



# MATT DICKSTEIN

## Business Attorney

Making legal matters easy and economical for your business

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

## Newsletter, November 2017

### Notices to Patients When a Physician Leaves a Group Practice

When a physician leaves a group practice, the physician has a duty and a right to notify his or her patients. BUT, the practice has a right to protect its patient list and other confidential data. The physician's duty not to abandon patients will conflict with the practice's right to protect its patient list. Whose right wins? Let's talk about the duty first.

#### **Duty Not to Abandon Patients**

When leaving a practice, a physician has an ethical duty not to abandon his or her patients. The California Medical Board states on its website (as of September 27, 2017) that the physician and other involved persons\* are obligated to notify patients sufficiently in advance of the departure. The notice should contain the physician's final date of practice, a statement of where the patient's medical records will be stored, and an authorization form for the transfer of patient records. The CA Medical Board says, "It is the patient's decision from whom to receive medical care." \*[The "other involved persons" presumably is the practice.]

Likewise, AMA Code of Ethics Opinion 7.03 advises that the patients be notified that their physician is leaving, and of the physician's new address. Further, the patients should be given the opportunity to have their medical records forwarded to the departing physician at his or her new practice location.

#### **Physician's Duty to Notify Patients vs. Practice's Right in its Confidential Data**

Now we must reconcile the physician's duty and right to notify patients -- vs. -- the practice's right to protect its patient list and other confidential data.

California's trade secret laws protect the practice from having its patient list stolen. Most patient lists are trade secrets that are owned by the practice (not the physician). The law prohibits the physician from using or disclosing the patient list, with one exception: The physician may give a bare-bones notice to patients. Under the exception, a physician may announce to the patients the physician's departure date and new contact information.

In sum, under California trade secret law, a physician may announce his or her change in practice to the physician's patients. The announcement may contain two elements: (1) the physician's departure date, and (2) the physician's new contact information. To give the CA Medical Board its due, I add a third element to the notice: (3) instructions for transferring patient records. This type of notice

complies with the physician's duty not to abandon patients, and complies with California trade secret law in protecting the practice's patient list.

- *Word to the wise #1:* If a physician is giving unilateral notice to patients, that is, notice without the consent of the practice, the physician must be careful to add nothing else whatsoever to the form notice; any extra language can render the notice illegal.

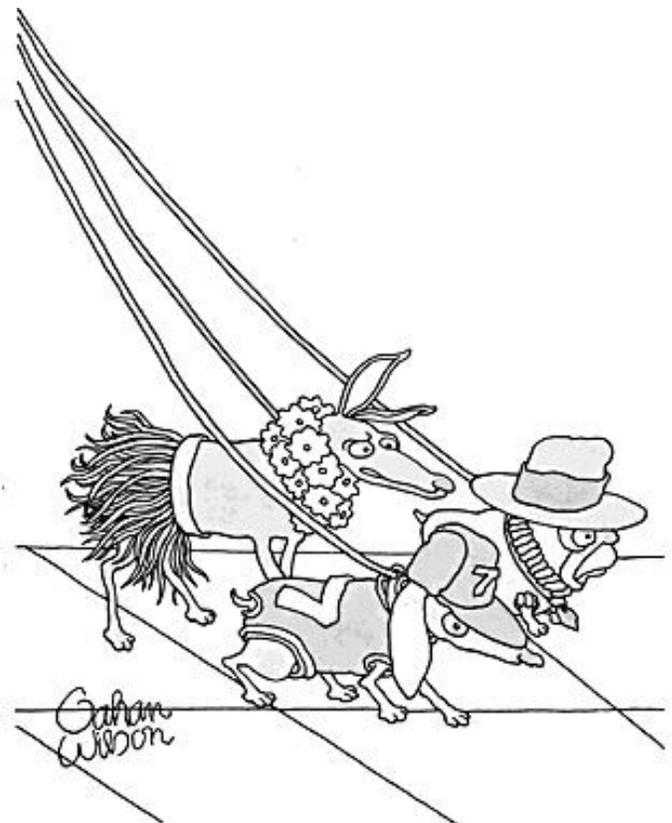
## What To Do

Now that we know that the practice and physician have a combined duty and right to notify patients, and now that we know the contents of the notice, what to do next? Simple- The practice and the physician should agree to send out a joint notice to patients. The notice will contain at least the three elements I propose above, and whatever else that the practice and physician can agree to. This solution complies with California law. It's also a civilized way to separate the physician and practice, without getting the patients in the middle of the dispute.

- *Word to the wise #2:* In addition to the joint notice to patients, the practice should provide a script for receptionists on what to say to patients who call in; the script should include the physician's new contact information. I know of no legal requirement for this, however, so it's just my advice.

## Michel de Montaigne

- There is nothing more notable in Socrates than that he found time, when he was an old man, to learn music and dancing, and thought it time well spent.
- I find I am much prouder of the victory I obtain over myself, when, in the very ardor of dispute, I make myself submit to my adversary's force of reason, than I am pleased with the victory I obtain over him through his weakness.
- There is no knowledge so hard to acquire as the knowledge of how to live this life well and naturally.
- Not being able to govern events, I govern myself.
- So it is with minds. Unless you keep them busy with some definite subject that will bridle and control them, they throw themselves in disorder hither and yon in the vague field of imagination... And there is no mad or idle fancy that they do not bring forth in the agitation.



*"Somehow, some way, we have to guide these people back to reality!"*