

Reducing Risk

A Publication on Healthcare Risk Management from Princeton Insurance

Ceasing to or Leaving a Practice

Introduction

There are important risk management issues to consider when leaving a practice, whether for retirement, relocation, illness or other reasons. The decision to cease practicing or to leave a practice requires careful planning to provide continuity of patient care; avoid allegations of abandonment; provide patient and healthcare provider access to medical records; and maintain the integrity, security, and confidentiality of the medical records.

In order to assure compliance with all applicable contracts and federal and state laws, it is recommended that planning be performed in consultation with legal counsel experienced in healthcare law. It is also advisable to work with your insurance agent or broker to assure adequate continuity of professional liability insurance coverage after you leave your practice.

The following are several risk management guidelines to consider as you plan for ceasing or leaving a practice.

Know the Applicable Board of Medical Examiners Regulations

A physician who ceases to practice or anticipates that he or she will remain out of practice for more than three months is required by the New Jersey State Board of Medical Examiners regulations to:

- Establish a procedure for patients to obtain a copy of their treatment records or to have their records transferred to another healthcare professional who is assuming the practice responsibilities.
- Publish a notice of the cessation of the practice in a newspaper of general circulation in the practice's geographic location. The notice must include the process for obtaining a copy of the medical record. The notice must be published at least once each month for the first three months after the cessation.
- Make reasonable efforts to directly notify any patient treated during the six months immediately preceding the cessation.

Inform Your Patients

It is important to prevent potential allegations of abandonment by properly notifying patients of your intention to leave a practice. An organized plan for notifying patients of the decision to cease practicing, along with appropriate documentation of the actions taken to assure continuing care, will assist in defending any allegations of abandonment.

At least three months prior to your departure, mail a notification letter by certified mail, return receipt requested, and first class mail, to your patients. Patients who are acutely or chronically ill and in need of continual medical management should, if possible, be informed in person during an office visit, followed with the official notification letter. It may be prudent to recommend that the patient be seen as soon as possible by his or her new physician in order for you to communicate with the new provider and coordinate continuing care.

Documentation of your efforts to assure continuity of care is an integral component of practice closure. This includes discussions with the patient and other providers, as well as maintaining a copy of the notification letter and the return receipt in the medical record.

You may also want to consider additional means of informing your patients such as posting a sign in the office waiting room and giving a written notice to patients seen in the office.

Notification Letter Content

- Identify the reason for ceasing to practice (e.g. retiring, relocating).
- Include the official end or closing date.
- Emphasize the importance of continued care for appropriate management of known conditions and preventive care.
- If another provider is to assume the practice, include an introduction of the physician and how he or she may be contacted. The patient also should be notified that his or her medical record will remain with that physician.
- Provide a referral for continuity of patient care. If the practice is to be closed, the notification letter should provide resources for the patient to obtain a new physician such as the names of two to three appropriate physicians who are within the same area of practice and known to you, the name and contact information for the state medical society, or the patient's managed care physician referral service.
- Make clear that the choice of a physician to continue care is ultimately the patient's.
- Explain what patients need to do to obtain a copy of their medical records. You may also offer to have a copy sent to the physician selected to continue their care. Include an authorization for release of medical records with the notification letter.

Manage Medical Records

Planning for the cessation of your practice must also address mechanisms for patients to obtain a copy of their medical records and for record retrieval and record retention as required by law. The physical medical record is the property of the physician. However, the patient is the owner of the information contained within the medical record.

The patient has the right to obtain a copy of his or her medical record without charge when a physician ceases to practice, or when a physician moves to another practice and the patient chooses to follow the physician to the new practice. A signed and dated authorization form is required to release a copy of the record to another provider. The authorization should be placed in the patient's medical record.

Federal laws govern the protection of records of patients who have received services pertaining to HIV/AIDS, mental illness, alcohol and drug abuse education, training, treatment, rehabilitation, or research. Specific authorization is required before this information is released.

It is recommended that the departing physician and the physician who assumes the practice have a written agreement drafted by legal counsel experienced in health law and contracts that addresses pertinent issues, including medical records. The agreement likely would cover matters such as who is responsible for maintaining the original medical records; the process for retrieval of records; maintaining the security, integrity and confidentiality of the records; and records destruction.

Medical records of adult patients should be retained for a minimum of seven (7) years from the latest date of contact with the practice. If the patient is a minor, retain the records for the longer of seven (7) years from the latest date of contact with the practice, or until the patient reaches the age of twenty-three (23). The Medicare and Medicaid programs also require that you retain records in their original or legally reproduced form for at least five (5) years to comply with their Conditions of Participation. Managed care companies that you contract with may also have other requirements for record retention.

In order to comply with requirements for record retention after you cease practice, consider utilizing the services of a commercial storage firm. A HIPAA business associate agreement incorporating specific provisions to protect the security, integrity and confidentiality of the records would be required. The agreement should also include prohibitions against selling, sharing, discussing, transferring, or otherwise disclosing confidential information with any other individuals or businesses, and provisions requiring protection of the records from loss, theft, unauthorized destruction or other unauthorized access.

At some point in time, a physician may determine that there is no requirement or value in retaining certain medical records. In order to defend against possible allegations of spoliation of evidence in the event of a legal claim, have a written protocol and practice that address the destruction of medical records. You should be able to demonstrate that a particular record was destroyed in accordance with routine practice and applicable regulations, as opposed to a wrongful intent.

Destruction of medical records must ensure confidentiality of the patients' protected health information. The records should be burned or shredded so as to be rendered unreadable. It is also recommended that you maintain a log of the patients whose

Reducing Risk

medical records have been destroyed. Information to be kept includes the patient's name and date of birth, and the date that the records were destroyed.

For more information about reducing risk at your practice, please view our risk management newsletter at www.RiskReviewOnline.com. To access additional Reducing Risk documents, visit our website at www.PrincetonInsurance.com and click on "Risk Management – Publications".

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