

Ending a Doctor-Patient Relationship

You may be surprised to learn that you could be sued for malpractice based on your decision to stop providing acupuncture care to a patient. While all health care practitioners are familiar with the concept of malpractice, many fail to realize that a decision to discontinue the provision of care can be considered malpractice. Surprisingly, lawsuits charging that a health care provider has "abandoned" a patient are currently one of the most prevalent types of malpractice litigation. This article will explain what is meant by "abandonment" in an attempt to clarify the manner in which you may terminate an acupuncturist relationship without committing malpractice.

For nearly 100 years, courts have declared that abandonment of patients constitutes malpractice on the part of health care practitioners. The decisions of the courts reveal that abandonment occurs not only in cases in which a health care provider refuses to treat a patient obviously in need of treatment, but also in cases in which it appears that no treatment is necessary, or cases in which the acupuncturist has a seemingly valid excuse for failing to provide service. Therefore, it is important that even the most conscientious acupuncturist be familiar with the rules regarding patient abandonment.

Abandonment can occur in several forms. The most easily recognizable type occurs when an acupuncturist tell a patient that treatment is being withdrawn and thereafter performs no further services for the patient. Abandonment can also occur, however, when the acupuncturist is unable to attend to the needs of a patient due to the acupuncturist's own illness; to being on vacation; to the acupuncturist being called away by the illness of a close friend or family member; or to attend to the needs of another patient.

In addition, abandonment can occur when an acupuncturist refuses to treat a patient on the grounds that the patient has failed to pay bills for past services, or if the acupuncturist discontinues treatment on the mistaken belief that the patient has been cured. Even the unauthorized substitution of one health care provider for another has been found to constitute abandonment. Thus, it is important to realize that abandonment is not always a conscious act. It can occur even when the acupuncturist does not intend to abandon the patient, or without the acupuncturist's knowledge of doing so.

A patient who sues you for malpractice on the grounds of abandonment must prove four things. First, it must be proved that you owed the patient a duty of care: that is, the patient must prove that an acupuncturist-patient relationship existed. Second, the patient must prove you violated the applicable standard of care. In other words, the patient must prove your termination of treatment was not an acupuncturally sound act, but instead constituted malpractice. Third, it must be proved the patient has suffered an injury. Fourth, the patient must prove the injury was caused by discontinuation of treatment. The patient must prove each of these elements in order to recover against you.

Existence of the Acupuncturist-Patient Relationship

The issue of whether or not an acupuncturist-patient relationship exists usually is not hard to resolve. In most cases, the patient and acupuncturist have entered into an express agreement for

the acupuncturist to render services to the patient. An acupuncturist-patient relationship can, however, arise in the absence of an express agreement. While it is possible for an acupuncturist to render some services to a person without an acupuncturist-patient relationship being established, the law is unclear as to how much treatment can be provided before such a relationship exists. It is clear, though, that such a relationship can arise even when the acupuncturist has rendered services free of charge.

Standard of Care

There is no ironclad rule for determining when an acupuncturist's discontinuation of service to a patient is so improper as to constitute malpractice. The question of abandonment is relative to the needs of the patient and the circumstances of the case. Conduct that is improper under some circumstances becomes abandonment under others. Thus, courts ultimately determine the question of abandonment by examining a particular situation and deciding whether or not the acupuncturist's decision to end the acupuncturist-patient relationship was reasonable. It is impossible to predict whether or not a court will view a given action as abandonment, but one can get a better understanding by observing the trends of court decisions in various types of abandonment cases. The major trends are as follows:

Unreasonable Demands by Patient

An acupuncturist who does not comply with a patient's unreasonable demands has not abandoned that patient. For example, there was no abandonment in a case in which an acupuncturist refused to make a house call upon a patient who was able to come to the acupuncturist's office. Unfortunately, the rule that excuses an acupuncturist for failing to comply with a patient's unreasonable demands is less clear than it seems, since a jury must determine whether the patient's demands were "unreasonable."

A Patient's Refusal to Cooperate

If a patient is uncooperative and refuses to follow prescribed treatment, the acupuncturist may be justified in immediately terminating the acupuncturist-patient relationship. In this case, the acupuncturist should inform the patient of the termination and the reasons for it in order to prevent any misunderstandings.

Non-Payment by Patient

An acupuncturist's obligation to use reasonable care and skill while treating a patient in no way depends upon the patient's ability to pay his or her bills: rich and poor alike are entitled to demand proper treatment. An acupuncturist is not entitled to end the acupuncturist-patient relationship at a critical time during treatment solely on the grounds that the patient is unable or unwilling to pay for previous or continued treatment. An acupuncturist wishing to terminate the relationship because of the patient's inability or refusal to pay may do so only after giving the patient sufficient notice to arrange health care services from another provider.

Referrals

An acupuncturist who refers a patient to another health care provider must take particular care to ensure the referral does not constitute abandonment. Obviously, the patient's consent must first be obtained. It must also be made clear whether or not the referring acupuncturist will have any further duties to treat the patient. If the referring acupuncturist is to assist the other in the patient's treatment, or is to be responsible for any other aspect of the patient's health care beyond that provided by the other acupuncturist, the acupuncturist-patient relationship has not been

terminated. In this case, inattention to the needs of the patient on behalf of the referring acupuncturist could constitute abandonment.

Substitute Acupuncturists

Acupuncturists who must be absent from their patients for a period of time due to vacations, illnesses or otherwise, frequently arrange for other acupuncturists to provide services to patients during the period of absence. If a patient suffers harm during that period, either because of the substitute acupuncturist's negligence or otherwise, the patient might claim abandonment by the acupuncturist.

Some non-California courts have held there is no abandonment if the health care provider supplies a competent substitute during his or her absence. Since California has not decided the issue, however, the safest course would be to obtain the patient's permission to substitute the services of another acupuncturist for your own during those periods in which you will be called away from patients. This will serve to suspend the acupuncturist-patient relationship during those periods.

Damages and Proximate Cause

The third and fourth elements that must be proved to successfully bring a malpractice action are that the patient has suffered harm and that harm was the result of the acupuncturist's abandonment of the patient. While actual monetary damages resulting from abandonment are often difficult to prove, this cannot be relied upon to protect the acupuncturist from judgement. Even in cases in which monetary damages cannot be proved, most courts will award damages for pain and mental suffering experienced by the patient during the period of abandonment, even if the patient was "abandoned" only for a very short time.

Conclusion

Acupuncturists are cautioned to use care when ending an acupuncturist-patient relationship. Explain to the patient the reason for the termination, making sure the patient understands that you will no longer provide acupuncture care.

When terminating an acupuncturist-patient relationship because of the patient's non-payment, always be sure to give sufficient notice to allow the patient to arrange to receive acupuncture care from another acupuncturist. It is not advisable to terminate relationship for non-payment at a critical stage in the patient's treatment.

Remember that your statements or actions may lead a patient to believe you have terminated the acupuncturist-patient relationship when you have not. Be alert for such mistaken impressions. Communicating periodically with your patients whom you are not currently treating can help avoid such impressions and is also likely to increase your business.

Finally, keep a written record of the terminations of acupuncturist-patient relationships and the reasons for such terminations. The record should include copies of letters and memoranda of telephone or other conversations between you and the patient. As long as your termination of the relationship was reasonable, such a record could prove very valuable in defending a malpractice action based on a charge of abandonment.

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