Managing Uncomfortable Professional-Patient Encounters

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Outline

1. Patient is trouble
2. Colleague is trouble
3. Looming investigation

Patient Termination Criteria

• Treatment nonadherence
• Follow-up nonadherence
• Office policy nonadherence
• Verbal abuse
• Nonpayment

Source: The Doctors Company  www.doctors.com

Special Situations

• Pt is in acute phase of treatment
• Pt is disabled
• No other provider nearby
• Pt is a member of a prepaid health plan
• AIDS / HIV
• Pregnancy
• Group practice

Source: The Doctors Company  www.doctors.com

Termination Process

• Formal
• Written notice
• Mailed by USPS certified mail, return receipt
• Keep copy of correspondence

Source: The Doctors Company  www.doctors.com
Elements of Written Notice

- Reason for termination
- Effective date (usually 30 days)
- Offer interim care provisions
- Continued care provisions
- Offer to provide a copy of the medical records
- Patient responsibility
- Policy on medication refills

Think twice about refusing if

- The patient is in an emergent condition
- Refusing would constitute a civil rights violation, e.g., refusing on the basis of the patient’s race, gender or sexual orientation
- You have a contractual obligation requiring that you provide care

Probably can refuse if

- Tx is beyond your scope of training
- Pt requests tx that is of no benefit or isn’t valid
- Pt is delusional or drug seeking
- You’re too busy to accept new patients
- You don’t want to accept the Pt’s insurer
- Patient can’t pay, which you learn before tx has begun
- Pt (or spouse) is a lawyer
- Pt is disruptive

Tough calls on refusing

- Pt informs you he can’t pay after tx begins
- Pt maintains a lifestyle or ideology that is incompatible with your personal, religious or moral beliefs such that you don’t want to treat
- You can’t agree with the patient on treatment goals

North Coast Women’s Care Medical Group v. San Diego County Superior Court (CA Supreme Ct., 2008)

- Guadalupe Benitez, who is a lesbian, wants intrauterine insemination
- She goes to North Coast Women’s Care but is informed that Dr. Christine Brody rejects her request for conscience based reasons
California Unruh Civil Right's Act

- Prohibits discrimination on the basis of "sex, race, color, religion, ancestry, national origin, disability or medical condition."
- Court rules Benitez is entitled to care "even if the compliance posed an incidental conflict with defendants' religious beliefs."
- But even then, Dr. Brody can say no if another physician can provide the service or if the clinic abandons the service, i.e., does not provide the service to anyone.

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Disruptive Physician Behavior

- Discriminatory behavior
- Inappropriate remarks or language
- Incompetence
- Physical assault and/or battery
- Refusal to cooperate and/or follow protocols
- Retaliation
- Substance abuse
- Throwing objects

Source: QuantiaMD  www.quantiamd.com

Etiology

- Workload
- Learned behavior
- Provocation of others in the health care team
- Non-work related causes
- Policies or procedures
- Compensation
- Patient compliance

Source: QuantiaMD  www.quantiamd.com

Remedies

- Improve organizational culture
- Offer education and support
- Swiftly, effectively address disruptive behavior

Source: QuantiaMD  www.quantiamd.com

The Doc's on Drugs
Interesting facts

- Alcohol is #1 substance of choice among addicted physicians (50%), followed by opioids (35%), then stimulants (8).
- Many physicians may be able to function for years despite a nasty habit; those who inject narcotics, however, usually survive only months in practice before their use becomes symptomatic and disabling.
- Physicians may retain their practice skills until the very end, with familial relationships the first to go.

Strategies

- “Denial is the hallmark of addictive illness.” (Keith Berge, MD) Only a small percentage of physicians will voluntarily enter treatment.
- Call your state’s Physicians Health Program for advice or a local treatment center (Talbott Recovery Center). Federal and state laws mandate job protection, typically up to 12 weeks, during a medical leave for addiction treatment. Also, most states allow foregoing a report to the state licensing board if one opts for tx facilitated (but not provided) by the PHP.
- By calling/reporting your suspicions to a legal entity, they will launch the investigation such that you will not be involved.
- These treatment programs tend to have great success among physicians. Five years after treatment, 75% of physicians are abstinent.

“Once a pickle, always a pickle.”

Emotionally painful conversations are…

- Inevitable in health care
- Awkward because health professionals are often not trained to conduct them
- Important to do well since the public, law and, usually, patients demand truthful and effective communications
- Often necessary because resisting them might not only be unethical but result in malpractice litigation

The Model ...

- Is a simple stimulus-response paradigm
- You encounter a situation (e.g., having to break bad news, being confronted with questions) that provokes an uncomfortable feeling
- Your response to and management of that feeling will be critical in managing the communication

Describe an impossible patient
Impossible patients are ...

- Impossible to please
- Ornery
- Whiny
- Overly agreeable (overly nice)
- Threatening
- Noncompliant
- Controlling
- Critical
- Angry/demanding
- Manipulative
- Chronic complainers
- Frustrating
- Provocative

The Unruly Patient in the Office

Never respond to rudeness. When people are rude to you, they reveal who they are, not who you are. Don't take it personally be silent.

Approaches

- Remove the patient to a quiet place (not necessarily out the door)
- Learn their side of the story: they might be sick or have a personality disorder
- "Mr. Jones, I really regret that your outcome has not met up with your expectations. But when you complain to the other patients in the waiting room, it creates very unpleasant feelings among us, and we're trying to help you. So, I would ask that you to voice your complaints to us, not to the people out there. Do you think you can do that? Is that a deal?"
- Maybe intervene with more than one person
- Maybe also post signs in the office, reminding patients of the need for respecting everyone, etc.
- Maybe draw up a contract with a difficult patient

Empathic Language

- "This must be .... (dreadful, awful, depressing, frightening) .... for you to hear."
- "This is obviously making you feel very ....."
- "I hear you."
- "Tell me more about that."
- "And how did you experience (or feel about) that?"
- "What was that like?"
- "How were you able to stand it?"
- "So, this must have caused/must be causing you a lot of .... (heartache, sadness)."

More empathic language

- "I wonder what you're feeling right now."
- "What is it about that that .... (worries, upsets) .... you?"
- "What is it about talking about that .... (you don't like? Makes you anxious? Makes you want to talk about something else?)"
- "What would you like to have happen from this?"

More ...

- "Anything else?"
- "Now let me make sure I'm understanding you. You're asking me .... (whether or not, how it is that) ..... Is that correct?"
- "So, what you're saying is that ...."
- "What am I missing?"
- Repeat the other's last three or four words.
Do not get angry, frustrated, or slash back!

- By slashing back or admonishing the patient, you are essentially dismissing the way the patient is feeling (and therefore you are dismissing the patient).
- You are refusing to share the patient's emotional reaction; so he or she may see you as an adversary, not an ally.
- You might unwittingly reinforce the patient's self-destructive feelings.

Some pearls ….

- "It must be very hard for you to be here when you're so disappointed in me and in the care you've received."
- If patients are yelling, ask them to speak slowly so you can better understand them. It is almost impossible to yell slowly.
- If a patient is angry and the situation allows you to become angry as well, get angrier about the situation than the patient. Your emotional display will make the patient feel you are his or her champion.

And one more ….

Identify something about this impossible patient that you admire or respect and tell him/her.

If you can get the impossible patient to honestly say "Thank you," you are on your way to a more healing relationship.

THINK: SOOOOOOOOOTHING

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Looming Investigation

- Inadequate chart documentation
- Billing errors
- Inappropriate testing
- Improper treatment
- Compliance issues
- Kickbacks for referrals

Who's watching?

- Office of Inspector General (OIG)
- Comprehensive Error Rate Testing (CERT)
- Recovery Audit Contractors (RAC)
- Zone Program Integrity Contractors (ZPIC)
- Medicare Part C Plans
  - Risk adjustment audits
**Tragic Murder/Suicide Case**

- Philip Gabriele, MD and Marcella Gabriele
- Elkhart, Indiana (2009)
- Federal Grand Jury indictment
  - Health care fraud
  - Wire fraud
  - Criminal conspiracy
  - Unnecessary surgery
  - Altered patient charts
- Attorney JP Hanlon said “Indictment was without merit.”

Source: Healio.com March 10, 2010

**$4 Million Medicare Audit**

- Anonymous complaint to OIG hotline about cataract surgery
- Also: visits, FP, modifier 25
- Marathon appeals process (=4 years)
  - Redetermination
  - Reconsideration
  - Administrative Law Judge
- $4 Million allegation reduced to $3 Thousand

**Whistleblower in NYC**

- Whistleblower False Claim Act suit
  - Robert P. Kane – former revenue-cycle director
- Continuum Health Partners (now NY Mount Sinai Health System) identified overpayments – refunded 2 yrs later
- Judge applied ACA 60-day rule: pinpoint and refund overpayments within 60 days
- FCA imposes triple damages + $11K per false claim

**Bitter Dispute at Bascom Palmer**

- Timothy Murray, MD accused by colleague Philip Rosenfeld, MD PhD
- Whistleblower case (Qui Tam)
- Alleges Dr. Murray performed unnecessary surgery

**Error vs. Fraud**

- Erroneous claims
  - Mistaken
  - Inadvertent
  - Negligent
  - Innocent
  - Obligation to refund
  - No penalty
  - No jail
- Fraudulent claims
  - Recklessly false
  - Deliberate
  - Intentional
  - Criminal
  - Refund + penalties
  - Civil and criminal sanctions
  - Exclusion

Source: Federal Register Vol 65, No 194, October 5, 2000

**Improper Medicare FFS Payments FY 2014**

- Part A & B improper payments totaling $45 billion; 12.7% of the dollars processed by CMS
- Part C error rate 9%
- Medicaid error rate is 6.7%

Medicare Error Rate (1996 – 2014)

Medicare FFS Improper Payments

- CY 2014
  - Cataract procedures  4.1% error rate
  - Ophthalmology 3.5% error rate

- Compare to:
  - All procedures 12.1% error rate
  - Optometry 5.6% error rate

Next Steps

- Compliance Plan
  - Periodic chart review
  - Monitor utilization patterns
  - Remediate errors
  - Staff training
  - Continuous improvement

Additional Assistance

(800) 399-6565
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