



## CNA HealthPro

### Easing the Concerns of Retirement

The decision to retire from practice is often a difficult one, involving many personal and professional considerations – including potential liabilities. The fact is that retiring from dental practice does not necessarily end all associated liabilities. Fortunately, with a little time and effort, you can protect yourself against many of these risks.

Dentists approaching retirement may not find it as easy as it once was to find potential buyers. Smaller graduating classes, coupled with the closing of numerous dental schools over the last 20 years, have left many retirees no other option than to close their doors. Whether you sell your practice or close it outright, there are risk management considerations to address. Some of these issues are easier for the dentist who is able to find a buyer for his or her practice.

If you are trying to sell your practice, it is best to look for a purchaser who shares your practice philosophy. If possible, observe your potential buyer's clinical and communication skills. If you notice discrepancies between your standards of care and philosophy of practice and those of the buyer, think twice about completing the sale. Remember that comments about your work made by the purchasing dentist could encourage malpractice suits by your former patients.

Before completing the transaction, it is important to retain an attorney experienced in negotiating practice sale agreements on behalf of dentists.

#### Informing Patients

Many retiring dentists are primarily concerned about potential patient allegations of abandonment. Managing the termination of the dentist-patient relationship in a manner that reduces the risk of abandonment can be easily accomplished. Fortunately, abandonment allegations arising from a dentist's retirement are not a frequent source of malpractice claims.

Patients are entitled to reasonable notification that a dentist's services will no longer be available. Therefore, it is prudent to notify *all* patients of record of your plans to cease your clinical activity, except those you have already formally terminated or who have previously contacted you to do so. This step is more critical if you close your practice outright, since patients will not be able to access dental care by simply returning to your current practice location.

The ways in which a patient can be notified of a dentist's impending retirement include direct correspondence, office postings, and public announcement.

Patients should be alerted to your retirement by a simple, clearly written letter sent to their current mailing address on file. The letter can be sent first-class; it does not require certified mail. The letter should

- inform patients of your last date of practice
- explain how they can obtain a copy of their treatment record
- specify who (if anyone) will continue to provide care in the office

If the office will be closing, inform patients as to how they can find a new dentist – e.g., by advising them to consult the telephone directory, giving them the names of colleagues or directing them to a referral service. If you are selling your practice or have made arrangements regarding the retention or storage of patient records, include a form in your mailing that authorizes transfer of the dental records to a subsequent dental provider.

A two-or three-month notice period before you retire from practice is usually sufficient to allow your patients to make necessary accommodations, such as finding a new dentist, having their records transferred and resolving billing issues. It also allows you enough time to bring unfinished treatments to a point where the patients are stable.

For patients requiring ongoing care, follow up your letter with a discussion – either face-to-face or by phone – informing them of their remaining treatment needs. This will help protect patients from potential harm and further reduce your risk of abandonment allegations. Document the list of letter recipients and make chart entries of all such discussions with patients.

In addition to sending letters to patients, post a notice conspicuously in your office stating the same basic information. In case someone who presents for treatment overlooks the notice, be certain to discuss the matter personally with each patient. Also, have your staff inform patients calling for appointments of your upcoming retirement.

A public announcement satisfies the notice requirement for any patient of record who might not receive your written notification. The public announcement of your retirement can be as simple as a notice or advertisement in your local newspaper(s) stating the closing date of your practice. As with the mailing, it should direct patients to contact your office prior to the date of closure for access to care and records. For public announcements, a minimum of 30 days advance notice is required; at least 60 days is recommended.

When a practice is sold rather than closed, it further reduces the risk of abandonment, as patients will have continued access to care, albeit with a different provider. In this case, the various notice forms should advise patients that their records will be left with the purchasing dentist as of the date of sale. The forms also should inform patients that, if they choose not to continue care with the purchasing dentist, they may contact you in advance of the sale date for a copy of their record.

If claims arise later, these measures serve as proof that a good-faith effort was made to inform patients of the change.

### **Saving and Transferring Records**

Ideally, original patient records should be kept forever if at all possible. At a minimum, keep your records well beyond any point of legal and/or administrative risk exposure – that is, long enough to protect you from potential malpractice actions and to satisfy any state requirements that may exist. Check your state's dental practice act for any specific requirements on mandatory record retention or consult an attorney for guidance in this area.

If you are selling your practice, you will need continued access to your dental records in the event of a peer review or professional liability action. To that end, be certain your sale contract contains a provision requiring the buyer to maintain all of the records you transfer for a specific period of time. The time frame should satisfy state record retention requirements as well as the statute of limitations for malpractice actions. In addition, the contract should contain a provision stipulating that you or your estate has the right to access those records in defense of a malpractice claim or similar legal action.

Keep in mind that state laws vary, especially with respect to health care provider malpractice actions pertaining to minors. In some states, minors have until their 23rd birthday to bring a malpractice claim against their dentist. These timeframes should be considered when drafting the provisions pertaining to a

purchase and sale agreement of your practice. You can specify a retention period of “forever,” but a more practical time frame would be 12-15 years for patients who were adults at the time of treatment.

Even if you are unable to find a buyer and must close your doors, you may be able to reach an agreement with a local dentist to act as custodian of your records. In exchange for the goodwill value of the records and the potential for an influx of new patients, he or she may agree to maintain the records for a specified length of time, similar to the sale agreement described above.

All record requests should be in writing and filed in the patients’ charts. Most states permit you to charge patients a “reasonable” duplication fee. Check the dental practice act in your state to see if such a clause is included and if “reasonable” is further defined.

If you close your practice and retain your own records, you will probably not have duplication methods available after the last date of practice. If record requests are received following that date, inform the patients that you will have a medical records duplicating service create a copy for the requester, and that any charges for the duplication costs must be paid directly to the vendor.

If you are storing records yourself, beware of the danger of water damage and related risks of home storage. Consider alternative storage methods, such as microfilming, warehousing or transferring to a computer database.

Please note that the above guidelines are general in nature, and do not necessarily reflect the record retention laws of any particular state. For specific legal advice, contact an attorney in your state with experience in this area.

## **Insurance Coverage**

If you have been covered by claims-made professional liability insurance, you can protect against late-emerging claims by acquiring so-called *tail coverage*, known formally as extended reporting period (ERP) coverage.

In a *claims-made* policy, tail coverage extends the time period within which a claim may be reported if the claim arose from an incident that occurred while a policy was in force but is reported afterwards. In effect, tail coverage converts a claims-made policy into an *occurrence* policy – that is, a policy that covers claims arising from incidents that occur while the policy is in effect, no matter when the claims are reported.

Without tail coverage, claims-made policies will generally not cover claims that are reported after the policy has lapsed. Although most states have a statute of limitations on malpractice actions, the limitations clock may not begin ticking until years after an incident, particularly if the plaintiff became aware of a problem long after the treatment ended or was a minor at the time of treatment. For this reason, dentists need coverage that stretches indefinitely into the future.

Some PPP policyholders are entitled to free tail coverage upon retirement. It is a good idea to discuss tail coverage and other insurance issues with your insurance representative, who can explain the particular risks and coverage options of the extended reporting period.

Retirement should be a time to relax from the pressures of professional life. By paying close attention to the issues of patient notification, record retention and insurance coverage, you can substantially decrease your exposure and increase your peace of mind.

## A Sample Authorization Form

I hereby authorize Dr. Frank Adams to turn over my dental records to Dr. Jack Johnson, or to forward a copy to my new dentist, whom I have indicated below. I understand that, in the absence of alternative designation, my records will be transferred to Dr. Johnson on July 1, 200X. By authorizing this transfer, I understand that I am not impairing Dr. Adams' right of access, when necessary, to my records for the time I was under his care.

**New dentist's name:**

**Address:**

**Patient name (please print):**

**Patient signature:**

**Date:**

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