

## **The Dentist and Divorce—Easing the Pain, Protecting Your Practice**

By  
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Nobody wants it, few expect it, but the reality is, the nationwide divorce rate is somewhere around 50% on average. Some published articles opine greater percentages for dental/medical professionals.

The medical/dental professional facing a divorce, not only has to contend with the emotional issues, and matters of custody and visitation with respect to children, but must often undergo a thorough financial examination of his practice by outside forensic experts, while he tries to maintain that practice, and serve his patients.

### **Minimizing Emotional Pain**

With respect to emotional issues, I have often helped professional clients by making them view divorce as a *legal event* that deals with property and family issues, that changes the structure of a *legal event*—marriage—which created property and family issues between the parties.

By categorizing the process as an *event*, and not the sum total of one's life, worth, or existence, the emotional pain of divorce can be more quantified, more contained, less damaging. Given the scientific and logical training of a dentist/doctor, this viewpoint is more readily embraced by them.

### **Minimizing Negative Impact on Patient Care**

With respect to the court process, what the dentist/doctor can be facing, is a system that cares little for the realities of his practice, or his care for his patients.

There are some judges that require the parties to be present in court for *every* appearance, regardless of whether or not that appearance is merely a procedural step necessitating only the attorneys be present, or a substantive appearance wherein parties' testimony may be needed.

I have seen it happen where judges will call last minute conferences requiring appearances, without concern of the full schedule of patients a dentist/doctor must minister too. Last minute cancellations of appointments are not only a detriment to the patients, but to the dentist/doctor-patient relationship.

One way of minimizing this problem, is to initially have the attorney "sound out" the assigned judge regarding appearances of the parties, and ensure that the judge knows that the dentist/doctor is not just an ordinary divorce supplicant, but has medical and ethical obligations to patients that are every bit as important—if not more—than a court's arbitrary desire to have parties appear without any real purpose.

(There are times I've had to practically *beg* a judge to be reasonable and cognizant of the unique situation of the dentist/doctor, and forgive his non-appearance. Most of the time, begging worked).

Another reality, is that quite often, appearances are scheduled well in advance, and it is important that the office managers/assistants are made aware as soon as possible that there are certain mornings *not* to schedule patients, certain days that are not available to attend conferences, seminars, or continuing education programs.

### **Streamlining Forensic Examination of The Value of the Practice**

Perhaps the most time consuming—and bothersome—incident to the divorce proceedings is the gathering of financial records related to the practice of the

dentist/doctor, so that a forensic evaluation may be had for equitable distribution purposes.

Often, the license to practice as well as the practice was obtained during the marriage, and is an item to be evaluated and distributed. In other cases, where the license was obtained prior to the marriage, but there has been an expansion of the practice during the marriage, the adversary spouse will look for a portion of the appreciation of the practice—especially in a case where she has provided services to the practice—bookkeeping, office management, etc.

A forensic examination will encompass billing records, insurance claim forms, bank statements, deposit slips, benefits, payroll records, equipment leases and purchases, tax returns, and just about any financially related document a forensic accountant can get his hands on.

It takes an inordinate amount of time to access, organize and reproduce these items--time taken away from the practice of dentistry.

How does one minimize this?

In reality, these documents might at any time be needed to apply for a loan, to sell a practice, to bring in a partner, etc. when there is no divorce pending.

They should be organized in any event, and when not under time pressure to do so. The professional should have tax returns in a file, billing records in a file, equipment leases in a file, etc.—whether that file is hard copy or electronic.

By taking some regular increments of downtime to organize documents which—divorce or no divorce—should in any event be organized, much time and expense can later be saved.

Forensic accountants charge upwards of \$300 per hour or more in New York, and the less digging for documentation they have to do, the less digging into your pocket you have to do.

If you have space in your office complex to have the examination performed there, (away from patients' eyes of course) you may want to consider that the examination be done on site. If this isn't practical, your attorney should liaison with the examiner, to insure that any records which need be returned, are promptly returned, and that privacy concerns are observed.

Given the unique privilege and privacy concerns of the dental/medical professional, there are times when protective orders may be needed to avoid any ethical violations in the divorce document discovery process. Certain records will have to have names, as well as other personal identification data redacted.

### **Avoiding Publicity**

The last thing a dentist/doctor needs is a public airing of his divorce proceedings. One has to be careful of the selection of a divorce attorney, for there are some that are would be media darlings, and look for broadcast attention regardless of the potential detriment to the client.

Readers may remember the recent Nassau County case wherein a doctor sought the return of a kidney he donated to his wife, or monetary compensation therefor, within the context of a divorce.

Much print and television time was dedicated to this bizarre claim. I was present, trying a case next door to the kidney case while members of the press were there, and the media feeding frenzy was not pretty.

The final result in that high visibility divorce was a denial of the application, and a note by the court, that in seeking compensation for the donation of an organ the doctor might have violated the public health law, and committed a crime.

No medical professional wants this kind of publicity, it can decimate a practice, and can spill over into ethical areas. Ergo, attorney selection is imperative—you may want a bulldog on your side, but never a publicity hound.

### **Conclusion**

The unique situation of the dentist/doctor within the context of a divorce, calls upon him/her to approach the emotional issues with all the scientific/logical thinking background embedded in them by their education and training, to realize an event is not an epic or an epitaph--that there is life after a divorce.

The documentary requirements of a forensic evaluation of a practice, should motivate the dentist/doctor to organize his records *now*, because even without a divorce, these records should be easily accessed, reproduced and available for any of the business/financial events which may occur in the practice.

Lastly, the dentist/doctor should be careful in his selection of divorce counsel, and avoid those who would seek self promotion over the privacy interests of the client.

### **About the Author**

W. Adam Mandelbaum, with offices in Oyster Bay, has practiced divorce and family law on Long Island for 28 years, and offers a free e-zine concerning legal issues for individuals and businesses. Contact him at [nylawman@justice.com](mailto:nylawman@justice.com)