

Transfer of patient files

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It is not uncommon for a chiropractic patient to change practitioners whether as a result of change of residence; the relocation of the chiropractor; or the desire to change practitioners for any other reason. When considering the transfer of patient files from one practitioner to another chiropractor there are a number of different considerations which must be taken into account. While this article is not directed to the specific issue of record keeping, it may be useful to remind the reader of certain issues involving record keeping, namely:

- 1 Obligations concerning record keeping are specifically legislated pursuant to Statutes in the province or state in which the practitioner carries on practice. The paramount legislation dealing with the obligations of a practitioner, vis a vis record keeping is the Licensing Statute. In the case of Ontario the relevant Act is the Chiropractic Act. The Regulations and Policies established pursuant to the Act will enunciate the rights and obligations of a doctor in dealing with the maintaining and transferring of a file.
- 2 In addition to the licensing statute, there may be additional legislation governing record keeping. For example, in the Province of Ontario the Ontario Health Insurance Act (OHIP) and the Workers' Compensation Act deal specifically with record keeping. The statutory obligations, regulations, and policies governing billings involving OHIP require that a chiropractor maintain records in accordance with professional standards, being those standards applicable to the practice of chiropractic in Ontario.
- 3 The maintaining of professional records is governed by general accounting principles which may include consideration of the statutory obligations imposed upon a taxpayer by Revenue Canada. The information maintained by a chiropractor in a patient file includes finan-

cial and personal data which may come under the scrutiny of a government agency auditing the financial aspect of the doctor's practice.

- 4 In a group practice, which by implication suggests that there are at least two chiropractors, the issue of record keeping may be dealt with by the contractual arrangements of the parties. Notwithstanding what may be agreed to by the practitioners, the doctors may not waive or alter their obligations imposed by the Statutes, Licensing Board or Common Law relating to the creation, maintaining and transferring of patient files.
- 5 The standards governing the maintaining of professional records has been considered by the Courts. For example, the Supreme Court of Canada has enunciated the principle that the patient records must be accessible to the patient. (*McInerney v. MacDonald* [1992] 2 S.C.R. 138).

It is customary that in the departure of a chiropractor from a group practice that there will be four different situations involving patient files, namely;

- 1 There will be patients who will have seen both doctors.
- 2 There will be patients who will have been seen by only the remaining doctor.
- 3 There will be patients who will have been seen by only the departing doctor.
- 4 Patient files may have been opened in the name of the Group Practice.

In the first scenario, wherein patients have been treated by both doctors, even if on only one occasion, the original or at least a copy of the file should be maintained at the clinic. If the original documentation is being removed from the office, a signed authorization form should be received from the patient directing that the file be provided to a specific practitioner. The authorization should be dated.

In the second scenario, in the event that the patient was

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originally considered to be a patient of the remaining doctor, a patient authorization form should be signed whether an original or copy is being provided to the departing doctor.

In the third scenario, in the event that the patient was not seen by the remaining doctor during the departing doctor's tenure at the office, the patient file was not opened in the name of the Practice, and the patient billing was rendered only under the name of the departing doctor, and not the Group Practice, i.e. First Chiropractic Clinic, then there is no necessity of the remaining doctor to be concerned with authorizations or consent forms. This statement is subject to one remaining concern, that being an issue of whether the public is made fully aware that the Group Practice is not a partnership. The general principle of law is that a partnership may be created in two ways, i.e. by the intention of the parties to form a partnership and secondly, by the conduct of the parties in holding themselves out to the public such that the public considers the practitioners to be partners. I am not fully aware of the dynamics of the existing Group Practice, i.e. whether there is a common letterhead, a common sign indicating the names of the practitioners, all without reference to the actual relationship. If there is any concern that a patient may make a future claim against the remaining practitioner resulting from the relationship of the doctors prior to the termination of the practitioners' relationship at the Practice, then the remaining practitioner should ensure that a copy of the file is maintained at the Practice. Simply put, if any patient might construe your relationship with your associate as being anything other than as an associateship arrangement then the remaining practitioner can be held responsible for any improper actions of the departing doctor. In this instance, it is imperative that a copy of the file be retained by your office. If the remaining practitioner did not treat the patient, the consent of the patient is not necessary.

In the fourth scenario, the Practice was operated under the style name, First Chiropractic Clinic. Whether or not both practitioners treated a patient, it is important to ensure that a copy of the file is maintained in the office, and I would suggest that in this instance, the authorization of the patient to the transfer of the file should be obtained and kept in the file.

In addition, if an associateship arrangement dealt with record keeping, the provisions of the Agreement may impose additional responsibilities upon the parties save

and except that the terms and conditions of the Agreement may not diminish a practitioner's professional and statutory obligations. For example, an Associateship Agreement may have dealt with the issue that all patient records are the property of the Clinic, in which case files should only be transferred with the written authorization of the patient.

In summary, I would suggest that the principles governing what should take place in this matter may be summed up as follows, namely:

- 1 If a practitioner treated the patient, the original file or a copy of the file should be maintained by the practitioner and an authorization for release of the original or a copy be obtained from the patient.
- 2 If the file was opened in the name of the Practice, a copy of the file should be maintained and an authorization for the release of the original or a copy of the file should be obtained from the patient.
- 3 If the file was not opened in the name of the Practice, the billings, correspondence and business cards of the Practitioner did not make reference to the name First Chiropractic Clinic, then the file can be taken from the office without an authorization being obtained or a copy being kept. Of course, the patient may have a different understanding of the situation so that keeping a copy of the file may be prudent in any case.

In the case of x-rays, since the reproduction of the x-ray may be costly, it is recommended that the original x-ray remain as part of the original file and with the practitioner who billed for the services associated with the x-ray. The original x-ray should be provided to a qualified health care practitioner who should provide a written undertaking to return the x-ray to upon request. The practitioner who billed for the service may be required to produce the x-ray as a result of an audit of the practitioner's billings.

In the event that patient files are being transferred as a result of a sale/purchase of a practice, it is imperative that consideration be given to the licensing statute, regulations and policies to ascertain whether a patient authorization is required at the time of the transfer of the file. In any event, if the selling practitioner does not keep a copy of the records, then the Agreement covering the transaction should impose an obligation upon the purchaser to maintain the records and allow accessibility to the records by

the vendor in order to satisfy his or her professional obligations. With respect to the time period for maintaining records, forever is not too long a period of time!

For the purposes of ensuring that a practitioner complies with his or her professional obligations, it is imperative

that professional advice be obtained in the jurisdiction in which the practice is being carried on. It would be prudent for practitioners entering into a group practice to be fully cognizant of what might occur with respect to patient files from the outset of the relationship.

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