

Closing a Medical Practice: When the Shingle Comes Down

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Two memorable days for every physician are the first day in practice, when you hang out your shingle, and the last day, when you close the practice and the shingle is taken down. These two days are filled with anxiety, tension, and uncertainty. This article discusses the steps involved in dismantling a practice, either by selling the practice or simply closing it.

KEY WORDS: Selling a practice; patient notification; disposal of medical records; disposal of medications.

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One of the most common issues faced by every physician is the closure of a healthcare practice. Most physicians will only close one practice in their medical lifetime. There is no training or education regarding this event. If it is not done properly, however, the consequences can be severe, including penalties, fines, and unhappy patients who were members of the practice. Let's look at the nine concerns that must be addressed for any practice closure.

PATIENT NOTIFICATION

The physician should give their patients at least 30 days' notice that the practice is closing. Once you know your practice is about to close, you should stop accepting new patients. A letter should be sent to all inactive and active patients whose charts you are still mandated to preserve. A sample retirement letter is shown in Figure 1. Each state will have a different number of years required to maintain inactive patient charts. A means of obtaining a copy of their medical records or a way to forward their records to the medical provider of their choice must be included in that letter. Suggesting specific names for future medical care could result in a lawsuit concerning negligent referral. It is better to refer the patient to the local medical society to obtain several names of physicians for future care.

A more hands-on transfer of care should be implemented for patients actively being treated. You can suggest several physicians that you trust to continue their care. Cooperate in supplying the patient's records to the subsequent physician. It is essential to have the patient sign a HIPAA form before any of their records are transferred to another healthcare provider. This goes for active or inactive patients.

Date

Dear Patients:

It is with mixed emotions that I announce my retirement from active practice, effective (date). It has been a great pleasure providing for your health care needs over the years, and it is not easy for me to give it up.

As of (date), Dr. Robert Smith will take over my practice. I am pleased that you could have him as your physician. Dr. Smith is a well-trained graduate of State University Medical School. He served his internship at Capital Memorial Hospital in Capital City and completed his residency at Jefferson University. I am glad to leave my patients in his capable hands.

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. Ms. Carla Johnson at the Capital County Medical Society can help you begin your search by providing the names of doctors in the area who are accepting new patients.

Your medical records are confidential, and a copy can be transferred to another doctor or released to you or to another person you designate only with your permission. If you plan to continue with this office, you can sign an authorization to release your files to Dr. Smith on your next visit. If you choose to see a different physician, please sign the enclosed authorization and return it to my office as quickly as possible so we may transfer your records to your new doctor. Your records will continue to be on file at my former office.

I have valued our relationship greatly. Thank you for your loyalty and friendship over the years.

Best wishes for your future health.

Sincerely,

Jane X. Doe, MD

Figure 1. Example of a letter from a physician discontinuing practice to patients.

HIPAA Release Form

Please complete all sections of this HIPAA release form. If any sections are left blank, this form will be invalid and it will not be possible for your health information to be shared as requested.

Section I- I, _____, give my permission for _____ to share the information listed in Section II of this document with the person(s) or organization(s) I have specified in Section IV of this document.

Section II – Health Information I would like to give the above healthcare organization permission to: Tick as appropriate Disclose my complete health record including, but not limited to, diagnoses, lab test results, treatment, and billing records for all conditions. Or Disclose my complete health record except for the following information Mental health records Communicable diseases including, but not limited to, HIV and AIDS Alcohol/drug abuse treatment records Genetic information Other (Specify) _____

Form of Disclosure: Electronic copy or access via a web-based portal
Hard copy

Section III – Reason for Disclosure Please detail the reasons why information is being shared. If you are initiating the request for sharing information and do not wish to list the reasons for sharing, write 'at my request'. _____

Section IV – Who Can Receive My Health Information I give authorization for the health information detailed in section II of this document to be shared with the following individual(s) or organization(s) Name: _____

Organization: _____
Address: _____
I understand that the person(s)/organization(s) listed above may not be covered by state/federal rules governing privacy and security of data and may be permitted to further share the information that is provided to them.

Section V – Duration of Authorization This authorization to share my health information is valid: Tick as appropriate a) From _____ to _____ Or b) All past, present, and future periods Or c) The date of the signature in section VI until the following event: _____
I understand that I am permitted to revoke this authorization to share my health data at any time and can do so by submitting a request in writing to: Name: _____

Organization: _____
Address: _____

I understand that: If my information has already been shared by the time my authorization is revoked, it may be too late to cancel permission to share my health data. I understand that I do not need to give any further permission for the information detailed in Section II to be shared with the person(s) or organization(s) listed in section IV. I understand that the failure to sign/submit this authorization or the cancellation of this authorization will not prevent me from receiving any treatment or benefits I am entitled to receive, provided this information is not required to determine if I am eligible to receive those treatments or benefits or to pay for the services I receive.

Section VI-

Signature: _____ Date: _____
Print your name: _____

If this form is being completed by a person with legal authority to act an individual's behalf, such as a parent or legal guardian of a minor or health care agent, please complete the following information: Name of person completing this form: _____

Signature of person completing this form: _____

Figure 2. HIPAA release form.

EMPLOYEE CONSIDERATIONS

The employer closing the practice should consider all employees with an employment contract. That contract may entitle the employee to some notice before the closure of the practice. Additionally, any employee with benefits must have those benefit providers notified of any benefit termination. That would include health insurance, life insurance, disability insurance, or any other benefit. State laws must be applied for pensions and any 401(k) plan.

DISPOSAL OR STORAGE OF MEDICAL RECORDS

All medical records must be retained, in either hard copy or a digital version, for a specified period, which varies from state to state. If you choose to store the records in a storage facility, you should have a signed Business Associate Agreement with the facility to protect yourself concerning HIPAA requirements. Some facilities specialize in the storage of medical files. These same specialty facilities often offer safe disposal of aged records. Of course, the physician may save the charts in their home if held safely and securely. Each patient must know how to obtain access to their chart. Letting each patient understand how they can access their chart at the time of retirement, along with the retirement letter, is the easiest way of accomplishing this.

The new owner can maintain the patients' records if you sell your practice. However, the new owner may not access those records to solicit those patients. That would put the practice's seller in jeopardy of violating HIPAA law regarding patient privacy.

Of course, upon notice that the physician is selling the practice or retiring, the patient may request that their medical records be sent to their new physician. Patients requesting a copy of their records to be sent to the next physician must first sign a valid HIPAA authorization form. These forms are available for free online. A sample HIPAA authorization form is shown in Figure 2.

Whether the buyer maintains the patient records at home, in the office, or at a storage facility, the selling or retiring physician must retain a right of access to the charts. The retiring physician might need them if they are subsequently sued or for any subsequent civil, criminal, or insurance audit. Such access is not considered a HIPAA violation by the retiring physician.

DISPOSAL OF DRUGS AND SAMPLES

Old samples of controlled medication cannot be disposed of in the trash or flushed down the toilet. Any unopened samples or bottles of controlled substances should be returned to the distributor. Opened bottles may be accepted by the distributor. Your state's Department of Health may take any open controlled substances. You must check the rules in

your state. If any form is required for such surrender, keep it or a copy of it for at least five years. Controlled substances could also be given to the DEA. A special agent from the DEA assigned to your area will tell you what to do to satisfy their requirements.

CANCELLATION OF EXISTING CONTRACTS AND LEASES

The owner of the closing practice must review the lease of the premises. The terms of the lease govern what is required. When is the lease over? What is required to give notice before renewal? Is renewal automatic unless a specific notice requirement is met? Can you break the lease? You can always attempt to negotiate an early termination of the lease; if such a negotiation is successful, make sure the new terms are in writing and signed by both parties, the owner and the renter.

Equipment and software leases must be examined for possible penalties incurred if you terminate the agreement prematurely. All your contracts and leases must be reviewed to ascertain if they can be assigned to the new owner if you are selling your practice instead of simply closing it.

PHYSICIAN LICENSE AND DEA REGISTRATION

You must notify your state's Medical Board or governing body of any address change. If you are retiring from active practice, they must be told. Virtually every state requires this. If you decide to keep an active license to practice, you must keep up with continuing medical education requirements.

If you have any doubts about retirement, it is a good idea to maintain your license and DEA number.

Additionally, you must continue to renew your registration. If you have any doubts about retirement, it is a good idea to maintain your license and DEA number. It is much easier and less expensive to maintain a license than to have a license reinstated. In that case, keeping your registration and your DEA registration current and paid is advisable. Likewise, the DEA must be notified of any changes in your address.

DISSOLVING THE BUSINESS

Every state has its own corporate law. Dissolving a business, such as a professional corporation or association, of a professional limited liability company (PLLC), is governed by the individual state's corporate law. Each state has its own mechanism to obtain the equivalent of what is known as a

certificate of dissolution. After dissolution, a winding down period is needed. During this time, the physician must end any contractual obligations.

Additionally, during this time, checks may still arrive from accounts due. It is essential to adhere to the state's dissolution policy. It is most often advisable to be assisted by an experienced health law attorney.

MEDICAL MALPRACTICE CONSIDERATIONS

It is important to alert your professional liability policy that you are closing your practice location. If it is only one of multiple locations, you must let them know that the other locations will still be in operation. Let them know if you are moving to another location, too. If you are retiring, you must confirm that you have an occurrence policy. If not, you must buy a tail so that you will be covered for any lawsuit filed after your policy expires. Some claims-made policies have a five-year conversion or maturation period. That means if you have had the same policy for at least five years and are now disabled or retired, you are covered; the policy automatically converts or matures to what is, in effect, an occurrence policy. If you should die while having a claims-made policy,

and you or your estate is served with a malpractice lawsuit for a patient you treated while you were still alive, your estate would be liable and must defend that lawsuit. If the case is successful, your estate will have to pay the settlement or finding of liability by the judge or jury. You and your estate will be covered if you obtain the equivalent of an occurrence policy.

SALE OF PRACTICE

The sale of a practice is a complex affair with many rules and regulations. Each state may have different laws concerning such a sale. These laws will affect who can buy, and when and how they can buy. Retaining a health law attorney with experience in this area of practice is highly advisable.

Often, it is necessary to get the word out that your practice is for sale. You can go the route of using a broker. Another option is getting the word out through the sales representatives that you deal with. Your local medical society also can be helpful. Spread the word at a meeting; take an ad in the society's monthly newsletter.

Bottom Line: Closing a professional practice and retiring can be stressful. It involves realizing that you are about to have a profound disruption in your life. To accomplish this less stressfully, follow a few of these suggestions and consider using a healthcare attorney to guide you. ■■