

Legal Brief

Termination of the Physician-Patient Relationship

This Legal Brief was drafted for general informational purposes only. It is not meant to be a comprehensive guide, nor should it be construed as legal advice. The information in this brief is current as of February 1, 2013; readers should consult the most recent versions of referenced statutes, regulations, and cases to ensure there have been no material changes.

Summary

A physician-patient relationship is most often formed when a patient seeks treatment and a physician provides care. A physician should consider his or her ethical and professional obligations prior to the termination of such a relationship. If the relationship is terminated without proper notice, or in a way that harms the patient, civil liability could result.

Discussion

Formation of the Physician-Patient Relationship

A physician-patient relationship can be formed expressly or by implication. An example of the express formation of a physician-patient relationship is an agreement between a physician and an employer that the physician will treat all of the employer's employees. Additionally, some forms of agreements with insurers to provide care to their insureds may also act to establish a physician-patient relationship. The physician and the physician's legal counsel should review any such agreement the physician may have signed before the physician declines to treat a patient who may be covered by such an agreement.

In South Dakota, the physician-patient relationship is more commonly formed by implication. The simple act of a patient presenting himself or herself for treatment and the physician providing care can create the relationship. Similarly, the physician-patient relationship most often ends by implication; the relationship usually ends when the presenting problem is resolved and ongoing care is no longer needed. Challenges can arise, however, when the physician desires to terminate the relationship, yet the patient continues to present for treatment.

Termination of the Physician-Patient Relationship

Physicians have both a legal and an ethical obligation not to terminate the physician-patient relationship in such a way as to cause harm to the patient. The American Medical Association's Code of Medical Ethics includes a straightforward statement as to this obligation:

The patient has the right to continuity of health care. The physician has an obligation to cooperate in the coordination of medically indicated care with other health care providers treating the patient. The physician may not discontinue treatment of a patient, as long as further treatment is medically indicated, without giving the patient reasonable assistance and sufficient opportunity to make alternative arrangements for care. Rule 10.01(5).

In addition to these ethical considerations, a physician may be held civilly liable for injuries to the patient resulting from the physician's abrupt refusal to provide further treatment.

The requirement of assistance and an opportunity to make alternative arrangements applies regardless of the reason the physician desires to terminate the relationship, including but not limited to failure to pay, failure to follow the physician's advice, or general bad behavior on the part of the patient. It is also unlawful to terminate a physician-patient relationship solely because of the patient's race, gender, religion, or national origin.

The patient must have sufficient time to make alternative arrangements. As a result, the physician must provide notice of his or her intent to terminate the relationship. While the circumstances of the individual patient must be taken into account (e.g., the patient's physical and mental condition, whether the patient lives in a rural area, and other factors affecting the patient's access to substitute care), thirty (30) days' notice of termination is recommended. It is also appropriate to provide a referral or at least a reference to a directory or other resources the patient can use to locate a new physician. It is recommended the physician list two (2) or more possible replacements to mitigate the possibility a patient will seek to hold the referring physician liable for a referral to a physician whom the patient later claims caused him or her harm.

The termination notice should be in writing and sent to the patient's last known address by certified mail, return receipt requested. It is important to protect the patient's privacy, so all references to the care provided to the patient should be as generic as possible to account for the possibility that someone other than the patient will open and read the letter. If the patient refuses to sign for the letter, the physician should follow up by sending the same notice by regular First Class mail. It is recommended the thirty (30) day notice period be extended to run an additional three (3) days from the time when the First Class letter is sent to account for transition through the mail. In all cases, the letter and any return receipt should be kept in the patient's permanent record.

The physician must continue to treat the patient while the patient seeks a replacement caregiver, and the letter to the patient should so indicate. If the termination notice period expires and it appears, through no fault of the patient, that a new physician has not been located, the existing physician should continue to provide treatment for an additional reasonable period of time. If, on the other hand, the patient's inability to locate a new physician is due to nothing more than the patient's obstinacy or desire to make the physician uncomfortable, the physician may withdraw. In this case, the withdrawal may occur regardless of whether a new physician has indicated that he or she will take on the patient's care. In these circumstances, it is recommended that the withdrawing physician provide one "final" notice to the patient, given in the manner described above and at least fifteen (15) days before it becomes effective.

Termination of a contract with an employer or of another form of managed care contract does not necessarily by itself terminate the physician-patient relationship. In those circumstances, it is recommended that the physician send written notice of termination to the individual patients covered by such plan.

Medical Records

A provider remains responsible for record maintenance regardless of the termination of the physician-patient relationship. Further, the patient remains entitled to a copy of his or her medical records upon request and payment of the actual cost of reproduction and mailing. (See Medical Record Privacy – Patient Right of Access to Medical Records for more details.)

Conclusion

The physician-patient relationship may be formed either through a contract or simply through the act of patient care. Termination of that relationship should only be done after consideration of ethical responsibilities and after providing adequate notice to allow the patient to seek care elsewhere.



SDSMA gratefully acknowledges the SDSMA Foundation for its support of this publication through funds awarded by The Physicians Foundation.