

## MANAGEMENT & MARKETING

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If your office performs credit checks on prospective patients, I encourage you to read this month's column carefully. Even if you don't obtain credit reports, it is important to understand recent changes in how they are used and regulated. Most of you will recognize the author, Bill Brady, as the CEO and President of Orthodontists Fee Plan. OFP recently became a subsidiary of Capital One, one of the nation's largest lenders, which has added even more to Mr. Brady's knowledge of credit issues.

He warns that orthodontists who are unaware of the current regulations pertaining to credit reports may be taking a great risk by obtaining such reports on prospective patients. I myself was surprised by the *Wall Street Journal's* explanation of the negative impact that merely asking for a credit report can have on your patient's credit rating.

I want to thank Mr. Brady for bringing these new developments and their effects to our attention. His warning may help orthodontists avoid legal difficulty and help their patients avoid credit problems.

### Obtaining Credit Reports Can Be Risky Business

As the consumer credit landscape has changed, and as federal regulations now require more disclosure to consumers, orthodontists need to be aware of the problems associated with obtaining credit reports before offering financial arrangements. The aim of this article is not to discourage anyone from using credit reports when appropriate, but to point out some of the potentially adverse effects of credit reports on your patients and to help you avoid illegal practices.

### Effects on Patients

The FICO score is a three-digit rating generated by Fair, Isaac & Co. to reflect a consumer's creditworthiness. It takes into account the consumer's payment history, defaults, attempts to obtain credit, and so on. Many lenders rely on the FICO score to decide whether to make a loan or issue a credit card, and at what rate.

Let's use an example. If your FICO score is 660, you may pay an interest rate of 8% on a car loan. If your score is five points lower, you may have to pay .5-1% more. For a \$15,000, six-year car loan, that difference costs you \$265-530.

How does this apply to an orthodontist? Whenever a practice requests a credit report, *that patient's FICO score will be reduced by an average of five points.* See note #1. As a recent front-page *Wall Street Journal* article pointed out, the score can be reduced by as many as 10 points.<sup>1</sup> As shown by the car-loan example, your request for a credit report could cost the patient several hundred dollars.

*The Wall Street Journal* also describes how more than 350 insurance companies now use FICO scores to determine how much they will charge consumers for home and auto insurance. The *Journal* reports that "if your credit score goes down, your auto-insurance rate may go up". Credit

card companies also have FICO cutoffs, so that someone above the cutoff might get a 9.9% rate on a credit card, while someone below the cutoff could get a 15.9% rate--a difference of 6%.

A second issue is that your name will appear as an "inquirer" on your patient's credit report *for two years*. As more and more consumers are checking their own credit reports, it is more likely that your patients will see your name on their report. Future lenders may also perceive your inquiry as a negative, wondering, "Why did this consumer have to get credit from a doctor? Was there a problem?"

It is worth noting that when your patient applies with Orthodontists Fee Plan, our corporate name AmeriFee (not the doctor's name) appears as the "inquirer" on the credit report. The patient's FICO score is still affected, as it would be with any lender, but the patient calling OFP has filled out a loan application and is fully aware that OFP is obtaining a credit report for financing.

## **Illegal Practices**

Credit reports are highly regulated by the federal government through the Equal Credit Opportunity Act, as implemented by the Federal Reserve Board's Regulation B and the Fair Credit Reporting Act. In addition, many states have their own laws. You should consult with your attorney about state regulations that may apply to you.

*Discrimination.* It is illegal to subtract a grade or offer different financial terms because of someone's marital status, age, or gender.<sup>2</sup> No model for credit grades can use age, marital status, or gender as a factor.

*Adverse Action.* If you obtain a credit report and then offer to change or negotiate any of the financial terms you presented to the patient (initial payment, monthly payment, etc.), and the patient decides not to proceed with treatment *for any reason*, you are obligated to send that patient a written "Adverse Action" letter. This is required by law because the patient did not accept your financial terms, whether or not that was the actual reason for not seeking treatment from you.<sup>3</sup> The letter must include the name, address, and telephone number of the credit reporting company you used; a statement that the credit reporting company did not make the decision about the financial offer that was made to the patient; and a notice about how the patient can obtain a copy of the credit report. Other requirements for adverse action may also apply.

Some have suggested that you can avoid this requirement if you base your credit decision on the patient history form rather than the credit report. This is a dangerous idea, however, because if you were legally challenged on a decision to offer restricted financial terms, the presumption would be that you could not have ignored the credit report.

*Disclosure.* You must fully disclose to the patient that you are going to seek a credit report, and you must obtain authorization to do so. The authorization form should be in bold print and should be separate and distinct from any medical form. Since federal regulators want to protect consumer privacy, you are taking a great legal and practical risk if you do not make this disclosure prominently in writing. Before any form is signed, your staff should also tell the patient verbally that the office is going to obtain a credit report.

The Federal Trade Commission, which is responsible for carrying out the Fair Credit Reporting Act, has specifically determined that a dentist does not have a "permissible purpose to obtain a credit

report on the parent of a patient". As a result, the dentist needs the "written instructions" of the patient to obtain the credit report. The wording of these instructions is critical; this and other information can be found at [www.ftc.gov/os/statutes/fcra/shibley.htm](http://www.ftc.gov/os/statutes/fcra/shibley.htm).

We know of several offices that were not careful with disclosure and ran into trouble. They did what many orthodontists do?they had one sentence buried in a long medical history form, the rest of which had nothing to do with financial information. In these cases, the patients had initial consultations and signed the forms, and the offices obtained credit reports. The patients then decided to proceed with other orthodontists. A short time later, the patients tried to refinance a mortgage or get a home-equity loan and discovered that the orthodontists had "inquired" into their credit reports. These patients were angry with the orthodontists, especially because they didn't pursue treatment with those doctors. They threatened litigation and even notified the attorneys general in their states.

The moral of the story is: Be up-front and fully disclose. No orthodontist needs the ill will that results from being perceived as sneaky.

## **Practical Problems**

One of the biggest problems facing lenders today is the *amount* of debt consumers have. You cannot make an intelligent credit decision unless you know a patient's income and ability to pay off debt. Orthodontists do not typically ask a patient's income, however, and most staff people do not consider how much debt a patient has before making a decision about what financial terms will be offered.

At OFP, we often see applications such as a family that has paid its bills and earns \$50,000 a year, but carries \$40,000 in credit-card debt. We might deny credit altogether, because this is an accident waiting to happen. Most orthodontic offices would rate this family as an "A" credit risk, however, because they don't know about its income or debt. If the family starts to fall behind with its bills, the orthodontist is often the last to be paid. Please understand that I am not recommending that orthodontists ask for patients' incomes, but merely pointing out that a great deal of sophistication and training is needed to analyze debt.

There is also the practical issue of how your staff interprets a credit report. At a recent AAO staff roundtable session, experienced financial coordinators were given credit reports to evaluate. Each participant had a different opinion, and no two would have offered the same financial arrangements. This shows the inconsistency and risk inherent in using credit reports to determine financial arrangements.

## **Conclusion**

Credit reports are risky business today. Regulators are imposing stricter requirements to protect consumers. Patients are getting more sensitive and savvy about their credit reports. Lenders are making interest-rate decisions based on FICO credit scores--and your "inquiry" can unintentionally hurt your patient financially. Full disclosure of what you intend to do is required. Fine print or "try to slip it past them" wording is neither acceptable nor prudent.

When patients call OFP, they are calling to receive financing, and there is full disclosure about obtaining their credit report. As a regulated financial institution, we have to be aware of all

applicable legal requirements and highly sensitive to consumer privacy rights. We actually find ourselves helping to educate many patients on how to obtain their credit reports and what they can do to improve them. See note #2.

If you use credit reports, you are in a highly regulated and complex area of business and you need to be very, very careful. •

## **REFERENCES**

**1** Wall Street Journal, March 19, 2002, p. 1.

**2** 12 CFR 202.4 and 202.1(b).

**3** 12 CFR 202.2(c).

## **FOOTNOTES**

**1** When you apply with multiple lenders for a single car loan, the FICO models have been modified so that your score is not reduced for every inquiry, since it is clear that you are making only one transaction. In addition, your credit score is not reduced if you receive a credit-card solicitation, because you are not actively seeking the credit.

**2** If you would like to obtain a free copy of your own credit report, call any of the following toll-free numbers: (888) 397-3742 (Experian); (800) 888-4213 (Trans Union); (800) 685-1111 (Equifax).