CLOSING A PRACTICE: EXIT STRATEGIES

ASAP

3/17/18

[slide 1]

Thank you for the invitation to speak today.

I'm Donna Vanderpool and I'm the Vice President of Risk Management at PRMS

We manage The Psychiatrists Program – medical malpractice insurance for psychiatrists

[slide 2]

Here's what you need to know about me…

[slide 3]

I have no financial relationship with any commercial interest

So no disclosures

[slide 4]

But I do have this disclaimer

While I am an attorney, I'm not your attorney

So nothing I say here is legal advice

I also want to remind you to not shoot the messenger

You are in a regulated industry

Your licensing boards may have requirements for practice closure

Some of which seem ridiculous!

[slide 5]

Here are our objectives

[slide 6]

Let's think about practice closures as either planned or unplanned

And you see here the five basic scenarios

[slide 7]

Starting with planned practice closures

How to do it

[slide 8]

Hopefully you are closing your practice at the end of a long and fruitful career and are doing so when you choose to do so.

Some psychiatrists start thinking of practice closure a year or two in advance.

Others begin the process much closer to their retirement date.

You will want to involve your financial and legal advisers early in the process and they can help you to determine whether you should attempt to sell your practice or simply close it down.

Your malpractice carrier will also have information to assist you in areas related to patient care

Once you have a firm date in mind, you should think about whether it is appropriate to stop accepting new patients.

That will depend largely upon the nature of your practice.

Make certain that new patients who are expecting to establish an ongoing relationship with a psychiatrist understand the limits of your ongoing ability to treat them and are given the choice of seeing someone else from the start

How long it takes to close a practice will be influenced in part by how many active patients you have and how long it takes to terminate the treatment relationship or transfer their care.

We'll talk about sending letters shortly

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Your individual state may have specific requirements for closing down a medical practice.

These can typically be found on your state's licensing board website.

Several states also have detailed guides with state-specific information regarding practice closure.

I've shown a few here.

And just a heads up – some states are absolutely silent on the issue!

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And some states address it by saying to check with your malpractice insurance carrier!

We'll talk more about active patients shortly when we talk about sending letters

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Take a look at all of the contracts you've signed in conjunction with your medical practice.

Will your landlord let you out of your lease with a period of notice or are you bound for the entire term of the lease?

Are you working under contract for a group or you subcontracting with a clinic?

> Most employment contracts will require you to give notice prior to leaving typically 30-90 days but it may be more

Take a look at your vendor contracts.

> If you terminate your contract with your EHR vendor, what will happen to your records?
>
> > Will you get them back in some usable format that will allow you to comply with record requests and use them in the event that you are named in a lawsuit or audited?
> >
> > Will records be stored in the cloud?
> >
> > > Will you have ongoing costs?
> > >
> > > Will these costs be capped or will they increase over time.

If you participate in any insurance plans, dig out your provider manual or access it online to determine how much notice plan participants must receive prior to termination.

What about your malpractice insurance?

> Contact your carrier to determine how long you should keep your policy in place once you've closed the doors on your practice and whether you need to purchase tail coverage

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You will want to notify your staff prior to notifying patients.

In terms of timing, the OR Medical Association recommends 3 months' notice to employees

Given the job market, you may find that knowing the practice is closing may cause some staff members to find new jobs and leave before the office is officially closed.

Be prepared to offer additional compensation as an incentive to stay or in the alternative to hire temporary employees.

And, be prepared to manage employees' feelings of stress and betrayal

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Making provisions for the storage of medical records often ends up being a bigger issue than physicians anticipate so it's a good idea to start thinking about it early in the process.

While our conservative risk management advice is to hold onto records indefinitely, we do appreciate that this is not always practical.

At the bare minimum, you will want to hold onto records for the period required by your state licensing board.

While not all states have medical record retention laws, those that do, typically range from 6-10 years.

It's important to remember that this is from the last date of treatment.

You will also want to keep in mind your state's statute of limitations for the filing of a malpractice lawsuit which may be longer than the retention period.

If you don't have records, it doesn't mean you can't be sued;

it means you can't defend yourself.

Keep in mind that if you treat children they will have additional time in which to file a suit once they reach the age of majority.

Also the statute of limitations will be tolled for a person under a disability until such time as that disability is removed

so an individual whose mental condition has rendered them incapacitated could file suit if capacity is regained – even if it is many years later.

And of course there is no statute of limitations for a board complaint.

With all that in mind, you may determine that there are records that no longer need to be retained and now is a good time to dispose of some of them.

Remember that they must be completely destroyed –

Make certain that you keep a log – patient name and date of destruction

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For those records that you decide to keep, you will want to consider various options:

Document Storage facilities

Your own home

Or another custodian

However this is done, you must ensure that records are kept in such a way as to:

maintain confidentiality

keep safe from theft,

keep safe from damage from such things as flooding, mildew, and pests

stay accessible.

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A document storage facility can be an option for storing your medical records, however there are a few things you need to be aware of

First of all, it should be a facility that routinely stores medical records.

You can go online for names or you might check with others in your area who you know would have had a need to store records – such as a hospital or larger clinic – for recommendations.

As you are considering your various options, carefully review the companies' proposed agreements and watch for the following:

Access:

How easily can you access your records?

Is the facility open 24/7?

If you cannot go to your assigned space and retrieve records directly, what is the time frame in which records can be retrieved?

Remember, if you are (provided) with a valid record request, you will only have so much time in which to respond so you must ensure that records can be obtained in a timely manner.

Non-Payment Provisions:

Pay close attention to provisions in the agreement that outline the facility's remedies in the event of your non-payment of storage fees.

Some contracts provide that the facility retains the right to destroy the contents or even to sell the contents.

Although it may seem unlikely that this would ever occur, consider the consequences in the event that something happened to you or a change in your office staffing caused payment to be overlooked.

Business Associate/Confidentiality Agreement:

If you are a covered entity under HIPAA, and the storage facility will have access to patient information, you must ensure that the facility is willing to enter into a Business Associate Agreement.

If you are not a covered entity, you should still require that the facility agree to maintain the confidentiality of your information if such an obligation is not already laid out in your contract.

[slide 16]

I want to take a moment to remind you of the importance of having a business associate agreement in place with ……

This involved a small pediatric subspecialty practice in Illinois who utilized an entity called FileFax to store inactive patient records.

During a compliance review initiated by OCR, they found that although the practice had been using FileFax to store their records since 2003, they had never had a business associate agreement in place and thus the practice had "failed to obtain satisfactory assurances from Filefax, in the form of a written business associate agreement, that Filefax would appropriately safeguard the PHI" that was in the company's possession.

The practice was required to pay a $31,000 settlement and enter into a corrective action plan.

I want to stress that there is no evidence that there had been any type of breach regarding the practice's information.

This was due simply to the fact that a business associate agreement was not in place.

[slide 17]

Maybe instead you want to retain the records yourself at home

Here are some things to consider

Storage must be secure

From peeping eyes

And from natural disasters such as fire or flood

Some psychiatrists scan their paper records to save on storage space

Be sure the technology you use will be usable in the future

You have colleagues that years ago stored their records on floppy disks

Anyone have a disk drive any more??

[slide 18]

Maybe you want to store your records with another custodian, such as another psychiatrist or an attorney

You need a written agreement

I've included some points to cover

Remember that you can be sued in retirement

And your record is your defense

So you need to ensure you will have access to the record if needed

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If you have an EHR system, think about how your records will be maintained.

Hard copies?

Cloud-based storage?

What about those patients for whom you have both paper and electronic health records?

How will those be maintained?

Can you scan the old chart into the EHR if you haven't already done so.

For ongoing access, will you need to maintain the license on the software so that they can be read?

Will you have to purchase updates?

These are things to clarify with your vendor.

If you do determine that Electronic health records can be destroyed, you can look to The National Institute for standards and technology for guidance.

Currently that guidance may be found is NIST special publication 800-88 guidelines for media sanitization but make certain that you are following current standards when it comes time to destroy records.

If you are getting rid of computers, don't forget about PHI stored on the hard drive. If the hard-drive cannot be wiped clean, it should be removed and destroyed.

You may be surprised to learn that digital copiers and printers have the capability of storing information on their hard drives.

So this too must be considered.

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In this case Affinity Health Plan was required to pay over $1.2 million dollars to settle potential HIPAA violations after they were found to have disclosed the PHI of 344,000 patients when they returned multiple copiers to a leasing agent without erasing the data left on the hard drives.

Digital copiers and printers have the capability of storing information on their hard drives.

Leased equipment often ends up at auction and there are actually people who will buy it just for the chance that there will be usable information on the hard drives.

Leasing companies may wipe the drive clean or let you keep the hard drive at the end of the lease but you need to find out

[slide 21]

The OK medical board addresses this in its guidance on closing a practice

[slide 22]

Let's talk about patient notification

There are two distinct types of notification

> active patients need termination of the treatment relationship
>
> and both active and inactive patients need practice closure notification – and specifically the future location of their records and how to get them

Why is it so important to notify even inactive patients of the practice closure?

> The records – for continuity of care purposes, boards expect that records can be available to former patients

The Rhode Island Medical Board says physicians must “create a way for patients to get their medical records for at least the next 5 years” and “the transfer of the record cannot be delayed due to lack of payment”

Of course the advice is to follow any state requirements

In the absence of guidance from the state, I’m giving an overview of board requirements

> Based on a review of all states’ requirements

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You have to notify active patients

My state survey showed only a few states defined what an active patient is

> And the definitions vary

So if your state doesn’t specify, I think you can choose between seen within past 2 to 3 years

[slide 24]

When to notify patients?

> States vary
>
> Risk managers prefer 3 months notice

In any event, at least 30 days notice

> But again, that’s if you don’t have specific guidance from your state or from the health plans you participate with
>
> > Many of those provider contracts that I’ve seen require 60 days notice

The key is to give proper notice

To avoid an allegation of patient abandonment

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Again, if there's no specific guidance available, all active patients should be notified by letter

Additionally, to notify inactive patients (who may want to request a copy of their records), you may want to consider placing an ad in the newspaper

Again, some states require this and give specific requirements

Length of time ad must run, size of ad, etc.

Just a few examples:

- CT: newspaper notice should be no less than two columns wide and two inches in height…must appear twice, seven days apart
- DC: newspaper notice must be published at least once per month for three months in advance to discontinuing practice
- FL: newspaper notice should be published once a week for four consecutive weeks; within one month of the termination date, a copy of the notice should be sent to the board

States may allow for electronic notification

Ex: WA patients may be notified via electronic communication , if that is the normal method of clinical communication with the patient

And you should supplement individual notices with a sign in the office

And you may want to include the notice in your monthly billing statements, if applicable

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Here's just a reminder of the AMA ethics opinion on termination of the treatment relationship

[slide 27]

Even if you speak to a patient in person and advise them of your retirement, a letter should still be sent to all active patients.

These are the standard termination elements

Note the referral requirement

You do not have to place your patients

Rather, you need to provide referral resources

It can be a hospital's referral program

Several APA district branches have a referral database

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And the APA has a psychiatrist finder for patients

That counts as a referral resource

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Here a summary slide of the risk management advice for patient notification

Certainly you will want to provide your patients with sufficient notice to allow them time to find another psychiatrist before you close your practice.

Generally 3 months is optimal

Make certain that you speak to any other clinicians with whom you may be sharing a patient's care such as in a split treatment relationship.

The therapist can help the patient with the transition and may already have other psychiatrists with whom they routinely work who might be able to take over your patient's care.

You should also post a sign in your waiting area and on your website or other practice social media sites.

Be aware also that some states require that you post a notice in a local paper.

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There may be some patients that you want to actually try to transfer their care to another psychiatrist, rather than terminating

If this done, you don't need a termination letter, but rather a letter confirming that care has been transferred to the new psychiatrist

Do no prescribe beyond your closure date

Remember that you are responsible – and liable – for a patient currently on the meds you prescribed

And, some patients may be particularly upset about your decision to retire

They may drag their feet before finding another psychiatrist

And may try to continue to contact you after your closing date

Just understand that a patient may perceive you are still treating them if you continue to communicate with them after the termination date

And it's on the patients' perception that matters

Your intent is irrelevant

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Just a list of closing details

Patients need to be able to reach you after closure, such as for record releases

That ties in with talking to your licensing board

Ex: Alaska State Medical Board "advises physicians who are planning to take a sabbatical or otherwise close their practice, to advise the board of the location of their medical records prior to their departure so as to facilitate timely access by patients to their medical records"

Ex: Kansas law requires licensees to provide, within 30 days of the practice's closure, the following information to the board:

Location where patient records will be stored

Name, address, and telephone number of the individual or entity designated to maintain the records, and

Date the records are scheduled to be destroyed

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And more reminders on this slide

Prescription pads need to be properly disposed of

shredded

[slide 33]

Just a side note since we are in NY

So the government tells prescribers in NY that they can mail back their prescription forms to the state Bureau of Narcotic Enforcement

Such as when retiring

Presumably, this is so that they don't get into the wrong hands and get misused

And contribute to the opioid crisis, right?

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So the Bureau of Narcotic Enforcement gets audited a few years back

And a key finding is this:

> "The Bureau does not always properly secure or monitor returned prescription forms. As a result, data shows thousands of unused forms, supposedly destroyed, may actually have been used to obtain controlled substances"

My advice - Shred the forms yourself!

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So once retired, what are you going to do?

[slide 36]

Maybe you want to travel the nation on someone else's dime, so you consider locum tenens work

Lots of your colleagues of doing this – because I insure them, so they call us with questions

So I can share some "lessons learned"

> Locum tenens companies typically provide some level of support for the psychiatrists they hire regarding state licensure issues.
>
> > However, psychiatrists should confirm directly with appropriate licensing bodies whether a particular license will be required for the assignment.
> >
> > Obviously, this includes a license to practice medicine if you accept an out-of-state assignment.

As one physician found out, relying solely on an employer to determine legal requirements can be a costly mistake.

An Ohio physician permanently lost her medical license for issuing prescriptions to patients without an in-person examination.

She had been assured by her employer's CEO that the manner of prescribing was legal.

Additionally, an attorney for a national telemedicine organization assured her that the manner of prescribing was proper and legal.

When the Ohio appellate court upheld the medical board's revocation of her license, the court noted that she "did not consult with any other attorney, nor did she contact anyone with the board to determine whether prescribing medications over the internet was permissible in Ohio."

Holzhauser v. State Medical Board of Ohio, 2007 WL 2773472 (Ohio App.)

Also, federal DEA registration is required in each state where controlled substances are prescribed.

Federal DEA registration covers multiple prescribing locations within one state, but it does not cover multiple states.

Additionally, states can require their own registration for controlled substance as well as for legend drugs.

Under the federal Controlled Substances Act, no controlled substance may be prescribed without at least one in-person evaluation of the patient.

Many states adopt this in-person evaluation requirement for legend drugs.

A remarkable number of claims and lawsuits against psychiatrists following inpatient suicides involve psychiatrists working at more than one facility and confusing levels of observation.

> For example, “Level 1” at one facility may call for constant observation while at another facility “Level 1” means 15-minute checks.
>
> When the psychiatrist confuses his or her facility with another facility’s observation levels, patients may inadvertently be given window of opportunity in which to hurt themselves.

Psychiatrists often are asked to sign various forms related to patient services whether the psychiatrist performed the services or not.

> A psychiatrist’s signature may be needed on insurance forms to attest that the patient received the billed-for treatment or on treatment plans to signify that a psychiatrist has reviewed the plan and agrees with it.
>
> A psychiatrist should review the wording of the form he or she is signing. If there is no wording to indicate what the psychiatrist’s signature means, the psychiatrist should annotate his or her signature so that the services that are actually rendered are clear.[2]
>
> A psychiatrist’s signature for peer review or quality assurance purposes, for example, should include an annotation describing what was reviewed.
>
> Signing forms without annotating the signature could be used to infer that the psychiatrist provided services he or she did not provide.
>
> An unannotated signature can be proffered to mean anything anyone—including plaintiff attorneys—wants it to mean.

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In addition to requiring their own controlled substance registration, states can impose other requirements on licensees or registrants.

If a locum tenens assignment means practicing in another state (in-person or via telemedicine), psychiatrists may be required to register with that state's prescription monitoring program, obtain continuing medical education credits, prescribe electronically, or other requirements.

Some states require checking that state's prescription monitoring program before issuing a prescription for a controlled substance.

Even if checking the prescription monitoring program database is not required before prescribing, the risk management advice is to check the database anyway

It's a valuable safety tool

The locum tenens company should clarify psychiatrists' responsibilities before arrival at assignments.

Vague terms, such as "psychiatric services," should be fleshed out.

Will psychiatrists be expected to see patients outside of their subspecialty?

What on-call responsibilities come with the assignment?

Locum tenens companies typically provide medical malpractice insurance coverage for psychiatrists.

Psychiatrists should obtain proof of coverage.

Locum tenens assignments sometimes include supervisory duties for nurse practitioners and/or other providers.

The scope of the nurse practitioner's or other provider's practice, including any prescribing authority, is defined by each state, either by the legislature and/or nursing or other licensing board regulations.

States vary in the extent to which a nurse or other provider's practice is regulated and in the degree of supervision required.

Psychiatrists should have a very clear understanding of what is required by the state's nursing or other licensing board as well as the psychiatrist's own licensing board.

Psychiatrists should know what is expected of them before accepting assignment or agreeing to be a supervisor and before signing-off on a form as a supervisor.

Other organizations that may be involved, such as health insurance companies, hospitals and other facilities, and Medicare/Medicaid, may have their own requirements for supervision.

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Psychiatrists should know the procedure for getting patients admitted to a local hospital.

In some cases, involuntary admission may be required.

Psychiatrists should know how to initiate an involuntary admission if needed.

Having an easy-to-reach contact at the locum tenens company can go a long way to reducing psychiatrists' potential professional liability risks and other problems.

The locum tenens company representative can clarify psychiatrists' duties and help solve disputes that arise during the assignment.

If psychiatrists accept locum tenens assignments that involve telemedicine, those psychiatrists should consider these additional, special concerns.

remember that the practice of medicine occurs where the patient is located.

Services to out-of-state patients typically require an additional medical license.

Also remember that under the federal Controlled Substances Act, no controlled substance may be prescribed without at least one in-person evaluation of the patient.

There is a telemedicine exception to the one in-person evaluation requirement,

but only for telemedicine as strictly defined by the Controlled Substances Act.

Under most circumstances (greatly simplified here), to prescribe without an in-person examination, even via telemedicine, the patient either needs to be in facility with its own DEA registration or the patient needs to be in the physical presence of another provider with his or her own DEA registration.

There are other exceptions that are extremely limited

(if this issue of prescribing controlled substances without an in-person visit is relevant to you, I have an article on this I can share – just stop by the table outside)

States vary in the degree to which they regulate the practice of telemedicine;

some regulate extensively,

others less so.

The field is also changing.

States frequently enact new regulations, so psychiatrists practicing via telemedicine must keep up-to-date.

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Maybe in retirement you want to volunteer your services

I recommend against surrendering your license when you retire

It's easier to keep the license current than it is to get a license reissued after it has been voluntarily surrendered

But it may be easier to get it back in some states for volunteering purposes

In OK, there is a "special volunteer medical license" for those situations where a retired physician as voluntarily surrendered her regular license

In OK, with this license, there's no fee or CME requirements

But the physician cannot be paid

And may only be caring for the needy and indigent

In NC, such a physician cannot work more than 30 days a year

Check with the applicable board

And as always, check on medical malpractice insurance

[slide 40]

Maybe you want to put your expertise to good use and consult with other physicians

I included this chart just to show how low risk consulting with other physicians is

With your expertise, you could be invaluable to

Pediatricians

And other psychiatrists without adolescent expertise

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Just as an example – I am not endorsing this –

The MAVEN project uses retired physicians in their nationwide network of volunteer consultants

Now, I want to bring up one other technical point

I know you would be simply consulting with a patient's treating physician

You are not treating

However, licensure – if consulting with out of state physicians – could still be an issue

Most states say no license is needed

But most of those add "if done infrequently"

But under TX law, no license is need for a medical specialist located in another jurisdiction

who provides only episodic consultation services on request

to a physician licensed in this state

who practices in the same medical specialty;

so an out of state consulting psychiatrist would need a TX license apparently to consult with a TX pediatrician

I told you some state requirements are ridiculous!

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Maybe you want to write about patient treatment – to share information with colleagues

Publishing a psychiatric patient's information can pose legal and ethical issues

Let's talk first about legal concerns

Writing about a patient can breach patient confidentiality

To maintain confidentiality, you need to do more than just removing the patient's name and personal identifiers

This is tricky

If you delete or change one detail, that could change the entire clinical picture

On the other hand, if you include such details, it can become easy for patients, as well as their family, friends, or acquaintances, to recognize the patient through the description in the publication

Which can lead to a breach of confidentiality claim

In addition to breach of confidentiality, writing about patients can expose the psychiatrist to claims of defamation, intentional infliction of emotional distress, and other allegations

So the solution is to get patient consent, right?

That's where the ethical concerns come in.

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This is the APA's take on the issue

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Obtaining proper informed consent for this type of activity can be difficult

Particularly due to the sensitive nature of the psychiatrist-patient relationship

Although the patient has the right to give or withhold consent, their choice may be heavily influenced by transference feelings

Or just may be uncomfortable saying no

And many publication projects involve financial gain for the psychiatrist

This may imply an exploitation of patients for financial gain

Outweighing the potential benefit that is created through sharing the information for education purposes

[slide 45]

As a risk manager, my colleagues and I spend a large part of our days answering calls from psychiatrists and staff members.

Practice closure if a fairly frequently topic

Happily, these calls are most often from a doctor who has had a long and successful career and has just reached the point where he or she wants to retire and enjoy life.

But unfortunately this isn't **always** the case.

The last call on the slide is the one I always find the most heart-wrenching

The call from the spouse of a psychiatrist who has just passed away and who – though completely devastated – is trying to figure out how to best provide for the patients, as they know the doctor would have wanted

Oftentimes, the doctor has kept his or her personal and professional lives separate

So the spouse or loved one knows very little about the inner workings of the practice

And because the doctor has also taken very seriously the vow to maintain patient confidentiality, no one else knows anything either

The last thing the psychiatrist would have wanted is for his family and patients to be left floundering

But that's exactly what happens

But it doesn't have to be this way

So let's move to unplanned practice closures

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I'm guessing that most of you listening have planned for your financial future and taken steps to ensure that your loved ones are taken care of in the event something happens to you.

But that planning is not complete if you haven't also made plans for the discontinuation of your medical practice.

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This is taken from an article I came across in the Southern California Physician from May 2005.

The article details the author's difficulties in closing down her father's medical practice after finding that he had not done anything to plan for it himself.

Here is a woman with a background in finance and law and even she found it to be a challenge.

> Imagine how difficult it would be for someone without her expertise.

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I realize that the thought of putting together an entire closure plan is a daunting process.

You know that you should do it but it's just so hard to get started.

> It's kind of like doing your taxes.

You mean to get a jump on it but when you sit down to do them you find you're missing a piece of information so you put it off.

You've probably been thinking about doing something like this but just couldn't think of how to get started.

It's actually easier than you think

Although the ultimate goal here is that you have a comprehensive plan that someone can follow, you can still benefit greatly by taking some very small first steps.

Just as you ask your patients for emergency contacts, you should also make certain that your staff has them for you.

If you were to fail to show up to the office one morning, or leave for a quick break and not return, would your staff know whom to contact in the event they cannot reach you?

Under what circumstances would you want them to make that all?

How long would you want them to wait before reaching out to that person or persons?

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While many solo practitioners have staff to assist them, some do not – particularly those who are just opening their practices or those who are winding down and just have a handful of patients.

What would happen if you suddenly disappeared?

Take for example the very tragic story of a doctor who, as she was driving home late one night, hit a deer and skidded into a ravine where she was found dead three days later.

Would someone know how to get into your office?

Could they check messages?

Would they be able to find your appointment book or access it on your computer? What if there were a need by another physician to access patient records?

> Does someone know where to find a key to your file cabinet or how to access your EHR system?

What would you want your patients to be told?

Depending upon the reason for your unexpected absence you may be able to leave hope for your return but you do want to make certain that patients' expectations are managed and that they are not unnecessarily alarmed.

In the worst case, patients need to know that although you will no longer treat them, there is a plan in place to help them find continued care.

[slide 50]

Closing down a practice – particularly on short notice is a big job.

So another important question to answer is – who will be in charge?

If you happen to practice with a psychiatrist, certainly managing your absence will be easier

> but if not, there does need to be one person who is managing the situation.

As tensions will be high and everyone will want to be trying to help it's important that one person be managing the situation according to your wishes.

So who will this be?

A trusted and experienced office manager might be one option.

He or she will know how your practice runs and will likely have access to computers, voicemail, etc.

If at all possible, find another psychiatrist or psychiatrists who will agree to step in and assist with patient care at least for the short term.

It should by they and not office staff who are authorizing refill requests of prescriptions.

What about your spouse?

I know of many psychiatrists whose spouses are their office managers so that does make some sense

but before considering a spouse, significant other or family member consider that they may already have their hands full in dealing with your illness or grieving over your loss and whether this extra responsibility is too much to ask of them at this time.

A personal attorney is another option.

Speaking of attorneys, I will point out that you are not the only profession that is encouraged to engage in this contingency planning

Attorneys have an ABA Rule of Professional Conduct that states “the duty of diligence [in representing a client] may require that each sole practitioner prepare a plan that designates another competent lawyer to review client files, notify each client of the lawyer’s death or disability, and determine whether there is a need for immediate protective action.”

Moreover, some states have incorporated this ABA ethical statement into state law

And some states even require – as part of the licensing process, the identification of an "assisting attorney" who will close the law practice in the event of unexpected circumstances

[slide 51]

So now you have taken the initial steps of making certain that all relevant individuals have each other's contact information and know under what circumstances to reach out to each other.

Let them all also know who would be in charge in the event of your sudden death or incapacity so that you don't have several people trying to run the show.

It's probably a good idea to also have a back-up person named in the event the first person is unable to fulfill this task.

Now it's time to put your plan into writing.

Begin with the steps you've already taken - the name of the person or person(s) who will be in charge of the process and contact information for key individuals.

Again, thinking of all of the necessary steps can be daunting so start with the basics thinking through your particular practice situation and what would be needed immediately

It may need to start with this is my office address and here's where to find my spare key.

Here's my voicemail password and this is my computer login and password.

Here are the names and the contact information for colleagues who have agreed to help.

Here is the number for my malpractice carrier and my attorney.

To help you with this initial step – just the basics, we have a resource for you to work from

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Now move beyond just the basics

Patients must be notified as soon as possible after you become unavailable.

In the event that you are able to return to practice after you have recovered from your emergency, you will want to make certain that you have a practice to return to so it's imperative that patient notification is handled appropriately and that steps are taken to avoid allegations of abandonment.

Obviously you can't give your patients 30 days' notice

but you can have ready a plan to ensure continuity of care by someone else.

We have had calls from doctors trying to manage all of this literally from their hospital beds with no staff to assist.

Do not be that doctor

While some patients may be informed as they call for or arrive to appointments, it is recommended that staff call all patients with previously scheduled appointments.

Staff should also change the outgoing phone message to reflect the closure of the practice and instructions as to how/when to obtain or transfer medical records, how to obtain refills, and what to do in an emergency.

As some of your patients may become quite upset by this news, it is important that you give some thought as to how it is communicated and by whom.

A letter should be sent to all active patients.

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If you happen to be a solo practitioner, a non-clinician friend or family member who steps in to close down your practice may not appreciate the importance of your records and maintaining patient privacy

> We received a call one day from an attorney who was handling the estate of a deceased psychiatrist who had been engaged in active practice at the time of her death.
>
> The psychiatrist's companion who was the doctor's sole heir had taken the medical records into her possession.
>
> She was bitter that the doctor's time with her patients had taken away from her time with her and she was pouring over them refusing anyone else access.

In other instances, well-meaning individuals stepped in but hadn't been trained in the release of records

> such as the daughter of one hospitalized physician who turned over original records to patients who requested their charts
>
> and the office staff member who released copies of records but not necessarily with proper authorization.

And then there was the friend of a doctor who stepped in to assist while the doctor was laid up who was telling anyone who requested records that they would have to pay $500!

[slide 54]

An AMA ethics opinion reminding physicians of the need to retain and release records upon practice closure

[slide 55]

Once your patients have been notified, there will be others on your list who will need to be made aware of your practice closure.

High on that list should be other providers with whom you share patients

- for example a therapist in a split treatment relationship.

Not only would that person need to know that they are now on their own when it comes to caring for the patient, they need be prepared to handle your mutual patients' reaction to the news.

Many psychiatrists work part-time at local mental health clinics.

Oftentimes, they are the only psychiatrist at the facility.

It's imperative that they be made aware of your death or disability as quickly as possible to allow them time to find someone who can take over your patient load.

As these patients are patients of the facility as opposed to your private patients, it is not necessary to notify them directly.

If you work at a hospital or have patients who are hospitalized, the hospital should also be contacted.

It is not unheard of for a hospital to discharge a patient back into a psychiatrist's care without notifying him or her of the discharge.

Other entities to notify – include

insurance plans with which you participate,

your state prescription monitoring program

your medical board

and also the DEA - both the federal DEA and your state's equivalent

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Most of these are common sense but I will point out a couple of things

If you haven't already done so, check your lease before the next renewal to make certain that there is a provision allowing for the termination of your lease in the event of your death or disability.

You do not want your family having to scramble to find someone to sublease your space or having to continue to pay rent for a lengthy period after your practice closes.

Find out from your EHR vendor what will happen to your records if your contract is cancelled.

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I'm not a billing expert and so I won't attempt to get into the issue of billing

but as you know, you have a limited period of time in which to submit claims to insurance companies.

It's important that someone stays on top of this so that your family is not deprived of money owed to you.

Take a moment and just list out each of these

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Make certain that this is a living document.

In other words, take the time to review it periodically to ensure that all of the information is current.

You will also find that when you are ready to retire, it will make an excellent tool for you to use when you close your practice

Keep it in a place that is safe but accessible.

Somewhere in your home is ideal such as in a locked desk drawer or safe or strongbox.
A safety deposit box at a bank sounds like a good idea

but the bank may not be open when the document is needed

and safety deposit boxes may be sealed upon notice of death.

[slide 59]

The Immediate Aftermath

- **Notifying the patients.**

Office staff will need to notify patients of the office closure as soon as possible after a psychiatrist becomes unavailable.

Staff should also change the outgoing phone message to reflect the imminent closure of the practice and instructions as to how/when to

obtain or transfer medical records,

obtain refills,

and what to do in an emergency.

Also, practice websites should be updated as soon as possible.

- **Records.**

    - During the days immediately following the news of a psychiatrist's death or incapacitation, the goal is to ensure that records are available for patients' continuing care while maintaining patient confidentiality.

      As a general rule, patients may access or authorize the release of their own records by completing an authorization form.

      Some third party requests may necessitate a call to the psychiatrist's risk manager or attorney.

      Never release original records.

        Only release copies.

- **Prescriptions**.

  All states have rules, statutes, or regulations governing who may lawfully prescribe or renew prescriptions or medications.

      In the event of a psychiatrist's sudden incapacitation, it is imperative that office staff continue to act only within the scope of their own training and/or licensure.

- **Referrals**.

  In a group practice or facility, other physicians in the same practice may make themselves at least temporarily available to care for patients who are suddenly without a treating psychiatrist.

A solo practitioner should nurture professional relationships with colleagues in the community and educate staff or another responsible persons on managing referrals to covering psychiatrists, the community mental health facility, the patients' health insurance providers, or the local emergency room if warranted.

- **Contact the psychiatrist's professional liability insurance carrier.**

  Most policies require any significant change in practice to be reported within thirty days.

  During that phone call, an underwriter can discuss coverage and explain the necessary documentation to be completed.

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<u>After the Storm</u>

- **Notification Letters.**

  While many, if not most, active patients will already have heard about the sudden practice closure or death of their psychiatrist, a formal notification letter is an excellent means of sharing information and otherwise guiding patients to resources.

  This letter should also instruct patients as to the methods by which they may access or authorize the release of their record to a subsequent clinician.

And then there are the standard issues we've already covered

- **Record Retention.**
- **Records Storage.**
- **Public Notices.**

- **Contact the psychiatrist's state licensing board.**

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In terms of resources, in addition to some articles on contingency planning and practice closure that I brought,

- I also have the first step contingency planning worksheet I mentioned earlier

Another resource is your personal attorney

And the APA has a good resource document

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Full disclosure – PRMS is acknowledged as a contributor

And my last resource – just to make you aware

There are companies that come in to close physician practices

[slide 63]

I'm not endorsing this company, but this is one example

In the states they operate, this company offers two main services:

Planning for a sudden practice closure

And second, bringing in a psychiatrist and administrative person to close down the practice

And that's all I have!

Any questions?