Selling or Closing Your Medical Practice

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You have decided to sell or close your medical practice. Your first thought should be: how do I protect my patients? Your second thought should be: how do I protect myself? You can accomplish both objectives by developing and implementing a thoughtful, detailed plan to efficiently transition out of your medical practice. While the method of achieving this transition may vary depending on the legal structure of your medical practice (for example, if you are a shareholder in a medical corporation or a limited liability company, the shareholders’ agreement or operating agreement, respectively, will largely govern the process of selling or redeeming your interest in the medical practice whereas you are not bound by such agreements if you are a solo practitioner), and selling, as opposed to closing, a medical practice, requires the preparation and negotiation of a Purchase and Sale Agreement (which should address a host of additional issues that will be the subject of a future article), any plan for selling or closing your medical practice should invariably address the following issues:

1. **Notice.** Notice of the sale or closure of your medical practice should be made to (a) your patients; (b) your staff; and (c) relevant third parties. We will address each in turn.

**Your Patients:** American Medical Association (“AMA”) Opinion 8.115 titled “Termination of the Physician-Patient Relationship” provides:

> Physicians have an obligation to support continuity of care for their patients. While physicians have the option of withdrawing from a case, *they cannot do so without giving notice to the patient, the relatives, or responsible friends sufficiently long in advance of withdrawal to permit another medical attendant to be secured.*

(Emphasis added.) Consistent therewith, AMA Opinion 8.11 titled “Neglect of Patient” provides in pertinent part, that “[o]nce having undertaken a case, the physician should not neglect the patient.” These opinions memorialize what you already know: In selling or closing your medical practice, your principal obligation is to ensure that your patients are not abandoned or their care disrupted. This obligation is satisfied by providing your patients with proper notice of your intentions. So what constitutes proper notice? Generally, proper notice is notice timely provided to “active” patients, by the appropriate means, in sufficient detail to permit them to easily transition to another health care provider who offers the health care services that you do. Let’s specifically address each requirement:

**Provide timely notice:** Although Louisiana law does not mandate that Louisiana health care providers provide their patients with a certain number of days’ notice of the sale or closure of a medical practice, most commentators agree that a minimum of ninety (90) days’ notice should be provided. Of course, the earlier you can provide notice to your patients, the better.

**Identify the patients requiring notice:** Provide notice of the sale or closure of your medical practice to all “active” patients. At a minimum, this should include all patients that you have seen within the two (2) years prior to the sale or closure of your medical practice. However, depending on the type of health care services you provide and the type of patients you treat, patients that you have not seen within the past two (2) years may also properly be considered—and may consider themselves—active patients of your medical practice. To the extent that you reasonably believe any such additional patients exist, notify these patients as well.
Provide notice by appropriate means: Notice letters should be mailed directly to each active patient that you have identified at their last known address. If you believe any of your active patients are at particular risk if their care is disrupted, send these patients notice letters by certified mail, return receipt requested in order that you can confirm receipt. You should also have your staff call any such patients. In addition, it is recommended that you place notice signage in your office (and instruct your staff to provide notice to anyone who contacts, or is contacted by, your office), post notice on your medical practice website or other online presence, and run an ad in the newspaper (print and online) several times over several weeks prior to the sale or closure of your medical practice. Once such notification is provided, it is imperative that you place a copy of the notice letter, any signed return receipt, and written confirmation of any phone calls providing such notice, in each patient’s chart. It is also imperative that you maintain screenshots of the notice provided online and copies of any ads that were purchased. Undertaking these measures will enable you, if necessary in the future, to defend against any claim of patient abandonment.

Include sufficient detail in your notice letter to enable your patients to efficiently transition to another health care provider: First and foremost, your notice letter should thank your patients for providing you with the opportunity to care for them. They have placed their trust in you and you should emphasize that it has been a privilege for you to serve them and that you intend to make their transition to a new health care provider as easy and efficient as possible. To that end, your notice letter should clearly indicate the final date on which you will be available to provide medical care in order that your patients can plan accordingly and there is no misunderstanding concerning the date on which they must transition to a new health care provider. To assist in transitioning to a new health care provider, your notice letter should also provide the name of the physician(s) and/or practice group who is purchasing your practice, if applicable (although it should also indicate that the patient is not obligated to use the new physician(s) and/or practice group), or provide information concerning how the patient might locate a new physician, if your practice is closing (for example, your office, the Louisiana State Medical Society, or a medical society within your locality might provide a referral). To further assist in transitioning to a new health care provider, your notice letter should advise your patients where medical records concerning the treatment you have provided them will be stored and include a medical record release authorization form that they can use to obtain a copy of these records now or in the future. Finally, your notice letter should plainly indicate where your patients can seek emergency medical care when you are no longer available and before they transition to a new health care provider and include any other information that you believe is important for your patients to know as they transition. For example, your notice letter may advise your patients how they can have their prescriptions renewed, or how they can obtain medical test results that will not be available until after the sale or closure of your medical practice.

Your Staff: Although your patients should remain your primary concern as you sell or close your medical practice, your staff should be notified first. You do not want them to hear of your intentions “on the street,” and you will need them to carry out your transition plan. Accordingly, before outlining for your staff your plan for the sale or closure of your medical practice, assure them that you will assist them in transitioning to new jobs by providing referral letters, allowing them flexibility to attend job interviews, and advising them of any job opportunities you learn about. You should also consider whether any of your staff members will be provided, or are entitled to, severance packages and whether bonuses should be offered to staff members who agree to remain with you until your medical practice is sold or closed. Finally, be prepared to discuss other questions your staff may have, including COBRA continuation insurance coverage,
unemployment insurance and payment for sick time and vacation time accrued but not used. Once these issues are considered and addressed with your staff, clearly define what each staff member is expected to do in carrying out your transition plan and have a backup plan ready in the event one or more of your staff members leave before your medical practice is sold or closed.

**Relevant Third Parties:** In addition to notifying your patients and your staff, you should also notify any other person or entity involved in providing care to your patients that you are selling or closing your medical practice. For example, you should notify any physicians to whom you refer patients or from whom you receive referrals and any hospitals for which you take call. You should also notify the appropriate licensing agencies and professional associations, including the Louisiana State Board of Medical Examiners, the Louisiana Narcotic and Dangerous Drug Enforcement Administration, the Federal Drug Enforcement Administration, the Louisiana State Medical Society and the American Medical Association. In addition, you should notify your third party payors and insurers, including Medicare, Medicaid, any health plans in which you participate, and your medical malpractice insurer as well as any other insurer that provides coverage for your medical practice or the building in which your medical practice is housed.

2. **Medical Records.** Louisiana law provides that “[m]edical records of a patient maintained in a health care provider’s office are the property and business records of the health care provider.” Louisiana law further provides that a patient (or an appropriate representative) has a right to obtain a copy of his or her medical record upon furnishing a signed authorization and that medical records must be retained by a health care provider for a minimum of six (6) years from the date treatment was last provided. Federal law—particularly, the HIPAA Privacy and Security rules—require that medical records of a patient be protected from data breaches. Medical records are also your best defense against medical malpractice and discipline claims. Accordingly, it is essential that you properly store and maintain a complete set of original medical records concerning your patients both before and, for the requisite time period, after you sell or close your medical practice (upon obtaining appropriate authorization, only provide your patients with copies of the medical records concerning their treatment). As an initial matter, make sure that you fully complete those portions of the medical records for which you are responsible. Next, you must decide how and where to store the medical records concerning your patients. To the extent that medical records are in paper format, it is strongly recommended that, although more cost effective, you do not store such records on your own or even in a commercial self-storage facility. Such facilities are likely not sufficiently secure to ensure that such records are maintained in a HIPPA-compliant manner. Rather, it is recommended that you store paper medical records concerning your patients in a commercial storage facility that maintains full responsibility for the security of records in its custody or, alternatively, that you store paper medical records with another health care provider (such as a health care provider who has purchased your medical practice, if applicable, or who otherwise will agree to store such records). Similarly, it is recommended that you store electronic medical records concerning your patients in a digital repository administered by the commercial storage facility or health care provider maintaining your paper medical records. However, regardless of who ultimately takes custody of the paper and electronic medical records concerning your patients, be sure to enter into a custodial agreement with that person or entity to ensure that clear protocols are in place for record retention, confidentiality, security, authorized access and, when appropriate, destruction of your medical records. Such an agreement should also clearly set forth the fee, if any, payable to the custodian for providing these services.

3. **Operational and Financial Issues.** Once you decide to sell or close your practice, you should immediately stop accepting new patients. You should also identify those patients that are in special need of uninterrupted health care, including those patients that are at particular risk if their
care is disrupted, and begin referring those patients to other health care providers. In addition, you should plan to utilize a temporary staffing agency or some other means to replace critical staff members who leave your medical practice before it is sold or closed to seek, or accept, new job opportunities. Again, your primary focus should be on continuing to provide timely, efficient health care to your patients through the final date on which you will be available to provide such care. From a financial perspective, you should concentrate on promptly billing and collecting, and resolving any disputes concerning, any outstanding amounts due for health care services you have provided, whether these amounts are due from insurance companies or directly from your patients. If outstanding amounts are due from your patients, you should weigh the total outstanding amounts due, and any disputes concerning these amounts, against the bad will that may be engendered by aggressively seeking to collect these amounts (another possibility is to enter into agreements with your patients to pay off their outstanding balance over time or to pay a lump sum discounted amount). Of course, you should always weigh the total outstanding amounts due from any source against the costs associated with seeking to collect these amounts. Once you determine that an outstanding amount is uncollectible, write it off. Likewise, you should promptly determine which accounts payable remain outstanding and pay, or resolve any disputes, concerning these amounts. Under any circumstance, you will likely engage in billing and collection activities for several months after you sell or close your practice. If such activities are handled internally, you need to determine whether to continue working on these personally, with one or more staff members who you pay to continue such activities, or with an outside billing or collection service that you pay directly or authorize to retain a percentage of any amounts the service collects. If such activities are already handled by an outside billing or collection service, notify the service of your intention to sell or close your medical practice as soon as the decision is made, stress the importance of promptly billing and collecting outstanding amounts due, and review your current agreement with the service to determine when to terminate the agreement. Do not close your business bank account until all outstanding amounts are either collected or written off. As you transition out of your medical practice, it is also recommended that you retain a certified public accountant to advise you on various financial issues and take appropriate steps on your behalf, including filing a final tax return for your practice, if applicable, reserving necessary funds for any outstanding expenses, taxes and contingent liabilities, and advising you on various billing, collections or payment issues.

4. **Insurance.** Malpractice insurance can be purchased on either an “occurrence” or a “claims made” basis. An “occurrence” malpractice policy covers malpractice claims arising out of treatment provided by a physician during the policy period, regardless of when the claim is made (for example, even if the claim is made after the policy period ends). In contrast, a “claims made” malpractice policy covers malpractice claims arising out of treatment provided by a physician during the policy period, **but only if the claim is also made during the policy period.** If you maintain “occurrence” coverage, you can terminate your policy as of the date you sell or close your medical practice. However, if you maintain claims made coverage, it is vital that you have “tail” malpractice coverage in place when you sell or close your medical practice. A “tail” malpractice policy covers malpractice claims that arise out of treatment provided by a physician during the policy period, but that are made after the policy period ends. In Louisiana, a medical malpractice claim must be asserted within one (1) year from the date of the alleged malpractice or one (1) year from the date of discovery of the alleged malpractice, but in any event must be asserted within three (3) years of the date of the alleged malpractice. Accordingly, you should maintain “tail” coverage for three (3) years after you sell or close your medical practice. You should also determine when it is appropriate to cancel any other policies insuring your medical practice. Insurance policies covering employee benefits and workers’ compensation can likely be cancelled on the last day your employees are employed. However, it may be prudent to keep insurance policies covering general liability and employee liability in place for some time after
you sell or close your medical practice. It is also recommended that you retain copies of your cancelled insurance policies for several years.

5. **Practice Assets, Contracts and Other Records.** As you sell or close your medical practice, you will also need to address various other matters, including selling or otherwise disposing of the office furniture and equipment that you own or, alternatively, complying with, and terminating, any lease or other agreements, including maintenance or service agreements, concerning such furniture and equipment. Also, do not forget to notify your supply vendors of the specific date on which they should stop providing supplies and to timely terminate any supply agreements you have in place. In addition, it is important that you destroy any office items that have your name or the name of your practice thereon, particularly any prescription pads. In connection with prescription drugs, be sure to comply with applicable federal law regarding their disposal, specifically, the federal regulations set forth at 21 C.F.R. Part 1317, and maintain your narcotics ledger for a minimum of two (2) years following the sale or closure of your medical practice. Further, review, and terminate when appropriate, any other contracts your practice has in place, including any employment agreements, health plan contracts, and waste disposal agreements, or any other contracts that you personally have in place, such as a medical directorship agreement. Similarly, discuss with your CPA and attorney what other business records, including financial, tax, employee and medical licensure records, you should maintain and the length of time you should (or are required to) maintain such records.

In addition to these five issues that should be addressed in any sale or closure of a medical practice, your individualized plan for selling or closing your medical practice (or selling or redeeming your interest in a medical practice) should also address any other issues unique to your particular practice and its structure. All of these issues—and the steps necessary, and person assigned, to address each such issue—should then be identified on a written checklist prepared at the outset of the process and reviewed with your practice manager, if applicable, and relevant professional advisors. Once finalized, this checklist will serve as a clear roadmap for you, and other relevant individuals, to effectively protect you and your patients as you transition out of your medical practice.

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