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Action Items for the Estate When a Solo Physician or Dentist Dies

When a solo physician or dentist dies, the doctor's estate must figure out what to do with the practice. Because the doctor practiced solo, there are no partners who will continue the practice. The estate cannot operate the practice because it's not licensed to practice medicine or dentistry. Usually the estate has two choices, either sell the practice or wind it down.

Initial Steps. Before doing anything else, take these initial steps.

Step #1: Notify the CA Medical or Dental Board of the doctor's death.

Step #2: Notify the federal Drug Enforcement Administration of the doctor's death. When you notify the DEA, you should receive instructions on how to dispose of the remaining drugs and controlled substances.

Step #3: Talk with the office manager of the practice to determine the manager's availability to help wind down the practice, and to create a plan of action.

Step #4: Find a business broker who specializes in the sale of medical or dental practices.

What to do with the Practice During the Interim Phase. During the interim period while the estate is selling the practice or winding it down, you will need a doctor to operate the practice.

- *For dentists*, the law is clear. At the death of a dentist, the executor of the estate may employ licensed dentists and dental assistants and charge for their services for up to 12 months after death. Ideally, the temporary dentist keeps the practice running so that you can sell it as a going concern within the 12 months.

- *For physicians*, the law is not so clear. By the letter of the law, the estate may not itself operate, and may not hire a physician to operate the practice during the interim period when the estate is trying to sell the practice or wind it down. Remember that the estate is unlicensed. This means that, according to the law as written, the estate must either sell or shut down the practice immediately upon the death of the physician. In the past, the CA Medical Board has permitted the estate to bring in a physician to cover the practice for the interim period while the practice is being sold. The CA Medical Board did so on an informal basis, however, and I can't tell you that it has a policy of offering this benefit. My advice is for the estate representative to call the CA Medical Board and explain the situation, and hope to receive informal permission to bring in such a coverage physician on a temporary basis. If granted permission to do so, the estate must move fast in disposing of the medical practice. I have seen estates that operated a practice up to one year after the physician's death. This is certainly an abuse of the leeway given by the CA Medical Board, and likely constitutes the unlicensed practice of medicine by the estate, which is illegal.

Employees. If you sell the practice, the employees hopefully can continue with the purchasing doctor. If you can't sell the practice, then consider having the office manager handle the winding down of the practice, including termination of employment, payment of amounts owed at termination, COBRA notices, etc.

The office manager can supervise most other actions needed for the winding down as well, for example, the giving of patient notices, payment of practice obligations, and the collection of accounts receivable. You might have to pay the office manager a little extra to stay around for this work.

Patient Records. Patient records are like nuclear waste: no one wants them and no one knows how long to store them. Your best option is to find a doctor to take the patients and the patient records. If a patient requests his or her patient records, thank the patient, and deliver the records to the patient immediately.

If you can't find a doctor to take the patient records, then how long should the estate store the records? I have no easy answer. There is no general law requiring a doctor to maintain medical records for a specific period of time. Different laws have different requirements, for example, 3 or 5 or 7 years. Most litigators advise that you hold patient records for 10 years, on the theory that most claims have gone away after 10 years.

If nothing else, the estate should contact the doctor's insurance carrier to determine its requirements for record retention. You do not want to violate the contract for malpractice insurance. Many carriers provide a reduced period for retaining records after a doctor's death. The estate should hold the records for at least the period of time required by the insurance company.

Malpractice Insurance. Keep the doctor's malpractice policy in place until it expires. For high-risk practices, consider buying a tail policy. Also, keep copies of the doctor's prior policies until you feel safe from malpractice claims against the deceased doctor.

One Year Statute of Limitations. Lastly, talk with the estate's attorney about the statute of limitations for estate and probate matters. There is a one-year statute of limitations for bringing a claim against an estate which starts to run from the date of the death of the doctor, regardless of whether the claimant knows about it. The one-year statute of limitations might cut off a lot of possible claims against the estate.

Depending on the nature of the doctor's practice, you might feel comfortable relying on this short one-year period for protection from patient, creditor and other third-party claims against the deceased doctor. This is a difficult decision, but it's a critical decision, so be sure to talk about it with your attorney.

"I'll take the case," I said. Or did I? I fear I'm no longer able to differentiate between interior and exterior monologue.

Are you having this problem? I sure am.