

# Preventive Action

Quarterly Risk Management Newsletter for Policyholders of FPIIC

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## Avoiding Abandonment Claims

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### Terminating the Physician-Patient Relationship

The physician-patient relationship is one that is based on the law of contracts. This relationship obligates the physician to continue treating the patient until the patient's condition no longer warrants treatment, the patient discharges the physician, or the physician unilaterally withdraws from treatment providing that the patient is given appropriate notice of the physician's intent to withdraw and afforded an opportunity to obtain a suitable replacement. Improperly severing the physician-patient relationship (contract) exposes the physician to a potential claim of abandonment.

While a physician has the right to withdraw from the care of a patient,

appropriate measures must be taken to avoid an allegation of abandonment. The more commonly encountered situations are non-payment of a bill by the patient, failure by the patient to keep follow-up appointments or follow medical advice, or the threat of a legal action by the patient or family member. Under these circumstances, it may be prudent for the physician to terminate the relationship.

### Avoid Abandonment

Abandonment may be defined as the unilateral severance of the physician-patient relationship at a time when there is still a need for treatment. Actionable abandonment occurs only in the absence of notice to withdraw or a failure to provide adequate medical attention.

Generally, there is no legal cause of action when evidence that adequate medical treatment was available within a reasonable time frame after the physician has withdrawn from care or if no injury or damage resulted. Before severing the physician-patient relationship, first consider the patient's medical condition and if the severance will result in a break in the continuity of care which in and of itself could unfavorably impact the patient's condition. Depending on the medical condition and treatment requirements, terminating the physician-patient relationship could be unwise from a liability standpoint. If the patient

requires treatment at the time, the physician should render care, stabilize the patient and only then consider withdrawal. This does not mean completing all of the patient's medical care, but rather stabilizing the immediate medical condition. To withdraw from a patient who needs immediate care risks not only injury to the patient, but also a suit for abandonment and possible disciplinary action from the Board of Medicine.

If the patient is in a non-emergent condition, the physician should provide the patient with notice of intent to withdraw. The notice must inform the patient of the need for follow-up care, provide sufficient time to obtain the care, and the potential consequences of foregoing such care.

The length of time will vary according to the circumstances. In the interim, the physician should remain available to treat the patient should the condition deteriorate.

The notice to withdraw should always be documented. The best method is to discuss it with the patient verbally and follow up with a

certified letter. If it is not possible to discuss the matter with the patient, then the letter should provide sufficient protection. Review the applicable provider contract or the patient's managed care plan for any limitations or prohibitions for discharging the patient.

**“Improperly severing the physician-patient relationship (contract) exposes the physician to a potential claim of abandonment.”**

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First Professionals Insurance Company



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For comments, questions or to obtain additional copies contact the First Professionals Insurance Company Risk Management Department at 800-741-3742, ext. 3016.

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The following elements need to be addressed in the letter to the patient:

- 1. A statement of intent to withdraw from treatment.
2. A designated time frame and date for the withdrawal.
3. An agreement that the physician will continue treatment through the withdrawal date.
4. The potential consequences to the patient of foregoing continued care and treatment, when necessary.
5. An offer to refer the patient to an appropriate source where the patient can find a new physician.
6. An offer to furnish a copy of the medical record upon patient authorization.

The letter should be sent by certified mail, return receipt requested as well as via regular mail, indicating, "copy sent via regular mail." If the patient refuses the certified letter, the regular mail letter will then serve as proper notice. A copy of the letter and return receipt should be filed in the patient's chart.

AVOIDING ABANDONMENT CLAIMS
• Properly terminating the physician-patient relationship may require more than sending a termination letter. Situations vary.
• Sample termination letters are intended for reference only and should be revised to fit specific issues.
• Send the letter certified mail, return receipt requested and also by regular mail and indicate in the letter "copy sent via regular mail." File a copy of the letter in the patient's chart.
• Consult your professional liability carrier or personal attorney should uncertainty arise.

FORM LETTERS
TO ANNOUNCE WITHDRAWAL FROM CASE
Dear \_\_\_\_\_:
Please be advised that I am withdrawing from further professional attendance upon you because of your refusal to follow my medical advice and treatment. Since your condition requires medical attention, I suggest that you place yourself under the care of another physician without delay. I will remain available to attend you for (specify # of days and calendar date) from the date of this letter, but in no event beyond that point.
This will allow you ample time to select a physician of your choice from the many competent practitioners in this area. With your authorization, I will make available to the physician your case history and a copy of your medical records.

TO CONFIRM DISCHARGE BY PATIENT
Dear \_\_\_\_\_:
This will confirm that you discharged me as your physician on \_\_\_\_\_. In my opinion your condition requires continued medical treatment by a physician. If you have not already done so, I suggest that you employ another physician without delay. At your request, I will provide your new physician with information regarding the treatment which you have received from me and a copy of your medical records.

**STATEMENT OF PATIENT LEAVING HOSPITAL AGAINST ADVICE**

This is to certify that I am leaving \_\_\_\_\_ Hospital at my own insistence and against the advice of the hospital authorities and my attending physician. I have been informed by them of the dangers of my leaving the hospital at this time. I release the hospital, its employees and officers, and my attending physician from all liability for any adverse results caused by my leaving the hospital prematurely.  
Signed \_\_\_\_\_

I agree to hold harmless \_\_\_\_\_ Hospital, its employees and officers, and the attending physician from all liability, with reference to the discharge of the patient named above.

\_\_\_\_\_  
(Husband, wife, parent, etc.)

If the patient refuses to sign such a statement, he cannot be forced to do so nor may his release be withheld until he signs. If this occurs, the form should be filled out, witnessed by hospital personnel present, and "Signature Refused" written on the form.

**TO PATIENT WHO FAILS TO FOLLOW ADVICE**

Dear \_\_\_\_\_:

This will confirm our conversation on mm/dd/yy wherein I informed you that I was unable to determine without x-rays whether you sustained a fracture in your injured right arm. I strongly urge you to permit me or some other physician of your choice to obtain the necessary x-rays without further delay.

Your failure in not permitting a proper x-ray examination may result in serious consequences if in fact a fracture does exist. -

## News Alerts

### Website Lets Florida Patients See Doctors Online

A website based in South Florida allows patients to visit the doctor without leaving their home. Patients pay \$99.95 to access the website, MDWEBLive.com. The fee includes a camera, headset, and the first online doctor's visit. After that, it's \$40 up front per consultation. While MDWEBLive is convenient, the service is controversial. Telemedicine law in Florida requires a "physical examination" before a physician can prescribe treatment online, but does not spell out if that means "in person." Doctors who are leery of the online visits say there are things you can't see on a web cam. However, others who work with MDWEBLive point out doctors that are on-call make phone calls every day with no medical records, and no prior knowledge of the patient, and still provide opinions. WEBLive doctors are covered by medical professional liability insurance and have access to patient records. (NBC6 (FLA), 8/11/08) -

### Florida Healthcare Providers Battle Amendment in Federal Court

Florida doctors and hospitals are now battling in federal court to keep records of medical errors out of public view. In 2004, voters passed Amendment 7, a referendum that gives patients "access to records made or received in the course of business by a healthcare facility or provider relating to any adverse medical incident." Shortly after it passed, doctors and hospitals took the matter to the state's Supreme Court. In a 4-3 decision, justices dismissed the challenges by doctors and hospitals, and threw out a 2005 state law that issued guidelines for implementing the referendum. The current suit argues that federal laws on medical privacy supersede state laws. Doctors, hospitals, and even some safety advocates said the amendment would run counter to its purpose, discouraging any reporting

of errors, and violating long-held agreements. Hospitals also claim that Amendment 7 puts them in conflict with a 1986 federal law, the Health Care Quality Improvement Act. (Herald Tribune, 8/9/08) -

### Follow-up Care Lacking For Colon Cancer Patients

According to new research, many colon cancer patients aren't getting the screenings recommended after surgery to make sure the disease hasn't returned. Researchers at University Hospitals Case Medical Center in Cleveland found only about 40% of the 4,426 older patients in their study got all the doctor visits, blood tests, and the colonoscopy advised in the three years after cancer surgery. Whether doctors didn't offer the tests or patients failed to get them isn't known, said Dr. Gregory Cooper, who led the study. "I would probably put most of the blame on the providers," said Cooper, a gastroenterologist at the hospital. According to data found in the PIAA Colorectal Cancer Claims Study, an alleged delay in diagnoses attributable to the treating physician(s) was reported 654 times, with claimants often citing multiple reasons per claim. A physician's failure to screen was cited as the number one delay in diagnosis with 106 occurrences, or 16% of the total. The PIAA study also shows that claimants can also be held accountable for delay in diagnosis. The data revealed that while 46% of patients claimed contributing factors unknown, 20% of claimants failed to seek follow-up care. (PIAA, 9/9/08) For their study, Cooper and his colleagues used a federal database of cancer cases and Medicare records for patients to see if the guidelines were being followed. When the study began, the minimum guidelines called for at least two doctor visits a year, twice yearly blood tests for two years, and a colonoscopy within three years. Overall, 60% of the patients didn't meet the guidelines. (MSNBC, 9/8/08) -

# New Network Improves Patient Safety

*Have you registered with the Health Care Notification Network (HCNN)?  
If not, don't delay! The benefits of the network improve patient safety and your liability protection.*

Medical liability protection requires that you are well-informed about patient safety issues quickly and reliably. First Professionals Insurance Company (FPIC) is working with other liability carriers, the FDA and medical societies to bring a new service to you that will improve patient safety and your liability protection.

HCNN is a new network to deliver drug safety alerts online to U.S. physicians and was recently launched to replace the decades-old system based upon paper and U.S. mail. The HCNN is free to all licensed U.S. physicians, and is solely used for patient safety alerts that are product-related and mandated by the FDA. It ensures the most rapid and effective delivery of important alerts to physicians, thereby improving patient safety and office efficiency while reducing liability and paperwork. It may also be used to notify physicians in the event of national public health emergencies or bio-terror events.

In an effort to implement the HCNN services, FPIC recently mailed a letter of explanation regarding the program and a fax form to all policyholders. If you haven't done so already, please take the time to verify the requested information and fax it to the appropriate contact number. It's that simple.

FPIC endorses the HCNN because we believe that more rapid and focused delivery of FDA-mandated product recalls and warnings have the potential to reduce malpractice claims and, ultimately, decrease malpractice insurance premiums.

For more information please visit [www.hcnn.net](http://www.hcnn.net), e-mail [info@hcnn.net](mailto:info@hcnn.net) or call (800) 925-5155. You may also contact a risk management consultant at FPIC if you have questions or to obtain additional details at (800) 741-3742, extension 3016, or [rm@fpic.com](mailto:rm@fpic.com).

## **Why should I register for the HCNN?**

The HCNN is good for providers and for patients because it improves the speed and efficacy of patient safety alert delivery. U.S. liability carriers, medical societies, health plans, government officials and other healthcare leaders are asking all physicians to register for HCNN because it improves patient safety, reduces physician liability, and ensures the fast and convenient delivery of patient safety alerts. The HCNN also stores and files alerts and can send them automatically to other members of the practice staff. HCNN benefits include:

- Improved patient safety
- Reduced professional liability
- Immediate receipt of important clinical information
- Increased convenience for practices
- The ability to have patient safety alerts also sent to other members of your office staff
- Reduction in office paperwork and mail
- The ability to get more information about a specific patient safety alert
- The ability to enter into a discussion area with other providers who have received an alert



*Working Together to Protect Patients*

## Case Study: Failure to Diagnose and Treat At-risk Patient

Editor's Note: This case analysis reflects an actual First Professionals' case.

### Case Analysis

The patient, a 49-year-old male, was diagnosed with hypertension, memory loss, short-term vision change, single-sided numbness and weakness. Over a three-year period he was followed by his primary care physician, an internist and several neurologists. Medical records revealed that despite such clinical symptoms, no tangible treatment was rendered. The patient suffered a massive stroke, resulting in permanent disability. He was then placed on Coumadin, and experienced no further strokes.

Suit was brought against the primary care physician and all of the neurologists for failure to diagnose and treat an at-risk patient for stroke. The patient's medical experts argued that had anticoagulant therapy been initiated, the stroke suffered by the patient would have been avoided. Although a causation defense may have been possible, medical experts could not support the standard of care. The patient's medical history and ongoing clinical condition placed him at high risk for stroke and should have prompted his treating physicians to initiate anticoagulation therapy.

### Risk Management Discussion

- Diagnostic error is the most common type of medical malpractice claim and often the most difficult to defend
- Most diagnostic errors are attributed to system failure – not faulty medical judgment.
- Ensure that at-risk patients are closely followed and not lost to follow up.
- Clarify the treatment parameters of all treating physicians and consultants.
- Complete the treatment loop when at-risk patients are being followed by multiple physicians.
- The physician that orders a particular diagnostic study or consultation is responsible for obtaining the results of same.
- Patients with chronic conditions often are at greater risk for diagnostic failure. –

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## Legal FAQs For information specific to your state of practice, contact First Professionals' Risk Management department



### **Are all covered entities required to comply with the HIPAA Security Rule?**

Yes. All covered entities that must comply with the HIPAA Privacy Rule must comply with the HIPAA Security Rule.

### **What are 'compensatory damages'?**

Generally, damages designed to compensate the injured party. Compensatory damages include past, present and future medical bills, lost wages, and other expenses attributed to the negligent act or injury.

### **How long must a physician retain medical records?**

Per Florida Administrative Code

64B8-10.002, for five years. However, FPIC recommends that records be kept for at least a seven-year period from the point of last patient contact given the maximum statute of limitations for medical malpractice. For patients under the age of one, records should be retained until the child's eighth birthday. If the patient is age one year or older, then keep records for the seven-year period.

### **What action should be taken when a summons and complaint is received?**

Immediately notify FPIC by calling the Claims Department at (800) 741-3742, ext 3293. If you are served, FPIC only has a limited number of days to assign a defense attorney and prepare a response to be filed on your behalf. It is important to not discuss the case with the patient, the patient's attorney or other parties involved in the care and treatment of the patient. You should gather and secure the patient's records immediately.

### **What action should be taken when a "Notice of Intent" letter is received?**

Immediately notify FPIC by calling the Claims Department at (800) 741-3742,

ext 3293. FPIC only has limited a limited number of days to prepare a response on your behalf to the notice of intent and assign a defense attorney, if necessary. It is important to not discuss the case with the patient, the patient's attorney or other parties involved in the care and treatment of the patient. You should gather and secure the patient's records immediately.

### **Must a physician supply an interpreter at the request of the patient?**

Yes, in compliance with the Americans with Disabilities Act. The expense incurred in providing interpreter services may be used as a write-off for tax purposes

### **May multiple prescriptions be issued for the same medication on the same day?**

The Florida Board of Medicine's position is that the issuance of multiple prescriptions for the same medication on the same day to a stable patient is appropriate as long as the statement 'do not fill before' is written on the subsequent prescriptions. In addition the prescription must adhere to the new legible prescription law. —