

## 10 Steps to Take Before Terminating a Physician-Patient Relationship

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At times physicians are faced with the burden of having to remove a patient from their practice. Circumstances leading up to this unfortunate decision may include a difficult or disruptive patient who is abusive to the staff or a patient who repeatedly fails to show up for appointments. Other situations may involve patients who fail to pay for services, including those who receive a check from their insurer and refuse to pay over the check proceeds to the physician. In addition, a patient may be uncooperative, dishonest, or demonstrate drug seeking behavior. In all events, it is important for physicians to follow the legal and ethical guidelines for terminating the physician/patient relationship. Failure to follow these guidelines may subject the physician to allegations of patient abandonment and other potential legal and disciplinary action.

This Article describes some steps a physician should take before terminating his or her relationship with a patient.

**Step One: Try to Work It Out With Your Patient.** As a practical matter, when faced with a difficult patient situation, the best course of action is to try to avoid a unilateral termination of the physician/patient relationship by addressing the problem. Communication is the key. The patient should be advised of the situation and given the opportunity to correct the problem. The physician should make it clear that failure to correct the problem may result in the dismissal of the patient from the practice.

**Step Two: Review the Applicable State Medical Licensing Rules.** State licensing boards govern the practice of medicine and the relationship between a physician licensed in that state and his or her patients. Accordingly, it is essential to review the medical board rules carefully before a physician terminates a patient from his or her practice. A physician licensed in New Jersey must comply with the New Jersey Board of Medical Examiners (the "NJBME") regulations. The NJBME regulations address the termination of the physician/patient relationship in N.J.A.C. 13:35-6.22 Pursuant to the NJ regulations, a licensee patient relationship is deemed to exist where the licensee has provided services to the patient within one year preceding the date of termination or in such other circumstances where the patient indicated that to the licensee that the patient anticipates that the licensee will provide continued professional services. Among other things, the NJBME regulations contain specific requirements as to (A) the written notification needed to terminate the licensee-patient relationship (described in detail in Step 6 below) and (B) the continuity of care to be provided by the physician after notification of termination (described in detail in Step 7 below).

The NJBME regulations define certain situations where the physician is prohibited from terminating the physician/patient relationship. These include terminations which are discriminatory or circumstances where no other licensee is currently able to provide the type of care that the licensee is providing to the patient. N.J.A.C. 13:35-6.22 (d). Other NJBME Regulations found at N.J.A.C 13:35-6.5 provide that the licensee may not charge a fee for a copy of the patient's records if the physician affirmatively terminates the patient-physician relationship (described in detail in Step 8 below).

**Step Three: Consider AMA Guidance.** The American Medical Association (the "AMA") has provided guidance on terminating the physician/patient relationship. The AMA defines abandonment as "the termination of a professional relationship between physician and patient at an unreasonable time and without giving the patient the chance to find an equally qualified replacement." According to the AMA's Code of Medical Ethics, Opinion 8.115, physicians have the option of terminating the physician/patient relationship, but they must give sufficient notice of withdrawal to the patient, relatives, or responsible friends and guardians to allow another physician to be secured.

The AMA recognizes that there are times when a physician may no longer be able to provide care to a certain patient, including when the patient is noncompliant, unreasonably demanding, threatening to the physician or staff, or otherwise contributing to a breakdown of the physician/patient relationship. According to the AMA, terminating a physician/patient relationship is ethical as long as the proper procedures are followed.

The AMA has given the following advice for the termination process:

1. Giving the patient written notice, preferably by certified mail, return receipt requested;
  2. Providing the patient with a brief explanation for terminating the relationship (this should be a valid reason, for instance non-compliance, failure to keep appointments.);
  3. Agreeing to continue to provide treatment and access to services for a reasonable period of time, such as 30 days, to allow a patient to secure care from another person (a physician may want to extend the period for emergency services);
  4. Providing resources and/or recommendations to help a patient locate another physician of like specialty; and
  5. Offering to transfer records to a newly-designated physician upon signed patient authorization to do so.
- American Medical Association (AMA), "Ending the Patient-Physician Relationship."

An interesting Opinion by the AMA (Opinion 9.123) provides that patients who use derogatory language or otherwise act in a prejudicial manner toward physicians, other health care professionals, or others in the health care setting, seriously undermine the integrity of the patient/physician relationship. Such behavior, if unmodified, may constitute sufficient justification for the physician to arrange for the transfer of care.

**Step Four: Check Your Payor Contracts and Policies.** A physician who is a participating provider (under contract) with the patient's insurer (commercial or government payor) may be obligated to notify the payor and comply with additional requirements. The physician should review the applicable provider contract and policies in order to ascertain if the payor has a policy on patient termination. For example, some insurance carriers require 60 or 90 days notice before dismissal (as compared to the 30 days notice required under New Jersey law) and some require prior written notice to the carrier to enable the carrier to contact the patient. There also may be specific requirements concerning pregnant or mental health patients. Medicare, Medicaid, and other government payors have strict policies on terminating a patient that should be reviewed before terminating a governmental plan beneficiary.

**Step Five: Review Your Malpractice Carrier Requirements.** Some medical malpractice insurance carriers have adopted rules or recommendations for terminating the physician/patient relationship. Accordingly, physicians should review their malpractice policy or contact the malpractice carrier when establishing the procedure for terminating the physician/patient relationship.

**Step Six: Send Written Notification to Your Patient.** The physician should send written notification advising the patient that he or she is terminating the patient relationship. The notification should comply with the licensing board's rules and the requirements of the applicable payor and the physician's malpractice carrier. The patient notification should be prepared or reviewed by counsel for the physician. For New Jersey physicians, the NJBME regulations (N.J.A.C. 13:35-6.22 (c)(1)) provide that a physician shall notify the patient, in writing, that the licensee shall no longer provide care to the patient as of a date certain. The NJBME regulations require that notification must be sent no less than 30 days prior to the date on which care is to be terminated and shall be made by certified mail, return receipt requested, or other proof of delivery, sent to the patient's last known address. The notice period should be structured to comply with any payor or malpractice carrier requirements. A copy of the letter and the postal receipt should be maintained by the practice.

**Step Seven: Provide Continuity of Care.** Physicians should ensure that they provide the proper continuity of care when dismissing a patient from their practice, including any requirements under state licensing rules, their payor contracts and their malpractice policy. NJBME Regulations provide that the physician terminating the patient relationship must provide all necessary emergency care or services, including the provision of necessary prescriptions, until the date on which services are terminated. N.J.A.C. 13:35-6.22(c)(2). The AMA guidance recommends that the physician provide the patient with resources and referrals for other sources of

care. The NJBME regulations (N.J.A.C. 13:35-6.22 (f)) provide that, when requested by the patient, the physician shall make reasonable efforts to assist patient in obtaining medical services from another licensee qualified to meet the patient's medical needs. These efforts may include, but are not limited to, providing referrals to the patient.

**Step Eight: Do not Charge for Patient Records.** A physician who terminates his or her relationship with a patient should not charge the patient for copying the patient's medical records. NJBME Regulations (N.J.A.C. 13:35-6.5 ) dictate that the licensee may not charge a fee for a copy of the patient's records if the physician affirmatively terminates the patient-physician relationship.

**Step Nine: Consider Risk Management.** Additionally, the physician should perform a risk management analysis before terminating the physician/patient relationship. The physician should consider the possibility (even if the patient's position is without merit and the physician will ultimately be successful) of patient complaints, disciplinary investigations, litigation, or other action initiated by disgruntled patients.

**Step Ten: Establish a Set Policy on Patient Terminations and Train Staff on the Policy.** In order to avoid any potential issues with former patients, the practice should have a set policy in place for the termination of the physician/patient relationship, including a sample termination letter. The policy should be applied to patients consistently and without discrimination. The staff should be trained on the policy and should document compliance with the policy.

It is never easy or pleasant to terminate a professional relationship with patient. In order to avoid additional complications surrounding the dismissal of a patient, it is important to consider the legal and ethical guidelines applicable to a physician's decision to terminate the physician/patient relationship. Following the steps described in this Article may help to make the process easier for physicians who are facing that decision.

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