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## **REDUCING THE RISK OF ABANDONMENT CLAIMS**

Terminating a physician-patient relationship is appropriate and ethical in a variety of circumstances. However, if the relationship is not ended appropriately, a physician could be liable for patient abandonment or for failure to diagnose or treat a condition. This special report presents justifiable grounds for terminating a patient relationship, factors that may increase the risk of an abandonment claim, and tips from the risk management experts at NORCAL for reducing this risk.

## CONSIDERING WITHDRAWING FROM CARE OF A PATIENT? CONSIDER THIS.



Generally speaking, once a physician-patient relationship is established, physicians have an ongoing responsibility to a patient until the relationship is properly terminated, including ensuring coverage for patients when the physician is temporarily unavailable. Although a patient should never be dismissed for reasons such as gender, race, religion, ancestry, national origin, physical disability, or sexual orientation, there are **justifiable grounds for ending a patient relationship** provided relevant statutory obligations are met.\* There are also **constraints on the right to terminate a patient relationship** that, if not handled appropriately, may increase the risk of an abandonment claim.

### WHEN CAN A PHYSICIAN TERMINATE A PATIENT RELATIONSHIP?

Give careful consideration prior to any decision to terminate a physician-patient relationship. Physical threats or violent behavior may justify immediate termination in order to protect office personnel or other patients. In non-threatening situations, the decision to dismiss a patient may be based on a number of patient behaviors, including:

- » Nonpayment of bills
- » Dishonesty
- » Continual cancellation or failure to keep appointments
- » Rude, disruptive, sexually suggestive, uncooperative or profane behavior
- » Noncompliance or disagreement with treatment recommendations
- » Initiation of legal proceedings against the physician, partners or practice

### WHAT FACTORS CAN COMPLICATE A PATIENT TERMINATION?

- » The presence of acute conditions
- » Limited access to alternative sources of care
- » Clinical causes of objectionable behavior
- » Contractual agreements with managed care plans or hospitals
- » Other social or economic factors



**LIABILITY ISSUE**  
WITH PATIENT TERMINATION:  
**INSUFFICIENT NOTICE**

\*Consult your attorney for guidance on applicable state laws and with questions about individual patient termination situations.

## REDUCING THE RISK OF ABANDONMENT CLAIMS

### 1 Provide Consistent Communications

- » **Provide adequate notice of withdrawal from care.** Generally 30 days is adequate, but longer notice may be needed for patients with no alternative source of care.
- » **Objectively document in the medical record** the events and rationale behind the decision and any one-on-one discussions with the patient.
- » **Deliver a withdrawal from care letter** including (as appropriate) specific objective reasons, consequences for not obtaining ongoing care, and referral sources for obtaining it.

### 2 Ensure Continuation of Care

- » **Provide normal care during the notice period.** Avoid limits on treatment such as urgent or emergency conditions only.
- » **Resolve or stabilize acute conditions** that currently warrant treatment.
- » If warranted, **attempt to rehabilitate the patient** pursuant to an office policy and protocol.
- » **Ensure that other providers are available to assume care.** Specialists who are “the only game in town” or providers in a rural area need to be especially careful.
- » **Rule out clinical factors** as the cause of the patient’s inappropriate behavior.

### 3 Establish a Withdrawal from Care Policy

- » **Clarify contractual obligations** with managed care plans or hospitals to see if you are obligated to see “any and all” enrollees or patients. You may still have obligations to treat established patients even after a contract cancellation.
- » **Develop an office policy on patient termination,** including sample communications, notification guidelines, contractual restrictions and obligations.



### CASE STUDY:

#### Immediate Termination

*A lawsuit against a partner may be grounds for termination, but the duty to provide necessary medical treatment remains.*

A patient with a history of miscarriage became pregnant and was scheduled for a cerclage with OB 1. OB 1 later discovered she had filed a lawsuit against his partner, OB 2, but he took no action to start a termination process. After the patient was admitted for surgery, OB 1 informed her that because of the lawsuit he would not perform the procedure. The patient had OB 3 perform the cerclage four days later, but she miscarried. The patient sued OB 1, alleging the abandonment-related delay of the cerclage caused her miscarriage. The court agreed: OB 1 had a right to withdraw from the patient care, but had a duty to provide reasonable notice for her to secure another physician to complete the cerclage in a timely manner.

*Case study summarized from the January 2015 issue of NORCAL Mutual’s publication, Claims Rx.*

This report is presented as a courtesy by NORCAL Mutual Insurance Company. Our Risk Management Specialists are always ready to help policyholders with risk issues and to support practice changes that lower risk and improve patient safety.

## ABOUT NORCAL GROUP

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## REFERENCES

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