OPTOMETRISTS AND DISPENSING OPTICIANS BOARD
Te Poari o ngā Kaimātai Whatu me ngā Kaiwahakarato Mōhiti

STATEMENT ON RELEASE AND RECEIPT OF PATIENT INFORMATION

Background

The Health Practitioners Competence Assurance Act 2003 (Act) requires the Board to set standards of ethical conduct to be observed by health practitioners. The Board's *Standards of Ethical Conduct* require optometrists and dispensing opticians (practitioners) to abide by all relevant legislation. The purpose of this statement is to ensure that practitioners are aware of their legal obligations to patients with particular regard to release of patient information, pursuant to the Privacy Act 2020, the Health Information Privacy Code 2020 and the Health Act 1956.

Statement

Practitioners are expected to comply with patient requests promptly and cooperatively for release of their personal information. In order to minimise risk of misunderstanding between patient and practitioner about the release of patient information, all practitioners must ensure that they communicate clearly with the patient about the information held, the intended recipients, the process for releasing it, and any other matters that the patient should be aware of.

Issues

Requirement to release information

Section 22F of the Health Act 1956 requires that health information must be disclosed upon request from the individual to whom the information relates, or their representative, or any person that is providing or is to provide services to that individual.

A request by the individual or an individual's representative can be refused on limited grounds only.[1]

If the information is requested by a person that is providing, or is to provide, services to that individual (for example, a request for information about a patient is made by one practitioner to another practitioner), the practitioner holding the information may withhold it if he/she has ***reasonable grounds*** for believing that the individual does not wish that information to be disclosed.

[1] The Health Information Privacy Code and Privacy Act provide very few reasons for withholding information. Practitioners should seek legal advice if they consider there are grounds for withholding an individual's information from the individual or their representative.

Where there is a request from one practitioner to another for patient information, and where patient details such as full name, address and date of birth are provided that correspond with the records held on file, the practice holding the information should disclose it unless they have reasonable grounds for believing that the individual does not wish the information to be disclosed.[2] If the practitioner who holds the information has genuine doubts, on reasonable grounds, about the *bona fides* of the request, he/she should speak to the patient directly to verify the request or request written consent from the patient to release that information to the practice.

Section 22F of the Health Act specifies that information may not be withheld on the grounds that payment is due to the holder of that information, or to avoid prejudice to the commercial position of the holder of any information or of any other person.

Under IPP 13 of the Privacy Act 2020, organisations and practitioners must not use unique identifiers for individuals unless it needs the identifier to perform its functions. Practitioners need to take precautions to the protect any unique identifiers that are assigned to patients from being misused and this should be kept in mind when releasing patient information.

The Retention of Information

The information that is collected from a patient for the purpose of examination and record keeping must not be kept for longer than there is a purpose for its retention as stated in IPP9 in Part 3 of the Privacy Act 2020.

Release of prescription information

There is no legal definition of what constitutes a prescription for an optical or ophthalmic appliance. Because of this, it is important when dealing with a request for release of information that practitioners communicate clearly with patients about the information held on the patient's file.

The information to be released will depend on the patient's request. **If the complete patient file is requested, then a copy of the complete patient file must be provided, without deletion.[3] All tests, measurements and procedures undertaken as part of an eye examination must be recorded - and <u>if recorded</u>, must be released.**

When releasing only prescription information to a patient who has the intention of having an optical or ophthalmic appliance made up elsewhere, the practitioner releasing the information should be clear about the status of the information, and should specify in writing whether the information is:

1 a ***dispensed prescription*** which is complete and has performed satisfactorily in a dispensed ophthalmic or optical appliance to provide clear and comfortable vision; or

[2] There are additional (limited) grounds for withholding information from another provider, under the Privacy Act (sections 45-53). Practitioners should seek legal advice if they consider withholding information under these grounds.

[3] The Privacy Act 2020 provides very few reasons for withholding information. Practitioners should seek legal advice if they consider there are grounds for withholding an individual's information from them.

2 ***prescription findings at examination*** which is based on information obtained within the clinical environment but not yet tested in a dispensed ophthalmic or optical appliance.

Prescription information released must clearly indicate the name of the prescriber, and if being issued by anyone other than the prescriber, should include the name and registration number of the person providing the prescription information (if registered) and it must be clear that this person is not the prescriber and that the information is being provided on behalf of the prescriber.

To further protect the practitioner releasing the information, and as a matter of good record keeping, he/she should make a note on the patient's record *at the time the information is released*, summarising the advice given with regard to the information.

Charging for release of information

The Board does not have a role in the setting of fees by practitioners. Section 66 of the Privacy Act provides that a private sector agency may require payment of a charge in respect of making information available in response to a request. If practitioners are considering setting a charge, practitioners must have regard to the Privacy Act and Health Information Privacy Code requirements. Clause 6 of the Code sets out the limited circumstances in which a practitioner may charge for making health information available, namely; (a) for a subsequent request - where information has already been made available to an individual and the individual makes a subsequent request for the same/substantially the same information within 12 months of the original request; or (b) for providing a copy of an x-ray, video recording, or an MRI/PET/CAT scan photo.

Where a charge is likely to exceed $30 the individual must be provided with an estimate of the charge before dealing with the request.[4] Section 66 of the Privacy Act specifies that: the charge must be reasonable; and regard may be had to the cost of the labour and materials involved in making information available in accordance with the request and to any costs incurred pursuant to a request of the applicant for the request to be treated as urgent.[5]

Breaches of the Privacy Act or Health Information Privacy Code

Any alleged breaches of the Privacy Act or the Health Information Privacy Code must be referred to the Privacy Commissioner.

Practitioners **must** notify the Privacy Commissioner and the affected patients/people when there has been a privacy breach that poses a risk of serious harm or causes serious harm. This needs to be judged on the sensitivity of the information that has been accessed and whether the breach is contained. It is also important to considering whether more harm would be caused by notifying the affected persons. If there is any uncertainty, practitioners are obligated to inform

[4] Per Part 3, clause 6 of the Health Information Privacy Code 2020.

[5] As per section 66(3) of the Privacy Act 2020. A charge cannot be made for assisting with a request for information, making or transferring a request, or processing a request (section 66(3) of the Privacy Act 2020).

the Privacy Commissioner. There are some exceptions which can be found under section 116 of the Privacy Act 2020.

Overseas Disclosure

If information is to be sent overseas, practitioners must now consider the whether the patient is covered by the New Zealand Privacy Act or a comparable privacy legislation in the country of the recipient. The patient must be aware of the consequences of such a disclosure and waive the protections if there are not equal privacy provisions in the destination country.

Receiving prescription information

Upon receipt of prescription information, the receiving practitioner must ascertain whether further tests or measurements are required before an appliance can be dispensed. This will depend on the information received.

Dispensed prescription

Whether a further eye examination is required will depend on a variety of factors, including (for example) the time elapsed since the appliance was dispensed. If a decision is made to make up an appliance based on the dispensed prescription, the practitioner should be aware that any substitutions made to a dispensed prescription may or may not result in an appliance which performs to the same level of satisfaction. Practitioners changing any parameters of an existing specification must take responsibility should the new appliance not perform to expectation.

Prescription findings at examination

If measurements such as pupil distance were not recorded as part of the eye examination, these measurements may need to be taken.

Under section 9 of the Health Practitioners Competence Assurance Act 2003 there is a restricted activity relating to the "*prescribing of an ophthalmic appliance, optical appliance or ophthalmic medical device intended for remedial or cosmetic purposes or for the correction of a defect of sight."* This restriction is intended to address the significant risk of asymptomatic eye disease associated with the dispensing of an ophthalmic appliance, optical appliance or ophthalmic medical device, without the first step of a diagnosis by a registered health practitioner.

Before ordering an appliance based on information received from another practice, the practitioner should satisfy him/herself that an eye examination was performed by an optometrist or ophthalmologist as part of the process undertaken to derive the prescription findings.

Ethical obligations

All practitioners are reminded of their ethical and professional obligations to treat colleagues with respect and professionalism. This includes making and responding to requests for patient information.

Practitioners are also required to treat patients in accordance with the Health and Disability Commissioner's Code of Health and Disability Consumers Rights.

The 10 basic patient rights under the Code are:

Right 1: the right to be treated with respect
Right 2: the right to freedom from discrimination, coercion, harassment, and exploitation
Right 3: the right to dignity and independence
Right 4: the right to services of an appropriate standard
Right 5: the right to effective communication
Right 6: the right to be fully informed
Right 7: the right to make an informed choice and give informed consent
Right 8: the right to support
Right 9: rights in respect of teaching or research
Right 10: the right to complain

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