

# THE "RETIRING" PSYCHIATRIST - SOME PRACTICAL SUGGESTIONS

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So, you want to retire from the practice; move to another state, warmer climate? The following article offers some practical suggestions for those of you who are about to or are considering any of the above. In writing this article I was impressed by the lack of statutory and regulatory guidance available to physicians who are considering, for whatever reason, the voluntary cessation of his/her practice in Massachusetts. Accordingly, the practical suggestions in this article are based on my experiences in having counselled psychiatrists who have retired or otherwise voluntarily terminated their professional practice in Massachusetts.



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## How, When, and What to Tell Your Patients

Informing a patient of the decision to end treatment as a result of your retirement (in this article the term "retirement" will be used to encompass all voluntary cessation of a psychiatrist's practice in the Commonwealth) can be a difficult task. Accordingly, it needs to be approached with much thought and lead time. Depending on the type of case load a psychiatrist is treating, a six-month lead time is a reasonable period in which to begin the process of notifying your patients of treatment termination. In most cases, patients can initially be advised verbally of this decision and, in light of their responses, a written confirmation might be advisable. In cases where patients are not seen on a regular basis or have not been seen for some time but are still considered patients, notification by mail would be the preferable course. The suggested six-month lead time would afford you the opportunity to facilitate the patient's transfer to a new treater as necessary. Based on certain boundary requirements, patients should be told of the reasons for termination without, however, revealing any more personal detail than necessary. Certainly, a psychiatrist who chooses to retire may inform his/her patients of the reasons for this decision. Often certain patients may want and/or need a more detailed explanation of your reasons for ending treatment. Under these circumstances, you should be cautious and consider the impact such additional information may have on a particular patient before providing it to them. Notations should be made in each patient's record as to whether they were informed of the impending retirement verbally or in writing and their response thereto. In some cases, consideration should be given to provide particular patients with additional sessions to deal with the cessation of treatment and/or transfer to a new treater.

## Arrangement for Transfer of Patients

A psychiatrist terminating treatment must be particularly sensitive to potential claims/allegations of patient abandonment where the therapeutic relationship is being ended prior to an end clinical result having been achieved. Although it is not the duty of the retiring psychiatrist to place patients with another treater, it is ethically required that information regarding available resources be given to each patient and referrals made when requested or indicated by the patient's condition. It may be helpful

to contact several psychiatrists or psychotherapists who may be both suitable and available for referrals from your practice. You could make their names available to your patients, leaving the final decision, however, to them. A word of caution about referral fees is worth mentioning. It is both unethical and illegal to enter into an agreement with a psychiatrist to whom you are referring to accept a referral fee or any remuneration in exchange for a patient referral. Certain patients may require more attention and assistance from the psychiatrist in facilitating their transfer to another treater. It is important that when referral and other information is given to each patient there be documentation of the same in the patient's file.

## Transfer of Records

Patients should be informed that their records will only be transferred to a new treater with the written permission of the patient or their parent, if minors, or guardian if under guardianship. A general release can be drafted in advance of your discussion with each patient and a copy given to him or her to facilitate transfer to a new treater. It is important to note that the records that should be released to a subsequent treater would be copies of the patient's records and that you should retain the original in your files. Also, records containing information about HIV or alcohol and drug abuse treatment require specific reference in the release. The Board of Registration in Medicine requires that records be retained for seven (7) years from the date of the last encounter for adults or until a child patient reaches the age of nine (9). It has always been my recommendation that you should retain records for

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at least ten (10) years after the last encounter to provide an additional "margin of safety" against any claims where it is alleged that the regular three-year Statute of Limitations is inapplicable. As a practical matter, if a psychiatrist is planning to leave the state, arrangements must be made for the records to be accessible to patients wanting copies subsequent to the psychiatrist moving out of state. This could be accomplished by the psychiatrist contracting with a service or another professional to maintain the records and their confidentiality subject to a request and release authorization from his/her patient or to provide each patient with a copy of his/her records in advance so that they could, in turn, provide copies to their subsequent treaters. Depending upon the particular patient, the latter course of action may not be the most desirable.

### ✓ Malpractice Insurance Issues

Retirement does not protect you against a claim for malpractice where the alleged malpractice occurred during active practice. Accordingly, maintaining malpractice insurance for a period after retirement is an important consideration to all. Massachusetts's Statute of Limitations is three (3) years for medical malpractice claims. As a general rule, therefore, you would want to maintain insurance for at least a period of three (3) years post retirement. The type of malpractice insurance one carried during the last period of his/her practice would dictate the type of continuing coverage necessary. If you carried a so-called "occurrence" policy, such policy would provide coverage for all claims which are based upon acts which "occurred" when the insurance was in effect, regardless of when the claim is actually made and, accordingly, no additional insurance would be required. If you

are insured under a so called "claims made" policy, coverage is only provided if the insurance is in place at the time the claim is filed. Accordingly, "tail" insurance would be strongly suggested to protect you from claims that could be made within the Statute of Limitations and after you've retired.

### Requirements of the Board of Registration in Medicine for Retiring Physicians in Massachusetts

The Board of Registration in Medicine (BRM) by regulation (243 CMR 2.07[7]) requires an application be filed with it as a prerequisite to a physician's retirement from the practice of medicine. The Board requires that it be notified of your intent to retire from practice along with a written statement, signed under the penalties of perjury, detailing your knowledge of any present or future complaints against you. It also requires that you make your patient records accessible to patients and successor physicians for a minimum of seven (7) years or until a child patient reaches the age of nine (9). If there are any outstanding complaints against you, the Board will not allow you to retire on the date you choose without a resolution of the complaints.

### Some Advice on Estate Planning

If you are in the process of considering an estate plan and you are still in the active practice of medicine, you may want to consider the appointment of a special administrator with respect to your medical practice. The purpose of such a special administrator would be, in the event of your untimely death, to attend to the appropriate transfer of patients' records and the winding up of your medical practice only. It affords you the opportunity to consider now who would be the best person to contact your patients, to make arrangements for transfer and referrals if necessary, to transfer and to maintain patient records in accor-

dance with the law, and arrange for the appropriate post-mortem insurance coverage.

Now that you have the way to retire from practice you only need to find the means. ■