

# **Home Health Care**

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## **Law Manual**

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## **Patient Abandonment**

### **Introduction**

The relationship that exists between a physician and patient, or between other types of health care providers and the client, continues until it is terminated with the consent of both parties. A patient having health needs, especially a patient who is disabled or feeble, may be dependant on the home health professional. The patient has the right to expect that he or she will have access to the services he or she needs until receiving proper notice to the contrary and, preferably, until a substitute is provided.

Such a relationship can be terminated by the patient at any time. The patient has the freedom to choose his or her health care providers. However, the physician, nurse, or home health provider may also withdraw from the case as long as it is done properly and the patient is not harmed by this action.

The premature termination of medical treatment is often the subject of a legal cause of action known as "abandonment." **Abandonment** is 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.<sup>1</sup>

### **Elements of the Cause of Action for Abandonment**

Each of the following five elements must be present for a patient to have a proper civil cause of action for the tort of abandonment:

1. Health care treatment was unreasonably discontinued.
2. The termination of health care was contrary to the patient's will or without the patient's knowledge.
3. The health care provider failed to arrange for care by another appropriate skilled health care provider.
4. The health care provider should have reasonably foreseen that harm to the patient would arise from the termination of the care (proximate cause).
5. The patient actually suffered harm or loss as a result of the discontinuance of care.

Physicians, nurses, and other health care professionals have an ethical, as well as a legal, duty to avoid abandonment of patients. The health care professional has a duty to give his or her patient all necessary attention as long as the case required it and should not leave the patient in a

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<sup>1</sup> Lee v. Dewbre, 362 S.W.2d 900 (Tex. Civ. App. 7th Dist. 1962).

critical stage without giving reasonable notice or making suitable arrangements for the attendance of another.<sup>2</sup>

### **Abandonment by the Physician**

When a physician undertakes treatment of a patient, treatment must continue until the patient's circumstances no longer warrant the treatment, the physician and the patient mutually consent to end the treatment by that physician, or the patient discharges the physician. Moreover, the physician may unilaterally terminate the relationship and withdraw from treating that patient only if he or she provides the patient proper notice of his or her intent to withdraw and an opportunity to obtain proper substitute care.

In the home health setting, the physician-patient relationship does not terminate merely because a patient's care shifts in its location from the hospital to the home. If the patient continues to need medical services, supervised health care, therapy, or other home health services, the attending physician should ensure that he or she was properly discharged his or her duties to the patient. Virtually every situation 'in which home care is approved by Medicare, Medicaid, or an insurer will be one in which the patient's 'needs for care have continued. The physician-patient relationship that existed in the hospital will continue unless it has been formally terminated by notice to the patient and a reasonable attempt to refer the patient to another appropriate physician. Otherwise, the physician will retain his or her duty toward the patient when the patient is discharged from the hospital to the home. Failure to follow through on the part of the physician will constitute the tort of abandonment if the patient is injured as a result. This abandonment may expose the physician, the hospital, and the home health agency to liability for the tort of abandonment.

The attending physician in the hospital should ensure that a proper referral is made to a physician who will be responsible for the home health patient's care while it is being delivered by the home health provider, unless the physician intends to continue to supervise that home care personally. Even more important, if the hospital-based physician arranges to have the patient's care assumed by another physician, the patient must fully understand this change, and it should be carefully documented.

As supported by case law, the types of actions that will lead to liability for abandonment of a patient will include:

- premature discharge of the patient by the physician
- failure of the physician to provide proper instructions before discharging the patient
- the statement by the physician to the patient that the physician will no longer treat the patient
- refusal of the physician to respond to calls or to further attend the patient
- the physician's leaving the patient after surgery or failing to follow up on postsurgical

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<sup>2</sup> Kattsetos v. Nolan, 368 A.2d 172 (Conn. 1976).

care.<sup>3</sup>

Generally, abandonment does not occur if the physician responsible for the patient arranges for a substitute physician to take his or her place. This change may occur because of vacations, relocation of the physician, illness, distance from the patient's home, or retirement of the physician. As long as care by an appropriately trained physician, sufficiently knowledgeable of the patient's special conditions, if any, has been arranged, the courts will usually not find that abandonment has occurred.<sup>4</sup> Even where a patient refuses to pay for the care or is unable to pay for the care, the physician is not at liberty to terminate the relationship unilaterally. The physician must still take steps to have the patient's care assumed by another<sup>5</sup> or to give a sufficiently reasonable period of time to locate another prior to ceasing to provide care.

Although most of the cases discussed concern the physician-patient relationship, as pointed out previously, the same principles apply to all health care providers. Furthermore, because the care rendered by the home health agency is provided pursuant to a physician's plan of care, even if the patient sued the physician for abandonment because of the actions (or inactions of the home health agency's staff), the physician may seek indemnification from the home health provider.<sup>6</sup>

#### **ABANDONMENT BY THE NURSE OR HOME HEALTH AGENCY**

Similar principles to those that apply to physicians apply to the home health professional and the home health provider. A home health agency, as the direct provider of care to the homebound patient, may be held to the same legal obligation and duty to deliver care that addresses the patient's needs as is the physician. Furthermore, there may be both a legal and an ethical obligation to continue delivering care, if the patient has no alternatives. An ethical obligation may still exist to the patient even though the home health provider has fulfilled all legal obligations.<sup>7</sup>

When a home health provider furnishes treatment to a patient, the duty to continue providing care to the patient is a duty owed by the agency itself and not by the individual professional who may be the employee or the contractor of the agency. The home health provider does not have a duty to continue providing the same nurse, therapist, or aide to the patient throughout the course of treatment, so long as the provider continues to use appropriate, competent personnel to administer the course of treatment consistently with the plan of care. From the

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<sup>3</sup> 61 AM. Jur. 2d, Physicians and Surgeons § 237 (1981).

<sup>4</sup> See, e.g., Tripp v. Pate, 271 S.E.2d 407 (N.C. App. 1980).

<sup>5</sup> Ricks v. Budge, 64 P.2d 208 (Utah 1937).

<sup>6</sup> M.D. Nathanson, Home Healthcare Answer Book: Legal Issues for Providers 212 (1995).

<sup>7</sup> See, generally, E.P. Burnzeig, The Nurse's Liability for Malpractice (1981).

perspective of patient satisfaction and continuity of care, it may be in the best interests of the home health provider to attempt to provide the same individual practitioner to the patient. The development of a personal relationship with the provider's personnel may improve communications and a greater degree of trust and compliance on the part of the patient. It should help to alleviate many of the problems that arise in the health care' setting.

If the patient requests replacement of a particular nurse, therapist, technician, or home health aide, the home health provider still has a duty to provide care to the patient, unless the patient also specifically states he or she no longer desires the provider's service. Home health agency supervisors should always follow up on such patient requests to determine the reasons regarding the dismissal, to detect "problem" employees, and to ensure no incident has taken place that might give rise to liability. The home health agency should continue providing care to the patient until definitively told not to do so by the patient.

### **COPING WITH THE ABUSIVE PATIENT**

Home health provider personnel may occasionally encounter an abusive patient. This abuse may or may not be a result of the medical condition for which the care is being provided. Personal safety of the individual health care provider should be paramount. Should the patient pose a physical danger to the individual, he or she should leave the premises immediately. The provider should document in the medical record the facts surrounding the inability to complete the treatment for that visit as objectively as possible. Management personnel should inform supervisory personnel at the home health provider and should complete an internal incident report. If it appears that a criminal act has taken place, such as a physical assault, attempted rape, or other such act, this act should be reported immediately to local law enforcement agencies. The home care provider should also immediately notify both the patient and the physician that the provider will terminate its relationship with the patient and that an alternative provider for these services should be obtained.

Other less serious circumstances may, nevertheless, lead the home health provider to determine that it should terminate its relationship with a particular patient. Examples may include particularly abusive patients, patients who solicit the home health provider professional to break the law (for example, by providing illegal drugs or providing non-covered services and equipment and billing them as something else), or consistently noncompliant patients. Once treatment is undertaken, however, the home health provider is usually obliged to continue providing services until the patient has had a reasonable opportunity to obtain a substitute provider. The same principles apply to failure of a patient to pay for the services or equipment provided.

As health care professionals, HHA personnel should have training on how to handle the difficult patient responsibly. Arguments or emotional comments should be avoided. If it becomes clear that a certain provider and patient are not likely to be compatible, a substitute provider should be tried. Should it appear that the problem lies with the patient and that it is necessary for the HHA to terminate its relationship with the patient, the following seven steps should be taken:

1. The circumstances should be documented in the patient's record.

2. The home health provider should give or send a letter to the patient explaining the circumstances surrounding the termination of care.
3. The letter should be sent by certified mail, return receipt requested, or other measures to document patient receipt of the letter. A copy of the letter should be placed in the patient's record.
4. If possible, the patient should be given a certain period of time to obtain replacement care. Usually 30 days is sufficient.
5. If the patient has a life-threatening condition or a medical condition that might deteriorate in the absence of continuing care, this condition should be clearly stated in the letter. The necessity of the patient's obtaining replacement home health care should be emphasized.
6. The patient should be informed of the location of the nearest hospital emergency department. The patient should be told to either go to the nearest hospital emergency department in case of a medical emergency or to call the local emergency number for ambulance transportation.
7. A copy of the letter should be sent to the patient's attending physician via certified mail, return receipt requested.

These steps should not be undertaken lightly. Before such steps are taken, the patient's case should be thoroughly discussed with the home health provider's risk manager, legal counsel, medical director, and the patient's attending physician.

The inappropriate discharge of a patient from health care coverage by the home health provider, whether because of termination of entitlement, inability to pay, or other reasons, may also lead to liability for the tort of abandonment.<sup>8</sup>

Nurses who passively stand by and observe negligence by a physician or anyone else will personally become accountable to the patient who is injured as a result of that negligence .... [H]ealthcare facilities and their nursing staff owe an independent duty to patients beyond the duty owed by physicians. When a physician's order to discharge is inappropriate, the nurses will be help liable for following an order that they knew or should know is below the standard of care.<sup>9</sup>

Similar principles may apply to make the home health provider vicariously liable, as well.

Liability to the patient for the tort of abandonment may also result from the home health

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<sup>8</sup> Sheryl Feutz-Harter, Nursing Caselaw Update: In appropriate Discharging of Patients, 2 J. Nursing L. 49 (1995).

<sup>9</sup> *Id.*, 53.

care professional's failure to observe, examine, assess, or monitor a patient's condition.<sup>10</sup> Liability for abandonment may arise from failing to take timely action, as well as failing to summon a physician when a physician is needed.<sup>11</sup> Failing to provide adequate staff to meet the patient's needs may also constitute abandonment on the part of the HHA.<sup>12</sup> Ignoring a patient's complaints and failing to follow a physician's orders may likewise constitute a tort of abandonment for a nurse or other professional staff member.

### **Contact Experienced Health Law Attorneys.**

The Health Law Firm routinely represents physicians, nurses, home health care professional and other health providers in investigations, regulatory matters, patient abandonment, licensing issues, litigation, inspections and audits involving the DEA, Department of Health (DOH) and other law enforcement agencies. Its attorneys include those who are board certified by The Florida Bar in Health Law as well as licensed health professionals who are also attorneys.

To contact The Health Law Firm, please call (407) 331-6620 or (850) 439-1001 and visit our website at [www.TheHealthLawFirm.com](http://www.TheHealthLawFirm.com).

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<sup>10</sup> See, e.g., *Pisel v. Stamford Hosp.*, 430 A.2d1 (Conn. 1980) (nurses were held liable for failing to monitor the condition of a patient).

<sup>11</sup> See, e.g., *Sanchez v. Bay General Hosp.*, 172 Cal. Rptr. 342 (Cal. App. 1981); *Valdez v. Lyman-Roberts Hosp., Inc.* 638 S.W. 2d 111 (Tex. 1982).

<sup>12</sup> *Czubinsky v. Doctors Hosp.*, 188 CAL. Rptr. 685 (1983).