

Closing the Osteopathic Physician's Office

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CLOSING THE OSTEOPATHIC PHYSICIAN'S OFFICE

At some point in every physician's career it becomes necessary to close an Osteopathic practice. If the closing has been anticipated and planned for, as in the case of a retiring physician, the closing should present relatively few problems. However, if the closing is unexpected, as in the case of a deceased or disabled physician, the situation is both traumatic and full of problems and questions that require quick solutions or answers.

This pamphlet is designed to give some answers to the most pressing questions that arise during an office closing process. It covers such questions as ... "What do we do with the medical records?" "Can we still collect the accounts receivable?" ... "How do we notify the patients about the closing?" ... "What state and federal agencies need to be notified about the closing and what do we need to tell them?" ... "Who can dispose of unused drugs and medications legally?" ... "How do we get off all of the junk mail lists?" ... etc. etc..

We have attempted to give current information, in addition to contact addresses and telephone numbers if additional information is needed.

PRESERVATION OF MEDICAL RECORDS

One major problem that always arises whenever it becomes necessary to close a physician's office is what to do with patient records. Since these are very important and confidential documents, they must be carefully preserved in some manner.

If a physician was in partnership, it is common practice to leave the records in the possession of the partner. However, all of the physician's patients should be advised that they have the right to have their medical records sent to another physician of their choice. This notification may be accomplished through a sign in the reception area, a note on the billing statement, or a small advertisement in a newspaper of general distribution in the community.

It is not advisable to turn the original record over to the patient. It should be transmitted to another physician if at all possible. Realizing that there will be preparation and mailing costs involved, very few patients will object to paying a minimum amount for this service.

(NOTE: If the physician is deceased and the practice can find no other physician willing to take possession of the original records, then it is permissible to release the original directly to the patient, while keeping a list of those records so released.)

The medical record of an individual includes any and all medical and clinical data on the individual, including EKG tapes, x-rays, laboratory reports, etc. In some

offices it may be necessary to gather up a patient's entire record from several different filing locations.

It is not necessary to transmit financial data to another physician along with the patient's medical record. However, it is both legal and ethical to do so.

Whenever a physician is leaving or has left practice and the actual office is being closed, several different methods of patient notification may be used. A letter placed in the patient's monthly billing notice is one method. Since most patients do not receive a monthly notice, it is common practice to place a dignified advertisement in two or three editions of the local newspaper notifying the general public, as well as past and present patients, of the office closing and that medical records will be sent to another physician of the patient's choice.

Of course, the method that will assure maximum notice is a direct letter to the last known address of each patient in the file. Obviously, this could become prohibitively expensive and is really not necessary. The important thing is to preserve the records so that they will be available when needed.

There is no general law setting the specific amount of time that medical records should be preserved. However, legal authorities have recommended that in Oklahoma, medical records should be kept for a minimum of ten years from the last time the patient was seen. Records of patients who were minors when treated should be preserved until two years after the patient reaches 18 years of age, ie, their 20th birthday.

After the maximum number of records have been forwarded to other physicians, the storage location of the remainder of the records should be made known to the following organizations: the Oklahoma Osteopathic Association and the Oklahoma Board of Osteopathic Examiners, to be included in the physician's record; to other physicians, pharmacies, clinics, and clinic managers in the area; and to area hospital administrators and hospital medical record departments, even in hospitals where the physician did not have staff privileges.

Specific federal and state laws call for the preservation of financial records. As a general rule, most financial records may be safely destroyed after seven years. However, the rule does not apply to the minutes and other financial "books" of corporations.

The destruction of any record, medical or financial, should only be done with the advise of competent legal counsel. Advise regarding the destruction of medical records should be sought from the Oklahoma Osteopathic Association and/or the Board of Osteopathic Examiners.

ACCOUNTS RECEIVABLE

Accounts receivable must be dealt with whenever it becomes necessary to close a physician's practice. On occasion the simplest thing to do is leave the office open, or set up a smaller office in a nearby facility, and allow the physician's bookkeeper or accountant to continue collecting the accounts for some time.

If the physician was in a partnership and the practice is going to remain open, it is often simpler to allow the partnership accountant or bookkeeper to continue collecting until as much as possible has been recovered.

Occasionally, when it becomes necessary to close out the accounts receivable of a deceased physician, the administrator of the estate will recommend that the accounts be "sold" to a collection agency at a discount price and then leave the agency the responsibility of collecting the unpaid amounts. This is a procedure not recommended for Osteopathic accounts.

The Osteopathic physician is admonished to give due consideration to the patient's ability to pay the fee which is due, before turning it over to an ethical collection agency. If the physician or family "sells" medical accounts, all control is lost and may subject patients or former patients to the tactics and methods of aggressive collection which might bring the Osteopathic profession into disrepute and even destroy the "good name" of the physician.

There are a number of collection agencies in Oklahoma that specialize in collecting fees for professionals, specifically for physicians. Their reputations are usually well-known to the state association.

INSURANCE

One of the first actions taken by an administrator of a deceased person's estate is to collect all of the various insurance policies and notify the companies of the person's death. This same procedure should be followed in the case of the death of an Osteopathic physician. However, occasionally a physician will simply quit business and fail to notify companies insuring the practice.

If a physician closes an office, they obviously no longer needs premise or business liability coverage, and should notify the company. This may even entitle them to a rebate on paid premiums. Other possible savings can be found in the timely termination of overhead expense policies, disability income policies, and even professional liability policies.

As an example, the savings in premium costs for a professional liability policy may be substantial whenever a physician who has been classified as a high-risk surgeon leaves private practice to become a medical director or in-house physician (doing no surgery) for a large company. This reduces the insurance

company's risk, and the physician may be eligible for the same amount of coverage at a reduced premium.

FINAL PAPERWORK

Whenever a physician's office is forced to close unexpectedly, as in the case of death or disability, his or her general paperwork area and mail should be carefully searched for any unfinished paperwork requiring a personal signature. Such things as unsigned death certificates, insurance physical forms, etc., should be gathered up and returned to the appropriate agency with a note stating that the physician's signature is no longer available.

Whenever a physician is voluntarily closing the office, "unfinished paperwork" isn't such a problem.

DISPOSAL OF EQUIPMENT

It is some times possible to sell a medical practice, in tact, to another physician. In such case, the purchasing physician may agree, as a part of the purchase, to preserve the medical records of the first physician's patients. He or she might even purchase the accounts receivable of the office ("sale" of accounts receivable to another physician is acceptable) or agree to try to collect them, and may even agree to keep the first physician's original staff together. However, this "perfect" disposition of a practice seldom occurs.

Whenever it does become necessary to dispose of medical equipment, there are a number of avenues available. A simple notice on the local hospital doctors' bulletin board will quite often bring quick results. The notice should list the equipment, its general condition, the expected price, or a notation that the "best offer" is going to get it.

Where the state association has a journal, bulletin or other publication, the person wishing to dispose of the material might consider placing an ad.

Another method of disposal of medical equipment is to call the various physician and hospital supply firms in the area. Often they will take the equipment on consignment and will attempt to find a buyer in return for a percentage of the selling price.

One alternative not to be overlooked is the possibility of donating the used medical equipment to a charitable institution and then taking an appropriate tax deduction. One advantage of this method is that you can usually dispose of the property very quickly and often the tax deduction may be larger than the used equipment sale price.

JOURNALS AND ADVERTISING MAIL

It may take up to a year for information that a physician is retired, deceased, or has closed a medical practice to reach all of the various mailing lists. Unfortunately, there is no central clearing office that can remove names from all lists. However, the American Medical Association, if requested to do so, will notify all users of its mailing list to remove a name. (NOTE: The AMA tracks all persons holding themselves out as physicians and works with mailing organizations to correct their mailing lists.)

A little patience and about a year's time may bring an end to the flow of mail, or you may write "deceased-return to sender" or "no longer in practice," on each piece and mail it back. While the latter course might entail some effort initially, it will rapidly and effectively cut off the flow.

ASSOCIATION DUES

Many Osteopathic Associations have a provision in their bylaws for refunds of dues in the event of the death of a member or if a member finds it necessary to leave the area encompassed by the association. However, many physicians prefer not to ask for dues refunds, especially from their professional societies.

AGENCIES TO NOTIFY

Whether a physician dies, or is simply changing addresses, there are certain agencies that need to be notified as soon as possible. Some notifications are required by law, others are good publicity, and some just make good sense.

The Oklahoma Board of Osteopathic Examiners requires by law that an Osteopathic physician's current address (mailing or practice) be on file. The Board's address is 4848 North Lincoln Boulevard, Suite 100, Oklahoma City, OK 73105. Phone 405528-8625. Fax 405557-0653.

Federal law requires that the Drug Enforcement Administration be notified any time a physician changes his principal place of practice or becomes deceased. In the event of a practice location change a new DEA number needs to be issued for the physician's new address. Changes should be sent to the Drug Enforcement Administration, Division Office, 1880 Regal Row, Dallas, TX 75235, (214) 366-6900.

The Oklahoma Osteopathic Association would like to be notified as soon as possible. Quite often the Association is called upon to vouch for a physician-member. In addition, it publishes a scientific journal, newsletter,

bulletin, and/or membership directory that needs to receive an address change. The Oklahoma Osteopathic Association may be contacted at 4848 North Lincoln Boulevard, Oklahoma City, OK 73105. Phone 405528-4848 or 800522-8379. Fax 405528-6102. E-Mail: ooa@okosteo.org.

Notification should also go to the American Osteopathic Association's main headquarters at 142 East Ontario Street, Chicago, IL 60611. Phone 312 202 8000 or 800 621-1773. Fax 312 202-8200.

The American Medical Association maintains a national registry of physicians, both MD and DO. Whether a physician is a member of the AMA or not, the AMA needs his or her current address. This is a little known function of the AMA that has thwarted several thousand "phony" doctors. The association maintains extensive files on medical and osteopathic licenses issued, medical school graduates, "phony physicians," and current and past addresses of physicians. Address and practice status changes may be sent to the American Medical Association, 515 State Street, Chicago, Illinois 60610. (312) 464-5000.

Oklahoma law requires that whenever a physician goes into practice in an area, they must register their license with the County Clerk of the county in which they will practice. If moving to another county in the state of Oklahoma, the physician must re-register with that County Clerk. Other states have similar provisions.

Oklahoma law requires that a physician must have not only a DEA registration, but also be registered with the Oklahoma Bureau of Narcotics and Dangerous Drugs Control and receive a BNDD number. This registration number is assigned to the physician at his principle place of practice. In the event of death or that a physician's address changes, the BNDD Director should be notified at 440 NE 39Th St, Oklahoma City, OK 73105. (405) 521-2885.

Because the lag time between the filing of a claim and its final payment by Medicare, Medicaid and Oklahoma Blue Shield, physicians are encouraged to notify these agencies whenever they change addresses.

Address changes to Medicare may be addressed to Trailblazers Health Enterprises, LLC, Attn: Provider Enrollment, PO Box 650711, Dallas, TX 75265 0711.

Medicaid in Oklahoma is handled through the Oklahoma Healthcare Authority, Medical Services Division, 4545 N. Lincoln, Suite 124, Oklahoma City, OK 73105, (405) 522-7300.

Because of its extensive field staff, Oklahoma Blue Shield usually knows about address changes. However, they too should be notified at 1215 South Boulder, Tulsa, OK 74102.

Address change notification should also be sent to the other insurance companies and managed care plans (including HMOs) that the physician finds most often in their practice. The office staff will be able to identify these companies.

All insurance companies doing business in the state of Oklahoma must register with the office of the Oklahoma Insurance Department. That office will furnish insurance company addresses. It may be contacted by writing to Insurance Commissioner, P.O. Box 53408, Oklahoma City, OK 73152. (405) 521-2828

In the larger cities, upon the death of a physician, the administrators of the various hospitals in which he or she may have had privileges should be contacted immediately. This will assure coverage of any patients in the hospital, and will minimize confusion in emergency rooms and other coverage areas. In the smaller towns this is usually not necessary because "everyone knows" almost immediately.

UNIFORM DANGEROUS CONTROL SUBSTANCES ACT

Federal regulations concerning the Uniform Dangerous Control Substances Act provide that in the event the registration of any purchaser of such items is suspended, revoked, or voided (because of death, ceasing of legal existence, discontinuance of business or professional practice, or because he changes his name or address as shown on his registration)... all unused order forms for schedules I & II drugs shall be returned to the nearest office of the Drug Enforcement Administration (DEA). Order forms are known as DEA Form 222.
DEA Oklahoma City
DEA Tulsa
9900 Broadway Extension
7615 E. 63rd Pl., Suite 250
Oklahoma City OK 73114
Tulsa OK 74133
(405) 475-7500 (918) 459-9600

All controlled dangerous substances records and inventories must be maintained at least two years.

In the event it becomes necessary for any person to dispose of controlled substances, such person may contact the regional DEA director for authority and instructions. In the event the person disposing of the material is not a registrant (example, the administrator of a physician's estate) he must submit to the regional director a letter stating... his name and address, the name and quantity of each controlled substance to be disposed of, and registration number of the person who possessed the controlled substance prior to the applicant.

The regional director shall authorize and instruct the applicant to dispose of the substance in one of the following manners: (1) by transfer to a person registered under the act and authorized to possess the substance... (2) by delivery to an

agent of the bureau or to the nearest bureau office... (3) by destruction in the presence of an agent of the bureau or other authorized person... or (4) by such means as the regional director may determine to assure that the substance does not become available to unauthorized persons.

NOTE REGARDING ADDRESSES AND TELEPHONE NUMBERS: *Federal and state agencies tend to move around and change office locations frequently. No guarantee can be given that the numbers in this brochure will be correct at some point following publication when they are needed. It may be necessary to consult the latest telephone directory for current numbers and then call for addresses.*

This publication was researched and written for the Oklahoma Osteopathic Association by Ed Kelsay, Attorney at Law, in January 2009. Mr. Kelsay may be contacted at 2817 N. Oakridge Drive, Bethany, OK 73008. Telephone (405) 720-9800, fax (405) 720-9993, or e-mail **ekelsay@cox.net**.

Oklahoma Bureau of Narcotics Travis
White, Deputy General Counsel

All registrants must diligently protect against the unlawful use and transfer of controlled dangerous substances. If the substance is "scheduled" according to the Uniform Controlled Dangerous Substances Act (63 O.S. Sections 2-203 through 2-212) then it is "controlled" and therefore subject to strict regulations in order to prevent the unlawful use, distribution or transfer of said substances

If you are a registrant that orders or otherwise distributes controlled dangerous substances that are considered Schedule I or II drugs then you are subject to some of the greatest regulations to ensure against unlawful access, distribution or use by others. One method to assist in protecting against the diversion of substances such as I's and II's is to require all registrants seeking to order and/or transfer these substances to complete a form which is provided by the DEA. (DEA 222). This form must be completed in full in order to comply fully with state and federal guidelines.

"Practitioners" by definition will include osteopathic physicians, therefore said registrants will be limited in the manner in which they can handle and transfer controlled dangerous substances. A "practitioner" registration is limited to, unless otherwise specifically provided for, "dispens[ing], precib[ing], administer[ing] or us[ing] for scientific purposes substances in Schedules II through V." 63 O.S. Section 2-303(C). A review of each of these terms in Title 63 reveals that each regards a transfer of a controlled dangerous substance from the practitioner directly to the end user, patient and/or the like.

The power to "distribute" a controlled dangerous substance requires a more specific registration except in limited circumstances. Of course, "distribut[ion]" of controlled dangerous substances is the delivery of said substances other than by administering or dispensing...perhaps most commonly considered from one doctor to another doctor, or from one pharmacy to another pharmacy, who would then be administering and/or dispensing said controlled dangerous substance to an end user.

Oklahoma law, as well as, OBN's Rules for Registrants, which have the effect of law, govern the limited circumstances where a "practitioner" may "distribute" controlled substances without the need for seeking an additional registration.

63 O.S. Section 2-311 and OAC 475:35-1-2 both provisions deal with circumstances where a "practitioner" possesses a quantity of controlled dangerous substances (except V's which are not provided for here) that are no longer needed by the practitioner. These provisions, 1) allow the "practitioner" to sell this quantity of CDS to A) manufacturer, B) wholesaler or C) a pharmacist.

Again, the same rules apply any time a Schedule I or II is being transferred, these substances must be recorded on a DEA Form 222 prior to transfer.

OBN Rules allow registrants to distribute despite the lack of a registration which allows for distribution from one practitioner to another which includes pharmacies of a quantity of CDS only in limited situations:

1) 1) Practitioner can only distribute CDS to another properly registered practitioner; 2) 2) The practitioner properly documents said transfer using the proper DEA Form 222 if applicable;

3) 3) The total amount of CDS which is distributed by the practitioner over a 12 month period does not exceed 5% of the total amount of CDS distributed AND dispensed for this period.

4) 4) If the practitioner believes they will exceed said 5% limit in a 12 month period, the practitioner must seek another registration which allows the practitioner to distribute CDS.

On occasion, a registrant/practitioner may cease conducting the business associated with their registration. When this occurs, compliance with OAC 475:35-1-3 must be had. In order to comply with these provisions a practitioner should review 21 C.F.R. Section 1307.21. In general, this section advises a practitioner who they should contact, and how CDS may be disposed of properly including but not limited to, the destruction, transfer or return of remaining CDS to an authorized entity.

A registrant that ceases to conduct business must surrender their OBN Certificate of Registration to the Oklahoma Bureau of Narcotics.

Said registrant, prior to transferring their business and stock of CDS must advise the OBN in person or by certified mail within 14 days prior to the transfer of said business activity. This "notice" to OBN shall contain detailed information as provided for by the provisions of OAC 475:35-1-3 including but not limited to the type of business activity the transferring registrant was conducting, the name and related identification information for the registrant which is destined to take over the transferring registrant's business, the location for the continuing business, the date the transfer of business responsibility is to take place, etc...(there are additional provisions for registrants engaged in the business of manufacturing/procuring Sch I's and II's as well).

In the event OBN does not indicate otherwise prior to the transfer, said transfer and distribution of CDS may be conducted, again with complete compliance with the provisions as summarized above, however, without the need of obtaining a registration permitting distribution of CDS.

Any transfer of a practitioner's business where CDS is to be distributed from one practitioner to another, on the date said transaction is to occur, a complete inventory of all CDS being transferred shall be completed. Both the transferring practitioner and the receiving practitioner shall keep a copy of said inventory for their records. Of course, because registrants are obligated to keep accurate records as it pertains to CDS transactions and of CDS in their possession, said records maintained by the transferring practitioner should be copied and provided to the new receiving practitioner, at least as it pertains to the CDS which has been distributed.

Be advised, that the above provisions are in place to guard against the diversion of controlled dangerous substances to persons who are not authorized to lawfully possess, use or distribute said substances. That is a mission that is accepted by all registrants. A failure to adequately guard against the diversion of controlled dangerous substances may result in civil liability, as well as, potentially criminal liability for the respective registrant/practitioner. Because the responsibility is so great, you are reminded to make every effort to review and understand the laws and rules pertaining to being a responsible registrant.

The above summary is not meant to replace or otherwise supersede the provisions of law that are cited but are offered merely as a guide. Registrants are responsible for knowing the law and related rules pertaining to their registration. To ensure compliance you are directed to the following provisions for more information:

- 0 630.S.Section2-101. Definitions
- 0 63 O.S. Section 2-303(C). Registration
- 0 63 O.S. Section 2-308. Order Forms.
- 0 63 O.S. Section 2-311. Sale of Certain Substances
- 0 63 O.S. Section 2-315. Submission of out-of-date controlled dangerous substances for destruction.
- 0 OAC 475: 35-1-2. Distribution by a registered practitioner or pharmacy to another registered practitioner or pharmacy
- 0 OAC 475:35-1-3. Distribution upon discontinuance or transfer of business
- 0 21 C.F.R. Section 1304 et seq. These sections deal with record keeping requirements of registrants
- 0 21 C.F.R. Section 1305. Orders for Schedule I and II
- 0 21 C.F.R. Section 1307.21. Procedure for Disposing of controlled substances

**DEA FORM 222 information may be obtained online at www.dea diversion.usdoj.gov/21cfr/2105cfrt.htm.

"Closing a Practice" Licensing Board Requirements Oklahoma State Board of Osteopathic Examiners

Under the Oklahoma Osteopathic Medicine Act, Title 59, there are certain provisions that a licensed osteopathic physician must comply with when closing a practice. Primary, is to make available to each patient (following an appropriate notice of Closure) their medical record, either to the patient directly, to another physician, or to a legal agent of the patient. Aside from the "Act" there are other statutory requirements governing the availability of a patient's medical record to the patient.

Customarily, the logistics can be arranged directly from the physician's practice site, or once physician closure occurs, through a third party agent of the physician, i.e., local hospital, another clinic or an attorney.

Secondly, it is a requirement of the "Act" that the Oklahoma State Board of Osteopathic Examiners be notified in writing, preferably on the physician's letterhead, (405-528-8625 office; 405-557-0653 fax) within fourteen (14) business days of "any relocation of practice activity," which implies closure.

Hugh D. Tidier, CMBI
Chief Investigator

Date

Dear Mr. Patient,

The time has come for me to retire from the practice of osteopathic medicine effective Month, Day, Year. **It** has been my great pleasure to serve as your physician.

To ease in your transition to another physician, we will gladly send copies of your medical record to the physician of your choice. In order to insure your confidentiality, a signed authorization form must accompany your request for transfer of records. I have enclosed this form for your convenience. Please make your request to our office by Month, Day, Year, during regular business hours. You will need to provide the name, mailing address, phone and fax number of the physician you wish your records be sent to.

After Month, Day, Year, records will be stored with (Name of Physician, Clinic, Hospital, records facility). If you need records after this date, please contact them by calling (555) 555.5555.

Thank you for the opportunity to serve as your physician.

Sincerely,

John A. Doe, DO

Closing the office Ad for local paper:

Notice: The office of John A. Doe, DO will close effective *0010010000*. Patients may request copies of medical records prior to this date by calling the office MonFri during normal business hours. After this date, records will be transferred to the Jane A. Doe, DO, 1234 Main Street, Town, St, Zip code.