

When a doctor dies, mind patient records and act fast if heirs are unlicensed

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Question: *If one of our physicians dies, what are we obliged to do besides notify the patients and invite them to transfer care to one of our other doctors?*

Answer: You certainly should let patients know, especially those with pending appointments. But also, as soon as possible, you should be in touch with all of the late physician's active patients. It's not just good manners — it's how you avoid patient abandonment charges ([PBN 4/9/20](#)). The period from which a patient was last seen by your practice to qualify for notification will vary from state to state.

You're also obliged to either offer access to an appropriate alternative within the practice or in the community, as you would be if you closed the practice down. If you refer to outside providers, remind the patients to check with their insurers to make sure their coverage doesn't change, suggests Carrie Nixon, managing partner of the Nixon Law Group in Vienna, Va.

Usually the biggest issue for patients after a doctor's demise is the physician's patient records. Nearly always, these are contractually an asset of the practice and, for the same reason doctors can't just carry out those records when they leave a practice under their own power, they typically remain in the practice's custody when the physician dies ([PBN 5/2/16](#)).

Daniel B. Frier, Esq., co-founder of the law firm Frier Levitt LLC and chairman of its health care department, says this can be a considerable issue in the case of older doctors, because when they finish up "they can leave 20, 30 years of paper files. And usually the successor doesn't want the responsibility — but that doctor also needs the access to live records."

So, Frier says, "Maybe the files from the last three years get assumed via a medical records custody agreement. And the rest of the older records go to the estate." "Just because the doctor died doesn't mean that the practice can't be audited for fraud, right?" says Ericka L. Adler, shareholder and health care practice group manager at the Roetzel & Andress firm in Chicago. "And that can go back 10 years. So we really need to keep those records handy."

The period for which records have to be maintained varies by state as well. Adler recommends in some cases they be held for that "statute of limitations" plus some period of extra time. For example, if the patients are minors, you may want to hold their records until they reach at least 21.

If the deceased doctor is an owner or partner, there will be financial details to settle, the terms of which settlement ideally have been laid out in their contract, Adler says. Payments owed the deceased, including those adjusted after the fact such as bonuses, will go to their estate; practice-related debts would also be handled per the contract.

But it's a little more complicated if the physician was a sole proprietor. Normally, the practice will have been operated as a business entity, so personal assets will not be involved. But if possession of the entity transfers to, say, the physician's family, and no one in that family holds a valid medical license for the jurisdiction, they may have to make a quick decision — because most states won't allow an unlicensed person to run a medical practice in perpetuity.

"Sometimes the physician's estate can volunteer to run the practice by bringing other doctors in," Frier says. "Some states will let you operate without the license for a certain period of time, others won't." Frier has seen situations in which "the estate forms an MSO [management service organization] that manages the practice, but the practice itself is owned by a successor."

The moral of the story: If your owners or partner-owners haven't made plans for this eventuality with their lawyers, they should get on it right now.



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