



PHYSICIAN'S GUIDE TO CLOSING A PRACTICE

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MISSION STATEMENT OF THE MAINE MEDICAL ASSOCIATION

To support Maine physicians, advance the quality of medicine in Maine, and promote the health of all Maine citizens.

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To the extent the enclosed material include links to various websites, the Maine Medical Association intends no endorsement of their content and implies no affiliation with the organizations.

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INTRODUCTION

A Physician's Guide to Closing A Practice is intended to provide useful information to assist Maine physicians with the many details involved in closing an independent medical practice. Some physicians are simply retiring. Others are making lateral transitions, developing emergency contingency plans, or beginning encore careers. Sadly, at times, a surviving spouse or business partner may be left with the overwhelming task of selling or closing a practice. While the context surrounding each situation is unique, the Maine Medical Association aims to provide a rich resource of materials to guide, educate, and inform.

As you begin to close your practice, careful planning is key to avoid legal risks and future hassles. It is possible to have claims related to issues such as patient abandonment, employment disputes, medical malpractice or real-estate transactions follow a physician into retirement. Therefore, we strongly encourage physicians to obtain preemptive professional advice. While this Guide is not intended to provide legal advice, you may contact the MMA attorneys at 207-622-3374 for referrals to attorneys or other advisors who can assist you.

BUSINESS ENTITY DISSOLUTION

For guidance on the many business and tax implications of closing or selling a practice, we recommend speaking with your accountant, attorney, and/or business advisors well in advance of a transition date. If you do not already have such advisors, please contact the Maine Medical Association for referral resources. You will need to resolve whether the practice is to be sold or dissolved. The proceeds of the sale of a practice can be a significant asset for a physician's estate or retirement. If you are dissolving the practice, depending how your business entity is formally structured, you may be required to submit dissolution documentation to the Secretary of State and/or the Internal Revenue Service. The IRS maintains online information for closing a business entity. In addition, if you are withdrawing from being involved in a partnership, you owe your business partners the duties of loyalty and care and may need to take specific steps to prepare for the withdrawal.

Physicians should also have implemented appropriate estate planning measures addressing the sale or closing of the medical practice due to death or disability. These plans should include the appointment of a transition team who may be directed as to how to proceed in a practice closure or sale. Physicians may want to consider a "cooperative aid agreement," or a formal contract with a colleague specifying that in the event of a sudden illness, injury or death, the signer to such agreement promises to temporarily cover for you until either your recovery or the time when your practice is closed or sold. For the benefit of the surviving principals, we advise keeping essential documents in a single location or identifying where such documents can be located.

Additional resources include:

- IRS Checklist on Closing a Business: <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Closing-a-Business-Checklist>
- Appendix: Suggested Timeline/Checklist for Closing a Practice

INFORMING PATIENTS OF THE OFFICE CLOSURE

The charge of patient abandonment or neglect is a serious litigation risk factor. To reduce legal risk, MMA advises that whenever possible physicians inform patients about impending office closures at least ninety days before business operations cease. All patients of record should receive a letter informing them of your decision. Ensure that you retain a copy of each letter within the patient record. In addition, publish a formal announcement in the newspaper. We advise that an announcement be placed at least three times spread out over the course of several months. You need to be able to provide sufficient documentation demonstrating that you made a reasonable effort to reach patients who may have relocated. [See Appendix for sample patient letters and a press announcement.]

Transitioning your patients must be managed appropriately. No new patients should be seen at the practice once your retirement announcement is made. At 60 days prior to closing, it is recommended that physicians start referring patients who require continual follow-up and start restricting nonemergent appointments as much as possible. Patients who have chronic or acute medical conditions may require special consideration. Anticipate that your established patients will be unnerved and that it may be an upsetting experience for them.

Additional resources include:

- American Medical Association Medicolegal Forms with Legal Analysis: Documenting Issues in the Patient Physician Relationship, Karla L. Kinderman, J.D, LL.M, 1999
- American Medical Association Ethical Opinion 8.11, *Neglect of Patient*
- American Medical Association Ethical Opinion 8.115, *Termination of the Physician Patient Relationship*
- Appendix: Sample Patient Letters & Press Announcement

RECORD TRANSFER

Physicians have an ethical obligation to notify patients of a move, closure or retirement so that they can obtain a copy of their medical records and/or have them transferred to another practice. AMA Ethics Opinion 7.03, *Records of Physicians Upon Retirement or Departure From a Group*, provides in part:

“A patient’s records may be necessary to the patient in the future not only for medical care but also for employment, insurance, litigation, or other reasons. When a physician retires or dies, patients should be notified and urged to find a new physician and should be informed that upon authorization, records will be sent to the new physician....”

Physicians should notify patients of their right to a copy or transfer of their record by letter to their last known address. In addition, we recommend that physicians publish a written notice in the newspaper on three or more occasions. Such notification can be combined with notification of practice closure, as described immediately above. [See Appendix for sample patient letters and press announcement.]

Physicians should document the patient’s request to release a copy of the patient’s record to a new physician accepting the patient and document that you have sent the records. It is also ideal to obtain a confirmation notice from the new physician indicating that a record has been received. In doing so, you reduce allegations of patient abandonment or neglect. Note that the patient has a right to a copy of their record and medical records cannot be withheld if the patient owes fees to the practice. While no special form is required for the patient to request release of their own record, see the Appendix for a sample authorization to release records/protected health information. It is also acceptable to release records to the patient or another treating provider based on a verbal/phone request from the patient that is documented with an office note in the record (HIPAA and Maine state law do not require written authorization to release records to a patient or a treating provider).

Additional resources include:

- American Medical Association Ethical Opinion 7.03, *Records of Physicians Upon Retirement or Departure From A Group*
- American Medical Association Ethical Opinion 7.04, *Sale of a Medical Practice*
- American Medical Association Ethical Opinion 7.05, *Retention of Medical Records*
- Appendix
 - Sample Patient Letters & Press Announcement
 - Sample Authorization to Release Protected Health Information

RECORDS TRANSFER | RECORD FEES

In accordance with Maine law, physicians are entitled to charge a reasonable fee for duplicating or transferring records to another practice. However, by tradition, retiring Maine physicians have not charged patients or subsequent physicians for the first transfer of medical records.

If you do choose to charge for copies of medical records, Maine law provides that the charge may not exceed the reasonable costs incurred by the health care practitioner in making and providing such copies or report. The charge for copies of paper records may not exceed \$5.00 for the first page and \$.45 for each additional page with a cap of \$250.00. Charges include reasonable actual cost of materials and staff time but cannot include a retrieval fee, cost of new technology, maintenance, and data access or storage fees.

If a medical record exists in a digital or electronic format, the physician or hospital may assess as charges reasonable actual cost of staff time to create or copy the medical record and the cost of necessary supplies and postage. Actual cost may not include a retrieval fee or the cost of new technology, maintenance of the electronic record system, data access or storage infrastructure. Charges assessed for digital and electronic format may not exceed \$150.00.

Additional resources include:

- 22 MRSA § 1711-A, Fees Charged for Records, <http://www.mainelegislature.org/legis/statutes/22/title22sec1711-A.html>

RECORD RETENTION AND STORAGE

As you transition your practice, it is critical that you maintain access to a complete set of patient medical records, minimize alteration/damage, and have a retrieval system in place. This is necessary to defend any malpractice or discipline claims, respond to audits or other compliance concerns and make records available to patients who have not yet obtained a copy. When closing a practice, MMA recommends that physicians keep the original documentation and provide the patient, subsequent provider or buyer of the practice with a copy of all records. Keeping an original set of records will enable you to respond properly in the case of future malpractice claims, audits or other need for records. In contrast, keeping a copy of charts and providing the original records may not afford the same liability protection.

Before transferring or storing records, all collateral documents such as lab reports, test interpretations, notes, and case summaries should be complete.

Maine does not currently have a law that governs the length of time that you must retain patient records if you are a private medical practice. The minimum length of time the MMA recommends for record retention for adult patients is six years. Maine hospital licensing regulations specify a seven (7) year retention period and this likely would apply to hospital-based practices. See [DHS Rule Chapter 112, Regulations for Licensure of General & Specialty Hospitals](#), §3.5.5. It is common for physicians to keep records for as long as ten years, and some malpractice carriers recommend this length. For minors, records should be maintained until the age of majority, plus the statute of limitations (3 years), or until the minor turns 21. Maine's

hospital licensing regulations require the records of minors to be retained for 6 years beyond the age of majority, or age 24. AMA Ethics Opinion 7.05, *Retention of Medical Records* states that medical considerations are the primary basis for deciding how long to retain medical records and the Board of Licensure in Medicine has a similar policy. Therefore, physicians should keep a permanent record of all chemotherapy, operative notes, and immunizations. Note that some HMO and MCO agreements require departing physicians to retain medical records for a longer period of time than the recommended minimums. To ensure compliance with your contractual obligations, please refer back to your HMO or MCO agreements. Please see the Appendix – Record Retention Guidelines for more detailed information on record retention periods.

The American Medical Association’s Code of Medical Ethics, HIPAA, and Maine State Law require careful attention to record retention, use, and release. Moreover, the American Recovery and Reinvestment Act of 2009 and HITECH Act, provide for stringent penalties related to electronic medical data breaches. Accordingly, for any records that you maintain, you should put in place preservation protocols, theft protection measures, and data security procedures. The sections below outline additional options and issues with record storage.

Additional resources include:

- American Medical Association Ethical Opinion 7.05, *Retention of Medical Records*
- Appendix – Record Retention Guidelines

RECORD STORAGE | SELF-STORAGE OPTION

One option for record maintenance is self-storage. Scanning paper records may eliminate some volume. However, the records must be accessible so that copies can be produced and provided at time of demand, and must be clearly and carefully archived. Moreover, records must be protected against the environment and pests and in a manner that continues to comply with all HIPAA Privacy and Security Rule requirements. MMA often finds that physicians cannot realistically maintain records in a HIPAA-complaint manner in their homes, garages, etc. Self-storage facilities may provide some additional protection but are also generally unregulated and insecure. Commercial record facilities provide an additional layer of protection. You should look for a facility that is able to comply with HIPAA Privacy and Security Rule requirements and is willing to enter into a HIPAA-compliant Business Associate Agreement with you, detailing issues such as access to records, breach notification requirements and indemnification.

Additional resources include:

- MMA HIPAA Resource Page and Sample Business Associate Agreement: <http://www.mainemed.com/education-info-cme/hipaa>

RECORD STORAGE | MEDICAL PROVIDER CUSTODIAN

Rather than arrange for and manage records yourself, another option for record storage is to arrange with a buyer, succeeding physician or facility, pursuant to a contract, to maintain your patient records and allow you access in the event the need arises. The disadvantage of such a transfer is that the physician or facility storing the records may eventually or inadvertently destroy, lose, or otherwise compromise the records. In the event a physician finds himself facing a malpractice suit, this could forfeit an adequate defense. However, certain steps can be taken to minimize risk, including drafting an agreement that specifies protocols for record access, confidentiality and retention. MMA advises that you consult with an attorney in drafting such an agreement. It should address the following:

- A protocol for record access. Generally, records are the property of the physician who prepared the records. The succeeding physician or facility is merely the custodian of such records. The physician-owner of the records is entitled to access the records during the practice's regular business hours.
- A protocol discussing the responsibilities of the physician or facility maintaining the records. Records held for safekeeping should be stored separately and not commingled with the physician or facility's own records.
- A protocol discussing the destruction of records and record retention procedures.
- A protocol explaining the facility's data security & privacy policy. To protect physician-patient confidentiality, the physician holding the records for safekeeping will not access those records without patient written consent, unless he/she is the patient's treating provider. The protocol should discuss how the succeeding physician should comply with written requests to release copies of the medical records to a patient or designated physician.
 - Recognizing that strong penalties are in place for data breaches [*see* HITECH Act], the physician-owner should consider adding an indemnification clause into the contract. An indemnification clause is a contractually assumed duty to defend another party, or to pay damages on behalf of that party, in the event of a claim by a third party. Should a physician holding the records or his/her employees breach confidentiality and subject the physician-owner to liability, the physician holding the records should indemnify the physician owner for any harm resulting from a breach. However, because indemnification liability is contractual, it is almost never covered by insurance. The custodian physician practice should review liability insurance policies to determine whether indemnification liability is specifically excluded or whether assuming an indemnification liability may jeopardize coverage under the policy as a whole.

RECORD STORAGE | ELECTRONIC RECORDS

A well-managed digital repository may significantly reduce or eliminate the need to maintain paper records. However, technology is fluid and becomes antiquated quickly. Information stored on magnetic mediums such as CD drives, zip-drives, or backup tapes lose their magnetism and therefore their ability to hold information. As such, these mediums are not viable long-term record storage options and it is advised that physicians maintain software licensure programs and all necessary updates. Depending upon your technology infrastructure, it may be necessary to maintain the server, computer, or software programs. Moreover, evaluate whether adequate privacy, encryption and metadata protection are in place based on the format used for data storage. Finally, when managing digital records, consider the following points:

- For electronic records with no corresponding hard copy equivalent, it is especially important that policies be developed and documented as to their eventual destruction. A plan should also be put in place to ensure that this destruction is carried out on schedule.
- E-mail messages may be subject to discovery in any litigation. E-mail with record usefulness should be moved out of the e-mail account and into a controlled repository, along with other digital documents.

Additional resources include:

- Health & Human Services website regarding maintaining computerized records for evidence in litigation:

<http://www.hrsa.gov/healthit/toolbox/HealthITAdoptiontoolbox/PrivacyandSecurity/evidentiaryreqs.html>

DISPOSAL

You must properly dispose of inactive patient records that will not be transferred to patients or new practices and/or those records you have maintained beyond the recommended storage periods. MMA strongly recommends using a professional record destruction service and having a confidentiality agreement and HIPAA Business Associate Agreement in place with the contractor. In the event of a breach of confidentiality, such agreements should indemnify the physician and hold such physician harmless. Moreover, you should request a certificate of destruction and be certain that sub-contractor companies are not involved in the record destruction process. For more information on professional record destruction services please contact the National Association for Information Destruction.

Please note that is not advisable to burn patient records. If records contain x-rays, the heat may release dangerous metals; moreover it often does not completely destroy all records. Paper recycling also does not ensure confidentiality. Destroying records improperly is considered negligence and has a high risk of being a HIPAA violation.

While practices are ethically obligated to notify patients before record destruction, this is unnecessary if you have already informed patients of their ability to obtain or transfer a copy of their record when closing your practice. However, if you have not already informed patients of this right, you should notify each patient by a letter to his or her last known address and publish a notice in the newspaper on three or more occasions, giving patients a reasonable period of time to request or transfer records.

OTHER BUSINESS RECORDS

Medical offices may have a substantial number of records in addition to patient charts, such as medical licensure information, tax and financial data and employee records. Please see the appendix Record Retention Guidelines for further information on the length of time to retain such records.

EQUIPMENT

If equipment is leased, it is important to review the leasing agreement and contact the vendor to negotiate the terms for the remaining period. Some medical equipment owned by the practice may be resold, salvaged or donated. Purchasers include physicians setting up an initial practice, international physicians or medical supply companies seeking enhanced used equipment inventory. Used medical equipment may also be donated to an organization providing medical treatment. Serviceability, age, ease of removal, and compatibility with existing systems will all determine the dollar value. We advise obtaining the services of a professional medical equipment appraiser or supplier who can further advise you about the worth of any particular pieces of equipment.

Before donating equipment you may need to:

1. Consult the FDA-Division of Industry and Consumer Education – 1 (800) 638-2041 - to ensure that all public health medical equipment disposal rules are being followed.
2. Speak with an accountant who can inform you of the appropriate tax credit.
3. Consult Maine environmental and waste management laws. Does your equipment have a component that is environmentally toxic?

If the equipment is of no value, a scrap metal dealer may be interested in the recycle value of the metal and various internal components.

SUPPLIES & WASTE MATERIALS

- **Recurrent orders:** Notify supply vendors so that recurring orders are adjusted and assigned a termination date. Arrange with utility companies to turn off utilities on the closing date. Request final bills from all suppliers and examine them carefully. Be sure to change your mailing address and update or cancel subscriptions for journals, newspapers and the like.
- **Office property:** Examine your office lease, and be sure you have a right to sublet or have an “escape clause” so you can vacate the premises when you close your practice.
- **Disinfecting Medical Supplies:** In accordance with Federal FDA and OSHA guidance, tools, equipment, and environmental surfaces such as counter tops should be disinfected or sterilized before they are donated or sold.
- **Sharps & Biomedical Waste:** The Maine Department of Environmental Protection developed Biomedical Waste Management Rules that became effective on January 1, 1991. The rules were developed and implemented as a result of legislation responding to public concerns about the potential public health environmental hazards posed by medical waste. The rules identify biomedical waste subject to regulation; require the registration of biomedical waste generators; and establish minimum standards for packaging, labeling, handling, storage, transportation, treatment and disposal of biomedical waste requirements. See the DEP [Biomedical Waste website](#) and [Chapter 900](#) - Biomedical Waste Management Rules.
- **Hazardous Waste:** The Occupational Safety and Health Agency (OSHA), and its counterpart agencies at the state level, are responsible for developing and enforcing the rules for hazardous materials that relate to worker health and safety issues. In addition, hazardous waste regulations are developed and enforced by the Environmental Protection Agency (EPA). Any facility that generates hazardous wastes is subject to detailed rules concerning topics such as
 - how the wastes must be stored on site
 - how long they may be stored
 - who is allowed to transport and receive them
 - what kinds of records have to be maintained.

The term "hazardous waste" is reserved for materials that meet very specific criteria spelled out in the federal Resource Conservation and Recovery Act (RCRA) and the regulations associated with it. For more information, see the [EPA website](#) on hazardous waste and the [Healthcare Environmental Resource Center](#).

- **Undistributed Medications:** You may often return unopened medications to the manufacture and request a refund. Contact drug representatives to determine what to do with unused medications and samples. There are strict reporting laws governing the distribution and/or possession of controlled substances. We advise contacting the Drug Enforcement Agency for narcotics removal. Do not flush it, throw it into the garbage, keep it on your person, or take it home with you.
 - Additional Resources Include:
 - The U.S. Drug Enforcement Agency *Practitioner's Manual* that provides the protocol for disposing of prescription drugs: <http://www.deadiversion.usdoj.gov/pubs/manuals/pract/> or call the DEA office in Bangor - (207) 262-4666 or Portland - (207) 780-3331
 - The Maine Drug Enforcement Agency: <http://www.maine.gov/dps/mdea/>

SURRENDERING YOUR DEA REGISTRATION

If you will no longer be prescribing controlled substances, you should notify the Drug Enforcement Agency of your retirement and request that your DEA number be inactivated. This notification may be accomplished by either (1) sending a letter or email to the DEA, (2) by writing “non-renewal due to retirement” on your DEA renewal form.

Contact the DEA at:
 DEA.Registration.Help@usdoj.gov or
 Drug Enforcement Administration
 Attn: Registration Section ODR
 P.O. Box 2639
 Springfield, VA 22152-2639

Additional resources include:

- Appendix: Sample Letter to DEA

PROFESSIONAL NOTIFICATION

Provide written documentation informing all hospital affiliations, licensing boards, professional societies, alumni associations, and other professional associations of your practice closure or retirement and notifying them of your current mailing address and contact information. Some organizations (like the Maine Medical Association and American Medical Association) offer reduced or no dues for retired members.

As an alternative to retiring and relinquishing your license to practice medicine, you may wish to renew your license and request inactive status. Also, some physicians may choose to discontinue practice but wish to maintain an active license for personal or professional reasons.

Additional resources include:

- Board of Licensure in Medicine
161 Capitol Street, 137 State House Station
Augusta, Maine 04333-0137
(207) 287-3601
<http://www.docboard.org/me/>

- Board of Osteopathic Licensure
161 Capitol Street, 142 State House Station
Augusta, ME 04333-0142
(207) 287-2480
<http://www.maine.gov/osteo/>

- Maine Medical Association Membership Director: (207) 622-3374

- American Medical Association Member Relations: (800) 262-3211

REVISING YOUR INSURANCE PORTFOLIO

To ensure that you are properly protected, MMA strongly advises that you speak to your insurance broker or carrier to review all of your current insurance policies and what changes may need to be made after retirement or closing a practice. Even after retirement, closing of a practice, and/or cessation of business activity, a physician will continue to be exposed to professional liability for prior patient care and may need coverage for continued volunteer or professional activities. In the event that you have “claims made” professional liability insurance coverage (providing coverage for claims made against the policyholder and reported to the insurance company while the policy remains in force), as opposed to “occurrence based” coverage (providing coverage for an injury or damage that takes place during the policy period, regardless of when the claim is reported), you may need to purchase additional insurance, known as “tail” insurance, to cover you into your retirement.

MMA also recommends that you review all business-related insurance policies including life insurance, disability insurance, disability overhead expense, property liability and practice interruption insurance. Insurance policies covering employee benefits and workers compensation can generally be terminated as of the last day of work for your employees. Policies covering medical equipment and supplies can likely terminate when the office is sold or

closed. On the other hand, you may need to maintain some coverage for the continued storage of medical records. You should permanently retain copies of cancelled or expired insurance policies.

INFORMING YOUR STAFF

One of the most challenging aspects of closing a practice is informing the staff of your decision. MMA advises that that you meet with each employee individually. By showing concern and respect, you lessen the likelihood of hurt feelings and decrease the potential of employment litigation. In some instances, a physician taking over your practice will want to retain some members of the staff to provide patient and operational continuity. Unfortunately, this is not always possible. Therefore, before announcing the closing, have a solid operational plan in place and establish your transition team. Be sure to review any employment agreements, employee manuals and benefits plans to ensure that your transition plan is consistent with your legal obligations as an employer.

Compose a written agreement specifying what unused benefits each employee is entitled to. Moreover, if employees have been employed for a significant amount of time, consider a severance package. Typically this amounts to one week of pay for every year at the job. An exit bonus may also retain the services of valuable employees who are key in assisting with the transition process. If you have offered retirement or health insurance plans, have the plan coordinators review each employee's options. Finally, consider retaining the services of a career specialist who can review resumes, hone interview skills, and offer career guidance. You may wish to provide employees with written letters of recommendation and assistance in networking efforts. Maine Career Centers provides a rich resource for both employers and employees.

OFFICE SECURITY

On closing an office, consider changing external door locks, security codes, and computer passwords. Prescription pads, backup computer files, signature stamps, cash, business stationary, diplomas, and all records should be accounted for and/or destroyed.

COLLECTING OUTSTANDING DEBTS

It is often difficult to collect outstanding payments from patients following the closure of a practice. Bill payment and billing and collection activities will typically continue months after the practice closes. While the practice is still running, every effort should be made to bill and collect as quickly as possible and to resolve any outstanding reimbursement issues with insurance companies and patients. One way to avoid collection problems is to ask your patients

to pay at the time of service. Have your staff ask for payment after the appointment and for payment on any overdue accounts. If the patient cannot pay in full, have a staff member work with the patient at the time to come up with a mutually agreeable plan for payment. Letters are the next step, followed by telephone calls and finally, turning the old accounts over to a collection agency (or considering whether it is worthwhile to simply write off some or all of the bad debt).

After the practice has ceased seeing patients, if the practice uses an outside billing service, then it is a matter of following the terms of the agreement and deciding when it is appropriate to cease the activities. If billing is done internally, there are several alternatives, including but not limited to: leasing a small office (on a month-to-month basis) so that the necessary staff may continue to work on accounts; having the biller work from home or from the physician's home; engaging a billing service to work the accounts and take a percentage; or finding a company that would purchase the receivables.

When closing your practice, also be sure to notify Medicare, Medicaid and any managed care companies you have contracts with at the present time. (Review your managed care contracts for guidance on termination of such contracts).

###

APPENDIX

Suggested Timeline/Checklist for Closing a Practice¹

ONE TO TWO YEARS IN ADVANCE

- Begin planning for sale of practice or securing a new physician.
- Contact an attorney, accountant and/or business advisors for guidance on transition and estate planning.
- If office space is leased, review the office lease for specifics on termination. Is a sublease allowed? If not already written into the lease, request that an “escape clause” be written into the lease agreement.
- If the office space is owned determine if the property should be maintained or sold. If you are to sell the property retain the services of a licensed appraiser and real estate agent.
- Begin to request payment at time of service.
- Review accounts receivable and consider if acquiring the services of a collection agency is cost effective. Ensure that managed care contracts are current.
- Set up a “ticker” file to follow up with slow claims.
- Begin to purge records of inactive patients.

SIX MONTHS BEFORE CLOSURE

- Continue to purge inactive patient records
- Review contracts with all payers to determine the method for termination.
- Review contracts with all suppliers/service providers to determine method and timeline for termination
- Review all insurance policies with appropriate advisors to determine which can be cancelled and which should be maintained; consider malpractice “tail” coverage
- Begin to plan what you will be doing with office equipment and furniture (sale, donate, disposal).
- Send a letter to your peer group. (Local community physicians, referring physicians, etc.)
- Inform the staff of the plan to close. Complete exit interviews with all staff members notifying them of all remaining benefits.

THREE MONTHS BEFORE CLOSURE

- Inform payers, supplies, vendors of your closure and request final bills (include utility companies, telephone, answering services, janitorial services, linen services, landscaping companies, vending machine service companies, etc.) Carefully review all final bills. Keep a record of all correspondence.
- Plan for patient record storage – arrange with a secure record facility or enter an agreement with another physician/health care facility for record storage and access
- Prepare and send patients a letter informing them of your retirement or closure. Keep a copy of the letter, the mailing list, and returned envelopes. The letter should include the date of closure, list of physician referral resources, an authorization to release records, and where the records will be stored once the practices closes.
- Place advertisement in paper notifying the community of your intent to close – repeat monthly for three months.

¹ Suggested time line is adopted from the American Medical Association, *Closing Your Practice (1988)*, American Dental Association, *Guide To Closing A Dental Practice, (2004/2008)*, Ohio State Medical Association, *Checklist For Closing A Practice, (2002)*, and Robert Stanyon, MS, RN, *Closing Your Office Practice-Rx For Change, A Risk Management Guide, Countdown Calendar, FOJP Service Corp, 2003, No. 3.*

- Close practice to new patients and begin referring patients with ongoing health needs to new providers; at 60 days begin to restrict non urgent appointments
- Determine what you will be doing with office equipment and furniture.

ONE MONTH BEFORE CLOSURE

- Complete a change of address form with the United States Post Office
- Cancel or complete change of address forms for all periodicals, journals, waiting room subscriptions, etc.
- Notify the Board of Licensure in Medicine and other professional organizations (hospitals, Maine Medical Association, American Medical Association, specialty societies, study groups, etc.)
- Notify the DEA
- Schedule a staff appreciation event

AFTER FINAL PATIENT IS TREATED

- Destroy remaining prescription pads, signature stamps
- Arrange for proper disposal of controlled substances and other drugs, samples, sharps, hazardous waste, unopened supplies etc; keep narcotics ledger for a minimum of two years
- Notify utility companies of final shut off
- Ensure that all final statements from vendors and suppliers are accurate and paid.
- Cancel appropriate insurance policies
- Secure all diplomas, licenses, and medical memberships.
- Send personal letters of appreciation to those who have assisted in your career success.
- Donate books and journals to a medical charity or library.
- Keep business checking account open for at least three months and be sure that all checks have cleared.
- Consider keeping your answering service active for three to six months.
- Change locks, passwords, and security codes.
- File any necessary tax forms

Sample Retirement Letter | *Office Closing and No Succeeding Physician*

Dear Patient:

I am writing to inform you that effective, _____ I have decided to close my practice.

It has been my pleasure to serve your medical needs. I thank you for the privilege of being your physician. If you require assistance in finding a new physician, I recommend you contact your health insurance plan, local hospital, or the Maine Board of Licensure in Medicine (for MD information) or Osteopathic Licensure (for DO information).

- Maine Board of Licensure in Medicine Physician Search database: 207-287-3601 or <http://www.docboard.org/me/df/mesearch.htm>.
- Maine Board of Osteopathic Licensure: 207-287-2480 or <http://www.maine.gov/osteo/>

Once you have a new physician, he/she will need copies of your medical record in order to treat you. I have enclosed a written authorization form for you to sign. Please fill it out and send it to me as soon as you know who your new physician will be.

If you do not contact us with a formal request, Dr. _____ will be the custodian of all of my records and can be reached at _____. [Or, describe other record storage/request arrangement.]

Again, I have valued our professional relationship.

Sincerely,

Dr. _____

Sample Retirement Letter | *Retiring and a succeeding physician is in place.*

Dear Patient:

I am writing to inform you that effective, _____ I will be retiring. It has been a pleasure to care for your medical needs. I thank you for the trust you have shown in me.

To ensure that your medical needs continue to be met, I have arranged for Dr. _____ to take over my practice. A graduate of _____, Dr. _____ brings _____. I am pleased that my patients are being left in such capable and caring hands.

However, should you desire to have your records transferred to a physician of your choosing, I am happy to comply. I have enclosed an authorization form to release your medical records to a new physician, if you wish. Please fill it out and send it to me as soon as you know who your new physician will be.

If I do not hear from you, Dr. _____ will be the custodian of your record.

Thank you for your cooperation. Your health and wellness remain our priority.

Sincerely,

Dr. _____

Sample Press Release | *Closure of Practice*

After, _____ years in practice. Dr. _____ of _____ Medical Practice located at _____ is announcing his retirement. Dr. _____ would like to thank his patients and community at large for the trust they have placed in him. As the health and wellness of Dr. _____ patients remain a priority, he has arranged for his practice to be purchased by Dr. _____. Dr. _____, a graduate of _____ brings over _____ years of experience and expertise. If patients should choose to find a physician of their own choosing, they are encouraged to contact Dr. _____ office at _____. In doing so, they may arrange for appropriate record transfers.

- [Sun-Journal](#)
P.O. Box 4400
Lewiston, Maine 04240
Telephone: (800) 482-0753

- [Portland Press Herald/ Maine Sunday Telegram](#)
One City Center, 5th Floor
Portland, Maine 04101
Telephone: (207) 791-6650 or Toll Free: (800) 442-6036

- [Bangor Daily News](#)
491 Main St.
P.O. Box 1329
Bangor, Maine 04402
Telephone: (207) 990-800 or Toll-free:(800) 432.7964

**To ensure that you have reached patients who may have relocated, it is recommend that you publish a press release several times over the course of several months. Consider your local weekly publication.*

**AUTHORIZATION TO RELEASE PROTECTED HEALTH
INFORMATION (PHI)**

This authorization is for use or disclosure of protected health information pertaining to:

Name: _____ *[Practice or Patient Fills out with Patient Contact Information]*

Address: _____

DOB : _____ MRN: *_[Optional]* _____ Phone: _____

I hereby authorize the following health care provider:

_____ *[Add your practice name & contact information here]*

To release my protected health information to:

Name: _____ *[Patient or practice fills out where information will be sent]*

Address: _____

Purpose of disclosure: Record transfer to new provider

Protected health information to be released: All medical records

Your specific permission is required to disclose information regarding the following:

Check box and sign to specify protected health information to be disclosed

Treatment by Mental Health Professional or Program _____

Drug/Alcohol Abuse _____

HIV Test Results or Status _____

(Maine law requires our practice to inform you that, if this information is misused, disclosing your HIV infection status may have consequences, such as negative treatment in your personal life or by insurance companies. It can be important for providing you needed services & healthcare.)

Expiration: This authorization becomes effective immediately and shall expire on: _____ . If no date is given, this authorization is valid for **30 months**

- I understand that I am not required to sign this form and [enter practice name] will not condition treatment, payment for services, or eligibility for services on whether I sign this form. I understand that my refusal to sign may result in improper diagnosis or treatment, denial of coverage for health benefits or other insurance or other adverse consequences.
- I understand that PHI released pursuant to this authorization may include records generated by another healthcare provider or facility.
- I understand that I have the right to access or copy the PHI described in this form by making a written request to the Privacy Officer of this practice. A copying fee may be charged as permitted by law
- I understand that I have the right to withdraw my authorization at any time except to the extent that action has been taken in reliance on this authorization. I understand that if I revoke this authorization, I must do so in writing and present my written revocation to the Privacy Officer at [enter practice name]. I understand that revocation may be the basis for denial of health benefits or other insurance coverage or benefits.
- I understand that PHI used or disclosed pursuant to this authorization may be re-disclosed by the recipient and no longer be protected by confidentiality laws.
- I understand that PHI that includes alcohol or drug program information protected by federal law will require notice to the person receiving the information that it may not be shown to or shared with others without my express written permission.
- I understand that I have a right to receive a copy of this authorization.

Signed: _____ **Date:** _____

Print name: _____

If signed by other than patient, indicate legal relationship: _____

Record Retention Guidelines

RECORD RETENTION GUIDELINES ²	RETENTION PERIOD
<i>Medical License</i>	
Continuing Education Records	Permanently
License & DEA Information	Permanently
<i>Tax & Financial File Retention</i>	
Accounts Payable Ledger & Schedule	7 Years
Accounts Receivable Ledger & Schedule	7 Years
Audit/Accountant Annual Report	Permanently
Bank Statements	3 Years
Capital Asset Records	Permanently
Cash Receipt Journal	Permanently
Cancelled Checks	7 Years
Checks (cancelled for important payments-ie: taxes, purchases of property)	Permanently
Contracts and Leases (expired)	7 Years
Contracts, Mortgages, & Leases (Still in effect)	Permanently
Deeds, Mortgages, and Bills of Sales	Permanently
Deposit Books & Slips	3 or 6 Years
Depreciation Schedules	Permanently
Financial Statements (Yearly)	Permanently
General Ledgers	Permanently
Income Tax Returns, Worksheets, and Related Documentation	Permanently
Insurance Policies (Expired)	3 Years
Insurance records, current accident reports, claims, policies, etc.	Permanently
Inventory of products, materials, and supplies	7 Years
List of accounts (assets, liabilities, revenue, expenses, etc.)	Permanently
Petty Cash Vouchers	3 Years
Retirement Plan Records (Documents, Investment Records, Allocations)	Permanently
Vouchers for Payments to Vendors, Employees, etc.	7 Years
<i>Employment Record Retention</i>	
Applications (Not hired)	3 Years
Personnel Records (After termination)	7 Years
Payroll Records, Taxes, & Summaries	7 Years
Time Sheets, Cards, or Time Clock	7 Years
Training Manuals	Permanently
Workman Compensation Records	5 Years
<i>Other</i>	
Accident reports/claims (settled cases)	7 Years
Computer and Software Manuals	Permanently
Controlled Substance Copy (Surrender Forms)	2 -5 Years
Correspondence, routine with patients or vendors	2 Years
Correspondence (legal or important)	Permanently
Legal Agreements (Partnership, LLC, or Business Entity Paperwork)	Permanently
Medicare Billing Records	7 Years
OSHA Records (Log and Summary)	5 Years past the year to which it pertains

² Adopted from the American Dental Association, Guide To Closing A Dental Practice, 2004/2008 and Robert Stanyon, MS, RN, Closing Your Office Practice-RX For Change A Risk Management Guide, FOJP Service Corp, 2003, No. 3.

PATIENT RECORD RETENTION GUIDELINES	
Day sheets, schedule	7 Years
HIPAA documentation (e.g., acknowledgment of receipt of privacy notice, requests for amendments, workforce training documentation)	6 Years
Patient billing/payment or fee schedule	7 Years
Third-Party Insurance Claims, records & correspondence	7 Years
Immunization Records [AMA Code: 7.05(6)]	Permanently
Medicaid or Medicare [Medicare: 482.24 (b)(1)]	5 Years
Adult Records	6 Years minimum (7 if hospital-based)
Minor Records	Age 21 (age of maturity, plus statute of limitations) or age 24 (if hospital-based)
Deceased Adult Records	6 years minimum from time of death
Mammograms	5 to 10 Years
Ob/GYN	Age 21 (age of maturity, plus statute of limitations)
X-rays	4 years minimum
Operative Narratives, Patient Master Lists, Birth & Death Registry	Permanently

Sample Letter | *Drug Enforcement Agency Letter*

Drug Enforcement Administration
Registration Section ODR
P.O Box 2639
Springfield, VA 22152-2639

To Whom It May Concern,

My name is Dr. _____. My License # is _____. My DEA # is
_____. Effective, _____, I wish to retire my DEA registration number.

Best Regards,
Dr. _____

SELECT SOURCES

AHIMA e-HIM Work Group on Maintaining the Legal EHR. "Update: Maintaining a Legally Sound Health Record—Paper and Electronic." *Journal of AHIMA* 76, no.10 (November-December 2005): 64A-L.

April Robertson, MPA, RHIA, CHSPS, FAHIMA, *Off-site Storage: No More "Out of Sight, Out of Mind"*, Journal of AHIMA, (May 25, 2010), (Accessed May 12, 2014).

American Dental Association, *Guide to Closing A Dental Practice*, (American Dental Association) 2004/2008: American Dental Association, Chicago.

http://dev.ada.org/sections/professionalResources/pdfs/office_closingpractice.pdf (Accessed May 14, 2014).

American Health Lawyers, *Representing Physician's Handbook, Third Edition*, (American Health Lawyers Association) 2012, 2009: American Health Lawyers Association, Washington, DC.

American Medical Association, *AMA Code of Ethics Opinion 7.3, Records of Physician Upon Retirement or Departure from a Group*, <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion703.page> (Accessed May 13, 2014).

American Medical Association, *AMA Code of Ethics Opinion 7.05, Retention of Medical Records*, <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion705.page> (Accessed May 13, 2014).

American Medical Association, *AMA Code of Ethics Opinion 8.11, Neglect of a Patient*, <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion811.page?> (Accessed May 13, 2014).

American Medical Association, *AMA Code of Ethics Opinion 8.115, Termination of Physician-Patient Relationship*, <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion8115.page?> (Accessed May 13, 2014).

American Medical Association, *Closing Your Practice* (American Medical Association) 1988: American Medical Association, Chicago.

American Medical Association, *Closing Your Practice: 7 Steps to a Successful Transition*. (American Medical Association) 1997: American Medical Association, Chicago.

Corneila M. Dorfschmid, PhD; Michael Maffeo, JD, MPH, *Managing Risks When Implementing the New E.H.R disclosure Accounting Requirements of A.R.R.A*, Journal of AHIMA, November 2009.

Daniel Kasinec, FACMPE. *Process & Checklist For Closing Your Practice* (Schneck). ACMPE Paper, August 2002.

Record Maintenance Department, Record Production & Maintenance, Dartmouth Hitchcock <http://www.dartmouth.edu/~library/recmgmt/production.html?mswitch-redir=classic> (Accessed May 13, 2014.)

Internal Revenue Service, *Closing A Business Checklist*, <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Closing-a-Business-Checklist> (accessed May 13, 2014).

Karen Schecter, *Closing Your Practice: What To Do And When To Do It*, American Medical News, American Medical Association, Feb. 18, 2008.

Karla L. Kinderman, J.D, LL.M, *Medicolegal Forms with Legal Analysis: Documenting Issues in the Patient Physician Relationship*, American Medical Association, 1999.

Laurie A Rinehart-Thompson, JD, RHIA, CHPA, "Storage Media Profiles and Health Record Retention Practice Patterns in Acute Care Hospitals," Perspectives in Health Information Management, AHIMA Foundation,

Lisa H. Schneck. *Closing down a medical practice: Patients, employees and details need attention when a group shuts down*. MGMA Connexion, Vol. 1, Issue 3, November 2001.

Louisiana Medical Society, *Closing A Medical Practice-Medical Legal Guidelines*, <http://www.lsms.org/legal/closemedprac.asp> (accessed May 14, 2014).

Massachusetts Medical Society, *Issues For The Retiring Physician*, (Massachusetts Medical Society, Working Paper 2012) (available at <http://www.massmed.org/retiring/#.U3PkdNyPJG4>).

Ohio State Medical Association, *Closing A Practice Packet*, Ohio Medical Association 2002.

Robert Stanyon, MS, RN, Assistant Vice President, *Risk Management & Research, Closing Your Office Practice-RX For Change A Risk Management Guide*, FOJP Service Corporation, 2003, No. 3.

Steven Harris, *Dissolving A Practice Takes More Than Closing The Door*, American Medical News, American Medical Association, (June 15, 2009).

Tennessee Medical Association, *Closing A Practice*, Tennessee Medical Association.