



Ethical & Legal Issues in the Care and Treatment of Patients

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The Good Samaritan Law in California



A Good Samaritan—or not?

A physician is driving along the road and comes upon a single car accident. He pulls his own car over and runs to the scene of the accident. The driver is still in the car. Fearing that the car is going to catch on fire, he pulls the driver from the car and remains with the injured driver until the ambulance arrives. The driver sustains physical injuries during the rescue and is now quadriplegic.

The driver sues the rescuing physician because of injuries sustained during the rescue.

Is the physician liable?



A Good Samaritan—or not?

Several hospitals in Los Angeles are located adjacent to each other. One day, a resident working at one hospital cut through a second hospital to pick up lunch. He did not have privileges at the second hospital. As he walked along the corridor of the second hospital, he heard someone cry out for help. The resident went to investigate and found a patient who he thought was having a seizure. While the resident was trying to help the patient, the patient fell out of bed and hit his head. The patient then stopped breathing. Code Blue was called. Resuscitation was attempted, but the patient died.

Is the resident liable or a Good Samaritan?



The Good Samaritan Law

Calif Health & Safety Code § 1799.102(a)

"No person who in good faith, and not for compensation, renders emergency medical or non-medical care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission.

The scene of an emergency shall not include emergency departments and other places where medical care is usually offered."

"This subdivision applies only to the medical, law enforcement, and emergency personnel specified in this chapter."



A Good Samaritan—or not?

An accountant picked up a car accident victim from the street and brought him to the ER in his car. He did not want to wait for an ambulance at the scene of the accident because he believed the patient's condition was critical. When he arrived at the Emergency Department, he realized he was now late for a very important meeting. He dragged the victim out of the car, propped him up at the entrance to the ED and drove away. Physical examination in the ED revealed quadriplegia.

Is the accountant liable or a Good Samaritan?



The Good Samaritan Law Calif Health & Safety Code § 1799.102(b)(2)

"Except for those persons specified in subdivision (a), no person who in good faith, and not for compensation, renders emergency medical or nonmedical care or assistance at the scene of an emergency shall be liable for civil damages resulting from any act or omission other than an act or omission constituting gross negligence or willful or wanton misconduct. The scene of an emergency shall not include emergency departments or other places where medical care is usually offered."



Ethical & Legal Responsibilities of Physicians and Patients



The Physician Patient Relationship

- ❖ The relationship between a patient and physician is fundamentally a moral activity.
- ❖ The patient-physician relationship is based on the physician's responsibility to:
 - Do good for the patient and alleviate suffering (“beneficence”);
 - Do no harm to the patient (“non maleficence”)
 - Allow the patient, when possible, to decide what to do with their own body (“autonomy”)



The Physician Patient Relationship

- ❖ 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 an equal footing
 - physician is in a position of power in relationship
 - patient is vulnerable
 - Relationship exists to serve patient's medical needs, not the physician's



A newborn has been diagnosed with either trisomy 18 or 13 (incompatible with life) tracheoesophageal fistula, which requires surgery. Mother request surgeon to repair the TE-fistula. Should the surgeon accept newborn as a patient and perform the surgery?

- A. Yes
- B. No

A vertical image on the left side of the slide. It features a wooden gavel with a gold band around its middle, positioned above a silver stethoscope. The background is a light blue gradient.

Prospective Patients

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



Rejecting Prospective Patients – Acceptable Reasons

- ❖ 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)



Rejecting Prospective Patients – Unacceptable Reasons

- ❖ 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



The Physician Patient Relationship

- ❖ 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)



Rights & Responsibilities of Patients

- ❖ Physicians have a duty to serve as advocates for their patients and respect their rights.
- ❖ Patients have the right to the following:
 - To be treated with respect and dignity
 - To receive timely attention to their medical needs
 - To have the opportunity to discuss the risks, benefits, alternatives, and costs of proposed treatments as well as the risks, benefits, and costs of foregoing treatment
 - To reasonably expect that their physician will provide objective guidance about what is considered the optimal course of action for the patient



Rights & Responsibilities of Patients

- ❖ Patient have the right to the following:
 - To ask questions and have their questions answered when they don't fully understand their health status or the recommended treatment
 - To accept or refuse any recommended treatment and have their decision respected
 - To have their privacy and confidentiality respected by the physician and their staff
 - To obtain copies and summaries of their medical records
 - To obtain a second opinion
 - To be advised about any conflict of interest the physician may have with respect to their care
 - To be assured of continuity of care. Physicians should cooperate in coordinating care with other health care professional and, if discontinuing care, give them sufficient notice and reasonable assistance in making alternative arrangements for care.



A 49-year-old woman with cervical cancer has a history of noncompliance. She had surgery a month ago that now needs to be followed up with a course of chemotherapy. The patient has now missed several appointments and the window for the chemotherapy is closing. Can the surgery force her into chemotherapy?

- A. Yes
- B. No



Rights & Responsibilities of Patients

- ❖ Patients are autonomous and exercise control over their health care decisions. With self-governance comes responsibility to actively participate in the healing process
- ❖ Patients have a responsibility to:
 - be truthful and forthcoming with their physicians
 - provide as complete a medical history as they can
 - cooperate with the agreed-on treatment plans or disclose when they have not followed the plan or want to reconsider the plan
 - refrain from behavior that unreasonably places the health of others at risk
 - refrain from being disruptive in the clinical setting



A bus driver has a history of epilepsy. He has requested his physician to keep his history of epilepsy confidential from his employer because this would result in loss of his job. Does the physician have to report the patient's history of epilepsy to the local health office?

- A. Yes
- B. No



California Health & Safety Code §103900

"Every physician and surgeon shall report immediately to the local health officer in writing, the name, date of birth, and address of every patient at least 14 years of age or older whom the physician and surgeon has diagnosed as having a case of a disorder characterized by lapses of consciousness.

However, if a physician and surgeon reasonably and in good faith believes that the reporting of a patient will serve the public interest, he or she may report a patient's condition even if it may not be required under the department's definition of disorders characterized by lapses of consciousness..."



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

- ❖ Before recommending cannabis to a patient, the physician must:
 - Be the patient's attending physician
"Attending Physician" is defined as a physician with a license in good standing who takes responsibility for an aspect of medical care, treatment, diagnosis, counseling, or referral of patient
 - Conduct a medical examination of the patient
 - Determine whether the patient has a "serious medical condition" that warrants the use of cannabis
 - Record in the medical chart the assessment and recommendation
- ❖ Violation of these requirements constitutes unprofessional conduct
 - Medical Board of California action: probation, suspension, revocation



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



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."



The Impaired Physician



Impaired Physician

Calif Bus & Prof Code § 822

“If [the Medical Board of California] determines that [a physician’s] ability to practice his or her profession safely is impaired because [he or she] is mentally ill, or physically ill affecting competency, the [Medical Board of California] may take action by one of the following methods:

- (a) revoking the [physician’s] certificate or license;
- (b) suspending the [physician’s] right to practice medicine;
- (c) placing the [physician] on probation; and/or
- (d) taking such other action in relation to the [physician] as the [Medical Board of California] in its discretion deems proper.

The [Medical Board of California] shall not reinstate a revoked or suspended [medical] license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice [medicine] may be safely reinstated.”



Impaired Physician

- ❖ Physical impairment must interfere with the safe practice of medicine.
- ❖ These include:
 - illnesses that cause fatigue, poor concentration, tremors, weakness
 - medications that impair vision, speech, or hearing;
 - pain that results in irritability
- ❖ Any combination of these conditions that impairs a physician to extent that they cannot practice medicine safely will give the MBC cause to take action.



Impaired Physician – Mental & Emotional

- ❖ Mental impairments also interfere with physician's ability to practice safely:
 - dementia or memory loss
 - depression
 - personality disorders
 - substance use disorders
 - medication side effects
 - sleep disorders



Our Responsibility to Impaired Physicians

- ❖ Physicians with physical or mental conditions that interfere with their ability to practice safely are putting their patients at risk
- ❖ They deserve thoughtful & compassionate care, but our primary consideration must be protecting patients' safety and wellbeing
- ❖ Physicians have an ethical obligation to:
 - ensure impaired physicians cease practicing and receive appropriate assistance in a timely manner
 - report impaired colleagues
 - assist and support recovered colleagues when they return to patient care
 - support peers in identifying physicians in need of help



Reporting the Impaired Physician

- ❖ No statutory requirement to report an impaired physicians in California
- ❖ Moral and ethical duty to report to protect patients from harm and to assist a colleague

