

## Before firing bad patients, doctors turn to lawyers

**BY LISA VAN DER POOL**  
JOURNAL STAFF

A patient is unhappy with her cosmetic surgery results and begins to bombard her physician with voice mails and e-mails demanding a refund; her doctor ponders a restraining order.

A physician has proof that his patient is “doctor shopping” to procure extra pain pills to feed a drug addiction.

A psychiatric patient threatens his doctor with physical violence.

Each of these real Massachusetts cases, while radically different, had the common effect of prompting a doctor to do the unthinkable: fire a patient.

But before those doctors prescribed pink slips, they call to their lawyers.

A lack of standardized policies and an increasingly litigious culture have combined to make doctors wary of abandonment claims and medical malpractice lawsuits, according to local health care lawyers, who say that in recent years they have fielded more inquiries from doctors and health care organizations about the best way to terminate a doctor-patient relationship.

Pressures to see more patients in a shorter period of time, mountains of paper work and the oppressive managed-care culture has created a harried environment in which clinicians must practice their trade, according to Dr. John Fromson, chairman of the department of psychiatry at the MetroWest Medical Center in Natick and assistant clinical professor of psychiatry at Harvard Medical School.

“The system has engendered much greater uncertainty, particularly with the insertion of the third party into the otherwise sacrosanct relationship of a doctor and patient,” said Fromson. “The system is increasingly complex and it engenders concern about legal ramifications.”

Statistics on patient firings are difficult to track down, although anecdotally local practitioners say the numbers are trending upward.

When a patient-physician relationship begins, the doctor is under ethical and legal obligations to provide medical services for as long as the patient wants, according to the American Medical Association. For a doctor



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**Jennifer Gallop and Anthony J. Cichello of Boston law firm Krokidas & Bluestein advise doctors with problem patients.**

to cut off that relationship and not be successfully sued with an abandonment claim, a laundry list of steps needs to be taken.

First, there has to be a legitimate reason, which could include everything from a patient refusing treatment and repeatedly missing appointments to threats of violence. Next, a letter should be sent to the patient via certified mail with a detailed explanation of the termination and a note that services will be continued for 30 days, to allow the patient to find another doctor.

Statements like “I cannot provide effective care for you” should be avoided.

The doctor should offer to transfer medical records, cost free, to the patient’s new physician. Because every case is different, most practices deal with situations individually, according to legal experts.

Dianne J. Bourque, a health care attorney at Mintz Levin Cohn Ferris Glovsky & Popeo PC in Boston has gotten more calls of late about patient terminations, which she says often involve threatening, violent or drug-seeking behavior.

“It’s amazing the lengths that patients will

go to and how devious they’re getting to get prescription drugs,” said Bourque. About 7 million Americans abuse prescription drugs, up from 3.8 million in 2000, according to the U.S. Drug Enforcement Administration.

Bourque has also dealt with terminations that resulted from overbearing family members.

“That’s one of the hardest reasons. You have this poor patient sitting there and you have these buffoons you can’t get rid of who are incredibly disruptive,” said Bourque. “It gets delicate ... if you have someone who’s a wingnut and you deliver this letter. There can be a period of anxiety associated with that.”

In a situation where there’s a chance to modify patient behavior and avoid a termination, some doctors will use a “behavioral contract” detailing how a patient needs to alter their behavior in order to stay with their doctor, such as not swearing or yelling at the doctor, according to Jennifer Gallop, a health care attorney at Krokidas & Bluestein LLP in Boston.

“That’s a first step if you think it’s possible to work out and there’s nothing dangerous” about the situation, said Gallop.

Christine G. Solt, head of the health care practice at Choate Hall & Stewart LLP in Boston, attributes the uptick in patient-termination requests to reasons including aggressive parents pushing for more tests and treatments; drug-seeking patients; and patients who habitually miss appointments.

“The bottom line is you want to give patients the best care you can and if you don’t have a good relationship, you can’t do that,” said Solt. “It’s okay to acknowledge that the relationship isn’t working.”

Still, there are no guarantees of a complaint-free future for doctors who consult lawyers and insurance companies before firing a patients.

“Even if one communicates with the patient, you can never say you’re not going to get sued,” said Dr. Michael Grodin, a professor of bioethics at the Boston University School of Public Health. “The issue is that you will not be successfully sued.”

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