

# **EXIT STRATEGIES: PLANNING FOR THE EXPECTED AND UNEXPECTED CLOSURE OF YOUR PRACTICE**



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# CME DISCLOSURE

I have no financial relationships with any commercial interest

# DISCLAIMER

Nothing I say today is legal advice!

# OBJECTIVES

At the conclusion of this program, attendees will be able to:

- Identify steps necessary to close their medical practices upon retirement
- Describe the appropriate procedure for terminating the physician-patient relationship
- Develop an emergency plan for the closure of their practices by others.

# RESOURCES

*[www.prms.com/RMtalks](http://www.prms.com/RMtalks)*

# CALLS TO RISK MANAGEMENT

- I'm planning to retire in the next year or so, I'd like some information on closing my practice.
- Another psychiatrist in town with whom I share call has had a stroke and cannot work.
- A psychiatrist with whom I share space has just been arrested.
- I have some urgent health concerns and need to shut down my practice.

# CALLS TO RISK MANAGEMENT

- My husband just died and I don't know what to do.

# **FAILING TO PLAN, IS PLANNING TO FAIL**



Developing an “Advance  
Directive” for your practice



*“When he died, I was forced to handle closing his practice. My mother had mostly been kept in the dark about my father’s medical practice and his financial affairs but, at her age, even if she were in the know, it would have been difficult for her. It was difficult for me, and I’m a financial professional, an estate planning attorney.”*

Jan Copley

Closing My Father’s Medical Practice: Lessons Learned

# IN AN EMERGENCY

Does your staff know:

- All of your contact info?
- Contact info of spouse, significant others?
- Under what circumstances to reach out?
- How long to wait to do so?

# IN AN EMERGENCY

## Does someone know:

- Where to find your office key?
- Where to find your voicemail password?
- How to login to your computer?
- How to access your appointment schedule?
- How to access patient records?
- What should patients be told?
- What to put on outgoing message?

# IN AN EMERGENCY

## Who is in charge?

- Office manager?
- Covering psychiatrist?
- Spouse?
- Significant other?
- Family member?
- Personal attorney?

# CREATING AN ADVANCE DIRECTIVE

## Initial Steps:

- Ensure staff and significant others have contact info
- Develop written plan
  - › Decide who will be in charge
    - Inform others
  - › Provide access instructions
  - › Colleague(s) who can assist in emergency
  - › Others to call for advice – malpractice carrier, attorney, etc.

# CREATING AN ADVANCE DIRECTIVE

The plan should address:

- Patient notification
  - › Scheduled patients
  - › Message on outgoing voicemail
    - Who is covering
    - How to obtain refills
  - › Sign on door
  - › Death notice for newspaper
  - › Letter to active patients\*
    - Maintain list with contact info
    - Who is covering
    - How to get records

# ACTIVE PATIENTS

- Varies by state
- Clarify status now
- List of terminated patients

# CREATING AN ADVANCE DIRECTIVE

## Patient Records

- Staff should be trained regarding appropriate record release, retention, etc.
- If no staff, plan should direct person in charge to malpractice carrier for advice.
- Plan should include location of any off-sight storage
- Plan should include list of all patients seen in practice



# MEDICAL RECORDS

## AMA Ethics Opinion 3.3.1: Management of Medical Records

“In keeping with the professional responsibility to safeguard the confidentiality of patients’ personal information, physicians have an ethical obligation to manage medical records appropriately.

This obligation encompasses not only managing the records of current patients, but also retaining old records against possible future need, and providing copies or transferring records to a third party as requested by the patient or the patient’s authorized representative, when the physician leaves a practice, sells his or her practice, retires, or dies.”

# CREATING AN ADVANCE DIRECTIVE

Plan should include list of others to notify with contact info:

- Other providers with whom you share patients
- Other employment
- Hospitals
- Third Party Payers
- State PMP
- DEA – federal and state
  - › certificate number

# CREATING AN ADVANCE DIRECTIVE

- Local pharmacies
- Medical Board
  - › license number
- Landlord
- Utility companies
- Phone service
- Internet provider
- EHR/e-prescribing vendor

# CREATING AN ADVANCE DIRECTIVE

- Insurance carriers
- Billing service
- Business bank accounts
- Professional associations

# CREATING AN ADVANCE DIRECTIVE

- Periodically review plan and update as needed
- Use as a template for closure upon retirement
- Safe but accessible

# INITIATING MY CONTINGENCY PLAN



## IN THE EVENT OF MY SUDDEN DEATH OR INCAPACITY:

1. The key contact(s) having knowledge of the situation should immediately notify the other listed key contacts on the prior page.
2. In the event of my incapacity, I authorize \_\_\_\_\_ to carry out my contingency plan until such time as I return to or close my practice.
3. In the event of my death, I authorize \_\_\_\_\_ plan until such time as my practice is formally closed.

## THE INDIVIDUAL(S) HAVING AUTHORITY TO CARRY OUT MY CONTINGENCY

1. Immediately notify patients with scheduled appointments and tell them Dr. \_\_\_\_\_ will be providing care to them until or until I can return to practice (if this appears likely). Patients should be provided the doctor.
2. Provide this information to patients who call the office during my absence/for
3. Contact other entities where I provide care:

Name of Facility: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name of Facility: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Telephone: \_\_\_\_\_

4. Refer all matters related to patient care, including, but not limited to, prescriptions and correspondence from consultants to the physicians who have agreed to covering physicians with relevant information from the medical record.
5. Notify all active patients in writing using the letter drafted in accordance with
6. Release copies of medical records strictly adhering to the following protocol:
  - A written authorization, compliant with HIPAA and state law, must be signed releasing or transferring medical records.
  - A copy of the authorization should be kept in the medical record.
  - If the patient submits an authorization form other than the one we currently use, the risk management department of my malpractice carrier and ask for advice in the medical record.
  - If anyone other than the patient, such as an attorney, police officer, etc., requests including a copy of the medical record, DO NOT release any information until management or the attorney managing this contingency plan or my estate
  - \_\_\_\_\_ (name), \_\_\_\_\_ has keys/passwords needed to access medical records.
7. In the event of my death or incapacity, also provide notice to (provide contact information for):
  - Local pharmacies
  - DEA nearest field office
  - State licensing board
  - Insurance plans
  - Membership organizations
  - Other colleagues

\_\_\_\_\_  
(Physician signature) \_\_\_\_\_ (Date)

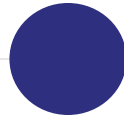
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# INITIATING MY CONTINGENCY PLAN



PRMS has attempted to facilitate contingency planning by suggesting information relevant to initiating a plan. The following form is not a complete contingency plan and the information it contains does not constitute legal advice. All physicians should consult with an attorney in their practice state for state-specific legal advice on contingency planning.

# PRACTICE CLOSURE UPON RETIREMENT



# BEGIN THE COUNTDOWN

- Determine practice closure date
  - › Ideally 12 months or more away
- Consult with advisors
  - › Business attorney
  - › Accountant
  - › Malpractice carrier
- Limit/stop acceptance of new patients
- Determine status of patients\*
  - › Send letters as appropriate



# BEGIN THE COUNTDOWN

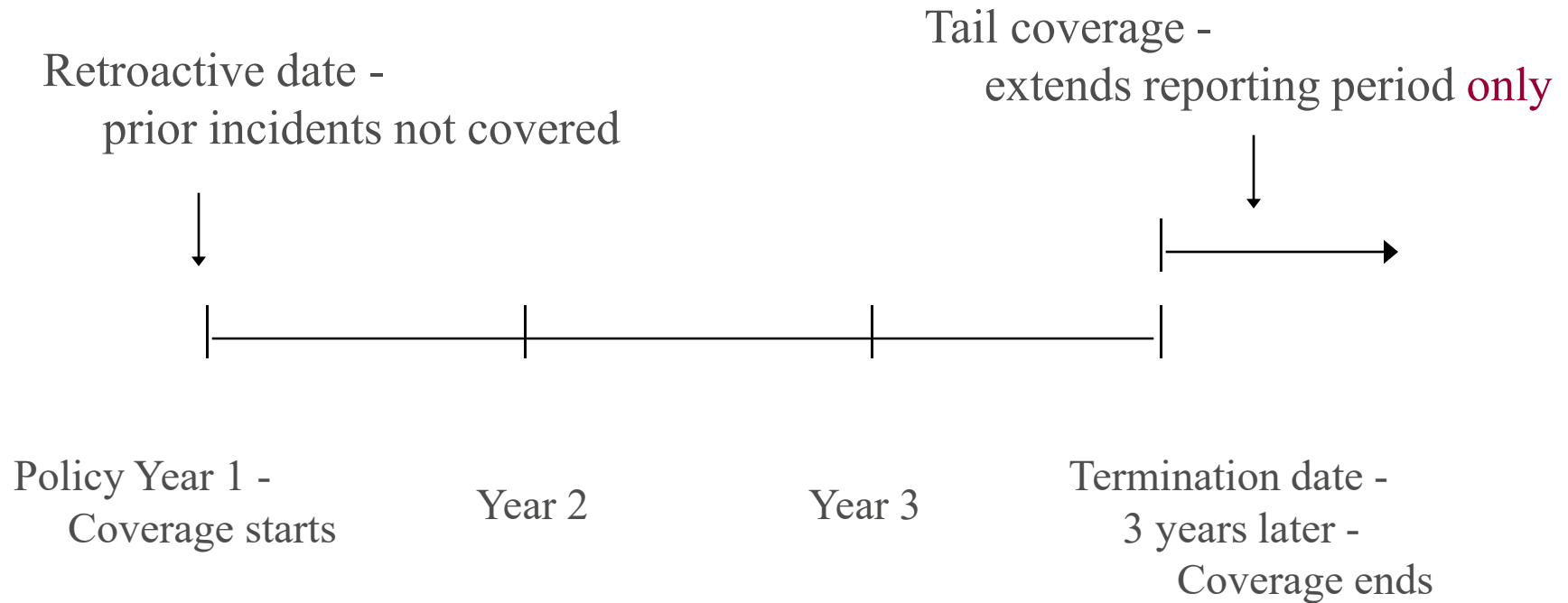
- Review contracts
  - › Lease
  - › Employment
  - › Vendors
    - EHR/E-prescribing
  - › Managed Care
  - › Malpractice Insurance
    - How long should you keep?
    - Tail coverage?

# MALPRACTICE INSURANCE

## Type of policy

- Occurrence
  - › Covers claims arising from events that **occur** during policy period
- Claims-made
  - › Covers claims **reported** during policy period arising from events that occur during policy period

# EXTENDED CLAIM REPORTING ENDORSEMENT – TAIL COVERAGE



# BEGIN THE COUNTDOWN

- Notify staff
  - › Prior to notifying patients
  - › Prepare to hire temps
  - › Consult business attorney re: compensation issues, e.g., payment for unused leave, etc.
- Notify NPs and PAs you supervise/collaborate with

# MEDICAL RECORDS

- Get a handle on medical records
  - › Destroy per policies and procedures
    - Shred, incinerate
  - › Maintain log
    - Patient name
      - › DOB, patient number
    - Dates covered
    - How destroyed
      - › Person or company
    - Date
    - Witness

# MEDICAL RECORDS

- Explore storage options
  - › Document storage facility
  - › Psychiatrist's home
  - › Other custodian
- Must ensure:
  - › Privacy
  - › Safety – theft, damage
  - › Accessibility

# MEDICAL RECORDS

- Document storage facility
  - › Medical records experience
  - › Contract
    - Destruction for non-payment
    - Timely access
  - › BAA or confidentiality agreement

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[HHS](#) > [HIPAA Home](#) > [For Professionals](#) > [Compliance Enforcement](#) > [Agreements](#) > No Business Associate Agreement? \$31K Mistake – April 20, 2017

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## No Business Associate Agreement? \$31K Mistake – April 20, 2017

The Center for Children's Digestive Health (CCDH) has paid the U.S. Department of Health and Human Services (HHS) \$31,000 to settle potential violations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule and agreed to implement a corrective action plan. CCDH is a small, for-profit health care provider with a pediatric subspecialty practice that operates its practice in seven clinic locations in Illinois.

In August 2015, the HHS Office for Civil Rights (OCR) initiated a compliance review of the Center for Children's Digestive Health (CCDH) following an initiation of an investigation of a business associate, FileFax, Inc., which stored records containing protected health information (PHI) for CCDH. While CCDH began disclosing PHI to Filefax in 2003, neither party could produce a signed Business Associate Agreement (BAA) prior to Oct. 12, 2015.



# MEDICAL RECORDS

- Psychiatrist's home
  - › Secure storage
    - Privacy
    - Safety -fire/flood proof
  - › Responsible for honoring requests
  - › May destroy when meet retention requirement
    - Maintain log
  - › May scan and destroy paper

# MEDICAL RECORDS

- Other custodian
  - › Written agreement
    - Maintain privacy/safety
    - Allow access
    - Patient record requests
    - Follow retention period
    - Destruction
    - Commingling
    - Notification of change of address
  - › Maintain log

# MEDICAL RECORDS

- EHRs
  - › Consult vendor contract
    - Hard copies
    - Cloud-based storage
    - Mixed records
    - Maintain software?
  - › Destroy per NIST
- Computers
- Copiers???



HIPAA for  
Individuals



Filing a  
Complaint



HIPAA for  
Professionals



Newsroom

HHS > [HIPAA Home](#) > [For Professionals](#) > [Compliance Enforcement](#) > [Examples](#) > HHS Settles with Health Plan in Photocopier Breach Case

HIPAA for Professionals

Privacy



Security



Breach Notification



Compliance & Enforcement



Enforcement Rule

Enforcement Process

Enforcement Data

Resolution Agreements

Case Examples

Audit

Reports to Congress

State Attorneys General

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## HHS Settles with Health Plan in Photocopier Breach Case

Under a settlement with the U.S. Department of Health and Human Services (HHS), Affinity Health Plan, Inc. will settle potential violations of the HIPAA Privacy and Security Rules for \$1,215,780. OCR's investigation indicated that Affinity impermissibly disclosed the protected health information of up to 344,579 individuals when it returned multiple photocopiers to a leasing agent without erasing the data contained on the copier hard drives. In addition, the investigation revealed that Affinity failed to incorporate the electronic protected health information stored in copier's hard drives in its analysis of risks and vulnerabilities as required by the Security Rule, and failed to implement policies and procedures when returning the hard drives to its leasing agents.

- Read the [Resolution Agreement - PDF](#)
- [For Information on OCR's Enforcement Activities](#)
- [Read the Press Release](#)
- [To File a Health Information Privacy or Security Complaint](#)
- View the Federal Trade Commission's [guidance on safeguarding sensitive data stored in the hard drives of digital copiers](#)
- The National Institute of Standards and Technology has issued [guidance on assessing the security of multipurpose office machines - PDF](#)

# OKLAHOMA BOARD OF MEDICINE

## *Closing or Relocating the Physician's Office:*

“Whenever a medical office is closing and it has patient health information stored on its computers, it is recommended that the hard drives be removed from the machines and physically destroyed. Computer technicians say that erasing a hard drive does not remove the information stored on it and it is possible to recover much of the data. The only way to prevent this is to break-up the disks in the hard drive. (National security experts say that a used computer should never be sold, given away, or thrown away with its hard drive intact.)”

# PATIENT NOTIFICATION

- Whom?
- When?
- How?
- What?

# PATIENT NOTIFICATION

Whom?

- “Active” patients
- Former patients?

# PATIENT NOTIFICATION

## Overview of State Licensing Board Requirements

- **Which patients to notify of practice closure?**
  - › “Active” patients must be notified sufficiently in advance of practice closure to ensure minimal disruption to the continuity of care
    - State examples of “active”
      - › Seen in last 6 months: NJ
      - › Seen within past 2 years: IN, TX, VA
      - › Seen within past 3 years: NM
      - › Other: TN – Seen within 3 years, unless patient has visited fewer than two times within the past 18 months



# PATIENT NOTIFICATION

## Overview of State Licensing Board Requirements

- **When to notify?**
  - › States vary
    - 3 months prior to closure (preferred)
    - 90 days prior to closure
    - 30 days prior to closure
  - › *Knowing your jurisdiction's requirement is vital to avoiding a patient abandonment claims*

# PATIENT NOTIFICATION

## Overview of State Licensing Board Requirements

- **How to notify?**
  - › Letter
  - › Newspaper announcement
    - Requirements vary; can be very specific
  - › Electronic communication
  - › Sign (to supplement, not replace, actual notice to patients)

# PATIENT NOTIFICATION

What should you send?

- Notice of practice closure?
- Termination letter?

## AMA Ethics Opinion 1.1.5: Terminating a Patient-Physician Relationship

Physicians' fiduciary responsibility to patients entails an obligation to support continuity of care for their patients. **At the beginning of patient-physician relationship, the physician should alert the patient to any foreseeable impediments to continuity of care.** When considering withdrawing from a case, physicians must : (a) **Notify the patient (or authorized decision maker) long enough in advance to permit the patient to secure another physician.** (b) Facilitate transfer of care when appropriate.

# TERMINATING TREATMENT

- Send/distribute letter to all active patients
  - › Clear statement of termination
  - › Recommendations for further care
  - › Referrals
    - General vs. specific
  - › Definite closure date
  - › How to obtain records

# PATIENT NOTIFICATION

Risk management advice:

- Comply with state law!
- Give 3 months notice
  - › Prepare patients for transition
  - › Speak with shared treatment providers
- Post sign in waiting area
- Notification on practice website
- Newspapers?

# TERMINATING TREATMENT

- Terminate or transfer?
- Do not prescribe beyond closure date
- Use caution with continued contact

# CLOSING THE OFFICE

- Arrange to have mail forwarded for 6-12 months
- Outgoing voicemail message for 6-12 months
- Update profile on state licensing board site
- LinkedIn/social media profile
- Discuss licensure status with medical board



# CLOSING THE OFFICE

- Medication disposal
- Prescription pads
- Letterhead
- Licenses and diplomas

# DON'T FORGET TO NOTIFY

- DEA
- Local DEA
- PMP
- 3<sup>rd</sup> party payers
- Professional societies

# DOCUMENT

- Keep copies of all letters and emails related to your practice closure – particularly those involving required notices.
- Lists of letter recipients
- Newspaper announcements
- Etc.