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Co-Discoverer of The Reward Gene

IN MEMORY OF STEVEN
PATIENT BROKERING - IS IT TIME TO ACCEPT AND REGULATE THE WORST KEPT SECRET IN BEHAVIORAL HEALTH CARE?

By Jeffrey C. Lynne, Esq.

For the aspiring treatment center start-up, gaining and maintaining traction within the marketplace can be daunting. Patient acquisition is the single-most important aspect of owning and operating a program, for without patients, there is no program.

However, patient acquisition is also the place filled with landmines. Unlike a typical business, where one can offer a potential customer a coupon, a free ride, almost anything of value to try their services, providing (or even offering) anything of value to a patient to induce their patronage is unlawful.

These actions tend to fall within an area of criminal law referred to as “patient brokering” and generally take one of two forms: one is offering anything of value to a potential client/patient to induce that person to patronize a specific health care provider; the other captures the activity of “bartering” or “selling” of patients to a treatment provider in exchange for a fee, a de-facto “patient delivery service.”

Why are these actions unlawful? As a matter of public policy, we desire for patients to make unbiased health care decisions based upon the quality of the care to be provided, rather than based upon personal benefit received, which are thought to unfairly influence health care decision making. Stated differently – would the patient select treatment center “x”, but for the fact that the center offered to pay for the patient’s airfare, or free room and board?

Admittedly, there are numerous instances of persons who are legitimately unable to obtain addiction treatment due to the lack of availability of services, but for the gratuitous “scholarship” provided. However, the overarching reality is that these otherwise altruistic intentions have been corrupted and abused to the point where the current generation of patients has learned how to “game” the system. These mostly young adults have started their recovery journey by figuring out they can barter their value, measured in increments of insurance benefits, for cigarettes, gym memberships, and free rent, as well as a host of other various luxuries, so long as they tender their insurance card to the highest bidder.

This is also an area where parents of adult children need to be more engaged. Parents are equally in a vulnerable position. There is an existential crisis occurring which they believe someone is taking care of – and that person is often a “marketer” under a different title. The enabling actions of a marketer or treatment center in providing free items or services undermines the need for the patient to learn self-help and self-care, which is the only way to sustain sobriety from addiction.

The other form of “patient brokering” is the actual delivery of patients to a facility in exchange for a fee. These salespersons, who label themselves as a “marketer” or “outreach coordinator,” are in reality no different than any other form of commercial “broker” in any other commercial field – we regularly use and rely upon auto brokers; commodity brokers; insurance brokers; mortgage brokers; real estate brokers; and stock brokers, to guide us in our decision-making process.


There are advantages to using a broker. First, they know their market and have already established relations with prospective accounts. Brokers have the tools and resources to reach the largest possible base of buyers. They then screen these potential buyers for revenue that would support the potential acquisition. An individual producer, on the other hand, especially one new in the market, probably will not have the same access to customers as a broker. Another benefit of using a broker is cost—they might be cheaper in smaller markets, with smaller accounts, or with a limited line of products.

But paying a “marketer” is unlawful for the same public policy reason – the profit motivation of providers to simply get access to patient insurance benefits tends to compromise how that patient was acquired.

Certainly, providers must be held accountable for the actions of the “marketers” they employ, and to some degree, the law does place a burden upon treatment programs to ensure that their marketing “employees” are not themselves engaged in illegal behavior to secure patients for their employers.

However, the policy to have a patient select his or her own provider based upon the quality of service delivery assumes that patients can readily differentiate between providers, and that facilities are able to fairly compete within the same market space. This also assumes that patient acquisition itself is a fair playing field.

So, the question is posed – has the time come to regulate, and therefore accept, the worst-kept secret in behavioral healthcare? Is it possible to craft a set of rules and guidelines (as well as professional licensing) so that consumers of this health care commodity will be in a better position to be educated and protected from otherwise unscrupulous “patient placement services”? Can regulation actually level the playing field by allowing all providers an equal opportunity to compete for their fair share of the treatment provider service delivery model? By eliminating the underground economy of patient brokering, which has devolved into human trafficking, could we possibly also elevate the very important role that recovery residences have within the treatment continuum by distinguishing them from “boarding houses” which simply warehouse actively using kids until they are placed in treatment programs?

By licensing and regulating marketing activity, we may be in a position to deliver an essential and important public health service of matching patients to appropriate treatment providers.

However, until then, a “marketer” remains (rightfully or not) akin to one who barters in human misery, no matter how they justify their role in this underground economy. Therefore, this occupation should be scrutinized, regulated, and professionalized with a set of ethics and industry education. Public health policy actually demands this of us, and the future of the American drug and alcohol treatment industry will be defined by our collective ability to deliver quality and cost-effective behavioral health care to the masses.

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