

# **Navigating Difficult Conversations with Patients and Families to Prevent Board Complaints**

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# Objectives



Recognize common challenging behaviors



Develop effective communication strategies



Implement appropriate and clear boundaries



Learn when and how to terminate the physician-patient relationship

# Physician- Patient Relationship

A physician-patient relationship is a consensual agreement between a patient and a physician to treat the patient's medical needs. It's based on trust and mutual understanding, and is characterized by shared responsibility for the patient's healthcare.

# Duty of Care

- Once a physician undertakes treatment, they **cannot** abandon the patient.
- A physician however, may legally and ethically terminate the doctor-patient relationship, so long as certain steps are taken.
- In making this determination, it is important to keep in mind that, although terminating a physician-patient relationship may result in a complaint to the Board of Registration in Medicine, ending an unhealthy and untherapeutic relationship may avoid more serious problems (including potential litigation) later on down the road.

# Relationships Built on Trust

- Trust is foundational to the patient-physician relationship
- Heavy focus on patient trust of their physician, but what about a physician's trust of their patient?
- How to dissolve the relationship without harm to the patient and remain protected from liability?





# The “Difficult Patient”

- Generally, once a physician begins treating a patient, they owe the patient a duty and cannot “abandon” the patient
- A physician may legally and ethically terminate the patient-physician relation by adhering to certain safeguards
- Physicians should be mindful of angering a patient by terminating the relationship, resulting in a complaint to the Board of Registration in Medicine
- However, continuing a non-functioning relationship could lead to more serious problems, including litigation

# Effective Communication

- Make sure to:
  - Listen;
  - Make eye contact;
  - Acknowledge;
  - Respond.
- Some of the most valuable insight comes from the patient.
- Prioritizing the patient's immediate concerns
- Slow down when speaking to the patient
- Listen intently and use body language that expresses attentiveness
- Express empathy and understanding

# Effective Communication

- Elicit the patient's expectations
- Manage and educate expectations
- Remain calm and avoid getting drawn into a conflict
- Diffuse feelings of anger and dissatisfaction
- Acknowledge that the patient is upset or dissatisfied
- Good communication:
  - Promotes patient participation;
  - Creates realistic expectation;
  - Improves coordinated care;
  - Avoids error (and lawsuits).



# “The Challenging Family Member”

- Like difficult patients, there can be difficult family members
- Make clear with patient if PHI can be discussed with them.
- Understand why they may be “difficult”
  - Emotions/Uncertainty
  - Interpersonal issues
  - Unrealistic expectations
- Employ similar approach of Effective Communication



# Maintaining Boundaries



# Boundaries

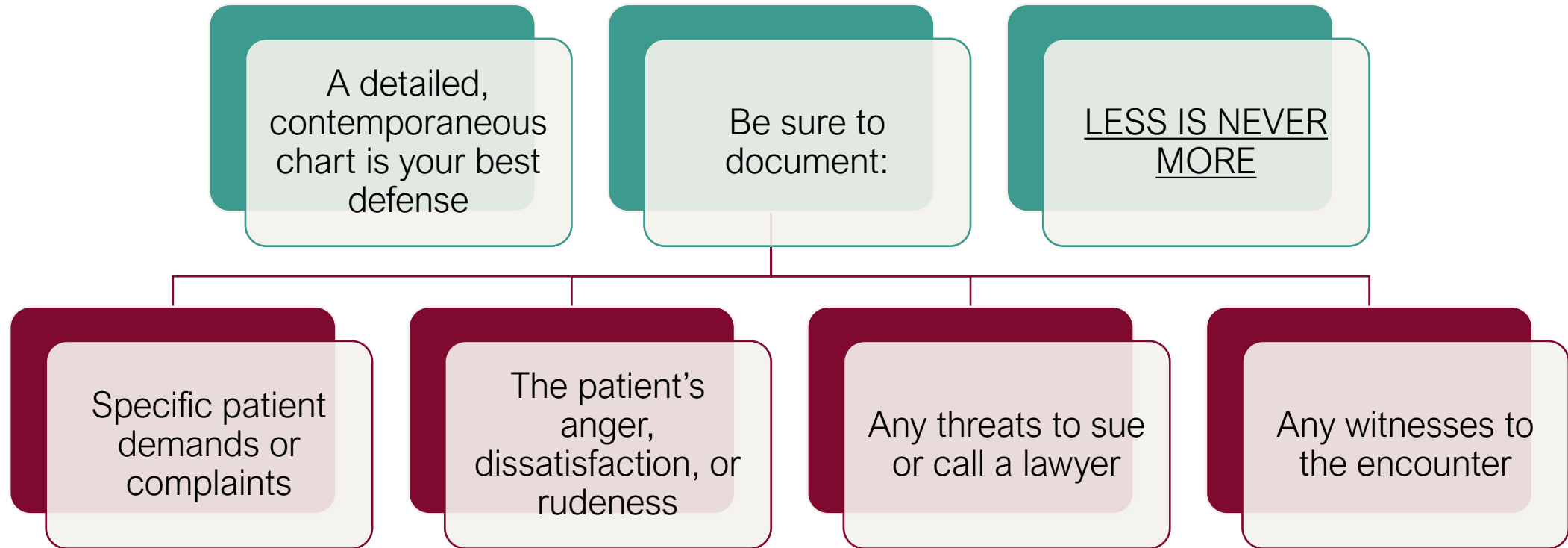
- Set clear boundaries at the outset
- Have clear, well-defined rules to cite
- Examples:
  - Uniform narcotic refill protocol
  - Behavior policy (patients can be terminated for violating the policy)
  - Behavioral agreement or prescription contract



# Chaperone

- A chaperone is a tool used to protect patients and clinicians, and is often utilized during sensitive examinations (breast exams, pelvic exams)
- Chaperones act as witnesses for the patient and clinician
- A chaperone may help protect a clinician against a patient complaint by clearing up potential misunderstandings
- The presence of a chaperone is useful to reinforce the professional nature of the interaction and content of the exam

# Detailed Documentation



# Damage to the Physician-Patient Relationship

- The physician-patient relationship can be damaged by a number of factors.
- When this occurs, the physician *must* decide if a **healthy** and **therapeutic** relationship can be maintained.
- If the relationship **cannot** be maintained, the physician **must** take the steps necessary to **appropriately terminate** the physician-patient relationship.
- **Improper dismissal** of a patient can lead to both **ethical** *and* **legal** dilemmas.

# Grounds for Dismissal

The power to dismiss a patient is most likely to arise due to the patient's:

- 1) not adhering to the treatment plan;
- 2) failing to attend follow-up visits;
- 3) failing to follow office policy, such as those implemented for prescription refills or appointment cancellations;
- 4) failure to follow behavioral contract;
- 5) verbal or physical abuse of the provider or the provider's staff;
- 6) files a complaint or initiates a lawsuit against the physician or practice;
- 7) harassment of the provider or the provider's staff; or
- 8) non-payment of healthcare services.

# Circumstances That Cannot Serve As Grounds for Dismissal

A patient may not be dismissed due to:

- issues arising from a mental or physical disability
- language barrier
- cultural difference
- race
- color
- religion
- national origin
- sexual orientation
- gender identity
- any other basis that would constitute invidious discrimination.



# Dismissal Limitations in Provider Contracts

- Physicians should be aware that some provider contracts (e.g. Medicare, Medicaid, and private health insurance plans) may stipulate that the physician must accept certain patients and specify the steps the physician must follow in order to dismiss a patient.
- The physician should consult and abide by these rules.



# Procedure for Termination

- If the decision is made to terminate the physician-patient relationship, it is crucial that the proper procedure for such termination be followed.

# Termination Letter

- A proper termination letter should include the following information:
  - Explain the reasons behind terminating the patient from treatment in an objective, concise and non-confrontational manner.
  - When appropriate, a physician may even express regret at the situation by stating something to the effect of: “I am sorry that you perceive a sense of disappointment in your treatment relationship with our office.”
  - Offer to provide the patient with assistance in finding a new physician or provide some suggestions directly in the letter, such as advising the patient to contact his/her insurer for names of physicians in their area who are panel providers.
  - Provide a clear timetable for discharge indicating that you will continue to see the patient for a specified period of time (i.e. 30 days) for any acute problems.
  - If the patient requires ongoing medical care, or has a particular issue that needs close follow-up, be sure to highlight that issue to the patient in the letter and inform the patient of any potential consequences if he or she fails to do so.
  - Indicate to the patient that you will provide the subsequent care provider with a copy of the patient’s records and provide instructions on how to request that.
  - Notify the patient’s other physicians that the patient is being transferred out of your care and whenever possible provide the contact information for the new physician.



# Sufficient Notice of Termination

- The most important factor is ensuring that a patient is provided with **sufficient notice** that the relationship is ending.
- The American Medical Association has stated that notice must be “long enough in advance to permit the patient to secure another physician.”
- Some factors to consider regarding the degree of notice required are the:
  - (1) condition of the patient;
  - (2) specialty of physician; and
  - (3) number and availability of similar providers in the community.
- **Always, clearly communicate an end-point for treatment and instructions for emergency care.**

# Mailing and Saving the Termination Letter

- Once your letter is complete, mail the notice to the patient, both by first-class and certified mail, with a return receipt requested.
- Ensure to keep and file:
  - (1) a copy of this letter;
  - (2) the original certified mail receipt; and
  - (3) the original certified mail return receipt.
- It should be noted that prior to sending this letter, it may be advisable to **Speak to an attorney** prior to terminating a patient from your practice to avoid any potential legal problems.

# Conclusion

- Under proper grounds and with sufficient notice, a provider can terminate the relationship.
- But, were a provider to improperly terminate the physician-patient relationship, they may be liable for a claim of abandonment, which is **indeed actionable** in Massachusetts.
- It is **crucial** for the physician-patient relationship to be terminated **properly**.

## **NEED FOR LEGAL COUNSEL**

- Confer with legal counsel regarding proper procedures for termination procedures
- If a Board complaint is filed, contact qualified legal counsel as soon as possible as you only have 30 days to file a response
- While legal counsel is not required in defending a Board Complaint, it is highly recommended



# Coverage Issues

## Professional Liability Policy

- Limited monetary amount

## MMS Legal Advisory Program

- Provides coverage through the investigatory process until the Board seeks to take adverse action against the physician's license
- ACHWG is the legal counsel for this program

## Layering Coverage

- Using your LAP coverage first saves the limited amount of funds available to be spent retaining experts and defending the matter through hearing if necessary





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*Every physician matters, each patient counts.*

# Legal Advisory Plan

For a **nominal fee of \$95/year**, the LAP offers you support and legal services, which include:

- Crafting an initial written response to the Board addressing the complaint
- In-person legal representation at an informal Board conference
- An extra 30-minute consultation on Board issues, even when there's no complaint

The value ranges anywhere from \$3,000 to \$10,000.

It is important to be enrolled *prior* to the initiation of a Board investigation to avail yourself of plan services.

Learn more at [www.massmed.org/lap](http://www.massmed.org/lap)



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