

Records: Practice Breakup

Council, Nov. 2003

From time to time, the College becomes involved in issues relating to access to records. The law is clear that patients have the right to access the information contained in their clinical records. This right to access usually includes reviewing the record, obtaining a copy of the record or directing that a copy of the record is sent to another practitioner. This right to access is relatively straightforward when there is only one practitioner involved. However, it becomes more complicated when two or more practitioners are practicing together, and there is a practice break-up. In these cases, either one or more of the patient, the departing practitioner(s) or the remaining practitioner(s) ask for the College's position on who "owns" the records. In many of the cases that are brought to the attention of the College, there is no written agreement between practitioners as to what will happen with respect to the records upon dissolution of the practice.

In order to be assistive to members in understanding what their rights and obligations are in situations where there is a practice break-up, the Council has adopted the following Guidelines for members:

- Patients have a right to access the information on their health records including direction their health records including directing information be sent to another practitioner, and this right to access should not be impeded by business agreements.

The delivery of quality care relies on access to historical information. Optometrists practicing in multi-practitioner settings, either with other optometrists or other health care practitioners, are encouraged to have business agreements that deal with who regains control and custody of patient records if the business relationship is dissolved. Nevertheless, Council considers that it is inappropriate for there to be a clause that attempts to limit a patient's right to either access the record or direct that the information in the record be transferred to another practitioner.

- Business agreements between practitioners should not impede a patient's right to choose a practitioner to deliver services including being provided with contact information when this is requested.

Patients have the right to choose the practitioner that they want to provide their care. The College believes that it is inappropriate for optometrists to enter into a business relationship wherein the flow of information about the whereabouts of another member is restricted. This is more than a matter of policy, since failure to provide contact information to a patient about a practitioner who previously practiced with the member may be a matter of professional misconduct.

- Patients have a right to know where their health records are stored, and who has access to them.

Recognizing that quality care relies on access to historical information, patients have a right to know where their records are located. It is reasonable for a patient to assume that the records will be retained in the practice where she/he was examined. If for some reason the records are re-located elsewhere, reasonable attempts to contact and inform the patients should be made. The nature and extent of the attempts may vary depending on the circumstances. For instance, in small communities, placement of a notice in the daily or weekly paper on several occasions may suffice.

- There is no inherent right for an associate working in a practice to have access to patient information, nor is there an inherent responsibility for a practitioner with primary responsibility for the records to provide patient information to the associate if the associate leaves the practice.

Optometrists working in another optometrist's practice as an employee or as an associate have no inherent rights to access any information about the patients he or she saw in that practice. Records, including clinical and contact information, belong to the practice and to the owner(s) of the practice. Any patient information may only be released with the consent of the patient, or as required by law. Where two (or more) members are in a cost sharing arrangement ownership of the records will remain separate; that is, each member will retain ownership of the records he/she made.

- Members working together should have business agreements that spell out the rights and responsibilities of each party in the event of a practice break-up. The contract may specify an associate's right to certain information retained by the practice and/or an owner's obligation to provide it.

Ideally, many problems would be avoided if members documented their business agreements. Such documentation should be done with legal advice and include the respective roles and responsibilities of all involved parties, including those relating to ownership and access to records.

- When a patient consents to the transfer of files upon a practice break up, it is the responsibility of the requesting practitioner (or patient) to cover the costs associated with the transfer of the records.

Members are urged to refer to the OAO Suggested Schedule of Professional Fees to determine reasonable fees for this service.