

PRACTICE ADVISORY

The Practice Advisories published by the Royal College of Dental Surgeons of Ontario (RCDSO) contain practice parameters and advice which should be considered by all Ontario dentists in the care of their patients and in the operation of their practices. It is important to note that these Practice Advisories may be considered by the College and its committees in determining whether professional responsibilities have been maintained.

Release and Transfer of Patient Records

INTRODUCTION

When a patient ceases to be a patient of a particular dentist, copies of his or her dental records may be given to the patient or transferred to another practitioner upon receipt of a written direction signed by the patient, or his or her representative. In the case of a child, in most instances, a direction signed by the child's parent or legal guardian will be sufficient.

This release and/or transfer of copies of patient records and/or radiographs, either to the new dentist or to the patient, is a legal and professional responsibility required under Ontario Regulation 853/93 made under the *Dentistry Act, 1991* respecting professional misconduct. Such transfer must be done in a timely fashion. This requirement is also supported by a landmark ruling of the Supreme Court of Canada.

INFORMATION REQUIRED

Since patients have the right of access to a copy of their complete patient dental record, dentists are required to follow the direction of a patient and provide copies of what the patient has requested.

If a patient and/or authorized representative or lawyer requests a copy of the complete file (records, radiographs, referral slips, study models, photographs, correspondence etc.), this information must be provided.

In the majority of cases, however, the information normally required by the patient's new dentist would include:

- a summary of all information pertinent to the patient's continuing treatment. This information may be satisfied by forwarding a photocopy of the patient's chart – assuming that the entries are legible and complete.
- good quality copies of any radiographs which would be of assistance to the new dentist. In most cases, the most recent full mouth series or panoramic view, and those radiographs taken within the last 24 months, would be all that is required.

It would be helpful if the patient's new dentist would assist in the efficiency of the transfer of records by indicating to the patient which records would be most helpful for his or her continuing care.

A WORD ABOUT DIGITIZED/ELECTRONIC RECORDS

The College's recordkeeping requirements respecting digitized/electronic dental records state that the system used should have the capability to provide good quality printed copies of the records and digitized images. If the new dentist or patient indicates that he or she would prefer electronic or digitized records, it would be permissible to transfer them in that form.

RELEASE OF RECORDS FOR FORENSIC USE

A dentist may be asked by the police to provide records for the identification of a deceased person, or to assist in the identification or location of a missing person.

In order for a dentist to comply with this request, the dentist must have the legal authority to do so. The legal authority for the identification of a deceased person is usually a Coroner's Warrant. The legal authority required to assist the police in the identification or location of a missing person would be a General or Search Warrant.

When a police officer comes to your office to obtain original records, he or she will have the appropriate warrant. You should request and keep a copy of the warrant, record the date, the materials handed over, the time and the name of the police officer, and the police service that the officer represents, for example, the Ontario Provincial Police, and the officer's badge number.

Unlike other requests for the transfer of records when the College advises members never to release original records, the case of a warrant is different. The College advises that it is acceptable that original records and radiographs, pertaining to the person in question, be turned over to the police officer. The College recommends, however, that copies of these records be retained on file in the dentist's office.

RETENTION OF ORIGINAL RECORDS

The record retention requirements of the College mandate that original patient records, including radiographs and diagnostic study models, be retained by the dentist owner of the practice or, in the case of a partnership or health profession corporation, the principal dentist in the office where the treatment originated. Information about this is available in the College's Guidelines on Dental Recordkeeping.

It is important to note that the responsible practitioner must retain his or her original records for the prescribed 10-year retention period and make, or cause to be made, a high quality duplicate set of records, including radiographs, that would then would be forwarded to the new dentist or to the patient, if requested to do so.

In the rare situations involving urgently needed or specialized care, when records are required by warrant or by the College's Complaints Committee, original patient records may be released. If they are to be released directly to the new dentist, there should be an agreement with the new dentist that these records will be maintained as required by the regulations on behalf of the forwarding dentist, and returned as requested. In these cases, copies of the records should be retained by the original dentist.

TIMELINESS OF RECORD DUPLICATION AND TRANSFER

The professional misconduct regulations made under the *Dentistry Act, 1991* speak to the transfer of records and/or reports "within a reasonable time." It is the College's view that, in most cases, this should be accomplished within one to two weeks of receipt of the request.

The College also recommends that dentists use personal delivery, a courier service or registered mail to ensure that the records safely reach their destination.

FINANCIAL CONSIDERATIONS

It is the College's view that in fulfilling his or her legal and professional obligations to forward records and/or reports that have been requested by a patient or their agent, a dentist may consider charging a fee consistent with the direct costs incurred in doing so.

This would include the costs of photocopying paper records, duplication of x-rays or models and transfer costs. An administrative fee for this service is not considered appropriate.

The College recognizes that in some cases, the burden to members to provide records justifies cost recovery. In others, a dentist may choose to provide copies of records as a professional courtesy in that assessing such a fee may further inflame an existing conflict with a patient.

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The following guidance is no longer in effect.

Questions related to setting fees for the duplication and transfer of patient records can be directed to [RCDSO's Practice Advisory Service](#) or the [Information and Privacy Commissioner of Ontario](#).

Please note that it is unacceptable to withhold the transfer of records because of an outstanding account balance. This is a separate business issue that can be addressed according to the office's collection policies and protocols. College regulations and guidelines must be followed, regardless of a financial dispute between the patient and the dentist.

ISSUES RELATED TO ASSOCIATES OR PARTNERS

A dentist's responsibilities and obligations are no different in circumstances where the dentist who a patient chooses is a former associate, partner or shareholder in a common health profession corporation. When there is a termination of the arrangement under which two or more dentists practise together, each dentist is responsible for ensuring that disputes between them do not in any way impact the ongoing care of patients.

In this regard, the dentist who has possession of the original patient records should act in accordance with this Practice Advisory. As emotionally difficult as it may be, dentists must ensure that they co-operate, to the extent necessary, so that patient care is not compromised or delayed. Patients should never become a bargaining pawn in disputes which may develop between practitioners.

If the owners of practices wish to attempt to protect their goodwill, this should be done by entering into appropriate contractual arrangements. Prudent practitioners should ensure that the agreement is in writing, and deals specifically with the rights of each party upon termination of the arrangement, including payment for duplication of dental records and radiographs.

The contract should not, however, provide any terms which would in any way prejudice the future treatment of patients, restrict patients' right to choose the dentist of their choice, or limit the access of the patient to their dental records.

Disputes between practitioners or contractual arrangements should not prejudice the future treatment of patients, restrict patients' rights to choose the dentist of their choice, or limit the access of patients to their dental charts or records.