

Guideline on Closing, Leaving, or Transferring Practice: Ownership, Storage, and Access to Clinical Records

The guiding principle for registrants closing, leaving, or transferring practice is the imperative of ensuring the continuity of patient care and the secure storage of patient records and to ensure that those records continue to be accessible to the patient.

Registrants should familiarize themselves with the CNPBC Bylaws (the “Bylaws”), particularly Part 6 – Registrant Records, at: <https://www.cnpbc.bc.ca/about-us/legislation-bylaws/>.

The bylaw requirements are in addition to statutory obligations imposed on public bodies under the [Freedom of Information and Protection of Privacy Act](#) and private sector businesses under the [Personal Information Protection Act](#).

Ownership of Clinical Records

Although patient clinical records generally belong to the registrant who created them, the information contained in the record belongs to the patient. This means that the patient has the right to access the personal health information contained in the clinical information and to obtain a copy of clinical record itself.

There are exceptions to the general rule that clinical records belong to the registrant. For example, when a registrant generates a clinical record in the course of employment, the employer may own the record as in the case of a health authority. Contractual agreements may also address ownership of clinical records in a private sector setting. Where registrants are unclear on who owns clinical records, they should seek legal advice.

Registrants who practice in a group setting must have a written agreement in place which addresses ownership of clinical records generated during the course of the practice, and the responsibility for ensuring safe storage and accessibility of those clinical records in the event that the group practice dissolves or there are changes to it. Registrants who move to a new practice are entitled to retain copies of clinical records for each patient for whom they will be continuing to treat.

Registrants must recognize that patients have the right at all times to choose their naturopathic doctor. The decision whether to switch to another naturopathic doctor at the clinic, or to follow the departing naturopathic doctor to the new clinic, rests with the patient.

Security and Storage of Clinical Records

Clinical records contain sensitive personal information, including health information. Sections 84 and 87 of the Bylaws require registrants to “safely and securely store” all personal information and make reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, disposal of patients’ personal health information.

In addition, s. 84 of the Bylaws requires registrants to retain personal information for seven years. Although this is a regulatory requirement imposed by CNPBC, registrants should seek legal advice regarding retention of records beyond that period in light of the limitation periods established by the [Limitation Act](#) which govern civil actions.

Registrants who use electronic patient records must ensure that their system has adequate safeguards to protect the confidentiality and security of information, including but not limited to, ensuring:

- a) an unauthorized person cannot access identifiable health information on electronic devices;
- b) appropriate password controls or data encryption are used;
- c) secure backup of data; and
- d) when hardware is disposed of that contains identifiable health information, all data is removed and cannot be reconstructed.

Reference documents published by the Office of the Privacy Commissioner of BC (www.oipc.bc.ca) may provide useful guidance to registrants in meeting their privacy obligations, in particular the Privacy Toolkit developed in association with the *College of Physicians and Surgeons of British Columbia* and the *BC Medical Association*: <https://www.oipc.bc.ca/guidance-documents/1470>.

Patient Access to Records

Patients have the right to access copies of their clinical records under the CNPBC Bylaws as well as under privacy legislation.¹ Section 90 of the Bylaws provides that a registrant must provide a patient access and/or a copy of the clinical record within 45 days of the patient’s request. If a patient makes an access request under privacy legislation, a response is generally required within 30 business days.

The right to access is not absolute. For instance, under section 90 of the Bylaws, a registrant may refuse to disclose part or all of a clinical record if there is a significant likelihood of harm to the patient or a third party. Registrants who require assistance in responding to an access request should seek legal advice.

¹ The *Freedom of Information and Protection of Privacy Act* sets out the privacy requirements for public bodies; the *Personal Information Protection Act* sets out the privacy requirements for organizations and businesses in the private sector.

In the event that a third party seeks access to a patient's clinical record, the registrant must have a signed consent from the patient which specifically authorizes disclosure of a copy of the clinical record to the third party. If the signed consent form is unclear in any way or the registrant has concerns regarding the patient's ability to consent, further inquiries should be made.

Fees for Producing Patient Records

Section 90(5) of the Bylaws states that patients may be charged a reasonable fee for reproduction of personal information. The amount charged **must not exceed** that set out in **Schedule "B"** of the College's Bylaws. Registrants must ensure that privacy and security of clinical records or other personal information is maintained during reproduction. It is not appropriate to have copies made at unsecure third-party facilities.

Closing, Leaving, or Transferring Practice

Section 85 of the Bylaws governs the manner of disposing or transferring records when a registrant ceases to practice or moves to another jurisdiction. It provides that registrants must ensure that records are disposed of only by:

- (a) transferring the record to another registrant or, with the consent of the patient, to another health care agency of health care practitioner;
- (b) effectively destroying a physical record by utilizing a shredder or by complete burning (only if the record is more than seven years old);
- (c) erasing information recorded or stored by electronic methods in a manner that ensures that the information cannot be reconstructed (again only if the record is more than seven years old); or
- (d) transferring the record to the patient.

Closing a Practice

A registrant who retires or otherwise ceases to practice naturopathic medicine must either transfer their patient clinical records that have been in existence for less than seven years in accordance with s. 85(a) or (d) of the Bylaws or retain them for at least seven years in secure storage with the ability to facilitate patient access. The requirement to maintain secure storage and patient access to records under the Bylaws and under privacy legislation continue to apply even when a registrant has closed their practice.

Section 86(1)(b) also requires registrants to provide written notification to CNPBC which:

1. confirms that they have stopped practicing naturopathic medicine; and
2. outlines the steps they have taken to transfer or dispose of clinical records.

The requirement to ensure that patients continue to have access to records is a critical one as regulatory colleges often receive complaints from patients who are unable to access their records.

A registrant who is preparing to close their practice must ensure that the care of any patient under acute and/or active treatment is, with the patient's consent, promptly transferred to another naturopathic doctor or other healthcare provider. All outstanding reports or test results must be reviewed and acted upon by a qualified naturopathic doctor or other licensed healthcare provider. Registrants should be aware of their professional obligations under section 33 of the CNPBC's Code of Conduct (available at <https://www.cnpbc.bc.ca/about-us/legislation-bylaws/>) when discharging patients.

A registrant who is preparing to close their practice must provide notification of practice closure to their patients as soon as practicable to enable patients an adequate opportunity to find another health care provider. This notification may be sent by e-mail, provided that the patient has consented to receiving e-mail notifications from the clinic; otherwise, the notification should be mailed to the last known address of the patient. Registrants should also post a notice of pending closure in a visible area of the clinic reception and/or front door of the clinic. The notice should also advise patients where they can obtain emergency care if necessary. A copy of the notification must be placed in the clinical file of each patient who received the notification.

A registrant who is preparing to close their practice should also assist their patients in finding a new naturopathic doctor by providing a list of registrants in the registrant's local area, by directing patients' to the CNPBC's public register (available at <http://www.cnpbc.bc.ca/>) or to the British Columbia Naturopathic Association (available at <http://www.bcna.ca/>) for a referral.

Leaving or Transferring Practice – Notification Requirements

Where a registrant in a group practice setting moves to a new practice location, a notification letter must be sent jointly by the registrant and the clinic owner to all the patients. The notification letter must: (a) advise the patient of the registrant's new practice location; and (b) ask whether the patient wishes to have their clinical records remain at the clinic or be transferred to the registrant's new location. The notification letter must also inform the patient where their clinical record will be in the event that no response is received. The notification letter may be emailed to the patient provided that the patient has consented to receiving e-mail notifications; otherwise, the notification letter should be mailed to the last known address of the patient and a copy must be retained in the patient's clinical file.

Records of Deceased Registrants

Registrants are responsible for ensuring that they have a plan in place to ensure proper storage and accessibility of patient records in the event of disability or death. Where a registrant dies without a proper plan in place for records, CNPBC requests that the executor or administrator of the estate notify CNPBC

and assist in ensuring that clinical records are properly transferred or disposed of.

If the deceased registrant practised through a health profession corporation, the executor or administrator of the estate should request a formal change of name for the corporation and advise CNPBC of the name change. A permit for a health corporation name cannot be renewed if the registrant is deceased.

Professional Obligations

If a registrant who fails to take steps to secure, transfer or dispose of clinical records in accordance with the Bylaws (and applicable requirements under privacy legislation), may be subject to investigation and potential disciplinary consequences by the inquiry and/or discipline committee. The CNPBC may also notify the Office of the Information and Privacy Commissioner of British Columbia of a possible violation of privacy legislation (i.e. the *Freedom of Information and Protection of Privacy Act* or the *Personal Information Protection Act*.)

Business and Employment Decisions

CNPBC is not mandated to provide registrants with business, tax and/or legal advice matters such as contractual disputes or employment obligations. Registrants should seek legal or other professional advice if they have questions about such matters.