

Avoiding Delays in Diagnosis

Victor R. Cotton MD, JD

President

Law & Medicine

Hershey, PA

www.lawandmed.com

Seeing the Patient

Seeing the Patient

Executing the Diagnostic Plan

Do I have to see him?

Do I have a duty to him?

Duty Owed

Duty Owed
Duty Breached

Duty Owed
Duty Breached
Causation

Duty Owed
Duty Breached
Causation
Damages

Simply being a physician does not
create a duty.

Ethical

Ethical

Good Samaritan Laws

Ethical

Good Samaritan Laws

Duty to Rescue Laws

Simply being a physician does not
create a duty.

A doctor-patient relationship
creates the duty.

A doctor-patient relationship is formed when a doctor has contact with a patient.

Anywhere

Anywhere

Anytime

Anywhere

Anytime

In Person/Remotely

Anywhere

Anytime

In Person/Remotely

Via a third person

Anywhere

Anytime

In Person/Remotely

Via a third person

Independent of Payment

*Kelley v. Middle Tennessee
Emergency Physicians, P.C.*

133 S.W.3d 587 (Tenn 2004)

Scheduling an Appointment?

Appointment plus records?

Triage?

TAKE HOME #1

Do not triage new patients.

“I’m sorry. We can’t give you any advice or treatment until the doctor sees you.”

Curbside Consult?

Legal Risks of “Curbside” Consults

Cotton VR

Am J Cardiol 2010; 106:135-8.

Not a Curbside

Not a Curbside

Formally interpreting studies

Not a Curbside

Formally interpreting studies

On call for ED (EMTALA)

Cover my practice?

TAKE HOME #2

When in doubt,
see and/or take care of
the patient.

Delays

Seeing the Patient

Executing the Diagnostic Plan

Delays

Seeing the Patient

Executing the Diagnostic Plan
(Delivering the Standard of Care)

The Standard of Care

What a reasonable physician
would do under the circumstances

Case

64 yr old man
MI 2009, DM,
HTN, High Chol

64 yr old man

MI 2009, DM,
HTN, High Chol

Seen by PCP & Cardiologist

Calls PCP

Calls PCP

Recent Onset Knee Pain

Calls PCP

Recent Onset Knee Pain

Triaged

TAKE HOME #3

Existing patients must be properly triaged.

Seen the Following Day

Seen the Following Day

Sig pain, No swelling or erythema

Seen the Following Day

Sig pain, No swelling or erythema

X-Ray – Joint Space Narrowing

Seen the Following Day

Sig pain, No swelling or erythema

X-Ray – Joint Space Narrowing

Pain Meds, Referred to Ortho

Is the PCP responsible for
ensuring that the patient goes to
the
ortho appointment?

The Standard of Care

What a reasonable physician
would do under the circumstances

Seen the Following Day

Sig Pain, No swelling or erythema

X-Ray – Joint Space Narrowing

Pain Meds, Referred to Ortho

TAKE HOME #4

Make sure the patient
knows his role.

“Diagnostic plan discussed
with patient”

Next Day

Patient seen by Ortho

PCP, Cardiologist, Ortho

PCP, Cardiologist, Ortho

Co-Management

64 yr old man

MI 2009, DM,

HTN, High Chol, Knee Pain

TAKE HOME #5

You must define your role.

64 yr old man

MI 2009, DM,

HTN, High Chol, Knee Pain

Decide to Scope Knee

Pre-op CXR

Pre-op CXR

1.5 cm lung nodule

Pre-op CXR

1.5 cm lung nodule

New from 18 months ago

CT Scan

CT Scan

Nodule appears benign

CT Scan

Nodule appears benign

Rx - Repeat CT 6 months

CT Scan

Nodule appears benign

Rx - Repeat CT 6 months

Report sent to Ortho

Who is responsible for follow-up of
the lung nodule?

PCP & Cardiologist - MI, DM,
HTN, High Chol

PCP & Cardiologist - MI, DM,
HTN, High Chol

Ortho - Knee

PCP & Cardiologist - MI, DM,
HTN, High Chol

Ortho - Knee

Lung Nodule

Is he your patient?

Do you have a duty to him?

The Standard of Care

What a reasonable physician
would do under the circumstances

Ignore the nodule, it has nothing to do with his knee.

Someone else will probably find it very soon.

Option #2

You could do the follow-up.

Option #3

You could have his PCP
do the follow-up.

Talk to the PCP

Talk to the PCP

Put it in writing to the PCP

Talk to the PCP

Put it in writing to the PCP

Tell the patient

Talk to the PCP

Put it in writing to the PCP

Tell the patient

Document what you did

TAKE HOME #6

You must clearly define,
and regularly redefine,
your role.