MEDICAL LICENSURE COMMISSION OF ALABAMA
ADMINISTRATIVE CODE

CHAPTER 545-X-4
MISCELLANEOUS

545-X-4-.08 Joint Guidelines Of The State Board Of Medical Examiners And Medical Licensure Commission For Medical Records Management.

(1) Definitions.

(a) ACTIVE PATIENTS. Active patients are any patients treated by the physician one or more times during the immediately preceding thirty-six (36) months.

(b) NOTIFICATION. Notification shall be conducted by US Mail in a form letter to the active patients at their last known address or an electronic message sent via a HIPAA compliant electronic record system or HIPAA-compliant electronic health record system that provides a means of electronic communication to the patient and is capable of sending the patient a notification that a message is in the patient's portal.

(c) PERSONAL REPRESENTATIVE. The executor, administrator, or such other person as may be authorized under Title 43 to act as a fiduciary and to settle and distribute the estate of a decedent. The trustee of a trust established as a substantial part of the estate plan of a deceased physician or any other person having legal control over the medical records of the patients of a deceased physician shall also be responsible for compliance with these rules in the same manner as a personal representative.

(2) General Guidelines.

(a) Medical records serve important patient interests for present health care and future needs, as well as for insurance, employment, and other purposes. In keeping with the professional responsibility to safeguard the confidentiality of patients' personal information, physicians have an ethical obligation to manage medical records appropriately. This obligation encompasses not only managing the records of current patients, but also retaining old records against possible future need, and providing copies or transferring records to a third party as requested by the patient or the patient's authorized representative when the physician leaves a practice, sells his or her practice, retires, or dies. Physicians should maintain legible, well-documented records reflecting the history, findings, diagnosis, and course of

treatment in the care of a patient. Medical records should be maintained by the treating physician for such period as may be necessary to treat the patient, in compliance with these rules, and for such additional time as may be required for medical and legal purposes.

(b) Access. On a legally compliant request of a patient or a patient's legal representative, a physician or his or her practice shall provide a copy of the medical record to the patient or to another physician, attorney, or other person designated by the patient or the patient's legal representative. A patient or his or her legal representative may authorize a physician or his or her practice to provide a copy of a specific portion or a summary of the medical record when the medical record is in non-electronic form and the patient or his or her legal representative knowingly waives his or her right to a copy of the full record. The cost of reproduction shall not exceed what is authorized under state and federal law. Records subpoenaed by the State Board of Medical Examiners are exempt from this law. Physicians charging for the cost of reproduction of medical records should give primary consideration to the ethical and professional duties owed to other physicians and their patients and waive copying charges when appropriate.

(c) Retention of Medical Records. Medical records shall be retained for a period of not less than five (5) years from the physician's and/or other providers within his or her practice last professional contact with the patient except for the following:

1. Immunization records which have not been transmitted to the immunization registry maintained by the State Board of Health shall be retained for a period of not less than one (1) year after the minor reaches the age of majority or ten years from the date of the physician's and/or other providers within his or her practice last professional contact with the patient, whichever is longer;

2. X-rays, radiographs and other imaging products shall be retained for at least five (5) years after which if there exist separate interpretive records thereof, they may be destroyed. However, mammography imaging and reports shall be maintained for ten (10) years;

3. Medical records of minors shall be retained for a period of not less than one (1) year after the minor reaches the age of majority or ten (10) years from the date of the physician's and/or other providers within his or her practice last professional contact with the patient, whichever is longer;

4. Notwithstanding the foregoing, no medical record involving services which are under dispute shall be destroyed until the dispute is resolved.

(d) Destruction of Medical Records.

1. No medical record shall be singled out for destruction other than in accordance with the established office operating procedures.

2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules and state and federal privacy requirements.

3. Records may be destroyed by burning, shredding, permanently deleting, or other effective methods in keeping with the confidential nature of the records.

4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for not less than four (4) years. The record of destruction need not list the individual patient medical records that were destroyed but shall be sufficient to identify which group of destroyed records contained a particular patient's medical records.

(e) Retention and Access by Physicians Practicing Telemedicine. Physicians who practice medicine via telemedicine have the same duty as all other physicians to adhere to these rules relating to medical records. Physicians who provide care via telemedicine must retain access to the medical records which document their delivery of health care services via telemedicine. A physician who is unable to access and produce the medical records documenting his or her practice of medicine via telemedicine upon demand for inspection or review by the Board of Medical Examiners or Medical Licensure Commission shall be in violation of Code of Ala. 1975, §34-24-360(2) and (23).

(3) Minimum Requirements for Patient Notification. The retirement, death, license suspension or revocation, and the departure of a physician from a practice group all create conditions under which patients must be notified of the triggering event. Timely and informative patient notification is critical to ensure a patient's ability to secure continuity of care. At a minimum, the notification to patients shall identify the physician who treated the patient, the general reason for the patient to being notified, an explanation of how the patient may obtain his or her medical records, a HIPAA authorization for the patient to complete, how long the medical records will be made available to the patient, and the intended disposition of the medical records if no instructions are received within the time provided.

(4) Disposition of Patient Medical Records. All physicians shall plan for the disposition of patient medical records in accordance with this rule.

(a) Disposition of Patient Medical Records upon Physician's Death. When a physician dies while in active medical practice, notification shall be sent by the physician's practice if in a group practice within thirty (30) days following the death of the physician. If the physician is not a member of a group practice, the notice shall be sent by the personal representative of the physician's estate within thirty (30) days of appointment of an executor or administrator by the Probate Court to all his or her active patients. The notification to active patients shall contain a HIPAA-compliant form for the patient to sign to authorize copies of the patient's records be sent to a new physician, the patient, or the patient's representative, and shall include clear directions to the patient for submission of the form to effectuate the timely transfer of records. The party sending the notice shall bear the costs of notifying the physician's patients.

1. For physicians who are in solo practice the physician should include compliance with these rules as part of his or her estate planning.

2. In addition to the notice requirement stated above, the personal representative of a physician's estate should ensure that all medical records are transferred either to the custody of another physician or to a HIPAA-compliant entity that agrees in writing to act as custodian of the records. Medical records shall be maintained in custody in their original or legally reproduced form for the retention periods specified above, during which time the personal representative shall make the medical records available for transfer to the deceased physician's active patients. After the expiration of the retention period, the personal representative may dispose of or destroy the medical records in compliance with state and federal law.

(b) Disposition of Medical Records upon Physician's Retirement. When a physician retires, it is his or her, if in solo practice, or his/her group practice's responsibility to send notification of retirement not less than thirty (30) days prior to retirement to all active patients. The physician must ensure that all medical records are transferred to the custody of his or her active patients, to another physician, or to a HIPAA-compliant entity that agrees in writing to act as custodian of the records. Medical records shall be maintained in custody in their original or legally reproduced form in compliance with the retention periods set forth in (2)(c). The notification to active patients shall contain a HIPAA-

compliant form for the patient to sign to authorize copies of the patient's records to be sent to a new physician, the patient, or the patient's representative, and shall include clear directions to the patient for submission of the form to effectuate the timely transfer of records.

(c) Disposition of Medical Records upon Physician's License Suspension or Revocation. When a physician's medical license is suspended or revoked, the physician or his or her practice shall send notification of the suspension or revocation within thirty days of the suspension or revocation to all active patients. The cost of sending the patient notifications shall be borne by the physician whose license is suspended or revoked. The notification must contain a copy of the Medical Licensure Commission's Order of Suspension or Revocation. The physician must ensure that all medical records are transferred either to the custody of the physician's active patients, to another physician, a physician practice group, or to a HIPAA-compliant entity that agrees in writing to act as custodian of the records. Medical records shall be maintained in custody in their original or legally reproduced form in compliance with the retention periods set forth in (2)(c). The notification to active patients shall contain a HIPAA-compliant form for the patient to sign in order to authorize copies of the patient's records to be sent to a new physician, the patient, or the patient's representative, and shall include clear directions to the patient for submission of the form to effectuate the timely transfer of records.

(d) Disposition of Medical Records upon Departure from the Group. The responsibility for notifying patients and paying for the cost of the notification of a physician who leaves a group practice but continues to practice medicine shall be governed by the physician's employment contract with the group practice. If no contractual provision exists pertaining to medical records upon departure, and the group does not elect to notify the patients, then the departing physician shall be responsible for notifying all active patients and be responsible for the cost of such notification. Absent a contractual provision to the contrary, the party who notifies the patients of the departure shall bear the costs of notification and reproducing or transferring medical records. Patient notification, records retention, and record dispersal shall be accomplished in accordance with this rule.

1. Any provision of the physician's employment contract notwithstanding, the departing physician's active patients shall be notified of the physician's new address and offered the opportunity to have copies of their medical records forwarded to the departing physician at his or her new practice.

2. A group shall not withhold the medical records of any patient who has authorized their transfer to the departing physician or any other physician. The patient's freedom of choice in choosing a physician shall not be interfered with, and the choice of physician in every case should be left to the patient. The patient shall be informed that upon authorization, his or her records will be sent to the physician of the patient's choice.

3. Absent a contractual provision to the contrary, when the group or medical practice undertakes to notify patients of the physician's departure, the group shall bear the cost of notifying patients and reproducing or transferring medical records. When the departing physician is responsible for notifying patients of his or her departure, the practice shall cooperate with the physician by providing the physician a list of the active patients and their last known mailing address and contact information, and the physician shall bear the cost of notifying his or her patients and reproducing or transferring medical records.

(e) Sale of a Medical Practice. A physician, a physician group practice, or the estate of a deceased physician may sell the elements that comprise his or her practice, one of which is its goodwill, i.e., the opportunity to take over the patients of the seller by purchasing the physician's medical records. Notwithstanding the above, the sale of a physician owner's equity in a medical practice that continues to operate, and which does not constitute the sale of the entire practice, does not constitute a medical sale for the purposes of this rule. Therefore, the transfer of records of patients is subject to the following:

1. The selling physician, his or her estate, or group practice must ensure that all medical records are transferred to another physician or covered entity or business associate operation on its behalf. Medical records shall be maintained in custody in their original or legally reproduced form in compliance with the retention periods set forth in (2)(c).

2. All active patients shall be notified within thirty (30) days of the transfer that the physician, his or her estate, or group practice is transferring the practice to another physician, group practice, or entity who will retain custody of their records, and that at their written request the copies of their records will be sent to another physician, the patient, or the patient's representative.

(f) Disposition of Medical Records when a Physician is Unavailable. When a physician goes on vacation, goes on

sabbatical, takes a leave of absence, leaves the United States, or is otherwise voluntarily unavailable to his or her patients, the physician shall arrange to provide his or her patients access to their medical records.

(g) Abandonment of Records. It shall be a violation Code of Ala. 1975, §34-24-360(2) and (23) for a physician to abandon his or her practice without his or her practice making provision for the maintenance, security, transfer, or to otherwise establish a secure method of patient access to their records.

(5) Violations. Violation of any provision of these rules is grounds for disciplinary action pursuant to Code of Ala. 1975, §34-24-360(2) and (23).

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