

Avoiding Claims of Abandonment When Terminating a Patient

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There are many reasons a physician may desire to terminate a patient and end the physician-patient relationship. For example, repeatedly missing appointments, refusing to follow treatment plans, being disrespectful, rude, or abusive toward office staff, and failing to pay for medical treatment are all common reasons for terminating a patient. The physician-patient relationship, however, is protected by New York law and, therefore, physicians should act prudently to terminate the physician-patient relationship through the following procedure.

The physician should provide the patient with written notification that he or she is terminating the physician-patient relationship. In New York, hospitals and nursing homes are required by the Public Health Law and Department of Health regulations to provide written notice of discharge, including a discharge plan. There is no corresponding requirement for physician offices, however, all medical doctors must avoid "abandoning" a patient as that term is defined in New York statutes and interpreted by the Courts.

The Education Law indicates the following is professional misconduct: "[a]bandoning or neglecting a patient under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care." N.Y. Educ. Law § 6530(3). If properly written, the notice of termination can satisfy this professional standard by providing the patient with a reasonable period of time to find another physician. Thirty days notice is generally considered a reasonable amount of time for a patient to locate another practitioner, but thirty days is not specifically required under New York law.

During the notice period, the terminating physician should be available if the patient needs immediate professional care, including care for emergencies. This requirement comes from the Education Law's rule that physicians avoid neglecting a patient in immediate need unless reasonable arrangements have been made for other care.

Making "reasonable arrangements" should include: (a) providing enough advanced notice of the termination; (b) providing a list of referral sources; and (c) offering to transfer a copy of the patient's medical records to his or her new physician. In the written termination letter, the physician should include a specific date, thirty days or more in the future, upon which the physician-patient relationship will terminate. By doing so, there is no confusion over which date the relationship will end.

As for referral sources, the physician should provide a list of organizations the patient could contact to locate a physician who is accepting patients. For example, the termination letter could list the Medical Society of the State of New York's "Physician Lookup" resource available online at http://www.mssny.org/MSSNY/Doc_Lookup or the AMA's "Doctor Finder" resource available online at <http://apps.ama-assn.org/doctorfinder>. There is no requirement to provide specific names of providers.

Finally, the physician should offer to transfer a copy of the patient's records to the new practitioner. Medical facilities may charge the patient for the reasonable costs of reproducing records. For paper copies, the charge may not exceed seventy-five cents per page, but for x-rays and other film reproductions, the charge may be the actual cost of reproduction. N.Y. Pub. Health Law § 17. The Public Health Law, however, states that records "shall not be denied solely because of inability to pay." *Id.* Therefore, in the termination letter, the physician may choose to include a sentence notifying the patient of the costs associated with reproducing the records and request reimbursement. However, the physician cannot withhold transfer of the records if the patient is unable to pay.

In conclusion, when a physician desires to terminate a physician-patient relationship, providing a written termination letter to the patient is essential to avoid potential claims of abandonment. The termination letter should include: (i) a specific date, thirty days or more in the future, as advance notice of termination; (ii) a list of referral sources the patient may turn to for a new physician; and (iii) an offer to transfer copies of the patient's medical records including notice of the costs of reproduction if there will be a charge.

The attorneys of Bousquet Holstein PLLC's Health Care Practice Group counsel healthcare professionals and entities of all sizes with regard to issues specific to the healthcare industry. For more information please visit BHLAWPLLC.com or contact Joshua Werbeck at jwerbeck@bhlawpllc.com.