

FAQs on access to Medical Records

The Medisec team receives daily queries regarding medical records. This is a quick overview of the most frequently asked questions and our advice.

Q. Is a patient entitled to their medical record?

A: A patient is entitled to a copy of his / her records (provided it does not put their health or the health of others at risk or reveal information about third parties without their consent).

Q. Should letters or notes from other healthcare professionals be included when sending a patient a copy of their file?

A. Yes, they should. While you do not need consent from the authors of those letters or notes (with the exception of certain mental health records – see below), you can as a matter of courtesy, let them know that the records have been requested and released.

The consent of another healthcare professional would be necessary prior to the disclosure of records that contained an expression of their opinion, which was given in confidence or on the understanding that it could be treated as confidential. In appropriate cases (some psychiatric illnesses for example) actual views of the consultants should be sought should the doctor be unsure as to whether releasing such records could pose a significant threat to a patient's health.

Q. How long should I keep patients' records?

A. Please refer to Medisec's fact sheet: *Retention and storage of medical records*, available on our website, which provides details of retention periods for different categories of records.

Q. What arrangements should be in place for the records of a deceased doctor?

A. Overall where a doctor dies, the best arrangement is for all records to be given to a colleague who is taking over the care of the patient, from the date of the doctor's death. In certain circumstances, particularly with private patients, records can be returned to individual patients for transmission to their new doctor. If releasing the records directly to patients, records should be made and files should be handed out in sealed envelopes for confidentiality reasons. Records should only be given to the patient themselves and not family members unless you have the patient's specific written consent.

The arrangements in all cases should be in consultation with the Legal Personal Representative (e.g. executor) of the doctor concerned.

Q. One of my patients died recently and his son is requesting details regarding his father's medical records. Can I give him the information?

A. According to the Medical Council's Guide to Professional Conduct and Ethics, (available on the Medical Council website) your duty of confidentiality continues after a patient has died. This is an ethical requirement and not a legal one as the right to sue for a breach of confidentiality dies with the patient. If your patient has requested that any information remain confidential you should respect his wishes. If the deceased patient has not given you any instructions regarding his personal information, you should take into account why the

information is required and whether or not the information would be of benefit or detrimental to the family, having regard to the good name of the patient and his family.

Please refer to Medisec factsheet: *Request for a deceased patient's records*, available on our website.

Q. I have often been asked for medical reports regarding patients from insurance companies. Some patients do not want me to disclose particular details of their history. What should I do?

A. Before disclosing any personal information to an insurance company you must have the express consent of the patient. Any requests from insurance companies should be discussed in detail with the patient and the patient made aware that this personal information may be shared with non-medical personnel. In certain circumstances you may ask the insurance company to amend their requests for information so that relevant information only is supplied and not sensitive personal information.

If following a discussion with the patient, they refuse consent to disclosing the required medical information, the doctor should refuse to provide the report. There is likely to be implications for the patient with regards their insurance policy or claim.

Please see our factsheet on *Private Medical Attendant Reports (PMAs)*, available on our website.

Q. A consultant undertakes some occupational health work for a company. One of the employees is taking an action against the company. The company is requesting a medical report on the patient. The patient originally signed consent with the company for the consultant's services. The patient is now not willing to give consent to release the report. Does the original consent signed by the patient imply consent in the circumstances?

A. Bearing in mind that litigation may be imminent against the employer, it would appear that the original consent signed by the patient would not apply in this case and further patient consent should be sought. If litigation is imminent, supplementary written consent to disclose information from the patient should be sought.

It is important at the outset of each consultation with the patient to clarify on whose behalf the consultant is providing a service, the patient or the company? Should there be any perceived conflict of interest it may be in the best interest of both the patient and the consultant to request that the company seek an independent medical review of the patient.

Is the patient entitled to a copy of the report?

The patient cannot be furnished with a copy of the report without the consent of the company – although the company can be asked for such consent and approval. Normally a company would be unlikely to withhold consent.

Q. Who is entitled to records of a patient to be made a Ward of Court?

A. When a person becomes unable to manage their assets because of mental incapacity, an application can be made to the courts for them to become a Ward of Court. Usually, the person applying to become "Committee" in the High Court is the person to whom records can be provided to if necessary. "Committee" is a reference to the person appointed by the Court to act on behalf of someone who is made a Ward of Court., usually but not always, a relative of the patient.

Q. If I receive a solicitor's letter requesting medical information on a psychiatric patient of mine who had allegedly assaulted the solicitor's client, should information be given?

A. You should not provide such records to the solicitor representing a victim in the absence of the patient's written informed consent. Having regard to the patient's illness there may be problems in such a patient providing consent. The solicitor should only be provided with such records on production of the patient's written informed consent or an Order of the Court.

Q. One of my patient's had genetic testing recently and does not want his family to know the results. What should I do?

A. The Medical Council's *Guide to Professional Conduct and Ethics*, states that anyone who wishes to have genetic testing must be counselled beforehand about the possible consequences of testing not only on them, but on their relatives. Always try to obtain the patient's consent in these circumstances but if consent is refused, disclosure may be permitted in the public interest. These can be difficult legal scenarios, so we recommend you contact Medisec if such a situation arises.

"The contents of this publication are indicative of current developments and contain guidance on general medico legal queries. It does not constitute and should not be relied upon as definitive legal, clinical or other advice and if you have any specific queries, please contact Medisec for advice".