

PATIENT CONSENT AND TERMINATIONS

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PATIENT CONSENT

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The Basics

- Informed consent is based on the ethical principle of personal autonomy.
- The principal of autonomy gives patients the right to decide what happens to their bodies.

The Basics

- Adequate Disclosure is a non-delegable duty of the clinician providing treatment.

The Basics

The provider must explain:

1. What is involved with the treatment
2. Anticipated results, benefits and harms of the treatment
3. Possible complications and foreseeable risks
4. Whether the procedure is experimental
5. Risks and benefits of alternative treatment choices
6. Consequences of receiving no medical treatment at all

The Basics

- Most patients have the capacity for decision-making, so the disclosures are made directly to the patient.
- Some persons are not considered autonomous and therefore must have someone else sign for them.

MINORS

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Minors – General Rule

In WV, the general rule is that persons under 18 years of age lack the legal capacity to give valid consent to medical treatment.

Minors - Exceptions

1. Sexually Transmitted Diseases
2. Controlled Substance Dependency
3. Alcohol Dependency
4. Emergencies
5. Emancipated Minors
6. Mature Minors

Mature Minor Exception

Mature Minors are persons under the age of 18 who have been judged by the provider to have the ability to understand the nature and risks and consequences of the offered procedure or treatment.

Mature Minor Exception

- Whether a minor has the capacity to consent depends on the age, ability, experience, education, training, and degree of maturity or judgment obtained by the child, as well as upon the conduct and demeanor of the child at the time of the procedure or treatment.
- The determination would also involve whether the minor has the capacity to appreciate the nature, risks, and consequences of the medical procedure or treatment.

Mature Minor Exception

- If a minor is of an age to understand the issues, their consent is **required**.
- Where there is conflict between the intentions of one or both parents and the minor, the physician must exercise their best medical judgment of the minor's maturity level.

INCAPACITATED ADULTS

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Incapacitated Adults

Governed by the WV Health Care
Decisions Act

Living Wills and Medical POAs

Any competent adult may execute at any time a living will, medical power of attorney (MPOA), or combined MPOA and living will to be followed at a time when they become incapacitated.

Who is an Incapacitated Adult?

“Adult” is a person who is 18 years of age or older, an emancipated minor or a mature minor.

“Incapacity” means the inability because of physical or mental impairment to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented, and to communicate that choice in an unambiguous manner.

Who can Consent for an Incapacitated Adult?

- MPOA Representative
- Court Appointed Guardian
- Surrogate

Surrogates

1. Spouse
2. Adult children
3. Parents
4. Adult siblings
5. Adult grandchildren
6. Close friends
7. Any other person or entity, including, but not limited to, public agencies, public guardians, public officials, public and private corporations and other persons or entities which the department of health and human resources may from time to time designate.

Authority of MPOA Reps and Surrogates

Begins when the patient is determined to be incapacitated.

Ends when:

- Patient is no longer incapacitated
- MPOA Rep or Surrogate no longer willing to serve
- Patient's death

Mixed Messages

Patient's expressed directives >
Decisions of MPOA Rep/Surrogate

Protection for Providers Treating Incapacitated Adults

Health care providers and health care facilities may rely upon health care decisions made on behalf of an incapacitated person without resort to the courts or legal process, if the decisions are made in accordance with the provisions of the WV Health Care Decisions Act.

TERMINATING THE PHYSICIAN- PATIENT RELATIONSHIP

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The Basics

Once a patient-physician relationship has begun, a physician generally is under both an ethical and legal obligation to provide services as long as the patient needs them.

The Basics

Once a patient-physician relationship has begun, it can be terminated:

- When services no longer needed
- By the Patient
- By mutual consent

Patient Abandonment

- Defined as a termination of a professional relationship between physician and patient at an unreasonable time and without giving the patient the chance to find an equally qualified replacement.
- To prove abandonment, the patient must show more than a simple termination of a patient-physician relationship. A patient must prove that the physician ended the relationship at a critical stage in the patient's treatment without good reason or sufficient notice to allow a patient to find another physician, and the patient was injured as a result.

AMA Code of Medical Ethics, Opinion 1.1.5

“Physicians’ fiduciary responsibility to patients entails an obligation to support continuity of care for their patients. At the beginning of patient-physician relationship, the physician should alert the patient to any foreseeable impediments to continuity of care. When considering withdrawing from a case, physicians must: (a) Notify the patient (or authorized decision maker) long enough in advance to permit the patient to secure another physician. (b) Facilitate transfer of care when appropriate.”

Alternatives

Before terminating, consider alternatives to termination.

Best Practices

- Provide written notice by certified mail, return receipt requested.
- Provide brief but valid explanation for terminating the relationship.
- Agree to continue care or emergency care for at least 30 days, to allow a patient the opportunity to secure another physician.
- Provide resources and/or specific recommendations to help a patient locate another physician of a like specialty.
- Offer to transfer records to a newly designated physician upon signed authorization to do so.

Other Considerations

- Medical staff bylaws and/or policies of your medical practice
- Hospital employment contracts
- Contracts with health care benefits plans and managed care providers

Protected Classes

- If the patient is a member of a protected class, federal and state laws apply.
- A physician should seek legal advice when possible, before terminating any patient who is a member of a protected class to prevent allegations of discrimination based on race, religion, age, gender, or disability.

Conversations about Termination

- Discuss the reasons for terminating the relationship. Refer to any earlier discussions or warning letters provided to the patient and as applicable, any efforts made to educate the patient or secure the patient's cooperation in their treatment.
- Confirm that the patient needs additional medical care.

Conversations about Termination, continued...

- Confirm that the physician is no longer providing medical care to the patient as of a certain date.
- Confirm that the physician or practice is providing transitional care for a 30-day period while the patient seeks a new provider.
- Provide details about the transitional care, including a clear date when the transitional care begins and the date the transitional care concludes.

Conversations about Termination, continued...

- Discuss the scope of the termination and whether it covers the individual physician or the entire practice or all providers at all locations.
- Provide a list of referral physicians or physician recommendations, participating providers in the patient's health plan, or contact numbers for the state medical board or local hospital referral services.
- Confirm that the physician will make available to the patient's new provider, all medical records and other information needed to continue the patient's treatment.

Conversations about Termination, continued...

- State whether the physician is charging the patient for the cost of copying the patient's records and what the cost is.
- Confirm that the physician is sending the patient a notice of termination letter after the discussion.
- If practical, obtain the patient's consent before terminating the physician-patient relationship.

Immediate Terminations

If the patient or their family member is violent, abusive or engages in criminal conduct (e.g., stealing Rx pads), immediate termination may be needed.

Immediate Terminations, continued...

- If possible, send a warning letter.
- Place a copy of the letter in the patient's chart.

Immediate Terminations, continued...

- Contact:
 - Local law enforcement to request assistance and make a police report
 - The physician's counsel
 - On the advice of counsel, the insurance carrier and
 - The patient's health benefits plan to advise that the physician or practice is no longer providing medical care to the patient.

Immediate Terminations, continued...

- As soon as practical after immediate termination, draft a notice letter advising:
 - The physician has terminated the physician-patient relationship as of the date of the dismissal.
 - The patient may no longer seek treatment from the physician or the practice.
 - If applicable, the patient is no longer welcome on the premises.
 - The patient needs additional medical care and the consequences of foregoing care.

Immediate Terminations, continued...

- Send this letter by certified mail, return receipt requested.
- If the patient refuses to accept the mail, send the letter in an unmarked envelope with no return address or have it hand delivered.
- Send a copy of the letter to counsel and to the physician's insurance carrier and place a copy in the patient's medical chart.

Immediate Terminations, continued...

- Follow the hospital's policies, medical staff bylaws, health benefits plans, and EMTALA rules about dismissing a patient.
- If the patient is at a critical stage of care, discuss with the hospital's chief medical officer or designee how to arrange alternative care for a dangerous or combative patient.

Termination Notices

- Keep them brief.
- Do not use language that is inflammatory and keep the language objective and factual.

Termination Notices

- Include the following:
 - Explain that the physician-patient relationship is ending.
 - Refer to earlier conversations with the patient, as applicable.
 - If the physician has already discussed ending the relationship with the patient in person, do not explain the reasons for the termination in detail.

Termination Notices, continued...

- Explain the scope of the termination (e.g., whether the patient may use other physicians in the practice or the patient may seek care at other practice locations).
- Clearly set out the date of termination.

Termination Notices, continued...

- Explain that the patient needs continuing medical care, but the physician is not to be the provider of that care.
- Explain the consequences of the patient foregoing additional medical care.

Termination Notices, continued...

- Offer to provide the patient with transitional care for a period (usually 30 days) starting on a specified date and continuing through an end date.
- Be specific about when the transitional care starts and when it stops.

Termination Notices, continued...

- Offer the patient resources to help them find a substitute health care provider.
- Explain that the physician will provide a copy of the patient's medical records to their new physician when the patient signs the HIPAA authorization to use and disclose protected health information.

Termination Notices, continued...

- Explain whether the patient will be charged a reasonable amount for the costs of copying the medical chart.
- Include the signature of the physician terminating the relationship.
- If the termination is for a group practice, the practice manager should also sign the letter.

Termination Notices, continued...

- Do not send the letter by email.
- Send the letter by certified mail, return receipt requested.
- If the patient refuses the letter, do both of the following:
 - Send the letter a second time by regular mail in an unmarked envelope; and
 - Deliver the letter by hand (for example, by a process server).

Records of Termination

- Maintain all records about the termination in the patient's medical record, including
 - All letters sent to and received from the patient.
 - All materials sent to the patient, such as instructions for care, appointment reminders, warning letters, and lists of providers or referrals.

Records of Termination, continued...

- Copies of any behavioral agreements or opioid agreements.
- Records of incidents including police reports, staff complaints, and other records supporting the decision to terminate the professional relationship.
- Objective and factual statements by staff members and the provider explaining the efforts to obtain the patient's cooperation in the care plan, instructions given to the patient, and warnings about noncompliance.

Records of Termination, continued...

- Objective and factual statements about the patient's failure to comply with the treatment plan, the physician's instructions, medical orders, behavioral modification, or opioid agreements.
- A copy of the signed notice of termination letter, proof of transitional care, and HIPAA authorization to share the patient's medical records with the new physician.

Do not terminate if:

- The physician knows the patient cannot find the same type of medical care or specialty within a reasonable geographic location. (e.g., the physician is the sole practitioner of a certain specialty in a certain area or the only available provider in a rural area)
- The physician is treating the patient for an urgent medical condition or an acute condition requiring continued, uninterrupted care. The provider must continue the care until the patient's need for acute care has stabilized.
- Termination of the physician-patient relationship violates EMTALA.

Do not terminate if:

- The physician does not have sufficient records to support a properly executed termination of the physician-patient relationship. In this case, the physician should wait until they have adequately documented their efforts to:
 - discuss possible termination with the patient and behavioral modification;
 - discuss the patient's need for continuous medical care and the consequences of foregoing care;
 - provide the patient with instructions and confirm the patient's understanding; and
 - obtain the patient's cooperation.

Questions

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