

## Issues Involving the Ownership, Retention and Storage of Patient Records and the Notification of Patients When a Physician Leaves a Group Practice

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Among the questions that a practice group faces when a physician leaves the group are those involving who owns the medical records of patients served by the physicians, what rights the terminating physician has to access those records or make copies of them, what sort of patient notification is required and what ongoing record maintenance/storage requirements the group has. To a large extent the answer to these questions depends on whether the physician intends to remain in the area and continue to practice medicine serving the same patients, or whether the physician is terminating medical practice or relocating to another area.

Generally, the medical practice entity, such as a corporation or limited liability company, which employs the physician will be the owner of the patient records. This would mean that the physician would have no right to unilaterally take the records, or even to make copies of them, unless that was agreed to by the group or requested by the patient. However, there are situations where that may not be the case, as, for example, where the physician had an established practice prior to joining the group and brought those patient records with him or her without transferring ownership of the records. The written agreements by which an established practitioner joins a group (or, for that matter, any physician employment contract) should specifically cover the ownership of the physician's records and spell out the rights of the physician if he or she left the group.

The ethical opinions published by the American Medical Association (AMA) address the issue of the notification of patients when a physician leaves a group practice. Issues involving the AMA's ethical rules are significant in that they have the force of law in Ohio and violations can result in disciplinary action by the State Medical Board. The AMA ethical opinions provide that if a physician leaves a group practice the patients of the physician should be notified. In correspondence to this writer several years ago, an AMA representative stated that this did not obligate the group to initiate correspondence to patients, but simply required the group to provide information to inquiring patients.

In any situation in which the physician who is terminating association with the group will also be terminating physician patient relationships, there are patient notification requirements under Ohio law. The Ohio State Medical Board has adopted regulations with respect to the termination of the physician patient

relationship. Where the physician is terminating his or her association with the group and will not be continuing to provide, or be available to provide, services to his or her patients, the regulation mandates certain patient notice. These notice requirements do not apply in a situation which the physician has only rendered service to a patient on an episodic or emergency basis and where the physician could not reasonably expect that related medical services will be rendered to this patient in the future. The requirements also do not apply if the physician has formally transferred the patient's care to another physician who is not in the same group practice.

Otherwise, a physician who is leaving a practice, selling a practice, or retiring from medical practice must do the following to formally terminate physician patient relationships:

- Mail a notice by regular mail addressed to the last known address to all patients seen by the physician within the immediately preceding three years;
- Publish a notice in the newspaper of greatest circulation in each county in which the physician practiced and in a local newspaper that serves the immediate practice area; and
- Post a sign in a conspicuous location in or on the façade of the physician's office.

The required notices and sign must advise patients of their opportunity to transfer or receive their records. For patient records remaining in the physician's possession once the physician is no longer seeing patients, the notices and sign must provide contact information for obtaining the records.

Physician groups typically have an interest in controlling the manner in which patient

notices are given to the patients of physicians who are leaving the group. Because of this, it is advisable to include a provision in the employment contract between the group and the physician which spells out the fact that the group will determine the manner of and will discharge, all responsibilities with respect to patient notification. However, ultimately the responsibility for notifying the patients rests with the physician, and the physician could (and, indeed, should) force the group to make the notification if it failed to do so.

Some physicians ask whether, even if the group provides the required notice, they have the right to notify patients of their departure. Generally, the physician does not have this right unless it is specifically provided for in a contract between the physician and the group. If the physician wishes to be able to notify patients upon leaving the group, then this is something that should be included in the physician's employment contract.

Another medical records issue involves the obligation to maintain or store medical records. The agreements between a group and its physicians should specify what obligation the group has to maintain or store the records after the physician has separated from the group. This can become a significant issue with regard to "old" records for patients who may no longer be receiving services from either the terminating physician or from any other physician in the group. The legal aspects of retaining patient records are beyond the intended scope of this article. However, it is recommended that the responsibility of the group to maintain the records be dealt with in its agreements with its physicians.

Dealing with the "old" records of physicians who have terminated from the group can create a number of practical issues. For example, if the group subsequently, breaks up, what happens to the "old" records of physicians who had left previously? Who will pay the costs of off site storage, a cost which can be significant each year for many years? Who will be responsible for providing copies of requested records? When and at whose direction can those records be destroyed?

Groups should consider requiring any physician who terminates from the group to be responsible for the storage of any record which the group will not need for ongoing medical care for the patient. This is another issue which should be dealt with in any physician employment contract.

*For more information about patients and their medical records see the AMCNO Medical Record Fact sheet insert included in this issue. ■*