



Action

Preventive

The Quarterly Risk Management Newsletter for Policyholders of FPIC

Winter 2000

# Dental Records Release and Maintenance

## Release of Information

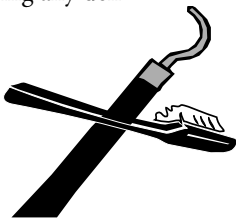
The major concern in the release of information is the possible violation of dentist-patient privilege. Privilege generally protects the confidential communication between the dentist and patient, including information included in the dental record.



The dentist and dental staff have the responsibility to protect the dentist-patient privilege except where the patient gives authorization of release, or in situations where state laws provide for the release of information without patient authorization.

In many states, privilege is said to be waived when the patient places his/her condition in an injury or liability lawsuit. The dentist is then allowed to provide records to the liability insurance carrier for defense purposes without express written permission by the patient.

If you are unable to determine whether or not "privilege" has been waived, then you should consult an attorney before disclosing any dental information without the patient's authorization or court order.



Most requests for release of information will be one of seven types:

1. Release of information to another health care professional.
2. Release of information to an insurance carrier:
  - a. for payment of health care fees
  - b. to apply for insurance coverage of some type.
3. Release of information to the patient.

4. Release of information to the patient's employer.
5. Release of information to an attorney.
6. Subpoena that includes documents.
7. Court order.

Each type (except the court order) requires a patient's authorization prior to the release of information. In some states when information is released without proper authorization, the dentist may be charged with a misdemeanor and fined.



## Exceptions

Psychiatric patients are one exception where the usual authorization by the patient may not be sufficient to release information.

Some states have specific laws that protect the confidentiality of psychiatric or mental health information and invalidate general laws regarding release.

There are also exceptions where the dentist is required by law to provide dental/patient information to the state and no patient authorization needs to be obtained.

## Patient Authorization to Release Dental Records

The authorization for release of information should be written in very simple, general terms. It should be signed and dated in ink by the patient (or authorized person in case the patient is a minor, incompetent, or deceased). Some states may have time limits covering the time frame when signed release is valid.

A written release of information should be obtained prior to requesting records on a patient's behalf from another provider.

## How to Respond to Record Requests

In today's active dental practices, dentists will receive a variety of requests related to their patient records. The dental chart is the property of the dentist. Dentists are obligated, upon request of the patient or his/her legal representative, to furnish copies of all reports or records made of the examination or treat-

Continued on next page 2

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ment, including x-rays. Furthermore, the release of copies of dental records may not be conditioned upon payment of unpaid fees for services rendered. A patient's records cannot be withheld if there is an outstanding balance. The dentist may, however, charge a fee for copying reports or records not to exceed the limit allowed where the dentist practices. Payment of copying fees may be required upon delivery of the copies. If there is no time specified for complying with the request, FPIC recommends supplying the records within (5) working days after receipt of the request.

Workers' Compensation laws vary from state to state. Your office should maintain compliance with updated Workers Compensation requirements for release of information.

## Exceptions

Some states have specific laws, which protect the confidentiality of psychiatric or mental health information, drug and/or substance abuse treatments, HIV, AIDS, and sexually transmitted disease information. In some states, these are considered extremely confidential records and require either a written release wherein the specific records are mentioned, not simply "all records," or a court order requiring release of these specific records.

There are also exceptions where the dentist is required by law to provide dental/patient information to the state without obtaining patient authorization.



## Faxing Patient Information

When your office is faxing patient information to another office, remember that this information is confidential. Your office should use a fax transmittal form when faxing confidential information and also call the receiving office after faxing is completed to verify that the information was received.

This information should be documented in the patient's record along with the person who received the fax and the time and date it was received.



A copy of the fax confirmation should be placed in the patient's dental record along with the fax transmittal form. Your office should comply with all state laws and regulations when releasing confidential information to another office.

If your office would like sample patient authorization forms, please call Sandra Strickland in our Risk Management Department at 1-800-741-3742 extension 3263.

*FPIC publishes Preventive Action on a quarterly basis as a service to its policyholders. Information in this publication does not establish a standard of care, nor is it a substitute for legal advice. The information and suggestions contained in this newsletter are generalized and may not apply to all practice situations. FPIC recommends you obtain legal advice from a qualified attorney for a specific application to your practice. This information should be used as a reference guide only.*

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