

# Family and Employees as Patients

## *Be Aware of the Pitfalls*

**Clear-cut answers are rare when someone you are responsible for—whether it's a family member or an employee—is hurting and you have the medical expertise to ease their pain. In many instances, however, doing so may involve significant risks.**

Most physicians periodically provide medical care to their family members and employees. Good intentions probably motivate these practices, but difficulties may arise.

According to the AMA's *Code of Ethics*,<sup>1</sup> physicians generally should not treat themselves or members of their immediate families. The AMA points out that professional objectivity may be compromised when an immediate family member or the physician is the patient. In addition, a physician's personal feelings may unduly influence his or her professional medical judgment, thereby interfering with the care being delivered.

The AMA's *Code of Ethics* does speak to emergency situations: "In emergency settings or isolated settings where there is no other qualified physician available, physicians should not hesitate to treat themselves or family members until another physician becomes available." It also specifies that, it is not appropriate for physicians to write prescriptions for controlled

substances for themselves or immediate family members except in emergencies.

The American College of Physicians' *Ethics Manual* also advises physicians to "avoid treating themselves, close friends or members of their own families" and to be "very cautious about assuming the care of closely associated employees."<sup>2</sup>

This is an issue that will affect almost every physician at some time and in some aspect. Consider the following scenarios, which though extreme, clearly show the potential risks:



### Scenario 1—The Grandchild as Patient

*Rob Suter, M.D., a board-certified cardiologist, was on vacation in the Caribbean with his wife, their three adult children and their spouses, and six grandchildren. On the second day, his daughter came in from the beach carrying her two-year-old son, Toby, who was crying. She told her father that Toby had been this way for about an hour, and she had been unable to settle him down. "He's*

*been grabbing at his right ear. Could you take a look his ear for me, Dad? He might be getting another ear infection."*

*Dr. Suter admitted that he hadn't examined an ear since medical school but agreed to take a look. He saw no redness or swelling of the eardrum and reported that Toby probably did not have an ear infection. He thought Toby probably got some sea water in his ear, had a long day at the beach, and was just overtired.*

*The child was put to bed and stopped crying and fell asleep within 15 minutes. Later that night when Dr. Suter's daughter went to check on Toby, he had vomited, was shaking and could not be aroused. She called her father who noticed the child was also having difficulty breathing and was feverish.*

*They called 9-1-1. EMTs arrived, and Toby was taken by ambulance to the local hospital. Upon arrival in the ED, the child suffered a seizure. On examination, the emergency physician found a large red, inflamed welt on the back of Toby's right ear and diagnosed a jellyfish sting. Toby was obviously having an allergic reaction to the venom. Despite prompt treatment, there was some permanent auricular damage that would require plastic surgery in the future.*

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## Prescribing for family members and employees can create legal and ethical issues physicians should avoid.

In applying the AMA's directives to Scenario 1, the best course of action would have been to take the child to the local hospital rather than for Dr. Suter, who was a cardiologist and the patient's grandfather, to check the child's ear. A hospital was nearby and it had qualified physicians certified in emergency medicine and pediatrics who were better trained and equipped to diagnose and treat the child.

Dr. Suter was distressed about the situation for a long time. He blamed himself for his grandson's "close call" and the resultant auricular deformity. Dr. Suter replayed the situation in his head over and over, chastising himself for not looking behind the child's ear and not thinking about a jellyfish sting. However, although his grandson suffered because he did not receive appropriate medical care in a timely fashion, the child's outcome could have been much worse.

**An employee or relative may be reluctant to question the physician's judgment or treatment recommendations or ask for another practitioner's opinion.**

### Scenario 2—Employee as Patient

Sara Johnson was a 32-year-old licensed practical nurse and a five-year employee of an OB/GYN group. One Monday at the start of her shift, she told Dr. Anatole, the practice's senior partner, that she had been having "strange belly pain" and nausea off and on for the last 36 hours. Sara asked Dr. Anatole if it was anything to worry about.



*She normally saw another partner for routine GYN care, but since that physician was on vacation, Dr. Anatole decided to proceed with a brief exam. He asked Sara some routine questions and determined that her last menstrual period was 5 weeks earlier. He had her lie down on an exam table in a patient examination room and palpated her belly to see if he could evoke a more specific pain response but could not. Sara responded that she wasn't experiencing any pain during the exam.*

*Dr. Anatole told her that she probably had the gastrointestinal bug that had been making the rounds through the practice. He sent her home, telling her to force fluids and get some rest. The next morning, Sara did not report to work or call in sick.*

*After several attempts to reach Sara by phone, the office manager called her sister—her designated emergency contact—and told her that the office had been trying to reach Sara but had been unable to do so. The office manager suggested she go check on Sara.*

*Unfortunately, when her sister got to the apartment, she found Sara dead in her bed. The subsequent autopsy revealed the cause of death was a ruptured ectopic pregnancy.*

Sara's family brought a malpractice action against Dr. Anatole for failure to diagnose an ectopic pregnancy. Dr. Anatole had no option but to settle the case as he had not documented his examination (which was cursory at best and probably would not have met the standard of care anyway).

Dr. Anatole explained to his defense attorney: "I didn't really view this as a real patient encounter. I was just helping out an employee in the absence of her regular physician." However, Sara had talked to the office manager on her way out of the office and reported that "Dr. Anatole thinks I have the GI bug. He checked me out and told me to go home, rest and take in fluids." So, it was clear that Sara perceived Dr. Anatole's suggestions as medical advice. This was a tragic case, and unfortunately, Dr. Anatole's actions could not be defended.

### Ethical and Legal Considerations

Researchers suggest that when physicians are asked to treat family members in non-emergent, discretionary cases, they should ask themselves the following seven questions.<sup>3</sup> Physicians can also ask themselves these same seven questions when asked to treat employees. If a practice physician cannot comfortably answer "Yes" to each question, the physician should consider not treating the family member or employee in that situation.

- Am I trained to address this medical need?
- Am I too close to obtain intimate history and to cope with bearing bad news if need be?
- Can I be objective enough not to over-treat, under-treat or give inappropriate treatment?
- Is my medical involvement likely to cause or worsen family conflicts?
- Is my relative more likely to comply with an unrelated physician's care plan?
- Will I permit any physician to whom I refer a relative to treat that relative?
- Am I willing to be accountable to my peers and to the public for this care?

### Specific Difficulties in Treating Family Members

- 1) A physician treating a family member will find it difficult to maintain professional objectivity and clear medical judgment.
- 2) The personal relationship may make it difficult to get a good past and present medical history or complete a physical examination (e.g., failing to ask sensitive questions about sexual topics, domestic abuse, or drug/alcohol use). This can produce a physician-patient encounter that does not meet the standard of care.
- 3) Past medical records, medication lists, and other information that is essential to diagnosis and treatment are usually not available or reviewed. Proper documentation of the medical encounter between a physician and family member is rarely documented in full detail.
- 4) In a physician's quest to help a loved one, the physician may attempt to render care outside of his or her own specialty, area of expertise, or training.

***Physicians who provide medical care for family members or employees risk losing objectivity and letting their personal feelings interfere with the patient's best interest.***

- 5) Outside of a true emergency, the treatment of a family member is specifically contraindicated by the AMA's *Code of Ethics*, as well as that of many specialty societies.
- 6) Due to the nature of the personal relationship with the patient, the physician is more likely to compromise patient rights, such as by failing to obtain informed consent. Due to the personal relationship, a relative may be reluctant to question the physician's judgment or treatment recommendations or ask for another practitioner's opinion.
- 7) Medicare, along with many other insurance carriers, expressly excludes coverage for treatment of a physician's immediate relatives.

### Specific Difficulties in Treating Employees

- 1) Treating employees can strain the physician/employee relationship and blur professional boundaries that should be maintained and protected.
- 2) Hasty hallway consultations between a physician and employee could establish a physician/patient relationship where one did not exist. It may not meet the acceptable standard of care for a consult done in a more professional and structured manner.
- 3) Like the treatment of relatives, personal issues between employer and employee may cloud good

medical judgment and create embarrassing situations for both parties. For example, the employee may be hesitant to share certain sensitive history information or disrobe for an exam. Any personal medical information the employee shares could jeopardize the physician's future ability to work with the employee or even compromise the employee's continued employment.

- 4) Protecting confidentiality/privacy once an employee becomes a patient can be difficult. A physician may elect NOT to document some sensitive information learned in a physician/employee encounter to protect it from being discovered by other employees. However, that could render the note incomplete and be harmful to future patient care.



- 5) Consider the risk of liability—medical malpractice, unprofessional conduct, sexual harassment and other employment-related allegations—that such an encounter could produce.



- 6) Informed consent requirements and patient rights may be compromised. An employee may be reluctant to question the physician's treatment recommendations or ask for another practitioner's opinion.
- 7) Payment issues—the days of professional courtesy are gone.

Instead, the best policy is to charge employees the same as you would other patients. Discounting care or waiving copays for employees can violate the practice's contracts with Medicare and other third-party payers.

- 8) Be careful about providing care for an employee who sustains an on-the-job injury. Should the employee file a workers' compensation insurance claim, any treatment by a practice physician may be considered a conflict of interest.

Although it's often easier and faster to provide medical care to family members and employees, physicians should learn to say "no" more often.

## Questions?

*If you have any questions you'd like our Connection experts to answer, please e-mail them to [riskmanagement@psicinsurance.com](mailto:riskmanagement@psicinsurance.com)*

Prescribing for family members and employees can create legal and ethical issues that every physician wants to avoid.

<sup>1</sup>Council on Current and Judicial Affairs (2006). *Code of Medical Ethics of the American Medical Association, Current Opinions with Annotations, 2006-2007 Edition*. American Medical Association, Chicago, IL.

<sup>2</sup>Available online at [www.acponline.org/ethics/ethicman.htm](http://www.acponline.org/ethics/ethicman.htm).

<sup>3</sup>Consider ethics, patient rights before treating your immediate family. AMA Ethics Forum. Posted April 13, 2009. [www.ama-assn.org/amednews/2009/04/13/prca0413.htm](http://www.ama-assn.org/amednews/2009/04/13/prca0413.htm)

## What Can We Learn?

- **Refrain from self-treatment.** Follow the guidelines of the AMA, the American College of Physicians and your own specialty organization on treating family members and employees. Unless there is a true emergency, most physician organizations advise against it.
- **Avoid curbside consults** with colleagues, friends or employees seeking your medical advice, diagnosis, recommendations or treatment of a personal medical problem. Politely decline and advise them that you cannot provide optimum care without a complete history and a physical examination. If appropriate, ask the person to schedule an appointment to be seen in your office.
- **Develop a policy in your practice** on the treatment of employees by practice physicians. Include the policy in your employment manual and new employee orientation materials. The policy could advise, for example, that it is not permissible for employees to seek medical advice and prescriptions for themselves or family members. Or, if you wish to implement a more lenient approach, you could limit the treatment of employees to minor medical problems and initial emergency situations while on the job.
- **Ensure there is no special treatment for any employees** versus the rest of the practice's patient population. This includes situations where employees are regular patients of practice physicians and mid-level providers.

The key is that employees must make appointments and be seen during regular office hours when they are off-duty, be charged the going rate for the services they receive, and be afforded the same HIPAA protection for their medical information as the practice's general population.

- **The courtroom is not your treatment room.** Physicians generally treat family members and employees without an adverse outcome. However, all it takes is one "abnormal" event for litigation to occur. Then, the defense of a physician can be daunting if there is not proper documentation to counter allegations of inappropriate treatment, failure to document, failure to diagnose and failure to adhere to the standard of care.



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