



Closing a Medical Practice

This packet 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 December 1, 2012; however, readers should consult the most recent versions of referenced statutes, regulations and should consult with a professional who specializes in this area with specific questions regarding closing a medical practice. The following information is primarily directed towards physicians who are discontinuing practice and not renewing their medical license due to retirement, illness, moving out of state, etc. If you are closing a practice but intend to keep an active South Dakota medical license, some of these guidelines may not apply to you.

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Checklist for Closing a Medical Practice

- ✓ Notify the South Dakota Board of Medical and Osteopathic Examiners (SDBMOE) of your proposed closing date (605.367.7781)
- ✓ Notify active patients of your plans and begin the process of transferring and storing records approximately three months prior to your closing date. You should make arrangements to keep all medical records for at least two years after your death.
- ✓ Arrange for the retention of business and medical records in a secure environment. (See retention guidelines.)
- ✓ Notify employees of your plans approximately three months prior to closing. Review your obligations concerning vacation time, sick pay, and other benefits such as pension plans and insurance.
- ✓ Arrange for disposal or transfer of controlled substances with your local Drug Enforcement Agency (DEA) or the South Dakota Board of Pharmacy (605.362.2737).
- ✓ Turn in your DEA and state certificates of resignation, if you no longer will be practicing.
- ✓ Contact your professional liability insurer. Determine if you need to purchase a reporting endorsement or “tail” coverage.
- ✓ Tighten your collection practices so when you close your practice you will not have to be concerned with follow-up on accounts and insurance claims.
- ✓ Examine your office and determine whether you have a right to sublet or have an “escape clause” so you can vacate the premises when you close your practice.
- ✓ Plan the sale of any equipment with your tax advisor and or business consultant.
- ✓ Obtain final statements from suppliers.
- ✓ Notify utility companies of your closing date.
- ✓ Notify the insurance company that issues your office insurance of your closing date.
- ✓ Change mailing address and cancel subscriptions.
- ✓ Notify your accountant and ask him/her to assist you in tax planning for closing your practice.
- ✓ Notify professional associations.
- ✓ Contact your local Social Security office if you are approaching age 62.
- ✓ Contact your personal attorney to help you coordinate the closing of your practice to assist you with questions you may have concerning any of the above items.



Closing a Practice Information

Physicians can reduce the stress of closing a practice by planning ahead. Advanced planning will assure that there is sufficient time to work with attorneys, accountants and other professionals who may be needed to assist physicians with the closing of their practice. Additionally, you must notify a number of individuals and agencies in advance of closing a practice. When possible, physicians should begin planning at least one year in advance before closing their medical practice.

This closing medical practice information is divided into five sections:

1. Initial Planning
2. Notification
3. Winding Down Your Practice
4. Medical Records
5. Conclusion

Initial Planning

Begin planning for the closing of your practice at least one (1) year in advance to give you and your family time to make decisions and arrangements concerning the disposition of your practice as well as your post-closing needs. You will need time to work with your attorney, accountant and other professionals to reduce the complexity and anxiety of the closing process to be a manageable level.

Notification

Patients

Notify your active patients of your intent to close your practice so that they have adequate time to locate another physician. If possible, this notification should take place two or three months in advance of your closing date. (You may refer your patients to another physician or a referral service.)

An active patient is someone involved in a continuing course of treatment or someone that you have seen within the last twelve months. If you are uncertain as to whether someone is an active patient, then treat that person as an active patient for purposes of notification. In addition to notifying your active patients, you may wish to run an advertisement in your local paper announcing the closing of your practice for the benefit of inactive patients and others.

To ensure that the active patient is given reasonable notice to seek alternative medical care, physicians may observe 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, allowing sufficient time for the patient to obtain alternative care (if possible, this notification should take place three months before closing). Physicians should inform their patients that they are closing their practice.
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.

See the attached sample notice letters.



Professional Associations

Notify professional associations to which you belong, including specialty societies and the local county medical society, which in turn will notify the South Dakota State Medical Association (SDSMA). The SDSMA will then notify the AMA. Currently, the SDSMA waives dues for honorary members. Honorary members are entitled to participation in SDSMA-sponsored events.

Social Security

Physicians who are approaching age 62 should contact their local Social Security office to find out about Social Security and Medicare benefits.

Employees

The timing and manner of notifying employees of your intent to close your practice is a matter that will vary from practice to practice. Your employees may begin seeking other employment opportunities as soon as you tell them of your plans, so be sure to make arrangements, whether with your employees or with a temporary agency, for adequate office help until your closing date. It is likely that you may even need help after your closing date to complete the winding down of your practice. In any event, give your employees sufficient advance notice of your closing date so that they can make personal plans.

If you provide health insurance for your employees and this insurance will terminate when you close your practice, you will need to notify the health insurance company of your anticipated closing date. State and federal laws require that employees be offered by the insurance company either a policy of individual coverage, or the right to continue under the group policy for a period of time. You should contact your insurer or insurance agent for additional information, including information about how to notify employees of their rights.

If you offer your employees a pension plan, you should contact your employee benefits advisor to determine the extent to which benefits must be provided to your employees, the permissible alternatives for distributing these benefits, and the applicable procedural requirements of the Internal Revenue Service, the Department of Labor, and the Pension Benefit Guaranty Corporation with which you must comply.

South Dakota Board of Medical & Osteopathic Examiners

Physicians are not required by law to notify the State Medical Board of South Dakota when they close their practice. However, licensees must give written notice to the Board of any change of address within thirty (30) days of the change. In addition, physicians who want to maintain their medical license must continue reapply annually. Physicians who surrender or allow their license to expire cannot practice medicine, including volunteer work.

Drug Enforcement Agency

The Drug Enforcement Administration (DEA) must be notified when a physician dies or discontinues professional practice. If physicians do not intend to maintain their medical license or actively practice, they should return for cancellation 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. Physicians can return any controlled substances to the supplier (21C.F.R. 1307.12). With DEA notification and permission, physicians can transfer controlled substances to another DEA registrant (21C.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 (SD



BOP) 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 SD BOP 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 (21C.F.R. 1304.04, 21C.F.R. 1305.13 and 21U.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.

Professional Liability Insurance

Notify your professional liability insurance carrier as soon as the decision is made to close your practice. Even if retired or no longer in practice, physicians can still be sued for malpractice arising from events that occurred while they were still in practice. 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" 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 their professional liability insurance coverage. Physicians who cancel their insurance should write to their insurer, specifying the policy number and notice of this intention. Physicians who cancel their 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.

Office Insurance

For any other insurance connected with the office, physicians should notify the insurance companies of their 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

Solo 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 (2) prior to closing/retirement, hire an associate who agrees to purchase the practice upon closing/retirement; or 3) sell the practice. You can sell the practice yourself through word-of-mouth, by advertising in trade journals or professional society publications and by contacting residency and fellowship training programs to locate potential buyers. Some physicians find it advantageous to take on an associate for a year or two prior to their closing/retirement who agree to buy the practice from them when they close/retire.

Group Practice

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). In the partnership or corporation has no such agreement, physicians, with the help of their attorney, should negotiate for the buyout of their interest.



Assets

In any 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 particular 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 (premium paid to assume the 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).

Additionally, the physician needs to work with attorneys, accountants and their other professionals 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) any security liens and the terms of the office lease; 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).

Medical Records

The physician-patient relationship is a confidential one. While the medical record is the property of the physician, the information developed by the physician and recorded therein should be shared with the patient upon request or transferred with the patient's permission. 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 sale or other disposition of a physician's medical practice, it is imperative that physicians 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 name a custodian of the records (often another physician). 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 SDSMA recommends a contract be written that requires the custodian to notify you if he or she moves or for some other reason no longer wishes to maintain the records.

For additional information about medical records, see SDSMA policies 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.

Conclusion

Physicians should begin planning for the closing of their practice at least one year before the anticipated date. Physicians need to notify their patients and eventually terminate all active physician-patient relationships. Physicians should also notify their employees, the DEA, any professional organizations and insurance companies. Upon closing, physicians should either retain their patients' medical records or transfer them to another physician upon patient request, or to a custodian. Regardless of the method chosen, the physician should retain access to the original medical records. Copies of the patient's records must be available for release upon receipt of the patient's written permission. Closing a practice often raises questions about contract and tax law, accounting, and appraising. Specific questions concerning closing a practice should be referred to legal, tax and financial professionals who specialize in this area.



Sample Letter and Authorization to Transfer Medical Records

Sample Letter #1 – Letter to Patients on the Closing of a Practice

Date

Name

Address

City, State & Zip Code

Dear Patient:

I am writing to let you know that I am planning to close my medical practice. The effective closing date of my practice will be (insert date).

It is important that you make arrangements to receive quality medical care. If you need assistance finding another physician, I suggest that you contact (the South Dakota State Medical Association or (hospital) referral service. Insert options that apply in your community.) The telephone number is (insert telephone number).

Once you have a new physician, he or she will need copies of your medical records in order to treat you. I cannot transfer copies of your records unless I have your permission, so I have enclosed a permission form for you to sign. Please fill out and send the completed form to me as soon as you know who your new physician will be. If you do not know the name of a new physician, I will prepare a copy or summary of your current medical records for you. However, I will not prepare or release that information without your request and permission.

(Of note, physicians will need to decide whether or not to charge patients for copies of medical records. If you charge for this service, insert a sentence that informs the patient of copying charges that will apply. See legal brief on Medical Records Privacy – Record Retention.)

I wish you all the best for the future.

Yours truly,

(Physician signature)



Sample Letter #2 – Letter to Patients/Physician Taking Over Your Practice

Date

Name

Address

City, State & Zip Code

Dear Patient:

This letter is to inform you that I will be closing my medical practice effective (insert date), at which time I will no longer be able to treat you.

Dr. (insert physician name) will be taking over my practice. Dr. (insert physician name)'s background is (insert specialty and or qualifications). Your medical records will continue to be on file at this office. If you decide to become a patient of Dr. (insert physician name)'s, you will need to sign a permission form before Dr. (insert physician name) can have access to your records. You can sign this form the next time you come into the office.

If you wish to find another physician, I suggest you contact (the South Dakota State Medical Association or (hospital) referral service. Insert options that apply in your community.) The telephone number is (insert telephone number).

If you decide to be treated by a physician other than Dr. (insert physician name), I will need your permission before I can transfer copies of your records to a new physician. *(Of note, physicians will need to decide whether or not to charge patients for copies of medical records. If you charge for this service, insert a sentence that informs the patient of copying charges that will apply. See legal brief on Medical Records Privacy – Patient Right to Access.)* Please complete the enclosed permission form and send it back to me as soon as possible.

I wish you all the best for the future.

Sincerely,

(Physician signature)



Sample #3 – Authorization to Transfer Medical Records

I, _____, authorize (insert name of physician medical practice) to use or disclose the protected health information listed below to (insert name and address of receiving physician/medical practice).

(Describe the information to be used or disclosed in a way that identifies the information in a specific and meaningful way. For example, include meaningful descriptors such as date of service, type of service provided, level of detail to be released, origin of information, etc.)

(Describe each purpose of the requested use or disclosure. If the patient is making the request and does not indicate a specific purpose, “At the request of the patient” is sufficient.)

This authorization is valid until (insert a specific date or event that relates to the patient or the purpose of the use or disclosure) at which time this authorization expires. If I fail to indicate an expiration date or event, this authorization will expire in six (6) months.

I understand that I have the right to revoke this authorization, in writing, at any time by sending written notice to (name of privacy contact) at (office address or email address). I understand that if I revoke the authorization, the revocation will not apply to information that has already been released in response to the authorization or to information that (insert name of medical practice) has used based on this authorization. I also understand that the revocation will not apply to my insurance company when the law gives my insurer the right to contest a claim under my policy. (Alternatively, you may refer individuals to your Notice of Privacy Practices for information about how they may revoke an authorization if you describe revocation rights in the Notice.)

I understand that information used or disclosed pursuant to this authorization may be subject to re-disclosure by the recipient and may no longer be protected by federal or state law.

I understand that authorizing this use or disclosure is voluntary. I understand that I have the right to refuse to sign this authorization. Refusing to sign will not affect my ability to be treated by (name of medical practice). (If applicable, add “payment, enrollment, in a health plan or eligibility for benefits” to this sentence.)

If I have questions about the use and disclosure of my information, I can contact (insert name of contact) at (insert contact information).

Signature of Patient or Personal Representative

Date

Name of Patient or Personal Representative

Description of Personal Representative’s Authority

CC: copy to patient



Additional items to consider:

1. You may choose to include additional elements or information as part of this authorization as long as the additional items are not inconsistent with the required elements.
2. Authorizations cannot be combined with another type of document (such as Notice of Privacy Practice) to create a compound authorization, except as follows:
 - An authorization for research study may be combined with any other type of written permission for the same research study such as consent to participate in the research study;
 - An authorization for use or disclosure of psychotherapy notes may only be combined with another authorization for a sue or disclosure of psychotherapy notes; and
 - Except for authorizations for use or disclosure of psychotherapy notes, an authorization may be combined with any other HIPAA authorization, except when you have conditioned the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits on the provision of one of the authorizations.
3. Generally, you may not condition the provision of treatment or payment, enrollment in a health plan, or eligibility for benefits on the patient signing an authorization. However, you may condition providing research-related treatment upon the patient signing an authorization for use and disclosure of protected health information for research. Also, you may condition the provision of health care that is solely for the purpose of creating protected health information for disclosure to a third party on the patient providing an authorization for this specific purpose. If the patient refuses to sign the authorization in these circumstances, the authorization must state the consequences to the individual of refusing to sign the authorization.
4. **Marketing:** If you engage in marketing activities where you use or disclose protected health information of patients and the marketing involves more than a face to face communication with a patient or involves more than a promotional gift of nominal value, you must obtain the patient's authorization to use and disclose protected health information for this purpose. If the marketing involves direct or indirect remuneration to you from a third party, this authorization must state that you receive remuneration.
5. You must provide a copy of the signed authorization to the individual and you must retain signed authorizations for six (6) years from the date of creation or the date when the authorization was last in effect, whichever is later.
6. Other state and federal laws may require that additional statements be included in this authorization. Some of these additional laws include when the authorization applies to medical records related to artificial insemination, birth records, acquired immunodeficiency syndrome (AIDS) or human immunodeficiency virus (HIV), mental health hospitalization records, or alcohol or drug abuse treatment records.