Texas Medical Board Regulations

When a physician departs a group, the issue of continuity of care for patients should be considered. The Texas Medical Board (TMB), in an attempt to address this issue, adopted regulations that must be followed whenever a physician leaves a group. This applies to physicians who are partners, members, or employees of the group.

Unfortunately, there are a number of ambiguities in the regulation. Despite these ambiguities, physicians – those who depart a group and those who remain in the group – must comply with the regulations.

This whitepaper attempts to provide as much information upon this issue as possible. The law and regulations, as it relates to departure from a group, often requires intensive legal interpretation. If questions about compliance remain after reading this whitepaper, you should contact your own retained legal counsel for advice. The regulation does not address all possible scenarios and there is little other insight (other than to seek legal advice) that can be offered.

When a physician retires, terminates employment or otherwise leaves a medical practice, he or she is responsible for:

• ensuring that patients receive reasonable notification and are given the opportunity to obtain copies of their records or arrange for the transfer of their medical records to another physician; and

• notifying the board when they are terminating practice, retiring, or relocating, and no longer available to patients, specifying who has custodianship of the records, and how the medical records may be obtained.¹

¹ 22 Texas Administrative Code §165.5
What kind of notice to patients is required?
According to the TMB regulations, three types of notification must be used:

- publishing notice in the newspaper of greatest general circulation in each county in which the physician practices or practiced and in a local newspaper that serves the immediate practice area;
- placing written notice in the physician's office; and
- sending letters to patients seen in the last two years notifying them of discontinuance of practice.

Do all three types of notice have to be used?
Yes, the regulation states that newspaper, posted written notice, and letters must be used.²

Where in the newspaper must the notice be listed?
The regulations do not provide any guidance on this issue. This is left to the physician’s judgment.

I am an employed physician do I have to send the letters?
According to the regulation, “the departing physician remains responsible, for providing notification consistent with this section.”³

Even if the group from which you are departing agrees to send the letters (something to which you are not required to agree), you remain responsible. If the group negligently provides notice where it agreed to send notice or reneges to send notice entirely, then you may have a cause of action against the practice for negligence – but you are still responsible and may be sanctioned.

The regulations say I have to notify the patients I have “seen” in the last two years. That is many patients. Do I really have to send it to everyone I have seen?
Yes, the regulations state the notice must be sent to patients “seen in the last two years.”⁴

I am an employed physician, isn’t notice my employer’s responsibility?
No, again, the regulations state the departing physician is responsible.

The regulation expressly states “Employers of the departing physician as described in Section 165.1(b)(6) of this chapter are not required to provide

² Id.
³ Id.
⁴ Id.
notification...” This likely indicates that an employer may voluntarily choose to provide the notice, but are not required.

Where does the notice have to be posted in the office?
“Notices placed in the physician’s office shall be placed in a conspicuous location in or on the facade of the physician’s office, a sign, announcing the termination, sale, or relocation of the practice. The sign shall be placed at least thirty days prior to the termination, sale or relocation of practice and shall remain until the date of termination, sale or relocation.”

I was an employed physician and my termination was immediate, I can’t post for 30 days prior to leaving. What can I do?
This is one of the ambiguous areas of the regulation. Unfortunately, there is no guidance for this circumstance.

Does anyone else get the notice?
Yes, the TMB requires a copy of the notice. “A copy of the notice shall be submitted to the Board within 30 days from the date of termination, sale, or relocation of the practice.”

I am an employed physician (or a former partner or member) and the group practice will not provide patient contact information for the mailed notice. Am I entitled to that information?
Maybe. The group runs the risk of violating another provision of the regulation if it continues to refuse to disclose. The regulation states:

“A physician or physician group should not withhold information from a departing physician that is necessary for notification of patients.”

If a practice does not turn over a patient list with contact information and does not send out notice letters, then the group may be in violation of this provision of the regulation.

If a practice does not turn over a patient list with addresses, but does send out notice letters on behalf of the departing physician, then the group may not be in violation of this provision. This is because the information was not “necessary for notification of patients.” Notice was arguably accomplished. However, the regulation places the duty of notification upon you, the departing physician, not the practice. Further, the TMB will hold you responsible to see that appropriate notice was made even if the practice sends the notices. The regulation does not...

---

5 Id.
6 Id.
7 Id. (emphasis added).
require you to delegate the satisfaction of your duty to the practice or remaining physicians. Thus, you may continue to demand the information necessary to notify patients of your departure. Remaining physicians may be in violation of the regulation where they withhold the information in the face of continued demands.

This is a circumstance where both employer and employee are at risk of a medical board sanction. Both parties should work to see that the patients obtain the information they are entitled to receive.

There is nothing expressly in the regulation that requires a practice to inform patients of where the departing physician is relocating. However, physician ethics require that when asked by a patient the group practice “must inform that physician’s patient of the departing physician’s new address.” (See TMA Board of Councilors Ethics Opinion below).

In another ambiguity of the regulation, some may argue the regulation seems designed and anticipates that the departing physician’s new address is part of the notice requirement. Unfortunately, this is unclear, but it is very possible the TMB intended the new location to be provided.

Again, both the departing physician and the group are at risk of sanctions where continued disagreement prevents notice.

**Practice/Employer Physician Risks**
As alluded to previously, employer/group practices also risk sanctions in these situations.

I run the Group Practice (or I am the owner of the practice) and a departing physician is demanding I provide a patient list. Am I required to turn over the list?

The answer is that you may be required to turn over the list.

The regulation states: “A physician or physician group should not withhold information from a departing physician that is necessary for notification of patients.”

If you (or the group practice) are unwilling to perform the notification by mail and refuse to provide information that will permit the departing physician (even if he or she is a former employee) to provide notice then you may be in violation of this provision. Continued refusal to turn over information in this circumstance has extreme legal risk.

If you (or the group practice) are unwilling to provide the contact information necessary for notification, but you send the notifications on behalf of the

---

8 Id. (emphasis added).
departing physician, then you may be in compliance with the regulation. This is because the notices were sent and the information was not “necessary for notification.” However, the departing physician need not agree to this arrangement.

As noted previously, the duty to notify patients is a personal duty of the departing physician. The regulation does not require the departing physician to delegate the satisfaction of that duty to the practice or remaining physicians. Thus, the departing physician may continue to demand the information necessary to notify patients of his or her departure. Withholding the information in the face of continued demands by the departing physician may likely violate the TMB regulation.

AMA ethics may require disclosure of patient contact information in this circumstance. According to the AMA ethics body “[i]f the responsibility for notifying patients falls to the departing physician rather than to the group, the group should not interfere with the discharge of these duties by withholding patient lists or other necessary information.” As Texas places the responsibility of notice upon the departing physician, ethics may demand disclosure of the patient list to the departing physician.

Even if the departing physician allows the practice to provide notice, the practice continues to face extreme legal risk because the practice has voluntarily taken upon itself the duty of notification for the departing physician. If the practice does not send a notice that complies with TMB expectations, the departing physician may have a cause of action to sue the group practice for any legal injury. Also, as the practice has voluntarily taken upon itself the duty of notification, where a patient accuses the departing physician of abandonment, the practice may find itself liable for any injury to the departing physician. Thus, if the TMB disciplines the departing physician or a patient accuses the departing physician with abandonment and wins at trial – the group may be liable to the departing physician for the damages (which can include TMB or trial defense costs and any award or fine the departing physician must pay). Further, such awards owed to former group members or employees may not be covered by professional liability insurance. Check with your liability carrier.

Departing physicians will want to consider the possibility that should a practice fail to provide notice that complies with the regulation, he or she will be held responsible by the Texas Medical Board, not the practice. Although one can delegate the task of notification, one cannot disclaim the responsibility to comply with the regulation.

There is little legal risk posed by turning over the contact information for patients seen in the last two years. Also, as indicated earlier, if a patient asks, the remaining physician may not ethically withhold the new location of the departing physician. The TMB has authority to discipline for unprofessional or dishonorable acts. It is unclear if feigning ignorance of the departing physician’s

---

9 Council on Ethical and Judicial Affairs, Opinion 7.03.
location or refusing to provide that information would fall under this authority. Physicians must be aware that the TMB holds them accountable for the activities of their staff members.

Simply, all parties - the remaining physicians and the departing physician - are at risk of TMB sanction where continued disagreement over the disclosure of information prevents notice.

**I run the Group Practice (or I am the owner of the practice), am I required to send out notices for the departing physician?**

No. The regulations expressly state: “Employers of the departing physician as described in Section 165.1(b)(6) of this chapter are not required to provide notification. . . .” 10

You are free to elect to do so, but please read the answer to the previous question for insight into the risk this may entail where you also refuse to provide patient contact information.

**I run the Group Practice (or I am the owner of the practice), am I required to allow the departing physician post a notice in our waiting room?**

Yes. The regulations expressly state: “Other licensed physicians remaining in the practice may not prevent the departing physician from posting notice and the sign.” 11

**Regulatory Scheme of the TMB and Notification of Patients**

The Texas Medical Board has drafted regulations that place the departing physician and the remaining physicians at risk of discipline to ensure that patients are notified upon the departure of a physician from a group. Continued disagreement may lead to a circumstance where all physicians involved may face disciplinary sanctions. Although it may seem the regulation is ambiguous, the regulation clearly is intended to ensure that all parties have an interest in compliance.

**Covenants Not to Compete**

The enforceability of covenants not to compete are affected by the refusal to provide a list of patients to departing physicians. The law states:

(b) A covenant not to compete is enforceable against a person licensed as a physician by the Texas State Board of Medical Examiners if such covenant complies with the following requirements:

(1) the covenant must:

---

10 Id.
11 Id.
(A) not deny the physician access to a list of his patients whom he had seen or treated within one year of termination of the contract or employment;

(B) provide access to medical records of the physician's patients upon authorization of the patient and any copies of medical records for a reasonable fee as established by the Texas State Board of Medical Examiners under Section 159.008, Occupations Code; and

(C) provide that any access to a list of patients or to patients' medical records after termination of the contract or employment shall not require such list or records to be provided in a format different than that by which such records are maintained except by mutual consent of the parties to the contract;

(2) the covenant must provide for a buy out of the covenant by the physician at a reasonable price or, at the option of either party, as determined by a mutually agreed upon arbitrator or, in the case of an inability to agree, an arbitrator of the court whose decision shall be binding on the parties; and

(3) the covenant must provide that the physician will not be prohibited from providing continuing care and treatment to a specific patient or patients during the course of an acute illness even after the contract or employment has been terminated.\(^\text{12}\)

**TMA Policy**

**TMA Board of Councilors Ethics Opinion**

**PATIENT’S RIGHTS UPON PHYSICIAN’S DEPARTURE FROM A GROUP.** When a physician leaves a group practice, and, if requested by a patient of that physician, the group practice must inform that physician’s patient of the departing physician’s new address, and that copies of the patient’s medical records may be forwarded to the departing physician’s new practice. It is unethical to withhold such information upon request of a patient. Additionally, the fact that a physician leaves a group practice should not cause any patient to be neglected or abandoned. It is unethical to interfere with the relationship between the departing physician and his or her patients by withholding information, even when there are other physicians remaining in the group who are qualified to render the necessary care.

**AMA Policy**

**CEJA Ethics Opinion**

E-7.03 Records of Physicians upon Retirement or Departure from a Group

A patient’s records may be necessary to the patient in the future not only for medical care but also for employment, insurance, litigation, or other reasons.

\(^{12}\) Texas Business & Commerce Code §15.50.
When a physician retires or dies, patients should be notified and urged to find a new physician and should be informed that upon authorization, records will be sent to the new physician. Records which may be of value to a patient and which are not forwarded to a new physician should be retained, either by the treating physician, another physician, or such other person lawfully permitted to act as a custodian of the records. The patients of a physician who leaves a group practice should be notified that the physician is leaving the group. Patients of the physician should also be informed of the physician’s new address and offered the opportunity to have their medical records forwarded to the departing physician at his or her new practice location. It is unethical to withhold such information upon request of a patient. If the responsibility for notifying patients falls to the departing physician rather than to the group, the group should not interfere with the discharge of these duties by withholding patient lists or other necessary information. (IV) Issued prior to April 1977; Updated June 1994, June 1996 and February 2002.

**NOTICE:** This information is provided as a commentary on legal issues and is not intended to provide advice on any specific legal matter. This information should NOT be considered legal advice and receipt of it does not create an attorney-client relationship. The Office of the General Counsel of the Texas Medical Association provides this information with the express understanding that 1) no attorney-client relationship exists, 2) neither TMA nor its attorneys are engaged in providing legal advice and 3) that the information is of a general character. Although TMA has attempted to present materials that are accurate and useful, some material may be outdated and TMA shall not be liable to anyone for any inaccuracy, error or omission, regardless of cause, or for any damages resulting therefrom. Any legal forms are only provided for the use of physicians in consultation with their attorneys. You should not rely on this information when dealing with personal legal matters; rather legal advice from retained legal counsel should be sought.