

Risk Management Considerations in the Event of an Unexpected Interruption in Your Practice¹

When a medical office is forced to close suddenly due to an unexpected illness, death or incapacity of a physician, staff and family members are often left scrambling in order to transfer patient care and business operations to other health care providers. In an ideal world, preparations for these situations would be made in advance to ensure patient care continuity and reduce the psychiatrist's liability exposures. This article highlights the importance of long-range planning in the event of an abrupt, temporary, or permanent closure of a medical practice as well as identifying risk management considerations.² Every practice is different and it is important to confer with your practice's attorney to ensure compliance with federal, state and ethical guidelines.

Unscheduled Temporary Practice Closures

Occasionally, patient care within a psychiatric practice may be temporarily interrupted due to unforeseen circumstances. When this happens, the following factors should be considered:

- Scheduled patients should be notified as soon as possible.
- Your office voicemail should be changed to reflect:
 - closure details,
 - expected re-opening date, and
 - directions for patients to seek emergency treatment if needed.
- A physician or other delegated clinical practitioner should review all patient medical records to determine any medical urgency for rescheduling.
 - Provide non-clinical staff with direction regarding rescheduling patients with urgent medical needs.
- Patient contact regarding canceled and rescheduled appointments should be documented in the medical record.

Practice Coverage During Closure

Often small practices are unable to provide adequate coverage during times of temporary office closure. In these situations the psychiatrist may choose to consider contracting with another psychiatric provider or contracting with a *locum tenens* in order to ensure access and continuity of care.

When evaluating whether to select and contract with another provider or *locum tenens*, consider the following guiding principles:

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² See also, American Psychiatric Association, "*Closing a Practice at Short Notice: What Every Psychiatrist and Their Family Should Know*," Resource Document, approved by the Joint Reference Committee May, 2007.

- Assess the expertise and practice style of potential providers and evaluate how well they fit with your practice's demands and patient expectations.
- Get reference lists from past users, verify local hospital privileges and gather quality data.
- Consult with your practice attorney when drafting and implementing a contract.

Unscheduled Permanent Practice Closures

There may be situations that require a practice to close immediately, unexpectedly and permanently due to unforeseen circumstances. In order to reduce liability exposures, it is important that:

- The psychiatrist recognizes pertinent legal, regulatory and ethical issues that must be addressed.
- When applicable, practice managers must be notified of these issues.
- Practice documents must be stored in a safe, secure place where they can be accessed in the event of an immediate, unexpected closure of your practice.
- Plan ahead and discuss practice issues with your attorney.
- Discuss with your spouse about whom to contact in case of an unexpected illness or passing. In the event this occurs, spouses often do not know who to contact or what to do.

Planning Ahead

Long-term planning may ease the consequences of an abrupt office closure. Ideally, ahead of time, the psychiatrist will formally authorize an individual to be charged with the responsibility for overseeing the practice's affairs should the psychiatrist be unable to continue with patient care. The individual's existence should be known to the psychiatrist's attorney, accountant, business manager, staff and, where indicated, family members. In addition, this person should have authorization and access to all practice information and records.

Some additional long-term planning actions may include:

- In a safe and secure location, maintaining a list of passwords and other log-in requirements.
- Maintaining up to date list of active patients/contact information.
- Maintaining a list of psychiatrist's current affiliations, licensure/certification organizations, and participating insurance plans.

Notifications

When a practice unexpectedly closes, there are many individuals and agencies that need to be notified. These may include patients, staff, hospital/clinic affiliations, insurers, medical malpractice liability carrier, medical boards and colleagues.

Staff

Office staff should be notified as quickly as possible, as they will be the people most likely to assist in transitioning the practice. Review, with the help of an attorney, the practice's written policies and procedures in order to determine legal and ethical obligations owed to staff. These obligations may include administering payroll and employee benefit plans, continuing employee

health insurance coverage, and compensating staff for unused employee benefits such as vacation/sick time.

Patients

In the event of a practice closure, inform patients as soon as possible. A few actions to consider are:

- Place a message on the voicemail/answering machine/answering service alerting patients that the practice is currently closed, that new appointments are not being scheduled and contact information regarding how patients needing immediate/emergency care should proceed.
- Cancel previously scheduled appointments.
- Place a sign on the practice exterior alerting patients that the office is closed until further notice.
- Send patients a registered letter (with return receipt requested) via regular mail containing information about psychiatrists able to assist them in finding another provider, as well as information directing patients how to obtain copies of their medical records. A copy of the letter should be filed in the patient's medical record.

Additional Notifications

- Notify federal and state DEA agencies of a practice closing and properly dispose of any unused prescription pads and order forms, as well as any unused controlled substances in accordance with state and federal regulations.
- Insurers, other third party payers, and state medical boards where the psychiatrist is licensed, should also be notified of the practice closure, as well as the psychiatrist's medical malpractice liability insurer. It is important to review the liability policy and consult with your liability insurer to determine if additional coverage will be needed to provide continuing protection in the event the psychiatrist passes and his/her estate is sued for care that was rendered while the policy was in force.

Medical Records

A significant issue when a practice closes concerns federal and state medical record retention requirements. Requirements vary by state, and state guidelines are often more stringent than federal privacy regulations set forth under HIPAA. Again, the practice attorney should be consulted in order to ensure adherence to applicable rules and regulations.

Release/transfer/destruction

With respect to the transfer, release, storage or destruction of medical records, it is important to remember that while the patient "owns" the information contained within the medical record, the physical record is the property of the practice. To reduce liability exposures, the practice needs to create and adhere to medical record procedures regarding these issues that are consistent with federal and state laws, as well as APA ethical guidelines. These procedures should include:

- Obtaining consent to release/transfer records from the patient, and

- Notifying patients of how to obtain records and notifying patients when records are scheduled for destruction.

The APA Ethics Code requires that express written consent be obtained prior to disclosure to any third parties, even when not explicitly required by state and federal law.³ Whether to release the psychiatrist's psychotherapy notes portion of the medical record may be confusing. Under HIPAA, psychotherapy notes are afforded increased protection from disclosure, but must be kept separate from the rest of the medical record. In order to release psychotherapy notes, a separate authorization must be obtained. In addition, state and federal law may also require separate consent for information relating to release of information relating to mental health records, HIV status, or controlled substance use. It is important for you to be aware of the specific regulations applicable to your practice.

If proper consent is obtained, the medical records can be copied and the copies sent to the individuals designated on the release form. Physicians may charge reasonable fees for copying and mailing the record, and often these fees are established by state statute. It is practical, however, to consult with your risk management or legal professional to prior to releasing the medical record.

Record Retention

The length of time for retention of records is often determined by state statute, and can vary state to state. The practice's attorney should determine the state's retention requirements prior to destroying any records. Once the length of time for retention is established, decisions can be made regarding destroying, storing and/or retaining practice medical records. The practice should make a list detailing the disposition of patient records.

Business Records

The practice attorney should be consulted in order to determine the requisite time frames for retaining the various types of business documents, including medical records, tax returns, financial records, contracts, insurance policies, etc.

Conclusion

Unscheduled practice closures may be very stressful, particularly in the absence of advance planning. Proper planning, knowledge of the numerous issues, and organizations involved and legal guidance may reduce the practice's liability exposure and the emotional and administrative burdens placed on staff and family members.

³ American Psychiatric Association, "Principle of Medical Ethics, With Annotations Especially Applicable to Psychiatry," Section 4, (2013 Ed.).

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