

Physician CONNECTION



Guidelines for Closing a Medical Practice

By Paul-Michael La Fayette, J.D., Patrick Pickett, J.D., and M. Veronica Brattstrom, M.S., CHTS-PW, CHP

Closing a medical practice can be stressful for staff, physicians and patients. Whether you plan to leave the area, practice with another group or retire, considering patient needs when closing a medical practice is paramount to make this transition successful.

The bottom line is: don't be rushed. Planning ahead is key to successfully closing a medical practice.

Advising Patients

Patients need ample time to find another doctor. The American Medical Association's Code of Medical Ethics requires physicians to support continuity of care for their patients and provides guidance as to how to terminate the physician-patient relationship. (See AMA Opinion 8.115) To ensure continuity of care and avoid allegations of abandonment and other risks of malpractice claims, provide your patients with a minimum of a 60-to-90-day notice. How can you demonstrate you made a reasonable effort to reach patients?

- Place a notice in a highly visible area of your waiting room.
- Place ads in your local media. Consider placing the ads a month apart.
- Discuss the closing with each patient personally and document the patient record regarding the

conversation to include referral for treatment and monitoring of current medical conditions.

- Have staff inform patients who to call for appointments about the expected closing date.
- Hand each patient a written notice (when possible) about the closing.
- Enclose an announcement of the closing with your invoices.
- Send written letters of notification to all patients seen in the past two years. For patients who are classified as "high risk," consider sending the letter via certified mail, return receipt requested.
 - Discuss the importance of continued medical care.
 - Advise patients about where they can obtain emergency care.
 - Advise patients how copies of their medical records can be obtained during this period of transition and after the practice has closed.
 - Help patients find another provider by providing contact information for your local medical society and/or hospital physician referral center. If you help a patient find another provider who is willing to assume care, it helps avoid allegations of abandonment.



- State the date of closing and last day you will be available for emergency care.
- Keep copies of the letter you send in each patient's chart.

Additionally, do not accept any new patients and consider restricting nonemergency appointments. In other words, do not begin treatments that cannot be completed prior to the closing date of your practice.

Advising Regulatory Agencies, Insurance Partners and Colleagues

You must advise appropriate regulatory agencies such as Medicare, Medicaid and the DEA of your new office location and/or the closure of your practice. Additionally, some states require you notify your state board of pharmacy of any changes in your practice.

Advise your health insurance partners and any provider networks with which you have a contractual

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relationship. Be aware of and follow the rules outlined in any managed care contracts in which you participate. There may be contractual requirements within specific plans as to termination of the relationship and deadlines for submission and payment of outstanding claims. This is not only important to ensure that payments are received, but also in the context of selling your practice, it is an important factor in negotiations for accounts receivables.

Contact your malpractice insurance carrier. Be sure to review your malpractice coverage to determine whether you have an occurrence or claims-made policy. An occurrence policy provides coverage for any lawsuits that are filed where the claim arises out of treatment that was provided when the policy was in effect. A claims-made policy provides coverage for lawsuits where both the injuries and the claims are made during the coverage period.



For example, under a claims-made policy, if your policy began on January 1, 2016, and ended on December 31, 2016, you will only have coverage for any claim that arises out of treatment provided in 2016 and if the lawsuit is filed in 2016. Thus, if treatment was provided in 2016 but the lawsuit is not filed until 2017 or thereafter, a claims-made policy will not provide coverage. With this in mind, if you have a claims-made policy, consider tail coverage. This can be expensive but, if you have a claims-made policy, it is recommended. Contact your malpractice carrier or insurance agent for information concerning tail coverage.

Provide written notification of closure to referral sources, professional societies, organizations and hospitals with whom you have privileges. You will also want to advise those who provide contributory services such as surgical and radiology centers, as well as labs.

Lastly, and perhaps often overlooked is to provide notice to the U.S. Postal Service, telephone, computer network and utility providers. Minor details like these can cause headaches if they are missed.

Advising Staff

The closure of a practice significantly impacts the lives of your staff and patients. Inform your staff so they can look for other employment. Follow COBRA guidelines with regard to health insurance coverage after employment is terminated. Pay your staff for sick leave or vacation time they have not used. You can include this amount in severance packages. It may be helpful to have a single staff member be responsible for addressing staff and patient questions about the closure or transition of a practice. Consistent communication is important.

Medical Records

Patients' medical records are the property of the medical practice. However, patients have a right to access their medical records and to obtain a complete copy of their medical records. HIPAA, as well as most licensing boards, requires you to provide a copy of the medical records upon request. Here are some points to remember:

- A reasonable fee can be charged for duplicating a record—check state law about restrictions as to what constitutes a reasonable fee.
- The record cannot be withheld due to an outstanding patient balance or lack of payment for the copies.

- If your practice maintains electronic health records, you must provide a copy in a readable format. As such, it can be produced on disc, flash drive or secure emails and web-based portals.
- If a patient elects not to receive an electronic format of the medical record, or if the record cannot be converted to a readable format, a hard copy must be produced.
- HIPAA requires that the record be produced to the patient within 30 days of the request and permits a one-time extension of an additional 30 days upon written explanation of the delay to the patient.

Retention of Medical Records

The timeframe to retain patient records is state specific. A good rule of thumb, however, is to keep all patient medical records for 10 years. Review your specific state guidelines to include checking with your local medical society and an attorney for advice on medical record retention related to special circumstances including treatment of minors, mentally incompetent patients, deceased patients, diagnostic film retention, OSHA exposures, concerns regarding medical malpractice and billing records.

- Some instances may require you to retain your records indefinitely.
- In most jurisdictions, patients who are minors have until the age of majority (18) plus the statute of limitations (usually 1 to 3 years depending on the jurisdiction) to file a malpractice suit. As such, records for patients who are minors must be maintained for much longer periods than for adult patients.
- HIPAA requires retention of records for up to 6 years.

- Medicare and Medicaid require retention for up to 7 years.

If you are selling your practice, consult legal counsel regarding your purchase contract. Execute a Business Associate Agreement (BAA) to ensure compliance with HIPAA. Be aware that, according to HIPAA, the owner of the record—the physician who created the record—has the responsibility to protect the patient's confidential information. Most contracts for sale of a practice will place the responsibility on the purchasing physician to store and retain the practice's records.

Make sure that any contract for sale of the practice addresses who will be responsible for the retention and storage of patient records and that the agreement meets HIPAA requirements. For example, to comply with HIPAA, patients who stay with the practice must still be asked to complete and sign an authorization for release of records from the previous physician to the new physician.

Medications

Federal rules require you contact the DEA prior to disposal of any controlled substances. The DEA publishes the Practitioner's Manual, which provides guidance as to the proper disposal of controlled substances (see page 17 and Appendix E of the manual)—<http://www.deadiversion.usdoj.gov/pubs/manuals/pract>. Contact your state regulatory agencies, such as the state medical and pharmacy board, for further guidance. Other medications, including all sample medications, must be disposed of properly. You will also want to destroy all prescription pads.

Closing the Business

Your future plans may dictate your required duties and activities when closing your practice. There are many practical and legal



considerations to address, which will vary based upon your succession plan for the practice and the nature of the practice. For example, a physician whose succession plan is to merely shut down his or her practice must address the potentially expensive concern of providing for the ongoing storage of medical records while a physician selling a practice will have the monetary and practical advantage of a buyer who has a vested interest (the continued service of the patients) in storing the records and managing records retention on behalf of the departing physician.

Similarly, the structure of the practice (such as the type of legal entity in which the physician delivers patient services) may have practical implications on the timing and ease with which the practice may be shut down. For example, in some states physicians practicing in a corporation or professional corporation may have to take additional steps to dissolve the business that a physician practicing in a limited liability company or professional limited liability company will not face.

Because of the varying nature of the steps, careful planning and consultation with trusted peers who have experienced a similar shut down and with professionals such as your business lawyer, accountant, practice manager and insurance professional are imperative.

SBA's Seven Steps

The process for dissolving a business entity varies, but there are

some universal considerations. The U.S. Small Business Administration lists seven steps to closing a business. These include:

1. Decide to close the business.
2. Get expert advice.
3. File dissolution documents.
4. Cancel registrations, permits, licenses and business names.
5. Comply with employment and labor laws.
6. Resolve financial obligations.
7. Maintain records.

(Steps to Closing a Business, www.sba.gov/managing-business/closing-down-your-business/steps-closing-business.)

Deciding to close your business sounds simple enough, but there is more to it than merely making a decision. The process of reaching a decision depends upon the size and nature of the business entity through which the practice is conducted. There may be co-owners to consult.

A physician who practices as a sole proprietor may merely reach a conclusion that he or she has decided to move on in life. The same physician practicing in a solo practice incorporated or organized as an LLC should check the governing documents of the business prior to making the decision. The timing and manner of the closing may be dictated or restricted in those documents.

Closing practices with multiple owners will typically require consultation and a "vote" of the owners. There may be agreements in place, such as a Shareholders Agreement, a Buy Sell Agreement or a Close Corporation Agreement, which may dictate, restrict or otherwise control what can and cannot be done. The vote may be reflected in a set of minutes resulting from a meeting or, if all owners are in agreement, an action in writing by the owners reflecting the decision to close the business. To the extent controlling documents are in place, there may be requirements that are no longer applicable or no longer

desirable. These documents may have to be amended before deciding to close the business.

Get Expert Advice

Physicians in a small or large practice should also consult with experts in law, accounting and taxation and insurance, as well as brokers, banking and other areas regarding the business aspects. Deciding to save money and not consulting such experts may be a “penny wise and pound foolish” decision. In a recent business matter, a mistake that could have been avoided by expending legal fees of about \$500 in advance ended up costing a client tens of thousands of dollars in legal and accounting fees after the client decided to do it on his own.

Be fully open and honest with experts. Presenting the business information and records in an organized fashion will lead to better advice and lower fees. If one or more of these consultants are not known to the physician, it's likely that the experts will make recommendations. Typically a lawyer practicing in this area will know accountants and brokers who are well versed in the subject and vice versa.

File Dissolution Documents

It may be necessary to formally file dissolution documents to terminate the legal existence of the business. Some types of business entities (e.g. sole proprietorships and, in some locations, general partnerships) do not have a filing requirement to form the business and thus do not have a filing requirement to dissolve it. Assuming there is a filing requirement, your lawyer should prepare and file dissolution documents to formally terminate the existence of your business in the eyes of the state in which it is organized.

Practices in multiple states will likely require filings in each state in which the practice provided services. In some locations, businesses that failed to file franchise tax returns for a number of years were automatically dissolved by the department of taxation and the body governing business entities in the particular state. Some practitioners would merely ignore the dissolution filing requirement and allow the state in question to shut down the business for failure to file such a return. This is a bad idea and, in some locations, is no longer an option. Merely leaving the formal dissolution to others or ignoring the step entirely can lead to future tax assessments.



If the business appears to be operating but is no longer filing taxes, the taxing authority may estimate the taxes due based on the past filings of the business. Such estimates are typically amounts far in excess of what is truly owed. Avoid potential trouble by working through the formal process of dissolution. This process may include notifying the department of taxation and other governmental bodies and obtaining clearance indicating that all necessary returns have been filed and taxes paid.

Cancellations

In addition to canceling registrations, permits, licenses and business to the DEA, Medicare, Medicaid, medical boards and insurance carriers, there may be

business name registrations, typically filed with the state secretary of state's office, that should be terminated. This may be true even for entities such as sole proprietorships and general partnerships that may not otherwise have a dissolution filing requirement. Keep in mind, however, if you are selling your practice, its registered name may be an asset that the buyer is purchasing and an assignment of the name, rather than a cancellation, may be the appropriate way to proceed.

Complying with Employment and Labor Law Requirements

The failure to pay employees their final amounts due can have serious implications. Wage and hour claims may be filed seeking payment along with penalties and interest. As a practical matter, many other ills may be avoided by ensuring your former employees are happy. Make sure they are paid all that they are owed. Provide them enough time to find substitute employment so that they are not left in the unemployment line as a result of the closure of your business.

Some employers are required by state and federal laws to provide advance notice that they are closing down their business and putting people out of work. Treating employees fairly and keeping them happy may avoid a host of allegations and claims including wage and hours matters, failure to give the required notice and allegations of discrimination.

Resolve Financial Obligations

As part of the planning to close a practice, it is important to identify the assets and liabilities of the practice and to determine its solvency. A physician with a positive balance sheet will have a much different exit strategy than one whose liabilities exceed his or her assets. Not all liabilities are the

same. Some will be liabilities solely of the practice while others may carry personal responsibility for the physician. For example, while the practice may be the principal responsible party, real estate leases and bank financing frequently require a personal guaranty by the physician at the time the debt is incurred.

Further, some liabilities may be secured with a lien on the assets of the practice while other liabilities may be unsecured. Identifying the nature and attributes of each of the practice's liabilities is a critical factor in planning an exit strategy. A physician in a medically underserved area who is winding down his or her practice over a long period of time might be tempted to merely reduce his or her workload and gradually shutter the business without considering the significant effort that might be required to find a potential buyer willing to come into the underserved market. Caution should be taken to ensure the outstanding liabilities of the business don't become the physician's liabilities. Even a modest sale price for a business may make a significant difference in the satisfaction of the liabilities.

Tax Debts May Become Personal Liabilities

If there are employees of the practice, you must make sure the practice has paid all of its payroll tax obligations. Because these are funds the practice has withheld and collected from its employees, the owners of the practice are treated as holding the funds in trust for delivery to the taxing authority. Similarly, if there are items sold by the practice on which sales tax is collected, those taxes are also obligations for which there is personal liability on the business owners.

Private creditors may or may not have the ability to pursue claims for payment directly from a physician

who is closing his or her practice. Generally, the debts of a business entity such as a corporation or an LLC are solely the debts of that entity and, following closure of the business, they cannot be collected from the physician/owners of the practice. Such entities are generally viewed as separate persons under the law and, based on that separateness, the debts of the business are its alone. As there is no entity in a sole proprietorship, the physician is likely liable.



Collecting Debt from Partners

In partnerships, the ability to collect the partnership's debts from its partners varies based on the type of partnership, the type of partner and the specifics of the law of the jurisdiction involved. In some circumstances it may be possible to collect even the debts of a corporation or an LLC from its owners. For example, if the physician owners of an LLC or corporation distributed cash out of the practice to themselves without making appropriate arrangements for the payment of debts and, following the distribution there are insufficient assets to pay the debts, state law may permit the creditors of the practice to pursue the owners for amounts up to the amount of the inappropriate distribution. Also, if the physician owners of the business did not keep their business entity separate from themselves, it may be possible for creditors to pierce the corporate veil and impose corporate liabilities on the physicians.

Some factors that might lead a court to allow this are failure to adhere to corporate formality requirements such as holding meetings and keeping minutes. The failure to maintain separate bank accounts may also be such a factor. Generally, ignoring the corporation and treating yourself and the business as one may lead a court to do the same and impose the entity's liabilities on you.

Maintain Records

Maintaining records is important not merely from a medical records standpoint (discussed elsewhere in this article) but also from the standpoint of business records. There are legal requirements that some business records be maintained for minimum time periods beyond the closure of the business. When closing your practice, make sure to discuss with your attorney and accountant what records should be kept and for how long.

Other Considerations

For the myriad business and tax implications that can occur during this time of transition, consider hiring an accountant to close out financial issues.

You might need to pay final rent as well as final utility charges, phone/internet providers and vendor bills. Check your receivables for outstanding bills, and send final notices to anyone who owes you money. Work out agreements with your patients for the amounts they owe. Do not forget to cancel contracts with waste disposal, cleaning services, laboratory services and equipment rental companies.

Consider working with legal counsel as you will need to file a final tax return for your practice. Sell or auction the assets your practice owns, or donate them to charitable institutions.

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Patrick Pickett concentrates his practice on corporate, business and real estate matters. Pat serves as counsel to medium and small corporations, limited liability companies and other business organizations in a variety of industries including medical and dental practices. One of his strengths is structuring and negotiating business transactions, including the formation, sale and acquisition of companies, as well as various real estate transactions.

Paul-Michael La Fayette represents healthcare professionals in professional negligence claims and in state licensing board actions. Paul also serves his professional clients and their practices with regard to employment and risk management matters. He has 20 years of experience as a trial attorney defending professionals in litigation and utilizes this experience to guide his clients and their practices on a daily basis.

Veronica Brattstrom is a senior risk management consultant with PSIC. She has provided risk management consulting services to healthcare professionals for more than 18 years. She received her bachelor's degree from the University of Illinois at Chicago, and her master's degree from the University of Illinois at Champaign. Veronica received her CHTS-PW certification in 2012, which she actively uses to assist physician practices with electronic health records (EHR) workflow analysis. She is also a licensed property/casualty agent and received her CHP in 2016.

These guidelines may serve as a resource as you prepare to close your practice; however, they should not be considered as legal advice. Contact your local medical society and a business attorney for specifics regarding your state requirements.

Sample Letter for Physicians Closing a Practice

Date
Patient Name
Address

Dear (Patient Name) _____

Please be advised that because I am closing my practice on _____ (date), I shall not be able to attend to you personally. Since your condition(s) may require additional care, I suggest that you arrange to place yourself under the care of another doctor.

Option A (pursing treatment at the same practice with a different provider):

At your request, you will remain with the practice under the care of Dr. _____. To comply with HIPAA please sign the enclosed authorization and your records will be provided to Dr. _____.

Option B (pursing treatment elsewhere with a new provider):

You have opted to seek care at a location other than this practice. You may want to contact your local medical society, hospital physician referral service or your insurance company for recommendations.

I will be happy to provide your new doctor with copies of your medical records. Please sign and return the enclosed authorization along with your instructions about where to send your records.

Best wishes for your future health and happiness.

Yours truly,

Enclosure: Authorization for release of records
Copy to patient's chart



Send all inquiries, address changes and correspondence to:
Physician Connection, P.O. Box 9118, Des Moines, IA 50306
Toll-Free 1-888-336-2642
Internet – www.psicinsurance.com/physicians
Email – riskmanagement@psicinsurance.com

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