

# **Medical Jurisprudence**

**Behavioral Sciences Term  
St. Georges University  
School of Medicine**

**Visiting Professor  
Thaddeus Pope, JD, PhD**

# Segment

1 of 8

# Treatment Relationship

# Objectives

1. Why does a treatment relationship **matter**?
2. What is a physician's **legal** duty to treat?
3. What is a physician's **ethical** duty to treat?

5. When is a relationship **formed?**
6. When is a relationship formed with **consulting** physicians
7. When is a relationship formed with **IME** physicians

8. What **duties** are triggered upon formation of relationship
9. What are the 4 ways to **end** a relationship?
10. How can physician terminate without **abandonment**

11. Under what conditions  
can patient **waive** right to  
sue



**Why does a  
treatment  
relationship  
matter**

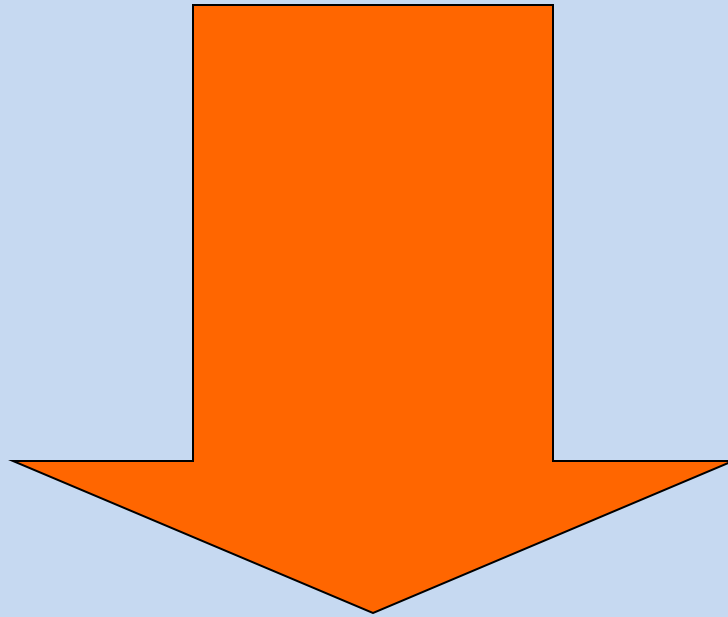
Physicians owe  
3 malpractice  
duties to  
patients

Standard of care

Abandonment

Informed consent

No treatment relationship



No claim for medical  
malpractice

All medical  
malpractice  
theories have 4  
essential elements

Duty

Breach

Causation

Damages

But no **duty**  
without a  
treatment  
relationship

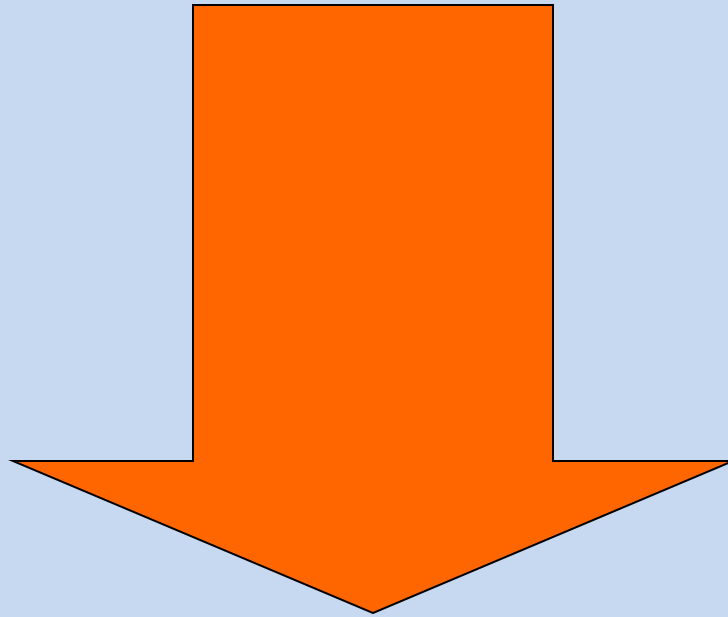
Malpractice  
duties are those  
owed by a  
physician **qua**  
**physician**



Malpractice duties  
owed only if in a  
**treatment**  
**relationship** – if PTF is  
patient and you are  
her physician

Existence of a  
treatment  
relationship **creates**  
malpractice duties

No treatment relationship



No malpractice duties

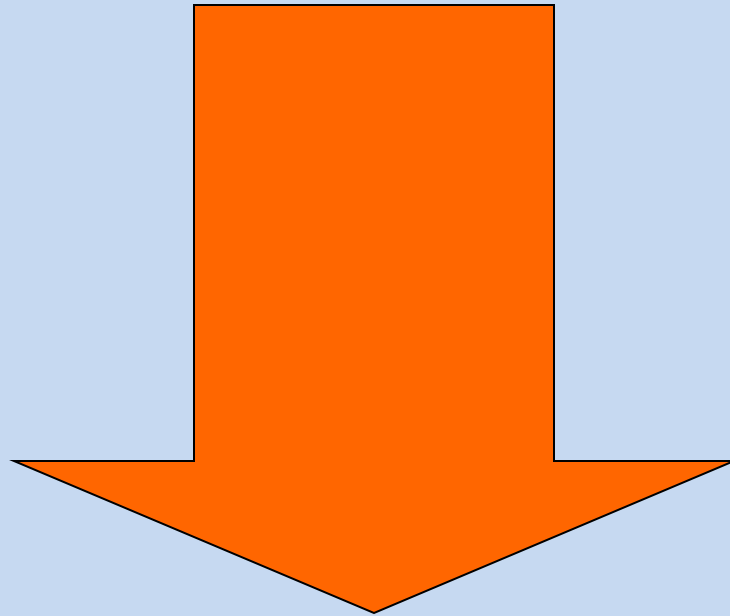
**Duty to**

**Treat**

We will later address  
**when** such duties  
spring into being  
(when Tx relationship  
is **formed**)

First, let's examine  
when physician  
**must** treat (even if  
not want)

# No treatment relationship



May refuse to treat  
for **any** reason

Default  
starting  
point



No duty

to treat

Providers **may**  
**refuse** to treat  
for any reason  
or for no reason

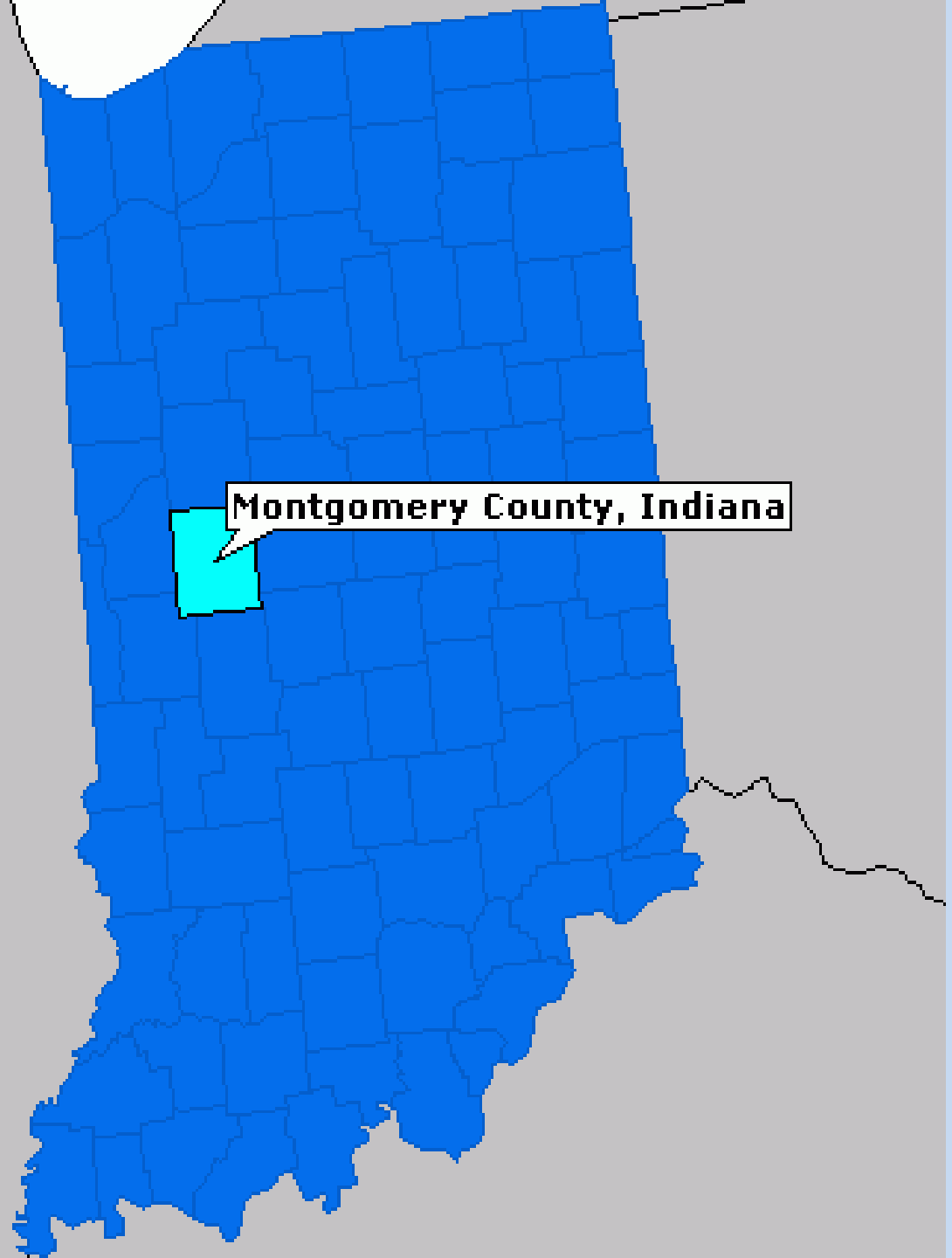
Duty to treat  
created by  
physician's **own**  
voluntary  
consent

**Hurley**

**v.**

**Eddingfield**

# 1901



Montgomery County, Indiana

- Patient “dangerously ill”
- Physician **only one** available
- Physician treated this family for years
- Husband tendered fee
- Physician had **no reason**
- Patient died

# Indiana Supreme Court



Duty to treat  
based on  
consent,  
**contract**



Even if physician delivered prior babies, treatment relationship is by ‘episode of illness’”

Physician has **no duty** to deliver this baby, unless he agrees.

When **must**  
physician treat  
a patient?

**Never,** if not  
**already** in  
treatment  
relationship

# Exceptions

Providers **may**  
**refuse** to treat  
for any reason  
or for no reason



*"Unfortunately, you have what we call 'no insurance.'"*

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[www.CartoonStock.com](http://www.CartoonStock.com)

DO YOU WANT TO  
PLAY DOCTOR?



I CAN'T. YOU'RE  
NOT INSURED.



PIERO  
TONIN

Cannot refuse  
for an **illegal**  
reason



# Invidious discrimination

Race

Disability

Cannot refuse  
if **already**  
agreed

# **Prior agreement**

MCO contract

On-call when accept  
staff privileges

**Legal vs.  
ethical  
duties**

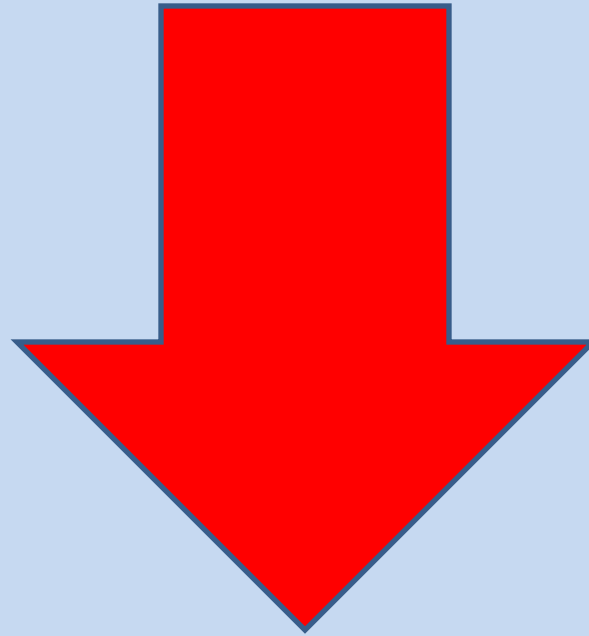
We are focusing

**malpractice**

**duties** actionable

by patient

No contract



No tort

# Code of Medical Ethics

of the **American Medical Association**

Council on Ethical and Judicial Affairs  
Current Opinions with Annotations  
2010-2011 Edition



VI. A physician shall . . .  
be **free to choose** whom  
to serve . . . .

. . . **except** in emergencies

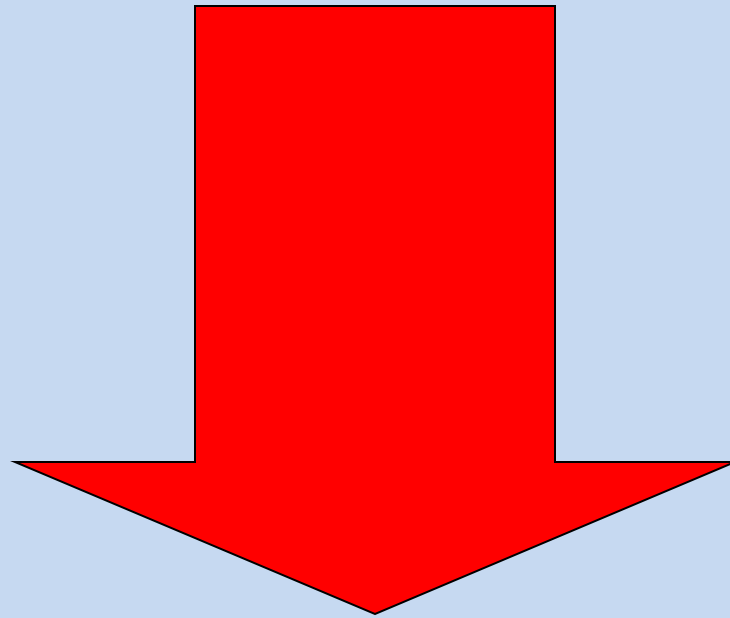


VII. A physician . . .  
responsibility . . .  
**betterment** of public  
health.

IX. A physician shall  
**support access** to medical  
care for all people.

**When is a  
Relationship  
Formed**

No treatment relationship



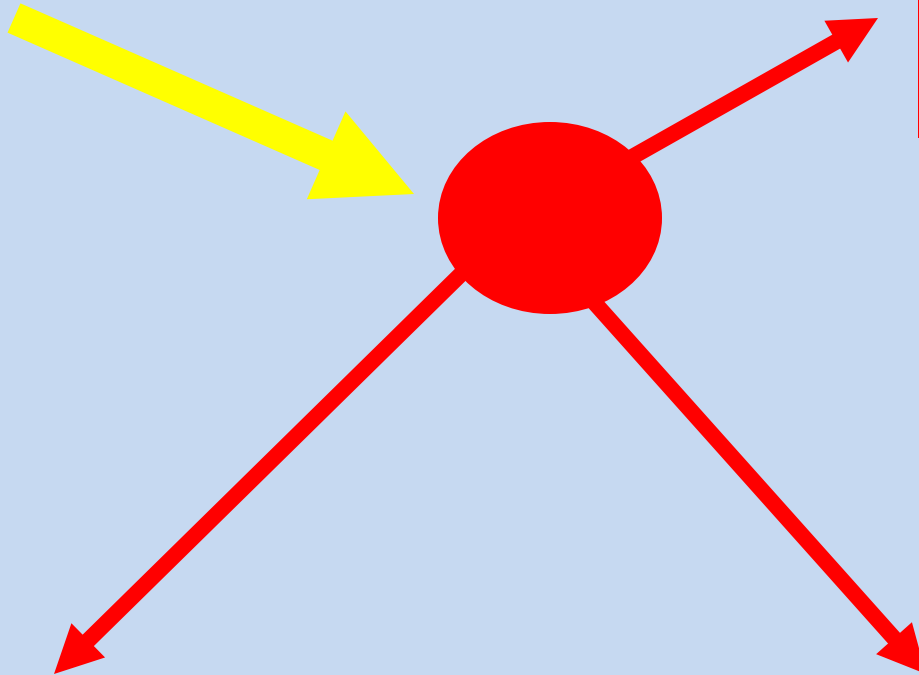
No med mal duties

**Treatment  
relationship**

**Standard  
of care**

**Informed  
consent**

**Non-  
abandonment**

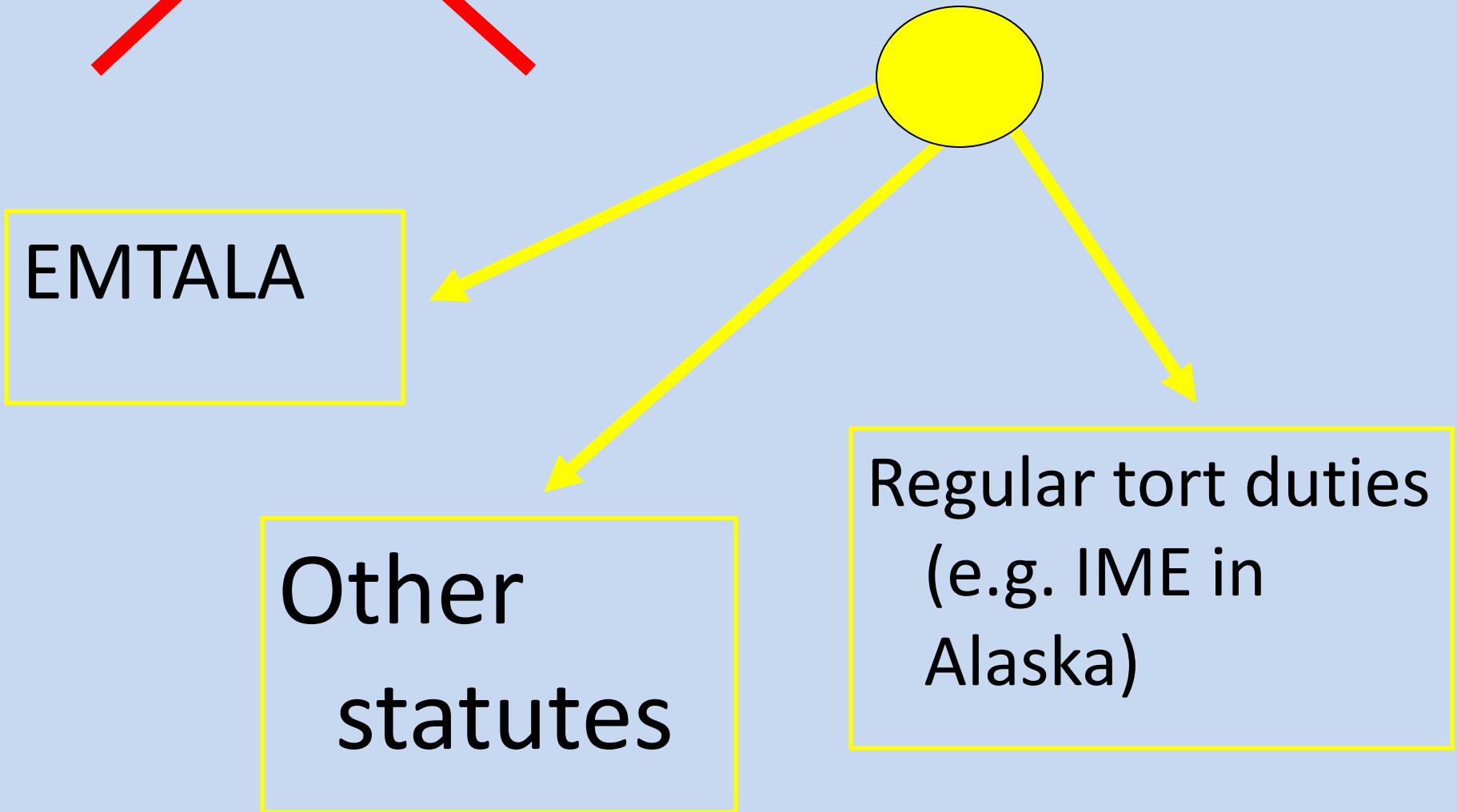


~~Treatment  
relationship~~

EMTALA

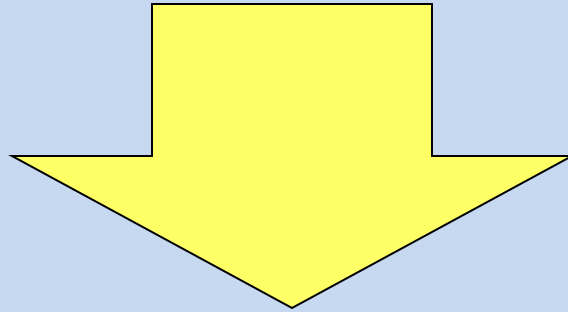
Other  
statutes

Regular tort duties  
(e.g. IME in  
Alaska)

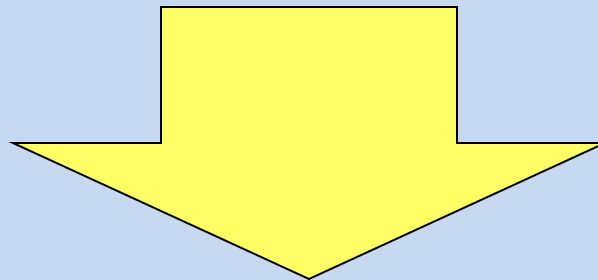


Not concerned  
with the **merits**  
of these cases

No treatment relationship



No med mal **duty**



No med mal claim

Did the  
physician  
**consent**



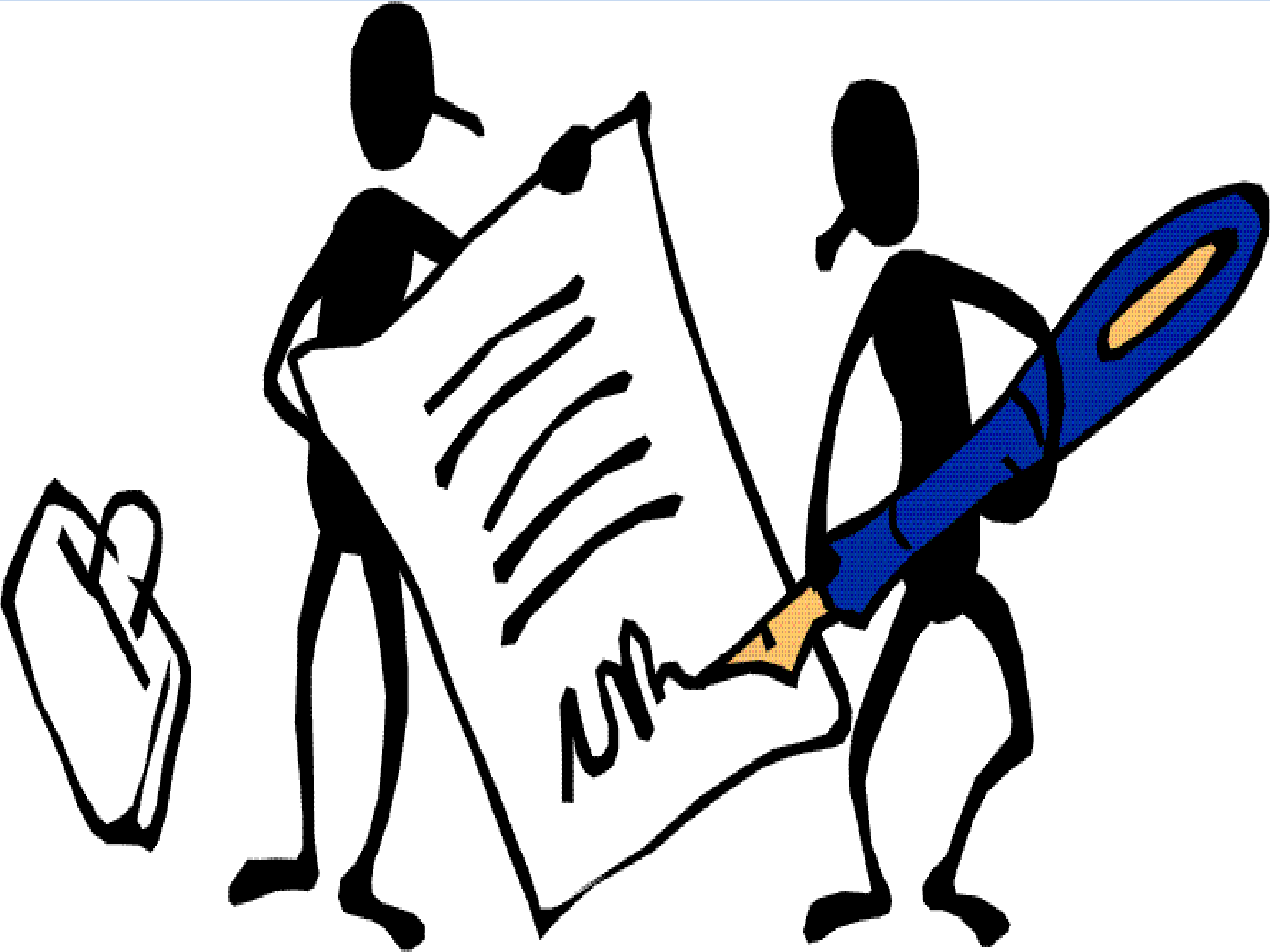
Sometimes

Clear & Easy

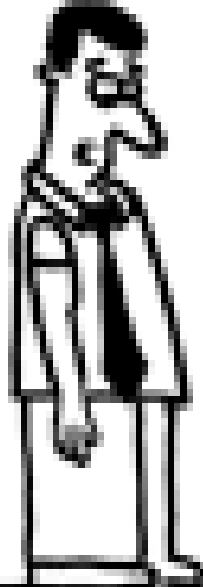
Patient seeks care

Physician provides it

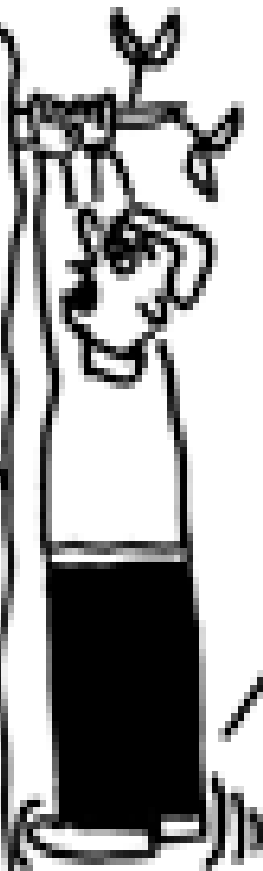




We don't  
have a  
written  
contract.



But you  
orally promised  
to rescue me!



Sometimes

Less Clear

**Some** physician –  
patient interaction

But is it enough?

What type

What amount

is sufficient



Detrimental  
Reliance





# DON'T WAIT

The *New* ER at

St. Mary's Hospital

is Ready For *You.*



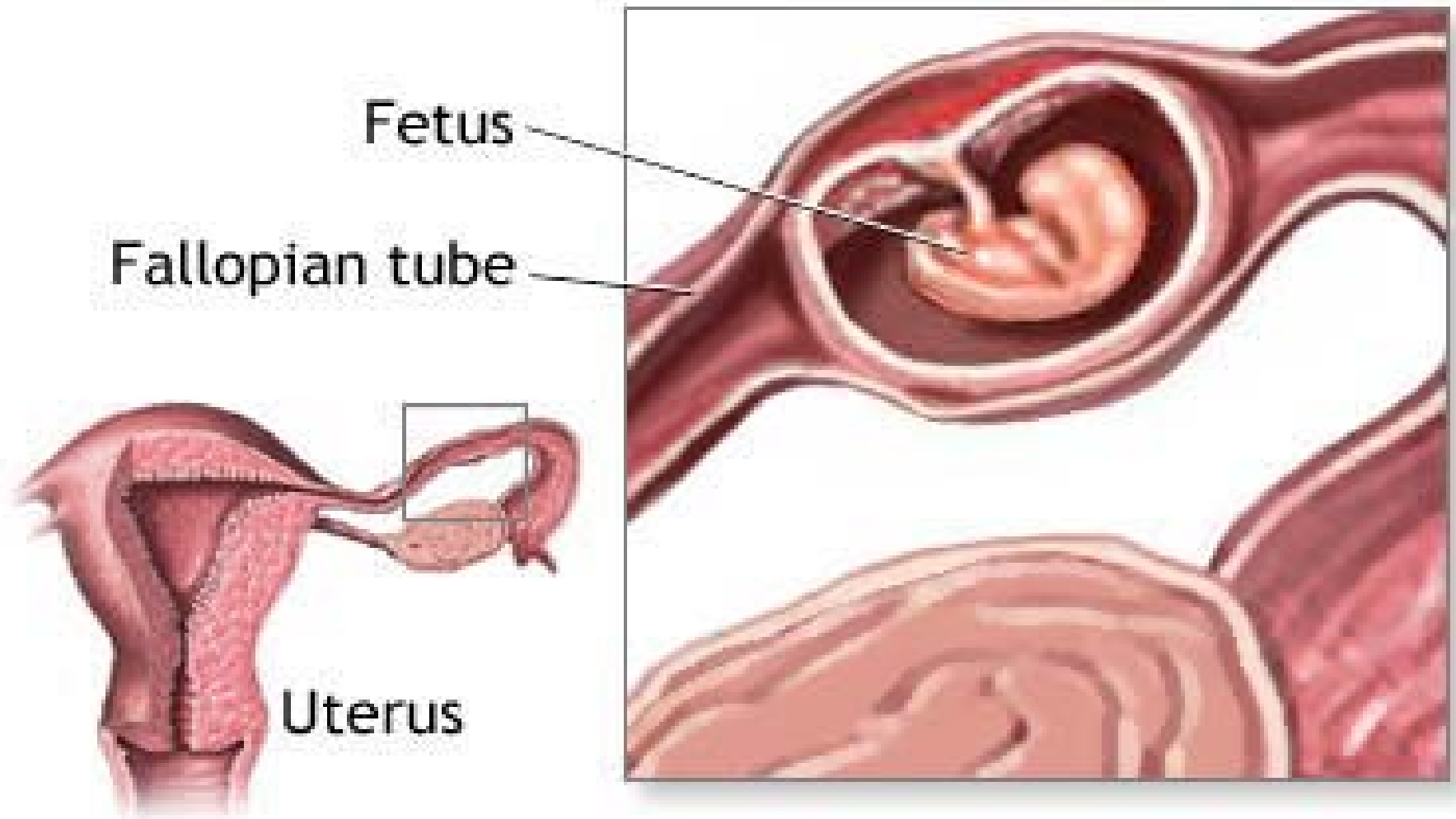
**Adams**

**v.**

**Via Christi Reg.**

**Med.**

# Ectopic pregnancy



# Theory of professional negligence (medical malpractice)

Dr. O should have suspected  
ectopic pregnancy

Dr. O should have advised of  
danger

9:30pm ER visit would have  
saved her

Breach

fail diagnose

Causation

diagnosis

would prevent

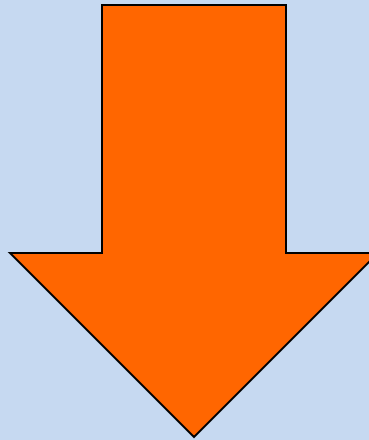
Damages

death



Dr. O:

No duty



Merits of malpractice  
action irrelevant

“family physician for  
Mr. and Mrs. Adams  
and their three  
children for several  
years”

Compare *Hurley*

Mrs. A calls

Dr. O calls back

Mrs. A recites symptoms

Dr. O listens

Dr. O offers advice

**Doctor O  
argument**

Not seen, talked, treated Nichelle  
for 4 years

Not speak Nichelle on July 22

No longer even provided  
obstetrical care AT ALL

Took no action

Only discussed Nichelle's  
condition in general terms with  
mother

Not consider Nichelle his patient

Nichelle not consider him her  
doctor

# **Mrs. Adams argument**

Doctor O called  
her “right back”

This is “affirmative action.” But it  
is not itself sufficient. He could  
have said “I cannot help you”



Doc listened and gave medical  
opinion (3 separate pieces)

Abdominal pain not abnormal

Take ER if got worse

See doc next day

“reassure”

“dissuade”

# Objective test

Look to **external** acts,  
not subjective intent

**Lyons**

**v.**

**Grether**



ADA (but 1977)

Service animal laws

Complaint against  
physician abandonment  
(wrongful termination).

Not “bad” treatment but  
“no” treatment

Not yet seen (or examined)  
by the doctor

But did she “entrust her  
treatment to the physician  
and did the physician  
accept the case”?



# Appointment

Specific time

Specific place

Specific purpose

All 3 cumulatively sufficient

Detrimental  
Reliance

**Clanton**

**v.**

**Von Haam**

Breach

fail diagnose

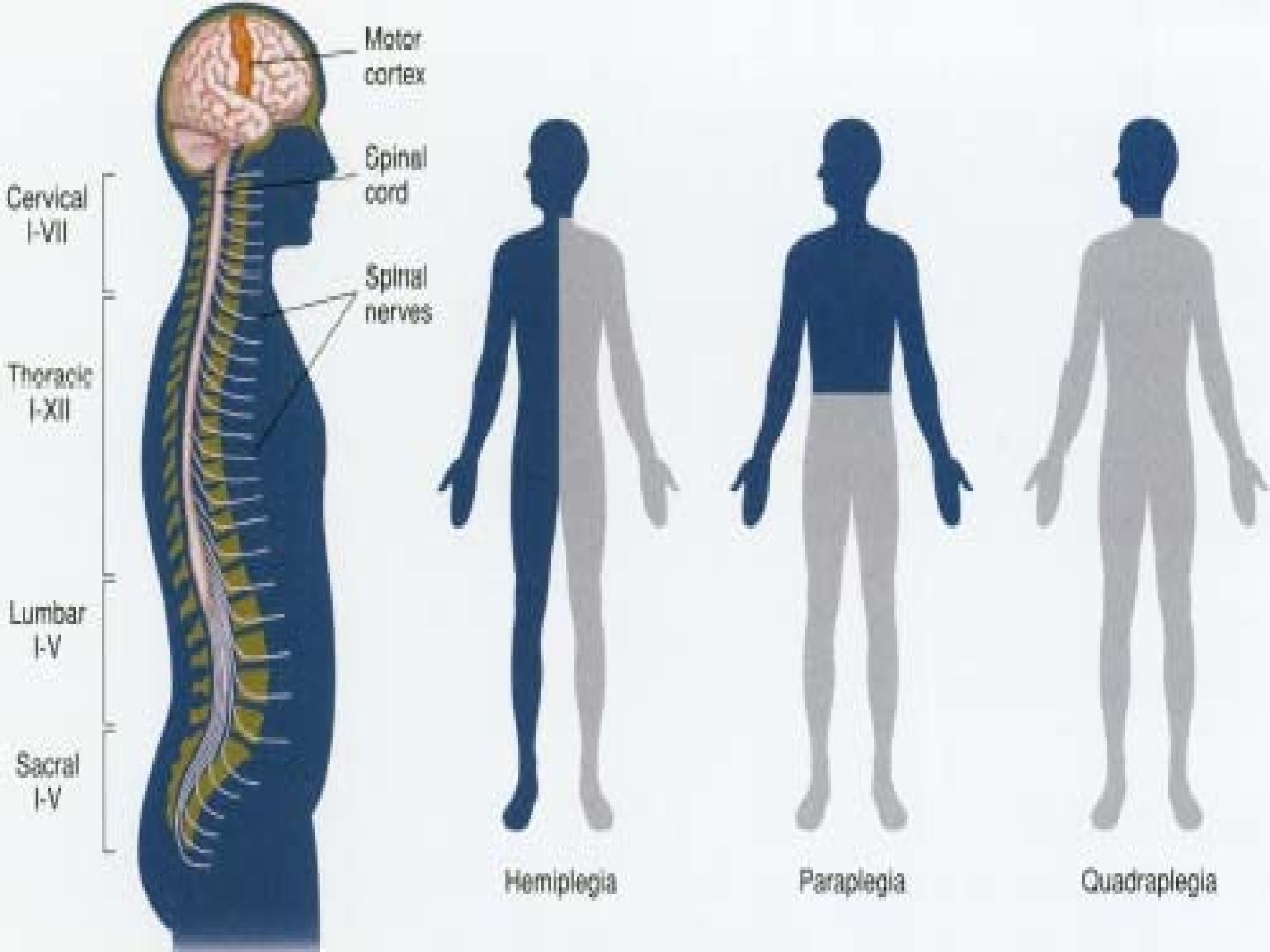
Causation

diagnosis

would prevent

Damages

paralysis



Motor cortex

Spinal cord

Spinal nerves

Cervical I-VII

Thoracic I-XII

Lumbar I-V

Sacral I-V

Hemiplegia

Paraplegia

Quadraplegia

Procedural posture

Summary Judgment  
for DEF

Affirmed

Previously **treated**

**Called** her back

**Listened** to symptoms

(This much is all in  
*Hurley*)



Recommended

continue

medication



This **would have**  
**been** sufficient  
to form a P-P  
relationship

Patient:

“wasn’t **nothing** he  
could do for me”

“not . . . suspend efforts”

“never relied”

“no way dissuaded”

**When is relationship  
formed with NON-  
treating physicians**

1. Informal  
consult

2. IME

**Informal or  
“curbside”  
consult**

**Reynolds**

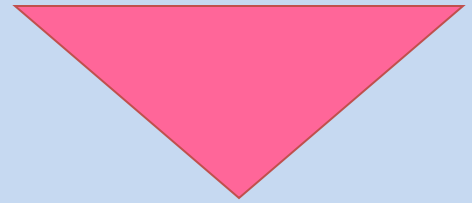
**v.**

**Decatur  
Memorial**







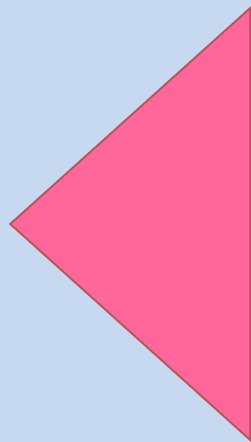




Infectious problem

vs.

Spinal cord injury



Only informal consult

Neurologist did not  
examine patient

Did not even look at labs,  
scans

No treatment  
relationship with  
physician who  
provided only  
**informal** consult





No see patient

No see record

No write in record

No bill

No see labs

Treating physician  
retains independent  
judgment

No reliance by patient

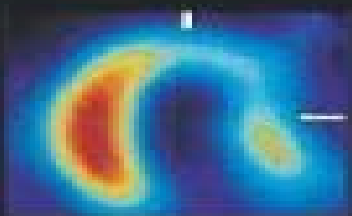
To impose duty would  
create “chilling effect”  
on communication,  
education (via  
curbside, hallway  
chats)

Can you sue the authors?

*16th Edition*

# HARRISON'S

## PRINCIPLES OF Internal Medicine



Kasper  
Hauser

Braunwald  
Longo

Fauci  
Jameson

<b>INTERACTION</b>	<b>RELATIONSHIP</b>
Provide care	Yes
Make recommendation	Yes
Telephone call	Maybe
<b>Formal</b> consult 2d physician	Yes with both
<b>Informal</b> consult 2d physician	Not with 2d doc

**IME**

# SOCIAL SECURITY DISABILITY CLAIM

Please do complete this form to file an application for a delay in processing this claim.

FILED CLAIM FOR (Check one)  
 Immediate only (0)  Delay in processing (1)

Item	Yes	No	Unsure	Not Applicable
1. Do you have a Social Security Number?				
2. Do you have a Medicare Number?				
3. Do you have a Medicaid Number?				
4. Do you have a Supplemental Security Income Number?				
5. Do you have a Disability Insurance Number?				
6. Do you have a Health Insurance Number?				
7. Do you have a Life Insurance Number?				
8. Do you have a Pension Number?				
9. Do you have a Retirement Number?				
10. Do you have a Disability Insurance Number?				
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95. Do you have a Disability Insurance Number?				
96. Do you have a Health Insurance Number?				
97. Do you have a Life Insurance Number?				
98. Do you have a Pension Number?				
99. Do you have a Retirement Number?				
100. Do you have a Disability Insurance Number?				

**APPROVED**

123456

POLYHOLDEE INFORMATION

123 456-7890

# WORK INJURY CLAIM FORM

## 1 WORKER'S PERSONAL DETAILS

Title Family Name

Given names

Other known or previous legal names eg Maiden name

Date of birth

Gender

 Male  Female

What area of the work site were you injured in when you were injured?

What is the street address where the incident occurred?

Suburb

State





PLEASE READ

No

FOL

G IN

TION VERY CAREFULLY

# LIFE INSURANCE APPLICATION

FORM OR FOR M  
rkplace

E INFORMATION CONTACT:

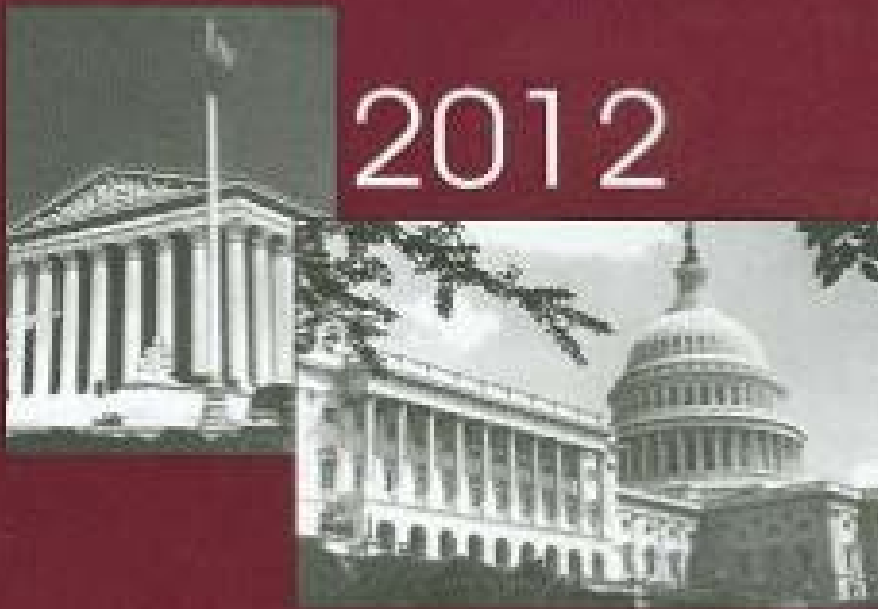
at the details from your employer, check the if you are insur  
13 1210  
cost of a local call

YOU NEED TO

# FEDERAL RULES OF CIVIL PROCEDURE

Compiled by Kevin M. Clermont

2012



And Selected Other  
Procedural Provisions

- Civil Advisory Committee Reports
- Federal Rules of Appellate Procedure
- Constitution and Procedural Statutes
- Federal Rules of Evidence

## Rule 35

The court . . . may order a party whose mental or physical . . . is in controversy to submit to . . . examination



IME physician is  
not in a treatment  
relationship with  
examinee

Physician  
interacts  
with the  
“examinee”

**BUT**

Examinee does not  
select physician

Examinee does not pay  
physician

Physician does not  
report to examinee

Not consensual

Parties not expect

P not “treating” E

P not doing it “for” E



**Smith**

**v.**

**Radecki**

Smith injured on the job

Employer doubts validity of claim



Sends Smith to Dr. Radecki

Radecki missed cyst

Maybe this was negligent

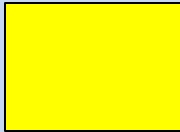
Complaint is about physician's  
use of professional skills

But was Radecki in a  
treatment relationship  
with Smith?

Did he owe Smith a duty  
(to act as RPP)?

IME can cross  
the line from  
examination  
to treatment

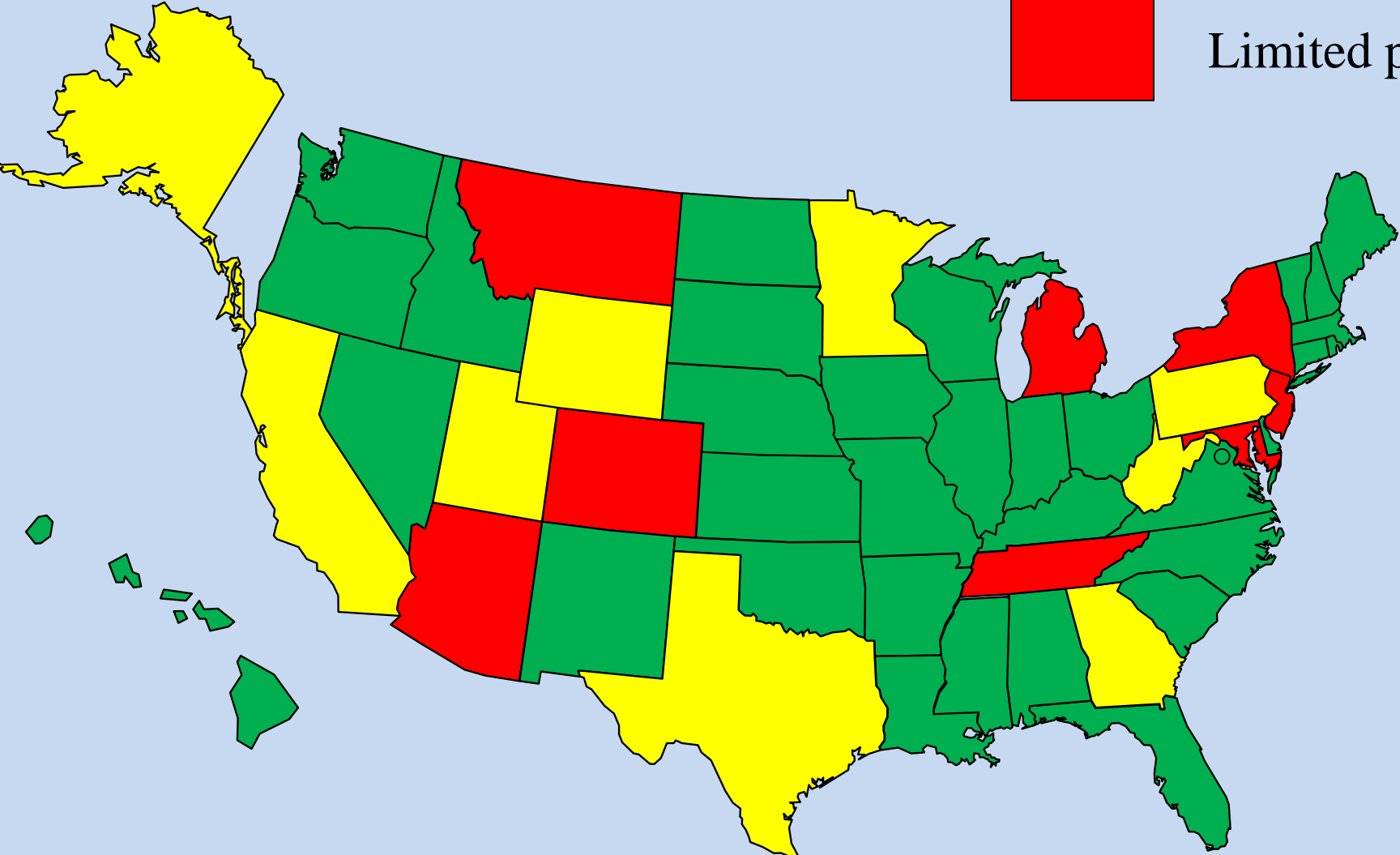
**Exception**



No p/p



Limited p/p



IME in **limited**  
treatment  
relationship



Do not affirmatively  
injure the examinee

**No duty**

Diagnose other things,  
Continue seeing/treating

# **Summary of rules on formation of treatment relationship**

Treating – Y

Consulting

Formal - Y

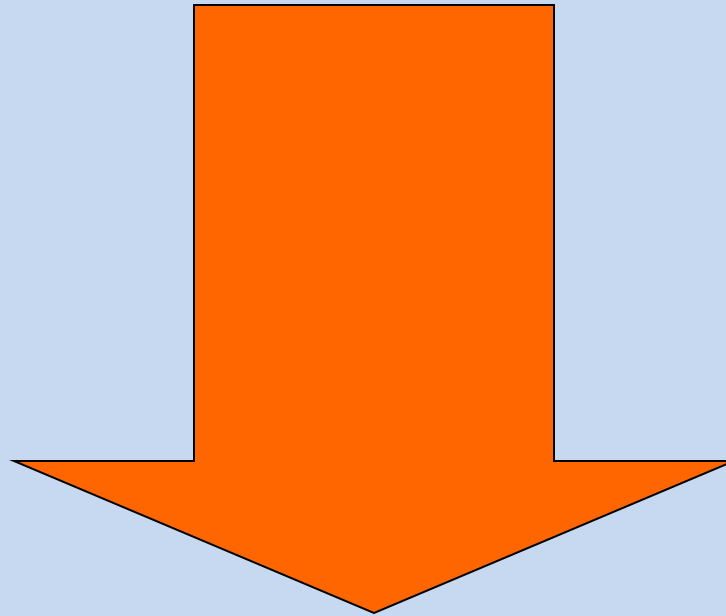
Informal - N

IME – N

But “limited” relationship  
in some states

**How to  
terminate the  
relationship**

# No treatment relationship



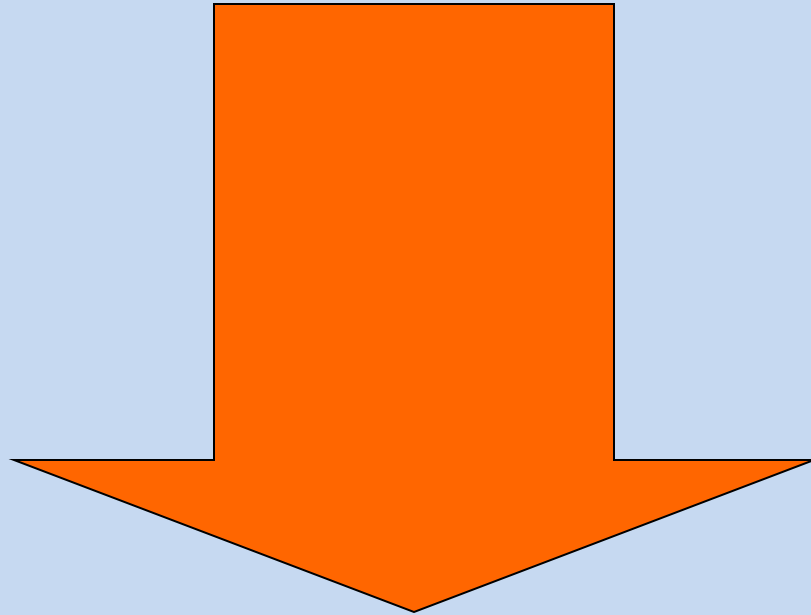
May refuse to treat  
for **any** reason

# Unless

Invidious discrimination  
(e.g. race, disability)

Prior agreement to treat

Existing treatment  
relationship



Must continue to treat

# Until

Termination of  
relationship  
(in 1 of 4 valid ways)



Otherwise,  
termination is

Tortuous  
abandonment

# Paul Simon

## 50 Ways To Leave Your Lover



STEREO



ASV

some folks lives roll easy

Uncontroversial  
ways to  
terminate

1. Mutual consent

2. Patient dismisses  
physician

3. Medical services  
no longer needed

# Trickier

Physician withdrawal

Once treatment relationship is formed, **limits** on physician ability to terminate

**Reason** for  
terminating  
does not  
matter

Noncompliance

Failure to pay

Verbal abuse, threats

Drug seeking

Fail keep appointments



Violate policies

CBO

Lack skills for adequate Tx

Lack resources

Others ??

Unilateral physician  
withdrawal is permitted

**with sufficient notice**

(to allow Pt time to find  
another provider)

Otherwise,  
physician termination is

**Tortuous  
abandonment**

Physician **may** terminate

Physician **may not**  
abandon (i.e. terminate  
with insufficient notice)

**Abandonment**

Intentional,  
purposeful,  
deliberate decision

Non-medical reason

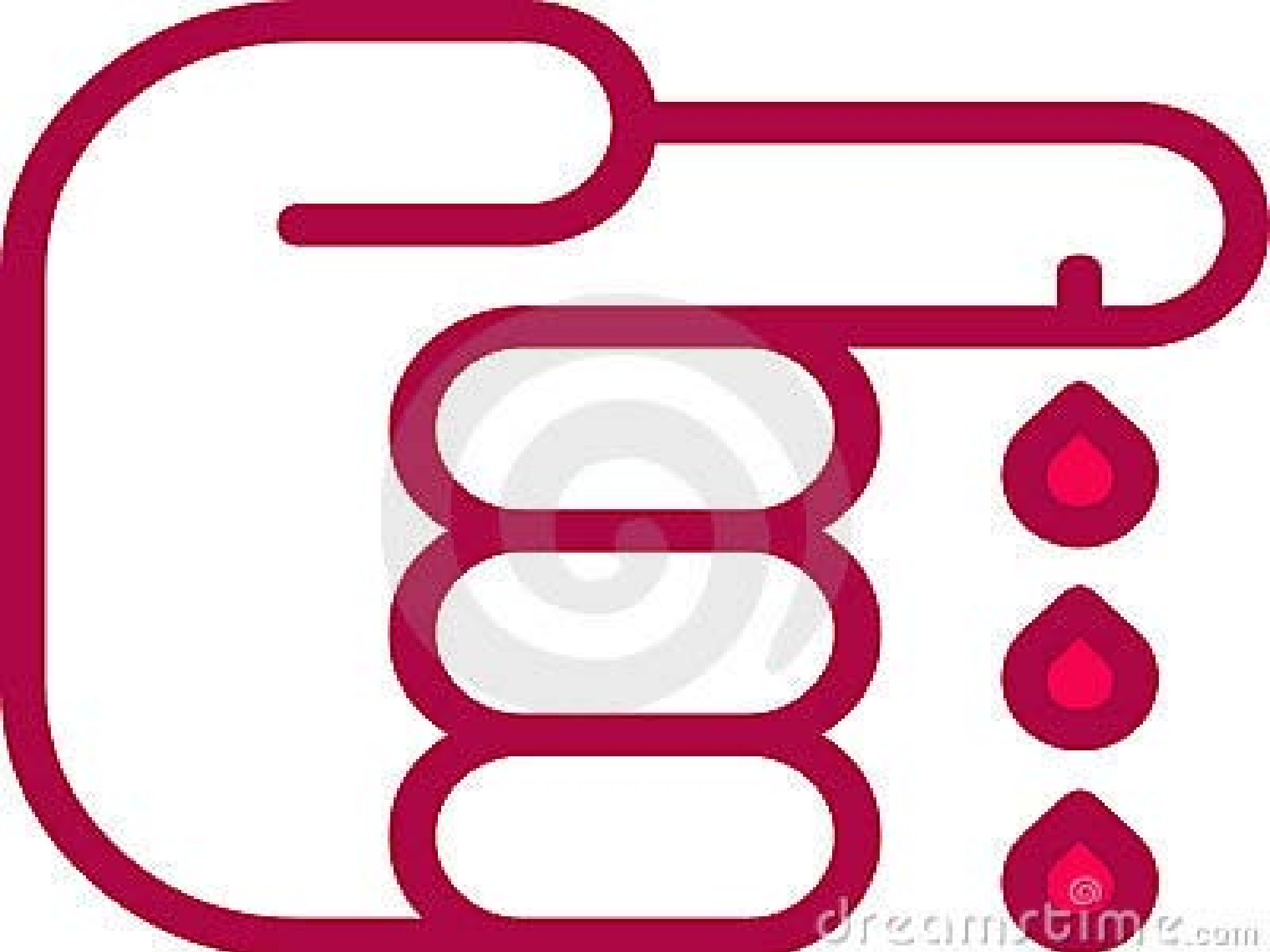
If stop Tx, because  
mistaken, missed  
diagnosis, then  
medical malpractice

**Ricks**

**v.**

**Budge**





Mar. 8	R finger on wire
Mar. 11	Budge treats R
Mar. 12-15	R in hospital
Mar. 15	R leaves hospital AMA Dr. B instructs R

Mar. 17 R to Dr. B office  
Dr. B. “go to  
hospital” meet you

Mar. 17 Dr. B **refuses to  
treat (unpaid)**

Mar. 17 R to another hospital

**Payton**

**v.**

**Weaver**



437,000 patients with ESRD

Covered by Medicare

> \$10 billion

**1975-1978**

Dialysis w/ Dr. Weaver

Drugs & alcohol

**Not** following rules

Antisocial

**12-12-78** Dr. Weaver notice

**04-23-79** Dr. Weaver notice

**1979** Writ of mandate  
settlement: Dr. Weaver  
will treat, if Payton  
complies with 6  
conditions



**1980**

Brenda fails to  
comply with **any** of  
the 6 conditions

**03-03-80**

Dr. Weaver 3d  
notice + offer to  
help

All the (bad) facts  
about Ms. Payton  
make no difference to  
the abandonment  
analysis

**Abandonment**

**Not just tort**

**Licensure too**

Abandonment **not** just type  
of medical malpractice

Licensure codes and  
regulations **also**  
define the duty

New Jersey  
requirements for  
terminating a  
licensee-patient  
relationship

1. Notify the patient, in writing, . . . no less than **30 days prior** to the date on which care is to be terminated, and shall be made by certified mail...

“Notwithstanding . . .  
a licensee **shall not**  
**terminate** a . . .  
relationship . . .  
circumstances”

“Where to do so  
would be for any  
**discriminatory**  
**purpose”**



“Where . . . **no other licensee** is currently able to provide the type of care or services . . .”



Want to refuse →  
try transfer

No transfer →  
must comply

# Code of Medical Ethics

of the American Medical Association

Council on Ethical and Judicial Affairs  
Current Opinions with Annotations  
2010-2011 Edition



**AMA Opinion 8.115**

“Physicians have an obligation to support **continuity of care** for their patients.”

“While physicians have the option of withdrawing from a case, they cannot do so without giving **notice** . . . sufficiently long **in advance** . . . to permit another medical attendant to be secured.”

**How can the  
treatment be  
limited**

**1. Waivers**

**2. AMA**

**3. Arbitration**



**Waiver of  
liability**

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"I'd like to put this tongue depressor in your mouth.  
Will you please sign this waiver?"

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**"I'll remove the thorn as soon as you've signed the waiver form."**

SEARCH ID: AROU132

**Tunkl**

**v.**

**UCLA**



“**RELEASE:** . . . the patient . . .  
agrees to and hereby **releases**  
. . . the hospital from **any and**  
**all liability** for the negligent or  
wrongful acts or omissions of  
its employees . . .”

The waiver bars the  
malpractice suit

So, attack the waiver

# Waivers must be

1. Knowing
2. Voluntary
3. Consistent with  
public policy



# Knowledge

Understand risks

Appreciate

consequences

# Voluntariness

Agree freely

Not made to sign under  
coercion or duress

# Public Policy

Bargaining power

Need for service

Relative vulnerability

Physicians cannot make  
patients waive right to  
sue

Such contracts are void as  
contrary to public policy

**Partial  
waivers**

Complete waivers  
prohibited

But **partial** waivers  
allowed

**Discharge**

**AMA**

**DISCHARGE - AGAINST MEDICAL ADVICE**

I, \_\_\_\_\_, am voluntarily leaving and signing out  
(Name of patient)

(OR)

I, \_\_\_\_\_, am voluntarily taking \_\_\_\_\_  
(Name of person signing) (Name of patient)

from the Medical Center, contrary to the advice of the medical staff in attendance. This is to certify that I, in so doing, assume full responsibility for any and all risks of this action, and hereby agree to hold the Medical Center and its' staff free from any liability of any consequences that may result directly or indirectly by reason of such removal.

\_\_\_\_\_  
(Signature of patient or person assuming responsibility)

\_\_\_\_\_  
(Relationship of person assuming responsibility)



Other partial  
waivers  
allowed

Deviation from  
standard of care for  
religious reasons

**NO BLOOD**



**ADVANCE DECISION TO REFUSE  
SPECIFIED MEDICAL TREATMENT**

Patient  
participates in  
experiment

A research study for Irritable Bowel Syndrome (IBS).



**Frustrated by your  
IBS and endless  
bathroom stops?**

**A local research study  
seeks people with  
Irritable Bowel Syndrome.**

- ✓ No-cost investigational medication
- ✓ No-cost study-related care

***SEE IF YOU QUALIFY. CLICK HERE.***

[www.StudyIBS.com](http://www.StudyIBS.com)

# Arbitration

Cal Civ. Proc. Code 1295(e)

Such a contract is **not** a  
contract of adhesion, nor  
unconscionable nor otherwise  
improper, where it complies  
with subdivisions (a), (b), . . .

# Cal Civ. Proc. Code 1295(a)

“Any contract for medical services which contains a provision for arbitration of any dispute as to professional negligence . . . shall have . . . as the **first article** of the contract . . . in the following language:”



"It is understood that any dispute as to medical malpractice, . . . will be determined by submission to **arbitration** . . . and not by a lawsuit or resort to court process . . . ."

(b) Immediately before the signature line . . . in at least 10-point bold **red** type:

“NOTICE: BY SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE 1 OF THIS CONTRACT.”

**Treatment**

**relationship**

**RECAP**

# Question 1

When **must** a HCP  
enter a treatment  
relationship

Never, except through  
**consent**

Consent can be **prior**  
(e.g. assumption of on-call  
duties, MCO listing)

# **Limits** on right to refuse

ADA

Race

# Question 2

**When** is a treatment relationship formed

**Conduct** by physician that  
evidences consent

Words or action

Interpret from patient

perspective (do they think  
they are being treated)



Formation often  
evidenced by  
patient **reliance**

Physicians who provide only **informal, curbside consults** are not in a treatment relationship with patient, even if treating physician relies on consultant's advice

# IME physician

**Never** in regular treatment relationship

In **limited** treatment relationship (some jurisdictions)

# Question 3

**When** is a treatment  
relationship  
terminated

1. Patient consent  
(e.g. patient fires doc)
2. End of medical need  
(e.g. cure, recovery)
3. Doc fires patient

Doc can fire patient for  
**any** non-illegal reason  
(e.g. ADA)

But must give sufficient  
**notice** (to get new doc)

Failure to provide  
sufficient notice =  
**abandonment**

# Question 4

What **duties** arise on  
formation of  
treatment relationship



# Non-abandonment

Duty not to prematurely terminate treatment relationship (makes sense if one already exists)

# Informed consent

Exercise reasonable  
judgment/skill

(i.e. be non-negligent,  
avoid malpractice)

# Standard of Care

Judgment & skill of  
reasonably prudent  
physician under the  
circumstances

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