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**Overview**

- Preventing patient complaints
- Responding to patient complaints
- Documenting complaints
- Apologies and admitting fault
- Dealing with the disruptive patient
- Terminating patient relationships

*Please share experience and best practices.*
Preventing Patient Complaints

• What are the most common complaints?
• What is their cause?
• What do you do to prevent them?

Preventing Patient Complaints

• Be friendly and sincere.
• Understand patient's condition or circumstances.
• Be alert and attentive to patient needs.
• Be respectful to patient concerns.
• Be responsive to patient requests.
• Ensure effective communication so that patient knows what to expect.
  – Clinical care.
  – Consent.
  – Charges.

* Experience – Expectations = Frustration

Preventing Patient Complaints

• Consider practice brochure or welcome packet
  – Practice info, e.g., directions, hours, phone numbers, etc.
  – Policies re:
    • Appointments, cancellations, fees
    • Prescription refills
    • Financial issues
    • Respect in interactions
    • Termination of relationship
Staff Behavior Triggering Complaints

- Clerical mistakes
- Impatient
- No empathy
- Apathy
- Speaks in technical terms
- Fatigue
- Angry or defensive

- Dogmatic
- Inexperienced
- Distracted
- Condescending
- Unprofessional
- Does not listen

Responding to Patient Complaints

Do not do this!

Or this!

Responding to Patient Complaints

- If the patient doesn’t feel that you have taken their concerns seriously, they’ll often go to someone who will!
  - Other providers.
  - Other potential patients.
  - Online posts.
  - Licensing boards.
  - Litigation.
### Responding to Patient Complaints

- **Complaint may be legit and give chance to improve.**
  - Better to know so you can respond.
  - Chance to turn patient into an advocate of the practice.
- **Response may depend on seriousness of the complaint**

<table>
<thead>
<tr>
<th>Minor complaint (e.g., inconvenience, late appointment, rudeness, etc.):</th>
<th>Serious complaint (e.g., adverse outcome, violation, etc.):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Handle on the spot through effective communication</td>
<td>May require formal investigation and response</td>
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### Best practices

- **What do you suggest?**

### Responding to Patient Complaints

- **Train staff how to respond.**
  - Take complaint seriously and respond immediately.
- **Appoint qualified person to respond to significant concerns.**
  - Remember: all concerns are significant to the patient!
- **Remember goals of your response:**
  - **Constructive:**
    - Ensure patient feels that you understand.
    - Learn facts.
    - Improve performance.
    - Strengthen patient relationship.
  - **Destructive:**
    - “Win” the argument.
    - Justify self regardless of truth.
    - Assume you know the truth.
    - Trivialize the patient’s concerns.
    - Belittle the patient.
Responding to Patient Complaints

• Respect patient’s concerns.
• Listen actively.
• Be open minded.
• Ask questions.
• Beware your body language.

• Be patient and empathetic.
• Avoid argument.
• Restate patient concerns to confirm understanding.
• Follow up.

Seek First to Understand, Then to Be Understood.  
Stephen R. Covey
Responding to Patient Complaints

• Use the complaint as a learning opportunity and chance to improve.
  – Follow up with and involve the staff member who is the subject of the complaint.
  • Learn the facts.
  • Assess understanding.
  • Provide additional education as appropriate.
  • Impose corrective action as appropriate, including documentation in personnel file.
  – Train others as appropriate.

Documenting Patient Complaints

• Document significant complaints in file separate from the medical record.
  – Not subject to patient’s right to access per HIPAA.
  – May be protected under Idaho’s peer review privilege.
  – In significant cases, may want to document facts in letter to attorney to receive benefit of attorney-client privilege.

Documenting Patient Complaints

• Document complaint file:
  – Nature of complaint, including communications.
  – Investigation (e.g., witness statements, documents, etc.)
  – Determination.
  – Response.
• Supplement medical record with info re patient care.
  – Use appropriate corrections or late entries.
  – Never falsify medical record.
**Notifying Malpractice Insurer**

- Check malpractice policy terms.
  - May need to provide notice of claim to trigger coverage.
    - Claims made v. occurrence policies.
    - Policy conditions re notice.
  - May prohibit admissions or settlements without insurer’s consent.
- Check with broker.
  - Policy requirements.
  - Effect on policy premiums.
- When in doubt, discuss with malpractice carrier.
  - Document communications re significant matters.

**Idaho Apology Law**

- Expressions of apology, condolence and sympathy: “[A]ll statements … expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence, including any accompanying explanation, … which relate to the care provided to the patient, or … the discomfort, pain, suffering, injury, or death of the patient as the result of the unanticipated outcome of medical care shall be inadmissible as evidence…”
  - “I’m sorry that you are going through this…”
  - Be careful how you phrase it!
- Admission of Fault: “A statement of fault which is otherwise admissible and is part of or in addition to [an apology] identified [above] shall be admissible.”
  - “It is our fault; we made a mistake…”

**Apologizing**

- In appropriate circumstances, you may want to accept responsibility and apologize.
  - May help address concerns and avoid litigation.
  - May be the “right” thing to do.
- But carefully consider before doing so.
  - You may not have all the facts.
  - Consult with your malpractice insurer and/or attorney.
    - Admissions may adversely affect coverage.
    - Admissions may adversely affect litigation.
**Writing Off Bill**

- Do not bill for unnecessary or inappropriate services.
  - May violate False Claims Act.
- Generally, cannot waive or discount copays or deductibles.
  - Payer contracts.
  - Federal and state fraud and abuse laws.
- May be able to waive or discount payments if:
  - Isolated occurrence.
  - Resolution of documented patient concern.
  - Do not charge payers.
- In tactful way, confirm it is offered as an accommodation, not admitting liability.

**Settling a Complaint**

- If offer something to resolve complaint, consider obtaining settlement agreement.
  - Benefit: proper release protects you from subsequent litigation or claims arising out of same facts.
    - Ensure the release contains appropriate terms.
    - Must be supported by consideration.
  - Risk: asking for release may prompt patient to reconsider settlement and instead pursue claims.
- Check with malpractice carrier before settling a claim.

**Board Complaints**

- Take them seriously.
- Be professional and respectful in response.
  - Maintain credibility and be cooperative at all times.
  - Do not act impulsively.
  - Respond objectively; do not be overly defensive.
- Explain basis for your actions.
  - Remember: Board does not have all the facts.
  - Provide records, but only if necessary.
  - Answer the questions that are asked; beware raising new matters.
- Always tell the truth.
- Consider review by qualified colleague or attorney.
- Notify insurer, if appropriate.
**Board Complaints**

- Beware stipulations and settlements.
  - May be efficient way to resolve dispute, but...
  - May carry significant adverse consequences.
  - Report to National Practitioners Data Bank ("NPDB")
  - May adversely affect other relationships.
    - Employment
    - Payer contracts
    - Licensure in other states
    - Board certification
  - Likely must report in future applications
- Consider alternatives, e.g., hearing, informal reprimand, etc.

**Online Complaints**

- Just because the patient can say it online does not mean that you can!

**Online Complaints**

- Do NOT disclose protected health info in online response.
  - HIPAA prohibits unauthorized use or disclosure of protected health info, including:
    - Fact that a person is or was a patient.
    - Info that could reasonably identify the patient.
  - There is no HIPAA exception for responding to a patient complaint online.
  - Patient does not waive HIPAA privacy rights by posting info online.
**Online Complaints**

- Options for responding:
  - Ignore it.
  - Contact patient to resolve concerns or obtain consent to respond.
  - Respond generically.
    - Do not confirm or deny that complainant was a patient, or include any info about the patient or patient encounter.
    - May explain policies or practices without reference to patient.
  - Contact online company to request removal of complaint.
  - Encourage and emphasize positive reviews.
  - If review is defamatory, may threaten lawsuit.

**HIPAA Complaints**

- HIPAA requires:
  - Have a process for patient complaints.
  - Document complaint and disposition.
  - Do not retaliate.
  - Mitigate harmful effects.
  - Sanction workforce members.
  - Record improper disclosures on disclosure log.

*(45 CFR 164.528 and .530)*

- Must self-report breach of unsecured protected health information in violation of the privacy rule unless there is a low probability that the data has been compromised.
  - To patient.
    - Letter containing certain info within 60 days
  - To HHS.
  - To media, if breach involves > 500 persons in state.

*(45 CFR 164.400)*
Disruptive Patients

• Risk areas
  – Higher likelihood of poor outcomes
    • Noncompliant with care
    • Staff dislike patients
    • Poor communication
  – Malpractice
  – Complaints
    • Licensing or accreditation complaints
    • Public relations problems
  – Cost in time and money in dealing with them
  – Adverse effect on work environment

Disruptive Patients

• Do not do this…
  • Unless you want to risk liability for:
    – Malpractice.
    – Patient abandonment.
    – Civil penalties under EMTALA or COPs.
    – Participation in third party payer programs.
    – Adverse licensure actions.
**Disruptive Patients**

- How to deal with disruptive patients?
  - Try not to take them in the first place.
    - Practice preventative medicine.
    - Check prior providers.
    - Check medical history.
  - Once you have them, try to deal with them in appropriate manner.
  - If you can't deal with them, terminate relationship without abandoning them.

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**Provider-Patient Relationship**

- Relationship = Duties.
  - Treat per standard of care.
    - Malpractice
  - Treat until relationship properly terminated.
    - Abandonment
- No relationship = No duties.

- *Be careful about taking on problem patients.*

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**Avoiding Disruptive Patients**

- In general, providers can legally refuse to accept a new patient if they want.
  - Ethics rules may differ.
- Exceptions:
  - EMTALA (emergency patients)
  - Charity care obligations
    - Public or 501(c)(3) hospitals
    - Federal grantees
  - Anti-discrimination laws
  - Contracts require care
  - Cannot abandon patient
Avoiding Disruptive Patients

• Beware cases in which relationship established but may not be intended, e.g.,
  – Follow up visit after ER care
  – Phone calls or emails with patient
  – Call for appointments
  – Consultations with colleagues
  – Courtesy or favor
  – IME, employer physical, etc.
• Each case depends on its own facts.
• Clarify relationship with prospective patient.

Avoiding Disruptive Patients

• Establish patient expectations up front.
• “Patient Rights and Responsibilities” document
  – Explain that patient’s cooperation and appropriate conduct are essential to effective care.
  – Require, among other things,
    • Cooperation in developing treatment plan.
    • Compliance with treatment plan.
    • Ongoing communication and respect.
    • Professional, non-disruptive conduct.
• Post in practice and make available to patients.
• Use in communications with patient.

Dealing with Disruptive Patients

KEEP CALM AND CARRY ON
Dealing with Disruptive Patients

• Assess the cause of the disruptive behavior.
  – Medical or psychological condition, e.g., medication, intoxication, withdrawal, psychosis, paint.
  • Consider clinical consult or evaluation.
  • May be resolved once the clinical situation is stabilized.
  – Misunderstanding.
  – Miscommunication.
  – Patient is simply a jerk.
• Consult with appropriate, objective person who was not involved in crisis situation.

Dealing with Disruptive Patients

• Many situations can be resolved through effective communication.
  – Allow the patient to vent.
  – Listen.
  – Acknowledge their concerns.
  – Respond in appropriate manner.
  • Consider timing.
  • Consider personnel involved.
• But don’t let them interfere with operations or endanger staff or patients.

Dealing with Disruptive Patients

• Establish a “code green” team.
• Call security and/or the police if necessary.
  – HIPAA allows internal uses or disclosures for provider’s operations, including security.
  – HIPAA allows disclosures to law enforcement:
    • To avoid risk of serious and imminent harm.
    • To report crime on provider’s premises.
    (45 CFR 164.512)
• Always do what is necessary to protect your other patients and staff.
Dealing with Disruptive Patient

- **Patient Care Conference / Contract**
  - Refer to “Patient’s Rights and Responsibilities.”
  - Explain that inappropriate conduct interferes with our ability to provide effective care.
  - Require, among other things,
    - Cooperation in developing treatment plan.
    - Compliance with treatment plan.
    - Ongoing communication.
    - Professional, non-disruptive conduct.
  - Warn that we will need to end relationship if they fail to comply.
  - Advise them that they may go elsewhere.

Dealing with Disruptive Patients

- **Document, document, document!**
  - Incident report or other peer protected file.
  - Medical record.
    - May be subject to patient’s right of access.
    - May be discoverable.
    - Be objective, use quotes, etc.
  - Documentation is critical in case we need to take additional corrective action.
  - Remember: “If it’s not in the chart, it didn’t happen.”

Ending Patient Relationship

- In general, providers can end patient relationship if they want.
- Exceptions:
  - EMTALA (emergency patients)
  - State or federal laws affecting withdrawal of treatment or discharges
  - Charity care obligations
    - Public hospitals
    - 501(c)(3) hospitals
    - Section 330 grantees
  - Anti-discrimination laws
  - Contracts require care
  - Cannot abandon patient

But most of these would not require continued care if there is documented disruptive behavior.
Ending Patient Relationship

• Abandonment = failure to give patient sufficient—
  – Notice of ending relationship;
  – Time to find new practitioner; and
  – Proper care until patient can transfer to a new practitioner.

• Penalties
  – Lawsuit by patient for damages.
  – Discipline by licensing agencies.
  – Payor penalties.

Ending Patient Relationship

• Legitimate reasons for ending patient relationship:
  – Disruptive conduct, e.g., violence, threats, abusive conduct, sexual harassment, etc.
  – Refusal to pay bills.
  – Breakdown in relationship or communication.
  – Noncompliance with treatment.
  – Disagreement with treatment.
  – Moral or religious objection to treatment.
  – Missed appointments.
  – Closing or limiting practice.
  – Etc., etc., etc….

Ending Patient Relationship

• Factors to consider before termination:
  – Patient’s current health care needs.
  – Availability of alternative care.
  – Basis for termination, e.g., legitimacy and urgency compared to patient’s health care needs.
  – Whether patient is in protected class.
  – Documentation that supports termination.
  – Alternative actions, e.g.,
    • Warnings.
    • Patient care conference.
    • Behavioral contract.

• Ask yourself: “What would a jury think?”
Ending Patient Relationship

• If termination is necessary and appropriate,
  — Notify patient in writing and perhaps orally.
  • Ensure patient receives the letter.
  — Give sufficient time to transfer care.
  • Depends on patient’s health care status.
  • Norm is 30 days.
  — Facilitate transfer of care.
  — Provide necessary care in the interim.
  • Comply with EMTALA.
  — Inform staff of situation.
  — Do not resume care unless resume relationship.

• Notice to patient should—
  — Explain basis for ending relationship in objective terms.
  — Explain that circumstances limit ability to provide care.
  — State the effective date of termination.
  — Advise patient to continue care elsewhere.
  — Provide referral sources for continued care if available.
  — Offer to provide interim or EMTALA care.
  — Offer to transfer records.
• Keep copy of letter in patient record.

• There may be situations that justify immediate termination without advance notice or time, e.g.,
  — Danger to patient, staff, or others.
  — Criminal misconduct.
• But be careful.
  — Consider patient care needs, e.g., where condition stabilized.
  — Consider alternative sources of treatment.
  — Consider statutory obligations, e.g., EMTALA, state statutes, or conditions of participation.
  — Consider what a jury would think.
• Document justification for actions.
Ending Patient Relationship

- Establish policies for addressing disruptive patients.
  - Acceptance of patients.
  - Responding to disruptive conduct.
    - Identify skilled personnel to respond.
  - Ending patient relationship.
    - Identify skilled personnel to take appropriate action.
- Train personnel and document training.

Questions?

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