

# Creating, Handling, and Ending Patient Relationships



KIM C. STANGER

(9.25)

This presentation is similar to any other legal education materials designed to provide general information on pertinent legal topics. The statements made as part of the presentation are provided for educational purposes only. They do not constitute legal advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the speaker. This presentation is not intended to create an attorney-client relationship between you and Holland & Hart LLP. If you have specific questions as to the application of law to your activities, you should seek the advice of your legal counsel.

# Overview



- Creating patient relationships
  - Intentional
  - Unintentional
- Maintaining patient relationship
  - Basic standards
  - Patient complaints
  - Problem patients
- Ending patient relationship
  - Limits
  - Avoiding patient abandonment

- ***Check laws for your particular state!***

# Housekeeping

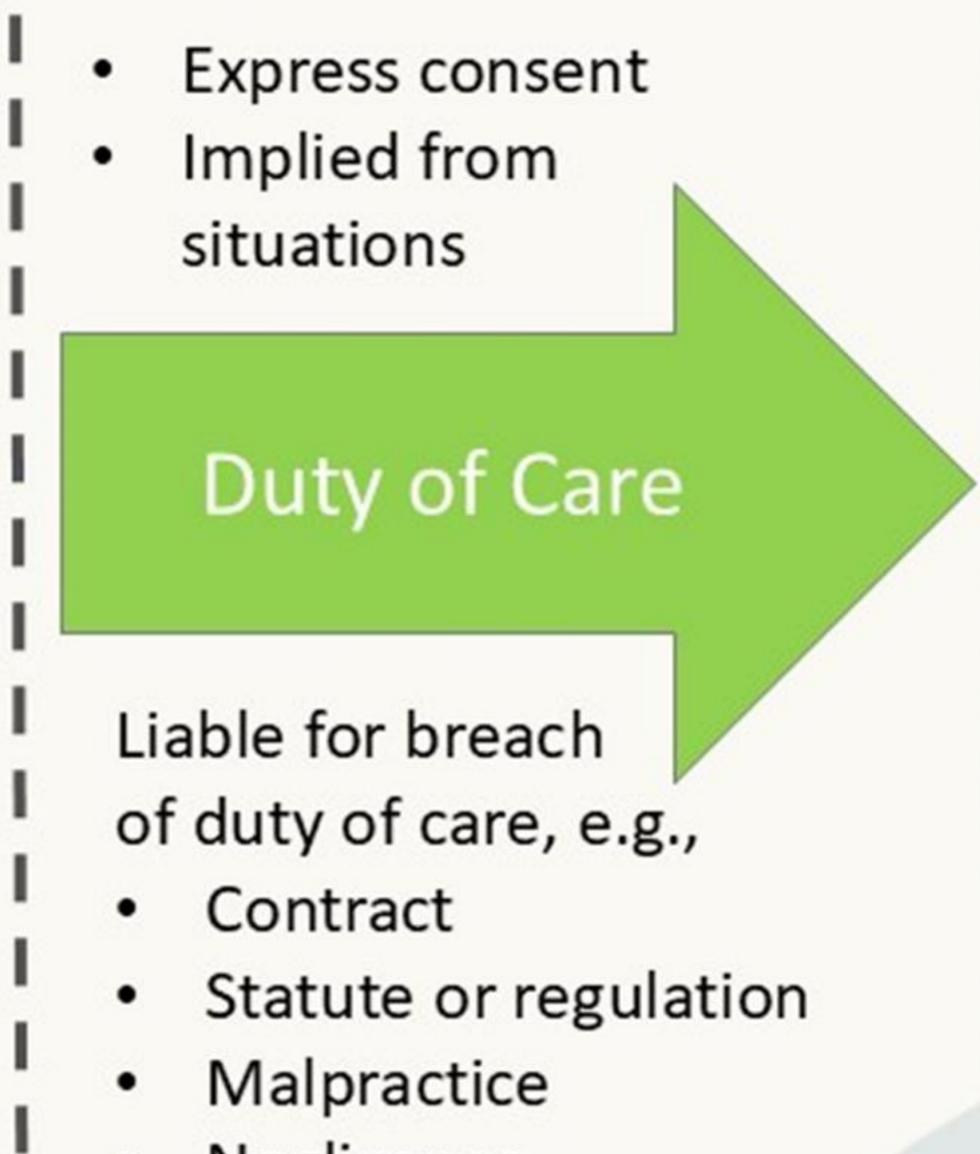
## Written resources:

- Powerpoint slides
- Stanger, *"Firing" Patients: Avoiding Patient Abandonment*, <https://www.hollandhart.com/firing-patients-avoiding-patient-abandonment>
- Sample documents:
  - Patient responsibilities
  - Patient behavior contract
  - Letter terminating patient relationship
- If you did not receive the .ppts, please contact Lisa at [lbadelberg@hollandhart.com](mailto:lbadelberg@hollandhart.com).
- The presentation will be recorded and available on our website, <https://hhhealthlawblog.com/2025-webinar-recordings/>.
- If you have questions, you may submit them using chat feature or e-mail me at [kcstanger@hollandhart.com](mailto:kcstanger@hollandhart.com).

# Provider-Patient Relationship

Provider-Patient  
Relations Created

Provider-Patient  
Relation Terminated



- Express consent
- Implied from situations

Liable for breach of duty of care, e.g.,

- Contract
- Statute or regulation
- Malpractice
- Negligence
- Lack of consent
- Abandonment

# Creating Relationship



➤ General rule:

- + Patient seeks care from practitioner
- + Practitioner consents to provide care
- + Practitioner-patient relationship

# Refusing Patients

## GENERAL RULE

- In general, practitioners can legally refuse to treat anyone they want.
- Ethics rules may differ...

## EXCEPTIONS

- EMTALA
- Anti-discrimination laws (e.g., race, religion, nationality, language, disability, sexual orientation, etc.)
- Contracts require care (e.g., Medicare, insurers, employment, etc.)
- Grant requirements
- Charity care obligations

# Anti-Discrimination Laws

## LAWS

- Civil Rights Act Title VI
- Americans with Disability Act
- Age Discrimination Act
- Rehabilitation Act § 504
  - See new rules.
- Affordable Care Act § 1557
  - See new rules.
- State discrimination laws

## RISKS

- Persons with disabilities
- Persons with limited English proficiency
- Sex discrimination
- Physical access
- Websites
- Service animals
  - Dogs and mini-horses
  - Not necessarily emotional support animals

# Anti-Discrimination Laws

## **Persons with Disabilities (e.g., hearing, sight, etc.)**

- Must provide reasonable accommodation to ensure effective communication.
  - Auxiliary aids
- Includes person with patient.
- May not charge patient.
- May not rely on person accompanying patient.

## **Persons with Limited English Proficiency**

- Must provide meaningful access, e.g.,
  - Interpreter
  - Translate key documents
- Includes person with patient.
- May not charge patient.
- May not require patient to bring own interpreter.
- May not rely on person accompanying patient.

# Anti-Discrimination Laws



United States  
Attorney's Office  
Eastern District of Michigan

About U

Search

About

News

Meet the U.S.  
Attorney

Divisions

Programs

Jobs

Contact  
Us

ObGYN declined to provide interpreter and dismissed patient due to disability. Physician had to pay \$7500.

[Justice.gov](#) > [U.S. Attorneys](#) > [Eastern District of Michigan](#) > [Press Releases](#) > U.S. Attorney's Office Resolves ADA Complaint Alleging That Local Doctor's Office Failed To Provide Sign Language Interpreter

## PRESS RELEASE

# U.S. Attorney's Office Resolves ADA Complaint Alleging That Local Doctor's Office Failed to Provide Sign Language Interpreter

Thursday, March 23, 2023

Share



For Immediate Release

U.S. Attorney's Office, Eastern District of Michigan

# Creating Patient Relationship

**CAUTION**

- Beware cases in which relationship may not be intended.
  - Phone calls or emails w/patient
  - Telemedicine
  - Social media
  - Call for appointments
  - Consultations with colleagues
  - Courtesy or favor
  - Emergency care or call coverage
  - Health fairs or other volunteer situations
  - Testing or vaccination programs
  - IME, employer physical, sports physical etc.
- Each case depends on its own facts.

# Creating Patient Relationship

To avoid creating unintended patient relationship—

- Be careful what you say or do.
- Don't get involved or give advice.
- Define or limit your relationship.
  - Explain non-existence or limits to your care.
  - Include disclaimers or limits in consents, registrations, websites, etc.
  - Refer to another practitioner.
- Document the parties' relationship.
  - Policies, forms, consents.
  - Discharge/referral instructions.
  - Letters or emails.
- Check your insurance to ensure you have coverage.

# Sample Disclaimer Language

“This service does not establish a practitioner-patient relationship, nor does [PROVIDER] undertake to provide additional or follow-up care for the Patient or advise Patient of the results of any exam, tests or care. The Patient is responsible for contacting their regular healthcare provider to obtain appropriate follow-up care or to address any questions or conditions that may arise.”

# Creating Patient Relationship

## *Beware telehealth!*

- Usually, must be licensed in state where patient is located.
- States may impose telehealth requirements, e.g.,
  - Provider-patient relationship must be established before prescribing, treating.
  - Must establish provider-patient relationship through two-way audio/visual interaction subject to limited exceptions.
  - In-person community standard of care applies.
  - Special consent rules.
  - Other rules?

(See, e.g., IC 54-5705)

# Problem Patients

- Best way to deal with problem patients?
- **Try not to take them in the first place.**
  - Practice preventative medicine.
  - Check prior providers.
  - Check medical history.



# Provider-Patient Relationship

Provider-Patient  
Relations Created

Provider-Patient  
Relation Terminated

No duty to  
provide care

- Express consent
- Implied from situations

Duty of Care

Liable for breach  
of duty of care, e.g.,

- Contract
- Statute or regulation
- Malpractice
- Negligence
- Lack of consent
- Abandonment

No duty to  
provide care

# Managing Patient Relationship

Beware laws, regulations, and contracts affecting patient relationship, e.g.,

- Ethical rules
- State medical practices act or licensure rules and regulations
- Practitioner agreements and policies
- Payer agreements
- Medicare/Medicaid provider agreements and conditions of participation (COPs)

# Managing Patient Relationship

## Medical practices act may prohibit:

- “Providing health care which fails to meet the standard of health care provided by other qualified [providers] in the same community or similar communities, taking into account his training, experience and the degree of expertise to which he holds himself out to the public.”
- “Engaging in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient.”
- “Engaging in a pattern of unprofessional or disruptive behavior or interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient. Such behavior does not have to have caused actual patient harm to be considered unprofessional or disruptive.”
- “Abandoning a patient”

(Idaho Medical Practices Act, IC 54-1814)

# Managing Patient Relationship

- Comply with standard of care.
- Obtain informed consent
  - **Informed consent v. consent form**
    - Informed consent = patient understands risks, benefits, alternatives, providers, etc. and agrees to care.
    - Beware
      - Reliance on form over communication.
      - Situations in which patient does not understand due to physical, mental, or language conditions or barriers.

# Consent Form ≠ Informed Consent

## Informed Consent = Communication

- Practitioner communicates info relevant to treatment
- Patient understands the material facts, e.g., benefits, risks, and likely consequence of the proposed treatment and alternatives.
- Patient makes informed decision to consent or refuse treatment.

## Consent form = Documentation

- Supplements oral or other info given by the practitioner.
- Documents that the communication process took place, e.g., that practitioner communicated relevant info, patient understood info, and patient made voluntary, informed decision.

# Managing Patient Relationship

- Establish and manage expectations
  - **Expectations – Actual Experience = Frustration**
    - Scope of services to be provided
    - Anticipated process and outcomes
    - Policies and practices
      - Practice/facility policies
      - Patient rights and responsibilities
    - Updates and ongoing communication
    - Listen, understand, and respond professionally



# Dealing with Patient Complaints



- *What are the most common complaints?*
- *What is their cause?*
- *What do you do to prevent them?*

# Staff Behavior Triggering Complaints

- Clerical mistakes
- Impatient
- No empathy
- Apathy
- Speaks in technical terms
- Fatigue
- Angry or defensive
- Dogmatic
- Inexperienced
- Distracted
- Condescending
- Unprofessional
- Does not listen



# Preventing Patient Complaints



***Treat others the way you would want to be treated!***

- Be friendly and sincere.
- Be alert and attentive to patient needs.
- Understand the patient's condition or circumstances.
- Respect the patient concerns.
- Respond timely to patient requests or concerns.

# Responding to Patient Complaints

- If the patient doesn't feel that you have taken their concerns seriously, they'll often go to someone who will.
  - Other providers.
  - Other potential patients.
  - Online posts.
  - Licensing boards.
  - Litigation.



# Responding to Patient Complaints

***Do not do this!***



***Or this!***

# Responding to Patient Complaints

- Complaint may be legit and give chance to improve.
  - Better to know so you can respond.
  - Chance to turn patient into an advocate of the practice.
- Response depends on seriousness of the complaint.



Minor complaint  
(e.g., inconvenience, late appointment, rudeness, etc.):  
Handle on the spot through effective communication

Serious complaint  
(e.g., adverse outcome, violation, etc.):  
May require formal investigation and response

# Responding to Patient Complaints

- Train staff how to respond.
  - Take complaint seriously and respond promptly.
- Appoint qualified person to respond to significant concerns.
  - *All concerns are significant to the patient!*
- Remember:
  - Patient/family likely:
    - Feeling poorly
    - Scared
    - Venting
  - Have empathy.
  - Be objective.



# Responding to Patient Complaints

- **Keep in mind the goals of your response:**

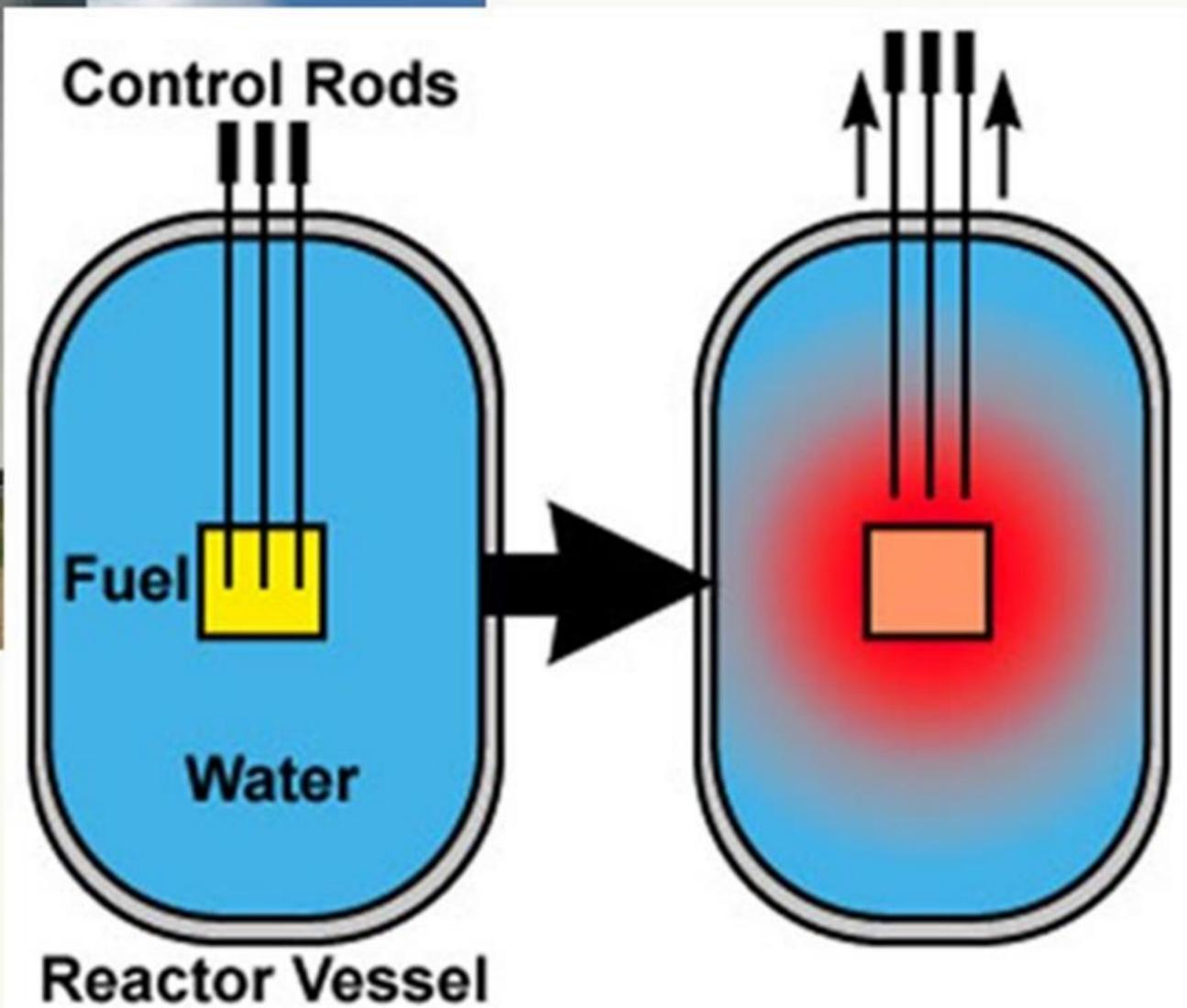
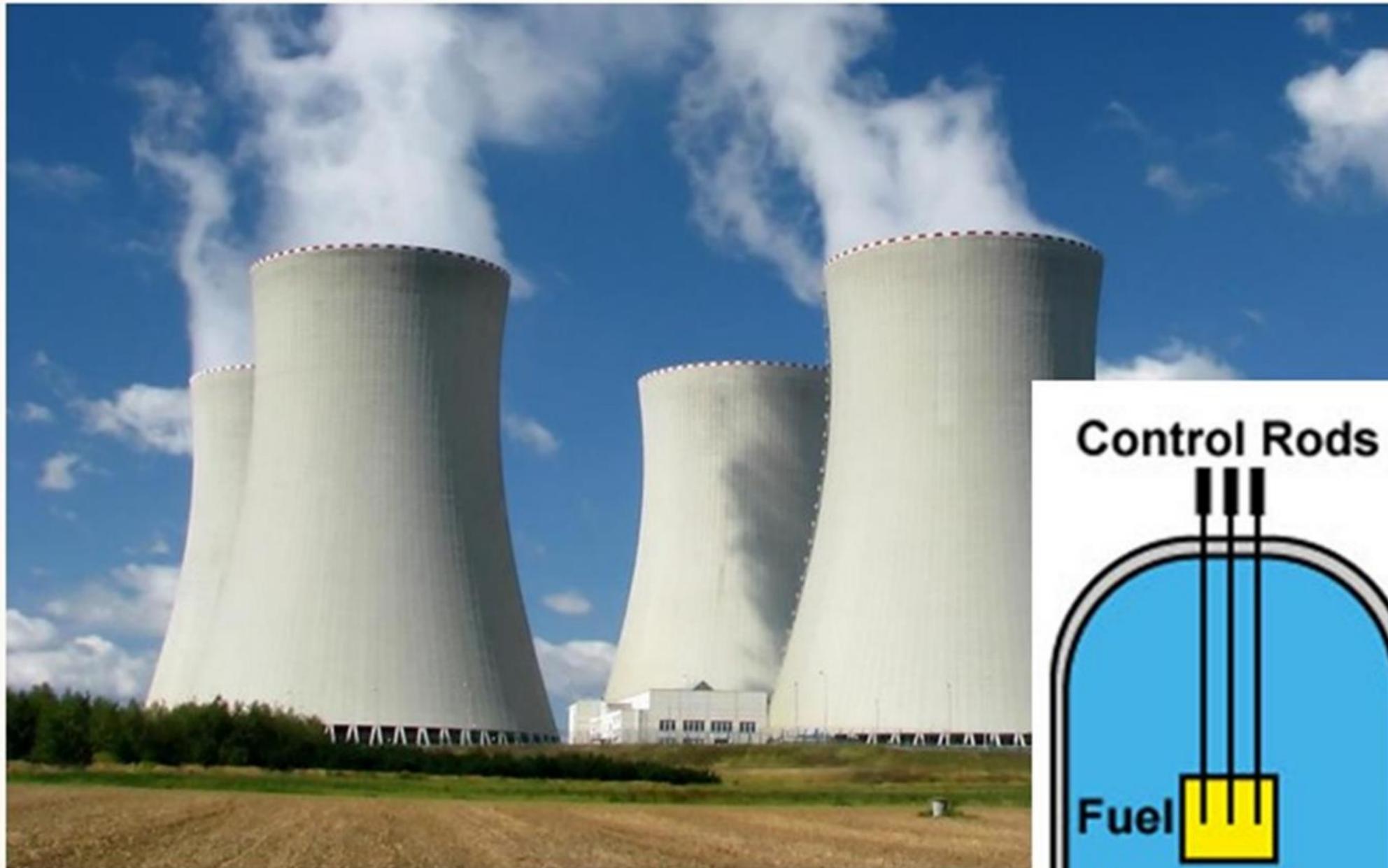
## Constructive

- Learn the facts.
- Ensure patient knows you understand their position.
- Help patient understand.
- Address legitimate concerns.
- Improve performance.
- Strengthen patient relationship.

## Destructive

- Concerned only about yourself.
- “Win” the argument.
- Justify self regardless of truth.
- Assume you understand the patient.
- Trivialize the patient’s concerns.
- Belittle the patient.
- Avoid addressing the real issues.

# Responding to Patient Complaints



# Responding to Patient Complaints



## **Listen Understand & Talk**

- Respect patient's concerns.
- Listen actively.
- Be open minded.
- Ask questions.
- Beware your body language.
- Be patient and empathetic.
- Avoid argument.
- Restate patient concerns to confirm understanding.
- Follow up.

# Apologizing



- In appropriate circumstances, you may want to accept responsibility and apologize.
  - May help address concerns and avoid litigation.
  - May be the “right” thing to do.
- But carefully consider before doing so.
  - You may not have all the facts.
  - Consult with malpractice insurer and/or attorney.
    - Admissions may adversely affect coverage.
    - Admissions may adversely affect litigation.
  - Check state apology laws...

# Sample Apology Law

- **Expressions of apology, condolence and sympathy:** “[A]ll statements ... expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence, including any accompanying explanation, ... which relate to the care provided to the patient, or ... the discomfort, pain, suffering, injury, or death of the patient as the result of the unanticipated outcome of medical care shall be inadmissible as evidence....”
  - *“I’m sorry that you are going through this...”*
  - Be careful how you phrase it!
- **Admission of Fault:** “A statement of fault which is otherwise admissible and is part of or in addition to [an apology] identified [above] shall be admissible.”
  - *“It is our fault; we made a mistake...”*

(IC 9-207)

# Online Complaints



Dislike

New Review



I would not recommend this company to my worst enemy.



- ***Just because the patient can say it online does not mean that you can!***

# Online Complaints

## HHS Office for Civil Rights Reaches Agreement with Health Care Provider in New Jersey That Disclosed Patient Information in Response to Negative Online Reviews

OCR has announced a settlement with Manasa Health Center, LLC, a health care provider in New Jersey that provides adult and child psychiatric services. The settlement resolves a complaint received by OCR in April 2020, alleging that Manasa Health Center impermissibly disclosed the protected health information of a patient when the entity posted a response to the patient's negative online review. Following an OCR investigation, potential violations of the HIPAA Privacy Rule include impermissible disclosures of patient protected health information in response to negative online reviews, and failure to implement policies and procedures with respect to protected health information. Manasa Health Center paid \$30,000 to OCR and agreed to implement a corrective action plan to address potential violations.

- [Read the HHS Press Release](#)
- [Read the Resolution Agreement and Correction Action Plan](#)



\$30,000  
settlement

# Online Complaints

- Do NOT disclose protected health info in online response.
  - HIPAA prohibits unauthorized use or disclosure of protected health info, including:
    - Fact that a person is or was a patient.
    - Info that could reasonably identify the patient.
  - There is no HIPAA exception for responding to a patient complaint online.
  - Patient does not waive HIPAA privacy rights by posting info online.

# Online Complaints

- Options for responding:
  - Ignore it.
  - Contact patient to resolve concerns or obtain consent to respond.
  - Respond generically.
    - Do not confirm or deny that complainant was a patient or include any info about patient or encounter.
    - May explain policies or practices without reference to patient.
  - Contact online company to request removal of complaint.
  - Encourage and emphasize positive reviews.
  - If review is defamatory, may threaten lawsuit.



Debt

# Writing Off Bill

- Do not bill for unnecessary or inappropriate services.
  - May violate False Claims Act.
- Generally, cannot waive or discount copays or deductibles.
  - Payer contracts.
  - Federal and state fraud and abuse laws.
- May be able to waive or discount payments if:
  - Isolated occurrence.
  - Resolution of documented patient concern.
  - Do not charge payers.
- In tactful way, confirm it is offered as an accommodation, not admitting liability.

# Settling a Complaint



- If offer something to resolve complaint, consider obtaining release.
  - Benefit: proper release protects you from subsequent litigation or claims arising out of same facts.
    - Ensure the release contains appropriate terms.
    - Must be supported by consideration.
  - Risk: asking for release may prompt patient to reconsider settlement and instead pursue claims.
- Check with malpractice carrier before settling a claim.

# Licensing Board Complaints



- Take them seriously.
- Be professional and respectful in response.
  - Maintain credibility and be cooperative at all times.
  - Do not act impulsively.
  - Respond objectively; do not be overly defensive.
- Explain basis for your actions.
  - Remember: Board does not have all the facts.
  - Provide records, but only if necessary.
  - Answer the questions that are asked; beware raising new matters.
- Always tell the truth.
- Consider review by qualified colleague or attorney.
- Notify insurer, if appropriate.

# Licensing Board Complaints

- Beware stipulations and settlements.
  - May be efficient way to resolve dispute, but...
  - May carry significant adverse consequences.
    - Report to National Practitioners Data Bank (“NPDB”)
    - May adversely affect other relationships.
      - Employment
      - Payer contracts
      - Licensure in other states
      - Board certification
    - Likely must report in future applications
- Consider alternatives, e.g., hearing, informal reprimand, etc.

# Dealing with Problem Patients

- ***Document, document, document!***
  - Medical record
    - May be subject to patient's right of access.
    - May be discoverable.
    - Be objective, use quotes, etc.
  - Incident report or other peer-protected record
    - No absolute protection.
- Documentation is critical in case you need to take additional corrective action or defend our actions.
- Remember: *"If it's not in the chart, it didn't happen."*

# Dealing with Problem Patients

- Patient Responsibilities Document
  - Post and distribute as part of registration or otherwise.
  - Explain that patient's cooperation and appropriate conduct are essential to effective care.
  - Require, e.g.,
    - Cooperation in developing treatment plan.
    - Compliance with treatment plan.
    - Ongoing communication.
    - Professional, respectful, non-disruptive conduct.
  - Use in communications with patient.
- *See sample.*

# Dealing with Problem Patients

- Patient Care Conference / Contract
  - Refer to “Patient’s Rights and Responsibilities”.
  - Explain that inappropriate conduct interferes with our ability to provide effective care.
  - Require, among other things,
    - Cooperation in developing treatment plan
    - Compliance with treatment plan
    - Ongoing communication
    - Professional, non-disruptive conduct
  - Warn that we will need to end relationship if they fail to comply.
  - Advise them that they may go elsewhere.
- *See sample.*

# Provider-Patient Relationship

Provider-Patient  
Relations Created

Provider-Patient  
Relation Terminated

No duty to  
provide care

- Express consent
- Implied from situations

Duty of Care

Liable for breach  
of duty of care, e.g.,

- Contract
- Laws and regulations
- Malpractice
- Negligence
- Lack of consent
- Abandonment

No duty to  
provide care

# Ending Patient Relationship

## *Do not do this...*

- Unless you want to risk liability for:
  - Malpractice.
  - Patient abandonment.
  - Civil penalties under EMTALA or COPs.
  - Participation in third party payer programs.
  - Adverse licensure actions.



# Ending Patient Relationship

- Different providers may have different requirements, e.g.,
  - Hospitals
    - Discharge plan
    - Notice
    - Appeal process
  - Long term care facilities
    - Notice
    - Termination requirements
  - Physicians and other providers
    - Standard of care
    - Patient abandonment

# Patient Abandonment

## Common elements for tort claim

1. An established doctor-patient relationship.
2. Provider abandoned the patient while medical attention was needed.
3. Patient was not given adequate opportunity to transfer care to another provider.
4. Patient suffered damages as a result of the abandonment.

# Patient Abandonment

- Abandonment =
  - Failing to follow up or provide ongoing, needed care.
  - Unavailability for significant time or leaving town without securing coverage for patients.
  - Terminating relationship or closing practice without giving sufficient:
    - Notice that you are ending relationship
    - Time to find a new practitioner
    - Care until patient can transfer to new practitioner
- Penalties
  - Lawsuit by patient for damages
  - Action against license
  - Adverse employment and payer action

# Avoiding Patient Abandonment

- May generally terminate relationship for any legitimate reason or no reason, but not a bad reason.
- Legitimate reasons
  - Unable to provide needed care
  - Failure or refusal to pay bills
  - Breakdown in relationship or communications
  - Disruptive conduct
  - Noncompliance with treatment
  - Missed appointments
  - Etc., etc., etc.
- Bad reasons
  - Discrimination

# Avoiding Patient Abandonment

- Factors to consider before ending patient relationship:
  - Patient's current health needs
  - Availability of alternative care
  - Basis for termination (e.g., legitimacy compared to patient's health care needs)
  - Whether patient is in a protected class (e.g., age, race, disability, etc.)
  - Documentation supporting termination
  - Alternative actions
    - Warnings
    - Patient care conference
    - Behavior contract

# Avoiding Patient Abandonment

- If termination necessary and appropriate:
  - Notify patient in writing and perhaps orally
  - Give sufficient time to transfer care
    - Depends on patient's condition
    - Usually 30 days, but no hard and fast rule
  - Provide necessary care in interim
  - Facilitate transfer of care
- *See sample.*
- *Retain letter in patient chart or elsewhere.*

# Sample Letter to Patient

Dear [PATIENT]:

Due to recent events, I will no longer be able to continue providing your medical care; accordingly, it will be necessary for you to transfer your care to another health care provider. I will continue to provide you with any necessary care until *[STATE DATE, USUALLY 30 DAYS OUT]*, which should give you sufficient time to transfer your care; however, after that date, you will need to obtain medical care elsewhere.

Your condition *[MAY/DOES]* require continued care. I strongly encourage you to take immediate action to transfer your care to an appropriate health care provider. If you need assistance, *[IDENTIFY LOCAL REFERRAL SERVICE]* may be able to help you find another appropriate provider. Alternatively, your insurance program, local hospitals, or acquaintances may be able to refer you to an appropriate provider.

We will make your medical records available to your new provider upon his or her request. Please have your provider contact our office to make arrangements to transfer the records.

# Avoiding Patient Abandonment

- There may be situations that justify immediate termination without advance notice, e.g.,
  - Danger to patient, staff or others
  - Criminal misconduct
- Be careful before terminating without notice; consider:
  - Patient care needs
  - Availability of alternative sources for treatment
  - Statutory obligations, e.g., EMTALA or state statutes
  - Contractual obligations
  - “What would a jury think?”

# Avoiding Patient Abandonment

- Once you have terminated patient relationship, be careful about resuming relationship.
  - Setting new appointments.
  - Taking new calls.
- If provide emergency or necessary care pending termination or per on-call obligations:
  - Reaffirm termination of patient relationship and/or no ongoing patient relationship.
- Flag records to avoid resuming care.
- Respond promptly if mistakenly resume care.

# Questions?



Kim C. Stanger

Office: (208) 383-3913

Cell: (208) 409-7907

[kcstanger@hollandhart.com](mailto:kcstanger@hollandhart.com)