

CLOSED

Closure of a Podiatric Practice

It's important to understand the steps involved.

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One of the most common questions a healthcare attorney is asked concerns the closure of a healthcare provider's practice. Let's look at the various concerns one at a time.

I. Patient Notification

The podiatrist should give his/her patients at least 30 days' notice that the practice is closing. Once you know that your practice is about to close, you should stop accepting new patients. A letter should be sent to all your inactive and active patients whose charts you are still mandated to preserve; ideally it should be a certified letter stating the date you intend to close your office. Each state will have a different number of years that you are required to preserve inactive patient charts. A means of obtaining a copy of their medical re-

ords, or a way to forward the record to the medical treater of their choice, must be included in that letter. Suggesting specific names for future podiatric care could result in a lawsuit

er. Of great importance: have the patient sign a HIPAA form before any of their records are transferred to another podiatrist or healthcare provider. This goes for active or inactive patients.

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concerning negligent referral. It is better to refer the patient to the local podiatry society to obtain several names of podiatrists for future care.

For patients actively being treated, a more hands-on transfer of care should be implemented. You can suggest several podiatrists whom you trust to continue their care. Of course, the patient can choose any treater of their choice. Cooperate in supplying the patient's records to the subsequent treat-

II. Employee Considerations

The employer closing the practice should first list all employees with an employment contract. That contract may entitle the employee to some notice prior to closure of the practice. Additionally, any employee with benefits must be notified of any benefit termination. That would include health insurance, life insurance, disability insurance, and any other benefit. Con-

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cerning pensions, IRS and applicable state law must be applied.

III. Disposal or Storage of Medical Records

Any medical records must be retained, in either hard copy or a digital version for a certain period. The time 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. There are facilities that specialize in storage of medical files. These same specialty facilities often offer safe disposal of aged out records. Of course, the podiatrist may opt to simply save the charts in his/her own home if the charts are saved in a safe and secure manner. Patients must know how to access their chart. Letting all patients know at the time of retirement about how they can access their chart, along with the “retirement letter”, is the easiest way of accomplishing this.

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If you sell your practice, the new owner of the practice can assume the responsibility of maintaining the patient records. The new owner may not access those records to solicit those patients. That would place the seller of the practice in jeopardy of violating HIPAA law regarding patient privacy.

Of course, upon notice that the podiatrist is selling the practice or retiring, the patient may request that their podiatric medical records be sent to their new podiatrist. Each patient requesting that a copy of their records be sent to the next podiatrist must first sign a valid HIPAA authorization form. These forms are available for free online.

Whether the patient records are maintained by the buyer or at a storage facility, the selling or retiring podiatrist must retain a right of access to the charts. The retiring podiatrist might need them if subsequently

sued, or for any subsequent civil, criminal, or administrative investigation, or insurance audit. Such access is not considered a HIPAA violation by the retiring podiatrist.

IV. Disposal of Drugs/Samples

For starters, 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. Any opened controlled substances may be accepted by your state’s Department of Health. You must check what the rules are in your state. If any form is required for such surrender, keep that form, or a copy of it, for at least five years. Controlled substances could also be given

to the federal DEA, with the required forms. A “special agent” assigned to your area will tell you what to do to satisfy their requirements.

V. Cancellation of Existing Contracts/Leases

The owner of the closing practice must review the lease. The terms of the lease, if legal, govern what is required. When is the lease over? What is required to give notice prior to renewal? Is renewal automatic unless a certain notice requirement is met? Can you “break the lease”? You can always attempt to negotiate terminating the lease early, if 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 terms to prematurely terminate the agreement. This is not always possible.

All your contracts and leases

must be renewed to ascertain if they can be assigned to the new owner, if you are selling your practice as opposed to simply closing it.

VI. Podiatric License and DEA Registration

It is imperative that you notify your state’s Board of Podiatry, or governing body, of any address change.

If you are retiring from active practice, they must be notified. Virtually every state requires this. If you decide to keep an active license to practice, you still must keep up with any continuing podiatric medical education requirements in a timely manner. Additionally, you must continue to renew your registration. If you have any doubts as to retirement, it is advisable to keep both your registration and your DEA registration current and paid. Likewise, the DEA must be notified of any changes in address of where you practice.

VII. Dissolving the Business

Every state has their own corporate law. Dissolving a business, such as a professional corporation or association, of a 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, the corporation needs to have what is called a winding down period. During this time, the podiatrist must end any contractual obligations. Additionally, during this time, checks may still arrive from accounts due. It is important to follow the method of dissolution of that state. It is most often advisable to be assisted in this by an experienced health law attorney.

VIII. Medical Malpractice Considerations

It is key to alert your professional liability policy that you are closing your practice location. If it is only one of multiple locations, you must

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let them know that the other locations will still be in operation. If you are moving to another location, let them know that too. If you are retiring, you must confirm that you have an occurrence policy. If not, you must buy a tail in order that you will be covered for any lawsuit that is filed after your policy expires. Some claims-made policies have a five-year conversion/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 will be liable and must

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defend that lawsuit. If the lawsuit is successful, your estate will have to pay the settlement or finding of liability by the judge or jury. If you obtained the equivalent of an occurrence policy, you and your estate will be covered.

IX. 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. It will impact as far as who can buy, when they can buy, and how they can buy. It is highly advisable to retain a health law attorney with experience in this area of practice.

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 your sales representatives whom you deal with. Your local podiatry society can be very helpful. Spread the word at a meeting; take an ad out in the society's monthly newsletter. Consider advertising in *PM News*.

Frankly, closing a professional practice and retiring can be a very stressful time. It involves a realization that you are about to have a profound change in your life. To accomplish this in a less stressful manner, use professionals to guide you along the way. **PM**



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