

# A Checklist for the Retiring Physician



VIRGINIA'S FAMILY PHYSICIANS

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## IN THIS EDITION

*The following checklist is an educational guide to acquaint physicians with some of the issues that confront a physician who is considering retiring from the active practice of medicine. The retirement from the practice of medicine involves many considerations and steps, including those described in this resource.*

## A CHECKLIST FOR THE RETIRING PHYSICIAN

*The checklist that follows will help VAFP members begin to sort through issues that a retiring physician may face. It necessarily is selective and lists only some of the issues involved in retiring from an active medical practice. It is not legal advice. It is intended for use as a general reference guide only. An experienced health care attorney should be consulted about legal matters pertaining to a physician's retirement.*

### ☐ **Virginia Board of Medicine Issues**

There is no statutory or regulatory requirement in Virginia that you contact the Virginia Board of Medicine when you retire. If your mailing address changes, you should notify the Board within 30 days. Current Board regulations require a licensee to furnish a current mailing address (and address changes) to the Board.

Contact information:

Virginia Board of Medicine  
6603 West Broad Street, 5<sup>th</sup> Floor  
Richmond, Virginia 23230-1712  
Tel: (804) 662-9908  
Fax: (804) 662-9517  
[www.dhp.state.va.us](http://www.dhp.state.va.us)

Many physicians decide to keep their Virginia license to practice medicine active for a variety of reasons, including without limitation (i) working at free clinics or similar organizations and (ii) writing prescriptions. Several considerations here are important.

- The Virginia Board of Medicine will not discount the fee it charges for an active medical license merely because your schedule and volume of work will be reduced significantly.
- Writing prescriptions after your retirement from an active medical practice is very dangerous and not recommended. Virginia law prohibits prescribing controlled substances except to a “patient.” The Virginia Board of Medicine, in guidelines dating back to 1985, notes that “[t]he presence of a medical record is an essential part of a valid practitioner/patient relationship.” The Board suggests that a medical record shall contain:
  - an appropriate history and physical examination (if pain is present and controlled substances prescribed, the assessment of pain, substance abuse history, and co-existing diseases or conditions should be recorded)
  - diagnostic tests, when indicated
  - a working diagnosis

- a treatment plan
  - documentation by date of all prescriptions written to include name of medication, strength, dosage, quantity and number of refills. The prescription should be in the format required by law.
- The Virginia Board of Medicine has established guidelines for the treatment of yourself or immediate family members.
  - Self-prescribing. A physician cannot have a bona fide doctor/patient relationship with himself/herself. Only in an emergency should a physician prescribe Schedule VI drugs for himself or herself. Prescribing of Schedule II, III, IV or V drugs to himself or herself is prohibited.
  - Immediate family. Treatment of immediate family members should be reserved only for minor illnesses or emergency situations. Appropriate consultation should be obtained for the management of major or extended periods of illness. No Schedule II, III, or IV controlled substances should be dispensed or prescribed except in emergency situations. Records should be maintained of all written prescriptions or administration of any drugs.
- If you retain an active medical license, you are required to complete the Board's CME requirements. The Board may exempt all or part of these CME requirements for a physician who (i) is practicing solely in an uncompensated position, (ii) provided his/her practice is under the direction of a physician fully licensed by the Board of Medicine.
- A physician (upon a request on the renewal application and submission of the required fee) may be issued an inactive license by the Board. A physician with an inactive license is not required to comply with the Board's CME requirements but shall not perform any act requiring a medical license.
- A physician's profile remains on the Virginia Board of Medicine's web site for two years after the physician's license lapses or ends. If the Board has entered a disciplinary order concerning the physician's practice, the profile remains on the Board's web site indefinitely.
- If you allow your license to expire, you have no responsibility to keep your profile information current.
- The Virginia Board of Medicine requires you to maintain the records of your CME compliance for six years following your most recent license renewal.
- Physicians who are licensed by the Virginia Board of Pharmacy to sell controlled substances should comply with the Board of Pharmacy regulations concerning the disposal (including the transfer) of these controlled substances.

❑ ***Notify Your Patients***

- By mail. Your patients have a right to continuity of medical care. A physician has a legal and ethical duty to provide it. As a matter of good professional practice, you should notify your patients individually and in writing of your intent to retire so that they will have adequate time to find another physician. It is appropriate for you to refer them to another physician, their health plan, or to a referral service.
- By newspaper advertisement. Virginia law (Va. Code §54.1-2405) requires that notice be published in the newspaper announcing the “sale” of any medical practice. A 2003 amendment to this statute applies this publication requirement to practice relocations as well. Without deciding whether retirement from medical practice qualifies as a sale or relocation under this statute, it is advisable for you to purchase a local newspaper advertisement announcing your retirement to avoid any argument that Virginia law has been violated.

❑ ***Notify your Practice's Employees***

When and how you notify your employees of your intent to retire is an individual consideration that will vary from physician to physician and from practice to practice. It may depend on whether you have written employment contracts with any of your employees and, if so, what these contracts provide. Review any existing written employment agreements (or have them reviewed by an attorney) to make certain that you satisfy all your contractual obligations, including notice requirements for terminating the contract. There also may be obligations concerning employee vacation time, sick pay, insurance benefits, pension plans and other benefits. Be sure to retain adequate staff until you complete the process of winding down your medical practice.

❑ ***Notify the U.S. Drug Enforcement Administration (DEA)***

You must notify the DEA in writing of your retirement and request that your DEA number be deleted from the DEA system. This notification may be made by sending a letter signed by the physician to the DEA, or by making a notation of “non-renewal due to retirement” on your DEA renewal form (if the renewal form is due around the time you intend to retire). In addition to sending this notification, you must follow DEA instructions concerning the disposition and transferring of controlled substances, drug samples, and other medications.

Contact information:

Drug Enforcement Administration  
Office of Diversion Control  
2401 Jefferson Davis Highway  
Alexandria, Virginia 22301  
Tel.: (800) 882-9539  
[www.usdoj.gov/dea/](http://www.usdoj.gov/dea/)

## ❑ *Notify health plans*

You should provide written notice to every governmental and commercial health plan whose members you see, or with which you contract, concerning your retirement date.

## ❑ *Arrange for the retention, transfer or destruction of medical and business records*

- Medical Records. Virginia is one of only a handful of states that does not prescribe how long a physician must maintain medical records. The general rule is that medical records should be maintained for as long as medical or administrative needs or uses for them exist. Laws and policies increasingly reflect an appreciation for the value of retaining medical records to assist in the ongoing clinical care of a patient. In fact, American Medical Association Policy E-7.05 provides that “[m]edical considerations are the primary basis for deciding how long to retain medical records.” Medical records obviously are kept to document patient care, but they also are maintained for a number of reasons that have little (if anything) to do with direct patient care. Chief among these is to assist in the defense of a physician if a patient brings a medical negligence claim involving their treatment. It is for this reason that your professional liability insurer should be contacted for any requirements or suggestions for retention of patient records.

A “statute of limitations” is a period of time allowed by law in Virginia for a person to file a claim against another person, including a medical negligence claim against a physician or other health care provider. All medical records should be maintained, at a minimum, for the applicable statute of limitations period, which generally begins immediately following the final care provided to the patient in the office or by telephone.

- The applicable statute of limitations for adults, defined as someone eighteen years old or older, is two years from the date a cause of action accrues, which usually is the date of the alleged negligent conduct.
- There are exceptions that may “toll,” or extend, the two-year statute of limitations or postpone the accrual date. They are:
  - foreign objects left in a patient’s body;
  - the continuing treatment rule;
  - fraud;
  - concealment; and
  - intentional misrepresentation
- The continuing treatment rule tolls the statute of limitations if a physician continues to treat a patient for the same condition involved in the alleged medical negligence, or for a problem related to the condition involved in the

alleged negligent conduct. In that case, the statute of limitations does not begin to run until the treatment ends.

- In general, the statute of limitations is not extended in any of these cases more than ten years from the date a cause of action accrues. An exception to this upper limit involves patients who are considered to have a legal disability (for instance, mental incompetence), for whom the running of the statute of limitations will be tolled throughout the period of disability. Many medical organizations and professional liability insurers recommend that physicians retain their adult patient records for at least ten years. For physicians who treat Medicare-eligible patients, this period also would cover the six-year limitation on the time the government may bring claims against health care practitioners for alleged overpayment.
- For minors, calculating the statute of limitations is based on the patient's age at the time of the alleged negligent conduct or the last date the child was seen by the physician. If a minor is eight years or older at the time of the alleged negligent conduct, the statute of limitations is two years from the date of the last act or omission giving rise to the cause of action. If the child was less than eight years of age, the minor has until his 10<sup>th</sup> birthday to commence an action. As a result, the safe course of action is to retain minors' medical records for the same period as adult medical records — that is, for at least ten years.

Virginia law does allow medical records that are retained to be stored in non-paper format — that is, electronically or on film — but only if the storage process makes the records unalterable. Paper copies may be destroyed, but destruction should be accomplished in a way that preserves patient confidentiality. Shredding is recommended if records are destroyed. Ensure that a list or chart file numbers and patient identifiers are recorded along with the date of destruction for those records that are destroyed. Use a licensed document destruction company and obtain a certificate of destruction. The list of charts and the certificate of destruction should be kept indefinitely.

When patients contact you directly to obtain a copy of their records or to transfer their records to another physician, the patient should sign a release for these records. You should only release copies of records to patients or physicians, never originals. Virginia law (Va. Code §8.01-413) permits you to charge the following amounts for medical records requests:

- fifty cents (50¢) per page for the first 50 pages
  - twenty-five cents (25¢) per page for each page thereafter
  - an additional search fee of \$10.00
- Business Records. You are required to keep many records pertaining to the business aspect of your practice after you retire. You should consult an attorney to help you determine how long you should retain business records, including without limitation

payroll records, personnel files, accounts payable invoices and credits, contracts, shipping and billing records, earnings records, and OSHA records. The HIPAA privacy regulations require you to retain HIPAA documentation (e.g., acknowledgment of receipt of privacy notice, requests for amendments, workforce training documentation) for at least six years.

❑ ***Terminate or transition your retirement and similar plans***

Again, an attorney or other competent advisor should assist you with this.

❑ ***Notify your professional liability insurer***

After you retire, it is possible that you may be sued for medical negligence arising from treatment rendered while you still were in active practice. If you have “claims-made” professional liability insurance coverage (as opposed to “occurrence” coverage), you may need to purchase additional insurance to ensure that you and your practice will be insured if a medical negligence claim is filed against you in the future. It is very important that you maintain adequate professional liability insurance coverage. You should retain copies of your professional liability insurance policies, including those that have been canceled or are expired. Ask your professional liability insurer whether discounts are available for retired physicians. If you have discontinued your practice, but you maintain an active license to practice medicine, you should consider maintaining your professional liability insurance.

❑ ***Notify your accountant***

Discuss the retirement process with your accountant and determine what steps need to be taken from an accounting perspective.

❑ ***Notify the insurance company that insures your practice location***

You should not cancel the property damage and general liability insurance for your office until you dispose of the physical assets of the office or until the premises are vacated. Consult with your insurance company or agent early.

❑ ***Tighten your collection practices***

When you retire, you should not have to be concerned with follow-up on accounts and insurance claims. You should discuss this early with your billing and collection agent or employee.

❑ ***Read your office lease***

Hopefully, your office lease contains language that will permit you to sublet so you can vacate the premises when you retire or shortly after your retirement. If you are authorized to sublet the premises (e.g., your lease permits you to sublet the premises, or you have obtained the landlord’s consent), you may not automatically be released from liability under your lease. You should examine your lease with respect to this

issue, and, if necessary, try to obtain from the landlord a release from further liability for rent and damages. If you own an office condominium or building and wish to “retire” from these responsibilities as well, you should consult with an attorney to plan an appropriate disposition of the premises.

❑ ***Plan the sale of your medical practice***

If you practice in a partnership or corporation with other physicians, you may have a “buy – sell” agreement in place that provides for the buyout of a retiring partner or shareholder. If you do not have a “buy – sell” agreement in place, you will have to negotiate the purchase price for your interest in the practice. If you are in solo practice, you may wish to hire a broker to sell your practice, or sell your practice yourself through word of mouth, by advertising in trade journals or by contacting residency and fellowship training programs to locate potential buyers. Some physicians find it advantageous to take on an associate for a year or two prior to retirement, with the intent that the associate will buy the practice upon retirement. You should consult with an attorney, accountant or other tax advisor concerning the complex tax considerations involved in the disposition of a medical practice. The manner of sale, the method of sales price allocation to the assets of the practice, and various other factors can have significant tax ramifications.

❑ ***Obtain final billing statements from suppliers***

Ensure that all final payments and credits have been made to and from any entity providing your office with ongoing supplies and services (e.g., software vendor, office supplies vendor, medical supplies vendor).

❑ ***Notify utility companies of your closing date***

Ensure that all final payments and credits have been made.

❑ ***Notify professional associations***

You should notify the Medical Society of Virginia, the Virginia Academy of Family Physicians, the American Medical Association, and any local or other specialty boards and/or societies of which you are a member of your decision to retire. Some of these organizations may have reduced dues for retired physicians.

❑ ***Notify the local Social Security office if you are approaching age 62***

Your local office should be able to provide you with information about Social Security benefits and Medicare.

❑ ***Change your mailing address and cancel subscriptions***