



# MATT DICKSTEIN

## Practice Attorney

Making legal matters easy and economical for your practice

39488 Stevenson Place, Suite 100, Fremont, CA 94539  
510-796-9144. matt dickstein@hotmail.com matt dickstein.com

## Newsletter, February 2015 Who Owns the Patient's Medical Records?

In this article, I explain who gets the patient medical records after a physician leaves a group medical practice. I propose a structure that is fair and resolves the problem up-front for all sides.

### Summary of CA law

Medical records are the property of the medical provider that prepares them, for example, the group practice or hospital. Patient records do not belong to the patient, nor do patient records belong to the physician. The group practice owns the patient medical records.

The patient has a right to view the original medical records, and to get copies. The medical provider must send the copies within 15 days after the patient's written request. The provider may charge 25¢ per page plus a reasonable clerical fee. For diagnostic films, such as an x-ray, MRI, CT and PET scans, the charge can be the actual cost of copying. The provider may even demand payment before sending the records.

CA law does not require that the physician group transfer patient records to a departing physician. Rather, transferring records between providers is considered a professional courtesy. There is no deadline for transferring records, no penalty for failure to transfer the records, and the transferring group may charge a fee for the service.

For this reason, the only way for a departing physician to require the transfer of medical records is to have the patient demand the records. The patient must send a written demand to the old provider requesting the records. Remember that the law does not require the old provider to send the records to the departing physician, but only to the patient -- although it strikes me that the old provider must send the records to the address required by the patient, which might be the departing physician's new address.

### What about patient abandonment?

Most physicians leaving a group practice argue that the physician must give notice to the patients to avoid patient abandonment. The group's counter is that it will continue the patient's care, hence the patient is not abandoned. CA law does not decide the winner of this argument.

You should avoid this argument altogether by using my notice procedures below. My notice procedures comply with the CA Medical Board's requirements on patient abandonment, and using them will resolve, up-front, the whole mess of patient abandonment and who gets the patient records.

### **The contract should decide who gets the patient records**

Physicians in group practices usually work under employment agreements, contractor agreements, and sometimes shareholder agreements. Whatever contract you use, it should have provisions for giving notice to patients when the physician leaves the group practice. If the contract doesn't have such provisions, then both sides should agree to a notice procedure before the physician leaves. Clearly it's best to have a contract fix the notice procedures at the beginning of the relationship, because the two sides frequently can't agree on anything at the end, by the time of departure.

Send the notice only to patients of the departing physician. The notice should include the following:

1. State the last day the physician will be available to render medical care at the group's facilities.
2. State the physician's new contact data, and give the patient a choice to move with the physician or stay with the group.
3. Give instructions on how the patient can obtain or transfer his or her medical records. For example, the notice might have 2 boxes that can be checked – one that keeps records at the practice, and one that transfers records to the departing physician.

The contract should state whether the physician or the group is responsible for sending out the notice and who pays the cost. The contract also should give a deadline for transferring patient records, for example, within 3 business days after the patient's request. Delay is unfair to the patient, of course, and it also acts as a de facto non-competition clause against the departing physician. If a patient can't wait, delay will drive the patient back to the group for continuing care.

The American Medical Association confirms the above notice procedures in its Opinion 7.03 (Records of Physician upon Retirement or Departure from a Group). The Opinion states that it's unethical to withhold from a patient information about his or her physician's new practice; and that the notice should give patients the option to have their medical records forwarded to the departing physician.

In conclusion, if you take nothing else away from this article, please remember that the departing physician and the medical group each risks charges of unprofessional conduct if it makes the transfer of patient records difficult for the other or for the patients. \*\*\*\*\*Call me if you want to talk more.

## **Bill Murray**

- Bill drinks champagne in a big pint glass with ice. Why? Hydration. "You don't want to crash. You want to keep that buzz, that bling, that smile."
- The more relaxed you are, the better you are at everything: the better you are with your loved ones, the better you are with your enemies, the better you are at your job, the better you are with yourself.

