



Medical Record Legal Considerations

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Starting the Patient Physician Relationship

Physician Patient Relationship is a Moral Activity

- ❖ The relationship is one of trust
- ❖ Physician is responsible to:
 - Put the patient's needs and welfare before his own self-interest;
 - Provide medical care to patients based on evidence-based science and sound judgment; and
 - Work in best interests of patient
- ❖ Relationship started by mutual consent:
 - but relationship is not on a equal footing
 - physician is in a position of power in relationship
 - patient is vulnerable
 - Relationship exists to serve patient's medical needs, not physician's.

Prospective Patients

- ❖ Physicians are not ethically required to accept prospective patients and may exercise their right to choose who they serve

Acceptable Reasons to Reject Prospective Patients

- ❖ Care requested is:
 - beyond physician's competence or scope of practice
 - is known to be scientifically invalid
 - not medically indicated
 - incompatible with physician's deeply held personal, religious, or moral beliefs
- ❖ Physician lacks resources to care for patient in a safe, competent, respectful environment
- ❖ Accepting the patient would seriously compromise physician's ability to provide needed care to his other patients
 - needs to be balanced against promoting access to care
- ❖ Patient is abusive or threatening to physician, staff, or patients (must rule out underlying medical condition causing behavior)

Unacceptable Reasons for Rejecting Patients

- ❖ Discrimination against a prospective patient based on:
 - race, gender, sexual orientation, gender identity
 - or personal/social characteristics not relevant to the individual's care
- ❖ Patients for whom physician is contractually obligated to provide care

Starting Relationship without Consent

- ❖ A physician-patient relationship may be started without the patient's consent:
 - In emergency situations where the patient is unable to consent;
 - Medical care to a prisoner under a court order;
 - Independent medical examinations requested by a third party (a limited patient-physician relationship may exist)



Treating & Prescribing to Yourself and Family Members



Question:

A physician has decided to provide medical care for himself, his family members, and his relatives. He's a very smart physician and believes he is the best doctor for his family.

Can he provide medical care and write prescriptions to his family?

Reasons Not to Treat Family

❖ Drawbacks:

- emotions may compromise professional medical judgment
- may require sensitive questions or examining intimate parts
- patient (child) may be reluctant to disclose sensitive information
- patient (child) may not feel free to refuse care
- patient may not have true autonomy and may not be able to give informed consent (refusal)

❖ Therefore:

- physicians ethically should not treat themselves or family members

Acceptable Conditions for Treating Family

- ❖ Ethically acceptable to treat self or family:
 - in emergency or isolated settings where no other qualified physician is available
 - for short-term, minor problems
- ❖ When treating family members, physicians should:
 - document treatment or care provided
 - send relevant information to patient's primary physician
 - avoid providing sensitive or intimate care for a minor patient
 - recognize the limitations of patient autonomy

Treating Self or Family

❖ California Law

- no law that prohibits prescribing controlled substances to family member, employee, or friend

❖ Must comply with laws of prescribing, including:

- must perform and document an appropriate history and physical exam
- must document medical indication for the prescription
- must keep adequate and accurate medical records
- follow same practice as for any other patient for which medications are prescribed



Recommending Cannabis in California

- ❖ Physicians who recommend cannabis to a patient
 - May not accept, solicit, or offer any form of remuneration from or to a licensed dispenser, producer, or processor of cannabis products in which the licensee or his or her immediate family has a financial interest
 - May not distribute any form of advertising for physician recommendations for medical cannabis unless the advertising contains a notice to consumer
- ❖ A violation constitutes unprofessional conduct and Medical Board of California will take action





Personal Use of Cannabis in California

- ❖ No formal policy by MBC regarding physician use of cannabis for medicinal or recreational purposes
- ❖ MBC views cannabis like any other controlled substance or alcohol
- ❖ California law prohibits physicians using drugs or alcohol to the extent as to be dangerous to themselves or any other person, and from being impaired while practicing medicine
- ❖ MBC will take action for:
 - Being impaired
 - Unprofessional conduct, and
 - Violating the Medical Practice Act



Personal Use of Cannabis in California

- ❖ Physicians convicted for cannabis-related crimes, whether misdemeanor or felony, will be treated by the MBC as it does any other crime committed by a physician
 - MBC will look at the circumstances surrounding the conviction and take appropriate action to protect the public



Mandatory Reporting Conditions



Reportable Conditions

- ❖ Physicians must report certain diseases and conditions to their Local Health Officer (LHO) [Health & Safety Code § 120250]
 - Failure to report a reportable condition constitutes gross negligence and incompetence
- ❖ Syphilis
 - All cases of suspected or confirmed syphilis should be reported within one working day
 - Report goes to local health office of jurisdiction where patient resides
 - Can be by phone, fax, or electronically
 - Inform patient at time of testing that, if positive, confidential report to LHO required and the health department may contact patient for follow up



Reportable Conditions

❖ Tuberculosis

- Must report to LHO within one working day
- The LHO will report case to California Department of Public Health
- Must also report when patient stops TB treatment and all household contacts of TB case patient

❖ Lapses in Consciousness

- Must report immediately in writing to LHO
 - Name, date of birth, address of every patient older than 14
- Report will be sent on to DMV to enforce Vehicle Code
- Will be kept confidential and used solely to determine eligibility to operate a motor vehicle



Reportable Conditions

❖ Drugs – Duty to Warn

- Pharmacists must give warnings of harmful effects of prescribed drugs combined with alcohol or if drug impairs ability to drive
- Physicians who dispense sample pills in their clinic have same duty to warn

❖ Injuries by Deadly Weapon or Criminal Act

- Must report known or suspected injuries by a firearm
- Must report injuries resulting from assaultive or abusive behavior
- Oral report by telephone immediately
- Written report to law enforcement agency within two working days



Reportable Conditions

❖ Pesticide Poisoning

- Must report pesticide-related illness to LHO by telephone within 24 hours and in writing within 5 days
- Must also file report with the Division of Labor Statistics and Research within 24 hours of the initial examination

❖ Child Abuse

- Must report known or suspected child abuse to a child protective agency as soon as possible by telephone and in writing within 36 hours
- Failure to report
 - punishable by imprisonment for up to six months and a fine of up to \$1,000
 - Considered unprofessional conduct and is grounds for disciplinary action and administrative citation by the MBC
 - grounds for suit for civil damages for any subsequent injury to child



Reportable Conditions

❖ Consensual Sex Involving a Minor

- Must report female child under 16 years old impregnated by man 21 years or older
- Must report children 14 years or older if reasonable suspicion sexual contact non-consensual
- Children under 14 years presumed unable to consent to sexual activity
 - all sexual contact violates the law and must be reported where reasonable suspicion of sexual activity
 - presence of sexually transmitted disease



Reportable Conditions

❖ Elder Abuse

- Must report all actual or suspected abuse of dependent adults and elderly dependent adults
 - Includes: physical abuse, mental abuse, sexual abuse, exploitation, neglect, self-neglect, intimidation, deprivation of nutrition, and financial abuse
- Must make confidential report to an adult protective service agency or law enforcement agency
 - Immediately by telephone
 - written report within two working days



Reportable Conditions

❖ Injuries from Neglect or Abuse

- Must report patients transferred from a health or community care facility who shows signs of physical injury, neglect, abuse, or battery
- Immediately by telephone and in writing within 36 hours
- Person making report is immune from liability
- Failure to comply
 - misdemeanor punishable by up to six months in county jail and/or a fine of up to \$1,000
 - considered unprofessional conduct by the MBC



Publications Physicians Must Distribute to Patients



Publications Physicians Must Distribute

- ❖ **A Patient's Guide to Blood Transfusions** [Health and Safety Code § 1645 (the Paul Gann Blood Safety Act)]
 - standardized summary of the positive and negative aspects of receiving blood
- ❖ **A Woman's Guide to Breast Cancer Diagnosis & Treatment** [Health and Safety Code § 109275]
 - summary discussing alternative breast cancer treatments for women who are being biopsied or treated for breast cancer



Publications Physicians Must Distribute

❖ **Gynecologic Cancers .. What Women Need to Know** [Health and Safety Code § 109278]

- Must be distributed by physician responsible for annual gynecologic exam
- Describes symptoms and diagnosis of gynecological cancers

❖ **Professional Therapy Never Includes Sex** [Business and Professions Code § 728]

- Psychiatrist must distribute to patients who have previously been involved sexually with their psychotherapist during prior treatment
- Summarizes their legal rights and remedies



Publications Physicians Must Distribute

❖ **Things to Consider Before Your Silicone Implant Surgery** [Business and Professions Code § 2259] (Cosmetic Implant Act of 1992)

- Must provide to patients considering implant surgery

❖ **What You Need to Know About Prostate Cancer** [Business and Professions Code § 2248 and Health and Safety Code § 109280] (Grant H. Kenyon Prostate Cancer Detection Act)

- Must be provided when examining a patient's prostate gland
- Summarizes availability of appropriate diagnostic procedures



Obtaining Patient Records from a Previous Physician

Obtaining Medical Records from a Previous Physician

- ❖ Former physician should make medical records available promptly.
- ❖ Proper authorization to transfer medical records must be granted by patient.
- ❖ Physician may be sued for breach of confidence or an invasion of privacy for divulging information without patient's written authorization



Patient Access to Own Medical Records



Patient Has Right to Access Own Medical Record

- ❖ Patients can make a written request to review or obtain a copy of medical record and have the right to inspect and obtain copies of their medical records
 - Must allow patients to inspect their medical records within 5 working days after receiving a written request.
 - Must give copy of medical record within 15 days after receiving a written request
 - May charge a fee of up to 25 cents per page or 50 cents per page for records copied from microfilm plus reasonable clerical costs
 - Can draft comprehensive summary for the patient in lieu of making copies
 - must be made available to patient within 10 working days from the date of request (and up to 30 days if record is of extraordinary length or patient has been discharged from a facility within the last 10 days)
 - Provider may charge a reasonable fee based on actual time and cost for preparation [Health and Safety Code § 123130]



Patient Has Right to Access Own Medical Record

- ❖ Release of medical records to parents of minor patient optional
 - Balance right to obtain records with need to protect physician-patient relationship with minor patients [Health & Safety Code § 123115]
- ❖ Physician may deny patient's request for medical records
 - Substantial risk of detrimental consequences to patient having access to psychiatric or mental health records
- ❖ Patient has right to add addendum to medical record
 - May provide a written addendum about any item in medical record patient believe to be incomplete or incorrect
 - Healthcare provider must attach the addendum to the patient's medical record and must include addendum whenever the records are provided to a third party [Health & Safety Code § 123111].



Patient Has Right to Access Own Medical Record

- ❖ Physician may not withhold patient medical records because of unpaid healthcare bills.
 - Failure to do so subjects physicians to sanctions by the MBC
- ❖ Willful violation of “Patient Access to Health Records Act”
 - constitutes unprofessional conduct
 - grounds for disciplinary action by MBC
 - may include license suspension or revocation



Managing Access to Medical Records

Managing Medical Records

- ❖ To manage medical records responsibly, physicians should:
 - Prohibit access to patients' medical records by unauthorized staff
 - Consider how long you should keep medical records
 - Immunization records should be kept indefinitely
 - Keep records that may have a bearing on patient's future health care needs
 - Make medical records available
 - When requested by patient
 - To physician who takes up patient's care
 - As otherwise required by law
 - Never refuse to transfer records on request by patient
 - Charge a reasonable fee (if any) for transferring record
 - Discarded records should be destroyed to protect confidentiality



California Statutes related to Terminating Patient-Physician Relationships



Question:

You have had a patient in your practice for a while. The patient has faithfully made regular visits but has not been compliant with your medical regime for taking hypertension medications. You have repeatedly explained the risk of nonadherence, and you have rescued the patient on many occasions with emergent medications, usually in the local emergency department over a weekend. You are convinced that the patient understands but stubbornly refuses to comply. You decide to terminate this patient from your practice.

Can you?



Question:

An internist has been managing a diabetic patient for the last 10 years. The patient's condition is progressively getting worse. The patient is not happy with the physician's management.

Can the patient terminate care with the physician?



Question:

An internist refuses to see a complicated hypertensive patient who he has seen for the last 10 years. Internist did not give any notice to that patient, and the patient is now angry with the physician. The patient was recently admitted to a hospital with the diagnosis of stroke.

Has the physician effectively discharged the patient from his practice?



Ending Patient-Physician Relationships

- ❖ Physician can end patient relationships
 - Cannot be discriminatory
 - Cannot be abandonment
- ❖ Acceptable reasons
 - Treatment nonadherence
 - Follow-up noncompliance
 - Office policy nonadherence
 - Verbal abuse
 - Display of firearms or weapons
 - Nonpayment of bills



Ending Patient-Physician Relationships

❖ Exceptions

- Patient in acute phase of treatment
- Physician is only source of medical care within reasonable distance
- Physician is only source of specialized medical care
- Patient is a member of a prepaid health plan

❖ Other situations

- Patient cannot be dismissed or discriminated against based on limited English proficiency or is in a protected class by state or federal law
 - ❖ Americans with Disabilities Act (ADA)
 - ❖ Civil Rights Act
 - ❖ Emergency Medical Treatment and Labor Act (EMTALA)



Ending Patient-Physician Relationships

❖ Other situations (cont)

- For pregnant patients,
 - ❖ Can end relationship in 1st trimester if pregnancy is uncomplicated
 - ❖ Can end in 2nd trimester if pregnancy is uncomplicated and the patient is transferred to another practice prior to cessation of services
 - ❖ Can end in 3rd trimester only under extreme circumstances (e.g., illness of physician)
- Presence of a disability cannot be a reason for terminating relationship unless patient requires care for disability outside expertise of physician



Ending Patient-Physician Relationships

- ❖ Give patient written notice of termination
 - Send by both regular mail and certified mail, return receipt requested
 - Keep copies of all materials in the patient's medical record
- ❖ Written notice should contain:
 - Reason for termination (“inability to achieve or maintain rapport”)
 - Effective date (30 days is adequate)
 - Provisions for interim care
 - Offer referral suggestion for continued care
 - Offer to provide copy of medical records (attach authorization form)
 - Offer to speak with new provider to ensure smooth transition
 - Remind patient of their responsibility to follow-up and continue medical care
 - Explain that medications will be provided only up to the effective date of termination



Physicians Cannot Discriminate

Calif Bus & Prof Code §125.6

"With regard to an applicant, every person who holds a license under the provisions of this code is subject to disciplinary action ... if, because of any characteristics listed in ... Section 51 of the Civil Code, he or she refuses to perform the licensed activity or ... makes any discrimination, or restriction in the performance of the licensed activity."

- ❖ Civil Code § 51 prohibits business from discrimination based on age, ancestry, color, disability, national origin, race, religion, sex and sexual orientation



Physicians Cannot Discriminate

Calif Bus & Prof Code §125.6(a)(2)

"Nothing in this section shall be interpreted to prevent a physician or health care professional ... from considering the characteristics of a patient listed in ... Section 51 of the Civil Code if that consideration is medically necessary and for the sole purpose of determining the appropriate diagnosis or treatment of the patient."



Closing Your Medical Practice

Closing Your Medical Practice

- ❖ Terminates physician-patient relationship
 - Should notify patients sufficiently in advance
 - Need to ensure smooth transition to new treating physician
 - Need to minimize liability of “patient abandonment”
- ❖ Patient has ultimate decision from whom to receive care
 - Send letter to patient explaining closure including final date of practice
 - Advise patients where their medical records will be stored and how to access them
 - Include authorization form with letter to facilitate transfer of medical records to new treating physician
 - If practice is being taken over by another physician, patients can be referred to that physician.



Retention & Destruction of Medical Records



Purpose of Medical Records

❖ Primary purpose of medical records

- Provide information
- For both current and future providers

❖ Secondary purpose

- Billing
- Utilization review
- Quality assurance review
- Risk management
- Statistical review
- Evaluation, prosecution, defense of medical malpractice claims



Retention of Medical Records

- ❖ No California law requiring physician to maintain all medical records for a specific period of time
- ❖ HMO medical records must be maintained for at least 2 years
- ❖ Medi-Cal patient records must be kept for at least 3 years after date of last service
- ❖ Patients whose care was paid out of the Emergency Medical Services Fund must be retained for at least 3 year from the date of last service
- ❖ Records of prescribing, dispensing, or administering Schedule II controlled substances must be retained for 3 years

Retention of Medical Records

- ❖ Workers' Compensation evaluations must be maintained for 5 years
- ❖ Medical records for MediCal patients should be retained for 10 years
- ❖ Medical records should be retained indefinitely for patients under active treatment
 - If space is limited, physicians should retain all records for at least 7 years
- ❖ For patients considered inactive, a 10-year retention period is advised
- ❖ Medical records of minors should be kept at least until the patient reaches the age of majority (18) plus one year
- ❖ The California Evidence Code permits use of microfilmed records; photocopied records may be used if originals have been lost or destroyed



Other Release of Medical Records

Subpoena of Medical Records

- ❖ If patient medical records are subpoenaed for a deposition or court hearing
 - Do not need to surrender original documents; may provide certified copies of medical records
 - Physician may be asked to produce originals for inspection
 - Original medical records themselves are property of the physician



Review of Medical Records by an Investigator

- ❖ In general, patients are entitled to
 - Confidentiality of their medical records
 - Confidentiality of doctor-patient communications
- ❖ Statutory exceptions include reports regarding
 - Child and elder abuse
 - Communicable diseases
 - Pesticide poisoning
 - Medical Board investigations [Business & Professions Code § 2225]

Review of Medical Records by Medical Board

- ❖ Medical Board is a state regulatory agency and therefore exempt from the usual requirements of HIPAA
- ❖ Medical Board investigators have peace officer authority [Penal Code § 830.3]
- ❖ Medical Board may secure patient medical records [Business and Professions Code §§ 2225 and 2225.5]
 - With a search warrant,
 - With a subpoena duces tecum, or
 - Through securing a properly executed patient release of records
- ❖ Physician must produce records within 15 days
 - Failure to comply – civil penalty of \$1,000 per day

