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When a Physician May Refuse to Treat a Patient

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Physicians often feel compelled to terminate a relationship with a patient for reasons such as the patient's failure to pay for the services, the patient's failure to appear for appointments or take prescribed medications, the patient's seeking services that are morally or religiously objectionable to the physician and/or the patient having a communicable disease. A physician's desire to terminate the relationship, however, must be tempered by legal considerations. While the physician may withdraw from the physician/patient relationship under certain circumstances, the physician cannot just say "no" to providing the patient further care.

At common law, a physician did not have a duty to treat any patient as long as a relationship between the physician and patient did not exist. This so called "no duty rule" extended to a physician's right to refuse to treat an individual in need of emergency care as long as there was no prior relationship between the physician and the patient. From a legal perspective, physicians were free to decline to treat an individual under circumstances that prevented a physician/patient relationship from coming into existence.

This no duty rule was based on the law of contracts and the notion that, to create a physician/patient relationship and the physician's duty to treat, both parties had to voluntarily consent. In order to establish the duty bound relationship, the physician had to act affirmatively in a way that indicated an intention to treat the patient. The relationship could be established either expressly or impliedly.

A relationship is expressly established where the physician actually sees the patient. A relationship can be impliedly established in many more unexpected ways, even when there has been no direct contact between the physician and the patient. For example, if the physician agrees to treat a patient for a specific condition and schedules an appointment but the patient does not keep the appointment, a physician/patient relationship may still exist. As another example, a physician/patient relationship may similarly exist if an HMO patient's primary care physician refers the patient to a specialist physician participating in the HMO and the specialist physician's office gives the patient an appointment at a designated time and place.

Once a physician/patient relationship is established, the general rule is that a physician has a duty to continue to provide care to the patient until that relationship is terminated by the mutual consent of the physician and patient, the patient's dismissal of the physician, the services of the physician are no longer needed or the physician properly withdraws from the physician/patient relationship. Various laws, including laws governing emergency treatment provided by hospitals and antidiscrimination laws, as well as certain ethical constraints, have significantly limited a physician's ability to terminate the relationship.

The federal Emergency Medical Treatment and Active Labor Act, commonly referred to as "EMTALA," was enacted by Congress in response to a concern over "patient dumping" by hospitals refusing treatment of individuals who could not afford to pay for medical services. EMTALA imposes a duty on the hospital and its physicians to provide medical screening examinations and medical stabilization of all individuals seeking emergency care, regardless of the individual's ability to pay. Under EMTALA, a patient cannot directly sue a physician for not complying with EMTALA's requirements, but physicians may be subject to civil monetary penalties and may be subject to exclusion from participation in the Medicare and Medicaid programs for gross and flagrant or repeated violations of EMTALA.

Antidiscrimination laws also have affected the circumstances when a physician may deny medical care. Section 504 of the Rehabilitation Act of 1973 prohibits an otherwise qualified individual with a disability from being excluded from or denied benefits of any program actively receiving federal financial assistance solely by reason of the individual's disability.

The Americans With Disabilities Act of 1990 provides even broader protections for disabled individuals, including individuals who have a contagious disease. Title III of the ADA prohibits a place of public accommodation from denying an individual access to health care because of disability, unless the individual poses a direct threat or significant risk to the health and safety of others that cannot be eliminated by adequate precautions or reasonable modification of policies, practices or procedures. A disabled individual is one who has a physical impairment that substantially limits one or more major life activities, a record of impairment, or is regarded as having an impairment.

In several cases, the courts have addressed the application of the ADA to a physician's decision to refuse to treat a patient. For example, in the case of *Bragdon v. Abbott*, decided by the Supreme Court in 1998, the court found that asymptotic HIV infection is a disability under the ADA. Bragdon involved a dentist's refusal to fill a cavity of an asymptotic HIV patient in his office, although the dentist was willing to treat the patient in a hospital at a higher cost to the patient. The patient sued Bragdon for violation of the ADA. The court ruled that asymptotic HIV constitutes a disability. The court's decision speaks to health care providers' legal obligation to treat HIV infected patients along with patients with other disabilities.

Ethical considerations may also limit the circumstances under which a physician can deny care to a patient. The American Medical Association Council of Ethical and Judicial Affairs has found it unethical to deny treatment to individuals because they are HIV positive.

Both the ethical opinions and legal precedents agree that a physician may not intentionally and unilaterally sever an existing relationship with any patient, unless the physician provides reasonable notice to the patient, in writing, and sufficient time to locate another physician. Failure of the physician to continue to provide care when the patient remains in need of care or failure to provide notice and an adequate opportunity for the patient to find another physician before the physician terminates the physician/patient relationship can be construed as the physician's abandonment of the patient or dereliction of the physician's duty if injury results. In addition to being exposed to liability for any damages that are caused by the abandonment or the breach of duty, the physician may be subject to disciplinary action under the state's medical practice act. In Pennsylvania, a physician's abandonment of a patient can result in disciplinary action against the physician and exposure to civil liability.

Even given these limitations, there are some circumstances when a physician can "fire" the patient in non-emergency situations. One such circumstance is the patient's unwillingness or inability to pay. However, caution must be exercised in this situation. Courts are split on whether a patient's inability to pay or lack of insurance justifies a physician's termination of the physician/patient relationship, especially when the patient continues to require medical attention.

If the patient is not currently receiving treatment and fails to pay, the physician may terminate the relationship after giving the patient reasonable notice and sufficient opportunity to secure another physician. Similarly, at least one court has found that a physician may terminate treatment when the physician no longer participates with the patient's health plan by informing the patient of the change and giving the patient a list of providers that participate with the health plan or obtaining the patient's agreement to pay out-of-pocket for the medical services provided.

A physician is not required to prescribe or render medical treatment that the physician deems ethically inappropriate or medically ineffective. A physician may refuse to treat a patient when the physician has a moral or religious objection to the care that is sought by the patient. If a physician decides not to provide services to a patient on religious, ethical or moral grounds, the physician should discuss the reasons for the refusal with the patient, inform the patient of other resources or providers that can competently respond to the patient's needs, and document the discussion with the patient in the patient's medical record.

A physician may deny care when a patient requests services outside the physician's area of expertise or office hours or at a location other than the physician's office. Physicians also have the right to close their panels and to refuse to accept new patients when they do not have the capacity to treat additional patients.

In non-emergency situations, a physician is justified in refusing to treat unruly and uncooperative patients. If a patient refuses to follow the physician's plan of care or to comply with an appropriate treatment regimen, the physician may unilaterally terminate the physician/patient relationship by giving the patient advance notice of the specific reasons for his termination. Assuming there is no change in the patient's behavior after receipt of the notice, the physician may give the patient written notice of the effective date of termination of the relationship as long as the physician provides ample opportunity for the patient to secure a competent substitute.

A physician employed only for a specific occasion or service may be under no duty to continue visits or treatment thereafter. Examples are a surgeon who limits treatment to the performance of the operation and necessary aftercare or a physician who is called upon to consult on a one-time basis with the patient's attending physician. In these situations, the physician may want to ensure that the patient has no expectation of repeat visits or continued treatment. Consequently, the physician should make sure that the patient understands the treatment is limited to a certain illness or injury or to a certain specified time and place and that another health care practitioner will be responsible for follow-up care.

In no case should the reason given to the patient for the denial of care be a pretext for discrimination. To avoid such an inference, the policy and procedures for termination of the physician-patient relationship must be uniformly applied and implemented by the physician in a non-discriminatory fashion. The physician should give the patient sufficient notice to find a new physician, assist in referral of the patient , provide the patient written notice or confirmation of the reasons for termination and include such documentation in the patient's medical record.

In summary, the physician/patient relationship, which is similar to any contractual relationship, creates certain obligations. Assuming that a physician/patient relationship exists, a physician has a duty to treat and may not just say "no" to care of a patient without exposure to liability for abandonment of the patient and possible malpractice. A physician's withdrawal from the relationship should not be attempted or accomplished during a time when the patient is in need of medical attention.

In every other instance, prior to withdrawal from or termination of the relationship, the physician should explain to the patient the reason why the physician is unable to attend to the patient's needs and assist in the patient's transfer to a competent substitute. Written documentation of the physician's notification to the patient and of the referral sources or providers recommended to the patient will demonstrate that the physician has satisfied the conditions for proper withdrawal. Just as the physician must exercise reasonable care and skill in treating the patient, the physician must exercise reasonable care and skill in discontinuing the physician/patient relationship.

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