

Legal and Ethical Challenges, Part 1

General Population

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KEYWORDS

• Emergency medicine • Emergency psychiatry • Ethics • Law • Legal principles

KEY POINTS

- The practice of emergency clinicians is governed by specific legal and ethical principles.
- Emergency clinicians are expected to provide care to patients in the emergency department, which often establishes a patient-physician relationship without a prior formal agreement.
- Under certain circumstances, emergency clinicians must breach confidentiality.
- In emergency medicine and psychiatry, there can be an exception to the informed-consent-to-treatment process in emergency situations.
- Patients can be placed on emergency holds, can receive medication over objection, and can be transferred voluntarily or involuntarily to an inpatient psychiatric setting.

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PHYSICIAN-PATIENT RELATIONSHIP

The physician-patient relationship is a special relationship that remains the cornerstone of health care. Mutual trust and confidence by patients and physicians are essential to this *fiduciary* relationship in which physicians take care of patients. This special relationship demands a higher degree of care and responsibility from trusted physicians toward patients, who depend on knowledgeable physicians for help and care.

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In the physician-patient relationship, emergency psychiatrists and clinicians have duties of *beneficence*, *nonmaleficence*, *respect for patient autonomy*, and *justice*.¹ *Beneficence* means that emergency clinicians act in the best interest of their patients

Disclosures: The authors have nothing to disclose.

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Psychiatr Clin N Am ■ (2017) ■-■
<http://dx.doi.org/10.1016/j.psc.2017.05.003>

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by responding promptly to acute illness to alleviate suffering and to minimize risk of injury or loss of life. *Nonmaleficence* is ensured by the emergency clinician's priority to refrain from inflicting harm to patients. This principle is essential to clinician integrity and patient trust. Emergency clinicians must respect *patients' autonomy* as adult patients with decision-making capacity who have the right to accept or refuse treatment even in the emergency department (ED). However, in a clear emergency situation whereby the patient is unable to consent, the emergency clinician can provide treatment necessary to stabilize the patient's condition to prevent injury or loss of life (see exceptions to informed consent discussed later). The principle of *justice* is understood as acting impartial and fair. Emergency clinicians provide care to patients regardless of race, color, sex, nationality, religious faith, or other properties.

As part of the physician-patient relationship, a physician is expected to practice within the standard of care for his or her profession, which is a *reasonable person's standard*. This medical standard of care is defined as providing the type of care that would be provided by other ordinary competent and skilled medical professionals with similar backgrounds and under similar patient circumstances in the same community. Of note, the reasonable person standard requires the provision of average care, not excellent or superior care.²

Often the question is, when is the physician-patient relationship established? Although states vary in how they define a physician-patient relationship, the relationship is generally established when a physician affirmatively acts in a patient's case by advising, examining, diagnosing, treating, or agreeing to treat.³ Hence, in the ED, the relationship starts when physicians, even in the absence of written consent for treatment, attend to the medical needs of patients with an acute condition.

Although a general nonemergency physician is not obligated to treat patients whom he or she does not wish to treat, even by arbitrary standards, the obligation to treat is different for emergency physicians and psychiatrists in designated urgent care or emergency care centers. When it becomes apparent that patients are in need of immediate intervention, a therapeutic relationship is assumed to exist.⁴ Therefore, when patients arrive at an urgent or emergency care center, the emergency physician has a duty to provide emergency medical and/or mental health care because patients may be in imminent need of services and arrived with the expectation of urgent treatment. Before such patients can leave the ED, the emergency clinician must ensure that no further immediate interventions are required.⁴

Once physicians enter into a physician-patient relationship, a legal contract is formed under which physicians owe a duty to patients to continue to treat patients until this relationship is properly terminated.⁵ Commonly, physician abandonment of patients occurs when the physician terminates the relationship either at an unreasonable time or without affording patients some reasonable time to find a new physician to ensure continuum of care.³ In general, once a duty of care is established, the emergency clinician's obligations are to (1) evaluate, treat, and stabilize patients and (2) properly identify patients' disposition. Emergency clinicians have 3 disposition options: (1) discharge with no further treatment, (2) discharge with outpatient treatment, or (3) admission for inpatient hospitalization.⁴ Hence, in order to ensure a continuum of care for patients, emergency clinicians must provide discharge follow-up care plans with provider resources to patients who are in need of outpatient care on discharge from the ED.

MALPRACTICE

Malpractice falls under the legal category of a tort, which is a civil wrong in which a person damages a second person, who is then requesting compensation for

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