

Additional Materials: Potential rule language for naming a successor for care of records

447.02(5) Except as provided in ss. [447.058](#) and [447.063](#), nothing in this subchapter may be construed as authorizing the examining board to regulate business or administrative support functions or services, that do not constitute the practice of dentistry, dental therapy, or dental hygiene, provided to a business that provides dental or dental hygiene services.

As a reminder, the above statute is the overall framework we have to work within for writing this rule.

447.063 Preservation and transfer of patient health care records.

447.063(1) A person who manages or controls a business that offers dental, dental therapy, or dental hygiene services, including management or control of a business through which the person allows another person to offer dental, dental therapy, or dental hygiene services, shall preserve patient health care records, as defined in s. [146.81 \(4\)](#), for an amount of time determined by the examining board by rule. (10 years.)

146.819 Preservation or destruction of patient health care records.

146.819(1) Except as provided in sub. (4), any health care provider who ceases practice or business as a health care provider or the personal representative of a deceased health care provider who was an independent practitioner shall do one of the following for all patient health care records in the possession of the health care provider when the health care provider ceased business or practice or died:

(b) Provide for the deletion or destruction of the patient health care records.

“Provide for the destruction of the records” This could potentially be seen as in conflict with, or different from, the above statute 447.063 (1) and the 10-year record retention requirement.

Proposed code edits to add into the rule, in redline below:

DE 8.035 Preservation of patient health care records. (1) A person who manages or controls a business that offers dental, dental therapy, or dental hygiene services, including management or control of a business through which the person allows another person to offer dental, dental therapy, or dental hygiene services, shall preserve patient health care records for at least 10 years from the date of the last entry. The treating dentist or dental therapist is also responsible for ensuring the records are preserved, as required under s. DE 8.03.

(a) As part of the practice of dentistry, if the treating dentist or dental therapist ceases practice or business during the 10-year record retention time of any patient health care records, the treating dentist or dental therapist shall ensure the records are transferred to a subsequent dentist who will assume responsibility for the records.

(b) As part of the practice of dentistry, a dentist [or dental therapist] shall [preemptively] designate a successor dentist who would assume responsibility for the dentist's [or dental therapist's] patient health care records in the event of the dentist or dental therapist ceasing practice or business. [The name of the designated successor dentist shall be noted in the patient health care record.]

As always, the parts in brackets are optional parts that could be removed or changed. My thought is that this would only require the successor dentist to assume care of the records, not necessarily the whole patient.

I'm not sure if the board would also want to require dental therapists to name a successor. It is an option written in the (b).

DE 8.05 ~~Preservation or destruction of patient health care records.~~ ~~The preservation or destruction of patient health care records shall be in compliance with s. 146.819, Stats.~~

Management of records upon ceasing practice or business. As required under s. DE 8.035 (1) (b), as part of the practice of dentistry, a dentist [or dental therapist] shall [preemptively] designate a successor dentist who would assume responsibility for the dentist's [or dental therapist's] patient health care records in the event of the dentist or dental therapist ceasing practice or business. [The name of the designated successor dentist shall be noted in the patient health care record.] As part of the practice of dentistry, upon ceasing practice or business, the treating dentist or dental therapist shall ensure the records are transferred to a subsequent dentist who will assume responsibility for the records.

Proposed creation of DE 8.06 – potential addition in redline (the idea of requiring a “records custodian”)

DE 8.06 Dentist or dental therapist responsibility for ensuring compliance. A dentist or dental therapist associated with a dental practice or clinic is responsible for ensuring the practice or clinic is operating in compliance with state and federal law and code pertaining to patient health care records. or that the clinic has designated a dentist or dental therapist who assumes full legal responsibility for such compliance.

In my opinion, this might be more difficult to pass as a rule, because it is harder to make the case that it is part of the “practice of dentistry” to be responsible for other dentists’ records. We can try this option above or try creating a separate section DE 8.07 to express this idea of a designated “records custodian”