

CLOSING YOUR PRACTICE – A GUIDE FOR PHYSICIANS

Closing a practice takes time and planning. There are legal, ethical, and medical considerations. Patients and employees, along with organizations such as the medical boards, hospitals, and managed care organizations need to be notified. There are issues related to medical records release and retention. Accounts payable and accounts receivable, malpractice insurance, and administrative issues must all be addressed. The attached file addresses these issues and includes forms which we hope you will find helpful.

CLOSING YOUR PRACTICE: STEP BY STEP GUIDE

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This information is organized into the following sections:

1. General guidelines for closing a medical practice.
2. Notifications
3. Medical records
4. HIPAA-compliant forms
5. Other issues
6. Closing your practice check-list

Disclaimer: This material presents an overview of issues related to closing a physician practice. It is not nor is intended to replace legal advice. This information is meant for general informational purposes. No recipients of this information should act, or refrain from acting based upon any or all of the contents of this material. The information contained in this publication is subject to constant change; therefore, there may be omissions or inaccuracies. The actual regulations cited should be consulted as needed. The information is intended to serve as a general resource and guide. Attorneys should be consulted as needed for legal advice.

This information was prepared for the New Mexico Medical Association by the law firm of Miller Stratvert P.A. in Albuquerque, New Mexico, updated by Thomas S. Dean in June 2016. This information is based, in part on the publication, Closing Your Practice: 7 Steps to a Successful Transition, by American Medical Association.

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1. GENERAL GUIDELINES FOR CLOSING A MEDICAL PRACTICE

This information provides guidelines for closing a medical practice. Legal advice is often necessary especially if a practice is being sold, a physician is leaving a medical group, or the practice is being closed due to the sudden death of a sole provider. Seek legal advice as needed.

Certain steps should be taken in a medical practice closure to ensure continuing care for patients and a smooth transition for employees and the physician. This includes notifying employees, patients, medical boards, professional associations, and third-party payors.

Release and retention of medical records must be addressed along with sale or disposal of office equipment and furniture. Leases must be terminated, accounts payable paid, and accounts receivable collected. A suggested timeline is provided in Section 5.

The first question faced by a physician is whether to close or sell the practice. A physician who is close to retirement and lives in an area where another physician is not available to take over the practice will likely close the practice. A physician who wants to roll over the good will from one practice into a newer practice will likely sell the practice. In that case, the practice must be appraised and a buyer found. Transfer of property, accounts, and records must be made. All of these activities will require legal and accounting input and exceed the scope of this information.

2. NOTIFICATIONS

There are many people who need to be notified about a practice closure including the following:

A) Attorney and Accountant:

The physician should meet with an attorney and an accountant as soon as closing a practice is a possible option for the physician. A timeline and action items should be developed. Contracts with insurance companies and managed care organizations should be reviewed to ascertain how third party payers should be notified about the practice closure. Facility and equipment leases should be reviewed and the language in any newly negotiated contract should be written in such a way that allows the physician to terminate these leases with adequate notice. Ninety days (90) is typically adequate notice absent a contract provision to the contrary.

B) Employees:

Employees should be informed prior to patients about the practice closure. Three months is the suggested minimum amount of notification for employees. Some employees may choose to leave immediately or at the earliest job opportunity. If feasible and to foster good will, the physician who is closing the practice should offer to assist employees in contacting potential employers in the community, writing letters of reference, and offering severance pay.

In New Mexico, severance pay is not required and is essentially a gift from the employer. If severance pay is offered, it should be done in a manner that is applied equally to all employees (for example, a set amount of severance pay for each year of the employee's service to the practice). Decisions will need to be made about paying the employees for vacation time, sick time, health care benefits, severance pay, and retirement plans. If there is a written policy in place about any of these issues, then this should be followed.

Employers must pay employees for hours they have worked, and such pay must be given to employees within a reasonable period of time. New Mexico law does not specifically address whether employers must pay employees for vacation time. However, vacation time could arguably be considered hours worked such that employees should be compensated for any earned vacation time. Sick leave is a benefit that is to be taken when an employee is sick. It is not necessary to pay out unused sick time in the event the practice closes.

Personnel records of employees need to be kept pursuant to state and federal law. Suggested retention for personnel records is ten years. Information about any training employees have may be relevant in future litigation.

At least one employee should be asked to stay on until the last day the practice is open or until patients are no longer being seen by the physician. This employee can assist with patient notifications, medical records, and closing accounts. A financial incentive may be required so that this employee will forego employment opportunities until the practice closes.

C) Patients:

Patients should be notified next. Notification needs to be done for many reasons, such as avoiding claims of abandonment, fostering good will, transferring copies of medical records, and ensuring continuity of care.

Ideally, patients should be given three months notice. Longer notice may be necessary for patients with psychiatric concerns. In addition, physicians with obstetrical patients should provide care through the end of the pregnancy to those patients who are past 20 weeks gestation. New patients should not be accepted once the decision to close the practice has been made.

Abandonment is generally defined as when a physician unilaterally terminates a relationship without giving the patient adequate notice. Notice to patients should be given in writing. A physician can terminate a relationship with a patient by giving reasonable notice to the patient. UJI 13-1115 NMRA; see Physician's Abandonment of Patient, 3 Am. Jur. Proof of Facts 2d 117, § 3 (June 2016 update) (“[a]s long as arrangements have been made for a competent, qualified substitute and notice of the pending substitution is given to the patient, abandonment will not be held to have occurred”).

At a minimum, patients should be given no less than thirty (30) days notice with an ideal notice being at least ninety (90) days. Notice must be given to patients even if a physician is leaving a group practice because the relationship is between the physician and the patient not the group practice and the patient.

Generally, the recommended procedure for notifying a patient and terminating the physician-patient relationship is:

- a) give the patient written notice;
- b) provide the patient with a brief explanation for terminating the relationship such as the retirement of physician;
- c) agree to provide treatment and access to services for a reasonable period of time, such as 30 days, to allow a patient to secure care from another physician;
- d) tell the patient how to obtain emergency care in case a new physician has not been selected by the time the practice closes;
- e) provide resources and/or recommendations to help a patient locate another physician as needed;
- f) offer to transfer a copy of the medical records to a newly-designated physician upon a signed patient authorization; and,
- g) if appropriate, some patients can request a copy of their medical records

In general, under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), patients have a right of access to obtain a copy of the information contained in the medical record of the patient except for:

- a) psychotherapy notes;
- b) information compiled in reasonable anticipation of or for use in civil, criminal, or an administrative action or proceeding;
- c) protected health information that is subject to the Clinical Laboratory Improvement Amendments (“CLIA”) of 1988 found at 42 U.S.C. § 263a to extent that access to the information is prohibited by law; or information that is exempt from Clinical Laboratory Improvement Amendments (“CLIA”) of 1988 pursuant to 42 C.F.R. § 493.3(a)(2);
- d) protected health information of an inmate maintained at a correctional facility or under the direction of a correctional facility subject to specific restrictions;
- e) certain research treatments and protocols;
- f) specific protected information subject to the provisions of the Privacy Act, 5 U.S.C. § 552a; or
- g) if the individual’s protected health information was obtained from someone other than the health care provider and a promise of confidentiality as to source was made by the health care provider.

See 45 C.F.R. § 164.524(a)(1) and 45 C.F.R. § 164.524(a)(2).

Certain other circumstances, where a covered entity can deny access to protected health information and the requesting patient can appeal a denial of obtaining copies of medical records, are found at 45 C.F.R. § 164.512(a)(3). Legal counsel should be sought if a health care provider will be denying a patient access to medical records.

Regulations specific for the release of drug and alcohol treatment records should also be consulted. Medical records concerning drug and alcohol treatment cannot be redisclosed by any recipients of the information. *See* 42 C.F.R. Part 2.

Patients who are high risk and/or in the midst of continuing care may need additional assistance to find a new physician. A copy of the letter sent to each patient should be retained in his/her medical records. The closing physician practice should ideally retain the original copy of the medical records.

In the alternative, the closing physician practice should make arrangements, in writing, with the new physician taking over the practice to have access to the medical records in the event of future litigation, billing issues, governmental inquiries, and so forth. If the records are going to be stored, a business associate agreement should be established with the records storage facility.

Patients who have been seen within the past two years by the practice should receive the notification that the practice is closing. Generally, sending the letter by first class mail is adequate. Acute and fragile patients should be sent the letter by certified mail, return receipt requested. Patients who have not been seen by the practice for at least two years can receive notice through publication in local newspapers.

Newspaper notices should be placed in publications that are read by the general public. This notice must be of sufficient size and placement so that the average person will see it in the newspaper. It should inform patients of the practice closure, the effective date, and the process for obtaining medical records before and after the date of the practice closure.

Sample letters and newspaper notices are included in this material.

A message should be left on the practice's answering machine for several months following the close of a practice. Alternatively, the phone could be forwarded to another phone number where the patient could receive information about the practice closing, obtaining medical records, and other available providers.

D) Third Party Payors:

Managed care organization (MCO) contracts should be reviewed for a termination without cause provision and to ascertain the amount of time required for termination of contracts and possibly patient relationships. Typically, a MCO requires ninety (90) days notification. MCO contracts may have language concerning the transfer of

patient care and how patients select new providers. A letter should be sent notifying the MCOs of the practice closure. A sample letter is provided with these materials.

Notice should be given to public sector payors such as the New Mexico Medicaid and federal Medicare. The letter should include the date on which the practice will close, Medicare or other provider number assigned to the physician, physician name, address and telephone number. Following the full implementation of the National Provider Identifier on May 23, 2007, this number should also be provided. The physician should sign the letter.

For Medicare, contact the Medicare Administrative Contractor for Jurisdiction H, which includes all of New Mexico, at

Novitas Solutions, Inc.
Provider Enrollment Services
P.O. Box 3095
Mechanicsburg, PA 17055-1858

For Medicaid, the Physician should contact the Centennial Care contractors, if physician has contracts with any of these organizations.

Non-Centennial Care Medicaid correspondence can be addressed to

Director
Medical Assistance Division
NM Human Services Dep't
PO Box 2348
Santa Fe, New Mexico 87505.

Written confirmation should be obtained that these contracts have been terminated.

Other third party payors such as Blue Cross/Blue Shield, TriCare, and the Worker's Compensation Administration should also be contacted.

E) Agencies:

Certain agencies must be notified of practice closure or physician relocation as soon as possible. Some notifications are required by law. Agencies that a physician must notify about practice closure include, but are not limited to the following:

- 1) New Mexico Board of Pharmacy: A physician must notify the Board of Pharmacy in writing within ten days of the practice closure. The physician must return his/her Controlled Substance License to the Board and indicate where patient records will be stored.

The above information can be sent to:

N.M. Board of Pharmacy
5500 San Antonio Dr. NE, Suite C
Albuquerque, NM 87109

- 2) The Drug Enforcement Agency (DEA): It is up to the physician as to whether he/she keeps a DEA number after a practice is closed. If the physician decides that a DEA number is no longer needed, then a letter must be sent to DEA stating that the DEA number should be retired and that the physician does not have any schedule 2 or controlled substances in his/her possession. The letter should be signed by the physician, dated, and the DEA certificate should be included.

The above information can be sent to:

The Drug Enforcement Administration
660 South Mesa Hills, Suite 2000
El Paso, Texas 79912

Other organizations that the physician may want to consider notifying include:

- The American Medical Association
- The New Mexico Medical Society
- Professional Organizations relevant to physician's specialty
- Hospitals - Medical staff bylaws should be consulted to ascertain if there are any requirements concerning notification.
- The New Mexico Medical Board. The New Mexico Medical Board has regulations that pertain to the closing of a medical practice. The New Mexico Medical Board requires that:
 1. Whenever possible, patients that have been seen in the last three years must be notified at least thirty (30) days before the closure of a practice.
 2. Notifications should include a newspaper notice published in the geographic area where the physician practices. The notice should include a contact person to obtain medical records, a telephone number, and a mailing address. The notice should run a minimum of two times per month for three months. Notifications may also be made to an individual patient through letters. The New Mexico Medical Board should also receive notification.
 3. Patients of a physician leaving a group practice should be notified when the physician leaves the group practice. A group practice cannot withhold patient lists from the departing physician and patients must be given the opportunity to have their records transferred to the physician at his/her new location.

4. If a practice is sold, all active patients must be notified that the physician is transferring the practice to another physician who will retain control of the medical records. A patient can request the transfer of their medical records with a written request.

See NMAC § 16.10.17.9 (2016) for full text of the regulations.

Sample Letter To Patients

**PHYSICIAN NAME/GROUP NAME, M.D.
ADDRESS
CITY, STATE, ZIP CODE**

<INSERT DATE>
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear Mr. or Mrs.<INSERT NAME>:

This letter is to inform you that I will not provide medical care after <DATE OF PRACTICE CLOSURE>. I am retiring from the practice of medicine. As such, you will need to find a new <PHYSICIAN/NAME OF SPECIALTY> by <DATE OF PRACTICE CLOSURE>.

I have enclosed a list of other cardiologists in <CITY/TOWN> area. For the best continuity of care, please make your appointment with the physician of your choice at your earliest opportunity. With your written permission, I will send your new physician a copy of your medical records. Please stop by the office to sign an authorization for release of your medical records or call the office and an authorization will be mailed to you. You will need to return the authorization to our office so that medical records can then be forwarded to the new physician. Please make the first appointment with your new physician as soon as possible to ensure a smooth transition of your care.

If you choose to not see any of the physicians on the enclosed referral list, you can also consult your primary care physician or the New Mexico Medical Society. If <TYPE OF MEDICAL CARE> care is needed after <DATE OF PRACTICE CLOSURE> but before a new health care provider is found, you should go to the nearest hospital emergency room.

The privacy and confidentiality of your medical records is important to us and my practice takes all reasonable and appropriate efforts to comply with federal and state regulations pertaining to medical records. If your medical records are not sent to a new health care provider by <DATE OF PRACTICE CLOSURE>, the medical records will be stored at <NAME OF FACILITY>. The new physician will be sent a copy of these medical records upon receipt of an appropriate authorization for release of information.

I want to thank you for allowing me to provide you with <TYPE OF MEDICAL CARE> care. Please contact my office on or before <DATE OF PRACTICE CLOSURE> if you have any questions.

Very truly yours,

NAME OF PHYSICIAN, M.D.

Sample Newspaper Notice

<PHYSICIAN NAME>, M.D.
is retiring from the practice of medicine on <DATE OF PRACTICE CLOSURE>. Copies of medical records and assistance with referrals for continuing <TYPE OF MEDICAL CARE> care can be obtained from the office located at ADDRESS OF OFFICE.
Please call <PHONE NUMBER> for additional information.

Sample Letter To Managed Care Organizations

**PHYSICIAN NAME/GROUP NAME, M.D.
ADDRESS
CITY, STATE, ZIP CODE**

<INSERT DATE>

Dear <CONTACT AT MANAGED CARE ORGANIZATION>:

Pursuant to my contract, I am giving you 90-120 days notice that I will be closing my practice as of <PRACTICE CLOSING DATE>. I will continue to see patients through <LAST DAY THAT PATIENTS WILL BE SEEN>.

By separate letter, I will notify each active patient of the closing of my practice. I will try to arrange for each patient to pick up their medical records and/or transfer their care to another physician.

Thank you.

Very truly yours,

NAME OF PHYSICIAN, M.D.

3. MEDICAL RECORDS

There are four primary issues to consider:

- A) Federal and state law requirements for the retention of medical records;
- B) Statute of limitations for malpractice claims; C) Confidentiality of medical records; and,
- D) Retention of other practice records.

A) Federal and State Law Requirements for the Retention of Medical Records:

Federal Law

Federal regulations require that providers maintain medical and billing records for Medicare (Title XVIII), Medicaid (Title XIX) and Maternal and Child Health (Title V) for at least six years. Access to those records must be provided to the New Mexico Human Services Department within two days of a request to provider.

Federal law requires that mammogram radiology films are kept for a period of not less than five years, or not less than 10 years if no additional mammograms of the patient are available, or longer if mandated by state or local law. 42 U.S.C. § 263b(f)(1)(G)(i)(I).

Federal Bankruptcy law addresses requirements for retention of records if a health care business applies for bankruptcy under chapter 7, 9, or 11. If the bankruptcy trustee does not have a sufficient amount of funds to pay for the storage of patient records as required under applicable federal or state law, then the regulations provide guidance concerning the disposition of medical records. *See* 11 U.S.C. § 351.

State Law

New Mexico statute requires that medical records for Medicaid patients must be kept for “at least six years from the date of creation” of the record. NMSA 1978 § 27-11-4 A. (2016). Hospital records, regardless of the insurer, must be retained for ten years. NMSA 1978, § 14-6-2 A (2016).

In addition, the New Mexico Medical Board regulations require that

[p]hysicians must retain medical records that they own for at least ten (10) years after the date of last treatment or the time frame set by state or federal insurance laws or by medicare and medicaid regulation. Medical records for patients who are minors must be retained until the date that the patient is twenty-one (21) years old.

NMAC § 16.10.17.10 D. (2016) (emphasis added).

New Mexico case law also suggests that a physician's failure to retain medical records as required can give rise to liability in a future medical malpractice case, because a jury may infer from the intentional loss or destruction of medical records that those records would be helpful to the plaintiff. *See eg., Coleman v. Eddy Potash, Inc.*, 120 N.M. 645, 905 P.2d 185 (1995) (overruled on other grounds).

Records can be retained in either paper or electronic form. New Mexico has adopted the Uniform Electronic Records Act, which provides that "if a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which (1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and (2) remains accessible for later reference." NMSA 1978 § 14-16-12(a). The electronic version of the record must reflect the information originally set forth in the paper version of the record. An electronic record can be modified for reformatting or other purposes as long as it "accurately reflects the information set forth in the record after it was first generated in its final form." *Id.*, § 12(d).

The New Mexico Medical Board also has regulations pertaining to the provisions of records to patients or other requestors. Physicians are required to provide timely complete copies of medical records to a patient or another physician when legally appropriate. When providing copies of the medical records, physicians can charge for the reasonable cost of copying and mailing the medical records.

The New Mexico Medical Board's regulations provide that a physician can charge no more than \$30.00 for the first 15 pages and then \$0.25 per page for any pages thereafter. A patient can be charged for the actual copying of records in other formats such as radiology films. NMAC § 16.10.17.8 B. (2006). Medical records cannot be withheld because an account is overdue or a bill is owed. *Id.*, § 8 A.

In addition, the New Mexico Medical Board requires that:

psychotherapy notes should be maintained separately from the primary medical record and the psychotherapy notes may be withheld from the patient. Express authorization is required from the patient to release these records to other providers.

NMAC § 16.10.17.8 C.

B) Statute Of Limitations:

The above requirements address only record retention requirements under federal and state regulations. However, other considerations establish the length of time that physicians must keep medical records. An important consideration is the possibility of litigation that may flow from patient care.

A statute of limitations is the amount of time that a patient can file a claim for malpractice. In New Mexico, this amount of time depends on whether a physician is

covered under the Medical Malpractice Act or has opted for other malpractice insurance coverage. Under the Medical Malpractice Act, a lawsuit can be filed up to three years after the date of the alleged malpractice (the “occurrence rule”). NMSA 1978 § 41-5-13. If a physician is not a qualified health care provider under the Medical Malpractice Act, a lawsuit can be filed up to three years after any malpractice is discovered by the patient (the “discovery rule”).¹

C) Confidentiality of Medical Records:

Confidential health care information is protected by federal and state law.

The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) Privacy rule establishes general rules for the use and disclosure confidential health information. This provides patients with some guarantees that their medical information will remain private. HIPAA requires a patient authorization for the transfer of medical records and a business associate agreement with any organization that stores the medical records after a practice closes. Drug and alcohol treatment records require separate authorization for disclosure and re-disclosure of drug and alcohol treatment records is prohibited.

HIPAA requires that health care providers, or covered entities, ensure that confidential health care information is secure. The HIPAA Security rule requires that covered entities conduct periodic internal evaluations of their risks and vulnerabilities, develop and implement appropriate security measures and document implementation of security measures.

Security and Privacy are complementary rules since security policies, technologies and procedures will help keep patient information confidential. The Security rule focuses on the “how to” of keeping electronic protected health information secure. The rule is divided into three main areas or safeguards: Administrative safeguards, Physical safeguards, and Technical safeguards.

In some circumstances, New Mexico law is more restrictive than HIPAA. Information concerning mental health and developmental disabilities is protected under the Mental Health and Developmental Disabilities Code and can only be disclosed by written consent. *See* NMSA 1978 § 43-1-2 *et seq.* Human Immunodeficiency Virus test results can only be disclosed with patient consent, with a few limited exceptions. *See* NMSA 1978 § 24-2B-6 (1997). Information about sexually transmitted diseases can only be disclosed according to specific guidelines. *See* NMSA 1978 § 24-1-9.4 (1996).

Federal and state laws provide the basis for requiring patient authorization for the transfer of medical records to a new health care provider. In the written notice that is sent to patients, informing them of the practice closure and the need to select a new provider, the patient should be told of the mechanism to have the records transferred to a new provider.

¹ Physicians should contact their attorney and their malpractice insurance carrier to ascertain whether the physician is a qualified health care provider under the New Mexico Medical Malpractice Act.

The patient should also be informed as to the disposition of the medical records if a new provider is not selected. The written notice to patients should state that the practice takes all reasonable and appropriate efforts to comply with federal and state regulations pertaining to patient confidentiality.

If a patient requests a copy of medical records, a copy of the original, not the original medical records should be provided. It is important that the original medical records are retained by the health care provider in case of litigation or audit. If records are not retained according to federal and state law, a plaintiff could allege spoliation of evidence. It would also be impossible to defend a lawsuit if the medical records are not available.

If records are transferred to a storage facility or another provider following the practice closure, a Business Associate agreement should be in place requiring the storage facility to comply with federal and state requirements pertaining to records storage. An inventory of the stored records should be provided to the physician and any agreement concerning the storage of the medical records should allow the physician to access the medical records as needed for billing, litigation, or other reasonable purposes.

Medical records can be destroyed by shredding through either a shredder on site or a shredding service. If a shredding service is used, a Business Associate agreement should be executed by the health care provider and the shredding service. The health care provider should request a certificate of destruction from the shredding service. Pursuant to HIPAA, the final disposition of the medical records by shredding, should be noted and kept in a records log.

D) Retention of Other Practice Records:

In addition to medical records, there are federal and state requirements as to how other practice records are maintained.

HIPAA requires that patient-related documents relating to uses and disclosures, authorization forms, business associate contracts, notices of privacy practices, response to patients who want to amend or correct medical record information, a patient's statement of disagreement, or complaint information are retained for six years. 45 C.F.R. §164.316(b)(2)(i).

Generally, health information about employees held by a health provider employer is not subject to HIPAA because the information relates to an employer/employee relationship and was not obtained during the provision of health care. However, if an employer obtains employee health information for use with the practice health care benefits for employees, this information falls under the HIPAA regulations.

The Fair Labor Standards Act requires that records related to wages, hours, sex, occupation, conditions of employment are kept for three years. 29 C.F.R. § 516.5 and 516.11 -29).

The Internal Revenue Service (IRS) requires that employers keep copies of tax records pertaining to social security for four years after the date of the tax. 26 CFR § 31.6001-1(e)(2).

The Employers Retirement Security Act requires that any employer who had an employee benefit or pension plan must file a summary of the plan with the Department of Labor and retain records for not less than six years. 29 U.S.C. § 1027.

The Federal Employee's Compensation Act requires that providers who treat patients covered by this Act must keep records all injury cases including history, description of the injury, degree of disability, radiology findings, treatment provided, and other essential information. The period of time that these records must be kept is not defined. 20 C.F.R. § 10.11.

The Civil Rights Act and the Equal Pay Act require that personnel records concerning hiring, promotion, demotion, termination, transfer, layoff, pay raises and so forth are kept for one year from the personnel action involved. Any records related to a discrimination case must be kept until the case is completed. 29 C.F.R. § 1602.14.

A sample HIPAA patient authorization, HIPAA Business Associate Agreement, and release for records for drug and alcohol treatment providers, are included.

4. HIPAA-Compliant Forms

Disclosure of records, even after closing a practice, will continue to be governed by the Privacy Rule of HIPAA. The form for a patient to authorize disclosure of medical records, and the form for special authorization to disclose certain sensitive information, are provided below.

If your medical records are going into storage or transferred to another legal entity such as a successor practice, it likely will be necessary to enter into a "Business Associate Agreement" with the company holding your former patients' records. A number of good sample agreements are available online, and several links are provided immediately following the sample patient authorizations:

A. Patient Authorizations for Disclosure of Health Information

Authorization for Disclosure of Health Information

1. I hereby authorize [name of provider] _____ to disclose the following information from the health records of:

Patient name _____ Date of birth _____

Address _____

Telephone _____

Patient number _____ covering

the period(s) of health care

From (date) _____ to (date) _____

From (date) _____ to (date) _____ 2.

Information to be disclosed:

- complete health record(s) discharge summary history & physical examination progress notes
 consultation reports laboratory tests X-ray reports
 photographs, videotapes, other (please specify) digital or other images

I understand that this will include information relating to (check if applicable):

- acquired immunodeficiency syndrome (AIDS) human immunodeficiency virus (HIV) infection
 behavioral health service/psychiatric care treatment for alcohol and/or drug abuse

3. This information is to be disclosed to _____ for the purpose of _____.

4. I understand this authorization may be revoked in writing at any time, except to the extent that action has been taken in reliance on this authorization. Unless otherwise revoked, this authorization will expire on the following date, event, or condition:

5. The facility, its employees, officers, and physicians are hereby released from any legal responsibility or liability for disclosure of the above information to the extent indicated and authorized herein.

Signed: _____

(patient)

(date)

(legal representative) (relationship to patient) (date) or

(signature of witness)

(date)

Sample Consent to Release Drug and Alcohol Treatment Records

1. I (name of patient) "()" Request "()" Authorize:

2. (name or general designation of program which is to make the disclosure)

3. To disclose: (kind and amount of information to be disclosed)

4. To: (name or title of the person or organization to which disclosure is to be made)

5. For (purpose of the disclosure)

6. Date (on which this consent is signed)

7. Signature of patient

8. Signature of parent or guardian (where required)

9. Signature of person authorized to sign in lieu of the patient (where required)

10. This consent is subject to revocation at any time except to the extent that the program which is to make the disclosure has already taken action in reliance on it. If not previously revoked, this consent will terminate upon: (specific date, event, or condition) or if

NOTE:

This information has been disclosed to you from records protected by federal confidentiality rules. The federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 C.F.R Part 2. A general authorization for the release of medical or other information is not sufficient for this purpose. The federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient. *See* 42 C.F.R. Part 2 for additional information.

This release can be used in conjunction with a HIPAA compliant Authorization for the Disclosure of Health Information.

B. Sample Business Associate Agreements

A number of model Business Associate Agreements are available online. Two are official Federal publications. Consider customizing one of these forms for your use:

1. U.S. Health and Human Servs. Dep't, Sample Business Associate Agreement Provisions (Published January 25, 2013), online at <http://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>
2. Centers for Medicare and Medicaid Services, Business Associate Agreement, available online at https://www.cms.gov/Medicare/Medicare-General-Information/MedicareApprovedFacilitie/Downloads/CAS_Business-Associate-Agreement_07_16_2015.pdf
3. U.T. Health Science Center, Sample Business Associate Agreement Provisions, available online at <http://uthscsa.edu/hipaa/assoc-contract.asp>
4. Ophthalmic Mutual Insurance Company, Sample Business Associate Agreement (opens a Word Document in a new window), available online at <http://tinyurl.com/j92ulms>

5. OTHER ISSUES

A. Collecting Accounts Receivable From Patients:

A physician cannot refuse to transfer medical records to a new provider if a patient has outstanding accounts receivable. N.M.A.C. § 16.10.17.8 A (2016). Issues concerning patient collections should not be noted in the medical record.

The best way to avoid having to ask for accounts receivable is to request payment at the time of service or to develop a payment plan for patients who cannot pay the full fee or co-pay at the time of service. All accounts should be aged and delinquent accounts should be tracked.

If a practice has delinquent accounts receivable, a collection letter should be sent. These can be followed by a phone call if there is no response to the collection letter. Collection agencies should be used as a last resort.

If the physician is transferring the practice to another physician, an agreement could be reached whereby the new physician agrees to collect the accounts receivable for a percent of the amount payable or for a fixed fee that is set in advance.

B. Collecting Accounts Receivable From Insurance Companies:

In New Mexico, insurance companies are required to pay claims within forty-five (45) days. NMSA 1978 § 59A-16-21.1B. Small claims court is an alternative if insurance companies fail to pay claims.

MCO contracts should be consulted for clauses pertaining to final payments and practice closure.

C. Medical Malpractice Insurance:

A physician who is a qualified health care provider under the Medical Malpractice Act will not need to obtain additional malpractice insurance following the practice closure as long as the policy that the health care provider has is occurrence based.

A physician who does not fall under the Medical Malpractice act will need to purchase “tail” coverage. Malpractice insurance carriers and legal counsel should be contacted for specific information about the health care provider’s malpractice insurance needs following practice closure.

6. CLOSING YOUR PRACTICE CHECKLIST

Closing a practice takes planning and the sooner the planning starts, the smoother the process. The following provides some general guidelines:

Next building lease term	The lease. Make arrangements for an “escape clause” to be written into your lease. Most landlords will agree to this with six months notice. If you cannot negotiate an escape clause, be sure you have the right to sublease your space.
Two years or sooner before closing	Accounts payable. Consider asking for payment at the time service charges are incurred. Begin aging accounts receivable, if you do not already do so. Develop a mail and telephone collection program. Refine insurance filing procedures. Establish a tickler file to follow up on slow claims.
Three months or sooner before closing	<p>Notify employees. Assist them in finding employment, if possible. Arrange for key person(s) to remain as long as you’ll need them. Line up potential temporaries in the event employees leave before the practice closes. Determine our obligations under retirement and health insurance plans and take appropriate steps to discharge them. Review your policy manual and be sure that employees understand overtime pay, unused sick leave, and vacation policies. Discuss with employees the amount of vesting they have in pension plans and how funds are to be transferred.</p> <p>Notify patients. Identify active patients. Send letters notifying them of your plans, together with an authorization to release records. Start processing transfers. Know state regulations regarding patient access to records and retention requirements. Make arrangements for storage or micro-filming of remaining records. Draft an announcement for submission to local newspapers.</p> <p>Office furniture and equipment. Explore sources available for sale and/or disposition of office equipment and furniture. Have equipment appraised and place ads in journals if you wish to sell, or contact a used medical equipment broker. If appraisals are low, or to avoid the bother of selling, consider donating equipment and furniture to bona fide charities.</p>
Near Closing	Insurance. File final unemployment return and cancel workers’ compensation and office contents and liability policies when premises are totally vacated. (Be sure, however that office insurance, on both personnel and contents, is maintained until

	<p>business is formally concluded and then request premium refunds.) Professional liability should be canceled only if you plan to cease practicing entirely. If you've been covered under a claims-made policy, arrange for "tail" coverage. Be sure to keep old policies easily accessible. Contact your insurance carrier and legal counsel for additional guidance.</p> <p>Accounts payable. Notify all suppliers and request final statements. You may be able to return some unopened containers for credit. Notify all utilities, including telephone, of the date you wish service to be discontinued.</p> <p>Accounting matters. File necessary final tax forms. Notify Keogh or corporate retirement plan of your intentions and those of your employees. Keep business checking account open for three months after closing. Payments that are received after the business account is closed can be deposited in the physician's personal account as long as records are maintained. Check with an accountant or attorney for the most accurate information. Make arrangements for retention of personnel, business, and medical records.</p> <p>Subscriptions and memberships. Discontinue magazine subscriptions and ask for refunds, or notify publishers of your new address. Notify professional associations.</p>
Upon Closing	<p>Leave a forwarding address with the post office for first-class mail.</p> <p>Send personal letters of appreciation to individuals who have helped you in your career.</p> <p>Donate books and journals to a medical library or appropriate charity.</p> <p>Dispose of drugs according to DEA instructions. Destroy all unused prescription pads and letterhead if you are discontinuing practice. Contact agencies as appropriate.</p> <p>Securely store all diplomas, licenses, and indications of medical membership.</p> <p>Advise the local medical society of the location of remaining records.</p>
To Tie Up Loose Ends	<p>Consider keeping your answering service active for three months to a year. Check with your local medical society for advice.</p>

Content of document and checklist provided in part from:

Closing Your Practice: 7 Steps to a Successful Transition, American Medical Association

Additional References

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