicated pregnancies and with adequate time for the patient to find another practitioner. Termination in the second trimester should occur only for uncomplicated pregnancies and with transfer of the patient to another obstetrical practitioner prior to actual cessation of services. Termination during the last trimester should occur only under extreme circumstances (such as illness of the practitioner).
- ▶ The presence of a patient's disability cannot be the reason(s) for termination unless the patient requires care or treatment for the particular disability that is outside your expertise. Transferring care to a specialist who provides the particular care is a better approach.

RECOMMENDED STEPS FOR PATIENT TERMINATION

When the situation with the patient is such that terminating the relationship is appropriate and acceptable and none of the restrictions mentioned above are present, termination of the patient relationship should be completed formally. Because of the risks inherent in this process, be sure to consult your patient safety risk manager before notifying any patient of your decision to terminate the relationship.



! The patient should be put on written notice that he or she must find another healthcare practitioner. The written notice should be mailed to the patient by regular and certified mail, return receipt requested. Keep copies of the letter, the original certified mail receipt, and the original certified mail return receipt (even if the patient refuses to sign for the certified letter) in the patient's medical record.

A notice should include:

- ▶ **Reason for termination.** Although a specific reason for termination is not required, under certain circumstances it is acceptable to use the catchall phrase “inability to achieve or maintain rapport,” or to state, “The therapeutic practitioner-patient relationship no longer exists.”
- ▶ **Effective date of termination.** This should provide the patient with a reasonable time period to establish a relationship with another practitioner. Usually, 30 days from the date of the letter is considered adequate. However, you should follow your state regulations. The relationship can be terminated immediately if the patient has terminated the relationship or the patient or family member has threatened the practitioner or staff with violence or has exhibited threatening behavior.
- ▶ **Interim care provisions.** Offer interim care. True emergency situations, however, should be referred to an emergency department.
- ▶ **Continued care provisions.** Offer suggestions for continued care through local referral services such as medical or dental societies, nearby hospital medical staffs, or community resources. Do not recommend another healthcare practitioner by name.
- ▶ **Request for medical or dental record copies.** In your written notice, offer to provide a copy of the medical or dental record to the new practitioner by enclosing an authorization document (to be returned to the office with the patient's signature). One exception to this element is the psychiatric record, which may be offered as a summary in lieu of the full copy of the medical record.

- ▶ **Patient responsibility.** Remind the patient that follow-up and continued medical or dental care are now the patient's responsibility and that both should be pursued.
- ▶ **Medication refills.** Explain that medications will only be provided up to the effective date of termination.

CONCLUSION

By establishing clear policies, documenting medical records thoroughly, and communicating in a way that creates an atmosphere of trust and partnership, you can limit many of the situations that arise with challenging patients and reduce your malpractice risk.

When you decide that terminating the physician-patient relationship is your only option, consider whether the patient's circumstances warrant particular measures or a delay in termination, or if a normal termination process can be followed. Offer interim care and medication refills until the termination date, and carefully prepare the written notice and your own documentation. Taking these simple steps can help ensure that your practice avoids any allegations of wrongdoing.

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