
Patient Abandonment

By Bruce J. Zimmerman, D.D.S.



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Out of the blue. That's how it comes. "Are you Dr. Zimmerman? This is for you." With some degree of drama, right there in front of my receptionist's desk, a blue envelope with an open end is held out to me. "What is it?" "A subpoena." "What for?" "Don't know, doctor, I just deliver them." Hello Monday morning.

I take it back to my desk and, while still standing, I quickly scan through all the

hithertofors and whereas trying to get the gist of what it says. I find the name of my accuser and, after some mental stretching, I kind of get the idea that I'm being sued for patient abandonment. But, I'm not sure.

My thoughts flash to my waiting patient who may be starting to wonder if I have forgotten him. I put the letter on my desk and return to the treatment room, but it's hard to keep my mind on the tasks at hand. I could have done an additional procedure for my patient that morning but I decide not to. I finish up what I've started because I can't wait to get back to that piece of paper. While finishing up, though, it occurs to me that the first thing I must do is call Dr. Nate Reynolds.

Now the train starts down its long track, and I feel my stomach sinking—knowing that whatever the outcome, it's not going to be a pleasant trip. For those who don't know, Dr. Nate Reynolds is the dentist advisor to the Liability Trust, our malpractice insurance carrier. One of the rules of our insurance carrier is that any incident that has even the most remote possibility of becoming a problem must be immediately reported.

Nate asks me to fax him a copy of the subpoena and a copy of the patient's records. (This does not violate the patient's privacy rights.) I want to call the patient. He advises me not to. He advises me to do nothing until he has examined the documents. What seems like an eternity later (the next day), he calls me and asks me of my recollection of the occasions in question. I've had lots of time to read over the subpoena and my records a hundred times, and I tell him what I remember. He encourages me that the Trust will indeed help me, and that my records appear to be complete and accurate.

That turned out to be the key: complete and accurate records. My records and my actions saved me. I'll tell you how.

"The Colorado State Board Of Dental Examiners defines patient abandonment as the unilateral termination of care of a patient of record on the part of the dentist or dental hygienist. As a patient and dentist or dental hygienist enter into a professional relationship, that dentist or dental hygienist has responsibility for continuity or continuous care until either

party chooses to discontinue the relationship. At the time at which the dentist or dental hygienist chooses to discontinue, he or she must notify the patient in writing noting with due diligence that the clinician will be available for emergency care and/or appropriate referrals for 30 days from the date of the letter. The Colorado Board of Dental Examiners defines a patient of record as one who has been treated by that dentist or dental hygienist within the previous two years."

In my records was the postal receipt signed by the patient and a copy of the letter that I had sent him via certified mail/signature requested. Nate informed me that the Trust's attorney would respond to the patient's attorney. She did, the charges were dropped, and that was the end of what could have been a painful and costly experience.

The Dentists' Professional Liability Trust offers these recommendations if you wish to terminate a relationship with a patient:

- Give them *certified* written notice.
- Be available for 30 days for any true emergencies.
- Give the reasons you are taking this action.
- Note any conditions or problems that need monitoring.
- Make a copy of the records available, with the appropriate release.

The lesson is simple: follow the rules, treat everyone like you would want to be treated, and cover yourself. ■

4.G. PATIENT ABANDONMENT (Adopted 8/14/02)

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Every Rose Garden Needs Weeding

Dr. John Bassett

You don't have to practice long to realize that some people are easier to deal with than others. Most folks, whom we encounter in our practice, are a joy to work with and a delight to serve. However, every so often there comes along someone whom you cannot please, no matter how hard you try. If this person is an employee, the solution is simple: Colorado is an "at will" state, and employees can be terminated without cause. When it is a patient of record, the solution is somewhat more difficult.

While you have the right to terminate your relationship with a patient for nothing more than you don't like their politics or their taste in fashion, common sense and good judgment should tell you that if you are going to dismiss a patient from your practice you should have a sound and justifiable reason for doing so. Commonly accepted reasons to dismiss a patient include:

1. Non-compliance with your office's policies and procedures. This may include, but need not necessarily be limited to the following:
 - Refusal to fill out registration or new patient forms including a health history.
 - Chronic tardiness for appointments or failure to appear at all for regularly scheduled appointments.
 - Refusal to have x-rays taken.
 - Refusal to make financial arrangements and failure to comply with agreed upon financial arrangements.
2. Refusal of recommended treatment. This may include:
 - Patients who seek treatment when they feel it's needed, contrary to your advice – such as those who say, "Let's wait doc until it hurts before you do that."
 - Patients who have an insufficient commitment to regular maintenance and oral hygiene.
3. Abusive behavior toward you, your staff or other patients. This is relatively easy to identify – you can hear these patients down the hallway before you even enter the operatory. However, their favorite medium is the telephone, and the usual victim of their harassment is your receptionist.

Stating your office policies in an informational brochure is an excellent way to communicate these policies to new patients. The development of this printed material will compel you to think through your office policies thoroughly. A copy can be mailed to a new patient with a welcome letter. Your expectations are stated clearly before you have invested time with the patient. If prospective patients don't like your policies, they need not cross your office threshold, saving everyone time and stomach lining.

Once you have identified the weeds you wish to remove from the garden of your practice and the reason or reasons for their removal, the next decision is how to best go

about it. The preferred choice is to write a letter to the patient. You should include certain items in your "epistle of dismissal". Begin with a brief explanation of your reasons. *"It is clear to me that you do not value the services we are trying to provide,"* is one of my favorites. *"I'm not willing to accept your verbal abuse to my office staff,"* may be appropriate. It is then customary to direct the patient to seek their dental care at another office. If you're aware that the patient is in need of dental care, the Colorado Dental Practice Law requires you to provide an "appropriate referral" to other licensed dentists or health care professionals for consultation or treatment. This does not mean you must refer the patient to a specific dentist or physician, rather it means that you tell them specifically (that in your judgment) they need to see a periodontist, or an endodontist, or prosthodontist, for consultation and treatment. Provided you make such a referral, you have no legal obligation to continue treating the patient.

The next paragraph of your dismissal letter should deal with the disposition of the patient's records. As the custodian of those records, you are responsible to maintain the originals for at least seven years. For minor patients you must keep these records for a minimum of seven years after the patient becomes 18 years old. You should offer to send copies of the patient's record, including radiographs, to the patient or the dentist of the patient's choice. A word to the wise: be sure to obtain a signed request from the patient before sending the records to anyone, including the patient. Such a written authorization-request is required by Colorado law. Considering the circumstances, you probably do not want to aggravate the situation any more by charging an additional fee. You are entitled to charge a "reasonable" fee for duplicating records, but since you are initiating this dismissal, charging for a copy of the record will likely provoke a reaction similar to "waving a red flag at a bull". Be aware that it is illegal to refuse to provide copies of a patient's record because of past due fees related to dental treatment.

A short discussion regarding the duplication of radiographs is in order here. It is neither ~~not~~ proper nor legal to forward duplicate copies of x-rays that are not of diagnostic quality. I strongly suggest that full mouth and bite-wing surveys be taken with a film "2-pack", so that diagnostic quality "duplicates" are always available. It costs only pennies more, and gives the *disgruntled patient* one less thing to complain about.

Your letter is finished, but you are not. Now you need to send it via Certified Mail – "Return Receipt Requested", so you can prove the patient received it, or at least that you tried. To avoid the problem of a patient refusing to sign for the letter, send a copy regular first-class mail. Place either the receipt or the returned letter in the patient's original record, and now you are finished.

What have you accomplished? Now, one less hassle complicates your life. In the case of an abusive patient, you have demonstrated to your victimized staff that you are supportive of them. Occasionally, a dismissed patient will call and apologize, asking to be re-instated as a patient. Believe it or not, my experience is that these people are often much more compliant and appreciative the second time around. Regardless of the outcome, your rose garden will be a lot prettier and less thorny for the effort.

Dr. Bassett practices in Aurora and is currently President of the Dentists Professional Liability Trust.

Chapter 4.

Terminating the Relationship

There are times when a dentist may have to, or want to, stop seeing his or her patient. Questions then arise about how to do so. At the federal level, various anti-discrimination laws may come into play, as may HIPAA (e.g., with respect to copying records), but the key in terminating a dentist-patient relationship is usually state law, particularly on abandonment. Be sure to consult with your state dental society, state board of dentistry, and/or their private attorney regarding this issue.

160. I'm Closing My Practice. What Must I Tell My Patients? How and When Do I Tell Them?

➤ It depends on what your state law requires. Generally, the key is to inform your patients, with reasonable time for them to secure the services of another dentist, while not interrupting dental care. Contract considerations may also come into play (e.g., if you are bound by an associateship or insurance company agreement).

Perhaps you are relocating, retiring, or can no longer practice due to illness. Regardless of the reason, patients should be informed that you are closing your practice and terminating their treatment. Moreover, ending the relationship generally requires that the termination not jeopardize the patient's oral health, and that the patient be given reasonable opportunity to secure the services of another dentist.

The notice of termination should specify the date the dentist-patient relationship will end. In addition, it can be helpful, when appropriate, to include the following information in the notice:

- Reason for termination;
- Emergency care will be provided in the interim;
- Information on referrals;
- Statement that copies of patient records will be available to the patient or the new dentist at the patient's request; and
- Specifics and timeframes for continuing care that should be sought.

State law may address how patient notification must be done (e.g., by letter, by publication of notice in a local newspaper, etc.). State law may also require that ongoing dental care must be continued for a specified period of time until other arrangements can be made.

If these steps aren't taken, the termination act may be viewed as abandonment—wrongful cessation of the dentist-patient relationship, particularly where the patient is still undergoing treatment.

161. How Do I Dismiss An Unruly Patient From My Practice?

➤ Another common situation might occur when a patient becomes uncooperative and/or non-compliant and you do not want to continue treatment. If this is the case, determine if state law will allow termination, and if so, how to properly terminate care in accordance with that law (e.g., requirements as to notification and continuity of care, per the prior question).

It is important to remember that dismissing a patient is problematic if it is a pretext for doing something you would otherwise like to but could not legally do. For example, if the patient is uncooperative because of a disability, have you explored and extended possible accommodations, or are

you going straight to dismissal before fulfilling your obligations under the AwDA? Would you be terminating someone similar who did not have a disability?

Finally, remember one common pitfall: termination of care for non- or late payment will likely violate the laws of abandonment, since most states require completion of treatment before termination as a general rule, and view a patient's payment obligation as a separate issue. See Section II, Chapter 10, "Payment and Collections," for further details.

Terminating the Dentist-Patient Relationship

1. When does abandonment of a patient occur?

Abandonment occurs when you refuse to treat a patient who is in need of care without adequate notice and without adequate provision for alternative care.

2. What are the elements of abandonment?

The elements of abandonment are: a dentist-patient relationship; act of premature termination; and proximate cause.

3. What legal relationship is established in the dentist-patient context?

The dentist-patient relationship establishes contract duties of benefits and burdens common to other contract relationships.

4. When does the dentist-patient relationship begin?

This relationship is contractual. The person presents for care, and you agree to provide that care. The dentist-patient relationship begins when either you or your agent offers medical advice or treatment, over the phone or in person. That creates a duty on your part to follow through with appropriate care and to give the patient proper instructions, information, and advice.

5. What should I do if I feel unqualified to care for the patient?

If you feel unqualified to treat the person, you may ordinarily refer him to the appropriate specialist who will take over the case, because that encounter has not established a dentist-patient relationship. You should take care not to refer a person with an infectious disease on the basis that they are infectious. This type of referral, which is not based on your abilities, could be construed as an act of discrimination under the Americans with Disabilities Act and/or state and local disability laws. In addition, persons with disabilities in general should not be referred elsewhere for treatment if their special needs reasonably can be accommodated in your office. Finally, discrimination laws also could apply if you refer a person to another facility on the basis of age, race, sex, religion or ethnic origin.

6. When may I discharge a patient?

Except in an emergency, you may discharge any patient provided that the patient's health is not jeopardized by the termination. But, you must give the patient proper notice and reasonable time to find another dentist.

7. May I terminate a patient based on their age, race, sex, religion or ethnic origin?

No, as noted above, federal and state law prohibit discrimination based on age, race, sex, religion or ethnic origin. Therefore, no patient should ever be terminated from treatment or refused care for these reasons.

8. May I discharge an HIV-infected patient?

You should not refuse to treat a patient whose condition is within your current realm of competence solely because the patient is HIV-infected.

9. What are acceptable reasons for terminating the dentist-patient relationship?

Any number of reasons are acceptable; e.g. failure to follow advice and treatment, consistent tardiness for appointments, failure to pay. Termination because of age, race, religion, or sex are unacceptable reasons to terminate the relationship.

10. What if the patient owes me money?

If the patient owes money, s/he can be discharged if you warn him in writing that you may discharge him if he doesn't make an effort to pay you.

11. What if the reason for the discharge is something else?

If the reason for discharge is something else, the notice should either state in a kind way the reason for discharge or state no reason at all. It is necessary to give the patient ample time to locate an alternative dentist. Continue to treat until the patient has been notified in writing and told of other alternatives.

Terminating the Dentist-Patient Relationship

12. What is a reasonable amount of notice to give a patient when terminating a relationship?

Once you have determined that the patient's health will not be compromised and s/he will have ample time to find another dentist, send the patient a letter giving at least 30 days notice from when you think the patient will receive your letter.

13. Should I send such a letter by special mail?

Yes, if possible. Send the patient a registered letter, return receipt requested. Keep a copy of the letter and the return receipt in the patient's file.

14. What should the letter say?

Explain to the patient in the letter that as of a certain date (at least one month after the patient should actually receive the letter), you will be terminating the relationship. Give the reason, and tell the patient that you will provide emergency treatment during this time period if needed.

15. Should I give a patient any special instructions in my termination letter?

It is important to take the patient's condition into consideration. For example, if the patient has a condition that needs continued close monitoring, this need should be emphasized in the termination letter. That way, if the patient shows up two years later in worse condition and files a complaint against you, you have documentation that shows that the patient was advised to seek continued care.

16. Should I retain an attorney when writing a termination letter?

It can be helpful to have your attorney review the termination letter, particularly in situations involving a difficult patient or complex facts.

17. What happens if my patient has an emergency after the termination letter has been sent?

You should certainly care for the patient, if, in spite of the termination letter a patient should be presented with an emergency condition and cannot safely wait for alternative care. To do otherwise would seriously risk a malpractice suit.

Questions & Answers

18. Could you give an example of what a termination letter might say?

Yes, however, it is strongly recommended that you contact your own attorney to make sure the basic elements of the notification letter comply with any special legal requirements in your state. By way of example, the letter should include the following:

Over the past (number of weeks or months) (state reason for termination). This situation has caused serious problems for us. We are also aware of the sensitive relationship that seems to have developed during our course of treatment. Giving these circumstances, we believe that you will be more comfortable receiving your dental services from another dentist.

Therefore, after (give a date at least 30 days after the expected receipt of this notice) our doctor-patient relationship will be terminated and you must arrange for another dentist to provide your care. In the meantime, I will be available to administer to any emergency conditions that may arise.

As you know, there are several ways of contacting a new dentist. There are listings in the telephone directory and Yellow Pages. The (name of component or constituent dental society) maintains a patient referral service without charge that you may contact by telephoning (area code and number). In addition, our office can suggest other dentists in this area if you wish, or your friends or neighbors may have recommendations. Once you have made arrangements with your new dentist, at your or the new dentist's request, our office will provide copies of your dental records, radiographs and any other materials that will be beneficial for your future treatment.

(Mr./Ms. _____), it is important for your oral health that you contact another dentist and make arrangements for your continued care as soon as possible. We appreciate your interest in our practice, but we feel this change is best for all concerned.

Terminating the Dentist-Patient Relationship

19. Historically, how have courts decided whether a patient has been abandoned?

The "reasonableness" of the termination, plus notice and information about alternatives for treatment, have sometimes dictated whether a patient was truly "abandoned".

For example, a patient may be deemed to have been abandoned where the dentist has failed in his duty of follow-up care. In one case, an oral surgeon extracted four wisdom teeth. He removed the sutures at a post-operative visit six days later, but on the seventh day, the patient reported pain, stiffness and swelling to the dental office by telephone. The dentist's "nurse" asked if the pain was at the extraction site. The patient answered in the negative and the "nurse" referred the patient to a physician because "it was not a dental problem." The patient was later hospitalized with osteomyelitis, and the court held that the dentist prematurely discharged the patient.

20. Is abandonment the same as negligence?

No, but abandonment may arise from nondiligence, nonvigilance, or inattention. Where inattention and delay in rendering care have caused injury, courts have held that "constructive abandonment" occurred.

21. Do the courts impose a different standard on dentists in certain areas?

It is possible that dentists in under-served areas have an increased chance of losing an abandonment case because of the difficulty of the patient connecting with another dentist.

22. Are there other problems I might face in addition to a lawsuit by the patient?

Yes, abandonment is typically regarded as unprofessional conduct subject to discipline under state dental practice acts and the profession's codes of ethics. In most states, the elements of the "offense" and defenses available to the dentist in a disciplinary action would be similar to those in a court of law.

Questions & Answers

23. Should I have a patient information booklet or brochure? What should it say?

It could be helpful to have a patient information booklet that explains up front what will constitute grounds for dismissal from your practice, such as habitual noncompliance, several missed appointments, or abusive behavior toward you or your employees.

24. Where can I refer a patient who cannot pay his bill?

A patient who cannot pay a bill may be referred to a state or county social agency.

25. Should I suggest a referral service if the patient should have a problem finding a new dentist?

Yes, you might suggest that the patient contact the referral service of their constituent or component dental society.

26. What about patient records - must I make them available?

Yes, offer to make copies of the patient's records available to the new doctor either gratuitously or for nominal cost. Have the patient sign an authorization form before you release the files. Keep a copy of the termination letter with the patient's chart. Send the original by certified mail, return receipt requested, to the patient's last known address. If the letter comes back, send a duplicate letter to the same address through the regular mail, and note in the chart the date on which the letters were sent.

Terminating the Dentist-Patient Relationship

27. What should I do about retirement?

If you are selling a practice or retiring, notify patients as far in advance as possible and offer to transfer copies of their records (with their authorization).

28. What if I am sick or injured?

Do the same if you are sick or injured and unable to practice. Notify patients and offer to transfer copies of their records (with their authorization) if treatment is needed before your recovery.

29. What if notification is impossible?

Should disability make notification impossible, some courts have held that a dentist will not be liable for abandonment.

30. Again, what considerations should I keep in mind when considering terminating a patient?

There are five considerations to bear in mind when terminating a dentist-patient relationship: 1) the patient's health must not be jeopardized by the termination; 2) the patient must be notified that treatment will be discontinued; 3) the patient must be given ample opportunity to find another dentist; 4) you should agree to provide emergency treatment until the patient has found another dentist; and 5) you should provide referral information to the patient. If possible, give the patient the names of several dentists.

31. Are there defenses to abandonment?

The traditional defenses are: (1) dismissal by the patient, (2) consensual termination by the parties, (3) withdrawal by the dentist after having given fair notice and an opportunity to procure a substitute dentist, and (4) the cure or end of the disorder. Lack of damages or proximate cause will also act as a defense. The courts are in general agreement that, if the patient expressly discharges the dentist, the duty to treat ends and no abandonment can arise. Proper documentation of all facts can be crucial to a dentist's defense. Dentists would be well served by including written notes in the patient record regarding this relationship.