

Medical Abandonment Explained:

Medical abandonment, or, in legal terms, *tort abandonment*, is severe and purposeful disruption of active or critical medical care*, resulting in patient harm to the degree that it qualifies for civil action through lawsuits or other civil actions, such as licensing review or monetary damages. Medical board complaints of patient abandonment are generally processed under the umbrella of unprofessional conduct.

Patient abandonment is a serious, yet often overlooked, form of medical malpractice. To leave a patient high and dry without continuity of care when “active treatment” is in process is nothing short of negligence. Robert Warner, JD, and Timothy R. Deer, MD say, “In [this article](#) we examine the most common causes of claims against those practicing pain medicine and discuss the issues that may determine the risks of liability from the plaintiff’s perspective.”

“Physicians are not required to treat each and every patient in perpetuity.

However, physicians cannot simply terminate the relationship at a time when [medical treatment](#) is necessary and/or the patient cannot be immediately transitioned to another doctor.”

An example of a tortious claim related to the under treatment of pain is the California case of the late William Bergman of Hayward. Mr. Bergman was a retired railroad detective who had developed cancer. He was undertreated for his pain, and the harm was [unjustified suffering](#). His estate was awarded 1.5 million dollars in general damages.

One state, putting it aptly in its “patient abandonment” code, said, “...a physician cannot just walk away from their patient.”

There are times when a physician wishes to release a patient from his or her practice. The reasons are up to the physician *if active care is not underway* and only if disruption would not lead to harm.

Once disruption occurs and causes harm, the abandonment becomes *tortious* or, in common law, an act of harm that warrants restitution. In this case, 30-days will not suffice. The care must be physically transitioned to another practitioner.

The difference between abandonment and tortious abandonment is the existence of a continuing need for medical attention, examples being: a daily adjustment of diuretics for a patient with congestive heart failure and renal disease; the daily need to assess and modify oxygen levels for a patient with chronic airway disease; or a patient requiring round-the-clock opiate pain medication.

The National Pain Council interprets abrupt, unconsented discontinuation of critical daily opiate medication without medical justification as having the potential for serious debilitating harm, including [multiple affected body systems](#) due to the return of untreated pain, and the possibility of death.

The Elements of Cause of Action for

Tortious Abandonment:

- 1- Health care treatment was unreasonably discontinued.
- 2- The termination of health care was contrary to the patient’s consent or without the patient’s knowledge.
- 3- The health care provider failed to arrange for (verifiable) care by another appropriately skilled health care provider.
- 4- The health care provider should have reasonably foreseen that harm to the patient would arise from the termination of care (proximate cause).
- 5- The patient suffered harm, or injury, or loss as a result of the discontinuance of care. **
- 6- The abandonment of critical or active care occurred abruptly and without warning.

** *Multiple medical problems can result from the discontinuance of active pain control: sleep deprivation syndrome, loss of function, hypertension, and loss of companionship, anxiety and depression, suicidal ideation, loss of employment.*

To avoid abandonment charges, document the following:

- 1- The treatment is no longer warranted; there is no longer a medical indication for treatment.
- 2- The patient and physician mutually consent to end the treatment.
- 3- The patient discharges the physician.

***Critical medical care** defined is when a *patient’s condition has a high probability of imminent or life-threatening deterioration.*

The Elements of Cause of Action for Tortious Abandonment

The health care professional has an ethical and legal duty to avoid the abandonment of patients. Once a doctor-patient relationship has been established, the licensed provider must give his or her patient, in active treatment, ongoing care until suitable arrangements for another provider to actually assume care can be made, and that care is in hand, as opposed to just handing the patient a list of other providers.

Once a suitable replacement provider takes over and continues the treatment, abandonment charges are no longer viable.

Other causes for tortious abandonment charges:

- 1- Physician refusal to respond to calls or to further attend to the patient.
- 2- A statement to the patient that the physician will no longer treat the patient.
- 3- Failure of the physician to provide proper instructions before discharging the patient.
- 4- Discharging the patient for failure to pay the bill.
- 5- Not responding after hours to urgent situations.
- 6- Leaving on vacation without providing backup medical care for the patient.
- 7- Refusing to see the patient for follow-up visits.
- 8- Failure to provide 15 days of emergency treatment or prescriptions (California).

In summary, tort abandonment occurs when a physician stops providing critical medical care. This is different than physical abandonment. Abandonment can occur within the medical practice while the person is still registered as a patient. The ruling factor is critical medical care itself being stopped without consent. An example of a critical care treatment might be daily insulin in the same category as the need for daily divided dose opiate pain medications for long term pain medication stabilization. Both the insulin and the opiate pain medication would result in immediate harm to the patient.

The test for tortious abandonment:

- 1- Harm has occurred when the critical treatment was stopped.
- 2- Permission was not given by the patient, to the discontinuation or lowering of critical therapy dosage.
- 3- Critical care has not been directly transferred to the new provider causing interruption in the patient's care.
- 4- To avoid tort abandonment charges with the potential for lawsuits and State Medical Board actions, you must explain and document the medical reasons for stopping or changing the critical treatment parameters.

If the patient does not agree to the tapering plan and wishes to continue care with another provider, the physician of record must secure that care and document no disruption occurred.

Providing lists of providers is not sufficient to protect against charges of critical care abandonment of care.

If the patient remains in the practice, the abandonment of the critical care is still potentially tort abandonment. It is not where the patient receives care, it is what care is provided.

For additional information please reference the companion **Position Paper #18** from the [National Pain Council](http://www.nationalpaincouncil.org) titled: **#018 Forced Reduction and Discontinuation of Opioid Pain Medications.**

National Pain Council



Position Paper #020

www.nationalpaincouncil.org

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