

Holding Your Own

Who really owns the patient when an associate leaves?



As your practice grows, you will need to hire additional surgeons to take on the additional caseload, or maybe even to provide different yet complementary procedures.

This is a good thing (or at least it should be).

But what happens when he or she moves on to bigger and better things and drops or poaches some of your patients in the process? Think this won't happen to you? You're wrong.

There are so many ways this type of breakup gets messy. For example, a surgeon may leave your practice and:

- take only those patients they personally treated;
- take or solicit all of the patients who may have come in for consults with them;
- refuse to treat a patient who was still under their care as of the date of their departure; or
- refuse to treat a patient previously under their care, but now has complications from a prior procedure.

The key question is, who really owns the patient once a physician/patient relationship is established? Often, there is

a legal answer and a moral answer, and they don't necessarily overlap.

The best way to prevent a mess is to address these potential road bumps up front and in advance. Many employment agreements do contain a restrictive covenant that states that if the employee physician chooses to leave, he/she cannot practice within XX miles for XX years after the separation from the practice and/or actively solicit patients. However, these provisions are not always enforceable.

Still, patient responsibilities and ownership should be agreed upon prior to entering into a contractual agreement with an employee. This should include treatment up to and including discharge, and resolution for any potential complications afterward. Always have cross coverage from a specialist who can perform procedures you can't, don't or won't to protect your patients.

If these issues are not addressed properly, and well in advance, there will be a legal battle, and no one ever wins with that tactic—especially your patients. ●

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