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OK to promote your practice to outside patients, but watch poaching concerns

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The recent closure of a major practice in Rhode Island, and the efforts of a separate practice to pick up their patients, raises the question: Is it out of line to actively solicit another provider's patients?

In April, the Rhode Island Department of Health posted an unusual announcement: That Anchor Medical, a large health system with offices in Providence, Lincoln and Warwick, "has announced it is closing effective June 30, 2025," and "current patients of Anchor Medical Associates are encouraged to immediately begin the search for a new primary care professional." Prior to announcing closure, Anchor served approximately 25,000 patients. Anchor itself made a similar announcement and suggested several local alternative providers on a "Patient Resources" page.

But Rhode Island's Thundermist Health responded more proactively than most: It posted a front-page notice on its website citing the "recent news about Anchor Medical Associates closing their offices" and the "concerns for many Rhode Islanders who need to find new primary care providers and pediatricians," and offered to book appointments. Also, Thundermist has made itself available to the press — for example, its CEO did an op-ed in the April 30 Warwick (R.I.) Beacon addressing the issue — and has been featured in stories in local news outlets.

Given the paucity of primary care providers in the state — "Rhode Islanders can't find doctors, and Anchor Medical closure will only make it worse," headlines the local PBS affiliate — Thundermist's aggressive approach seems appropriate and even public-spirited. But in less extreme circumstances, can you ethically and legally try to draw off a competitor's current patients?

First: Break no laws

HIPAA and other privacy laws prevent you from obtaining your competitors' patient records to solicit. And the sort of competitive advertising common in other fields probably wouldn't go over well with patients. Further, if you misrepresent facts about the competitor, you can get in real trouble.

In a case brought before Fresno County [Cal.] Superior Court in 2015, for example, a local hospital accused regional doctors of "illegal and predatory conduct to misappropriate Plaintiffs' pediatric cystic fibrosis patients" by first accessing the patients' records from the hospital EHR via their remote access agreements, then by contacting "family members of some of Plaintiffs' pediatric cystic fibrosis patients to make false and misleading statements about Plaintiffs' cystic fibrosis center." The local hospital accused the doctors of making claims that the hospital could not provide adequate care and that the patients should transfer their care.

"What Thundermist is doing seems OK because Anchor is definitely closing," says David Davidson, a health care attorney with Dickinson Wright in Fort Lauderdale, Fla. "You could have some ethical issues if the system didn't announce but only, for example, released financials that made it look as if they weren't doing very well, and the other provider entity started running ads like, 'Is your health system going to be here tomorrow?' capitalizing on that [information]. You could even run into legal issues as regards unfair competition and even defamation."

While under ordinary circumstances patient poaching is frowned upon, it's generally not a legal issue unless the means of soliciting patients implicates other laws such as HIPAA or the anti-kickback statute.

For example, Davidson says, if you promoted your practice at an ancillary business that patients of multiple providers might use, such as an imaging facility or an ambulatory surgical center, "that would smell bad to me — you'd have to wonder whether [the provider] is paying this ASC or imaging center to tell people that." That might implicate state law violations on fee-splitting and patient brokering.

Focus on patient welfare

James Stafford III, an attorney with Clark Hill PLC in Los Angeles, says that the safest course is to stick with "legally and ethically sound" outreach to patients such as "transparent social media announcements regarding service availability, educational community events that address health care continuity concerns, [and] clear communication about insurance acceptance and scheduling availability."

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Richard F. Cahill, vice president and associate general counsel of The Doctor's Company in Napa, Calif., also suggests that you look to your professional associations and state boards for guidance on appropriate competitive marketing. The American College of Obstetricians and Gynecologists, for example, has a page on this, including the admonition that "physicians should consider not just the intent of any advertisement but also its effect on the public's view of the profession."

"The patient's welfare must remain the central consideration in all recruitment strategies," Stafford says. "When patient interests guide recruitment methodology, the resulting approach will generally align with legal and ethical principles. This patient-centered framework not only mitigates compliance risks but also builds enduring trust with both patients and providers — the true foundation of sustainable practice growth."

Resources

- Anchor Medical, Rhode Island: www.anchormedical.org/
- Thundermist Health Center, Rhode Island: www.thundermisthealth.org/
- State of Rhode Island Department of Health, "Information for Anchor Medical Associates Patients,:" April 11, 2025: <https://health.ri.gov/information-anchor-medical-associates-patients>
- Warwick Beacon, "RI's health care crisis demands urgent action," April 30, 2025: warwickonline.com/stories/ris-health-care-crisis-demands-urgent-action,289390
- ABC6 Providence, "Thundermist looking to recruit patients losing doctors due to Anchor Medical closure," April 10, 2025: www.abc6.com/thundermist-looking-to-recruit-patients-losing-doctors-due-to-anchor-medical-closure/
- PBS Rhode Island, "Rhode Islanders can't find doctors, and Anchor Medical closure will only make it worse," April 28, 2025: <https://thepublicsradio.org/health/rhode-islanders-cant-find-doctors-and-anchor-medical-closure-will-only-make-it-worse/>
- ACOG, "Ethical Ways for Physicians to Market a Practice," Nov. 2011: www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2011/11/ethical-ways-for-physicians-to-market-a-practice



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