

# Risk Management



## WHAT DO YOU DO WHEN PATIENTS CANNOT PAY?

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This ongoing column is dedicated to providing information to our readers on managing legal risks associated with medical practice. We invite questions from our readers. The answers are provided by PRMS, Inc. ([www.prms.com](http://www.prms.com)), a manager of medical professional liability insurance programs with services that include risk management consultation, education and onsite risk management audits, and other resources to healthcare providers to help improve patient outcomes and reduce professional liability risk. The answers published in this column represent those of only one risk management consulting company. Other risk management consulting companies or insurance carriers may provide different advice, and readers should take this into consideration. The information in this column does not constitute legal advice. For legal advice, contact your personal attorney.

**QUESTION: I have a patient who has a large outstanding balance with me. I know that financial hardships are affecting everyone these days, but I can't continue to treat him indefinitely without being paid. What can I do?**

**ANSWER:** You are right: Times are tough. However, it is reasonable to be paid for services rendered.

There are several important issues to consider when patients run up a balance. The most important thing to remember is that good clinical care must continue to be provided until

the financial situation has been resolved or until the treatment relationship has been properly ended. To do otherwise would leave the physician vulnerable to allegations of abandonment.

**Educating patients about policies and procedures.** Ideally, payment expectations, including billing policies and procedures, would be discussed and presented in writing at the outset of treatment. If this happened in your case, then it is time to remind the patient of that discussion and how it applies to the current situation. If this did not happen, then it is necessary to have this discussion now.

Considering the potential impact such a discussion could have on the therapeutic relationship, it would be best for you to have this conversation directly with the patient rather than having a member of your office staff broach the topic. If you do not have policies and procedures regarding billing, now is the time to develop and implement them.

**Meeting the standard of care.** Sometimes a patient who owes money will suggest that he or she reduce the number of sessions with the physician in order to reduce the cost. In such instances, the doctor must remain mindful that the standard of care (the care that the patient should receive at a minimum) is determined by the patient's clinical needs, not by the patient's finances.

In some cases, reducing the frequency of sessions may be an appropriate change to the treatment plan. If so, then the doctor should document the clinical rationale supporting the change. If seeing the patient less frequently is not an adequate treatment option, then either some other financial arrangement must be negotiated or

the patient's care may need to be transferred to a provider who can accommodate lower fees for treatment.

**Maintaining boundaries.** Care must be taken to not cross the professional boundaries of the physician-patient relationship while reaching a resolution. Multiple or dual relationships can lead to allegations of taking unfair advantage of the treatment relationship to exploit the patient or otherwise further the psychiatrist's personal, religious, political, or business interests.

To illustrate, a patient might offer to work in the doctor's office or provide other services in exchange for treatment or in order to reduce the existing debt. While creative, this approach would constitute a boundary crossing and possible ethics violation because of the potentially negative impact on the therapeutic relationship. For example, how might treatment be impacted if the doctor finds that the work provided by the patient is unsatisfactory? Furthermore, there may be other financial complications for both the physician and patient (e.g., potential tax implications due to the need to report barter arrangements as income). As a rule, once you are the patient's psychiatrist, then that is all you should be. An in-depth treatment of this and other ethical issues can be found at the American Psychiatric Association's website:

<http://www.psych.org/Departments/EDU/residentmit/ethicsprimer.aspx>

**Engaging in termination of treatment.** Once the psychiatrist-patient relationship has been established, the psychiatrist has ethical and legal obligations to continue treating the patient until the relationship has been properly terminated. Unfortunately, an excessive outstanding balance can

interfere with the therapeutic relationship, thereby making effective treatment difficult or impossible. If negotiation of a mutually acceptable resolution has failed, then termination of the physician-patient relationship may be the only option left. Care must be taken to engage in the proper, formal termination process in order to avoid allegations of abandonment.

Proper termination in a noncrisis or nonemergency situation includes the following: 1) giving the patient reasonable notice and time to find alternative treatment; 2) educating the patient about treatment recommendations; 3) assisting the patient with finding resources for treatment; 4) providing records and information, as requested; and 5) sending a follow-up letter to the patient.

**Using collection agencies.** Like other businesses, physicians are entitled to use collection agencies to collect unpaid balances. However, a common concern of psychiatrists is that a patient will file a malpractice lawsuit in retaliation. Although the more likely type of lawsuit to result from pursuing collection is a counterclaim from the patient claiming that the services were not provided at all or that the patient was so dissatisfied with the level of service that no fee should be charged or collected, patients do often make allegations of negligence in order to put more pressure on the physician to resolve the matter before a lawsuit is filed.

The decision to utilize a collection agency should be made by the doctor rather than a member of the office staff, so that the doctor can assess the impact on the patient. A malpractice lawsuit can arise simply because a provider chooses to collect on a patient's overdue bill. However, a more likely result and, therefore, a greater concern of the physician is a complaint made by the patient to a

healthcare organization or licensing board. For this reason, the decision to pursue collection should be approached thoughtfully and professionally. Furthermore, if the collections process is likely to send the patient into crisis or cause the patient to take legal action against the doctor, then the doctor may opt to write off the balance. Physicians should check whether third-party payors prohibit writing off outstanding balances. When developing policies and procedures involving collections, the physician should consult with a personal business attorney in order to ensure compliance with applicable statutes and regulations, such as HIPAA's Privacy Rule and others.

### **SUBMIT YOUR OWN QUESTION**

To submit a question, e-mail Elizabeth Klumpp, Executive Editor, [eklumpp@matrixmedcom.com](mailto:eklumpp@matrixmedcom.com). Include "Risk Management Column" in the subject line of your e-mail. All chosen questions will be published anonymously. All questions are reviewed by the editors and are selected based upon interest, timeliness, and pertinence, as determined by the editors. There is no guarantee a submitted question will be published or answered. Questions that are not intended for publication by the authors should state this in the e-mail. Published questions are edited and may be shortened. ●