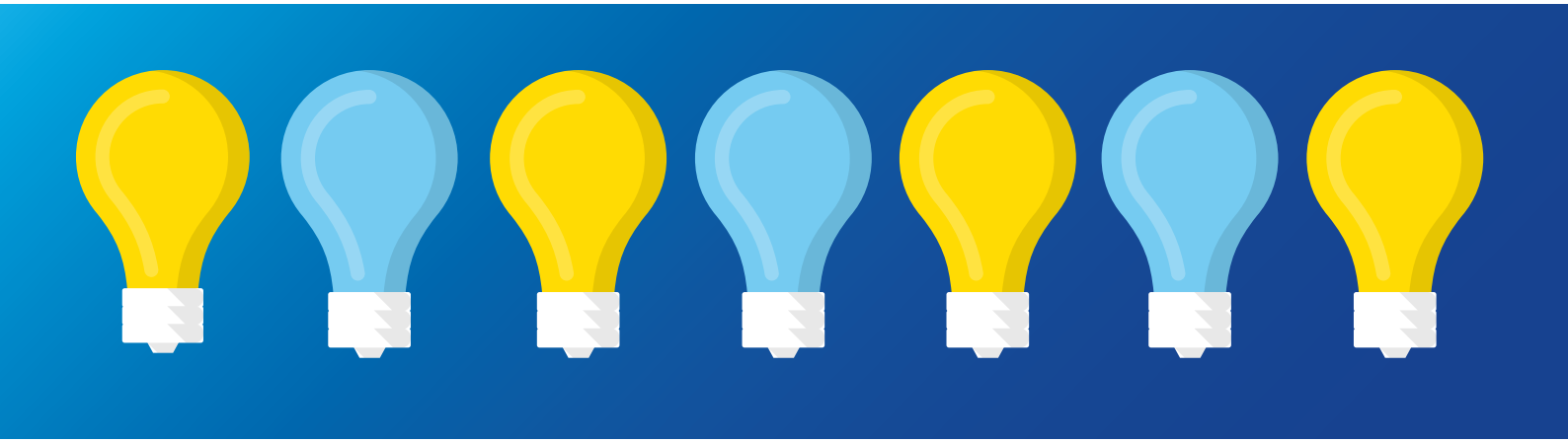
MORE THAN DEFENCE

Dental Protection

ENDING PROFESSIONAL RELATIONSHIPS



CONTINUUM SERIES – AUSTRALIA

ENDING PROFESSIONAL RELATIONSHIPS AUSTRALIA

CONTENTS

OVERVIEW

DPL's **Continuum** series of advice booklets forms part of our commitment to assist and support members every step of the way from student to graduate, from the early years of professional life on to safely negotiating the many challenges that can arise at critical moments throughout a professional career, and helping them through to a happy and worry-free retirement (and beyond). In particular we aim to make members aware of the dentolegal pitfalls associated with all these critical moments, so that they are more able to cope with them at a personal level and to manage them safely and successfully in a professional sense.

1.0 INTRODUCTION – DIFFERENT SCENARIOS

All good relationships must come to an end, sooner or later. So also must all less-than-ideal relationships and in both cases, parting company carries potential risks. Sometimes the end of a professional relationship is a moment of sadness, while on other occasions it can be tinged with a sense of relief.

You may be parting company with an individual patient, or with a family or similar group of patients. You may also be saying goodbye to all of your patients simultaneously, and perhaps with little or no notice for some reason or another, or more gradually over a period of time planned in advance.

You may have the opportunity to say goodbye in person, face to face, or it may be more appropriate or more practicable to do this in writing or (very occasionally) over the telephone or even by other forms of communication such as email. There may be legal considerations, some of them captured in a contract or other form of working agreement between the dentist and other professional colleagues and/or a practice owner. There may be an ongoing contractual relationship with a patient, as happens with some insurance schemes and/or health funds designed to provide continuing care for a patient from a named individual service provider. On other occasions the contractual relationship may involve a third party who has some kind of interest in the relationship between you and the patient(s).

In all cases, the continuity of patient care becomes an important issue requiring our consideration and this is generally one of many ethical considerations that arise when we end our professional relationship with any patient (or group of patients).

The first issue to bear in mind is the fact that the end of any professional relationship needs to be managed in a professional manner. The patient's needs, welfare and best interests must always be paramount, whatever the background to the parting of the ways, and if we keep that in mind during all the decisions we make, this will go a long way towards keeping the associated risks to a minimum.

The decision to end your professional relationship with a patient should not be made and communicated to the patient in the heat of the moment, when emotions might get in the way and cloud your ability to imagine how your actions might later be viewed by third parties. It is worth pausing and going through the exercise of trying to anticipate how the situation might be perceived by others.

2.0 LEAVING A PRACTICE AND MOVING AWAY

If you are leaving a practice, but continuing to practice elsewhere, you may be moving sufficiently far beyond the immediate area that it is unlikely to provoke any contractual, ethical or other dispute with your former colleague(s). If you are moving more locally, the situation tends to be very different and this is covered in Section 3 below.

Just as with retirement (see Section 4.0 below), it is probably ideal if the outgoing dentist is able to personally introduce the new dentist who will be taking over responsibility for the care of the patients involved. This won't always be possible on a one-to-one basis, at least not for every patient, but a suitably worded letter can serve the same purpose, the essential ingredients being:

- Telling them when you are leaving (and if appropriate, where you are going) and what the arrangements are if they need any treatment between now and the date of your departure.
- Thanking the patients for their past loyalty/support/trust.
- Telling them who the new dentist will be and perhaps adding a word or two about that person if he/she agrees (it may be sensible to get them to agree the text if practicable).
- Telling the patient what they need to do (if anything) and what will happen when their next checkup is due. You may wish to give them a named person to contact if they wish to discuss these arrangements.
- Wishing them well for the future.

The above approach is the most professional way of managing a planned departure, and it reflects well on you as well as on the practice itself. The practice may be happy to meet the cost of this, as it is the best way of limiting the potential damage to the practice (for example, any loss of patients) during the transitional period.

3.0 LEAVING AND CONTINUING TO WORK IN THE VICINITY

You may have contractual obligations regarding what you can or cannot say to the patients. However, it is important to recognise, notwithstanding any such contract, that the patient must be free to choose to receive treatment from a particular clinician, and nothing should be done by any party to obstruct that choice – for example, by deliberately providing them with incomplete, misleading or untruthful information about the whereabouts of the previous dentist. It may be possible for a professional and amicable compromise to be reached between the parties, so that the rights of patients are respected, while making appropriate arrangements for the recognition (financially or otherwise) of the transfer of goodwill. DPL has regularly given advice to members in this regard in the interests of preventing matters escalating into a costly and unpleasant dispute. If managed professionally it need not do so.

4.0 RETIREMENT OR OTHERWISE CEASING PRACTICE IN A PLANNED WAY

This section covers those situations where you have time to plan ahead, as opposed to the case of accidents or illnesses where you cease practice suddenly and not return.

Many dentists who retire or move on, after spending many years treating many of the same patients, like to say their goodbyes personally., This can be achieved as each patient comes in for their next course of treatment. The ground to cover is that described in Section 2.0. The process can be made easier by supporting these conversations with a previously-printed letter which can be handed to each patient, reinforcing the key points that the patient needs to know.

Quite apart from being the preferred approach at a human level, it is generally the safest option dentolegally too, especially if you have also made arrangements to be kept informed of any patients who for any reason have problems after you have left the practice.

You do need to reach an agreement before you leave (unless this has already been provided for in any working agreement / contract previously agreed) as to:

- What will happen in the event of any dissatisfaction or complaint about treatment that you had provided (or not provided). Normally it is sensible that you should be made aware of any such instances and given a chance to respond appropriately (always contact DPL for advice and assistance, just as you would have done if you were still practising).

- Being provided with copies of any records, x-rays and other information you might need in order to satisfy yourself as to the next dentist's findings, and what has been proposed/done and why. This is particularly important if you have agreed to some sort of 'retainer' being used to fund such situations.

Usually a strong, positive historical relationship with a patient is the best possible defence in the event of (for example) the premature failure of any treatment that you have provided. When you also make it clear to the patient that you may be leaving the practice but are still anxious to ensure that they have a smooth and problem-free transition to their new dentist, you have even better protection. Demonstrating a caring and interested approach is the key to this. Patients who discover that they have a problem and are left to feel abandoned by their previous dentist, often have their dissatisfaction fuelled to a point where they are more likely to take things further.

5.0 WITHDRAWING FROM THE TREATMENT OF PARTICULAR PATIENTS

Sometimes, for a variety of reasons, you may decide that you need to withdraw from an individual patient's treatment, or suggest that they seek further treatment elsewhere. You may find it difficult or impossible to treat the patient or something may have happened as a result of which you are simply not prepared to continue treating the patient. There may have been longstanding underlying interpersonal difficulties and these have been brought to a head by a particular event. This can often be a dangerous flash point and it needs to be sensitively managed.

1. Try never to lose your temper with a 'challenging' patient. Keep your cool and remain professional at all times, however difficult this might be on occasions.

2. Don't apportion or imply any blame. A useful approach which neatly avoids blaming either party is to suggest that there may have been a 'breakdown in communication'. If the patient has refused to accept your advice, or has voiced a lack of confidence in you. Continuing to treat them actually creates an ethical conflict which is a perfectly reasonable basis upon which you can explain that it is important that the patient should have complete trust and confidence in their clinician, and therefore it might be better if they make a fresh start with someone else. Focusing upon the ethical conflict means that it is less personal between you and the patient. See also Section 4.0.

3. If you are finding it difficult to treat the patient safely and to an acceptable standard, consider referring the patient to a suitably experienced colleague.

4. Never part company with a patient in anger or simply because your pride has been hurt. If for any reason you do decide that you cannot continue treating the patient, make it clear that you are withdrawing from the treatment in the **patient's** best interests, not your own. Make the necessary referral arrangements, keep the patient informed, and resist the temptation to insert any 'smart' comments or 'one liners' in the correspondence or in the clinical records, or worse still in any direct communication you have with the patient.

5. Never give the impression that you are being arrogant, dismissive or petulant when deciding to end your relationship with a 'challenging' patient. A few ill-chosen words spoken in the heat of the moment can result in months or years of subsequent repercussions if you end up being sued or facing a notification to AHPRA or another agency such as the Complaints Commission.

6.0 OTHER SITUATIONS

CONFLICTS

Situations do arise from time to time, although not often, where you feel unable to continue with a patient's care and treatment because of some kind of conflict. This conflict may be real and perhaps even mutually recognised (the patient may be suing a close professional colleague or even a partner with whom you share a 'joint and several' liability – so the patient is theoretically suing you too in a roundabout kind of way). But in other situations there may simply be a risk of the perception of a conflict by the patient or third parties and it simply makes more sense to limit that risk.

In these situations you should discuss your concerns with the patient at the earliest possible opportunity, and explain why you feel it necessary and/or desirable to ask them to seek treatment elsewhere. In most cases you may feel able to suggest possible sources of such treatment, or even to arrange a referral. In other situations even this may be ill-advised. If in doubt, seek specific advice from DPL.

ONE OUT, ALL OUT

A different kind of conflict arises when you reach a point where you wish to discontinue your professional relationship with one person, but there are other patients who are related in some way to that person (for example, a partner or spouse, or other family member) who in other circumstances you would still be quite prepared to continue treating. Here you have a choice to make and it may depend upon the precise situation. If you feel that it would be difficult or embarrassing to continue treating these other people, then you may think it best to end your relationship with them also. The pitfall to avoid is that of telling them, without the consent of the original patient, what is happening and why – indeed, even when a close family member is involved, you have no right to discuss any aspect of any other patient's care. In some of these situations, saying farewell to one member of the family makes it highly probable that you will not be seeing any of the others again – but don't assume that this will always be the case. Each patient has an individual relationship with you and has a right to expect the same professional consideration and courtesy.

TRANSFER

'Patient Transfer' is a term more commonly used in some countries than in others. In many countries no real attempt is made to distinguish between different kinds of referral or patient transfer between practitioners. In Australia it is described as 'handover' and defined in the Code of Conduct for Registered Health Practitioners as follows:

'the process of transferring all responsibility for the ongoing care of a patient from one practitioner to another.'

It is different from 'referral', which is described in the same Code of Conduct as;

'one practitioner sending a patient to obtain an opinion or treatment from another practitioner. Referral usually involves the transfer (in part) of responsibility for the care of the patient – often for a defined time or purpose.'

and also different from 'delegation' which the same source document defines as;

'one practitioner asking another to provide care on behalf of the delegating practitioner, while he or she retains overall responsibility for the care of the patient.'

It will be obvious from the above distinctions that it is essentially a question of ensuring clarity as to who has the responsibility for the care of the patient. Significantly, the Code of Conduct does not describe or define a situation where a patient is cast adrift and effectively abandoned by their former practitioner with no thought as to their future care. This should not happen, because practitioners have a duty of care to their patients which needs to be discharged either by personally completing treatment that has been commenced or is outstanding, or by arranging or facilitating the completion of that treatment elsewhere.

The above definitions are extremely helpful in teasing out the essential distinctions between these three quite different scenarios. Many problems arise at the referral interface because nobody is quite sure who has responsibility for what.

UNFINISHED BUSINESS

One situation that can be difficult to manage in an ideal way is when an orthodontist retires or leaves a practice and still has patients under treatment. The nature of orthodontics increases the possibility of this happening because it is not always possible to plan sufficiently far ahead to accommodate the lengths of treatment involved. Three other factors may complicate this:

- Any lack of willingness or capacity on the part of other local orthodontists, to accept the patients for treatment at all, or without them having to sit on a long waiting list.
- In the case of an orthodontist retiring and selling his/her practice, it may have proved impossible to find a suitable buyer for the practice as a 'going concern'.
- A new orthodontist may not agree with your treatment approach (see below), either in respect of a few individual patients, or more generally. This can sometimes lead to some problematic and emotive disputes, from which it may be difficult or impossible to entirely isolate the patients (and parents) involved.

Other kinds of 'unfinished business' are restorations or appliances that have been made, but not yet fitted, or incomplete endodontic treatment. Situations can arise when you reach a point where you feel unable to continue through to end of a course of treatment that you have begun. In general these situations are best avoided because it still leaves you with the ethical dilemma of not leaving the patient 'in limbo' and perhaps having to make some suitable arrangements for the completion of treatment. In all of these cases it is advisable to leave the patient in as stable a condition as possible, ie, one where the patient's condition will not deteriorate while they are finding themselves another dentist.

A DIFFERENT APPROACH

There is a lot to be said for maintaining as much control as possible over where your former patient goes after leaving your care. Problems have been known to arise where there is a fundamental difference in the treatment approach / philosophy between a patient's former dentist and new dentist, and unless handled with care and sensitivity these situations can get out of hand very quickly.

Examples include dentists who practise a 'minimum intervention' approach, and others who would tend to be more interventive in their approach (to caries, for example). Some dentists hold strong views regarding the use of mercury-containing fillings, or approaches to orthodontics and facial development. Not surprisingly, patients who pass between two dentists with strongly held, opposing views can become confused as to who to believe and this can lead to disputes.

Communication is the key to achieving a mutual understanding, and a reasonable approach rather than a dogmatic insistence by one party that they are right and everyone else is wrong. If you do get the opportunity to discuss with the patient's next dentist, anything that they might find puzzling without that 'inside knowledge' that you are best placed to provide, this can head off a lot of problems. It can be helpful if you prepare some 'handover' notes in the most unusual cases which may include an invitation for the new dentist to contact you if necessary.

FORCE MAJEURE

Sometimes (for example, when a practitioner is summarily dismissed from a practice and prevented from re-entering the premises) it becomes physically impossible for a practitioner to continue treating a patient, and in this situation the practitioner may also have no contact details for the patient(s) concerned. As a result, patients may feel 'abandoned' by the departing dentist through circumstances beyond his/her control.

Each situation presents it own particular challenges and the atmosphere in the above scenario is unlikely to be one of cordial co-operation in the interests of patients. It is often left to the practice owner or other dentist(s) left in the practice, to keep patients informed and to advise them of the arrangements that they are being offered for their future care and treatment.

Other situations where an unexpected event or force majeure can intervene include:

- The death of the practitioner.
- The hospitalisation of a practitioner following an acute illness.
- An accident which leaves the practitioner unable to practise.
- The suspension or erasure of the practitioner's professional registration.

MONEY

If for any reason you do not complete treatment that you have started to undertake for a patient, it is important to consider whether the patient is financially disadvantaged by your decision. For example, might they have grounds for believing that they have already paid you for something that you have failed to provide (or only partly provided?). Might they be left having to pay a second dentist to complete the treatment that you started? If so, will the total amount they pay end up being more than they would have paid you, had you completed the treatment? Rather than avoiding this issue, and perhaps leaving a patient to jump to a wrong conclusion, it is sensible to be proactive, so that the patient understands where they stand regarding the cost of treatment.

An option to consider in some cases is to make arrangements with a colleague that the patient will not be charged for the completion of the treatment, any necessary financial transaction taking place between you and the colleague.

REFUSING TREATMENT

Sometimes a professional relationship never actually starts at all, and this creates the threat for the practitioner. As the monopoly provider of dental treatment there is a potential dilemma if a dentist refuses treatment to a patient for any reason; the patient will then be denied access to care until a colleague elsewhere accepts them. Refusal creates a barrier and generates unnecessary delay for the patient in obtaining treatment. Fortunately, this is not something that happens on a regular basis because there are also very sound reasons for legitimately refusing to treat a patient.

So, when might it be reasonable to refuse treatment?

- Contractual reasons: if there is limited funding available for the provision of care provided by government agencies such as Medicare. It may be necessary for an alternative source of funding (usually from private sources) to be identified before the clinician can provide treatment.
- Recognition of your own capability: If the treatment required by a patient is beyond your capability, it will be necessary to provide a referral to a more experienced colleague. However, it may be possible to provide emergency treatment to stabilise the condition before referring the patient.
- Lack of co-operation: If the patient refuses to pay for treatment or in some circumstances if the patient repeatedly refuses to carry out your instructions (cleaning their teeth) or attend for appointments it may be reasonable to withhold treatment until they become more compliant. A record of the conversation should be made in the notes. If you feel uneasy about adopting this approach, take a moment to discuss it with one of DPL's dentolegal advisers.
- If the patient is violent or aggressive to you or the staff. You should write to the patient stating that the practice does not tolerate rudeness or aggression from any set return.

Never refuse to treat a patient for any of the following reasons:

- Race
- Gender
- Social class
- Age
- Religion
- Sexual orientation
- Appearance
- Disability.

You expose yourself to an accusation of discrimination and the penalties imposed by the supporting legislation. You are also likely to find yourself being investigated by AHPRA for breaching the *Dental Code of Conduct for Registered Health Practitioners*, 1.2 Professional values and qualities.

dentalboard.gov.au/documents/default. dentalboard.gov.au/documents/default documents/default.aspx?record=WD10%2f1395&dbid=AP&chksum=R1dfbnbA3tonKJ72dtXBxQ%3d%3d.

Finally you should always avoid the temptation to refuse treatment because the patient has complained. This is a sure fire way of escalating a complaint within the practice into a complaint directly to the APHRA or another regulatory body. Take a deep breath and reread Section 5.0.

7.0 SUMMARY

TIMING AND MEANS OF COMMUNICATION

In this Advice Booklet we have described a number of specific scenarios. But the general principle is that you need to judge, taking into account all the relevant circumstances, the most appropriate moment to bring the professional relationship to an end. There then arises the question of whether it is best to do this in person, face-to-face, or by telephone, or through other means such as letter or email. If you have any reason to believe that parting company face-to-face might be difficult or confrontational, then a letter has the advantage that the precise terms in which you explained the situation become a matter of record. These words therefore need to be chosen very carefully, in readiness for the possibility that they might end up being read by third parties. Feel welcome to ask DPL to help you to get this wording right, because the cost of getting it wrong can be uncomfortably high.

If you communicate your decision to the patient by phone, make a detailed note of the discussion while it is fresh in your mind (and confirm when it took place) and ensure that this information becomes included in the patient's records.

Sometimes, even if you do decide that the moment has come to withdraw from the patient's care, and you tell the patient there and then (or by phone subsequently), it is still prudent to support this with a letter written in a tone which underlines your concern for the patient's continuing welfare and best interests. This heads off any suggestion by the patient that you had acted unprofessionally and simply 'walked away'.

THE LAST WORD

When clinicians disappear without warning – other than in the most exceptional of circumstances – patients will often feel let down, or even abandoned. This, in turn, can make them less forgiving if it later transpires, or is suggested or implied by another dentist, that there is some kind of problem with work that you have previously provided. The simplest of gestures, such as a letter to former patients (agreed where necessary with any other interested party such as a new practice owner or incoming colleague) thanking them for their past loyalty, confirming any arrangements you have made for their future care and treatment, and wishing them well for the future, ends what may have been a long and happy relationship on a positive, professional note.

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