



ENDING THE PHYSICIAN/PATIENT RELATIONSHIP¹

...Psychiatrists—in particular—need to be extremely diligent when terminating relationships with their patients.

Psychiatrist A ended her contract with a managed care organization (MCO). How far back in her records is she required to go in notifying patients about leaving the MCO's panel?

Psychiatrist B ended her contract with an MCO by giving the required-by-contract 60-day notice. What does she tell her patients?

Psychiatrist C was terminated immediately from an MCO's panel. What are his responsibilities to his patients?

Psychiatrist D is seriously ill and must retire immediately. His family needs to know what to tell his patients.

Psychiatrist E is seeing a patient who has become increasingly violent and started carrying a gun. She was to terminate the relationship but has been unable to find another psychiatrist for the patient.

Ideally, *all* patients should receive a termination letter when treatment ends, regardless of reason (see sample letter of termination on page 5). The psychiatrist should work with the most recent cases first and continue back as far as reasonable.

For those seeing patients covered by MCOs, the usual guidelines regarding termination apply. Psychiatrists working with MCOs must, of course, check their contracts, which are often quite specific about the termination process.

The bottom line for psychiatrists treating a patient in crisis is that any termination—regardless of the reason—makes them vulnerable to charges of abandonment if the patient is harmed by their action. Unless the patient is willing to transfer to another practitioner or hospitalization occurs, termination is quite risky in an emergency situation.

¹ [Excerpt from APA's *Psychiatric Practice & Managed Care*, July/August 1999]

MANAGING RELATIONSHIPS WITH PATIENTS²

Besides the necessities of the personal relationship you must establish with your patient to be able to provide appropriate treatment, the psychiatrist-patient relationship has formal rules that must be adhered to in the interest of protecting yourself from malpractice liability. Once you have agreed to having a treatment relationship with a patient, you are legally and ethically obligated to continue that relationship until it is terminated in a proper manner (see below).

AVOID CREATING AN INADVERTENT PHYSICIAN-PATIENT RELATIONSHIP

The following are several situations where you might inadvertently establish what could legally be construed to be a psychiatrist-patient relationship and advice on how to avoid doing this.

Informal Counseling or Prescribing for Friends

Just answering general questions at a social gathering would not constitute establishing a physician-patient relationship, but any time a colleague or friend asks to discuss a problem with you and perhaps get some advice, you're running a risk. In such a situation you must be careful to make it clear that you are not functioning as the person's physician, but only as a friend, and cannot make treatment decisions. It is also important to know that, as far as the law is concerned, prescribing or dispensing medication to a person establishes the physician-patient relationship.

Initial Visit or Consultation

In private practice, you may see a patient one time and decide, for whatever reason, that you do not want to provide treatment for this individual. This shouldn't create a problem as long as you, or the member of your staff who sets up the appointment, makes it clear that the first meeting is just an opportunity for you and the patient to meet each other and see if you want to establish a treatment relationship. If you do not do this, you will be obligated to help the patient find a new doctor and remain available until she does, just as you would with a long-time patient. If you're working in managed care you may be contractually obligated to agree to take any patient who is referred to you, so this first-visit exception would not apply.

Limited Purpose Examinations or Consultations

If you are asked to examine a patient for a specific purpose (i.e., to meet a requirement of an employer, insurer, or government agency) you should be sure to explain the limited purpose of the examination at the outset to make it clear that no physician-patient relationship is being established. Although you are clearly not liable for continuation of care in such a situation, you are still liable for any negligence in carrying out the examination. So remember to examine people you see under these circumstances with the same care you'd use with your regular patients.

² This section is taken from the APA's reference guide, **Practice Management for Early Career Psychiatrists**, first published in May 1999 and updated regularly by the Office of Healthcare Systems and Financing. The 300+ page guide gives psychiatrists a quick reference to the details of practicing psychiatry. The publication is available online without charge to APA members via the APA website (www.psych.org) in Members' Corner. A hard copy may be purchased (\$50.00 for members, \$150.00 for nonmembers) through APA's Office of Healthcare Systems and Financing)

Informational or Educational Activities

If you participate in any of the community outreach programs we mention in Chapter 7 you'll want to be sure to make it clear that by addressing a group about psychiatric issues and answering questions from the audience, no matter how specific those questions may be, you are just providing general information and are not establishing a physician-patient relationship

EMERGENCIES

Once a physician provides care for a patient in an emergency situation, she takes on an obligation to continue treating the patient until other assistance arrives. Beyond that she has no duty to continue to provide care for the patient, and, in fact, in most jurisdictions physicians are not even required to offer assistance in emergency situations at all (there are exceptions to this rule, so you should check your state's laws).

TERMINATING TREATMENT

For whatever reasons—a patient's failure to follow treatment instructions or failure to pay; a psychiatrist's belief that another therapist would provide better treatment; a determination that therapy is no longer needed; a psychiatrist's retirement—it is sometimes necessary to terminate a relationship with a patient. To do this without risking liability for abandonment, a psychiatrist must:

- Give the patient reasonable notice and time to find a new therapist
- Assist the patient in the process of finding a new therapist
- Provide records and information as requested by the new therapist.

Appendix Y is a sample letter that could be used to inform a patient that you are terminating treatment.

Although thirty days notice is generally considered appropriate, in a rural or other underserved area it may be necessary to provide longer notice. When terminating a relationship with a patient it is also necessary to give proper instructions concerning any medication the patient is taking (e.g., if stopping medication abruptly could cause injury).

If one of your patients chooses to terminate the relationship, or simply fails to show up, it is also appropriate to acknowledge in writing that the relationship has been terminated and recommend further treatment if you feel it's needed.

It is never appropriate to sever a treatment relationship when a patient is in an emergency situation unless the patient agrees to see another clinician or is hospitalized.

MANAGING TERMINATION RISK IN MANAGED CARE³

When a managed care organization refuses approval for future visits, the situation is similar, in many ways, to the traditional problem when a patient loses a job or health insurance. The psychiatrist's first obligation is to the patient, not to the managed care organization.

Avoiding Contract Pitfalls

...A psychiatrist should be watchful for at least three kinds of provisions that can significantly limit options in a termination situation.

First, does the contract proposed by the managed care company forbid the contracting psychiatrist to continue treatment on a private basis after the organization has terminated benefits? If so, the psychiatrist will not be able to proceed as he has when insurance benefits were exhausted by offering continued treatment.

Second, does the contract attempt to restrict the psychiatrist's ability to refer a patient to other treatment resources, particularly those outside the managed care network? If so, the psychiatrist may not be able to refer the patient to the provider s/he feels may best serve the patient.

Third, does the contract prohibit psychiatrists from expressing to the patient their disagreement with the coverage decision of the managed care company? If so, the psychiatrist may not be free to adequately counsel the patient regarding the additional treatment the psychiatrist believes the patient should receive

Terminating in a Managed System

If, despite the decision of a managed care organization not to pay for additional treatment, a psychiatrist believes that additional treatment is necessary, the appeals procedure set out by the managed care organization must be followed. At the same time, the psychiatrist must inform the patient that further visits have not been approved and make preparation for termination of treatment.

Should the psychiatrist see the patient while the appeal is pending? In general, the answer is yes. An additional session that may not be reimbursed can be worthwhile protection against a subsequent suit for abandonment. However, if the appeals process drags on for more than a week or two, the psychiatrist is entitled to treat the patient in the same way as one whose insurance has been cancelled.

If the contract does not prohibit the discussion of the option of private treatment, the psychiatrist can raise the option, explaining what treatment the psychiatrist thinks is necessary and the terms on which treatment will be provided.

If continued treatment with the psychiatrist is not possible for contractual or economic reasons and the psychiatrist is not precluded by contract from expressing disagreement with the benefit termination or from making referrals, the psychiatrist should do as s/he would in any other case.

³ Reprinted from *Rx for Risk*, Psychiatrists' Purchasing Group, Inc. September/October 1995. Since then, some states have passed laws that may affect how psychiatrists handle terminations. If you have questions about procedures, check with a local healthcare attorney.

Discuss with the patient the need for continuing treatment, and identify alternative sources of care. Offer to assist the referral or record transfer. **And do not abandon the patient if he is in crisis.**

What if the psychiatrist has not managed to eliminate a clause restricting referrals outside the managed care network? In these situations, the provider is faced with a dilemma. Do the right thing by the patient or abide by the contract?

The choice may not be quite so black and white when payment is being terminated by the MCO but the patient remains in crisis. Restrictions on out-of-network referral may not apply when there is clearly no insurance coverage for such a referral. Nothing in the contract can limit the psychiatrist's professional obligation to the patient. The therapist must discuss what, based on professional judgment, is the best plan for future treatment of the patient's illness. If this means recommending care with another provider who will accept private payment or see the patient on a "no fee" basis, then the psychiatrist should make this recommendation.

If you think that patient is in crisis, even if the managed care organization does not, then you must act on your own clinical judgment. Treat the managed care patient the same as you would any other patient who is being terminated during a crisis. See the patient through the crisis if you cannot arrange alternative care. Suggest clinical alternatives, and follow up with a letter just as you do in other terminations.

Sample Letter: TERMINATION OF PSYCHIATRIST-PATIENT RELATIONSHIP⁴

Dear [Name of Patient]:

This is to inform you that I believe it is necessary to terminate our professional relationship. [Psychiatrist may, but is not required to, specify reason.]

I have been serving as your psychiatrist since [specify date], and am currently treating you for [indicate diagnosis] with a program of [specify treatment mode, including any drugs]. In my view, you [would/would not] benefit from continued treatment.

If you wish to continue to receive treatment, you are, of course, free to contact any psychiatrist of your choice. However, you may wish to contact one of the following [psychiatrists/facilities], [who/which] may be willing to accept you as a patient: [indicate specific referrals here]. If you find that none of these choices is acceptable, please contact me; I will make every effort to suggest additional alternatives. If you do decide to obtain treatment from one of these psychiatrists or facilities, or from any other psychiatrist or facility of your choice, I will be happy to forward your clinical records to your new doctor on your written authorization.

Finally, be assured that I will be available to treat you until [specify date]. [The following factors, among others, may be used to determine what is "reasonable" in a particular situation: condition

⁴ **Practice Management for Early Career Psychiatrists**, American Psychiatric Association, Office of Healthcare Systems & Financing, Fifth Printing, September 2004.

of the patient, length of the psychiatrist-patient relationship, availability of other psychiatric services in the community, reason for termination, and amount of money owed, if any.]

Sincerely,

[Psychiatrist's Signature]

[Psychiatrist's Name]

Note: it is advisable to send termination letters via certified mail, return receipt requested.