

Legal Brief

Closing a Medical Practice

This Legal Brief was drafted for general informational purposes only. It is not meant to be a comprehensive guide, nor should it be construed as legal advice. The information in this brief is current as of February 1, 2013; readers should consult the most recent versions of referenced statutes, regulations, and cases to ensure there have been no material changes.

Summary

The closure of a medical practice requires advance planning. Physicians must notify patients and other professional organizations of the closure, and plan for proper handling of medical records and remaining prescription drugs. Physicians should allow enough time to handle internal accounting, legal, and employee-related matters.

Discussion

Patients

Active patients must be given adequate time to locate another physician. If possible, notification should take place two (2) or three (3) months in advance of the closing date. In addition to notifying active patients, it is advisable to run an advertisement in the local paper to announce the closing of the practice for the benefit of inactive patients and others.

To ensure active patients are given adequate notice to seek alternative medical care, physicians are encouraged to take the following steps:

1. Evaluate the patient's current condition and render any necessary care to stabilize the patient.
2. Inform the patient of his or her illness and emphasize the need for follow up care (physicians may refer the patient to another physician, if necessary).
3. Notify the patient of the intent to withdraw care by a definite date; allow sufficient time for the patient to obtain alternative care (if possible, this notification should take place three (3) months before closing).
4. Inform the patient that emergency care will be provided in the interim.
5. Inform the patient that copies of records will be made available to the patient or the new physician upon receipt of the patient's written permission to transfer the record.
6. Document steps 2-5 in writing by certified mail with a return receipt requested. A copy of the letter and the return receipt should then be kept in the patient's file.

Care should be taken to maintain the confidential nature of the physician-patient relationship. Unless required by law, physicians may not transfer copies, summaries of records, or other information contained in a patient's medical record to any other person without the patient's prior written permission.

In the case of the sale or other disposition of a physician's medical practice, it is imperative that the physician make provisions for the proper handling of medical records. Physicians should not transfer copies of records except with prior written permission of the patient. Physicians may, however, name a custodian of the records (often another physician). In that case, the custodian becomes responsible for the maintenance and care of the records but does not have access to their content, except with the prior written permission of the patient. If physicians choose to transfer patient records to a custodian, the South Dakota State Medical Association (SDSMA) recommends a contract be written that requires the custodian to notify the withdrawing physician if he or she moves or for some other reason no longer wishes to maintain the records. For additional information about medical records, see the following related legal briefs: Medical Records Privacy – Covered Entities; Medical Records Privacy – Protected Health Information; Medical Records Privacy – Disclosure with Patient Consent; Medical Records Privacy – Disclosure Without Patient Consent; and Medical Records Privacy – Record Retention.

Medical Association and State Medical Board

In addition, provide notification to professional associations to which you belong. Include notification to specialty societies, your district medical society, and SDSMA. The SDSMA will then notify the American Medical Association (AMA). While physicians are not required by law to notify the South Dakota Board of Medical and Osteopathic Examiners when they close their practice, licensees must give written notice to the Board of any change of address within thirty (30) days of the change. In addition, physicians maintaining a medical license must continue to reapply annually. Physicians who surrender or allow their license to expire cannot practice medicine, including volunteer work.

Employees

Employees must also be made aware of the planned closure. However, the timing and manner of employee notification will vary from practice to practice. Employees may begin seeking other employment opportunities upon notification. As a result, it is recommended that arrangements be made whether with current employees or with a temporary agency to assure adequate office help until the closure date. It is also likely employee assistance will remain necessary after the closure date to complete administrative duties associated with the winding down of the practice. The physician may want to consider some sort of retention pay to encourage key employees to remain with the practice until it is wound down. Regardless of the need for employee help, employees should be given sufficient advance notice to make personal plans.

If employer-provided health insurance will terminate, the physician must notify the insurance provider of the closure. Federal law requires the insurance company to offer covered employees either a policy of individual coverage or the right to continue under the group policy for a period of time. Contact your insurer or insurance agent for additional information, including information regarding how to properly notify employees of their rights. Also, contact your employee benefits advisor if employees are offered a pension plan to determine the notices that must be given under state and federal law.

Drug Enforcement Administration

The Drug Enforcement Administration (DEA) must also be notified when a physician discontinues professional practice. If physicians do not intend to maintain their medical license or actively practice, they should return their DEA certificate of registration and any unexecuted order forms to their local DEA field office (21C.F.R. 1301.52). To determine the location of your local field office, contact the Federal Drug Enforcement Administration at 888.803.1179.

Upon closing a medical practice, any controlled substances on hand should be returned, transferred, or disposed of. Physicians can return any controlled substances to the supplier (21 C.F.R. §1307.12). With DEA notification and permission, physicians can transfer controlled substances to another DEA registrant (21 C.F.R. §1307.11). Physicians can dispose of controlled substances by sending a list specifying the name and quantity of controlled substances to be disposed. This list (three copies of Form 41 for the DEA) must be sent to either the South Dakota Board of Pharmacy or the DEA district office that serves the physician's area (21C.F.R. §1307.21). Upon receipt of the list, the executive director of the Board of Pharmacy or the special agent in charge for the DEA shall authorize and instruct the physician how to dispose of the controlled substances. For at least two (2) years after closing a practice, physicians should keep the final inventory of all controlled substances and any copies of DEA order forms (21 C.F.R. §1304.04, 21C.F.R. §1305.13

and 21 U.S.C. §827). Additionally, physicians should not issue any controlled substance prescriptions that need to be refilled after they terminate their DEA registration and should completely destroy any extra prescription pads.

Insurance

The professional liability insurance carrier should receive immediate notice regarding the planned closure. Even if retired or no longer in practice, physicians can be sued for malpractice arising from events that occurred while practicing. Therefore, physicians should maintain adequate professional liability insurance coverage.

Prior to closing a medical practice, physicians should determine which type of liability insurance they have. One type, “occurrence” coverage, covers all claims arising out of medical practice during the policy period, regardless of when the claims are made. The other type, “claims-made,” covers only against claims actually made during the effective period of the policy. With “claims-made” policies, physicians need to purchase from their insurer an insurance rider called a “reporting endorsement” or “tail” in order to be covered for any claims filed after the practice is closed. Physicians may want to also review and update the total amount of coverage available.

In some cases, physicians may decide to cancel professional liability insurance coverage. Physicians who cancel insurance should write to their insurer, specifying the policy number and notice of the intent to cancel. Physicians who cancel insurance should not provide any medical services, including volunteer work. All physicians should retain copies of any insurance policies, including those that have been canceled or expired.

For any other insurance connected with the office, physicians should notify the insurance companies of the intent to close the medical practice. Physicians should not cancel their property damage and general liability insurance until the disposal of physical assets has occurred or the premises have been vacated.

Winding Down the Practice

With a solo practice, the physician has several options: 1) after reasonable notification to patients and employees, simply close the practice; 2) a year or two prior to closing/retirement, hire an associate who agrees to purchase the practice upon closing/retirement; or 3) sell the practice. The sale of a practice can be accomplished simply by word-of-mouth, by advertising in trade journals or professional association publications, or by contacting residency and fellowship training programs to locate potential buyers. With a group practice, the partnership or corporation agreement will often include procedures for the buyout of the departing physician by the other partner(s) or shareholder(s). If the partnership or corporation has no such agreement, physicians, with the help of their attorney, should negotiate for the buyout of their interest.

In either case, physicians will have to assess the physical assets of their practice. Depending on the type and organization of the medical practice, the assets of the practice may include: 1) fixtures and medical equipment such as examination tables, X-ray and physical therapy equipment, and instruments; 2) equipment not specific to the practice of medicine such as computers, desks, file cabinets, and waiting room furnishings; 3) supplies such as medical supplies, non-narcotic drugs, and office supplies; 4) rented or leased equipment and office lease; 5) real estate (land and building); 6) accounts receivable, depending on their value, and 7) goodwill, which is the opportunity for another physician to serve the departing physician’s patients (there is no assurance that the purchasing physician will get the “business” of the former patients).

Physicians need to work with attorneys, accountants, and their other professional advisors to understand the following: 1) the tax implications of the sale or disposal of the practice; 2) any outstanding liens on office furniture, equipment, or supplies; 3) the terms of any office lease and the consequences of termination; and 4) the market effect on the sale of the practice (the market will determine the sale price rather than the practice’s objective value).

Additional Resources

In order to further aid with the closure of a practice, SDSMA offers the following additional resources, all of which are included as addenda to this Legal Brief:

1. Checklist for Closing a Medical Practice
2. Sample Letter – Practice Closing
3. Sample Letter – New Physician Continuing Practice
4. Sample Authorization to Transfer Medical Records

Conclusion

The closure of a medical practice involves significant planning. Physicians need to notify their patients and eventually terminate all active physician-patient relationships. Physicians should also notify employees, the DEA, professional organizations, and insurance companies. Upon closing, physicians must pay close attention to law regarding proper records handling. Specific questions concerning closing a practice should be referred to legal, tax, and financial professionals who specialize in this area.



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