

# Legal Considerations in Operating a Medical Practice

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In today's highly regulated business environment, a physician needs to do more than provide good medicine to have a successful practice. Physician-owners must know how to deal with their employees, meet payrolls, have timely billings and collections, arrange needed financing, obtain necessary insurances and handle claims, negotiate their payer contracts and a whole host of other vendor contracts, resolve contract disputes, put into place appropriate employee benefit and retirement plans, manage regulatory compliance (both medical-related and general business) and handle other business matters.

How can a medical practice effectively treat its patients while managing its operations without running afoul of one of the numerous legal requirements imposed on the practice? The reality is that most successful medical practices rely heavily on trusted and experienced office managers. In turn, your managers need to know when to look for assistance from outside advisors experienced in the inner workings and demands on a medical practice.

**A Legal Perspective.** Over the course of the next several months, this column will focus on various legal issues affecting every medical practice. We will provide you with practical

suggestions and best practice recommendations on how to handle them, identifying what you can do internally and when it may be time to speak with your outside attorney, accountant or other consultant.

This month we review a medical practice's legal obligations with respect to maintaining patient medical records. We also comment on the move to electronic medical records (EMR).

## MEDICAL RECORDS RETENTION

Properly maintained medical records

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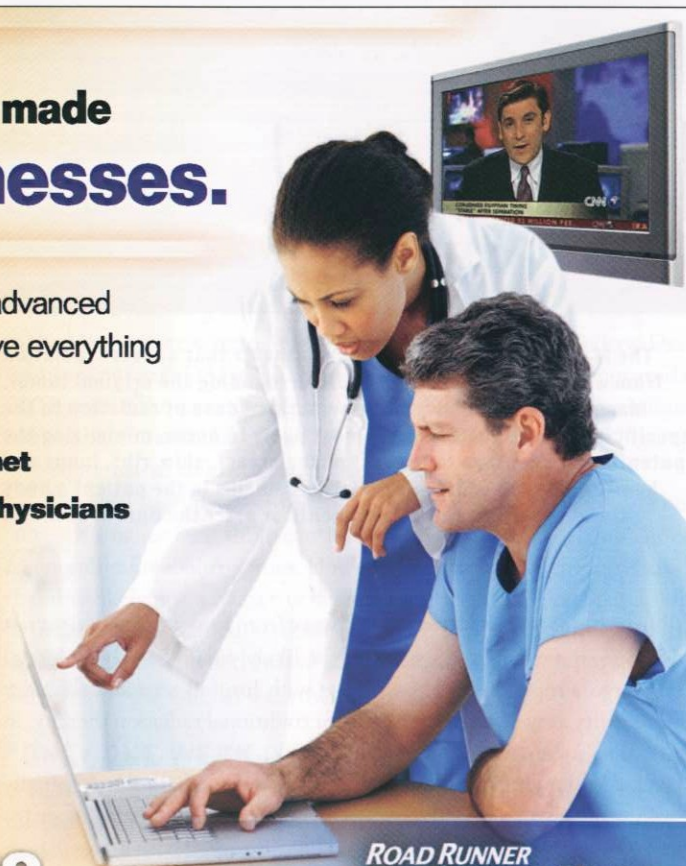
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are critical to a medical practice for more than just the clinical treatment of patients. These records are also essential for billing and regulatory purposes. Once created, the practice must maintain medical records in a secure and confidential manner. Over time, these records will continue to grow, as will the expense of staff and space to maintain them. *How long should a medical practice keep records?*

For New York practices, we recommend that medical records of minor patients (those under 18 years of age) and medical records of obstetrical patients be retained until the *later* of when the child obtains the age of 20½ or 10 years from the date of your last payment for services. For non-obstetrical, adult patients, we recommend that you retain records **until 10 years** from the date of your last payment. These recommended time frames are based upon the statutes of limitations for medical malpractice claims and federal false claims, which have the longest look-back periods. Please note, reimbursement contracts with health insurers often impose a record retention requirement, so make sure your retention period is in compliance with any contractual requirements.

## ELECTRONIC MEDICAL RECORDS

The use of electronic medical records (EMR) can improve care, reduce costs and facilitate your operations, including disaster recovery plans. One lesson learned from Hurricane Katrina is that it is much easier to protect medical records from destruction when they are on computer files that can be easily and quickly taken out of harm's way as opposed to file cabinets full of paper.

The use of EMR also allows remote access to a patient's medical records, eliminates legibility issues, provides quicker access to laboratory and test results and affords multiple providers access to a patient's medical information

in a timely fashion. From an employer's perspective, once up and running, EMR can reduce demands on staff as the maintenance of EMR is faster and easier than maintaining paper files.

However, EMR systems do not eliminate the legal requirements for medical record retention and confidentiality. EMR brings with it heightened security and

new privacy concerns. Therefore, if you are considering moving your practice to a paperless office, keep in mind the following requirements:

- (1) EMR must be retained for the same period of time as paper records;
- (2) EMR must be maintained in a secure administrative, physical and technical environment because they are

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