

## Section 4

### **DISCLOSURE AND CONFIDENTIALITY OF RECORDS**

"The chiropractic physician shall preserve a patient's medical records from disclosure and will release them only on a patient's written consent stating to whom the records are being released or as required by State or Federal law".<sup>38</sup>

Confidentiality is an ethical and legal responsibility and is also necessary if practitioners expect individuals to be straightforward and honest. Patients must be confident that information will remain private and secure from public scrutiny. This confidence forms the basis for the principle that all patient-doctor communications are privileged and confidential.<sup>19,39-43</sup> Practitioners must not disclose whether an individual is, or has been, a patient. This includes disclosing information to the immediate family of the patient, with the exception of a parent or guardian of a minor or person legally declared incompetent.<sup>19</sup> The practitioner is responsible for observing professional and legal requirements of confidentiality, as well as ensuring these requirements are met by any employee involved in the preparation, organization, filing or other handling of patient records.<sup>39</sup>

Ultimately, patients have the right to have any information pertaining to their health kept confidential and not made available to others without authorization.<sup>19,38-45</sup> This information remains privileged even after the patient dies.<sup>19,41,43</sup> Even though an individual pays for professional services, they do not own the resulting records.<sup>19</sup> With few exceptions, e.g. federally assisted drug or alcohol abuse programs, patients have the right to copy,<sup>41,42</sup> inspect,<sup>41,42</sup> correct, amend, authorize or restrict access,<sup>19,40-42</sup> be notified of intended disclosures<sup>19,40-42</sup> and pursue breach of duty remedies with respect to their personal health records.<sup>42</sup>

There are few exceptions to the rules of disclosure. However, the following situations allow disclosure without permission of the patient:

- response to certain court orders;
- conformity with statutory reporting law, e.g. child,<sup>45</sup> elderly abuse;
- communicable disease reporting, e.g. TB;
- injuries allegedly resulting from a criminal act, e.g. knife or gunshot wounds;
- cases where an individual threatens harm to themselves and/or others with a reasonable probability they will carry out the threat.<sup>40-43</sup>

In the cases of communicable disease where the patient refuses to inform or allow someone else to inform an endangered third party, or when there is a threat of physical violence where a third party may be in danger, the duty for disclosure to both public officials and the third party may exist.<sup>41,42</sup>

The State of Oregon has developed a statute encouraging health care providers to adopt voluntary guidelines that will give health care recipients access to their medical records in addition to preserving them from unnecessary disclosure. This statute recommends utilizing a written release authorization form. (See Appendix A)

If, in the professional judgement of a physician, disclosure of a medical record or part of a record would be injurious to a patient, the provider may withhold that record or provide an accurate and representative summary of the information contained in the record. In addition, a health care provider may withhold another provider's record in their possession even after receiving a written release authorization. In either of these situations, the health care provider must disclose

the author and date of the withheld record(s) and/or summary(s), or declare the record provided to be a summary. "A patient may not maintain an action for damages against a health care provider for disclosures made by the health care provider in good faith reliance on a properly executed written release authorization..."<sup>44</sup>

With respect to workers' compensation claims, signed forms 801, 827, 829, and 2837 (Release of Information) give medical providers the authority and responsibility to release relevant medical records to the insurer, the insurer's representative, or the Director of the Department of Consumer and Business Services.<sup>46</sup>

In order to protect the patient's right to privacy, the health care provider must have further specific consent for admitting a non-essential person (e.g. student intern) where privacy may be compromised or when taking pictures for clinical or professional purposes. Like other forms of consent, this should be documented.<sup>19</sup>

If information is going to be electronically transferred, a confidentiality statement should be utilized as a cover sheet to preserve confidentiality.<sup>40, 41, 45</sup> For example,

*PLEASE NOTE: The information contained in this transmission is confidential in nature. The information is to be used for its intended purpose only and is to be destroyed after the stated need has been fulfilled. Please deliver IMMEDIATELY to the individual indicated above. If you have received the transmission in error, please notify us immediately by telephone and destroy the transmitted documents.*

The health care provider may even want to include in their release of record document a check box that gives the patient the choice to not have their records transmitted electronically as the confidentiality of these systems is somewhat less reliable. The healthcare provider should maintain records of any electronic transmissions and request the receiver to sign and return attached receipts when the data has been received.<sup>40, 45</sup> The increasing reliance on electronic storage and transmission of health record data requires that the provider take all reasonable precautions to ensure that confidentiality is maintained.<sup>41-43</sup>

It is the patients' responsibility to be aware of their insurance company's policy with respect to releasing medical records; i.e. who is allowed access to their private health records. In order for the healthcare provider to submit a standard health insurance claim form to an insurance carrier, the patient must "...authorize the release of any medical or other information necessary to process this claim."<sup>47</sup>

Other areas may compromise confidentiality including sign-in sheets, patient files, door/wall hanging file holders, "thank you for referral" cards, etc. Health care providers should establish policies and procedures that ensure reasonable protection of the patients' right to confidentiality in addition to acting as role models by demonstrating their commitment to patient privacy and confidentiality.<sup>40, 41, 43, 45</sup>

## Section 5

### DOMESTIC VIOLENCE

Domestic violence is one of the major, serious public health problems affecting families in America and globally.<sup>48-51</sup> Domestic violence, child abuse and elder abuse are all included in the broader category of family violence.<sup>49</sup> Most definitions of domestic violence (a.k.a. intimate partner abuse (IPA), intimate partner violence (IPV)) include the following components:

1. ongoing pattern of intentional violent or assaultive or coercive behaviors or tactics.<sup>48, 51-58</sup>
2. purposeful tactics or behaviors directed at achieving and maintaining power, compliance or control over the victim,<sup>51,52,57</sup> thereby denying their individual and civil rights.<sup>56</sup>
3. may include any or all of the following:

Physical abuse:<sup>48-57</sup>

- injuries of a non-accidental or unexplained nature including shaking, slapping, hitting, kicking, punching, choking, biting, throwing, use of conventional and household objects as weapons;<sup>52</sup>
- injuries commonly targeted to proximal areas so they remain concealed;<sup>52</sup>
- denial of medical attention, physical needs (food, water, shelter, sleep), access or use of contraceptives or other safe sex techniques;<sup>52</sup>
- restraint or not allowing victim to leave their room or home;<sup>52</sup>
- murder.<sup>52,54-57</sup>

Sexual abuse:<sup>48-53,56,57</sup>

- rape;<sup>52</sup>
- making sexual jokes or comments intended to humiliate or demean;<sup>52</sup>
- forcing any person to watch pornography or others having sexual contact, or participating in prostitution or pornography.<sup>52</sup>

Emotional or psychological abuse:<sup>48,50-54,57</sup>

- social isolation or deprivation;<sup>48, 52, 53, 57</sup>
- verbal abuse or intimidation and threats;<sup>48,52,53,56,57</sup>
- control by isolation from family and friends;<sup>52-54,57</sup>
- techniques of coercion or brainwashing designed to use children against a partner; e.g. threatening to take or hurt the children, using children to continue contact through custody or visitation.<sup>52</sup>

Economic coercion or control:<sup>48,51,52,54,57</sup>

- in any type of relationship: adult, adolescent, current heterosexual, homosexual including former dating, marriage, and cohabitating.<sup>48,52,53,58</sup>

Domestic violence is a gender-neutral term and universal problem, which cuts across all racial, socioeconomic, national, religious and ethnic boundaries.<sup>48,49, 54,57</sup> The overwhelming majority of victims, 90-95%, are women;<sup>48,49,57</sup> however, expert opinion and initial studies suggest domestic violence among lesbians gay, bisexual and transgender individuals may be comparable to domestic violence perpetrated against heterosexual women.<sup>53</sup> There is no standardization of what constitutes a violent act. This results in conflicting estimates of the number of women and men affected by "violence"<sup>54</sup>. There is paucity of data about domestic violence against men.