



MODULE ONE

THE DOCTOR-PATIENT RELATIONSHIP

OUTLINE

A. Background – Medical Malpractice System

1. Malpractice is negligence that occurs in the performance of a profession.
2. The four elements of negligence:
 - a. Duty Owed - the existence of an obligation
 - b. Duty Breached - failure to deliver the obligation
 - c. Causation - the link between breach and harm
 - d. Damages - patient injury

B. Creation of the Duty – The doctor-patient relationship

1. Simply being physicians does not obligate us to our fellow man.
2. The doctor-patient relationship creates the duty to another person.
3. A doctor-patient relationship is formed when a doctor has professional contact with a patient.
4. It is not necessary to see the person physically in order to form a doctor-patient relationship.
5. Anyone whom you supervise and have authority over can form doctor-patient relationships for you.

C. Case Scenarios

1. Case Study: Scheduling an Appointment

2. Case Study: Medical Records

Simply having a person's medical records, even if you look through the records and formulate a treatment plan, does not create a doctor-patient relationship.

3. Case Study: Triage

- a. Be careful about who gives medical advice in your office.
 - b. Do not triage new patients.
 - c. A simple suggestion that a person seek medical care is not sufficient to form a doctor-patient relationship.
 - d. Triage creates a doctor-patient relationship. But simple screening does not.
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4. Case Study: Curbside Consult

- a. The physician must have professional contact with the patient, not with another doctor.
 - b. Formal involvement in the chain of patient care does not qualify as a curbside consult.
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5. Case Study: Medical Advice in a Social Setting

- a. A doctor-patient relationship can be formed anywhere at any time.
 - b. **TAKE HOME POINT:** A physician should never enter into a doctor-patient relationship by accident.
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6. Case Study: Covering Another Physician's Practice

- a. The doctor-patient relationship hinges on the element of professional contact.
 - b. **TAKE HOME POINT:** A covering physician assumes all of the doctor-patient relationships of the person for whom he covers.
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D. Exception to the Rule

1. The Emergency Medical Treatment and Active Labor Act (EMTALA) creates a duty without the existence of a doctor-patient relationship.
2. **TAKE HOME POINT:** When the ER calls, consider yourself to be in a doctor-patient relationship.

E. Extent of the Duty

Every doctor owes every one of his patients the standard of care in every situation. There are no exceptions.

F. Ending a Doctor-Patient Relationship

1. Inactivity.

- a. A doctor-patient relationship will cease to exist if it is not maintained by regular contact.
- b. No action required by the physician.

2. Patient Choice.

- a. A patient is permitted to fire his doctor at any time for any reason and without any advance notice.
- b. A patient may also end the doctor-patient relationship indirectly - by misbehaving in a serious way.

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- c. Noncompliance, missing appointments or failure to pay a bill in most cases does not terminate the doctor-patient relationship.

3. The Decision of the Physician.

- a. A physician can fire any patient at any time for almost any reason.
- b. A physician cannot fire a person based on race or disability.
- c. Two Requirements: Notice, and time to find a new doctor (30 days).

- d. Notice – simple form letter.
- e. Finding a new doctor is the patient’s responsibility.
- f. Delivery of the letter

G. Termination Dilemmas

- 1. During the 30 days, the physician owes the patient the standard of care.
- 2. On the 31st day, the relationship and the duty end.
- 3. It often makes practical sense to help the patient find a new doctor.
- 4. Be careful with an ex-patient who comes to the emergency room (EMTALA).
- 5. Once notice is given, nothing can stop the relationship from ending on the 31st day unless the physician forgives the patient and takes him back.
- 6. So long as you give sufficient notice, you cannot abandon the patient.
- 7. If a doctor-patient relationship has become dysfunctional and cannot be repaired, the ethical duty is to end the relationship.

- 8. **TAKE HOME POINT:** Resolve all doctor-patient relationship dilemmas by erring on the safe side and taking care of the patient.