

WHO IS RESPONSIBLE FOR PATIENT FILES?

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Who should have possession of patient files? What is the impact on an ND who does not have the file should there be a patient complaint and/or a resulting malpractice claim?

Recently, more and more NDs have been posing the following questions:

1. Who should possess the files?
2. How long the files should be maintained?
3. What should you do as an ND if you are leaving a clinic?

With respect to the first question, the attending ND is responsible for maintaining his or her patient files.

As for the second question: depending on the jurisdiction of practice, the statutory period ranges from 7 to 10 years from the last patient visit. For example, the College of Naturopathic Doctors of Alberta states that records should be retained for 7 years, or, if the patient is a minor, until he or she reaches the age of majority (*i.e.*, 18 years old) plus 7 years. By contrast, the College of Naturopaths of Ontario or (CONO) requires that records be kept for a period of at least 10 years after the date of the last entry.

In Ontario, recent changes to legislation with respect to the health records of children states that once a child reaches the age of majority, health care professionals are required to maintain the files for an additional period of 10 years. This is also required in Manitoba, Nova Scotia (where the age of majority is 19 years), and Prince Edward Island.

In British Columbia, the Bylaws of the College of Naturopathic Physicians of British Columbia (CNPBC) state that personal information must be retained for a period of 7 years. However, the British Columbia Naturopathic Association (BCNA) has recommended that *“keeping files much longer than the required seven years is important.”*¹ For example, in response to the new *Limitation Act* extending the limitation period for claims against medical practitioners from 6 to 15 years, the College of Physicians and Surgeons of British Columbia (CPSBC) and other regulatory colleges now require that medical records be retained for a period of

¹ British Columbia Naturopathic Association, “File Retention & Ownership”
<http://www.bcna.ca/file-retention-ownership/>.

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16 years, or in the case of minors, the records must be retained until they reach the age of majority (19 years) plus 16 years.

The Saskatchewan Association of Naturopathic Practitioners requires that patient files for adult clients be retained for at least 7 years. Files for minors must be kept until they turn 18 years old plus 7 years.

In other provinces and territories, where the practice of naturopathic medicine is as-yet unregulated, it is incumbent upon NDs to be aware of the legislation regarding health records in their jurisdiction.

The third question is the most complex; what do you do as an ND if you leave a clinic? This in turn prompts two more questions – namely, who is responsible for an ND’s patient files if he or she leaves, and what effect might an existing employer or partnership agreement have in this scenario?

To assist our clients with these complex questions, Partners requested the assistance of the law firm Dolden Wallace Folick LLP, and CNA, the underwriter of the CAND group malpractice insurance. Based on a review of existing case law the guidelines of the regulatory boards and the requirements of the underwriter, we are able to provide the following information.

In BC, the CNPBC states that NDs who are leaving their practice should be guided by two important principles: *“the assurance of continuity of patient care and the preservation of patients’ clinical records.”*²

According to the CNPBC, in a scenario where an ND is moving to a new practice, the patient files may indeed “belong” to the ND and can go with them. However, if those files were generated in the course of employment, their ownership may in fact lie with the employer. The CNPBC advises that where there is a group practice, there should be an agreement in place about ownership of the records and how they should be managed in the event someone leaves the practice.³ The CNPBC further advises that patients themselves should be informed about an ND moving practices, and asked whether they want their records to follow that ND or stay with the clinic.

Regardless of who ultimately “owns” the patient files, the CNPBC makes it clear: *“An associate who moves to a new practice is entitled to retain copies of clinical records for every patient for whom the associate is the treating naturopathic physician.”*⁴

² College of Naturopathic Physicians of British Columbia, “Guidelines: Leaving or Transferring Practice – Ownership, Storage, and Access to Clinical Records” <http://www.cnpbc.bc.ca/wp-content/uploads/2017-06-15-Guideline-Leaving-or-Transferring-Practice.pdf>.

³ *Ibid.*

⁴ *Ibid.*

Similarly, in Ontario, while it is the responsibility of the attending ND to maintain his or her patient files, the CONO states that “ownership” of those files may lie with the clinic and not the ND, depending on the terms of the agreement between the clinic owner and ND.⁵

The CONO also says that if a practice arrangement between two or more practitioners’ ends, regardless of who ends up being the designated owner of the patient files, the agreement between them should not “restrict patients’ right to choose – while the original patient record remains in one location, the patient can pick their naturopathic doctor.”⁶

Because signing a contractual agreement can change the common right of a professional to ownership of the records they maintain, what happens when a patient files a complaint after the departure of an ND, who has signed an agreement stipulating that all records are the property of her or her employer or clinic?

In our opinion, the onus of responsibility must remain with the attending ND – and this is confirmed by the CONO, which states: “It’s your obligation to have the current address and contact information of your previous practice location, and to obtain the original copy for the College. The original will be returned to the owner of the file once the College has completed the complaint process.”⁷

It would be less complicated, of course, if attending NDs retained ownership of their files, but if that is not possible due to a contractual agreement, they should at least retain copies and know where the originals are kept in the event the files are required by a disciplinary body or court.

Summary of recommendations:

1. The attending ND retain a copy of the patient file – ideally the original one. This could be either hand-written or electronic depending on jurisdictional requirements.
2. If multiple NDs have attended a patient, they should each retain the original copy of their own notes to file.
3. The clinic should, at the very least, maintain a copy of the file.

⁵ The College of Naturopaths of Ontario, “Regulatory Guidance: Transfer of Records”
https://www.collegeofnaturopaths.on.ca/CONO/Members_Practice/Regulatory_Guidance/Transfer_of_Records/CONO/Members_Practice/Regulatory_Guidance/Transfer_of_Records.aspx?hkey=5b6ba842-eff9-4ddd-9c7f-8ce966cba35d.

⁶ *Ibid.*

⁷ *Ibid.*

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4. Although NDs can contractually agree to give up ownership of their files, they should do so knowing that in the event of a complaint, they may be responsible for obtaining the original file and should accordingly have a plan in place for doing so. While a file could be obtained through direction provided by the patient, this could prove awkward.
5. In the case of an insurance claim, insurers, their solicitors, and the courts prefer original notes. Therefore, NDs should make sure to retain them, or have legal access to them.