

CLOSING A MEDICAL PRACTICE IN MICHIGAN

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To shut the door to one chapter of life and open it up to a new chapter requires understanding, support and knowledge. This white paper discusses the typical process for Michigan medical practitioners to close their medical practices. It is intended as a general guide for legal counselors, as well as financial planning and tax advisors. While medical practitioners may find the information in this paper to be informative, they are strongly advised to seek competent counsel for the matters discussed herein.²

All possible issues involved in medical practice closures cannot be addressed in a single paper of this length. For example, the entity type being closed may be a solo practice, partnership, or a medical group. Likewise, the form of the practice may be a sole proprietorship, a professional corporation, or a professional limited liability company. Moreover, the medical practitioner may intend to continue to practice medicine elsewhere, either locally or away, and in the same or a different specialty, or the practitioner may intend to retire. The specific issues raised by these variations are not addressed in this paper.

Unless noted otherwise, this paper focuses on situations where a practitioner engaged in solo practice voluntarily decides to close his or her medical practice and to discontinue practicing medicine after it is closed.

1. Making the Decision

Chances are that the medical practitioner has mulled over the decision to close the practice for a long time, but making the final decision to close a practice requires careful consideration. A practitioner who is closing a practice and retiring, in particular, needs to have a game plan which includes financial planning. The practitioner may want to speak to a trusted financial planner to determine whether he or she is prepared financially for closing. If the practitioner will join a new practice or will be transitioning to another engagement, the new contract detailing the arrangement should be reviewed by the practitioner's legal counsel before all parties sign the agreement so that the practitioner's new arrangement provides a comfortable financial alternative to running a medical practice.

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² The materials and information in this guide should not in any event be construed as legal, tax, or financial advice for a specific situation.

While financial concerns of life after the practice of medicine are an important consideration, someone contemplating this decision needs to be prepared for the emotional aspects of closing a practice. Trusted advisors would do well to discuss the practitioner's expectations after the practice is closed and to listen carefully to the responses to assess the level of a practitioner's cooperation and usefulness in the closure process. A good advisor can help a practitioner sort out motives for closing the practice while anticipating how the practitioner will react to the closing process.

Closely tied to the emotional aspect is determining whether there is a support system of family and/or friends in place to help the practitioner deal with changes (emotional, financial, health, or otherwise) which may not be anticipated in the decision process. One significant problem in situations where the decision to close a practice is made either by circumstances or by others, or both, is that the practitioner may not have time to take careful measures to close the practice. Another is that the practitioner may not have available funds to engage advisors to properly close the practice. The legal advisor must be aware of both the problems of time and money, while ensuring that vital actions are handled.

Practitioners generally have two methods of voluntarily ending their career: First, some practitioners prefer to gradually reduce their workload and transfer it to other practitioners, either within a group or by refusing to accept new patients and instead providing referrals to other practitioners. Second, other practitioners may prefer to quit "cold turkey" and leave the practice abruptly (usually by selling their practice). While either approach may work, those preferring the "cold turkey" approach will need to put more thought into how they want to live after practicing because there is no gradual reduction in work to help them adjust.

This paper describes legal steps necessary to close a medical practice, and also briefly touches on broader subjects outside of the purely legal scope. Many lawyers who work in this area are not only outside legal counsel to the medical practitioner, but they also serve the broader role of a confidant and trusted counselor. In those circumstances, limiting advice to the purely legal issues does a disservice to the client. The lawyer may not have all the answers and may enquire on areas outside the scope of legal expertise, but, by raising such issues with clients and helping to find competent advisors, the attorney adds value to the legal representation and helps the client to be in the best position to succeed after the practice is closed.

2. The Plan

Practitioners who have been in practice for any length of time usually have a team of advisors. This team generally consists of an attorney (possibly more than one--for example, one for professional issues and one for personal issues), an accountant, a financial advisor, and an insurance agent (also possibly more than one, again reflecting the professional/personal distinction). All of these advisors should be made aware of the contemplated decision, the timetable under consideration, and the practitioner's plans and goals after closing the practice. When all the members of the team are made aware of the situation and their mutual client's desired results from the beginning, they will all have more time to assist the client (and each other) to take the necessary steps to reach those results.

While it is important to get all of the advisors involved, it is also important that each advisor understand the limitations of his or her responsibilities in the process. From a communication standpoint, it is helpful if either the client or one advisor, designated by the client, is responsible for “quarterbacking” the group to allow for a central point of communication and ensure that tasks are achieved in accord with the established timetable. If the practitioner delegates this to one advisor, the other advisors should be notified of this delegation in writing and be instructed to share information with the lead advisor. Generally, the lead advisor is typically either the accountant or the attorney, since such person will generally be the most involved with the steps in terminating a practice.

Once the team of advisors is in place and the lines of communication are clear, the legal advisor should discuss with the client the need to set a reasonable target date to close the practice.³ The steps described below take time, even assuming that everything moves smoothly. It is not unusual for a year or more to pass between when a plan is set in place and when a practice is actually ready to be closed or sold.⁴ Moreover, practitioners have a legal obligation not to abandon their patients, even if they are in the process of closing their practice.⁵

The client and advisors should prepare a checklist of the steps to be taken, the estimated dates by which they will be taken, and who will be responsible for taking such steps, to ensure that everyone stays on track. The process of putting together such a checklist also serves to focus the practitioner’s thinking to allow for more specific goals to be identified. Additionally, if there are alternative options which may be available to the practitioner, the checklist should allow the practitioner to either determine which alternative will be used or set a date by which that decision must be made.

One important aspect of setting a timeframe is that it allows the practitioner a chance to estimate the supplies that will be necessary to obtain before the closing date. The practitioner does not need to leave a full closet on the closing date. By properly gauging the amount of supplies, there should be fewer items to dispose of after the closing date and during the winding down of a business if the practice is being closed. Also, if the practice is being sold to another practitioner, the selling practitioner has the opportunity to evaluate the need for capital improvements which might not be necessary to continue functioning in the short term, but which might be valuable in the long term, and the likely cost-benefit analysis of making such improvements vis-à-vis the expected purchase price.

³ If a practitioner is leaving a medical group, but the group will continue, the legal obligations will be somewhat reduced. Regardless, any agreements among the members of the group must be consulted for other issues that may need to be addressed. If the entire group is terminating, the legal requirements are similar to those for a sole proprietorship but on a broader scope. Again, agreements among the group members must be reviewed for other issues.

⁴ If the intent is to sell the practice, that time estimate excludes the time necessary to find a buyer. Additionally, if the practitioner wants to coordinate closing the practice with the termination of an office space lease and/or equipment leases, the practitioner may need to start planning years in advance to avoid paying penalties for an early termination of a lease.

⁵ AMA Code of Medical Ethics - Opinion 8.115 – Termination of the Physician-Patient Relationship, issued June 1996; *Tierney v University of Michigan Regents*, 257 Mich. App. 681 (2003)

3. Get the Secret Out

The decision has been made, and the estimated timeline has been established. Many practitioners may want to keep the knowledge to themselves, thinking that their practice will suffer during the pre-closing period. However, word will usually get out in surprising ways. A practitioner and advisors who can control the message will do well toward eliminating gossip and misinformation, but they should anticipate that information about the closure will likely spread sooner than they may have liked.

The list of parties to notify will vary depending on the situation, but those listed below should provide a useful starting point.

A. The Manager and Group Members.

If the practitioner is a member of a medical group, the practitioner will need to inform the person responsible for the management of the group. There are usually procedures in place for practitioners who leave the practice, as well as assistance from the office staff. The legal advisor should review the practitioner's employment contract to determine if there are any special notices that need to be made, penalties if notice is given on an untimely basis, benefits which will be due to the practitioner, and how the practitioner's fees will be handled after he or she leaves.

B. Employees

The employees of a sole proprietorship or small group practice practitioner should be notified of the closing early in the process. The practitioner should be very definite and clear about his or her decision. It is recommended that the employees be notified in an office staff meeting which includes time for questions. Unless otherwise necessary, it may be better for office morale and continued efficiency to announce the closing in a group setting than on an individual basis so that the office staff does not fragment into those "in-the-know" and those who only know rumors. Notifying staff members at an early stage should also reduce their stress about the situation. The staff members are vital to the continued success of the practice until it is terminated. If the practice is to be sold, they can help ensure that a purchaser doing due diligence hears about happy patients. Importantly, the staff should be instructed on how to handle questions or rumors about the situation from patients and others.

The downside to notifying staff is that some or all will start to look for other employment opportunities. It is of vital importance that the staff stays motivated until the practice is terminated to ensure patient satisfaction and reduce risks of professional liability. The practitioner may want to consider offering a "termination of practice" bonus or some other form of incentive to be paid after the practice has successfully been closed. It is important that the employees understand that they remain a valuable part of the closing process and, where appropriate, they should be allowed some input into the closing process. However, the practitioner should be prepared to hire temporary staff to substitute for any employees who leave prior to closing.

C. Colleagues

The practitioner will also want to notify colleagues of an anticipated closing. By doing so, practitioners can identify which of their colleagues are accepting new patients and might be appropriate providers for their patients in order to ensure that their patients continue to receive proper care. While this is more easily done in a group practice, when a solo practice is being shut down (without being sold), it becomes even more important as it may not be possible to refer all patients to one colleague or other practice group.

D. Patients

The practitioner should reflect on when and how to notify patients of the closing. Notification should be made by mail. If a practice is being purchased, or the practitioner is a member of a group and the group will continue serving the same medical field in which the practitioner practiced, the letter may be written in conjunction with the purchasing practitioner/group member in the same field to introduce patients to the presumed successor. However, when the practice is terminating, a bit more detail is necessary for clear communication.

First, the letter should give a general and brief explanation of why the practice is closing. Examples would include “retirement,” or “to be closer to family in a different area of the [state/country].” References to living a life of luxury on a golf course or tropical island are not recommended. Second, the letter should indicate the date when the practice will close. Third, the letter should indicate what will happen to patient records (this will have extensive treatment in Section 4 below). Fourth, the letter should describe a procedure to transfer to another practitioner and indicate colleagues who are accepting patients.⁶ The letter may include a form for the patient to complete granting permission to release the patient’s records to another practitioner or it may give direction to the patient as to how to get that information released. Fifth, contact information after the practice is closed may be given. In general, the least disruptive method for the practitioner to accept communications may be through use of a post office box. Finally, the letter should provide for a sincere and grateful farewell to the people who allowed the practitioner to make a living for years.

As mentioned above, it is important that employees be aware of the situation and have instructions regarding how to respond to inquiries which will inevitably come shortly after such a letter is sent. In addition to the letter, notices should be put up in the office waiting room reminding patients that the practitioner will be closing the practice. Patients who have a high-risk medical problem should be sent their letter as early as possible, usually by certified mail. Records should be kept in the patients’ files of such notification.

It would also be good practice to place an advertisement in the local newspaper indicating that the practitioner’s office is closing and thanking his or her patients for their patronage.

⁶ The practitioner may not require that the patient utilize the successor’s services, but may suggest them as a courtesy. No patient is obligated to use a practitioner specified by the retiring practitioner and the patient should be advised in writing they can choose their provider.

E. Insurers/Third-Party Payers

The practitioner should notify insurers and all other third-party payers of the closing of the practice by certified mail. A forwarding address should be included in the notice. The legal advisor should review any agreements with such parties to be sure that the practitioner does not breach any agreement in the process of closing the practice, especially if the agreements place any requirements on the practitioner beyond the legal requirements for handling medical records.

F. Drug Enforcement Agency

The practitioner also needs to notify the local DEA field office for instructions on how to dispose of controlled substances which will not be sold or administered. Practitioners will need to inventory the controlled substances which they are surrendering. The Special Agent in Charge for the DEA will authorize and instruct the practitioner how to dispose of the controlled substance, such as by transfer to a reverse distributor, delivery to the DEA, destruction in the presence of a DEA agent, or by any other means the Special Agent determines.

The practitioner will want to be sure that all controlled substances are accounted for and properly disposed of prior to terminating the business (though this may have to occur after the last patient has been seen). For those practitioners who are selling to another practitioner or are leaving a group practice, the selling/departing practitioner should document the transfer of any controlled substances to ensure no future liability for failure to comply with applicable requirements after the transfer date. A practitioner should keep copies of the records documenting the transfer and disposal of controlled substances for two years.

In addition, the practitioner will need to send his or her DEA Certificate of Registration and any unused Official Order Forms (DEA Form-222), marked “void,” to the local DEA office by certified mail, return receipt requested. All prescription pads should also be destroyed.

G. Medicare/Medicaid

The practitioner should notify Medicare of the future termination of the practice by completing the Internet-based Provider Enrollment, Chain and Ownership System (PECOS) on the internet,⁷ or the paper enrollment application form, CMS-855I, and sending it to the Michigan fee-for-service contractor, currently Wisconsin Physicians Services.⁸

The practitioner should also contact Medicaid regarding future termination of the practice. This is done through the State of Michigan’s CHAMPS Provider Enrollment On-line System.⁹

⁷ <https://pecos.cms.hhs.gov/pecos/login.do>.

⁸ P.O. Box 8248, Madison, Wisconsin 53708-8248 (<http://www.wpsmedicare.com>); Telephone 866-234-7331.

⁹ <https://sso.state.mi.us>. Instructions may be found at www.michigan.gov/mdch>CHAMPS>SSOInstructions.

The National Plan and Provider Enumeration System assigns National Provider Identifiers (NPI) to both individuals (including sole proprietorships) and to organizations (such as professional corporations) that render health care. The NPI Enumerator should be notified of any changes within 30 days of the effective date of the change. Such changes include a change in address for an individual who is moving to another practice, a “deactivation” if the individual is no longer practicing or if the organization is dissolved, or a change in the contact person if the organization is sold. This can be done by using the web-based process at the National Plan and Provider Enumeration System (NPPS)¹⁰ or by filling out and mailing a paper application form, NATIONAL PROVIDER IDENTIFIER (NPI) APPLICATION/UPDATE FORM (CMS-10114), to the NPI Enumerator.¹¹

H. Michigan Licensing Board and Department of Community Health

According to the Michigan Credentialing Unit of the Michigan Health Professions Division of the Bureau of Health Care Services of the Department of Licensing and Regulatory Affairs, there is no specific procedure for a medical practitioner to terminate his or her license. Instead, the practitioner simply lets it lapse by not renewing it.

To change the address on the license, go to www.michigan.gov/elicense, or complete the *Data Change/Duplicate License Request Form* available through the LARA Health Professions Licensing Division website, and send it to LARA/BHCS/Health Professionals Licensing Division, P.O. Box 30670, Lansing, MI 48909, or, by fax, to 517-373-7179.

I. Hospitals

Any and all hospitals where the practitioner has privileges should be notified when the practitioner will no longer be providing services. The legal advisor should review any agreements with hospitals to ensure that the practitioner terminates the relationship in compliance with the terms of the agreement. In addition, any other services, such as labs, MRI facilities, etc., that the practitioner refers patients to should be notified.

J. State/local Medical Societies and Other Professional Associations

The practitioner should notify all societies and professional associations to which he or she belongs that the practitioner will be closing the practice. For a practitioner who is selling the practice or leaving a group practice, some thought should be put into the timing of when societies and associations will be told and what they will be told in order to maximize the value of the practice to the selling/departing doctor.

¹⁰ <https://nppes.cms.hhs.gov>

¹¹ This form is available for download at <http://www.cms.gov/cmsforms/downloads/CMS10114.pdf> or by request from the NPI Enumerator (tel: 800-465-3203; TTY: 800-692-2326; email: customerservice@npienumerator.com or by mail at NPI Enumerator, P.O. Box 6059, Fargo, ND 58108-6059).

K. Software Companies

Software is an integral part of a practice these days. From electronic medical records to billing and accounting systems, it is important that the practitioner understand the consequences of terminating or otherwise changing the relationship with software providers. The practitioner must be certain that the software companies will allow the practitioner access to the records and materials necessary to ensure that the practitioner is properly compensated for services rendered prior to closing the practice (assuming no purchaser acquires the accounts receivable) or which may be necessary to comply with record retention requirements or to defend against a malpractice action.

L. Office Lease.

If the practitioner leases space from a landlord, the legal advisor may need to review the lease to ensure that proper notice is given so that no penalties are assessed for not following the agreement. The advisor can also make the practitioner aware of any particularities of the lease, such as responsibility for removal of signage or rights of the landlord to show the office during business hours.

M. Service Providers and Vendors

If a practitioner is party to agreements with service providers and vendors requiring advance notice for cancellation of contracts, then the practitioner should provide such notice in accordance with the agreements. Service providers and vendors may include medical suppliers, office suppliers, collection agencies, laundry services, cleaning services, and hazardous waste disposal services.

4. Records – What to Do With Them

File retention is one of the least popular aspects of closing a practice, as practitioners would (understandably) prefer to walk away and be done after the doors are closed. However, such an action is neither permitted by applicable law, nor prudent on the part of a practitioner. The following discussion of record retention is bifurcated into medical records and business records.

A. Patient Medical Records

Under the Michigan Medical Records Retention Act,¹² the general rule is that patient records must be retained for at least seven years from the date service was provided to the patient, unless authorized by a patient to be destroyed.¹³ While certain situations may allow for a shorter period,¹⁴ former practitioners would do well to use the default rule. Additionally, practitioners who treat minors

¹² Public Health Code, Michigan Medical Records Retention Act (P.A. 481 of 2006), MCL Section 333.16213

¹³ The Health Care Law Section of the State Bar of Michigan has prepared a “Health Care Records Retention Manual” which lists in detail specific retention periods for various records relating to health care and practice operations. It may be found at <https://www.michbar.org/health/pdfs/retentionmanual.pdf> or by going to the publications section of the Health Care Law section of the State Bar of Michigan (www.michbar.org).

¹⁴ See, e.g., MCL 400.111(b)(8) regarding services to an indigent person. Also, HIPAA notices, policies and consent forms all must be retained for 6 years under 45 CFR 164.530(j).

remember that the statute of limitations for a malpractice action by a minor may not run until a period of time after the minor reaches a certain age,¹⁵ which may be longer than the general seven-year rule. In those cases, practitioners should keep a special list of those files to ensure that they are not destroyed until after the limitations period has run. In any event, the practitioner will want to ensure access to records (even records transferred pursuant to patient request) until the limitations period has run.

When a practitioner ceases to practice, the practitioner's patient records cannot be abandoned. The practitioner may send each patient a written notice providing the patient with 30 days to request a copy of his or her records or to designate where the records should be sent. The notice may also request from the patient, within 30 days, written authorization to destroy the records. If the patient does not request a copy of the record, direct the transfer of his or her patient records, or provide written authorization to destroy the records, then the practitioner may not destroy any records which are less than seven years old.

The practitioner does not need to keep the records in dusty bins in a garage, however. The records may be transferred to a successor licensed in the practitioner's profession, to a health care provider, a health facility or agency, or to a medical records company. The recipient of the records needs to keep the records stored in a manner that protects their integrity, ensures their confidentiality and proper use, and ensures their accessibility and availability to patients.

Subject to the above requirements, records to be destroyed or otherwise disposed of may be shredded, incinerated, electronically deleted, or otherwise disposed of in a manner that ensures continued confidentiality of the records.

If the patient records are not properly destroyed or disposed of, then the Department of Licensing and Regulatory Affairs may arrange for their destruction or disposal, but first the Department will send a written notice to the practitioner providing the practitioner with an opportunity to properly destroy or dispose of the records, unless a delay in the destruction or disposal may compromise the patient's confidentiality. Any costs incurred by the Department related to its overseeing the destruction or disposal of patient records may be assessed to the practitioner.

Any practitioner who fails to comply with the rules regarding retention and destruction of patient records may be subject to an administrative fine of up to \$10,000 if the failure is due to gross negligence or willful and wanton misconduct.¹⁶

Any person who sells, purchases or assumes the practice of a practitioner must notify the State of Michigan within 10 days of the sale, purchase or assumption of the practice. Written notice (in the form of a letter) should be submitted to the Michigan Department of Licensing and Regulatory Affairs, Bureau of Health Care Services, specifying the date of the sale, purchase or assumption, who will have custody of the medical records, and how patients may request access to them or how they may receive

¹⁵ For example, MCL 600.5851(7) and (8).

¹⁶ MCL 333.16213(5)

a copy of their medical records.¹⁷ The written notice should be sent by certified mail to the Department of Licensing and Regulatory Affairs, Bureau of Health Care Services, Health Professions Licensing Division, Attn: Credentials, P.O. Box 30670, Lansing, MI 48909.

B. Business Records

Records relating to business and operational issues should be retained after the termination of the practice. However, the length of time that a record should be retained will depend on the subject matter of the record. For instance, records related to the organization of the practice entity should be kept permanently. Many advisers believe tax returns can safely be destroyed after either four years (after the running of the general three year statute of limitations¹⁸) or seven years (after the running of the six year statute of limitations for substantial omission¹⁹), but there is no statute of limitations if the IRS alleges fraud by the taxpayer.²⁰ Additionally, tax returns can be a convenient record of the basis of various assets which may be sold after the practice terminates.

There are numerous types of business records, ranging from insurance records and employee records, as well as retirement and welfare plan records. Attached as Exhibit A is a guideline for quick reference of how long to keep various types of business records. It is important to note that applicable law may change the periods suggested, so Exhibit A should be treated as a helpful guide that must be reviewed each time before giving advice in specific instances.²¹

5. Insurance – What to Worry About Now

As mentioned above, all of the practitioner's advisors should be kept informed regarding the termination of the business. One advantage of that is that while the practitioner, the practitioner's legal adviser, and financial adviser are working on terminating the business (either by sale or otherwise), the insurance agent can be reviewing options for appropriate policy(ies) to be obtained after the practice is closed. From a medical perspective, this will likely include a determination of whether a "tail policy" (*i.e.*, an extension of the practitioner's insurance coverage after closing the practice to cover lawsuits filed after the practice is closed) is necessary for malpractice claims asserted after the practice has been closed. From a personal standpoint, all existing policies should be reviewed and new options should be considered (long-term care policies are becoming more prominent). Life insurance policies should be reviewed in conjunction with the practitioner's estate plan to ensure that premium costs and death benefits are still aligned with the practitioner's goals after the practice has been terminated.

6. Get Out the Broom and Clean the Room

One of the major issues for a terminating practitioner who does not have a purchaser for the practice and is not in a group setting is the sale of medical equipment and furniture. For any equipment

¹⁷ MCL 338.31

¹⁸ Internal Revenue Code ("IRC") § 6501(a)

¹⁹ IRC § 6501(e)

²⁰ IRC § 6501(c)(1)–(3)

²¹ The legal advisor may also want to refer to Treasury Regulations 1.6001-1 and to The Sarbanes-Oxley Act, 17 CFR 210.2-06, for further guidance as to accounting records.

that may be leased, it should be returned pursuant to the terms of the lease. However, for equipment that is owned outright, the practitioner will likely need to find a market for the equipment. There are businesses which specialize in appraising and selling medical equipment or a new medical practitioner might be willing to purchase some of the equipment. This is one example of why it is useful to spread the news among colleagues. Other possibilities might be to have the equipment auctioned or donated. The practitioner should review the lease for the office space and determine if any of the equipment might be required to stay on the premises after the termination of the lease as fixtures on the property.

As mentioned above regarding notifying the DEA of the closing of the practice, it is important that the practitioner dispose of all controlled substances in accord with instructions provided by the DEA. On a more mundane topic, there should be a forwarding address provided to the postal service and, if desired, a post office box should be rented. Telephone numbers should be cancelled (unless there is a desire to keep a business cell number for personal use). Any service providers and vendors which required and received long-term notice of the closing should again be notified and asked to provide final bills. Any other service providers or vendors who might require only a short notice, such as shredding services, garbage haulers, magazine subscriptions, landscape gardeners, utility suppliers, and anyone else with whom the practitioner and his or her office has a reciprocal relationship, should be notified of the closing date and to provide final bills after the office space has been cleaned and closed. The practice's website should be terminated. The legal advisor may want to recommend that the practitioner start a list early so that no one is overlooked.

7. Financial Matters

For a practitioner leaving a group practice or who has sold his or her practice, many of the matters described herein will be largely irrelevant by virtue of established procedures for leaving the group or by terms of the purchase and sale agreement. But, for those practitioners who will be closing their practices, it is important that they close the business in an orderly fashion.

After the last patient has been seen, if the office space is to be closed, the practitioner should request final bills from all vendors. Business associate agreements with vendors pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) generally include provisions dealing with termination of the agreement and disposition of the personal health information (PHI), and those terms should be followed. Generally, the agreement will provide that, at its termination, if feasible, the business associate is required to return or destroy all PHI received from, or created or received by the business associate on behalf of, the practitioner. If the practitioner has been leasing office space, then the practitioner needs to review the terms of the lease regarding termination of the lease and how items such as utilities will be handled. If the practitioner owns the office space (or controls the company which owns the office space), the practitioner will want to discuss with a realtor how to best show the space for a sale or lease to a third party.

Any credit cards issued in the name of the practice should be terminated, and all automatic payments (ACH) should be stopped. Accounts receivables that are retained by the practice should be handled carefully. For tax reasons, the legal entity of the practice generally should not be terminated until all efforts to collect receivables have stopped (or the sale of the receivables to a third party has

been completed). If the practitioner, as an individual, attempts to collect the receivables, and the legal entity is a corporation, there will likely be recognition of income to the corporation without the supporting income having been received.²² Finally, after all bills have been paid (and a reserve has been set aside for the expenses associated with the Final Steps listed below), and all receivables have been collected, the practice's bank account(s) should be closed in a manner approved by the tax adviser for the practice.

8. Final Steps

After the above has been completed, there are a few final legal and accounting items that must be handled. If the practitioner was the plan sponsor of a retirement plan, then the plan should be updated for all laws current to the date the plan is terminated. Although details are beyond the scope of this paper, in general, if the practitioner wants more complete assurance that the plan assets will continue to be tax deferred, an application should be submitted to the IRS for a favorable determination letter. It is usually recommended that assets not be distributed until the IRS issues this letter. After the letter is issued (or upon final accounting if no letter is sought), the plan assets are distributed (or rolled over into IRAs or other qualified plans of a participant's new employer) and a final Form 5500 should be filed.²³ Any welfare plans should also be terminated and final returns filed where necessary.

After resolving all these issues and after resolution of all accounts receivable, the professional entity, whether a professional limited liability company or a professional corporation, should be terminated. Minutes should be created to record the decision to dissolve the entity. At the state level, a *Certificate of Dissolution* (Form CD-531 for corporations; Form CD-731 for limited liability companies) should be filed with the Corporations Division of the Michigan Department of Licensing and Regulatory Affairs (LARA).²⁴ Within 60 days after submitting the Certificate of Dissolution to LARA, a tax clearance request must be submitted to the Tax Clearance Division of the Michigan Department of Treasury²⁵ on Form 501, *Tax Clearance Request for Corporation Dissolution or Withdrawal*. If the legal counsel wishes to represent the entity, he or she should include Form 3840, *Limited Power of Attorney*. Final tax returns must be included with the Tax Clearance Request. If the practitioner is transferring the medical practice to another practitioner, the seller must complete Form UIA 1027, *Business Transferor's Notice to Transferee of Unemployment Tax Liability and Rate*, and furnish the form to the purchaser at least two business days prior to the transfer of the business. Also, if applicable, Form 163, *Notice of Change or Discontinuance*, or a letter including all discontinuance and account information, should be sent to

²²IRC § 336(a)

²³ See *The ERISA Outline Book*, by Sal L. Tripodi, APM, J.D., LL.M., published by ASPPA (American Society of Pension Professionals & Actuaries), www.asppa.org/eob; *Pension Distribution Answer Book*, 2014 Edition, Part 3, by Melanie N. Aska, Scott D. Miller, and Carol R. Sears, Wolters Kluwer Law & Business, New York.

²⁴ Michigan Department of Licensing and Regulatory Affairs (LARA), Corporations, Securities & Commercial Licensing Bureau, Corporations Division, P.O. Box 30054, Lansing, Michigan (mailing address).

²⁵ Michigan Department of Treasury, Tax Clearance Division, Lansing, MI 48922, (517) 636-5260.

the Registration Unit of the Michigan Department of Treasury.²⁶ In addition to the above Michigan forms, at the federal level, if the dissolving entity is a corporation, then IRS Form 966, *Corporate Dissolution or Liquidation*, should be sent to the IRS within 30 days from the date of termination to alert it to the termination at the address where the corporation files its income tax return.²⁷ A final set of income tax returns for the entity should be filed, each clearly indicating that they are the final returns.

In addition to filing the above forms, the legal advisor may want to prepare a *Notice to Existing Creditors and Claimants and General Notice to Claimants and Creditors*. Under Michigan law, a dissolved corporation may (but is not required to) provide written notice of its dissolution to existing (known and unknown) claimants.²⁸ If a notice is sent to a known creditor, then the creditor has six months to make a claim or it will be time barred. If the notice is also published in a local newspaper, then any other claims will be time-barred after one year has passed.²⁹ These notices are useful if the corporation has had creditors in its past, as they effectively set a time limit on when claims may be made.

9. Conclusion

“I just want to practice medicine” is the creed of many practitioners, and their involvement in closing the practice may be difficult for them. A legal advisor can alleviate their stress by clearing delineating what needs to be done and who should do what. The key elements are active listening to the practitioner and execution of the checklist. The legal advisor will have done his or her job when the practitioner is able to leave behind his or her practice and move on to the next chapter of life.

²⁶ Michigan Department of Treasury, Registration Unit, P.O. Box 30778, Lansing, MI 48909, fax 517-636-4520.

²⁷ For Michigan, Internal Revenue Service, P.O. Box 802501, Cincinnati, OH 45280-2501.

²⁸ MCL 450.1841a(1)

²⁹ MCL 450.1842a

EXHIBIT A

RECORDS RETENTION RECOMMENDED GUIDELINES – MICHIGAN 2014³⁰

Business Records	Minimum Retention Period
Articles of Incorporation/Organization	Permanent
Bylaws/Operating Agreement	Permanent
Capital stock records	Permanently
Computer records, backup of all business records	Permanently
Contracts and leases (expired)	7 years
Contracts and leases (current)	Permanently
Correspondence (general)	3 years
Correspondence (legal/important matters)	Permanently
Correspondence (routine) with customers or vendors	1 year
Deeds, mortgages, bills of sales	Permanently
Licenses and permits	Permanently
Minute books of directors and Stockholders	Permanently
Mortgages and note agreements	6 years after the termination, expiration, disposal, etc. of the item
Property appraisals by outside appraisers	Permanently/7 years after property is sold
Property records	Permanently
Stockroom withdrawal forms	1 year

Financial Records	Minimum Retention Period
Accounts payable and accounts receivable ledgers and trial balances	7 years
Auditors' reports	Permanently
Automobile logs	7 years
Bank reconciliations	7 years
Bank statements	7 years
Duplicate deposit slips	3 years
Cash books	Permanently
Charts of Accounts	Permanently
Check (canceled, routine)	7 years
Check (cancelled, important)	Permanently
Depreciation schedules	Permanently
Financial statements – annual	Permanently
Financial statements – interim	4 years
General and private ledgers	Permanently
Information returns	7 years
Invoices – Sales and cash register receipts, merchandise purchases	4 years

³⁰ It is important to note that applicable law may change the periods suggested, so Exhibit A should be treated as a helpful guide that must be reviewed each time before giving advice in specific instances. Citations are referenced at the end of these Guidelines.

Financial Records	Minimum Retention Period
Invoices – purchases (permanent assets)	4 years after the termination, expiration, disposal, etc. of the item
Invoices to customers and from vendors	7 years
Journals	Permanently
Notes receivable ledgers and trial balances	7 years
Petty cash vouchers	3 years
Purchase orders	7 years
Sales and use tax returns	Permanent
Sales records	7 years
Scrap and salvage records	7 years
Subsidiary ledgers to the general ledger and trial balances	7 years
Tax returns	Permanent

Insurance Records	Minimum Retention Period
Insurance - Accident reports	6 years
Insurance - Fire inspection reports	6 years
Insurance - Group disability records	6 years
Insurance - Insurance policies	6 years after the termination, expiration, disposal, etc. of the item
Insurance - Safety records	6 years
Insurance - Settled insurance claims	4 years after the termination, expiration, disposal, etc. of the item

Employee Records	Minimum Retention Period
Age Work Certification Records for Minors	3 years after termination
Employment applications	3 years
Applications, résumés, and other hiring documents (non-hires)	1 year
Any personnel or employment record made or kept by employer, including application forms and records concerning hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship	EEOC: 1 year after the date record was made or personnel action taken, whichever is later
If an employee is involuntarily terminated, any personnel or employment record made or kept by employer, including application forms and records concerning hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship	EEOC: 1 year from the date of termination. Where a charge or lawsuit is filed, all relevant records must be kept until final disposition
For employers with fewer than 100 employees, records showing for each year the number of persons promoted, terminated, applicants hired for each job by sex and where appropriate, by race and national origin	Where adverse impact is found in the selection process, records must be maintained for at least 2 years after the adverse impact is eliminated

Employee Records	Minimum Retention Period
For employers with 100 or more employees, records showing the impact of the selection process for each job, maintained by sex for each racial or ethnic group that constitutes at least 2% of the labor force in the relevant labor area or 2% of the applicable workforce	Where adverse impact is found in the selection process, records must be maintained for at least 2 years after the adverse impact is eliminated.
Attendance Records	4 years
Discrimination records pertaining to claims, unfair or discriminatory employment practices, and Americans with Disabilities Act	Until the final disposition of the charge or action
Consumer credit reports	There is no retention requirement. However, when disposing of records, every employer that employs one or more employees is required to shred any and all documents that contain information derived from a credit report
Employment Advertisements and Postings	1 year
INS Form I-9 (Employee Eligibility Verification Form) signed by each newly-hired employee and the employer	3 years after employment begins or 1 year beyond termination, whichever is later
<p>FMLA Records containing the following information:</p> <p>Basic employee data, including name, address, occupation, rate of pay, terms of compensation, daily and weekly hours worked per pay period, additions to or deductions from wages and total compensation</p> <p>Dates of leave taken by eligible employees. Leave must be designated as the FMLA leave. For intermittent leave taken, the hours of leave. Copies of employee notices and documents describing employee benefits or policies and practices regarding paid and unpaid leave. Records of premium payments of employee benefits</p> <p>Records of any dispute regarding the designation of leave</p>	3 years
Medical Records (records related to work comp, FMLA, ADA, hiring, and drug testing keep in a separate file)	6 years under HIPAA. Note longer period possible for patients who are minors
MSDS (Material Safety Data Sheets) or some identification of substance used or found (hazardous condition exposures)	The duration of employment plus 30 years
Employee Medical Records and Analysis as required by OSHA	The duration of employment plus 30 years

Employee Records	Minimum Retention Period
OSHA Logs and Reports	5 years following the end of the year to which they relate, plus current year
Payroll and Tax Records – including name, address, social security number, wage rate, number of hours worked daily or weekly deductions, allowances claimed and net wages	IRS: 4 years from the date tax is due or tax is paid; may be up to 6 years depending on the state ADEA: 3 years
Payroll data, supplementary records on which wage computations are based, including time cards and piece work tickets, wage rate tables, work and time schedules and records of additions to or deductions from wages	2 years after record is made
Basic employment and earnings records, time cards, piecework records, and records substantiating additions or deductions from wages, such as wage assignments, garnishments	FLSA: 2 years from date of last data entry
Personnel File Records – including application, pre-employment tests, performance appraisal, rate changes, position changes, leaves, transfers, promotions, demotions, documentation of disciplinary actions and job descriptions	4 years after termination
Polygraph test results and the reasons for administering	3 years.
Reasonable accommodation requests	1 year. If an employee is involuntarily terminated, his/her personnel records must be retained for 1 year from the date of termination
W-2 and W-4 forms	4 years from the later of tax due date or payment date
Retirement and COBRA Records	Minimum Retention Period
COBRA Records	6 years after termination
ERISA - Plan and trust agreement	Permanent
ERISA - IRS approval letter	Permanent
Employee Benefit Plans	6 years following the termination of the plan
Retirement plan informational returns	Permanent
ERISA - Associated ledgers and journals, actuarial reports, financial statements	Permanent
ERISA-related records used to develop all required plan descriptions or reports, as well as other materials needed to certify information	6 years

FOR FURTHER INFORMATION, PLEASE SEE:

Information concerning employment and hiring records retention requirements:

Age Discrimination in Employment Act (ADEA):

Executive Order No. 11246 (EO 11246)

29 CFR §§ 1627.2-1627.6, 1627.10-1627.11

29 CFR § 1627.3

29 CFR § 1627.3(a)

29 CFR § 1627.3(b)(1)

29 CFR § 1627.3(b)(3)

41 CFR §§ 60-1.3, 60-1.7, 60-1.12

29 USC § 626

Americans with Disabilities Act Amendments Act of 2008 (ADAAA):

29 CFR §§ 1602.7-1602.14

29 CFR § 1602.14

42 USC § 12117

Civil Rights Act of 1866

42 USC § 1981

Controlled Substances and Alcohol Use and Testing

49 CFR § 382.401

Davis-Bacon and Related Acts (DBRA):

EO 11246

29 CFR § 5.5(a)(3)

40 USC § 276a

41 CFR § 60-1.12

Employee Polygraph Protection Act of 1988
(EPPA):

29 CFR § 801.30

Equal Pay Act of 1963 (EPA):

EO 11246

20 CFR § 516.6

29 USC § 206

29 CFR §§ 1620.1, 1620.32

29 CFR § 1620.32

41 CFR § 60-1.7(a)

Fair Labor Standards Act (FLSA):

29 USC § 211

29 CFR § 516

29 CFR §§ 516.2-516.8, 570.6

29 CFR § 516.5

29 CFR § 516.6

29 CFR §§ 516, 570.5

Family Medical Leave Act of 1993 (FMLA):

29 USC § 2616

29 CFR § 825.500

Federal Insurance Contribution Act (FICA):

26 USC § 3101, *et. al.*

FICA Reg. § 316001-1(e)(2)

Federal Unemployment Tax Act (FUTA):

26 USC § 3301, *et. al.*

Immigration Reform and Control Act of 1968 (IRCA):

8 USC § 1324b(3)(B)

Internal Revenue Code of 1986, as amended (IRC):

IRC § 6501(a)

26 CFR 1. 6001-1

Occupational Safety and Health Act (OSHA):

29 USC § 657-58

29 CFR §§ 1904.4, 1904.5, 1904.7, 1904.29, 1904.32, 1904.33, 1904.44, 1910.1020

Rehabilitation Act of 1973:

EO 11246

29 USC § 793

29 CFR § 32.49

41 CFR § 60-1.12(a)

41 CFR § 60-741.80

41 CFR § 60-741.80(a)

41 CFR § 60-741.80

41 CFR § 60-741.80(a)

Title VII, Civil Rights Act of 1964:

29 USC § 626

29 CFR §§ 1602.7-1602.14; 1602.20-1602.21

29 CFR § 1602.7

29 CFR § 1602.14

29 CFR §§ 2000e-8(c)

Toxic Substances Control Act:

15 USC § 2607

Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA):

EO 11246

38 USC § 4212

41 CFR § 60-1.12(a)

41 CFR § 60-300.80

41 CFR § 60-300.80(a)

Michigan Occupational Health Standards

Part 470, Employee Medical records and Trade Secrets, R 325.3456 – 325.3459

Information concerning employee benefit records retention requirements:

Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA):

29 USC § 1161

Employment Retirement Income Security Act (ERISA):

29 USC § 1027

26 USC § 6001

29 CFR § 2520.107-1

ERISA Opinion Letter 82-40A (8/10/82)

29 USC § 1059

29 USC § 1113

Health Insurance Portability and Accountability Act (HIPAA)

45 CFR § 164.530(j)(2)

Information concerning financial records retention requirements:

Internal Revenue Code of 1986, as amended (IRC):

IRC § 6001

26 CFR 1. 6001-1

The Sarbanes – Oxley Act

17 CFR § 210.2-06

In addition, you may want to consult *The Guide of Record Retention Requirements in the Code of Federal Regulations as of January 2006*, editors William Pegler, Kathryn Hough, Lynn Brown, Christopher Zwirek (Published by Toolkit Media Group, 2007)