

Retiring, Selling or Closing Your Practice

There's a lot of ground to cover, so it's best to plan ahead.

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WHETHER BY CHOICE or necessity, there probably will come a time when you (or your family) will have to wind down the business operations of your dental practice. Whether you are selling the practice to another dentist or closing it entirely, there are many issues to address. Keep in mind, too, that your obligations as a dentist do not cease when your doors close.¹

First Things First

As with most things in life, it is best to prepare in advance. Patients should be advised of the pending closing of the practice and given the opportunity to seek a new dentist. The law does not specify what notice is required, and it certainly would be dependent upon many factors.

If there is a sale of the practice, it is not appropriate to simply transfer patient files to the new owner. The Board of Regents Rules require consent from patients before their information is transferred. The most feasible way of obtaining such consent is by written notice informing patients of the sale, introducing the new dentist and advising them that unless they request copies of records be sent to a different dentist within a certain time (that is, 30 days), the records will be maintained at the address of the purchasing dentist. We've included sample notices at the end of this column.

Notice may be made in many ways, including a letter or the publication of a notice in a newspaper.

Several months' advance notice of a sale or closing is not always possible. Unforeseeable events may force you to discontinue your practice at once. In those circumstances, you should give the most realistic

notice possible and feasible, and you should make sure that arrangements are made for reasonable continuation of care for your patients.

Recordkeeping

The dentist's obligation to maintain patient records outlasts the closure or sale of a practice. Any sale agreement must, therefore, note that original records are being maintained on behalf of the prior owner and allow for access to the records. This is absolutely essential for you to prove treatment, to defend against any claim or to respond to any investigation, and to fulfill your professional obligations.

If you are closing your practice, you must make provision for maintaining the records and for allowing patients to contact you if they need copies in the future.

A patient is entitled to get copies of his or her records or to ask to have them transferred. As always, you must provide copies if requested even if there is a balance owing on the patient's account. Failure to do so could result in a charge of professional misconduct or an ethics violation.

Although New York State Public Health Law allows you to charge for the copies (the amount is limited to 75 cents per paper copy and no more than the reasonable cost of your expenses for other copies), at retirement, many dentists will provide copies at no cost. The best policy is to notify patients of the costs, if any, and have the patient sign a written request specifying which records to copy and where they should be sent. You may want to remind patients that you will retain the originals and that they should check with the new dentist to see if any copies are truly necessary.

After retirement, you must continue to maintain patient records for the minimum statutory time. For adults, that is six years; and for minors, the greater of six years or until their 22nd birthday.

1. You may obtain a copy of the ADA's Closing a Dental Practice: A Guide for the Retiring Dentist or Surviving Spouse. In addition, you should consult with your personal attorney, accountant and other professional advisor to ensure compliance with the laws, regulations and to maximize practice value.

Abandonment

The New York State Board of Regents Rules do not go into detail regarding a dentist's obligation to complete treatment when closing a practice or retiring. They merely state that professional misconduct includes:

"...abandoning or neglecting a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care, or abandoning a professional employment by a group practice, hospital, clinic or other health care facility, without reasonable notice and under circumstances which seriously impair the delivery of professional care to patients or clients."

If you are aware that you will be retiring or closing your office in the near future, it is best not to take on new patients or to start new procedures that cannot be completed. Depending upon the circumstances, the dentist may need to arrange for continued treatment with another dentist for patients undergoing extensive procedures. Since orthodontic treatment is so lengthy, closing an orthodontic practice presents a difficult scenario from this perspective. It may be advisable to contract with a skilled practitioner to complete the treatment.

In any event, if the patient is agreeable to having another dentist complete the work, you should provide any subsequent dentist with the necessary clinical information. If the entire cost is paid, a partial refund may be necessary.

It is also advisable, if possible, to balance all accounts. If a patient has prepaid for services or is on an installment payment plan, you should clarify the account and avoid later claims or issues.

Miscellaneous Items

You must be careful when disposing of or transferring materials, including any unused medications. Hazardous wastes, including amalgam, must be properly disposed of. Also, write to the Bureau of Controlled Substances, stating the number of unused prescription pads you have and asking for permission to destroy them.

The State Education Department should be notified that the office is closed and be given your contact address. Decide whether you want to continue to keep your license active. If so, you must continue to comply with registration fees and continuing education requirements. If you decide to let your registration lapse, you cannot continue to practice, that is, if you are retired and your license is inactive, you cannot write prescriptions.

You should remember to check all your insurance policies and determine if there are any that need to be continued. Your malpractice insurance carrier should be notified and depending upon your policy, you should purchase a "tail" on your coverage. Make sure you maintain a copy of your policy with other important records.

In the event of the death of the dentist, family members may want to apply to the Surrogates Court for an order allowing the practice to continue for up to eight months for purposes of selling and/or closing the practice. ■

The material contained in this column is informational only and does not constitute legal advice. For specific questions, dentists should contact their own attorney.

Sample Letter (closure)

Dear Patients:

This is to advise you that as a result of _____ (my retirement, health, unforeseen events) _____, I will be discontinuing the practice of dentistry on _____.

I will not be able to attend to you professionally after that date.

It has been a pleasure to serve as your dentist. Please be aware that you need continued care and should find a new dentist as soon as possible. If you are in need of the name of another dentist, you may contact the _____ Dental Society at (____) ____ - ____.

I shall make copies of your records available to you or the dentist you designate. Since your records are confidential, I require your written authorization (see enclosed). As required by law, I will maintain your original records.

Thank you again for your confidence and trust in me as your oral health care provider. I wish you continued health.

Sincerely,

_____, D.D.S./D.M.D.

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Sample Letter (Sale)

Dear Patients:

It has been a pleasure to serve as your dentist. Due to _____ (give reason, if possible) _____, I will be discontinuing the practice of dentistry on _____. Although I will not be able to attend to you professionally after that date, I have agreed to sell my practice to Dr. _____. Dr. _____ is a _____ (year) _____ graduate of _____ and (give any relevant background). Of course you may choose to have copies of your records sent to another dentist, but if we do not receive a written authorization to transfer copies of your records within thirty days of this letter, Dr. _____ will be the custodian of your records. He will treat patients in the same office location.

Thank you again for your confidence and trust in me as your oral health care provider. I wish you continued health.

Sincerely,

_____, D.D.S./D.M.D.

Sample Form:

Authorization for Release of Information

I (the undersigned) authorize _____ (Provider/Facility name) to release the information described below to the extent allowable by law from the record(s) of: _____

Patient Name: _____
(Last) (First) (Middle)

Date of Birth: _____ SS#: _____

Covering the period(s) of treatment:

From: _____ to: _____

2. The following is a description of the information to be released:

3. Purpose of disclosure:

4. I understand this consent may be revoked in writing at any time. With the exception to the extent that disclosure of information has already occurred prior to the receipt of revocation by the above named provider. If written revocation is not received, authorization will be considered valid for a period of time not to exceed 90 days from the date of signing.

5. A photocopy of this authorization is to be considered as valid as the original.

6. I understand that the information used or disclosed pursuant to this authorization may be subject to re-disclosure by the recipient and may no longer be protected by Federal Law.

SIGNATURE: _____

DATE: _____

Patient or personal/legal representative (Next-of-kin or legal guardian to sign only if patient is a minor, legally incompetent, or deceased)

PRINT NAME: _____

Relationship to patient of personal/legal representative signing for patient: _____

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