

Dental Protection uses a variety of different lawyers to assist members around the world. On these two pages we have compiled a small sample of some of the variations in the laws and ethical guidelines that apply to dental records. A more detailed development of the subject can be found on the various national homepages available on our website www.dentalprotection.org

	Australia	Bermuda	Hong Kong	Ireland	Israel
Is there any legal requirement which determines how long a dentist needs to keep clinical records?	<u>NSW</u> – Retain dental records for 7 years from last treatment or if the patient is under 18 years of age, until the minor is 25 years old. <u>WA</u> – <i>The Limitation Act (WA) 2005</i> makes it appropriate to retain dental records 7–10 years from date of last consultation.	No – follow best practice.	Three years.	No legislative provision. Dental Code of Practice suggests a reasonable period; not likely to be less than ten years.	Income tax regulations require all records to be kept for 7 years. <i>Ministry of Health 2006</i> regulations require records to be kept 20 years from date of the last visit.
Are there any legal obligations about the storage of dental records?	<u>NSW</u> – Take all reasonable precautions to prevent the loss, unauthorised access or use, modification, disclosure and misuse of dental records. Prevent unauthorised disclosure of the patient's information. <u>WA</u> – Records should be adequately stored to ensure confidentiality and privacy is maintained.	No – follow best practice.	Should be stored safely to safeguard confidentiality. Electronic records require adequate security features.	Yes, inline with the <i>Data Protection Acts 1988 and 2003</i> . In addition details should not be passed to debt recovery agencies. See www.dataprivacy.ie	No – follow best practice.
What legal requirements apply to the disposal of either paper or computer-held records?	<u>NSW</u> and <u>WA</u> There is no specific prescription about this, although confidentiality must always remain a consideration.	No specific requirements – follow best practice.	No, but take care not to breach confidentiality.	No specific requirements; however holder of record should ensure no breach of confidentiality.	There are regulations for hospitals; shredding is obligatory. Private practices do not have regulations; however the records must be kept confidential.
Under what circumstances is a dentist obliged to disclose their records?	<u>NSW</u> – Dentists may generally disclose information in these circumstances: – with patient's prior consent; – to prevent a serious or imminent threat to health or life of the patient or another; – by compulsion of law or to protect the public revenue. <u>WA</u> – The Supreme Court can order that records be supplied as evidence. A dentist should disclose records if patient gives express or implied consent.	Obliged if subpoenaed to bring such documents to court. If objection raised by the patient, the court will decide. A patient who is considering bringing action against his dentist for negligence cannot get access to their records before bringing the action. Speed of response should be a 'reasonable period' depending on the circumstances in which the request is made. Patient is likely to be responsible for photocopying costs.	Upon receipt of patient's written request, the dentist is obliged to disclose a copy of the records within 40 days.	On request by the patient, records should be disclosed to them or to any nominated person. In the case of deceased patients the request should be made by the personal representative of the patient.	Disclosure of records to a third party requires a court order or an official request from a senior police officer in a criminal matter.
Does the patient have a right to a copy of their record?	Records belong to the clinician who created them. <u>NSW</u> – Patient may request access to and may request correction of any information contained in the records. <u>WA</u> – <i>The Privacy Act 1988</i> entitles a patient to access their information on record. The dentist normally has 30 days to consider the request and, if appropriate, must give the person (or their legal representative) a photocopy/printout of their records, at reasonable cost.	Under the <i>Patients Bill of Rights (1970)</i> a patient is entitled to receive full details of his treatment, diagnosis and possible long term effects. It is not clear whether this extends to records.	See above. A dentist is entitled to charge a reasonable fee for providing the records.	If a request is made by the patient, records must be produced within 40 days. Patient may be asked to pay a fee but this cannot exceed 6.35 Euros.	The <i>Patients Rights Law 1996</i> makes it mandatory to provide the patient with a copy of their records on request. The speed of response and charges for photocopying must be reasonable.
Any other observations?	Ensure all copies are clear, clean and non-truncated.	Good records may take a little time to create but they can save a lot of inconvenience in years to come. Sadly it's impossible to know just which ones you may want to retrieve.	Good notes imply good practice.	Dental records are an integral part of good patient care.	Computer records are permissible provided the software creates an unalterable date stamp on each entry.

Malaysia	New Zealand	Singapore	South Africa	UK	Guyana
Yes; the records should be preserved at least for the limitation period. Generally this means 3–6 years although that period can be extended in a range of situations to protect the vulnerable patient.	Ten years after dental services were last provided to the patient.	No legal requirements, however as legal proceedings can be brought within six years it is wise to keep them for seven.	No, but there are ethical guidelines (Health Professions Council of South Africa) which state records should be stored for not less than six years from the date they become dormant. In the case of a minor, it is advisable to keep the records at least until the minor reaches 22.	The <i>Date Protection Act (1998)</i> prohibits sensitive data from being kept longer than necessary- at present there is no authority to guide us on this. The limitation period is three years for negligence, six years for contract or (for a child), until age 21.	No – follow best practice.
No – follow best practice.	Appropriate physical resources to maintain adequate security of information whilst in use, storage or transit.	No statutory obligations to keep records, but once created, there is a legal obligation that they should be properly stored.	No legal obligations but HPCSA guidelines provide that records should be stored in a safe place. If they are in electronic format, they should be safeguarded by passwords and other protective measures.	Yes, the records must be kept securely. There is no need to use privacy enhancing technology.	There are no statutory obligations but dentist has an implied obligation to patients to ensure secure storage of dental records.
None – follow best practice.	Must be disposed of in a manner that ensures confidentiality. For electronic records, mere erasure is inadequate.	None – follow best practice.	None, but common sense dictates that confidentiality should be protected; use shredder or a similar device for paper.	The NHS dental contract requires NHS records to be kept for up to two years after a course of treatment has finished. Disposal preferably by shredding.	None – follow best practice.
By order of the court upon a subpoena and by order of a law enforcement officer or some other public officer i.e. a tax examiner.	The patient has a right to access their dental records. The patient may provide authority for another person to obtain their records. The dentist is also obliged to disclose records in the absence of the patient when; - the life or health of an individual is at risk - required for risk management assessment - data could facilitate the sale of a business - necessary for court or in crime prevention.	Access should be given to the patient, the patient's parents or relatives in certain circumstances, or statutory requirements i.e. <i>the Poisons Act</i> or in the public interest.	Dentist should provide any person (16 or older) with a copy or abstract or direct access to own records, should they request. For patients under 16, the parent or legal guardian may apply for access. No dentist shall make information available to a parent or legal guardian regarding a patient who is over 14 but under 16 without the patient's written authorization. It is mandatory to disclose records if ordered by the court.	To the police to prevent and detect crime; when required by an enactment of law or court order; to legal professionals for use in legal proceedings. A dentist should however be cautious as there are requirements of necessity as well as having the consent of any other individual identified; the records may need to be redacted (edited) before disclosure.	No legislative provision. Ethics of doctor/patient confidentiality will apply. Disclosure should only be made with the patient's consent, or where ordered by a court or required by statute, to enable a dentist to prosecute or defend a claim by or against a patient. The police may be authorised to request disclosure.
No – follow best practice.	The request must be responded to no later than 20 working days after receipt. A dentist cannot charge the patient.	There is no law, but it is generally recognised that a patient is entitled to a copy of their records. A deliberate failure to respond to a request amounts to professional misconduct. Records should be provided at reasonable speed and at no charge.	The <i>Promotion of Access to Information Act, 2000</i> gives persons the right of access to information that is required for the exercise or protection of any rights prior to court proceedings having been instituted. A fee is payable and a response must be given within 30 days.	A dentist is obliged to disclose individual dental records if there is a written request from the patient, and, if necessary, information required to satisfy himself of the authority of the person making the request, if not the individual. Respond as quickly as possible or in any event within 40 days of receipt of the request (<i>Data Protection Act 1998</i>). Current maximum chargeable fee £10 (£50 for manual records).	There is no legislation on this and so it will be a matter between patient and dentist and will vary from case to case. There will probably be a charge for copying.
Keep billing records separately from the patient care records.	The old adage, 'no records equals no defence' is still apt.	X-ray copies should be given to patients on request, especially when the patient goes to another dentist for treatment. In such cases the dentist can charge for copies	The HPCSA guidelines contain a useful checklist for medical record keeping which is summarised at www.dentalprotection.org/southafrica	- The DPA information commissioner has indicated that the definition of 'health record' also applies to x-rays. - Rather than destroying records when a storage problem arises, consider scanning them for digital storage.	Follow the best practice recommended by Dental Protection.