You can 'fire' patients for just cause, but hew to a clear policy

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Practice management

Patient abandonment is a real ethical and, sometimes, legal issue. Generally you have a right to refuse service if your reasons are sound. But you should follow guidelines and be extra attentive to any special care claim the patient may have on you.

When medical organizations get into legal trouble for patient abandonment, it's nearly always because they've closed down without giving sufficient notice, experts tell *Part B News*. Such a case emerged in the Boston suburb of Quincy, where Compass Medical shut down suddenly after losing a fraud suit. The Boston Herald reports that patients filed a class action suit on June 2 on grounds of abandonment against the shuttered practice, asserting that it "violated generally accepted industry standards and guidelines for the orderly winding down and closing of a medical practice," according to the complaint.

Patient abandonment may also be added to malpractice claims, particularly if the provider cuts off contact with the patient after the alleged failure of care occurred. "If the plaintiff is arguing that the breaking of the continuity of care resulted in whatever the malpractice was or contributed to, or was associated with the malpractice, they can legitimately bring that claim of abandonment," says Frank P. Izzo, a partner in the Rivkin Radler firm's Poughkeepsie, N.Y., office.

The basics: Notice and referral

There may be times when you feel a patient's foibles — e.g., habitual failure to show up for appointments, nonadherence to prescribed treatment or unruly behavior in the office — merits their removal from your care. While a patient can leave your practice at any time and for any reason, both professional ethics and, in some cases, state law require that you make certain arrangements if you want to "fire" a patient.

Medical associations, specialty boards, the AMA and other experts generally agree that best practice includes timed notice of at least 30 days, an explanation and a referral to alternative care.

In most cases this is "less a formal procedure than a way of ensuring you're meeting your ethical obligations," says Mark Ustin, a partner at Farrell Fritz P.C. in Albany, N.Y. "Medical associations routinely have a member resource as to how to do it, but there's not necessarily a bright-line rule — if there's an element of the [termination] letter they tell you to send that you don't include, for example, that's not necessarily fatal."

In his own practice, Sandip Buch, M.D, a psychiatrist and founder of the online psychiatry company Skypiatrist, says the drill is to "provide at least 30 days of medication; send them a formal letter; talk to them or email them to make sure they receive the message that you can't work with them, and explain how they can continue to get their care [elsewhere]."

"You want to put your reasons in writing and you want to be very clear that you're severing the relationship, and that it's not for reasons that are in any way inappropriate," Ustin says. Such illegitimate reasons may be the patient's race, gender or other protected statues under civil rights laws. In that regard, Izzo says, termination of a patient is "similar to the termination of an at-will employee" in terms of its civil rights implications (*PBN 3/12/20*).

Ustin adds that the notice "should include an effective date and instructions for finding another physician. You may go so far as to make a referral — though if it's a difficult patient, you don't necessarily want to give them the name of a specific colleague. You can certainly tell them to reach out to your local medical association."

"Practitioners should be familiar with their local state laws to see if there are additional criteria that might be something to do with professional misconduct," Izzo adds. Sometimes these will be less exacting that association guidelines: For example, while New York state requires hospitals and nursing homes to give written notice and a written plan of discharge to any patient that's being dismissed, private practices have no such requirement.

Also, check your payer contracts, Izzo suggests: They sometimes have restrictions on patient dismissals.

Even troublesome patients?

Sometimes there are special cases that require changes to your patient firing procedure. The clearest exigency is a patient who presents a danger to the practice and other patients (*PBN 5/24/13*). If the danger is genuinely immediate, you can bounce the patient and call the cops without worrying about paperwork (*PBN 6/13/16*).

But you may owe a duty of care even to troublesome patients. For example, though laws vary, there is general agreement that patients whose need for acute care is pressing — such as an OB/GYN patient the third trimester, or a patient in follow-up care directly after surgery — should not be discharged. Izzo points to New York state law that includes under its definition of "professional misconduct" the act of "abandoning or neglecting a patient under or in need of immediate professional care without making reasonable arrangements for the continuation of such care."

This arguably can apply to a patient with mental health or substance abuse issues who may be in "a crisis situation or an acute phase of treatment," Izzo says, and whose presence in your waiting room may be harmful or dangerous to other patients. In such cases you could "try to schedule the patient at the beginning or the end of the day when no other patients are around to avoid their interaction with the waiting room," he suggests, or use telehealth where clinically appropriate.

It may turn out that no reasonable accommodation can be made, and you have to take steps to detach the patient from your practice. (Be sure to document accommodation efforts, just in case.) Also, you may conclude that the level of care the troublesome patient needs is definitionally beyond your capacity.

"Let's say someone is in [psychiatric] crisis," Buch says. "Now we're talking about outpatients — if someone's in crisis, they might not be appropriate for outpatient care to begin with. There are partial hospitalization programs where you go three days a week, or there's inpatient. So if someone's really in crisis, I would say they need to go to a higher level of care anywhere anyway.

"Also, you don't want to let someone say they're always 'in crisis' and therefore can't be let go," Buch adds.

3 patient firing tips

- **Make sure patients can get their records**. All ex-patients, no matter how they achieved that status, have the same right to their records on demand per HIPAA and other laws as other patients (*PBN 5/22/23*). This also applies when you're closing a practice, a fact providers often forget (*PBN 8/22/22*).
- **Make allowance for care cavils — until you can't**. Patients will sometimes refuse to comply with certain common exam procedures, such as disrobing or weighing in. Experts recommend you do whatever you can to comply, but when it really impedes care and treatment, you may choose to release the patient (*PBN 1/17/22*).
- **Tread carefully with abusive patients**. Experts say that complaints by your employees about patients who are abusive toward them should be taken very seriously — as should the patient's potential counter-charge of discrimination if you dismiss them without a clear explanation (*PBN 1/24/19*). A formal charge of abuse by the employee would strengthen your case to fire the patient.

Resource

Boston Herald, "Former Compass Medical patient sues company, alleges 'patient abandonment,'" June 2, 2023: *www.bostonherald.com/2023/06/02/former-compass-medical-patient-sues-company-alleges-patient-abandonment/*

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