

Abandonment

Your rights v the rights of the patient

PREFACE

This article has been prepared by Nevena Brown, a principal of Guild Lawyers on behalf of Guild Insurance Limited, as part of its ongoing proactive approach to risk management for the profession, and in response to inquiries received from members regarding how does a practitioner safely “jettison” a patient without giving grounds for complaint.

INTRODUCTION

As a registered Osteopath, like any health provider, you are recognised by law to hold a special relationship with your patients – a relationship that imputes, by legislation and case law, a high standard of care on you in relation to the health and wellbeing of your patients.

However, a common concern that is being voiced by practitioners is what can they do to ensure they do not breach their high standard of professional care, when they perceive their own rights are at risk.

Such situations generally arise when the practitioner has formed the view that they cannot assist the patient any further but not necessarily because of medical issues (such as the need for referral). The reasons for such decisions can vary. It is possible that the practitioner simply feels that he or she does not have the welfare of the patient at heart, possibly because of continuous and unreasonable questioning and criticism of the practitioner’s treatment regime or fee system. It may involve instances where the communication between the practitioner and the patient has broken down and the patient is non-compliant. It could also arise from situations where the practitioner is in fact threatened by the patient, either through behavior bordering on harassment or verbal abuse.

Whilst your professional care and compassion for your patients are paramount in your position, it must be remembered that you as a practitioner also have rights. For example, you have a right to payment for services rendered in accordance with the terms of engagement. You have a right to be treated with respect and not subject to abuse. If the situation is not serious enough to call for formal measures, such as instituting debt recovery proceedings or taking out relevant court orders, there are ways you can refuse or discontinue treatment, although it is trite to state that such decisions should be made after careful deliberation and after other reasonable strategies to deal with the problem have been tried and failed.

If such situations are not carefully managed, the patient, as a reaction to being “abandoned”, could take unfortunate and costly action such as making illegitimate claims of injury, lodging a complaint with a disciplinary boards of unethical conduct or even demand a refund of fees paid to you for treatment.

At the outset, it is worth noting that it would be prudent for every practice to set up clear and written policies detailing what is expected from patients. These policies should address such issues as payment for treatment (for example, how to charge for late notice cancellations or how to deal with an inability to pay tax invoices) through to the requirements for patients to comply, as best as they can, with any between-consultation care regime recommended by the practitioner. Of course, such policies should be balanced by policies detailing what a patient can expect from the practice, such as the right to cease care without penalty or seek alternative opinions. If these policies are understood by the patient at the outset, it is easier for you to discontinue treatment when one of these policies has been breached.

If you do not wish to commence treatment of a patient or wish to terminate care, whether a specific breach of a policy can be cited or not, it is recommended that a letter be written to the patient, on a confidential basis.

For your assistance, we set out two examples of letters you could amend to fit your particular situation.

1. Where you feel that you are not in a position to provide optimal care for the patient and simply wish to terminate the relationship for your sake and the patients:

“Dear Ms/Mr X,

I refer to your initial consultation and our subsequent discussions. I wish to advise you that I have decided, for a number of reasons, that I am no longer able to provide ongoing osteopathic care.

I pride myself on the quality of my care for my patients, but it is clear, due to your obvious distrust of the benefits of osteopathic care/refusal to adopt my recommendations in relation to your condition/insistence to unnecessarily contact me without an appointment and without regard to the difficult position this places me in (you can refer to whatever the scenario is, without using subjective comments or making derogatory remarks), that I cannot assist you any further. To continue treatment would conflict with my ethical obligations to my patients.

I believe you will be better serviced by another competent osteopath, and below is a list of osteopaths I would recommend:

I trust that you will accept my decision with a spirit of goodwill. I will release your file to your future health provider upon receipt of a written authority to that effect.

I wish you well in your treatment.”

2. Where your relationship with the patient has reached an irretrievable breakdown and therefore termination of the relationship is necessary:

“Dear Ms/Mr X

I wish to advise you that I have decided that I am no longer able to provide ongoing osteopathic care.

I pride myself on the quality of my care for my patients, but it is clear, due to your obvious distrust of the benefits of osteopathic care/refusal to adopt my recommendations in relation to your condition/insistence to unnecessarily contact me without an appointment and without regard to the difficult position this places me in (you can refer to whatever the scenario is, without using subjective comments or making derogatory remarks), that I cannot assist you any further. To continue treatment would conflict with my ethical obligations to my patients.

I believe you will be better serviced by another competent osteopath, and below is a list of osteopaths I would recommend:

I trust that you will accept my decision with a spirit of goodwill. I will release your file to your future health provider upon receipt of a written authority to that effect.

I wish you well in your treatment.”

If you consider that the patient would benefit from a different technique, you should state this and provide a list of osteopaths who practice that technique. If you feel that the patient would benefit from treatment from a physiotherapist, chiropractor or other health practitioner, again it would be appropriate to mention that and provide a source so that the patient can locate a local practitioner in that field, such as the Australian Physiotherapy Association.

Of course, adopting such a course will not guarantee that the patient will take the hint and “leave quietly”, but it will certainly go a long way to ensure that you have, to the best of your ability, fulfilled your professional duties as a registered health provider should your actions be brought into question.

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