



# Legal Issues in the Care and Treatment of Patients

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# The Good Samaritan Law in California

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## 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?

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## 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?

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## 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."

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## 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?

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## 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."

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## Treating & Prescribing to Yourself and Family Members

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## 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?

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## 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


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## 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

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## 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

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## California Statutes related to Prescribing to Patients

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## Internet Prescribing

Can you set up a website and prescribe medications over the internet?

Calif Bus & Prof Code § 2242.1 (2018):

(a) Prescribing, dispensing, or furnishing dangerous drugs ... without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

- Authored in response to internet marketing of prescription medications
- Violation occurs in state where patient is located
- Violation results in civil penalty of \$25,000 fine per occurrence

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## Internet Prescribing

California now permits telemedicine & internet prescribing due to Covid-19 restrictions

Calif Bus & Prof Code § 2242 (2020)

(a) Prescribing, dispensing, or furnishing dangerous drugs ... without an appropriate prior examination and a medical indication, constitutes unprofessional conduct. An appropriate prior examination does not require a synchronous interaction between the patient and the licensee and can be achieved through the use of telehealth, including, but not limited to, a self-screening tool or a questionnaire, provided that the licensee complies with the appropriate standard of care.

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## Reporting Lost / Stolen Prescription Pads

- ❖ If you suspect your prescription pads have been lost or stolen:
  1. Report theft or loss to local law enforcement
    - ❖ This is for your own protection
    - ❖ Proves any prescriptions written after the date and time of police report are not yours
  2. Report theft or loss of tamper-resistant prescription forms to Department of Justice CURES program no later than 3 days after discovery
    - ❖ A law enforcement agency report number is required so do step #1 first
  3. Notify California State Board of Pharmacy at [BOPcomplaint@dca.ca.gov](mailto:BOPcomplaint@dca.ca.gov)
    - ❖ Board maintains website that lists physicians who have reported pads stolen
    - ❖ Website is available 24/7 to pharmacists, law enforcement, & the public
  4. Notify the Medical Board of California by email to [complaint@mbc.ca.gov](mailto:complaint@mbc.ca.gov) or by letter
    - ❖ Letter should be written on physician's professional letterhead

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## Business & Professions Code §688 Electronic Data Transmission Prescriptions

- ❖ Beginning January 1, 2022, health care practitioners who are authorized to issue prescriptions must have capability to send electronic data transmission prescriptions.
- ❖ Beginning January 2, 2022, a prescription issued by a health care practitioner shall be issued as an electronic data transmission prescription subject to exceptions.
- ❖ Exceptions:
  - ❖ An electronic data transmission prescription is not available due to a temporary technological or electrical failure
  - ❖ The prescribing health care practitioner is issuing a prescription to be dispensed by a pharmacy located outside California
  - ❖ A prescription issued in a hospital emergency department or urgent care clinic when: (1) The patient resides outside California; (2) The patient resides outside the geographic area of the hospital; (3) The patient is homeless or indigent and does not have a preferred pharmacy; or (4) The prescription is issued at a time when a patient's regular or preferred pharmacy is likely to be closed.

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## Physicians Must Offer Naloxone California Law AB 714

- ❖ Prescriber must offer a prescription for naloxone or another drug approved by FDA for complete or partial reversal of opioid depression when:
  - prescription dosage is > 90 MME per day
  - opioid medication is prescribed concurrently with a prescription for benzodiazepine
  - patient presents with increased risk for overdose
    - ❖ Hx of overdose, hx SUD, or patient returning to high dose of opioid but no longer tolerant
- ❖ Prescriber must provide education
  - to patient or patient's parent/guardian on overdose prevention and use of naloxone
- ❖ Does not apply to prescriptions for terminally ill patients

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## Covid-19 Related California Law

### Inappropriate Exemptions May Subject Physicians to Discipline

- ❖ A physician who grants a mask or other exemption without conducting an appropriate prior exam and without a finding of a legitimate medical reason supporting such an exemption within the standard of care may be subjecting their license to disciplinary action.
- ❖ The Board is encouraging the public to file a complaint with the Board if they feel that a physician is granting mask exemptions inappropriately.

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## 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




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## 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



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## 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

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## 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

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## California Statutes related to Terminating Patient-Physician Relationships

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### 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?

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### 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?

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## 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?


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## 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


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## 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)

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## Ending Patient-Physician Relationships

- ❖ Other situations (cont)
  - For pregnant patients,
    - ❖ Can end relationship in 1<sup>st</sup> trimester if pregnancy is uncomplicated
    - ❖ Can end in 2<sup>nd</sup> trimester if pregnancy is uncomplicated and the patient is transferred to another practice prior to cessation of services
    - ❖ Can end in 3<sup>rd</sup> 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

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## 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

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## 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

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## 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."

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## The Impaired Physician

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## 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."

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## 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.

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## 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

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## 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

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## 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

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