

# COMPLIANCE RISKS FOR RETIRING PHYSICIANS:

Know the requirements  
for closing your practice



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## COMPLIANCE RISKS FOR RETIRING PHYSICIANS:

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items you should ask about is the records retention requirements for both the medical and business records of the practice. If notification of the practice closing is required for your state or practice type, the malpractice insurer may have a template for the content of the notification. If your malpractice insurer does not have a sample notification letter, you should consult with a local attorney with healthcare expertise, who should also be able to help you with the records retention questions. If you need



further guidance on the notification requirements, some state medical boards have sample notification templates on their websites. In any case, you should gather all the requirements and information prior to providing your notification, so you only have to complete this step once.

## UNDERSTAND THE NOTIFICATION REQUIREMENTS

On the topic of notification, throughout the US, the legal requirements of the message and the medium for closing a medical practice vary

## INTRODUCTION

The three most common reasons cited for why doctors entered the medical profession are typically to help other people, have a financially rewarding career, and to earn a position of respect. If you reached the point where you are considering the closure of your practice, you likely achieved all three of these goals, along with many other positive contributions in your community. Hopefully, you are aware of the steps required to close your practice correctly, otherwise, you may put all three of these achievements at risk and tarnish your legacy. Since most doctors only close their practice once, this document is intended to share years of experience dealing with closing practices, to outline the steps you can take to protect yourself, your patients, and your legacy.

## KNOW YOUR AVAILABLE RESOURCES

When considering the closing of a medical practice, one of the first calls you should make is to your malpractice insurer. You will likely want to carry a tail insurance policy after the practice closes, and since your insurer will want to help you (and them) avoid risk of claims, they should also be able to provide you with effective guidance on the actions required to protect yourself when closing the practice. One of the key



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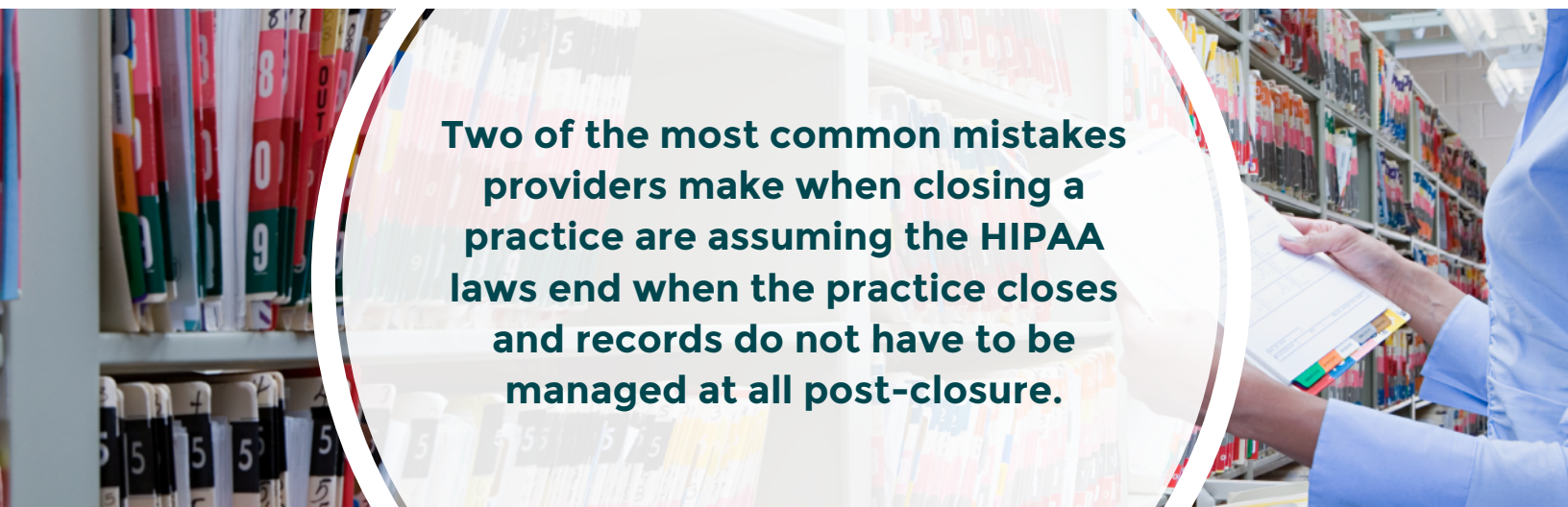
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widely from state to state. Even if your state doesn't legally require notification, you should still consider providing notice to help the community transition to other providers. Some state requirements or guidelines for notification are behind the times, noting items such as newspaper ads, mailed letters, or signage. If this reflects your state requirements, you should also consider more effective ways to provide notice, in order to avoid patients attempting to contact you personally for help after the practice closes. If your practice has a website, you should keep it live for at least the first few months after your practice closes, with notification information posted there. The same approach can be utilized for the phone line of the practice, with notification information recorded on the voice message of the answering machine. If the practice has a social media presence, that is also a great place to post information for helping patients transition their ongoing care. In addition to notification of the closure date of the practice and basic information such as where patients can obtain copies of their medical records through the statutory retention period, items such as how patients can transfer ongoing prescriptions originally written by you, along with the names of other trusted medical providers in the area, are great to include in your

notification message, if your state doesn't already require this information.

### **AVOID RISK AND ENSURE CONTINUITY OF CARE**

When closing a medical practice, the records are a key item to manage correctly, in order to preserve continuity of patient care, and avoid personal risk. Two of the most common mistakes providers make when closing a practice are assuming the HIPAA laws end when the practice closes and records do not have to be managed at all post-closure, or that the requirements are easy enough that the provider can manage the records themselves. The frequency of records requests while the practice was operating is not a valid measurement for estimating the request activity after the practice closes, because the patients must now transfer to a new provider. There is often a spike in records activity upon receiving the closure notification, as some patients will simply request their medical records out of fear that they may not be able to obtain copies in the future. Records requests for continuing care, along with activity required by third parties for items such as litigation, insurance audits, and workers compensation, represent potential disruptions and risk that you don't need to deal with after closing your practice.



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## **COST EFFECTIVE STRATEGIES FOR MANAGING RECORDS**

When assessing the records management requirements for closing your practice, there are some strategies that can be applied to save money, especially if you have some time before the actual closing date. For paper records, thinning out files that are past the statutory retention can reduce the volume of records to be managed, reducing future cost and risk. Be sure to use a secure destruction provider for all eligible records. If possible, physically segment records with different retention requirements, as storing whole boxes with similar retention can eliminate years of excess storage for the records with shorter retention. Segmenting records at a high level, such as separating adults and pediatric records, is typically easier and more important than segmenting records by service year, although both approaches are beneficial. While operating your practice, you may have sorted records by active, inactive, and deceased patients, but remember in the context of the HIPAA laws, retention applies equally to all records (including deceased patients) so all records must be stored accordingly when the practice closes. Be aware if you have Medicare/Medicaid patients that CMS requires their records to be stored for ten years, which is longer than many states require for retention of adult medical records. Segmenting and storing the business records of the practice is also important. The laws for storing business records typically require seven years of storage, although this should be verified when you speak with your malpractice insurer or healthcare

attorney. You may also want to consider designating an attorney or relative to be an authorized representative to act on your behalf, in case you are unavailable to handle an inquiry requiring access to the non-medical records.

## **CONSIDERATIONS FOR ELECTRONIC RECORDS**

If you use an electronic medical records system, the primary objective when closing your practice is to eliminate the need to access the proprietary system going forward. First, the cost to maintain



licensing, access, and the security risk through the statutory retention period can be impractical. You must also consider the impact if the software provider should go out of business, get acquired, or simply discontinue the software product you currently use, leaving you with access or conversion issues. The best approach is to perform a one-time export or conversion to a generic format, typically PDF. If your EMR vendor is unable to provide the records in a generic format, there are third party solutions that can assist with this task.



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### CHOOSING A CUSTODIAL RECORDS PROVIDER

If all the records management items seem daunting, don't worry – a dedicated expert records custodian can help you navigate a solution. Choosing the right records custodian is important, as there are companies focused on document shredding and storage that also offer custodial records services as a secondary business, while other providers are subject matter experts, dedicated entirely to custodial records. The wrong type of provider who is not fully aware of the correct ways to manage records, can put both you and your patients at risk. This distinction was highlighted in 2020, when a federal lawsuit exposed a third-party provider that was charging patients for copies of medical records and delaying access. This action and subsequent guidance from the US Department of Health & Human Services clarified the responsibilities and penalties both you and a custodial records provider can face, if the provider does not

understand and follow the HIPAA laws. When assessing a custodial records provider, ask if they require a Business Associate Agreement (BAA) to be signed by both parties. If a BAA is not part of the custodial records provider's standard document set, that is a huge red flag that the provider is not aware of or performing on the basis of the HIPAA laws. If you are using an electronic medical records system, the records custodian should be able to help you or your third-party provider through the one-time export of the records into a generic format, in a way that the custodian can use effectively to provide release of information throughout the retention period. Finally, the right records custodian should be able to guide you through all the steps outlined in this document, to help you efficiently arrive at a place where you can confidently walk away from all the records responsibilities after closing the practice, ensuring patient care, cost-certainty, and compliance.

LEARN MORE ABOUT **CARIEND:**



Your moment begins now. To get started with the closure process, call Cariend today at **855.516.0611** or visit us online at **CARIEND.COM**.

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