

A PLAN FOR RETIREMENT FROM THE PRACTICE OF PSYCHIATRY

A PLANNING GUIDE THROUGH THE PROCESS

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OUTLINE FOR PRESENTATION TO MPS MEMBERS ON ISSUES TO CONSIDER WHEN PLANNING RETIREMENT FROM PRACTICE

- 1. Requirements of the Board of Registration in Medicine for retirement.**
- 2. Notifying your patients**
- 3. Notifying your employees**
- 4. Notifying the DEA and the DPH and disposal of controlled substances**
- 5. Arranging for the retention of patient and business records.**
- 6. Notifying professional associations**
- 7. Professional malpractice carrier – do you need tail insurance**
- 8. Planning for outstanding collections from individuals and insurance companies.**
- 9. Sub-letting your office space**
- 10. Consider options to resigning your medical license**
- 11. Who best to take responsibility for patient records after retirement**
- 12. Ethical responsibility for referrals of patients who need continuing care**
- 13. What's a reasonable amount of time to plan for your retirement**
- 14. Total retirement vs a phase-down**
- 15. Advice on estate planning**

The presentation will include detailed discussions of the options for different types of licenses available from the Board of Medicine, how best to prepare for informing your patients, options for maintaining your records for the 7 years post retirement, your ethical responsibility for referring patients, what is a reasonable lead time to plan for your retirement and ways to plan for an emergency closure of your practice, just to name a few.

1. Requirements of the Board of Medicine:

- A. An Application to Retire from the Practice of Medicine may be accessed online from the Board's website at: mass.gov/eohhs/docs/borim/physicians/app-retire.pdf (See *document attached*) In addition to the application you will also have to submit a statement listing any present or future complaints against you. You must also agree to make your patient records accessible to former patients and their successor physicians for a minimum of 7 years from the date of the last encounter, or until a child patient reaches the age of 18, whichever is the longer retention period. Your application and the above statement along with your wallet card must be sent to the Board at: *200 Harvard Mill Square, Suite 330 – Wakefield, MA 01880***
- B. Application to Return to Active Status may also be accessed at the above website. (See document attached)**
- C. Alternatives to “retiring” your license are as follows:**
- (1) Volunteer License, which allows applicants who fulfill the requisites for a full license to perform volunteer work as a physician, has certain limitations and is available to current and former licensed physicians. (See Board regulation attached)**
 - (2) Administrative License may be issued to any person who satisfies the educational and post graduate training requirements for a full license and whose primary responsibilities are those of an administrative or academic nature. Such license does not include the authority to diagnose or treat patients, issue prescriptions, delegate medical acts or prescriptive authority or issue opinions regarding medical necessity. Administrative licensees are not required to maintain professional malpractice insurance. (See Board regulation attachment)**
 - (3) Temporary License may be issued by the Board for an Academic Faculty Appointment or for a Substitute Physician. (See regulation attached)**

2. Notifying Your Patients

One of the most challenging aspects of a planned retirement from the practice of psychiatry is informing your patients of your decision to retire

and making their transition to another treater as comfortable as possible.

A. When to Communicate Patients:

There are no set-in-stone requirements on how or what you communicate to your patients. You do however have an ethical duty to provide sufficient notice to your patients. Depending on whether your practice is limited to psychotherapy or psychopharmacology, a combination of both, or whether you treat very sick patients, your notification strategy should mirror your patient's needs. Best practice would be to begin notification as soon as you make the decision to retire but no less than 9 months from your planned retirement date. In rare circumstances where your patient caseload is small and you are comfortable with providing for their transfer, a shorter period may be acceptable. Remember, absent emergencies or unforeseen circumstances, your decision to retire does not relieve you of your ethical duty to provide patients with sufficient time for a transition to another treater otherwise complaints for abandonment could surface.

B. How to Communicate to Patients:

You have two modes of communication at your disposal. The first is verbal and the second is in writing. To the extent possible you should take advantage of both means. Active patients should be your first priority, and in particular those patients who may need the most "hand-holding" during the transition. Notify them verbally about your decision to retire, your time frame, and the fact that although you will make every effort at referring them to a new psychiatrist, insurance and availability of psychiatrists may have an impact. For patients seen intermittently, a letter will suffice. Placing an advertisement in your local newspaper announcing your retirement and listing contact information for records transfer should also be considered especially when you are unable to reach former patients.

C. What to Communicate to Patients:

I have attached a sample letter that may be edited to conform

to your specific practice. You should avoid listing your specialty on the envelope or letterhead so as to avoid the possibility of a family member or friend who has access to your patient's mail, discovering for the first time that their family member or friend is being seen by a psychiatrist.

3. Retention and Availability of Patient and Business Records

- A. The Board of Medicine requires that physicians retain all patient records for a minimum of seven years from the date of the last patient encounter that permits former patients and successor physicians or treaters access to the records during this period. If the patient was a minor at the date of the last patient encounter, the physician must retain the records for a minimum period of seven years from the date of the last patient encounter or until the date the patient reaches the age of 18 years, whichever is the longer period. If there is any question that there may be a law suit or complaint against you, you should consider retaining those records for a period past the seven years. So as to avoid any unforeseen circumstances regarding complaints or threatened law suits you should consider retaining access to your records for ten years from the date of last encounter.**
- B. Your business records e.g. tax returns, office bills, payroll records, should be kept a minimum of 6 years unless otherwise advised by your accountant or attorney.**
- C. Psychiatrists in sole or small practices who serve as the "Keeper of Records" for their patients, must arrange for access and transfer of those records for at least seven years post retirement. This can become a major effort for those who have maintained paper records over the course of their career in particular for those whose practice has been primarily psychotherapy. There are several options available to you depending on the volume of your records.
 - (1) You continue to be the keeper of records and respond to requests in the same manner as you have when in practice. I would advise that you first separate your files into 2 categories: using the cutoff date of seven years, destroy those records that are beyond the seven year date (NOTE, for minors' records refer****

to 3.A. above) and, maintain an alphabetical list of those records that are within the seven year rule. When destroying records you should maintain a list of the records, a sentence or two about the patient and the date of last clinical encounter.

- (2) If you are unable or unwilling to continue to be the keeper of the records, you may wish to engage a friend or colleague who is capable of providing the appropriate security and privacy required by HIPAA and Massachusetts law. As this would be a professional undertaking, you would have to ensure the capability of the person to manage the task, agree on a fee in advance and factor in that charges would be made for preparing the records which may reduce the overall cost of the agreement.
- (3) The third option for record maintenance would be to engage a professional records management company such as Iron Mountain. Private medical records management companies are HIPAA and state law compliant and assume the total responsibility of records management. If you choose to engage such a company the burden is on you to determine their compliance with HIPAA and state law, particularly regarding mental health records. As most private companies will calculate the income derived from copying and forwarding records into your overall costs, the total cost for the 7 year period should reflect such an offset.
- (4) **IMPORTANT NOTE:** If you choose to have a third party maintain your records for the required period of time, you need to have a written agreement to allow you access to any record you may need to defend a complaint or law suit in the future.

4. Charges for Copying and Forwarding Records

At the current time, allowable charges for the handling, copying and mailing of records is as follows: \$22.32 base charge (administrative); \$.76 per page for the first 100 pages; \$.39 per page for each page in excess of 100 pages; and, actual cost of mailing. You **MAY NOT** charge a patient if the records are being requested by or on behalf of a beneficiary for the

sole purpose of supporting a claim under any provision of the Social Security Act or any federal or state financial needs-based program.

5. Notifying the DEA and the Massachusetts Department of Public Health

You are required to notify the DEA of your retirement requesting that your DEA number be deleted from their system. You must notify them in writing at: *Boston Field Division, JFK Federal Building, 15 New Sudbury Street, Room E-400, Boston, MA 02203* and the *Massachusetts DPH, Drug Control Program, 305 South Street, 2nd Floor, Jamaica Plain, MA 02130*. Prescriptions written by you prior to retiring your DEA or DPH certificates continue to be valid.

6. Contact Your Malpractice Insurance Carrier

As the statute of limitations in Massachusetts for malpractice suits is 3 years from the date the injury, with certain exceptions as explained below, you may still be exposed to a malpractice claim after retirement for a negligent act that may have occurred while you were in practice. . You need to inquire of your insurance carrier as to whether your insurance is “claims made” or “occurrence”. If you have a claims made policy you may need to purchase “tail” insurance until the statute of limitations and its exceptions expire. The exceptions to the 3 year rule include: (1) minors who have until age nine if the date of injury occurred prior to the child’s 6th birthday. (2) Situations where the patient could not discover and could not have reasonably discovered within the 3 year period – then the law suit may be commenced within 3 years from the date the patient had knowledge or sufficient notice that the injury was related to the physician’s treatment. (3) The Statute of Repose imposes an absolute deadline to medical malpractice claims regardless when the patient discovers them.

7. Other Matters to Consider when Planning Retirement

- A. Review your office lease
- B. Notify insurance companies
- C. Notify professional associations and organizations
- D. Discuss retirement with accountant
- E. Review outstanding collections, accounts receivable and disputed claims
- F. Plan to sell or donate office equipment

SAMPLE PATIENT LETTER NOTIFYING OF RETIREMENT

Dear Patient:

I am writing to let you know of my retirement from my medical practice as of _____.

In planning for my retirement it is important to make arrangements for your continued care. Although I may not be able to refer you to another physician, I will make every effort to do so with your help. I would ask that you contact your health insurance provider for a list of physicians in your area that may be able to admit you into their practice. In addition to your health care insurer, you may also wish to contact the Massachusetts Medical Society's customer service line at _____.

Once you have identified a new physician, my office will need your permission to transfer your medical records.

Thank you for your understanding in this matter.

Sincerely,

Commonwealth of Massachusetts
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330, Wakefield, MA 01880
Telephone (781) 876-8210
www.mass.gov/massmedboard

Application to Retire from the Practice of Medicine
Board Regulation 243 CMR 2.06(4)

If you wish to retire from the practice of medicine, you must prepare a written statement, signed under the penalties of perjury, notifying the Board of your intent to retire from the practice of medicine. In this written statement, you must also detail your knowledge of any present or future complaints against you, and must agree that you will make your patient records accessible in accordance with 243 CMR 2.07(13). This Board regulation provides that a retiring licensee, his successor, or his estate must retain patient records in a manner which permits his former patients and their successor physicians access to them for a minimum period of seven years from the date of the last patient encounter, or until a child patient reaches the age of 18, whichever is the longer retention period.

After completing this form and preparing your written statement, send this form, your written statement, and your license wallet card to the Licensing Division at the above-listed address. If there are no complaints against you, the Licensing Division will complete this form, and return a copy of the form to you for your records.

In limited circumstances, the Board may consider a request from a retiree to reapply for a license, but only upon showing of good cause.

To be completed by the licensee - please type or print.

Name: _____ Date: ____/____/____

Address: _____

License Number: _____

Signature: _____

To be completed by the Licensing Division

Board Approval Date: _____ Licensing Division Staff _____

Commonwealth of Massachusetts – Board of Registration in Medicine
200 Harvard Mill Square, Suite 330, Wakefield, MA 01880

APPLICATION FOR INACTIVE STATUS

Board Regulations: 243 CMR 2.06 (3)

Name: _____
(Last) (First) (Initial)

License Registration Number: _____

Is your license current? Yes No

A licensee must make their request in writing to the Board and certify that he/she will not practice medicine in Massachusetts. Please make such a request below:

I, _____ hereby request **inactive status**.
(print name)

I certify that I **will not practice** medicine in Massachusetts.

Signed: _____

Mailing Address: _____

(City) (State) (Zip code)

Email Address: _____
(Required)

NOTE: Inactive licensees are required to renew their inactive license every renewal cycle.

Please submit your active wallet size license with this form. A licensee who is inactive is exempt from the continuing medical education requirements set forth in 243 CMR 2.06(6) and is not required to have liability coverage.

PLEASE RETURN THIS APPLICATION TO THE ADDRESS ABOVE.

APPLICATION FOR RETURN TO ACTIVE STATUS

Prior to returning to Active Status, a licensee must:

- complete 100 hours of Continuing Professional Development (CPD) Credits, including a minimum of 40 Category 1 credits;
- complete the Board's Electronic Health Record (EHR) Proficiency requirement; and
- obtain professional liability insurance coverage. The requirement for professional liability insurance coverage applies only to physicians engaging in any direct or indirect patient care in Massachusetts.

1. NAME: _____
(Print Name)

2. MAILING ADDRESS: _____

(City) (State) (Zip Code)

3. LICENSE REGISTRATION NUMBER: _____

4. HAVE YOU COMPLETED THE CPD REQUIREMENTS AS REQUIRED BY 243 CMR 2.06(6):

Check one: YES NO

Please provide the number of CPD credits completed in each category:

Category 1 credits _____ Risk Management Category 1 credits _____

Category 2 credits _____ Risk Management Category 2 credits _____

5. DEMONSTRATING EHR PROFICIENCY:

I have demonstrated proficiency in the use of EHR by completion of 3 hours of a Category 1 EHR-related CPD course that discusses, at a minimum, the core and menu objectives and the Clinical Quality Measures for Meaningful Use; or

I am exempt from the EHR Proficiency requirement, during this licensing cycle because:

Check one:

- I will not be engaged in the practice of medicine as defined in 243 CMR 2.01(4); or
- I am on active duty as a member of the National Guard or of a uniformed service called into service during a national emergency or crisis.

6. PROFESSIONAL LIABILITY INSURANCE: As a condition of rendering any direct or indirect patient care in the Commonwealth, a physician is required to obtain medical malpractice insurance. Please provide the following information:

Name of Carrier _____

Policy Start Date: _____

Policy End Date: _____

Coverage Type:

Claims with tail coverage

Occurrence Policy

Letter of Credit: YES NO (If "yes", you must provide documentation.)

I am exempt from the requirement to obtain medical malpractice insurance for the following reasons:

I am not involved in any direct or indirect patient care

I am otherwise exempt (please specify below)

APPLICANT'S STATEMENT

I hereby certify under the penalties of perjury that all information on this application is true.

SIGNATURE: _____

DATE: ____/____/____

EMAIL ADDRESS: _____

Please fax the completed form to the attention of the Renewals Coordinator at the Board of Registration in Medicine at (781) 876-8383.

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requirements of 243 CMR 2.02(8) to the satisfaction of the Board will be granted a limited license and is entitled to a certificate of registration signed by the chair and the secretary of the Board.

(a) Limited License Is Specific to Training Program. A limited license authorizes a limited licensee to practice medicine only in the specified training program. The licensee may only practice at the training program or at the health care facility designated on the limited license or at the facility's approved affiliates. Limited licensees may, however, practice for up to eight weeks in any single year of residency at a non-designated facility, if that facility is a teaching hospital with three or more ACGME or AOA accredited programs. A limited licensee may practice medicine only under the supervision of a full licensee who has been credentialed by the facility where the limited licensee is practicing pursuant to 243 CMR 2.02(8). The Board will not issue more than one limited license to a person at a time.

(b) Report of Disciplinary Actions to the Board. A health care facility that takes a disciplinary action against a limited licensee in a training program must report this action to the Board. In the event that a limited licensee terminates his or her appointment at a health care facility or his or her participation in a training program prior to the limited license's expiration date, or has his or her appointment or participation terminated, the health care facility designated on the license shall submit to the Board, pursuant to M.G.L. c. 111, § 53B, a written notice of termination which sets forth the reasons for the termination and is signed by the director or the administrator of the health care facility or training program.

(9) Duration of a Limited License.

(a) the Duration of a Limited License Shall Be One Academic Year. The Board may, subject to any guidelines that have been adopted by the Licensing Committee and the Board, issue a limited license for the duration of a trainee's enrollment in an ACGME or AOA training program. The issuance of a limited license beyond a total of seven years of practice pursuant to a limited license may be granted only by a majority vote of the Board.

(b) Nothing in 243 CMR 2.02(9) shall limit the Board's authority to revoke a limited license at any time in accordance with M.G.L. c. 112, § 9.

(10) Restrictions on Billing by Limited Licensees. In a training program, a full licensee may bill for the services of a limited licensee, but only if such services are rendered as part of the training program under the direct supervision of a full licensee. Except as provided in the preceding sentence, no one may bill for the services of a limited licensee, but the salary of a limited licensee may constitute part of a health care facility's service charges.

(11) Volunteer License.

(a) Purpose. In order to encourage physician volunteerism and to serve the public health, the Board establishes a Volunteer License category. To qualify for a volunteer license, an applicant shall satisfy the prerequisites for a full initial license as set forth in 243 CMR 2.02(1), except for 243 CMR 2.02(1)(l). In satisfaction of 243 CMR 2.02(1)(k), the candidate shall pay a Volunteer License application fee, if one is established by the secretary of administration and finance pursuant to M.G.L. c. 7, § 3B. The Board may require that the applicant successfully pass a clinical skills assessment or other professional evaluation of clinical competency. The Volunteer License is chosen voluntarily by the

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(a) General. The Board may issue an administrative license to an applicant whose primary responsibilities are those of an administrative or academic nature; such as professional managerial, administrative, or supervisory activities related to the practice of medicine or the delivery of health care services or medical research, the practice of investigative medicine or the administration of health insurance organizations. The Administrative License status is chosen voluntarily by the applicant, and the Board shall not involuntarily impose this license status on an applicant or licensee. An administrative license does not include the authority to diagnose or treat patients, issue prescriptions for drugs or controlled substances, delegate medical acts or prescriptive authority, or issue opinions regarding medical necessity.

(b) Malpractice Insurance Requirements. A physician with an administrative license is not required to have professional malpractice liability insurance.

(c) Issuance of License. An applicant who meets all of the requirements of 243 CMR 2.02(1), except for 243 CMR 2.02(1)(g) and (m), to the satisfaction of the Board will be granted an administrative license and is entitled to a certificate of registration signed by the chair and the secretary of the Board.

(d) Biennial. An administrative license issued in accordance with 243 CMR 2.02(12) may be renewed biennially. An administrative license shall terminate automatically upon Board approval of a full license application.

(e) Change in License Status.

1. From Full to Administrative License. If a physician with a Full license wishes to change his or her license category to an Administrative license, he or she may file a request for a Change of License status with the Board.

2. From Administrative to Full License. A licensee with an Administrative license may apply to the Board to change his or her license status to a Full license upon filing a Request for a Change in License status. The licensee shall submit a proposed reentry into clinical practice plan, if applicable, and pay the full license application fee. A reentry into clinical practice plan will describe the applicant's proposal to resume clinical practice, his or her continuing professional development, clinical training and other relevant experience during the time period in which the applicant held an administrative license. The Board may require that a licensee with an Administrative license status, who wishes to return to clinical practice, successfully pass a Board-approved clinical skills assessment or other Board-approved professional determination of clinical competency.

(13) Temporary License. In order to qualify for an initial temporary license, an applicant must meet the requirements of 243 CMR 2.02(1), except 243 CMR 2.02(1)(l) and except as otherwise provided in 243 CMR 2.00, in addition to the requirements of 243 CMR 2.02(13).

(a) Academic Faculty Appointment. Pursuant to M.G.L. c. 112, § 9B, the Board may issue an Academic Faculty Appointment license. This is a temporary license that the Board may issue to a visiting physician who is licensed to practice in another jurisdiction, and who has a temporary faculty appointment certified by the dean of a medical school in Massachusetts for purposes of medical education in an accredited hospital associated with the medical school; and a scope of practice plan certified by the Chair of the Department, approved by the Board and subject to audit thereof.

1. A temporary license issued under 243 CMR 2.02(13) shall be valid for a period set

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applicant, and the Board shall not involuntarily impose this license status on an applicant or licensee.

1. Serving the Public Health. As part of the application for a volunteer license, a candidate shall submit the following information:

- a. A written statement from the applicant outlining the scope and duration of services to be provided by him or her;
- b. A written statement from the director of the applicant's proposed work site outlining the scope and duration of the applicant's responsibilities; and
- c. Evidence satisfactory to the Board that the volunteer physician's proposed work will serve the public interest. An example of work that serves the public interest is treating a medical population in need that may not otherwise have access to medical care.

(b) Issuance of Volunteer License. An applicant who meets all of the requirements of 243 CMR 2.02(11) to the satisfaction of the Board will be granted a volunteer license and is entitled to a certificate of registration signed by the chair and the secretary of the Board.

(c) Scope of Practice for Volunteer Status. A licensee engaged in volunteer practice may practice medicine only at work sites approved by the Board in conjunction with his or her license application, shall be subject to the same conditions and responsibilities as a full licensee, and may not accept compensation for his or her practice of medicine. A volunteer licensee must have the approval of the Board prior to changing any work sites.

(d) Termination. A volunteer license issued in accordance with 243 CMR 2.02(11) may be renewed biennially. A volunteer license shall terminate automatically upon termination of the licensee's volunteer work or upon Board approval of a full license application. A volunteer licensee engaged in patient care is required to have professional malpractice liability insurance as in 243 CMR 2.02(1)(m).

(e) Change in License Status.

1. From Retired to Volunteer License. A licensee holding a Retired inactive license may apply to the Board for a change of license status from Retired inactive status to a Volunteer active license. The licensee shall complete an application for a Volunteer license. If the licensee has been away from the clinical practice of medicine for two or more years, the Board may require the completion of a Board-approved clinical skills assessment program, physician supervision or monitoring, CPDs, medical education or other such requirements to assist the licensee in reentering the clinical practice of medicine.

2. From Full to Volunteer License. If a physician with a full license wishes to change his or her license category to a volunteer license, he or she may file a Request for a Change of License Category with the Board. Such a request may be made at the time of license renewal or anytime during the license term.

3. From Volunteer to Full License. A licensee holding a volunteer license may apply to the Board for a change of license status from a Volunteer license to a full license. The licensee shall complete an application for a full license and pay the difference between the volunteer license application fee and the full license application fee.

(12) Administrative License. In order to qualify for an administrative license, an applicant shall satisfy the educational and postgraduate training requirements for a full license as set forth in at 243 CMR 2.02(1), except for 243 CMR 2.02(1)(g), (l) and (m) and the following requirements:

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by the Board, not exceeding 12 months, may be renewed up to two times, and shall terminate automatically upon termination of the faculty appointment. A temporary license under 243 CMR 2.02(13) and any renewals thereof shall not exceed three years.

2. In order to renew a temporary license under 243 CMR 2.02(13), the licensee shall complete the following requirements:

- a. The opioid education and pain management training requirement, as described in 243 CMR 2.02(2)(e);
- b. The end-of-life care education requirement, as described in 243 CMR 2.06(6)(b); and
- c. 50% of the continuing professional development requirement for full licensees, as described in 243 CMR 2.06(6).

3. All practice of medicine by a licensee under 243 CMR 2.02(13)(a) must be essential to his or her teaching and shall be restricted to the specified institution or any of that facility's approved affiliates.

4. A temporary licensee may not practice outside the scope of practice that is directly related to his or her educational and training responsibilities.

(b) Substitute Physician.

1. Holds An Out-of-state License. Pursuant to M.G.L. c. 112, § 9B, the Board may issue a temporary license to a physician who is licensed to practice medicine in another U.S. jurisdiction to permit him or her to act as a substitute physician for a physician licensed in Massachusetts. A temporary license issued in accordance with 243 CMR 2.02(13)(b) may be granted only upon written request of the physician licensed in Massachusetts and shall be limited to a period of three months or less. A *locum tenens* physician may be a substitute physician.

2. Diplomate of Specialty Board. The Board may issue a temporary license to a physician eligible for examination or registration in the commonwealth who is a diplomate of a specialty board approved by the American Medical Association or the American Osteopathic Association to permit him or her to act as a substitute physician for a registered physician in the commonwealth. This temporary license is granted only upon written request of the licensed physician, is limited to the specialty in which the applicant is certified and limited to three months or less.