



American
Association of
Orthodontists

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This information is not intended to serve as legal advice. It is designed to provide you with a summary of some of the practical and legal issues that arise as to the topic presented. Each case is different. You should consult with a licensed attorney in your state who is knowledgeable of the topic prior to acting on the information provided in this summary. If you need any assistance in locating an attorney, contact AAO's General Counsel.

PATIENT RECORDS AND RECORD KEEPING

The role of records and record keeping in an orthodontic practice has long since been established. However, much has changed as to the type of records that should be kept and the duration of retaining the records. These developments are largely related to the increasingly complex world in which we live and

the omnipresent threat of treatment decisions being questioned by others. This article will revisit the fundamental aspects of patient records and record keeping, and address the most common questions posed in relation to such records.

Patient Records Must Be Made

Orthodontists are required to make records relating to the treatment of their patients. This obligation has professional, legal and ethical foundations. The first and foremost reason for maintaining records relates to the care of the patient. Legally, such records are required and necessary to defend any malpractice claim that may be brought. Ethical rules also govern. The American Dental Association's Principles of Ethics and Code of Professional Conduct state that dentists "shall maintain patient records in a manner consistent with the protection of the welfare of the patient."

What Constitutes Patient "Records"?

Although the answer to this question may vary somewhat on a case-by-case basis, generally all records relating to the treatment of the patient should be maintained. These records include, but are not limited to, charts, x-rays, models, appointment books, correspondence to and from the patient, phone records, medical history forms, the patient contract, the signed informed consent form and interoffice memos relating to the patient. A more specific list of orthodontic records is included in the AAO's *Clinical Practice Guidelines for Orthodontics and Dentofacial Orthopedics*.

The *Guidelines* identify the following pretreatment unaltered diagnostic records:

- A. Extra and intraoral images to supplement the clinical findings.
- B. Dental casts to assess the inter-arch and intra-arch relationship of the teeth, to help determine arch length and width requirements, and to assess arch symmetry.
- C. Intraoral and/or panoramic radiographs to assess the condition and developmental status of the teeth and associated structures, and to identify any dental anomalies or pathology.
- D. Cephalometric radiographs to permit evaluation of the size, shape, and positions of the craniofacial structures and dentition, and to aid in the identification of skeletal anomalies or pathology.

The *Guidelines* also set forth the following post-treatment unaltered records:

- A. Extra and intraoral images.
- B. Dental casts.
- C. Intraoral, panoramic, or cephalometric radiographs.
- D. Other indicated procedures or tests.

How Long Should Patient Records Be Maintained?

This is probably the most commonly asked question in relation to records and record keeping. At a

minimum, patient records must be kept for the applicable statute of limitations period. This period is the time within which an action may be brought for malpractice, and varies on a state-by-state basis. Generally, these periods range from five to 15 years. There are also differences as to when the statutes begin to run. For example, in most states, the time period is tolled (or delayed from starting) until the patient reaches the age of majority. Likewise, state jurisdictions differ as to whether the time period begins to run when the negligent act was committed or at the time when the patient discovered that the act occurred (which, for orthodontists, would be the last treatment contact with the patient because of the duration of orthodontic treatment). Although the need to maintain records should be balanced against the practical aspects of such storage (i.e., costs, space, etc.), the best approach is simply to retain the records indefinitely because of the valuable information the records contain. The practical difficulties of maintaining records indefinitely can be minimized by transferring some of the records to microfiche or, in some cases, videotaping the models.

Honoring Patient Requests For Their Records

Another frequently asked question is whether the records must be provided to the patient upon the patient's request. The short answer to this question, from both a legal and ethical standpoint, is "yes." The patient is entitled to all of the records in the file. This answer applies regardless of whether the patient's account is in arrears, a malpractice action may be imminent, or the patient has asked that the records be sent to a third party (i.e., another dentist, attorney, etc.). However, there are three caveats to this answer. The patient's request should be in writing, a reasonable duplication fee can be charged, and copies of the original records should be provided to the patient. There are special rules that should be followed when the request comes from someone other than the patient (i.e., spouse, divorced parent, etc.) and when the records contain "highly confidential" information, which are addressed below.

Patient Transfers

Patient transfers arise when the patient has indicated a desire to pursue orthodontic treatment with a different practitioner. Orthodontists should take all reasonable measures to assist in the uninterrupted continuation of treatment for their patients. Upon obtaining the patient's written request, copies or reproductions of all of the patient's orthodontic records should be forwarded to the accepting orthodontist, or if the patient requests them, then the records should be forwarded to the patient. Prior to the transfer, the transferring orthodontist should conduct a final review of the patient's condition, which should be documented.

Record Requests By Spouses And Parents Of Patients

Specific rules apply when (1) the married or divorced spouse of a patient requests records relating to the patient/spouse, and (2) one of the married or divorced parents requests records of their patient/child. In the first context, absent a particular law or court order requiring disclosure, the spouse of a patient is not entitled to information relating to the patient/spouse. This rule applies when the spouses are either married or divorced. In the second context, married parents are allowed to obtain the records of their minor child. However, if the parents are divorced, the noncustodial parent does not generally have the right to their child's records. The proper course of action in this context usually depends upon the particular laws of the state that govern the situation. For example, in some states, both parents can have custodial rights. Therefore, an attorney in the proper state should usually be consulted prior to releasing the records to the divorced parent. Legal counsel should also be obtained prior to disclosing financial information relating to the parent of a minor patient that presented the child for treatment where the other parent of the patient has requested such information.

Special Rules For "Highly Confidential" Information

Particular attention should also be given to the release of patient information to third parties (i.e., other dentists, etc.) when the file contains "highly confidential" information. "Highly confidential" information is data relating to drug, alcohol or psychiatric conditions, sexually transmitted diseases (i.e., AIDS), or any other uniquely sensitive information. This information should be flagged in the file when entered, and legal counsel should be consulted prior to its release to any third party.

Practice Transition and Coverage

In situations involving the sale or purchase of a practice, the issue of records frequently arises. A written agreement should be used in such transactions. The agreement should provide for the parties' rights as to

records. Generally, it is advisable for the selling orthodontist to retain originals of all records for patients that are not part of the sale (i.e., those for which treatment is complete). Likewise, the purchasing orthodontist should usually maintain the originals of records relating to patients that are part of the sale (i.e., those relating to patients continuing in treatment). However, both parties should have access to both sets of documents, and the agreement should provide for that ability as well as the obligation on the part of each orthodontist to retain the records in a place of safekeeping for the appropriate time. Similar issues arise in practice coverage arrangements (i.e., agreements among several orthodontists relating to "covering" for one another in the event of death or disability). These arrangements should also be in writing. It is generally advisable for the agreement to provide that all necessary records will be taken by the covering orthodontist, and that both the absent doctor and the covering orthodontist will be entitled to the records generated for the patient. This requirement is necessary because of liability concerns and the fact that patients can request records from either doctor.

Written Office Policy As To Recordkeeping

It is generally a good idea to adopt all of these rules in the form of a written office policy and to provide all staff members with a copy at the commencement of their employment. Such a written policy can provide the staff with immediate answers to frequent questions, thereby decreasing the likelihood of a costly mistake in relation to patient records and record keeping.

SAMPLE REQUEST FOR RELEASE OF RECORDS

I, (PERSON MAKING REQUEST), hereby request and give my permission to Dr. (YOUR NAME) to provide (INSERT "ME" OR "NAME OF DOCTOR THEY HAVE REQUESTED THE RECORDS BE FORWARDED TO") copies of all orthodontic records with respect to the orthodontic care of (INSERT PATIENT'S NAME). Such records may include, but not be limited to, medical care and treatment, illness or injury, dental and orthodontic history, medical history, financial history, consultation, prescriptions, x-rays and models.

I agree to pay the cost of duplicating such records.

Signed:

(Patient) or (Parent, Legal Guardian or Custodian of the Patient if Patient is a Minor)

Print Signature:

Address:

Date Signed:
