

National Council of State Boards of
Examiners for Speech-Language
Pathology and Audiology

Stranded in the Desert

Issues in Patient Abandonment

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1

PRESENTED BY:

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2

Disclosures

Financial Disclosures

- Tammy Brown receives compensation as an Audiology Board Member with the Ohio Board of Speech-Language Pathology and Audiology, which licenses and regulates the practice of speech-language pathology and audiology in the state of Ohio. Her travel related expenses are being reimbursed by the Ohio Board of Speech-Language Pathology and Audiology.
- Gregg Thornton receives compensation as the Executive Director for the Ohio Board of Speech-Language Pathology and Audiology, which licenses and regulates the practice of speech-language pathology and audiology in the state of Ohio. His travel related expenses are being reimbursed by the Ohio Board of Speech-Language Pathology and Audiology.

Non-Financial Disclosures

- Presenter(s) are not presenting any content regarding a specific product or service.

3

Learner Outcomes

1. Participants will be able to define and understand the legal and ethical principles regarding patient abandonment.
2. Participants will be able to identify issues and implications that arise when patient abandonment occurs.
3. Through illustration of real scenarios and application of various professional codes of ethics, participants will be able to understand how to appropriately discharge a patient/client from a therapeutic relationship to ensure their health and welfare.
4. Participants will be able to identify primary principles to include in licensure board rules and regulations when addressing patient abandonment allegations or complaints.



4

Patient Abandonment – Stranded in the Desert

What's the connection between patient abandonment and being stranded?

Patient Abandonment can have consequences for:

- Patients/Clients
 - Without proper dismissal – patient harm may result
- Speech–Language Pathologists and Audiologists
 - Without proper dismissal – licensees may be at risk for legal liability, disciplinary action, and impact to reputation
- Licensure Boards
 - Without appropriate regulations to address patient abandonment complaints, consumers may not be adequately protected

5

Patient Abandonment Defined

Patient Abandonment – How it can impact the patient/client:

- Continuity of care
 - loss of records
 - repeating services
- Requires multiple office visits
- Time, travel, and cost
- Loss of trust between the provider and patient
- Loss of trust between professionals

6

Patient Abandonment Defined

Patient Abandonment – it can be a violation of:

- Statutes;
- Administrative Rules; or
- Code of Ethics

7

Patient Abandonment Defined

- **General definition:** Patient Abandonment refers to withdrawal from treatment of a patient without giving reasonable notice or providing a competent replacement.

8

Patient Abandonment Defined - Statutes

- Legal definition for patient abandonment will vary by state
- **Legal definition:** an example for patient abandonment:
 - can be defined as the **unilateral termination** of a physician–patient or health professional–patient relationship by the health care provider **without proper notice** to the patient when there is still the necessity of continuing medical attention.

9

Patient Abandonment Defined - Statutes

Legal elements for patient abandonment can vary by state:

- Generally under state statutes as a civil cause of action, e.g. tort law – malpractice, negligence
- Legal elements vary by state – refer to your state statutes
- **Legal elements:** an example for patient abandonment:
 - Health professional–patient **relationship must exist**
 - Provider should have **reasonably foreseen that harm** would have resulted from the termination
 - **Patient harm** must be **demonstrated**
 - Patient must demonstrate that at the time patient abandonment occurred, **a condition existed requiring medical necessity**

10

Patient Abandonment Defined - Statutes

Legal elements: some common elements

- Unilateral termination by the healthcare provider
- Without reasonable notice
- Without referral to an appropriately qualified provider

Legal elements: some variations

- **Causation** between the provider's inappropriate termination and the patient/client being harmed
- At the time the provider inappropriately terminated the patient/client, a condition existed requiring **medical necessity**

11

Patient Abandonment Defined - Statutes

Patient Harm vs. Medical Necessity

- What do speech pathologists and audiologists do that could cause patient harm?
- How does medical necessity relate to services speech-language pathologists and audiologists provide?
- Comes down to standing behind the scope of practice of speech-language pathology and audiology for consumer protection

12

Patient Abandonment Defined - Rules

Legal Basis Under Administrative Rules:

- Regulatory entities can define/enforce patient abandonment

Example – Ohio State Medical Board
Chapter 4731–27 Termination of Physician–Patient Relationship

4731–27–01 Definitions.

- (A) "Health care entity"
- (B) "Termination"
- (C) "Retiring"
- (D) "Terminate"
- (E) "Resignation"

13

Patient Abandonment Defined - Rules

Legal Basis Under Administrative Rules:

Example – Ohio State Medical Board
Chapter 4731–27–02 Dismissing a patient from medical practice

How Physician–Patient Relationship Is Established:

- when the physician provides service to a person to address medical needs,
- whether the service was provided by mutual consent or implied consent,
- or was provided without consent pursuant to a court order.
- **Once a physician–patient relationship is established, a person remains a patient until the relationship is terminated.**

14

Patient Abandonment Defined - Rules

Legal Basis Under Administrative Rules:

Example – Ohio State Medical Board
Chapter 4731–27–02 Dismissing a patient from medical practice

How Physician–Patient Relationship Is Terminated:

- A **statement** that the **physician–patient relationship is terminated**;
- A **statement** that the physician will **continue to provide** emergency treatment and **access to services** for up to **thirty days** from the date the letter was mailed, to allow the patient to secure care from another licensee; and
- **An offer to transfer records** to a new provider upon the patient's signed authorization to do so.

15

Patient Abandonment Defined - Rules

Legal Basis Under Administrative Rules:

Example – Ohio State Medical Board
Chapter 4731–27–02 Dismissing a patient from medical practice

Requirements for Sending Notice:

- letter via **certified mail, return receipt requested**,
- with a **copy** of the letter, the certified mail receipt, and the mail delivery receipt **maintained in the patient record**;
- An **electronic message sent via a HIPAA compliant electronic medical record system**,
- is capable of sending the patient a notification that a message has been received and is in the patient's portal, and is capable of notifying the sender that a message has not been viewed or has been viewed;
- **If a notice sent via an electronic message is not viewed within ten days** of having been sent, **a letter sent via certified mail**

16

Patient Abandonment Defined - Rules

Legal Basis Under Administrative Rules:

Example – Ohio State Medical Board
Chapter 4731-27-02 Dismissing a patient from medical practice

Exceptions:

- (1) medical service rendered on an **episodic basis/emergency setting/medical service not expected to be rendered to the patient in the future**;
- (2) **patient's care transferred** to another health care provider who is not in the same practice group;
- (3) physician is **leaving** a practice, **selling** a practice, **retiring**;
- (4) **patient terminated** the relationship,

17

Patient Abandonment Defined - Rules

Legal Basis Under Administrative Rules:

Example – Ohio State Medical Board
Chapter 4731-27-02 Dismissing a patient from medical practice

Other Requirements:

- physician assistant or anesthesiologist assistant may not independently dismiss a patient from a medical practice
- **Improper dismissal of a patient is failure to conform to minimal standards of care, whether or not actual injury to a patient is established**

18

Patient Abandonment Defined – Code of Ethics

Legal basis and definitions of patient abandonment found under Codes of Ethics:

- State Licensure Boards
- National and State Associations

19

Patient Abandonment Defined – Code of Ethics

● ASHA

- When clinicians **leave** a caseload **without coverage** by an appropriately qualified professional, it is called **client abandonment**. A professional who **abandons** her or his **clients without making effective efforts** to provide for their **continuing care** violates the first principle of the ASHA Code of Ethics: “Individuals shall honor their responsibility to hold paramount the welfare of persons they serve professionally....”

- American Speech-Language-Hearing Association. (2010). *Client abandonment* [Issues in Ethics]. Available from www.asha.org/policy.

- Note: ASHA is currently reviewing and updating its ethics policy statement as a result of the 2016 ASHA Code of Ethics.

20

Patient Abandonment Defined – Code of Ethics

ASHA Code of Ethics (2010) – Principles of Ethics 1 –

Individuals shall honor their responsibility to **hold paramount the welfare of persons they serve** professionally or who are participants in **research** and **scholarly activities**, and they shall **treat animals** involved in research in a **humane manner**.

- **Rule R** – Individuals **shall not discontinue service** to those they are serving **without providing reasonable notice**.

21

Patient Abandonment Defined – Code of Ethics

ASHA Code of Ethics (Mar. 1, 2016) – Principles of Ethics 1 –

Individuals shall honor their responsibility to **hold paramount the welfare of persons they serve** professionally or who are participants in **research** and **scholarly activities**, and they shall **treat animals** involved in research in a **humane** manner.

- **Rule T** – Individuals shall provide **reasonable notice and information about alternatives for obtaining care** in the event that they can no longer provide professional services.

22

Patient Abandonment Defined – Code of Ethics

Ohio Code of Ethics – OH Adm. Code 4753–9–01(B)(3)(k)

(B) Fundamental rules considered essential. Violation of the code of ethics shall be considered unprofessional conduct.

(3) Licensees shall exhibit professional behavior in the delivery of services by:

(k) Use every resource available, including **referrals to other specialists as needed**, to effect maximum improvement in person(s) served. Licensees shall:

(i) **Identify** competent, dependable referral sources for person(s) served professionally.

23

Patient Abandonment Defined – Code of Ethics

Other States

- 15 states do not address patient/client dismissal or patient referrals

24

Patient Abandonment Defined – Code of Ethics

Other States – 15 states have ethical provisions for patient/client referrals

Examples:

- Individuals shall use every resource, including referral when appropriate, to ensure that quality service is provided.
- Individuals shall use every resource, including referral when appropriate, to ensure that high quality service is provided.
- Referral of clients for additional services or evaluation and recommendation of sources for purchasing appliances shall be without any consideration for financial or material gain to the licensee making the referral or recommendation for purchase.
- Failing to refer patient or client to qualified professional when such advice or service is called for.

25

Patient Abandonment Defined – Code of Ethics

Other States – 5 states have patient/client referral verbiage and require licensees to identify referral sources

Examples

- Use every resource available, including referrals to other specialists as needed, to effect maximum improvement in person(s) served. Licensees shall:
- Identify competent, dependable referral sources for person(s) served professionally

26

Patient Abandonment Defined – Code of Ethics

Other States – 8 states address patient/client dismissal through ASHA's Code of Ethics

Examples:

- Adhere to the standards set forth in the most current publication of the "Code of Ethics" as published by the American Speech–Language–Hearing Association
- **The Division hereby incorporates by reference the "Code of Ethics" of the American Speech–Language–Hearing Association (2010)**
- Failing to comply with the 2016 ASHA Code of Ethics, available from <http://www.asha.org/Code-of-Ethics/>;

27

Patient Abandonment Defined – Code of Ethics

Other States – Kentucky

Unprofessional conduct to:

- Abandon or neglect a patient in treatment without making reasonable arrangements for the continuation of treatment

28

Patient Abandonment Defined – Code of Ethics

Other States – Louisiana

- Individuals **shall not discontinue service** to those they are serving without providing **reasonable notice** and **other resources**.

29

Patient Abandonment Defined – Code of Ethics

Other States – Nevada

- A licensee who anticipates the **termination or interruption** of service to a client shall notify the client as promptly as possible and seek the transfer, referral or continuation of service in relation to the needs and preferences of the client.

30

Patient Abandonment Defined – Code of Ethics

Other States – New York

Unprofessional Conduct for:

- **Abandoning** or neglecting a patient or client under and in need of **immediate professional care**, without making reasonable arrangements for the continuation of such care, or **abandoning a professional employment** by a group practice, hospital, clinic or other health care facility, **without reasonable notice and under circumstances which seriously impair the delivery of professional care to patients or clients.**

31

Patient Abandonment Defined – Other Regs

Other Provisions – Ohio

- Committing any act of gross misconduct, dishonorable, immoral, or unprofessional conduct while engaging in the practice of speech–language pathology or audiology.
- Engaging in illegal, incompetent or habitually negligent practice.

32

Patient Abandonment Defined – Other Regs

Other Provisions – Vermont

Unprofessional conduct if licensee engages:

- In a pattern of incompetent or negligent conduct
- Professional negligence or malpractice

33

Patient Abandonment Defined – Other Regs

Other Provisions – Wyoming

- **Grounds for Discipline**

- Client abandonment
- ASHA Code of Ethics

34

Patient Abandonment Defined – Code of Ethics

Caveat – Can this requirement lead to possible allegations of patient abandonment?

Unprofessional conduct to:

- **Terminate a professional relationship** when it is reasonably clear that the **client is not benefiting from the services being provided.**
- The Licensee shall periodically evaluate and document the patient's progress towards the treatment goals and recommend referral to other disciplines or **recommend discontinuance of therapy where there has been no documented progress.**

35

Patient Abandonment Defined – Code of Ethics

Caveat – Can this requirement lead to possible allegations of patient abandonment?

Things to consider:

- Does your Board have clear rules addressing how the provider should discontinue the professional relationship when there is no patient progress?
- Requirements to discontinue service should have elements addressing patient notification, e.g., reasonable notice

36

Interactive Survey



- Press the number corresponding to the reply you want to choose
- The number you press last is the number that will be recorded

37

piano : keys :: trumpet :

- A. valves
- B. levers
- C. buttons
- D. frets



Sample “clicker” question

Today is ...

1. Monday
2. Wednesday
3. Thursday
4. Saturday
5. None of the above



39

Guidelines for Discussion

- Scenarios are based on real situations, with permission from those involved or based on public information. Names and facts may be changed for educational purposes.

Consideration:

- How would your Board address scenarios involving possible patient abandonment under your existing statutes and rules?

40

Ethics re: Patient Abandonment



41

Patient Abandonment Scenario #1

- A licensee with a small group practice is treating a child. During the course of therapy, the child's father disagrees with the licensee's clinical judgment. Despite the licensee's best efforts to explain their recommendations for an appropriate plan of care, the father disagrees and becomes increasingly upset. The situation escalates with the father's verbal insults and threatening physical harm against the licensee. The threats escalate to the point where the practitioner must discontinue their services with the child.



42

Patient Abandonment - Survey

Is the licensee at risk of patient abandonment after notifying the father that his child is being dismissed from services?

1. Yes
2. No
3. It Depends



43

Patient Abandonment – Scenario #2

- Practitioner is treating an elderly adult patient with dementia. During therapy sessions, the patient makes inappropriate comments/advances. The licensee is uncomfortable with the advances and decides to cancel all future appointments with the patient.



44

Patient Abandonment - Survey

Is the licensee at risk of patient abandonment for discontinuing services to the patient for making inappropriate comments/advances?

1. Yes
2. No
3. It Depends



45

Patient Abandonment – Scenario #3

- Due to economic down-turn and other circumstances, a non-profit speech and hearing center must close its doors after over fifty years in the community. The center's director contacts the licensure board for guidance with requirements for patient notification and patient records.



46

Patient Abandonment - Survey

Is the Center at risk of patient abandonment?

- A. Yes
- B. No
- C. It Depends



Patient Abandonment – Scenario #4

- An audiologist in solo-practice closes his clinic office and posts a sign on the door informing patients how to request their records. A patient arrives for a scheduled appointment and this is the first time the patient learned that the audiologist closed the practice.



Patient Abandonment - Survey

Is the audiologist at risk of patient abandonment?

- A. Yes
- B. No
- C. It Depends



Patient Abandonment Scenarios

Final Outcome:

- Resolutions will vary by each state based on specific facts and regulations
- Continuation of Care vs. Continuity of Care



Special Scenario - Consumer Perception of Patient Abandonment

- An SLP fails to provide required therapy minutes listed on a child's Individualized Education Plan. The SLP also documents providing services to the child on days the child is not in school. The parents believe the SLP has abandoned their child in the delivery of services.
- Board Final Action: License Revocation
- A consumer may perceive a practitioner's misconduct as patient abandonment



51

Patient Abandonment – Valid Reasons to end practitioner/client relationship

Some valid reasons to end a provider–patient relationship:

- The practitioner has insufficient skills to provide adequate treatment to the patient;
- There are insufficient supplies or resources to provide adequate treatment;
- An ethical conflict of interest arises during the course of treatment;
- The patient/client violates the practitioner's or facility's policies, e.g., missed appointments, non-payment, etc.;
- The patient/client refuses to comply with the practitioner's recommendations, and
- The patient/client demonstrates inappropriate behavior, such as making sexual advances or engaging in verbal abuse.

52

Patient Abandonment – Steps to end practitioner/client relationship

Steps to appropriately terminate the relationship under valid reasons:

- Provide the patient with written notice of the termination
- Provide a valid reason(s) for the decision
- When appropriate, the practitioner should continue to treat the patient for a reasonable period of time to allow the patient to arrange for alternative care from another practitioner;
- The practitioner should identify a referral source;
- The practitioner should arrange for patient authorization to transfer a copy of patient records to the new practitioner

53

Patient Abandonment – Other Caveats

Patient Abandonment – Can also be defined by employer work policies or managed care policy contracts:

- May require additional steps by the provider;
- Transfer of care;
- Access to records, even if patient cannot pay for services;

54

Summary

- Whether or not patient abandonment has occurred is determined by specific facts that must be thoroughly investigated;
- Legal liability can vary from state to state;
- Patient abandonment should be clearly defined
- Strength of our scope of practice; expectations of consumers; intra and inter-professional alignments to the scopes of practice; and trust amongst all is paramount
- Associated costs of patient abandonment

55

Who is stranded in the desert?

- The consumer?
- The licensee?
- Your licensure board?



56

Recommendations – Avoid being stranded in the desert

1. Include questions on initial licensure applications and license renewal applications about civil court actions, civil judgements, malpractice, etc. related to their practice;
2. Require licensees to self-report adverse actions within a certain time period, e.g., 30 days;
3. Review your existing statutes and rules with your legal counsel to determine your legal basis to address complaints involving patient abandonment;
4. Adopt specific rules or code of ethics provisions addressing patient/client dismissal, patient abandonment.

57

Questions?



Please return your
clicker

