



Physicians Caring for Texans

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MISSION: TMA supports Texas physicians by providing distinctive solutions to the challenges they encounter in the care of patients.

Termination of the Patient-Physician Relationship

TMA Office of the General Counsel

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The patient-physician relationship is grounded in the personal relationship that exists between the physician and the patient. The patient-physician relationship is the result of a contract between a physician and a patient that the doctor will treat the patient with proper professional skill.¹ Although the relationship is contract-based, the contract need not be formal — it can be *implied*, which means the acts and conduct of the parties demonstrated there was a mutual intention to contract.² When that relationship becomes untenable for either party, dissolution of the relationship may become necessary. While both the physician and the patient have the right to terminate the relationship, the requirements for termination are more complicated for physicians than for patients.

This white paper discusses the general legal and ethical issues related to termination of the patient-physician relationship.

Q: May a physician lawfully terminate his or her relationship with a patient at any time?

A: Physicians have an ethical and legal duty to avoid abandoning their patients. The premature termination of medical treatment of a patient may result in civil liability for the physician. Abandonment is usually defined as “the unilateral severance of the professional relationship without reasonable notice at a time when there is still the necessity of continuing medical attention.”³ Said another way, there are times when a physician may not legally terminate the patient-physician relationship.

Proof of actionable abandonment requires a showing the physician failed to provide “an adequate medical attendant” or failed to give adequate notice.⁴ Finally, as in any negligence action, the plaintiff must prove this breach of duty was the cause of his or her injuries or damages.

Q: How should notice be given to the patient?

A: Documentation of proper and sufficient notice should afford the physician protection from possible civil liability. Hence, in addition to orally advising the patient and documenting that advice in the chart, the physician should send a letter to the patient (with return receipt requested) to ensure the patient is aware of the physician’s decision. A copy of the letter and the return receipt should be retained in the physician’s records. (A sample letter terminating the patient-physician relationship is attached.)

Q: How much notice is required?

A: *Reasonable* notice is required. In a lawsuit alleging abandonment, one issue may be whether the notice period was “reasonable” under existing circumstances. Many factors may affect this “reasonableness” determination. The time necessary for a patient to locate another physician in a large urban area may be less than that which would be considered reasonable in more isolated rural areas where fewer physicians practice. Also, the nature and severity of the patient’s condition may affect the time required to find another physician. For example, an obstetrics-gynecology patient in her eighth month may not be able to locate another physician willing to assume responsibility for care. In this example, the physician who seeks to terminate the relationship may be delayed in doing so until after providing delivery and postpartum care.

1 *Ortiz v. Shah*, 905 S.W.2d 609, 611 (Tex. App. — Houston 1995).

2 *St. John v. Pope*, 901 S.W.2d 420, 424 (Tex. 1995).

3 *King v. Fisher*, 918 S.W.2d 108, 112 (Tex. App. — Fort Worth 1996).

4 *Lee v. Dewbre*, 362 S.W.2d 900, 902 (Tex. App. — Amarillo 1962).

Q: What other considerations are relevant in composing the notification letter to the patient?

A: The effective date of termination should be stated explicitly in the notification letter, taking into consideration the reasonableness of the notice. The physician may wish to suggest the names of other physicians for the patient to consider contacting. While it is not necessary to state reasons for the decision to terminate in the notice, the physician should make it clear the patient-physician relationship no longer exists.

The physician should offer to forward copies of medical records to another physician, with proper patient authorization. However, physicians may not legally, or ethically, withhold a copy, narrative, or summary of the patient's medical record from another physician (or the patient) because of an outstanding account balance.⁵ The physician may specify that any treatment during the notice period will be provided on a cash basis, unless there is a medical emergency. However, it may be prudent to treat the patient who cannot pay cash rather than possibly defending a lawsuit charging abandonment. The notification letter should remind patients that follow-up and continued medical care are now their responsibility, and that they should pursue both. Additionally, the notification letter may include a statement explaining that medications will only be provided up to the effective date of termination.

Q: What should the physician do when the patient terminates the relationship?

A: The law recognizes that the patient-physician relationship is different from arm's length dealings between buyers and sellers of commercial products. Physicians have a fiduciary responsibility to act only in the best interests of their patients. The physician is judged to have superior knowledge, must keep information about patients confidential, and must provide patients with relevant information and alternatives before asking them to consent to treatment.

However, this fiduciary responsibility is not reciprocal. The patient is free, at any time, for any or no reason, and with no notice, to decide that he or she does not wish to be treated by a particular physician. When the patient discharges the physician orally, the physician should send the patient a short letter confirming the patient's decision, and retain a copy for his or her files. Significant conditions requiring treatment should be described in the letter.

Q: I lost contact with a patient I treated several years ago. If the patient calls for an appointment, am I still obligated to see the patient?

A: If no formal termination of the patient-physician relationship has ever occurred, then the patient may have a reasonable expectation of continued care. However, if you do not want to resume treating the patient, and if the patient does not need treatment now for an emergency or urgent condition, the patient should be informed that you wish to terminate the relationship.

Q: A patient will not pay an outstanding balance for services rendered. Does that mean the patient-physician relationship has been terminated?

A: No. The essence of the patient-physician relationship is the physician's agreement, in response to an express or implied request, to become responsible for the patient's care. The relationship is not dependent on whether the patient pays the physician money for services rendered. If the opposite were true, then no charity care rendered to a person would result in the formation of a patient-physician relationship. The same is true for unpaid fees: Failure to pay does not automatically terminate the relationship.

While patients may be dismissed from a practice for nonpayment of fees, the situation should be handled with care. It may be the case that the patient's consistent refusal to pay for services rendered interferes with the physician's ability to provide appropriate medical care. One cannot expect the physician to continue providing uncompensated care and believe his or her attitude towards the patient will remain unaffected. In such cases, it may be justifiable to terminate the patient-physician relationship so long as the steps outlined above are followed. An exception to this would be if the physician has chosen to regard a particular patient as a charity case. As a corollary, a

⁵ Texas Medical Board Rule §165.2(h); *See also* American Medical Association Code of Medical Ethics, 2016, Sec. 3.3.1, p. 57.

physician should not deny an established patient an appointment, or cancel an appointment, because of an unpaid balance. This results in a person being considered a patient one day and not another — depending on how the office staff feel about the size of the unpaid balance. So long as the patient-physician relationship is established, and not definitively terminated, a physician owes the patient the same duty of care; otherwise, there is a danger of abandonment (or at least a successful liability claim based on delay in treatment). Remember that medical malpractice law holds physicians to a higher standard of care than an ordinary business person. Thus, a person is a patient for all intents and purposes, regardless of his or her pay status, until the relationship is terminated. It is, of course, appropriate to warn a patient with an unpaid balance that termination is possible if the matter is not rectified.

When considering the option of dismissing a patient for nonpayment of fees, the physician should evaluate the need for continuity of care. It is strongly recommended that a dismissal for this reason be used only as a last resort.

Q: A patient of mine left the hospital “against medical advice.” Later the patient wants to make an appointment with my office. Am I obliged to treat the patient?

A: There is a question of whether the patient, by leaving “against medical advice,” intended to discharge the physician. The act of leaving the hospital could have occurred because of facts unrelated to the patient-physician relationship or the medical treatment. If this is the case, the patient should be asked about his or her intentions regarding the relationship. Otherwise, if the patient-physician relationship may not have been terminated by the acts of either party, there is still an obligation to the patient.

Q: I discharged a patient from my practice for noncompliance. Later I saw him in the emergency department, but he needed follow-up in the office. Is it now necessary to “reterminate” the patient if I do not wish to provide further care?

A: Yes, a new patient-physician relationship will have been established by the act of treating the patient in the emergency department unless the limits were clearly established in that interaction. However, all of the factors listed above pertaining to proper termination of the patient-physician relationship are still applicable.

Q: A patient filed a medical malpractice suit against me. Now the patient wants to make an appointment. Am I still obligated to take care of the patient?

A: There is no legal authority for the idea that the filing of a medical professional liability suit (or a complaint with the Texas Medical Board) automatically terminates a patient-physician relationship. Thus, a physician likely would be obligated to take care of the patient until the relationship is properly terminated. However, a physician might well regard the filing of a lawsuit (or grievance) as being untenable for maintaining the relationship, and thus begin proper termination procedures.

Q: A patient arrived for her initial appointment. The patient was rude and abusive because she felt she had waited too long, so I decided not to take care of her. Do I have to send her a termination letter?

A: Generally, no, because a patient-physician relationship was not formed. However, it is the policy of some offices to regard all people as “patients” at the time the first appointment is scheduled. In that case, the physician may have voluntarily assumed a duty the law has not yet imposed. A letter reciting that you have not agreed to be her physician may be advisable.

Q: A physician colleague called me with a question about a patient, which I answered. Do I have to send that patient a termination letter?

A: Likely not, because a patient-physician relationship was not formed with the consulting physician if the consulting physician did not contact, examine, or treat the patient directly and did not contract with the treating physician or another party to perform services for the patient.⁶

⁶ *Lopez v. Aziz*, 852 S.W.2d 303, 306 (Tex. App. — San Antonio 1993).

Q: I sometimes perform a doctor's examinations of certain individuals to determine their fitness for employment, the extent of a disability for a workers' compensation claim. Do I need to send these individuals termination letters?

A: Likely not, because a patient-physician relationship is not formed when an examination is not performed for the individual's benefit or to treat the individual.⁷

Q: I need to terminate my relationship with a managed care patient. What considerations apply?

A: A physician wishing to terminate the patient-physician relationship with a managed care patient should review the contract with the managed care plan. The contract may require the physician to inform the patient that he or she must select another physician from the managed care provider list; require that the physician send a copy of the termination letter to the managed care plan; or require the physician to notify the plan first, prior to termination.

Q: I was "deselected" by a managed care plan. Do I still have to provide care to managed care plan enrollees even though I may not be paid for that care?

A: Insurance status has no bearing on whether abandonment has occurred, so enrollees are still patients until the patient-physician relationship is properly terminated. Also, the managed care plan contract may require that care be continued until a particular course of treatment is completed, or the plan finds the patient another physician.

Q: I want to close my practice. What problems can arise if I do not give proper notice?

A: Physicians who close their medical practice without sufficient notice can encounter legal problems. For example, in *Korn v. Ohio State Medical Board*, a physician disappeared from his medical practice for more than two months. The medical board disciplined him because "he was unable to practice medicine according to acceptable and prevailing standards of care." He subsequently was placed on five years' probation. On appeal, the court found that the evidence supported a finding that he was irresponsible in the manner in which he left his practice and patients. Violations of his duties were not excused by the fact that "others picked up the pieces."⁸

Also, the Texas Medical Board's rule 165.5, Transfer and Disposal of Medical Records, imposes certain requirements on physicians who relocate or close their practice (emphasis added):

(a) Required Notification of Discontinuance of Practice. Except as provided for in subsection (f) of this section, **when a physician retires, terminates employment, or otherwise leaves a medical practice, he or she is responsible for:**

(1) **ensuring that patients receive reasonable notification and are given the opportunity to obtain copies of their records or arrange for the transfer of their medical records to another physician;** and

(2) notifying the board when they are terminating practice, retiring, or relocating, and therefore no longer available to patients, specifying who has custodianship of the records, and how the medical records may be obtained.

(3) Employers of the departing physician as described in §165.1(b)(6) of this chapter are not required to provide notification, however, the departing physician remains responsible, for providing notification consistent with this section.

(b) Method of Notification.

⁷ See *Johnston v. Sibley*, 558 S.W.2d 135, 137-38 (Tex. App. — Tyler 1977); *Ramirez v. Carreras*, 10 S.W.3d 757, 762 (Tex. App. — Corpus Christi 2000); *Lotspeich v. Chance Vought Aircraft*, 369 S.W.2d 705, 709 (Tex. Civ. App. — Dallas 1963); *Almaguer v. Jenkins*, 9 S.W.3d 835, 838 (Tex. App. — San Antonio 1999); *Wilson v. Winsett*, 828 S.W.2d 231, 232-33 (Tex. App. — Amarillo 1992).

⁸ *Korn v. Ohio State Med. Bd.*, 573 N.E.2d 1100 (Ohio Court of Appeals 1988).

(1) Except as provided for in subsection (f) of this section, **when a physician retires, terminates employment, or otherwise leaves a medical practice, he or she shall provide notice to patients of when the physician intends to terminate the practice, retire or relocate, and will no longer be available to patients, and offer patients the opportunity to obtain a copy of their medical records or have their records transferred.**

(2) **Notification shall be accomplished by:**

(A) **publishing notice in the newspaper** of greatest general circulation in each county in which the physician practices or practiced and in a local newspaper that serves the immediate practice area;

(B) **placing written notice in the physician's office; and**

(C) **sending letters to patients** seen in the last two years notifying them of discontinuance of practice.

(3) A copy of the notice shall be submitted to the Board within 30 days from the date of termination, sale, or relocation of the practice.

(4) Notices placed in the physician's office shall be placed in a conspicuous location in or on the facade of the physician's office, a sign, announcing the termination, sale, or relocation of the practice. The sign shall be placed at least thirty days prior to the termination, sale or relocation of practice and shall remain until the date of termination, sale or relocation.

(c) Prohibition Against Interference.

(1) Other licensed physicians remaining in the practice may not prevent the departing physician from posting notice and the sign, unless the departing physician is excepted from providing notice of his or her departure under subsection (f) of this section.

(2) A physician, physician group, or organization described in §165.1(b)(6) of this title (relating to Medical Records) may not withhold information from a departing physician that is necessary for notification of patients, unless the departing physician is excepted from providing notice of his or her departure under subsection (f) of this section.

(d) Voluntary Surrender or Revocation of Physician's License.

(1) Except as provided for in subsection (f) of this section, physicians who have voluntarily surrendered their licenses or have had their licenses revoked by the board must notify their patients, consistent with subsection (b) of this section, within 30 days of the effective date of the voluntary surrender or revocation.

(2) Physicians who have voluntarily surrendered their licenses or have had their licenses revoked by the board must obtain a custodian for their medical records to be approved by the board within 30 days of the effective date of the voluntary surrender or revocation.

(e) Criminal Violation. A person who violates any provision of this chapter is subject to criminal penalties pursuant to §165.151 of the Act.

(f) Exceptions to Required Notification of Discontinuance of Practice.

(1) A physician is not required to provide notice of his or her discontinuation of practice to patients treated pursuant to a locum tenens position at a practice location, if the physician was treating such patients during a period of no longer than six months at that location.

(2) For the purpose of this section, "locum tenens" is defined as a position in which a physician is employed or contracted on a temporary or substitute basis to provide physician services.

Q: Can a physician be liable for abandonment when a patient fails to return for treatment?

A: Ignoring a physician’s advice to return for treatment may be negligence on the part of the patient that would defeat a professional liability action.⁹

Furthermore, there is no abandonment if a patient terminates the patient-physician relationship by voluntarily choosing not to return for treatment.¹⁰ Thus, a patient who ignores advice to receive needed treatment at some point constructively terminates the patient-physician relationship resulting in no abandonment.

Q: Suppose I treat a patient in the emergency department, and that patient needs to be transferred to another hospital. Another hospital and treating physician are found, and the patient is loaded into the ambulance for transport. Am I discharged from that patient’s care when the patient leaves the hospital?

A: No. For a transfer to be “appropriate” under the federal Emergency Medical Treatment and Active Labor Act, the transferring hospital and physician are responsible for providing medical treatment, within its capacity, that minimizes any risks to the patient’s health during transfer. The transferring hospital also is responsible for ensuring that proper transportation equipment, personnel, and life support measures are used during the transfer.

AMA Code of Medical Ethics

1.1.5 Terminating a Patient-Physician Relationship

Physicians’ fiduciary responsibility to patients entails an obligation to support continuity of care for their patients. At the beginning of [a] patient-physician relationship, the physician should alert the patient to any foreseeable impediments to continuity of care.

When considering withdrawing from a case, physicians must:

- (a) Notify the patient (or authorized decision maker) long enough in advance to permit the patient to secure another physician.
- (b) Facilitate transfer of care when appropriate.

AMA Principles of Medical Ethics: I, VI

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⁹ *Eoff v. Hal and Charlie Peterson Foundation*, 811 S.W.2d 187, 191 (Tex. App. — San Antonio 1991).

¹⁰ *Knapp v. Eppright*, 783 S.W.2d 293, 295 (Tex. App. — Houston 1989).



Physicians Caring for Texans

Sample letter terminating patient-physician relationship

Dear Mr./Ms. _____:

Please be advised that I will no longer be able to treat you as a patient. I find it necessary to conclude our relationship because (specify reason[s], if desired).

Since your condition (describe condition)(may/will) require further medical attention, I suggest that you select another physician without delay. As I indicated, I will be available to treat you for only ____ days following your receipt of this letter.

I will be glad to forward information from your medical records to any physician or other person you designate. Please complete and sign the enclosed authorization form.

Thank you and best wishes.

Sincerely,

_____, MD

Authorization to release medical records

Dear Dr. _____:

This letter will authorize you to provide a copy, summary, or narrative of my medical records (as indicated by the checkmark below).

Complete record

Records of care from ____ to ____ only

Records of care concerning the following condition(s) to the following person:

Name _____

Street _____ City _____ State _____ ZIP _____

The reasons or purposes of this release of information are as follows:

I understand that you will provide this information within fifteen (15) days, and that a reasonable fee for furnishing this information may be charged.

Signed: _____ Date: _____

Patient (or person legally authorized to consent on patient's behalf)