

Patients Who Refuse to Wear a Mask: Responses That Won't Get You Sued

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What Do You Do Now?

Your waiting room is filled with mask-wearing individuals, except for one person. Your staff offers a mask to this person, citing your office policy of requiring masks for all persons in order to prevent asymptomatic COVID spread, and the patient refuses to put it on.

What can you/should you/must you do? Are you required to see a patient who refuses to wear a mask? If you ask the patient to leave without being seen, can you be accused of patient abandonment? If you allow the patient to stay, could you be liable for negligence for exposing others to a deadly illness?

The rules on mask-wearing, while initially downright confusing, have inexorably come to a rough consensus. By governors' orders, [masks are now mandatory in most states](#), though when and where they are required varies. For example, effective July 7, [the governor of Washington has ordered that a business not allow a customer to enter](#) without a face covering.

So far, there are no cases or court decisions to guide us about whether it is negligence to allow an unmasked patient to commingle in a medical practice. Nor do we have case law to help us determine whether patient abandonment would apply if a patient is sent home without being seen.

We can apply the legal principles and cases from other situations to this one, however, to tell us what constitutes negligence or patient abandonment.

The practical questions, legally, are who might sue and on what basis?

Who Might Sue?

Someone who is injured in a public place may sue the owner for negligence if the owner knew or should have known of a danger and didn't do anything about it. For example, individuals have sued grocery stores successfully after they [slipped on a banana peel](#) and fell. If, say, the banana peel was black, that indicates that it had been there for a while, and judges have found that the store management should have known about it and removed it.

Compare the banana peel scenario to the scenario where most news outlets and health departments are telling people, every day, to wear masks while in indoor public spaces, yet owners of a medical practice or facility allow individuals who are not wearing masks to sit in their waiting room. If an individual who was also in the waiting room with the unmasked individual develops COVID-19 two days later, the ill individual may sue the medical practice for negligence for not removing the unmasked individual.

What about the individual's responsibility to move away from the person not wearing a mask? That is the aspect of this scenario that attorneys and experts could argue about, for days, in a court case. But to go back to the banana peel case, one could argue that a customer in a grocery store should be looking out for banana peels on the floor and avoid them, yet courts have assigned liability to grocery stores when customers slip and fall.

Let's review the four elements of negligence which a plaintiff would need to prove:

- Duty: Obligation of one person to another
- Breach: Improper act or omission, in the context of proper behavior to avoid imposing undue risks of harm to other persons and their property

- Damage
- Causation: That the act or omission caused the harm

Those who run medical offices and facilities have a duty to provide reasonably safe public spaces. Unmasked individuals are a risk to others nearby, so the "breach" element is satisfied if a practice fails to impose safety measures. Causation could be proven, or at least inferred, if contact tracing of an individual with COVID showed that the only contact likely to have exposed the ill individual to the virus was an unmasked individual in a medical practice's waiting room, especially if the unmasked individual was COVID-positive before, during, or shortly after the visit to the practice.

What About Patient Abandonment?

"Patient abandonment" is the legal term for terminating the physician-patient relationship in such a manner that the patient is denied necessary medical care. It is a form of negligence.

Refusing to see a patient unless the patient wears a mask is not denying care, in this attorney's view, but rather establishing reasonable conditions for getting care. The patient simply needs to put on a mask.

What about the patient who refuses to wear a mask for medical reasons? There are exceptions in most of the governors' orders for individuals with medical conditions that preclude covering nose and mouth with a mask. A medical office is the perfect place to test an individual's ability or inability to breathe well while wearing a mask. "Put the mask on and we'll see how you do" is a reasonable response. Monitor the patient visually and apply a pulse oximeter with mask off and mask on.

[One physician recently wrote about measuring her own oxygen levels](#) while wearing four different masks for 5 minutes each, with no change in breathing.

Editor's note: Read more about [mask exemptions](#) in our interview with pulmonologist [Albert Rizzo, MD](#), chief medical officer of the American Lung Association.

Practical Tips

Assuming that a patient is not in acute distress, options in this scenario include:

- Send the patient home and offer a return visit if masked or when the pandemic is over
- Offer a telehealth visit, with the patient at home

What if the unmasked person is not a patient but the companion of a patient? What if the individual refusing to wear a mask is an employee? In neither of these two hypotheticals is there a basis for legal action against a practice whose policy requires that everyone wear masks on the premises.

A companion who arrives without a mask should leave the office. An employee who refuses to mask up could be sent home. If the employee has a disability covered by the Americans with Disabilities Act, then the practice may need to make reasonable accommodations so that the employee works in a room alone if unable to work from home.

Those who manage medical practices should check the websites of the state health department and medical societies at least weekly, to see whether the agencies have issued guidance. For example, the [Texas Medical Association has issued limited guidance](#).

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