

# LEGAL *Alert*

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## Medical Records Policy Licensure Requirement *and* Model Medical Records Policy for Michigan Physicians

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**The Michigan Public Health Code (the "Code"), at MCL § 333.16177(4), requires a physician or other applicant for an initial Michigan health professional license, or a licensee applying to renew a license, to provide the Michigan Department of Licensing and Regulatory Affairs (the "Department"), on the application or the license renewal form, with an affidavit stating that he or she has a written policy for protecting, maintaining, and providing access to his or her medical records in accordance with Section 16213 of the Code. In addition, the required policy must provide for compliance with Section 16213 in the event that the applicant or licensee sells or closes his or her practice, retires from practice, or otherwise ceases practice. Section 16177(4) requires an applicant or licensee to make the written policy available to the Department upon request.**

The following is a summary of the Code's medical records requirements for health professional licensure purposes and a model medical records policy for use by physicians and their medical practices.

### Summary of Code's Medical Records Requirements for Health Professional Licensure

Section 16213 of the Code, codified at MCL § 333.16213, establishes requirements which Michigan physicians and other licensed health professionals must comply with as a condition of their licensure. Physicians and their medical practices are permitted to exceed the minimum requirements established by the Code. In addition to the Code's requirements, physicians and other health professionals remain responsible to comply with other applicable laws and regulations, such as the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended (including the privacy and security regulations) and the Michigan Medical Records Access Act, as amended. The definitions of terms defined in Section 16213 ("medical record" or "record," "medical records company," and "patient") are provided at the end of this summary. Explanatory comments on issues of importance to physicians are identified by italics.

#### Requirement to Maintain Medical Records

A physician or other individual licensed under Article 15 of the Code (e.g., physician's assistants, registered nurses, physical therapists, etc.) is required to keep and maintain a record for each patient for whom he or she has provided medical services, including a full and complete record of tests and examinations performed, observations made, and treatments provided. MCL § 333.16213(1).

#### Maintenance Requirement

Medical records must be maintained in such a manner as to protect their integrity, to ensure their confidentiality and proper use, and to ensure their accessibility and availability to each patient or his or her authorized representative as required by law. MCL § 333.16213(1).

### Minimum Required Retention Period

Unless a longer retention period is otherwise required under federal or state laws or regulations or by generally accepted standards of medical practice, a licensee is required to keep and retain each record for a minimum of seven (7) years from the date of service to which the record pertains.

MCL § 333.16213(1).

*Physicians should note that contractual agreements and terms of participation with third party payers also may require longer retention periods.*

### Destruction of Medical Records Less than Seven (7) Years Old

A licensee may destroy a record that is less than seven (7) years old only if **both** of the following are satisfied:

- a. The licensee sends a written notice to the patient at the last known address of that patient informing the patient that the record is about to be destroyed, offering the patient the opportunity to request a copy of that record, and requesting the patient's written authorization to destroy the record.
- b. The licensee receives written authorization from the patient or his or her authorized representative agreeing to the destruction of the record.

MCL § 333.16213(1)(a)-(b).

*Physicians should note that even when Section 16213 permits medical records to be destroyed, physicians first need to evaluate relevant factors before identifying medical records for potential destruction, such as statute of limitations periods, and whether the physician's professional liability insurer has any recommended or required retention periods. Additional factors are identified in the accompanying model policy.*

### Destruction of Medical Records Older than Seven (7) Years

Except as otherwise provided by Section 16213(1) or federal or state laws and regulations, medical records required to be maintained pursuant to Section 16213(1) may be destroyed or otherwise disposed of after being maintained for seven (7) years.

MCL § 333.16213(4).

*As mentioned previously, physicians should consider any relevant factors before destroying any medical record.*

### Permitted Methods of Destruction

If medical records are destroyed or otherwise disposed of, those records shall be shredded, incinerated, electronically deleted, or otherwise disposed of in a manner that ensures continued confidentiality of the patient's health care information and any other personal information relating to the patient.

MCL § 333.16213(4).

### Obligations on Retirement, Sale or Closure of Medical Practice

If a licensee or registrant sells or closes his or her practice, retires from practice, or otherwise ceases to practice, the licensee or the personal representative of the licensee (if the licensee is deceased) shall not abandon the medical records required under Section 16213 and shall send a written notice to the Department

that specifies who will have custody of the medical records and how a patient may request access to or copies of his or her medical records and shall do either of the following:

- a. Transfer the records required under Section 16213(1) to any of the following:
  - (1) A successor licensee.
  - (2) If requested by the patient or his or her authorized representative, to the patient or a specific health facility or agency or other health care provider licensed under Article 15 of the Code.
  - (3) A health care provider, a health facility or agency, or a medical records company with which the licensee had contracted or entered into an agreement to protect, maintain, and provide access to those records required under Section 16213(1).
- b. In accordance with Section 16213(1), as long as the licensee or the personal representative of the licensee (if the licensee is deceased) sends a written notice to the last known address of each patient for whom he or she has provided medical services and receives written authorization from the patient or his or her authorized representative, destroy the records required under 16213(1). The notice shall provide the patient with thirty (30) days to request a copy of his or her records or to designate where he or she would like his or her medical records transferred and shall request from the patient within thirty (30) days written authorization for the destruction of his or her medical records. If the patient fails to request a copy or transfer of his or her medical records or to provide the licensee with written authorization for the destruction, then the licensee or the personal representative of the licensee shall not destroy those records that are less than seven (7) years old but may destroy, in accordance with Section 16213(4), those that are seven (7) years old or older.

MCL § 333.16213(3).

### Enforcement by Department in the Event of Improper Destruction or Disposal

If medical records are destroyed or disposed of other than as provided by Section 16213(4), the Department may take action including, but not limited to, contracting for or making other arrangements to ensure that those records and any other confidential identifying information related to the patient are properly destroyed or disposed of to protect the confidentiality of patient's health care information and any other personal information relating to the patient. Before taking action, the Department, if able to identify the licensee responsible for the improper destruction or disposal of the medical records at issue, shall send a written notice to that licensee at his or her last known address or place of business on file with the Department and provide the licensee with an opportunity to properly destroy or dispose of those medical records unless a delay in the proper destruction or disposal may compromise the patient's confidentiality. The Department may assess the licensee with the costs incurred by the Department to enforce this subsection.

### **Administrative Fine for Failure to Comply with Section 16213**

A person who fails to comply with Section 16213 is subject to an administrative fine of not more than \$10,000.00 if the failure was the result of gross negligence or willful and wanton misconduct. MCL § 333.16213(5).

### **Contracting with Others to Achieve Compliance**

If a licensee is unable to comply with Section 16213, the licensee shall employ or contract, arrange, or enter into an agreement with another health care provider, a health facility or agency, or a medical records company to protect, maintain, and provide access to those records required under Section 16213(1). MCL § 333.16213(2).

### **Ownership of Medical Records**

Nothing in Section 16213 shall be construed to create or change the ownership rights to any medical records. MCL § 333.16213(6).

### **Definitions. As used in Section 16213:**

- a. "Medical record" or "record" means information, oral or recorded in any form or medium, that pertains to a patient's health care, medical history, diagnosis, prognosis, or medical condition and that is maintained by a licensee in the process of providing medical services.
- b. "Medical records company" means a person who contracts for or agrees to protect, maintain, and provide access to medical records for a health care provider or health facility or agency in accordance with this section.
- c. "Patient" means an individual who receives or has received health care from a health care provider or health facility or agency. Patient includes a guardian, if appointed, and a parent, guardian, or person acting in loco parentis, if the individual is a minor, unless the minor lawfully obtained health care without the consent or notification of a parent, guardian, or other person acting in loco parentis, in which case the minor has the exclusive right to exercise the rights of a patient under this section with respect to his or her medical records relating to that care.

MCL § 333.16213(7).

# Sample Medical Records Policy

**Instructions:** Physicians and their medical practices may use this model policy for guidance when drafting a Medical Records Retention and Disposition Policy for Michigan health professional licensing compliance per the requirements of the Michigan Public Health Code § 333.16177 and § 333.16213. Physicians are responsible to modify this model policy to suit the particular needs of their medical practices. For example, this model policy is drafted under the assumption that the physician's medical practice is organized as a P.C. or P.L.L.C. and is led by an officer called the "President." If a physician's medical practice is not organized in this manner, the physician should modify this model policy accordingly. The final version of the policy adopted by the medical practice should be signed by the practice and each practitioner. Each practitioner should receive a copy of the complete policy for his or her review and signature. A copy of the complete policy signed by each practitioner should be placed in the practitioner's licensing or administrative file maintained by the medical practice. **These instructions should be deleted from the final version of the policy adopted by the medical practice.**

[ Medical Practice Name ] [ P.C. or P.L.L.C. ]

## Medical Records Retention and Disposition Policy

### A. Policy Statement

It is the policy of \_\_\_\_\_ (the "Practice") and each of its physicians, physician's assistants, registered nurses, and other licensed health professionals (each a "Practitioner") (1) to establish and maintain a medical record for each patient to whom medical services are provided, including a full and complete record of tests and examinations performed, observations made, and treatments provided; (2) to comply with applicable laws regulating the retention and disposition of medical records (including, but not limited to, the requirements of MCL § 333.16177 and § 333.16213 of the Michigan Public Health Code and any amended or successor statutes) and third party payers; and (3) to comply with the requirements of this Medical Records and Disposition Policy (the "Policy").

For purposes of this Policy, "medical record" or "record" shall mean information, oral or recorded in any form or medium, whether original or reproduced, that pertains to a patient's health care, medical history, diagnosis, prognosis, or medical condition and that is maintained by a Practitioner in the process of providing medical services.

This Policy does not govern, and is not intended to address, (1) compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended, the privacy and security regulations, as amended, implemented pursuant to HIPAA, or compliance with the Michigan Medical Records Access Act, as amended or (2) the ownership of the clinical data and other information contained within medical records or the ownership of the media (e.g., paper, tape, hard disk drive, or other electronic media) containing medical records.

# SAMPLE MEDICAL RECORDS POLICY

## B. Retention Period for Medical Records

Unless a longer retention period is otherwise required by (1) applicable law, regulation or contractual agreement, or (2) generally accepted standards of medical practice, or (3) by the Practice, the Practice and each Practitioner shall keep and retain each medical record for a minimum of seven (7) years from the dates of service to which the medical record pertains.

## C. Maintenance of Medical Records

The Practice and each Practitioner is responsible to ensure that medical records are kept and maintained in such a manner as to protect their integrity, to ensure their confidentiality and proper use, and to ensure their accessibility and availability to each patient or his or her authorized representative as required by applicable law.

## D. Process for Destruction and Disposal of Medical Records

Neither the Practice nor any Practitioner is permitted to destroy and dispose of medical records except in compliance with this Policy and applicable law. Medical records may be destroyed and disposed of only with the prior written authorization of the President of the Practice following consultation with the Practitioner with principal responsibility for the patient's care, when feasible, and only then when permitted by and in compliance with this Policy and applicable law. When determining whether or not to destroy and dispose of medical records, factors which should be taken into consideration include, but are not necessarily limited to, the following:

1. Whether or not the dates of service recorded in the medical records are more than or less than seven (7) years from the last date of service to the patient recorded therein. The patient notification standards enumerated in MCL § 333.16213 of the Michigan Public Health Code (including any amended or successor statute) shall be reviewed and if applicable complied with prior to any destruction and disposal of medical records. The Practice and Practitioner shall not destroy and dispose of any medical records which are less than seven (7) years old from the last recorded date of service except when permitted by the standards enumerated in MCL § 333.16213, provided that a longer retention period does not apply per Section B of this Policy.
2. Whether or not the statute of limitations applicable to any professional liability claims which the patient may assert has expired, and whether or not the Practitioner's professional liability insurer has any recommended or required retention periods. Particular attention shall be paid to medical records involving treatment furnished to minors, due to differing statute of limitations periods.
3. Whether or not there is a contractual obligation with a health plan or other party to maintain the records for a specified period of time.
4. Whether or not a retention period greater than seven (7) years from the last date of service is required by law, contract, the Practitioner, or the Practice.
5. Whether or not the patient or other treating providers are likely to have need for the medical records for the patient's health care treatment.
6. Whether or not there is any ethical obligation to maintain the records or offer them to the patient prior to destruction and disposal, whether or not required by law.
7. Additional factors which the Practice or Practitioner may determine are relevant.

Before destroying and disposing of medical records permitted by this Policy, the Practice should create and maintain a log which identifies relevant information including the date and method of destruction, name of the patient, general description of the records and dates of service.

Records identified for destruction and disposition are to be shredded, incinerated, electronically deleted, or otherwise disposed of in a manner that ensures continued confidentiality of the patient's health care information and any other personal information relating to the patient, and in compliance with applicable legal standards.

# SAMPLE MEDICAL RECORDS POLICY

## E. Disposition of Medical Records on Practitioner's Retirement or Sale or Closure of the Practice

In the event of the Practitioner's retirement or other cessation of licensed practice, or in the event that the Practice is sold or closed, neither the Practice nor the Practitioner may abandon the medical records required to be maintained by this Policy. The Practitioner will be responsible to send a written notice to the Michigan Department of Licensing and Regulatory Affairs (or successor agency, if applicable), which shall specify who will have custody of the medical records and how a patient may request access to or copies of his or her medical records following the occurrence of such an event. In addition, the Practitioner and the Practice will (1) transfer the records to (a) a successor medical practice or physician who is duly licensed under the laws of Michigan; or (b) if requested by the patient or his or her authorized representative, to the patient or a specific health facility or agency or other health care provider licensed under the laws of Michigan; or (c) a health care provider, a health facility or agency, or a medical records company with which the Practitioner or Practice enters into an agreement to protect, maintain, and provide access to those records as required under this Policy and Michigan law; or alternatively (2) destroy and dispose of the records as permitted and in compliance with this Policy and applicable law including the patient notification standards enumerated in MCL § 333.16213 of the Michigan Public Health Code.

## F. Contracting Permitted

The Practice, with the authorization of the President and notice to each Practitioner, may employ or contract, arrange, or enter into an agreement with another health care provider, a health facility or agency, or medical records company to protect, maintain, and provide access to the medical records as required under this Policy and Michigan law.

## G. Violations of Policy

If the President or the Practice's governing board has reasonable cause to believe that a Practitioner has failed to comply with this Policy, the Practitioner shall be informed of the basis for such belief and the Practitioner shall be afforded an opportunity to cure the failure, if it is capable of cure. If, after hearing the Practitioner's response and after making further investigation as warranted by the circumstances, the Practice's governing board or President determines that the Practitioner has failed to comply with this Policy, corrective action may be taken by the Practice's governing board or the President.

## H. Adoption, Amendment, Repeal and Miscellaneous

This Policy has been duly adopted by the Practice's governing board and may be amended, repealed or superseded only by the Practice's governing board. The interpretation of this Policy and/or its application in a specific situation shall be the exclusive responsibility of the Practice's governing board unless delegated to the President. Each Practitioner affiliated with the Practice shall agree to be bound by the terms and conditions of this Policy. A copy of this Policy will be made available to the Michigan Department of Licensing and Regulatory Affairs upon its request.

**[Medical Practice Name], [P.C. or P.L.L.C.]**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

### Acceptance and Agreement to Policy by Practitioner

The undersigned physician or other licensed Practitioner affiliated with the Practice has read and hereby agrees to be bound by the terms and conditions of the preceding Medical Records Retention and Disposition Policy and as it may be amended or restated hereafter by the Practice's governing board.

\_\_\_\_\_  
Practitioner Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Practitioner Type:

\_\_\_\_\_  
Date



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