

## Avoiding Allegations of Negligent Referral in Medicine

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Healthcare providers can be accused of “negligent referral” if they refer patients to specialists who mishandle the patients’ cases and cause injuries. This article examines negligent referral and offers strategies for how practitioners should handle referrals. Following is a case example in which a family physician was accused of negligent referral.

### Case Example: Referral for Cataract Surgery

Dr. C was a family physician who had a long-term, older male patient who began to complain about diminishing vision. Dr. C did an examination and suspected the patient had cataracts. She recommended that the patient see Dr. H, a local ophthalmologist whom Dr. C had known and referred patients to for many years. The patient saw Dr. H and was diagnosed with cataracts. During cataract surgery, the patient suffered a retina injury (a recognized risk of cataract surgery), which resulted in permanent loss of vision in the affected eye. The patient sued Dr. H for malpractice and Dr. C for negligent referral to Dr. H.

In this case, it appears that Dr. C made an appropriate referral for an appropriate reason. Yet she was sued for negligent referral. However, no negligence occurred in this referral. The fact that a provider refers a patient to a certain specialist, and the patient subsequently suffers a suboptimal outcome as a result of treatment from that specialist, does not provide a basis for an allegation of negligent referral. This is true when the patient suffers a recognized complication of a procedure, or even when the specialist makes a mistake that results in a patient injury.

Negligent referral occurs when the provider does not use appropriate care in determining that a referral is necessary or in referring the patient to a qualified specialist – e.g., if the

referring provider *knew or should have known* that the specialist was not competent to render the needed care. Lack of competency might be the result of various factors. For example, the necessary care might be outside the specialist's scope of practice, or an impairment might jeopardize the specialist's ability to provide safe care (e.g., an illness, injury, substance abuse, or advanced age).

Every specialist has cases that result in suboptimal outcomes and occasional cases in which errors are made. That does not – in and of itself – make the specialist an inappropriate referral resource. Again, the allegation of negligent referral only applies when the referring provider has reasonable grounds to believe that a patient will have a suboptimal outcome as a result of the specialist's treatment.

In the previous case example, the patient might have had grounds for a negligent referral allegation if Dr. C had knowingly referred him to an ophthalmologist who was unable to provide safe patient care as a result of a physical impairment.

## **Strategies to Avoid Allegations of Negligent Referral**

One effective way to avoid allegations of negligent referral is to give patients choices related to their care. Although occasionally a situation might occur in which there is only “one person for the job,” generally more than one specialist is available, even if some travel is involved. If the primary care provider is aware of several competent specialists in the area, then he/she should provide the patient with a list of these specialists.

The primary care provider also might suggest that the patient contact his/her insurance carrier to obtain specialist recommendations (and to verify coverage). The primary care provider also might consider referring the patient to a local medical society to see whether the group recommends any particular specialists. Finally, especially if the case is unusually complicated, it might be appropriate for the primary care provider to refer the patient to a medical school.

If the patient wants to see a specialist with whom the primary care provider is not familiar, the provider should indicate to the patient that he/she simply has no knowledge of the

specialist and cannot offer any opinion as to whether this particular specialist would be a good choice.

A more difficult situation occurs if the patient wants to see a specialist who does not inspire the primary care provider's confidence. One option is for the provider to indicate that he/she has not worked with this specialist to any extent and would feel more comfortable if the patient sees a doctor on the recommended list of specialists from the primary care provider.

Sometimes the patient can be generally resistant to a referral, preferring instead to have the primary care provider treat the condition. Once the provider decides on a referral, he/she should stick with that decision despite any appeals from the patient. The likelihood of a suboptimal outcome increases when providers stretch the boundaries of their expertise or competency.

## In Summary

Specialty referral is an integral part of a healthcare practice. From a risk perspective, primary care providers should limit their scopes of practice to procedures for which they are well trained and experienced, and refer difficult cases to qualified specialists. Involving patients in decision-making and offering options for appropriate specialists can support the ultimate goal of high-quality and patient-centered care.

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