

Ethical Considerations when Selling a Practice

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Case Study No. 16

The owner of a successful practice is ready to present the potential buyer a purchase agreement for the sale of the practice. Typically, the buyer will be an optometrist employed in the practice (insider) or an individual who has had no prior connection with the practice (outsider). The primary ethical dilemma the seller often faces is the methodology of notifying patients of the impending change of ownership. The case here primarily focuses on the sale of the practice to a new outside owner, but the principles also apply to an employee or associate working in the practice who will become the new owner.

Discussion:

When selling a practice, optometrists should plan well in advance of the projected date to enable them to achieve a successful outcome for both the seller and buyer. Most brokers and consultants will advise that this process should begin several years prior to the intended sale. Much of this effort will be directed at developing a successful exit strategy to arrange a smooth transition for the new owner, the office staff and most importantly the existing patients. A successful planning effort should enable the selling doctor to maintain the practice volume and improve systems in order to make the practice more valuable and marketable. Working with the appropriate professionals will be important when planning the legal and business aspects of the sale including the practice appraisal, tax considerations and contracts.

There are legal aspects to the transition of a practice and some details that are beyond the scope of the AOA Ethics and Values Committee. Yet many of the action items involved have both ethical and legal obligations. Keep in mind that additional consideration must be given to address any state laws for how patients are informed or for how medical records are handled when a doctor leaves a practice.

The potential new owner of the practice will be making one of his or her biggest career decisions and should likewise develop a solid entrance strategy. The strategy will include appraising the value of the practice, financing the purchase, evaluating the accuracy of business transactions, managing the office staff and successfully taking over the care of new patients. The transfer of patient files to the new doctor and notification to patients must be carefully orchestrated and handled in an ethical manner to make the transition as seamless as possible. The selling doctor has an ethical responsibility to notify the patients the doctor is selling the practice and to provide to them options for obtaining continued medical care. Ideally, the selling optometrist will build a level of confidence in the patients that they will be receiving quality, personalized care from the new doctor taking over the practice. The legal agreement between the buyer and seller should clearly detail the manner in which patient records will be transferred and how patients will be notified. It is realistic to set an expectation that 70% or more of the patients will continue seeking care in the practice with the new doctor (1). The values of honesty, trustworthiness and integrity apply when the transition is handled in an ethical manner by the seller. The optometrist purchasing the practice will be seeking a smooth transition to maintain confidence of the patients

and office staff. Maintenance of the patient base will also contribute to the financial viability of the practice and the prospect of future growth.

When preparing the transition to a new practice owner, both parties should reach consensus on the timing and nature of communicating the change to various parties, and document the provisions in writing to avoid misunderstandings.

Patients:

After the legal documents of sale have been signed, the seller will need to attend to the process of informing patients of the impending change. Consideration should be given to explaining the reason(s) for selling the practice, the timing of the transfer, and how the new doctor was selected to take over the practice. The parties should agree on the method(s) of delivery of the communication to patients - whether by electronic means (email, website, and social media), letter, postcard, or only when appointments are made. Advance notification to patients is important and should occur within a timeframe of two to four months prior to the actual transition. The costs of communicating this change should not take precedence over the need to inform patients and to reassure them of continuing quality of care with the new doctor. Typically, close relationships have been developed with the patients, and many could display unpredictable reactions ranging from sadness to perhaps even anger. Factor some time to also absorb these potential reactions.

An introductory fact sheet with helpful information about the new doctor including education, experience, and any appropriate personal details may be shared with patients to build their confidence in the new provider. The seller may also wish to consider the value of personally explaining details of the impending changes to patients seen in the office. Another option to facilitate a smooth transition might be for the buyer to spend some time in the office meeting with staff and patients as the personal connection resonates differently than when patients receive a written notice of the new practitioner.

Notifications in writing, a door notice, and public announcements through newspaper, social media and/or website can also be part of a comprehensive communication plan.

When selling a practice the doctor is severing the professional relationship with patients. According to the AOA Standards of Professional Conduct, referring to *Patient Abandonment*: "Once the optometrist has undertaken a course of treatment, the optometrist should not discontinue treatment without giving the patient adequate notice and the opportunity to obtain the services of another eye care provider. Optometrists are responsible for ensuring appropriate follow-up care when not available to render such care" (2). Patients in this category should be notified expeditiously of the owner's departure date and should be given advance notice about the new optometrist who will be providing follow up care. In the case of an office closing, it may be wise to provide a list of alternate providers in one of the communication pieces.

The seller and buyer need to determine the cut-off for "active patients" in the practice, and this typically extends to the past four years. Notification to these active patients should provide at least 60 days' prior to the transfer of ownership, when possible. In addition to introducing them

to the new practice owner, the notification also should allow patients the opportunity to obtain alternative care, after the current owner leaves the practice. Patients should also be informed that copies of their medical records could be sent to a practitioner of their choice, with written consent and payment of a reasonable fee, if applicable. As a general rule of thumb, unless the patient is a minor, Brian Atlas, staff attorney for the AOA, recommends it is best to keep patient records available for a minimum of 10 years to be on the conservative side. Be sure to double check your state's laws relating to medical record laws - minimum medical record retention periods. As the seller, you may have additional legal requirements related to notification of non-active patients. Note that these legal requirements may differ for different states.

Office Staff:

The parties involved should also consider the needs and feelings of the staff members in a transition of care or closure of a practice. Staff members could be surprised or shocked by a change. Their thoughts and feelings should be respected as they are also important stakeholders in the process. Adequate notice should be provided to those involved so that they have time to process the change that will be occurring and to consider options for themselves for employment.

An initial action could be to organize a staff meeting to notify employees of practice transition or closure. Consideration should be given to plan for hiring temporary staff members if current employees leave prior to the transition date (3).

Referral Sources:

Let the colleagues that you work with, or refer to, know of your decision to close as soon as possible and with a suggested 60-day minimum notice. The access of medical records and any other needed information should be explained so that peers are aware of the process to obtain any documents needed for patient care.

Others Parties:

Your state optometry board, credentialing organizations, and third-party insurers, along with your vendors and laboratories are among others who should be notified. Refer to the [American Academy of Family Physicians](#) recommended checklist for the stakeholders who might need to be contacted in the transition of care or closure of an office. (3)

Closing:

Situations of a departing physician occur for various reasons and may involve strong emotions for stakeholders. Yet the main consideration should address the concerns of the patient to allow access of the information of a provider change and to ensure that access to the patient records is not blocked. Optometrists should develop a well-constructed communication plan to help those involved make informed decisions related to their future care and plans. The transition of care should be accomplished in such a manner that allows patients sufficient time to secure the services of the optometrist of their choice. Failure to notify patients of an optometrist's departure

from or closure of a practice may result in a claim of abandonment and possible licensure actions by a state board of optometry (4). The patient cannot be abandoned.

References:

1. <https://sellingapractice.com/smooth-transition-medical-practice-sale/> retrieved on April 17, 2019.
2. https://www.aoa.org/Documents/about/Standards-of-Professional-Conduct_Adopted-June-2011.pdf
3. https://www.aafp.org/dam/AAFP/documents/practice_management/admin_staffing/ClosingPracticeChecklist.pdf retrieved on April 17, 2019.
4. https://www.isms.org/News_and_Publications/Publications/Physician_Advocate/2017/09/29/Closing-Medical-Practice2017/

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