

Costs of Notifying Patients and Transfer of Medical Records After receipt of a request for an advisory opinion relating to who bears the costs of notifying patients and transferring medical records when one or more physicians leave a practice, the Credentials Committee recommended that the Board issue the following opinions. The motion was adopted without objection.

Question 1: When a physician who is departing a group practice requests a list of his or her active patients and, in lieu of providing the list, the practice elects, in the alternative, to send the notices itself, if there are no contractual provisions between the parties addressing the cost, who should bear the cost of the notices the practice elected to send?

Response: Ala. Admin. R. 540-X-9-.10(3) states that a physician who leaves a medical practice “is responsible for ensuring that active patients receive reasonable notification” of the physician’s departure. However, when this responsibility is assumed by a party other than the departing physician, the question of who is ultimately responsible for the costs incurred is a matter of contract between the parties and is beyond the purview of the Board. Accordingly, the Board is unable to answer Question 1.

Question 2: If a patient of a group practice chooses to seek treatment from a physician at a second practice and requests that the first practice transfer his or her records to the second practice, do the Board rules authorize the first practice to force the physician at the second practice to pay for the costs of reproducing and transferring the patient’s records?

Response: Board rules do not authorize any person to compel another person, other than the actual requestor, to pay for the reproduction and transfer of medical records. Alabama law permits a person “required to release copies of medical records” to “condition the release upon payment *by the requesting party* of the reasonable costs of reproducing the medical records.” Ala. Code § 12-21-6.1(b)(1) (emphasis added). Similarly, Ala Admin. R. 540-X-9-.10, referencing state law, provides that a physician “is allowed to condition the release of copies of medical records on the *payment by the requesting party* of the reasonable costs of reproducing the record.” Ala. Admin. R. 540-X-9-.10(2) (emphasis added). Under both state law and Board rules, the *requesting party* is the person who may be required to pay the reasonable costs of reproducing and transferring a patient’s records. Board rules do not authorize a physician to charge another physician for the reproduction and transfer of medical records if the second physician has not requested the reproduction and transfer.

Moreover, the charging of reasonable costs to the requesting party is permitted, but it is not required. See Ala. Code § 12-21-6.1(b)(1) (“any person . . . *may* condition the release”); Ala. Admin. R. 540-X-9-.10(2) (“a physician is *allowed* to condition the release”

of medical records); American Medical Association (“AMA”) Code of Ethics Opinion 3.3.1 (endorsing charging a “reasonable fee (*if any*) for the cost of transferring the record”) (emphasis added). Instead, physicians should give “primary consideration” to their ethical and professional duties when determining whether or not even to charge for the reproduction and transfer of records. Ala. Admin. R. 540-X-9-.10(2); AMA Code of Ethics Opinion 3.3.1 (stating that “physicians have an ethical obligation to manage medical records appropriately. This obligation encompasses . . . providing copies or transferring records to a third party as requested by the patient . . . when the physician leaves a practice.”).

Accordingly, the health, safety, and welfare of patients must be the top priority of all physicians involved in the reproduction and transfer of medical records. While a physician may condition the release of medical records on the payment of costs by the requesting party, he or she should not permit the issue of costs to impair the health, safety, or welfare of any patient involved. Where a patient has requested the transfer of medical records to a second physician, and where the first physician has declined to charge the costs to the requesting patient, the Board’s rules do not authorize the transfer of costs from the requesting patient to any other party.

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