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A Survivor's Survival Kit: How to be best prepared for the unexpected death of a practice owner

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A Survivor's Survival Kit

How to be best prepared for the unexpected death of a practice owner

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The death of a business owner is something I have personal experience with, as I lost my mentor and business partner when I lost my father in 2019. At the time of his passing, my father, Ted Sr., was still working full time and was the owner or owning-partner in several lines of business. This left me in the position of handling not only the transition of our partnership, but also representing our family's interests in the parts of the business in which I did not have any legal ownership.

I have been a Certified Financial Planning Practitioner™ for 14 years, working almost exclusively with dentists. In that time, I have noticed that (despite my best efforts and guidance) the one part of the financial planning process consistently neglected by dentists is estate planning — especially as it relates to succession and continuity planning for the dental practice. I hope this article will illustrate what happens when a practice owner passes away while owning the practice.

These tips are drawn from my own personal experiences, but I will also draw on cases of clients who have passed away, both expectedly and unexpectedly. I will share my "survivor's survival tips," which are actionable suggestions to improve the estate/succession plan and reduce the administrative burden on the grieving survivors. Note that this article should not be considered formal legal advice. Please consult an estate planning attorney for specific advice relevant to your unique situation.

Below are the five critical items to consider.

1. Selling vs. closing the practice

One of the central themes of the discussion will be what should happen with the operating dental practice if the owner-doctor dies unexpectedly. A dentist's passing is the most complicated when that practitioner is the sole owner of his or her own dental practice.

Owner-doctors typically feel a sense of duty to patients and loyalty to the staff they have worked with for so many years. To that end, most owner-doctors wish for the practice to be sold, so that their staff will continue to be employed and that the patients will continue to have a dental home. Additionally, even though they won't get to enjoy it themselves, many owner-doctors are comforted by the fact that if the practice is sold, their heirs will receive the equity built up in the practice in the form of sale proceeds.

If the practice is to be sold, an associate must be hired immediately to salvage any of the value of the practice. Since most of the value of the practice is in the goodwill — the reputation of the practice and the habit patients are in to seek their dental treatment there — even a short interruption in patient treatment will cause the value of the practice to free-fall. To mitigate this, it would be helpful for the owner-doctor to give the family some insight as to any "heirs apparent," such as an existing associate who would be a natural successor to own the practice, or at least treat patients until the practice is sold. If an associate works in the practice, make sure to review the associate's employment contract for any language giving that associate a first right of refusal or compelling them to buy the practice in the event of the owner's death or disability. If no associate exists, then make sure the family has a list of local colleagues or old classmates willing to work in the practice while it is being sold.

It is important to consider the geographical market the practice is in. Despite the fact that lucrative opportunities abound in rural markets, it is still a challenge to recruit both buyers and associates to rural-market practices. Whether you are a rural practitioner or an urban/suburban practitioner, consider establishing a "mutual aid group" with local colleagues, wherein there is a formal arrangement between everyone in the group to take a rotation covering for deceased or disabled colleagues.

In Michigan, a non-dentist cannot own a for-profit dental practice, so unless one of the heirs is a dentist, the practice will legally need to be sold or closed within a "reasonable period." Although "reasonable period" is not defined, I typically view one year or less from the date of death as defensible, and the heirs should make every visible good-faith effort to sell the practice quickly. This is unfortunate news for families who would plan to keep the

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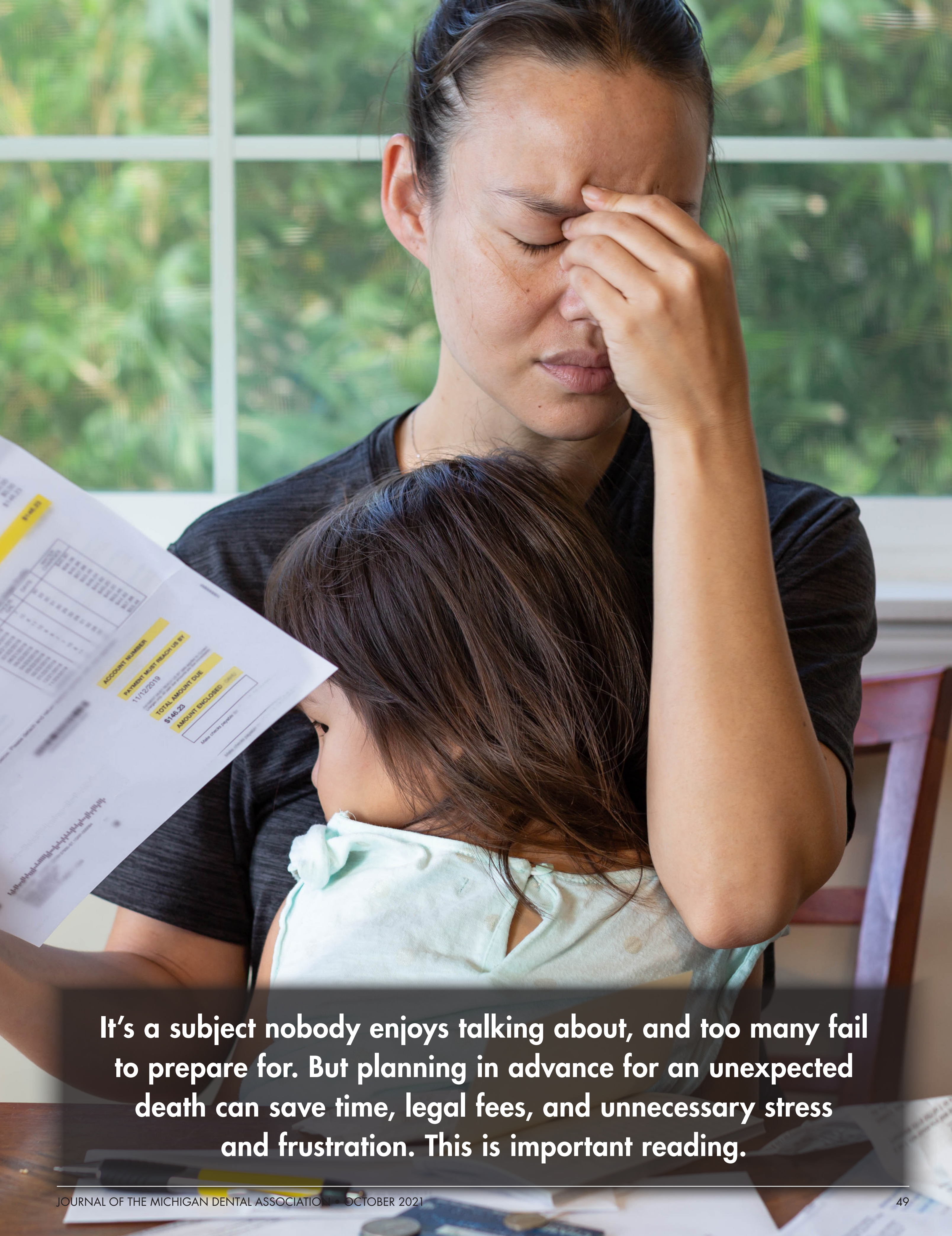

It's a subject nobody enjoys talking about, and too many fail to prepare for. But planning in advance for an unexpected death can save time, legal fees, and unnecessary stress and frustration. This is important reading.

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practice, staff it with associate dentists, and draw dividends from it indefinitely. However, if the doctor owns the real estate that contains the practice, that can be kept as an income-producing asset by the members of the surviving family if they so choose.

The doctor or (if deceased) the doctor's family may choose not to sell the practice, and instead close it completely. They may do this for a variety of reasons. For example, they may not feel like the practice is large enough to sell; they may already be financially independent and therefore not need the sale proceeds; or they may be too grief-stricken to go through the rigorous process of selling the practice. In this case, a representative from the doctor's estate must inform the patients that the doctor has died and where patient records are being stored.

Naturally, if the practice is sold, then an announcement is made to the patients of record, and the new owner becomes the custodian of the patient records. If the practice is closed, patients of record must be notified of where the records are kept. In some cases, this may be a storage facility maintained by a representative of the deceased doctor's estate. However, a better strategy would be to arrange for a local colleague to take custody of the records and inform the patients that their records are now at a new office, where they can either seek treatment or request a transfer of those records. In either case, patient records should be maintained for 10 years.

In addition to handling the patient records, money owed to or by the practice should also be settled as quickly as possible. This includes credit balances on patient accounts or refunds due. Treatment still in process will also need to be addressed. In the case of a practice sale, an arrangement could be made with the new buyer to make good on any treatment owed to patients. Accounts receivable can be handled in the same way: The new buyer can buy the accounts receivable, and payments made by patients can go to the new owner.

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2. Taking care of business until the practice is sold

Practice sales don't happen immediately. It will take time to find a buyer and actually effectuate a sale to another dentist. As mentioned above, in order to preserve the value of the practice, every effort should be made to operate as normally as possible. This means that the practice should remain fully staffed, with an associate doctor producing as much dentistry as possible and the hygiene team continuing to see patients as scheduled.

It should be noted that it may take a while to get an associate in place, and it is entirely possible that a new or temporary associate may not produce as much as the late doctor did, especially in the short term. This may result in the practice running "in the negative" and may require a cash infusion from the family to make ends meet. To that end, the family needs to be ready to potentially seed the practice with operating cash in the short term. This may seem counterintuitive as, historically, funds come out of the business to support doctors' personal households. However, if the owner-doctor is dead, that does not mean that practice overhead stops, and that includes debt payments. Outstanding loan balances (both business and personal), as well as the month-to-month income void left by the late doctor are precisely the reasons that doctors must have adequate life insurance. Doctors should regularly meet with their insurance agents to review their assets and liabilities and make sure that their life insurance coverage is adequate to pay off debts, and can also replace the doctor's income in order to support surviving members of the household.

Keeping the practice operational means patients must be seen, and cash flow must be managed! No matter how kind-hearted the associate doctor and other staff members are, they will expect to be paid if they continue to work. Staff can play an integral role in keeping the value of the practice intact. They will be the ones doing the inevitable rescheduling of patients when the doctor passes away, and they will be the friendly faces that patients see after the funeral. Chemistry with remaining staff members can be a tremendous help for patient retention. Furthermore, when a buyer for the practice is found, patients will also look to staff for impressions of the new doctor.

3. Who's the boss?

Everything discussed so far may seem theoretical, with the most important takeaways up to this point being the importance of proactive communication with those surviving and some tips on how to maintain the value of the practice after the passing

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Survivor's Survival Checklist

Owner-Doctor's To-Dos

- ☐ **Create and maintain a list of financial institutions where they maintain personal and business accounts. Make sure it includes all business operating accounts.**
  Some doctors have an operating account at one financial institution and a separate "practice savings account" at another financial institution.
  (example: practice and building lender(s), personal bank/credit union accounts, practice retirement plans, personal investment accounts, etc.)

- ☐ **Record any hidden "cash stash," such as money kept in a home or office safe.**

- ☐ **Create and maintain a list of creditors, business and personal, who may be owed.**
  This is especially helpful for personal loans, such as money borrowed from family or friends with little to no documentation.
  (example: money owed on equipment loans through vendors, signature loans, personal or business lines of credit, vehicle loans that are through the business, 401(k) loans, credit cards, etc.)

- ☐ **Create a list of any subscription services, lease agreements, or one-time (annual) expenses paid by the practice that should be discontinued if sold.**
  (example: photocopier/toner, trash pickup, alarm or security system, snowplowing, lawn care, web domain,etc.)

- ☐ **Create a list of login credentials for all practice software subscriptions**
  (example: practice software subscriptions, practice and personal bank accounts, practice and personal social media, phone/tablet passcode, credit cards, supply vendors, any dental benefit programs the practice participates with)

- ☐ **Insist that a spouse or other trusted family member/friend is involved in at least one meeting with your financial planner, attorney, accountant, and insurance agent while you are still alive.**
  In addition, make sure they have the contact information for each of the parties mentioned.

- ☐ **Record any specific requests for funeral or memorial services.**
  (example: buried or cremated — if buried, which cemetery, any favorite officiates to preside over a service, passages to be read, or songs to be played, etc.)

Survivors' To-Dos

- ☐ **Keep an account in the name of the practice open for at least one year post-sale.**
  This will come in handy for depositing any residual checks made payable to the practice or paying any residual expenses associated with the practice.

- ☐ **Keep the doctor's personal cell phone charged and activated!**
  This helps with contact information for funeral attendees, as well as two-factor authentication codes that may be needed to get into accounts.

- ☐ **Request multiple copies of the death certificate.**
  You will asked to submit a copy for various financial accounts, life insurance proceeds, and tax returns.

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of the owner-doctor. However, I can tell you from personal experience it is not that easy.

One of the biggest complications stemming from the death of the owner-doctor is often a lack of clarity as to who can formally act on behalf of the practice, as well as who has the authority to hire an associate, list the practice for sale, pay the employees, pay bills, or perform any of the countless day-to-day operational tasks in the practice. Whether engaging a broker to sell the practice, or hiring a short-term associate, someone will need to be empowered to act on behalf of the practice and enter into formal engagements until the practice sells or closes.

In the case of a partnership, this would typically be the surviving owner of the practice. In the case of a single/solo practitioner, the owner doctor should consult with their attorney about establishing a power of attorney, and/or making a trusted spouse a formal officer of the practice entity and/or a signer on the practice accounts. They should also explore having them be a co-trustee on the practice retirement plan — this will simplify termination distributions from the practice retirement plan.

Absent anyone else with formal authority to act on behalf of the practice, an attorney will need to quickly draft a formal resolution wherein someone is appointed to act on behalf of the practice. While a resolution of this nature will give someone legal authority to conduct business, be advised that financial institutions (such as banks) have their own rules, so they may not oblige. When the day finally comes and the practice is sold, this is the person who will sign the legal documents on behalf of the seller. Remember: Formally appointing someone to represent the deceased takes time, and waiting is the enemy of this process!

4. A note on probate

One of the best reasons for an owner-doctor to do some proactive estate planning is to avoid having the practice assets (and other property) end up in probate. Probate is the court proceedings that conclude all the legal and financial matters of the deceased. Most people seek to avoid probate as it is time-consuming, costly, and open to public visibility.

Mechanically speaking, when the practice is sold, it is actually sold by the surviving family members. However, if the owner-doctor has worked with an attorney and established a trust, the practice assets will likely be sold by the trust. Trust assets typically avoid probate, so they can be valuable tools for any property that doesn't otherwise allow for a formal beneficiary to be listed. Retirement accounts and life insurance policies with listed beneficiaries will avoid probate even if a trust has not been established.

5. Survivor's survival kit

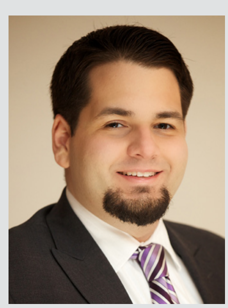
As you can tell by now, communication and organization are fundamental to successfully settling the affairs of a deceased owner-doctor. One of the most powerful things an owner-doctor should do is to prepare a letter of instruction to their family and staff to be referenced in the event of the doctor's untimely passing. That letter should include contact information for whoever should be involved in the sale of the practice: a practice brokerage firm and a law firm.

Additionally, the Survivors' Survival Checklist on Page 51 is a list of things I am either glad I had, or wished I would have had, when I was the surviving family member of a deceased business owner. I hope this can be helpful to others who find themselves in the same situation.

One need not be practicing dentistry very long to have experienced the loss of a classmate or colleague. Whether it was a long battle with a critical illness, or sudden tragedy, it seems like the dental community loses a few of the great ones each year. As you may guess, most dentists are only "inspired" to get estate and succession plan formalized when a loss hits close to home — that is, when a friend or local colleague dies unexpectedly. I sincerely hope that reading this article will prompt MDA *Journal* readers to get their affairs organized and communicate with next of kin. Doing so can save time, legal fees, and unnecessary stress and frustration when a family is already exhausted and grieving. ●

About the Author

Ted Schumann II, MBA, MSF, CFP, AIF, is an investment adviser representative and the managing partner of DBS Investment Advisers, LLC and DBS Dental Sales. For almost two decades, he has been helping dentists plan their financial future, working with dentists throughout all stages of their career, including transitioning into and out of practice ownership. He is also a member of the MDA Foundation Board of Directors and serves on the MDA Foundation Finance Committee. He is a frequent speaker at MDA events and at various dental societies all over Michigan.



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