



# New York State Dental Association

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When a Dentist Dies  
*A Guide for Widows and Widowers*

When the owner and operator of a going dental practice dies, his or her spouse faces many questions about what to do with the practice and how.

*Who owns the practice?*

*Can the practice continue to operate and generate income?*

*What should be done with patient records?*

*Are there special considerations if the practice was a partnership, professional corporation or limited liability company?*

Often, the surviving spouse has no answers to these questions. Many family lawyers who handle estate matters are not well versed in the unique requirements surrounding professional dental practices.

This brochure sets forth some simple guidelines for surviving spouses to follow upon the death of a spouse who was operating a dental practice. The information found in this guide was prepared by the Legal Department of the New York State Dental Association.

## Who Owns the Practice When the Dentist Dies?

### Sole Proprietorships

As with any other property or business, a dental practice is an asset that becomes part of the owner's estate when the owner dies. The real property on which the office sits; the equipment, supplies and other personal property in the office; the patient records, and the goodwill of the practice are all assets whose ownership will pass to the deceased's estate.

If the dental office space was leased, the rights under the lease may also pass to the estate depending upon the terms of the lease. The surviving spouse needs to know what property was part of the dental practice and then make certain that all appropriate property is included in the estate.

The executor of the estate, if there is a will, or the administrator, if there is not, is legally responsible for marshaling all the assets of the estate. Although the deceased's estate takes ownership of the tangible and intangible property making up the former practice, the estate cannot own or operate a dental practice. Only a licensed person or entity can own a going dental practice, and an estate cannot obtain a dental license. Therefore, the estate's ownership is limited to the purpose of liquidating and selling the practice. The one exception is that the estate can ask permission from the New York State Surrogate's Court to operate the deceased dentist's practice for a maximum period of eight months.

### Partnerships and Limited Liability Partnerships

A dentist who was a partner in a dental practice will usually have his/her share of the assets pass to his/her estate upon death. The estate will generally not have any specific interest in partnership property, so the assets that pass to the estate are usually governed by the written partnership agreement.

The surviving spouse needs to obtain a copy of the partnership agreement and be familiar with the rights and requirements spelled

out in that document. The situation is the same for a partnership that is structured as a limited liability partnership.

## Professional Corporations

A dentist who was the sole shareholder of a professional corporation will have his/her assets treated exactly the same as a sole proprietorship, except that the shares of stock in the professional corporation are additional items that become part of the dentist's estate.

A dentist who was one of several shareholders in a professional corporation has very different considerations. The professional corporation is obligated by law to redeem the outstanding shares of the deceased within six months after the appointment of an executor or administrator of the estate. The shares must be redeemed at their book value as of the end of the month immediately preceding the shareholder's death. However, the certificate of incorporation, the corporate bylaws, or an agreement among the corporation and all shareholders may shorten the time period for redemption or set a different method for determining the price of the shares to be redeemed.

Also, the corporation's obligation to redeem the shares does not prohibit the estate from selling the shares to another dentist prior to the corporation's redeeming the shares.

## Professional Limited Liability Companies

A dentist who was the sole member of a professional limited liability company will have his/her assets treated exactly as if he/she had been a sole proprietor.

A dentist who was one of several members in a professional limited liability company will have his/her assets treated in the same way as a shareholder in a multi-shareholder professional corporation.

The deceased's membership interest must be redeemed by the company in the same way that shares in a professional corporation are redeemed when a shareholder dies. Also, the written operating agreement of the company will need to be consulted to determine if there are any special rights under the agreement. The surviving spouse needs to obtain a copy of the operating agreement and be familiar with the rights and requirements spelled out in that document.

## Can the Practice Operate After the Owner Dies?

### Sole Proprietorships

Although the dentist's estate has technical ownership over the assets comprising the practice, in New York State only a dentist licensed in the state can practice dentistry and, pursuant to Section 6512 of the New York State Education Law, no unlicensed person or entity can own or operate a dental practice.

Because an estate is not capable of obtaining a license to practice dentistry, it lacks the legal authority to continue to operate a dental practice for the benefit of the estate, unless the estate petitions the New York State Surrogate's Court to operate the deceased dentist's practice for a maximum period of eight months.

### Partnerships and Limited Liability Partnerships

The death of a partner ordinarily will dissolve a partnership, unless the written partnership agreement provides otherwise. Most partnership agreements do provide otherwise by allowing the remaining partners to vote to continue the partnership.

The major issue that arises with the death of a partner is whether the partnership can continue to use the deceased partner's name in the practice. Unless the partnership agreement allows for such use, the deceased partner's name cannot be used unless his/her estate gives permission for such use.

### Professional Corporations

The death of a dentist who was the sole shareholder in a professional corporation is treated essentially the same as if the deceased had been a sole proprietor. The dental practice cannot continue to be operated by the estate, unless the estate petitions the New York State Surrogate's Court to operate the deceased dentist's practice for a maximum period of eight months. The death of a dentist who was one shareholder in a multi shareholder professional corporation does not affect the right of the professional corporation to continue to operate. The corporation simply carries on with the remaining shareholders.

The name of the deceased shareholder cannot be used in the name of the professional corporation unless the name was used previously by the corporation. This continued use of the deceased dentist's name is not dependent upon permission from his/her estate.

## **Professional Limited Liability Companies**

The death of a dentist who was the sole member in a professional limited liability company is treated essentially the same as if the deceased had been a sole proprietor. The dental practice cannot continue to be operated by the estate, unless the estate petitions the New York State Surrogate's Court to operate the deceased dentist's practice for a maximum period of eight months.

The death of a dentist who was one member in a multi-member professional limited liability company generally results in the dissolution of the company, unless the written operating agreement provides otherwise. In any event, the estate cannot substitute for the deceased as a member of the company.

If the written operating agreement does provide that the company survives a member's death, the company can continue to operate the dental practice. It can also continue to use the deceased dentist's name in the practice and it does not need to seek permission from the dentist's estate to do so.

## What Should Be Done with Patient Records?

### Sole Proprietorships

If a dentist dies, his/her patient records become part of the estate, and the estate obtains the same ownership rights that the dentist previously held.

As already stated, an estate cannot practice dentistry or carry on a dental practice for its own benefit, unless the estate petitions the New York State Surrogate's Court to operate the deceased dentist's practice for a maximum period of eight months. Therefore, the estate will have to sell the patient records as part of the sale of the practice if it wishes to obtain anything of value for the records. The eight month rule is designed to allow time to make a sale of the practice without the records and other assets losing their value.

The estate does not have to sell the patient records and, because it is not bound by the professional conduct rule that requires licensees to keep dental records for six years, it could destroy the records. However, despite being freed from the record-retention rule, the dentist's estate should not rush to destroy the patient records. It can still be sued for malpractice committed by the dentist before his/her death. This potential liability will not run out until the two-and-one-half-year dental malpractice statute of limitations runs out against all patients.

Therefore, in order to defend such suits, the dentist's estate should keep copies of the patient records for at least two-and-one-half years from the date of the dentist's death. In some instances, such as discovery of a foreign object in the patient's body, the statute of limitations can run for a longer period; and the dentist's estate should obtain advice from a qualified attorney about how to handle such a contingency.

A dentist's estate will also need to bear in mind that Section 4504 of the New York State Civil Practice Law and Rules (the dentist/patient privilege law) will still apply to any records held by the dentist's estate.

That law created confidentiality rights that were held by the patients rather than by the deceased dentist. The dentist's estate must take care not to breach the privilege of confidentiality held by the

patient. Thus, in selling any patient records, the estate should obtain the patient's consent through use of the same standard consent letter employed when a living dentist sells his/her patient records to another dentist.

(Copies of that letter can be obtained through NYSDA.)

## Partnerships and Limited Liability Partnerships

In a partnership, the patient records are owned by the partnership and not by its individual members. Thus, when a partner dies, the partnership handles the disposition of the patient records. It is unlikely that the dentist's estate will have any specific right of ownership in any of the patient records. However, the estate may still want to obtain copies of the deceased's records in order to protect it from possible malpractice suits.

It should be kept in mind that the partnership has no legal obligation to provide copies of records to the deceased's estate, which is why it is a good idea for every dentist to maintain his/her own personal set of patient records.

## Professional Corporations

The patient records of a deceased dentist who was the sole shareholder in a professional corporation should be treated essentially as if the deceased had been a sole proprietor.

The patient records of a deceased dentist who was one shareholder in a multi-shareholder professional corporation are owned by the professional corporation and not by the deceased's estate. Thus, the professional corporation will handle the disposition of the patient records. In this respect, the professional corporation is much like a partnership.

Again, the estate may still want to obtain copies of the deceased's records in order to protect it from possible malpractice suits. However, like a partnership, the professional corporation has no legal obligation to provide patient records to the estate.



## Professional Limited Liability Companies

The patient records of a deceased dentist who was the sole member in a professional limited liability company should be treated exactly as if he/she had been a sole proprietor.

The patient records of a deceased dentist who was one member in a multi-member professional limited liability company are owned by the company and not the deceased's estate. Thus, the company will handle the disposition of the patient records. In this respect, the limited liability company is like the partnership and the professional corporation.

Again, the estate may still want to obtain copies of the deceased dentist's records in order to protect it from possible malpractice suits. However, like the partnership and the professional corporation, the limited liability company has no legal obligation to provide patient records to the estate.

## Be Prepared

The emotional and economic upheaval caused by the death of a spouse can become even more devastating when that spouse was a dentist with a thriving practice. But there are steps you can take now to avoid the potentially tangled web of estate issues likely to follow the death of a dentist spouse.

1. Make sure the estate has an accurate list of the assets of the deceased dentist's practice, both tangible and intangible.
2. Make sure legal paperwork, such as partnership agreements, professional corporation bylaws, limited liability company agreements, leases, contracts and other similar documents, is available to the estate and understood by the estate.
3. Check to see if there are any pending or potential malpractice claims against the deceased so that the estate can be alerted to their existence.
4. Remember to maintain patient records until the estate is free and clear of any potential malpractice liability.
5. Make sure patient confidentiality is not breached by actions of the estate.
6. Make sure that the attorney handling the estate is familiar with and capable of handling the special considerations that the liquidation and sale of a dental practice pose.

With regard to choosing an attorney, NYSDA can help the dentist's survivors through the NYSDA Legal Services Panel. If you do not have an attorney or wish to obtain a new attorney, call NYSDA at 1-800-255-2100 to obtain assistance and a referral to the Legal Services Panel.

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