

Legal Update

Transferring a medical practice: *legal obligations for incoming and outgoing physicians*

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When a physician retires or moves on from a practice for whatever reason, he or she will often find a replacement physician to take over the practice. In such situations, it is important that both physicians engage in discussion about a number of aspects of the practice prior to the final handover.

Employees

The first consideration is what will happen to the existing employees? Do these employees have contracts?

Both the incoming and outgoing physicians should be aware of potential legal obligations to employees. For example, unless the leaving physician formally terminates the employment of his or her employees, under Ontario law the new physician assumes their employment. This can have financial ramifications for the new physician if he or she wishes later on to terminate their employment.

Both physicians should address these issues, and both should obtain legal advice prior to formally transferring the practice, particularly if the incoming physician wishes to rehire or retain the employees.

Patients

The second consideration is what will happen to patients' medical records?

Patients must be given ample notice that the current physician is leaving, and informed that the new physi-

cian will be taking over the practice.

We suggest giving patients as much time as possible so that they may decide if they wish to find, and have their records transferred to, a new physician. In this situation, a reasonable notice period is approximately

Once the leaving physician has properly informed patients that the new physician is assuming the practice, the two physicians should sign a Record Transfer and Access Agreement. This formally transfers the legal custodianship of the records from the leav-

OMA Legal Services is available to assist members with drafting a Record Transfer and Access Agreement.

two months. The College of Physicians and Surgeons of Ontario (CPSO) notes that it is acceptable to provide such notice in person, at scheduled appointments, by sending a letter to patients, or placing a telephone call to the patient; supplemental notice can be provided via a notice posted in the office, a newspaper ad, or recorded voice mail message.¹

ing physician to the new physician so that the new physician may access patients' personal health information. Further, it provides access to the records to the leaving physician in the event of a medical-legal matter, and guarantees that the new physician will maintain custody of the records for the appropriate timelines, as required by the Medicine Act² and the CPSO.³

