

## Dodging Pitfalls of Patient Dismissals

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## Disclosures:

- We have no conflicts
- Dr. Lennon does not maintain an active license to practice law – none of this talk is legal advice
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## Troubling News stories

The Washington Post

A doctor was killed for refusing to prescribe opioids, authorities say

Police: Patient attempted to rape nurse at Pennsylvania hospital

Alleged attack took place at Penn State Milton S. Hershey Medical Center

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BY MICHAEL TANENBAUM  
PhillyVoice Staff



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## Learning Objectives:

Participants will be able to:

- identify the most common administrative hurdles to patient dismissals
- recognize and follow local and national laws on patient dismissals
- list the most common ethical friction points of patient dismissals

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## Administrative Pitfalls

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## Items for consideration

- Isolated incident vs repeated pattern
- Are other physicians available to care for the patient?
  - Location/nature of practice
    - Rural practice
    - Member of staff model HMO



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## Key reasons to “fire” a patient

- Persistent failure to keep scheduled appointments or adhere to agreed-upon treatment plans
- Repeated failure to pay reasonable medical bills
- Ongoing rude, disruptive, or unreasonably demanding behavior
- Habitual noncompliance
- Falsifying or providing misleading medical history
- Seductive behavior toward physician or staff
- Sentinel incident (eg, verbal threat, violence, criminal activity)



Lippman, Helen, and John Davenport. "Patient dismissal: the right way to do it: under what circumstances is it permissible for a physician to "fire" a patient? We present a balanced--and legal--approach." *Journal of Family Practice* 60.3 (2011): 135-140.

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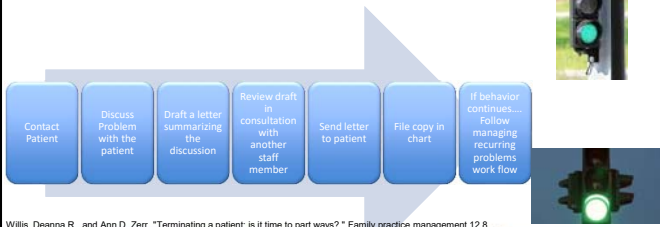
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## Managing problem behavior



Willis, Deanna R., and Ann D. Zerr. "Terminating a patient: is it time to part ways?." *Family practice management* 12.8 (2005): 34.



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## Managing recurring problems

- Request to meet with patient face to face
  - If patient accepts → draft written agreement
    - Patients signs agreement
      - File copy in chart
        - » If behavior continues proceed



Willis, Deanna R., and Ann D. Zerr. "Terminating a patient: is it time to part ways?." *Family practice management* 12.8 (2005): 34.



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## Managing recurring problems

- Request to meet with patient face to face
  - If patient accepts → draft written agreement
    - Patients REFUSES to sign agreement
      - Review draft with other staff member
      - Send letter and agreement to patient
      - File copy in chart
        - » If behavior continues proceed



Willis, Deanna R., and Ann D. Zerr. "Terminating a patient: is it time to part ways?." Family practice management 12.8 (2005): 34.



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## Managing recurring problems

- Request to meet with patient face to face
  - Patient does NOT accept → draft written agreement
    - Review draft with other staff member
      - Send agreement via certified mail with self addressed stamped envelope requesting signature and mail back
      - File copy in chart
        - » If behavior continues proceed



Willis, Deanna R., and Ann D. Zerr. "Terminating a patient: is it time to part ways?." Family practice management 12.8 (2005): 34.



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## Termination

- STOP
  - If patient action involved violence or other potentially illegal activities
    - CONTACT LAW ENFORCEMENT



Willis, Deanna R., and Ann D. Zerr. "Terminating a patient: is it time to part ways?." Family practice management 12.8 (2005): 34.



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## Termination

- STOP
  - Third Party Payer agreements may affect ability to terminate patient

Draft termination letter


Review draft in consultation with another staff member (management/ risk management/ legal counsel)

Send letter to patient via certified mail with return receipt requested

File copy in chart

Inform Staff

Willis, Deanna R., and Ann D. Zerr. "Terminating a patient: is it time to part ways?." Family practice management 12.8 (2005): 34.




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## Termination letter

- Explain patient-physician relationship has been terminated
- Continue to direct the patient's care for emergent issues until a specific date
  - Typically 30 days from letter
- Ability to terminate dependent on payer
  - Medicare/Medicaid depends on state regulations and provider manual
    - May require transfer within system "second chance"

Willis, Deanna R., and Ann D. Zerr. "Terminating a patient: is it time to part ways?." Family practice management 12.8 (2005): 34.




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## Legal Pitfalls

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"Avoid lawsuits beyond all things; they pervert your conscience, impair your health, and dissipate your property."

- Jean de la Bruyère

PENNSYLVANIA ACADEMY OF FAMILY PHYSICIANS FOUNDATION

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## Medical law is state-based:

- In PA, the Medical Practice Act, 49 Pa code § 16.61 (a)(17)
- Abandonment occurs when a physician withdraws his services after a physician-patient relationship has been established, by failing to give notice to the patient of the physician's intention to withdraw in sufficient time to allow the patient to obtain necessary medical care.



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## Elements:

- A physician-patient relationship has been established
- Failing to give notice
- Sufficient time to allow the patient to obtain necessary medical care

Absent: limits on reasons – you can dismiss a patient for ANY reason not protected under the Civil Rights Act



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## Establishing relationship:

- Not formally defined
- Generally considered established when a physician affirmatively acts in a patient's case by examining, diagnosing, treating, or agreeing to do so
- This may include: on-call service, resident supervision, or being part of group contracted to provide care (i.e., your group agrees to care for patients covered by an HMO)



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## Giving notice:

- **Must be able to prove notice is given – use receipt requested certified mail**
- **Beware of language or capacity limitations**



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## Time to allow transfer of care:

- **Not defined**
- **General agreement of 30 days**

(The clock starts after receipt of notice. If you mail a notice on day 1, service should not stop sooner than day 37 to give adequate transit time of notice.)



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## During the transition:

- **You must provide standard ongoing care!**
- **If the patient calls during the transition, treat them as you would any other patient – this includes prescriptions for ongoing treatments**



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## When the patient sues:

- If you have followed the rules you should be able to defend yourself in the event of a lawsuit or medical ethics complaint
- HOWEVER . . .

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## Help your case:

- Before seeing a patient for the first time, have the patient sign a notice of initial assessment that clearly states the visit does not establish a relationship, but rather, will be used to determine if a relationship is appropriate

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## Help your case:

- When establishing a patient relationship, require the patient to sign a document acknowledging the limits of the relationship – in other words, what things will lead you to terminate the relationship

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## Help your case:

- At the first sign that you may need to dismiss a patient
  - CALL HR
  - CALL YOUR LAWYER
  - CALL YOUR PATIENT OMSBUDSMAN
  - MEET, REVIEW, AND FORM A PLAN



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## Help your case:

- Document behaviors that will drive separation
- Document efforts to remediate patient behavior
- Report patient criminal behavior not otherwise protected by HIPAA  
IMMEDIATELY



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## Wait, report patient crimes?

- HIPAA allows disclosure to law enforcement:
- Avert harm      45 CFR § 164.512(j)(1)(i)
- Crime on premises      45 CFR § 164.512(f)(5)
- Report by victim      45 CFR § 164.502(j)(2)



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## Wait, report patient crimes?

- 18 Pa.C.S. § 2701. Simple assault.
- (a)(3): attempts by physical menace to put another in fear of imminent serious bodily injury

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## Wait, report patient crimes?

- 18 Pa.C.S. § 2706. Terroristic threats. . . . A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to . . . commit any crime of violence with intent to terrorize another

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## Wait, report patient crimes?

- 18 § 2709. Harassment . . . A person commits the crime of harassment when . . . the person:
- (1) strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempt or threatens to do the same;
  - (2) follows the other person in or about a public place or places;
  - (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose;

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## Wait, report patient crimes?

- (4) communicates to or about such other person any lewd, lascivious, threatening, or obscene words, language, drawings, or caricatures;
- (5) communicates repeatedly in an anonymous manner;
- (6) communicates repeatedly at extremely inconvenient hours; or
- (7) communicates repeatedly in a manner other than specified in paragraphs (4), (5), and (6).



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## Help your case:

- Document the notice, the receipt and the transition of care plan
- Facilitate transfer of care



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## Sample Termination Letter:

I will no longer be able to continue providing your medical care. It is necessary for you to transfer your care to another health care provider. I will continue to provide you with any necessary care until 5 January 2020, which should give you sufficient time to transfer your care. After that date you will need to obtain medical care elsewhere.



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## Sample Termination Letter:

You are encouraged to immediately take action to transfer your care to an appropriate health care provider. Your insurance program, local hospitals, or county assistance officer may be able to refer you to an appropriate provider.

Upon receipt of a signed release form (enclosed) we will make your medical records available to you and/or your new physician.



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## Ethical Pitfalls

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Ethics is knowing the difference between what you have a right to do and what is right to do

-Potter Stewart



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## Western Medical Ethics

- Beauchamp and Childress: Four values
  - Patient Autonomy
  - Beneficence
  - Nonmaleficence
  - Justice



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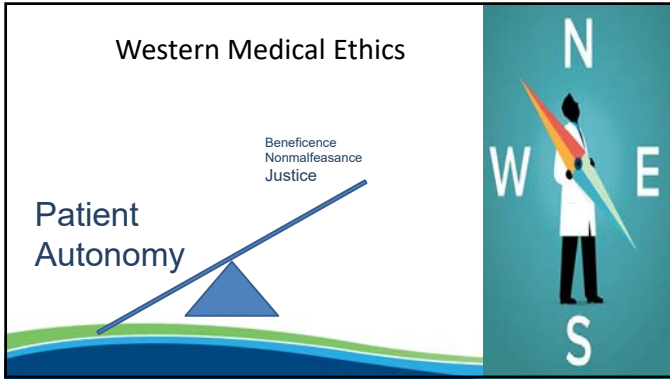
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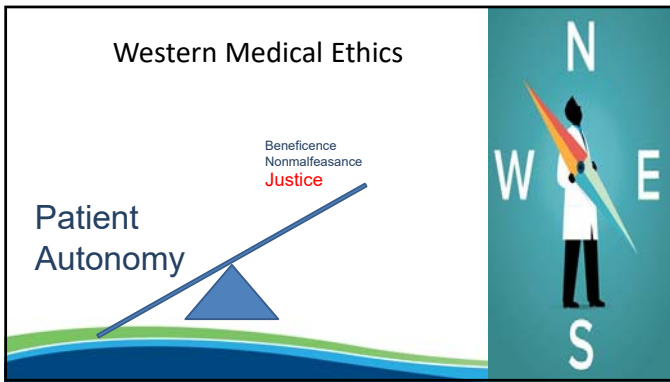
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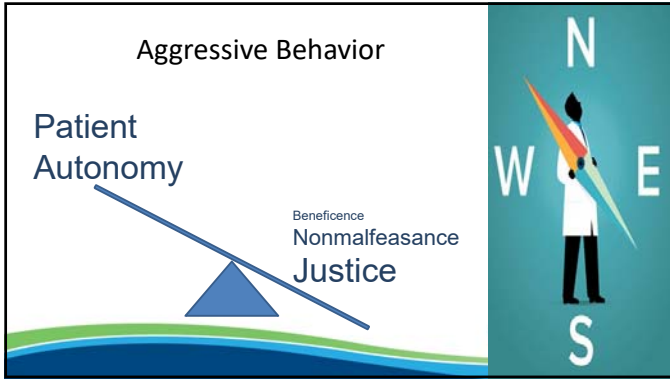
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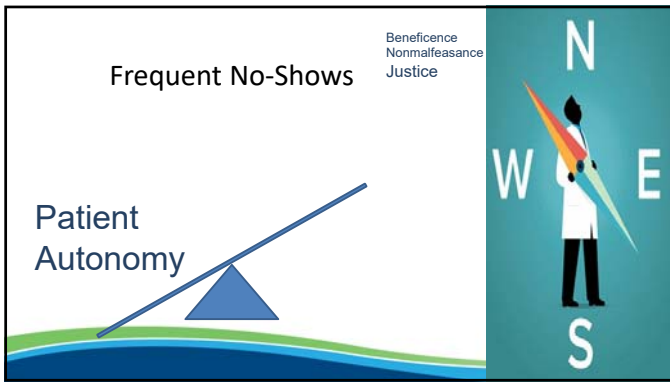
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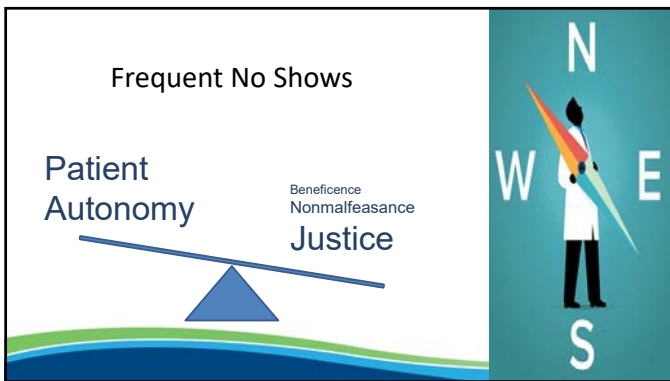
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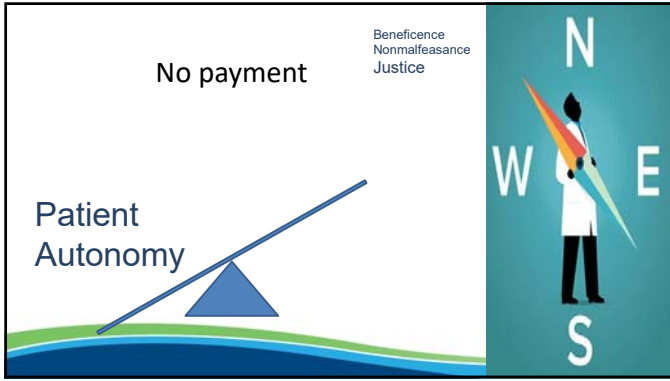
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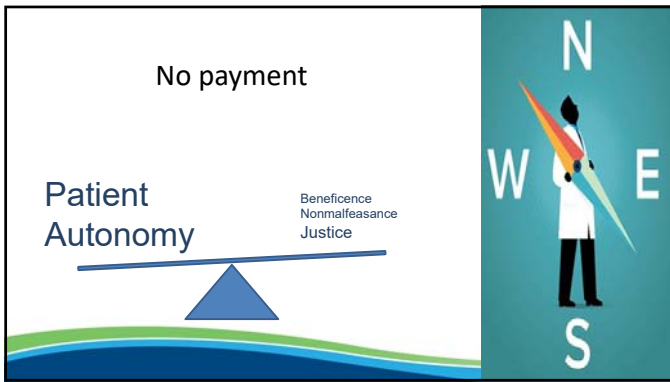
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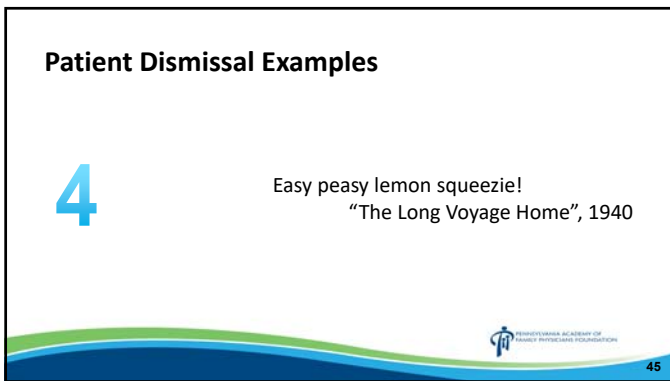
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### Case #1

- 47 y/o paraplegic male s/p MVA with chronic pain requiring high dose opiates
  - Admitted for the third time in 6 months for uncontrolled abdominal pain
  - Evaluation revealed no obvious disease process requiring acute intervention
  - Patient continued to request high dose opiates beyond his regimen
  - Deemed medically stable for discharge
  - Patient threatened to sexually assault nurse, kill a resident physician and blow up the hospital



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### Case #2

- 56 y/o male with complex medical history including ESRD on dialysis, Poorly controlled IDDM and Atrial Fibrillation
  - Limited funds, uses community transport but is often suspended from services due to noncompliance
  - Frequently no shows to clinic appointments
  - Only accepting dialysis clinic is in your health system



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### Case #3

- 58 y/o female with multiple comorbidities and significant socioeconomic issues requires frequent home visits
  - Patient has been compliant with most therapies, but has been gaining weight, having more difficulty with mobility and requesting high doses of opiates
  - Physician recommends other modalities for preventing pain, which patient declines
  - Patient becomes increasingly hostile as visits progress, verbally threatening harm to the physician
  - Resources are limited in the area for home care



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### Case #4

- 52 y/o male, partner of a patient seen at an associated oncology practice
  - Male's partner was given a poor prognosis, told that therapies would not be effective and no longer provided
  - Male was upset with the plan, stated he had a gun in his car and left the office
  - Police were called, no gun was found



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### Case #5

- 62 y/o female with near end stage COPD living in HUD housing is dismissed from another clinic and establishing at your clinic. She needs an appointment ASAP as she is almost out of her controlled substances.



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### Case #6

- 36 y/o female with hypertension, chronic back pain is established at your clinic. It has been two years since she has been in the clinic. She sends messages at least monthly requesting refills, medical equipment and labs despite never following through with requests to schedule appointments. Her messages become increasingly angry
  - “why does everyone IGNORE ME and my HEALTH? I cannot come in and YOU CANNOT make ME!”



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## Case #7

- 68 y/o female with diabetes and hypertension
  - Frequently messages her primary provider about availability to speak about nonclinical issues
  - Has messaged office about possible job opportunities at clinic PCP works at
  - Sent a letter to the PCP, was opened by office staff for disposition and noted to mention unrequited love for physician



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# Thank You!

**Any questions?**

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- American Medical Association Code of Medical Ethics. Terminating a patient-physician relationship: Opinion E-1.1.5. Last accessed 4 September 2019 at: <https://www.ama-assn.org/delivering-care/ethics/terminating-patient-physician-relationship>
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## Supplements

- Medical Practice Act, 49 Pa. Code § 16.61 (a)(17)
- (17) Abandoning a patient. Abandonment occurs when a physician withdraws his services after a physician-patient relationship has been established, by failing to give notice to the patient of the physician's intention to withdraw in sufficient time to allow the patient to obtain necessary medical care. Abandonment also occurs when a physician leaves the employment of a group practice, hospital, clinic or other health-care facility, without the physician giving reasonable notice and under circumstances which seriously impair the delivery of medical care to patients.



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## Supplements

- American Medical Association Code of Medical Ethics. Terminating a patient-physician relationship: Opinion E-1.1.5.
- Physicians' fiduciary responsibility to patients entails an obligation to support continuity of care for their patients. At the beginning of patient-physician relationship, the physician should alert the patient to any foreseeable impediments to continuity of care. When considering withdrawing from a case, physicians must:
  - (a) Notify the patient (or authorized decision maker) long enough in advance to permit the patient to secure another physician.
  - (b) Facilitate transfer of care when appropriate.



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## Supplements

- American Medical Association Code of Medical Ethics. Limits of requirement to place patient interests above personal interests, 1.1.7
- In part:
- Preserving opportunity for physicians to act (or to refrain from acting) in accordance with the dictates of conscience in their professional practice is important for preserving the integrity of the medical profession as well as the integrity of the individual physician, on which patients and the public rely. Thus physicians should have considerable latitude to practice in accord with well-considered, deeply held beliefs that are central to their self-identities. Physicians' freedom to act according to conscience is not unlimited, however. Physicians are expected to provide care in emergencies, honor patients' informed decisions to refuse life-sustaining treatment, and respect basic civil liberties and not discriminate against individuals in deciding whether to enter into a professional relationship with a new patient.



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## Supplements

- 18 Pa.C.S. § 2701, 2706 and 2709

In parts:

- 18 § 2701. Simple assault. (a)(3): attempts by physical menace to put another in fear of imminent serious bodily injury
- 18 § 2706. Terroristic threats. . . . A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to . . . commit any crime of violence with intent to terrorize another



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## Supplements

18 § 2709. Harrassment . . . A person commits the crime of harassment when . . . the person:

- (1) strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempt or threatens to do the same;
- (2) follows the other person in or about a public place or places;
- (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose;
- (4) communicates to or about such other person any lewd, lascivious, threatening, or obscene words, language, drawings, or caricatures;
- (5) Communicates repeatedly in an anonymous manner;
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- (7) Communicates repeatedly in a manner other than specified in paragraphs (4), (5), and (6).



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