



Guidance for Physicians when Closing a Medical Practice

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INTRODUCTION

A physician may close a medical practice by:

- selling the practice
- retiring
- relocating

Regardless of the reason to close a practice, physicians must comply with a number of laws and regulatory requirements, such as retaining a patient's medical records, notifying patients and the provincial medical Colleges about the closure of the practice, and providing information on how to obtain access to the patient records and storage requirements. This document provides an overview of applicable federal and provincial laws and guidelines issued by the provincial Colleges and provincial medical associations. A brief overview of the legal framework and any applicable guidelines for each province can be found in [Table 1].

PRIVACY LEGISLATION AND RETENTION PERIOD

While there are no provincial or federal privacy laws indicating the specific timeline with respect to retention of patient medical records, the governing principle is that physicians should safeguard and protect health records in the following manner:

- Physicians should maintain a written policy outlining the retention and destruction of the health records
- The Federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) states that organizations must develop minimum and maximum retention periods.
- Both federal and provincial legislation generally state that personal information must be destroyed when retention is *no longer necessary* for legal or business purposes.
- Information cannot be held indefinitely and where information must be held for a long period of time, the retention must be justified

In addition, the CMPA recommends the retention of medical records for 10 years, and a longer retention period is recommended for minors.

Beyond Privacy Legislation

The provincial Colleges, provincial medical associations and the CMPA have guidelines outlining the retention period of medical records, but physicians must be aware that they will have to meet any statutory requirements in their province. Where the statute is silent on retention, physicians may look to their provincial College guidelines. CMPA guidelines, although not directly enforceable in law, provide physicians with a framework in the event of future litigation. Provincial medical association guidelines are also not enforceable and may supplement provincial College guidelines. Sources of information include the following:

- (1) **Provincial Legislation Regulating Physicians:** From the date of last entry, physicians must retain a patient's medical record for the following time periods:
British Columbia – six years
Ontario – ten years
Quebec – five years
Note that legislation in other provinces/territories is silent on this issue.
- (2) **Provincial College Guidelines:** Most provincial Colleges recommend a ten year retention period, although some vary with recommendations of six or seven years [Table 2]. The Quebec College recommends a five year retention period but information relating to genetic tests must be retained for ten years.

- (3) **Canadian Medical Protective Agency:** CMPA recommends a ten year retention period and further recommends physicians to retain original records of patient health records including appointment books and telephone logs. Several provincial Colleges also recommend physicians retain original records.
- (4) **Medical Associations:** The provincial medical associations, with the exception of Doctors Nova Scotia, have not outlined retention requirements but refer physicians to the applicable provincial College guidelines.

NOTIFYING PATIENTS OF CLOSURE

Most provincial Colleges and medical associations state that physicians must notify patients that they will be closing their practice and provide instructions on how patients may obtain their medical records. A notification period of three months is a good practice, although a longer period is ideal. Where possible, it is recommended that patients be notified in person, by letter or by telephone. (See sample letter attached).

If another physician is assuming the practice, the letter to patients should include an introduction to the new physician. If another physician will not be assuming the practice, it is appropriate to assist patients in finding another physician by providing them with a list of physicians in the area who are accepting new patients, although this may not always be possible.

OTHER NOTIFICATIONS OF CLOSURE

Physicians must notify their respective provincial College when they cease to practice/relocate and provide the location of the patient's health records. *The exception to this is the College of Physicians and Surgeons of Ontario (CPSO), which recommends they be notified, but this is not mandatory.* A sample letter to patients is included in this document.

Key stakeholders physicians should notify about a practice closure include:

- Employees
- Colleagues (and/or partners)
- Provincial health care insurance provider (i.e. OHIP)
- Provincial College of Physicians and Surgeons
- Provincial Medical Association
- Canadian Medical Association
- Canadian Medical Protective Association
- Health Region
- Hospitals
- Nursing homes
- Referring and consulting physicians and surgeons
- On call group
- Pharmacies
- Lawyer, tax accountant, financial advisor, banker, insurance agent, etc.
- Landlord
- Municipal tax office (particularly if a residential dwelling is utilized for the practice)
- Canada Revenue Agency (employee payroll and your GST account, if applicable)
- Telephone, utility and Internet service providers
- Janitorial service
- Computer vendor
- Canada Post
- Credit and debit card companies
- Fringe benefit plan provider

- Medical and office supply vendors
- Laboratories

Closing a Group Practice

If a physician is in a group practice and has executed a formal (associates' or partners') agreement, the length of notice should be stated in the agreement. In the absence of such an agreement or clause, it is ideal to plan the closure of your practice with the expiration of the current lease so that colleagues can make arrangements to secure new space, downsize the existing premises, or recruit another physician.

Notification to Employees

The minimum notification (or pay in lieu of notice) to employees is established in individual province's Employment (or Labour) Standards Act and is based on the number of years of employment. It is strongly recommended that the notice period (or pay in lieu of notice) is greater than the minimum required and that you consult with a lawyer who has experience in employment law for advice. Some employees may be needed even after the closure to complete the transfer of records, reconcile billings, etc.

If another physician is to become the employer, it is still recommended that notice (or pay in lieu of notice) be provided to employees so that the current employment contract is terminated. However, certain provinces require a break in the employment (up to 3 months in some provinces) otherwise, employee rights such as vacation entitlement and termination entitlement are continued from their date of original employment.

OFFICE FURNITURE AND EQUIPMENT

If another physician is taking over the practice, the current market conditions suggest that, unless there are unusual circumstances, goodwill (that is the value of the practice beyond the physical assets) is not a consideration. Typically assets are transferred at one of three values: the market value, which can be established by consulting with sales personnel from medical and office furniture and equipment vendors; the book value, which could be the value recognized in your accounting records; and what the seller is willing to accept and what the buyer is willing to pay.

Other options for the disposition of furniture and equipment include advertising in medical journals, listing items with your provincial medical association, posting notices at health care facilities, etc. *Note that certain equipment may be considered medical devices and the sale of devices must be in compliance with the Food and Drugs Act and Medical Devices Regulations, regulated by Health Canada. Section 26 of the Regulations states that no person can advertise nor sell used Class II, III or IV medical devices unless the manufacturer still holds a licence for it. Information on medical device classification can be found by contacting device licensing division of Health Canada at: DEVICE_LICENSING@hc-sc.gc.ca or by visiting http://www.hc-sc.gc.ca/dhp-mps/alt_formats/hpfb-dgpsa/pdf/md-im/keyword_motscles2_e.pdf*

Ideally, if leasing equipment, the lease termination date will coincide with the closure of the practice. If not, the vendor may consider a buyout or will require that the lease terms be honoured. Transfer of the lease or subleasing the equipment to the physician who is taking over the practice are additional options.

DISPOSAL OF DRUG SAMPLES

The disposal of all health products must be undertaken with sufficient care to avoid contamination of local water and ground systems. The disposition must be thorough, with due regard to environmental considerations, and other municipal, provincial and federal legislative requirements.

The disposition of drug samples can take many forms: if there is a physician successor, he/she may take custody of them; they may be returned to the appropriate pharmaceutical representative; the company that removes medical waste and sharps can, in some instances, dispose of them; a pharmacy may handle their disposal; or the local police force may have to be consulted.

Please refer to the Controlled Drugs and Substances Act (CDSA) and associated Regulations for information on disposal or destruction requirements for controlled substances by visiting: <http://laws.justice.gc.ca/en/C-38.8/index.html>
(Additional information and links can be found at the end of this document under "Other Resources")

TRANSFER AND ACCESS TO MEDICAL RECORDS

Continuity of patient care is important and patients must at all times have reasonable access to their records. Some general rules are as follows:

- Physicians must respect a patient's request to transfer records.
- Patient records must be transferred in a timely manner.
- If a patient does not request his/her records to be transferred, or if the physician has been unable to contact the patient, physicians must first attempt to transfer to another physician in the same office or within the same geographic area.
- Records must not be sold to another physician.
- Physicians must ensure they have full access to medical records in the event that a liability issue should arise in the future. CMPA recommends physicians keep the original records.

STORING MEDICAL RECORDS WITH COMMERCIAL STORAGE COMPANIES

If records cannot be transferred to another physician, they may be stored in bonded storage facilities. Physicians in Newfoundland and Labrador may store records with a family member. It is recommended that physicians enter into an agreement with the storage company, with the storage company's responsibilities regarding retention, privacy and security, timely and proper destruction, disclosure, access of records and fee structures clearly laid out in the agreement, including the ability to use sub-agents.

The medical associations in British Columbia and Saskatchewan have posted sample agreements on their website. Physicians must, however, obtain their own legal advice and not rely on those sample agreements.

AFTER THE PRACTICE CLOSES

It is a good practice that the clinic telephone number with a recorded message be retained, informing callers that the practice is closed for a period of approximately three months after the practice closure. This message should instruct callers of their options, particularly if they wish to have a copy of their medical record forwarded to another physician.

REFERENCES

This document was drafted using the following sources as reference:

- applicable Provincial legislation governing physicians;
- privacy regime applicable in each jurisdiction;
- College guidelines in each jurisdiction;
- Medical Association guidelines of each jurisdiction; and any other sources of information such as the Canadian Medical Protective Agency (CMPA).

OTHER RESOURCES

Disposition of Drug Samples

- Health Canada - Proper Use and Disposal of Medication
http://www.hc-sc.gc.ca/iyh-vsv/med/disposal-defaire_e.html
- National Association of Pharmacy Regulatory Authorities "Recycling" and Disposal of Dispensed Drugs - <http://www.napra.org/docs/0/97/194/184.asp>
- Health Canada - Office of Controlled Substances; Compliance, Monitoring and Liaison Division.
http://www.hc-sc.gc.ca/ahc-asc/branch-dirgen/hecs-dgsesc/dscsp-psasc/ocs-bsc/index_e.html
(tel:613-854-1541)

SAMPLE LETTER TO PATIENTS WHEN CLOSING A MEDICAL PRACTICE

Dear Patient:

It is with regret that I must inform you that I will be closing my medical practice effective [date] due to [retirement, illness, relocation].

I am pleased to advise you that we are all very fortunate to have Dr. [name] continue this practice and your care, if you so chose. Dr. [name] graduated from medical school at the University of [name] in [year], completed his/her residency training in [discipline] in [year], and has been in active practice since [year] in [name of town/city and province]. Dr. [name] will begin seeing patients on [date].

Your medical records will remain in the clinic and in the care of Dr. [name] unless your written authorization, as is required by the College of Physicians and Surgeons of [province], is received to transfer them to another physician.

Thank you for the opportunity to be a partner in your medical care and I extend my best wishes to you.

Sincerely,

Dr. [name]

TABLE 1: SOURCES OF LEGISLATION AND GUIDELINES

	AB	BC	MB	NB	NL	NS	ON	PE	QB	SK	NT	YK
Provincial Health Privacy Legislation	x		x				x			x		
Federal Privacy Legislation (PIPEDA)				x	x	x		x			x	x
Provincial Privacy Legislation		x							x			
Professional Legislation governing Medical Profession		x		x ¹		x ¹	x		x			x
College Guidelines	x	x	x	x	x	x ³	x			x		x
Medical Association Guidelines	x ²	x ²	x ²			x	x ⁴			x		

The information in this table is current to October 2006 and for **informational purpose only. The information in this document does not constitute any legal advice.**

¹ The legislation does not prescribe a retention period but states that where adequate provision has not been made for storage of patient health records, the College may seek a court order to take custody of the patient records.

² The Medical Association refers physicians to the College's guidelines.

³ The Doctors of Nova Scotia has not published the guidelines as of yet but will have an FAQ on their website in the near future.

⁴ The Ontario Medical Association has issued its own guidelines but also refers physicians to the College's guidelines.

TABLE 2: COLLEGE AND DIVISIONAL GUIDELINES IN RELATION TO CEASING TO PRACTICE

College	Notify College for location of records	Notify Patients	Retention Period (years)	Notify other health authorities, colleagues, labs etc.	Other obligations
Division					
AB ⁵	Y	Y (post notice in office and newspaper)	10	Y	Place records with commercial storage; or transfer as necessary. Office must maintain list of files transferred.
BC ⁵	Y	Y (3 months prior to departure and as many in person as possible); (newspaper)	7	Y	Assist patients with search for a new physician. Specialists should return patient to family physician and inform family physician if new specialist is taking over.
MB ⁵	Y – no later than 15 days after closing	Recommended.	10	-	<p>Group practice physicians encouraged to enter into an agreement in relation to ownership of patient’s medical records and consider following factors:</p> <ul style="list-style-type: none"> • Permit free access to past physicians/original doctor. • Custodian takes over records where patients seek advice from custodian. • Timing for destruction of records; • Custodian may abstract relevant facts for third doctor. <p>Must not sell records to another physician but transfer to custodian would be appropriate.</p>
NB	Y	Y Where a new physician does not intend to assume care, patients must be advised directly.	10	Y	<p>Enter into written agreement with custodian (re: retention, transfer, destruction, and fee arrangement).</p> <p>Must not sell records to another physician but transfer to custodian would be appropriate.</p>
	-	-	-	-	-
NL	Y	Y (adequate notice – may be by way of when patient visits clinic, letter, newspaper, notice in the physician’s office or by telephone answering service)	10	-	Medical records can be stored at partners, colleagues, medical clinics, hospitals, family or bonded commercial storage.

College	Notify College for location of records	Notify Patients	Retention Period (years)	Notify other health authorities, colleagues, labs etc.	Other obligations
Division					
	-	-	-	-	-

NS	Y	"A newspaper ad announcing the termination of practice is customary."	10	-	May store patient medical records with a bonded commercial storage agency or other physicians, clinics or hospitals.
Draft Form	Y	Y	10	Y	Contact Prescription Monitoring Association of Nova Scotia (PMANS) to dispose unused triplicate prescription pads
ON ⁵	Policy 5-05 of the CPSO guidelines is silent on whether the College must be notified. According to the College, physicians are recommended to notify the College of the location of the medical records but are not obligated.	Y - Newspaper, direct communication or an alternate method.	15	-	Group setting: physicians must have an agreement that establishes responsibilities for maintaining and transferring patient records upon dissolution
	See footnote 5	Y – recommends to send letter to patient (2-3 months)	See footnote 5	Y	Physicians may contact OMA'S Practice Advisory Services for names of storage companies. ⁶
PEI ⁷	-	-	-	-	-
	-	-	-	-	-

College Division	Notify College for location of records	Notify Patients	Retention Period (years)	Notify other health authorities, colleagues, labs etc.	Other obligations
QB ⁵	Y	Newspaper advertisement within 30 days of change. A copy of the notice must be sent to the College of who has custody of the records.	5		If in group practice, other MDs in group practice must keep records. Retiring MDs must keep list of patient files and the recipient of the patient records.
SK ⁵	Y	Y (newspaper advertisement)	6	-	Must transfer patient records to another physician at the same address and telephone number or transfer patient records to either another member practicing in the same locality, a medical records department of a health care facility, or a secure storage area with a person designated to allow physicians and patients reasonable access to the records.
	Y	Y (1) individual letter; (2) posting a notice in a prominent area of the office; (3) leaving a message on the voicemail; or (4) notice in the local newspaper.	-	Y	
YK		Must send letter to patient (mail or during patient visit) and newspaper advertisement. 3 months notice period recommended. Other options include leaving message on physician's telephone answering service or posting notice in office.	7	Y	Make arrangements for patient's reports, consultations, lab tests
NT ⁷	-	-	-	-	-

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⁵ The Medical Association in this jurisdiction refers physicians to the College's guidelines.

⁶ According to the OMA's Practice Advisory Services, names of storage companies they may refer to physicians include are (1) RSRS (Record Storage & Retrieval Services); (2) Green & McQueen Medical File Management; and (3) DOCUdavit Solutions (free storage but appears to charge fees for transferring records).

⁷ Information from neither the College nor the Medical Association is available. PIPEDA would apply in this Jurisdiction.