

The Proper Way to Close a Dental Practice

Fager Amsler Keller & Schoppmann, LLP

When a dentist contemplates retiring or closing a practice, there are key steps which must be taken before the practice can be closed. It is particularly important that all of these steps be completed in a timely manner.

The first step is making a firm decision about when you wish to close the practice or when you have to do so, if the closing is not due to retirement. This decision will permit you to carefully plan the closure so that you provide sufficient time to notify patients, staff, vendors, and insurance companies.

Once you have determined that date, you must notify your patients of your decision. We recommend that you provide at least thirty days notice. This notice should be longer if your patients' dental conditions justify a longer period. You also need to consider whether your specialty is immediately available to your patients in your geographical area. This will permit your patients to transition to another practice without having serious gaps in care.

You also need to notify MLMIC Insurance Company's Underwriting Department of the last date your office is actually open. You should make certain that any staff that remain in the office to provide patients with access to their dental records do not provide dental advice to these patients. If you are going to practice at another site or in another part of the state, you will need to notify MLMIC of that change as well.

If another dentist will be assuming your practice, you need to advise your patients of this and enclose an authorization to transfer records with your letter. This permits this new dentist to have access to the records of those patients who choose to transfer their care. If no other dentist is assuming



your practice, refer your patients to the local dental society to obtain the names of other dentists in the area.

If you intend to store your own dental records for the appropriate statutory time periods for adults and minors, you must be able to provide copies of the records upon a patient's request, in the manner they request, pursuant to HIPAA and HITECH. Regulations governing the practice of dentistry requires a dentist to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient for at least six years and, in the case of minors, until one year after a minor patient reaches age 21.¹ Further, Education Law § 6530(40) requires dentists to provide access to the record for those persons defined as "qualified persons" under Public Health Law § 18, including patients and their legally recognized personal representatives. Thus, when a dentist leaves a practice for any reason, there must be a

plan for the maintenance of the patient's dental records and how to ensure the patient's right of access to those records.

If you intend to store your records in your home or space you rent, you must store your records or electronic media in a safe, waterproof, locked area. Do **not** give your original records to the patient, as that will make it extremely difficult to defend you later in a dental malpractice case.

If you are leaving your records in the possession of another dentist or group, the patients should be advised where to now access these records. Further, we recommend that you enter into a written agreement with that dentist or group that allows you to access a copy of these records in the event of a lawsuit, investigation, or proceeding by OPD or Medicaid/Medicare (HHS) or other governmental agency. Alternatively, you can arrange to use a record storage company to retain the records for the statutory and recommended periods for retention.

1. 8 N.Y.C.R.R. § 29.2(a)(3). Because of concerns regarding the statute of limitations in malpractice cases and health care fraud liability, Fager Amsler Keller & Schoppmann, LLP recommends retention of records for at least 10 years after the date of last treatment or service.

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All of this written information as well as answers to your specific questions can be obtained by contacting an attorney at one of the offices of Fager Amsler Keller & Schoppmann, LLP (FAKS) at the numbers listed below. For instance, there are memoranda containing guidelines for closure of a practice and retention of records, a template letter for notification of patients, and a template agreement for retention of your records by another dentist or group, which we recommend be reviewed by your business counsel before proceeding with it. If the office closure is due to an unanticipated health condition or death, FAKS can also provide legal advice about closing the office.

Finally, you will need to contact your business counsel for direction on

how to notify all dental insurers with whom you participate, including your premises liability insurer and any other relevant carriers, and also for information regarding your responsibilities to your employees and office.

Fager Amsler Keller & Schoppmann LLP telephone numbers are:

Long Island: (516) 794-7340

Latham: (518) 786-2880

Syracuse: (315) 428-1380
or toll-free (877) 426-9555



physician litigation stress resource center

The Physician Litigation Stress Resource Center is a not-for-profit website that provides physicians, dentists and other healthcare professionals with the resources they need to understand and cope with the personal and professional stress created by involvement in a professional liability case or an adverse outcome that may result in litigation. This site directs practitioners to articles, books, and websites addressing the process of litigation; suggests strategies for coping with the stress of litigation; and lists resources that may provide support for healthcare practitioners throughout the ordeal of litigation.

2020 Marketing Calendar Dental Event

In 2020, MLMIC will be participating in the following events throughout New York State. For more information on MLMIC's involvement in these events and others, please contact Pastor Jorge, Manager, Marketing Services, at 212-576-9680.

**New York County Dental Association
2020 Annual Officer's Installation**
January 23, 2020 (The Penn Club, NYC)

Fifth District Dental Society - 2020 Winter Seminar
January 24, 2020 (Marriott Syracuse Downtown, Syracuse, NY)

**Suffolk County Dental Society
2020 Officer Installation Gala Dinner Dance**
January 25, 2020 (The Watermill, Smithtown, NY)

Nassau County Dental Society - (GKAS) Give A Kid Smile Day
February 1, 2020 (Cradle of Aviation, Garden City, NY
@ 7:30 AM - 1:30 PM)

New York County Dental Association - (GKAS) Give Kids A Smile
February 7, 2020

Third District Dental Society - CE Seminar Series
March 6, 2020 (Holiday Inn Express, Latham, NY)

Ninth District Dental Association - 2020 General Meeting
March 11, 2020 (Villa Borghese, Wappingers Falls, NY)

Big Apple Dental Meeting - 1 Day Meeting
March 25, 2020 (Maestro Caterers @ 1703 Bronxdale Avenue,
Bronx, NY)

**Greater Long Island Dental Meeting (GLIDM)
2020 54th Annual Session**
March 31, 2020 - April 1, 2020 (Hilton Hotel, Melville, NY)

**New York County Dental Association
General Membership Reception**
April 6, 2020 (NYCDA's Headquarter @ 5:30 PM)

**Columbia University College of Dental Medicine
2020 Spring ASDA Vendor Fair**
April 17, 2020 (Bard Basement of Columbia's Campus,
60 Haven Avenue, NYC)