PATIENT ABANDONMENT

OBJECTIVES

- Define patient abandonment
- Learn physician’s ethical/professional responsibilities
- Understand legal and regulatory responsibilities
- Discuss strategies to prevent abandonment or appearance of abandonment

Slide 3: Definition

The AMA defines abandonment as “the termination of a professional relationship between a physician and patient at an unreasonable time and without giving the patient the chance to find an equally qualified replacement”. Abandonment is considered unprofessional behavior and if reported to the state office of professional medical conduct, can trigger an investigation. A physician may also be at risk for a medical malpractice claim if the termination of care occurs at a “critical stage” of treatment and an injury results.

Slides 4-8: Case

Dr. Feinstein is the orthopaedic surgeon on call to the university hospital emergency department. He receives a call from the orthopaedic resident that she has just treated Mr. Swanson, a 32-year-old gentleman with a bimalleolar fx/dislocation of the ankle. She performed a CR and applied a LLC. The resident recommends an admission as the patient has severe swelling and is intoxicated. Dr. Feinstein thanks the resident and concurs with the admission. Dr. Feinstein advises the resident to split the cast. He reviews the signs of compartment syndrome and lets the resident know that he will be in early in the morning to evaluate Mr. Swanson. Dr. Feinstein explains that he will perform surgery when the swelling has resolved, and there is no reason to pre-op the patient.

Dr. Feinstein meets the patient in the morning. Mr. Swanson is doing well and his pain is well controlled by oral medications. After reviewing the x-rays and examining the patient, surgical repair of the fracture is recommended. Dr. Feinstein advises the patient that the surgery will be performed when the swelling resolves. He gives the patient his card and requests that Mr. Swanson simply come to the office in three days. Dr. Feinstein does not review the chart for the patient’s insurance coverage nor does he discuss this issue.
Session 9-10: Questions

- Has Dr. Feinstein demonstrated medical professionalism?
- Have Dr. Feinstein and Mr. Swanson developed a professional relationship?
- Should Dr. Feinstein have reviewed the patient’s insurance coverage prior to his initial evaluation of Mr. Swanson?
- Would it have been acceptable if Dr. Feinstein informed Mr. Swanson during the initial hospitalization that he was not a Medicaid provider?
- What are the ethical and legal standards which need to be met?

A physician assigned to cover an ED has a legal and ethical responsibility to care for any patient presenting to the ED during their assigned shift. Dr. Feinstein has fulfilled his responsibilities by appropriately consulting with the orthopaedic resident on call, discussing the care of the patient, and making initial treatment recommendations.

Dr. Feinstein has established a physician/patient relationship with Mr. Swanson. He discussed the acute management with the resident, made specific treatment recommendations including the timing of surgery, and concurred with the admission of the patient. He has appropriately evaluated the patient in the hospital and arranged for outpatient follow-up in his office to schedule surgery.

Medical professionalism incorporates a variety of personal traits and professional conduct in caring for patients. Commonly agreed upon personal qualities and responsibilities include:

- Altruism;
- Advocating for the patient;
- Respecting and adhering to the four basic principles of medical ethics; and
- Developing a fiduciary relationship.

A fiduciary responsibility implies that the needs of the patient take precedence over any personal self-interest of the physician. Once this relationship has begun, the patient should be able to place their full trust in the physician and assume that the physician is treating them appropriately.

Dr. Feinstein is on call to the ED. Consenting to be included in an emergency department call schedule includes an agreement to care for all patients that require your expertise, irrespective of any other factors. Reviewing the patient’s medical coverage prior to evaluating the patient does not obviate the ethical and legal responsibility to care for the patient.
If a physician is contractually "unable" to care for a patient, this does not absolve him/her of the responsibility to care for the patient until appropriate alternative care is obtained. If a physician does not believe that either he/she or the institution has the expertise to appropriately care for the patient, the physician is required to arrange for the patient to be transferred to another physician and/or institution that can render the appropriate care.

Issues related to a patient’s health care insurance and physician provider status are difficulties frequently encountered by physicians when caring for patients. Although the delivery of emergency care should not be affected, definitive and ongoing care can be impacted by insurance and provider status. Physicians should establish practices that work best in their particular practice model and practice style. Many physicians may wish to meet their professional responsibilities and continue to care for their patient until the acute problem has been resolved. Unfortunately, even if a physician wishes to care for a patient, the patient’s health plan may not reimburse for hospital services administered by a non-participating provider. It is advisable to identify any potential conflicts with continuity of care in the earliest phases of care. This may include the doctor identifying the problem in the hospital, or the doctor’s office staff identifying a potential problem the following morning. If a conflict is identified, the physician’s office staff may be able to work with the insurance carrier to resolve the problem, or the physician will have ample time to identify another provider to care for the patient.

Slides 11-12: Case continued

Mr. Swanson arrives in the office as requested. He is seen by Dr. Feinstein’s PA, Mr. Muztagh. PA Muztagh advises the patient that Dr. Feinstein will not be able to perform the surgery because he is not a Medicaid provider. He suggests that Mr. Swanson call the city hospital for an appointment. Mr. Muztagh neither offers nor suggests that he will arrange for a physician to treat Mr. Swanson. The patient is advised to continue to use the crutches and keep his leg elevated while he is waiting to see another doctor. The PA writes another Rx for oxycodone/acetaminophen.

Slides 13-14: Issues for discussion

- Was the care received in Dr. Feinstein’s office appropriate?
- Would it have been acceptable if Mr. Swanson called the office for an appointment and was advised that Medicaid insurance coverage was not accepted?
- Does this office interaction reflect upon Dr. Feinstein’s professionalism?
Dr. Feinstein and Mr. Swanson have established a professional relationship. Dr. Feinstein has acted in a professional manner in both his initial care in the in-patient setting and arranging for outpatient follow-up in his office. Mr. Swanson has placed his trust in Dr. Feinstein and has come to the office as advised to plan for definitive treatment.

Dr. Feinstein’s office staff are all “extensions” of his professional practice. They are therefore obligated to treat the patients seen in the office with the exact same professional standards as that of their employing physician. It can be assumed, whether fairly or unfairly, that the office staff is performing in a manner in accordance with the doctor’s instructions. A physician needs to ensure that all patients treated in his office receive professional care. A physician should also be made aware of any patients who are advised that they can no longer be cared for in his/her office. The failure of a physician’s office to uphold professional standards reflects directly on the physician’s medical professionalism.

Advising Mr. Swanson that Dr. Feinstein will not be able to care for him, either on the telephone prior to an office visit or in the office, without arranging for a timely transfer of care might be considered patient neglect and abandonment.

State regulatory agencies are required to investigate all reports of unprofessional conduct. Medical professionalism obligates a physician to act as a fiduciary and ensures that the patient’s self interest overrides any personal conflict or self interest. Although Dr. Feinstein has acted professionally and had planned on performing the definitive surgery, his office staff, acting as his proxy, has been unprofessional in declining to continue to care for the patient and not arranging alternate care. Failure to ensure that your patient has received the appropriate care is unprofessional and can be consistent with a claim of abandonment and result in disciplinary action.

This case example invokes the medico-ethical principles of beneficence, non-maleficence, and justice. The principle of beneficence obligates a physician to help his/her patient heal. If a physician is not able to assist the patient because of the lack of necessary skill or for any other personal or moral
objection, beneficence requires that the physician assist the patient in obtaining care. To meet this standard a physician needs to arrange for the patient to receive appropriate and timely care. Simply instructing the patient to call another institution does not meet this standard.

The principle of *non-maleficence* states that a physician’s action should not cause harm. Declining to continue to treat the patient without ensuring that the patient receives timely care during a critical treatment window violates this principle.

The principle of *justice or distributive justice* protects both individuals as well as all members of society. Specifically, when caring for individual patients, a physician is obligated to treat all patients equally and in a similar fashion irrespective of a person’s ethnicity, race, religion, morality, sexual preference, or ability to pay.

Although a physician has the legal right to discontinue the professional relationship, the relationship must be terminated in a manner which does not harm the patient. If a patient requires time dependent care, such as the repair of an ankle fracture, it is the responsibility of the treating physician to ensure that the patient has obtained a new treating physician. If the lack of continuity of care results in a compromised outcome or injury, the physician has placed himself at risk for a medical malpractice claim.

Mr. Swanson was in need of timely surgery to treat his musculoskeletal condition. A prolonged delay in treatment could affect the surgical outcome and the ability to obtain an acceptable reduction. Clearly, if transfer of care is deemed necessary, the safest and most appropriate strategy of the referring physician is to locate and verbally communicate with an accepting physician. Mr. Swanson was unable to obtain care in a timely fashion. Although Dr. Feinstein was unaware of the problem, the failure of his office staff to follow-up is his responsibility.

The ethical and professional burden on the treating physician is much greater when a patient is in need of care within a critical period of time. In the instance when a physician wishes to terminate an established, long term relationship the AMA recommends the following steps:

1. Giving written notice to the patient (certified letter, return receipt)
2. Providing a brief explanation for the reason(s) for termination
3. Agreeing to continue care for a reasonable period of time (possibly 30 days)
4. Assisting patient (physician recommendations/ insurance provider manual/state medical society, etc.) in finding alternate care
5. Offering transfer of medical records.
Slides 15-20: Case conclusion

Mr. Swanson’s pain rapidly resolves, and he has returned to work in his clerical position. He is not eager to have surgery because he cannot afford to miss work. He has called two other orthopaedic offices and was advised that they didn’t accept Medicaid. He called the city hospital three times and was never able to find the orthopaedic department to schedule an appointment.

Mr. Swanson is now three months post injury. His best friend told him that when he broke his ankle he was in a cast for three months. Mr. Swanson doesn’t want to return to the university hospital ED because he feels that they didn’t care for him properly. He has heard many good reports about the local community hospital and decides to be evaluated there. The triage nurse contacts Dr. Caballero, the orthopaedic surgeon on-call. Dr. Caballero requests that the cast be removed and x-rays obtained and he will come in to evaluate the patient.

The x-rays demonstrate a healed bi-malleolar ankle fx, with abundant callus around the fibula and a markedly widened medial clear space. Dr. Caballero fully explains the x-ray findings, the significance of the problem, and options of treatment and recommends surgical repair. He advises Mr. Swanson that the surgery will be more difficult due to the delay, and the patient will have a greater risk of complications from the injury due to the wait.

Dr. Caballero performs successful surgery the following week, and Mr. Swanson is able to resume playing his weekly squash game four months later.

Slide 21: Patient obligations

Has Mr. Swanson failed to meet any personal obligation, ethical standard, or legal obligation?

Individuals, who are active participants in their own health care, lead healthy life styles and partner with their physicians have been found to have better health outcomes. It is accepted and expected that individuals have a responsibility to care for themselves. This personal responsibility includes being honest and forthcoming with their physician. Arriving at a treatment plan that is acceptable to both the patient and physician is the cornerstone of patient-centered care and shared decision making. Simply expecting a patient to follow all treatment recommendations is not a reasonable expectation and leads to high levels of non-adherence to treatment recommendations.
The successful physician/patient relationship requires that both the patient and doctor equally participate in the decision making. Although, equal participants in the decision-making process, the patient and physician obligations are not equal. Physicians are assumed to have a far greater understanding of the medical facts and treatment options and therefore have a greater burden in the relationship. The medico-ethical principles of respecting a patient’s autonomy, beneficence, and non-maleficence obligate the doctor to ensure that the patient has a full understanding of his/her condition and the options for treatment. This can only be achieved through effective communication.

Mr. Swanson has faithfully attempted to follow all of Dr. Feinstein’s recommendations. He arrived in the office as instructed for his follow-up care and the scheduling of his surgery. He attempted to obtain follow-up care from other physicians and another hospital when he was advised by PA Muztagh that Dr. Feinstein couldn’t care for him. Mr. Swanson was left with the impression that there was no need to return to the office if he was having a problem obtaining care. PA Muztagh didn’t offer to help him obtain a follow up appointment nor did he remind Mr. Swanson that Dr. Feinstein’s practice would continue to care for him until alternate care was found.

**Slides 22-24: Summary**

- Dr. Feinstein has established a professional relationship with Mr. Swanson.
- If Dr. Feinstein is unable to continue to care for Mr. Swanson, Dr. Feinstein is required to provide care until appropriate alternate care is obtained.
- Mr. Swanson has followed the instructions given to him based on his level of understanding and ability.
  1. He came to the office for a follow up as instructed.
  2. He attempted to obtain care at another institution and with other physicians.
  3. He was not advised to return to Dr. Feinstein's office if he had any problems locating definitive care.
  4. He was left with the impression that he was unable to have any further care in Dr. Feinstein’s office.
- Dr. Feinstein’s failure to ensure that Mr. Swanson has obtained appropriate care prior to ending a professional relationship is considered abandonment and may trigger a review by the state office of professional medical conduct.
- If Mr. Swanson is “injured” or their medical outcome is compromised by inadequate continuity of care, Dr. Feinstein may be at risk of a medical malpractice claim.
Slides 25-26: Recommendations

- The AMA strongly recommends that a physician maintain a professional relationship with a patient for as long as the patient requires care.
- If a physician determines that they are unable to care for a patient, they are required to follow ethical and legal guidelines to ensure that the patient receives appropriate continuity of care.
- If a physician is contractually unable to care for a patient, they must continue to provide all necessary care until an acceptable provider is identified and has agreed to care for the patient in an appropriate fashion.

References