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South Carolina Board of Dentistry policy regarding patient dental records

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Download date	2024-09-10 10:49:55
Link to Item	https://dc.statelibrary.sc.gov/handle/10827/52066



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Henry D. McMaster
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**SOUTH CAROLINA BOARD OF DENTISTRY
POLICY REGARDING PATIENT DENTAL RECORDS**

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Director

It has come to the South Carolina Board of Dentistry’s attention that dental patients are having an increasingly difficult time obtaining copies of their dental records from dental offices in South Carolina. Accordingly, the Board is hereby promulgating this policy to assist patients in obtaining their records and to remind licensees of their obligations under state and federal law.¹

Obligations under South Carolina law

South Carolina Code section 40-15-83, Patient recordkeeping requirements; penalty, states:

(A) Dentists shall retain their patient records for at least five years. These minimum recordkeeping periods begin to run from the last date of treatment. After these minimum recordkeeping periods, the records may be destroyed. If a dentist is employed by a corporation or another dentist, the corporation or employing dentist is responsible for maintaining the patient records for a period of five years. The practicing dentist shall have access to these patient records during that period. However, a dentist who works in a nonprofit dental clinic operated solely for the benefit of poor and indigent persons is not required to maintain records for patients seen in that setting. The owner or operator of a nonprofit dental clinic, for at least five years, shall retain patient records for persons treated at the clinic.

(B) A clinic, corporation, or dentist violating subsection (A) is subject to a civil penalty, to be imposed by the board, of up to ten thousand dollars for each violation.

S.C. Code Ann. § 40-15-83 (2011).

While the Board does not generally regulated dental practices or the corporate practice of dentistry, under the Dental Practice Act the Board has the statutory authority to fine a clinic, a corporation, or a dentist for a violation of this section. If the dentist who provided the treatment on the patient has left the practice and therefore no longer has access to the records, the Board lawfully retains has the authority under the Act to fine either the clinic, corporation or other dentist for whom the treating dentist worked and who still maintains the records in their possession.

The requirements regarding what must be contained in patient records is set forth in South Carolina Code § 40-15-450. In addition, the Board believes that patient dental records must be maintained in such a manner that a subsequent treating dentist can readily ascertain the treatment provided by the performing dentist and include, at a minimum, documentation of:

1. Personal information;
2. Concise medical history;

¹ South Carolina Code section 40-15-40 authorizes the Board to adopt rules and regulations for its own organization and for the practice of dentistry, dental hygiene and the performance of dental technological work in this State.

Adopted July 14, 2023

3. All patient office visits and other consultations obtained;
4. All prescriptions written including date, type(s) of medications, and number (quantity) prescribed;
5. All therapeutic and diagnostic procedures performed;
6. All written patient instructions and written agreements;
7. Most recent dental charting and periodontal examination, if applicable;
8. All intraoral scans, photographs or digital impressions, if applicable;
9. Most recent full mouth radiographic survey or panograph, or detailed written report on radiographic finding if physical radiographs are unavailable;
10. Most recent bitewing radiographs, or a detailed written report on radiographic findings in the event bitewing radiographs are unavailable;
11. All pathology or medical laboratory reports, if applicable;
12. Anesthesia records, if applicable;
13. All initial orthodontic diagnostic records, including pretreatment study models, photographs, cephalometric radiographs and cephalometric analysis, if applicable, or a detailed written report in lieu of the physical records.
14. Correspondence with consultants or specialists, if applicable.
15. Treatment plan and progress notes.

Copies of patient records and/or x-rays, or summaries thereof, must be made available to the patient and/or new dentist upon submission of a written release authorization, in a reasonable manner and upon reasonable costs associated with providing such record (see below). This obligation exists whether or not the patient's account is paid in full.

Obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)

Dentists are bound by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which protects the privacy and security of individuals' identifiable health information *and establish an array of individual rights with respect to health information*. With limited exceptions, the HIPAA Privacy Rule provides individuals with a legal, enforceable right to see and receive copies upon request of the information in their medical and other health records maintained by their health care providers and health plans. The phrase "health care providers" includes corporations that employ dentists.

The Privacy Rule generally requires HIPAA-covered entities to provide individuals, upon request, with access to the protected health information (PHI) about them in one or more "designated record sets" maintained by or for the covered entity. This includes the right to inspect or obtain a copy, or both, of the PHI, as well as to direct the covered entity to transmit a copy to a designated person or entity of the individual's choice.

Individuals have a right to access this PHI for as long as the information is maintained by a covered entity, or by a business associate on behalf of a covered entity, regardless of the date the information was created; whether the information is maintained in paper or electronic systems

onsite, remotely, or is archived; or where the PHI originated (e.g., whether the covered entity, another provider, the patient, etc.).

Individuals have a right to a broad array of health information about themselves maintained by or for covered entities, including: medical records; billing and payment records; insurance information; clinical laboratory test results; medical images, such as X-rays; wellness and disease management program files; and clinical case notes; among other information used to make decisions about individuals.

A covered entity may require individuals to request access in writing, provided the covered entity informs individuals of this requirement. See 45 CFR 164.524(b)(1). Covered entities also may offer individuals the option of using electronic means (e.g., e-mail, secure web portal) to make requests for access. In addition, a covered entity may require individuals to use the entity's own supplied form, provided use of the form does not create a barrier to or unreasonably delay the individual from obtaining access to his PHI.

While the Privacy Rule allows covered entities to require that individuals request access in writing and requires verification of the identity of the person requesting access, a covered entity may not impose unreasonable measures on an individual requesting access that serve as barriers to or unreasonably delay the individual from obtaining access. For example, a doctor may not require an individual:

- a. Who wants a copy of her medical record mailed to her home address to physically come to the doctor's office to request access and provide proof of identity in person.
- b. To use a web portal for requesting access, as not all individuals will have ready access to the portal.
- c. To mail an access request, as this would unreasonably delay the covered entity's receipt of the request and thus, the individual's access.

While a covered entity may not require individuals to request access in these manners, a covered entity may permit an individual to do so, and covered entities are encouraged to offer individuals multiple options for requesting access.

Under HIPAA, a South Carolina dental patient may file a complaint against a corporation or practice with the U.S. Department of Health and Human Services (HHS) Office for Civil Rights in addition to filing a complaint with the Board. Dental practices and corporations should be diligent in producing dental patient records when requested to avoid an investigation by the Board, HHS, or both.

A dental practice or corporation employing dentist seeking more information on their obligations under federal law may visit the U.S. Department of Health and Human Services here:

<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>

Recently the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) announced the resolution of three investigations concerning potential violations of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule's patient right of access provision. These resolutions included fines of between \$25,000 and \$80,000. These consent agreement resolutions can be found here:

<https://www.hhs.gov/about/news/2022/09/20/ocr-settles-three-cases-dental-practices-patient-right-access-under-hipaa.html>