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# PHYSICIAN *Risk* *Management*

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## Warning! Patient might sue you for abandonment

Repeated missed appointments, non-compliance, or abusive behavior are some of the reasons a physician might seek to withdraw from providing further treatment to a patient, but what are the legal risks involved?

The primary liability risk is patient abandonment, according to **Robert Berg, JD**, an attorney with Epstein Becker Green in Atlanta.

“Essentially, the patient claims that the physician has an obligation to continue to treat the patient, or at least to assist the patient in obtaining alternate treatment, and that the failure of the physician to satisfy that obligation constitutes abandonment of the patient,” he says.

While breach of an ethical obligation typically does not provide grounds for a private cause of action

by a patient against a physician, it does provide evidence of the appropriate standard of care required of physicians — which, in turn, usually sets the bar for establishing a medical malpractice or patient abandonment case, says Berg.

In one case, a physician left a practice, and no notice was provided to the patients. **Joshua M. McCaig, JD**, an attorney with Polsinelli Shughart,

Kansas City, MO. “Both the practice and the physician had to deal with various complaints and litigation. If only a simple letter had been sent from the practice and the physician stating that the physician was leaving and that follow-up appointments can be made with other doctors, all of this would have likely been avoided.”

Here are risk-reducing strategies:

- **Avoid making late entries.**

“A late, self-serving note on a reason for terminating a patient would be much more difficult to sell to a jury than a contemporaneous note simply stating what happened,” says McCaig.

- **The physician should offer to assist the patient in finding alternate care.**

This offer is particularly needed in cases in which the patient’s condition requires additional treatment, says Berg. (See related stories on what makes a successful suit likely, below, and how to inform the patient, p. 57.)

“It is usually appropriate to put a sentence in the termination notice along the following lines: ‘Your condition requires additional treatment, and we would be happy to assist you

## Executive Summary

If the physician terminates the physician/patient relationship due to non-compliance, abusive behavior, or missed appointments, the patient might have a successful suit for patient abandonment if his or her condition worsened because of failing to find another physician to provide treatment. To reduce risks:

- ◆ Offer to assist the patient in finding care.
- ◆ Provide medical records without charge.
- ◆ Allow the patient enough time to find another provider.

in finding another treating physician,” Berg advises.

- **Provide a copy of the patient’s medical record to the new treating physician without charge to the patient.**

While most states allow a physician to charge the patient a reasonable amount for copying patient records, it is prudent for the physician to make the transition to the new physician as easy and painless as possible, Berg recommends.

“Little things like not charging for copying and sending the patient record can be the deciding factor in whether the patient sues the physician for abandonment,” he says.

## SOURCES

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## Will abandonment lawsuit be successful?

“Bad facts” are the primary reason why patient abandonment claims succeed, according to **Robert Berg, JD**, an attorney with Epstein Becker Green in Atlanta. If the patient promptly finds another physician to provide treatment, a lawsuit is very unlikely, Berg explains, but a jury might go out of its way to find for a patient plaintiff in a case in which the patient’s condition worsened following the termination.

“Other exacerbating factors include difficulty, or even failure, in finding another physician to treat the patient, or the additional cost incurred,” he says.

Courts generally have allowed physicians broad latitude regarding terminating their patient relationships, says **Clinton R. Mikel, JD**, a partner at The

Health Law Partners in Southfield, MI. “We have even seen instances where courts have allowed retaliatory physician-patient relationship terminations, such as group practice physician 1 terminating a patient based on the patient’s lawsuit against group practice physician 2,” he says.

Most states require a patient to prove that the physician ended the relationship at a critical stage of the treatment; that the physician did not provide the patient with sufficient notice and assistance in seeking other comparable medical care; and that the patient was injured as a result, adds Mikel.

A 2007 Wisconsin case involved allegations that a physician improperly abandoned a patient as a result of the

patient filing a malpractice case against the physician.<sup>1</sup> “The physician successfully defended the suit by claiming the patient failed to obtain an expert affidavit supporting the claim,” says Berg. “Similar allegations were made in a 2007 Washington, DC, case.”<sup>2</sup>

A notorious 2011 Indiana case involved allegations of medical malpractice and patient abandonment, adds Berg.<sup>3</sup> “While it is not clear whether the plaintiff patient was awarded damages for one or both claims, the court did appear to sanction a claim for patient abandonment under appropriate circumstances,” he says. “It should be noted that this was one of more than 350 malpractice cases filed against this physician, who had fled the country.”

## References

1. Casperson v. N.E. Wisconsin Center for Surgery and Rehabilitation of Hand, LLC,

2007 WL 1191782 (Wis. App. 2007).

2. Hill v. Medlantic Health Care Grp., 933 A.2d 314 (D.C. 2007).

3. Mark S. Weinberger, MD, PC,

Merrillville Center for Advanced Surgery, and Nose and Sinus Center v. William Boyer, No. 45A03-1011-CT-598 (Ind. Ct. App. 10/19/11). ♦

## Take these 3 steps with termination

Termination of an acute patient in immediate need of surgery should not be handled in the same way as termination of a healthy patient not in need of specific care, advises **Robert Berg, JD**, an attorney with Epstein Becker Green in Atlanta.

“There is no “one size fits all” way to terminate the relationship,” says Berg. Take these steps to reduce risks:

1. Provide notice and assistance in a way that is likely to allow the patient to make a smooth transition to another provider.

**Christopher P. Dean, JD**, an attorney at Ober Kaler in Baltimore, MD, says, “Don’t terminate the relationship during an emotional encounter, and don’t terminate the relationship ‘effective immediately. An abrupt, or ‘hard landing’ for the patient makes it more likely that the patients will consider their legal options or complain to the state licensing board.”

Shorter notice might be appropriate in a large metropolitan practice where there are many other options for the patient, whereas more notice might be needed if

the physician is a subspecialist in a rural area, says Berg.

Dean says, “A patient requiring critical care would need a longer period of time to find another physician than a normal patient. A short letter can document that the physician addressed these needs before seeking to end the relationship.”

### “Reasonably” assist patient

Terminating physicians are not typically required to ensure that the patient finds alternative care, notes **Clinton R. Mikel, JD**, a partner at The Health Law Partners in Southfield, MI.

“In most cases, it is enough that the patient was given sufficient opportunity to seek alternative care and the physician reasonably assisted the patient in doing so,” he says.

The physician’s termination letter to the patient should clearly communicate where they stopped the patient’s treatment in their continuum of care; if the patient requires ongoing medical care or has a particular issue that needs follow-up, and consequences for failure to do

so; and instructions for how to handle medical emergencies, says Mikel.

2. During the notice period, the physician should continue to provide needed treatment if requested by the patient.

“This can be an awkward situation. But if handled properly, it can go a long way toward minimizing exposure to a claim for abandonment,” says Berg.

3. Explain in writing, simply and concisely, why the physician/patient relationship is being terminated.

For example: “Please be advised that we are terminating our physician/patient relationship with you, as a result of your continued failure to follow our medical advice. This termination will be effective as of Oct. 31, 2012.”

“It is not appropriate to go into extensive detail in terms of the reasons for termination, nor should the notice contain a litany of reasons,” says Berg. “This may undermine the physician’s defense, should an abandonment claim be made, if even one of the listed reasons is arguably false or not supported by the medical record.” ♦