



American
Association of
Orthodontists

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This information is not intended to serve as legal advice. It is designed to provide you with a summary of some of the practical and legal issues that arise as to the topic presented. Each case is different. You should consult with a licensed attorney in your state who is knowledgeable of the topic prior to acting on the information provided in this summary. If you need any assistance in locating an attorney, contact AAO's General Counsel.

TERMINATING THE DOCTOR/PATIENT RELATIONSHIP

Background

In most instances, it is easier to form the doctor/patient relationship than to terminate the arrangement. This result occurs because once the relationship arises, the orthodontist owes numerous duties to the patient. In fact, these duties include terminating the relationship at the proper time and in the correct way. The doctor is not relieved of these and other obligations to the patient until the relationship expires or is properly terminated. There are also many practical/non-legal issues to consider before terminating the relationship.

Therefore, absent emergency circumstances, the orthodontist is well served to evaluate and assess any potential problems in the relationship before agreeing to form the relationship. Once the relationship is formed, treatment must continue until one of the following occur: the patient's condition no longer warrants treatment, the doctor and patient mutually agree to discontinue treatment, the patient discharges the orthodontist, or the doctor unilaterally withdraws. J. Taraska, *Legal Guide for Physicians*, 2.04[1]. In the last instance, where the doctor unilaterally withdraws, there will always be the potential risk of liability for such things as abandonment and professional negligence. Therefore, because the risk can never be totally removed, the objective is to *mitigate* the risk as opposed to *eliminate* it.

Role of the Patient Contract

The orthodontist's contract with the patient could restrict the doctor's ability to terminate the relationship. Therefore, the contract should be reviewed prior to termination. Contracts should be drafted with provisions that anticipate the possible need to terminate and ease the doctor's ability to do so. For example, the contract should contain provisions which permit the doctor to terminate the contract at any time and for any reason, and define the scope of the relationship as being limited solely to those items of treatment which the doctor has orally communicated to the patient.

Bases for Termination

As a general legal rule, an orthodontist is permitted to withdraw from treating the patient at an appropriate time for any reason, as long as proper measures are used to terminate. For example, the patient must be provided with ample opportunity to obtain the services of another orthodontist, and the orthodontist should offer to treat the patient for a reasonable period following notice of termination. The patient's failure to cooperate (i.e., keep regular appointments, wear appliances, etc.), relocation or personality conflicts, and lack of payment (in certain circumstances) are generally proper reasons for termination. *Id.*

Timing of Termination: What is the Patient's Condition?

Once the orthodontist has decided to terminate the relationship, the first issue to determine is when termination should occur. This issue is usually controlled by the condition of the patient. An orthodontist should *never* terminate the relationship until the patient's condition has been thoroughly evaluated. The relationship should be terminated at a time when no adverse orthodontic or medical consequences will result to the patient.

Special Considerations for Non-Payment Cases

Non-payment cases pose a unique dilemma. While the legal contractual theory permits an orthodontist to terminate the relationship in these instances, there are other legal and practical issues that should be considered. Namely, the orthodontist could be easily portrayed as sacrificing the care of the patient for personal economic reasons. This practical aspect, particularly when coupled with negative orthodontic and medical effects arising from termination, can result in litigation with negative consequences for the orthodontist. In addition, this type of termination case seems to generate its fair share of vindictive and retaliatory acts by the patient (i.e., dental board complaints, etc.). Therefore, as a practical matter, there is additional risk in terminating the relationship on this basis. In some cases, this risk may justify continuing treatment through completion without payment.

Procedures for Termination

If it is determined that termination of the relationship can be properly accomplished, then all of the following procedures should be followed:

1. Inform the patient (or guardian) of the treatment status and condition;
2. Recommend that the patient (or guardian) promptly secure another orthodontist, offer to assist the patient in locating an orthodontist and explain that serious consequences could result if treatment is not immediately commenced;
3. Inform the patient (or guardian) of a definite date upon which the relationship will be terminated, which should be reasonable and sufficient to permit the patient to secure other orthodontic care (although "reasonableness" will depend upon the facts of each case, the date of termination should be no less than 30 days after oral notice of intent to terminate);
4. Explain to the patient (or guardian) that you will be available on an emergency basis during the period between oral notice of your intent to terminate and the effective date of termination (i.e., the 30-day period); and
5. Offer to make copies of the patient's records upon receiving proper request.

All of these items should be *confirmed in a letter* from the orthodontist to the patient in *all cases*. A sample letter is attached.

In the case where the termination is based upon the patient's failure to attend appointments, there are additional steps that should be followed. An orthodontist should first attempt to telephone the patient, and document the file as such. If unsuccessful after a reasonable length of time, then the doctor should forward a letter to the patient containing the above items, except that the letter should state that you are confirming the *patient's* termination of the relationship by virtue of failing to appear for appointments (as opposed to your termination). This letter should be mailed certified mail - return receipt requested. If the letter is unclaimed, retain the *entire* envelope package, and mail the same letter (with revised date) via regular mail in another envelope.

Removal of Appliances

The orthodontist should be very cautious in removing appliances in connection with terminating the doctor/patient relationship. A doctor should never remove appliances solely as a punitive measure incident to termination (i.e., for non-payment). However, such removal may generally occur where the patient requests the removal *in writing* (after being advised of the consequences *in writing*), the removal of the appliances would be timely on the basis of the patient's normal course of treatment *without regard* to the reason(s) giving rise to termination, there will not be any negative orthodontic or medical effects resulting from such removal, or leaving the appliances in place would cause ramifications more adverse to the patient than would occur if the appliances were removed. If an orthodontist removes any appliances, a release of liability form should be obtained from the patient for such removal.

DISMISSAL LETTER FOR ACTIVE PATIENT

Dear _____:

As we have discussed, this letter will confirm that as of _____ **(at least 30 days from date of letter)** I am withdrawing from further professional attendance to **(Patient's Name)** orthodontic needs because of **(State Reason)**. The status of your treatment is **(Complete)**. Since **(her/his/your)** dental condition requires further treatment, I urge you to immediately seek the care and treatment of another orthodontist. If you do not, serious consequences could occur. I will assist you in locating another orthodontist if you desire.

I will be available to attend to your orthodontic needs until the above date on an emergency basis only. Should you properly authorize the release of our records, we will be happy to forward them to the orthodontist of your selection.

I regret having to take this action, but I feel that I have no other option.

Sincerely,

Dr. _____