



110 Centerview Drive
Post Office Box 11289
Columbia, SC 29211-1289
Phone: (803) 896-4500
FAX: (803) 896-4515

South Carolina
Department of Labor, Licensing and Regulation

Board of Medical Examiners



Henry D. McMaster
Governor

Emily H. Farr
Director

**POSITION STATEMENT ON THE CLOSING OF A MEDICAL PRACTICE
IN SOUTH CAROLINA¹**

It is the patient's decision from whom to receive care. Therefore, it is the responsibility of all practitioners and other parties that may be involved to ensure that patients are notified of changes in the practice, sufficiently far in advance (at least 30 days) to allow other medical care to be secured as set forth herein. Patients should clearly understand that the choice of a health care provider is the patients' choice. Patients should be told how to reach any practitioner(s) still practicing medicine within the state, and when specifically requested, should be told how to contact departing practitioners. Finally, patients must be told how to obtain copies of or transfer their medical records.

Failure to provide patients with adequate notice may constitute abandonment of the patient and subject the provider to disciplinary action.

When a physician retires, terminates employment or otherwise leaves a medical practice, he or she is responsible for:

- Ensuring that patients receive reasonable notification and are given the opportunity to obtain copies of their records or arrange for the transfer of their medical records to another physician; and
- Updating your business address with the South Carolina Board of Medical Examiners when moving practices or practice locations and notifying the Board when retiring and specifying who has custodianship of the records, and how the medical records may be obtained. The SCBME cannot retain patient records.
- The obligation to provide notification of the closing of the practice remains the obligation of the departing physician regardless of the corporate structure of your practice.

Notification to patients:

¹ The Board is authorized to "publish advisory opinions and position statements relating to practice procedures or policies authorized or acquiesced to by any agency, facility, institution, or other organization that employs persons authorized to practice under this chapter to comply with acceptable standards of practice." S.C. Code Ann. § 40-47-10(I)(1).

- (1) Posting such notice on the physician's or practice website or social media pages (Twitter, Facebook, Instagram, etc.), **or** publishing notice in the newspaper of greatest general circulation in each county in which the physician practices or practiced and in a local newspaper that serves the immediate practice area; **and**
- (2) Placing written notice in the physician's office as soon as the decision is made but in no case, no less than thirty (30) days prior to closing the practice or upon a physician's decision to terminate employment; **and**
- (3) Notifying patients seen in the last two years of the physician's discontinuance of practice by either sending a letter to each patient **or** sending an email to each patient notifying them of the closing of the practice or termination of the physician. If the practice receives notice that the email address of a patient is no longer valid, the physician or practice shall notify those patients by sending a letter to those patients.

Notices placed in the physician's office shall be placed in a conspicuous location in or on the facade of the physician's office announcing the termination, sale, or relocation of the practice. The sign must be placed as soon as possible but less than thirty (30) days prior to the termination, sale or relocation of practice and shall remain until the date of termination, sale or relocation. If practicable, the notice should remain on the front door after the practice closes. The notice must provide the patient with information on how they may obtain their medical records.

Physician's offices should keep the telephone number of the closed practice active for a minimum of 30 days and include key information on the voicemail after the practice has closed so patients can obtain their medical records.

When requested, the practice should provide a departing physician with the contact information of his/her patients to ensure the departing physician is allowed to fulfill patient notification responsibilities.

If requested by a patient of that physician, the group practice must inform that physician's patient of the departing physician's new address, and that copies of the patient's medical records may be forwarded to the departing physician's new practice. It is unethical for any remaining physicians in the group to withhold such info upon request of a patient.

Record Retention and Disposal:

South Carolina Code § 44-115-120 governs the length of time a physician must retain records for adults and minors. Pursuant to this section, “[p]hysicians shall retain their records for at least ten years for adult patients and at least thirteen years for minors. These minimum recordkeeping periods begin to run from the last date of treatment. After these minimum recordkeeping periods, the records may be destroyed.”

One option for record maintenance is self-storage. Scanning paper records may eliminate some volume. However, the records must be accessible so that copies can be produced and provided at time of demand, and must be clearly and carefully archived. Moreover, records must be protected against the environment and pests and in a manner that continues to comply with all HIPAA Privacy and Security Rule requirements. Physicians cannot realistically maintain records in a HIPAA-complaint manner in their homes, garages, etc. Self-storage facilities may provide some additional protection but are also generally unregulated and unsecure. Commercial record facilities provide an additional layer of protection. You should look for a facility that is able to comply with HIPAA Privacy and Security Rule requirements and is willing to enter into a HIPAA-compliant Business Associate Agreement with you, detailing issues such as access to records, breach notification requirements and indemnification.

Rather than arrange for and manage records yourself, another option for record storage is to arrange with a buyer, succeeding physician or facility, pursuant to a contract, to maintain your patient records and allow you access in the event the need arises. The disadvantage of such a transfer is that the physician or facility storing the records may eventually or inadvertently destroy, lose, or otherwise compromise the records. In the event a physician finds himself facing a malpractice suit, this could forfeit an adequate defense.

A well-managed digital repository may significantly reduce or eliminate the need to maintain paper records. However, technology is fluid and becomes antiquated quickly. Information stored on magnetic mediums such as CD drives, zip-drives, or backup tapes lose their magnetism and therefore their ability to hold information. As such, these mediums are not viable long-term record storage options and it is advised that physicians maintain software licensure programs and all necessary updates. Depending upon your technology infrastructure, it may be necessary to maintain the server, computer, or software programs. Moreover, evaluate whether adequate privacy, encryption and metadata protection are in place based on the format used for data storage.

You must properly dispose of inactive patient records that will not be transferred to patients or new practices and/or those records you have maintained beyond the recommended storage periods. It is strongly recommended you use a professional record destruction service and having a confidentiality agreement and HIPAA Business Associate Agreement in place with the contractor. In the event of a breach of confidentiality, such agreements should indemnify the physician and hold such physician harmless. Moreover, you should request a certificate of destruction and be certain that sub-contractor companies are not involved in the record destruction process.

Please note that is not advisable to burn patient records. If records contain x-rays, the heat may release dangerous metals; moreover, it often does not completely destroy all records. Paper recycling also does not ensure confidentiality. Destroying records improperly is considered negligence and has a high risk of being a HIPAA violation.

While practices are ethically obligated to notify patients before record destruction, this is unnecessary if you have already informed patients of their ability to obtain or transfer a copy of their record when closing your practice. However, if you have not already informed patients of this right, you should notify each patient by a letter to his or her last known address and publish a

notice in the newspaper on three or more occasions, giving patients a reasonable period of time to request or transfer records.

A physician should notify the regulatory and business agencies impacted by the closure, including Centers for Medicare, Medicaid Services (CMS), the Drug Enforcement Administration (DEA), health insurers, and state medical or business associations.

Physicians under discipline

Physicians who have voluntarily surrendered their licenses or have had their licenses suspended or revoked by the Board must notify their patients as outlined herein within 30 days of the effective date of the voluntary surrender or revocation. Physicians who have voluntarily surrendered their licenses or have had their licenses revoked by the board must obtain a custodian for their medical records within 30 days of the effective date of the voluntary surrender or revocation. The SCBME should be notified within 30 days who the custodian of their medical records are.

When Notice is not required

A physician is not required to provide notice of his or her discontinuation of practice to patients if the physician:

- (1) treated the patient while in a locum tenens position at a practice location for a period of no longer than six months at that location. For the purpose of this section, "locum tenens" is defined as a position in which a physician is employed or contracted on a temporary or substitute basis to provide physician services;
- (2) only treated the patient in the following settings: (a) a hospital; (b) an emergency department; (c) a birthing center; (d) an ambulatory surgery center; (e) provided only anesthesia services; (f) radiology services based on an order by a treating physician, or (g) pathology services.

Related Policies/Resources

South Carolina Board of Medical Examiners Policy Relative to Termination of Physician-Patient Relationships

https://llr.sc.gov/med/Policies/Termination_of_Physician-Patient_Relationships.pdf

South Carolina Physicians' Patient Records Act-S.C. Code § 44-115-10

<https://www.scstatehouse.gov/code/t44c115.php>

Transfer of Patient Records First-Time Requests

<https://llr.sc.gov/med/Policies/metransfirst.aspx>

Patient Records Electronic Access Playbook: This AMA Playbook focuses on dispelling myths

around HIPAA and helping physicians and their practices understand their obligations to provide patients with access to their health information.

<https://www.ama-assn.org/system/files/2020-02/patient-records-playbook.pdf>