



Abandonment Ship

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Licensees in virtually all professions practice under various standards of practice, codes of conduct, codes of ethics and other parameters that assist in determining what is the appropriate course of action under any given circumstance.

In a governmentally regulated profession like physical therapy, practitioners must possess a license to lawfully practice. That license carries with it obligations on the part of the licensee to obtain and maintain licensure in good standing and adhere to all applicable laws that will incorporate compliance with relevant practice and ethical standards. Failure to adhere to such standards can lead to adverse actions taken by the regulatory board against the practitioner and ultimately loss of licensure and practice privileges.

The standards by which licensees are judged for purposes of potential adverse action should be found in the statutes and regulations/rules. Of course, professional trade associations also adopt standards and codes that may or may not be enforceable for purposes of adverse actions against a license. The purpose of this article is to address the issue of “abandonment” in a professional setting and the rights and obligations of practitioners, specifically as it relates to adverse actions against a license.

According to Merriam-Webster.com, the word abandonment means

- a: to give up to the control or influence of another person or agent;
- b: to give up with the intent of never again claiming a right or interest in (abandon property) or to leave and never return to (someone who needs protection or help).

In a professional setting, the sense of abandonment likely lies in the perception of the patient/client and may lead to complaints of abandonment that are premised upon a certain dependency when, in fact, the practitioner may not be able to ethically continue treatment. For example, circumstances may exist whereby a dual relationship causes a practitioner to transition

a patient to another licensee. The patient may perceive such as abandonment when, in reality, the licensee is at legal risk to continue such treatment. Communication is essential to identify, clarify and resolve such circumstances. The existence of a signed patient “bill of rights” can be very beneficial.

Regarding the definition or existence of abandonment, must physical therapists treat patients? Do licensees have a right to reject a patient and what, if any, are your obligations if you elect not to treat? Are such obligations different when initially rejecting a person as a patient as opposed to electing to no longer treat an existing patient? When does the physical therapist-patient relationship begin and end? These questions may seem elementary, but are not easily answered. This is especially true when a patient’s perception differs from that of the physical therapist. It would seem to be axiomatic that for there to be an issue regarding abandonment, there must be or have been a patient-physical therapist relationship.

A preliminary review of statutes and regulations indicates that there are several laws that explicitly prohibit the abandonment of a patient by direct reference. For example, the Alabama Board of Physical Therapy Administrative Code (Chapter 700-X-3 et. seq.) identifies “conduct detrimental to the best interest of the public” as constituting grounds for administrative discipline. Specifically, one paragraph defining “unbecoming conduct” states “abandoning or neglecting a patient or client in need of immediate professional care without making reasonable arrangements for the continuation of such care” constitutes acts that may subject a person or licensee to adverse action. This example provides an excellent example of how interpretation of the language may unfold.

The introductory language refers to conduct detrimental to the “public,” an encompassing word inclusive of perhaps all residents of or consumers in Alabama. The specific subpart (b) refers to abandoning a “patient or client,” thus one must distinguish between a patient and client, as well as a person not yet determined to be either. The code continues, by qualifying that abandonment must be of a patient or client “...in need of immediate professional care...” Again, a qualifying factor of someone in need of immediate care must be met before abandonment meets the criteria of the code.

Many other jurisdictions have statutes and/or regulations that state that unprofessional conduct that would subject physical therapists to administrative action by the board includes, by definition, “abandonment of a patient.” Under such a law, one must determine whether there has been an abandonment of the patient. These more general laws allow for additional flexibility in interpreting what constitutes abandonment.

Abandonment of patients/clients has been the subject of published jurisprudence in other professions.

In *In the matter of Disciplinary Proceedings Against Michael C. Trudgeon*, 2010 WL 3191853 (WI 2010), the Wisconsin Supreme Court revoked an attorney’s license for 56 ethical violations, including abandoning clients, conversion of settlement funds, and failing to notify the court that his license was suspended. The attorney admitted to the violations and the Court imposed restitution costs of more than \$25,000.

In *Iowa Supreme Court Attorney Disciplinary Board v. Ramey*, 2008 WL 682389 (IA 2008) the Iowa Supreme Court reprimanded an attorney for multiple instances of misconduct including client abandonment, fraud, and failure to respond to the Board's inquiries regarding complaints. Based in part on the history of disciplinary proceedings involving the attorney, the Board recommended that his license be revoked. While the Court agreed with the factual findings, it ruled that a public reprimand was all that was warranted, as his license was already suspended and he was already required to satisfy numerous conditions in order to have it reinstated; therefore, a more severe penalty would not serve to protect the public or deter future misconduct.

In *Miller v. Tennessee Board of Nursing*, 2007 WL 2827526 (App. Ct. TN 2007), the Tennessee Appellate Court affirmed the findings that a registered nurse abandoned her patients and that the Board did not act arbitrarily when it imposed a civil penalty on her. However, the Court reversed the holding that the Board's immediate suspension of nurse's license pending a psychological examination was appropriate in the absence of any evidence that she was mentally unfit to practice. The Board took action after the nurse left work ill without informing a supervisor as instructed, resulting in the abandonment of patients she was obligated to care for. While the evidence supported the abandonment charge, the lack of evidence questioning the nurse's psychological condition negated the Board's decision to summarily suspend her license.

The above cases represent an overview of the potential for patient/client abandonment to result in potential administrative action against a license.

Boards of physical therapy must first be empowered to discipline persons/licensees based upon abandonment. Such authority may come in the form of specific statutory or regulatory language. Alternatively, such authority may be found in catch-all phrases such as "unprofessional conduct," designed to provide the board with added flexibility under unique circumstances.

In the absence of specific language in law but where a set of facts may constitute abandonment, the board may wish to aggressively interpret ambiguous language to administratively investigate and prosecute. Indeed, the core principles of virtually all the codes of ethics, including that of the American Physical Therapy Association, include a requirement that licensees adhere to the core values of patient safety and shall act in the best interest of the patient/client. Certain assumptions must be made that abandonment is not an act in the best interest of the patients/clients, thereby creating an argument that abandonment is actionable by the physical therapy board.

While the cases and other fact patterns contemplated by the boards and ultimately the courts likely constitute egregious circumstances worthy of administrative action, there are additional scenarios involving physical therapists who give up a patient/client or practice. There are countless reasons for terminating a professional relationship and/or practice and the treatment

of confidential files are at stake. Further, the death of a licensee also creates similar succession issues and treatment of confidential files. Licensees are encouraged to seek information regarding a professional will to address these circumstances.



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Mr. Atkinson also serves as Executive Director of FARB, a not for profit association whose full members consist of associations of regulatory boards, which facilitates cross- profession interaction, provides educational programs for board members, staff, investigators, and attorneys related to regulation in the interest of public protection.