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Closing a Practice: Recognizing and Mitigating the Risk Factors

Discontinuing a healthcare practice – whether by selling it or closing it unequivocally – is a complicated process, involving many personal, professional and economic considerations. From a risk management perspective, it is important to remember that ending a practice does not necessarily bring an end to associated liabilities. Fortunately, with a little time and effort, practitioners can effectively protect themselves against many of these residual risks.

This edition of *Healthcare Perspectives*® examines some of the more common exposures attendant upon terminating or selling a healthcare practice. These vulnerabilities include such issues as patient/client (hereafter simply “patient”) notification responsibilities and potential abandonment allegations, record retention requirements, criticism by the purchasing practitioner or other subsequent treaters, and insurance coverage concerns. It also suggests practical measures to address these potential liabilities, and includes a [sample record transfer authorization form](#) and a [risk control checklist](#) designed to help providers plan and execute a smoother and safer closure process.

RISK NUMBER ONE: ABANDONMENT ALLEGATIONS

Patients are entitled to reasonable notification that a practitioner’s services will no longer be available. Failure to provide such notification to patients in the midst of treatment may potentially result in claims alleging abandonment. Therefore, *all* patients of record must be notified of any plans to cease clinical activity, except those who have been formally terminated. This step is especially critical for practices being closed rather than being sold. In the former scenario, patients cannot simply return to the setting to receive care, but must seek out a new provider, a potentially time-consuming process.

Impending retirement from practice should be publicized through various channels of communication, including personal correspondence, face-to-face discussion, office postings, emails and public announcements. If abandonment claims arise later, the following measures serve to document that a good faith effort was made to inform patients of the change:

Direct correspondence. Alert patients of practice termination by mailing them a simple, clearly written letter. The letter can be sent via first-class mail; certified mail is not required. The letter should note when the practice will close, explain how patients can obtain a copy of their healthcare information records and specify who, if anyone, will continue to provide care in the office. It should be sent two to three months prior to closure, which is generally sufficient time to stabilize those patients undergoing treatment and help all patients find a new practitioner, have records transferred and resolve billing issues. If illness or other unforeseen circumstances make it impossible to give advance notice, promptly inform patients of the situation, using every practical form of personal and public communication.

If the office will be closing, the letter should either recommend a new practitioner or, if this is not practical, direct patients to a recognized referral service, such as those offered by state or local professional healthcare societies, or the list of providers associated with their health plan. It should also include a form authorizing transfer of healthcare information records to the patient’s new practitioner, explaining how the record request process works and listing associated costs. (Note that most states permit providers to charge patients a “reasonable” duplication fee for their records. Check the state practice act to determine if such a clause is included and how “reasonable” is defined. The act should also advise whether original records or a duplicate copy are to go to the new practitioner upon patient authorization.)

Selling the practice reduces the risk of abandonment allegations, as patients will have continued access to care, albeit with a new provider. In this case, note the purchasing practitioner’s name in the letter and advise patients that their records will be left with this individual as of the date of sale. The letter also should advise patients to request a copy of their records prior to the sale if they choose not to continue care with the purchasing practitioner. Remember to document the list of letter recipients and to file record requests in the patient’s chart.

Personal discussion. For patients requiring ongoing care, follow up the letter with a discussion, either face-to-face or by telephone, informing them of their remaining treatment needs. This protocol will help protect patients from potential harm and further reduce the risk of abandonment allegations. Make chart entries of all such discussions.

Office posting. In addition to sending letters to patients, it is advisable to post a notice conspicuously in the healthcare setting stating the same basic information. Have receptionists and other staff members bring it to the attention of patients, both when patients are in the office and when they call to schedule appointments.

Public announcement. A public announcement satisfies the notice requirement for patients of record whose address has changed or for any other reason have not received the written notification. It can be as simple as a notice printed in the local newspaper stating the practice's closing date. As with the mailing, it should direct patients to contact the office prior to closure for access to needed care and records. The announcement should be published at least 30 days – and preferably 60 days – prior to the closing date.

RISK NUMBER TWO: PATIENT RECORD ISSUES

With respect to records storage, the first step is to check the state practice act for specific requirements on mandatory record retention, or consult an attorney for guidance in this area. Such requirements vary among states and may change over time.

Archiving records. Ideally, however, original patient/client records should be archived indefinitely, if at all possible, as claims may arise years after treatment. At the very least, patients' records should be stored for a duration consistent with the statute of limitations governing malpractice actions and to satisfy state requirements. Keep in mind that state malpractice laws vary, especially with respect to care rendered to minors. In some states, minors have until their 23rd birthday to bring a malpractice claim against their practitioner, irrespective of when the treatment occurred.

Storing records post-purchase. If the practice is being sold, the seller will require continued access to healthcare information records in the event of a peer review, licensing board or professional liability action. It is thus essential that the sale and purchase contract include a provision requiring the purchaser to maintain all transferred records for a specified period of time that satisfies state record retention rules as well as the statute of limitations for malpractice actions. In addition, the contract should stipulate that the seller or seller's estate has the right to access those records in defense of a malpractice claim or similar legal action. Some sellers request that records be retained in perpetuity, while others specify a time frame of 12 to 15 years for patients who were adults at the time of treatment and longer for minor patients.

Finding a record custodian. Practitioners who close the practice outright may be able to reach an agreement with a local provider to serve as custodian of the records. In exchange for the goodwill value of the records and the potential for new patients, he or she may agree to maintain the records for a specified length of time. The terms of such an agreement should be similar to the practice sale arrangement described above.

Self-retention of records. Practitioners who retain their own records likely will not have the means at hand to duplicate them in response to patient requests. If a record request is made after the practice closing date, inform the patient that a health records duplicating service will create a copy, and that any related charges must be paid directly to the vendor.

Home storage of records creates the risk of water, smoke and other forms of damage. Consider alternative storage methods, such as warehousing the records or transferring them to a computer database. Electronic records must be appropriately backed up and securely stored, in compliance with HIPAA and any state electronic record requirements.

(Note that these guidelines are general in nature, and do not necessarily reflect jurisdictional laws regarding record retention. For specific legal advice, contact a local attorney with expertise in this area and check with state and national professional associations for relevant information resources.)

RISK NUMBER THREE: CRITICISM BY SUBSEQUENT TREATERS

When selling a practice, it is advisable to look for a purchaser whose standards of care and philosophy of practice align with one's own. For example, critical comments made by the purchasing practitioner about past diagnostic and treatment decisions, even if they reflect honest differences of professional opinion, may encourage malpractice suits by former patients.

If possible, observe the potential buyer's clinical and communication skills, and determine whether current patients are likely to be comfortable with the new provider. In addition, before completing the transaction, retain an attorney experienced in negotiating practice sale agreements.

RISK NUMBER FOUR: CLAIMS-MADE OR OCCURRENCE INSURANCE COVERAGE

When considering professional liability insurance, practitioners should compare the coverage features of both claims-made and occurrence insurance. Later, when retiring or closing a practice, it is prudent to review select coverages with an insurance professional.

Claims made policies provide coverage for claims first made while the policy remains in force. In the first few years of coverage, the cost of claims-made coverage is typically lower than that of occurrence coverage; however, each time a claims-made policy is renewed, the premium increases in consideration of the increased likelihood of claims. A claims-made policy offers coverage on an annual basis.

Occurrence coverage provides coverage for an injury or damage arising out of an act, error or omission which takes place during the policy period, irrespective of when the claim is made. Therefore, even if the alleged incident occurred in earlier years, regardless of when the claim is made, the coverage of the policy in force at the time of the incident would apply.

For practitioners who select a claims-made policy, additional coverages may be added, including Prior Acts coverage (often at an extra cost) and Extended Period Reporting coverage. Prior Acts coverage, i.e., the "nose", covers acts or omissions that occurred before the policy was in force, provided the claim is made during the policy period. Extended Period Reporting coverage, i.e., the "tail", covers claims made after the termination of the policy and during the tail coverage period, provided the acts or omissions which are the basis of the claim occurred prior to termination of the policy. Tail coverage is usually purchased when a practitioner decides to switch insurance companies, and may be added free of charge to many policies upon the practitioner's retirement, assuming the practitioner has satisfied certain conditions relating to age at retirement and years insured.

Retirement should be a time to relax from the pressures of professional life. By paying close attention to the issues of patient/client notification, record retention and insurance coverage, practitioners can substantially decrease their liability exposure and increase their peace of mind.

When selling a healthcare practice, retain an attorney experienced in negotiating practice sale agreements, in order to ensure common exposures are sufficiently addressed, including patient notification responsibilities and potential abandonment allegations, record retention requirements and insurance coverage concerns.

Risk Control Recommendations: Closing a Practice

The following checklist is designed to serve as a starting point for healthcare business owners for discussion and consultation in regard to the process of closing or selling a practice. For additional risk control tools and information, visit the websites of [CNA](#), [NSO](#) and [HPSO](#).

ACTIONS 60-90 DAYS PRIOR TO CLOSING	STATUS	COMMENTS
STAFFING-RELATED RECOMMENDATIONS		
<i>Personally notify staff about the upcoming closing.</i>		
<i>Review staffing contracts and seek legal advice if severance will be offered.</i>		
<i>Prepare to hire temporary staff if current employees leave prior to closing date.</i>		
PATIENTS/CLIENTS		
<p><i>Notify patients/clients (hereafter, "patients") of the closing date and the reason for the closing. Use multiple forms of communication, including:</i></p> <ul style="list-style-type: none"> ▪ Personal letters ▪ Office postings ▪ Email 		
<i>Retain a dated copy of the notification sent to patients in their healthcare information record.</i>		
<i>Include an authorization form for patients to request transfer of healthcare information records.</i>		
<i>If the practice has a website or social media account, post the office closing date and additional relevant information.</i>		
<i>Post a notice in the local newspaper regarding the closing.</i>		
PRACTITIONERS		
<i>Notify state licensing boards of the closing date, as well as credentialing organizations and professional associations.</i>		
<i>Inform the Drug Enforcement Agency, if applicable, of the date of impending retirement, indicating whether registration will be continued or surrendered at this time.</i>		
<i>Advise all health plans and other contracted payers of the practice termination and provide them with a forwarding address for payments made after the office closes its doors.</i>		
<i>If there are treatment privileges at hospitals or clinics, notify these facilities of the retirement or practice closing date.</i>		
<i>Contact ancillary services (e.g., laboratories and radiology facilities) to which patients are referred and inform them of the retirement or closing date.</i>		
UTILITIES		
<p><i>Notify utilities and vendors of when the following services or subscriptions (among others) should be discontinued:</i></p> <ul style="list-style-type: none"> ▪ Water ▪ Electricity ▪ Gas ▪ Telephone ▪ Internet ▪ Answering service ▪ Housekeeping ▪ Hazardous waste disposal ▪ Laundry service ▪ Collection agencies ▪ Magazines 		
<i>Request that utilities and vendors submit final statements prior to the closing date, in order to settle accounts.</i>		

ACTIONS 30-60 DAYS PRIOR TO CLOSING	STATUS	COMMENTS
PATIENT SCHEDULING		
<i>Cease accepting new patients once the closing date has been announced.</i>		
<i>Begin limiting non-emergent appointments, explaining the reason to patients.</i>		
<i>Refer patients who require follow-up care to other practitioners, personally calling these providers to facilitate the handoff.</i>		
PATIENT HEALTH RECORDS AND CLINIC DOCUMENTS		
<i>Determine how long health records must be stored according to state law.</i>		
<i>Arrange for safe paper or electronic healthcare information record storage, selecting a storage facility that has experience with federal and state privacy requirements.</i>		
<i>Notify the state board of patient record storage location(s).</i>		
<i>Obtain a mailing address or post office box for patient record requests sent after the office closes.</i>		
<i>Arrange for proper storage of clinic documents, such as financial records, patient education materials, and policies and procedures, as required by state and federal law.</i>		
MEDICATIONS		
<i>Destroy all prescription pads, using a paper shredder.</i>		
<i>Dispose of in-office medications in accordance with federal, state and local guidelines.</i>		
DEBTS AND FINANCES		
<i>Review accounts receivable and accounts payable records in order to resolve any outstanding debts.</i>		
<i>If appropriate, hire a collection agency to reconcile accounts after the practice has closed.</i>		
INSURANCE (PRACTITIONER AND STAFF)		
<i>Obtain extended reporting (i.e., tail) coverage, if a claims-made policy is in effect.</i>		
<i>Review health, life, disability and workers compensation insurance contracts for policy cancellation requirements.</i>		
OFFICE EQUIPMENT		
<i>Decide how to dispose of office and medical equipment, and obtain legal advice before entering into any sales or leasing contracts.</i>		
MAIL SERVICE		
<i>Make mail forwarding arrangements with the U.S. Postal Service.</i>		

This tool serves as a reference for organizations seeking to evaluate risk exposures associated with closing a healthcare practice. The content is not intended to represent a comprehensive listing of all actions needed to address the subject matter, but rather is a means of initiating internal discussion and self-examination. Your clinical procedures and risks may be different from those addressed herein, and you may wish to modify the tool to suit your individual practice and patient needs. The information contained herein is not intended to establish any standard of care, serve as professional advice or address the circumstances of any specific entity. These statements do not constitute a risk management directive from CNA. No organization or individual should act upon this information without appropriate professional advice, including advice of legal counsel, given after a thorough examination of the individual situation, encompassing a review of relevant facts, laws and regulations. CNA assumes no responsibility for the consequences of the use or nonuse of this information.

Sample Form: Patient/Client Authorization to Transfer Health Records

I, *(Patient/client or guardian name) (please print)* _____,
hereby request and authorize

(Practice or practitioner name) (please print) _____,
to transmit my healthcare information records to

(Practice or practitioner name) (please print) _____,
or to forward a copy to my new practitioner, whom I have indicated below. I understand, in the absence of an alternative designation,
that my records will be transferred to *(Location)* _____ on *(Date)* _____.

By authorizing this transfer, I understand that I am not impairing the transferring practitioner's right of access to my records, when
necessary, during the period in which I am under his/her care.

*(Name of new practitioner, specialist, consultant,
patient/client, attorney, insurer, etc.) (please print)* _____

Street address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Patient/client or guardian signature: _____ Date: _____

This sample form is for illustrative purposes only. Your form's content and layout may be different. We encourage you to modify this form to suit your individual practice and patient/client needs. As each practice presents unique situations and statutes may vary by state, we recommend that you consult with your attorney prior to use of this or similar forms in your practice.



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