Must notify the RI Medical Society
331-3207

Practice closing? Remember to transfer patient records

Question *I plan to close my practice in the near future. Physical plant concerns aside, I realize the professional and ethical obligations I have to my patients regarding transfer of medical records. What is entailed in making a fair, responsible and legally acceptable transfer of records to other community physicians?*

Answer As a physician, you have a responsibility to protect your patients' health information while at the same time ensuring its availability for continuity of care. There are several issues that need to be addressed with respect to the transfer of your patients' medical records during and after closure. The key ones include retention, storage and accessibility, and budget.

Retention

The physician is bound by certain federal and state statutes during and after the practice's closure. You should contact your state health department and licensing authorities to obtain their record transfer guidelines or recommendations. If these don't exist, you should review the state's requirements for record retention for adult and minor patients.

If you participate in the Medicare or Medicaid programs, you are required to retain records in their original or legally produced form for at least five years to comply with the Medicare Conditions of Participation.

Federal laws govern the transfer of records of patients who have received services pertaining to alcohol and drug abuse education, training, treatment, rehabilitation or research. The law states that the patient must produce a written authorization for these records to be transferred to another physician.

If your state does not specify the length of time records must be kept, then you need to be aware of and adhere to the state's malpractice statute of limitations for adults and minor patients.* We recommend you use the time period prescribed by the statute of limitations as a minimum, because the statute may not begin to run until the potential plaintiff learns of the causal relation between an injury and the care received. If the patient is a minor, records should be retained until the patient reaches the age or majority, as defined by the state law, plus the period of the statute of limitations.

* RI law does not set a maximum statute of limitations. Therefore, it is best to check with your malpractice carrier's risk management department for their advice on record retention issues that may be related to your specialty.

Storage and accessibility

Generally, a physician remains liable for accidental or incidental disclosure of health information during and after a closure.

If the records are not being transferred to another physician, they may be archived with a reputable commercial storage firm. Some physicians rent space from another physician or store the records in their basements at home.

If the records are transferred to another physician, a written agreement outlining the terms and obligations should be executed. You are responsible for ensuring that records are stored safely for an appropriate length of time.

If you use a commercial storage company, be sure to incorporate specific provisions into your agreement with respect to confidentiality and prompt return of information upon your request.

There should also be language regarding prohibition against selling, sharing, discussing, transferring or otherwise disclosing confidential information with any other individuals or businesses, protection of information against theft, loss, unauthorized destruction or other unauthorized access, etc. Your malpractice insurance carrier should be able to assist you with this agreement.

Patients should receive only copies of their medical records upon written request. The originals must be retained until the required retention period has expired.

Budget

The manner in which you store records may depend upon your budgetary constraints. You will have to weigh the cost associated with using a commercial firm against the potential cost associated with accidental destruction or loss of records that could occur when storing them in your home or at another physician's office. In addition, consider other expenses including labor, copy equipment, storage boxes and supplies, and transportation costs to the storage location.

The process

Once you have determined where and how you will store the patient records, it is time to begin the actual process of notifying your patients and disseminating records and information contained in the records.

First, notify your malpractice insurance carrier to make sure that your coverage continues even after the practice is closed. We also recommend that you consult your attorney.

Next, make sure that all records are complete, including dictated reports, interpretations of tests, etc. To minimize the amount of storage space needed, purge records as appropriate.

Notify patients and give them an opportunity to obtain copies of their records or have the originals forwarded to their new physician.

At a minimum, send a letter to your active patients (those you have seen in the past 12 months) of your plans 60 to 90 days in advance of your closure. We recommend registered mail in the case of high-risk patients.

The letter should include the following: office closing date, notification of where the records will be stored and how to access them, release of information form to be completed to receive a copy of their medical record, deadline for submitting record requests, and information on how to locate a new physician/health care provider.

Place a copy of the notification in each patient's chart. You also should place any returned letters, with the associated envelopes, in the appropriate patients' charts.

Notify your referring physicians and other professional associates. A letter would be most appropriate. Finally, print announcements about the closure in the local newspapers. Keep copies of the announcements.

There is nothing that says you can't charge patients for copies of their original records. We recommend, however, that you don't charge patients before the closure. After the closure you could charge a nominal fee for copying and sending the patients their records.

You will need to establish a method for honoring record requests before and after the practice closes. Hire staff or obtain resources necessary to honor the requests for the established time period.

10.4 **Physician Self-treatment or Treatment of Immediate Family Members**. A physician is not authorized to prescribe a controlled substance to one self or an immediate family member under any circumstances.

10.5 Discharging a **Patient from a Practice.** Periodically, a physician/practice may need to terminate the physician-patient relationship. This shall be done via written notice, which shall be documented in the medical record. The physician/practice must be available to the patient for thirty (30) days for medication refills, urgent or emergent conditions. A physician does not have to refill controlled substances if there is a suspicion of diversion.

10.6 **Closing a Medical Practice**.

(a) In the event of a planned voluntary closure of a medical practice, the physician shall, at least ninety (90) days before closing his or her practice, give public notice as to the disposition of patients' medical records in a media venue with, at a minimum, statewide influence, and shall notify the Rhode Island Medical Society and the Board of the location of the records. The public notice shall include the date of the physician's retirement, and where and how patients may obtain their records both prior to and after closure of the physician's practice.

(b) The heirs or estate of a deceased physician who had been practicing at the time of his or her death shall, within ninety (90) days of the physician's death, give public notice as to the disposition of patients' medical records in a media venue with a statewide circulation, and shall notify the Rhode Island Medical Society and the Board of the location of the records.

(c) Any physician closing his or her practice, or the heirs or estate of a deceased physician who had been practicing at the time of his or her death, shall store the physician's patient records in a location and manner so that the records are maintained and accessible to patients.

(d) Any person or corporation or other legal entity receiving medical records of any retired physician or deceased physician who had been practicing at the time of his or her death, shall comply with and be subject to the provisions of RIGL Chapter 37.3, the *Confidentiality of Health Care Information Act*, and shall be subject to the rules and regulations promulgated in accordance with RIGL § 23-1-48 and with the provisions of RIGL § 5-37-22(c) and (d), even though this person, corporation, or other legal entity is not a physician.

Section 11.0 ***Mammography and Medical Records***

Mammography

11.1 (a) All aspects of mammography services shall be performed in accordance with the Mammography Quality Standards Reauthorization Act of 1998, Public Law 105-248, and 21 C.F.R. Part 900.

(b) Pursuant to RIGL §23-4.9-1, each facility that takes a mammography x-ray of any individual within Rhode Island shall keep and maintain that mammography x-ray for the life of the individual. However, any mammography x-ray may be destroyed if the

individual has had no contact with the mammographic imaging facility for a period exceeding fifteen (15) years.

Medical Records

11.2 Medical records and medical bills may be requested by the patient or the patient's personal representative. All medical record requests to physicians shall be made in writing through a properly executed Authorization for Release of Health Care Information.

(a) (1) Reimbursement to the physician for providing a patient a copy of their medical record, regardless of format, shall not exceed seventy-five cents ($0.75) per page for the first fifty (50) pages. After fifty (50) pages, the fee shall not exceed fifty cents ($0.50) per page. If a medical record is greater than two hundred and twenty-five (225) pages, the total charge will not exceed one hundred and twenty dollars ($125). If a health record is transferred electronically (e.g., USB, CD or other electronic means), the fee shall be consistent with the number of pages transferred and, if there are greater than two hundred and twenty-five (225) pages, shall not exceed one hundred twenty-five dollars ($125.00). An additional charge to reflect actual cost of postage or electronic transfer is permissible.

(2) **[DELETED]**

(3) A special handling fee of an additional twenty dollars ($20.00) may be charged if the records must be delivered to the patient or authorized representative within forty-eight (48) hours of the request.

(4) Fees shall be adjusted for inflation on an annual basis by the Board using United States Bureau of Labor Statistics calculator, adjusting rates to the most recent completed year. The increase will be effective on 1 October 2016, and on the 1st day of October in each succeeding year.

(5) **Family Discount**. Reimbursement to the physician for providing a family a copy of their respective medical records shall not exceed seventy-five cents ($0.75) per page for the first fifty (50) pages. After fifty (50) pages, the fee shall not exceed fifty cents ($0.50) per page. At no time can the cost per record exceed twenty-five dollars ($ 25) each, if properly executed Authorization for Release of Health Care Information requests are presented at the same time. An additional charge to reflect actual cost of postage or electronic transfer is permissible.

(b) The physician may not require prior payment of charges for medical services as a condition for obtaining a copy of the medical record. The physician may not require prepayment of charges for duplicating or retrieving records as a condition prior to fulfilling the patient's request for the medical record if the request is for the purpose of continuity of care. Copying of X-rays or other documents not reproducible by photocopy shall be at the physician's actual cost plus reasonable fees for clerical service not to exceed twenty-five dollars ($25.00). Charges shall not be made if the record is requested for immunization records required for school admission or by the applicant or beneficiary or individual representing an applicant or beneficiary for the purposes of supporting a claim or appeal under the provision of the Social Security

Act or any federal or state needs-based benefit program such as Medical Assistance, RIte Care, Temporary Disability Insurance and Unemployment compensation.

(c) No fees shall be charged to an applicant for benefits in connection with a Civil Court Certification Proceeding or a claim under the Worker's Compensation Act RIGL § 28-29-38 as reflected in RIGL § 23-17-19.1(16).

(d) Requested records must be provided within thirty (30) days of the receipt of the written request or signed authorization for records. Requests for medical records made by authorized third parties (e.g., attorneys representing the patient, attorneys not representing the patient, a patient's estate on behalf of the patient, or insurance companies) submitting a properly executed Authorization for Release of Information shall be billed at two dollars and fifty cents ($2.50) per page for the first ten (10) pages, then seventy-five cents ($0.75) per page for the next fifty (50) pages, then fifty cents ($0.50) per page. An additional charge to reflect actual cost of postage is permissible.

(e) Should instances arise relating to the retrieval and copying of medical records which are not specifically covered by these Regulations, a fee structure consistent with that described above shall apply.

(f) No fees shall be charged when a medical record is being sent from one provider to the next in the context of a consultation.

11.3 Medical Records shall be stored by physicians or their authorized agents for a period of at least seven (7) years unless otherwise required by law or regulation.

11.4 Medical Records shall be legible and contain the identity of the physician or physician extender and supervising physician by name and professional title who is responsible for rendering, ordering, supervising or billing each diagnostic or treatment procedure. The records must contain sufficient information to justify the course of treatment, including, but not limited to: active problem and mediation lists; patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

TITLE 5
Businesses and Professions

CHAPTER 5-37
Board of Medical Licensure and Discipline

SECTION 5-37-22

§ 5-37-22 Disclosures. – (a) Any physician who is not a participant in a medical insurance plan shall post a notice, in a conspicuous place in his or her medical offices where it can be read by his or her patients, which reads, in substance, as follows:

"To my patients:

I do not participate in a medical insurance plan. You should know that you will be responsible for the payment of my medical fees."

(2) Any physician who fails to post this notice is not entitled to charge his or her patients any amount for medical fees in excess of that allowed had the physician participated in a medical insurance plan.

(b) Every physician shall disclose to patients eligible for medicare, in advance of treatment, whether the physician accepts assignment under medicare reimbursement as payment in full for medical services and/or treatment in the physician's office. This disclosure is given by posting in each physician's office, in a conspicuous place, a summary of the physician's medicare reimbursement policy. Any physician who fails to make the disclosure as required in this section is not allowed to charge the patient in excess of the medicare assignment amount for the medical procedure performed.

(c) When a patient requests, in writing, that his or her medical records be transferred to another physician, the original physician shall promptly honor the request. The physician is reimbursed for reasonable expenses (as defined by the director pursuant to § 23-1-41) incurred in connection with copying the medical records.

(d) Every physician shall, upon written request of any patient (or his or her authorized representative as defined in § 5-37.3-3(1)) who has received health care services from the physician, at the option of the physician either permit the patient (or his or her authorized representative) to examine and copy the patient's confidential health care information, or provide the patient (or his or her authorized representative) a summary of that information. If the physician decides to provide a summary and the patient is not satisfied with a summary, then the patient may request, and the physician shall provide, a copy of the entire record. At the time of the examination, copying or provision of summary information, the physician is reimbursed for reasonable expenses (as defined by the director pursuant to § 23-1-48) in connection with copying this information. If, in the professional judgment of the physician, it would be injurious to the mental or physical health of the patient to disclose certain confidential health care information to the patient, the physician is not required to disclose or provide a summary of that information to the patient, but shall upon written request of the patient (or his or her authorized representative) disclose that information to another physician designated by the patients.

(e) Every physician who has ownership interest in health facilities or laboratories, including any health care facility licensed pursuant to chapter 17 of title 23, any residential care/assisted living

facility licensed pursuant to chapter 17.4 of title 23, any adult day care program licensed or certified by the director of the department of elderly affairs, or any equipment not on the physician's premises, shall, in writing, make full patient disclosure of his or her ownership interest in the facility or therapy prior to utilization. The written notice shall state that the patient has free choice either to use the physician's proprietary facility or therapy or to seek the needed medical services elsewhere.

American Medical Association

Physicians dedicated to the health of America

Ending the Patient-Physician Relationship

Ending the Patient-Physician Relationship

Once a patient-physician relationship is begun, a physician generally is under both an ethical and legal obligation to provide services as long as the patient needs them. There may be times, however, when you may no longer be able to provide care. It may be that the patient is noncompliant, unreasonably demanding, threatening to you and/or your staff, or otherwise contributing to a breakdown in the patient-physician relationship. Or, it may be necessary to end the relationship simply due to relocation, retirement, or unanticipated termination by a managed care plan and/or employer.

Regardless of the situation, to avoid a claim of "patient abandonment," a physician must follow appropriate steps to terminate the patient-physician relationship. Abandonment is defined as the termination of a professional relationship between physician and patient at an unreasonable time and without giving the patient the chance to find an equally qualified replacement. To prove abandonment, the patient must show more than a simple termination of a patient-physician relationship. The plaintiff must prove that the physician ended the relationship at a critical stage of the patient's treatment without good reason or sufficient notice to allow the patient to find another physician, and the patient was injured as a result. Usually, expert evidence is required to establish whether termination in fact happened at a critical stage of treatment.

A physician who does not terminate the patient-physician relationship properly may also run afoul of ethical requirements. According to the AMA's Council on Ethical and Judicial Affairs, a physician may not discontinue treatment of a patient as long as further treatment is medically indicated, without giving the patient reasonable notice and sufficient opportunity to make alternative arrangements for care. Further, the patient's failure to pay a bill does not end the relationship, as the relationship is based on a fiduciary, rather than a financial, responsibility. According to the AMA's Code of Medical Ethics, Opinion 8.115, physicians have the option of terminating the patient-physician relationship, but they must give sufficient notice of withdrawal to the relatives, or responsible friends and guardians to allow another physician to be secured.

Appropriate steps to terminate the patient-physician relationship typically include:

1. Giving the patient written notice, preferably by certified mail, return receipt requested;
2. Providing the patient with a brief explanation for terminating the relationship (this should be a valid reason, for instance non-compliance, failure to keep appointments.)
3. Agreeing to continue 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 (a physician may want to extend the period for emergency services);
4. Providing resources and/or recommendations to help a patient locate another physician of like specialty; and
5. Offering to transfer records to a newly-designated physician upon signed patient authorization to do so.

Following this protocol may be easier in some situations than others. For example, if a physician has signed a covenant-not-to-compete, chances are the employer will not hand over the patient list upon notice of departure. In instances such as these, you (in consultation with your attorney) may want to provide a model patient termination letter to the party withholding your patients' addresses, and request that the addresses and letter be merged for distribution to your patients. Ideally, you should not be in a contractual arrangement that makes contacting your patients difficult. However, if you find yourself in this situation, work with an attorney to ensure that appropriate steps are taken.

Checklist (prior to closing)

- Office insurance, both personnel and contents, must be maintained until business is formally concluded. File final unemployment return, cancel worker's compensation, office contents and liability policies when premises are totally vacated. Keep any accounts receivable coverage until accounts are paid or turned over to a collector.

- Professional liability may be cancelled only if you plan to cease practicing entirely. If you've been covered under a "claims made" policy, arrange for your "tail" coverage. **BE SURE TO KEEP ALL OLD POLICIES EASILY ACCESSIBLE.**

- Notify all suppliers and request final statements. You may be able to return some unopened containers for credit.

- Notify utilities, including telephone, of the date you wish service discontinued.

- Notify Board of Pharmacy (401-222-2828); state Medicaid and Medicare programs, local Blue Cross (401-459-1000), United Healthcare of NE (401-737-6900); Neighborhood Health Plan of RI (459-6000).

- Keep business checking account open for three months after closing. This should allow all bills to be paid. Deposits from patients, insurance payments may straggle in after that date, but can be deposited to your personal account, so long as a record is kept. Check with your accountant.

- Notify corporate retirement plan of you and your employees' intentions.

- Make arrangements for retention of business and personnel records.

- Discontinue magazine subscriptions and ask for refund or notify printers of your new address.

- Cancel or change status in personal and/or professional associations.

- Leave a forwarding address with the post office.

- Write "Retired—Return to Sender" on all "junk mail".

- Dispose of drugs according to DEA instructions. Destroy all unused prescription pads.

- Securely store all diplomas, licenses, indications of medical membership.
- Give some thought to keeping ;your answering service active for anywhere between three months to a year, depending upon local circumstances, your specialty and/or patient population.
- Be sure to advise the local Medical Society of the location of your remaining records. In Rhode Island the phone number is 401-331-3207.
- Send personal letters of appreciation to individuals who have helped you in your career.
- Donate books, journals to a medical library.

DONALD G. KAUFMAN, M.D.

WISHES TO ANNOUNCE HIS RETIREMENT
FROM THE PRACTICE OF MEDICINE
ON JUNE 30, 2006

I wish to thank my patients and colleagues who have helped make my medical career rewarding and fulfilling.

Records of my primary care patients will be available for transfer upon request. All gastroenterology patients records will remain at

GASTROENTEROLOGY ASSOCIATES, INC.
44 West River Street
Providence, RI 02904
Tel: 401-274-4800

Sample

PJ 12/07/14

NOTICE

Vincent F. Vacca, M.D., F.A.C.G.

announces
his retirement from private practice effective
December 31, 2014.

Dr. Vacca introduces and welcomes

P. Wilfredo Canchis, M.D.

who is assuming the practice responsibilities on:
January 1, 2015.

Staffing and office phone numbers
remain unchanged for appointment and other issues.

401-383-0400

SAMPLE

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401-333-9090

Cornerstone Records Management
401-885-0088

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1-800-934-3453

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