Pediatric Radiology

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Continuing Obligations Following the Unexpected Death of a Physician: Things to Keep in Mind

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Introduction

Although the number of physician-owned group practices and solo practices is getting smaller, nationwide 57% of physicians still work for practices with less than ten providers and 16.5% of physicians are solo practitioners. Especially in these smaller practices, the unexpected death of a physician can have significant effects on the practice’s ability to care for patients. This article examines the ongoing obligations of practices immediately following a physician death, from both a group and solo practitioner perspective. In some instances, family members may need to step into the shoes of a group’s administrator and take on the obligations set forth in this article, especially if the physician ran a solo practice and had minimal, or no, administrative staff.

Please note that this article is not intended to be an exhaustive list of the obligations one needs to undertake upon the sudden death of a physician. Rather, this article raises key issues and is meant to be read as general guidance.

Notification

Upon the death of a physician, practices have obligations to notify certain regulatory agencies and business partners or vendors, which will likely vary given the type and size of the practice and its contractual obligations. Most importantly, practices must notify patients as soon as possible to facilitate continued patient care.

Patient Notification

The office should notify patients as soon as possible to support continuity of care for the deceased physician’s patients. As a first priority, the office staff should call patients with scheduled appointments so patients with immediate needs for a physician can find another healthcare provider. The office should also consider changing its answering message to alert patients calling the office that the physician’s appointments have been cancelled and the physician will not be scheduling any new appointments. If another health care provider has agreed to provide patient care in the interim, the message should include such provider’s contact information. If the practice uses an answering service, the office should inform the answering service of the same information.

The office should also send a letter to all of the deceased provider’s active patients, which in Missouri is any patient who has had an appointment in the past seven years. For example, the American Psychiatry Association (“APA”) recommends that the office send this letter within forty-eight hours of receiving notification of the physician’s death, which is consistent with the American Medical Association’s Ethical Opinion 1.1.5. The APA also recommends sending the letters via Registered Mail with a Return Receipt requested and retaining the return receipts in the patient record. Retaining the receipts ensures the practice has proof it sent notifications for any liability purposes.

Many medical associations provide example termination letters on their websites. These examples contain the type of information that should be in a termination letter and are helpful starting points, as the specific information will vary depending on the type and size of the medical practice.
Patient notification letters typically should address at least the following issues.

For solo practices that are winding up, the letter should provide contact information for any physician who agrees to take over the deceased physician’s short-term duties (e.g., answering post-surgical questions, providing prescription refills, etc.). To facilitate the transfer of care, practices that are winding up should also explain how the patient can find a new physician. For example, patients can contact their insurance companies to get a list of providers in their coverage and plan area, do searches on the internet, look in phone books, and/or contact local medical associations for referrals. If the practice is not winding up, the letter can inform patients that they can find a new healthcare provider in any of the ways previously mentioned or continue care by any of the physicians within the practice.

The notice letter should also provide patients with four key pieces of information about their medical records. First, the letter should explain how patients may obtain copies of their medical records, either for themselves or for a successor medical provider. Because some patients may want their records sent to a new provider, the practice should attach a HIPAA compliant authorization to the letter so it may release the patient’s records if the patient so chooses. Second, if after a certain date the records will be stored at a location other than the practice site, the letter should provide the contact information where patients can retrieve their medical records. Third, the letter should also outline any charges the patient will be responsible for with respect to copying and sending medical records. Missouri permits providers to charge a reasonable amount for copies. The amount cannot exceed “twenty-four dollars and eighty-five cents plus copying in the amount of fifty-seven cents per page for the cost of supplies and labor;” however, this amount may change. Accordingly, practices should check the rate before charging patients. Finally, the letter should inform patients of the record retention policy, which is governed by state law, and that records not claimed within the specified time will be disposed of in accordance with the practice’s record retention policy.

Notifying Agencies

The practice should also notify any state licensing boards, malpractice carriers, and third-party payors of a physician’s death. Upon notification, it is likely that these entities will provide specific guidance on terminating any ongoing obligations with respect to the deceased physician. In addition, the practice should also notify the Drug Enforcement Administration (DEA) and any state controlled substance registration office in writing to have the DEA and state controlled substance registration, if applicable, retired. If the deceased physician was a solo practitioner, the office will also need to dispose of any unused controlled substances and unused prescription pads (sometimes referred to as “Blanks”). The practice should consult with the local DEA office on procedures regarding unused inventory. The DEA’s Diversion website has guidelines for disposing controlled substances and may provide further guidance.

Patient Record Retention

Patient medical record retention could raise regulatory issues after a provider dies if the office fails to keep the records for the proper amount of time or in the proper manner.

Length of Retention

Missouri requires providers to keep records for at least seven years after the last service was provided. Although the general statute does not specifically carve out an exception for minors, the Missouri State Medical Association recommends “if the patient is a minor, you should plan on keeping the records at least until they reach nineteen years of age, or seven years since you have seen the patient[,]” whichever is longer.

Manner of Retention

Though the duration of retention is the same for solo and group practitioners, the manner of retention will likely vary. Missouri regulations and HIPAA require that patients have access to their medical records and also that the records are kept private. Thus, if the deceased provider worked as part of a group, the group could retain the records with its other patient records. However, if the deceased provider worked as a solo practitioner, retaining the records could be more difficult. One option for the solo practitioner’s office would be to store the records off-site at a company that specializes in medical record retention. In the alternative, it could enter into a medical record custodial agreement with another practice.

Ongoing Liability Issues

Retaining medical records is a good practice because patients can sue the physician’s estate for malpractice until the statute of limitations expires. Thus, beneficiaries may also want to check the physician’s malpractice insurance to see what kind of policy the deceased provider had and decide if the coverage is sufficient. For example, if the physician had an Occurrence Policy, which provides coverage for any event that occurred during the policy
period, no additional coverage would be necessary. Occurrence Policies provide the broadest coverage and, thus, are usually the most expensive. In the alternative, many physicians have Claims-Made Policies, which only cover claims reported during the policy period. If the deceased physician had a Claims-Made Policy, the estate or practice may want to obtain additional insurance coverage. This additional coverage is often referred to as “Tail Coverage” or Extended Reporting Period (“ERP”) Coverage and provides malpractice coverage for incidences that occurred during the original policy period but are reported after its expiration. For an individual’s policy, the deceased physician’s insurer usually issues ERP coverage at no additional charge if the original coverage terminates due to death. If the insurer does not issue free ERP coverage, the estate or practice may also usually purchase the coverage.

While purchasing ERP coverage helps protect personal assets from malpractice liability, it is not cost effective or necessary to keep additional coverage forever because plaintiffs cannot bring lawsuits forever. Rather, plaintiffs must bring lawsuits within a certain period of time, called the “statute of limitations,” or their claims are barred. Missouri has a two-year statute of limitations for medical malpractice claims; however, there are exceptions. Patients can bring claims after two years if the patient is a minor or if the patient did not reasonably know she had a malpractice claim. For example, if a physician performed surgery, the physician could be liable for malpractice claims for leaving a medical instrument inside the patient. In that case, the two-year statute of limitations would not start until the patient knew or should have known about the malpractice, which could be much longer than two-years depending on when the patient discovers the object. Further, if the deceased physician treated minors, the physician could be liable for malpractice claims until the minors are twenty. Ultimately, the physician’s patient population and specialty will inform the need for Tail Coverage and the length of time for which it is reasonable to maintain.

Conclusion
The death of a physician can lead to uncertainty about the ongoing obligations of the medical practice. Further, those obligations can vary greatly depending on the size and type of practice. Awareness of these issues and some advanced planning can help to assure continuity of care for patients, and peace of mind for the practice and the deceased physician’s estate. For more specific information about these obligations, you should consult with a licensed attorney who specializes in healthcare regulatory issues.

References
2. Am. Med. Ass’n, Code of Medical Ethics: I.1.5 Terminating a Patient-Physician Relationship (2016) (hereinafter “Code of Medical Ethics: I.1.5”) (regarding that when a physician withdraws from a case, the physician must “(a) Notice the patient (or authorized decision maker) long enough in advance to permit the patient to secure another physician. (b) Facilitate transfer of care when appropriate.”)
3. See Mo. Ann. Stat. § 334.097(2) (West 2018) (“Patient records remaining under the care, custody and control of the licensee shall be maintained by the licensee of the board, or the licensee’s designee, for a minimum of seven years from the date of when the last professional service was provided.”)
6. Code of Medical Ethics: I.1.5.
8. U.S. Dep’t of Justice, Drug Educ.’s Admin., Practitioner’s Manual: An Informational Outline of the Controlled Substances Act 11 (2006 ed.), https://www.deadiversion.usdoj.gov/pubs/manuals/practmanx0212508.pdf (“Any practitioner desiring to discontinue business activities with respect to controlled substances must notify the nearest DEA field office (see Appendix E in writing. Along with the notification of termination of registration, the practitioner should send the DEA Certificate of Registration and any unused Official Order Forms (DEA Forms-222) to the nearest DEA field office.”)
9. For more guidance about how to properly dispose of controlled substances see Disposal of Controlled Substances by Registrants, 21 C.F.R. § 1177.05 (2018).
11. While there is no carve out for minors in the general statute, Missouri Annotated Statute § 332.052 provides that dentists must keep medical records for seven years or “in the case of a minor, seven years from the age of majority”
13. Id.
15. Id.
16. Id.
17. Id.