

New York State Dental Association

STARTING OUT



A Guide For Dentists

THE ESSENTIAL RESOURCE FOR PRACTICING IN NEW YORK

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Your Success is Important to Us

This guide provides dentists with valuable information about operating a dental practice in New York State. Web site links and contact information are always changing, and we invite you to share updates or concerns.

The New York State Dental Association is your professional association. For nearly 150 years, NYSDA has been a consistent voice for dentistry in New York State. NYSDA contributes to greater organized dentistry by serving our members at the state-level in conjunction with their membership in the American Dental Association.

**Have questions? NYSDA is a call or click away:
Reach us at (518) 465-0044 or NYSDental.org**

The American Dental Association (ADA) has additional resources that can be used as a starting point; however, requirements vary from state to state.

ADA checklist that will provide some general guidance on key issues dentists are frequently confronted with when opening a new practice:

www.ada.org/sections/professional_resources/pdfs/dentalpractice_checklist.pdf

Your Professional Association

The New York State Dental Association's Mission

The New York State Dental Association is an association of dentists dedicated to serving dental professionals, dental auxiliaries, and the public of the State of New York.

NYSDA promotes the public's health through its member dentists, commitment to provide quality dental care accessible to everyone, and holds membership to be the foundation of a successful practice.

NYSDA fulfills its public and professional mission by providing services, open communication, representation to government agencies, policy development, advocacy, education, and development of professional standards.

The logo for the New York State Dental Association features the words "New York State" in a bold, sans-serif font, with a small flame icon above the "Y" in "York". Below this, the words "Dental Association" are written in a slightly smaller, sans-serif font.

New York State
Dental Association

NYSDental.org | (518) 465-0044

Fax: (518) 465-3219

20 Corporate Woods Boulevard

Suite 602 | Albany, NY 12211

The logo for the American Dental Association (ADA) consists of the letters "ADA" in a large, bold, sans-serif font, followed by a registered trademark symbol (®).

ADA®

ADA.org | (800) 621-8099

211 East Chicago Avenue

Chicago, IL 60611

Benefits of Membership

- Strength of tripartite partnership - ADA, NYSDA and local society
- Business development programs - financial, practice management and investment support
- CE Registry – We do your CE record-keeping at no charge; you can access it at www.nysdental.org
- Representation in government
- Legal and business resources
- Legal Protection Plan
- Peer Review sets you apart from the nonmember -- an impartial process resolving patient complaints about treatment quality and safeguard you from malpractice actions
- Financial programs helping you with the business of being a dentist
- Clinical Journal
- Timely updates through e-mail newsletter and Website
- Scientific programs
- Insurance products protect your career investment
- Public health programs that advance profession in media and with the public
- Events connect you with colleagues for -, support and referrals
- Chemical dependency network offering confidential aid to dentists struggling with addictions
- Increase your patient base
- Save with enhanced buying power from NYSDA-endorsed vendors
- Make your voice heard!

Contract Analysis

NYSDA members have access to a free Contract Analysis Service. This service analyzes third-party contracts, including contracts from managed care companies, and informs members in clear language about the provisions of the contracts so they can make informed decisions about the implications of participation. The analysis highlights clauses in the contract that may be problematic or ambiguous.

NYSDA represents 67% of New York's dentists.

New York State Dental Association Component Societies

New York County Dental Society
New York County (Manhattan)
(212) 573-8500
www.nycdentalsociety.org

Second District Dental Society
Kings, Richmond
(718) 522-3939
www.sddsny.org

Third District Dental Society
Albany, Columbia, Greene, Rensselaer,
Sullivan, Ulster
(518) 782-1428
www.third-district.org

Fourth District Dental Society
Clinton, Essex, Franklin, Fulton, Hamilton,
Montgomery, Saratoga, Schenectady,
Schoharie, Warren, Washington
(518) 371-1114
www.4thdds.org

Fifth District Dental Society
Herkimer, Jefferson, Lewis, Madison,
Oneida, Onondaga, Oswego, St. Lawrence
(315) 434-9161
www.5dds.org

Sixth District Dental Society
Broome, Chemung, Chenango, Cortland,
Delaware, Otsego, Schuyler, Tioga, Tompkins
(607) 724-1781
www.6dds.org

Seventh District Dental Society
Cayuga, Livingston, Monroe, Ontario,
Seneca, Steuben, Wayne, Yates
(585) 385-9550
www.7dds.org

Eighth District Dental Society
Allegany, Cattaraugus, Chautauqua, Erie,
Genesee, Niagara, Orleans, Wyoming
(716) 995-6300
www.8ddsny.org

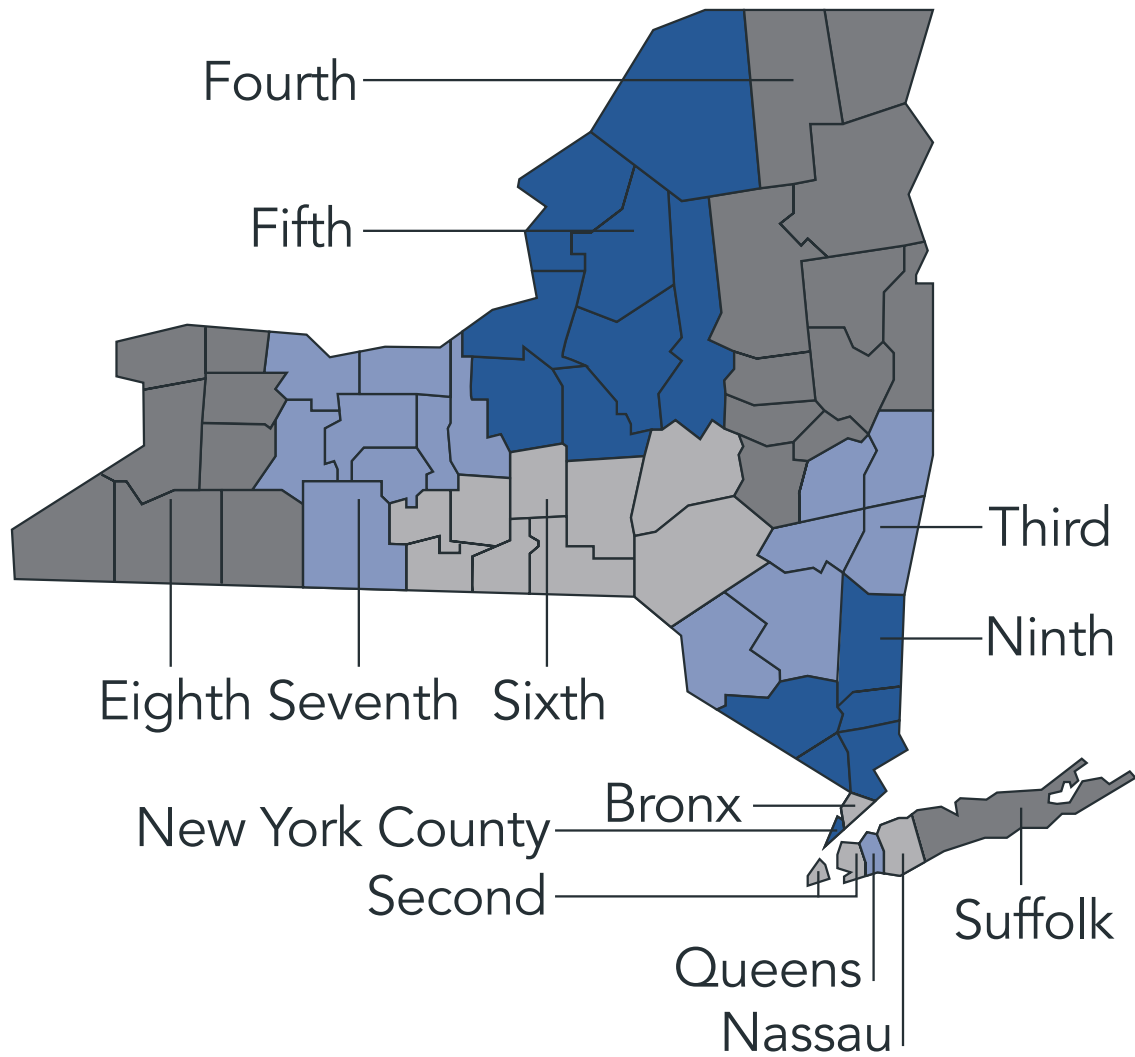
Ninth District Dental Association
Dutchess, Orange, Putnam, Rockland,
Westchester
(914) 747-1199
www.ninthdistrict.org

Nassau County Dental Society
Nassau
(516) 227-1112
www.nassaudental.org

Queens County Dental Society
Queens
(718) 454-8344
www.qcnds.org

Suffolk County Dental Society
Suffolk
(631) 232-1400
www.suffolkdental.org

Bronx County Dental Society
Bronx
(718) 733-2031
www.bronxcountydentalsociety.org



NYSdental.org | info@nysdental.org

P: (518) 465-0044

F: (518) 465-3219

20 Corporate Woods Boulevard

Suite 602 | Albany, NY 12211

Licensure & Continuing Education

Dental Licensure – How to get it, how to maintain it

New York State Education Department, State Board for Dentistry
www.op.nysed.gov/prof/dent/

Office of the Professions, NYSED
Division of Professional Licensing Services/Dentistry
89 Washington Avenue, Albany, New York 12234-1000
Phone: (518) 474-3817, ext. 550 | Fax: (518) 473-6995

Use of the title "dentist" within New York State requires licensure. To be licensed as a dentist in New York State you must:

- Be of good moral character
- Be at least 21 years of age
- Meet education and examination and experience requirements
- Meet experience requirements for licensure by endorsement
- Possess certification in CPR

Applications for licensure, forms indicated and fees must be submitted to the New York State Office of the Professions on the address specified on each form. Include name, Social Security number, date of birth, and the name of the profession in any correspondence.

Regulations and forms are available upon request from the NYS Education Department at: opforms@mail.nysed.gov, or (518) 474-3817 ext. 320.

License Fees: (December 2014)

The fee for licensure and first registration is: \$377
The fee for a limited permit is: \$105

Fees are subject to change. The fee due is the one in law when your application is received (unless fees are increased retroactively). You will be billed for the difference if fees have been increased. Do not send cash.

Mail your application and fee to:
NYS Education Department,
Office of the Professions
PO Box 22063
Albany, NY 12201

Approved Postdoctoral Coursework for Dental Enteral Conscious Sedation

American Dental Society of Anesthesiology (ADSA)
College of Sedation in Dentistry Tel: (312) 664-8270

Montefiore Medical Center
111 East 210th, Street Bronx, NY 10467
Tel: (718) 920-6266 | Fax: (718) 515-5419
E-Mail: info@montefioiredental.com

Mount Sinai Hospital Medical Center
One Gustave L. Levy Place, Box 1010, New York, NY 10029
Tel: (212) 241-7467 | Fax: (212) 426-2009

New York University NYU Continuing Dental Education
345 East 24th Street, New York, NY 10010-4086
Tel: (212) 998-9757 | Fax: (212) 995-4081
E-Mail: dentalcde@nyu.edu

Stony Brook University Medical Center
101 Nicolls Road, Stony Brook, NY 11794
Tel: (631) 632-6364

Controlled Substances License

Contact the DEA to request an application to obtain a license if you will be prescribing controlled substances.
The cost is \$731.00 for a three-year license.

For more information or to apply online:

- Go to web link above.
- Click on Registration/Applications.
- Scroll down to new registration applications-use Form #224; can be completed online or on printed paper form.

New York State Department of Health
www.health.state.ny.us/professionals/narcotic/index.htm

Bureau of Narcotic Enforcement
(866) 811-7957 | narcotic@health.state.ny.us

All prescriptions written in New York State must be on an official New York State prescription form. A practitioner must notify DOH immediately about the loss, destruction, theft or unauthorized use of any official New York State prescription form.

Applicants Licensed in Another Jurisdiction (Endorsement)

If you have successfully completed at least a one-year residency program, you can apply for a regular license instead of a license by endorsement.

The NYS Education Department may endorse a dentistry license issued by another jurisdiction if the department determines you have met New York's experience and educational requirements, have passed a comparable licensing examination and have:

- Met all New York State general dental licensure application requirements.
- Been licensed in another jurisdiction of the United States and practiced lawfully for at least two years (full-time) following initial licensure. (8 months of such practice must have been in the two-year period preceding your application.)
- Passed a licensing examination used by the State of New York either prior to or after application for licensure by endorsement, unless you have later passed a comparable licensing examination.

www.op.nysed.gov/prof/dent/dentic.htm#state

License Renewal + CE Requirements

Registration must be renewed every three years during the month of the dentist's birth date. A minimum of 60 contact hours of NYS Education Department approved continuing education, 18 hours of which can be verifiable self-study, must be completed every three years to maintain licensure.

Dentists will be exempt from the mandatory continuing education requirement for the triennial registration period during which they are first licensed.

Continuing Education Mandates

- Two-hour NYS Education Department-approved course regarding oral health effects of tobacco and tobacco products (one-time).
- NYS Education Department-approved 2-hour training in the identification and reporting of child abuse (one-time).
- NYS State Education Department-approved 3-hour course in dental jurisprudence and ethics (one-time).
- SED-approved infection control course (every four years).
- Certification in cardiopulmonary resuscitation (CPR) (maintain certification).

NYSDA members are offered the benefit of a CE Registry service. The Registry documents courses completed and provides participants with an annual transcript of continuing education activity. The NYSDA transcript is recognized by the NYS Education Department as proof of completion of all courses listed. Individual CE records can be accessed at: www.nysdental.org. Log in with ADA# in "members only" box.

Anesthesia Certificates

www.op.nysed.gov/prof/dent/dentanesthes.htm

To employ general anesthesia, deep sedation, or conscious sedation (parenteral or enteral route with or without inhalation agents), dentists must meet additional requirements and obtain a dental anesthesia/sedation certificate from the State Education Department. No certificate is required for the administration of nitrous oxide.

The requirements you must meet and the forms you must complete to obtain a dental anesthesia/sedation certificate are available at the website link above. Dentists may also request a dental anesthesia/sedation application packet by e-mail: opforms@mail.nysed.gov or by calling: (518) 474-3817 ext. 320.

Certificates are issued in three titles:

- Dental General Anesthesia, which authorizes a licensed dentist to employ general anesthesia, deep sedation, or conscious sedation (parenteral or enteral route with or without inhalation agents).
- Dental Parenteral Conscious Sedation, which authorizes a licensed dentist to employ conscious sedation (parenteral or enteral route with or without inhalation agents).
- Dental Enteral Conscious Sedation, which authorizes a licensed dentist to employ conscious sedation (enteral route only with or without inhalation agents).

Regulations

Controlled Substances and I-STOP

Summary of New Controlled Substance Registry Regulations

You must consult the Registry within 24 hours before prescribing or dispensing any Schedule II, III, or IV controlled substance to a patient – failure to do so will put your license at risk of action by the New York State Education Department’s Office of Professional Discipline (OPD).

Registering with the Department of Health to Access the Registry

First, you must establish a Health Commerce System (HCS) account with the Department of Health in order to be able to use and access the Registry. You can do that online at the following Web address: <https://hcsteamwork1.health.state.ny.us/pub/top.html>. You can get help via telephone with any questions on registering at either (866) 811-7957 or (866) 529-1890.

Prescribing Schedule II, III, or IV Controlled Substances

For ease of practical guidance, this summary will first deal with prescribing. Remember that dispensing is different from prescribing. After you have consulted the Registry within 24 hours before issuing a prescription and you have determined that you will prescribe a Schedule II, III, or IV controlled substance for a patient, you need do nothing more than issue the prescription to be filled at a pharmacy, just as you do now. You do not have to input anything into the Registry. The pharmacy does all the work of inputting information into the Registry for prescriptions once they fill them for a patient. Also, although you need to consult the Registry when prescribing Schedule II, III, or IV substances, pharmacies will input into the Registry information on a patient's history with all schedules of controlled substances.

However, you must record in your patient record that you consulted the Registry or, if you did not consult the Registry, you must record the specific exception allowed under the regulations for not consulting the Registry. The allowable exceptions will be discussed further below – but keep in mind that they are very rare and very narrowly construed, so it will not be the norm to record that you did not consult the Registry. Moreover, if you do happen to use the rare exception that neither you nor a designee could reasonably access the Registry in a timely manner, you must additionally extensively document the circumstances that caused you to use that exception, as well as your contact efforts with designees and why you were unable to have a designee consult the Registry for you. If you use the rare exception that the patient's health would be put at risk from contacting the Registry, you must additionally document the factual, clinical basis justifying your conclusion about that situation.

Dispensing of ANY Controlled Substance

Dispensing of drugs is a different and a more complicated issue. When you dispense a controlled substance directly to a patient from your office, that event does not go through a pharmacy. Therefore, if you dispense any controlled substance on any schedule of controlled substances, then you must report and input that information into the Registry yourself within 24 hours of dispensing the drug to the patient. You must include all of the following information when you input a dispensed drug to the Registry: 1) dispenser identifier; 2) patient name; 3) patient address, including street, city, state, ZIP code; 4) patient date of birth; 5) patient's sex; 6) date controlled substance was dispensed; 7) metric quantity; 8) national drug code number of the drug; 9) number of days supply; 10) prescriber's Drug Enforcement Administration (DEA) number; 11) payment method; and 12) species code. You are also required to file a "Zero Report" if you dispense no controlled substances during a specified time frame, but you may apply for a waiver to the Department of Health from this requirement if your practice does not dispense controlled substances to patients anyway. Such "Zero Report" waivers must be renewed periodically.

A waiver is available for economic hardship, technological limitations that are not reasonably within the control of the health care provider, or other exceptional circumstance demonstrated by the health care provider to extend the 24 hour reporting period up to no longer than the 15th day of the next month following the month in which the controlled drug was dispensed to a patient. There is no absolute waiver for reporting and inputting dispensed drugs to the Registry, just a waiver to extend the reporting time for dispensed drugs beyond the normal 24 hour reporting rule. Such waivers will not be routinely granted. The reality of this system is to encourage writing prescriptions for controlled substances to be filled at pharmacies and to discourage dispensing controlled substances to patients yourself. Only practices that really need to engage in dispensing controlled substances directly to patients are likely to want to inherit the Registry reporting and input burdens under this new system for doing so.

National Provider Identifier

The National Provider Identifier (NPI) is one of the final pieces of the Health Insurance Portability and Accountability Act (HIPAA). The NPI is a 10-digit standard identification number that replaces the previous provider identification information used—usually referred to as legacy identifiers. Legacy identifiers can be dental plan-specific identifiers, license numbers and Social Security numbers.

Any health care provider who uses standard electronic transactions (i.e., using your computer for electronic claims, eligibility verifications, claims status inquiries and claim attachments) will be required to include NPIs on those transactions.

Even if you do not submit claims electronically, NYSDA urges all dentists to apply for a National Provider Identifier (NPI). The NPI is the universal standard identification number for all insurance payment and claim transactions.

The NPI does not replace DEA, license and taxpayer identification numbers for their respective purposes.

To apply online, visit: <https://nppes.cms.hhs.gov>

The process takes approximately 20-30 minutes. You may also call (800) 465-3203 to request a copy of the application.

Although many companies are offering advice, assistance and guidance with respect to NPI, both the ADA and NYSDA have information regarding the NPI in their publications and on their websites as a member benefit. NYSDA staff is also available to answer specific questions.

X-Ray Registration

New York State Department of Health
Bureau of Environmental Radiation Protection
547 River Street, Flanigan Square, Room 530
Troy, New York 12180-2216
800-458-1 158, ext. 27580 or 518-402-7590

Radiation rules and regulations are required to be posted in your office. Copies of required postings can be obtained from the State Health Department.

In New York City: Bureau of Radiological Health: (212) 676-1552
During evenings, weekend and holiday hours: (866) 881-2809

Film badges are not required for office staff, but you may wish to use them to allay fears of pregnant employees.

Any dentist or dental hygienist, who in the performance of dental services, X-rays the mouth or teeth of a patient shall during the performance of such X-rays shield the torso and thyroid area of such patient, including but not limited to the gonads and other reproductive organs with a lead apron thyroid collar, or other similar protective garment or device. Notwithstanding the provisions of this subdivision, if in the dentist's professional judgment the use of a thyroid collar would be inappropriate under the circumstances, because of the nature of the patient, the type of X-ray being taken, or other factors, the dentist or dental hygienist need not shield the thyroid area.

From New York State Education Law: §6611. Special provisions. Item 7
Article 133, Dentistry and Dental Hygiene and Certified Dental Assisting
www.op.nysed.gov/prof/dent/article133.htm

Medical and Hazardous Waste Disposal

New York State Department of Environmental Conservation
www.dec.ny.gov/chemical/8789.html | (518) 402-8705

Become aware of state and local ordinances governing waste disposal and protection of the water supply. Regional/municipal information can be obtained from your local dental society.

New York State law bans the possession or use of non-encapsulated elemental mercury in dental facilities.

New York State requires most New York State dentists to install amalgam separators in their dental offices. The regulations also require and detail proper recycling of amalgam.

Orthodontists, Periodontists, Prosthodontists, and Oral and Maxillofacial Surgeons are exempt from separators. While the regulation applies to "All dental facility waters likely to come into contact with dental amalgam waste," offices that limit their practice to these specialties are exempt from the use of separators.

All dental offices, regardless of specialty, must recycle amalgam.
NYSDA endorsed carrier for amalgam separators:
SolmeteX™ | www.solmetex.com | (800) 216-5505



Where to send notice of installation:

Amalgam separators are regulated through the New York State Department of Environmental Conservation (DEC), but the INSTALLATION FORM MUST BE SENT TO YOUR LOCAL SEWAGE TREATMENT PLANT. If you own your office building, this information is on the sewer or tax bill. If you lease office space and do not know the treatment plant, you can call regional DEC offices for assistance and ask for the regional water engineer (see below).

New York City:

New York City Department of
Environmental Protection
Attn: Pollution Prevention Section
Bureau of Wastewater Treatment,
96-05 Horace Harding Expressway,
1st Floor Corona, NY 11368-5107
Fax: (718) 595-4771

Nassau County:

Nassau County Dept. of Public Works
Att: Peter Witkowski
3340 Merrick Road
Wantagh, NY 11793
Fax: (516) 571 -7357
*Note: Nassau County performs onsite
inspections of separator installations
and charges a fee of \$106.*

OTHER COUNTIES:

If you practice in another county and do not know the location of the sewage treatment plant, call the water division of the DEC regional office listed below.

Suffolk:

Region 1: (631) 444-0405

Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester:

Region 3: (914) 428-2505, ext.366

Albany, Columbia, Delaware, Greene, Montgomery, Otsego, Rensselaer, Schenectady, Schoharie:

Region 4: (518) 357-2045

Clinton, Essex, Franklin, Fulton, Hamilton, Saratoga, Warren, Washington:

Region 5: (518) 623-1212

Herkimer, Jefferson, Lewis, Oneida, St. Lawrence:

Region 6: (315)785-2513

Broome, Cayuga, Chenango, Cortland, Madison, Onondaga, Oswego, Tioga, Tompkins:

Region 7: (315) 426-7500

Chemung, Genesee, Livingston, Monroe, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Yates:

Region 8: (585) 226-5450

Alleghany, Chautaugua, Erie, Niagara, Wyoming:

Region 9: (716) 851-7070

Septic Systems

Dental offices that utilize septic systems rather than municipal sewer systems are required to install a separator. The installation form does not need to be submitted to anyone, but it should be completed and kept on file.

Infection Control

New York State requires that all dentists and dental hygienists take an infection control training course once every four years as a requirement for renewing their registration (which takes place every three years).

The New York State Dental Foundation has developed a CD-ROM, "Infection Control Training and Hazard Communication for The Dental Team". This package, offering four home-study credits, includes new CDC updates and recommendations not previously addressed for dentistry. Or, you take the course online to complete four lecture credits:
www.nysdentalfoundation.org

Students who complete this course will receive four mandated continuing education credits and a certificate of completion.

Contact the New York State Dental Foundation at: (800) 255-2100

New York State Building and Fire Code Enforcement

Laws may differ depending on county, or for those residing in New York City. For up-to-date information on code and code enforcement, visit www.dos.ny.gov/DCEA/laws_regs.html

Owning a Practice

How to Register as an Employer

To register as an employer, you must complete an employer registration form so that the Department of Labor can determine if you are liable under the New York State Unemployment Insurance Law. If you are determined liable, the Labor Department will send you quarterly combined withholding, wage reporting and unemployment insurance returns for reporting wages paid to your employees.

To register: www.labor.state.ny.us/ui/employer.shtm
Phone: (518) 457-2635

Required postings:
www.labor.state.ny.us/workerprotection/laborstandards/employer/posters.shtm

Employee Eligibility Verification

All U.S. employers are responsible for completion and retention of Form 1-9 for each individual they hire for employment in the United States. This includes citizens and non-citizens. On the form, the employer must verify the employment eligibility and identity documents presented by the employee and record the document information on the Form 1-9.

You are prohibited from hiring illegal aliens. You must verify that any new employee is a citizen, national of the U.S., or an alien authorized by the Immigration and Naturalization Service (INS) to work in the U.S.

<http://uscis.gov/files/form/i-9.pdf>

Employee Safety

Occupational Safety and Health Administration (OSHA)
401 New Karner Road, Suite 300, Albany, NY 12205
www.osha.gov | (800) 321-OSHA (6742)

The Occupational Safety and Health Administration has a number of requirements concerning infection control, employee safety and training, waste management and hazardous chemicals. To adhere to OSHA regulations you must:

- Request a copy of the "Bloodborne Pathogens Regulations Handbook," which can be obtained from the American Dental Association or OSHA.
- Provide a training program on infection control for your employees.
- Supply the Hepatitis vaccine to your employees at no charge.
- Display Poster # 2203 (Job Safety and Health Protection) in your office. (Obtain from the ADA or OSHA.)

Automated External Defibrillators

All dental offices in New York State are required to have Automated External Defibrillators (AED's) onsite. Dentists in New York are already required to be trained to use these devices.

NYSDA endorses AED Professionals. They can be reached at (888) 541-2337

Federal Employer Notices in your Place of Business

You have the legal responsibility to post certain federal notices under the Fair Labor Standards Act and other laws, depending on the size of your practice. These will include:

- Federal Minimum Wage Notice: www.dol.gov/whd/flsa
- Employee Polygraph Protection Act:
www.dol.gov/dol/compliance/comp-eppa.htm
- Occupational Safety and Health Administration (OSHA):
www.osha.gov/pls/publications/publication.html
- Consolidated E.E.O. Notice and Explanation of the Equal Employment Opportunity Law: www.eeoc.gov/employers/poster.cfm

These notices must be displayed, even if you have only one employee, and even if you pay rates above the federal minimum wage. Failure to display a current labor law notice carries a maximum federal fine of \$7,500.

These items can be obtained for free at: www.dol.gov

New York State Employer Notices

Post all federal notices PLUS registration for all licensed professionals employed in the practice, including licensed assistants, and other required notices under state law.

All may be obtained for free at: www.labor.ny.gov

New York Minimum Wage Law and Worker's Compensation Notice:
www.labor.state.ny.us/workerprotection/laborstandards/employer/posters.shtm

The Americans with Disabilities Act

The Americans with Disabilities Act gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, health care services, employment, transportation, state and local government services, and telecommunications.

U.S. Department of Justice
For Americans with Disabilities Act publications/technical questions:
(800) 514-0301
www.ada.gov

"Reaching Out to Customers With Disabilities"
Online course for businesses: www.ada.gov/reachingout/intro1.htm

New York State Labor Law

Employee Records:
<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

Employers' payroll records must contain the following information regarding their employees:

- Name, address and Social Security number
- Wage rate
- The number of hours worked daily and weekly
- The amount of gross wages, deductions from gross wages and net wages paid
- Allowances claimed, if any, as part of the minimum wage
- The time of arrival and departure of each employee working a split shift or spread of more than ten hours
- The number of units produced daily and weekly by piece-rate workers

Employers in "General Industry" are required to maintain these records for at least six years, while agricultural employers must maintain them for no less than three years.

Can an employee be fired without due cause?

Yes. New York State is an “employment-at-will” state. Without a contract restricting termination (such as a collective bargaining agreement), an employer has the right to discharge an employee at any time for any reason. This also protects the employee’s right to resign. An employer may fire an employee for “no reason” – or even for a reason that might seem arbitrary and unfair – and the employee is equally free to quit at any time without being required to explain or defend that decision.

There are a few exceptions to “employment-at-will.” The most significant of these are laws, enforced by the New York State Division of Human Rights, which prohibit discrimination based upon race, creed, national origin, age, handicap, gender, sexual orientation or marital status.

Unemployment Insurance

Unemployment insurance is temporary income for eligible workers who become unemployed through no fault of their own and who are ready, willing, able to work and have sufficient work and wages in covered employment. In New York State, the money for unemployment insurance benefits comes from taxes paid by employers. No deductions are ever made from a worker’s paycheck for unemployment insurance. It is the Department of Labor that determines whether an unemployed worker qualifies for unemployment.

Dental Hygienist Licensure Requirements

www.op.nysed.gov/prof/dent/dentdhlic.htm

All dental hygienists must have a current New York State license to practice. Hygienists may apply for licensure after graduating from dental hygiene school and passing the licensing examination. Dental hygienists must complete 24 hours of NYS Education Department approved continuing education every three years in order to maintain their license.

Licensure and First Time Registration fee: \$128 | Limited Permit fee: \$50

CE Mandates for Dental Hygienists

NYS Education Department-approved two-hour training in the identification and reporting of child abuse (one-time). NYS Education approved infection control (every four years).

Dental Hygienists Association of the State of New York, Inc.

Suite 404 (SCAA), 150 State Street, Albany, NY 12207

(518) 477-0343 | info@DHASNY.org

Certified Dental Assisting

www.op.nysed.gov/prof/dent/dentcdalic.htm

Licensure for dental assistants is not required. However, dental assistants who wish to perform “expanded duties,” as defined in recent amendments to the Education Law, must obtain licensure to practice “certified dental assisting.”

Licensure fee and first registration: \$103 | Limited Permit fee: \$40

Scope of Practice Changes: Dental Hygienists & Certified Dental Assistants

www.op.nysed.gov/prof/dent/dentcdardhscope.htm

Taxes & Business Issues

Personal Property Taxes

County tax assessors can provide personal property tax worksheets you can use to list the tangible assets, such as equipment and furnishings, in your dental practice.

Employee Taxes

Dentists are required to withhold federal, Medicare, Social Security and federal unemployment taxes from each employee's paycheck. Dentists who are self-employed may want to consult an accountant.

New York State Department of Taxation and Finance
W.A. Harriman Campus
Building 9, Albany, NY 12227
www.tax.ny.gov

New York State Department of Taxation and Finance Online Tax Center
www.tax.ny.gov/online

Business Taxes

- Sales Tax Information Center: (518) 485-2889
- Corporation Tax Information Center: (518) 485-6627
- Withholding Tax Information Center: (518) 485-6654
- Corporate Dissolution: (518) 485-2639
- Miscellaneous Business Tax Information Center: (518) 457-5735
- Mortgage Recording Tax and Real Estate Transfer Tax Information Center: (518) 457-8637
- PrompTax Customer Service Center: (518) 457-2332

New York State Tax Guide for New Businesses

www.tax.ny.gov/pdf/publications/multi/pub20.pdf

Internal Revenue Service: www.irs.gov
Individual Tax Questions: (800) 829-1040
Business Tax Questions: (800) 829-4933

The Internal Revenue Service has forms needed for federal tax identification number. All businesses that have employees must have a federal tax ID number. The IRS also provides:

- Circular E-Employers Tax Guide
- W-2 Forms
- W-4 Forms
- 941 quarterly federal tax return
- 8109 tax deposit coupons
- Business start-up kit
- Business License

Most cities require a business license. Contact the city hall or seat of government where you intend to practice to find out if the treasurer, city clerk and/or business license department administers licenses.

Your local Chamber of Commerce, the U.S. Small Business Administration, your certified public accountant or attorney's organization, and your bank loan officer can provide excellent sources for small business start-up information. Many groups offer courses for people just starting out, so do not hesitate to call and ask.

New York State Governor's Office of Regulatory Reform: www.nys-permits.org

Online Permit Assistance and Licensing - OPAL

If you want to start a new business or expand your current business, this site will help you find details about New York State business permits needed.

Empire State Plaza
Agency Building 1, 4th Floor
P.O. Box 2026, Albany, NY 12220
(800) 342-3464 | permits@gorr.state.ny.us

Small Business and Self-Employed Resources:
www.irs.gov/businesses/small/index.html

Insurance

As a business owner, you must try to minimize the financial risks your practice faces. Below is a listing of insurance types. NYSDA-endorsed insurance product information follows this section. This information is a guide. Work with a licensed insurance representative and read policies carefully.

Types of Insurance

Commercial Property: Provides replacement cost coverage on buildings and business personal property, including property of employees and others under the insured dentist's care, custody or control.

Disability Income Insurance: Helps replace a dentist's income when he/she experiences a loss of income due to a disabling sickness or injury.

Disability Office Overhead Expense: Assists dentists in paying for the operating expenses of their office while they are out on a short-term disability. The maximum benefit period for such policies is typically two years.

Employment Practices Liability Insurance: Protects dentist/employer from employment claims.

General Liability: Policy, often combined in a package with loss of office contents coverage, provides protection against personal injury or injury to others while on the business premises.

Group Life and Health Coverage: For preventive care and medically necessary expenses.

Professional Liability: Protects dentists against malpractice claims brought against their practice. Covers damages for a variety of dental incidents.

Long-term Care: Funding for your care if you are unable to care for yourself. Coverage for nursing home stays, assisted care or home-based care.

Unemployment Insurance: Temporary income for eligible workers who become unemployed through no fault of their own and who are ready, willing, able to work and have sufficient work and wages in covered employment. In New York State, money for unemployment insurance benefits comes from taxes paid by employers. No deductions are ever made from a worker's paycheck. The Department of Labor determines whether an unemployed worker qualifies for unemployment.

Voluntary Term Life: Term Life Policy

New York State requires virtually all employers to provide the following:

Workers' Compensation Insurance: Provides a benefit for job-related illnesses or injuries. The benefit could include money for medical expenses, loss of income, death benefit, permanent disability benefit and other expenses.

Short-term Disability Insurance: Provides a benefit due to an off-the job injury or illness. The benefit is for loss of income only. There is a seven day waiting period before benefits begin, and the maximum benefit period is 26 weeks.

- Sole proprietors, partners or corporations of one or two owners have the option of excluding themselves from the coverages.
- An employer must post in the workplace a notice of coverage of each policy and the corresponding employee rights under such policies.
- The State Insurance Fund is a not-for-profit agency of the State of New York that provides a guaranteed source of both of these coverages.
- Employer cannot have the employee pay for the cost of Workers Compensation Insurance, but they may have the employee share in the cost of the disability insurance to a maximum of \$.60 per week.

NYSDA-Endorsed Insurance Programs



NYSDA offers its members, in conjunction with Medical Liability Mutual Insurance Company, a program for professional liability insurance. This is the only professional liability program endorsed by NYSDA. Unlike commercial insurers, MLMIC is a mutual insurance company, which means that its policyholders are owners.

Dentists insured by MLMIC have full voting rights to elect its Board of Directors, as well as direct input through NYSDA's Underwriting/Claims Committee into vital areas of operation, such as rate-setting recommendations, claims management, underwriting and policy coverage provisions, peer review, and risk management. The Committee of dentists works directly with MLMIC to offer NYSDA members the best dental liability coverage available and represents members' interests in decisions regarding liability protection.

For information: www.mlmic.com/dentists

\$50 first year claims made coverage for qualifying new graduates.
For information: www.mlmic.com/dentists/discounts

New York City: (800) 683-7769
Long Island: (888) 263-2729
Upstate: (888) 744-6729

Auto Insurance with Liberty Mutual

In addition to a dental license, you will most likely maintain a driver's license.

NYSDA endorses Liberty Mutual for auto insurance. Obtain a quote online: www.Libertymutual.com/lm/nysdental or call (800) 526-1547

Safe Driving Tips—from Liberty Mutual

- Watch your speed.
- Check your tire pressure and treads at least once a month.
- Select a designated driver before you and your companions start drinking.
- Watch out for road rage.
- Don't tailgate—it won't get you to your destination any faster.
- Be aware that driving a sports utility vehicle (SUV) isn't like driving a car.
- Make it a habit to signal early.
- Size up the whole scene. Don't just look directly in front of you; instead, look 10 to 12 seconds down the road to where potential trouble spots begin.
- Know how to drive around large trucks.
- Green does mean GO...but first make sure the intersection is clear!
- Adjust your mirrors to reduce that blind spot next to your car.
- Driving is a full-time job—avoid using your cell phone.
- Avoid solar glare.
- If your car has adjustable headrests, properly adjust and lock them into place.
- Learn how to use your antilock brakes.
- Turn on your headlights when you use your wipers.
- Keep your car windows clear.
- Don't use cruise control when the roads are wet.
- **Buckle up every trip...every time.**



Basic Patient Issues

Patient Records

An important part of treatment is the patient record. The patient record is the complete history, evaluation, diagnosis, treatment and care of a patient and is kept so that, should it become necessary, another dentist would be able to view the record and know exactly what has been done for the patient, when and why. A patient record is also required by law to avoid charges of professional misconduct.

Written vs. Electronic

Written paper records are one method for creating a patient record. Electronic records are gaining popularity. New York accepts either type of record.

All patient records should contain a medical and dental history, radiographs, study models, drug and laboratory prescriptions, correspondence with or regarding the patient, consultant and referral reports, patient identification information, as well as examination, diagnosis and treatment information for each visit.

Length of Time for Retaining Records

Records must be retained for a minimum of six years or, for minors, either six years following the last visit, or one year following the 21st birthday (whichever is longer).

Access to Records

In general, a patient or the patient's legally authorized representative is entitled to access the record. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) contains requirements for access. New York Public Health Law Section 18 also applies and in many respects is stricter and must be followed.

All such access issues are governed by Section 18 of the Public Health Law requiring that, upon written request from a patient, the patient be given access to his/her dental records within 10 days. This access relates to the right to physically inspect the records. Also, upon written request from a patient, a dentist must provide, within a reasonable time, copies of the patient records. A third party is not generally entitled to such access. Ten days is also the acknowledged standard for copies of records.

Charging for Records

The dentist may charge a sum, not to exceed the actual cost incurred by the dentist, for all inspections and copies. For paper copies there is an absolute limit of 75 cents (\$0.75) per page. A patient is entitled to the copies even if he/she fails to pay for the records. The records must be provided first, and collection of the copying charge or any other outstanding balance owed by the patient must occur later.

Tips For Creating and Maintaining a Patient Record

The proper approach to creating and maintaining patient records is to adhere to strict risk management guidelines. The appearance of records is very important. They must be complete, neat, and legible. If you are in doubt concerning an event or procedure, place it in the record. If an employee writes the record, make sure you initial the entry. The rules that appear below should be followed whenever you make entries in your records:

- Use a consistent style for entries. Consistency lends credibility to your records and to your professionalism in maintaining them.
- Date and explain corrections. All corrections should be made as they occur, with the true date and reason for the correction, to preserve the integrity of the patient record.
- Use ink. Pencil entries fade over time and are easily altered, which makes the record's integrity subject to speculation. Use ink to avoid this.
- Use single-line cross-out. This is the best way to make a physical alteration to the record, while preserving the integrity of the patient record.
- Do not use white-out. White-out is messy and indicates that information was eliminated because the dentist had something to hide.
- Write legibly. An illegible record can be worse than no record at all. It makes the dentist look careless and disorganized.
- Express concern about patient needs. Document that the dentist listened to, noted and addressed the patient's expressed needs.
- Never write derogatory remarks in the record. Although it is okay to record negative information, such as a patient's failure to follow treatment advice, insulting material serves to convey an aura of unprofessionalism.

Contents of Records:

Medical History

Every patient's medical history should be as complete as possible and should be updated each time the patient visits the dentist. After reviewing the medical history with the patient, the patient should be asked to initial or sign the new medical history. It is recommended that practitioners adopt as a minimum standard the American Dental Association's Standard Medical History form.

- Name and phone number of patient's physician, and date of patient's last physical examination.
- Dentist's evaluation of patient's general health and appearance. List of systemic diseases, list of medications patient is taking, and any prostheses.
- Any treatment patient is currently undergoing; any radiation or chemotherapy history.
- Any bleeding disorders, drug allergies, smoking or alcohol history; any adverse reactions to anesthetics.
- Affliction with mitral valve prolapse, or if a cardiac condition, patient's blood pressure and pulse.
- Pregnancy or other physical conditions.
- Physical and emotional tolerance for procedures.
- Items to be updated on each patient visit.

Dental History

A complete dental history is of absolute importance! An inadequate dental history is the single greatest cause of problems for the dentist.

A complete dental history includes the following items:

- Patient's chief complaint.
- Past dental records, date of last dental treatment and frequency of past treatments; any complications resulting from past treatments.
- Frequency, type and place of previous radiographs.
- Patient's view of his/her oral hygiene status; patient's oral hygiene habits.
- Dentist's diagnosis, treatment plan or referral information.
- Dentist's progress notes for the patient.
- Dentist's termination notes or completion and discharge notes.

Each item in the dental history should be discussed thoroughly with the patient. Any diagnosis and treatment plan should be fully explained and understood by the patient. Any changes that occur over the course of treatment must be recorded and discussed with the patient. It is also important to discuss with the patient any limitations of treatment, and these should be recorded.

“Lose the Paper”

“If you haven’t switched over to electronic record keeping, your practice is already behind the times and in danger of falling even further behind.”

–Lance R. Plunkett

A number of members have asked why they need to be concerned about HIPAA (the Health Insurance Portability and Accountability Act of 1996) when they do not transmit reimbursement claims or protected health information (PHI) electronically. It is true that if your office handles reimbursement claims and other health care transactions only by paper—facsimile transmissions are not considered electronic transmissions for HIPAA purposes—you can avoid the need to comply with HIPAA as a matter of law. But this is one of those times when asking the question is somewhat self-defeating. Putting aside the fact that New York State law is even more demanding than HIPAA in some instances, it is akin to asking if you have a scribe with a quill pen and an inkwell, then why do you need a typewriter or a computer? The reason is, because the electronic age of patient record keeping is on the legal horizon. What does that mean?

On the federal level, there is a significant push toward converting all patient record keeping to an electronic system. It began in earnest with an executive order of the Bush Administration and is continuing at an even more enhanced pace with the Obama Administration. In fact, it is a centerpiece of the economic recovery plan. And it is a matter of money.

Medicare is willing to pay more to doctors who use electronic health records. An electronic health record (EHR) system is viewed as a quality improvement measure leading to better care for patients. Private insurers routinely follow the Medicare lead on such reimbursement matters. even the Federal Trade Commission (FTC) has looked at the use of EHRs as one possible efficiency justification for doctors to collectively negotiate fees with managed care plans in spite of the antitrust laws—approving one such arrangement for physicians right here in New York State, in Rochester. More on that later.

The old problem with electronic patient records—that they could too easily be altered for purposes of malpractice litigation—has long been put to rest by technological improvements. Now, electronic records are routinely accepted by courts because the security technology exists to satisfy a court that the record has not been altered just for purposes of litigation. No longer is there an inherent legal advantage to paper records. In fact, paper records may eventually become a disadvantage in court, potentially being portrayed by a plaintiff’s attorney to a jury as signaling a practice that is behind the times.

Of course, as with every new horizon development, there are some negatives to EHRs. Right now, there have been too many cases of patient information being lost or pirated by electronic hackers. That is a serious concern that needs to be addressed in any push toward an all-electronic patient record keeping system. Indeed, it is the single biggest factor that has slowed the movement towards eHrs.

Cost is the other major factor—electronic patient record keeping systems can be expensive to install. Although such systems are supposed to recover the costs over the long term, that is little comfort in a depressed economic climate where a large capital outlay might be required. However, the federal government has been exploring ways to subsidize professionals to purchase such systems, and funding for that is a part of the recent economic recovery/stimulus legislation.

Demonstrating for Electronic Records

Medicare is running a major demonstration project on eHrs for physicians right now. For an idea of how EHRs are being viewed, a description of the current Medicare demonstration project is useful. The Secretary of the Department of Health and Human services has directed the Centers for Medicare and Medicaid services (CMS) to develop a new demonstration initiative using Medicare waiver authority to reward the delivery of high-quality care supported by the adoption and use of EHRs. The goal of this demonstration is to foster wider implementation and adoption of EHRs and health information technology (HIT) as effective vehicles to improve the quality of care provided and to transform the way medicine is practiced and delivered. It is thought that the adoption of HIT has the potential to provide significant savings to the Medicare program and to improve the quality of care rendered to Medicare beneficiaries. This demonstration is designed to leverage the combined forces of private and public payers to drive physician practices to widespread adoption and use of EHRs.

As part of this new demonstration, all participating primary care physician practices will be required to have a Certification Commission for Healthcare Information Technology (CCHIT)- certified eHr by the end of the second year. CCHIT is the recognized certification authority for eHrs and their networks. Physician practices must, as part of the demonstration, be using the eHr to perform specific minimum core functionalities that can have a positive impact on patient care processes (e.g., clinical documentation, ordering of lab tests, recording lab tests and recording of prescriptions). However, the core incentive payment will be based on performance on the quality measures, with an enhanced bonus based on the degree of HIT functionality used to manage care.

The EHR demonstration will be operational for five years. The first operational year of the demonstration will provide payments to participating practices based on CCHIT-certified eHr functionalities used to manage the care of patients, with higher payment for more sophisticated HIT use (e.g., use of the eHr to facilitate care management activities, sharing of records among providers of care, etc.). Payments will be determined by a practice's score on the office systems survey (OSS), which will be administered annually to track the status of EHR implementation at the practice level and the specific EHR functions employed by each participating practice to support the delivery of care. Higher scores on the OSS will result in increased incentive payments to participating practices.

During the second operational year of the demonstration, payments will be made to participating physician practices that are using CCHIT-certified EHRs and reporting clinical quality measures, again with additional payments based on eHr functionalities employed by the practice. During years three to five of the demonstration, payments to participating practices will be based on performance on the designated clinical quality measures, with an added bonus each year based on the degree to which the practice has used the EHR to change and improve the way it operates.

CMS solicited partners interested in working with it to implement the EHR demonstration in their communities. The role of the community partner is to assist CMS with outreach activities, education and recruitment of eligible primary care physician practices in their defined communities. Community partners will also collaborate with CMS on an ongoing basis to assist CMS achieve its goal of leveraging the combined forces of private and public payers to drive physician practices to widespread adoption and use of EHRs. CMS sought strong organizational entities that had the necessary infrastructure and a clear commitment to advancing the adoption of EHRs and that were capable of supporting CMS in these activities.



Coordination of Care

Dentistry has a unique opportunity to pioneer in the area of EHRs, particularly in the area of coordinating specialty care. One possible advantage of such electronic networking is that it may give rise to competitive efficiencies that justify dentists collectively negotiating with dental plans. The FTC opinion in the case of the Greater Rochester Independent Practice Association (GRIPA) is an excellent example of the influence of the EHR movement.

In the case just mentioned, a group of Rochester physicians who had formed GRIPA (it was partly owned by a nonprofit health entity and two local physician membership professional associations) were seeing their normal risk arrangements decline due to lack of employer and payer interest in such programs. They devised an alternative plan that was not based on risk sharing as much as it was on clinical integration of quality care standards that would be monitored and enforced by GRIPA through contracts with member physicians, all in conjunction with the use of an integrated eHR system that GRIPA would manage for its physician members. GRIPA proposed to sell a "new product," consisting of its interdependent members' medical services, on a fee-for-service basis, intertwined with a number of collaborative activities, including an EHR system, designed to improve clinical outcomes and efficiencies. GRIPA physicians would also agree to refer patients to other GRIPA network physicians, except in unusual circumstances.

The efficiencies of this new GRIPA product were listed as follows:

1. Develop a collaborative, independent network of primary care physicians to provide medical care in a seamless, coordinated manner.
2. Promote the collaboration of GRIPA physicians in designing, implementing and applying evidence-based practice guidelines or protocols and quality benchmarks.
3. Monitor each other's individual and GRIPA aggregate performance in applying the guidelines developed and in achieving the network's benchmarks in order to improve patient outcomes and to reduce costs and resource utilization.
4. Integrate its physicians and providers of other medical services in the community through a Web-based electronic clinical-information system in which GRIPA physicians share clinical information related to their common patients, order prescriptions and laboratory tests electronically, and access patient information from hospitals and ancillary providers throughout the community.
5. Decrease the overall administrative and regulatory burden of its participating physicians by reducing paperwork and the time needed to process treatment information.

GRIPA would also perform a peer review quality assurance function for its members, and would have an internal disciplinary process to ensure physician compliance with GRIPA quality guidelines. It should also be noted that every physician who participated in GRIPA agreed to contribute \$1,650 to obtain a share in GRIPA when it was originally formed. GRIPA also received a grant of \$227,835 from New York State toward the cost of implementing its EHR system.

The FTC agreed that the GRIPA proposal would be permissible under anti-trust laws, even though it would require collective agreement and negotiation of the levels of fees for hundreds of physician members of GRIPA with other parties. The FTC noted that, while this would ordinarily be illegal price fixing per se, the restraints on competition here were ancillary to what was an otherwise efficiency-enhancing, pro-competitive joint venture among the GRIPA physicians. The FTC found the capital outlay for infrastructure, the mechanisms to monitor utilization to improve quality and contain costs, and the selective nature of including physicians who would comply with the quality standards and other GRIPA program features outweighed the price-fixing aspect of the arrangement and would not violate antitrust laws. The degree of integration of the physician services in the GRIPA arrangement was viewed as very important and beneficial by the FTC.

It is interesting to note that the FTC did not accept the “new product” justification offered by GRIPA for the arrangement, but still found that the arrangement would produce integrated efficiencies sufficient to offset price-fixing effects.

What may be most remarkable about the GRIPA arrangement was that GRIPA was completely candid with the FTC that the goal was to be able to contract for higher physicians’ fees on behalf of GRIPA members. While acknowledging that this was normally a major warning sign of impending antitrust disaster, the FTC still found that the GRIPA arrangement would likely offset those higher fees with other cost-saving efficiencies and quality improvements. In addition, the FTC found that GRIPA did not possess market power to exclude other competitors who might offer lower fees—leaving the matter up to consumer choice over quality versus price.

There can be no doubt that the EHR system that GRIPA was developing was a major factor in the FTC analysis, serving as proof of a serious effort to integrate physician services, as well as being a major innovation in the Rochester medical community. The GRIPA case does not mean that the mere adoption of an EHR system will shield any and every attempt to fix prices, but it does open the door to more creative arrangements to provide efficient, cost-effective, quality care to patients. It is just another part of the new legal horizon that dentistry will need to be looking at.

The material contained in this column is informational only and does not constitute legal advice. For specific questions, dentists should contact their own attorney. An archive of previously published legal articles can be accessed in the members-only area of the NYSDA Web site, www.nysdental.org.

Sample General Dentistry Consent Form

(Also found at www.nysdental.org)

Dentist: _____

Patient: _____

Dentistry is not an exact science and reputable practitioners cannot properly guarantee results. Despite the most diligent care and precaution, unanticipated complications or unintended results, although rare, may occur. A treatment plan is based on the best evidence available during the examination. There is no guarantee that this plan will not change. During treatment, it may be necessary to change or add procedures because of conditions that were not evident during examination, but were found during the course of treatment. For example, root canal treatment may be needed during routine restorative procedures. Any change in treatment plan may result in additional fees.

Guarantees and assurances cannot be made by anyone regarding the dental treatment which you have requested and authorized. It is essential that you keep your appointments and cooperate in your treatment to help insure the best possible result. Please read the following and initial and sign where noted.

SERVICES THAT MAY BE PROVIDED INCLUDE THE FOLLOWING

1. FILLINGS

Care must be exercised in chewing on filled teeth, especially on large fillings and during the first 24 hours, to avoid breakage. A more extensive restorative procedure than originally diagnosed may be necessary, due to more decay than anticipated. Sensitivity can occur following a newly placed filling and will usually go away with time.

(Initials)

2. CROWNS, BRIDGES AND LAMINATES

These restorations involve permanent alteration of the tooth structure. It is not always possible to match the color of the natural teeth exactly with artificial teeth. Temporary restorations may come off easily. Care must be taken to insure that they are kept on until the permanent restorations are delivered. The final opportunity to make changes to the new crowns, bridges or laminates (including the shape, fit, size and color) will be before cementation. It is necessary to keep the appointment for permanent cementation. Excessive delays may allow for tooth movement, necessitating the remaking of the restoration and additional charges may be incurred.

(Initials)

3. DENTURES (FULL AND PARTIAL)

The wearing of dentures can be difficult. Sore spots, altered speech and difficulty in eating are common problems. Due to jaw ridge loss, retention of full dentures can be a problem. Immediate dentures may require considerable adjusting and several relines. A permanent reline will be needed later (this is not included in the denture fee). You are responsible to return for delivery of the dentures. Failure to do so may result in poorly fitting dentures and remakes will require additional charges. Failure to wear partial dentures every day will likely lead to tooth movement, resulting in a partial that no longer fits.

(Initials)

4. PERIODONTAL DISEASE

Periodontal disease affects the gums and bone which support the teeth. It is a serious, progressive infection, causing breakdown of the gums and bone and eventual loss of teeth. It is best treated in its early stage. Treatment options may include gum surgery, extractions and replacements. Undertaking any dental procedure may have a future adverse effect on the periodontia.

(Initials)

5. ENDODONTIC TREATMENT (ROOT CANAL)

Although over 90% effective, there is no guarantee that root canal treatment will succeed and complications can occur from the treatment. Endodontic files and reamers are very fine instruments and can separate during use. Additional surgical procedures may be necessary following root canal treatment. Despite all efforts to save it, the tooth may still be lost.

(Initials)

6. REMOVAL OF TEETH (EXTRACTIONS)

Teeth may need to be extracted for various reasons, such as non-restorability, lack of bone support, part of orthodontic treatment, impactions, etc. There are alternatives to the removal of treatable teeth and these options include root canal treatment, periodontal treatment and crowns. Removal of teeth does not always remove the infection, if present, and further treatment may be necessary. There are risks involved in having teeth removed, including, but not limited to pain, swelling, spread of infection, dry socket, loss of feeling in the teeth, lips, tongue and surrounding tissues (which is usually temporary, but in rare cases is permanent), sinus involvement and jaw fracture. If complications arise during or following treatment, referral to a specialist may be needed, requiring further treatment and additional cost.

(Initials)

7. DRUGS, MEDICATIONS, AND ANESTHETICS

Antibiotics, analgesics, natural supplements and other medications can cause allergic reactions such as redness and swelling of tissues, pain, itching, vomiting and/ or anaphylactic shock. Injections of local anesthetics can cause paresthesia (numbness) of teeth, lips and surrounding tissues. Though quite rare, this numbness can sometimes be permanent. Studies have shown that bisphosphonate (ex. Fosomax) therapy for osteoporosis can compromise treatment results.

(Initials)

SIGNATURE OF PATIENT _____

Date _____

SIGNATURE OF DENTIST _____

Date _____

Radiographs

Appropriate radiographs are clear, well-fixed and developed. They are mounted and dated, rather than cone-cut. Old radiographs should be dated and stored. The dentist should never send out his/her original radiographs. Instead, an extra set of originals or a copy of the originals can be made for distribution upon request. Only under rare circumstances, such as a court-issued subpoena for original records, would it ever be necessary to part with original radiographs. Except for that rare instance, certified copies of the radiographs are all that should be provided in answer to a subpoena.

Where radiographic examinations are undertaken, minimum record-keeping standards require the following:

- Areas of proposed treatment must be visible on the radiographs.
- Radiographs must be within a satisfactory range of density and contrast.
- Root apices must be visible on periapical films.
- Crown images must not be overlapped on bitewings unless overlap is unavoidable because of malposition.

Study Models

Study models are an important dental diagnostic tool that must be retained as part of a patient's records. Models should be accurate and well-made, and the date and type of impression should be placed in the patient's record.

The models themselves, and the dyes used, should be properly identified, dated and stored by the dentist. It is critical that a dentist recognize that such models indicate the need for, progress and result of any treatment undertaken. Failure to retain these study models will lead to a deficient record, especially if the record is ever required by the Education Department's Office of Professional Discipline (OPD) or by a court.

Drug & Laboratory Prescriptions

Drug and laboratory prescriptions should be recorded in the patient's record exactly as written by the dentist. A copy of the prescription should be attached to the record. Prescriptions should be legible and exact. Any telephone prescriptions, or changes to written prescriptions made over the phone, should be recorded in the patient's record. It is important to be precise with respect to such telephoned information and to record it precisely in the record, along with the date and time of such telephone contact.

Terminating the Dentist-Patient Relationship

It's all in the timing, communication and record-keeping.

- Lance R. Plunkett, J.D., LL.M.

It's a topic that bears constant repeating, as it forms the basis for one of the most frequently asked questions of all time by NYSDA members—how to appropriately terminate a professional relationship with a patient? Whether the termination is sought because the patient has failed to pay outstanding fees, has become obstreperous and is threatening to sue, has broken appointments, or simply because the dentist wants to reduce the number of patients he or she sees, there are some simple and effective ways to ensure that the termination is handled legally.

Section 29.2(a)(1) of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York (8 NYCRR) defines unprofessional dental conduct to include “abandoning or neglecting a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care.” Abandonment of a patient can also be the basis for a dental malpractice suit.

There are three keys to terminating a dentist-patient relationship to avoid a charge of abandoning the patient. They are timing, communication and record-keeping.

It is essential that the relationship be terminated at a normal stopping point, and not in the middle of treatment. In addition, a dentist should never end a relationship for a discriminatory reason.

A normal stopping point is one that does not leave the patient with dental work that is only temporary in nature or with dental work that requires immediate follow-up care. Deciding what constitutes a normal stopping point can be difficult, but it is not a normal stopping point, for example, to prepare teeth for crowns, make up a temporary restoration and then terminate the relationship. The normal stopping point would be after the permanent restoration is placed.

Choosing a normal stopping point is not an area where a dentist wants to be adventurous or test the boundaries of the law. You want to choose a point where you can be fairly certain the patient will not be harmed as a result of your actions. Sound professional judgment should be used because, if you guess wrong, defending yourself against an abandonment charge becomes very problematic.

Dentists frequently ask what the law says is a specific, normal stopping point. The law does not supply this answer; rather, it leaves that determination to the expert opinion of dentists to define what the clinical standard is for a normal stopping point for any particular set of circumstances. The law

merely requires that the ultimate determination be reasonable in light of the foreseeable risks to the patient. This often engenders some clinical discussion, with orthodontics being a frequent source of debate among clinicians. In general, neither the answer that there is never any normal stopping point, nor the answer that any point of treatment is a normal stopping point will be satisfactory. And it may well end up a question of fact for a jury to decide after listening to competing dental experts testify on the matter.

A dentist should always terminate a relationship with a patient in writing. The letter to the patient should contain the following items:

1. A clear statement that the dentist/patient relationship is over.
2. A brief, clear explanation of the reason for terminating the relationship—which should always be professional and not inflammatory in nature.
3. A statement that the dentist will remain available for a specified period of time to provide emergency services only—30 days is a reasonable and standard period of time, unless the dentist practices in an area where locating another dentist will be difficult for the patient.
4. A statement that the dentist is willing to forward copies of the patient's records, free of charge, to a new dentist the patient chooses, upon written request from the patient to do so; the request should follow HIPAA compliance standards, as applicable.
5. A brief, clear statement of what the dentist expects the patient to do with regard to any outstanding balance owed for services rendered—again, this should be handled professionally and not in an inflammatory manner.
6. A statement that the patient contact the local component dental society if the patient needs to find a new dentist; the letter should not refer the patient to specific dentists.
7. The date and signature of the dentist. The letter should always be sent by registered mail with a return receipt requested. By failing to follow these communication guidelines you are unnecessarily risking compromising your legal defense to an abandonment charge.

It is vital that the dentist record the reason for terminating the relationship in the patient's record. A copy of the termination letter sent to the patient should also be retained. If you do not take the time to preserve the appropriate record of a valid termination, you may discover, to your dismay, that a court or the Office of Professional Discipline will determine the termination to be an abandonment.

Finally, once a dentist has terminated a relationship with a patient, he or she should not see the patient again, except for the specified "emergency service only" time period mentioned above. Such conduct will only jeopardize the validity of the termination and place the dentist at risk of additional legal actions by the patient.

Mandated Child Abuse Reporting

New York State dentists are required by law to report suspected cases of child abuse and neglect to the New York Statewide Central Register of Child Abuse and Maltreatment at (800) 653-1522

As soon as you suspect abuse or maltreatment you must report your concerns by telephone to the SCR. The SCR is open 24 hours a day, seven days a week, to receive your call. You must follow up with a written report within 48 hours of the oral report. Written reports go to the local Child Protective Services unit of your local Social Services Department.

Mandated reporters play a crucial role in keeping children safe and helping families access important resources. Mandated reporters often come into frequent contact with children at risk, and families in crisis, and have an early opportunity to help them get the intervention, support or services they need to stay safe.

It's important to remember that not every report results in the removal of a child from his or her home. Only those children who cannot remain safely at home are placed in foster care. Many families receive services that help children remain safely in the home and their parents or caregivers get the help that they need.

Mandated reporters more consistently report abuse and neglect than those in the general population, and their allegations are confirmed at a rate twice that of non-mandated reporters.

YOUR REPORT WILL REMAIN CONFIDENTIAL

The Social Services Law provides confidentiality for mandated reporters and all sources of child abuse and maltreatment reports. SCR is not permitted to release to the subject of the report any data that would identify the source of a report unless the subject has given written permission to do so. Information regarding the report may be shared with court officials, police and district attorneys, but only in certain circumstances.

PENALTIES FOR FAILURE TO REPORT

Anyone who is mandated to report suspected child abuse or maltreatment and fails to do so, could be charged with a Class A misdemeanor and subject to criminal penalties. Further, mandated reporters can be sued in a civil court for monetary damages for any harm caused by the mandated reporter's failure to make a report to the SCR.

IMMUNITY FROM LIABILITY

If a mandated reporter makes a report with earnest concern for the welfare of a child, he or she is immune from any criminal or civil liability that might result. However, this good faith immunity is not available where the liability results from willful misconduct or gross negligence by the reporter. Malicious and false reporting to the SCR is against the law.

Other resources and more information:

New York State Office of Children and Family Services:
www.ocfs.state.ny.us/main/cps

Legal Issues

NYSDA Legal Services Panel

The New York State Dental Association offers a panel of attorneys and law firms to whom NYSDA members can go for legal advice on dental matters, including: Office of Professional Discipline; Medicaid; Contract Analysis and Entity Creation/Practice Sales. To participate in the panel, attorneys will have to demonstrate that they have had:

- A minimum of five (5) years experience in handling the specific dental matters listed above.
- Agree to provide an initial consultation free of charge to NYSDA members.
- Agree to give a 10 percent discount off their usual fees.

This information can be found in the Members Only section of the NYSDA website at: NYSDental.org

NYSDA Legal Protection Plan

The Legal Protection Plan is available to New York State Dental Association (NYSDA) members in good standing for a small additional charge.

The Legal Protection Plan is designed to protect the legal and financial interests of dentists facing public and private administrative proceedings. **The Legal Protection Plan is not insurance or an insurance plan and is not the offering of an insurance plan.**

The Legal Protection Plan provides legal coverage in exchange for a payment for potential claims, proceedings, and/or investigations before the New York State Education Department, Medicaid or Medicare, Workers' Compensation, the United States Office of Civil Rights (HIPAA), the New York State and New York City divisions of Human Rights, New York State Sales Tax Bureau, New York State Department of Labor Employee Classification Bureau, United States Occupational and Safety Health Administration, Federal Trade Commission Identity Theft Bureau, IPRO, and any Health Maintenance Organization (HMO) or other insurance/managed care plan, provided that coverage for HMO and insurance/managed care plan issues relates only to claims, proceedings, and/or investigations where the HMO or insurer seeks to recover or recoup money from a dentist for fraud or similar alleged wrongdoing and not to ordinary billing disputes or routine denials of reimbursement claims.

The Legal Protection Plan shall not cover criminal matters under any circumstances. Participation by NYSDA members in the Legal Protection Plan is subject to screening and approval by Feldman Kieffer and NYSDA, which screening and approval can, at a minimum, consist of review of prior usage and claims history with the Legal Protection Plan, review of any prior malpractice or professional discipline history, and review of any NYSDA ethics and NYSDA Peer Review history.

For additional information on the Plan, you can contact the NYSDA Legal Department at **(518) 465-0044, ext. 242**, or at **info@nysdental.org**

Managed Care Plans (Insurance Company)

Source: American Dental Association

Deciding whether to participate in managed care, or any particular plan, is a personal decision for individual dentists to make at his/her own discretion. The Association does not encourage dentists to enroll or to decline to enroll in any plan. The Association reminds dentists that it is impermissible to engage in improper collective action, such as price fixing or boycotts.

The other party to the contract is referred to as "XYZ Company."

The information below is not intended to be legal advice and is general information regarding typical contract terms.

I. Term and Termination

- A. What is the term of the contract?
 - 1. Is there a definite date on which the contract expires?
 - 2. Will the contract be renewed automatically?

- B. How can you get out of the contract?
 - 1. When can you terminate the contract? Any time? Once a year? Once every three years?
 - 2. How much advance notice must you give XYZ Company that you intend to terminate?
 - 3. Can you terminate the contract for any reason ("without cause") or only for certain reasons ("with cause")? What are these reasons?

- C. Under what circumstances can XYZ Company terminate the contract?
 - 1. Must Company give you advance notice?

- D. Do any of your contract rights or obligations remain in force after the contract is terminated?
 - 1. Will you be required to complete work in progress?
 - 2. How will you be paid for work you complete after the contract is terminated?
 - 3. Will you still be bound by the contract price?

II. Modification Clause

- A. How can the contract be changed once it is signed?
- B. Do you have the right to approve changes proposed by XYZ Company?

III. What Documents Make Up The Contract?

- A. Have you received and reviewed all exhibits and attachments referred to in the contract?
- B. Other documents
 1. Does the contract refer to other documents that have not been disclosed to you?

These may be policies and procedures, standards, a provider handbook or contracts between XYZ Company and other parties, such as subscribers or a utilization review agent.

For example:

- "XYZ Company has entered into an administrative agreement with utilization review company governing the manner in which Company will interact with Dentist."
 - "Dentist agrees to abide by all the policies and procedures of XYZ Company."
 - "Dentist promises to comply with all administrative rules and procedures formulated by XYZ Company."
 - "Dentist promises to provide dental services according to the provisions of the contract between XYZ Company and subscriber."
2. How will these documents affect you? Do they, for example, determine your compensation, identify covered services or describe how a grievance system works?
 3. Are these documents subject to change later on, and how will you be told of any changes? Will you have the right to approve them?

Rule: Make sure you obtain and carefully review all attachments, exhibits, appendices and undisclosed documents before signing the contract.

IV. Liability

A. What, if anything, does the contract say about responsibility for liability that may arise out of the contract? In other words, if something goes wrong, who will pay?

B. Is there a "HOLD HARMLESS" clause that shifts liability from XYZ Company to you?

For example: "Dentist promises to defend, indemnify and hold XYZ Company harmless from any and all claims, demands, actions and lawsuits arising out of or related in any way to dental treatment provided by Dentist."

This means that Dentist promises to hire an attorney for, and pay any losses incurred by XYZ Company, if any claims or lawsuits are brought against Company because of dental treatment provided by dentist.

The problem with hold harmless clauses is two-fold:

First, they may create obligations that you would otherwise not be responsible for under the laws of your state. Normally you must pay for your own negligence, but a hold harmless clause may mean that you have to pay for someone else's negligence too.

Second, they are "contractually assumed" obligations — i.e., obligations you did not have under the laws of your state before you signed the contract. Most professional liability insurance policies do not cover contractually assumed liabilities.

Section 4325(d) of the New York State Insurance Law prohibits shifting company liability to the dentist.

Rule: Never sign a contract with a hold harmless clause without first consulting your personal attorney and your malpractice insurance carrier about the legal and financial implications of the clause.

C. Is there a "SOLE RESPONSIBILITY" clause that shifts liability from XYZ Company to you?

For example:

"Dentist is solely responsible for all dental treatment provided under this contract."

"Dentist shall be the sole judge of the dental care and services required by a Participant."

Imagine a situation where XYZ Company is at fault. Maybe a prior authorization rule, treatment protocols or restrictions on referrals to specialists contributed to a situation that the patient thinks is malpractice. If the dentist is solely responsible, then the dentist pays all.

Golden rule of contracting: Contract obligations do not alter the standard of care which the dentist owes to all patients.

If you are sued for malpractice, you will not be able to defend yourself by saying, "The contract made me do it!" Be alert to contract terms that might create conflicts between your obligations under the contract and your duties to your patients.

V. Referrals

A. Does the program use a closed panel of specialists?

1. Who are the specialists on the panel?
2. What if you want to use a specialist who is not on the panel?

B. Who decides whether a specialist can be used at all? How is the decision made?

Rule: You have an obligation to your patients to make sure that treatment is not compromised, regardless of any restrictions in the contract.

VI. Utilization Review

Will you be subject to utilization review?

If so, is the term "utilization review" (or "external audit procedures" or "utilization control") defined?

How will it be conducted?

Who will do the review? What standards will be used? Who sets those standards?

What is the purpose of the utilization review system?

The key question is, will the utilization review process influence or control the way in which you practice dentistry? Will it compromise your professional judgment?

VII. Peer Review

- A. Will you be required to participate in a peer review process?
- B. If so, who will evaluate your work?
- C. What standards and procedures will they use?
- D. What is the peer review used for?
- E. Will you have an obligation to review the work of other dentists? If so, does XYZ Company maintain liability insurance to protect you from lawsuits that might be filed against you because of this activity?
- F. Is the peer review system binding?
- G. Is there an appeal process?

VIII. Grievance System

- A. Will you be required to participate in a grievance system? If so, most of the concerns raised about peer review apply.
- B. Who can use the grievance system? Could a patient use it to complain about the quality of your care?

By submitting such disputes to grievance, you may waive the right to have them decided in a court of law.

IX. Arbitration

Does the contract contain an agreement to arbitrate? It can be enforced in most states. By agreeing to arbitrate, you give up your right to have the dispute decided in a court of law. The arbitrator's decision is almost always final; there is no right to appeal. Arbitration is not cost-free. The parties are usually responsible for their own attorney's fees, and they share the arbitrator's fee.

Does the arbitration process cover claims of malpractice for treatment you provide under the contract? If so, will your professional liability insurance carrier defend you in the arbitration proceeding and pay any award?

X. Insurance

How much insurance must you carry? A specific sum? A "reasonable and customary" amount? An amount to be determined by XYZ Company? Does Company have the right to approve your carrier?

Rule: Confirm exactly what your obligations are so you will know if you need to purchase additional insurance or change carriers.

XI. Compensation and Services

- A. How much will you be paid?
- B. What will you be paid for?
- C. When will you be paid?
- D. Who will pay you?
- E. Might compensation vary from plan to plan, e.g., fee for service under one plan and capitation under another?

For example:

"XYZ Company agrees to pay Dentist upon the basis of the fees established in contracts negotiated by Company. Company shall contract on the basis of UCR fees whenever feasible."

Company will place 50% of all premium income received each month into a dentist compensation fund." "Claims submitted by Dentist will be paid out of the compensation fund."

What if there is no money in the compensation fund? Will you still be paid?

- F. Is payment made from a designated fund? Are there other unknown contingencies to payment? H. What will be paid for non-covered services?

XII. Most Favored Nation Clause

Will you be required to give XYZ Company the benefit of any “better price” that you give to another dental benefit organization?

For example: “Dentist agrees that he will not charge greater fees for patients covered under a program administered by XYZ Company than he does for his other private patients.”

“In the event the fee specified in this contract for a particular service exceeds the fee Dentist would charge a nonmember for the same service, Dentist shall charge the Member the lesser fee.”

XIII. Noncompetition Clause

A. Does the contract have a “noncompetition” clause that will limit your ability to participate in other programs?

For example: “Dentist will not participate in any competing prepaid dental plans for a period of six months after this contract is entered into and thereafter will give six months’ notice before contracting with any other competing plan.”

“While this contract is in effect, Dentist agrees that he will not, directly or indirectly, negotiate or contract with any other non-XYZ prepaid dental capitation plan, or involve himself in the establishment of any other prepaid dental capitation plan, which contracts or seeks to contract with any group with which XYZ Company has contracted without express written permission of XYZ Company.

B. These clauses may be unenforceable because they unreasonably restrain competition. You should obtain the advice of your attorney before you agree to this kind of restriction.

XIV. Assignment/Delegation

A. Can you delegate your duties under the contract to an associate?

B. Can XYZ Company transfer its rights and obligations under the contract to someone else? If so, you may find yourself in a contractual relationship with an unknown entity.

C. Does Company need your consent to transfer the contract?

XV. Liquidated Damages

For example: “ In the event that XYZ Company terminates this contract on account of a breach by Dentist, Dentist and XYZ Company hereby agree that it would be extremely difficult to ascertain damages suffered by XYZ as a result of such breach and Dentist hereby agrees to pay XYZ, as liquidated damages and not as a penalty, an amount equal to [fill in the blank—e.g., all of Dentist’s compensation for the last three months preceding termination]. Such liquidated damages shall be in addition to and not in lieu of any other legal or equitable remedy available to XYZ Company.”

In other words, these are predetermined damages that you will owe.

Remember: Most contract obligations belong to the dentist; it is not that difficult to breach the contract. This is a liability that could easily be imposed against you. It is probably not covered by your professional liability insurance.

XVI. Entire Understanding

For example: “ This agreement contains the entire understanding between the parties and supersedes all prior negotiations and agreements.”

This means you will not be able to enforce any commitments XYZ Company has made to you unless they are written into the contract.

Rule: If it isn’t in writing, it probably is no good.

XVII. Governing Law

For example: “ This contract will be governed by the law of the State of [fill in the blank—e.g., Illinois].

This means that the contract will be interpreted and enforced according to the laws of the state named. You should consult your personal attorney about any potential advantages or disadvantages of this provision.

This material is informational only. For specific questions, dentists should contact their own attorney.

Navigating Associateship Contracts and Purchase Agreements

Dentists just starting out are especially at risk of making serious legal blunders when joining or purchasing a practice. Don't go to a contract signing without first consulting an attorney.

– By Graig F. Zappia, J.D.

Mr. Zappia is a partner with Tully Rinckey, PLLC. He concentrates his practice on business law, civil litigation, real estate law and estate planning.

Contracts. They can evoke as much tribulation in dentists at the start of their careers as the drill can instill in patients. Whether it is an associateship contract or a purchase agreement for an existing practice, dentists have good reason to get nervous when presented with either type of contract. One overlooked provision could severely limit dentists' career prospects, or expose them to unforeseen and costly liabilities. As intimidating as contracts can be, however, dentists just starting out should not walk away from opportunities to join or acquire a practice because of the potential strings attached. There are good opportunities out there that a little investigating and negotiating could transform into great careers. Reach out to and consult with an attorney who has more experience catching loopholes. With a little guidance, dentists can be off and running in no time.

Associateship Contracts

Remember, most employers are watching out for their own interests when they offer a dentist an associateship contract. Do not overlook the fact that a big part of that interest involves employing the dental professional. Generally speaking, the heart of the contract protects the employing practice against the possibility of being left in a lurch in terms of staffing and vulnerable to unfair business practices by the associate. For dentists, an associateship contract promises stability in terms of employment and sets expectations for compensation.

First and foremost, dentists offered an associateship contract will want to make sure its terms and conditions are in line with industry standards for a particular geographic region. Dentists practicing in upstate areas may have different terms than dentists practicing in the New York City metro areas. Reach out to local mentors, colleagues and dental school classmates to get a better sense of what is normal for an area in terms of pay, benefits and restrictive clauses. Doing this preliminary research will help you prepare for the inevitable contract negotiation.

Once that preliminary research is done, talk to your attorney about the terms and conditions within the contract itself. An important feature of an associateship contract is its term or length of employment. The big question for the dentist is do you view this job as a pit stop, or are you looking to get on the partner track? If the former, a short, single-year term may be preferred. If the latter, then a multi-year term, with interim options that can be renewed annually, may better suit you.

Pay close attention to the part of the contract addressing these renewal and early termination concerns. There may be notification requirements (e.g., 60 days prior notice) and financial consequences associated with leaving a job before the contract expires. Even if the dentist considers the job a short-term position, he or she may want to consider a renewal option, just in case the work is better than expected or other employment opportunities do not arise before the agreement expires.

Next, dentists will want to put the contract's restrictive covenants on their radar, particularly those pertaining to non-compete and non-solicitation clauses. A noncompete clause will prohibit an associate who leaves a practice from working for any competitors within a geographic range for a pre-determined period of time. In densely populated areas, such as in New York City, the covenant not to compete may cover a few city blocks. In less densely populated areas, such as in upstate communities, that prohibition could cover a few miles. A one-year, post-employment, non-compete period is common for the industry. Anything covering two years post-employment may be too long to hold up in court.

A non-solicitation covenant will prohibit associates from attempting to poach patients from their former employer. In the event you decide to leave the practice, your former employer's patients are off limits, permanently, unless those patients change practices under their own free will. The dentist should make sure the agreement recognizes there are some customers he or she brings into the practice, such as family members and friends, that remain the "property" of the associate. Dentists should make sure the non-solicitation clause is phrased in a way that ensures they can bring these preexisting patients to their next employer.

The bottom line is, associateship contracts aim to eliminate unpleasant surprises for both employers and employees. Employers offering an associate contract have likely crafted it in a way that reduces their risk to the lowest level possible. Dentists, however, may find an employer's attempts to protect his or her interests infringes too greatly on their own. Prospective associates should not be afraid to request modifications to the contract prior to signing. That's what negotiations are all about. Remember, the employer wants to hire the dentist, and the dentist is interested in being employed. An attorney could help both parties find their middle ground.



Purchasing a Practice

Much like my advice for prospective associates offered an employment agreement, my advice to dentists interested in buying a practice is simple: Get legal advice early on in the process. To this I add: Get an accountant on board as soon as possible as well. It should be a total team effort during the buying process. Buying a practice can be exciting; and it is easy to take at face value a glowing appraisal. It is crucial for buyers, however, to independently conduct their due diligence. Have an accountant review the seller's books early on, going back multiple years, to develop an appropriate purchase offer.

If the practice comes with real property, the buyer will want to have a lawyer prepare and negotiate a purchase agreement, conduct a title search on the real property being sold, work with the purchaser's mortgage company and guide the purchaser through the eventual closing. If the seller rents his or her space, the buyer will want to carefully scrutinize the lease agreement. Because landlords are not commonly apt to renegotiate lease agreements mid-term after a new tenant purchases an existing business, the dentist must ensure that the existing lease terms are favorable.

Regardless of whether the seller is retiring, be sure to hold him or her to covenants not to compete and not to solicit the patients you are purchasing under the terms of the agreement. Buyers should also include language in the purchase agreement that gives them greater control over how the seller notifies customers about the change of ownership. Require the selling dentist to endorse you as the new dentist and to spend time at the new practice with the existing patients, even before the purchase goes through. The last thing a buyer wants is for the outgoing dentist to steer his or her customers elsewhere, or to steal them away after selling the business.

Additionally, negotiate a long transition period with the outgoing dentist, even up to six months. While you may want to get going on your own, the selling dentist will continue working at the practice as a consultant on a limited basis, providing a useful guide for how the business is run and affording the new dentist time to get his or her feet on the ground. It is tough enough to practice dentistry. Running a business may be all new territory.

Prior to purchasing the practice, buyers should also take the time to meet the existing dental staff, making sure they are a good fit with the purchasing dentist and his or her style of dentistry. Carefully review any employment contracts that may exist after the sale goes through. Remember to take into

account the financial ramifications of employee benefits, such as health care costs and paid vacations. The buyer should also be prepared to assume existing contracts with vendors, such as those that provide dental supplies and advertising services.

Limiting liability should also be a priority for buyers. You do not want the seller's pre-existing legal problems to haunt you. If there is any ongoing litigation involving the seller, carve it out of the purchase agreement so that the selling dentist is responsible for seeing any such cases through to conclusion. Language indemnifying each party should also be included in the contract. These provisions ensure that the seller is legally accountable for any malpractice complaints or other lawsuits stemming from the period when he or she owned the business, even if they come to light after the transaction is closed.

Another important factor to consider is forming a legal entity to protect the purchasing dentist from future liability. For example, work with your accountant and attorney to determine what type of business formation is right for you and your practice, whether it is an LLC or corporation. Engage your attorney early on to set up that business entity to ensure that you are protected as soon as you take over ownership. Spending the time and money early on to form this entity will save you a vast amount in the long run should a legal issue arise down the road.

The key to becoming an associate or purchasing a first practice revolves around balance—balancing the interests of all the parties and how best to protect them all without having the deal come unglued. It is never a good idea to sign a contract or enter into a purchase agreement without first getting legal advice on its contents. Dentists can always negotiate the terms beforehand to guard against potential pitfalls that could unnecessarily stunt career development or tie the dental practitioner to a job, an office or any other obligation for too long or at too great a cost.

For specific questions, dentists should contact their own attorney.

Putting Your Legal House in Order

From The New York State Dental Journal,
April 2002 by Andrew Feldman, J.D.

Busy practitioners who are dedicated to the treatment of their patients often neglect their own professional needs. This can result in financial loss to their practice, and possible exposure to liability. By taking the time to perform a "legal checkup" of your practice, you may be able to avoid these problems and protect your interests without jeopardizing patient care.

Organization

- Is your practice structured to minimize your legal exposure and maximize available tax benefits?
- Do you have proper agreements in place to protect both yourself and your partners?
- Have agreements been updated to reflect changes in the law and/or in your practice?
- Do you have proper agreements in place with your professional employees?

Practitioners often fail to give needed attention to the corporate structure of their dental practice. Depending upon your circumstances, a sole proprietorship, professional corporation, general partnership, limited liability partnership or limited liability company may not be right for you.

Close attention should be paid to the details of your relationship with your patients, but also with your partners or members. For example, agreements among partners or members need to thoroughly address, among other things, divisions of profits and losses, withdrawal of partners or members, death or disability, loss of professional license, responsibility for payment of debts to third-party creditors and lending institutions, and the retirement of a partner or member.

Additionally, a careful review of all other agreements with the practice should be conducted. Many practices employ other practitioners to meet patient demand without admitting these practitioners as partners to the practice. Agreements with these outside parties should address not only employment issues like compensation, but also post-employment issues, including competition by the departed employee and similar concerns.

Financing

- Have you taken advantage of the record low interest rates that are available now?

Unfortunately, many dentists are too busy to investigate what may be "once-in-a-generation" interest rates available to professional practices applying for working capital loans to cover office remodeling, equipment purchases, practice acquisitions or other real estate transactions. Dentists can save substantial sums in interest, debt service and other payments if they act now.

Real Estate

- Are you thinking of buying a building, leasing new space or renewing your existing lease?
- Are you sharing space with other practitioners?

Purchases of real estate to house a dental practice present peculiar issues that need to be adequately addressed—in writing. Particular attention needs to be applied to zoning issues and the lawful ability to use the building for the particular practice it is intended to house, as well as other concerns associated with the need to protect real estate assets from potential liabilities arising from the practice.

Dentists who lease office space need to be careful of lease clauses that allow building expenses to be passed through on top of the base rent. Particular care also needs to be paid to lease provisions that define the allowable use of the space to make certain they accommodate the scope of the practice, as well as other provisions, which if not properly addressed, could have a materially adverse impact on your practice.

Space-sharing arrangements among practitioners are not uncommon, but they present potential issues that should be addressed in writing. These written agreements help diffuse potential disputes concerning the right: to use and occupy space, responsibility for office expenses, responsibility and exposure to landlords, and other issues arising from what are usually informal arrangements.

Managed Care Contracts

- Are you planning to renew or enter into a contract with a managed care organization?
- Has this contract been drafted to balance the rights and obligations of both you and the MCO, while protecting the patient-dentist relationship?

Many managed care organizations have prepared “standard provider agreements” which contain contractual provisions that favor the MCO). These agreements are presented to dentists on a “take-it-or-leave-it” basis. Providers who are dependent upon the MCO for patients will often enter into these contracts without fully considering the consequences of doing so. A dentist should carefully review and understand any managed care contract he or she is considering signing. Provisions in the contract that are often glossed over at the time of signing may become troublesome for the dentist when a controversy arises that requires interpretation or clarification.

Corporate Compliance

- Have you or your practice been audited by Medicare or a private insurance company?
- Have you noticed an increasing number of your claims for reimbursement being denied or down-coded?
- Have you recently entered into an agreement with a vendor, supplier or lessor?

Medicare, Medicaid and private insurance companies have begun to aggressively fight fraud and abuse in the health care industry. They are scrutinizing the billing of services, resulting in retrospective audits, demands for refunds and offsets to reimbursement.

Along with audits, the dentist must be aware of federal and state regulations that prevent certain types of financial arrangements. A violation of any one of these laws may result in severe civil or criminal liability.

By establishing a compliance program, and conducting self-audits on a regular basis, a dental practice can prevent these problems.

Practice Transactions

- Are you thinking of buying a practice or selling your practice?
- Are you taking the necessary steps now to maximize the value of your practice?

The purchase of a professional dental practice requires a significant amount of investigation as to the quality of the practice. It also necessitates the drafting of appropriate agreements to maximize the profitability of the acquisition and minimize exposure to existing liability associated with the practice.

Among the issues that need to be addressed are the potential for "run-off" of existing patients, the ability of the seller to compete with you after the sale and exposure to the seller's liabilities.

The number-one concern of sellers of professional practices is getting paid on notes given by the purchaser of the practice to the seller to finance the purchase. Often there are no "hard assets," such as real estate, to secure the note. There are a number of other ways to secure those obligations for the benefit of sellers.

There may come a day when you choose to discontinue your practice. Non-assignable office space, non-transferable equipment financing or leases, financing requiring hefty pre-payment penalties and other agreements with third parties all present substantial obstacles to realizing maximum value for your practice.

Estate

- Have you prepared a will?
- Does your will need to be updated to address changes in your business and personal life?
- Is your will drafted to minimize your tax exposure?

Having a will means that you sought to conserve your estate. Changes in your personal or professional life will require that your will be updated. You can reduce taxes and probate costs by designating what things will go where, and who will be responsible for handling the details. The cost savings that result from a carefully constructed estate plan mean that more of your estate can go to family members and other beneficiaries, and not to the government.

Mr. Feldman is a member of the NYSDA Legal Services Panel and a partner in the firm Feldman, Kieffer & Herman, a statewide practice with offices in Buffalo, Palmyra, Mayville and New York City. The firm provides legal representation to health care practitioners.



Directory

New York State Dental Association Component Societies

NEW YORK COUNTY DENTAL SOCIETY

New York County (Manhattan)
6 East 43rd St., 11 Floor
New York, NY 10017
(212) 573-8500 | Fax: (212) 573-9501
info@nycdentalsociety.org
www.nycdentalsociety.org

SECOND DISTRICT DENTAL SOCIETY

Kings, Richmond
111 Fort Greene PL
Brooklyn, NY 11217
(718) 522-3939 | Fax: (718) 797-4335
info@sddsny.org | www.sddsny.org

THIRD DISTRICT DENTAL SOCIETY

Albany, Columbia, Greene, Rensselaer,
Sullivan, Ulster
950 New Loudon Rd.
Latham, NY 12110
(518) 782-1428 | Fax: (518) 782-7372
director@third-district.org
www.third-district.org

FOURTH DISTRICT DENTAL SOCIETY

Clinton, Essex, Franklin, Fulton, Hamilton,
Montgomery, Schoharie, Saratoga,
Schenectady, Warren, Washington
632 Plank Road, Suite 200
Clifton Park, NY 12065
(518) 371-1114 | Fax: (518) 371-0018
fourthdistrictds@nycap.rr.com
www.4thdds.org

FIFTH DISTRICT DENTAL SOCIETY

Herkimer, Jefferson, Lewis, Madison,
Oneida, Onondaga, Oswego, St Lawrence
6323 Fly Rd., Suite 3
East Syracuse, NY 13057
(315) 434-9161 | Fax: (315) 437-6013
info@5dds.org | www.5dds.org

SIXTH DISTRICT DENTAL SOCIETY

Broome, Chemung, Chenango, Cortland,
Delaware, Otsego, Schuyler, Tioga, Tompkins
55 Oak St.
Binghamton, NY 13905
(607) 724-1781 | Fax: (607) 772-2192
info@6dds.org | www.6dds.org

SEVENTH DISTRICT DENTAL SOCIETY

Cayuga, Livingston, Monroe, Ontario,
Seneca, Steuben, Wayne, Yates
255 Woodcliff Drive
Fairport, NY 14450
(585) 385-9550 | Fax: (585) 385-9590
lbowerman@7dds.org | www.7dds.org

EIGHTH DISTRICT DENTAL SOCIETY

Allegany, Cattaraugus, Chautauqua, Erie,
Genesee, Niagara, Orleans, Wyoming
3831 Harlem Rd.
Buffalo, NY 14215
(716) 995-6300 | Fax: (716) 995-6305
info@8ddsny.org
www.8ddsny.org

NINTH DISTRICT DENTAL ASSOCIATION

Dutchess, Orange Putnam, Rockland,
Westchester
364 Elwood Ave.
Hawthorne, NY 10532
(914) 747-1199 | Fax: (914) 747-1396
ninth@ninthdistrict.org
www.ninthdistrict.org

NASSAU COUNTY DENTAL SOCIETY

Nassau
111 Oak St., Suite 204
Garden City, NY 11530
(516) 227-1112 | Fax: (516) 227-1114
nassaudental@aol.com
www.nassaudental.org

QUEENS COUNTY DENTAL SOCIETY
Queens
86-90 188th St.
Jamaica, NY 11423
(718) 454-8344 | Fax: (718) 454-8818
ed@qcds.org | www.qcgs.org

SUFFOLK COUNTY DENTAL SOCIETY
Suffolk
150 Motor Pkwy Ste 105
Hauppauge, NY 11788
(631) 232-1400 | Fax: (631) 232-1402
suffolkdental@optonline.net
www.suffolkdental.org

BRONX COUNTY DENTAL SOCIETY
Bronx
3201 Grand Concourse
Bronx, NY 10468
(718) 733-2031 | Fax: (718) 733-0186
bronxdental@optonline.net
www.bronxcountydentalsociety.org

ADA Accredited Dental Hygiene Schools

BROOME COMMUNITY COLLEGE
www.sunybroome.edu
(607) 778-5393

MONROE COMMUNITY COLLEGE
www.monroecc.edu
(585) 292-2000 Ext. 2761

ERIE COMMUNITY COLLEGE
www.ecc.edu | (716) 851-1390

NEW YORK CITY COLLEGE OF TECHNOLOGY
www.citytech.cuny.edu | (718) 260-5070

FARMINGDALE STATE COLLEGE OF NEW YORK
www.farmingdale.edu | (631) 420-2060

NEW YORK UNIVERSITY
www.nyu.edu/dental | (212) 998-9390

ORANGE COUNTY COMMUNITY COLLEGE
www.sunyorange.edu | (845) 341-4306

SUNY AT CANTON
www.canton.edu | (315) 336-3484

HUDSON VALLEY COMMUNITY COLLEGE
www.hvcc.edu | (518) 629-744

HOSTOS COMMUNITY COLLEGE
www.hostos.CUNY.edu | (718) 319-7949

ADA Accredited Dental Assisting Programs

COLUMBIA UNIVERSITY COLLEGE OF DENTAL MEDICINE
www.dental.columbia.edu | (212) 342-3714

HUDSON VALLEY COMMUNITY COLLEGE
www.hvcc.edu | (518) 629-7442

MONROE COMMUNITY COLLEGE
www.monroecc.edu | (585) 292-2000 ext. 2761

UNIVERSITY AT NEW YORK EDUCATIONAL OPPORTUNITY CTR.
www.eoc.buffalo.edu | (716) 849-6727 ext. 181

Approved Post Doctoral Coursework for Dental Enteral Conscious Sedation

AMERICAN DENTAL SOCIETY OF ANESTHESIOLOGY (ADSA)
College of Sedation in Dentistry
p: (312) 664-8270

MONTEFIORE MEDICAL CENTER
111 East 210th Street Bronx, NY 10467
p: (718) 920-6266 | f: (718) 515-5419
E-Mail: info@montefioredental.com

MOUNT SINAI HOSPITAL MEDICAL CENTER
One Gustave L. Levy Place Box 1010
New York, NY 10029
p: (212) 241-7467 | f: (212) 426-2009

NEW YORK UNIVERSITY CONTINUING DENTAL EDUCATION
345 East 24th Street
New York, NY 10010-4086
p: (212) 998-9757 | f: (212) 995-4081
E-Mail: dentalcde@nyu.edu

STONY BROOK UNIVERSITY MEDICAL CENTER
101 Nicolls Road
Stony Brook, NY 11794
p: (631) 632-6364

New York State Specialty Organizations

NYS ASSOCIATION OF ENDODONTISTS

508 Main Rd. PO Box 170
Aquebogue, NY 11931
p: (631) 722-3692

NYS SOCIETY OF ORTHODONTISTS

453 Second Ave
New York, New York 10010
p: (212) 685-4320

NYS ASSOCIATION OF PEDIATRIC DENTISTS

505 LaGuardia Pl #L4
New York, New York 10012
p: (212) 995-8888

NYS SOCIETY OF ORAL & MAXILLOFACIAL SURGEONS INC

20 Corporate Woods Blvd., Suite 602
Albany, New York 12211
p: (518) 465-0044

NYS SOCIETY OF PERIODONTISTS

1035 Park Blvd. #1-E
Massapequa Park, New York 11762
p: (516) 789-5700

NYSDA Endorsed Services

Banking Services

BANK OF AMERICA

Practice Loans: (800) 497-6076

US BANK

Credit Cards: (888) 327-2265

Financial Services

CARECREDIT

Patient Financing: (866) 246-9227

ALTFEST PERSONAL WEALTH MANAGEMENT

Financial Planning: (888) 525-8337

BEST CARD

Credit Card Acceptance: (877) 739-3952

SOFI

Student Loan Refinancing: (855) 456-7634

Insurance Services

MLMIC PROFESSIONAL LIABILITY INSURANCE

Bronx, Manhattan, Staten Island,
Westchester: (800) 683-7769

Brooklyn, Queens, Nassau, Suffolk:
(888) 263-2729

All Other Counties: (888) 744-6729

LIBERTY MUTUAL

Auto & Home Insurance:
(800) 981-2372 ext. 100390

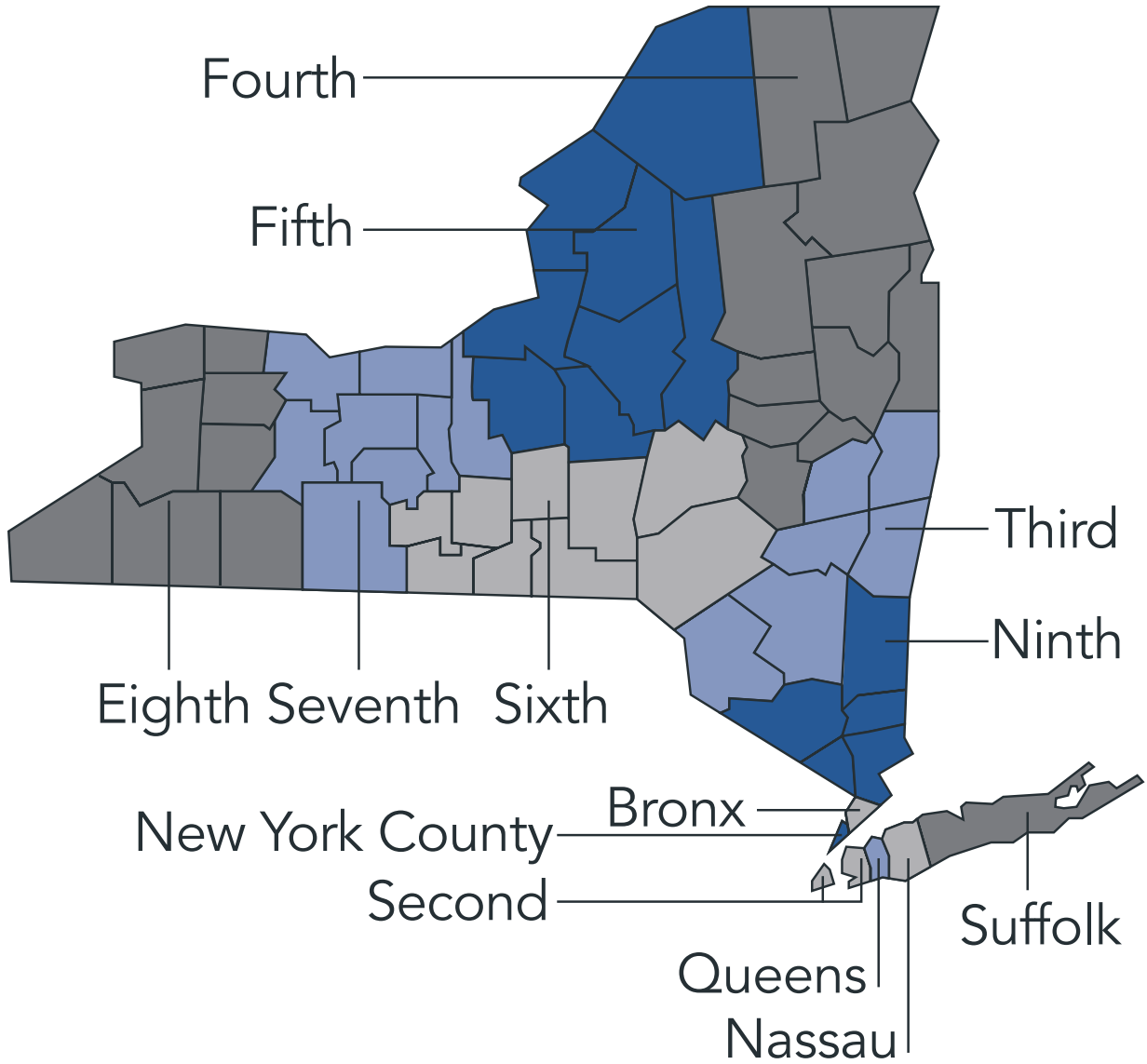
NEW YORK LONG-TERM CARE BROKERS

Long-Term Care: (844) 355-2596

Other Services

SOLMETEX AMALGAM RECYCLING:
(800) 216-5505

SCIENTIFIC METALS PRECIOUS METALS REFINING: (888) 949-0008



New Practice Checklist

This checklist and related resources can be used as a starting point to address many of the issues dentists encounter when opening new practices. For more information, contact your state dental society. (Requirements can vary from state to state and from city to city)

Licenses (May vary from state to state)

- State dental license Department of professional regulation or state board of dentistry: www.ada.org/492.aspx
- Anesthesia and analgesia permit (if needed) Department of professional regulation or state board of dentistry: www.ada.org/sections/advocacy/pdfs/anesthesia_general_permit.pdf
- Controlled substance license Drug Enforcement administration: www.deadiversion.usdoj.gov/index.html

Professional Association

- Join local, state and national dental association State dental societies: www.ada.org/stateorganizations.aspx

Regulations

- X-Ray Registration Check your state government web site
- Waste Management (Check state and local laws) Best Management Practice for Amalgam Waste: www.ada.org/sections/professionalResources/pdfs/topics_amalgamwaste_brochure.pdf
- HIPAA www.ada.org/2693.aspx
- National Provider Identification (NPI) <https://nppes.cms.hhs.gov/NPPES/Welcome.do>

Local requirements

- City or village occupancy permit Contact your county & municipal governments for regulations related to opening a dental practice.
- Zoning Board Your state dental society may also provide information
- Building Permit Dental Society Roadmaps: www.ada.org/3191.aspx

Infection Control & OSHA

- Infection control requirements www.cdc.gov/ncidod/dhqp/guidelines.html
- Job safety & health protection www.osha.gov
www.ada.org/3077.aspx?currentTab=1
- OSHA Compliance ADA Catalog – ADA Regulatory Compliance Manual
https://siebel.ada.org/ecustomer_enu/start.swe?SWECmd=Start&SWEHo=siebel.ada.org

Taxes

- State Department of Revenue List of state departments of revenue
www.at-homeworks.com/state_tax.htm
- Federal www.irs.gov/businesses/index.html
- IRS tax ID number www.irs.gov/businesses/small/international/article/0,,id=96696,00.html

Insurance

- Disability income & office overhead expenses ADA Group Insurance Plans/Great-West
- Life – Term & Universal www.insurance.ada.org
- MedCASH (supplemental to major medical) www.naic.org
- Professional liability www.ada.org/members/2364.aspx
- Health Insurance www.ada.org/sections/educationAndCareers/pdfs/insurance.pdf

Other Insurances

- Workman’s Comp. www.workerscompensation.com/stateregs.php
- Employee Fidelity Bond www.employeefidelitybonds.com

Employees

- Employee policies Employee Office Manual: A Guide for the Dental Practice: www.adacatalog.org
- Hire staff
- Employment Eligibility (I-9 forms) www.uscis.gov/files/form/i-9.pdf
- Federal & state labor law posters Posters: www.postersolution.com
- Americans with Disabilities Act www.ada.gov or call: (800) 949-4ADA

Business Issues

- Define practice structure

Valuing a Practice: A Guide for Dentists Practice Options for the New Dentist: A How-To Guide: www.adacatalog.org

- Practice financing

ADA Business Resources <http://adabusinessresources.com>

Supplies & Equipment

- Dental Buying Guide

Dental manufacturers by name, location and product: www.ada.org/537.aspx

Dental Lab

- Select a dental lab

National Association of Dental Laboratories: www.nadl.org/scr/dir/index.cfm

Other

- Verify licenses, as needed

- Vaccines and immunizations

www.cdc.gov/mmwr/preview/mmwrhtml/rr5217a3.htm

Below is a list of ADA practice management and regulatory publications and guidebooks frequently requested by dentists opening new practices.

Visit ADACatalog.org or call 1-800-947-4746

- CDT 2011-2012 The ADA Practical Guide to Dental Procedure Codes
- CDT Companion The ADA Practical Guide to Dental Coding
- The ADA Practical Guide to Frequently Asked Legal Questions
- The ADA Practical Guide to HIPAA Compliance
- The ADA Practical Guide to Starting Your Dental Practice
- CEO Crash Course: Take the Lead in Your Dental Practice
- Associateships: A Guide for Owners and Prospective Associates
- Valuing a Practice: A Guide for Dentists
- Transitions: Navigating Sales, Associateships and Partnerships in Your Dental Practice
- The Power of Internal Marketing
- Employee Office Manual: A Guide for the Dental Practice
- Dental Letters Made Easy
- ADA Regulatory Compliance Manual
- Effective Infection Control: A Training Program for Your Dental Office
- OSHA Training for Dental Professionals

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