



# Navigating the closing and selling of a medical practice

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**Part One: Medical record retention, and requirements to notify patients, employees, agencies, organizations and vendors.**

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Physicians are prepared for encountering challenges during their active practicing years, but they often find themselves with many questions - and few answers - when it comes time to retire, sell or close their practice. No matter the speed with which a practice closes or is sold, steps must be taken to ensure continuing care for patients, and a smooth transition for the physician.

The first decision to be made is whether to close or sell the practice. If the decision is to sell, the practice must be appraised, a price determined, a buyer found and the transfer of property made - and just as if the practice were being closed, the physician has the continuing obligation of notifying patients and employees, as well as all of the appropriate agencies of the decision. If the decision is to retire and close, more steps are involved, which is the primary focus of this article.

Some physicians who are retiring begin the process of closing their practice up to two years before the anticipated date of retirement. Others with the same goal may compress closure into only a few months. There are few hard rules, and luckily, many guidelines.

The Florida Statutes, Administrative Code, Department of Health (DOH) and the Florida Board of Medicine require physicians desiring to close or sell their practice to follow the following minimum legal requirements:

- Maintain patient medical records for a period of at least five years following the last patient contact.
- Publish a notice in the newspaper of the greatest circulation in each county of practice and within the local newspaper that serves the immediate practice areas 30 days prior to the sale, termination, closure or relocation, with 1) name of the physician and/or practice name; 2) date of sale, termination, closure or relocation; and 3) the address of where patients can receive or request to transfer copies of their medical records.
- A copy of the notice must be mailed to the Florida board of Medicine within one month following the sale. These requirements may be found generally within Florida Statutes sections 456.057, 456.058, and Florida Administrative Code rule 64B8-10.003.

While the foregoing are minimum requirements, there are additional steps to consider, and numerous agencies that must be notified.

Initially, in Florida, the length of time a physician should retain his

Although Florida permits physicians to charge a reasonable amount for record copying and forwarding, the MAA recommends that the physician provide the records at no charge. Pursuant to the Florida Administrative Code, reasonable costs of reproducing copies of written or typed documents or reports should not be more than the following: for the first 25 pages, the cost should be \$1.00 per page, for each page in excess of 25, the cost should be 25 cents, reasonable costs of reproducing X-rays, and such other special kinds of records, should be the actual costs.

**THE GENERAL RECOMMENDATION IS TO RETAIN MEDICAL RECORDS FOR AT LEAST 12 YEARS, AND ALWAYS INFORM THE BOARD OF MEDICINE WHERE THE RECORDS ARE STORED.**

As the physician decides whether to release, retain, store or destroy medical records, it is important to remember that the physical medical record is the property of the practice; the information is the property of the patient. Florida permits physicians to transfer all of their patient records to a fellow active practicing physician and deem this person as the new "record owner" of their patient's files without prior written consent of the physician's patients. If this route is chosen, the assistance of an attorney will be necessary in drafting an Assumption Agreement between the retiring physician and the new record owner, and the physician's patients must be informed of the transfer.

This notice to patients can be accomplished through the newspaper notice announcing the closure of the physician's practice. If any records are not being transferred, the physician will need to make arrangements to archive the records with a storage firm, or rent space from another physician, ensuring that the storage agreement includes confidentiality terms.

#### **Additional notifications**

Beyond notifying patients and staff, there are many agencies and organizations that the physician must notify. The process should begin by the physician notifying the Florida Board of Medicine and other medical licensing boards (if applicable). Additionally, the physician should notify the AMA, the county and specialty medical society, professional associations to which the physician belongs, insurance carriers, referring physicians, the Florida DOH, and the Florida Secretary of State's office.

or her patients' medical records varies according to the type of medical records, the reason for their disposition and their potential use. Therefore, it is recommended that medical records be retained for at least 12 years after a patient's last visit. Florida's Statute of Repose, housed within the Statute of Limitations, provides that certain medical malpractice lawsuits can be filed up to seven years from the date of the alleged negligent conduct. Therefore, the mandatory statutory five year record retention period could end before a medical malpractice lawsuit is even filed.

Additionally, disciplinary proceedings by the DOH or Board of Medicine can be filed within six years after the incident that gave rise to the complaint occurred; or up to 12 years later, where fraud, concealment or intentional misrepresentation prevented discovery of the violation. Therefore, the general recommendation is to make arrangements to retain medical records for at least 12 years, and always inform the Board of Medicine where the records are stored.

A physician must also consider his/her employees. Three months notification is recommended by the American Medical Association (AMA) as sufficient time to allow staff to find new positions, or make alternative plans. Some physicians have found it helpful to assist employees in finding other employment. Helping an employee find a new position is each physician's decision. There are many laws effecting employees and their benefits, which will impact how a physician closes his/her office. These laws include ERISA, and COBRA, and will be discussed in greater depth in Pat Two of this article.

The personnel records of employees should be kept for ideally no less than 10 years. Records pertaining to the training of an employee in procedures related to patient care should be retained for as long as the practice's medical records are kept.

#### **Patient notification**

Although not required by Florida law, as a general rule, physicians should send a letter to each active patient at least three months prior to closure. The letter should include:

- The office closing date;
- Where records will be stored and how to access them;
- A release of information form for the patient to sign and return;
- A deadline for submitting a records request;
- A mailing address where patients can send requests for records after the practice has closed;
- Information on how to contact a new physician.

Other agencies requiring notification include the Drug Enforcement Administration, the State of Florida Bureau of Narcotics Enforcement and Social Security Administration (if the physician is approaching age 65). If applicable, the physician should also apply for benefits as well as Medicare coverage and evaluate supplemental coverage as needed.

The physician should also make arrangements to notify hospitals with which there is a professional association, third party payors, including Medicare and Medicaid, and the HMOs with which the physician is affiliated. If a physician is in a leased office space, a review of the lease by an attorney and proper notification of the landlord must take place.

Arrangements must be made to sell/dispose of office equipment and furniture, and all utilities must be notified of the date services are to be discontinued. Additionally, lenders and creditors must be notified and a physician must request final statements from vendors and made arrangements to maintain a business checking account for at least three months after closure.

The city and county department licensure units must be notified, and an accountant retained to file necessary final tax returns and collect outstanding receivables.

Finally, physicians may wish to send personal letters of appreciation to individuals who have helped the physician throughout his or her career, donate books and journals, and take measures to securely store all diplomas, licenses and indications of medical membership.

The process of closing or selling a physician's practice is not a simple process, nor one that can take place in less than 30 days. Indeed, the process is one that requires the physician to take the time to carefully plan, and seek guidance to become aware of the legal requirements and guidelines which must be met to satisfy Florida laws upon the decision to retire, close or sell a medical practice.

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