

Reasonable care - legal perspectives on the doctor-patient relationship

Clarendon Press - Reasonable Care

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relationship

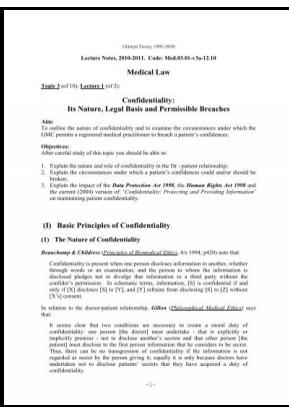
Notes: Includes bibliographical references (p. [241]-258) and index.

This edition was published in 1994

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Professional

The maxim to do no harm, *primum non nocere*, often is cited as the first ethical principle of medical practice. The Court held that when a patient enters this environment, that patient has every right to expect that the hospital and its physicians will exercise reasonable care in fulfilling their respective obligations.



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Doctor

Courts are only interested in whether the defendant breached a duty of care to the plaintiff in harming the plaintiff through a negligent act. It should be noted that patient abandonment can also occur between other kinds of health care providers and the patient -- not just between the physician and the patient.

Duty to Warn

Where patients recover capacity, their decisions are binding. With respect to collection, PHIPA provides that physicians and other HICs may indirectly collect PHI about an individual where: the individual consents; the information is reasonably necessary for providing health care to the individual and accurate information cannot reasonably be directly collected in a timely way; information is collected from a person who is not a HIC for the purposes of research that has been approved by a research ethics board, save where prohibited by law; the Information and Privacy Commissioner has authorized collection; the person disclosing the information is permitted or required to do so by law; or the HIC is permitted or required by law to collect it.

Legal issues when a doctor's relationship with a "difficult" patient breaks down

Thus, if the physician is to be held free to contract and to be liable on his promise, he should not then be free to provide for his own protection in advance by the simple expedient of having the patient sign a printed form, in consideration of his agreement to treat him, absolving the physician of any and all liability whether based on negligence or purported representation. Negligence Where a duty of care is breached, liability for negligence may arise. The advocate may act as a direct liaison between the parties or may refer the issue to one of the other mechanisms designed to provide assistance.

The Importance of Physician

But perhaps the most fundamental characteristic of the doctor—patient relationship is its fiduciary nature. HICs are permitted to refuse requests that are frivolous, vexatious or made in bad faith. All the authorities agree that the relationship of physician to patient also falls into that special category of relationships which the law calls fiduciary.

Physician

They are also obliged to take reasonable steps to ensure that any PHI disclosed to others is accurate, complete and up-to-date, or to clearly communicate its deficiencies in this respect to the recipient. However, if it can be shown that the breach materially contributed to the damage or it is more likely that the damage was due to negligence than another cause that is usually sufficient.

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