

The Journal of the Michigan Dental Association

Volume 106 | Number 5

Article 5

5-1-2024

Dentistry and the Law: Taking Records When Leaving a Practice

Dan Schulte JD

Kerr Russell, dschulte@kerr-russell.com

Follow this and additional works at: <https://commons.ada.org/journalmichigandentalassociation>



Part of the [Dental Public Health and Education Commons](#), [Health and Medical Administration Commons](#), [Health Law and Policy Commons](#), [Human Resources Management Commons](#), [Labor and Employment Law Commons](#), and the [Leadership Commons](#)

Recommended Citation

Schulte, Dan JD (2024) "Dentistry and the Law: Taking Records When Leaving a Practice," *The Journal of the Michigan Dental Association*: Vol. 106: No. 5, Article 5.

Available at: <https://commons.ada.org/journalmichigandentalassociation/vol106/iss5/5>

This Monthly Departments is brought to you for free and open access by the State & Local Dental Publications at ADACOMMONS. It has been accepted for inclusion in The Journal of the Michigan Dental Association by an authorized editor of ADACOMMONS. For more information, please contact commons@ada.org.

Taking Records When Leaving a Practice



By Dan Schulte, JD
MDA Legal Counsel

Question: I have a partner who has left the practice. She has been an owner of our professional corporation for several years. We only have

stock certificates, bylaws, and other basic corporate documentation. There are no employment agreements or other contracts between us or the PC. Everyone has always been paid based on collections minus a share of overhead. Our departing partner set up a new practice nearby, has notified patients that their records will be transferred to this new location, and that she will continue treating them there. Can my partner just pick up and leave, taking the dental records and patients with her?

Answer: The absence of employment agreements and a shareholder agreement dictating the rights and duties of the shareholders and the PC make this a difficult situation. An employment agreement would contain termination provisions including a requirement that your partner give you a certain amount of written notice in advance of the termination of employment. An employment agreement and/or a shareholder agreement would typically also contain a covenant not to compete, making clear whether and when your partner can set up a competing practice.

An issue you have not mentioned (and one that will come up sooner or later) is what your partner is due for the stock in the PC, what the PC's obligation is to repurchase it, the price, how the price is to be paid, etc. These buy-sell terms would also have been addressed in a shareholder agreement. The absence of these necessary contracts means that your partner is free to leave without notice and that the two of you will likely be disputing each other's actions going forward without any reasonable means of resolving these issues, which such contracts would have provided.

Unlike the issues described above, the ownership of patient records is set forth in the law. The PC is the legal

owner of the paper or other electronic media on which any patient's records are stored. As the owner of the records, the PC is the only one that may legally transfer the records. Absent the agreement of the PC (subject to the right of the patients themselves to obtain these records — which will be discussed below) your partner cannot legally remove these records (physically or electronically) and should not be promising patients that their records will be transferred automatically without cost.

What most often happens in these situations is that the departing dentist will notify the patients of the move, or the patients will inquire where the departing dentist is now practicing. In either event, if a patient desires to continue treating with the departing dentist, that patient must request a copy of his/her records. Upon such a request both Michigan and federal law would require the PC to make available a copy of the record if the patient is willing to pay a fee to produce the copy. The fee that the PC may charge for producing the copy of the patient's records is dictated by Michigan's Medical Record Access Act. To obtain a listing of the current fees, the complete text of this Act, and other information, go to Michigan.gov and search for "2024 Medical Records Access Act fees."

Providing an orderly procedure at the outset of the relationship in an employment agreement and shareholder agreement is the only way to ensure the protection of your practice and orderly continuity of care for patients. This will also limit to the extent possible any costly litigation to resolve disputes and claims between you and your partner(s). ●

Send questions to "Dentistry and the Law," MDA Journal, 3657 Okemos Road, Okemos, MI 48864, or email Journal Managing Editor Dave Foe at dfoe@michigandental.org.