

Virginia Board of Dentistry
Guidance on
DEATH OR RETIREMENT OF A DENTIST or
SELLING OR CLOSING OF A DENTAL PRACTICE

Excerpts of Applicable Law, Regulation and Guidance

- A dentist must give notice and provide records when closing, selling or relocating a practice. 18VAC60-21-90 (F)
- A dentist shall not transfer records pertaining to a current patient in conjunction with the closure, sale or relocation of their dental office until the dentist has first attempted to notify the patient of the pending transfer, by mail, at the patient's last known address, and by publishing prior notice in a newspaper of general circulation within the provider's practice area, as specified in § 8.01-324. § 54.1-2405(A)
- Records shall not be abandoned or otherwise left in the care of someone who is not licensed by the board except that, upon the death of a licensee, a trustee or executor of the estate may safeguard the records until they are transferred to a licensed dentist, are sent to the patients of record, or are destroyed. 18VAC60-21-90 (G)
- Patient confidentiality must be preserved when records are destroyed. 18VAC60-21-90 (H)

Patient Notification

Notification to patients should occur as soon as possible to assist with continued patient care upon the death or retirement of the dentist, or the sale or closure of a dental practice.

Requirements in § 54.1-2405(A) include:

- Notifying the patient via mail at the last known address.
- Publishing the prior notice in a newspaper of general circulation within the provider's practice area that meet the below requirements, as specified in §8.01-324:
 - Have a bona fide list of paying subscribers;
 - Have been published and circulated in printed form at least once a week for at least 50 of the preceding 52 weeks;
 - Provide general news coverage of the area in which the notice is required to be published;
 - Be printed in the English language; and
 - Have a periodicals mailing permit issued by the United States Postal Service (USPS). If the newspaper has such a mailing permit, it must publish the USPS Statement of Ownership (Form 3526) in such newspaper at least once per calendar year and maintain a copy of such form that is available for public inspection during regular business hours.¹

Suggested guidelines include:

- Calling patients with scheduled appointments to enable patients to find another provider or make an informed decision to stay with another provider within the same practice, if applicable.

¹There are exceptions listed in [§8.01-324](#)

- Consider changing any telephone answering message or website response to advise patients contacting the dental office that the dentist's appointments are being canceled and the dentist will not be scheduling any additional appointments.
- Providing contact information of any other provider who has agreed to provide dental care to the dentist's patients. Any answering message or website response should include the other provider's contact information.
- Sending the required notification letters via registered mail with return receipt requested, to the dentist's patients of the death or retirement of the dentist or closure or sale of the dental practice. The dental office should retain the return receipts to have proof that notifications were sent. The American Dental Association provides example notification letters for assistance.²
- Facilitating the transfer of care by explaining how a patient can find a new dentist. This could include:
 - informing patients of any dentists within the practice, if the practice is not closing;
 - contacting insurance companies to get names of other providers in their area;
 - conducting Internet searches to assist in identifying other providers;
 - reviewing phone book information; and
 - contacting dental associations for potential referrals.
- Providing patients with information about their dental records (18VAC60-21-90 (F)). This would include:
 - how a patient can obtain a copy of their dental records (please note that records cannot be withheld because the patient has an outstanding financial obligation) 18VAC60-21-90 (D);
 - providing contact information where dental records are maintained;
 - informing patients of any charges for obtaining or sending a copy of dental records, 18VAC60-21-90 (E); and
 - following the current dental office's record retention policy. 18VAC60-21-90.A.(1-3)

Patient Record Retention

Dental patient record retention after the death or retirement of a dentist or the sale or closing of a dental practice will create regulatory concerns if the records are not properly maintained. This includes the length and manner of retention as discussed below:

- It is required that dentists keep records for at least six years after the last service was provided. Additionally, records of a minor child shall be maintained until the child reaches the age of 18 years or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child. 18VAC60-21-90.A.(1-3)
- Virginia and HIPAA require that patients have access to their dental records and that the records be confidentially maintained. 18VAC60-21-90. (C) and (H)
- If the deceased dentist worked in a group practice, then the group could keep the deceased dentist's patient records with its other patient records.
- If the deceased dentist was a solo practitioner, upon the death of the licensee, a trustee or executor of the estate may safeguard the records until they are transferred to a licensed dentist, are sent to the patients of record, or are destroyed. 18VAC60-21-90 (G)

² American Dental Association [“A Guide to Closing a Dental Practice”](#)

- If the patient records are to be released or transferred, then a release form for releasing the record should be signed by the patient and made part of the dental record.
- If the patient records are destroyed, then confidentiality must be maintained. 18VAC60-21-90 (H)

Professional Liability Issues

Exposure to professional liability can continue after the closure, transfer, or sale of a dental practice. In Virginia, the statute of limitations for the filing of a lawsuit for professional liability is 2 years unless a minor is involved (§ 8.01-243.1). However, if in connection with a minor who was less than eight years of age, then the minor will have until his tenth birthday to commence a lawsuit (§ 8.01-243.1). Accordingly, beneficiaries and dental practice office managers may want to verify the dentist's malpractice insurance policy to see if the coverage under the policy is sufficient.

Other Notifications

Notifications should be sent to the listed entities below regarding the death or retirement of a dentist, the closure, transfer, or sale of a dental practice. Additionally, other notifications that should be sent include informing the following agencies and entities of discontinuation of any administration of controlled substances or of a change of address.

- The Drug Enforcement Agency;
- The Virginia Board of Dentistry;
- Pharmacies - where prescriptions have previously been submitted;
- Insurance Agencies having a policy with the dentist at Issue, Including disability, professional liability, and practice Interruption Insurance companies;
- Accountant for the dentist or practice;
- Financial advisor for the dentist;
- Legal counsel hired by the dentist or practice who specializes in healthcare regulatory issues;
- Colleagues of the dentist;
- Landlord or lease holder of the practice;
- Newspaper and marketing organizations to assist in notifying the public; and
- The Social Security Administration for any request for Medicare coverage or beneficiary benefits.

Note: Each practice is unique and additional organizations may need to be notified.

Staff and Management Personnel

In the event of closing, transferring, or selling of a practice, consideration is needed for maintaining appropriate staff to assist in the process. This could include the hiring of temporary staff to replace any personnel who may have left the practice in the interim. The needed appropriate staff can assist in continuing to collect payments, sending notifications, handling the daily operation needs up to the closing or transfer date, and addressing patient inquiries. The practice should include a means for providing staff information about their pay and benefits, including any staff retirement or health insurance plan information.

Note: In connection with staff and bill payments, having the spouse, a trusted advisor or partner be given check writing authority will enable bills to be paid during the transition period.

Estate Planning

The concerns raised by the death or retirement of a dentist identify the need for a good and specific estate plan. Planning to protect one's personal estate and dental practice is essential. This can include a will and/or a trust. A will can protect your estate from entering probate court, which is normally where a court makes

decisions about the distribution of your assets and names an executor. The probate process can take several months or longer depending on the size of the estate. Additionally, a probate court will assess court fees that will be taken out of the estate. This process is complicated and can impose emotional burdens on the family. However, a will alone may not be enough. A trust may also be needed. A trust can protect your estate and assist in managing your dental practice temporarily upon your death until your practice is sold or transferred. A legal professional who has specific estate expertise and a tax advisor will help with estate planning.

Conclusion

To help avoid the unexpected and emotional distress caused by the death or retirement of a dentist or closing, transfer or sale of a dental practice, it is essential to be prepared to assist your family, staff, and colleagues. This includes proper estate planning, retention of patient records, appropriate notification to patients and organizations, and sufficient professional insurance. Awareness of these issues and advanced planning can help to assure continuity of care of patients and peace of mind to the family.

Additional Resource Information

1. American Dental Association. Guide to Closing a Dental Practice. 2004-2008. <https://success.ada.org/en/career/closing-a-dental-practice>
2. New York State Dental Association. When a Dentist Dies - A Guide to Widows and Widowers. 2014. http://www.7dds.org/uploads/knowledge_base/pdf/When_Dentist_Dies.pdf
3. Virginia Dental Association. Understanding the Common Pitfalls of Patient Abandonment. May 17, 2018. <https://www.vadental.org/vda-hub/2018/05/17/understanding-the-common-pitfalls-of-patient-abandonment>