



## CNA HealthPro

### A Confidentiality Primer for Dentists

*Confidentiality is central to the dentist-patient relationship. This article examines the rules governing disclosure of patient information in normal circumstances and after a claim has been filed.*

The dentist-patient relationship is protected by law against outside intrusion. Initiation of the dentist-patient relationship protects patient information related to health history, finances and treatment from unauthorized access.

Behind this protection is the principle that open and unfettered communication between professionals and patients is essential to effective treatment. Unless their privacy is assured, patients may be unwilling to make full disclosure of relevant facts, which could compromise care.

Case law and subsequent legislation have consistently supported the patient's right to confidentiality. Under the law, all patient communication with the dentist must be kept confidential unless disclosure is specifically authorized by the patient. However, this applies only to statements or information relevant to treatment. For example, the fact that a patient's tooth was broken in a fight would be protected, but not the patient's admission that he later went to his adversary's house and broke one of *his* teeth.

#### **Rules of disclosure**

The information in dental records is considered the co-property of the patient and the dentist, but the physical records themselves belong to the dentist. Patients or their agents are entitled to a complete copy of the records, but dentists may charge a reasonable copying fee before releasing the records.

Other parties requesting records – including licensing or regulatory agencies, credentialing panels, public health agencies, spouses and employers – must first obtain the patient's consent. These general guidelines will help minimize risk:

- Receive written authorization before releasing information.
- Keep a copy of the patient's consent form in the chart, in case questions arise later.
- Be prepared to release records in response to a properly issued court subpoena. It is advisable to check with an attorney or insurance representative to ensure that the subpoena was properly issued and that the documents are not protected from disclosure by another privilege.

#### **Confidentiality after a claim**

When a claim or lawsuit is filed by the patient, the nature of the relationship changes, and new confidentiality issues arise. The law recognizes that it would be unfair to permit the patient to sue the dentist, and then prohibit the dentist from using the records in his or her defense. The dentist is, therefore, free to discuss with those essential to his or her defense, including the dentist's attorney and insurance representative, any statements or representations made by the patient bearing on the claim. The dentist also may discuss information contained in the patient records with those designated parties. However, the dentist is required to protect patient confidentiality regarding inquiries unrelated to the claim.

The law also creates a confidential relationship between the dentist and those working to defend the claim. Once a lawsuit is filed, two confidentiality principles apply: the attorney-client privilege and the work product privilege. Together, these privileges protect defense-related communication, both written and oral, between a dentist and his or her attorney. Also, any information compiled or summarized at the request of an attorney or insurance representative is typically protected.

### **The need for discretion**

Dentists must be careful to channel all case-related communication to their designated defenders. Be cautious about what is said to the patient, as comments may be asserted by the plaintiff's attorney to have included an admission of liability by the dentist.

It is also imperative to strictly limit discussion of the claim with others. While human nature motivates us to share our problems with sympathetic listeners, dentists should not discuss with third parties any facts about the claim or any communication with their insurance representative or attorney. Discussions regarding defense strategy, expert opinions and settlement negotiations should remain strictly confidential. Any disclosure to peers or co-workers may be construed as a waiver of attorney-client privilege, giving the claimant access to information that may prove damaging to the dentist's case.

To protect patient confidentiality and reduce their own risk, dentists should keep in mind these three general rules:

- Respect patient privacy. Information shared by the dentist and patient should remain confidential, except as needed to ensure proper treatment.
- Develop and follow a formal authorization process. Written consent should be obtained by the dentist prior to releasing any records, and a copy of the consent form should be saved with the records.
- Protect attorney-client privilege. Once a claim is filed, information may be shared in confidence with one's designated defenders, but only if the information isn't disclosed to others as well.

When reciting the Dentist's Pledge, dentists vow "to maintain a relationship of respect and confidence" with their patients. Protecting patient confidentiality is a key ethical obligation. It is in every dentist's best interest to establish formal policies and procedures to guarantee the privacy of patient secrets.

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