

12-1-2023

## Dentistry and the Law: Requiring Proof of Adoption/Retaining Orthodontic Models

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### Recommended Citation

Schulte, Daniel JD (2023) "Dentistry and the Law: Requiring Proof of Adoption/Retaining Orthodontic Models," *The Journal of the Michigan Dental Association*: Vol. 105: No. 12, Article 3.  
Available at: <https://commons.ada.org/journalmichigandentalassociation/vol105/iss12/3>

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# Requiring Proof of Adoption/ Retaining Orthodontic Models



By Dan Schulte, JD  
MDA Legal Counsel

**Q**uestion: Yesterday, a white adult woman brought in a 9-year-old African American child for examination and treatment. Neither the adult nor

the child have ever been seen by anyone in my office previously. When I took my continuing education in human trafficking, I was taught that racial differences were one of the factors I should take into account when trying to identify human trafficking. We asked to see proof of adoption. This upset the adult greatly, who left the office with the child prior to any exam or treatment being performed. Did I do something illegal?

**Answer:** No. There are many Michigan statutes dealing with the process of adoption and how, who, and when access to adoption records may be obtained. Most of these statutes are irrelevant to your question and beyond the scope of this column.

When an adoption is finalized, the child's original birth certificate (i.e., the one issued at birth in the child's birth name) is sealed. An amended birth certificate is then issued in the child's adoptive name either by an adoption agency or a court. An adoptive parent should have an amended birth certificate.

There is no law that makes it illegal for a dentist to ask for a birth certificate or other proof of adoption under the circumstances you describe. However, as you have learned, some people may be upset at this request and/or believe that the request is racially motivated or otherwise discriminatory. If such claims are made, what you were taught in the mandated human trafficking training would certainly be a defense. As a best practice, I recommend you adopt an office policy providing both that your office has training in human trafficking, is on the lookout for human trafficking, and list all the factors you learned in the course. This policy should be included on your website or be in some other form or medium that your patients may access.

**The best practice would be to assume that these models are included and, like other items included in the record, must be maintained for 10 years, and are subject to HIPAA, the Michigan Medical Records Access Act, etc.**

**Question:** I am trying to free up space in my office. I would like to eliminate a cabinet that is full of orthodontic models. Are these models considered dental records? If so, how long do I have to retain them? What about X-ray films? Are there laws requiring that they be recycled or specially disposed of?

**Answer:** The list contained in Michigan's Administrative Code of what must be maintained in a dental treatment record is very broad. The best practice would be to assume that these models are included and, like other items included in the record, must be maintained for 10 years, and are subject to HIPAA, Michigan Medical Records Access Act, etc.

However, I do believe that you could give a patient his or her model and instruct them to maintain possession of it for future use if necessary. You should have the patient sign a receipt, acknowledging they took possession of the model, inform them how the model may be needed in the future, and provide a warning that if they lose the model or it is damaged there will be a fee to have it redone.

You should also consider X-ray films to be part of the dental treatment record. They, too, are required to be maintained for 10 years. I am not aware of any Michigan or federal law requiring that they be recycled or disposed of in any special way. You should check ordinances in your local community that impose restrictions on what must be recycled or specially disposed of. ●

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