



**Legal and regulatory
issues for release, privacy, and
confidentiality of medical records**

STRICTLY confidential

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The health care community has an ethical and legal duty to preserve the confidentiality of information obtained from patients during the course of treatment. Information disclosed to a chiropractor during treatment and the doctor/patient relationship is confidential. A patient should not have any reservations making full disclosure to a chiropractor, who should not reveal information without the express written consent of the patient unless required by law. One change that has occurred in health care is the use and reliance on technology concerning medical records, privacy, and confidentiality issues.

Medical records serve as a basis of patient care for continuity in the evaluation of the patient's condition and treatment. Records also document communication between the treating doctor and other health care providers who contribute to the patient's care, and assist in protecting the legal interest of the patient and the doctor responsible for the patient.

Restricted Access

Although ethical principles are not legally binding, the courts have regularly ruled that health care professionals preserve confidentiality during the course of treatment. Courts have held that a doctor's disclosure of medical information without patient consent constitutes a breach of an implied condition of the patient/doctor relationship or contract. Courts have also adopted an invasion of privacy theory, concluding that a doctor's disclosure of medical information obtained in the course of treatment constitutes tortious conduct. Patients also have a right to rely on the ethical standard of the medical professional as an expressed warranty of confidentiality

(Hammonds vs Aetna Casualty and Surety Company Ohio: 1965, and Doe vs Roe—Sup Ct: 1977).

Access to medical records should be made to the patient, the patient's legal representative, and other health care professionals involved in the care and treatment of the patient. A legal representative is defined as: a competent adult appointed in writing by another competent adult, a court-appointed representative, the parents of a minor (except with regard to pregnancy or sexually transmitted diseases), and a

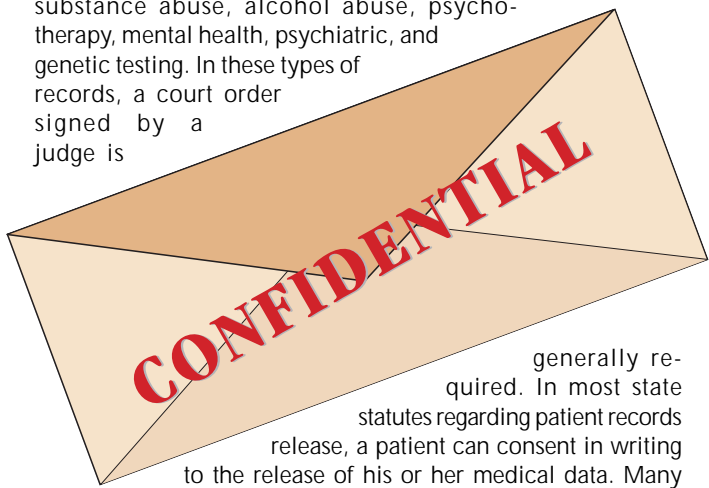
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personal representative of an estate (not necessarily next of kin). If there is a will, then a personal representative appointed by the courts; when there is no will, then next of kin or a personal representative.

There are exceptions to access medical records and confidentiality. In workers' compensation, the employer and insurance company are entitled to relevant records. A subpoena, but not for super confidential records, must have a seal of the clerk of the court who issues the subpoena or the Agency for Health Care Administration for investigations.

In an emergency medical treatment governed by state law, always try to obtain patient's consent. This would relate to any chiropractor that renders aid outside his or her office under the Good Samaritan Laws. If the chiropractor acts in good faith in an emergency situation, the chiropractor does not need consent and should not be concerned about obtaining medical information, as this will delay emergency care.

Super confidential records cannot be released except with the patient's consent. Super confidential records include: in some abortion/pregnancy cases, HIV/AIDS, drug and substance abuse, alcohol abuse, psychotherapy, mental health, psychiatric, and genetic testing. In these types of records, a court order signed by a judge is



generally required. In most state statutes regarding patient records release, a patient can consent in writing to the release of his or her medical data. Many states do not allow a patient to revise or alter the authorization. Some states provide a more stringent requirement and different release forms for the release of sensitive or super-confidential information.

A Matter of States

States vary in the rights granting patients to receive and copy their own records. Some states have no statutory right to access records (Kansas and North Dakota). Other states have statutory access for patients to access their own mental health records (Alabama, Idaho, New Mexico, and District of Columbia). There are 33 states that provide a right to access hospital records.

There are 13 states that provide access to HMO records, and 16 states that provide a right to access insurance records.

Health care privacy statutes can be found in laws applicable to many medical records issues. Most states have adopted specific measures to provide additional protection with regard to certain conditions or illnesses that have social and economic impact. You must evaluate your state law before releasing medical records.

There are federal and state laws to govern release of medi-

cal records, confidentiality and privacy issues. Each state has its own statutes that govern the release of medical records pertaining to chiropractors. The statutes specifically address the release, confidentiality, and privacy of medical records.

The Health Care Insurance Portability and Accountability Act of 1996 (HIPAA), deals with privacy issues and the release of records. State laws relating to the privacy and release of medical records are now tied to HIPAA. If state laws are more stringent than HIPAA laws, then chiropractors' ability to release medical records fall under state law. If HIPAA laws are more stringent than state laws, then HIPAA preempts state law. For this reason and the civil/criminal implications under HIPAA, it is important for the chiropractor to understand state and federal laws governing the release of medical records.

In addition, state statutes cover release of medical records and deal with confidentiality and privacy issues. Failure to maintain records and issues of confidentiality can range from board discipline, civil actions, fines, and criminal action. From a federal standpoint, under HIPAA, civil monetary penalties can range from \$100 to \$25,000 per violation, while criminal penalties include 1 to 10 years imprisonment and \$50,000 to \$250,000 in fines. It is extremely important to know your state and federal laws concerning medical records, confidentiality, and privacy issues.

In some states, doctors can be charged with practicing medicine without a license if they transmit electronic medical information to a state in which they are not licensed. Florida is one such state that has a long-arm statute allowing this type of prosecution. An example that falls under this statute is when an out-of-state doctor treats a patient in another state by prescribing medication via electronic means to a state that the doctor is not licensed. The key word is treatment. Sending medical records to another state “without treatment,” but with the patient's consent via electronic means usually does not present a problem.

E-medicine and the communication of medical information will continue to evolve. In most states, telehealth/telemedicine have task forces to deal with electronic issues including technology and enforcement. Know your state laws in dealing with all types of transmission of medical records. ■

About the Author

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