



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.

PRACTICE COVERAGE AGREEMENTS IN CASE OF DEATH OR DISABILITY

Because most orthodontists are in solo practice, it is inevitable that the average orthodontist will have to determine how patients can be cared for when he or she must leave the practice for an extended period of time. For example, what happens to your patients if you become temporarily disabled? What if you take an extended vacation or must tend to a family emergency? Many solo practitioners in the same area turn to the standard practice coverage arrangement. In this situation, each member of the group agrees to cover for any other member who must be absent for more than a brief period. The requirements for participation in the group often range from everyday friendships to location in the same area.

Such an arrangement can oftentimes work without any problem. There are instances, however, where unique or challenging circumstances can arise with a particular patient or with the management of the practice. In addition,

practice coverage arrangements appear relatively simple at first glance, but actually involve numerous complex issues. If care is not taken to carefully and properly structure the relationship among all members of the group at the outset, these issues can turn an innocent and worthwhile relationship into an unexpected ordeal. Such an unanticipated result is not uncommon.

The prudent group will insist that all members confirm the terms of the arrangement in writing. This approach will reduce the likelihood of disputes over such things as patient treatment responsibilities and the circumstances that trigger coverage. In addition to the standard terms of any practice coverage agreement, such as names of the parties, dates, addresses and signatures, the group should also address and agree upon more intricate issues. While each case is different, the following represent some of the primary items that should be included in most practice coverage agreements.

Statement of the Events Giving Rise to Coverage:

The group should specify the circumstances that require members to cover for another's practice. For example, the agreement might state that the parties desire to obtain coverage in the event of temporary disability, death, chemical dependency, vacation, family emergency or other similar reasons. Some of these events (i.e., disability) should also be defined.

How Coverage Commences:

The Agreement should contain specific guidance as to how coverage on behalf of a member begins. Generally, it would probably be advisable to provide that coverage starts by written or oral notice from the member of the group who will be absent. It can be provided that the notice is to be given to the entire group, a select member of the group from whom the absent member desires to obtain coverage, or to a member of the group who is chosen by all members as the "clearinghouse" and will delegate the patient(s) to the other members. An additional provision should allow for coverage to begin when any group member becomes aware of an event involving any other member for whom coverage may be required. For example, if a member of the group becomes incapacitated, and another member learns of it, the agreement should include a "take charge" mechanism for the remaining members to care for patients of the affected member.

Method of Including Additional Members:

The agreement should indicate if any new members can join the group, and if so, the manner of their inclusion. For example, if new members are allowed, the provision could state that they may enter the group upon a majority vote. Geographical or other requirements (i.e., board certification) may also be included as requirements for joining. Contrariwise, the group should consider whether it desires to include a provision on expulsion of an existing member. This issue may arise if a member loses his or her license to practice dentistry, is determined to have committed ethical violations, or is found guilty of a crime that evidences the inability to properly practice orthodontics.

How the Agreement Terminates:

The agreement should reference the manner in which it will expire. For example, it might provide that it will continue until the earlier of any of the following occur: retirement of a member, relocation of a member's practice, written notice of intent to withdraw, loss of license, or bankruptcy by a member. The agreement could also provide that it will continue among the remaining members (if any) until a certain specified time (i.e., 5 years).

General Obligation of Support:

Each member of the group should agree in the document to "devote such clinical and administrative assistance and support as is necessary" to the absent doctor's practice until certain events occur. For example, the agreement might provide that it will end when the earlier of any of the following occurs: the event giving rise to coverage ends, the practice is sold, or the agreement expires. It should also be specified where the patient treatment can occur (i.e., absent doctor's office, your office or either place).

Defined Coverage Duties:

The agreement should list the specific duties that are within the scope of the general obligation of support when covering for another member of the group. These duties might include new patient consultations, treatment plan development, communications with patients, clinical treatment and supervision of staff.

Plan for Implementation of Coverage:

Each member of the group should have a plan that will facilitate implementation of the group coverage agreement when a triggering event arises. The agreement should contain an obligation on the part of all members to have such a plan. For example, each orthodontist should have available separate letters to the member's patients, staff, and referring dentists informing them of the coverage arrangement and its duration. It would also be prudent for the agreement to contain an obligation on the part of the members to designate a particular staff person to assist in implementing the coverage arrangement.

Method of Compensation:

The agreement should state the manner in which compensation is to be paid to the members of the group when coverage occurs. Several possibilities include payment of all fees to the covering doctor(s), payment of the fees to the absent doctor, or a division between the two. (This division can also be apportioned differently based on time periods, such as a 50/50 division for the first two months and a 60/40 split thereafter, etc.) There may also be special considerations with this issue if insurance coverage or other third-party arrangements affect the absent doctor's relationship with the patients. In such cases, any member's pre-existing arrangements and contractual obligations with third parties should be reviewed and considered prior to joining the coverage group.

Copies of Records:

It is generally advisable for the agreement to provide that all necessary records will be taken by the covering orthodontist, and that both the absent doctor and the covering orthodontist will be entitled to the records generated for the patient. This requirement is necessary because of liability concerns and the fact that patients can request records from either doctor.

Prohibition on "Raiding the Practice":

The agreement should contain a provision that prohibits any member of the group from raiding, or taking any items belonging to the absent doctor's practice by virtue of the coverage arrangement. These items include equipment, assets and records, and the solicitation of patients and staff.

Insurance Coverage:

Each doctor should agree in the contract to obtain minimum acceptable limits of malpractice insurance from a reputable company, and to maintain the insurance during the term of the agreement.

Mutual Indemnification:

Generally, each member of the practice coverage group will be responsible for his or her own actions. As such, the agreement may contain a cross or mutual indemnification provision, whereby each member agrees to indemnify the others for their own acts. Members of the group should check with their respective malpractice insurance carriers to determine if coverage would be provided for liability based on a claim under this provision.

Boilerplate:

The practice coverage agreement will also contain several boilerplate terms, such as prohibition on assignment, choice of law, replacement of all prior agreements, etc. A typically standard boilerplate provision, however, takes on added importance with coverage agreements. This provision states that the arrangement is not intended to create a partnership among the participants. Because of the duties assumed by each member of the group for the other members, it is important to stipulate that no partnership arrangement is created by the coverage relationship.

Your attorney can help you analyze these and other issues. Generally, an attorney should be able to represent the entire group in formulating the agreement. A form Practice Coverage Agreement is attached. It should also be reviewed by local counsel prior to its usage. The successful practice coverage group will employ such assistance and address the issues noted in this summary and similar issues before commencing practice coverage.

PRACTICE COVERAGE AGREEMENT

This Agreement is made as of the date of signature by the last party hereto, and is entered into by and among all of the persons and/or entities who are signatories below (collectively, the “**Parties**”).

BACKGROUND

- A. Each of the Parties is engaged in the practice of orthodontics and dentofacial orthopedics in the same general geographic area;
- B. The Parties recognize that they may become disabled or die, and in such event, would be unable to maintain their individual practices;
- C. The Parties desire to provide for the continuation of orthodontic care for their patients and for the maintenance of their practices in the event of their disability or death; and
- D. Each of the Parties believes that the terms of this Agreement will accomplish these objectives, and therefore desires to enter into this Agreement.

For good and valuable consideration, including the mutual obligations of the Parties, the Parties agree as follows:

1. **DISABILITY.** The Parties agree that if, during the term of this Agreement, any of the Parties should become Disabled (the “**Disabled Party**”), the other parties (the “**Non-Disabled Parties**”) shall assume the operation of the Disabled Party’s practice until the earlier of (a) the end of such Disability, or (b) _____ months, unless otherwise agreed to extend this period by two-thirds (2/3) of the Non-Disabled Parties. For purposes of this Agreement, the term “**Disability**” means the temporary or permanent inability to perform with reasonable continuity the material duties of an orthodontist as a result of sickness, disease or bodily injury. The determination of disability shall initially be made by two-thirds (2/3) vote of the Non-Disabled Parties. If the Disabled Party disagrees with such determination, then the Disabled Party and the Non-Disabled Parties shall, within 10 days of such initial determination, each select a licensed physician, and the two physicians shall select a third physician who shall render a determination, which shall be final. If the determination concurs with the initial determination of the Non-Disabled Parties, then the Disabled Party shall bear all costs incurred in challenging the initial determination. If the determination finds no Disability, the costs shall be borne by the Non-Disabled Parties. The income from the Disabled Party’s practice shall be paid to the Disabled Party.
2. **DEATH.** The Parties also agree that if, during the term of this Agreement, any one of them should die (the “**Deceased Party**”), the other parties (the “**Surviving Parties**”) shall assume the operation of the Deceased Party’s practice until the earlier of (a) the sale or other disposition of the Deceased Party’s practice by the legal representative of the Deceased Party, or (b) _____ months, unless otherwise agreed to extend this time period by two-thirds (2/3) of the Surviving Parties. The income from the Deceased Party’s practice shall be paid to the Deceased Party’s legal representative.
3. **ASSUMPTION OF THE PRACTICE.** For purposes of this Agreement, the assumption of the practice by the Non-Disabled or Surviving Parties shall include devoting such clinical and administrative assistance as is necessary to continue operation of the Disabled or Deceased Party’s practice in the manner that it was operated prior to the period of coverage. This obligation shall include treating existing patients (i.e., only ongoing active patients with orthodontic appliances present, patients in retention, observation cases with interceptive, space maintenance or other appliances present, and cases not yet in active treatment but committed to treatment by previous tooth removal or other special circumstance making immediate treatment necessary), and making all necessary administrative and related financial decisions and transactions; provided, that the Non-Disabled or Surviving Parties shall not be required to examine or start any new patients (including patients

who have been accepted and treatment has not commenced, and observation patients ready for corrective treatment). Notwithstanding the foregoing, no party shall be obligated to spend more than one day per week to fulfill their obligations under Paragraphs 1 or 2, regardless of the number of concurrent disabilities or simultaneous deaths. All necessary staff and supplies shall be provided by the Disabled Party or the legal representative of the Disabled or Deceased Party, and the Non-Disabled or Surviving Parties shall not be obligated to provide staff or supplies. All information relating to the Disabled or Deceased Party's practice shall always be kept confidential and used only for furthering the purposes of this Agreement.

4. **ALLOCATION OF DUTIES.** Upon a determination of Disability or the death of any of the Parties, the Non-Disabled or Surviving Parties, as the case may be, shall by majority vote immediately determine the manner of coverage for the Disabled or Deceased Party's practice for the period provided for in Paragraphs 1 or 2, including the allocation of patients and duties among them. The Non-Disabled and Surviving Parties shall select from their ranks one of the Parties to coordinate the coverage. All duties and responsibilities shall be allocated equitably and equally among the Parties. The commencement of coverage for the Disabled or Deceased Party shall begin as soon as practicable after the determination of Disability or death of the Disabled or Deceased Party.
5. **PLACE OF TREATMENT.** The Non-Disabled or Surviving Parties, as the case may be, shall render treatment at the office of the Disabled or Deceased Party, except for "emergency" cases which may be treated at the location of either the Non-Disabled or Surviving Parties, or the Disabled or Deceased Party. Even though treatment may occur at the office of the Disabled or Deceased Orthodontist, nothing in this Agreement is intended to or shall create any leasehold or license interest as to such office in favor of the Non-Disabled or Surviving Parties.
6. **RECORDS.** During the period of coverage provided for in Paragraphs 1 or 2, the Non-Disabled or Surviving Parties, as the case may be, shall keep true and accurate records of all treatment rendered and of all administrative and related financial transactions effected. The originals of such records shall be maintained at the office of the Disabled or Deceased Party unless and until the practice is sold or otherwise disposed of as contemplated by Paragraph 7; provided, that any Party shall be entitled to obtain, at their expense and at any time, copies of any records made or recorded by them. In addition, all Parties shall ensure that their treatment, administrative and related financial records shall be kept in such manner so as to facilitate the coverage contemplated by this Agreement
7. **ASSISTANCE AS TO SALE OF PRACTICE.** In addition to the coverage obligations provided for above, upon request of the Disabled Party or the legal representative of the Disabled or Deceased Party, the Non-Disabled or Surviving Parties shall, during the applicable coverage period provided for in Paragraphs 1 or 2, reasonably assist the Disabled Party or legal representative in assessing and preparing the Disabled or Deceased Party's practice for sale. This assistance shall include providing lay opinions as to the value of the practice, and leads as to other individuals or entities who may be potential purchasers of the Deceased Party's practice; provided the Parties agree that none of the Parties shall be liable for any actions taken in reliance on such opinions or leads. If the Disabled Party or the legal representative of the Disabled or Deceased Party desires, any of the Parties may enter into negotiations with the Disabled Party or the legal representative of the Disabled or Deceased Party for the purchase of the practice of the Disabled or Deceased Party as long as any of the Parties who enter into such negotiations (a) disclose the same to all other Parties, and (b) refrain from providing any opinions as to the value of the Disabled or Deceased Party's practice. If the practice of the Disabled or Deceased Party is not sold or otherwise disposed of during the applicable period of coverage, then the patients of the Disabled or Deceased Party shall be divided equally among the Non-Disabled or Surviving Parties, as the case may be. Forty percent (40%) of the gross fees collected from these patients shall be paid by the Non-Disabled or Surviving Parties to the Disabled Party or the legal representative of the Disabled or Deceased Party on or before the 10th day of the month following the month in which the fees are collected, and the remainder shall be retained by the Non-Disabled or Surviving Parties.

8. **TERM.** The term of this Agreement shall end on the first yearly anniversary date, and shall automatically renew for one year terms unless all of the then-existing Parties agree in writing to terminate this Agreement. Any party may withdraw from this Agreement at any time by providing written notice of termination to the other Parties. Notwithstanding the foregoing, this Agreement may not be terminated by any party during any period of coverage contemplated by Paragraphs 1 or 2.
9. **SOLICITATION OF PATIENTS AND STAFF; CARE OF OFFICE.** The Parties agree that, during the term in which coverage contemplated by Paragraphs 1 or 2 is being provided to any Disabled or Deceased Party, they shall neither solicit nor accept into their practice any patients or staff of the Disabled or Deceased Party, and shall preserve and respect the physical premises and practice assets of the Disabled or Deceased Party.
10. **OTHER ARRANGEMENTS.** Notwithstanding Paragraphs 1 and 2 of this Agreement, nothing shall prevent the legal representative of any Disabled or Deceased Party from making other arrangements for the preservation of the Disabled or Deceased Party's practice.
11. **INSURANCE.** All parties shall maintain adequate and customary professional liability insurance covering their professional acts and omissions, including their professional obligations contemplated by this Agreement. Upon request of any other party, the Disabled Party or the legal representative of the Disabled or Deceased Party, as the case may be, shall insure that adequate and customary professional liability insurance coverage is provided to the Non-Disabled and Surviving Parties in relation to their professional acts and omissions in providing the coverage contemplated by this Agreement.
12. **INDEMNIFICATION.** Each of the Parties agrees to save, defend, indemnify and hold the other Parties harmless from any and all liability, actions, demands, causes of actions and damages, including reasonable attorneys' fees, arising out of their own acts and omissions.
13. **STATUS OF PARTIES.** Each of the Parties are independent practitioners and have entered into this Agreement on an arms length basis. Nothing in this Agreement is intended to or shall create or imply any partnership, joint venture, employer/employee or other similar legal relationship.
14. **ADDITION AND REMOVAL OF PARTIES.** Additional parties may become Parties to this Agreement upon (a) the unanimous agreement of all Parties to this Agreement, and (b) a written amendment to this Agreement by the additional parties under which they agree to all of the terms and provisions of this Agreement. This Agreement shall automatically terminate as to any Party who retires, whose license to practice becomes suspended or revoked, who is finally determined to be guilty of a crime involving moral turpitude, or who is removed for any reason, with or without cause, by four-fifths (4/5) vote of the other parties.
15. **MISCELLANEOUS.**
 - a. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, and permitted assigns.
 - b. No Party may assign this Agreement without the prior written consent of all other parties.
 - c. This Agreement shall be governed by and construed in accordance with the laws of the state of _____.
 - d. Any notice required or permitted hereunder shall be given via certified United States Mail, return receipt requested, or via facsimile, to the address of the intended recipient set forth by the signatures of the Parties below. Any notice so given shall be deemed received on the date of receipt. Any Party may change the address or number for receipt of such notices by providing notice in the same manner.

- e. If any one or more of the provisions of this Agreement shall be held illegal, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be construed as if such affected provision had not been contained herein.
- f. In the event of any dispute, claim, question or disagreement (collectively, a “**Dispute**”) arising from or relating to this Agreement or the breach thereof, the parties shall use their best efforts to settle the Dispute through consulting and negotiating with each other in good faith and attempting to reach a just and equitable resolution satisfactory to both parties. If the parties do not obtain such resolution within a period of 30 days from the date on which either party invokes this provision through written notice to the other, then, upon written notice from one party to the other, the parties shall attempt in good faith to settle the Dispute by mediation administered by the American Arbitration Association (“**AAA**”) under its Commercial Mediation Procedures before resorting to arbitration, litigation or other dispute resolution procedure. If the parties are unable to resolve the Dispute through mediation within 60 days from the date either party invokes this provision, then such Dispute shall be settled as soon as practicable by arbitration administered by the AAA in accordance with its Commercial Arbitration Rules (including the Optional Rules for Emergency Measures of Protection), who shall have the power to enter equitable judgments, including, but not limited to, specific performance, and the judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- g. The Parties shall act and fulfill their obligations under this Agreement in good faith.
- h. Each of the Parties agrees to take all necessary actions to ensure that the terms of this Agreement can be properly implemented, including communication of the terms of this Agreement to office staff and legal representatives, and executing any further agreements and documents.
- i. Each of the Parties represents to the others that there are no other agreements or obligations that prohibit his/her entry into, and ability to carry out the obligations under, this Agreement.
- j. Except as expressly set forth herein, nothing is intended to or shall create any rights in favor of any third party.
- k. If any of the Parties are prevented from fulfilling their obligations under this Agreement by act of God, civil strife or unrest, or any other event beyond the control of such Party, the Party shall be relieved of the obligation to fulfill their obligations.
- l. The obligations of Paragraphs 3 (confidentiality), 4 (payment of fees), and 6 (entitlement to records) shall survive the period of coverage provided for in Paragraph 1 and 2, and the termination of this Agreement, and shall not be merged therewith.
- m. This Agreement constitutes the sole and complete agreement of the Parties, and replaces all prior oral and written understandings and agreements.

The parties have executed this Agreement on the dates set forth by their signatures below.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

Signature: _____

Print Name: _____

Date: _____

Address: _____

Fax #: _____

Signature: _____

Print Name: _____

Date: _____

Address: _____

Fax #: _____

Signature: _____

Print Name: _____

Date: _____

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