



Odontology Section – 2006

F15 Privacy Issues Related to the Acquisition of Antemortem Dental Records

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After attending this presentation, attendees will understand how federal, state, and dental licensure agencies have made provisions for the release of privileged dental records requested by medical examiner offices, coroners, or law enforcement agencies for use in dental identifications.

This presentation will provide practical information to enhance the collection of dental records from practicing dentists, who might otherwise be reluctant to release antemortem dental records in light of current legal ramifications of releasing privileged patient information.

Dentists and custodians of dental records have been taught to consider patient dental record information as privileged. Most dental offices operate under the assumption that all requests for release of information require a written consent by the patient, or patient's guardian if the patient is a minor. Consequently, when asked to provide a patient's dental records to serve as evidence in a dental comparison, the custodian of dental records may question if releasing the requested information is permitted without their patient's consent.

Since the implementation of the 2003 Health Information Portability and Accountability Act (HIPAA) regarding privacy issues of privileged medical and dental records, the author has noticed an increased reluctance on the part of dentists to comply with requests from medical examiner offices for dental records to assist in the identification of deceased individuals. But the HIPAA Act directly addresses the need for antemortem dental records to be made available for dental comparison. Section 45 CFR 164.512.g.1 clearly states that the release of information requested by a medical examiner for the purpose of identifying a deceased person is permissible without patient consent. This section states: Uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required. (g) Standard: uses and disclosures about decedents. (1) Coroners and medical examiners. A covered entity may disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. A covered entity that also performs the duties of a coroner or medical examiner may use protected health information for the purposes described in this paragraph." In addition, many state dental licensure agencies and occupations codes include specific information regarding exceptions to the privileged relationship of protected health information when records are being requested for the purpose of confirmation of identification. For example, the Texas Occupations Code Chapter 258.105(d) includes the provision that privileged information is discoverable and admissible in a criminal prosecution if certain conditions are met. First, the patient must meet the criteria as a victim, and second, the court in which the prosecution is pending rules that the requested information is relevant.

It is expected that there will be continuing updates concerning the complex group of regulations governing the privacy of protected health information. For example, in March 2005 Texas bill 79(R)1328 was filed in the Texas Senate that would seek to align Texas statutes with HIPAA privacy rules. Some proposed changes include how long a record with protected health information must be kept, authorizations for disclosure, consent to disclosure, collection of data with privileged health information by the Texas Health Care Information Council, and when a request for a copy of a medical record may be denied.

Dental offices can remain compliant with rules concerning patient privacy and the release of protected health information, while still meeting the requests of medical examiners and law enforcement agencies. The author hopes that the information delivered during the presentation will encourage attendees to become familiar with privacy regulations in their own states, countries, and jurisdictions. Dentists, dental auxiliaries, and dental staff members can be proud that in many instances, their diligent treatment documentation, photographs, and quality radiographs serve as the best evidence for their former patient to regain their identity, allowing them to be returned to their family for emotional closure and proper burial. The information contained in the presentation is not intended to be regarded as legal advice. Instead, the presentation will demonstrate that federal, state, and dental licensure agencies have made provisions for the release of dental records for use in dental identifications, when it is obviously not possible for a patient to give consent for the release of the private information.

Forensic Science, Forensic Dentistry, Odontology