Ohio State Medical Board Promulgates New Regulations with Respect to the Termination of a Physician-Patient Relationship and the Notification of Patients When a Physician Leaves a Medical Practice

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Recently, the Ohio State Medical Board promulgated final regulations with respect to the process whereby Ohio physicians can terminate a physician-patient relationship. These regulations also addressed the notice of termination that a physician or a physician group must provide when a physician leaves a practice, sells a practice, or retires from the practice of medicine.

These regulations amend existing Board regulations, and follow a statute enacted by the Ohio General Assembly in March, 2013 which dealt specifically with the notice that must be delivered to patients when a physician’s employment with a health care entity is terminated. The new regulations are now in effect.

In addition, the Board published FAQs that provide additional information concerning the new regulations.

Compliance with these regulations is mandatory. Violations can subject a physician to disciplinary action by the Board.

1. Regulation Relating to the Termination of the Patient-Physician Relationship. (Ohio Administrative Code Section (“OAC”) 4731-27-02.)

The amended regulation is largely unchanged from the prior regulation. It provides that a physician who desires to terminate a physician-patient relationship must send a notice to the patient that includes all of the following:

(a) A statement that the physician-patient relationship is terminated.

(b) A statement that the physician will continue to provide emergency treatment and access to services for up to thirty days from the date the letter was mailed to allow the patient time to secure care from another licensee.

(c) An offer to transfer records to a new provider upon the patient’s signed authorization.

In the FAQs that accompanied the new regulation, the State Medical Board made it clear that the term “emergency treatment and access to services” does not mean that, after providing notice, the physician is required to see the patient for routine medical services. However, the physician is required to provide emergency care to the patient.

According to the FAQs, the phrase “access to services” generally contemplates that the physician will provide the patient a short-term prescription for maintenance medication. The phrase “for up to thirty days” anticipates that there may be situations where a patient’s actions or threats may compromise the safety of the physician and/or office staff. Under these circumstances, the physician may terminate the physician-patient relationship immediately and is not required to provide further services. These are welcome clarifications to the regulation.

The notice can be sent in one of two ways:

(1) Via certified mail, return receipt requested to the last address for the patient on record. A copy of the letter, the certified mail receipt, and the mail delivery receipt must be maintained in the patient record; or

(2) Via electronic message sent using a HIPAA compliant electronic medical records system or HIPAA compliant electronic health records system that provides a means of electronic communication. However, if the electronic message is not viewed within ten (10) days of having been sent, then a certified letter must be sent.

The requirement to provide this notice does not apply in the following common situations:

(1) Where the physician rendered medical service on an “episodic basis or in an emergency setting”, and the physician should not reasonably expect that related medical services will be rendered by the physician to the patient in the future.

(2) Where the physician formally transferred the patient’s care to another health care provider who is not in the same practice group.

(3) Where the termination of the relationship is because physician is leaving a practice, selling a practice, retiring from medical practice, or whose employment with a health care entity has ended for any reason—in these situations a notice described below in this article must be sent.

(4) When the patient has terminated the relationship, either verbally or in writing or has transferred care, and the physician maintains documentation of the termination in the patient’s records.

2. Notification Requirements in a Situation in Which a Physician Departs From a Group Practice Due to Resignation, Involuntary Termination, or Retirement. (OAC Section 4731-27-03, and Ohio Revised Code Section 4731.228.)

When a physician leaves a group practice, notice must be sent either via regular mail to the last address of the patient on record, with the date of mailing of the letter documented in the patient's file, or by an electronic message sent via a HIPAA compliant electronic medical records system, or a HIPAA compliant electronic health records system.

The obligation to provide notice rests with the practice. However, the practice may require that the physician make the notification. In such case, the practice must provide the physician with a list of the patients and the patient contact information. The physician must then provide the notice either via regular mail or via a HIPAA compliant electronic method. In addition, the physician “may, but is not required to” publish a notice of termination in local newspapers.

Taken in combination, the requirements of the regulation and the statute obligate the group or the physician to provide notification to patients the physician has seen within the
The notice must include the following:

(a) A statement that the physician will no longer be practicing medicine with the practice.
(b) The date on which the physician ceased or will cease to provide medical services at the practice.
(c) If the physician will be practicing medicine in another location, contact information based on information provided by the physician. The requirement to provide this contact information does not apply where the practice has a “good faith concern that the physician’s conduct or the medical practice provided by the physician would jeopardize the health and safety of patients . . . .” The statute contains no other exceptions—for example, there is no exception for a situation in which the departing physician will be practicing in violation of a covenant not to compete.
(d) Contact information for an alternative physician or physicians employed by the practice, or contact information of a group practice that can provide care for the patient.
(e) Contact information that enables the patient to obtain information on the patient’s medical records.

There seems to be an inconsistency between the requirements of the regulation and those of the statute in terms of the timing of the notice. Ohio Revised Code Section 4731.228, relating to the termination of “employment” of a physician, provides that the notice must be sent not later than the later following two events:

(1) The date of the termination of employment of the physician; or
(2) Thirty (30) days after the practice “has actual knowledge of termination or resignation of the physician . . . .”

On the other hand, if the terminating physician is a partner in the practice, or a member of a limited liability company (which would mean that, technically, the physician was not an “employee” of the practice), then the notice is governed by OAC Section 4731-27-03. In this case, the notice must be sent not later than the earlier of the following two events:

(1) Thirty days prior to the last day the physician will see patients; or
(2) Upon actual knowledge by the practice that the physician “will be leaving, selling, or retiring from” the practice.

This inconsistency gives rise to a couple of questions:

- Why should there be a timing difference at all?
- What if a physician is a shareholder-employee of a practice structured as a corporation? Is the physician an “owner” and thus OCR Section 4731-27-03 and its notice requirement applies, or is the physician an “employee” and thus R.C. Section 4731.228 applies?

Taken literally, this would appear to mean that if a physician was a partner in a partnership or member of a limited liability company (and, perhaps, a shareholder-employee of a corporation) had announced to the practice an intention to resign one year hence, the required notice would need to be given to patients at that point. Whether this was the intended consequence of this regulation is not clear. Often physicians and practices prefer not to provide such lengthy notice. Practices should be more cognizant of the notice requirements when discussing possible retirements or transitions with physician owners.

Medical groups should review their physician employment contracts to confirm that the provisions in those contracts are consistent with current Ohio statutory law and regulation.

3. Patient Notification Requirements in a Situation in Which the Physician is Terminating a Solo Medical Practice

In a situation in which a physician is retiring from or otherwise terminating a solo practice (regardless of whether the practice is simply being closed or was sold to someone else with the selling physician no longer practicing) there are patient notification requirements. In such case, notice to the patients is to be sent by regular mail to the last address for the patient on record with a date of the mailing of letter documented in the patient’s file. An electronic message sent via a HIPAA compliant electronic medical record system is also permitted.

The notice must be sent no later than thirty days prior to the last day the physician will see patients or upon actual knowledge that the physician will be leaving, selling, or retiring, whichever is earlier. As mentioned above, this would create an issue, for example, for a physician who has informally established in his or her own mind a somewhat far-off retirement date. At what point must the notice be given? At what point does the physician’s future planning process become “actual knowledge” of retirement? In the case of a physician who, due to acute illness or unforeseen emergency is unable to provide the advance notice, the notice is to be provided not later than thirty days after it is determined that the physician will not be returning to the practice.

The patients to whom the notice must be sent are those to whom the physician had provided services in the two year period prior to the last day the physician will see patients.

The notice must include all of the following:

(a) A statement that the physician will no longer be practicing medicine at the location.
(b) The date on which the physician cease or will cease to provide medical services.
(c) Contact information for an alternative physician or physicians who could provide care for the patient.
(d) Contact information that would enable the patient to obtain information in the patient’s medical records.

These requirements do not apply in a situation in which the physician provided services only on an episodic basis or in an emergency department or urgent care center when it would not be reasonably expected that related medical service would be rendered by the physician to the patient in the future.

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