

CONFIDENTIALITY AGREEMENT

Protecting Patient Confidentiality in the Dental Office

An office manager, who has complete access to patient information to make follow-up calls, mail recall letters and to verify insurance, uses the patient database to mail invitations to those she believes will be interested in attending a cookware party she is hosting at her home. A week later, a patient contacts the practice owner to complain about being solicited to attend this party and asks to be removed from any future mailings. The next day, she calls to cancel her upcoming appointment and request her records be sent to another dental office.



An associate has been working for a dental office for three years and has established good rapport with the patients. The associate informs the owner of the practice that he is leaving and wants to continue seeing “his” patients at his new office. He shows the owner a letter he intends to send “his” patients to let them know where he will be practicing. The owner explains that the patients are patients of the practice, not the associate’s and tells the associate he cannot mail the letter. The associate decides to mail the letter anyway and accesses the patient database to gather the information to mail the letters.

The above scenarios are real, happen frequently and can be unsettling to practice owners. Dentists have an ethical and legal responsibility to safeguard the confidentiality of patient information. Obtaining and using patient information, without consent from the patient, is a violation of patient confidentiality. It is the duty of the practice owner to ensure patient information is accessible only to those authorized to have access and is restricted from generalized use. A simple way to enforce this is by requiring all employees, including associates, to sign a confidentiality agreement.

The agreement should state that patient data is the property of the practice and cannot be used for any purpose other than providing patient care through the practice. The agreement should also state that patient data cannot be used for personal reasons or for the benefit of any individual or entity other than the practice. Each employee should be required to sign and date such an agreement and the original should be kept in the employee’s personal file.

continued

Following is an example of a confidentiality agreement:

Employees will come into contact with or have possession of patient information and other proprietary and confidential information and must take all appropriate steps to assure that the confidentiality of such information is maintained. This confidential information, whether it involves the office or the patients of the office, must be treated with sensitivity and discretion and only be disseminated upon written authorization from the patient. Violation of this confidentiality agreement may result in discipline, up to and including termination.

In addition to requiring associates to sign a confidentiality agreement, practice owners should also discuss other proprietary information prior to hiring, such as ownership of patient records. Prior to hiring an associate, discuss the steps that will be taken should the associate leave the practice, including who is responsible for completing treatment in progress. Define to whom the patient records belong and who is responsible for retreating patients when the associate leaves the practice. Decide whether to notify patients of the associate's departure, who will be responsible for notifying them, and how they will be notified – letter or telephone call. It is important to establish these ground rules prior to hire, so the associate has a complete understanding of what is expected while under the practice owner's employment.

Maintaining patient confidentiality is an important obligation for the entire staff. Use of patient information, for purposes other than office necessity, is a violation of the patient's confidentiality and the law. Practice owners have a responsibility to ensure that all patient information is protected and held in confidence. Having employees sign a confidentiality agreement will help to ensure that patient confidentiality is maintained in the office and lets them know the consequences if the agreement is breached.

Restylane Alert!

Restylane® is a cosmetic dermal filler that restores volume and fullness to the skin, correcting moderate to severe facial wrinkles and folds. The Food and Drug Administration (FDA) approved Restylane for the treatment of facial folds and wrinkles in December 2003. Some dentists have begun using this drug to enhance patients' smile lines and to reshape the lips. Dermal fillers such as Restylane do not treat oral conditions. Therefore, their use should be restricted to specially trained and certified oral and maxillofacial surgeons only. Practicing outside the scope of a dental license is a violation of dental practice statutes. Violation of a statute that results in an injury to a patient is a presumption of negligent care. When dentists practice outside the scope of their license, they may be voiding their professional liability coverage should an allegation be made from an untoward result.

Compromised Personal Information

Federal Government Follows States' Leads

The spring 2005 *Liability Lifeline* article, "Your Office Computer was Stolen; Now What?" reported California as the only state to require businesses to notify their consumers when personal data collected by the business was compromised creating the potential for identity theft. Believed to be following in California's footsteps, 168 data security-breach bills were introduced in 39 states in 2006.¹ Last September, the National Conference of State Legislatures' Web site listed Alaska, Georgia and Hawaii as having introduced legislation requiring companies and/or state agencies to disclose to consumers when there is a security compromise involving consumers' personal information.²

New Jersey, Pennsylvania and Illinois have enacted state security laws requiring any person or organization maintaining personal information about residents to notify affected individuals following a security compromise. A security compromise is the unauthorized acquisition of computerized data that compromises the security, confidentiality or integrity of personal information. It can occur when a third party has hacked into a computer hard drive or has stolen a business computer.

With multiple states introducing and passing security laws, the federal government has also introduced a variety of bills related to security compromises of confidential consumer information. For example, the Data Security Act of 2006 (S.B. 3568) has bi-partisan support and is being referred to the committee on Banking,

Housing and Urban Affairs for hearings and eventual committee action. It is the sixth data security bill introduced in 2006 in both the House and Senate. If approved, the Act creates a uniform national standard where businesses, not just financial institutions, must safeguard data (both electronic and paper) containing Social Security information, driver's licenses, credit cards, and account access codes and passwords. Protective measures could require businesses to develop, implement and maintain an effective information security program for sensitive personal information. This program will require all entities to notify consumers when information is compromised in a way that could lead to identity theft or account fraud.

If the Data Security Act of 2006 passes, all practice owners, regardless of where they reside, will be required to notify patients when they experience an information compromise. TDIC developed a sample letter for dentists to send to patients which notifies them when such a compromise happens. This letter can be accessed at thedentists.com in the forms and sample section of the risk management link.

TDIC policyholders interested in tracking security compromise legislation can access an update at ncsl.org.

1. *DM NEWS*, dmnews.com/cms/dm-news/legalprivacy/3704.html, June 21, 2006.

2. *National Conference of State Legislatures*, ncsl.org/programs/lis/privacy/IDTheft2006_pending.htm, September 21, 2006

Q&A

While reviewing my TDIC *Building & Business Personal Property* policy, I came across the term “insurable interest.” What is insurable interest?

A person has an “insurable interest” in property when damage to it may cause the insured a financial loss or other tangible deprivation. If your office burns down, the value of your office has depreciated resulting in a financial loss.

An insurable interest must exist both when a policy is issued and at the time of a loss. For this reason, it is important to notify your insurance carrier when there is a transfer in ownership of any property; to be sure your insurable interest is up-to-date.

I recently suffered a major property loss in my office. My claims adjuster notified me that he and a forensic accountant would be meeting with me next week to go over the loss. What is a forensic accountant and why is my insurance company using this type of service?

Forensic accountants perform damage calculations using more than basic accounting principles. The forensic accountant uses a full spectrum of financial, business and accounting skills to quantify a damages estimate. Insurance companies utilize forensic accountants to analyze financial information to calculate and quantify losses and economic damages. Insurance companies use this information to determine proper business valuation to ensure the policyholders are made whole.

A husband and wife have been patients and close friends of mine for years. I received a call from the husband saying his wife just passed away. Apparently, one of her last requests was to have her gold crowns removed. The husband asked if I would do this. Am I obligated to extract her teeth?

No, you are not obligated to extract her teeth. You should explain to the husband that you do not provide this type of treatment but there are forensic dentists who do. Your local dental society should have a listing of dentists who perform this service that the husband can contact.

I recently completed a bridge prep for a patient. I’ve been treating her and her immediate family for years. Unfortunately, she passed away before I could deliver the bridge. I incurred lab fees as well as chair-time costs. Can I contact her family to collect the balance owed?

Yes, you can pursue collections; however, it may not be the best option.

Consider the ramifications of collection attempts since you treat her family. Your efforts to collect from their deceased family member may cause you to lose them as patients. In addition, you risk them telling their friends, neighbors and coworkers about their dentist who is asking for payment on a dental bill for work that was never completed.

Instead of sending this account to collections, consider writing-off the amount owed from the patient’s account. This may foster appreciation and create loyalty in the family toward you. Send a letter expressing sympathy for their loss and explain that you are writing-off the balance owed.

Since lab fees are part of the balance owed, discuss the situation with the lab. Often, they are willing to write-off the outstanding fees as well.