

The Dentist's Role in Forensic Identification:

The Release of Dental Records & Radiographs, and Denture Labeling

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Council on Dental Practice



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THE COUNCIL ON DENTAL PRACTICE

The mission of the Council on Dental Practice is to recommend policies and provide resources to empower our members to continue development of the dental practice, and to enhance their personal and professional lives for the betterment of the dental team and the patients they serve.

Disclaimer It is the intent of this publication to offer dentists some tips on releasing dental records and radiographs, and about denture labeling in connection with a forensic investigation. The information provided here is for reference use only and does not constitute the rendering of legal, financial, or other professional advice or recommendation by the American Dental Association. Many of the issues discussed here may be governed by state law and dentists should consult with an attorney before complying with a request to release dental records in his or her possession. Reference to an organization or the listing of a website link does not constitute an endorsement of that organization, its affiliates or products.

Introduction A dental practice may be contacted by law enforcement officers or federal agency representatives who are operating on instruction from a medical examiner / coroner's office, law enforcement or an emergency management agency following a mass disaster or in a case involving an unidentified body or remains. Investigators' initial job is to quickly collect dental records to aid in victim identification. Dental records and radiographs are generally sought in cases when conventional identification such as visual or by fingerprint is not possible.

Only identified bodies or remains may be released to families for burial or cremation. In criminal cases positive identification is required. Positive identification may allow family members to proceed through the grieving process. In addition, positive identification allows legal and financial considerations to occur such as remarriage or probate.

A dentist who gets a request to provide dental records in a forensic investigation should cooperate with authorities who properly identify themselves and who present the dentist with a valid, properly served warrant, court order, subpoena or administrative order. State law, and possibly the HIPAA privacy regulations, determine the circumstances under which records may be released in the absence of a valid warrant or court order. Dentists may wish to consult with their private attorney in dealing with these situations.

The American Dental Association's policy **Dental Radiographs for Victim Identification** (2003:363) gives guidance with regard to dentists making available original records to authorized investigators attempting to identify a disaster victim:

Resolved, that the ADA actively promote to practicing dentists the importance of providing, as permitted by state law, radiographs and original records of patients of record that are requested by a legally authorized entity for victim identification which will be returned to the dentist when no longer needed, and be it further

Resolved, that copies of these records should be retained by dentists as required by law.

ADA Policy **Dental Identification Efforts** (1985:588) encourages dental societies and others to assist in forensic investigations. The policy states:

Resolved, that the ADA encourage dental societies, related dental organizations and the membership to participate in efforts designed to assist in identifying missing and/or deceased individuals through dental records and other appropriate mechanisms.

HIPAA Privacy Rule and Release of Protected Health Information Dentists who are covered under the HIPAA Privacy Regulation (Health Insurance Portability and Accountability Act) generally may release dental records or make disclosures from the record to law enforcement officials under the regulation without patient authorization provided they present a valid, properly served warrant; court order, subpoena or

administrative request. In the case of an administrative request two conditions generally must be met: 1) the information sought must be related to a legitimate law enforcement inquiry; and, 2) be reasonably limited to the scope of that inquiry. The HIPAA privacy regulations also permit dentists covered by the Rule to release patient records and make disclosures to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by state law.

Under HIPAA, a covered entity may use professional judgment to determine when it is appropriate to release clinical records to a family member for identification purposes since the HIPAA regulations indicate that such disclosures may need to be limited to directly relevant information. The most prudent option might be that the dentist in consultation with his or her attorney, if necessary, limit a disclosure to just those records or data necessary for victim identification.

Depending on the circumstance of the request, the celebrity of the patient for example, prior to release, a dentist (or the Privacy Officer in a dental practice) might wish to seek permission from the person(s) named in the record as Next of Kin.

A dentist may need to collect emergency contact and next-of-kin information from each new patient, and ask existing patients at least annually about any need to alter or update emergency information in the dental record about them; or any special instruction or restrictions they may elect (allowable by law) concerning the release of their personal health information to others.

Releasing The Oral Health Record

While dentists are the owner of the dental patient records in their possession (physical or electronic), a patient generally has a legal right of access to the information contained in their own dental record or in that of a dependent family member. They may have a further legal right to restrict disclosures or release of the record. Consequently, dentists need to become familiar with state and federal requirements and formulate record release policies and procedures specific to their practice. A record release and disclosure policy in an emergency could allow access to the dental records by family members of missing or unidentified persons, or to law enforcement. Written procedures based on your policy should appear in your practice's office manual. Such procedures could help ensure necessary access or disclosure while simultaneously protecting dental record privacy.

Another good idea when releasing originals, is to record for your own use, which documents you intend to release. Some dentists in fact, indicate a count on the front of the dental record of how many records are included inside if the number is more than just a few. Recording the count could help investigators receiving the records know that they got every document in a large dental file. Later, once the identification is made and the investigation is closed, and records are returned, it could help the dentist come to the same conclusion.

Oftentimes, photocopies of written records are acceptable to a recipient unless originals are specifically required or authenticity is in dispute. If investigators agree to accept photocopies of written dental records, you should provide crisp, clear copies that include *both* sides of any document containing or providing information on two sides. If a single document for copying has multiple pages, in a consistent manner, copy and number each page. Prior to releasing copies, make sure that each page identifies the individual in question and the dentist providing the record. If necessary, use a rubber stamp with the dentist's contact information on it, but do not obscure what is on the page with careless stamping.

Whenever possible, a dentist should release original records and radiographs in person, not by mail. It may also be a good idea for the dentist to obtain a receipt.

A dentist with sufficient reason may choose to restrict (except to the patient) release or disclosure of some of the information contained in the dental records to authorized entities presenting a valid, properly served warrant, court order, subpoena or administrative request. Unless specifically directed, a dentist might choose, for example, to not disclose a summary in the record of a sensitive conversation that is unrelated to identification.

Types of subpoenas:

- A “subpoena *duces tecum*” is an order for the dentist to appear in person with the required dental records. Check with your own attorney. In some states, a personal appearance may not be necessary.
- A “subpoena *ad testificandum*” is a written order demanding that a dentist appear and give testimony. This may be testimony at trial or a court hearing or by deposition. Again, consult with your attorney.

Before releasing any documents, original or copies, it is important to be certain to retain a duplicate set of any released documents. This will help the dentist to confirm the return of all records once the identification is made, and provide a record of what was produced while permitting the dentist at the same time, to maintain a file in the dentist's possession.

If a requested record is “misfiled” or lost within your practice and cannot be located, the dentist should report the result of the unsuccessful search to requesting authorities as soon as possible.

Inactive dental records kept off-site or on microfiche may require more time to locate, however, a dentist responding to a valid subpoena may be required to produce the records by a date specified on the subpoena and within the time frame allowed by law. If the dentist is unable to comply with the subpoena or order within the specified time frame, he or she should immediately contact the requesting official to explain the situation. An attorney can be invaluable in dealing with these situations.

A dentist who refuses to comply with a final, valid, properly served warrant, court order, subpoena or administrative request for records could be found in contempt of court.

A dentist who refuses to comply with a final, valid, properly served warrant, court order, subpoena or administrative request for records should appear in court to contest disclosure and explain the basis for refusing before any sanctions for failure to comply are imposed. Refusing to comply is very serious and not an ordinary option. You should not refuse to comply, for example, without first consulting your attorney for local court procedures.

Releasing Dental Radiographs

If requested, a dentist should release the original radiographs of a patient to properly authorized investigators. Even a very old radiograph in good condition might assist investigators in identifying a victim in a forensic identification case.

Most duplicate or printed radiographs are not of diagnostic value and could delay victim identification.

Radiographs include bitewings, occlusals, periapicals, panoramics and cephalometrics. If other radiographs of the head and neck of a patient are known to be held by a hospital or specialist, a dentist should give contact information so that investigators can reach these colleagues or institutions to collect additional information.

Denote “right” and “left” on mounted radiographs or how you read the indicator bubble. Indicate the date of exposure as well. For copied two-dimensional paper records there is no raised bubble to read, so labeling left and right could become critical whenever the paper copy is diagnostic.

Label any envelope containing radiographs with the patient’s name, social security number, if known, and a count of the number of individual radiographs contained inside. To prevent loss of content seal each envelope containing loose radiographs before releasing them to authorities. Again, keep track of precisely which records are released.

Frequently, authorized investigators working to identify a body; the remains of a recovered missing person; or mass fatality victims, may wish to clarify or confirm information with the dentist who released the victim’s radiographs, so you should place your name, telephone number and address prominently on any radiographic envelopes or mounts that you release.

Another way to denote radiographs as from your office is by securely attaching your business card to each mounted radiograph or envelope. However, *do not* staple through any radiographs.

Release a suspected victim's diagnostic casts if they are available as identifications have even been confirmed from incidental information such as rugae patterns on submitted casts.

Your patient's name and date of impression should appear on the casts. However, do not use pencil as pencil marks can come off or smudge during handling, possibly delaying a positive identification. Since diagnostic casts are breakable, before release they should be securely wrapped in bubble wrap or loose Styrofoam inside a case box with the dentist's contact information on the outside.

Suggestions for Better Record Keeping

Authorized investigators who acquire dental records in order to eliminate or positively identify a victim in a forensic investigation report that they too frequently encounter poorly kept records that contain errors or are incomplete. All states have patient record keeping requirements. At a minimum, dentists should follow the standards required by law in the jurisdiction in which they practice.

The dental patient record generally should contain identification data, medical history, dental history, clinical examination data, diagnosis, treatment plan, informed consent (or refusal); and documentation about treatment, including dates, diagnostic test results, person(s) providing treatment, relevant medicaments used and/or prescribed.

Additionally, referral information, observations, comments from patients and significant conversations with others about the patient are typically recorded. This listing of patient record components is not meant to be all-inclusive as there may be other specific state or institutional (dentists working in hospitals or federal facilities) record keeping requirements that apply.

A Few Do's and Don'ts About Record Keeping: Do not use pencil for entries as penciled lettering could rub off or smudge during handling and possibly delay positive identification. Instead, use a permanent ink to record the events of care into the dental record.

If you make a mistake entering data into the dental record, *do not attempt to erase or white out errors*. Simply cross out the information with a single line. Add your initials, and then enter on the next line the correct information, again adding your initials so that it is possible to determine who made each entry. Some states have laws about who can make entries into the record, however, whenever a dentist does allow staff to make entries on his/her behalf, the dentist should check the entry as soon as possible.

Avoid the overuse of abbreviations, acronyms or arcane symbols in record keeping. All too often they cannot be quickly interpreted and require that an investigator make a telephone call to the dentist for an explanation of meaning. This could delay identification.

Entries in the record should adequately and clearly document the events of care and inform the reader about the patient's history, health, dental treatment and relevant matters such as the name/address of previous dentists, if known. Brevity along with thoroughness is a hallmark of the excellent record keeper.

Chart descriptive information about teeth and restorations, including where restorations are located on teeth; which material was used; periodontal measurements and conditions when appropriate; anomalies such as wear patterns on teeth from pipe smoking, bruxism, etc.; or other features such as the presence of tori or diastemas; Cusps of Carabelli; or distinctive rugae---any of which could potentially be useful in positively identifying individuals or remains with no dental restorations.

If you are asked to provide dental records in a forensic investigation, gather requested records from your office as rapidly as you can because family members, media and community leaders expect victims once recovered to be quickly identified. Your attentiveness could be your last service to a deceased patient and family.

Denture Labeling in Forensic Investigations

Denture labeling of new or existing dental appliances is helpful to locate the denture wearer inside of institutions where patients frequently misplace their appliances. However, denture labeling is also particularly useful to investigators attempting to identify recovered bodies or remains; in identifying persons who are unconscious; or identifying persons who are suffering amnesia. As a result, at least 21 states (see following list) require that dentists label complete and partial dentures with the name of the wearer (or another identifying mark, i.e. social security number, driver's license number). Check your state's law (typically, state Dental Practice Act) for any additional or different requirements. In general, using a combination of name and identifying number inside a denture may best help avoid misidentifications or delays.

An all-acrylic resin appliance such as a full denture or an all-acrylic partial denture (or orthodontic appliance), prior to delivery, could be inscribed with the patient's full name on a substrate (paper, metal) and sealed inconspicuously into the surface of a denture by various processes. Inserting only the denture wearer's initials into the appliance might delay identification if there are many other fatalities, partial incineration, fragmentation or commingling of remains.

Cobalt-chromium appliances, unlike acrylic, resist melting even in some cases of incinerated remains. However, most dentists cannot mark cobalt-chromium appliances themselves chairside on account of the hardness of the metal. As a result, some specially equipped laboratories using a laser or other methods can etch a patient's name or an identifying number into the metal surface of a partial denture before returning the appliance to the dentist for inserting. Check with your dental laboratory for details. An extra fee might apply.

If you previously inserted a labeled complete or partial denture into the mouth of a subject undergoing forensic investigation, you should indicate to investigators where on the appliance they might look to find an inscribed name or other marker. The ADA has policy favoring denture labeling for identification purposes. It reads as follows:

ADA policy (1979:637) **Identification Through Prosthetic Devices**

Resolved, that the American Dental Association urge constituent societies to actively support the use of uniform methods of marking dental prosthesis for forensic identification purposes.

At least 21 states require dentists to place identifying marks on dentures. Those states are:

States Requiring Denture Labeling		
Alaska	Maine	New Jersey
California	Massachusetts	North Dakota
Georgia	Michigan	Ohio
Illinois	Minnesota	Texas
Indiana	Missouri	Washington
Kansas	Montana	West Virginia
Louisiana	Nevada	Wisconsin

In addition, New York requires dentures to be marked if the patient makes a request.

Annually check the readability of an identifying mark on a denture. Re-mark if necessary. The ideal marker should be permanent, legible and not interfere with the operation, fit, feel, appearance or strength of the appliance.

DMORT

DMORT (Disaster Mortuary Operational Response Team) is a program of the U.S. Department of Homeland Security. It is a federal level response team designed to provide mortuary assistance at a mass fatality incident. In general, a mass fatality is defined as an incident where more deaths occur than can be handled by local resources. DMORT works under local jurisdictional authorities such as Coroner/Medical Examiner, Law Enforcement, or Emergency Managers. DMORT responds in a mass fatality *only* when requested by a municipality through appropriate federal channels.

DMORT is composed of over 1,000 private citizens some of whom depending on the size and location of a mass fatality incident may be activated for the purpose of locating, identifying and returning loved ones to families. The Federal Government compensates them for their duty time as temporary federal employees. Teams include forensic

pathologists, forensic odontologists, forensic anthropologists, fingerprint specialists, funeral directors, morticians, embalmers, medical records technicians and transcribers, X-ray technicians, mental health specialists, security and administrative personnel, and support personnel.

In large-scale fatalities, DMORT members may help to identify victims by examining recovered dental remains. In the event of an aviation disaster or similar incident involving large numbers of fatalities, a DMORT team called in to help local authorities, might contact a dentist to obtain antemortem (before death) patient information or to clarify previously gathered information. It is they who also have the difficult job of deciphering illegible handwriting; obscure abbreviations, unapparent codes or acronyms; and sometimes, translating foreign languages and abridged summaries in the records in order to make positive identifications.

Many DMORT teams use the following dental information request form (developed by the Pennsylvania Dental Association Identification Team - PADIT) in order to obtain original dental records from dentists for victim identification.

DMORT DENTAL TEAM
Request for Clinical Dental Information

Dear Doctor,

Please review the following items listed below, as they are essential in the identification of

 Address _____

 SSN: _____ DOB: _____

who is thought to be a patient in your office. We believe this individual may be involved in an incident in which visual and fingerprint identification may not be possible. Therefore, in order to help with the identification of this individual we require your cooperation in obtaining **original dental records and radiographs**. (Duplicates are not acceptable) Please forward all available records and radiographs to the officer or courier present. Or send via overnight service to the address on the back. All items will be returned following the identification process. Please consider this request to be **CONFIDENTIAL**.
 Thank-you.

_____ Dentist's Name		
_____ Office Address		
_____ City	_____ State	_____ Zip Code
() _____ Office Phone		
() _____ Home Phone		
() _____ Beeper/Cellular Phone Number		
_____ E-Mail Address		

Doctor, please review the above information and make corrections if necessary. Staple your business card in this spot. Also include a beeper or cellular phone number if you have one. It may be necessary to contact you after business hours for details in order to facilitate the identification.

DENTAL RECORDS REQUEST

Please indicate below records you are forwarding. Please indicate right and left on mounted radiographs. Please sign and indicate date records sent or given to courier

- | | |
|---|--|
| <input type="checkbox"/> All dental /periodontal charts
<input type="checkbox"/> All bitewing radiographs
<input type="checkbox"/> All periapical radiographs
<input type="checkbox"/> All panoramic radiographs
<input type="checkbox"/> Other radiographs (Cephs, etc.)
<input type="checkbox"/> Dental models
<input type="checkbox"/> Clinical progress notes | <input type="checkbox"/> Specialist referrals, including names addresses and telephone numbers.
<input type="checkbox"/> Hospitals where radiographs of head and neck may have been taken.
<input type="checkbox"/> Patient's insurance company, including address, phone number and insured person if not patient.
<input type="checkbox"/> Please label radiographs with patient name and date taken. |
|---|--|

 Signature _____ Date

Please turn to other side

ADDRESS TO RETURN DENTAL RECORDS

DMORT Region

ATTN: _____

The DMORT representative requesting these records may be contacted by calling:

Cellular _____
FAX _____

**COST FREE PICKUP BY COURIER
MAY BE ARRANGED BY CALLING:**

This method is preferable as it will permit the most rapid delivery of the dental records. Please call and a courier will pickup the records at no charge.

WEBSITES AND INFORMATION RESOURCES ON FORENSIC IDENTIFICATION

Books

Bowers, C. Michael Forensic Dental Evidence. San Diego, CA : Elsevier Academic Press; 2004. ISBN: 0-1212-1042-1 <http://www.elsevier.com>

Stimson, Paul G. and Mertz, Curtis A. editors. Forensic Dentistry. New York: CRC Press; 1997.

Training

Armed Forces Institute of Pathology
202-782-2100
Washington, D.C.
<http://www.afip.org>

University of Texas - Southwest Symposium on Forensic Dentistry
Health Science Center
San Antonio, TX
210-567-3177
<http://cde.uthscsa.edu/>

The Council on Dental Practice of the ADA sponsors frequent training programs and conferences on basic dental forensic topics and techniques. Call the Council at 1-312-440-2895.

DMORT

<http://www.dmort.org>

Professional Societies

American Society of Forensic Odontology
<http://www.asfo.org>

The *Manual of Forensic Odontology* produced by the ASFO is available at the site for purchase. Member price \$53. Non-member price \$79.

American Board of Forensic Odontology

<http://www.abfo.org>

The *Diplomate's Manual* produced by the ABFO is available at the site for free downloading.

American Academy of Forensic Science

<http://www.aafs.org>

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