

## THE CONSEQUENCES OF A MEDICAL PROVIDER QUITTING WITHOUT NOTICE

**Urgent message: Patients and communities rely on access to urgent care to augment primary care shortages and decant over-crowded Emergency Departments. A provider who quits without notice causes scheduling disruptions which could be considered “patient abandonment.”**

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Once a medical provider has accepted a patient into her practice, she is under an ethical and legal obligation to provide services to the patient as long as the patient requires them.<sup>1</sup> However, it's not uncommon for a physician at an urgent care center to seek a higher-paying job. How (if at all) does that affect the obligation to continue the care of a particular patient?

Take the case of a hypothetical physician who's looking to increase her income, or perhaps has heard rumors that she might be cut from the schedule. To address this, she secures a similar position at a competing urgent care. Not wanting to forego income in the transition, she could submit her 2-week notice to her current employer and work right up to the start date at the new facility. Or, if she is under contract with her current employer, she may be required to provide a certain term of notice; leaving before the period has elapsed would be a violation of the employment contract. However, if she's an at-will employee, the urgent care owner has the right to terminate her the minute she fulfills her obligation to give notice; thus, being forthright about her situation could cost her 2 weeks' pay. As a result, she might choose to give no notice; doing so would protect her from immediate dismissal,<sup>2</sup> but could be deemed “gross misconduct,” insubordination, and abandonment of the responsibility to care for her patients.<sup>2</sup>

This article will address the question of whether such a physician has any legal or ethical obligations to her patients when she quits without notice.

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The requirement of employees to give notice of plans to quit is only a custom. There's no legal obligation, and employees are not required to give 2-weeks' notice.<sup>3</sup> There are 49 states with at-will employment laws, which means that any employee can quit at any time, without notice—likewise, an employer can terminate an employee at any time.<sup>4</sup> (The latter scenario was discussed in How Best to Manage an 'At-Will' Termination in the June issue of *JUCM*.)

Of course, without notice, an employee's departure can be disruptive; giving notice generally allows an employee to leave a company on good terms.<sup>5</sup>

## Legal Obligations

### *Malpractice for patient abandonment*

Patient abandonment is a type of medical malpractice that happens when a physician ends the doctor-patient relationship without reasonable notice or a reasonable excuse, and doesn't provide the patient with an opportunity to find a qualified replacement care provider.<sup>6-8</sup> It's also defined as "when a physician leaves the employment of a group practice, hospital, clinic or other healthcare facility, without the physician giving reasonable notice and under circumstances which seriously impair the delivery of medical care to patients."<sup>9-13</sup>

According to the AMA's Code of Medical Ethics, Opinion 8.115, a physician has the option of terminating the patient-physician relationship, but she must give sufficient notice of withdrawal to the patient, relatives, or responsible friends and guardians to allow another physician to be secured.

### *Patient abandonment in emergency rooms and urgent care situations*

Urgent care owners should know that in some instances, emergency rooms and urgent care facilities are exempt from these notice requirements.

Ohio promulgated a regulation in 2013 stipulating that any physician leaving, selling, or retiring from a practice must comply with Administrative Code Rule 4731-27-03.<sup>14</sup> Within 30 days of learning of a physician's termination or resignation, a medical practice must send notice by mail or by HIPAA-compliant electronic means to all patients treated by the departing physician within the past 2 years.<sup>14</sup> However, the notification requirements in that state do not apply to physicians who have provided treatment *on an episodic basis, in an emergency department setting, or at an urgent care center*.<sup>14</sup>

In addition, notice of termination isn't necessary if the patient's care has been formally transferred to another physician who's not within the same medical practice, or when the patient is the person responsible for terminating the physician-patient relationship. This should be documented in the patient's chart.<sup>15,16</sup>

## Ethical Issues

Aside from the AMA Ethical Standards, an urgent care owner may consider some other standards of conduct that could give rise to a legal remedy for the physician's departure:

- *Availability of urgent care services in the community.* The urgent care's ability to be open and to deliver services hinges on its scheduling of a provider during all hours of operation. A sudden departure of a provider without notice may mean that the center is unable to staff

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its schedule and, thus, be required to reduce hours or even temporarily close—leaving patients to find care elsewhere. This translates into a loss of profits.

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- *Continuity of care.* Established patients often return to urgent care to follow-up on lab tests, a reexamination of an injury, wound care (suture removal), when symptoms don't improve, and for medication refills. A provider who quits without notice is unavailable for this follow-up with these patients. Further, urgent care providers are typically available to oversee referrals to medical specialties such as physical therapy or imaging, and if a provider leaves without notice, management of the patient's ongoing care may suffer or not occur.

However, the standard practice of medicine involves physicians transferring patients, eg, from an emergency room to an in-patient ward. When physicians rely on other physicians to assist in caring for their patients, it's not considered patient abandonment.<sup>17</sup> A physician's transfer agreement with another physician is a mechanism to ensure continuity of care. Continuity of care for a patient is often maintained even without formal measures like transfer agreements.<sup>17</sup>

A key aspect of the continuity of care is the documentation of charts by the departing physician. When a provider leaves without notice, she may have incomplete charts. This can create administrative and insurance billing issues. Further, that physician is unavailable to answer insurance questions or provide supporting documentation on claims, which can result in increased write-offs. The state may have regulations as to whether it constitutes patient abandonment for a provider to leave without documenting the transfer of care or by inappropriately terminating the patient/practitioner relationship.<sup>18</sup> One solution, perhaps, is to withhold the physician's final paycheck until all charts are updated.

- *Supervisory responsibilities.* If the departing physician had supervisory responsibility for PAs and NPs but leaves without transitioning those responsibilities, the ability of those medical professionals to continue to provide care may be jeopardized if the urgent care can't find another physician to assume their supervision.<sup>19</sup> Again, this may have an impact on the urgent care's financial stability and bottom line.
- With urgent care billing, a physician and any PAs or NPs working under her must be "credentialed" by insurance companies to be considered part of their "network" and enable "in-network" contract reimbursement—a process that can take months. If a credentialed provider suddenly quits and is replaced with an as-of-yet credentialed doctor, the urgent care may not be paid by insurance. This can result in increased write-offs or patients paying out-of-network deductibles, depending on their insurance plan. The upshot is lost business.
- *Workplace efficiencies.* The unexpected departure of an urgent care physician can have a significant impact on the rest of the staff and on patients. Remaining providers and staff—particularly at centers staffed with multiple providers during a shift—may have to work harder and extra hours, and wait times and patient dissatisfaction may increase. If a center has to close temporarily or downsize operations due to losing a provider, support staff may also lose hours or employment. This, again, causes an economic impact on the urgent care.

### What Legal Remedy Does the Urgent Care Owner Have in this Situation?

Although an urgent care physician quitting without notice can be upsetting and potentially create disarray, a claim of physician abandonment requires there to be some type of harm. When

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bringing a lawsuit, a plaintiff must prove that the physician ended the relationship at a critical stage of a patient's treatment without good reason or sufficient notice to allow the patient to find another physician, and the patient was injured as a result.<sup>20-23</sup> Again, some states exempt urgent care facilities from patient abandonment notice requirements. Still, there can be consequences for the provider who leaves her employer or patients in the lurch:

- *Report to the medical board.* A physician who abandons her patients may be reported to the state medical board. Affected patients may be the first to file a complaint. Typically, the medical board will hold a hearing during which a hearing officer may recommend that the Board suspend the physician's privileges or issue a written reprimand for abandonment of patients.<sup>24,25</sup>
- *Business interference.* An owner could claim that the physician's actions constituted tortious interference of the business's reputation and goodwill.<sup>26</sup> The elements of a cause of action for tortious interference with a business expectancy or relationship are: 1) a contract or valid business relationship or expectancy; 2) the defendant's knowledge of the relationship or contract; 3) intentional interference by the defendant causing or inducing a breach of the contract or relationship; (4) the absence of justification; and (5) damages resulting from the conduct of the defendant.<sup>27</sup> Courts require an element of malice or wrongdoing to sustain a claim of tortious interference with business relations.<sup>28</sup> This claim may be a high threshold for an owner to prove.
- *Breach of contract.* If the physician signed an employment contract, depending on the terms of separation, she may be in breach, presenting a claim for damages.<sup>29</sup> The urgent care must document the damage that it suffered, which may include loss of business, additional overtime paid to other providers, and other monetary expenses.

Similar to an action in tort, the urgent care owner must weigh its contract damages to determine if they are sufficient to expend the time and expense of legal action.

### Takeaway

Except in Montana, employment is at-will, barring an employment contract. If urgent care owners execute contracts with their physicians, they should include language that specifically details the circumstances and responsibilities for termination.

For at-will physician employees, systems and procedures should be in place to ensure an efficient transfer of care and documentation.

While there are potential actions for an owner to consider against the quitting doctor, urgent cares may be best served to proactively guard against damage to the practice by protecting against issues of continuation of care and inadequate staffing.

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