

## This quarter's focus is: **The Physician-Patient Relationship**

Unfortunately, there is no statutory language in Florida or at the federal level that we can look to outline when a physician-patient relationship is created and when a duty arises. Generally, that relationship and the corresponding duty is created when a physician affirmatively acts by diagnosing or treating the patient or by agreeing to do so. There is no case law in Florida that speaks to how and when that relationship is created. Most deals with the breaking confidentiality, sexual misconduct, or workers compensation. The prevailing case in Florida is *Pate v. Threlkel, Shands, et al.*, where the Supreme Court of Florida held that physicians had a duty to warn of the genetically transferable nature of a condition and that the duty ran to that patient's children and such duty would be discharged by warning the patient, and it would not be necessary for physicians to warn children.

### Little Concern for Physicians in Florida:

- The Minnesota Supreme Court ruling explicitly states their case goes against the rulings of many other states'.
- Minnesota agrees "a physician-patient relationship is a necessary element of malpractice claims in many states. But we have never held such a relationship is necessary to maintain a malpractice action under Minnesota law."
- They agree their holding goes beyond the boundaries that many other states have recognized.
- It doesn't establish a physician-patient relationship began when the physician rendered professional advice to the APRN, simply that it's not a necessary element to medical malpractice claims in Minnesota.
- The court specifically stated it would not go into the legal status of "curbside consultations" leaving it open to argue a conversation was merely "professional courtesy."

### So When is a Physician-Patient Relationship Established?

- Traditionally, thought about in contractual terms
- If there is a general understanding between the physician and patient that the physician will or is rendering care/treatment, it is safe to assume that there exists a physician-patient relationship.
- The AMA says a relationship exists when a physician serves a patient's medical needs, by mutual consent of both parties.
- Providing emergency care at the request of the treating patient (consent is implied). Under EMTALA, when the patient "presents" anywhere on the hospital premises.

### PRACTICE TIPS:

- Consider whether you are billing for that service/call, etc. This would establish a contractual physician-patient relationship.
- When considering transfers, transfer center calls, ensure that the referring provider has given you all the information you need re: exams, labs, X-rays.
- Be mindful of what service is accepting the patient and that the referring provider is reaching out to the correct service (We have seen events where the service who accepts the patient is not the most optimal service for that patient's condition, delaying care, etc.)
- Err on the side of accepting the transfer, unless we don't have the service or providers capable of meeting the standard of care. The referring provider has probably already started documenting and discussing with the patient the reasons why the patient should be transferred to you.
- Be clear with colleagues during informal conversations that you do not have the benefit of all the patient information and that this is not a consult. They are exposing themselves to liability as well by not obtaining a formal consult, but arguing the reliability of a hallway conversation.

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