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Perspectives

on clinical risk management

TERMINATING THE PHYSICIAN-PATIENT RELATIONSHIP

Questions and concerns about terminating the physician-patient relationship are among the most numerous called in to ProMutual Group's risk management telephone consultation service. Some physicians ask whether, while others ask how to end their relationship with a patient. The reasons for the wish to terminate are several. In descending order of the frequency with which they are expressed to ProMutual Group, they include:

- Noncompliance with medical suggestions, treatments, or therapies
- Failure to meet financial responsibilities
- Verbal abuse or threats of physical harm
- Drug seeking
- Repeated failure to keep appointments
- Personality conflict
- Practice-related criminal activity (for example, theft of prescription pads)

Other reasons for which termination might be indicated include retirement and relocation,¹ unrealistic expectations on the part of the patient, stalking, sexual advances,² a change in the patient's insurance coverage, or the physician's withdrawal from the provider panel of the patient's healthcare insurer.

Some physicians believe they do not have a right to terminate their professional relationship with a patient. Others fear that termination

may lead to litigation. Still others worry that terminating the professional relationship will exacerbate an already volatile situation.

Patients who have been dismissed from a practice might sue their physician. However, such suits are likely to end favorably for the physician if the termination process has been carefully effected. Under the best of conditions, it requires discussion with the patient; attempts to understand and, whenever possible, to eradicate the barriers that preclude an effective professional relationship; written notification of the intent to terminate when termination is inevitable; provision of other health provider options to the patient; and thorough documentation of the entire termination process.

This issue of *Perspectives* is devoted to a look at some of the issues encountered by ProMutual Group's insured physicians as they grappled with the need or wish to terminate their relationship with patients for reasons other than retirement or relocation. The latter issues were addressed in the summer 2004 issue of *Perspectives*, which is currently available online. In this article, some of the most general and most straightforward concerns about the termination process are presented as frequently asked questions. The case studies that follow touch upon the kind of issues that, although not inherently part of the termination process, may need to be addressed if the termination process is to be complete.



101 Arch Street
P.O. Box 55178
Boston, MA 02205-5178

800/225-6168
617/330-1755
Fax: 617/330-6995

www.promutualgroup.com

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This information is intended to provide general guidelines for risk management. It is not intended and should not be construed as legal advice.

Linda Greenwald
Research and Writing

Erin Griffith
Layout

The relationship between a physician and his or her patient exists until it is ended by mutual consent, termination of the need for services, dismissal of the physician by the patient, or dismissal of the patient by the physician.³ For the purposes of this article, termination will refer only to dismissal of the patient by the physician.

Termination of the professional relationship with a patient should be a process, not an event. The process may vary with individual circumstances. However, certain basics are—or should be—a part of almost all situations. And certain issues arise almost every time termination is a consideration. They are presented below as questions, together with the risk management guidelines that answer them.

Q. When is it acceptable to end the professional relationship with a patient?

A. Termination is appropriate whenever the trust that once marked the physician-patient relationship is so diminished that the physician’s ability to give optimum patient care is compromised. Some of the particular circumstances that give rise to the need or wish to terminate the professional relationship are presented in bullet form on the first page of this article.

Reasons that *cannot* be used for termination include the patient’s gender, race, religion, or sexual preference.⁴ In addition, patients covered under the Americans with Disabilities Act (ADA) may be dismissed from the practice but only for one or more of the reasons that a non-disabled person might be dismissed, not because of the disability or illness.

Q. When is termination likely to be considered abandonment?

A. Terminating the professional relationship with patients in medical crisis, with those undergoing or needing treatment for an acute problem, and with pregnant women who are at more than 20 weeks gestation may be considered abandonment. ProMutual Group suggests that termination not be initiated in any of these situations until the crisis has

been resolved, the acute problem has passed, and/or delivery has taken place.

Abandonment might also be alleged if termination of the patient with a continuing medical need takes place without apparent cause, if the physician does not give the patient adequate time to find another practitioner, and if the patient suffers injury as a result of the physician’s haste or carelessness in terminating the professional relationship.⁵

Q. What is the best way to go about the process of termination?

A. The “best way” varies with the circumstance. In cases where threatened or actual violence is directed toward the physician or staff, termination may be verbal and immediate. In most other situations written notification of the patient is the ideal. The termination letter should include the following information:

- Reason for termination,
- Effective date of termination, usually at least 30 days from the date of the letter,
- Statement concerning the importance of the patient’s finding continuing medical care, if such care is required,
- Notification that care should be sought at a local emergency department if medical attention is required after the 30-day period and before a new provider has been selected,
- Referral source the patient may use to find another physician in the community,
- Offer to send the medical record to the new provider at the patient’s request.

A letter from a physician in a group practice should specify whether the professional relationship is being terminated only with the physician signing the letter, with several members of the group (all of whom should be named), or with the entire practice.⁶

The letter should be sent certified mail, return receipt requested. A copy should become part of the medical record.

In some situations the physician may wish to precede written notification of the patient with a one-on-one conversation to determine if there are any extenuating circumstances that might help explain the behavior that has become the reason for termination. It may be possible to resolve the problem with a payment schedule, a mutually agreed-upon contract, or other promise that makes termination unnecessary.

Health maintenance organizations (HMOs), state agencies, and other insurers may have specific requirements concerning termination. The physician should consult and abide by these rules.

Q. What if the certified letter is returned unopened?

A. The returned letter (and envelope) should be filed in the medical record and a duplicate letter sent in a plain white envelope showing no return address. Some practices have found it helpful to follow up the second letter with a telephone call. The entire process should be documented.

Q. Is the 30-day notification of the patient a hard and fast rule?

A. It is not a legal mandate. However, it is the generally accepted minimum period of time to allow the patient to find a new provider.^{1,67} It does not need to be honored when the patient threatens or commits violence against the physician or office staff or when the patient commits a criminal act involving the practice, for example, stealing a prescription pad or selling narcotics that have been prescribed by a member of the practice. It should be used as a guideline, not a hard and fast rule, in all other situations.

Q. A colleague told me I don't have to tell the patient the reason for termination. Is this true?

A. Openness and honesty should be as much a part of the termination process as

they are a part of the physician-patient relationship. Patients have a right to know not only why their relationship with the physician is being terminated but also that termination is for cause, not whim or bias. This is the position not only of ProMutual Group but also of the American Medical Association.¹

Physicians may wish to include in their practice brochure a statement about their policy on missed appointments, letting patients know that a missed appointment deprives another patient of an opportunity for an office visit and that a given number of missed appointments will be considered reason for termination.

Openness and honesty should be ... a part of the termination process.

Q. Many of the physicians in this area are not accepting new patients. May I give a patient I'm terminating from my practice the names of specific physicians who do have openings?

A. It is far better to offer a referral source than to give specific names. The patient who has a negative experience with someone whose name you offer may blame you for that experience and, in a worst case scenario, involve you in litigation. In addition, referring a problem patient to a colleague may be perceived negatively by that colleague and others.



A few situations that are not necessarily part of every termination process are, however, likely to be a part of many physicians' professional experience.

Q. Is there a rule about the number of times a patient can cancel an appointment before considering termination?

A. There is no rule. Practices must decide for themselves the number that works most effectively for them. ProMutual Group suggests that three consecutive missed appointments may be reason to consider termination. However, extenuating circumstances, for example, lack of transportation or a pressing family situation, may point to a need for discussion rather than termination.

Q. A patient who is suing me has made another appointment. Do I have to see her or is the suit justification for terminating the professional relationship?

A. If the patient is calling you for continuing treatment of an ongoing acute problem, you should probably see her. If the problem is chronic or if she is calling you about a new medical issue, you may want to both cancel the appointment and begin the termination process, explaining to her that given the circumstances, you believe another practitioner might be better able to meet her medical needs.

Q. I have a patient who hasn't paid her bill within the past several months. Do I have the right to refuse to see her until her bill is paid?

A. The medical care of an active patient should not be contingent upon whether or not the patient's bill is paid. However, a patient's consistent failure to meet his or her financial obligations to the practice may be reason for terminating the professional relationship. Before the patient schedules another visit, either have a member of your staff call her or, if you know her well, take a few moments yourself to call her to discuss concerns about the status of her bill. Determine whether or not she is dealing with loss of a job, family illness, or any financial emergency that may be affecting her

ability to pay her bills and try to work out a payment schedule with her. If she is unwilling to enter into such an agreement—or if she subsequently fails to meet its terms—consider terminating your relationship with her. Follow the conversation with a termination letter.

Q. A friend of our family is a non-compliant patient. She doesn't keep appointments, follow screening recommendations, or take her medications. For personal reasons, I would prefer not to terminate my professional relationship with her. However, I feel that I need to do something. What are my options?

A. You may wish to have the patient sign a summary informed refusal to acknowledge her refusal of preventive care, including screening. Individual informed refusals may be signed if the patient informs you in advance that she will not take a particular medication or follow a particular therapy. At some point you may wish to have a discussion with this patient to determine what her expectations are of you or any other physician, and how you might be able to work together. If compromise seems unlikely, you may wish to reconsider termination.

Q. I was the on-call urologist when a patient I had terminated from my practice for noncompliance came in to the hospital's ED. I diagnosed a kidney stone that needs further treatment. What is my responsibility to this patient with whom I had an extremely difficult relationship in the past and whom I do not want to see in my practice again?

A. ProMutual Group suggests that a physician who cares for a patient in the ED should see that patient at least once in the immediate post-ED period. In this situation, make sure you let the patient know that his visit to your office is a one-time event and because ongoing care is important, you will give him a resource

to help him find another physician, assuming that he is not already under the care of another urologist. Given the acuity of the patient's medical condition, you would be wise in this case not to simply assume the patient has found another provider but rather to follow up and make sure the patient is under the care of another practitioner.

In a case such as this, you would also be wise to notify the patient's primary care physician (PCP) of the ED visit and to let him or her know, in writing, of the need for follow-up. Although the patient would not need to give his authorization for communicating personal health information to another physician for purposes of treatment, there would certainly be no harm in obtaining the patient's written authorization for you to contact the PCP.



Sometimes termination involves a twist. The cases that follow are examples. They are actual practice situations that were called in to ProMutual Group's risk management telephone consultation service.

Case 1. *A patient who suffered severe injuries in a motor vehicle accident was treated by his internist over a period of months with a number of different opioids. None brought the relief the patient was seeking. He sought increasingly higher doses of increasingly stronger medications, until, at length, he was requesting prescriptions for 100 tablets of OxyContin every four days. The physician, suspecting drug seeking, called ProMutual Group to ask how to terminate the patient from his practice.*

The patient may have been a drug seeker. It is equally likely that he was selling the OxyContin. However, termination should not be initiated because of a suspicion, no matter how strong. At best, the patient was in pain and needed

active pain management. Alternatively, he may have become addicted to OxyContin, and needed referral to a detoxification program.

After ensuring that the patient no longer had a medically-related need for opioids, the physician might have confronted the patient about his requests for excessive amounts of OxyContin, shared his concern about drug dependency, and told the patient that he could not continue to prescribe the OxyContin in the quantity apparently needed to control the pain. He could then have suggested either (a) switching to a non-opioid drug therapy, (b) helping the patient enroll in a licensed detoxification program, or (c) referring the patient to a physician specifically registered to help with the detoxification process. He should not have tried prescribing decreasing amounts of OxyContin in an attempt to wean the patient from the drug.

Federal statute prohibits physicians from dispensing drugs for the purpose of detoxification unless they have a separate registration or a waiver from such registration to do so.⁸ (See 21 U.S.C §823.) That means that they should not prescribe a different, perhaps less potent, drug nor should they offer lessening amounts of the same drug in an attempt to wean a patient from a drug dependency or addiction.

Unless the patient had been proven to be selling the prescribed OxyContin, termination in this case should have been offered only after all other options had been offered and refused. The termination process itself should have included assurances that the patient was obtaining the required ongoing care. If, on the other hand, the patient was found to be engaging in criminal activities, termination could have been immediate.

Case 2. *A 22-year-old male who had been referred by his internist to a surgeon was being terminated from the*

surgical practice because of noncompliance. Upon receipt of the termination letter, the patient called the surgeon, irate. He demanded that the surgeon send him a copy of his record but release information to no one else. The surgeon believed it might be in the patient's best medical interest to send a copy of the record not to the patient but to the patient's internist. He called ProMutual Group for guidance.

This patient, like all patients with the exception of some psychiatric patients who may be entitled only to a summary of their record, has a right to a copy of his record, but not to the original. In general, copies of a record that is needed for treatment may be sent to another healthcare provider without the patient's written authorization. When, as in this case, the patient specifically requests that the physician not release the record, that request should be honored until or unless a request for release is accompanied by a court order, the patient later signs an authorization directing the surgeon to release records, or in certain emergent situations. In the above case, the patient, but not the internist, should be sent a copy of the patient's record.

Case 3. *A pediatrician wanted to terminate the care of a 17-year-old female whose mother was abusive to the office staff. She called to ask whether to direct a termination letter to the patient or to her mother.*

There are a couple of issues here. First, is the mother also abusive to the patient? Questioning the patient in the absence of the mother might lead to disclosure of a pattern of abuse at home. That would make termination unwise until help could be obtained for the daughter. Secondly, the pediatrician needs to consider discussing the situation with the mother, letting her know that she will be asked to seek medical care for her daughter at another location if the mistreatment of the staff does not end.

If termination is the only option, the letter should go to the mother because unless the daughter is considered emancipated, she is still a minor who is under the control of a parent. Emancipation varies from state to state. In some states a child who is married, serving in the armed forces, or is totally self-supporting

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is considered emancipated. In other areas, emancipation is not a factor of circumstance but a declaration of the courts.⁹ Physicians must be familiar with the statute in their state before treating a minor as emancipated. In this case, if the patient meets none of the criteria for emancipation in her state and has not received a declaration of emancipation from the courts, the letter should go to the mother.

Depending upon the maturity of the patient and the physician's relationship with her, the pediatrician might discuss with the patient the need to terminate—and then send her a copy of the termination letter sent to the mother.

Case 4: *A 32-year-old female had had numerous cosmetic procedures performed by the same plastic surgeon. The patient expressed displeasure with the scar left by a procedure performed to remove a nevus in the periumbilical region. The physician revised the scar at his own expense. However, the new scar led to new complaints and the patient's demanding monetary compensation. The physician called ProMutual Group to ask if he had sufficient reason to terminate the professional relationship.*

Unhappy patients are usually a benign presence in a practice. Occasionally, however, their unhappiness with the physician or an outcome may lead to

anger, which may, in turn, lead to litigation. The patient who expresses unhappiness with the administration of the practice might help bring about needed procedural changes. A discussion with the patient who continually demands special attention (*see Case 5*) may—or may not—result in behavioral changes.

Patients who are unhappy with the results of treatment, including surgical procedure, represent a different challenge. Some of these problems may be averted if in the pre-procedure period:

- The physician does not promise more than he or she can deliver,
- The screening criteria for elective procedures enable the physician to identify and exclude patients with unrealistic expectations,
- The informed consent includes all likely risks.

When the patient is unhappy despite all the efforts of the physician, termination may be the best recourse. The physician should let the patient know that he or she has done all within his or her professional power and, with the patient's interests at heart, feels that it would be in the patient's best interest to continue care elsewhere. The procedure outlined earlier in this article should then be followed. If, as in this case, the patient insists on remaining in the practice, the physician must be firm and express concern at his or her inability to meet the patient's expectations and then persist in following the termination process. Whenever treatment is still underway termination should be deferred until there is little likelihood that it can be considered abandonment.

Returning all or part of a professional fee to an unhappy patient is a business

decision that must be made by each practice on a case-by-case basis. Physicians seeking advice about whether and how to engage in such a practice would be well advised to consult an attorney or to call their medical malpractice insurance company.

Case 5: *A 48-year-old female presented in the office of an internist for an initial visit. The patient was asymptomatic and offered no complaints. The physician spent 45 minutes with her. He found only mildly elevated blood pressure and asked the patient to schedule another blood pressure check in one month. At the second visit, blood pressure was within normal limits. However, the patient entered into a lengthy non-healthcare-related discussion with the physician. After 30 minutes, the physician indicated that he would have to postpone the discussion until another time because there were a number of patients waiting to be seen. The patient flew into a rage at "being treated this way" and slammed the door as she left the office. The physician called ProMutual Group to ask if he had the right to terminate his relationship with this patient about whom he had "a bad feeling."*

The answer is "yes." This patient's unrealistic expectations of the physician's time and attention were indicators of potentially increasing difficulties as the professional relationship progressed. Patients with excessive demands or unrealistic expectations may be terminated from the practice with the same written 30-day notification that any patient would receive, assuming they are not in medical crisis or in the midst of treatment. Ideally, termination should be preceded by a discussion to try and help the patient understand the impact upon the practice of his or her behavior. When termination is inevitable, the reason given might be the physician's belief that another practitioner might be better able to meet the patient's medical

needs, given the fact that they appear not to share the same practice philosophy.

Some physicians might have chosen not to send a letter of termination in this case, believing that the slammed door was an indication that the patient was terminating the relationship. Unless the physician formally ends the relationship, however, the patient is free to schedule another appointment at any time.⁷ In this case, although the patient slammed the door, it was the physician's responsibility to permanently close it.

Conclusion

Physicians have a right to work with their patients, not for them. They have a right to practice in an atmosphere that is safe, to be paid for their services, and to have themselves and their staff respected, their schedules honored, their professional ability valued, and their word trusted. When those rights are violated or irretrievably compromised by the patient's actions or inactions, termination of the professional relationship may be a viable option. This article has presented some of the basic steps that should be a part of the termination process. For help with patient- or practice-specific issues involving termination, physicians should contact their attorney or the risk management department of their medical malpractice insurance company.



References

1. Ending the Patient-Physician Relationship. American Medical Association. Division of Health Law. 1998. Updated 2005. Available at www.ama-assn.org/ama/pub/category/4609.html. Accessed 26 Jan 2006.
2. Saxton, JW. Terminating patient relationships appropriately. *Physician's News Digest*. April 1999. Available at www.physiciansnews.com/law/499saxton.html. Accessed 26 Jan 2006.
3. Tetrault, J and Roediger, J. Severing the Ties, How to End a Patient Relationship Legally. Physician Practice, Inc. Medical University of South Carolina. Available at www.muschealth.com/professionals/ppd/sevties.htm. Accessed 24 Feb 2006.
4. Maltzman, JD and Armon, BD. Can your doctor dismiss you from his/her practice—legally? *OncoLink*. Abramson Cancer Center of the University of Pennsylvania. June 19 2005. Available at www.oncolink.org/resources/article.cfm?c=3&s=38&ss=201&id=869. Accessed 26 Jan 2006.
5. Freeman, J. Terminating Care Without Abandoning the Patient. *Iowa Medicine*. May/June 2005:10.
6. FAQs. Medical Records. North Carolina Medical Society. Jul 1995. Amended Aug 2003. Available at https://secure.ncmedsoc.org/pages/faq/faq_detail.jsp?faq_id=15. Accessed 26 Jan 2006.
7. Myers, C. The Right Way to Say Goodbye. *Unique Opportunities*. Available at <http://www.uoworks.com/articles/patientdismissal.html>. Accessed 26 Jan 2006.
8. U.S. Drug Enforcement Administration. Food and Drugs. Drug Abuse Prevention and Control. 21 USC Sec. 823 01/22/02. Available at <http://www.dea.gov/pubs/csa/823.htm>. Accessed 24 Feb 2006.
9. Stasiak, B. Appendix: Statutory and Judicial Emancipation of Minors in the United States. Northeastern University School of Law. 2002. Available at www.bostoncoop.net/lcd/emancipation/emancipation_appendix.pdf. Accessed 12 Mar 2006.

TERMINATING THE PHYSICIAN-PATIENT RELATIONSHIP Questions for AMA PRA Category 1 Credit (Risk Management)

*Note: Circle the **one** response that best answers each question below and return this page to the address on the reverse side. Five or more correct answers will qualify for one hour AMA PRA category 1 credit (risk management). Please keep a copy for your file.*

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Are you licensed to practice medicine in the U.S.? Yes No

1. Reasons for terminating the professional relationship with a patient include all of the following EXCEPT:
 - a. Verbal abuse
 - b. Drug seeking
 - c. Realistic expectations
 - d. Theft of prescription pads
2. Patients should be given 30 days notification of termination because:
 - a. That is the law
 - b. That is the medicolegal guideline
 - c. That is considered adequate time to find a new practitioner
 - d. That is the standard of care
3. The termination letter should include all except which of the following:
 - a. Reason for termination
 - b. Effective date of termination
 - c. Name of two potential new practitioners
 - d. Offer to send the medical record to the new practitioner
4. Patients should be given the reason for termination:
 - a. Under all circumstances
 - b. Unless they are under treatment for emotional illness
 - c. Only if they specifically request it
 - d. In all situations except abuse
5. Drug seeking is an indication for termination only after:
 - a. Medical reasons for the alleged pain have been ruled out
 - b. The physician's own attempts at detoxification have failed
 - c. The police have been notified of the drug seeking
 - d. The patient consents to enter into a contractual agreement with the physician
6. The patient who "fires" a physician has a right to come back to the practice:
 - a. Never
 - b. For 30 days
 - c. In emergency situations only
 - d. Until being dismissed by the physician

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Author: Linda Greenwald, Editor, Risk Management Publications, ProMutual Group

Advisors: Caroline Carregal, Director of Medical Education Services, Massachusetts Medical Society
Maureen Mondor, Vice President, Risk Management Department, ProMutual Group



Risk Management Department
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Needs Assessment: Questions concerning how, when, and whether to terminate the professional relationship with a patient are asked by numbers of physicians who find themselves unable to please, to treat, or to work with certain patients. Fear of being involved in litigation alleging abandonment leads many physicians to continue an unsatisfactory professional relationship with a patient. This article addresses some of the reasons for which termination might—and might not—be appropriate and the steps that should be included in the termination process. It also highlights some of the issues that might make termination not a straight road but a circuitous path.

Learning Objectives: After reading this article, physicians will be able to:

- Name at least seven reasons for which termination might be indicated.
- Identify five elements that should be included in a termination letter.
- Describe three situations that must be avoided if the physician wishes to avoid an allegation of abandonment.

ACTIVITY EVALUATION

Please complete the following questions. Your opinion is highly valued.

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