



CLOSING THE PRACTICE

*Risk Management Guidelines and
Sample Tools*



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Introduction

A variety of circumstances may lead a physician to end his/her current practice arrangement. To ensure continuity of patient care, to avoid any allegation of abandonment, and to fulfill contractual and regulatory obligations, the physician should provide notice in a timely manner. This responsibility often applies to a physician departing a group practice. If feasible, begin planning your departure years in advance. MPIE recommends consulting with an attorney and an accountant to assist you with building an exit strategy.

Address the following areas in your planning process.

Staff

- Keep staff informed. Notify employees three (3) months in advance of the anticipated closing date. Outline a plan regarding a severance policy and benefits. Consider providing incentives to encourage valued staff members to continue their employment and ease the transition to closing the practice. Options to consider offering are: an exit bonus, an increase in base salary, or continued employment if you sell the practice.
- Negotiate to enable your staff to retain their positions if the practice is acquired by another physician. Familiar staff facilitates the transition of patients to the new provider-owner.
- Arrange for staff interviews with the acquiring physician. If needed, provide an outplacement service to provide resources that assist staff in obtaining other employment.
- Ensure that you fulfill all legal requirements related to any employment retirement plan.
- Determine what obligations you have in relationship to your employees' health insurance coverage and your obligations to pay unused employee benefits such as vacation and sick time.

Patients

Notify active patients a minimum of three (3) months prior to closing, enabling them to locate another physician and adjust to the transition. Take into consideration the amount of time patients need to establish a relationship with another physician based on the location and availability of other similar practitioners in your geographic area.

When establishing an end-date, surgeons must consider the post-operative follow-up period and refrain from scheduling surgical cases beyond that timeframe.

Obstetrical providers need to plan at least 9 months prior to closure to manage their pregnant patients to term.

Following are recommendations for communicating with your patients about the closure:

Timeframe	Actions
6 months prior to closure	<ul style="list-style-type: none"> • Post announcements in office • Instruct staff to communicate with patients during calls and appointments
3 months prior to closure	<ul style="list-style-type: none"> • Notify by letter (sent first class mail) and enclose a records release authorization form for patients who are currently undergoing treatment or, who were seen by the practice within the last 2 years. See Appendixes A and B for sample letters. Retain copies of the letters in the patients' records. • Consider calling each patient that has a chronic or complicated medical condition (high risk). Follow up with a letter advising them that their condition requires ongoing medical attention and that a physician must be selected to provide for their continuing care. (A certified letter, return receipt requested may be sent in lieu of a telephone call). Determine whether it is necessary to actively transfer the care of compromised patients. • Place a notice in at least two (2) area papers serving your patient population. If you are a specialty physician and see patients throughout your state, it is in your best interest to utilize periodicals that circulate state-wide. The information contained in the notice is not regulated by any entity. The size of the ad must be large enough to ensure that it is easily seen. Publish the ad several times within a month. You should include the following information: <ul style="list-style-type: none"> ○ Date you are closing the office ○ Date you will stop scheduling patient appointments ○ Information related to transferring a copy of patients' medical records to another physician ○ An explanation of how patients can obtain copies of their medical records.
1-2 months after closing	<p>Place a message on the practice's voicemail service instructing patients about the closure. Check messages daily and respond to inquiries in a prompt manner. Include the following information in the message:</p> <ul style="list-style-type: none"> • Date office closed • Information about how patients can: <ul style="list-style-type: none"> ○ Find new providers ○ Obtain prescription refills ○ Request copies of the medical record ○ Obtain emergency treatment

Insurance

- Contact your professional liability insurance carrier. If you have a "claims-made" policy, tail insurance will protect you from a claim that occurred during a claims-made policy period but was reported after a policy has expired or been canceled.
- Inform every insurance company providing any form of coverage for the practice, (e.g., facility, vehicles, and employees).

Key Entities to Notify

- State Licensing Board
- State and Local Medical Societies
- Drug Enforcement Administration (DEA) (Controlled drugs should be discarded in accordance with DEA procedures and your DEA license returned)
- Hospitals
- Associates
- Medicare
- Medicaid
- Third-Party Payers, MCOs, Workers Compensation
- Professional Associations, AMA, AOA, Specialty Societies

Medical Records

A valid, signed authorization is necessary to provide a new physician a copy of a patient's medical record. The physician-patient relationship is normally an individual relationship. Obtain each patient's consent to allow colleagues in a group practice to assume care and access your patients' medical records. Do not release the original medical record. Forward a copy of a complete file to the new physician. You may not withhold the records of a patient whose account is in arrears. Be sure to retain medical records according to your state's requirements.

Storage of Medical Records

Safe storage requires that the confidentiality of the records be protected. Storage options include: archiving records, using a storage firm, arranging for a custodial physician, scanning into a read-only CD or copied to microfilm. When practices have both electronic and paper records, both formats should be reconciled to ensure that information is retained in a meaningful format.

Arranging for Physician Custodians of Medical Records:

A written agreement is encouraged and it should address the following:

- Length of time to maintain the records
- Indemnification provisions
- Access by a patient or the physician to the medical records

Storage Facility:

Any relationship established with a firm that handles the storage of sensitive information should include a formal written contract outlining the mutual obligations of the storage firm and the physician. There should also be in place a HIPAA business associate agreement with the storage firm. Before contracting with any such facility, some due diligence should be performed to verify the contractor's ability to maintain the confidentiality of medical records and its ability to limit access to appropriate persons.

Destruction of Medical Records

It would be best to never destroy medical records as there continues to be exceptions to the Statute of Limitations for suits to be brought. At times, this has happened several years after the alleged event may have occurred. It is never safe to destroy records even if the practice is following our recommended medical record retention policy. Technology today allows practices to scan records on to CDs for storage. This method allows for retention and frees up significant space.

While it is highly recommended that retention is the best method some practices may feel the need to elect destruction of old medical records. If destroying medical records is the practice's choice, it is only safe to do so after the MPIE retention a time frames. Some older inactive records may be purged. Confidential destruction (shredding) is an option. Contact either your local hospital which may have the capacity to safely dispose of medical records or, an attorney, to locate a secure record destruction service. HIPAA requires that a business associate agreement be entered into when a destruction service is used.

Additional Considerations

- Review your contracts related to notification requirements. It is always advisable to contact your attorney to ensure compliance with state laws and to review written contracts.
- Remember to destroy prescription pads and letterhead after your last appointment.

Resources

- AHIMA: Protecting Patient Information after a Facility Closure (2011 update) - <http://library.ahima.org/doc?oid=105074#.V6OgyPkrJhE>, accessed 8/4/16
- ACOG: Closing Down a Medical Practice: Guidelines and Considerations - <http://www.acog.org/About-ACOG/ACOG-Departments/Practice-Management-and-Managed-Care/Closing-a-Practice>, accessed 8/4/16
- ACP: Checklist Before Closing or Retiring from Practice - https://www.acponline.org/system/files/documents/running_practice/practice_management/tools/closing_practice.docx, accessed 8/4/16
- AAFP: Closing or Selling a Practice - <http://www.aafp.org/practice-management/administration/finances/close-sell.html>, accessed 8/4/16
- Michigan State Medical Society, www.msms.org, 517.337.1351

Appendix A | Sample Letter to Patients Announcing Closure

[Practice/Organization Name]

[Address]

[City, State Zip]

[Date]

[Patient Name]

[Address]

[City, State Zip]

Dear [Patient Name]:

I have decided to close my practice due to [reason – retirement, business reasons, etc.]. The last day I will see patients is [date].

I encourage you to look for a new provider as soon as possible. If you need assistance with selecting a new provider, you may wish to contact [local medical society and/or community health services referral hotline] at [phone number/website].

Your medical records are confidential, and a copy can be transferred to another doctor or released to you or another person you designate only through your permission. Please sign the enclosed authorization form and return it to my office by [date] so we may transfer your records.

Thank you for trusting me with your healthcare needs. Best wishes for your future health.

Sincerely,

[Physician Name]

Enclosure: Authorization to Release Medical Records

Appendix B | Sample Letter to Patients if Practice is Sold

[Practice/Organization Name]

[Address]

[City, State Zip]

[Date]

[Patient Name]

[Address]

[City, State Zip]

Dear [Patient Name]:

I have decided to close my practice due to [reason – retirement, business reasons, etc.]. The last day I will see patients is [date].

[Physician name] will be taking over my practice. Dr. [name] will be in custody of the medical records of all of my former patients, and would be pleased to continue your medical treatment, if you choose. I am pleased that you have the opportunity to have [him/her] as your physician. [Include a brief paragraph summarizing the qualifications of the physician taking over the practice.]

Of course, you may seek medical care from another doctor if you like. If you choose to do so, I recommend looking for a new physician as soon as possible. If you need assistance with selecting a new provider, you may wish to contact [local medical society and/or community health services referral hotline] at [phone number/website].

Your medical records are confidential, and a copy can be transferred to another doctor or released to you or another person you designate only through your permission. If you choose to see a different physician, please sign the enclosed authorization form and return it to my office by [date] so we may transfer your records to your new doctor.

Thank you for trusting me with your healthcare needs. Best wishes for your future health.

Sincerely,

[Physician Name]

Enclosure: Authorization to Release Medical Records

Appendix C | Sample Authorization to Release Medical Records

Dear Dr. _____:

This letter will authorize you to provide a copy of my medical records (as indicated by the check mark(s) below) or to otherwise release confidential information. At this time I am requesting the following:

- Complete record.
- Records of care from _____ to _____ only.
- Records of care concerning the following condition(s):

- Other. Specify: _____
- Confer with other person orally about information in my medical record.

HIV/AIDS: I consent to the release of any positive or negative test result for AIDS or HIV infection, antibodies to AIDS, or infection with any other causative agent of AIDS, with the rest of my medical records.

Initials: _____ Date: _____

To the following person(s):

Name(s)

Street

City State ZIP

Appendix D | Practice Closure Checklist

- Notify employees and make necessary arrangements to ensure adequate staffing until closure date.
- Post signage re: closure in office.
- Send notification letter to patients and place a dated copy of the notification in each patient's medical record.
- Place notice for closure in local newspaper(s).
- Evaluate the terms of the lease and give notice to landlord as required, or consider options to renegotiate if the lease is of longer duration than the time the physician wishes to remain in practice.
- Investigate sources to sell or dispose of medical and office equipment.
- Make arrangements to store or transfer custody of medical records. Notify your state medical board of the storage location.
- Inventory drugs and dispose, sell, transfer, or donate according to federal and state requirements. Contact the Drug Enforcement Administration (DEA) for specifics. Destroy all prescription pads.
- If the physician is retiring or relocating, notify DEA in writing and enclose DEA Controlled Substance Certificate and controlled substance order forms (cross out and write "void" on forms before sending).
- If the physician has practiced under a name other than his or her own (e.g., "Doctor's Westside Clinic"), he or she should have filed an assumed name certificate with the county clerk. The physician should contact the county clerk to deactivate this assumed name if he or she is closing the practice without a buyer or if someone else is assuming the practice under that name.
- If the physician and other physicians have been practicing as a partnership (or have had an operating agreement like a partnership to share office space) and the partnership will continue after the physician's retirement or departure, then withdrawing from the partnership or otherwise transferring the partnership interest is necessary. The departing physician should consult a lawyer regarding this matter.
- If the physician has operated X-ray and/or mammography equipment in the office, the physician holds a license from the Department of Health and must maintain a record of the transfer or disposal of such equipment.

- ❑ Send written notification to Medicare, Medicaid and all contracted payers. Include the closure effective date and a forwarding address for payments that resolve after the closure date.
- ❑ Notify your state medical board, licensing board, credentialing organizations, professional memberships, hospitals where you have privileges, and ancillary services such as labs/MRI facilities, etc.
- ❑ Inform all suppliers/service contracts of closure date and request final statements to close accounts (utilities, medical suppliers, office suppliers, collection agencies, housekeeping services, hazardous waste disposal, magazine subscriptions, laundry services, etc.).
- ❑ Advise professional liability insurance carrier of the physician's change in status. If the physician has a "claims made" policy, consider purchasing additional insurance to cover claims that may be filed after the coverage lapses. (This additional insurance is known as a "tail policy.") If the physician will be practicing part-time, insurance coverage may still be advisable.
- ❑ Consider using an answering service or prepare messaging for phone calls after the office is closed.
- ❑ Contact the US Postal Service to arrange for mail to be forwarded.

Appendix E | Sample Clause for Transfer and Custody of Medical Records

This clause may be used for a practice sale or merger, or to transfer medical records upon retirement or practice closure.

In partial consideration for turning over the medical records of patients developed in the practice, the buyer agrees to assume control, custody, and possession of all the medical records related to the practice of the seller and shall retain such records in accordance with applicable Michigan and federal laws.

As an alternative, an agreement could contain a schedule of retention periods derived from the information previously mentioned (i.e., "Medicare/Medicaid records: five years, unless a longer period is required by contract," and so forth).

In addition, the agreement should contain language that recognizes the unique nature of medical records and the ongoing requirements of confidentiality. For example:

Buyer recognizes that the medical records subject to this agreement are confidential under applicable Michigan and federal laws, and may not be released to any third party except as provided by law. Buyer agrees to honor lawful requests for release of medical records or information contained in those records in accordance with Michigan law and may, in buyer's discretion, charge a reasonable fee in accordance with Michigan laws to cover the costs of reproduction, unless such fees are deemed waived by other applicable law.

Physician employment agreements may contain clauses that provide that transferred medical records become the property of the new employer.

Finally, including an "access to records" clause may be appropriate in any contract of sale whereby the buyer allows the seller access to records to deal with specified medical-legal issues.

Purchaser shall permit seller, during normal business hours, to have reasonable access to, and to examine and make copies of, medical records of patients treated by the seller which relate to events occurring prior to the closing or events required to audit or maintain or defend positions in connection with Medicare and/or Medicaid (or other governmental insurance program such as CHAMPUS (Civilian Health and Medical Program of the Uniformed Services), in connection with any investigation or proceeding, in connection with an audit by a managed care company, or to conduct the defense of any potential professional liability claim, or to conduct the defense of any potential complaint or proceeding before the Michigan State Board of Medical Examiners.

Such clauses also may specify what type of notice the seller must provide to the buyer to trigger such rights, and may specify that the seller copy records at his or her own expense.