



Memo

TO: CDSBC Registrants
FROM: Jerome Marburg, Registrar & CEO
DATE: April 12, 2013
SUBJECT: **Patient confidentiality and insurance audits**

Recently, CDSBC has received correspondence from dentists and patients expressing concern about insurance audits and associated confidentiality and liability issues. This includes a number of inquiries from patients whose dentists have asked them to rescind consent given to insurers to review their files.

The purpose of this memo is to provide some general guidance to the profession and to the public on these matters.

1. Right to audit

Insurance companies have a right to conduct audits to ensure that plan funds are being properly spent and that payment is being made for treatment that is necessary and/or actually performed.

2. Financial liability

If the insurer determines that the dentist has billed inappropriately, the insurer may claim against the dentist for the overpayment. Some patients have expressed concern to the College that they might be personally responsible for payments made by the insurer to the dentist on their behalf that the insurer then determines were not appropriately paid to the dentist following an audit.

While we cannot give advice on this point, we have checked with a major insurance provider who informs us that, provided that there is no element of fraud or deceit on the part of the patient, the insured patient is not generally pursued by the insurer for inappropriate billing by their dentist.

It would not, for example, be appropriate for a dentist to indicate to a patient faced with a request for consent to release records, that the insurance company will come after them



for repayment of money provided to the dentist as a result of inappropriate billing on the part of that dentist.

3. Patient Confidentiality

Occasionally, in the course of an audit, an insurer may ask patients to consent to the release of their clinical records or other personal information.

Dentists have a duty to protect and keep confidential the personal information of their patients. However, dentists are reminded that patients' personal information belongs to the patient, and not to the dentist or the practice. Patients are entitled to authorize the release of their personal information, and dentists must respect that authorization. Dentists may not interfere with or hinder the insurer from obtaining patient consent.

If you are presented with a consent form signed by a patient for the release of their personal information, it is not a breach of your duty of confidentiality to release it in accordance with the consent form.

Although you should review the consent form carefully to make sure that any release of information does not exceed the patient's authorization, it is not appropriate to refuse to comply with a properly executed consent form. The patient, and the patient alone, can decide whether they do or do not wish to release their personal information.

It may be appropriate to provide the information to the patient, rather than directly to the authorized third party, so that the patient may review it and determine if there is anything sensitive they do not want to release. Again, the dentist may not attempt to influence or hinder the patient from providing consent or information released under that consent.

4. Rescission of patient consent

Upon receipt of patients' consent to disclose records to an insurer, one response has been for the dentist to write to patients and request that they rescind (withdraw) their consent.

While there may be circumstances in which a patient's consent was inappropriately obtained, dentists should be extremely cautious when making such requests. Depending on the content of the request, it may constitute unethical or unprofessional conduct. It may also constitute the unauthorized provision of legal advice.



In addition, some patients have raised concerns with the College as to why a dentist would advise rescission of consent unless the dentist had “something to hide”. This casts a negative light on the profession as a whole, and may be harmful to the individual dentist-patient relationship.

5. Concluding remarks

All dentists are reminded of the importance of accurate billing.

An insurer is within its rights to request that a patient consent to the release of their information in the conduct of an audit. This may be a stressful event for a dentist, and may raise concerns about confidentiality, but the information belongs to the patient and their direction must be respected.

Dentists are also reminded to maintain an appropriate standard of professionalism in all interactions. This includes interactions with patients following the receipt of a lawful consent for the release of their information.

This memo is intended to provide general guidance about some matters of concern to the profession and to patients. It does not necessarily reflect CDSBC’s approach to any specific situation, nor should it be taken as legal advice. If you are a dentist who has specific questions about your legal rights, CDSBC strongly recommends consulting a lawyer.

A handwritten signature in black ink, appearing to read 'J. Marburg', is positioned above the name of the Registrar & CEO.

Jerome Marburg
Registrar & CEO