

# D.C. Court: Being the ‘best’ does not preclude patient termination

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In a Dec. 10, 2020, decision, the D.C. Circuit Court denied a woman’s second attempt to obtain a preliminary injunction to force a fertility clinic to take her back as a patient pending a lawsuit she had filed against them.<sup>1</sup> The case was decided on two factors. The first factor was the plaintiff’s likelihood of success on the merits, which the court determined was unlikely. The second factor was whether the issuance of a preliminary injunction was “in accord with the balance of equities or public interest.” Due to the deterioration of the physician-patient relationship, the court determined that her reinstatement as a patient was not feasible. Another factor in the defendant fertility clinic’s favor was that it did everything right.

*Background.* The plaintiff, who was not married, had her eggs harvested and frozen. When she later decided to attempt fertilization and implantation, she inquired regarding financial assistance. The fertility clinic advised her of its established policies, which stated that if she had a partner (whom she had previously listed on her paperwork as the sperm donor), then the partner’s income would be counted for the purposes of determining eligibility for a discount. If the person was not a “partner,” but rather just a sperm donor, his income would not be counted, but he would be treated as a sperm donor, which required, among other things, that his sperm be screened and frozen prior to attempted fertilization of the plaintiff’s eggs. The plaintiff was not happy with either option and attempted to negotiate changes to the policies. When the fertility clinic, which had adopted the policies in accordance with ethical and other industry guidelines, resisted, the plaintiff

accused it of discriminating against her because she was unmarried and on other bases. The fertility clinic subsequently discharged her first orally, and then in writing, and offered to transfer her eggs to another fertility clinic at its own cost. The plaintiff filed suit, stating that this particular fertility clinic was the “best,” that others could not provide comparable care and that shipping her eggs to another clinic would cause them to deteriorate and delay their implantation, thereby interfering with her “fundamental right” to procreate. The fertility clinic presented evidence that there were at least seven other comparable fertility clinics in her geographic area and that shipping the eggs would not cause a substantial risk to their viability.

*Import.* Under Pennsylvania law, physicians are considered to have abandoned patients when they withdraw services after a physician-patient relationship has been established without giving the patient notice of their intent to withdraw in sufficient time to allow the patient to obtain necessary medical care. This can be difficult for primary care physicians who managed a complex patient’s overall health. But it is perhaps even more difficult for highly trained subspecialists and physicians who treat a specific, complex condition, as they can be very reluctant to discharge patients who may have difficulty finding truly comparable care. However, physicians are not required to tolerate disruptive or non-compliant patients. Very few published cases regarding patient abandonment under Pennsylvania law exist; however, the lawsuit discussed above, although it has no legal effect here in Pennsylvania, provides some key elements that a practice would want to

meet in the event it is accused of patient abandonment:

- Have established, written policies that are disclosed to patients at the time they join the practice.
- Ensure that staff review applicable policies with the patient and explain their application when a dispute arises and attempt to gain the patient’s understanding and acceptance of the policies.
- Document policy violations and related discussions and maintain them separately from the medical record.
- Enforce policies consistently: Ensure that they are not enforced in a discriminatory or arbitrary manner.
- Provide written notice, but care for any urgent or imminent need until the effective date of termination (30 days or longer, if necessary).
- Provide assistance, if necessary and appropriate, depending on the patient’s abilities and resources. For example, you may need to assist in obtaining a referral and/or prior authorization to an out-of-network specialist if you are the only subspecialist that is in-network.
- Facilitate the transfer of records to ensure continuity of care.

There are two potential situations that may complicate ending an established patient relationship: first, if the patient is in the global surgical period for which you have already been paid and the patient is in need of further follow-up; and second, if you are truly the only physician in a geographic area competent to perform a procedure or treat a particular condition.

*Conclusion.* Allegations of patient abandonment are serious and may lead

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to disciplinary action against a physician's license. But that doesn't mean that patients have a right to remain or be taken back as a patient once they have violated established practice policies or created hostilities with the practice or its staff even if you are the "best" clinic or practice, or individual physician, for a given condition. However, be sure to review your contract with the patient's insurance company for any further parameters on discharging patients. On a final note, tread carefully and consider

consulting a qualified attorney if special circumstances exist.

*DISCLAIMER: This article is for information purposes only and does not constitute legal advice. You should contact your attorney to obtain advice with respect to your specific issue or problem.*

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### Reference

1. E.M. v. Shady Grove Repr. Sci. Ctr., No. 19-657 (D.D.C. Dec. 10, 2020).

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