

**TITLE 16        OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 21    PODIATRISTS**  
**PART 12        MANAGEMENT OF MEDICAL RECORDS**

**16.21.12.1        ISSUING AGENCY:** Regulation and Licensing Department, Board of Podiatry hereafter called the board.

[16.21.12.1 NMAC - Rp, 16.21.12.1 NMAC 5/3/2019]

**16.21.12.2        SCOPE:** This part governs the use management of medical records that are created and maintained as part of the practice of a podiatrist who has physical possession or ownership of the records.

[16.21.12.2 NMAC - Rp, 16.21.12.2 NMAC 5/3/2019]

**16.21.12.3        STATUTORY AUTHORITY:** These rules are promulgated pursuant to and in accordance with the Podiatry Act, Section 61-8-9 NMSA 1978.

[16.21.12.3 NMAC - Rp, 16.21.12.3 NMAC 5/3/2019]

**16.21.12.4        DURATION:** Permanent.

[16.21.12.4 NMAC - Rp, 16.21.12.4 NMAC 5/3/2019]

**16.21.12.5        EFFECTIVE DATE:** May 3, 2019 unless a later date is cited at the end of a section.

[16.21.12.5 NMAC - Rp, 16.21.12.5 NMAC 5/3/2019]

**16.21.12.6        OBJECTIVE:** This part establishes requirements and procedures for management of medical records.

[16.21.12.6 NMAC - Rp, 16.21.12.6 NMAC 5/3/2019]

**16.21.12.7        DEFINITIONS: “Medical record”** means all information maintained by a podiatrist relating to the past, present or future physical health or condition of a patient, and for the provision of health care to a patient. This information includes, but is not limited to, the podiatrist’s notes, reports, summaries, x-rays, laboratory and other diagnostic test results. A patient’s complete medical record includes information generated and maintained by the podiatrist, as well as information provided to the podiatrist by the patient, by any other podiatrist who has consulted with or treated the patient, and other information acquired by the health care provider about the patient in connection with the provision of health care to the patient.

[16.21.12.7 NMAC - Rp, 16.21.12.7 5/3/2019]

**16.21.12.8        RELEASE OF MEDICAL RECORDS:** Podiatrists must provide copies of medical records to a patient or to another podiatrist when legally requested to do so. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. If the medical records are the property of a separate and independent organization, the podiatrist should act as the patient’s advocate and work to facilitate the patient’s request for records.

**A.** Medical records may not be withheld because an account is overdue or a bill for treatment, medical records, or other services is owed.

**B.** A reasonable cost-based charge may be made for the cost of duplicating and mailing medical records. A reasonable charge is \$1.00 per page for the first 25 pages, and \$0.10 per page thereafter. Patients may be charged the actual cost of reproduction for electronic records and record formats other than paper, such as x-rays. The board will review the reasonable charge periodically. Podiatrists charging for the cost of reproduction of medical records shall give consideration to the ethical and professional duties owed to other podiatrists and their patients.

[16.21.12.8 NMAC - Rp, 16.21.12.8 NMAC 5/3/2019]

**16.21.12.9        CLOSING, SELLING, RELOCATING OR LEAVING A PRACTICE:** Due care should be taken when closing or departing from a practice to ensure a smooth transition from the current podiatrist to the new treating podiatrist. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. Whenever possible, notification of patients is the responsibility of the current treating podiatrist.

**A.** Active patients and patients seen within the previous three years must be notified at least 30 days before closing, selling, relocating or leaving a practice.

**B.** Whenever possible, patients should be notified within at least 30 days after the death of their podiatrist.

**C.** Notification may be satisfied using any of the following methods:

(1) by placing a notice in at least one newspaper in the local practice area; notice should advise patients where their medical records will be stored; notice should include any pertinent information the patient may need for obtaining or transferring the records, including the name, mailing address and telephone number of a contact person with access to the stored records; notification should run a minimum of two times per month for three months to reach a maximum number of patients; or

(2) by written or electronic mail; or

(3) by individual correspondence to the patient's last known physical or electronic mail address.

**D.** Notification should include:

(1) responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address;

(2) how the records can be obtained or transferred;

(3) how long the records will be maintained before they are destroyed; and

(4) cost of recovering/transferring records.

**E.** A podiatrist or podiatrist group should not withhold patient lists or other information from a departing podiatrist that is necessary for notification of patients.

**F.** Patients of a podiatrist who leaves a group practice must be notified the podiatrist is leaving, notified of the podiatrist's new address and offered the opportunity to have their medical records transferred to the departing podiatrist at their new practice.

**G.** When a practice is sold, all active patients must be notified that the podiatrist is transferring the practice to another podiatrist or entity who will retain custody of their records and that at their written request the records (or copies) will be sent to another podiatrist or entity of their choice.

[16.21.12.9 NMAC - Rp, 16.21.12.9 NMAC 5/3/2019]

#### **16.21.12.10 RETENTION, MAINTENANCE AND DESTRUCTION OF MEDICAL RECORDS:**

**A.** Improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records constitutes unprofessional conduct under the board's rules adopted pursuant to Subsection H of 61-8-11 NMSA 1978. Podiatric physicians must maintain and make available upon request a written copy of their policy or their employer's policy for medical record retention, maintenance and destruction.

**B.** Written medical record policy shall include:

(1) responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address;

(2) how the records can be obtained or transferred;

(3) how long the records will be maintained before they are destroyed; and

(4) cost of obtaining copies of records, and of recovering records/transferring records.

**C.** Electronic medical record policy shall include:

(1) responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address;

(2) how the records can be obtained or transferred;

(3) how long the records will be maintained before destroyed;

(4) a data backup plan, disaster recovery plan and storage which ensures retrievability into reasonably usable form on a timely basis upon any request; and

(5) transfer of data via electronic file with appropriate safeguards to ensure patient confidentiality.

**D.** Podiatric physicians must retain medical records that they own for at least seven years. Medical records for patients who are minors must be retained for at least two years beyond the date that the patient is 18 years old.

**E.** Podiatric physicians shall retain medical billing information for at least two years after the date of last treatment.

**F.** A log must be kept of all charts destroyed, including the patient's name and date of record destruction.

**G.** If conversion of hard copies of medical records occurs to electronic format, the hard copy shall be retained by the physician for a minimum of 30 days after electronic transfer has occurred.

**H.** Destruction of medical records must be such that confidentiality is maintained. Records must be destroyed by shredding, incinerating (where permitted) or by other method of permanent destruction, including purging of medical records from a computer hard drive, server hard drive or other computer media or disk in accordance with existing practices for data deletion then available.

[16.21.12.10 NMAC - Rp, 16.21.12.10 NMAC 5/3/2019]

**History of 16.21.12 NMAC: [RESERVED]**

**History of the Repealed Material:**

16.21.12 NMAC, Podiatrists - Management of Medical Records filed 6/14/2007, Repealed effective 5/3/2019.

**Other History:**

16.21.12 NMAC, Podiatrists - Management of Medical Records filed 6/14/2007 was replaced by 16.21.12 NMAC, Podiatrists - Management of Medical Records filed 6/14/2007 effective 5/3/2019.